

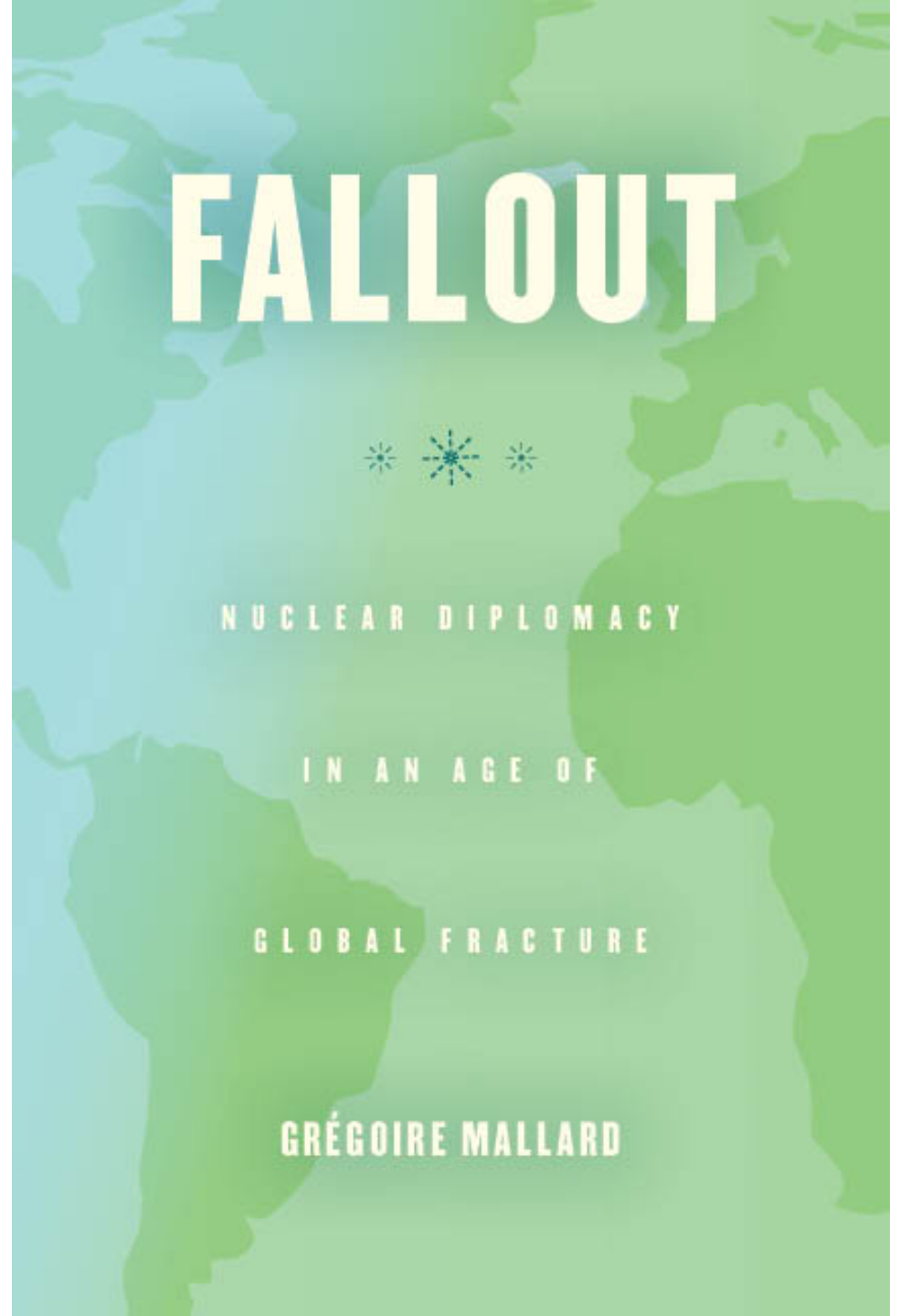
Preventing Nuclear Proliferation and Bringing in Outliers

Grégoire Mallard
Associate Professor
Anthropology and Sociology

The logo for The Graduate Institute Geneva, featuring the text "THE GRADUATE INSTITUTE GENEVA" in white, uppercase letters on a red square background.

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- Dealing with multiple standards
- Understanding the history of nuclear trade regimes



PART 1

- 1. The issues at stake
- 2. Looking at Europe's Past
- 3. Looking at the paths proposed to NPT outliers

Issues

- The existence of “double [or triple] standards” pervading the international legal system will eventually lead us to a “state of chaos.”

Mohamed El Baradei, 2011,
The Age of Deception

Issues

- Fairness of the global regime
- Transparency and clarity: mutual Agreement on the Common Goals?
- Effectiveness of the regimes set up

Do we have successful examples of harmonization of rules in the NPT regime?

PART 2

- 1. The issues at stake
- **2. Looking at Europe's Past**
- 3. Looking at the paths proposed to NPT outliers

What can we learn from Europe?



- Europe is the **only region** that
 - has a **multilateral** system of controls since 1958
 - has bargained **collectively** how the **NPT obligations** of its member-states are checked by **the IAEA** since 1973
- Europe has moved from an **opaque** nuclear status to a **clear** nuclear status

Europe and the world in nuclear affairs



- A **European** (and Transatlantic) **Regime**:
 - The European Community of Atomic Energy Treaty (**Euratom Treaty** 1957),
 - Euratom-U.S. Treaty (1958)
 - Euratom-IAEA safeguards (1973)
- A **Global** Regime:
 - The **IAEA Statute** 1956
 - The IAEA control documents (1960s)
 - The **Nuclear Nonproliferation Treaty** (NPT, 1968)
 - The IAEA post-NPT safeguards agreements (1970s)

The birth of the global nuclear regime

1953: “**Atoms for Peace**” US government agrees to sell peaceful nuclear power plants to Europe if controlled by an international agency

1956: creation of the **International Atomic Energy Agency** (IAEA)

before NPT, its goal is to control the use of fissile materials by **importing** nations (no difference between NWS and NNWS)



The birth of the European regime

- **Euratom Treaty** (March 1957)
- Six nations: France, West Germany, Italy, Belgium, Netherlands, Luxembourg



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Official goals in 1955 (Messina):

- To accelerate the growth of European nuclear industries by pooling civilian and dual use resources (uranium enrichment)
- To reinforce Europe's control over West German nuclear activities
- To stay away from military objectives in order to limit tensions between France and its allies

The birth of the European regime

- **Euratom Treaty** (March 1957)
- Six nations: France, West Germany, Italy, Belgium, Netherlands, Luxembourg

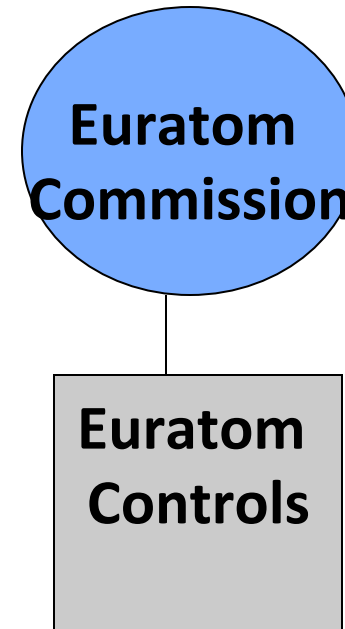
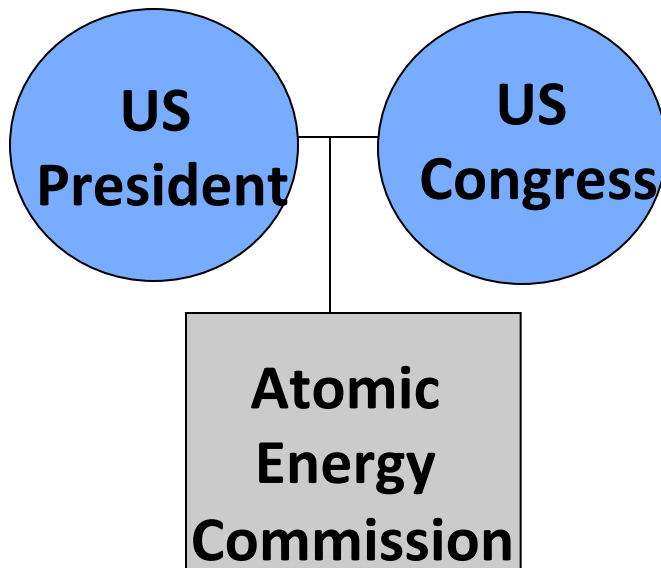


Eisenhower and Monnet

- **US-Euratom Treaty** (August 1958)

End of US control over European nuclear activities

Why did the US matter?



Since 1946: US controls European activities with US imported nuclear materials

1958: US accepts that Euratom controls European activities with US imported nuclear materials

Why did the US want a different system for Europe?



- Why did not the US let the IAEA control the use of nuclear materials in Europe?
- Why did they prefer to let the Europeans set up their own regional system of controls?

Why did the US want a different system for Europe?



1. **Normative**: Europe's model of **governance** is better
 - More democratic: more checks and balances

Why did the US want a different system for Europe?



1. **Normative**: Europe's model of **governance** is better
 - More democratic: more checks and balances
 - More efficient:
 - IAEA Board negotiates between East, West and non-aligned countries like India
 - IAEA refers observed violations to the UN Security Council, where decisions might also be blocked by great power rivalries

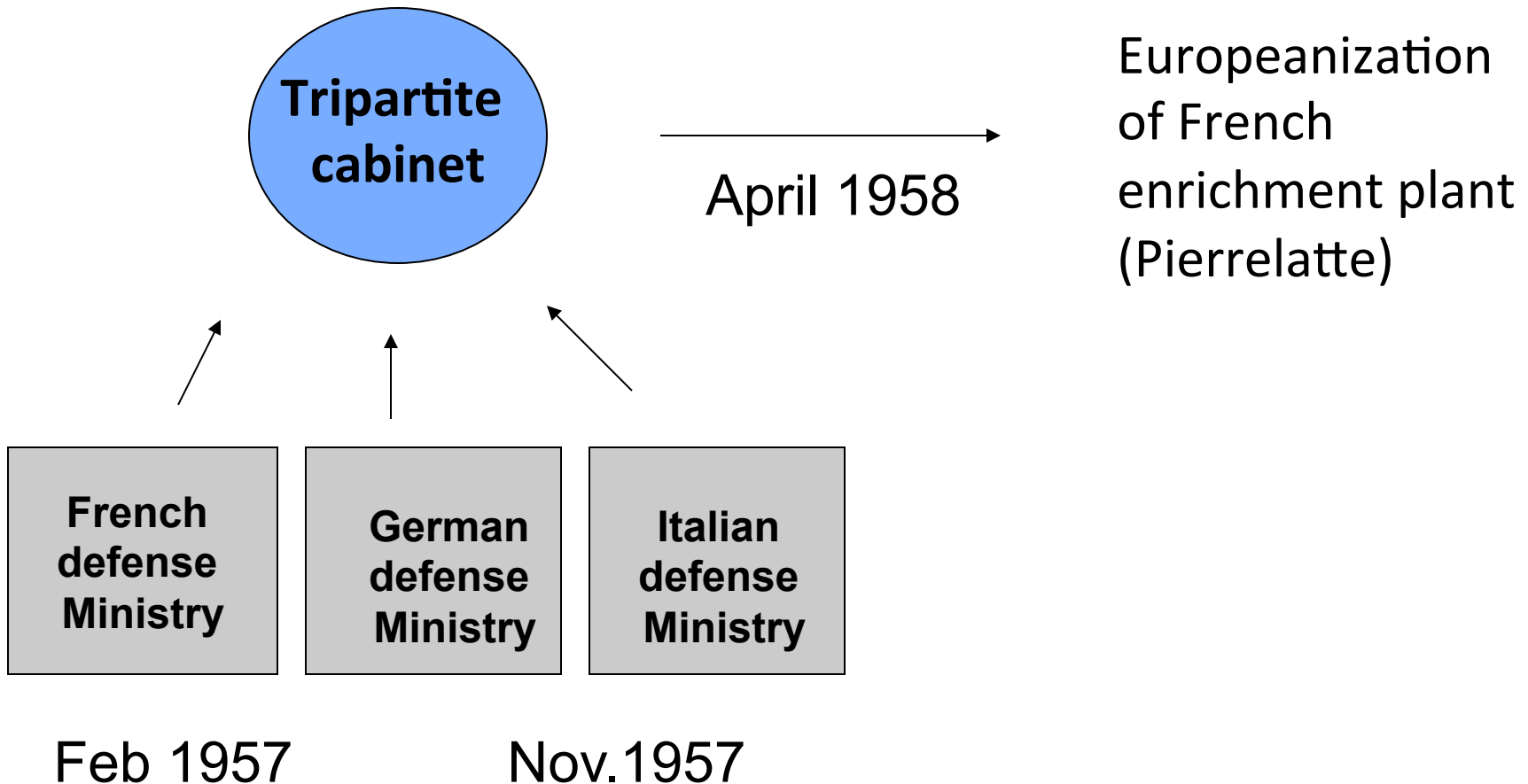
Why did the US want a different system for Europe?



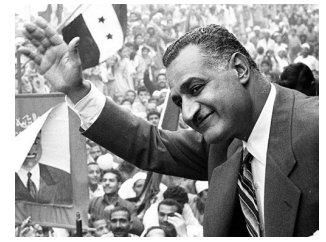
1. **Normative:** Europe's model of **governance** is better
2. **Strategic:** Western Europe should become a **nuclear weapon (quasi)-state**
 - Plans to integrate national nuclear deterrents (France, Germany and Italy in 1958, and then France and UK in 1962) under a European framework

Toward a secret European nuclear weapons capacity

Military nuclear activities



The awakening: the Suez Crisis



Before the Crisis

France believed the US would support its nuclear policies despite the failure of European military integration (EDC)

France did not *really* see West Germany as an equal in military & nuclear affairs

France wanted to remain free of interference in its colonial wars and nuclear affairs

After the Crisis

France realized US help in nuclear matters would be related to its progress in European integration

France realized West Germany (and Israel) would be its only partner in military affairs

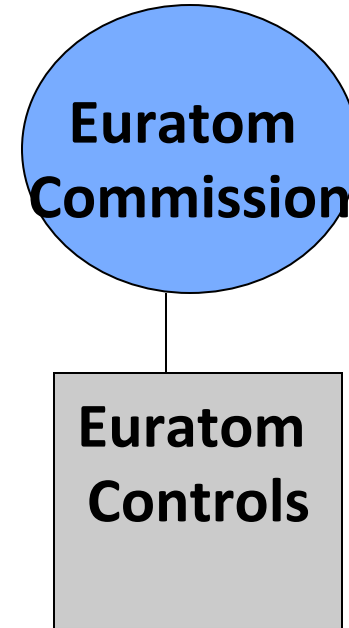
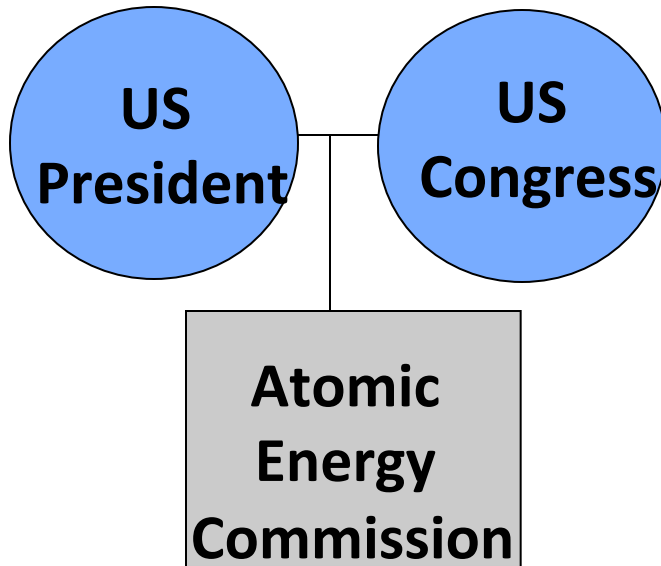
France agreed to enroll West Germany (Italy and Israel) more closely in its nuclear activities

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2. **Strategic:** Western Europe should become a **nuclear weapon (quasi)-state**
 - Plans to integrate national nuclear deterrents (France, Germany and Italy in 1958, and then France and UK in 1962) under a European framework
 - Europeans define Euratom controls in a specific way, which did not prohibit *declared* military uses of special fissionable materials

The delegation of US controls



Since 1946: US controls European activities with US imported nuclear materials

CONTROL OF FINALITY: Only peaceful uses allowed

1958: US accepts that Euratom controls European activities with US imported nuclear materials

CONTROL OF CONFORMITY: military uses allowed

Why did the US want a different system for Europe?



1. **Normative:** Europe's model of **governance** is better
2. **Strategic:** Western Europe should become a **nuclear weapon (quasi)-state**
3. **Legal:** Western Europe should **avoid legal contracts** with Eastern Europe
 - Danger of granting legal sovereignty to East Germany if both Germany's were included in a Central European Nuclear Free Zone

Was Euratom Acceptable to Others?



- Some Americans doubted its value
 - **Pragmatically**, US Atomic Energy Commission preferred universal extension of the IAEA controls to importing nations (in 1958) and then to all NNWS (in 1967)
- The Communist block attacked it
 - **Strategically**, Euratom = vast conspiracy to hide “military Junktim” between France and Germany
- The Non-Aligned Nations attacked it
 - **Legally**, India and Pakistan denounced the “**double standard**” between European and decolonizing nations

How did Euratom become accepted?

- ... to the **clarification** and **harmonization** of European and global control rules (67-75)
 - **Legal possibility**: Art. 3.4 of the NPT: states can bargain “collectively” their safeguards agreement with the IAEA





How did Euratom become accepted?

- ... to the **clarification** and **harmonization** of European and global control rules (67-75)
 - **Legal possibility**: Art. 3.4 of the NPT
 - **Political process**: double delegation of authority
 - Euratom member-states let the **Euratom Commission** bargain with the IAEA on their behalf
 - Great powers (US and Soviet Union) and others (Japan, etc.) let the **IAEA** bargain with Euratom on their behalf



How did Euratom become accepted?

- ... to the **clarification** and **harmonization** of European and global control rules (67-75)
 - **Legal possibility**: Art. 3.4 of the NPT
 - **Political process**: double delegation of authority
 - **Political outcome**: everyone was pleased with outcome of IAEA-EURATOM negotiations
 - **Europeans** liked the exceptions they received in the IAEA-EURATOM safeguards agreement (1973) ('one zone', no IAEA controls on US-imported fissile materials, IAEA only 'verifies')
 - **Non-Europeans** liked that the IAEA adopted the "**full-scope**" **Euratom controls** as a model for its post-NPT controls of NNWS (rather than the more intrusive pre-NPT controls of the 1960s)

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 - **Legal possibility**: Art. 3.4 of the NPT
 - **Political process**: double delegation of authority
 - **Political outcome**: everyone was pleased



→ While not perfect, the outcome of negotiations **normalized the situation of Germany**, Italy, etc. with respect to the non-proliferation issue (clearly NNWS after ratified NPT in 1975 with “European Clause”)

PART 3

- 1. The issues at stake with the WMD Free Zone in the Middle East
- 2. Looking at Europe's Past
- 3. Looking at the paths proposed to NPT outliers

Dealing with NPT outliers

NPT outliers	Paths of 'inclusion'
Israel	
India	
Pakistan (Iran, North Korea, individuals part of A.Q. Khan network in Germany, Switzerland, South Africa, Malaysia, etc.)	

Dealing with NPT outliers

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Israel	WMD Free Zone in the Middle East (ACRS in 1990s, NPT Rev. Con. Documents)
India	
Pakistan et al.	

High Stakes...



- Turning the Middle East into a WMD Free Zone :
 - is a **legal commitment** for all NPT signatory-states
 - 1995 NPT Review and Extension Conference
 - 2010 NPT Rev Conf. sets 2012 as target for first conference
 - can lead to the **full realization** of the **NWS'** NPT commitments (art. 6)
 - can lead to the **universal extension** of the NPT
- The whole world has a stake in the deliberation

... but a long road ahead



- Past attempts have failed:
 - During ‘Madrid process’ (1991-1995), the **Arms Control and Regional Security (ACRS)** group:
 - issued a Comprehensive Declaration
 - but it stumbled on Israel’s access to NPT as a NNWS

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- Past attempts have failed:
 - During ‘Madrid process’ (1991-1995), the **Arms Control and Regional Security (ACRS)** group:
 - issued a Comprehensive Declaration
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 - Since 2001, discussion has shifted from **including** NPT outliers to **enforcing** NPT and IAEA obligations of **NPT signatories** suspect of hidden activities (Libya, Iran, Iraq)
 - Failure to hold the **2012 Helsinki conference**

How can Europe inspire the Middle East ?



- Governance structure of a regional body
 - Ex ante mechanisms of conciliation (commission)
 - Ex post mechanisms of dispute settlement (court)
 - Is there a role for a Parliament?
- Technical Agencies:
 - Regional controls (adapted to needs, transparency)
 - Joint ventures (regionalization of fuel cycle activities)
 - Regional fuel supply agency (security of supply)
- A forum to discuss international legal obligations at the regional level
 - IAEA-Zone-Israel agreement rather than IAEA-Israel agreement

Dealing with NPT outliers

NPT outliers	Paths of 'inclusion'
Israel	WMD Free Zone in the Middle East (ACRS in 1990s, NPT Rev. Con. Documents)
India	NSG rules (1976) slowly incorporated in NPT- IAEA documents (IAEA infcirc + NPT Rev. con) as well as domestic laws (US)
Pakistan et al.	

An opaque response to India's nuclear ambitions?



- India's 1974 nuclear test provoked an indirect response from the West:
 - **Domestic** and **international** regulations:
 - In the US, Symington Amendment (1976) to the Foreign Assistance Act, Non-Proliferation Act (1978), etc.
 - Nuclear Suppliers Group (NSG) adopts the US restrictions to trade with countries without “full-scope” IAEA controls (1976), then included in 1995 NPT Rev. Conf.

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 - In the US, Symington Amendment (1976) to the Foreign Assistance Act, Non-Proliferation Act (1978), etc.
 - **Retroactively**, the US applied these new regulations to cancel its nuclear agreements with India
 - officially, not in retaliation to the Indian “peaceful” test (to avoid controversies about interpretation of art. 4 of NPT)

A clear response to India's clear nuclear ambitions



- India's 1998 nuclear tests provoked a direct response from the West:
 - UN Security Council Resolution 1172 “encourages” states to stop trading with India (and Pakistan) in nuclear and ballistic technologies and materials, and asks them to sign CTBT, NPT, etc.
 - NSG asks Russia to stop selling fuel to Tarapur plant (1998)

Normalization, with or without harmonization?



- The normalization of India's nuclear status rests on **domestic** and **international** regulations:
 - 2005 Bush-Singh Declaration
 - 2005 Indian Law on WMD, moratorium on tests
 - 2006 “123 Agreement” (ratified in 2008 by the US)
 - NSG “Waiver” (2008) and India-IAEA Agreement (‘sui generis’): IAEA agreement with India India neither IAEA agreement with NWS, NNWS or pre-NPT agreement

Normalization, with or without harmonization?

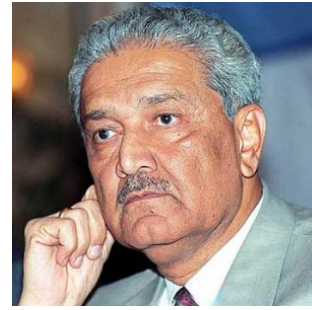


- The normalization of India's nuclear status rests on **domestic** and **international** regulations
- But the normalization creates tensions:
 - **Regionally**: 'full-scope' IAEA safeguard does not work toward nuclear disarmament and creates tensions with Pakistan as long as it is denied the same conditions
 - **Globally**: It creates tensions with NPT NNWS (violation of 'preferred trade partner' clause in NPT)

Dealing with NPT outliers

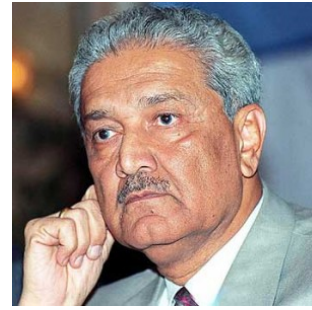
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Pakistan et al.	<u>UNSC sanctions regimes</u> (against Iraq, Iran and North Korea per UNSCRs 687, 1696, 1737, ... 1929); and against individuals per UNSCRs 1196, 1540) complemented by <u>domestic laws</u> (IEEPA of 1977, ILSA of 1996, CISADA of 2010) + <u>administrative measures</u> (EOs against Iran in the US from 1979 onward + OFAC for asset freezes) + <u>litigation in US courts</u> against sanctions-evaders (targets European banks); and by 'voluntary' <u>export control regimes</u> (PSI)

Dealing with A.Q. Khan network: The Official Story



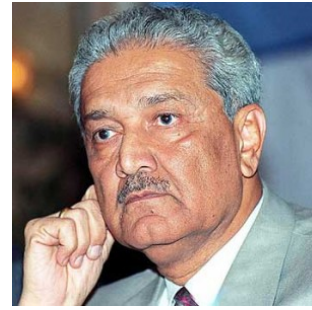
- The A. Q. Khan “network”
 - Suspicions in fall 2002 about centrifuge sales to Iran
 - Revelations in fall 2003 about centrifuge sales to Libya
- Denial by Pakistani and US authorities of any state-lead proliferation:
 - “private” treason for financial gains
- UNSCR 1540 (spring 2004)
 - Closes loopholes in NPT-regime by criminalizing proliferation activities of non-state actors
 - Modeled after counter-terrorism UNSCRs

Is the new 'counter-proliferation' regime fair & efficient?



- UNSCR 1540 was criticized for imposing legislative changes based on US model law to the rest of the world without seeking consent
 - Multilateral diplomacy + IAEA are put aside
- UNSCR 1540 aligned the goals of the NPT regime on the US foreign policy goals:
 - UAE (and others) in favor of strengthening of export-control law, but not in discriminatory freezes and export controls against Iranians only
 - Domestic legislation (like ILSA of 1996) include claims to 'extra-territorial' jurisdiction that the EU denounced as illegitimate from IL standards + increasing use of US courts to sue European banks

Is the new 'counter-proliferation' regime fair & efficient?



- UNSCR 1540 focuses efforts on legislative and administrative changes
 - UNSC Committee has largely symbolic action
- Inter-state judiciary cooperation in the context of criminal proceedings has largely been stopped by executives... including (& particularly) the US
 - Political pressures to drop cases (Swiss) and high secrecy in court cases (South Africa)
 - Political pressures to leave key participants (A.Q. Khan) outside IAEA's reach and to hide US responsibilities in leaving AQ Khan free; and violations of its own embargoes when conducting (failed) sabotage tactics

Conclusions

conclusion

- Big question is how much the NPT regime can coexist with outliers operating from outside
- Question of universalization of NPT regime should be considered as a question of harmonization leading to fair, transparent and efficient treaty-based regimes

The evolution of nuclear trade regimes: four outcomes

Clarification of Opaque Rules? Conflict of Legal Rules?	Recoupling of Public and Private interpretations	Decoupling of Public and Private interpretations maintained over time
Easy harmonization between global and specific rules	Harmonization (Euratom)	Unacknowledged exception (Israel)
Difficult harmonization (or no harmonization) between rules	Acknowledged exception (India)	Subversion (Pakistan)
