

# POLICY BRIEF

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## URANIUM FOR INDIA: AVOIDING THE PITFALLS

### WHAT IS THE PROBLEM?

*The prospect of Australia's selling uranium to India offers major potential benefits both for our exports and our foreign policy. There is however a conundrum as to how this could be done in a way that advances rather than damages Australia's interest in the global enterprise to resist the spread of nuclear weapons and in a rules-based international order.*

*Neither the NPT nor Australia's current uranium export policy provide for the countries — India, Israel and Pakistan — that did not have nuclear weapons in 1967, did not sign the NPT and today have the bomb. Clearly something has to change. The wrong policy choices could have deep long-term consequences for vital national security and economic interests, as well as for the political sustainability of uranium mining in Australia.*

### WHAT SHOULD BE DONE?

*A quick fix to the problem of India's current nuclear maverick status would be to paper it over with selective amnesia about aspects of Australia's longstanding and highly successful policy stance on nuclear proliferation and to make an India-specific sweetheart deal with this attractive suitor. The recent US-India agreement might appear to set a precedent Australia could follow but on closer examination it does not meet our national needs.*

*The safer alternative would be to adjust the existing international nuclear non-proliferation system to current day realities and to engage India in that process.*

*The result could be a strengthened non-proliferation regime and one that includes India (and potentially one day, the other two NPT holdouts). Uranium sales to India could then take place on a basis that was coherent with our broader foreign policy interests and supportive of our national consensus to continue uranium mining and exports.*



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**India is special**

One of the foreign policy successes of the Howard government has been its pursuit of a closer relationship with India. Uranium is potentially a big element in the future growth of that relationship because India has big plans for nuclear energy. This could make it a strategically important buyer for Australian exporters and without access to Australian uranium India will be at a negotiating disadvantage in the market. Beyond that, after years of resenting its treatment as a nuclear pariah, India is making this issue something of a litmus test of the Australian government's wish for a genuine partnership.

But India is also special as one of only three states to have refused to sign the Nuclear Non-proliferation Treaty (NPT), all of which proceeded to make nuclear weapons. While Israel and Pakistan made the A-bomb as a compensation for weakness, India saw it as a key to Great Power status. The dissent of these three has been one of the principal sources of weakness in the global non-proliferation regime, through which the vast majority of nations have sought to enhance their security.

India has been by far the most ardent rejectionist and the prime spur of Pakistan's weapons program. India's diversion of nuclear supplies intended for peaceful use to its first bomb (Smiling Buddha in 1974) prompted formation of the Nuclear Suppliers' Group (NSG), to help responsible exporters ensure that, as the NPT requires, nuclear exports should not aid proliferation.

This rule also reflects one of the two key bargains struck when the NPT was negotiated.

Nations being asked to forego the bomb insisted that they should not be economically disadvantaged. The corollary is that those who reject the system should be denied the benefits of membership. At the 1995 NPT Review and Extension Conference, the entire membership of the treaty, largely at Australia's instigation, adopted Full Scope Safeguards (FSS) as precondition for nuclear supplies. This principle requires the application of IAEA safeguards to all present and future nuclear activities of all the states which are not defined as Nuclear Weapon States in the NPT.<sup>1</sup> India was a target of that decision.

The other key bargain in the NPT is that the five states which had nuclear weapons on 1 December 1967 (the five Nuclear Weapon States or NWS) should work, with the rest of the membership, towards nuclear disarmament. Despite longstanding advocacy for nuclear disarmament,<sup>2</sup> India has not seen itself as having responsibilities in this direction.<sup>3</sup>

India also has the distinction of being the only country whose peaceful nuclear program has been seriously curtailed by non-proliferation controls.<sup>4</sup> Because of its shortage of domestic sources of uranium, and because it has not yet been able to perfect a way of using thorium, India has been chronically short of fuel for its reactors ever since Smiling Buddha severely restricted its access to imported uranium. The Indian Atomic Energy Commission has repeatedly failed to achieve anything like its declared targets for the production of electricity and is currently running its reactors below capacity because of the shortage of fuel.

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**A quick fix?**

Clearly Australia should not maintain an embargo on the export of uranium, when that not only excludes our uranium miners from a potentially lucrative market but also impedes India's economic growth, its prospects of reducing the environmental impact of that growth and the full flowering of government to government relations. The Prime Minister has hinted that Australian policy may change. The obvious change would be to drop our current ban on uranium exports to non-parties to the NPT and to treat India in the same way we treat the NPT Nuclear Weapon States.<sup>5</sup> The Bush Administration's 'New Partnership' with India points the way in this direction.

Frustrated that inherited US policies, domestic law and international legal obligations stood in the way of good relations with the largest democracy and a potential strategic counterweight to rising China, and 'readier to support a friend than to uphold a principle',<sup>6</sup> the Bush Administration decided to throw off these shackles. In two joint press releases between President Bush and the Indian Prime Minister Manmohan Singh announcing economic, military and political cooperation, the Administration undertook to reverse the United States' long-standing policy of denying nuclear supplies and technology to India while India 'would take on the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology such as the United States.' In other words, the US proposes to treat India like the Nuclear Weapon State it is in all but law.

Under the terms of this in-principle agreement, India's civilian nuclear program is to be separated from the military one and 14 of India's 22 reactors are to be made eligible for IAEA monitoring under a voluntary agreement similar to those entered into by the five NWS.<sup>7</sup> This will allow the US to conclude a nuclear cooperation agreement with India, permitting it to import nuclear fuel, equipment and technology for peaceful purposes (and US law has now been changed, with bi-party support to make this possible). Moreover, 'The US will work with its friends and allies to get the NSG guidelines changed to make an exception for India and encourage other countries to likewise change their policies'.

For its part, India will 'continue its unilateral nuclear test moratorium, work with the US to conclude the Fissile Material Cut-off Treaty (FMCT),<sup>8</sup> refrain from transferring enrichment and reprocessing technologies to states that do not have them, secure its nuclear material and adhere to the Missile Technology Control Regime and the Guidelines of the NSG.'

In the face of widespread criticism that this sudden reversal could not but be a serious blow to the nuclear non-proliferation regime,<sup>9</sup> the Administration replied that it is *starting the process* (our italics) of bringing India into the global non-proliferation system. In this it received support from the Director General of the IAEA, who welcomed the prospect of India's becoming a supporter of the system. The transformation of India from the principal opponent of the NPT into an external buttress for the regime would indeed be a major gain for global security. In broader terms, an end to

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the estrangement between the US and India and its replacement with a cooperative partnership is a positive development of historic proportions.

The Prime Minister foreshadowed to the *Australian Financial Review* on 30 March that Australia would support the US initiative in the NSG and media reports suggest most of the NSG membership are similarly inclined.

If — as is not yet assured — the United States and IAEA succeed in procuring an effective separation of India's civilian nuclear facilities from those involved in weapons programs, this would enable Australia as well to conclude a bilateral NWS-style safeguards agreement to ensure that any uranium we supply to India does not end up in a bomb.

But Australia's uranium export control policy has two other objectives. These are to make the world — and thus Australia — safer by strengthening the non-proliferation regime and to provide a coherent justification for the export of uranium. In these two respects it is much more difficult for Australia simply to ride on America's coat-tails.

**A cascade of conundrums for Australia**

*The NPT matters*

An important factor in the US willingness to sweep aside the legal impediments to its reconciliation with India is dissatisfaction with the NPT and its manifest failure to prevent North Korea from making the bomb or to curb Iran's apparent ambition to emulate this 'break-out'. The United States is not alone in

this. But the non-proliferation regime built upon the Treaty is a lot more than pious verbiage. That regime continues to erect significant obstacles for would-be proliferators, increasing their costs and delaying their programs, providing time for countermeasures and crisis management. It daily affects decisions by policy-makers in dozens of countries on such issues as how vigilant they should be in controlling nuclear materials and trade. It also weighs in military planning. For example, by helping to relieve Australian and Indonesian military planners from one nightmare scenario it assists in protecting our relationship with our neighbour from a major potential source of tension. If the NPT were further eroded, and there was a serious deterioration in the strategic environment, both countries could have to review their force posture. In the extreme, a regional nuclear arms race might ensue.

In addition, the NPT underpins a legal framework for international civil nuclear cooperation and trade and the rationale for Australia's uranium exports. The Full Scope Safeguards requirement, with which India cannot comply, is not just some theoretical arcana. It has become the carrot and stick in the incentive system underpinning the whole non-proliferation regime. The same incentive system is the principal justification for Australia's uranium export policy.<sup>10</sup>

The United States, secure in its own power, may imagine it can cope with any consequences of the NPT and its attendant regime being further weakened. But that is not a gamble that a country in Australia's situation can afford. On the contrary, we need the whole system to be made more robust, to cope with a world in which proliferation challenges are rising.

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*Legality and political legitimacy*

Neither a change of Australian policy nor a change of US policy and domestic law can get rid of the fact that legally, in terms of the NPT, India is a Non Nuclear Weapon State (NNWS) because it did not have the bomb on 1 December 1967. Until that legal fact is changed, the clear intent of the NPT and the Full Scope Safeguards requirement (FSS) stand in the way of Australia's (or the US') supplying India with uranium. Australia's main selling point for the Full Scope Safeguards (FSS) was that it is clearly what Articles I and III of the NPT mean. By unanimously adopting FSS as precondition for nuclear supplies at the 1995 NPT Review and Extension Conference, NPT member states indicated that they shared that view.

The Nuclear Suppliers Group is not a law-making body. It cannot relieve parties to the NPT from their obligations under that treaty. In law, that power is reserved for the full membership of the parties to the Treaty.

Whether or not an NPT party's supplying India with nuclear material would breach the letter of the NPT, for the most powerful country to embark on a course of action that is legally contestable and for others to follow it must erode the authority of the NPT. Beyond strict legalities, the US-India deal is a clear break with the political understandings, often reaffirmed norms and the negotiating history behind the existing international consensus on which the law rests, and on which the broader non-proliferation regime is built.

For Australia, a further legal obstacle is the South Pacific Nuclear Free Zone Treaty in

which the Full Scope Safeguards requirement is explicit.

*Corrosion of the non-proliferation regime*

The purpose of the Nuclear Suppliers Group is to help Member States comply with their NPT obligations. For it to change its guidelines to make an exception for India can only undermine the credibility and legitimacy of those guidelines. It would play directly into the hands of Iran, which has long argued that the NSG is a mere tool of US policy.

The field of nuclear weapons proliferation has hitherto been regulated in meticulous detail but the international consensus is strained. Once the precedent of relaxing rules and making exceptions is set, it becomes very difficult to prevent further unravelling.

No-one can be certain that China will not follow the US example, sell more nuclear material to Pakistan and set itself up as the sole arbiter of whether doing so is legitimate and responsible. Or that Russia or Namibia won't start supplying Iran on a similar basis. There will be no immediate surge of proliferation. But all this must increase cynicism generally and weigh in the wrong direction on all governments as they make day-to-day decisions. It must favour the pro-bomb side in Iran's internal debate and in Pakistan worsen the scepticism about the non-proliferation regime that facilitated A Q Khan's proliferation spree.

*India as a responsible Nuclear Weapon State*

While it is true that India has not itself assisted nuclear proliferation, the undertakings it has

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made to the US to behave like a responsible NWS in fact fall far short of the commitments accepted by the NWS. There is, for instance, no equivalent in the joint press releases for Articles I (banning assistance to proliferation),<sup>11</sup> III (cooperation in peaceful uses with NPT compliant countries) or VI (nuclear disarmament) of the NPT, whereas the NWS are legally bound on these points to each other and 183 other states. Likewise, there is nothing about Negative Security Assurances, nor any treaty level limitations on nuclear testing (the NWS are each bound by several of these).<sup>12</sup>

The NWS have all stopped producing fissile material for bombs. India continues to do so.

There is, at the time of writing, no certainty that India will accept and comply with even the minimal restraints that the US understands the new partnership pronouncements to mean.

Thus for example, the US has agreed that India may keep a third of its present nuclear reactors outside IAEA inspections (and therefore potentially usable for bomb-making). India is currently haggling with the US over its right to reprocess imported nuclear fuel. India has undertaken to support the conclusion of the Fissile Material Cut Off Treaty but its enthusiasm for that project is difficult to reconcile with its continuing production of fissile material for military purposes and its insistence on reserving as yet unbuilt reactors for that purpose, on top of the eight already reserved. India has been outraged by the US Congress's suggestion that US nuclear supplies could be cut off if India were to resume nuclear testing. It already reads its agreement with the US as allowing it to build up a stockpile of uranium adequate to see it through any

interruption of supply.<sup>13</sup> Likewise it recoils at the US suggestion that its safeguarding arrangements should be 'credible'.<sup>14</sup>

Presumably, US negotiators will ultimately find on these and other issues some compromise that they will accept. But it is asking a lot of Australia to leave this large slice of the deal on which it is expected to rely exclusively in the hands of India and the US. At the very least, that would leave future Australian exports that rested on such a deal wide open to criticism.

*Multilateral law vs bilateral deals*

In Aesop's fable the King of the Beasts claimed most of the food 'because my name is Lion'. The Superpower and the would-be Great Power India readily see exceptional arrangements as their due.

But Australia's name is not Lion. We have a far greater vested interest in a norm-based international system built on the equality of states<sup>15</sup> and in uniformly applied rules. Both to defend our interests internationally and to justify our policies domestically,<sup>16</sup> we need the protection of a framework of coherent international laws. We benefit from such laws being developed multilaterally, with our participation and that of many other countries as well. We also have a demonstrated ability to exert disproportionate influence in such a context.

The United States may feel able to change its policy and domestic law in exchange for assurances by the Indian government of its intention to behave like a responsible NPT Nuclear Weapon State. A lesser power like Australia would be reckless not to seek the



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security of having such assurances in the form of a legal instrument and preferably a multilateral treaty (which, if broken, would aggrieve many states, not just Australia alone).

*Wider policy constraints*

Australia has to take account of its own legal obligations including the South Pacific Nuclear Free Zone Treaty.

It also needs to think of the consequences for its bilateral relationships. For example, how to explain to the Chinese why we apparently rate India as an acceptable customer for our uranium but do not require it to match the legal constraints<sup>17</sup> the international community has demanded of China, without appearing to share in the anti-Chinese strand in the US's motivation for its New Partnership with India.

Having been for decades the main advocate of the Full Scope Safeguards requirement it would be particularly demeaning for Australia to jettison it for commercial gain and bilateral policy objectives. Having long held that the NSG guidelines were a lowest common denominator benchmark that we surpassed, to participate in lowering that bar and then our own standards must erode our influence in multilateral agreements.

These are dangerous waters for Australia. Many aspects will provoke dissent from experts, trouble the uncommitted and arm critics. Bi-partisan support for the uranium export policy will be less secure. In these and other ways, the interests of Australian uranium miners would be ill-served by a policy of exceptionalism for India.

**A safer alternative**

In short, permitting uranium exports to India would be problematic *in the current legal and political context*.

To make an India-specific exception from existing rules can only add to the deficiencies of the international non-proliferation system that is already under strain, notably from North Korea and Iran. The answer is not to discard what we have today, but to upgrade it by replacing obsolete elements and adding new features. Updating the nuclear non-proliferation regime to take account of developments during the 40 years since the NPT was negotiated is in any case long overdue. That project is one in which Australia should engage anyway. The Indian dimension gives us further motivation.

Neither the United States alone, nor any coalition of the willing, nor even the NSG's acting unanimously, can substitute for the full membership of the NPT, that is to say 188 states. Australia should work with these governments and India (so that India can contribute to and share ownership of the outcome) to conclude a number of new multilateral agreements, each of which improves the non-proliferation regime and, taken together, make a significant contribution to international security.

Making these enhanced international standards an acceptable alternative to NPT membership as a precondition for eligibility to import Australian uranium would avoid the problems inherent in an India-specific derogation from current policy.



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*Updating the NPT*

Several deficiencies in the text of the NPT have become evident with the passage of years and these cry out to be remedied by new agreements.

Article I of the NPT says that NWS should not help NNWS to acquire nuclear weapons. Today it is obvious that it should read: ‘no country will help any other to acquire nuclear weapons’. The reason is the spread of industrialisation and technical know-how. No one thinks of Malaysia, for example, as a proliferation threat but it was from Malaysia that Iran bought the motors for its enrichment cascade. As more countries develop their industrial capabilities, they need to be reminded, though a legal commitment, to not inadvertently allow their exports to make the world more dangerous. Moreover, this is an attractive reformulation for the mass of NPT parties because it applies to all: it gets rid of the two class, two sets of rules system inherent in distinguishing between NWS and NNWS. It also conforms to the policies of the NWS and India.

Such a new agreement could also pave the way towards India’s declared willingness to restrict exports of enrichment and reprocessing technology being incorporated in a multilateral agreement. It would also pave the way for India to join the 80 plus other countries in supporting the US-sponsored Proliferation Security Initiative (PSI).<sup>18</sup>

Article V of the NPT says the NNWS should have access to the benefits of peaceful nuclear explosions. This is totally out of date: it is now generally agreed that peaceful nuclear

explosions are a bad idea and should not be allowed for any nation. In codifying this existing consensus, once more, discrimination between NNWS and NWS would be removed.

Several such matters in the world’s nuclear issues IN tray could be disposed of relatively easily and quickly — and in the process India could be brought willingly to parity with the five NWS on these issues. They are not deeply problematic for the US, India or the majority of NPT parties. But to get nations to take the trouble to address such issues, and to get traction with non-specialist audiences, these relatively minor (but not insignificant) matters should be associated with agreements on matters of higher priority for most NPT Members. Three such issues are often undervalued by the NWS and totally overlooked in the US-India agreement.

*Negative Security Assurances*

NNWS have been clamouring for decades for an unconditional legal commitment by the NWS not to use or threaten to use nuclear weapons against states that do not have them or allow them to be deployed on their territory (as demonstrated by their membership of an appropriate treaty and their compliance with the necessary verification systems). The NWS have already given such legal commitments to some 120 countries (including Australia) under several Nuclear Weapon Free Zone Treaties.<sup>19</sup> At the very least, India should go beyond the qualified and unilateral Negative Security Assurance in its 2003 nuclear doctrine and emulate this. At best the NWS and India could extend this commitment to the remainder of NNWS.<sup>20</sup> India would find it difficult to refuse and may welcome the international

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community's acknowledging its power. The US might value the implied threat against the Irans of this world: 'go nuclear and you expose yourself to nuclear attack'. And for the world as a whole it would be a small gain for reducing tensions and thus enhancing security.<sup>21</sup>

*Peaceful energy*

It is reasonable for countries that give up the bomb to demand that they should not thereby be excluded from the peaceful applications of nuclear technology. The NWS and other NPT parties, including Australia, have delivered in this respect, but India and Iran have managed to make this issue a bone of contention and NNWS resentment. There are a number of ways in which this might be addressed. The Director-General of the IAEA, Dr Mohamed ElBaradei, has proposed the creation of a mechanism for the "assurance of supply" of nuclear fuel, possibly including a fuel bank to be managed by the IAEA and for the multilateralisation of the nuclear fuel cycle. This would lower the risk associated with the proliferation of these sensitive technologies while making the benefits available to a wider group of countries.<sup>22</sup>

In fact, only a few dozen countries have use for power stations that only come in Gigawatt size and nuclear technologies are not always the optimal solution in other fields. Another creative approach would be to break out of the nuclear mould and offer something of value to all. This could be a new global mechanism or even an organisation for energy security (all forms of energy, not just nuclear) for compliant non-proliferators. It could be a vehicle for disseminating technologies for the efficient use of energy, for cooperative action for measures

beneficial to the global economy (and the environment) as well as to individual countries.

These are just two ideas which warrant separate, more detailed consideration. The point is that we should look at other options for rewarding good behaviour in non-proliferation beyond the current, limited mechanisms and which India can contribute to and benefit from. For the US, this would support other US policies as well as non-proliferation. And for all it would be India's being brought into an improved version of Article IV of the NPT.

*Disarmament*

This of course is the minefield into which both the US and India will be most reluctant to tread — but until India accepts something along the lines of Article VI of the NPT, it will be claiming for itself greater rights and freedoms than are currently enjoyed by the five NWS. It will certainly put India's disarmament rhetoric to the test.

Elements of the new agreement that should be acceptable to the NWS and to India include commitments

- To take steps to avoid nuclear war<sup>23</sup>
- To work with others towards early conclusion of the Fissile Material Cut Off Treaty
- To work with others towards nuclear disarmament
- To report annually to the international community on progress and on observance of the nuclear testing moratoria.

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Beyond that lies a whole string of steps that might turn out to be achievable at this time or to become achievable at future dates, building on the initial agreement. At the very least, it might be possible to point towards such future steps.

*The re-entry problem*

Some may see all this as a device that ‘rewards bad behaviour’ and encourages Iran and others to think they can proliferate without risk of long-term ostracism. These proposals do offer a way back in from the cold, but at the same time raise the threshold of acceptable behaviour, requiring India to join the international community in accepting new commitments that enhance the security of all countries.

**Conclusion**

This Policy Brief advocates a broad strategic objective for Australian policy: with India’s cooperation, to update the international legal framework for resisting the spread of nuclear weapons. The aim is to put multilateral meat on the bare bones of India’s new willingness to accept the responsibilities of a nuclear armed state that is supportive of non-proliferation and responsive to the concerns of the non-nuclear armed majority of the international community. In the process it would create a sounder basis for permitting nuclear exports to India.

This Policy Brief is not the place to canvas such issues as the legal form of the new agreements or how the negotiations would be orchestrated. It offers not a hard and fast set of specific negotiating targets but illustrations of the

general approach and suggestions as to some specifics that appear prospective. No one will know for sure what is possible until international discussions on these topics are engaged. For each of the concrete measures suggested here a range of similarly inspired variants or alternatives could be devised, that would go at least part of the way to remedying the situation. It will be important to remain flexible and to adjust targets as the project progresses.

Australia has a long tradition of success in exactly this field of diplomacy. We should also not forget that sovereign control over a large portion of the world’s known uranium reserves gives Canberra, on non-proliferation issues, unaccustomed negotiating clout. In the Fraser-era negotiations to secure our safeguards demands we were initially told by the European Community in the person of EURATOM that they would ‘never’ agree to what we wanted. But they did, within three years.

As in the past we could lead a group of like-minded countries to develop proposals that will attract widespread support, because they are designed to respond to the concerns of many governments. In the present case obvious partners include not only traditional associates such as Canada but also the rising stars such as South Africa and Brazil, and from Europe, the Middle East and Asia, to give the group a more representative flavour. Ideally India itself would be in this inner core.

It will not be plain sailing. The Bush Administration is not enamoured of multilateral treaties and regimes (although it is growing more pragmatic, and its successor — be it Democrat or Republican — is likely to be

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more comfortable with traditional US approaches to such endeavours). Either the US or India could throw up obstacles, some of them unsurmountable. Likewise, the Non-Aligned Movement or other negotiators may try to extract more than the nuclear armed states are willing to concede.

But the international climate should be receptive, as the project offers multiple benefits for large numbers of countries. Australia and the US are not the only ones wanting a sound basis for access to India's nuclear market. Moreover, nuclear non-proliferation is a long-term core interest for the United States and many others, including India. It is highly unlikely that such a program of action would produce no results at all. Even beginning the process would have some value. A few new agreements in this field could be the first steps towards a revitalisation and strengthening of the global non-proliferation regime that some have called the New Grand Bargain and on which ideas have been developing for several years.

The recommendations in this Policy Brief do not cut across the wish of the US to develop a partnership with India, or the Australian government's wish to sell it uranium. On the contrary, they would redress the considerable 'collateral damage' to the nuclear non-proliferation regime and make the international legal framework more supportive of nuclear trade with India. This is a risk-lowering strategy, composed of measures that would be beneficial, with or without the Indian dimension.

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### NOTES

<sup>1</sup> The Full Scope Safeguards (FSS) principle which Australian dedicated many years of diplomatic effort to getting universally accepted, is that the NPT precludes the sale of nuclear material or technology to a 'non-nuclear weapon state' (NNWS) unless all fissile material in that country is subject to IAEA (level 1) safeguards, i.e. monitoring and 'material accountancy' by IAEA inspectors. This is not the case in India, Israel or Pakistan.

<sup>2</sup> India's longstanding advocacy for universal nuclear disarmament should be acknowledged, especially Rajiv Gandhi's May 1988 'Action Plan', presented to the UNGA Special Session on Disarmament, for a three-stage course to eliminate nuclear weapons by 2000. Its commitment has, however, never seriously been put to the test.

<sup>3</sup> While the NWS record in this respect is much criticised, they have done more than India and India was the principal opponent of negotiation of the Comprehensive Nuclear Test Ban Treaty (CTBT).

<sup>4</sup> Iran complains that although it is an NPT party it has been denied full access to international nuclear supplies. That is because suppliers are not confident the Iranian program is peaceful. Pakistan and Israel do not have current ambitions to produce nuclear power.

<sup>5</sup> Australia exports uranium to such countries under bilateral safeguards agreements that make use of the fact that they expose their civilian nuclear facilities to inspection by the IAEA. This enables us to know that our uranium does not end up in bombs. This also supports the non-proliferation regime by upholding the importance of NPT membership and IAEA inspections as a universal precondition for nuclear supply.

<sup>6</sup> London *Economist*, of March 11-17 2005

<sup>7</sup> There are three points to these agreements, the first of which is to demonstrate to non-NWS that the

NWS are willing to accept any commercial burdens that might be imposed by compliance with IAEA safeguards. Beyond that, the agreements convey an impression that the NWS are not in a state of perpetual privilege but in a transition stage between being nuclear armed and not. Third, they enable countries like Australia to supply uranium etc to the NWS and still be confident that their uranium does not end up in nuclear weapons.

<sup>8</sup> This project, that Canada and Australia have long championed, calls for a cessation of production of weapons-grade fissile material. Negotiations between the NWS have been continuing for years and last year the US tabled a draft treaty in the Conference on Disarmament.

<sup>9</sup> The London *Economist*, for example, ran a vitriolic cover story entitled 'Dr Strangedeal'.

<sup>10</sup> By supplying uranium under strict non-proliferation controls to countries that comply with international standards we provide an incentive for responsible nuclear policies.

<sup>11</sup> India's promise to adhere to NSG guidelines and to restrict the export of enrichment and reprocessing technology are important steps but do not equate to a legal, blanket commitment not to help proliferation.

<sup>12</sup> These include: The Partial Test Ban Treaty prohibiting nuclear tests in the atmosphere, in outer space and under water and the nuclear testing prohibitions in the five Nuclear Weapon Free Zones. The NWS are also signatories to the CTBT. Although this has not come into force because of the US reluctance to ratify it, the NWS are bound not to act contrary to it.

<sup>13</sup> One of the justifications for Australia's permitting uranium exports under safeguards agreements is that these exports make the importers dependent on such supplies and thus compelled to honour their treaty obligations.

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<sup>14</sup> Because this implies that someone other than the Indian government needs to be satisfied.

<sup>15</sup> Equality in dignity and before the law, despite inequalities in national power.

<sup>16</sup> In a country such as Australia, conformity with international laws and benchmarks confers legitimacy on domestic laws and policies. This is important for our uranium exporters.

<sup>17</sup> These include Articles I, III and VI of the NPT, the Negative Security Assurances (NSAs) and other protocols to the nuclear weapon free zone treaties, the nuclear testing treaties etc.

<sup>18</sup> Under the Proliferation Security Initiative launched by the US, Australia and 81 other countries cooperate to impede illicit WMD related trade to and from states of proliferation concern and terrorist groups.

<sup>19</sup> It should be noted however that the 2002 US Nuclear Posture Review strongly suggests that these guarantees are declaratory only.

<sup>20</sup> It is highly relevant that, contrary to the situation in the 1960s and 70s, the US no longer has nuclear weapons deployed in Europe and Asia. None of the other NWS, nor India, have any ambition to do so.

<sup>21</sup> Of course there is room for skepticism as to how reliable NSAs would prove to be in a war-like situation. Nevertheless they are important, symbolically and politically, to many countries. They also open up the important question of international legal restraints on the use of nuclear weapons – but they are sufficiently far from current intentions of any of the NWS or India to be tolerable to them.

<sup>22</sup> See, for example, his 8 December 2006 address *Nuclear Power in a Changing World* in Jakarta, Indonesia

<sup>23</sup> The NWS have a whole array of so-called ‘confidence building measures’ that include procedures to avoid dangerous incidents and defuse crises, prior notification of military exercises and other mutual information arrangements etc.

Numerous other measures in this field have been proposed. India and Pakistan have taken some steps bilaterally in this direction. The No First Use commitment in India’s 2003 nuclear doctrine is an example of another type of measure against nuclear war.

## ABOUT THE AUTHOR

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