

**NON-PROLIFERATION OF NUCLEAR WEAPONS
AND CONFIDENCE-BUILDING: A COMPARATIVE
ANALYSIS.
ARGENTINA AND BRAZIL – AN EXAMPLE FOR
SOUTH ASIA?**

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ABSTRACT

The proliferation of nuclear weapons has been one of the main challenges faced by the international community since mankind first became aware of their destructive power more than seven decades ago. Ever since, the threat of nuclear war has been acting as a sword of Damocles, and several theories have arisen based on the fear of such catastrophe.

Despite the fact that the end of the ideological confrontation between the US and the USSR eased the tension in this regard, the bipolar analysis that had prevailed during the Cold War years proved unsuitable to assess the situation prevailing in the last decade of the twentieth century. The emergence of new actors, which significantly changed the power dynamics in the international arena, demanded

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original approaches to deal with novel problems.

In the realm of nuclear proliferation, the announcement of the completion of successful nuclear explosions in 1998, both by India and Pakistan, constitutes beyond doubt one of the most noteworthy events of the post-Cold War years. This situation is relevant not only due to the deep enmity that has pervaded the relations between these two countries since the times of partition, which makes any kind of cooperation almost utopian; it is also important because both States have been recalcitrant to abide by the international legal framework. Whether this attitude is justified or not is an aspect of this complex scenario that the author will not delve into, as that would lead to political arguments rather than legal ones.

By using a wide array of sources, the author will evaluate the international legal framework dealing with nuclear activities. Then, the paper will focus on the legal situation prevailing between India and Pakistan and, more remarkably, the prospects of cooperation in the nuclear field. The following step will be to conduct a similar legal analysis with regards to Argentina and Brazil.

Notwithstanding the undeniable differences between the two sets of cases, by enquiring into the Latin American example, the author shall attempt to see if there are any beneficial outcomes which could be followed as

precedents to bring the stand-off in the subcontinent to an end.

I. GENERAL LEGAL FRAMEWORK

Since the bombing of Hiroshima and Nagasaki in August 1945, nuclear weapons have been among the top concerns of the international community. The unprecedented destruction, in addition to the long-term effects of the explosions, created a sense of urgency that has impelled States to adopt legal norms to regulate this unconventional field. Furthermore, it is clear that since World War II, being capable of developing nuclear weapons has been a symbol of international status and respectability and, beyond anything else, a guarantee in terms of national security for those few who possess them. In this sense, after the United States (US) brought the Pacific War to an end by dropping two atomic bombs, its ideological rival, the Union of Soviet Socialist Republics (USSR), hastened to explode its own nuclear device in 1949.¹ Following this, the United Kingdom (UK) did it in 1952, France in 1960, the People's Republic of China in 1964, India in 1974, Pakistan in 1998 and North Korea in 2006.² Though the dates and corresponding details are far from precise, there is evidence that Israel did it sometime between the 1960's and 1970's - though this was never

¹'The Nuclear Testing Tally' (*Arms Control Association*, July 2020) <<https://www.armscontrol.org/factsheets/nucleartesttally>> accessed 29 June 2021.

²*Ibid.*

acknowledged officially³ - and South Africa in 1979.⁴ Keeping in mind that this enumeration includes only States which have actually succeeded in testing nuclear bombs, it should be noted that if those attempting to reach this technological threshold were to be included, the list would be significantly longer.

One of the first global initiatives to deal with nuclear energy, which in general terms was regarded both as a challenge and an opportunity, a threat to the international peace though at the same time a stabilizing factor, was materialized through the Conference on the Statute of the International Atomic Energy Agency (IAEA), which met in October 1956 in the United Nations Headquarters. The corresponding Statute was approved by the Conference during October that same year, though it came into force only in 1957.⁵ As of April 2021, the IAEA is comprised of 173 members.⁶

According to Article 2 of the Statute, the Agency is established to *“accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world. It shall ensure, so far as it is able, that assistance provided by it or at its request or under its*

³‘Israel’ (*National Threat Initiative*, July 2017) <www.nti.org/learn/countries/israel/> accessed 29 June 2021; ‘Nuclear Weapons: Who Has What at a Glance’ (*Arms Control Association*, August 2020) <<https://www.armscontrol.org/factsheets/Nuclearweaponswhohaswhat>> accessed 29 June 2021; Max Fisher, ‘Why is the US okay with Israel having nuclear weapons but not Iran?’ *The Washington Post* (2 December 2013) <<https://www.washingtonpost.com/news/worldviews/wp/2013/12/02/why-is-the-u-s-okay-with-israel-having-nuclear-weapons-but-not-iran/>> accessed 29 June 2021.

⁴National Threat Initiative, ‘South Africa’ (*nti.org*, September 2015) <www.nti.org/learn/countries/south-africa/nuclear/> accessed 29 June 2021.

⁵The Statute of the IAEA has been subject to three amendments (1963, 1973 and 1989) which have entered into force, as opposed to the last two (adopted in 1999), whose entry into force is still pending. See <www.iaea.org/about/statute-amendments> accessed 29 June 2021.

⁶‘List of Member States’ (*International Atomic Energy Agency*) <www.iaea.org/about/governance/list-of-member-states> accessed 29 June 2021.

supervision or control is not used in such a way as to further any military purpose.”⁷

For its part, Article 3.d) asserts that “[s]ubject to the provisions of this Statute and to the terms of agreements concluded between a State or a group of States and the Agency which shall be in accordance with the provisions of the Statute, the activities of the Agency shall be carried out with due observance of the sovereign rights of States.”

Taking into account the provisions alluded to above, it is patent that the IAEA provides a broad framework to foster the cooperation of States in nuclear activities, attempting to strike a balance between security and progress for everyone. For the time being, there is no need to further enquire into the nature and functions of the Agency, which will be dealt with later on.

Another milestone came in 1968 when 93 States signed the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which entered into force in 1970. The treaty currently has 191 States parties, a fact that gives credit to its almost-universal nature.⁸

With regards to nuclear-weapon States (NWS),⁹ Article 1 obligates them “*not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon state to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.*”

⁷Statute of the International Atomic Energy Agency 1956, art 2.

⁸“Treaty on the Non-Proliferation of Nuclear Weapons’ (United Nations Office for Disarmament Affairs, 1968) <<https://treaties.unoda.org/t/npt>> accessed 29 June 2021.

⁹Ibid art 9.3. Therefore, the only five nuclear-weapon states would be the United States, the Union of Soviet Socialist Republics, the United Kingdom, France and the People’s Republic of China.

Meanwhile, Article 2 binds non-nuclear-weapon States (NNWS) “*not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.*”

In addition, Article 3.1 deals with the safeguards to be agreed upon between NNWS and the IAEA “*for the exclusive purpose of verification of the fulfilment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices.*” In this sense, it is evident that States understand their right to use nuclear energy for peaceful purposes as an expression of their sovereignty, a feature also reflected in Article 3.d) of the Statute of the IAEA. Furthering this point, Article 4.1 provides that “*[n]othing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.*”

Any reference to the NPT would be incomplete if no mention were made of Article 6, one of the key provisions therein contained. As much criticized as praised, it establishes the commitment of all the parties “*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, and on a treaty on general and complete disarmament under strict and effective international control.*” To discuss whether Article 6 is the most perfect accomplishment of the NPT or its most blatantly disregarded clause might be as futile as subjective an exercise. After fifty years of its entry into force, there are doubts as to whether the NPT has prevented the spread of nuclear weapons throughout the

world or stalled any real progress, by attempting to perpetuate the situation prevailing at the time of its signature.

From the author's perspective, the only uncontroversial aspect of this rule is that its aim has been to attain stability and predictability for the international system. The similarity with the United Nations Security Council (UNSC) and the privileged position of its five Permanent Members is straight and accurate. Even though by the time the NPT entered into force not all the Permanent Members of the UNSC were NWS, as one seat was held by the Republic of China; by the year 1971 this situation was rectified, and the Republic of China was replaced by the People's Republic of China in the UNSC, therefore leading to a full coincidence between the five NWS in the NPT and the five Permanent Members sitting in the UNSC.

During the 1990's, once the Cold War was over and the age of nuclear terror seemed to have been left behind, another ambitious treaty was adopted: the Comprehensive Nuclear-Test-Ban Treaty (CTBT).¹⁰ Regardless of the instrument's opening for signature in 1996, it has still not entered into force.

The plausible explanations for such stark reality are numerous, but the most likely one is that it entailed too enthusiastic a step, which States are still not ready to take. Article 1 elucidates in paragraph 1 that the parties undertake "*not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control*". While paragraph 2 of the same Article also reflects the commitment to "*refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion.*"

¹⁰Comprehensive Nuclear-Test-Ban Treaty (adopted 24 September 1996) (CTBT).

Finally, on April 2004 the UNSC adopted, unanimously, its Resolution 1540 (2004).¹¹ Among the many interesting aspects to this innovative approach, the first one that needs to be mentioned is that it has been adopted under Chapter VII of the Charter of the United Nations. This means that the matter has been regarded as a “*threat to the peace, breach of the peace, or act of aggression*” and that the decision itself is binding on all the members of the Organization.¹²

Despite the fact that it focuses on non-State actors, the resolution certainly reflected a progress in the fight against the proliferation of Weapons of Mass Destruction (WMD). In this sense, the UNSC ordered States, in paragraph 1, to “*refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery*”. While in paragraph 3, also prescribing them to “*take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials*”.

Meanwhile, it set up a committee to monitor the implementation of the resolution for a period of two years in paragraph 4. While calling all States to promote “*the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons*” in paragraph 8.a) and “*dialogue and cooperation on nonproliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery*” in paragraph 9.

¹¹1540 Committee, Security Council, ‘1540 Factsheet’ (*United Nations*, 2004) <<https://www.un.org/en/sc/1540/1540-fact-sheet.shtml>> accessed 29 June 2021.

¹²Charter of the United Nations (entered into force 24 October 1945) 1 UNTS XVI (UN Charter) art 39 and 25.

The mandate of the so called “1540 Committee” has been since extended. The last time, this was implemented through UNSC Resolution 1977 (2011), and the period was prolonged until April 25, 2021.¹³ Considering that many of its activities have been hindered due to the COVID-19 pandemic, some of these might be carried on beyond its expiration date.

II. INDIA – PAKISTAN: REAL THREATS?

Since the subcontinent’s independence in August 1947, both India and Pakistan have relied on military build-up rather than cooperation for their security. The 1947, 1965, 1971 and 1999 wars are only the most notorious armed conflicts involving the two countries; but the skirmishes and military activities falling short of outright war have been a constant.

This uninterrupted hostility has spurred a continuous arms race between the two countries which initially involved conventional weapons exclusively, but soon developed into an open competition to achieve nuclear superiority. In May 1998, both India and Pakistan conducted nuclear tests, officially announcing their respective accomplishments.¹⁴

The situation in South Asia is particularly concerning, as this region encompasses the only two possessors of nuclear weapons who have been at war among themselves. Leaving aside the frequent military

¹³UNSC Res 1977 (2011) Un Doc S/RES/1977 (2011) para 2.

¹⁴See John F. Burns, ‘India Sets 3 Nuclear Blasts, Defying a Worldwide Ban; Tests Bring a Sharp Outcry’ (New York Times, 12 May 1998) <www.nytimes.com/1998/05/12/world/india-sets-3-nuclear-blasts-defying-a-worldwide-ban-tests-bring-a-sharp-outcry.html> accessed 29 June 2021; John F. Burns, ‘Nuclear Anxiety: the Overview; Pakistan, Answering India, Carries Out Nuclear Tests; ‘Clinton’s Appeal Rejected’ (New York Times, 29 May 1998) <www.nytimes.com/1998/05/29/world/nuclear-anxiety-overview-pakistan-answering-india-carries-nuclear-tests-clinton.html> accessed 29 June 2021.

operations across the borders in India and Pakistan, one of the latest being the 2019 incidents which involved air strikes carried out by both parties, these two States have fought an armed conflict in 1999, the Kargil War, by which time their nuclear capabilities were well beyond dispute.

To a lesser extent, another focus of tension arises from the almost 3,500 km border separating China and India. Although the last full-fledged war between the two most populated countries in the world took place in the 1960's, it must be noted that frontier incidents between them have not been rare, the latest of which took place in late 2020 / early 2021. Nevertheless, it is also important to acknowledge that these incidents were always far from amounting to armed attacks; and by the time China and India were engaged in wars, the former had already conducted its first successful nuclear explosion test, though it would take until 1974 for the latter to do the same. As a result, it can be said that since they achieved nuclear status, these two countries have never engaged in a war among themselves.

Within the international community, the general understanding is that both India and Pakistan tend to disregard international law when it comes to nuclear proliferation, a situation that only gets worse due to their never-ending animosity. In other words, “[a]part from the challenge to the normative authority of the international nonproliferation regime, these two states are considered the most likely to break the post-WWII taboo on the use of nuclear weapons and thereby cause a human and environmental catastrophe.”¹⁵ Regardless of the incontestable reasons that could potentially lead to this conclusion, it cannot be denied that certain initiatives allow for less discouraging approaches. For instance, both countries have been members of the IAEA since its inception, that is, 1957. Moreover, India

¹⁵Nathan E. Busch, *Combating Weapons of Mass Destruction: The Future of International Nonproliferation Policy* (University of Georgia Press 2009) 222.

has also signed an Additional Protocol to its IAEA safeguards agreement in 2009;¹⁶ an accomplishment Pakistan is still to replicate.¹⁷

However, the most severe criticisms arise from the fact that neither of the countries have signed the NPT, a clear indication that they are not even willing to refrain from defeating its object and purpose.¹⁸ The attitude that both States have adopted since at least the 1970's would hardly be reconcilable with Article 6 of the NPT, which as expressed earlier, entails the commitment to pursue negotiations in good faith to desist from a nuclear arms race and to achieve nuclear disarmament.

Besides, considering that both India and Pakistan have made public in 1998 the success of their respective nuclear tests, it is obvious that neither of them had signed the CTBT by then. Today, their reluctance to join this comprehensive regime prohibiting nuclear tests remains unfettered, notwithstanding their inclusion as "Annex 2 States", which means, in essence, that without their ratification, the treaty cannot enter into force.¹⁹

¹⁶The instrument entered into force in 2014.

¹⁷'Status List: Conclusion of Additional Protocols' (*International Atomic Energy Agency*, 1 June 2021) <www.iaea.org/sites/default/files/20/01/sg-ap-status.pdf> accessed 29 June 2021.

¹⁸Vienna Convention on the Law of Treaties (entered into force 27 January 1980) 1155 UNTS 331 (VCLT) art 18.

¹⁹That is, States members of the Conference on Disarmament as at 18 June 1996 which formally participated in the work of the 1996 session of the Conference and which appear in Table 1 of the International Atomic Energy Agency's April 1996 edition of "Nuclear Power Reactors in the World", and of States members of the Conference on Disarmament as at 18 June 1996 which formally participated in the work of the 1996 session of the Conference and which appear in Table 1 of the International Atomic Energy Agency's December 1995 edition of "Nuclear Research Reactors in the World". In order to check the status of the treaty, see <https://www.ctbto.org/the-treaty/country-profiles/?country=79&cHash=4ea95bf7e350d97b6aa866e1c29ce45a>.

A. Pakistan

Relying substantially on Canada's support, Pakistan began the construction of its first nuclear facility, the Karachi Nuclear Power Plant (K-1) in 1966, which became operative in 1971.

Two years after the 1974 nuclear test conducted by India, Canada ceased its nuclear cooperation with both India and Pakistan, as at that point it was manifest that their intentions were well beyond the peaceful use of nuclear energy.

The 1980's evidenced a realignment of Pakistan, which started being regarded by China as a strategic partner to counterbalance India's influence in the region. Therefore, in 1986 China and Pakistan signed an agreement allowing the former to transfer civil nuclear technology to the latter. Furthermore, another treaty concluded in 1991 led to the construction of the Chashma Nuclear Power Plant (C-1) based on the Chinese Qinshan-1 model, which started its service in 2000.

From that point onwards, all nuclear projects in Pakistan²⁰ were executed with Chinese cooperation, which include C-2, operational since 2011, C-3, operational since 2016, C-4 operational since 2017, K-2, operational since 2021 and K-3, still under construction.²¹

One final aspect that needs to be mentioned with respect to the China-Pakistan nuclear cooperation is that after China joined the Nuclear Suppliers Group (NSG)²² in 2004, the export of nuclear equipment to

²⁰Those installations under "C" refer to the Chashma Nuclear Power Plant, while those under "K" pertain to the Karachi Nuclear Power Plant.

²¹'Nuclear Power in Pakistan' (*World Nuclear Association*, May 2021) <<https://world-nuclear.org/information-library/country-profiles/countries-o-s/pakistan.aspx>> accessed 29 June 2021.

²²A group of nuclear supplier countries which tries to prevent the proliferation of nuclear weapons by implementing certain guidelines adopted by its members. See 'About the NSG' (*Nuclear Suppliers Group*) <<https://www.nuclearsuppliersgroup.org/en/>> accessed 29 June 2021.

Pakistan started being questioned. However, the relationship between the two strategic partners seems to be as solid as ever.

B. India

The lead role India played within the Non-Aligned Movement provided for a certain political independence in the context of the Cold War, but this autonomy came at the expense of the benefits that being a close ally of a superpower might have brought. In this regard, not being assisted by any NWS might initially hinder the development of nuclear activities; but once a certain threshold is reached, that State is able to sustain its nuclear enterprises without any foreign interference. Up to an extent, this was the case of India.

Though India signed a Treaty of Peace, Friendship and Co-operation with the USSR in 1971, the terms therein contained are as vague as is usual in this kind of agreements. For example, Article 2 refers, among other things, to the aim of achieving a general and complete disarmament, covering both nuclear and conventional weapons. Additionally, Article 3 stresses on the importance of economic, scientific and technological co-operation between the parties; while Article 8 includes a general commitment to mutual non-aggression.²³ This treaty did not lead to a close collaboration between India and the USSR in the nuclear field, or at least not publicly. In consequence, India thrived to achieve nuclear status by its own means, and once it was apparent that its indigenous resources were mature, a reality that the 1974 nuclear test only confirmed, there was no effective way to prevent it from pursuing an independent nuclear policy. This is the reason why India has managed to follow its own interests, neutralizing every foreign pressure exerted on it and staying away from any legal regime that it finds incompatible with its own goals. That being said, it would be unfair to deny that India has adopted standards comparable

²³Treaty of Peace, Friendship and Cooperation between the Government Of India and the Government of the Union of Soviet Socialist Republics (9 August 1971).

to those imposed by the prevailing legal instruments. Indeed, one of its strongest arguments is that it has never transferred any materials or technology irresponsibly.

Keeping aside the bilateral commitments entered into by India and Pakistan, which will be addressed in detail in the next section, the author will only enumerate some of the most important undertakings given by India with regards to its nuclear activities.

Though India's development of nuclear capabilities was certainly independent, this does not imply that there have never been any kind of collaborations from other countries in this area. For example, in the year 2000, India signed a secret memorandum of understanding with Russia,²⁴ which obviously raised the alarms in the Western world, prompting it to pursue a more effective policy.

On that account, the US and India launched the Civil Nuclear Cooperation Initiative in 2005, which sought to island military facilities and open civilian ones, so that the IAEA would be able to conduct inspections in relation to Indian nuclear civilian activities while being kept away from military ones. This led to the approval by the IAEA's Board of Governors of India's Safeguards Agreement in August 2008, which in turn paved the way for the signature of the Agreement for Cooperation Concerning Peaceful Uses of Nuclear Energy between the US and India only two months later.²⁵

This pro-openness policy, though limited to the civilian ambit, not only eased the relations with the IAEA due to the facility-specific safeguards agreement, it also allowed India to engage in civilian nuclear technology commerce by availing itself of a waiver from the

²⁴Alex Wagner, 'Russia, India Sign Secret Nuclear Energy Accord' (*Arms Control Today*, November 2000) <www.armscontrol.org/act/2000-11/news/russia-india-sign-secret-nuclear-energy-accord> accessed 29 June 2021.

²⁵U.S. - India Civil Nuclear Cooperation Initiative, Bilateral Agreement on Peaceful Nuclear Cooperation (10 October 2008).

NSG.²⁶ In any event, this relationship with the US did not restrict India's autonomy in terms of nuclear activities in any manner; as proved by the agreement signed in 2009 with Russia, which provides the basis for a broad bilateral cooperation.²⁷

When all of this is taken into account, it becomes very hard to identify any kind of alignment in the Indian nuclear policy. The commitments agreed upon by its government in the early twentieth century show that India has sided with the country which better accommodates to its interests. Still, there is one aspect in which India's nuclear policy has been unchanged: its no first use policy. According to this stance, “*nuclear weapons will only be used in retaliation against a nuclear attack on Indian territory or on Indian forces anywhere*’. However, the statement included one additional and significant, caveat: *‘in the event of a major attack against India, or Indian forces anywhere, by biological or chemical weapons, India will retain the option of retaliating with nuclear weapons’*.”²⁸ This steady policy by no means implies that India is only willing to use its nuclear weapons as a last resort. On the contrary, the conflict escalation that the subcontinent has experienced in the last couple of years allowed for more or less explicit nuclear threats. In this sense, Prime Minister Modi's statement that

²⁶Jayshree Bajoria and Esther Pan, ‘The US-India Nuclear Deal’ (*Council on Foreign Relations*, 5 November 2010) <www.cfr.org/backgrounder/us-india-nuclear-deal> accessed 29 June 2021.

²⁷See ‘India, Russia Sign Nuclear Deal’ (*The Times of India*, 7 December 2009) <<https://timesofindia.indiatimes.com/india/india-russia-sign-nuclear-deal/articleshow/5311267.cms>> accessed 29 June 2021; Vladimir Radyuhin and Sandeep Dikshit, ‘India and Russia Sign Civil Nuclear Agreement’ (*The Hindu*, 7 December 2009) <www.thehindu.com/news/national/India-and-Russia-sign-civil-nuclear-agreement/article16852050.ece> accessed 29 June 2021.

²⁸See Kumar Sundaram & M. V. Ramana, ‘India and the Policy of No First Use of Nuclear Weapons’ (2018) 1(1) *Journal for Peace and Nuclear Disarmament* <www.tandfonline.com/doi/full/10.1080/25751654.2018.1438737> accessed 29 June 2021; Kerry Boyd, ‘India Establishes Formal Nuclear Command Structure’ (*Arms Control Today*, January 2003) <www.armscontrol.org/act/2003-01/news/india-establishes-formal-nuclear-command-structure> accessed 29 June 2021.

“India has stopped the policy of getting scared of Pakistan’s threats. Every other day they used to say ‘we have nuclear button we have nuclear button’. What do we have then? Have we kept it for Diwali?” can only be understood as an open warning to its neighbor.²⁹

C. India vis- à-vis Pakistan

Dealing with India and Pakistan separately might help better understand the antagonizing actors and how each of them developed its own nuclear capabilities; but to fully assess the real situation in the subcontinent, the interplay between the two States cannot be left unattended.

In the year 1988, India and Pakistan signed a bilateral agreement through which the parties committed to *“refrain from undertaking, encouraging or participating in, directly or indirectly, any action aimed at causing the destruction of, or damage to, any nuclear installation or facility in the other country”*.³⁰

Besides, in accordance with its provision 2, the parties have to exchange, on the first day of each year, the latitude and longitude of its nuclear installations and facilities. Since 1992, India and Pakistan have been exchanging their corresponding lists in accordance with the 1988 Agreement on the Prohibition of Attack Against Nuclear Installations and Facilities, the first day of each year.³¹ Though certainly limited,

²⁹‘Our Nuclear Weapons Are Not for Diwali: PM Modi on Pak’s Nuclear Button Threat’ (*India Today*, 21 April 2019) <www.indiatoday.in/elections/lok-sabha-2019/story/our-nuclear-weapons-are-not-for-diwali-pm-modi-on-pak-nuclear-button-threat-1506893-2019-04-21> accessed 29 June 2021.

³⁰Agreement between India and Pakistan on the Prohibition of Attack Against Nuclear Installations and Facilities, India - Pakistan Non-Attack Agreement (adopted 31 December 1988, entered into force December 1990) provision 1(i).

³¹Michael Krepon, ‘South Asia Confidence-Building Measures (CBM) Timeline’ (*Stimson*, 14 April, 2017) <www.stimson.org/2017/south-asia-confidence-building-measures-cbm-timeline/> accessed 29 June 2021.

this indicates that, no matter how hostile the parties to a dispute might be, there is always at least some space for cooperation.

But the hope of a constructive interaction, based on mutual respect and reciprocal confidence, would vanish shortly. By 1998, both countries had conducted nuclear tests, making public their respective results. These events, blatant shows of force, can only be interpreted as yet another escalation in their nuclear race.

In February 1999 the Prime Ministers of India and Pakistan signed the Lahore Memorandum of Understanding, through which they agreed to “take immediate steps for reducing the risk of accidental or unauthorized use of nuclear weapons and discuss concepts and doctrines with a view to elaborating measures for confidence building in the nuclear and conventional fields, aimed at prevention of conflict.”³²

Despite these sporadic glimpses of hope, before the end of the century the bilateral relationship would further deteriorate with the outburst of the Kargil War in May 1999, the only armed conflict in history which comprised two nuclear States in open confrontation. Still, Kargil was also relevant for another reason. After the war, the superiority of the Indian conventional forces over the Pakistani counterpart became indisputable; a situation that pushed Pakistan to the field of unconventional forces, adding its brand-new nuclear capabilities to the equation. In this regard, “*Kargil also brought forth the disturbing knowledge that Pakistan actively considered use of nuclear weapons in support of its conventional forces... This Pakistani doctrine of first use still exists despite a No-First-Use policy being adopted by India in 2000.*”³³

Finally, the two countries signed in 2007 the Agreement on Reducing the Risk of Accidents Relating to Nuclear Weapons, through which

³² The Lahore Declaration (India - Pakistan) (21 February 1991).

³³ Busch (n 15) 225.

India and Pakistan committed to “*notify each other immediately in the event of an accident relating to nuclear weapons, under their respective jurisdiction or control, which could create the risk of a radioactive fallout, with adverse consequences for both sides or create the risk of an outbreak of a nuclear war between the two countries*”.³⁴ The instrument has been successively extended for periods of five years, in accordance with the terms of its Article 8.

III. ARGENTINA – BRAZIL. AN EXAMPLE TO FOLLOW?

There is no point in trying to draw a comparison between the current relation of India and Pakistan, on the one hand, and that of Argentina and Brazil, on the other. However, it is important to highlight that even though the former is pervaded by an unparalleled hostility, the latter has also been shaped by a mistrust which, in several cases, ended up in wars.

The history of the two South American nations has been one of conflict since the times of the colonies: being Argentina under Spanish rule and Brazil under Portuguese domination, the wars in Europe usually had their backlashes in American soil. Without getting into historical details, for the purposes of this paper it is sufficient to point out that both countries have fought each other several times until the nineteenth century, and though the last century did not see any armed conflict in which the two nations were directly confronted, there has always been a clear antagonism spurred by a quest for regional dominance.

Since the 1930's, both countries have suffered innumerable institutional crises through which revolutionary and counter-revolutionary movements jeopardized democracy, allowing jingoistic

³⁴Agreement Between the Republic of India and the Islamic Republic of Pakistan on Reducing the Risk from Accidents Relating to Nuclear Weapons (21 February 2007) art 2.

governments to increase the pre-existent enmity. However, after the 1980's, both States have enjoyed uninterrupted successions of democratic governments, swinging across the whole political spectrum. Far from being exempt from controversies and serious democratic deficits, the undeniable truth is that both Argentina and Brazil have managed to remain democratic since 1983 and 1985, respectively.

Though this historical opposition between the two countries has influenced the most diverse aspects of their national policies, its impact on their respective nuclear strategies has been particularly interesting. Indeed, attention must be drawn to the fact that both Argentina and Brazil have been members of the IAEA since it was created in 1957. In spite of this, neither of them has signed any Additional Protocol to its IAEA Safeguards Agreement, therefore denying the Agency expanded rights of access to information and undeclared nuclear sites.³⁵

Drawing a parallel with the situation in the subcontinent is unavoidable here, as Argentina and Brazil limited their international commitments to joining the IAEA while systematically avoiding being part of any other instrument from the international legal framework until the 1990's, a decade when they both underwent substantial political changes.

In this regard, it is of paramount importance to understand that in the case of Argentina and Brazil, the process developed from bottom to top; that means, the driving forces were the bilateral commitments made by the parties, which thereby allowed their insertion into the broader international scenario. A further clarification that needs to be made is that the author is by no means denying the existence of external pressures which fostered, or rather prompted, the political changes that pushed both Argentina and Brazil to rectify their nuclear policies and abide by the international standards dealing with nuclear proliferation.

³⁵Status List: Conclusion of Additional Protocols (n 17).

This does not mean that the real revision, at least as reflected in the legal undertakings of the parties, originated in a bilateral setting, and only then moved to the global context.

For instance, the Agreement for the Exclusively Peaceful Use of Nuclear Energy signed by Argentina and Brazil in 1991 has been hailed as a milestone by the international community.³⁶ Though this treaty was up to an extent the consequence of a confidence-building process in which the parties had been involved for at least a decade, it is nevertheless a turning point worth being analyzed. According to the terms of the instrument, Argentina and Brazil agree to use “*the nuclear material and facilities under their jurisdiction or control exclusively for peaceful purposes*” as stated in Article 1.1. In order to scrutinize their respective nuclear activities, they created the Common System of Accounting and Control of Nuclear Materials (SCCC) referred to in Article 5, “*the objective of which shall be to verify... that the nuclear materials in all nuclear activities of the Parties are not diverted to the purposes prohibited by the present Agreement.*” In addition, the parties through Article 4 undertake to submit “*all the nuclear materials in all nuclear activities carried out in their territories or anywhere under their jurisdiction or control*” to the SCCC. Finally, according to Article 6 they established the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC), the entity in charge of the administration and implementation of the SCCC as seen in Article 7.

Far from limiting themselves to the bilateral context, that same year Argentina and Brazil managed to take their inventive approach to the international sphere, which they did through the 1991 Quadripartite Agreement signed by Argentina, Brazil, the ABACC and the IAEA for

³⁶Agreement between the Republic of Argentina and the Federative Republic of Brazil for the Exclusively Peaceful Use of Nuclear Energy (26 November 1991) INFCIRC / 395.

the application of safeguards.³⁷ In this regard, both the bilateral and multilateral frameworks were brought together to better address the interests of the two parties, in particular, and those of the international community, in general.

According to Article 2, the IAEA, under paragraph a, “*shall have the right and the obligation to ensure that safeguards will be applied . . . on all nuclear material in all nuclear activities within the territories of the States Parties, under their jurisdiction or carried out under their control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices*”, while the ABACC accepts to cooperate with the IAEA for this purpose as seen in paragraph b. Furthermore, besides reaffirming the cooperation at all levels, Article 3 in paragraph b, stresses that the ABACC and the IAEA “*shall avoid unnecessary duplication of safeguards activities*”.

The favorable outcome that ensued this course of action has been widely acknowledged, as evidenced by the declarations of former IAEA Director General Yukiya Amano in the context of the twentieth anniversary of the Pact for the Exclusively Peaceful Use of Nuclear Energy, occasion in which he deemed the “*imaginative and courageous*” regional initiative as a success, adding that “*the IAEA [was] proud to be ABACC’s partner.*”³⁸

The originality of the solution is something that most authors tend to praise, and this is not limited to the creation of the ABACC, the only bilateral agency of its kind in the world, but also to the Quadripartite Safeguards Agreement with the IAEA, which is referred to as a “*unique*

³⁷Agreement of 13 December 1991 between the Republic of Argentina, the Federative Republic of Brazil, The Brazilian - Argentine Agency for Accounting and Control of Nuclear Materials and the International Atomic Energy Agency for the Application of Safeguards (March 1994) INFCIRC/435.

³⁸Peter Kaiser, ‘Argentine-Brazilian Peaceful Nuclear Pact Celebrates 20th Anniversary’ (*International Atomic Energy Agency*, 11 July 2011) <www.iaea.org/newscenter/news/argentine-brazilian-peaceful-nuclear-pact-celebrates-20th-anniversary> accessed 29 June 2021.

*example of a safeguards agreement concluded at the request of States party to a bilateral non-proliferation arrangement.”*³⁹

In spite of everything, some scholars are still skeptical about the long-term results of the strategy. For example, it is sometimes observed that “*Argentina and Brazil are seen as having been successful in turning their nuclear competition into cooperation through mutual confidence... However, it is not yet certain that both countries will become competent partners by taking advantage of their joint strengths.*”⁴⁰

In any case, the developments ensuing the adoption of the aforementioned treaties show clearly that Argentina and Brazil, more than just building mutual trust and confidence, established a symbiotic relation in which the policies followed by each of them mirror those of the other party.

In this sense, despite the fact that the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean,⁴¹ better known as the Treaty of Tlatelolco, was opened for signature in 1967, and both Argentina and Brazil actually signed it that same year, they took until 1994 to deposit their respective instruments of ratification.⁴²

Under Article 1, the parties agree to “*use exclusively for peaceful purposes the nuclear material and facilities which are under their*

³⁹Laura Rockwood, *Legal framework for IAEA safeguards* (IAEA Library Cataloguing in Publication Data 2013) 9.

⁴⁰Irma Argüello, ‘Brazil and Argentina’s Nuclear Cooperation’ (*Carnegie Endowment for International Peace*, 8 January 2009) <<https://carnegieendowment.org/2009/01/08/brazil-and-argentina-s-nuclear-cooperation-pub-22597>> accessed 29 June 2021.

⁴¹Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (14 February, 1967) S/Inf. 652 Rev. 3.

⁴²List of treaties signed by the Argentine Republic (*Office for Disarmament Affairs, United Nations*) <<https://treaties.unoda.org/s/argentina>> accessed 29 June 2021; List of treaties signed by the Federative Republic of Brazil (*Office for Disarmament Affairs, United Nations*) <<https://treaties.unoda.org/s/brazil>> accessed 29 June 2021.

jurisdiction”, prohibiting and preventing “(a) The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way, and (b) The receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way” -paragraph 1-. Meanwhile, paragraph 2 of the same provision prevents the parties from “engaging in, encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon.”

By reading these elementary stipulations, it is easy to infer that the prohibitions established through the Treaty of Tlatelolco are broad and encompassing. Nonetheless, Argentina and Brazil decided to abide themselves bilaterally first, before joining the regional regime, within the same year.

Something similar happened with the NPT, which despite being open for signature since 1968, was only acceded by Argentina in 1995 and Brazil in 1998.⁴³ An interesting aspect in relation to this treaty is that it allows States, in Article 7, to “conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories”. However, Argentina and Brazil still decided to prioritize the regional framework, evidencing once again their bottom to top approach to the matter.

Last but not least, both Argentina and Brazil signed the CTBT in 1996 and deposited their respective instruments of ratification in 1998.⁴⁴

All these references to the different legal regimes prove that, despite some minimal differences in dates, since the early 1990`s, the Argentine and Brazilian nuclear policies were aligned and coordinated.

⁴³Ibid.

⁴⁴List of treaties (n 42).

This being ascertained, the challenge is to determine how this could be achieved. As mentioned earlier, both countries had been working together for years in the realm of nuclear activities before they were ready to commit under the terms of the 1991 treaties. But there must be something that allowed to capitalize on this increasing confidence.

The author believes that the turning point that left competition behind and laid the foundations for a broad cooperation was the signature of the Treaty establishing a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay,⁴⁵ the Treaty of Asuncion, signed in March 1991.⁴⁶ Though this instrument deals mainly with the establishment of a common market (MERCOSUR), enshrining the freedom of movement of goods, services and factors of production and establishing common external tariffs and common trade policies in relation to third parties as seen in Article 1, it certainly reflects a considerable level of trust among the States involved. Fully aware that the treaty itself did not materialize in any kind of nuclear collaboration between Argentina and Brazil in particular, the author has no doubts that it constitutes a landmark for the two countries, fostering further cooperation.

IV. CONCLUSION

After delving into the cases of Argentina and Brazil, and India and Pakistan, the differences are, to say the least, manifest. Any tension in the context of the Latin American example has been deescalated for the last three decades, and there are no prospects that this trend might revert any time soon. In clear contrast, the situation in the subcontinent only

⁴⁵Treaty Establishing a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay (31 December 1994).

⁴⁶Ibid.

seems to worsen, and the expectations of improvement in this front are, at best, meager.

To make things even more complex, the unease between India and Pakistan in terms of nuclear activities is aggravated by the unembellished interference of a regional nuclear power. The Chinese involvement is far from limited to positive actions, as envisaged in the close nuclear collaboration with Pakistan; it is also negative when it comes to India. After joining the NSG in 2004,⁴⁷ China has been systematically blocking India's admission to the group.⁴⁸ In consequence, the situation includes in its core the only two nuclear powers who have fought a direct war between themselves, plus a third nuclear power, an NWS indeed, following the terms of the NPT, which is also actively engaged in the dispute. Despite the fact that many try to find a hint of improvement in the nuclear relations between India and Pakistan, the state of affairs is, in one way or another, discouraging.

For example, can the 1988 bilateral agreement banning any action seeking to destroy or damage nuclear installations or facilities be regarded as a step forward? More than a decade before the signature of this instrument, the 1977 Additional Protocol I to the 1949 Geneva Conventions provided, in Article 56.1, that “[w]orks and installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may

⁴⁷Sean Lucas, ‘China Enters the Nuclear Suppliers Group: Positive Steps in the Global Campaign against Nuclear Weapons Proliferation’ (*Nuclear Threat Institute*, 1 November 2004) <www.nti.org/analysis/articles/china-enters-nuclear-suppliers-group/> accessed 29 June 2021.

⁴⁸‘Nuclear Suppliers Group (NSG)’ (*Nuclear Threat Institute*, 14 July 2020) <www.nti.org/learn/treaties-and-regimes/nuclear-suppliers-group-nsg/> accessed 29 June 2021.

cause the release of dangerous forces and consequent severe losses among the civilian population."⁴⁹

Cognizant that neither India nor Pakistan are members to the Additional Protocol I,⁵⁰ there is good reason to believe that the rule contained in its article 56 has become part of general customary international law, binding both States in consequence. Indeed, customary rule 42 from the International Committee of the Red Cross' database on customary international humanitarian law specifically deals with attacks against works and installations containing dangerous forces and against military objectives located in their vicinity, arriving to a corresponding conclusion.⁵¹ On a similar vein, Article 17 of the 1956 New Delhi Draft Rules establishes that "*[i]n order to safeguard the civilian population from the dangers that might result from the destruction of engineering works or installations – such as hydro-electric dams, nuclear power stations or dikes – through the releasing of natural or artificial forces, the States or Parties concerned are invited: (a) to agree, in time of peace, on a special procedure to ensure in all circumstances the general immunity of such works where intended essentially for peaceful purposes; (b) to agree, in time of war, to confer special immunity . . . on works and installations which have not, or no longer have, any connection with the conduct of military operations.*"⁵²

Even though the 1988 agreement makes no distinction whatsoever between times of war and times of peace, a fair interpretation of its

⁴⁹Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (Geneva Convention, 1949) (8 June 1977), art 56.

⁵⁰Ibid,

see

<https://ihldatabases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=470> accessed 29 June 2021.

⁵¹'Practice Relating to Rule 42. Works and Installations Containing Dangerous Forces' (International Committee of the Red Cross IHL Database), see <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule42> accessed 29 June 2021.

⁵²Ibid.

terms might allow to infer that the prohibition is not absolute and that, in case of armed conflict, nuclear installations or facilities could be attacked if the actions were carried out in compliance with the principles of international humanitarian law. Therefore, the question that arises is whether this bilateral commitment reflects any progress and whether it added anything to the already existing rules to which the parties were subject.

Another aspect that has been usually regarded as an advancement in the region is India's adherence to the no first use policy, a posture that has been embraced since the early 2000's and that corresponds to the historical Chinese stance on the subject. It could also be argued that this reflects little to no improvement at all.

To start with, it must be remembered that after the Kargil War, Pakistan has repeatedly referred to nuclear weapons as a valid recourse if an escalation in a conventional armed conflict so requires. In this regard, the first intricate question enquires into who is to blame for the outbreak of a nuclear war, the first one actually using nuclear weapons or the one escalating in conventional terms in such a way to make it impossible for the enemy to keep the conflict conventional. Even if the determination of the primary responsibility for such war is left aside, the concern here is that neither India nor Pakistan and, without doubt, China have discarded nuclear war outright, leaving that option, no matter how remote, real.

Besides, account should be taken of the 1996 International Court of Justice (ICJ) advisory opinion on the Legality of the Threat or Use of Nuclear Weapons.⁵³ Among many other things, the Court did not outlaw the use of nuclear weapons *per se*, as it expressed that “[t]he pattern until now has been for weapons of mass destruction to be declared illegal by specific instruments,” and that it “does not find any

⁵³*Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion [1996] ICJ Rep 226, p 226.

specific prohibition of recourse to nuclear weapons in treaties expressly prohibiting the use of certain weapons of mass destruction".⁵⁴ In the same sense, it stated that the set of treaties currently ruling the matter could be interpreted as "*foreshadowing a future general prohibition of the use of such weapons, but they do not constitute such a prohibition by themselves*".⁵⁵

In relation to the no first use policy specifically, which at the end of the day implies a threat to use nuclear weapons in retaliation against an attack, the ICJ explicitly acknowledged the importance of "*the fundamental right of every State to survival, and thus its right to resort to self-defence, in accordance with Article 51 of the Charter*"⁵⁶, adding that "[t]he proportionality principle may... not in itself exclude the use of nuclear weapons in self-defence in all circumstances".⁵⁷ Furthermore, it reasoned that "*in view of the present state of international law viewed as a whole... the Court is led to observe that it cannot reach a definitive conclusion as to the legality or illegality of the use of nuclear weapons by a State in an extreme circumstance of self-defence, in which its very survival would be at stake*".⁵⁸

Though the ICJ was far from stating clearly whether it upholds or rejects the Lotus principle, according to which "*[r]estrictions upon the independence of States cannot... be presumed*",⁵⁹ it becomes apparent from its reasoning that if nuclear weapons could ever be legally used, that would be in self-defence. In this regard, the no first use policy came as no real innovation, or at least, it did not mean any progress in the realm of nuclear weapons by the early 2000`s, when India embraced it. In any case, abiding by this unilateral policy, no matter whether its

⁵⁴Ibid, para 57.

⁵⁵Advisory Opinion (n 53) para 62.

⁵⁶Advisory Opinion (n 53) para 62.

⁵⁷Advisory Opinion (n 53) para 42.

⁵⁸Advisory opinion (n 53) para 97.

⁵⁹S.S. *Lotus (Fr. v. Turk.)*, 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7), p 18.

actual value is real or symbolic, is certainly better than avoiding this even minimal commitment.

To sum up, after analyzing the relation between India and Pakistan with regards to their nuclear activities both from a historical and a legal viewpoint, it is easy to conclude that there has been no real progress, apart from some incidental and rather low-impact measures adopted by the parties.

Rather than enquiring into the reasons underlying this gloomy setting, which might be as complex as seemingly unsurmountable at first sight, I would prefer to describe the situation from a broader perspective, attempting to explain how to tackle this stalemate by following the example of Argentina and Brazil.

Well into the twenty first century, it is evident that neither India nor Pakistan was ever affected by top to bottom pressures. This strategy has not worked during the Cold War years, leading to more or less, depending on whether we look at India or Pakistan, autonomous nuclear projects which developed below the radar of the US and the USSR, and at times, even despite their opposition. The pressure that the nuclear powers exerted over India and Pakistan during the 1980`s and 1990`s in an attempt to force them to join the NPT did not prevent the 1998 nuclear tests, showing once again the ineffectiveness of this top to bottom approach.

It is clear that Pakistan has been aligned with China for years now, and it is also true that China never bothered to hide its hostility against India. But India has nevertheless been successful in counterbalancing the Chinese influence in the region by developing indigenous nuclear capabilities while concluding agreements with both the US and Russia, as evidenced in the set of treaties signed in the 2000`s. Only this kind of pragmatic stance, which originates from the bottom and acknowledges the needs of the parties involved rather than the interests of the NWS, culminated in real and tangible progress. For example, the

2005 Civil Nuclear Cooperation Initiative between India and the US led to the Agreement for Cooperation Concerning Peaceful Uses of Nuclear Energy between the same parties. This latter treaty was only possible after India had signed a safeguards agreement with the IAEA. Though military activities were excluded from these commitments, a feature that has become a constant in the subcontinent, it anyway represented a significant step towards non-proliferation.

Still, it seems that many scholars, analysts and politicians believe that the solution has to come from the top. In this sense, *“Indian spokesmen have been especially critical of proposed regional solutions, consistently rejecting a South Asian nuclear-weapon-free-zone accord. Instead, they maintain that regional settlements should wait until the broader problem of international disarmament is resolved. The Indian position offers an engaging twist on orthodox Western understandings of self-interest and the priorities of disarmament. In this view, regional nuclear settlements like that between Argentina and Brazil are at best irrelevant and at worst a betrayal of global disarmament for narrow self-interest.”*⁶⁰ This kind of approach has never succeeded, and unfortunately there are no prospects that it may ever contribute to any concrete action.

The NPT has been the tug of war between NWS, on the one hand, and India and Pakistan, on the other. Nevertheless, this regime has never been attractive to either India nor Pakistan, who due to international sanctions achieved nuclear status in a more or less independent way. In any case, there is no doubt that both countries are currently capable of detonating atomic bombs, so any strategy should consider this fact as a starting point.

⁶⁰Aaron Karp, ‘Indian Ambitions and the Limits of American Influence’ (*Arms Control Today*, May 1998) <<https://armscontrol.org/act/1998-05/features/indian-ambitions-limits-american-influence%3e%20accessed>> accessed 29 June 2021.

If one looks closely at the example of Argentina and Brazil, the foundations of the framework that allows for a peaceful cooperation in nuclear activities between the two countries were laid at the margins of the international regime. The most relevant agreements were signed before Argentina and Brazil joined the Treaty of Tlatelolco and most importantly, before they were bound by the NPT. By 1991, the turning point in the Argentine-Brazilian nuclear relations, the Latin American nations were only part of the global regime as members of the IAEA. As already stated, India and Pakistan are also members of the Agency.

The fact that the 1991 bilateral and quadripartite agreements signed by Argentina and Brazil are very ambitious, in the sense that they cover “*all the nuclear materials in all nuclear activities*”, does not mean that any confidence-building measure between India and Pakistan has to be all-encompassing. Indeed, the few bilateral agreements they have signed, which are limited to the realm of civil nuclear activities, also show, though to a lesser extent, an attempt to increase confidence and mutual trust.

Confidence-building is a long and thorough process, and this is particularly palpable when it comes to such a sensitive area as nuclear proliferation. But still, tangible achievements are possible, and Argentina and Brazil constitute the best example of the kind of association that can only be the consequence of a long-term commitment towards solid relations.

As already suggested, the author does not particularly believe that nuclear cooperation between Argentina and Brazil was possible out of the blue, and it was certainly not the starting point towards a paradigm shift between the two countries. Quite the opposite, trust was built for years in many diverse fields, and nuclear cooperation was a by-product of a broad strategic partnership between the two States.

The real challenge in the subcontinent is to promote a confidence-building process, and such a sensitive area as nuclear activities might

not be the best starter. The critical point here is to identify activities in which cooperation is possible, tangible, and highly visible, allowing for joint enterprises that trigger the kind of synergy that can only bring about mutually beneficial outcomes. In other words, the author believes that the first step to ease the nuclear tensions between India and Pakistan is to denuclearize the debates and seek for other areas of cooperation in which the strategic interests of both countries can be tied up. In this regard, cooperation in any sector will prove beneficial for the process of confidence building.

Only after time allows for productive talks in the realm of nuclear activities, the parties should seek bilateral solutions to their problems, in an attempt to cater to their specific security needs and interests. It is of fundamental importance at this stage that the parties embark in a bottom to top approach, specifically addressing their concerns *vis-à-vis* each other. This by no means seeks to exclude third parties, be them States or international organizations; but the role of outsiders should be limited to making the process easier, always subordinated to India and Pakistan.

It is, in this regard, that the case of Argentina and Brazil can be looked at as a story of success which used a bottom to top approach to turn centuries of animosity into a reliable and mutually beneficial nuclear partnership. Therefore, India and Pakistan should enquire into this precedent not as a roadmap to follow, but as proof that when standard responses do not address the legitimate concerns of the parties to a dispute, tailored solutions, achieved with creativity and good faith, are possible.