

Council On Energy, Environment And Water





Understanding Complexity, Anticipating Change: From Interests to Strategy on Global Governance

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Report of the Working Group on India and Global Governance

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A report of the Working Group on India and Global Governance.

This report was prepared by the Council on Energy, Environment and Water (CEEW) in collaboration with a working group on global governance, convened by CEEW, comprising senior, independent experts.

The views expressed in this report are those of the authors acting in their personal capacity and do not necessarily reflect the views and policies of the Council on Energy, Environment and Water or of the institutions that members of the Working Group are currently affiliated with or have been with in the past.

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CONTENTS

Preface.....	v
I. Introduction	1
II. Purpose of the Working Group on India and Global Governance.....	2
III. Definitions & Interconnections	3
IV. India and Transitions in Global Governance	6
V. Governance Issues and India's Interests.....	9
VI. Overarching Questions for a Coherent Strategy.....	23
VII. Recommendations for a Strategic Approach to Global Governance	26

ANNEXURES

A.I <i>Members of the Working Group on India and Global Governance</i>	28
A.II <i>Global Regime on Money, Finance and Investment</i>	30
A.III <i>Strategic Issues in International Trade</i>	35
A.IV <i>Non-Proliferation and Disarmament Regime</i>	45
A.V <i>Energy, Climate and India's Concerns about Global Governance</i>	49
A.VI <i>Ocean Governance: Emerging Framework for Sustainable Use of the Maritime Domain</i>	60
A.VII <i>India's Policy on Space and Application of Space</i>	64
A.VIII <i>Peace and Security</i>	67



PREFACE

In October 2010, several of the persons who have contributed to this report participated in a roundtable discussion in New Delhi on global governance. The other discussion participants were representatives of a leading U.S. think-tank. Over the course of the two-day deliberations, three points became amply clear. First, there were areas of convergence and divergence between Indian and U.S. priorities regarding global governance and institutional reform. Secondly, there was a certain expectation that, as a rising power, India would have to shoulder greater responsibilities in coming years and decades in global governance structures and processes. Thirdly, there was recognition that several emerging issues concerning the global commons and the delivery of global public goods would require new governance arrangements in order to foster greater cooperation among the world's leading powers.

A fourth realisation, however, was perhaps the starkest, namely that public understanding and debate about global governance remained at a low level in India. There was a tendency to conflate foreign policy with global governance (even though a country's positions on both derive from national interest). As a result, it was difficult to articulate what India's national interests regarding global governance really were. Another fallacy was the confusion between global governance and world government, with all the attendant misgivings such misinterpretation could generate. What complicated matters was the minimal attention that was generally paid to understanding the interconnections between different global issue areas. India was good at defending its interests within the domains of single issues but did not have the capacity or the institutional procedures yet to anticipate changes in one area, understand the impact of such changes on other issues, and develop a strategy to make trade-offs across multiple concerns. Without in depth understanding of competing issues and the structures that governed them globally, India's ability to influence reforms would remain constrained.

Faced with this frustrating situation, the idea to convene a Working Group on India and Global Governance took hold. The Council on Energy, Environment and Water (CEEW), as an independent, policy think-tank with a mission to develop an integrated and internationally focused approach to some of the most pressing challenges facing India and the world, took the lead in convening the group. The aim was to bring together some of India's foremost diplomats and policy experts, who had represented India's interests in specific domains but who might not have had the opportunity to engage *across* multiple issues. Thus, the group (whose members joined voluntarily) included experts across a broad sweep, from money and finance to international trade and investment, from climate change to energy, from nuclear non-proliferation to peace and security, from maritime governance and outer space to cyber security, and from the UN Security Council to the G20 and other institutions.

Seated around the same table, members of the group could learn from and inform each other about the complexities of global governance in their respective areas of expertise. Gradually, it was expected, a common framework for understanding global governance would emerge. The group met regularly (on average, every two to three months). The meetings were informed by issue briefs that several group members prepared. The briefs (which are annexed to this document), along with other documents that were circulated, made for focused discussion and helped to generate an iterative process of refining collective ideas on India's interests in global governance.

The report, *Understanding Complexity, Anticipating Change: From Interests to Strategy on Global Governance*, is the result of four rounds of in-person discussions followed by further exchanges as the draft document evolved. At its core is the argument that India (its policymakers and stakeholders in wider society) has to understand complexity and anticipate changes and transitions in global governance. Each thematic area covered in the report – money, finance and investment; international trade; nuclear non-proliferation; energy and climate change; oceans; outer space; and peace and security – addresses the current situation, offers insights into oncoming changes, identifies connections with other issue areas, and offers guiding principles for how to resolve some of the emerging tensions.

The main purpose of the report is exploratory, in order to get to grips with a complex landscape of global governance, shifting rules and norms, the design of international institutions, overlapping (and, at times, contradicting) regimes and mandates, and the influence of emerging networks (formal and informal). Based on this approach, the report recommends that Indian policymaking on global governance could benefit from breaking silos (by constituting, for example, cross-issue study groups), creating an expert advisory group, institutionalising outreach to a new generation of diplomats, which has to navigate these challenges, and developing a strategic approach to India's participation at the G20 and other forums.

I wish to thank Ambassador Arundhati Ghose for playing an instrumental role in convening and leading the Working Group. I am also grateful to all other members – Suman Bery, C. Uday Bhaskar, Tarun Das, Nitin Desai, Anwarul Hoda, Kiran Karnik, Srinivasapuram Krishnaswamy, Radha Kumar, and Shyam Saran – for actively engaging with this process. The group greatly benefited from the insights of the National Security Adviser, Ambassador Shivshankar Menon, who participated in one of the meetings. Without the support of such senior individuals, the challenges of global governance are unlikely to receive due attention and strategic focus.

Thanks are also due to Mr Gautam Thapar, CEEW Trustee, for making available the excellent meeting room facilities at Thapar House. The Confederation of Indian Industry also offered its meeting facilities, for which I am very grateful. Finally, I acknowledge CEEW's benefactors and recognise the able support of the CEEW team and its partners – Madhu Arya, Narayan Gopalan, Prachi Gupta, Sanyukta Raje, and Meena Sarkar – who assisted in managing the process and in producing the report.

Understanding Complexity, Anticipating Change should be treated only as the start of a structured debate on global governance and India. As perhaps the first document that adopts a detailed cross-issue focus, it is relevant for India's senior policy leadership as well as for mid-level officials, for civil society organisations working on one or the other issues, and for industry representatives whose commercial interests are affected by global norms, rules, institutions and networks. I, therefore, hope that the conversation can broaden, both in the scope of issues covered as well as the persons involved. It is with that sentiment of open dialogue that this report is now presented.



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New Delhi
1 December 2011





I. INTRODUCTION

How would India contribute to global governance more effectively than it does now? Such a role for engaging with global governance is not new to India. It has actively participated in and contributed to various multilateral fora. Its contributions to UN peacekeeping and peacebuilding operations, its (original) espousal of a nuclear weapons-free world, its endorsement of universal values in the promotion of human rights, and its engagement with the multilateral trade regime are only a few examples of India's longstanding interest in global governance. The reality is that India does not as yet sit at the global high table, nor is it part of any core global "management board".

However, as an emerging power, India faces a dilemma. Its growing economic power (size of economy, rate of economic growth, size of foreign exchange reserves) offer it greater means to exercise influence on global issues. In some instances, other major powers expect India to take on more responsibility, although the form in which such responsibility would manifest is seldom made clear. Meanwhile, India remains a poor country with vast development deficits across many metrics: income, nutrition, health, education, energy, water, infrastructure, to name a few. Notwithstanding its growing power, India's engagement with the world remains contingent on how such engagement would translate into improving the human condition of her citizens. How can the priorities of a poor country translate into the

regional and global priorities and responsibilities of an emerging power?

The transition from defending national interests on specific issues of global concern to articulating India's vision for how to govern these issues will not be easy. It will require, first, mapping the formal institutions and informal forums that have varying degrees of influence or authority over similar sets of issues. Secondly, Indian policymakers will have to anticipate changes in each issue area. Thirdly, shifts in one area could have implications for the clarity of rules in others, so there would be a need to understand how global governance concerns intersect and interact. Fourthly, India will have to recognise that in many cases, say for governing new technologies, states need not have all the requisite information; instead, non-state actors, with benign intentions or otherwise, might be at the forefront of setting norms and standards. Thus, engagement on global issues would have to broaden within and outside government.

Once we have acknowledged the complexity of the lattice of global governance, India will have to reflect on its own institutional structures and evaluate its readiness for such complexity. Such evaluation would include intellectual capability (with underlying research), institutional coordination, centre-state convergence on priorities, and an informed and broad public debate, so that further changes may be anticipated well in advance and a coherent strategy is developed for India's interests in global governance.

II. PURPOSE OF THE WORKING GROUP ON INDIA AND GLOBAL GOVERNANCE

The Working Group on India and Global Governance (WGIGG) convened because its members believed that there were reasons for India to pay attention to global governance *beyond* a concern over specific foreign policy priorities. Instead, there was a need to understand changes and challenges *across* issue areas.

First, there was recognition that global governance was needed to resolve problems that were beyond the capacity of individual countries. For many problems, national-level answers were insufficient. As an emerging power, India would have to react to a range of issues and would need appropriate governance structures at the global *and* regional levels.

Secondly, and partly in response to the first, there is a need to look “beyond silos” and address concerns about how global governance impacts at a national security level. Working Group members, having represented India’s interests at the highest levels of diplomacy and yet by not having formal government affiliations currently, had the expertise and the time to reflect on long-term concerns that could feed into governmental processes and deliberations. The members believed that the outcome of their study could be of interest to an apex government agency like the National Security Council.

Thirdly, confronting the variety of global and regional challenges meant that government itself had to be restructured. Various parts of government must have the intellectual capacity to recognise challenges emerging in different international regimes. Thus, the Working Group would also reflect on the interagency process within government and identify ways to increase day-to-day strategic cooperation rather than rely on the current processes of episodic involvement.

Fourthly, by studying governance concerns across issues, the Working Group could play a significant role in identifying potential trade-offs and also points of leverage to formulate and enforce international agreements. Such a role would include studying the overlaps between regimes and how their rules complement or contradict each other. The Group noted that making trade-offs across regimes was a highly political, not simply a technical, problem. Thus, political leaders, who were instinctively attuned to the notion of trade-offs, had to be made aware of such choices in international relations as well.

Fifthly, the Group noted that there was a lack of capacity within line ministries to think beyond their narrow technical mandates. For instance, the Finance Ministry had the competence to engage with the G20 on economic crisis management but was not necessarily equipped to address other issues that were emerging on the G20 agenda. The WGIGG’s role was to develop an analytical framework that would help civil servants and political leaders understand the

complexity and linkages between global governance issues.

Issues to be addressed by the WGIGG

It is important to note a caveat. The Group agreed that India's relative power capabilities remained limited at present for it to be able to make any significant impact on global governance structures and processes. The exercise was, therefore, designed as **exploratory rather than deterministic or prescriptive**. A principal aim was to alert the government to the criticality of the issue of global governance *per se* and to internalise potential impacts on India's core national interests.

A range of issue areas exhibit different degrees of cooperation and governance at the global or regional level. On some issues like trade, India has been a very active participant. Other areas already have existing regimes (however imperfect), such as the Law of the Seas and the non-proliferation regime, regarding which India had to decide whether existing rules required minor "tweaking" or whether more fundamental changes were necessary. Then, there were regimes like climate change in which India participated actively but whose core principles and foundational architecture faced the threat of being overturned. As such, the conclusion was that there was **no clean slate on which new regimes could be drawn up**. Yet, some areas like cyber space and outer space required much deeper comprehension and competence than is currently available – and to evolve new rules

to govern actions by states and non-state actors.

The Working Group's added value would be studying how the issues interacted and how rules governing one area affected cooperation in another. **Complexity in global governance was both vertical (in the depth of issues) and horizontal (in how one regime shaped another).**

III. DEFINITIONS & INTERCONNECTIONS

Global governance may be defined as the 'sum of laws, norms, policies, and institutions that define, constitute, and mediate relations among citizens, society, markets, and the state in the international arena – the wielders and objects of international public power.'¹ Global governance, thus, entails both formal institutions and informal principles and practices, intergovernmental organisations and civil society and private sector entities; mechanisms through which 'collective interests are articulated, rights and obligations are established, and differences are mediated.'

The aim of global governance is to manage the interactions between various actors at the global level, even though the international system is characterised by the absence of a world government. Defined in this manner,

¹ Weiss, Thomas G., and Ramesh Thakur (2010) *Global Governance and the UN: An Unfinished Journey*, Bloomington: Indiana University Press, p. 6.

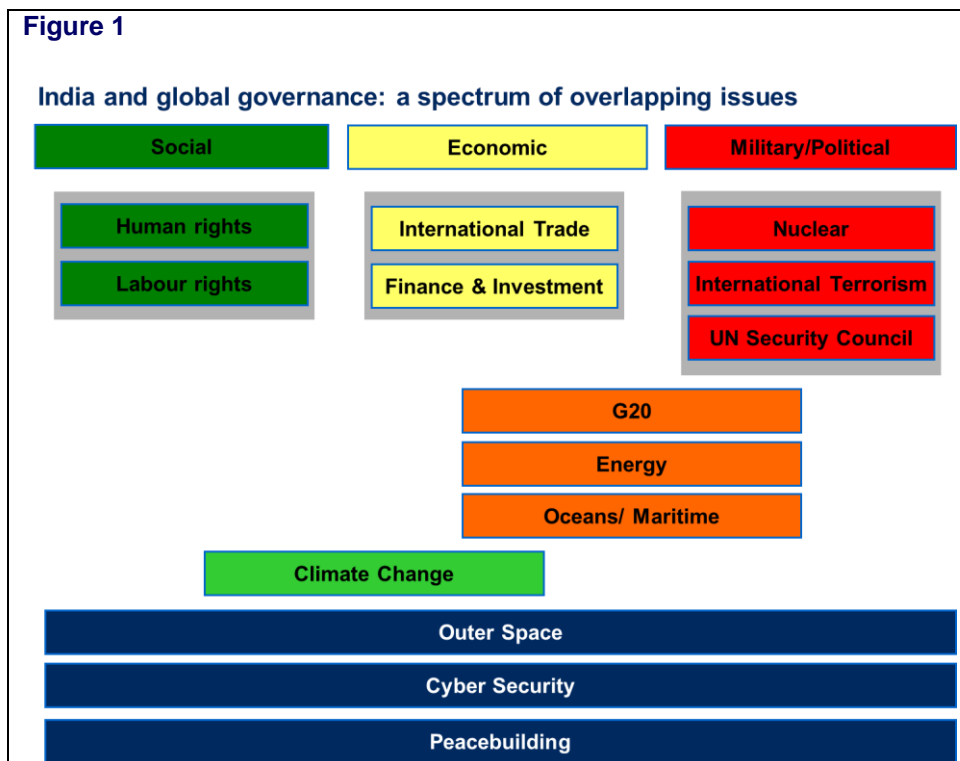
global governance pertains to both the outcome of the interactions as well as the process by which they are managed. Thus, for any single actor or state, the aim would be to secure its interests on a given international issue and also understand (and perhaps, influence) the processes that determine those outcomes.

Global governance, in other words, is **not restricted to foreign policy**. It is, at one level, a subset of a country's foreign policy, offering one means to safeguard national interests in the international arena. At another level, it is more than the sum of foreign policy parts, as it comprises numerous actors, multiple issues of direct and indirect relevance to particular states,

and several alternative forums, not all of which might be driven by intergovernmental processes.

Issues span social, economic and political dimensions

Another feature of global governance is that the issues can span social, economic and political dimensions. Consider figure 1. Human rights or labour rights are primarily global social concerns; trade, finance and investment are mainly within the realm of global economic governance; and nuclear non-proliferation, international terrorism, or the role of the UN Security Council (UNSC) are mostly within the political/military domains.



Other issues do not fall into such neat categories. Thus, the G20, which began after the Asian financial crisis of 1997-98 as an informal group of finance ministers and central bank governors discussing global macroeconomic conditions, has now evolved into a club of the world's most important economies with regular summitry and an agenda that has spanned global imbalances, exchange rates, financial regulation, global development, food security, energy subsidies, climate change, etc. Similarly, how energy is governed matters to the global economy, but it is equally a political matter with the objective of energy security being one of the foremost concerns for national governments. Maritime law and the governance of the world's oceans are important for a smoothly functioning global trading system. But they are also affected by territorial disputes, piracy, attempts to access deep sea mineral resources, global environmental concerns (such as depleting fish stocks), and climate change (rising sea levels, melting ice sheets in the Arctic, or the concern over climate refugees). Climate change, as a global public bad, has clear economic and social implications. The cost of mitigating the impact of rising greenhouse gas emissions or of adapting to a changing climate implies a non-trivial burden on developing countries. It also has social implications given that the burden of climate change will fall disproportionately on poor countries and, within them, on vulnerable sections of the population. Climate change could also have political ramifications, not simply through ongoing multilateral negotiations, but as a security issue as well (although many developing

countries have so far opposed debating climate change at the UNSC).

Finally, some issues are already impacting social, economic and political domains. The Internet is clearly a social phenomenon, giving access to a world of information to hundreds of millions of people and allowing them to connect with each other in ways that were unimaginable a few years ago. The role of social media in fuelling and facilitating the Arab Spring revolutions shows the power of the medium and also the interest of many states to control flows of information through cyber networks. The cyber domain links the entire gamut of human activities, hence needs to be tackled as an overarching necessity. The governance of cyber security is now crucial to the global economy and for national security concerns. All major infrastructure networks, military systems and intelligence records are dependent on secure information systems. But the rules governing unilateral action to disrupt these systems are less well developed. In a related sense, the governance of outer space is needed to facilitate social and economic objectives, such as better delivery of education, health and weather services or for information and communication networks. But unilateral action on outer space-related issues is also a political/military concern, such as the ability to destroy satellites in space. And while international terrorism might be a political/military issue, peacebuilding in fragile states and post-conflict situations requires effective global cooperation on economic and social dimensions as well.

Global institutions and interconnected governance

One outcome of global governance being characterised by overlapping issues is that the forums of engagement are also interconnected. International regimes are ‘implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations.’² The challenge is that the rules and norms driving decisions and actions in a given area are not framed within single institutions any longer. India, like other countries, has to operate in existing institutions with their respective governance deficits, for instance in the UNSC (where it does not have permanent membership) or in specialised UN agencies (where donor-driven programmatic funding has set priorities and agendas for decades). At the same time, other forums involving informal groups of technocratic experts, non-governmental groups and private sector entities also set rules and standards, which are then adopted by international institutions. Thus, several modes of governance are likely, such as supranationalism, or those based on hierarchy, or those emanating from public-private or private networks.³ Dealing with the challenges of processes and outcomes in

global governance means understanding how interconnected the issues are as well as how power, institutions and the networks that govern them are also linked.

IV. INDIA AND TRANSITIONS IN GLOBAL GOVERNANCE

Understanding interconnections between issues and institutions at a global level would be challenging enough, except that India has to recognise and prepare to navigate four simultaneous transitions in global governance.

First, it has to manage **the shift from being a rule-taker to a rule-maker**. Whether it is international trade or climate change, India’s positions have, historically, often reflected a North-South dynamic. With rapid economic growth yet vast relative and absolute poverty and other social deprivations, India has to now straddle the worlds of emerging economies as well as developing countries. The rules that govern international commerce, environment and access to natural resources have to balance these competing imperatives. The question is how will India use its power to shape negotiated outcomes?

Secondly, India has to identify and articulate its interests not only with regard to specific rules but also on the **design of regimes and institutions**. India is already at the top table of many international regimes, yet many of them still reflect structures and processes developed for a different era. Global governance is different from foreign policy.

² Krasner, Stephen D. (1982) ‘Structural causes and regime consequences: regimes as intervening variables’ *International Organization* 36(2).

³ Kahler, Miles, and David A. Lake (2009) “Economic Integration and Global Governance: Why So Little Supranationalism?” in Walter Mattli and Ngaire Woods (eds.) *The Politics of Global Regulation*, Princeton: Princeton University Press.

Regimes are intended to achieve outcomes that states cannot ensure unilaterally. Hence, regimes have to be designed to deliver functions that add to more than the sum of the interests of its members. With growing power, how would India influence the redesign of existing international regimes or the creation of new ones that would align with the changing needs of the global system? What functions would it ascribe to them, ranging from agenda-setting and rule-making to implementation, monitoring and enforcement? How will regime design vary for mercantilist issue areas (trade, investment, energy) versus those intended to deliver global public goods (action on climate change, access to the oceans and their resources, pandemic diseases)?

Thirdly, there is a shift **from singular regimes in specific issue areas to regime complexes**, with multiple institutions serving as parallel and non-hierarchical forums for negotiation. Historically, collective security, a founding principle of the United Nations, has itself been delivered via multiple channels (UN peacekeeping, regional peacekeeping like the African Union, formal alliances like NATO, etc.). Other areas like trade and investment have also had competing institutions, such as GATT/WTO and the UNCTAD. But formal negotiations and rule-setting have mostly occurred in singular institutions (say, the UNSC or the WTO's General Council). Now, partially overlapping regimes have gained equal prominence. Rules on trade in energy goods and services (critical to India's energy security) are framed in the WTO to some extent, but are far more detailed under

the Energy Charter Treaty or in the International Energy Agency (where India has only observer status). Or take another example, climate change. Hundreds of billions of dollars of climate finance are expected to flow in the coming decades. It is very likely that only a small fraction of the investments/grants will move through channels of the United Nations Framework Convention on Climate Change (UNFCCC). Instead, the governance of multiple sources of financing with dozens of disparate funds is interlinked, often through multilateral banks (see figure 2). How does India emphasise its actions in some forums over others? Does increasing complexity in regimes increase or reduce India's freedom of manoeuvre?

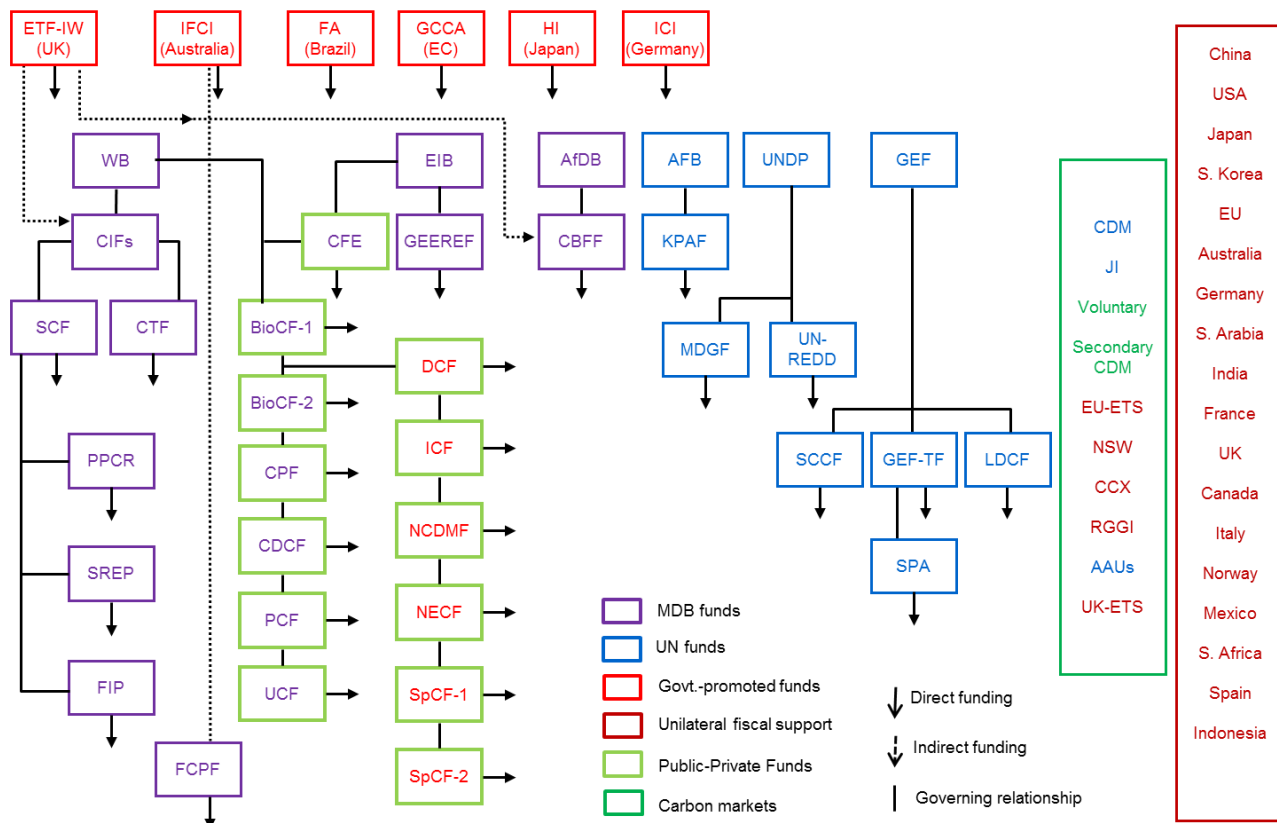
And fourthly, India must recognise that the **locus of global governance often follows informal networks** and not just formal institutions. The G20 (before it displaced the G7/G8), various trade coalitions (Quad countries, G20 group in the trade regime) or the BASIC group in climate negotiations are examples that illustrate these trends. Informal networks (whether of government officials or non-governmental experts and organisations) gain prominence and influence when intransigence characterises formal multilateral negotiations. Networks could develop internal institutional processes to coordinate discussions and actions. But they operate best in small group settings, thus adding to the tension between greater efficiency (promised by few actors) and greater legitimacy (achieved through broader representation). India is now part of many such groupings. Does it have a

strategy or the capacity to manage the trajectory of negotiations as they shift from

multilateral forums to informal settings and back again?

Figure 2

Climate funding sources are many but governance is often interlinked



SOURCE: Arunabha Ghosh (2010) *Harnessing the Power Shift: Governance options for international climate financing*, Oxfam Research Report, October.

Figure 3 describes these stages of transition, except that these are occurring simultaneously and the process will not necessarily follow a neat, linear path. Along with its internal contradictions of being an

emerging power yet a poor country, India has to manage the four external transitions as well. This is the fundamental challenge of global governance for India.

Figure 3: Four transitions in global governance

From rule-taking to rule-making



From rules to regime design



From single institutions to regime complexes



From formal forums to informal networks

V. GOVERNANCE ISSUES AND INDIA'S INTERESTS

The Working Group recognised that the four transitions in global governance affected India to lesser or greater extents. In order to determine or develop India's interests in global governance, the Group decided to focus on four questions:

1. Situation: How to understand the existing landscape of institutions and rules affecting each issue?
2. Anticipation: What changes on the horizon could be anticipated in each area for which India had to prepare its policy positions?
3. Connections: How would these changes overlap with or influence developments regarding other issues?
4. Resolution: At what forums might India find governance arrangements that would be in its interests and, in their absence, what kind of global governance would India prefer for maximum strategic autonomy?

The expectation of the Group was that such an approach could help to develop policy positions that were consistent with India's interests and coherent across different institutions and regimes.

Money, finance and investment

Situation:

- The existing international monetary and financial order was largely shaped by

Britain and the United States at the Bretton Woods conference in 1944, a conference to which India was invited, largely to lend support to Britain's positions. That conference led to the creation of the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development, later self-rechristened as the World Bank.

- Despite the success of the system in facilitating post-war reconstruction, it was at this time that several of the contradictions embedded in a dollar-centred system became apparent, contradictions that haunt the system till this day, and are very much at the centre of current discussions.
- Despite its presence at the original Bretton Woods conference, India, in common with most developing countries, has so far been what economists called a "free rider" in the design of global monetary arrangements, willing to accept the outcome of decisions taken by the major powers. Since the breakdown of the Bretton Woods regime, these decisions have typically initially been arrived at among the G7 grouping of leaders and finance ministers.

Anticipation:

- Three recent, interlinked events provide the occasion for a review of these

arrangements, and of India's interests and role in them. The first is China's role in the international monetary order. The second is the global financial crisis. The third is the transformation of the G20 since November 2008 from a rather routine and lacklustre meeting of Treasury and Central Bank officials to a political body at the leader level, a grouping that includes India.

Connections:

- India's position in the G20 gives it an insider's view of the discussions that are likely to reshape global economic and financial governance in the 21st century. Experience over the past century has shown that these rules work best when there is clear economic leadership in the global economy and less well in a multi-polar environment, raising both the stakes and the intellectual challenge for the shapers of any new regime.
- The IMF is looking to develop a regional architecture. The nascent discussion on these issues within both the IMF and the G20 is also attempting to link this architecture with various regional groupings, including the financial co-operation established in Asia under ASEAN+3 (China, South Korea, Japan), a grouping from which India is so far excluded. For settings like the ASEAN+3, India is not clear about the relationship between regional groups and global governance.

- The Leaders' process also provides the prospect of considerable cross-issue linkage, particularly where finance ministries are involved, including such areas as anti-money laundering, and climate change finance. In addition, the G20 Leaders' process has also comprehended multilateral trade negotiations.
- China's strategy is to create a security-political architecture so as to have a veto over any security decision taken by any other regional power. There is a symmetrical counterpart in the economic/monetary domain whose building blocks are being put in place (e.g. the "dim sum" (bond) market in Hong Kong).
- This strategy fits in with the global influence China wants and its "deal" to support the candidature of Christine Lagarde for IMF Managing Director in return for: making the yuan part of a basket of currencies; securing acceptance for a regional (Asia Monetary Fund) architecture; and internationalise emerging economy currencies.

Resolution:

- India might end up in a Britain-like situation vis-à-vis the arrangements that are developing in the East Asian region.
- The strategic elements of India's relations are less clear, especially how it

fits in with the French-Chinese strategy to “dethrone” the dollar.

- India, in fact, might have more in common with extra-regional powers than with the Asian players. The United States is still expected to remain the preeminent economic power in the world. Therefore, **India's strategy of hedging must involve both China and the United States. It has to fish in two ponds.**

International trade

Situation:

- In the mid-1980s when the Uruguay Round was launched, India was a prominent member of a group, with Australia, Japan, and New Zealand being others, which sought to make it harder to create customs unions and free trade areas (FTAs). But the move towards the formation of regional trading blocs gathered pace: European integration, NAFTA, ASEAN FTA, SAARC FTA, etc.
- India soon joined the world wide move towards FTAs with a larger number of countries: with ASEAN, Japan, Korea, Malaysia, Singapore, and Thailand, several African and Latin American countries, and ongoing negotiations with Australia, Indonesia and New Zealand.
- The concept of favourable treatment of developing countries has been an integral part of the multilateral trading system. Special and differential (S&D) treatment was conceived of essentially as defensive weapon, well suited to the past, when developing countries were not able to lower their high barriers to trade, which were necessary as a prop for import substitution policies.
- The Enabling Clause widened the concept of S&D treatment to all matters relating to trade in goods, including on regional trade agreements, non-tariff measures, and provisions for least developed countries.
- India's main focus has been on two aspects, viz., flexibility in the use of trade policy instruments by developing countries and measures taken by the developed countries to grant favourable treatment to imports from developing countries.
- The preoccupation of developing countries with S&D treatment, however, made them neglect the rules of general application. As a result the developed countries got the opportunity to tailor the rules to their own requirements, enabling them to retain their own trade distorting policies.
- Although the WTO has been functioning well as an institution for managing the conduct of trade relations among its members according to the framework of rules provided in the WTO Agreement, it has failed as a forum of trade negotiations. The requirement of decision by consensus has resulted in a

stalemate all too frequently because of the strongly held positions and resistance to compromise.

Anticipation:

- There are three strategic issues in the international trading system today on which it is necessary for India to adopt a clear and coherent position: regional agreements; special and differential treatment; and strengthening the WTO as a negotiating forum.
- India should be working towards a region wide economic integration arrangement in the Asia-Pacific region, the Free Trade Area of the Asia-Pacific (FTAAP) for which the APEC Summit gave a call at its meeting held at Yokohama on 13-14 November 2010.
- If the current proposals of the Chairman of the negotiating group on industrial tariffs are applied (Swiss formula with differential coefficients for developed and developing countries), many developing countries, including India, would be reducing their industrial tariffs by a higher proportion than developed countries.
- In agriculture too, it is the developed countries' policies that are causing far greater distortions to trade and production in agriculture.
- The situation has changed in India and most emerging developing countries, which now have an interest in vigorously

pushing for worldwide liberalisation of trade. S&D treatment is a poor bargaining instrument for eliciting concessions from the industrialised countries.

- In light of the stalemate in negotiations, it has been suggested that a decision should be allowed to be taken on the basis of a critical mass. A related issue has been that of allowing variable geometry, which implies permitting individual members to opt out of any future agreement if it is not ready to undertake the additional obligations envisaged in it.

Connections:

- Trade rules will also intersect with climate change, flows of energy, the treatment of subsidies for clean energy, and access to raw materials like rare earths. Given that much of the increase in demand for resources will come from Asia, participation in East Asian and Asia/Indo-Pacific arrangements would also have links to energy security and maritime issues. In the absence of more coherent global governance arrangements, the links between international trade and other domains might result in the onset of more disputes.
- The East Asia summit process has become ASEAN+8 (including United States and Russia). This links with US interests in linking its trade interests with the Asian security architecture.

Resolution:

- India should enter into economic integration arrangements mainly with countries and territories in the region and sub-region and **go slow with inter-regional initiatives**.
- India needs to focus on East Asia because it is in its strategic interest to be a partner in a strong economic alliance in the East Asian region. The aim should be to **promote the Free Trade Area of Asia and the Pacific** (FTAAP) through the consolidation route, working around the ASEAN +6.
- Asking for S&D treatment in the multilateral framework for trade is not consistent with India's current stature on the international stage. In fact, India also needs to consider how it can **offer more trade concessions to its South Asian neighbours**, which could have positive implications for a range of other concerns (like security, energy, climate change, etc.)
- In future negotiations, India should pay greater attention to designing the rules of general application, and propose S&D treatment sparingly. In the Doha Round, it should explore the possibility of resolving areas of disagreement by **moderating rather than maximising S&D treatment**.
- India should respond favourably to **proposals for agreements on the basis**

of critical mass. Although no proposal has been made along these lines so far, there are a number of areas in which agreement is possible on the basis of critical mass even in the Doha Round.

- The same applies to variable geometry. There is **no point in forcing every country to accept every agreement**, as many agreements may not have relevance for certain members.

Nuclear non-proliferation and access to high technology

Situation:

- India's position has evolved from being focused on the obligations of the states with nuclear weapons to other objectives, such as non-transfer of nuclear weapons and technology to others, non-use of nuclear weapons against non-nuclear weapon states, security guarantees by the UN to non-nuclear weapon states under threat from nuclear weapon states or those near weaponisation, a comprehensive test ban treaty, a freeze on the production of nuclear weapons. This resulted in India not signing treaties such as the Nuclear Non-Proliferation Treaty, CTBT or joining *ad hoc* export control groups until 1998. Since then the international environment, India's economy and India's own postures started changing, culminating in the Indo-US Civil Nuclear Agreement in 2008 and the consequent "waiver" of restrictions on global trade with India by the Nuclear

Suppliers Group. Today, India is not only not critical of the NPT, but it has also applied for membership of the four ad hoc export control groups.

- While trade, finance and climate change dominate the international discourse on global governance, non-proliferation, relating specifically to the proliferation of nuclear weapons, equipment and technology, is inevitably seen as an issue on which India's position has been categorised as that of an outlier/naysayer. While there is as yet no domestic consensus on India's acceding to the Comprehensive Test Ban Treaty (CTBT), there is unanimity against the Nuclear Non-Proliferation Treaty (NPT). As a non-signatory, global trade and cooperation was denied to India and other non-signatories.
- While this situation changed in 2008 with Nuclear Suppliers Group (NSG) waiving its denial of free global trade and cooperation to non-NPT signatories in favour of India, this situation has altered with the recent blanket denial by the NSG of specifically nuclear-related enrichment and reprocessing (E&R) technology to non-NPT signatories. This does not inhibit India's access to other high technology cooperation, but constitutes a barrier to India's full acceptance, as an equal partner, in the regime. In any case, in spite of the waiver, Japan and Australia, the first important to India in terms of access to technology and the latter for uranium,

maintain the denial regime against India. As a non-signatory to the NPT, India is also finding it difficult to pursue membership of the export control regimes, especially the NSG.

Anticipation:

- Given India's position on the NPT, the issues relating to transfer of E&R technology and her membership of the NSG are unlikely to change, though France appears to have assured India that it would not abide by the ban. If Russia follows suit, the situation would improve, though the United States and Japan would remain constrained, affecting, in the case of Japan, India's free access to high tech.

Connections:

- In terms of trade-offs between the non-proliferation regime and others, the approach of the P-5 would seem to rule it out. Defence and security related negotiations have tended to be zero sum games and trade-offs can be contemplated only within the regime itself. However, the non-proliferation regime goes beyond the NPT and trade-offs across other instruments could be explored.
- Cyber security, following the impact of the Stuxnet computer worm, is even more palpable in terms of its importance for India's nuclear architecture. Cyber governance must not only reduce the probability of recurring attacks but also

establish effective mechanisms for attributing responsibility and enforcing penalties and sanctions.⁴

Resolution:

- In the short run, we are unlikely to push for a change in the regime as it does not impact our interests. Nevertheless, **India needs to solidify its gains by preventing the further erosion of the NSG waiver** and find ways to bypass the NPT hurdle.
- India could do this by **joining structures outside the NPT**, such as the Proliferation Security Initiative. It should also **start participating in the CTBT Organization's review meetings** and offer its civilian sites for the International Monitoring Centre (it can do so without signing the CTBT). Such moves might even convince Japan to move ahead with a bilateral agreement.
- India should also participate in the Seoul meeting on the nuclear security of fissile materials, given the current situation with Pakistan's nuclear programme. It should further **discuss non-proliferation with China but at a bilateral level**.

- On disarmament, it is suggested that India not take the lead; the two countries which are likely to oppose the debate going beyond rhetoric, China and Pakistan, are the two which are the foci of concern to India. It is, and would appear so, self-serving and would be counterproductive. This should not prevent India from **joining the various initiatives underway to promote the objective of disarmament, which is ultimately in India's strategic interests**.

Energy and climate change

Situation:

- Interactions between states, international institutions, and private actors in the energy domain occur through four sets of institutions: regional institutions; fuel-specific organisations; global organisations for information sharing; and economic development organisations that deal with energy to lesser or greater extents.
- India is not a member of most of the energy-specific regional organisations and the scope of the multilateral institutions in governing energy is limited. Therefore, India has historically relied on its bilateral relations with oil producing states to fulfil its energy needs.
- The global climate regime is dominated by the UNFCCC. Today's rich countries carry the burden of responsibility for the

⁴ Manish, Sai (2011) "India is a Sitting Duck in the Cyber Battlefield," *Tehelka Magazine*, 8(47), 26 November.
http://www.tehelka.com/story_main51.asp?filename=Ne261111India.asp.

climate crisis. A fundamental principle of the UNFCCC is that of equitable burden sharing via common but differentiated responsibilities. India's historical stance vis-à-vis the climate regime has been to ensure that rich countries live up to their commitments.

Anticipation:

- Non-OECD countries will account for almost the entire increase in energy-related CO₂ emissions from now until 2030. There are growing concerns that the structure of the climate regime is being overturned.
- The decentralisation of energy markets combined with rising demand for energy in emerging economies begs the question whether countries will rely on international energy markets to secure access to energy sources or whether state agencies will assume greater control.
- There is growing reliance on informal networks to break logjams in multilateral negotiations and develop consensus on policy issues. This has both positive and negative implications for India. In the climate regime, for instance, India is now very much at the top table or an indispensable member of small group negotiations. At the same time, crucial energy-related forums (like the IEA or ECT) might or might not exclude India.
- There are also over-the-horizon developments, which have major governance implications, such as the

governance of geoengineering research and technologies or the melting of Arctic sea ice, which would open up questions about accessing mineral resources under the sea bed.

- Another crucial area is the viability of nuclear power. Following the accident in Fukushima, Japan, the nuclear market has switched from a sellers' market to a buyers' market. The anti-nuclear lobby in India, and globally, has become more vocal, and has created serious obstacles to the building of new reactors in India. This development, combined with continuing uncertainty about the supply of uranium, means that the governance of energy needs both a national response and a global approach as well, whereby nuclear power for civilian purposes is considered well within the ambit of energy-related multilateral regimes.

Connections:

- A world with multiple poles of energy suppliers, energy demanders and emerging economies has direct implications for coherence between different international organisations. Countries that are members of the multilateral trade regime do not always overlap with those that are part of producers' cartels.
- Existing arrangements do not adequately address growing multipolarity in energy demand. There have been few signs of cooperation between existing powers in

the energy sector and emerging economies.

- There are growing debates about which institutions to use to reconcile energy and environmental concerns. The WTO's toolbox is insufficient to price energy with a view to sustainability. Indian policymakers will increasingly confront trade-offs in regimes *across* different issue areas.

Resolution:

- India must use multilateral forums, not just the UNFCCC but also the WTO, G20, etc., to **preserve recognition of its development and poverty reduction priorities**.
- India should also **pursue multilateral routes for settling disputes** on access to energy resources and challenge sudden restrictions on energy flows from major suppliers.
- In the absence of an overarching multilateral energy regime, India's focus must be on **regional or plurilateral forums for energy security**, especially in conjunction with Asia-Pacific countries.
- India should actively participate in designing a **decentralised climate finance mechanism**, with elements embedded in the UNFCCC but which also coordinates with other regional institutions.
- India will also need to participate in plurilateral arrangements that might emerge in the near future to **govern over-the-horizon issues**, like geoengineering or access to new mineral resources.
- India offers a vast market for future investments in clean technologies. But incremental costs are high. Therefore, the strongest motivation to pursue deep **bilateral relations** is **to secure access to energy and climate-related technologies**.
- India also needs to recognise and leverage the **importance of civil society** and non-governmental organisations in setting the terms of discourse on climate change and energy. Ways of involving non-state civil society organisations in global governance structures may well form the template for other global issues, including particularly cyber security. Norms developed outside intergovernmental processes (say, on trade-climate linkages, or on cyber protocols) can weave into international treaties, so India needs to engage with these processes.

Oceans

Situation:

- The UN Convention on the Law of the Seas 1982 (UNCLOS) is one of the most important sources of ocean governance. The UNCLOS has established institutions such as the International

Seabed Authority (ISBA) to regulate deep seabed mining and the Commission on the Limits of the Continental Shelf (CLCS) to assist coastal States on matters related to the claims for extending the outer limits of their continental shelf beyond 200 nautical miles.

- Several other consultation processes and frameworks are also in place such as the United Nations Environment Programme's Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities, which establishes guidelines and instructions so that the national and regional authorities can take different actions to prevent, reduce and/or eliminate marine pollution from land-based activities, and Integrated Coastal/Ocean Management whose objective is to establish the requirements and characteristics of a holistic approach for the sustainable use of ocean space and marine resources.
- It is also important for India to urge the international community at the UN and other forums to codify the limits on the rights of nations to conduct military activities/ hydrographic surveys in the maritime zones of other (coastal) states. The UNCLOS, 1982 is ambiguous on this issue. While it is currently essential to resolve this contention between the United States and China in the Western Pacific, this outstanding issue could

severely impinge on India's security when the Chinese PLA Navy's presence in the Indian Ocean increases.

Anticipation:

- Ocean Governance and Management (OGM) is evolving and India needs to rigorously and swiftly address this in a holistic manner. A review of the many state agencies that are stakeholders, or which have a regulatory-cum-denial function to perform in matters maritime, need to be identified across the centre-state-district levels and apprised of OGM principles and tenets.
- At the regional level, the Regional Seas Programme of UNEP and the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA) will need strengthening in the coming years. Institutional mechanisms will also be needed with trans-sectoral and interdisciplinary mandates for the sub-regional implementation of all the Conventions, Agreements and Programmes.
- At the global level, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988, will be central to dealing with piracy and terrorism. India's commercial interests and energy security dictate the need for effective governance mechanisms.

Connections:

- From a security perspective, maritime governance concerns are also linked to the cyber and space domains. Cyber security is being tackled by the government by special measures that include organisation, legislation, regulation, institutional mechanisms to police, strengthen security measures and better prepare to defend against cyber-attacks, and to prosecute if the need arises. But there is no institution or agency that has the responsibility of looking at the linkages between three domains.
- Ocean governance is part of a larger geopolitical and strategic dimension. As new norms have evolved, UNCLOS and Rio 1992 are not sufficient for India's interests. Regional and global arrangements on oceans and fisheries, maritime boundaries, climate change, energy security and trade are increasingly interconnected and, therefore, require more analysis.

Resolution:

- There is a need for **greater capacity for domain awareness** but unclear whether the administrative system in India will respond.
- In order to shape the global governance rules and architecture, India should have limited objectives (for instance securing

a revision of the maritime insurance premium rules). **By sticking to specifics, India will have a greater chance of success.**

- India needs to show the will to exercise power. One example is to take issues related to the Arctic Ocean to the UN. Another is to accept the French invitation to join the Indian Ocean Commission.
- India might have hitherto found it easier to deal with issues bilaterally, but no one is stopping India from creating its own regional governance platforms.
- Thus, India ought to **take the lead in the maritime domain and create a Maritime-X group of countries** (M-X, where "X" would represent the number of countries) with India as the lead coordinator. The purpose of the M-X grouping would be to interpret UNCLOS, 1982 in a manner that anticipates changes and is made relevant for ocean governance in 2022.
- India should also **create a single-point maritime adviser/agency to coordinate global ocean governance issues** across the board in India. The same agency could then be enabled to include space and cyber governance issues as and when the latter domains become as animated and require urgent policy positions.

Outer space

Situation:

- Outer space as the “heritage of all mankind” was a formulation that can be substantially attributed to India, and we have been active in developing appropriate regimes. That said, there is no certainty that other countries will also equally abide by this principle. India has to be cognisant of scientific and technological developments in the outer space domain and, based on its own priorities, it needs to continue developing capabilities, at least on the periphery.
- The existing Outer Space Treaty, 1967 does not permit the use of outer space to base nuclear weapons and other weapons of mass destruction, although weapons may transit through outer space. The Treaty also does not prohibit placing conventional weapons in orbit. (Certain provisions of the Outer Space Treaty are elaborated under the Convention on International Liability for Damage Caused by Space Objects, 1972 and Convention on Registration of Objects Launched into Outer Space, 1975.)
- However, there is no clear indication of an outer space regime that would cover a broader spectrum of commercial and military interests. Both government and non-government actors (i.e. businesses) are exploring space to buttress the national security apparatus such as

military and intelligence and for pure commercial purposes, respectively.

- New laws to govern outer space activities are referred in the “EU Code” and the “Model Code of Conduct”, which was prepared by the US-based Stimson Center. The purpose of these new proposed codes is to make existing treaties more effective, especially in penalising actions by rogue countries.

Anticipation:

- Weaponisation of space: the use of outer space for all types of military purposes will need to be constrained for which there is the need for new codes and laws to take account of military, commercial, scientific and technological interests. The Ministry of Defence is well aware of the exploitation of outer space towards national defence.
- There is growing interest in the commercialisation of space, with initiatives like Atrium (an EU-Singapore partnership); Virgin Galactic (space travel); a planned Space Hotel, etc. The exploration of space has become expensive so there is the need to secure commercial financial inputs.
- Outer space is also expected to emerge as an area for greater scientific experimentation in the biosciences, such as developing new types of resilient seeds, or food materials that can survive long space travel in zero gravity conditions. An environment clinically

free of many impurities found on Earth is an added dimension that could facilitate new types of research. India needs to be aware of these developments and participate in international scientific experiments.

- Over the horizon issues:
 - India, too, will develop commercial interests in outer space over time;
 - India will also have to go to the International Space Station to launch further missions and will, therefore, need “parking space”;
 - Therefore, India needs to participate in international collaboration with regard to the International Space Station.

Connections:

- India's national interest in outer space would include strategic and commercial interests. These interests overlap with other issues, such as life sciences and medicine and space transportation.
- Technology transfer will also be needed because India will not be at the upper end of R&D activities even in the long term.

Resolution:

- With regard to the militarisation of space, India will have to make sure that it does not end up in the same position as

it has in the nuclear field and the status quo does not get frozen in an exclusionist manner. The question of the **right forum (from our viewpoint) to discuss weaponisation of outer space and military use of outer space (two different issues) needs further deliberation**, whether it should be the UN Committee on Peaceful Uses of Outer Space or the UN Conference on Disarmament.

- Since existing codes are still limited and the current governance structure remains relatively loose, it is an **ideal moment for India to get more deeply involved in outer space governance**.
- India could take the initiative with other like-minded and space-faring countries. Otherwise, it is possible that the Europeans and the Americans would develop laws that will reflect their national laws and “lock in” international governance arrangements with little Indian participation.
- Outer space is a new domain: **India needs a space command for the military dimensions of outer space activities**; cyber security issues will cut across on the military side as well.
- In order to engage effectively, much greater capacity would be needed to understand the issues, anticipate new developments, and assess the legal implications of an evolving governance regime.

Peace and security

Situation:

- In the past decade, two issues have emerged as key in global peace and security: the Responsibility to Protect (R2P) and peacebuilding.
- Though India modified its position to accept R2P in cases of mass violations and/or genocide, the Indian government was uncomfortable with the use of R2P in military support of the Libyan opposition; and abstained from the UNSC vote on Syria.
- India has been a member of the UN Peacebuilding Commission (PBC) since its inception and has been an active participant in its operations in Africa as well as its discussions on doctrine and approach. In its own neighbourhood, however, the PBC is not involved in peacebuilding activities in Afghanistan and/or Sri Lanka.

Anticipation:

- R2P will expand as a principle in the coming years, though its support through military operations will hopefully be bound by rules that are yet to be formulated.
- Indian government's engagement with peacebuilding currently appears to be on a series of tracks. India works within the

- UN and seeks improved coordination between the P5 and elected members of the UNSC as well as between the UNSC, the General Assembly and the PBC. India is also working with Brazil and South Africa through the three-country IBSA mechanism, the African Union and regional African groupings.

Connections:

- The relative success of Indian peacebuilding in Afghanistan, as measured by the spread of activities across Afghan provinces and effective use of resources, has attracted international attention and provided useful models for agencies in the field.
- The absence of the PBC from its neighbourhood allows India to pursue bilateral initiatives, but it also makes coordination of peacebuilding activities *ad hoc*.

Resolution:

- Bearing in mind that it is a relatively low-scale body in the kinds of operations it undertakes, the **PBC's presence in South Asia would not infringe on bilateral aid for state- or nation-building.**
- Bilaterally, India's policy of pursuing headway with its neighbours appears to be paying off. But **each bilateral initiative could be cushioned by multilateral support.**

VI. OVERARCHING QUESTIONS FOR A COHERENT STRATEGY

An issue-by-issue analysis clearly reveals that global governance processes and outcomes varied in the degree to which they were favourable to India's interests. If India had to develop a coherent strategy towards global governance that could cut across thematic issue areas, then it would have to answer several key, overarching questions.

Principles or pragmatism?

The Group considered ethical questions, namely whether India could afford to be “principled” in its approach to global governance or would it have to be “pragmatic” in pursuing its specific interests in international negotiations and regimes. At one level, India could not ignore its or the world's development imperatives. Thus, a principled approach to global governance meant that, even with rising power, India should not ignore the inequities that characterised international institutions. From another perspective, **principle and pragmatism need not be opposing choices.** For instance, the India-U.S. civilian nuclear deal was both in India's interests and a partial correction to the arbitrary inequity in the global nuclear non-proliferation regime.

A power-driven global order?

The Group also noted that before India's approach to global governance could be debated, it was important to understand whether international relations were characterised by only a power-centred

notion of governance. If yes, then there was not much point seeking governance reforms on the basis of principles.

For instance, engaging in international peacebuilding discussions and operations outside South Asia through the UN would demonstrate India's reliability as a partner but would not give momentum to India's pursuit of peace in its neighbourhood.

A related question was whether growing interest in India's positions on global governance stemmed from a desire for it to take on more responsibility in global affairs. There was no issue with responsibility *per se* but whether India would be considered “responsible” only if its actions served Western interests.

Such concerns aside, there were clear reasons why India needed to take another look at existing mechanisms of global governance. The most important reason was that, with economic growth and associated rise in power, **India's interests, and thereby its demands from global institutions, had changed.**

A preference for anarchy?

The problem was that as newer issues emerged on the international agenda, their governance arrangements could also be expected to be more anarchic. In response, would India's interests be better served with more rules or would a loose, anarchic model offer it the flexibility to develop its interests and positions over time. As a broad rule of thumb, the Group believed that India should

ask what kind of global governance would increase its security and welfare. India, in other words, preferred **governance arrangements and rules that offered it flexibility but also kept its opponents off balance**. At the same time, it was perhaps prudent to focus more on the economic and social welfare end of the spectrum rather than on the security dimensions.

Others disagreed, arguing that even in the security realm it was preferable to have rules in domains that were currently ungoverned. Cyber security was raised as an example where the absence of rules created more uncertainty and limited India's options to counter cyber-attacks.

In other words, a basic tension persisted throughout the Group's deliberations, on the merits of pursuing a proactive agenda towards global governance versus keeping a lower profile. The fear was that rules were "status quo-ist" and could freeze India's room for manoeuvre. Moreover, if rules were only applicable for the "good boys" in international relations, the powerful would still go ahead and do as they felt. India needed to ensure that rules did not limit its options, especially when much uncertainty characterised the evolution of new issue areas. One mitigating factor, however, was that India was now itself at the "top table", such as in trade and climate change. Since India was no longer the "outsider", it could play an active role in decision-making.

Global rules for national governance?

The Group also considered whether **international rules were needed to protect domestic action** from future international controversies. For instance, again on cyber security issues, it was noted that Indian scientists were uncomfortable with taking actions that could violate national or international laws. Without the clarity of rules, India's response to cyber-related threats could be compromised. In the minimum, a global definition of cyber aggression was needed.

A related concern was to what extent India's constituent states had to be included in an evolving conversation about global governance? While interaction with the states did occur on several foreign policy issues, there was not necessarily any institutionalised mechanism. On a case-by-case basis, if the interests of particular states were at stake, there was certainly the need for consultations. But as long as states' development interests were not compromised, there was no added need to institutionalise a process of state involvement in international affairs.

Anticipating change for strategic autonomy?

Perhaps the strongest case for seeking a proactive role in global governance drew on the need for India to develop a strategy that could cut across issues. Put differently, greater coherence was necessary in India's interactions with other nations on a range of subjects.

Moreover, forums like the G20 were becoming the stage for discussing an ever widening agenda. For India to participate effectively, it needed to recognise what the cross-issue linkages were. India, in other words, needed a **compass to guide its thinking**. Yet, with constantly changing interests, India could (should) not pursue rigid international regimes that locked in an inequitable structure of global governance.

With the aim of going beyond silos, it was important to anticipate the changes that were on the horizon in different regimes and recognise how they might impact India's interests in other areas. This was the main rationale for the Working Group. India's goal in global governance was neither to exercise dominance nor to take leadership in finding a balance between competing interests among countries. As far as India was concerned, the main principle was **"strategic autonomy" to create a favourable environment for its development**.

India also needed the capacity to navigate an unfavourable international environment, which was why anticipating changes had to be a key strategy. Unfortunately, while India had begun a national security assessment exercise, it was limited to the military end of the national security spectrum. A new task force, under the chairmanship of Ambassador Naresh Chandra, has been examining related issues such as the economy, infrastructure, internal security,

energy, security, and so forth. This effort could be complemented by studying how the international environment was changing (through formal institutions or otherwise) in ways that could be favourable or unfavourable to India's broadly defined development and security interests.

Framing regimes or tweaking rules?

Finally, once changes had been anticipated, should India take the lead in framing new rules for international regimes or should it be happy to tweak them to its advantage? There was, obviously, no general answer to this question. In a sense, the purpose of the Working Group was to explore in which areas one or the other strategy might be more applicable or desirable. On economic issues, there were a number of forums at which some degree of rule tweaking was already happening (the G20, the Financial Stability Board, Basel rules, etc.). On other issues, like maritime and ocean governance, changes were occurring elsewhere (say, at the IMO on rising insurance costs thanks to piracy) but within India it was not even clear which ministry ought to take the lead to formulate a response.

It was increasingly evident that India's capacity to react to, tweak or frame international rules or influence broader regime design varied greatly across issues. When changes in one arena affected another, the situation would become even more complex.

VII. RECOMMENDATIONS FOR A STRATEGIC APPROACH TO GLOBAL GOVERNANCE

India's economic performance over the past decade and especially since the onset of the economic crisis reveals the resilience of its growth trajectory and also its growing relative power in the international sphere. But to exercise such power to influence global governance processes and outcomes, India needs to **develop the will to power as well as the capacity to navigate the four transitions**, understand complexity across issues, anticipate changes, and engage with the institutional forums at which to articulate its positions and proposals for reforming governance architectures.

- **Break the silos** in which discussions on various global issues occur within the government so that the connections between different issues could be better understood. A work programme must begin immediately in several issue areas wherein study groups undertake detailed research and analysis on the four questions of situation (understanding today's history and complexity), anticipation (of oncoming changes), connections (with other issues), and resolution (or ways to mitigate trade-offs and increase win-wins across areas).
- **Create an expert advisory group on global governance** within the National Security Council, whose task would be to regularly monitor changes occurring in different issue areas and notify the

NSA/NSC about the implications for India's political positions, commercial interests or strategic objectives in other areas. Pressures on filling governance deficits in India are on the rise in line with rising expectations of the majority who face serious economic and social disadvantages and clamour for cleaner administration and effective governance. Under these circumstances, the government is unlikely to be able to give due attention to global governance aspects or take firm decisions in this regard. Thus, it is even more important for a designated and well informed group to track developments, research and advise the government on global governance issues.

- **Institutionalise outreach to the Ministry of External Affairs** by conducting regular training workshops with mid-level diplomats to create a new generation of globally aware and strategically focused cadre of officers. Various silos in the government machinery must be made aware of the necessity of such an exercise and interact with this group.
- **Develop informed positions on how regional, plurilateral, global and other forms of "variable geometry" in governance structures** impact on India's interests and what types of coalitions would best promote those interests not only within particular domains but cutting across regimes as well.

- In this regard, think strategically about **India's role in the G20**. This Working Group could extend its activities by including more members and engage in a thought experiment of India hosting a G20 summit at a future date. If the G20 has to evolve from a crisis-response group to an effective forum for global governance, it will need a more coherent agenda. The trajectory of G20 summits so far has followed ever-shifting agendas to reflect the host nations' priorities. Given India's own internal tensions across various issues, the Working Group could discuss:

1. What issues would India place on the G20 agenda; how would it balance crisis-mode thinking with long-term trends?
2. What reforms in global governance might India propose at the G20 summit that it hosts, i.e. how would

it develop a strategic approach to global governance and outline its priorities?

3. How would India take leadership on these reforms and with what strategies would it secure its intended outcomes while preserving the legitimacy of the process?

Finally, a strategic approach to global governance cannot ignore the domestic context. It is equally important that such a group is familiar with and follows the pulses of the "common man". Without a deep connection to the changing needs and aspirations of India's citizens, no group or government will be able to articulate interests or influence processes and outcomes at the global level that would also be conducive to India's development prospects.

ANNEX I

Members of the Working Group on India and Global Governance

In alphabetical order

- **Mr Suman Bery**
Country Director, India Central - International Growth Centre; Member, Prime Minister's Economic Advisory Council; Former Director-General, National Council for Applied Economic Research
Thematic areas of expertise: Finance; Investment; Multilateral Financial Institutions
- **Commodore (retd.) C. Uday Bhaskar**
Director, National Maritime Foundation; Former Director, Institute for Defence Studies and Analyses
Thematic areas of expertise: Oceans; Maritime
- **Mr Tarun Das**
President, Aspen Institute India; Former Director General and Chief Mentor, Confederation of Indian Industry; Member, Ministry of Finance Advisory Group on G20
Thematic areas of expertise: Finance; Investment; G20
- **Professor Nitin Desai**
Honorary Professor, Indian Council for Research on International Economic Relations; Member, Prime Minister's Advisory Council on Climate Change; Former United Nations Under-Secretary-General for Economic and Social Affairs
Thematic areas of expertise: Climate Change; Energy
- **Ambassador Arundhati Ghose**
Adjunct Faculty, National Institute of Advanced Studies; Former, Indian Foreign Service officer, Ambassador to the UN Conference on Disarmament and Chief Negotiator on the Comprehensive Test Ban Treaty
Thematic areas of expertise: Disarmament; Nuclear Non-proliferation
- **Dr Arunabha Ghosh**
CEO, Council on Energy, Environment and Water; Associate, Global Economic Governance Programme, Oxford; Faculty Associate, Smith School of Enterprise and the Environment, Oxford
Thematic areas of expertise: Climate Change; Energy; International Trade
- **Professor Anwarul Hoda**
Chair Professor, ICRIER's Trade Policy and WTO Research Programme; Former Deputy Director-General, World Trade Organization
Thematic areas of expertise: International Trade

- **Dr Kiran Karnik**
Former President, NASSCOM (The National Association of Software and Services Companies)
Thematic areas of expertise: Cyber Security; Outer Space
- **Air Chief Marshal (retd.) Srinivasapuram Krishnaswamy**
Distinguished Fellow, Institute of Peace and Conflict Studies; Former Chief of the Air Staff
Thematic areas of expertise: Outer Space
- **Professor Radha Kumar**
Director, Peace & Conflict Programme, Delhi Policy Group; Former Director, Mandela Centre for Peace and Conflict Resolution, Jamia Millia Islamia University
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ANNEX II

Global Regime on Money, Finance and Investment

Suman Bery

I. Context

The bulk of this note deals with the international monetary system: the framework of understandings and formal rules that governs the interaction between official entities (governments, and central banks as their representatives) in the settlement of payments imbalances that arise in commercial transactions. The mechanisms of the international monetary system consist of arrangements for regulating international liquidity (i.e. media of exchange accepted for international settlement) and for establishing bilateral exchange rates.

Covered more briefly are more nascent and less well-defined regimes governing global finance and cross-border investment. A global regime to govern cross-border finance concerns itself with defining a code of acceptable behaviour for private, rather than official, finance. It forms the global counterpart of the issues that arise in domestic decisions on liberalization of flows of private capital, what is commonly referred to as capital account convertibility.

One element of such capital account convertibility is foreign direct investment, where the movement of capital is designed to influence the management structure of a target entity in the host country. Attempts to define a global regime to regulate cross-

border investment have so far met with no success, with countries, including India, jealously guarding their sovereign prerogative to formulate rules that respond to domestic imperatives.

Accordingly such norms as exist are regulated by bilateral investment treaties, and by a patchwork of voluntary mechanisms for dispute resolution. However, the arrival on the world stage of the official sector as a major investor through the medium of sovereign wealth funds has created a new impetus in the advanced countries for an agreed code of conduct to regulate the investment activities of at least this group of countries.

Not included in this note, because it is being covered by others, are rules that govern international trade, even though trade, finance and exchange rates are intimately linked.

II. The International Monetary Regime: A Brief History

The existing international monetary and financial order was largely shaped by Britain and the United States at the Bretton Woods conference in 1944, a conference to which India was invited, largely to lend support to Britain's positions. That conference led to the creation of the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development, later self-rechristened as the World Bank.

While the IMF was equipped to play a funding role, its primary brief was to

articulate, monitor and enforce rules to govern the operation of the international monetary system. These rules were enshrined in its Articles of Agreement which were framed as a response to the monetary disorder that had prevailed in the inter-war period.

The new order was centred on the dollar, which in turn maintained a fixed parity to gold. Other major exchange rates maintained a “fixed but adjustable” relationship with the U.S. dollar, and thus, indirectly to gold. In principle, non-U.S. central banks (but only central banks, not the general public, nor the private bullion markets) enjoyed the theoretical right to convert their dollar holdings of official reserves for gold at the U.S. Treasury.

In the immediate post-war era, central banks of the major non-U.S. powers had no interest in exercising this right of conversion. The dollar was badly needed for reconstruction of the war-ravaged economies, and the dominant concern was of dollar shortage rather than dollar overabundance. Together with progressive trade liberalisation (within the framework of the General Agreement on Tariffs and Trade, GATT) and maintenance of capital account restrictions in most advanced countries (with the exception of the United States), this monetary regime delivered high, non-inflationary growth through much of the 1950s and 1960s, facilitating the recovery of Western Europe and Japan.

As noted, the Articles of Agreement creating the IMF left member states free to impose

restrictions on capital movements. Despite several efforts by the advanced countries to amend the articles on this issue, the most recent in the spring of 2011, this absence of regulation remains the case till today, with the IMF’s role limited to describing the controls that countries have in place.

III. Key changes in the regime

The global monetary system evolved in the 1960s, by which time reconstruction was largely complete in both Western Europe and Japan. A first (and to date only) revision of the Fund’s articles took place over that decade. Despite the success of the system in facilitating post-war reconstruction, it was at this time that several of the contradictions embedded in a dollar-centred system became apparent, contradictions that haunt the system till this day, and are very much at the centre of current discussions.

The first contradiction was first articulated by a Belgian economist, Robert Triffin. It is variously known as the Triffin dilemma or the Triffin paradox. As defined in Wikipedia, the Triffin dilemma refers to the tension between domestic and international policy goals for the reserve-supplying country when a national currency, in this case the dollar, also serves as the prime source of international liquidity. In effect, the reserve-supplying country is “forced” to adjust the structure of the domestic economy in order to provide the global economy with the liquidity it requires.

It is this world view which underpins the famous and highly contested speech of Fed Governor (now Chairman) Ben Bernanke in the middle of the last decade. In that speech he argued that the U.S. current account deficit, so criticised as a source of “global imbalances” was an inevitable response to the desire of a number of developing and oil-exporting countries to increase their holdings of “safe” U.S. liquid assets.

A second tension arises for the holders of the reserve currency and is more dynamic, which is to say that it evolves over time. There is an initial phase, as with Europe in the 1950s, when the reserve asset is actively demanded and willingly held. However as the stock of dollars held rises, official holders of the currency start to worry about portfolio diversification and maintenance of value, and have to trade off the convenience value of holding a highly liquid asset against the risk of loss of value.

This tension is further intensified by conflicting objectives for major holding countries (France and Germany in the 1950s and 1960s, China today). As successful exporters, their interest is in maintaining an undervalued exchange rate, normally measured against the dollar. Yet any attempt to “dump the dollar” implies a depreciation of the dollar with the twin consequences of reduced competitiveness for the holder’s exporters, and a substantial accounting loss for the government in its dollar holdings.

The final tension is more political than economic: the much greater policy latitude enjoyed by the reserve issuing country (or

countries) than other players in the system. In the 1960s this was exemplified by European resentment of U.S. actions in Viet Nam being financed through international dollar issue. Today it is represented by Chinese rage at the Federal Reserve’s policy of quantitative easing.

These pressures built up in the late 1960s, as key European central banks attempted to discipline U.S. policy by insisting on actual convertibility of dollars into gold as was provided for in the Fund Articles. The outcome was that the link to gold was abandoned by President Nixon in 1971, and major currencies moved from fixed par values against the dollar to the system of floating rates which has survived until today, forty years later, rather longer than the 25 years of the classical so-called “Bretton-Woods” era.

This post Bretton-Woods regime has enjoyed a somewhat more chequered history. On the plus side, it has clearly been compatible with the rise of developing Asia. Japan apart, the growth of the Asian newly-industrialising economies (South Korea, Singapore, Taiwan, China and Hong Kong), the leading ASEAN countries (Thailand, Malaysia, Indonesia) and, more recently India and China have all taken place under this regime, messy and imperfect though it is.

On the negative side, the post-Bretton Woods era has been characterised by more volatile inflation, considerable swings in bilateral exchange rates, and a succession of banking and financial crises in both the

developed and the developing world, most notably the so-called global financial crisis of 2008-09.

IV. Regime utility and India's stance

Despite its presence at the original Bretton Woods conference, India, in common with most developing countries, has so far been what economists called a “free rider” in the design of global monetary arrangements, willing to accept the outcome of decisions taken by the major powers. Since the breakdown of the Bretton Woods regime, these decisions have typically initially been arrived at among the G7 grouping of leaders and finance ministers. These are then endorsed, as appropriate, by the Executive Board of the IMF under the guidance of its policy-making body the International Monetary and Finance Committee, IMFC, formerly called the Interim Committee.

With the move to floating exchange rates and the establishment of the G-7 process (from an initial G-5), the IMF's role in global surveillance became insignificant, as the major economies, led by the U.S. chose both to manage and disregard the judgements of its staff. With floating exchange rates, the industrial countries no longer required the IMF's financing, and became less interested in expanding the IMF's lending resources. As such, the IMF's global surveillance function faded into insignificance and its funding role, now exclusively in emerging markets and developing countries became its main *raison d'être*.

V. Opportunities, Trade-offs and Governance Reforms

Three recent, interlinked events provide the occasion for a review of these arrangements, and of India's interests and role in them. The first is China's role in the international monetary order. The second is the above-mentioned global financial crisis. The third is the transformation of the G20 since November 2008 from a rather routine and lacklustre meeting of Treasury and Central Bank officials to a political body at the leader level, a grouping that includes India.

Within the advanced countries, notably the United States, there is a widespread belief that China's political and economic structure has allowed it to exploit the absence of well-specified global monetary rules in ways that are contrary to the interests of sustainable global growth. India is clearly one of the countries which is substantially affected by Chinese economic policy, for both good and ill, and it is being challenged to express its views on whether and how the global monetary order needs to be redesigned in the interests of global stability.

Within the G20 India appears to enjoy significant moral and intellectual authority, both because of its own competence in managing its economy and polity, and because of the quality of its team led by the Prime Minister. Even if India wished to be passive, the major powers will not allow it to be so. Further, the G20 Leaders process is somewhat free-wheeling and inchoate, with new issues being added by each chair as

leadership evolves. It is also a structure that suffers from a lack of legitimacy in the eyes of the many countries that are excluded from its deliberations. Its mechanisms for execution are largely through the actions of the individual governments represented there, or through the follow-up analysis and staff work done on its behalf by the IMF, an institution whose own legitimacy is contentious.

In sum, India's position in the G20 gives it an insider's view of the discussions that are likely to reshape global economic and financial governance in the 21st century. Experience over the past century has shown that these rules work best when there is clear economic leadership in the global economy and less well in a multi-polar environment, raising both the stakes and the intellectual challenge for the shapers of any new regime. The nascent discussion on these issues within both the IMF and the G20 is also attempting to link this architecture with

various regional groupings, including the financial co-operation established in Asia under ASEAN+3 (China, South Korea, Japan), a grouping from which India is so far excluded. The Leaders' process also provides the prospect of considerable cross-issue linkage, particularly where finance ministries are involved, including such areas as anti-money laundering, and climate change finance. In addition, the G20 Leaders process has also comprehended multilateral trade negotiations. The challenge facing India is to develop an inter-agency structure that allows a coherent medium-term view of India's interests across these fields, and allows the appropriate negotiating trade-offs to be struck within an agreed articulation of the nation's medium-term diplomatic priorities. This will need to be done within the framework of coalition politics at the centre and a wide diversity of political parties in the major Indian states who are also potentially important stakeholders in the outcomes of these negotiations.

ANNEX III**Strategic Issues in International Trade****Anwarul Hoda**

There are three strategic issues in the international trading system today on which it is necessary for India to adopt a clear and coherent position with a long term perspective. First, what is the extent to which India must enter into regional economic integration arrangements? Second, in international trade negotiations, should India persevere with its advocacy of special and differential treatment of developing countries? Third, is the institutional framework of the WTO Agreement in need of change in order to make it more successful as a forum of negotiations for liberalisation of trade and increasing the scope of multilateral disciplines? We deal with these issues in turn.

I. Regional economic integration agreements

There was a time when India shunned economic integration arrangements. In the mid-1980s when the Uruguay Round was launched, a Friends of the MFN Group was formed to improve the multilateral framework for the conduct of world trade and to make it harder to create customs unions and free trade areas (FTAs). India was a prominent member of the group, Australia, Japan, and New Zealand being others. The efforts of this group of countries made little headway. In fact, the move towards the formation of regional trading blocs gathered pace; the integration in

Europe was broadened and deepened and the United States pushed forward to form NAFTA. In Asia too, the ASEAN Preferential Trading Framework was deepened to establish the ASEAN FTA in 1992 while the SAARC Preferential Trade Arrangement (SAPTA) was established in 1993 by the South Asian countries. The SAPTA later evolved into SAFTA, although Pakistan's non-cooperative attitude has not allowed the FTA in the sub-region to go very far.

Having begun with the South Asian sub-region, India soon joined the world wide move towards FTAs with a larger number of countries. FTA agreements, known variously as comprehensive economic cooperation agreements (CECA), comprehensive economic partnership agreements (CEPA) or regional trade and investment area (RTIA) have already been entered into with the ASEAN and three of its member states, Malaysia, Singapore, and Thailand. More recently, the agreements with Japan and South Korea have been ratified and have entered into force. Agreements of one type or the other have been signed with several African and Latin American countries and there are ongoing negotiations with Australia, Indonesia and New Zealand, and with Thailand (to broaden the existing agreement). An important ongoing negotiation is with the European Union.

The question has arisen whether India should be more focused on seeking economic integration with its trading partners. It is not conducive to expansion of

trade to have too many partners with preferential tariffs applying on a differential basis, as is the case at present. The main driving force for economic integration arrangements should be geo-political dynamics, and it would make great sense for India to have preferential trading arrangements with its regional and sub-regional trading partners.

In fact, India should be working towards a region wide economic integration arrangement in the Asia-Pacific region, the Free Trade Area of the Asia-Pacific (FTAAP) for which the APEC Summit gave a call at its meeting held at Yokohama on 13-14 November 2010. A recent Asian Development Bank paper speaks of two routes, consolidation and expansion. Consolidation would involve ‘concluding several bilateral agreements between major concerned parties, harmonising them, and then creating one region-wide agreement covering all concerned parties, which may be followed by the suspension of old bilateral agreements.’ Expansion would imply that a few countries first form an FTA or CEPA; then others join in through accession procedures, as can happen if the Trans-Pacific Partnership initiative succeeds.

Of the two routes suggested for attaining the FTAAP, clearly the consolidation route is more advantageous for India. A region wide FTA should be aimed at only in the Asia and Pacific region, leaving out the eastern rim of the Pacific, as only such an FTA would be cohesive. If the FTA is broadened there would be problems as the United States

would be likely to seek the inclusion of stringent provisions on social and environmental standards. In practical terms, the best route for achieving the FTAAP appears to be to work around the ASEAN +6 with the six entering into an FTA or CEPA among themselves as an intermediate step.

Way forward on regional economic integration arrangements

- India should enter into economic integration arrangements mainly with countries and territories in the region and sub-region and go slow with inter-regional initiatives.
- The aim should be to promote the Free Trade Area of Asia and the Pacific (FTAAP) through the consolidation route, working around the ASEAN +6.

II. Special and Differential Treatment in the WTO Agreement

Evolution of the concept of special and differential treatment

The concept of favourable treatment of developing countries has been an integral part of the framework of rules of the multilateral trading system in the post-World War II period. The notion began taking shape when the General Agreement on Tariffs and Trade (GATT 1947) was amended in 1954-55 to give additional flexibility to developing countries in the use of trade policy instruments by adding Article XVIII, titled Government Assistance to Economic Development. It evolved into a full-blown idea when Part IV was added to

the GATT in 1964, envisaging affirmative action by developed countries in favour of developing countries, without deviating from the basic obligations of the GATT, such as the Most Favoured Nation (MFN) Clause. It also introduced the concept of less-than-full reciprocity by developing countries in trade negotiations with developed countries. A feature of Part IV was that the language used for the commitments of developed countries gave it the character of guidelines rather than of legally enforceable undertakings. The result was that the commitments undertaken by the developed countries were never applied meaningfully and in this respect Part IV has remained ineffectual up to the present day. On the other hand, the concept of less-than-full reciprocity in trade negotiations became the centrepiece of favourable treatment of developing countries in coming decades.

Two decisions taken in the United Nations Conference on Trade and Development (UNCTAD) and the GATT added substance to the concept of special and differential treatment. First, in 1968 the UNCTAD Resolution 21(II) agreed on the establishment of a 'system of generalized, non-reciprocal and non-discriminatory preferences for developing countries', taking the concept further by approving tariff preferences in favour of developing countries, notwithstanding the fact that it involved deviation from GATT obligations. Conformity with the GATT's MFN clause was obtained through the mechanism of a waiver. The next stage in the evolution of the concept was that, following negotiations in the Tokyo Round, in November 1979, the

contracting parties adopted the decision, Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, which has come to be known as the Enabling Clause. The ideas embodied in the Enabling Clause have over time come to be known as special and differential (S&D) treatment of developing countries, rather than differential and more favourable treatment.

The Enabling Clause widened the concept of S&D treatment to all matters relating to trade in goods. Not only could developed countries grant tariff preference to developing countries, but the developing countries could also enter into regional and global trade arrangements among themselves, both without the need for seeking a waiver from GATT obligations. Equally importantly, the decision provided for S&D treatment in multilaterally negotiated agreements on non-tariff measures. One other important feature of the decision was the special treatment envisaged for the least developed countries. The Tokyo Round also led to a few other decisions that improved incrementally the flexibility for developing countries envisaged in Article XVIII of the GATT.

The concept of S&D treatment thus became progressively broader and deeper during the deliberations in the UNCTAD and the GATT bodies in the 1970's. One study has summarised the evolution as follows:

"By the end of the seventies, S&D treatment, which began with the efforts of developing

countries to secure flexibility in the use of trade policy instruments, had become an all-pervading concept, encompassing non-reciprocity, preferences, technical assistance, and an overall philosophy that equal treatment of unequal countries was inequitable. Differentiation inter se among developing countries was explicitly recognised only in respect of the least developed countries” (Hoda and Gulati 2003).

India played a major role in these deliberations and it has continued to attach the highest importance to the concept in the ongoing trade negotiations in the WTO. Although S&D treatment now covers a number of aspects, including transitional time limits, technical assistance, and special treatment of the least developed countries, India’s main focus has been on two aspects, viz., flexibility in the use of trade policy instruments by developing countries and measures taken by the developed countries to grant favourable treatment to imports from developing countries. The concept emerged during the days of GATT 1947 when multilateral disciplines covered only trade in goods. In the WTO Agreement, which entered into force on 1 January 1995, the scope of S&D treatment was extended to cover the areas of services and intellectual property rights as well. We examine below how far India and the developing countries have benefited from the implementation of the concept.

Implementation of S&D treatment

In tariff negotiations in the pre-WTO era developing countries benefited undoubtedly from the concept of less-than-full reciprocity in the negotiations with the developed countries. At that time most developing countries were following the now discredited inward looking economic policies and needed to keep their tariffs high and could not participate in any exercise to cut down tariffs on industrial products. Developing countries were not called upon to participate in linear reduction of tariffs agreed upon by developed countries during the Kennedy Round (1964-1967). In the Tokyo Round (1973-79), they were similarly not required to accept the Swiss formula agreed upon by most developed countries. In the Uruguay Round (1986-94), they were not asked to cut tariffs by one-third as agreed upon by the developed countries. In all these negotiations, developing countries were merely exhorted to make a contribution to the objective of trade liberalisation or called upon to increase the level of their bindings. In the result the post-Uruguay Round tariffs of important developing countries were much higher than that of their developed country trading partners. However, developing countries paid a heavy price for this flexibility. During the Uruguay Round the developed countries reduced tariffs on products usually imported from other developed countries by a greater margin. Thus, tariffs remained relatively higher on labour intensive products such as textiles and clothing and footwear, normally imported from developing countries.

In agricultural products, on the whole the provisions of flexibility for developing countries proved to be of little value. In fact, much higher levels of flexibility in the use of policy instruments by the developed countries were implicit in the rules of general application. One provision on flexibility gave developing countries the ability to reduce their tariffs at a lower rate, but this was small favour when compared to the possibility retained by some developed countries to maintain tariffs in multiples of 100 per cent by applying the permitted modality of tariffication. No doubt many developing countries took advantage of the flexibility of binding tariffs at ceiling levels, but this flexibility was far in excess of what they needed. In India's case the simple average applied rate on agricultural products was 37 per cent in 2004, against the simple average bound rate of 114 per cent.

Developing countries were given the flexibility to make lower reduction commitments in domestic and export subsidies by way of S&D treatment. Studies have shown a huge disparity in the scale of subsidies used by developed and developing countries, making S&D largely inconsequential. In developing countries that benefited from lower reduction commitments on domestic support measures, such subsidies aggregated less than five per cent of the value of agricultural production. On the other hand, according to one study (Hoda and Gulati 2007) trade distorting subsidies in the EU in 2000-2001 constituted 27 per cent of the value of agricultural production. Similarly, even though a few developing countries used the flexibilities

granted to them in respect of export subsidies, they made little actual use of such subsidies. An OECD study (OECD 2001) showed that the rate of export subsidisation by the European Commission in 1997 was 112 per cent for butter, 148 per cent for rice, 164 per cent for sugar and 378 per cent for pig meat. Article 6.2 of the Agreement on Agriculture, which exempts from reduction commitments generally available investment subsidies and agricultural input subsidies generally available to low-income and resource poor farmers, has proved to be the only meaningful S&D provision in the Agreement on Agriculture.

The General Agreement on Trade in Services (GATS) does not use explicitly refer to the concept of S&D treatment. However, in Article IV, 'Increasing Participation of Developing Countries', it is provided *inter alia* that the increasing participation of developing countries shall be facilitated by 'the liberalization of market access in sectors and modes of supply of export interest to them'. This provision has not taken the developing countries very far as very little has been committed in the WTO Agreement with regard to Mode 4, the movement of natural persons, which is a mode of supply of particular interest to several developing countries.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) also provided for special benefits for developing countries, by providing them with the flexibility of a transitional period of 10 years with respect to product patent protection. However, the benefit was considerably

restricted by the requirement to grant exclusive marketing approval in the meantime in respect of pharmaceutical and agricultural chemical products.

As mentioned above, one of the elements of S&D treatment is the unilateral and non-reciprocal preferences granted by developed countries to developing countries, through the Generalised System of Preferences (GSP). Recent studies made in ICRIER have shown that the benefit derived by India from the GSP schemes of the European Union and the United States is relatively minor. The study on the EU GSP scheme concludes as follows:

'It would appear from the foregoing analysis that the EU scheme has made some contribution to the original objectives of the GSP in respect of developing countries covered by the standard GSP, including India. However, these benefits are somewhat modest, constrained as they are by the shallow cuts in MFN tariffs for important products, product/sector graduation, deeper and wider preference for GSP + countries and LDCs. The reduction of MFN tariffs after successive rounds of multilateral trade negotiations has diminished the value of the GSP concessions' (Hoda and Prakash, 2011a).

Another study on the US GSP scheme reaches the following conclusion:

'It would be seen from the foregoing analysis that although the US scheme has the potential to stimulate imports from developing countries and from India, structural deficiencies in the scheme prevent

it from making more than a nominal overall impact' (Hoda and Prakash, 2011b).

The future of S&D treatment

The original initiative of developing countries for S&D treatment in the early days of GATT 1947 had its origin in the belief that they needed greater space for economic manoeuvres in shaping their economic policies as to foster their development. In the 1950s and 1960s, when an increasing number of developing countries adopted import substitution policies, their belief was strengthened. Since they needed high tariff walls in pursuit of import substitution policies they could not participate in the reciprocal exchange of tariff concessions that took place during the 1960s and 1970s. In these negotiations, the GATT provisions on less-than-full reciprocity served them well as it enabled them to fend off pressures for tariff reduction. Things began to change in the 1980s, and by the time the Uruguay Round ended, most of the developing countries had adopted economic policies that were outward oriented. They made substantial liberalisation commitments in trade in goods autonomously during the Uruguay Round, as if to announce that they had arrived on the international trade scene and to declare their intention to change their external economic policies. And now, largely as a result of the opening up of the economy and the dismantling of barriers to trade and investment, a large number of developing countries have become highly competitive in world trade and are rapidly increasing their share of world trade over a large range of

manufactures. The question that arises is whether in industrial products developing countries really need S&D treatment to the same extent that they did in the pre reform era. If we look at the simple averages of bound tariffs prevailing in major developing countries, it appears that they have a distinct advantage over their industrial partners in any exchange of tariff concessions. In addition, the fact that the applied levels are much lower than the bound levels makes it possible for them to offer substantial concessions without much pain.

If the current proposals of the Chairman of the negotiating group on industrial tariffs are applied (Swiss formula with differential coefficients for developed and developing countries), many developing countries, including India, would be reducing their industrial tariffs by a higher proportion than developed countries. Since, traditionally in the GATT, reciprocity has been measured by the depth and coverage of reductions, it would be developed countries that would be getting the benefit of less-than-full reciprocity, and not developing countries. Compliance with the insistence of the United States and other developed economies for developing countries to subscribe to sectoral elimination of tariffs will only exacerbate and not redress the reciprocity deficit against the developing countries now on the cards. In the context of these developments it has become meaningless for developing countries to talk about S&D treatment in tariff negotiations on industrial products.

In agriculture too, the need for developing countries to rely on S&D treatment deserves to be seriously examined in the context of the widely agreed assessment that it is the developed countries' policies that are causing far greater distortions to trade and production in agriculture. In export competition, the proposal at any rate is to grant only transitional benefits to developing countries. In domestic support, even after the application of the S&D treatment provisions that have been proposed, the level of domestic support in the principal developed countries would be higher than in developing countries. That would be the case even if we do not reckon decoupled income support, which continues to be exempted from reduction commitments, even though most economists are now of the view that they cause more than minimal distortions. It would have been much fairer to propose that all WTO members, developing and developed alike, should reduce their overall total domestic support to 5 per cent of the value of agricultural production. Even the S&D provision built into Article 6.2 of the WTO Agreement on Agriculture on generally available investment subsidies and generally available input subsidies could have been appropriately redesigned and transferred to the green box. In market access, S&D provisions could have been minimised if a common tariff ceiling had been applied and the special safeguard mechanism had been made accessible to developed countries.

Way forward on S&D treatment

- S&D treatment was conceived of essentially as defensive weapon, well suited to the past, when developing countries were not able to lower their high barriers to trade, which were necessary as a prop for import substitution policies. The situation has changed in India and most emerging developing countries, which now have an interest in vigorously pushing for worldwide liberalisation of trade. S&D treatment is a poor bargaining instrument for eliciting concessions from the industrialised countries.
- In the past, the preoccupation of developing countries with S&D treatment made them neglect the rules of general application. As a result the developed countries got the opportunity to tailor the rules to their own requirements, enabling them to retain their own trade distorting policies.
- Asking for S&D treatment in the multilateral framework for trade is also not consistent with India's current stature on the international stage.
- In future negotiations, India should pay greater attention to designing the rules of general application, and propose S&D treatment sparingly. In the Doha Round, it should explore the possibility of resolving areas of disagreement by moderating rather than maximising S&D treatment.

III. Institutional issues in the WTO

Although the WTO has been functioning well as an institution for managing the conduct of trade relations among its members according to the framework of rules provided in the WTO Agreement, it has failed as a forum of trade negotiations. The Doha Round launched in 2001 has not concluded so far on account of disagreements among members. Although the reasons for the deadlock are complex, there is a view that the negotiating process could be facilitated if decision making were made more flexible in the WTO. Further, some observers point out that one of the impediments to concluding the negotiations is the requirement for the entire agenda (with the exception of dispute settlement) to be taken as a single undertaking. Proposals are being made within academia for imparting greater flexibility in the negotiating process with a view to obtaining results in the negotiations.

The general rule in the WTO Agreement is decision making by consensus. The requirement for consensus for decision making has been the focus of past debates on functioning and efficiency. This requirement has resulted in a stalemate all too frequently because of the strongly held positions and resistance to compromise. During the run up to the launching of the Doha Round and even after its commencement, progress in trade talks was held up by the lack of consensus on the expansion of the scope of the WTO Agreement to investment, competition policy, transparency in government

procurement and trade facilitation. In 1999, there was a prolonged impasse on the appointment of a Director General for the WTO and the post was left vacant for a few months before an uneasy compromise was reached.

In the context of these experiences, it has been suggested that a decision should be allowed to be taken on the basis of a critical mass. Decisions on this basis are not recognised formally in any WTO rule but do have precedence in practice. For instance, a major initiative at the First Ministerial Meeting held at Singapore in 1996 was the signing of the Information Technology agreement (ITA) by 28 members of the WTO. This agreement stipulated that it would come into effect after participants representing a critical mass (defined as approximately 90 per cent of world trade in information technology products) had notified acceptance of the agreement. It has been suggested that on the same principle, decisions could be taken on matters such as the trade share or proportion of the consenting members to the total membership.

A related issue has been that of allowing variable geometry, which implies permitting individual members to opt out of any future agreement if it is not ready to undertake the additional obligations envisaged in it. If negotiations are initiated on a new subject on the basis of less than consensus, it follows that members not party to the decision would not be expected to participate in it. However, even if comprehensive negotiations are launched on

the basis of consensus, should it be made compulsory for all members to agree on the full package of results? That was not the case in the Tokyo Round and only developed countries and a few developing countries stayed away. This led to criticism by scholars of the balkanisation of the trading system and a view emerged that in future, there should be no option to opt out of a part of the negotiated package. As a result, the Punta del Este Ministerial Declaration provided for the negotiations in the Uruguay Round to be a single undertaking, whereby participating countries could not pick and choose among individual agreements resulting from the negotiations but would have to accept all of them. The Doha Ministerial Declaration similarly provides that with the exception of the improvements and clarifications of the Dispute Settlement Understanding, 'the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking.'

With the WTO membership growing to 153 (and perhaps, Russia joining soon as the 154th member) and the existing differences in their economic situations and interests, a view has been growing that variable geometry may not be bad idea for the future.

In the past India could not have been keen on proposals for an agreement based on a critical mass or variable geometry, as there was every danger that it would be left out of such agreements among a subset of members. But now, with its growing clout and economic importance there is little danger of that happening. Such proposals should be acceptable to India on the basis

that the benefits of agreement among a critical mass of members would be extended to all members on an MFN basis.

Way forward on institutional issues

- India should respond favourably to proposals for agreements on the basis of critical mass. Although no proposal has been made along these lines so far, there are a number of areas in which agreement is possible on the basis of critical mass even in the Doha Round.
- The same applies to variable geometry. There is no point in forcing every country to accept every agreement, as many agreements may not have relevance for certain members.

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ANNEX IV

Non-Proliferation and Disarmament Regime

Arundhati Ghose

I. Background and India's positions

Nuclear technology was, in the initial years, used for the making of weapons; in that sense, the nuclear age started with the end of World War II and the beginning of the Cold War, and most particularly, the bombing of Hiroshima and Nagasaki. Since that time, there have been strong movements against the weapons and their use even as doctrines for their use began to evolve. Newly independent India was among the first to call for controlling the growing arsenals of the US, the USSR, Britain and France and for steps to be taken towards nuclear disarmament. India's arguments were based on both the immorality of the use of the weapons but on her own security interests. Nehru recognized that “a dominating factor in the modern world is the prospect of these terrible weapons suddenly coming into use before which our normal weapons are completely useless.” While there was public support for nuclear disarmament across the world, no ‘regime’ for disarmament was established. Cold War imperatives determined the evolution of the discussions on nuclear weapons. India continued to present various initiatives in the UN and other forums with the support of groups like the non-aligned and neutral countries.

On the other hand, there was a move towards controlling the spread of nuclear

weapons and nuclear technology to those that didn't have them. Partly as a result of India reacting to China's first nuclear test in October 1964, and taking the issue of non-proliferation to the UN, a major negotiation began which ultimately resulted in the Nuclear Non-Proliferation Treaty. India's position focused on the obligations of the states with nuclear weapons: non-transfer of nuclear weapons and technology to others, non-use of nuclear weapons against non-nuclear weapon states, security guarantees by the UN to non-nuclear weapon states under threat from nuclear weapon states or those near weaponisation, a comprehensive test ban treaty, and a freeze on the production of nuclear weapons. Non-nuclear weapon states would not seek to acquire nuclear weapons. In the event, India was unable to get any of the major objectives through, the NPT came into force and India decided not to sign it citing, inter alia, her national security imperatives. These issues, however, formed the basis of India's position during this period.

In 1974, India conducted a peaceful nuclear explosion; this led to the establishment of the non-proliferation regime which contained strict controls on non-nuclear weapon states seeking to or intending to seek nuclear technology, which by its nature, was dual use. Apart from the NPT, the regime was based on a safeguards system controlled by the IAEA- based on declarations by states of their nuclear installations and programmes. Since 1996, after the first Iraq war, an Additional Protocol was adopted by the IAEA which permitted inspections of non-nuclear

weapon states sites “anywhere, at any time”, but like the NPT, applied different obligations for the non-nuclear weapon states, the NPT recognized NPT states (which were also the Permanent members of the UNSC) and, at India’s instance, for states members of the IAEA but not signatories of the NPT. Many NPT members have not signed the Additional Protocol. This system was supported by informal, select groups of countries which controlled through national laws export of nuclear weapon technologies and equipment. These were the Nuclear Suppliers Group (NSG) (and the Zangger Committee), the Missile Technology Control Regime (MTCR), the Australia Group for Chemical and Biological weapons, and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The last (for conventional weapons) is the successor of the Coordinating Committee on Export Controls (COCOM), which had been set up by Western countries to control exports of conventional weapons and technologies to Warsaw Pact countries. Expectedly, India was adversely affected by the operation of these ad hoc groups as a technology denial was set up without, it might be added, a universal legal framework. India was a virulent critic of not only the NPT but the ad hoc export control groups-with little impact. In 1996, after having participated in the negotiation of the CTBT, there was a replay of the NPT process for India, who refused to sign it. She appeared to have withdrawn even further from the regime and was seen as an ‘outlier’ and ‘naysayer’ in the arms

control arena.

II. Changes to the regime and in India’s position

Since the 1998 nuclear tests by India, the international environment, India’s economy and India’s own postures started changing, culminating in the Indo-US Civil Nuclear Agreement in 2008 and the consequent ‘waiver’ of restrictions on global trade with India by the NSG. Today, India is not only not critical of the NPT, but has applied for membership of the four ad hoc export control groups. She has signed an Additional Protocol, separated her civil and military nuclear facilities and accepted IAEA safeguards on her civilian nuclear installations, except for the prototype fast-breeder reactor, but has pledged that all future fast-breeders would be under IAEA safeguards. She has also agreed to work for a successful conclusion of an FMCT-within certain parameters relating to her security interests. Since this time, India’s role towards the regime has been purely determined by her own interests-security and commercial, and she has taken no multilateral initiatives of significance in international forums on issues of disarmament or non-proliferation, like the Rajiv Gandhi Action Plan of 1988.

By exceptionalising India from the constraints and restrictions of the regime, the regime itself has indicated the possibility of adaptability to new situations- in this case, the emergence of India as a global economic player.

During the Bush Administration, the US promoted several informal agreements outside the NPT, widening the scope of coverage of the regime. These included the Proliferation Security Initiative (PSI), the Container Security Initiative (CSI) and even a UNSC Resolution 1540 to attempt to prevent actively the illegal transfer of nuclear equipment. India has not joined the PSI on the grounds that the legal basis for this programme, which lies in another formal agreement, operates on the NPT formula with special treatment for the NPT-5. She has made it a point to be a participant in the CSI and has passed the WMD Act in Parliament as a consequence of Resolution 1540. Through such innovations, and the NSG waiver for India, the US has introduced a degree of flexibility in the NPT regime, and perhaps shown the way in which the regime can be adapted without unravelling its foundation.

III. New challenges and possible responses by India

A new global challenge has arisen- the possible access to WMDs and related technologies and material by terrorists- particularly in India's neighbourhood. The NPT and indeed the regime deals basically with states and has no provision for action against non-state actors acquiring weapons or weapons related technology. Again, it has been the US that took the initiative to hold a Summit meeting on the need to secure fissile material in all countries. While India has supported this move, she has maintained a low profile in the discussions.

The exceptionalisation of India from the regime's constraints has raised hackles among many groups and some reservations in some countries-though not among most of the major powers- i.e. with the exception of China, the US, UK, Russia and France are supportive, Australia and Japan still have reservations, while other emerging powers, including Brazil, South Africa and Egypt, all members of the NPT as non-nuclear states feel hard done by. This case is in all likelihood a one off; it is not likely that such a pattern can or will be replicated anywhere else within the regime or even outside it. India's interest lies in not destabilizing the regime or seeking any amendments to the NPT itself-which is unlikely in any case but in supporting the building of additional structures around the NPT, like the PSI, CSI and Resolution 1540, such as some agreement on the security of fissile materials- if not the FMCT itself.

There is today no consensus on India joining the CTBT; in any case, without US ratification, an unlikely development in the remaining years of the Obama Administration, the CTBT cannot come into force. China will not ratify unless the US does so. However, even while seeking to build a consensus domestically, India could start participating as an observer in the CTBTO meetings and perhaps offer sites for the location of CTBTO monitoring stations. This could be done in return for membership of the NSG and other export control groups, which is of some importance to our strategic interests. India also needs to assume a more forward-looking approach to the issue of both security and safety particularly in the

context of the possible consequences of Iran's nuclear programme, the nuclear renaissance and the Fukushima accident in Japan; this would have to be within the parameters of the regime and presented as a means of strengthening the regime. The forthcoming Security Summit in Seoul in 2012 might be an opportunity to present our initiatives, with previous consultation, perhaps in an IBSA plus meeting, or even at the next BRICS meeting, though China may not be enthusiastic in spite of its recent agreement on nuclear safety with Japan and South Korea. India has a direct interest in such an agreement, given Pakistan's growing arsenal, increased production of fissile material and the presence of terrorist groups on its territory. It has also been reported that the two new nuclear reactors being supplied by China are models no longer in use and without the new technologies for safety.

On the issue of nuclear disarmament, it is suggested that India not take the lead; the two countries which are likely to oppose the debate going beyond rhetoric, China and Pakistan, are the two which are the foci of concern to India. It is, and would appear so, self-serving and would be counterproductive. This should not prevent

India in joining the various initiatives underway to promote the objective of disarmament which is ultimately in India's strategic interests.

In terms of trade-offs between the non-proliferation regime and others, the approach of the P-5 would seem to rule it out. Defence and security related negotiations have tended to be zero sum games "as one country or bloc of countries works to maximize its defence capabilities in ways that (deliberately or indirectly) challenge the military preeminence of its (putative) rivals." Given the importance of the issue to India's direct security interests, trade-offs can be contemplated only within the regime itself. (This inherent rigidity in the non-proliferation regime may not exist in other areas between which trade-offs could be considered.)

There is, however, reluctance within Government to change the mind-set which is as yet unused to not being a target of the non-proliferation regime; perhaps, it is not without cause. Wider inter departmental consultations might enable a change, but it is clear that the call will have to be political and part of an overall coherent and coordinated view of India's core interests.

ANNEX V**Energy, Climate and India's Concerns about Global Governance****Arunabha Ghosh**

Access to secure and diversified energy resources and a timely response to the threats posed by climate change are critical to sustaining India's economic growth and broader human development. The tensions between energy demand and climate-related concerns have to be resolved both nationally and at the multilateral level. The current structure of international regimes dealing with energy and climate issues presents both challenges and opportunities for India's priorities in global governance.

I. Overview of the historical landscape

The landscape for global energy governance is characterized by a cluster of interactions between states, international institutions, and private actors.⁵ These interactions occur through four sets of institutions: one, regional institutions (International Energy Agency, Energy Charter Treaty, the Latin American Energy Organization, the Asia-Pacific Economic Cooperation Energy Working Group, and the African Energy Commission) for energy-importing countries; two, fuel-specific organisations (Organization of Petroleum Exporting

Countries, the International Atomic Energy Agency, and the International Renewable Energy Agency); three, global organisations for information sharing (International Energy Forum, UN-Energy); and fourth, economic development organisations that deal with energy to lesser or greater extents (World Bank, World Trade Organization).

India's participation in energy regimes varies. It is not a member of most of the energy-specific regional organisations and the scope of the multilateral institutions in governing energy is limited. Therefore, India has historically relied on its bilateral relations with oil producing states to fulfil its energy needs. Currently, about three-fourths of India's oil imports originate in West Asia (almost a quarter in Saudi Arabia alone). This excessive dependence on a single region combined with rapidly rising demand creates major geopolitical risks for India.

The global climate regime is dominated by the United Nations Framework Convention on Climate Change (UNFCCC). (The Intergovernmental Panel on Climate Change, IPCC, serves as the UNFCCC's scientific counterpart to undertake in depth reviews of the latest climate science and provide consensus knowledge through a multilateral process.) Today's rich countries carry the burden of responsibility for the climate crisis (the average American is responsible for emitting 17 times more CO₂

⁵ Colgan, Jeff. D. (2010) 'The Landscape of International Energy Institutions', *Working paper of the S.T. Lee Project on Global Energy Governance*, National University of Singapore.

than the average Indian).⁶ But part of the problem is that non-OECD countries will account for almost the entire increase in energy-related CO₂ emissions from now until 2030 with more than three-quarters of this increase expected to originate in China, India and the Middle East.⁷

A fundamental principle of the UNFCCC is that of equitable burden sharing via common but differentiated responsibilities. Under this provision rich countries, which account for a disproportionate share of greenhouse gases in the atmosphere, committed to: reduce their emissions in absolute terms; lower the trajectory of emissions growth in relative terms, so as to open up atmospheric space necessary for growth in developing countries; and support efforts for emissions reductions in poor countries with finance and technology. Although the largest historical emitter, the United States, did not ratify the Kyoto Protocol, these obligations remain central tenets of the UNFCCC. India's historical stance vis-à-vis the climate regime has been to ensure that rich countries live up to these commitments so as not to constrain the ecological space available to India to pursue its development objectives.

II. Recent changes and challenged regimes

The historical landscape of international regimes governing energy and climate issues has been altered by new pressures and institutions. For better or for worse, the governance of these regimes is being challenged in four ways.

Shifting rules

There are growing concerns that the structure of the climate regime is being overturned. The Copenhagen Accord of 2009 could be read as a shift from a top-down approach towards limiting and reducing emissions to an architecture that emphasises bottom-up, flexible commitments with no upfront negotiated agreement on commitments or actions. This approach was only partially rectified at the Cancún climate meetings in December 2010 when all major economies agreed to cut emissions but without any agreement on how far overall emissions should be cut. Decisions on whether the Kyoto Protocol would be extended to a second commitment period post-2012 were deferred to the Durban climate summit in late 2011. This uncertainty over the fate of the Protocol undermines the differentiated responsibilities for developed and developing countries in the climate regime.

Disagreements over regime design

A second set of concerns stems from questions about the appropriate architecture and scope of energy and climate regimes.

⁶ UNDP, United Nations Development Programme (2007) *Human Development Report 2007/2008: Fighting Climate Change: Human Solidarity in a Divided World*, New York: Palgrave Macmillan.

⁷ IEA, International Energy Agency (2009) *World Energy Outlook 2009*, Paris: OECD/IEA.

For instance, the decentralisation of energy markets combined with rising demand for energy in emerging economies begs the question whether countries will rely on international energy markets to secure access to energy sources or whether state agencies will assume greater control.

After the 1973-74 oil price shock, western countries formed the International Energy Agency, under the OECD, to coordinate their response to future volatility. They have also created shared strategic reserves and early warning systems. Relatively low prices for oil in the 1980s and 1990s created an impression that liberal market rules combined with greater transparency would be sufficient to bring stability to the global energy market.

Indeed, the ‘fungibility’ of crude oil has increased in the past four decades. About 50 per cent (or 40 million barrels per day) is now traded openly.⁸ Oil is now a physical commodity *and* a financial asset: daily trade in crude oil futures could be as much as 30 times the daily consumption of physical barrels of oil. Growth in Liquefied Natural Gas is feeding the development of spot markets for gas. But while transactions on such a scale increase market efficiency, energy is also subjected to increased risks of volatility.⁹

⁸ Goldthau, A. and Witte, J. M. (2009) ‘Back to the Future or Forward to the Past? Strengthening Markets and Rules for Effective Global Energy Governance’, *International Affairs*, 85 (2), p. 376.

⁹ Yergin, D. (2009) ‘It’s Still the One’, *Foreign Policy* (September–October).

The suspicion that oil markets remain volatile and unstable has driven countries like China to invest, through its national oil companies, in exploration blocks particularly in Africa. In fact, emerging nations of the past (like Japan and South Korea) have followed similar strategies, before reconciling to a more market-oriented approach.¹⁰ Whether mercantilist strategies will succeed or liberal market institutions are sufficient remains an open question for today’s emerging economies.

Again, there are growing debates about which institutions to use to reconcile energy and environmental concerns. The WTO’s toolbox is insufficient to price energy with a view to sustainability.¹¹ And developing countries reject any trade-environment linkage in the WTO, fearing ‘green tariffs’, private environmental standards and other trade barriers against their exports on environmental grounds.¹² Moreover, they have found that despite applying low tariffs against environmental goods and services,¹³ their exports of energy-related goods face

¹⁰ IEA (2000) *China’s Worldwide Quest for Energy*. Paris: IEA, pp. 8-9.

¹¹ Lamy, P. (2007) ‘Doha Could Deliver Double-Win for Environment and Trade’, Informal Trade Ministers’ Dialogue on Climate Change held in Bali, 9 December.

¹² Ghosh, Arunabha (2009) ‘Enforcing Climate Rules with Trade Measures: Five Recommendations for Trade Policy Monitoring’ in R. B. Stewart, B. Kingsbury, and B. Rudyk (eds.), *Climate Finance: Regulatory and Funding Strategies for Climate Change and Global Development*. New York and London: New York University Press, pp. 272-280.

¹³ Jha, V. (2008) ‘Environmental Priorities and Trade Policy for Environmental Goods: A Reality Check’, ICTSD Issue Paper, 7 (September).

trade barriers abroad. They also worry about intellectual property rules that raise costs for environment-friendly energy technologies.

Indian policymakers will increasingly confront trade-offs in regimes *across* different issue areas. While negotiating rules *within* regimes, they will also have to develop positions on what kind of regimes they want to promote that can have coherent a division of functions and jurisdiction. When disputes arise, which regimes will they turn to seek redress and defend India's priorities? If multilateral mechanisms are found wanting, what alternative routes can India pursue at regional and bilateral levels?

Partially overlapping regimes

A third set of challenges is that energy and climate change are characterised by 'regime complexes' of partially overlapping institutions. The priorities, procedures and rules governing these institutions often conflict resulting in mixed policy signals and uncertain legal remedies.

A world with multiple poles of energy suppliers, energy demanders and emerging economies has direct implications for coherence between different international organisations.¹⁴ The countries that are members of the multilateral trade regime do not always overlap with those that are part of producers' cartels. Although, most OPEC

countries are now WTO members, there are other major energy players who are not. Countries like Algeria, Iran, Iraq, Libya and, most importantly, Russia (the second largest oil producer) are still undergoing accession negotiations at the WTO.

Moreover, existing arrangements do not adequately address growing multipolarity in energy demand. There have been few signs of cooperation between existing powers in the energy sector and emerging economies. China and India were invited to the International Energy Agency's 'Committee Week' in 2007 but remain observers. The IEA remains a subsidiary body of the OECD, a developed countries' club, making it difficult to bring emerging economies formally into its fold. Meanwhile, competing pressures of energy demand, climate change and trade barriers are discussed in different forums, at the IEA, the UNFCCC or in the WTO, thus creating a complex of partially overlapping but not hierarchically ordered regimes.¹⁵

In response, major consumers in the Asia-Pacific region have formed the Asia-Pacific Economic Cooperation (APEC) Energy Working Group but India is not a member. Now there are new calls for bringing together major suppliers *and* users under an

¹⁴ Ghosh, Arunabha (2011) 'Seeking Coherence in Complexity? The Governance of Energy by Trade and Investment Institutions', *Global Policy*, 2 (Special Issue), September, pp. 106-119.

¹⁵ Keohane, R. O. and Victor, D. G. (2011) 'The Regime Complex for Climate Change', *Perspectives on Politics*, 9 (1), pp. 7-23.; Alter, K. J. and Meunier, S. (2009) 'The Politics of International Regime Complexity', *Perspectives on Politics*, 7 (1), pp. 13-24; Raustiala, K. and Victor, D. G. (2004) 'The Regime Complex for Plant Genetic Resources', *International Organization*, 58 (2), pp. 277-309.

Energy Stability Board to coordinate emergency actions and give voice to emerging economies.¹⁶ With so many arrangements, it is unclear which forums countries will choose to resolve contradictions and disputes.

The climate regime has also become a canvas for new institutions and arrangements. In some instances, developed countries have tried to bypass the UNFCCC by creating smaller ‘clubs’ of key countries:¹⁷ the Asia Pacific Partnership of six countries (promoted by President George Bush) to find an alternative to the Kyoto Protocol; the Major Economies Forum in 2007, which included sixteen countries; the G8+5 framework; and the G20. All of these forums have included India but none has succeeded in fully overturning the formal UN-led process.

Similarly, the world of climate finance, ostensibly meant to provide developing countries with resources to adopt technologies to mitigate climate change as well as adapt to its harmful effects, is fragmented and interwoven in complex ways. There are multiple channels of finance – development banks, UN agencies, bilateral funds, carbon markets, etc. – and dozens of funds that increase transaction costs but offer little by way of predictable financing.¹⁸

Informal groups versus formal institutions

Fourthly, there is growing reliance on informal networks to break logjams in multilateral negotiations and develop consensus on policy issues. This has both positive and negative implications for India.

In the climate regime, for instance, India is now very much at the top table or an indispensable member of small group negotiations. Its membership of the BASIC coalition was viewed by many as a way to strengthen collective bargaining and ensure that India had a say in the final outcome of talks in Copenhagen. Although small groups have their benefits for efficient decision-making, they need to maintain open membership to gain legitimacy.¹⁹ The manner in which the Cancún climate talks were handled, with regular consultations with parties and coalitions, helped to restore some of the lost trust in the negotiation process.

At the same time, crucial energy-related forums (like the IEA or ECT) might or might not exclude India. Also, decisions taken in one forum (say, the G20’s pronouncements on energy subsidies) may have implications for negotiations and enforcement rules elsewhere. The links between energy and climate issues mean that

¹⁶ Victor, D. G. and Yueh, L. (2010) ‘The New Energy Order: Managing Insecurities in the Twenty-First Century’, *Foreign Affairs* (January/February), pp. 71-72.

¹⁷ Keohane and Victor (2011).

¹⁸ Ghosh, Arunabha (2010b) ‘Harnessing the Power Shift: Governance Options for International Climate

Financing’, *Oxfam Research Report*, October.

¹⁹ Ghosh, Arunabha (2010a) ‘Making climate look like trade: Questions on incentives, flexibility and credibility,’ *Centre for Policy Research Policy Brief*, March.

informal networks will be an important route for Indian diplomacy. But the right balance between formal institutions and loose coalitions and groups will demand continuous evaluation.

Over-the-horizon developments

Notwithstanding the current complexity, new developments can be anticipated, which will push the existing governance arrangements to their limits.

The first is geoengineering, a blanket term that covers a wide range of technologies geared towards removing carbon dioxide from the atmosphere or reducing the amount of sunlight that reaches the earth's surface (thereby reducing surface temperatures). Geoengineering may be considered a 'plan B' in the fight against climate change when other mitigation measures fail. Despite relatively low estimated costs, there are significant risks including changing rainfall patterns. Significantly, the technologies could be deployed unilaterally, thereby adding to concerns about potential military uses.

The problem is that there are no clear rules on how research into these technologies may be governed and, more importantly, how to deal with the consequences were the technologies deployed.²⁰ At present, a number of different regimes could have

²⁰ Blackstock, Jason, and Arunabha Ghosh (2011) 'Does geoengineering need a global response – and of what kind?' *Background Paper for the Solar Radiation Management Governance Initiative*, Royal Society UK, Chicheley.

some relevance in governing geoengineering. These include: the Convention on Long Range Transboundary Air Pollution, the International Maritime Organization, the Convention on Biological Diversity, the United Nations Environment Programme, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, the UN Framework Convention on Climate Change, and the Montreal Protocol on Substances that Deplete the Ozone Layer. But there has been no effort so far to evaluate how the overlapping mandates could be made to cohere.

A second set of developments may be linked to the melting of Arctic sea ice, which would open up questions about accessing mineral resources under the sea bed. The UN Convention on the Laws of the Seas would be one regime that could govern the developments but plurilateral regimes might develop among Arctic countries. India's interests would be affected to the extent that new regimes give or deny it access to these new resources.

III. What India needs from the climate and energy regimes?

Globally, some 1.6 billion people live without electricity and India has the largest share. Half of all rural households and 12 per cent of urban dwellings in India do not have access to electricity.²¹ Compared to 2004-05, electricity consumption in India is

²¹ UNDP (2007).

expected to increase by six to seven times to 3600-4500TWh by 2030.²² In order to meet the growing demand, the Planning Commission estimates that by 2031-32 (the end of the fifteenth five-year plan) India would need a total installed capacity of around 800GW, up from around 128GW today.²³ To put this figure in context, the increase is roughly equivalent to the total installed power generation capacity in China currently.

Energy security has a clear international dimension for India. Coal is the dominant primary source of commercial energy in India. This picture is not set to change in the near-term future. The coal sector currently accounts for over half of commercial energy consumption – and demand is rising. It is projected to increase from 432 million tonnes in 2005 to 670 million tonnes in 2011. At current levels of usage, India has an estimated 44 billion tonnes of coal reserves – sufficient for 30-60 years at current levels of consumption.²⁴ But rising demand combined with low efficiencies in extracting coal mean that coal imports could

account for up to 45 per cent of coal demand by 2030.²⁵

Moreover, India's dependency on oil imports has risen sharply. While India's oil consumption grew at an annual rate of 8.3 per cent during 1994-2003, its domestic crude oil production managed only a 2.3 per cent annual rate of growth.²⁶ Consequently, although India could meet 57 per cent of its oil needs in 1991, this proportion had dropped to 28 per cent by 2005.²⁷ The government estimates that, with a doubling or tripling of demand, imports could account for 90 per cent of oil needs by 2031-32.

The imperative of combating climate change cannot displace other pressing needs of energy supply and, through this, poverty reduction, educational attainment and gender equality, among other human development objectives. Policy makers in India have been unequivocal in asserting that national goals for economic growth and poverty reduction will not be compromised by participation in a multilateral climate change agreement. As the National Action Plan on Climate Change (NAPCC) puts it, 'Maintaining a high growth rate is essential for increasing living standards of the vast majority of our people and reducing their vulnerability to the impacts of climate change.'

²² Chikkatur, Ananth P. (2008) 'A Resource and Technology Assessment of Coal Utilization in India,' *Pew Center on Global Climate Change Coal Initiative Reports White Paper*, p. 4.

²³ Government of India (2006), *Integrated Energy Policy: Report of the Expert Committee*, August, New Delhi: Planning Commission, pp. xiii, 20-21.

²⁴ Chikkatur, Ananth P. (2009) Positioning the Indian Coal-Power Sector for Carbon Mitigation: Key Policy Options,' *Pew Center on Global Climate Change Coal Initiative Reports White Paper*, p. 26. New technologies can enhance the coal extraction potential, an assumption on which some argue that India's reserves can last 200 years.

²⁵ Government of India (2006).

²⁶ De Oliveira, Ricardo Soares (2008) 'India's Rise and the Global Politics of Energy Supply: Challenges for the Next Decade', *The Eleventh Vasant J. Sheth Memorial Lecture*, December, p. 3.

²⁷ Government of India (2006), p. 9.

From the global aggregate point of view, the populations of poor countries are starting from such a low base of energy consumption that projected increases will still be marginal. If the bottom half of India's population were all to be provided with electricity (not available at present), in the medium term these 78 million households would emit only 1–5 per cent of US emissions.²⁸ Moreover, even the top 1 per cent of Indians emit less than the global average of 5 tonnes of CO₂ equivalent (tCO₂e) per capita.²⁹

Therefore, India's demands from international regimes dealing with energy and climate can be summarised as follows:

1. Regimes must not restrict India's growth prospects by imposing limits on emissions or constraining choices pertaining to its energy mix.
2. They should facilitate access to predictable and affordable supplies of energy resources without threats of disruption.
3. Environmental concerns must be addressed equitably, thereby placing the burden of responsibility (preferably through legally enforceable commitments) on developed countries.

²⁸ Dubash, Navroz K., and Rob Bradley (2005) 'Pathways to rural electrification in India: are national goals also an international opportunity?', in Rob Bradley and Kevin A. Baumert (eds.) *Growing in the Greenhouse: Protecting the Climate by Putting Development First*, Washington DC: World Resources Institute.

²⁹ Greenpeace India (2007) 'Hiding Behind the Poor', Bangalore, India: Greenpeace India Society, October 2007, p.13.

4. Shifts in energy-related technologies should be supported by access to financial support to cover the incremental costs imposed on India.

IV. India's response so far – and its limits

One response in India has been the search for "equity oil" whereby India has acquired stakes in energy investments in more than thirty countries. But for various reasons, India's ability to follow a purely mercantilist strategy is limited. Indian companies have also collaborated with Chinese ones, for instance in the Greater Nile Petroleum Corporation in Sudan. However, such instances are fewer and public perception is more about rivalry between the two countries to secure energy supplies. The Cabinet's Empowered Committee of Secretaries has also disapproved of price wars to win foreign acreage.³⁰ Even the Planning Commission views equity oil as primarily a 'commercial decision'.

The question for India, then, is how to manage its dependency via international energy markets. One strategy is by policing the Indian Ocean's sea lanes. A more important challenge is how to participate in forums for rulemaking. India faces pressures of meeting energy demand, on one hand, and adhering to a principled foreign policy (particularly when it comes to dealing with undemocratic regimes). There are, unfortunately, no fully inclusive global

³⁰ De Oliveira (2008), p. 18.

forums where norms and/or rules on energy trade and investment may be decided.

At the same time, there are few guarantees when it comes to dealing with countries where regimes might look stable at present but which may face unrest in future. The recent political unrest across West Asia shows how quickly supply lines could get affected. Even if the largest producer (Saudi Arabia) increases supply, the quality of crude in Algeria and Libya is markedly different (lighter and sweeter), which means that even small disruptions can press against already stretched production capacities.³¹ Moreover, oil companies belonging to non-western countries are also susceptible to expropriation of their foreign assets and investments.

Meanwhile, in the climate change arena, India has gradually shifted away from its traditional stance. It recognises that it has a responsibility for its own national interest to take steps to reduce its energy intensity, promote alternative energy technologies and increase forest cover (among other strategies) while also preparing to adapt to a changing climate. At the climate negotiations in Copenhagen and Cancún it has been party to compromises to promote emission reduction commitments by all major economies (developed and developing) as well as greater transparency in the policies and actions of developing countries. In turn, it expects that rich countries will play a key role in providing

‘fast-start’ and long-term climate finance (including by creating a new Green Climate Fund) and that technology cooperation will be promoted through networks of innovation centres. What is unclear is whether the elements of these compromises will be legally binding and how they would be enforced. If countries fail to live up to their commitments, then India will have to find alternative avenues to pursue its interests on climate change while not compromising on its energy imperatives.

V. Trade-offs and opportunities in global energy and climate governance

From the above, we can identify at least six significant trade-offs that confront India across international regimes.

1. Access to energy resources versus the constraints that might be imposed on it by the climate regime;
2. Securing energy supplies through trade and investment institutions versus aiming for energy security via unilateral efforts to own oil and gas exploration blocks;
3. Ensuring access to external markets for its exports of environmental goods and services versus ensuring that trade rules are not linked to climate change in a way that inhibits exports of other products;
4. Maintaining its seats at the high tables of international decision-making (particularly in climate and trade) versus preventing exclusion

³¹ Morse, Edward L. (2011) ‘Oil and Unrest’, *Foreign Affairs*, 8 March.

from other plurilateral arrangements (especially in the energy domain);

5. Developing new technologies in collaboration with other leading economies versus securing access to significant multilateral financial resources for India's climate adaptation needs;
6. Ensuring freedom for its scientific community in pursuing new technologies, such as geoengineering, versus preventing unilateral deployment by other countries that may adversely affect India's rainfall and other climate patterns.

Given the aforesaid changes and challenges, India has to find opportunities to shape governance at different levels. A few ideas are listed below.

Multilateral

- India must use multilateral forums, not just the UNFCCC but also the WTO, G20, etc., to preserve recognition of its development and poverty reduction priorities. These concerns must be enshrined in legal terms so that, even as India's status as an emerging power gains currency, other countries do not lose sight of its vast development challenges.
- India should also pursue multilateral routes for settling disputes on access to energy resources and challenge sudden restrictions on energy flows from major suppliers. This will be particularly

important for disputes related to the treatment of energy subsidies, support for domestic clean technology industries, fair access to intellectual property, and for pre-empting environment-related trade sanctions.

Regional/Plurilateral

- In the absence of an overarching multilateral energy regime, India's focus must be on regional or plurilateral forums for energy security, especially in conjunction with Asia-Pacific countries. A strategy reliant mostly on unilateral mercantilist policies is unlikely to succeed given India's limited diplomatic and financial resources compared to other major energy demanders. In 2009 India and the IEA endorsed a joint statement to better align their energy policies, enhance energy security and develop transparent and efficient energy markets. There have also been pronouncements to improve links with the ASEAN Centre for Energy.
- India should actively participate in designing a decentralised climate finance mechanism, with elements embedded in the UNFCCC but which also coordinates with other regional institutions. This would be a pragmatic approach given the fraught negotiations over finance in the climate regime and yet give India a say in developing a mechanism that can effectively leverage public and private sources of finance for multiple ends.

- India will also need to participate in plurilateral arrangements that might emerge in the near future to govern over-the-horizon issues, like geoengineering or access to new mineral resources. Although India has an interest in opposing overly constraining rules, it would make more sense for it to participate in these forums than reject them outright. Moreover, India's participation in the early stages of rule-making would also serve well when legal and customary precedents are used to extend the rules to a wider set of countries or even at the multilateral level.

Bilateral

- The strongest motivation to pursue deep bilateral relations is to secure access to energy and climate-related technologies.

India offers a vast market for future investments in clean technologies. But incremental costs are high. For instance, graduating from subcritical coal plants to supercritical or high-efficiency combined cycle plants can impose additional capital costs of \$5-8 billion each year for the next two decades.³² Similarly, India now has the fifth highest installed renewable energy capacity but with the potential for a lot more. A new bilateral initiative, the India-U.S. Joint Clean Energy Research and Development Centre, promises to leverage \$50 million of co-financing by the two governments with an equivalent amount of money from private participants operating as consortia across the two countries. Similar partnerships with Europe and with China could widen the scope of R&D in clean energy technologies.

³² Ghosh, Arunabha, and Watkins, Kevin (2009) 'Avoiding dangerous climate change – why financing for technology transfer matters', *Global Economic Governance Working Paper*, 2009/53, University of Oxford.

ANNEX VI

Ocean Governance: Emerging Framework for Sustainable Use of the Maritime Domain

Sunil Agarwal

“Ocean governance” covers many aspects of ocean affairs, the required framework and mechanisms, structures for decision-making at national, regional and international levels, structures for cooperation at all levels, structures for special areas such as the environment, climate change, marine biodiversity, transfer of technology, marine scientific research, and modes of cooperation and coordination.

One of the main reasons for the growing interest in ocean governance is the increased awareness of the predominant role of the oceans, seas, and coastal areas to support human life and the corresponding imperative to develop these in a sustainable manner.³³

Ocean governance, in general, encompasses the following framework:

- 1) Legal Framework
- 2) Institutional framework
- 3) Mechanism of implementation

³³ United Nations Conference on Environment & Development. Río de Janeiro, Brazil, 3 to 14 June 1992. Agenda 21 – Chapter 17. Protection of the Oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources. (Par.17.1), P. 167-168

I. Legal framework

This framework consists of international and regional conventions as well as agreements and programmes, which establish legal provisions for the management of ocean affairs. State parties to these conventions have obligations to incorporate and implement the same in their national legislation.

a) Law of the Sea Convention (LOSC)

The UN LOSC (1982, also referred to as UNCLOS) is one of the most important sources of ocean governance because it establishes a system of rules and practices to provide a structure for ocean governance. Moreover, it establishes a holistic and inclusive approach predicated on the assumption that oceanic/maritime issues are closely interrelated and need to be considered as a whole.

b) Related Developments in International Law

- Instruments originating from the International Maritime Organization (IMO), the United Nations Conference on Trade and Development (UNCTAD), Food and Agriculture Organization of the United Nations (FAO), among others.
- 1992 United Nations Conference on Environmental and Development (UNCED) & World Summit on Sustainable Development (WSSD). It has been established that an important objective is to encourage countries to promote and apply the concept of sustainable development. In addition,

through the Rio Declaration on Environment and Development and Agenda 21, the UNCED also recognises determined principles, which should be observed by the states in their reforms of international and national ocean law and policy. Within these principles it is important to highlight: integration, precaution, pollution prevention, inter-generational equity, polluter pays, public participation, community based management, and indigenous rights.

- Other Regional Conventions, Agreements and Programmes. Among them can be included the regional conventions adopted under the regional sea programme of the United Nations Environment Programme (UNEP) in 1974. In this context, it should be highlighted that today, more than 140 countries participate in 13 Regional Seas programmes established under the auspices of UNEP: the Black Sea, Wider Caribbean, East Africa, South East Asia, ROPME Sea Area, Mediterranean, North-East Pacific, North-West Pacific, Red Sea and Gulf of Aden, South Asia, South-East Pacific, South Pacific, and West and Central Africa.

II. Institutional framework

The institutional framework is composed of the administrative mechanisms that are required to establish systems of coordination and cooperation between all the actors who have a role in the management of the oceans.

a) Institutions established by Law of the Sea Convention (LOSC)

- International Seabed Authority (ISBA): Established as a custodian for the Common Heritage of Mankind, it is an autonomous international organisation that came into existence on 16 November 1994 with the entry in force of the UNCLOS. Its principal function is to regulate deep seabed mining.
- Commission on the Limits of the Continental Shelf (CLCS): This is a specialist body whose main objective is to assist coastal States on matters related to the claims for extending the outer limits of their continental shelf beyond 200 nautical miles.
- Regime for the Peaceful Settlement of Disputes and the International Tribunal for the Law of the Sea (ITLOS): Established by Part XV of the UNCLOS, this mechanism is constituted by the following alternatives: the International Tribunal for the Law of the Sea, the International Court of Justice, an arbitral tribunal (Annex VII to the UNCLOS) and a special arbitral tribunal (Annex VIII to the UNCLOS).
- The Meeting of the State Parties (SPLOS) is carried out to conform to Article 319, paragraph 2 (e) of the UNCLOS and is related with administrative matters.

b) United Nations Open-ended Informal Consultative Process on Oceans (the Consultative Process)

It was established by the General Assembly in 1999. It has the following main tasks: (1) to analyse developments in ocean affairs

according to the legal framework provided by the UNCLOS and the objectives of Agenda 21; (2) to propose issues to be considered by the General Assembly; and (3) to identify areas where cooperation and coordination at the intergovernmental and interagency levels should be enhanced.

c) Post-UNCED Developments Guiding the Institutional Framework

- GPA Programme: UNEP leads the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA), which was adopted in 1995. This GPA has the main tasks of establishing guidelines and instructions so that the national and regional authorities can take different actions to prevent, reduce and/or eliminate marine pollution from land-based activities.
- Integrated Coastal/Ocean Management: Its objective is to establish the requirements and characteristics of a holistic approach for the sustainable use of ocean space and marine resources.

III. Mechanisms of implementation

In implementing an ocean governance framework, the following levels should not only be taken into consideration, but mechanisms of coordination and cooperation should be established between them in order to avoid fragmented decision-making and exclusion of stakeholders.

a) Local

- The principle of community-based management established in Principle 22

of the Rio Declaration on Environment and Development needs to be developed. It maintains that the state should recognize and to support the effective participation of indigenous communities and other local communities to obtain sustainable development.

- Incorporation and participation of stakeholders within a system of co-management requires that they take on the responsibility, with the governments, for management of resources and ocean stewardship.

b) National

- Mechanisms of coordination and cooperation should be established between all the governmental agencies, ministries and levels of government (local, national) that have competence in the scope of ocean governance.
- Incorporation and participation of stakeholders within a system of co-management.

c) Regional

- The Regional Seas Programme of UNEP and the GPA should be strengthened.
- The participation and assistance of regional inter-governmental organisations (RIGOs) are required.
- An organ of management with a trans-sectoral and inter-disciplinary mandate has to be established for the sub-regional implementation of all the Conventions, Agreements and Programmes.

d) International

- The General Assembly of the United Nations: This global institution is the

competent body to carry out the implementation of ocean governance provisions at this level. The General Assembly conducts annual reviews of ocean affairs and the law of the sea, based on reports prepared by the Secretary General and the recommendations proposed by the Consultative Process.

From the above framework, it can be observed that there is indeed an emerging ocean governance framework that is present and functional at the international, regional and national levels.

IV. Suggestions

Ocean Governance and Management (OGM) is evolving and India needs to rigorously and swiftly address this in a holistic manner. A review of the many state agencies that are stakeholders, or which have a regulatory–cum-denial function to perform in matters maritime, need to be identified across the centre-state-district levels and apprised of OGM principles and tenets. India’s comprehensive national security is inexorably linked with the maritime domain and is the equivalent of Dick Whittington’s cat.

Annex VII

India's Policy on Space and Application of Space

Srinivasapuram Krishnaswamy

I. Objective

The objective of this brief is to examine India's policies on matters concerning use and application of Outer Space in pursuance of its national interest and yet remain a strong supporter of global efforts in exploring Space and Outer Space for the goodness of mankind and the universe.

II. Situation

Space exploration was a fall-out of the Cold War, unlike exploration of air, which was realised through Man's quest for adventure. While suitable technologies for space exploration were being developed, the driver has been the need to buttress national security apparatus such as military and intelligence capabilities. The Space Order that emerged was focused on the national security plane. However, as people's curiosity and interest grew, space exploration took a new dimension, that of "business interest" that also helped to augment the cost of the strategic programme. In exploring policies with respect to Space and Outer Space, one should not lose sight of commercial and non-strategic interests, which could well impinge on policy regimes. Therefore, national interest on Space would include strategic and commercial interests. Commercial interests could well influence or

predominate military interests, as is happening in the use of space for communications.

III. Technology and costs

Prof. S. Chandrashekar's paper on the Emerging World Space Order could well form a base for our analysis.³⁴ However, economics and technology may require greater elaboration and these two issues are intertwined.

Chandrashekar's analysis indicates that Indian assets of \$38,400 million have been deployed already towards space-related systems and infrastructure. Considering the very basic essentials that our space programme meets, it would require sizable budget support to maintain credibility. This could mean an exponential growth in investment. However, in practice there would be restraints imposed by budgets and public support.

For successful exploitation and use of space, it is essential to provide adequate R&D backup and effective collaboration with other space-faring nations. International collaboration also helps to get vital technological inputs, which India would always be dependent upon for different stages of technology evolution. The

³⁴ Chandrashekar, S. (2010) "The Emerging World Space Order and Its Implications for National Space Policies," *Paper presented at the International Symposium on Earth Observation Systems: Policy and Coordination Framework*, 23 March; http://mapmiddleeast.org/2010/pdf/MME10_Chandrasekhar.pdf.

cryogenic engine is one such example, whereby India collaborated effectively in obtaining the engine from Russia until indigenous development could meet domestic requirements. Collaboration is also essential for ground-station support beyond national geographic boundaries.

A good strategy would be for India to explore significant commercial exploitation that could bring in investments. Currently, commercial exploitation is broadly limited to communications and remote sensing surveys. There is a level of confidentiality and secrecy over our space programmes. Greater awareness needs to be brought into the public debate and commercial space ventures should be presented as useful and economically attractive. Policies should dovetail the requirements to "market" space as a facility and a public service. A good example is that of Richard Branson's Virgin Galactic program and his ambition to establish a Space Hotel. Space tourism is now real when it was an exploration of idea only a decade ago. Commercial usage may dictate Space Laws in the foreseeable future, as is the case with spectrum usage in communications, over which the military used to have total freedom. Therefore, the laws that we envisage must take into consideration our technology dependence, commercial needs as well as public support.

IV. Threats

The Ministry of Defence is well aware of exploitation of space towards national defence. It is capable of developing programmes to meet the emerging

requirements in this regard. However, its involvement is necessary to ensure that laws and rules that are developed on the use of space and outer space meet India's genuine concerns. Pakistan, with its limited investment and technology potential is likely to focus on systems that could thwart Indian interests. In this manner, it can checkmate Indian interests. China's approach would be similar, in addition to developing an overwhelming space programme that could seriously limit India's national interests.

Therefore, India's space policies and its vision on space regimes must focus on seriously restricting the interception of space-based vehicles and systems and not permitting space-based weapons. Similarly, laws should be considered to prohibit jamming of space vehicles or space-based communication systems.

Other forms of threats could be of those in the cyber domain. We expect a plethora of commercial interests to impinge on national interests (notice the concerns over Google in China or Blackberry in India). We expect technology in civilian applications to be nearly on par with strategic systems and probably excel in certain areas. Laws that we support should be innovative to take full advantage of commercial technology while prohibiting serious interference on strategic freedom. This would require strong technical support to the lawmakers and negotiators. One interesting possibility is to encourage civilian use of space. A plethora of civil space applications could seriously jeopardise the military use of space and,

thereby, save humanity from any serious catastrophe.

V. Space laws

Currently, two codes of conduct for overseeing space activities are known, namely the 'EU Code' and the 'Model Code of Conduct' prepared by the U.S.-based Stimson Center. These could serve as the canvas to work on as multilateral rules are developed. India would seek freedom to explore and utilise space in constructive areas and for protection of its national interests without impinging on the freedom of others. It is important that India addresses all relevant issues and takes active part, instead of becoming a slave to decisions that were taken behind India's back. Broadly, India's views and consensus have not been sought yet. Fortunately, India

has the muscle, having significant inventory of its own in space and cannot be ignored. India, through a firm approach, could contribute immensely in developing rules that would promote peaceful exploitation of space and, importantly, in keeping space operations safe, for instance with strong enforcement against space litter and by effective management.

VI. Space programmes

While India has many joint ventures with nations that have space assets (other than China), it must build strategic alliances with countries that have similar interests. This would help in substantially decreasing the threat to programmes and assets and equally importantly share technology and resources. This could well be termed as a Strategic Alliance to signify India's intentions.

Annex VIII

Peace and Security

Radha Kumar

In the past decade, two issues have emerged as key in global peace and security: the Responsibility to Protect (R2P) and peacebuilding. Both have acquired salience by their deployment in India's immediate and wider neighbourhood; the Indian government and policy community are wary of the former and active in the latter. Thus, for example, though India (along with China) modified its position to accept R2P in cases of mass violations and/or genocide, the Indian government was uncomfortable with the use of R2P in military support of the Libyan opposition; and abstained from the UNSC vote on Syria, suggesting accelerated engagement with the Syrian government to persuade it to broker peace with its opposition.

As far as peacebuilding is concerned, India has been a member of the UN Peacebuilding Commission (PBC) since its inception and has been an active participant in its operations in Africa as well as its discussions on doctrine and approach. Indeed, the Indian government projects this activism as commitment to a reformed UNSC in which India would be a permanent member. In its own neighbourhood, however, India has gone it alone; the PBC is not involved in peacebuilding activities in Afghanistan and/or Sri Lanka, and there is little discussion of its being involved. India, thus, has no forum through which to address its policy interests regarding international

peacebuilding actions and/or programmes in South Asia.

In both instances, therefore, India is far from being a rule-maker or even a rule influencer in the areas that have a direct or indirect impact on India's own peace and security. The transitions taking place in the Arab world affect trade and energy supplies; they also affect the large Indian guest-worker population. Even more important, the conflict between different political and peacebuilding initiatives by members of the international community in Afghanistan and Sri Lanka, as well as in Pakistan and Nepal, directly impact on India's security as well as on development across South Asia.

The recently signed Afghanistan-India Strategic Partnership, which is balanced by new trade and visa agreements with Pakistan, indicates that the Indian government is taking a proactive approach to neighbourhood security dilemmas. To a lesser extent, India's participation in the Libyan reconstruction conference and its offers of electoral aid and expertise in democratic institution building to Arab countries undergoing political transition also indicate a shift towards putting domestic and/or national interests at the core of policy. But are these steps enough?

I. R2P

There is little doubt that R2P will expand as a principle in the coming years, though its support through military operations will hopefully be bound by rules that are yet to be formulated and agreed. One option in this

context is to push for R2P military operations to be conditional on wide regional and international acceptance and/or a pre-commitment to international engagement in post-conflict peace and reconstruction through the UN or regional organisations. In other words, rule-making not only for the principle of R2P and the conditions under which military operations for R2P take place, but also for carrying out that principle in the post-conflict phase.

Another option would be to stress the civilian aspects of R2P, especially in the form of prevention. This would entail strengthening institutions such as the UN Refugee Agency (UNHCR) (India has yet to sign the convention) as well as mechanisms for a host of development and capacity-building aid prior to the outbreak of violent conflict (or in its early phases).

A third option would be to initiate an R2P discussion amongst Asian countries, where there are several regional cooperation organisations (ASEAN, SAARC, SCO) and a nascent regional security forum (ARF). Such a discussion could begin to outline R2P rules, especially at the operational level.

II. Peacebuilding

As noted above, India is a founder member of the PBC and is active in both its doctrinal discussions and its operations. At the doctrinal level the Indian government has stressed that while security is ‘the key pillar for peace-building...(it is) equally important to focus on economic opportunity,

particularly for the youth in tandem with political and social stability,’³⁵ including ‘the creation of political and administrative institutions that improve governance and include all stakeholders, particularly the weak and underprivileged.’³⁶ Moreover, in order to ensure “national ownership” there should be effective dialogue between the PBC and the government and civil society of the country in which peacebuilding operations take place.

The Indian government’s engagement with peacebuilding currently appears to be on a series of tracks. Foremost is to work under the UN’s aegis and with the Peacebuilding Commission, both operationally and in the formulation of doctrine. On the latter, India works within the UN and seeks improved coordination between the P5 and elected members of the UNSC as well as between the UNSC, the General Assembly and the Peacebuilding Commission. At the same time, the Indian government is working with Brazil and South Africa through the three-country IBSA mechanism, the African Union and regional African groupings, ‘to promote South-South perspectives on development and security.’

³⁵ Statement by EAM at the Security Council on Post-Conflict Peace-building, New York, 31 October 2011

<http://www.mea.gov.in/mystart.php?id=515818471>.

³⁶ Statement by EAM at the Security Council on Maintenance of International Peace and Security: Interdependence between Security and Development, New York, 11 February 2011 <http://www.mea.gov.in/mystart.php?id=515817166>.

Secondly, the Indian government's peacebuilding activities are not confined to UN operations alone. In West Asia, India contributes development support to the Palestinian Authority of USD 10 million annually as untied budgetary support, along with grants to the United Nations Relief and Works Agency (UNRWA).

India's biggest investment in peacebuilding is in Afghanistan (USD 1.5 billion to date). Though it has "gone it alone" in Afghanistan, the relative success of Indian peacebuilding there, as measured by the spread of activities across Afghan provinces and effective use of resources, has attracted international attention and provided useful models for agencies in the field.

Given this proactive approach, would India oppose PBC operations in South Asia? The absence of the PBC from its neighbourhood is a mixed blessing for India. On one hand, it allows for flexibility through bilateral initiatives; on the other, it leaves coordination between actors in peacebuilding as an *ad hoc* and circumstantial option. In Afghanistan this absence has allowed peacebuilding to become subordinate to security rather than act as a driver for it; there is, too, an argument in favour of discussing PBC operations in Nepal and Sri Lanka as a means of preventing overlaps and conflicts. (Bearing in mind that the PBC is a relatively low-scale body in the kinds of operations it

undertakes, such a presence would not infringe bilateral aid for state- or nation-building.)

The underlying issue for India is the question of power. Engaging in international peacebuilding discussions and operations outside of South Asia through the UN will demonstrate India's reliability as a partner but will not give momentum to India's pursuit of peace in its neighbourhood and, by extension, will not demonstrate India's willingness to exercise power (through peacebuilding rather than military means).

India's own peacebuilding operations in Afghanistan are buffeted by changes in strategy and tactics by the Afghan government and international, including cross-border, actors. The Sri Lankan government is not exactly aiding peacebuilding initiatives for Tamil areas, obstructions that impact on politics in Tamil Nadu. The new breakthroughs with Nepal could be jeopardised if its government continues to play influential actors off against each other.

Bilaterally, India's policy of pursuing headway with its neighbours, at the pace and with the doggedness that is required, appears to be paying off. But each bilateral initiative could be cushioned by multilateral support of the sort that is likely to ensue if the PBC were to initiate activities in Afghanistan, for example.

