

### AFTER THE INDIA-US CIVIL NUCLEAR AGREEMENT:

# Assessing India's Responsible Nuclear Status in Global Governance Aniruddha Saha

India has maintained a historical opposition to joining the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the Comprehensive Test Ban Treaty (CTBT), in arguing that both treaties create an unfair hierarchical system in global governance. However, in spite of contesting these norms that govern nuclear practices, India has been successful in gaining de facto recognition from the United States through a bilateral signing of the 123 Agreement. While examining this paradox, this paper argues that even with the rendered de facto recognition, India's nuclear identity remains far from being normalized. To carry this argument forward, this paper: i) identifies how India constructed its responsible and compliant global nuclear image, ii) recounts India's problematic relationship with the global nuclear regime, in spite of undertaking compliant nuclear practices, and iii) makes the case that in order to normalize this ambivalence, India needs to adopt a more evolving stance of contesting historical nuclear norms in contemporary times. In doing so, this paper not only furthers the theoretical literature on norm contestation by incorporating the Indian nuclear case study as a valuable source of analysis, but also informs the policy community of the growing need to re-examine India's historical nuclear stance.

#### Introduction

India has historically maintained its position of being a non-signatory to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)¹ and the Comprehensive Nuclear-Test-Ban Treaty (CTBT),² on the grounds of both these treaties being discriminatory,³ an infringement on sovereign decision making, and the inability of driving the permanent five members of the United Nations Security Council towards complete

disarmament.<sup>4</sup> In spite of India's opposition to nuclear norms emerging out of these treaties, the US recognized India as a *de facto* and a *responsible* South Asian nuclear power in 2005<sup>5</sup> through the operationalization of the 123 Agreement with the latter in 2008.<sup>6</sup> In doing so, India became the only country being a non-signatory to the NPT and the CTBT with whom the US has signed a 123 Agreement. According to the Agreement, India promised to separate its civilian nuclear facilities from its weaponization program, and put the

former under the safeguards of the International Atomic Energy Agency (IAEA). In exchange, India received extensive American cooperation and support for "the full development and use of nuclear energy for peaceful purposes as a means of achieving energy security, on a stable, reliable and predictable basis."<sup>7</sup>

However, India's ambivalent relationship with the nuclear non-proliferation regime - with particular reference to the United States almost remains unnoticed, in spite of a series of geopolitical developments post 2008, and India's own problematic commitments to nuclear norms. Therefore, this paper re-contextualizes this anxiety-inducing relationship in arguing that India's nuclear identity in global governance remains far from being normalized, even after the bilateral signing and the operationalization of the Indo-US 123 Civil Nuclear Agreement in 2008. To do so, the paper looks at how India builds its responsible nuclear image on the global stage, the cases through which India has and keeps violating nuclear norms, and why India's arguments of historically opposing the NPT require a more critical and normative review.

### India as a Responsible Nuclear State on the International Stage

India's first Prime Minister, Jawaharlal Nehru, argued in 1946 that India would wish to reap the peaceful uses of atomic energy and prevent nuclear escalation, but if threatened it would "inevitably

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try to defend herself by all means at her disposal."8 In fact, scholars have often attributed India's employment of a peaceful stance towards nuclear energy to its non-violent struggle for independence from colonial rule.9 India's non-violent outlook towards nuclear energy, Nehru's diplomatic maneuvering, and efforts from Homi J. Bhabha the renowned Indian nuclear physicist - ensured assistance from United Kingdom in setting up and supplying nuclear fuel to APSARA, Asia's first nuclear reactor, at the Bhabha Atomic Research Centre in Mumbai.<sup>10</sup> In continued display of India's commitment to non-aggressive nuclear policies and as part of the India-US cooperation, the American General Electric Company built India's first commercial nuclear power plant in Tarapur during the 1960s.11 The US also agreed to supply enriched uranium fuel for the Tarapur Atomic Power Station till 1993.12

During the pinnacle of the Soviet-US arms race during the 1950s and the 1960s in the form of repeated atomic tests, India's crusade of nuclear non-violence, saw Nehru propose a "Standstill Agreement" in 1954 on further nuclear testing.<sup>13</sup> In very similar terms, Indian Prime Minister, Rajiv Gandhi, called for a step-by-step Action Plan on the floor of the UN General Assembly in 1988 that would have seen a nuclear free world by 2008.14 Other efforts of projecting itself as a responsible nuclear power - albeit not being a signatory to the CTBT and the NPT - was contributing to the formulation of these treaties by suggesting "a balance of mutual responsibilities and obligations on the part of the nuclear and nonnuclear powers,"15 "attempts to promote non-proliferation would be merely a first step toward the ultimate goal of universal nuclear disarmament,"16 and "endorsing the spirit of test-ban and self-imposed moratorium on test".17

In recognizing India's commitments to normative nuclear norms, a joint statement by Prime Minister Vajpayee and President Bush in 2003 "re-defined the US-India relationship in terms of "democracy, common principles and shared interests" of fighting "[g]lobal terrorism, state sponsors of terrorism, and the proliferation of weapons of mass

destruction",18 and ultimately led to the signing of the Indo-US 123 Agreement. Furthermore, India also keeps demonstrating a strong adherence and international commitment to protecting contemporary liberal values by investing heavily in peacekeeping operations of the United Nations, with the highest contribution of personnel since 1950.19 In more recent years, India has often toed in line with the US concerning strategic nuclear interests. Apart from India and Israel sharing several common areas of cooperation,<sup>20</sup> the US has often used the India-US nuclear deal to lobby India on its side in curbing Iranian nuclear ambitions. In September 2005, Greg Schulte, US ambassador to the International Atomic Energy Agency, stated that "India's voice will carry particular weight...I hope India joins us in making clear our collective concerns about Iran's nuclear program."21 Reportedly, closed talks among Indian diplomats suggested that Indian votes at the UN against Tehran was forced,<sup>22</sup> with India voting thrice against Tehran's nuclear ambitions between 2005 and 2009.23 Additionally, India also urged Tehran "to cooperate with the IAEA in the performance of its verification activities and addressing all outstanding issues" as recently as July 2021.24

In aligning itself with the foreign policy of India has also held a strong stance of condemnation against routine North Korean missile tests in arguing that these tests "adversely impact[ed] peace and stability in the region and beyond"25 and suspended major trade relations North Korea.<sup>26</sup> Very recently, amended its long-standing policy of perceiving Palestine and Israel as independent and separate countries by denying observer status to 'Shahed' (a Palestinian human rights organization) and voting in support of Israel, a valuable US ally, in the UN.27 In following up with its strong support to Israel, India also abstained from voting on a UN resolution brought to attention by Palestine in May 2021, which holds Israel accountable to human rights violations in the ongoing conflict in the Gaza Strip.<sup>28</sup>

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## India as an Irresponsible Nuclear State on the International Stage

Apart from historically maintaining its opposition to the NPT and the CTBT, India's nuclear tests in 1974 and 1998 invited a series of sanctions from countries including the United States, Canada, Japan, and Sweden.<sup>29</sup> Much of the stigma associated with India's nuclear identity was removed after the 123 Agreement. However, India's nuclear program and its associated vertical proliferation is far from being perceived as a Nuclear Weapon State (NWS), by virtue of the NPT. In fact, in October 2017, Amandeep Singh Gill, Permanent Representative of India to the Conference on Disarmament, ruled out India joining the NPT, in arguing that "The question of India joining the NPT as NNWS (nonnuclear weapon states) does not arise.... [and].....[t] he international community should take a united stand against those who indulge in or benefit from clandestine proliferation linkages."30

The Nuclear Suppliers Group (NSG), a multilateral regime that oversees the export of sensitive nuclear material and technology to prevent horizontal proliferation, was created in response to the 1974 nuclear test by India, an NPT non-signatory.<sup>31</sup> The NSG built on the foundations of the Zangger Committee, was the resultant of a series of non-proliferation initiatives, led by the US Ford

administration. This established a trigger list of items that were to be prevented from falling into the hands of states deemed NNWSs, with the NPT coming into force in 1970.32 It was not until the Bush administration came to power in 2001 that all nuclear related sanctions imposed by the United States against India were removed and the latter was recognized as a viable South Asian economic partner, being an effective counterbalance against China, and having shared democratic goals of fighting terrorism and halting rogue efforts of nuclear proliferation.<sup>33</sup> Furthermore, the US also continues to strongly back India's inclusion into the NSG.34 However, with an NPT nonsignatory India still maintaining a nuclear weapons program, current NSG member-states, including Austria, Brazil, China, Ireland, New Zealand and Turkey, remain in opposition or require further deliberations for New Delhi to join the NSG.35

India has also held a strong stance of condemnation against routine North Korean missile tests in arguing that these tests "adversely impact[ed] peace and stability in the region and beyond" and suspended major trade relations with North Korea.

In spite of India's nuclear program far from being normalized in the nuclear arena, it has not only continued its weapons development but also achieved nuclear triad in 2018, having the capability of launching a nuclear warhead from land, water, and air.<sup>36</sup> This was after the strike capability from water was last completed with the deployment of the Strategic Strike Nuclear Submarine or Submersible Ship Ballistic Missile

Nuclear (SSBN), INS Arihant, along with its crew members returning from the SSBN's first deterrence patrol in November 2018.<sup>37</sup>

While India continues to proliferate vertically and maintain its NPT non-signatory status, its domestic handling of sensitive nuclear technology performs abysmally low in the global charts on nuclear safety, compiled by the NTI Nuclear Security Index, a non-profit US organization. In prohibiting theft of its weapons-usable nuclear materials, it ranks 20 out of 22 countries, and has a ranking of 38 out of 47 countries when it comes to protecting its nuclear and research related reactors from foreign sabotage.<sup>38</sup> Furthermore, although India supports a path towards "universal, non-discriminatory and verifiable nuclear disarmament", its commitments international stage raise uncomfortable questions.<sup>39</sup> Other than being a historical non-signatory to the NPT and the CTBT, it has also refused to participate and join the negotiations on the Treaty on the Prohibition of Nuclear Weapons (TPNW) on similar arguments of the latter being hierarchical and purporting a discriminatory global nuclear order.40 The TPNW remains a first of its kind in stigmatizing nuclear weapons and all its possessors.<sup>41</sup> By entering into force in January 2021, the TPNW has also potentially become the first international legally binding multilateral agreement that prohibits to "develop, test, produce, acquire, possess, stockpile, use or threaten to use nuclear weapons" to move towards complete nuclear disarmament and the total elimination of nuclear weapons.<sup>42</sup>

Finally, while the Indo-US 123 Agreement provided India's nuclear program with a de facto and an implicit status of recognition, the ambivalence in the India-US nuclear relationship has often been expressed as "a low-level equilibrium trap.... [that has]... not proceeded to its maxima"<sup>43</sup> and being "notoriously insecure."<sup>44</sup> This recently played out in two major instances. Firstly, in late 2021, the United States announced sanctions on Turkey for the latter's purchase of the S-400 surface-to-air missile systems from Moscow.<sup>45</sup> With India engaged in similar negotiations with Moscow for an expedited delivery of the S-400

air defense systems (post the June 2020 border skirmishes between India and China), it brought to question as to whether this Indo-Soviet military deal would mark the return of US sanctions on India.46 Secondly, the US along with the UK, has shared sensitive nuclear technology with Australia for enhancing the latter's defense capability in developing nuclear powered attack submarines or Submersible Ship Nuclear (SSNs), under the newly crafted AUKUS partnership.<sup>47</sup> However, the Biden administration made it clear that this sharing of information was rather "one-off" when India would have clearly benefitted from this technology.<sup>48</sup> This is because India is in its own pursuit of building SSBNs under the Advanced Technology Vessel project, and currently uses INS Chakra, an SSN on a ten-year lease from Russia - much to the discomfort of the United States.<sup>49</sup> Furthermore, the AUKUS deal also challenges India's hegemony in the East Pacific and reinstates Washington's lack of trust in India's nuclear identity and military cooperation, while the latter continues to grapple with its advancements in military grade technology in a tense nuclear neighborhood.<sup>50</sup>

### Problematizing India's Historical NPT Non-Signatory Status

While India has maintained a historical opposition to the norms of the NPT in terms of the treaty being hierarchical and racial in operationalizing an unequal system of NWSs versus NNWSs, it has also pointed out that the NPT does not include a time-bound framework for making NWSs disarm.<sup>51</sup> Furthermore, in spite of proactively contributing to the initial negotiations of the NPT, India has been vociferous in remaining a holdout to the treaty and having an unchanging line of argument. It has been more than fifty years since the NPT came into force. Maintaining this static and non-evolving form of contestation for more than five decades indeed can be problematic, as shown by the steadily evolving research on international norms in International Relations (IR) Theory, and policy discussions surrounding Emerging and Disruptive Technologies (EDTs) in terms of the complexity and reliability on nuclear deterrence.

Despite US support, current NSG memberstates, including Austria, Brazil, China, Ireland, New Zealand and Turkey, remain in opposition or require further deliberations for New Delhi to join the NSG.

Firstly, there remains a difference in questioning the application of a norm in specific scenarios versus contesting the very core meaning of a particular norm.<sup>52</sup> With the kind of arguments that India makes to contest the norms of the NPT, it is not exactly clear whether India is critical of the norms that underwrite the NPT and/or the application of NPT norms on itself and other states rendered NNWSs. If India decides to adopt a position that questions the tenets of a widely shared and deeply institutionalized NPT, it would go on adding to the perception of India being an irresponsible nuclear power. Additionally, India would be required to adopt additional measures to make the international community believe that India is still committed to preventing the dangers associated with proliferation and use of nuclear weapons, and also wishes to move towards complete disarmament. However, if India wishes to simply question the application of NPT norms on itself and other NNWSs, it would potentially give rise to the perception of rallying other states in perpetuating non-compliant intersubjectivities towards nuclear proliferation.

Secondly, this non-evolving non-compliance strategy could also translate into a bargaining chip of states wanting to proliferate and may ultimately lead to the weakening of norm robustness associated with the NPT.<sup>53</sup> In March 1963, American President John F. Kennedy, argued that he saw the "possibility in the 1970s of the President of the United States having to face a world in which 15 or 20 or 25 nations may have..

[nuclear]...weapons."54 With the NPT coming into force in 1970, that number has been kept to less than 10.55 However, currently, the United States along with its European allies is struggling to bring Iran to the bargaining table in order to revive the Joint Comprehensive Plan of Action (JCPOA) and halt Iranian nuclear ambitions.<sup>56</sup> This includes Tehran significantly breaching the stockpile, heavy water, and enrichment limits of uranium after Trump's withdrawal from the JCPOA in 2018, that was originally negotiated under the Obama administration in 2015.57 In context to these ongoing negotiations, Iran could potentially use India's example of historically questioning the norms of the NPT and yet gaining a de facto nuclear status. Furthermore, India's nuclear proliferation may also serve as a dangerous precedent for Iran to first proliferate and then seek nuclear recognition.

The other point is about India's strategic ambiguity, in choosing to maintain a historical and non-evolving line of argument of being a non-signatory to the NPT. With India refusing to align with a clear position as to whether to question the application of NPT norms on NNWSs and/or contesting the NPT in itself, it sends mixed signals to the global community in understanding the Indian nuclear identity. The effect of the inability to

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comprehend India's NPT opposition is seen in several states refusing to support the former's NSG membership in simply stating that India is a non-signatory to the NPT.<sup>58</sup> Furthermore, a stagnated historical line of opposition to the NPT denies India from reaping the additional political and economic benefits of being part of the NSG club. It also significantly robs India of constructing a diplomatic bargain in order to make a case for itself in joining the NSG. Even so, as already discussed, a non-evolving perception of India's nuclear identity continues to result in an ambivalent and sociologically tense relationship with hegemonic powers in the international system.

#### **Conclusion**

This paper concludes that the democratic nature of India's governance and its commitment to common normative values allows it to contrarily pass off nuclear non-compliance, as being a responsible nuclear state. While India's global perception in the nuclear arena has significantly improved since its first nuclear test in 1974 and its subsequent declaration of having nuclear weapons capability in 1998, it requires several amendments in a variety of avenues to be perceived as a *normal* nuclear power.

This paper highlights several areas of improvement that makes the case for India being a responsible nuclear power which include ramping up its commitment to liberal values, restructuring its foreign policy to support US strategic interests, and continuously making its contributions of developing an international framework of nonproliferation and disarmament extremely palpable. However, there are more areas that require a critical look for India to move closer in improving its global nuclear perception. In spite of being a non-signatory to the NPT and as a result of sharing a tense nuclear neighborhood with China and Pakistan, India continues to aggressively modernize its nuclear arsenal, displays several shortcomings in handling and safeguarding its sensitive nuclear technology, and continues to maintain a strengthened military relationship with Moscow. Its historical opposition to the NPT also stands out in preventing India from normalizing its nuclear identity. Furthermore, India maintains an unchanged line of argument that the NPT operationalizes a system of unfair NWSs versus NNWSs and does not have a time-bound framework for making NWSs move towards complete disarmament.

While it may seem unlikely that India would change its long-standing opposition of not joining the NPT, this paper suggests that it remains imperative for India to clarify whether it remains in opposition to the implementation of the NPT in specific contexts and/or questions the very normative foundations of the NPT. Furthermore, paper characterizes this static contestation of NPT norms as highly problematic, in relation to the steady evolving norms scholarship in IR Theory and emerging discussions on EDTs. Until India adopts a clear diplomatic position, it would continue sending ambiguous signals about its nuclear identity to the global community, negatively impact its own painfully acquired recent nuclear bonhomie, potentially serve as a

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dangerous precedent for other non-compliant states to proliferate and then seek de facto nuclear recognition, and keep losing diplomatic leverage in gaining an NSG membership.

Therefore, what is required for India is to continue attaching itself to its historical stance of staying out of nuclear treaties, by framing a more adaptive line of argument in the contemporary global nuclear era and the evolving research and development on EDTs. Ways of doing this would be to first distinctly divide the timeline pre and post New Delhi's declaration of acquiring nuclear weapons capability. Second, in reference to this divided timeline, India could clearly develop a distinct historical position on the instances that it has questioned the hierarchical application of nuclear norms on NWSs versus NNWSs or targeted the very core of NPT norms.

This will not only enable India to overcome its ambiguity relating to whether it contests the core of nuclear treaties or its normative applications, but could also potentially build into its discussed recent foreign policy realignments. Furthermore, it could also enable India to re-think and shape its political preferences in the face of modern challenges of nuclear deterrence and non-proliferation, rather than rely on unchanging historical ideologues of non-violence and challenge hegemonic discourses. Nonetheless, it would indeed be interesting to observe in the long-run as to whether India will be able to overcome its uncomfortable nuclear identity in nuclear governance through the continued and/ or shift of (re-)constructing its persistent historical rejection of global nuclear treaties.

### **Author Bio**

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### CHINA AND INTERNATIONAL LAW: HISTORY, THEORY, AND PRACTICE

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