

## ON THE INDIAN ARGUMENT

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Since the end of the Cold War, the world has fallen into a state of nuclear complacency. Following the demise of the Soviet Union, with the risk of global nuclear war seemingly reduced to zero, people ceased being concerned with nuclear weapons. While it is true that the end of the Cold War has given us "the gift of time"<sup>1</sup> to find a long-term solution to the nuclear predicament, it is ironically precisely because we have this time that motivation to do something about nuclear weapons has all but evaporated. Of course, there were many people who, like Schell, have warned that the appearance of nuclear safety was an illusion. They argue that it is the very existence of the weapons in a world of antagonistic nation-states, not the particular superpower rivalry of the Cold War, that is the real problem. But the world has not been disposed to listen.

Perhaps, until now. The nuclear tests by India and Pakistan have begun to shake our nuclear complacency. Much of the world community expressed shock and dismay at the Indian tests. The outcry was especially loud from the United States. President Clinton lectured the Indians on their own interests, for example, warning that nation against seeing nuclear weapons as "the new measure of either national security or national greatness."<sup>2</sup> This kind of remark is seen by the Indians and others as blatant hypocrisy. In the face of such pious pronouncements of the unimportance of nuclear weapons for national greatness and their dangerousness for national security, the United States, despite the end of the Cold War, has refused to move seriously toward getting rid of its own nuclear weapons. It has, for example, reaffirmed the role of nuclear

deterrence in its own security policy. Moreover, it has allocated large sums of money for a nuclear weapons "stewardship" program, a move seen by the Indians and others as the Americans using their superior technology to bypass the limitations imposed by the Comprehensive Test Ban Treaty (CTBT).

From the Indian point of view, the United States is acting like the proverbial parent who says to the child, in effect, "do as I say, not as I do." The smoker warns her child not to smoke, or the drinker warns his child not to drink. In many cases, the child has the predictable reaction: sensing the hypocrisy, she or he engages in precisely those behaviors the parent warns against. Actions speak louder than words. From the child's point of view, the forbidden actions have much to recommend them as behaviors strongly recommended by the obvious fact that the parent finds them worth doing. Such actions must be an important part of being an adult.

But, while the parent's hypocrisy **explains** why the child picks up the parent's bad behaviors, it does not of course **justify** the child's doing so. Smoking is not in the child's interest--the parent is correct in his or her warnings. Smoking is highly imprudent behavior. All the more so, does parental hypocrisy serve at most to explain, rather than to justify, the child's emulating parental behaviors that are not only imprudent, but immoral. If the parent is deceptive and abusive toward others but warns the child against such behaviors, the child's emulating these behaviors may, as in the smoking case, be explained by the parent's hypocrisy. But such hypocrisy obviously cannot justify such behaviors, and the child, especially when grown-up, must be held accountable for them. Thus, if the possession of nuclear weapons is either imprudent or immoral, or both, the fact that India is emulating the United States and other nuclear powers might explain its acquisition of nuclear weapons, but not justify it.

To stick with the parent-child analogy one more step, children often engage in forbidden behaviors even in the absence of parental hypocrisy. A child may, for example, take up smoking against the parent's recommendations even when the parent is not a smoker. Smoking, as the tobacco companies well know, is a time-honored act of adolescent rebellion, an attempted assertion of the child's independence and autonomy. This aspect of the analogy may go far to explain India's acquisition of nuclear weapons. India has recently elected a Hindu nationalist government, concerned, as nationalist governments are, with asserting the nation's power and place in the world. As the currency of adulthood for many adolescents is smoking, the currency of great-power status for many nations is the acquisition of nuclear weapons. But, as with parental hypocrisy, while such psychological mechanism may serve to explain, they do not justify.

My concern in this paper is with justification. I am interested in exploring moral arguments regarding the acquisition and possession of nuclear weapons. What makes India an important case from a moral point of view is that the Indians have for several decades deployed an interesting moral argument regarding the possession of nuclear weapons, perhaps the only explicitly moral argument widely discussed in the political debate over nuclear weapons. The argument is that the international nuclear nonproliferation regime, as established by the Nonproliferation Treaty (NPT), is discriminatory.

The NPT, which came into effect in 1970 and was renewed in 1995, is an effort to halt the spread of nuclear weapons to nations that do not yet possess them. To that end, the treaty establishes a distinction between the nuclear "haves" (the United States, the Soviet Union/Russia, England, France, and China) and the nuclear "have-nots" (all the rest). The "have-not"

signatories pledge not to acquire nuclear weapons and to allow international inspectors to verify that any materials from nuclear power generation are not being diverted to weapons' construction.

The "haves" pledge, in article VI of the treaty, "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament." The international nonproliferation regime consists in the various institutional mechanisms that have been developed in international relations, pursuant to the NPT, to insure that the "have-nots" do not acquire nuclear weapons.

The NPT and the international nonproliferation regime thus establish a clear distinction between the "haves" and the "have-nots," leading to their differential treatment. The question is whether or not this differential treatment amounts to discrimination in the morally relevant sense.

Are the "have-nots" being treated unfairly? The Indians certainly believe so. Their discussion of the nonproliferation regime is laced with morally potent terms and ideas. As one Indian journalist has put it, "The present approach of the nuclear powers will create a **nuclear apartheid** between the haves and the have nots."<sup>3</sup> Speaking of the nonproliferation regime, former Prime Minister Rajiv Gandhi said in a speech before the United Nations:

History is full of such prejudices paraded as iron laws: That men are superior to women; that white races are superior to the coloured; that colonialism is a civilizing mission; (and) that those who possess nuclear weapons are responsible powers and those who do not are not.<sup>4</sup>

But is the differential treatment of the "haves" and "have-nots" unfair, as this condemnatory language suggests?

Both groups have obligations under the nonproliferation regime. The obligation of the

"have-nots" is the nonacquisition of nuclear weapons, while the obligation of the "haves" is the "deacquisition" of nuclear weapons, nuclear disarmament. There seems, prima facie, to be no unfairness in this division of the anti-nuclear burden. The NPT, on this view, represents a consensus that nuclear weapons are dangerous, and it assigns to those who already possess the weapons the obligation to get rid of them, while it assigns to those who do not yet have them the obligation not to acquire them. The obligations on both sides are equally stringent, and the difference between the obligations arises simply from the historical accident of which countries had already acquired the weapons.

The problem with this line of argument, the Indians would be quick to point out, is that the nonproliferation regime has not lived up to the nonnuclear ideal represented by the NPT. In the twenty-eight years since the inception of the NPT, the "haves" have increased their arsenals dramatically and have made little serious effort toward nuclear disarmament. While "horizontal" proliferation, the acquisition of nuclear weapons by nonnuclear states, has been largely curtailed, "vertical" proliferation, the accumulation of nuclear weapons by nuclear states, has increased dramatically. The result is a world in which the "have-nots" have had nonnuclear status continually enforced on them, while the "haves" have been free to avoid fulfilling their treaty obligations. The NPT envisioned a world in which every nation would be a "have-not," but the nonproliferation regime has become one in which a few states possess nuclear weapons into the indefinite future, and the vast majority of states are precluded from having them.<sup>5</sup> As a result, K. Subrahmanyam argues, the treaty has become "an instrument to legalize nuclear arsenals and unlimited [vertical] proliferation."<sup>6</sup> Thus, it appears that the nonproliferation regime is discriminatory in a morally relevant sense. As former Prime Minister Indira Gandhi asserted: "It

is only through nuclear disarmament that discrimination would be eliminated and equality between nations established."<sup>7</sup>

There is one interesting response to the Indian argument to consider.<sup>8</sup> Joseph Nye recognizes the discrimination issue as "the central dilemma in nonproliferation policy," but he argues that the discrimination is not unjustifiable. To show that the discrimination is morally acceptable, he presents a version of the hypothetical choice situation, "the original position," developed in John Rawls' statement of the social contract theory.<sup>9</sup> Extending Rawls' notion of the original position to the sort of situation Nye has in mind, one has to envision representatives of the world's states meeting to draft norms to govern their interactions, that is, to establish an international regime. In order that this regime be just, the representatives are to choose the norms from behind a "veil of ignorance," without knowing which states they represent, and so not being able to advantage their own state. In Rawls's version of the original position, he argues, the parties would choose equality in the distribution of burdens and benefits, unless it can be shown that an unequal distribution is to the advantage of everyone, especially the least advantaged.

In the light of this idea, the question for Nye is whether in the original position he envisions the state representatives would choose equality or inequality in regard to the permissibility of nuclear weapons' possession. As in Rawls's version, the choice is based only on the representatives' knowledge of certain general truths about the world. What is the knowledge with which Nye supplies his hypothetical representatives? According to Nye, it is that "in current circumstances, efforts to create either [universal possession or universal nonpossession of nuclear weapons] might significantly increase the risk of nuclear war." Choosing in the light of this knowledge, "they may well, under certain conditions, accept nuclear inequality." Elsewhere, Nye

argues that, based on this understanding of the world, the differences between "haves" and "have-nots" would be accepted by most states, "haves" and "have-nots" alike, not merely hypothetically, but actually: "Under such conditions, some inequality in weaponry is acceptable to most states because the alternative anarchic equality is more dangerous."<sup>10</sup> Assuming that Nye's claims about the greater riskiness of the nonnuclear world are correct, these two arguments from consent, hypothetical and actual, make a plausible case that the nonproliferation regime is not discriminatory in a morally relevant sense. But are these claims correct?

What Nye would tell the choosers is that the world would be more dangerous, in particular, that the risk of nuclear war would be greater, were the nuclear states to get rid of their nuclear weapons. Why does Nye think that it is true? The argument comes down to a claim about the role of security guarantees. When some states have nuclear weapons, they can offer to protect nonnuclear states from aggression by their neighbors, as the United States spread its "nuclear umbrella" over West Germany during the Cold War. This produces a degree of international stability. Conventional war is less likely to occur and the nonnuclear states covered by the umbrella do not feel the security need to develop nuclear weapons to protect themselves. Should the state providing the umbrella disarm itself of its nuclear weapons, instability would arise, aggression against the nonnuclear state would become more likely, and that state would feel pressure to acquire nuclear weapons to defend itself.

Nye argues that the role of security guarantees in avoiding proliferation implies that the nuclear states' "Article VI obligations cannot be interpreted as simple disarmament." He is thus led to speak of "the degree of discrimination that is inherent in the nonproliferation regime."<sup>11</sup> In a similar vein, Benjamin Frankel argues that the assumption of nuclear disarmament is part of

"the flawed conceptual foundations of the NPT."<sup>12</sup> The flaw is the failure to recognize the necessary role of security guarantees in avoiding proliferation, a failure to appreciate that nuclear disarmament would increase incentives for proliferation. Were the nuclear states to disarm, states now content to remain nonnuclear under security guarantees from the nuclear states would acquire the weapons, making the world more dangerous. As Nye puts it, nonproliferation efforts are threatened "by those who pursue a broader anti-nuclear agenda and assert it as proliferation policy."<sup>13</sup> Nonproliferation and nuclear disarmament are incompatible goals.

This is, in one of its guises, the familiar argument that nuclear deterrence (in particular, the form known as extended deterrence) works, in the sense that it reduces the risks of war. It was, of course, a controversial argument even during the Cold War. One counter-argument is that nuclear armaments increase mutual suspicions, thus increasing the risk of war by accident or in a crisis. In any case, the argument that nuclear deterrence works is even more controversial now that the Cold War and the superpower nuclear standoff has ended. Nye's "original position" argument fails because such an argument cannot be based on controversial claims. The knowledge that the choosers are assumed to have must be noncontroversial. Thus, the Indian argument that the nonproliferation regime is discriminatory, that it is unfair in its distribution of burdens and benefits, stands.

But in the face of a claim that some situation is discriminatory, there are two ways to go to remove the unfairness. A discriminatory situation is one in which some are treated unfairly because they are not allowed benefits that others are allowed. To remove the unfairness, one can grant to all parties the benefits that under the discriminatory situation only some are permitted, or one can deny those benefits to all of the parties. For example, consider a situation in which some



people are allowed to get away with cheating on their income tax. This is discriminatory because the nonpayers have a benefit, avoiding the tax payments, that others are not allowed, and there is no morally relevant reason for this. One can remove the unfairness by either allowing all people to avoid paying their taxes or by enforcing tax payments from all. The unfairness is removed either way, but there may be independent moral reasons for preferring one of the ways over the other. Assuming the moral value of government, it is not morally acceptable to remove the discrimination by allowing all people to avoid paying their taxes. Such a situation would not be discriminatory, but it would be morally impermissible for other reasons.

Similarly, there are two ways to remove the unfairness of the nonproliferation regime. We could allow all states to acquire nuclear weapons or allow none. We could allow universal nuclear armament or we could enforce universal nuclear disarmament. Are there moral reasons for preferring one of these ways over the other? Traditionally, India has thought so. They held a strong anti-nuclear position, one based not only on the argument from discrimination, but also on the argument that the possession of nuclear weapons was neither morally nor prudentially justified. "India's approach has been global and the objective both from the moral and security point of view, has been the total elimination of nuclear weapons."<sup>14</sup> The premises of the classical Indian position have been "the irrelevance of nuclear weapons to genuine security, their total indefensibility under all conditions, their contribution to international and regional insecurity, and their role in legitimizing the use of force, and massive force at that."<sup>15</sup> The moral goal was not just to end the discrimination of the nonproliferation regime, but to eliminate nuclear weapons. "All steps, including a test ban treaty, a convention on no-use, a fissile material cut-off treaty--even the Non-Proliferation Treaty--make no strategic or political sense unless they [lead]

to total nuclear disarmament."<sup>16</sup>

But more recently, India's position has changed. This change has been partially masked due to the continued appeal to the argument from discrimination. The new position continues to complain about the discrimination of the nonproliferation regime, but suggests that the preferred solution to removing the discrimination is to allow the "have-nots" to acquire nuclear weapons. This shift is suggested in the following statements of government representatives in 1996:

India cannot accept any restraint on its [nuclear weapons] capability, if other countries remain unwilling to accept the obligation to eliminate their nuclear weapons.<sup>17</sup>

We are unable to accept any obligations which affect our sovereign right of decision making.<sup>18</sup>

What these statements indicate is that India no longer sees as paramount the moral obligation not to possess nuclear weapons. If the nuclear powers are not going to end the discriminatory character of the nonproliferation regime through nuclear disarmament, then India is free to end it through nuclear armament. The assertion of the sovereign right to decide to go nuclear suggests that the Indian concept of the social contract of the international order has become much more Hobbesian, in contrast to the more Lockean concept it accepted when it recognized its moral obligation not to acquire nuclear weapons even in the face of the nuclear powers' unwillingness to end the discrimination through nuclear disarmament.

This shift to a real politic understanding of how India ought to behave has become clearer under the current Hindu nationalist government, which, with its May testing sequence, is carrying out its campaign pledge to acquire a nuclear arsenal. The defense spokesman of the new

government has endorsed the notion of nuclear deterrence. After observing the existence of a regime of nuclear deterrence covering most of the globe, he asserted:

It is only Southern Asia and Africa that are out of this protective pattern of security arrangements. Therefore, in our assessment and strategic evaluation, this area is uncovered and is a vacuum. If we have the kind of neighborhood that India has, which is extremely troubled, and if we have two declared nuclear weapons powers in our neighborhood, the basic requirement is to acquire a balancing deterrent capability.

What is left of the old moral concern can be seen in his citing the distinction between "personal morality and public morality": "Public morality enjoins upon any country . . . an obligation to take such actions for the protection of its people and for the security of the land as it judges best."<sup>19</sup>

It would, of course, be unfairly discriminatory to single out India for condemnation in the face of this policy shift, given that they have simply come around to the position on nuclear weapons held for decades by the nuclear powers. But there are two ways to avoid this unfair move: not to condemn India or to condemn all nuclear states. Morality, and indeed enlightened prudence, require the general condemnation. The Indian argument from discrimination is sound, but it is not the end of the moral story. The only morally acceptable way to avoid the discrimination is global nuclear disarmament.

## NOTES

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1. Schell, Jonathan, "The Gift of Time," The Nation
  2. New York Times, May 18, 1998, p. A8.
  3. Sidharth Bhatia, "Why India Will Not Sign the Comprehensive Test Ban Treaty," The Indian Budget '96-'97, <<http://m-web.com/sid003.html>>, emphasis in original.
  4. Rajiv Gandhi, quoted in "Nuclear Non-Proliferation," India: Issues and Opportunities, <<http://indianembassy.org/special/ctbt/nuclear.html>>.
  5. It is this failure of the "haves" to live up to their NPT obligations, by the way, which shows that the discriminatory nature of the nonproliferation regime is not made morally acceptable by the fact that most "have-nots" (though not India) are signatories of the NPT. The moral force of the bargain is nullified by the fact that the "haves" have not kept up their end.
  6. K. Subrahmanyam, "Regional Conflicts and Nuclear Fears," in Levine and Carlton (eds.), The Nuclear Arms Race Debated, p. 348.
  7. Indira Gandhi, as quoted in Arundhati Ghose, "Negotiating the CTBT: India's Security Concerns and Nuclear Disarmament," Journal of International Affairs 51, no. 1 (summer 1997); found at <<http://www.indianembassy.org/special/ctbt/ctbtghose.html>>, p. 2.
  8. This paragraph and the following two are drawn from an earlier essay of mine.
  9. Nye, "Maintaining a Nonproliferation Regime," p. 35, and "NPT," pp. 124-25. See John Rawls, A Theory of Justice (Cambridge, MA: Harvard University Press, 1971).
  10. Nye, "Maintaining a Nonproliferation Regime," p. 36. One might argue that there is a more straightforward argument from consent, namely, that states have actually consented to nuclear inequality in signing the NPT. But they may not have consented to the loose interpretation, instead having understood the treaty they signed under its strict interpretation.
  11. Nye, "NPT," p. 128, "Maintaining a Nonproliferation Regime," p. 36.
  12. Frankel, "Brooding Shadow," p. 61. See also Betts, "Paranooids."
  13. Nye, "Maintaining a Nonproliferation Regime," p. 16.
  14. Ghose, "Negotiating," p. 3.
  15. Praful Bidwai, "Comprehensive Test Ban Treaty: To Be or Not to Be," The Indian Budget '96-'97, <<http://m-web.com/pr001.html>>.
  16. See penultimate note.
  17. Ghose, "Negotiating," p. 8.
  18. I. K. Gujral, "Statement on Comprehensive Test Ban Treaty," <<http://www.indianembassy.org/special/ctbt/ctbt1.html>>, p. 1.
  19. Jaswant Singh, Newshour interview, June 11, 1998, <<http://www.pbs.org/newshour/textonly/focus1/html>>, pp. 2, 4.