South Asia’s Nuclear Security Tightrope
By Debi Prasad Dash

The volatile South Asian region has long suffered from war and instability. In that context, the tensions between two nuclear-armed states, India and Pakistan, pose a special security challenge, writes Debi Prasad Dash. Despite legal safeguards, the danger of terrorists seizing nuclear material is real and frightening.

“NUCLEAR PROLIFERATION and nuclear security remain a serious threat in our neighborhood,” said Indian Prime Minister Manmohan Singh, addressing the country’s top military commanders in October 2011. He is right. The effects of a major nuclear attack or accident are so widespread that they cannot be confined within national boundaries. Nuclear security is, therefore, not just a national or regional responsibility, but the responsibility of the entire international community.

Nuclear security is, however, also an esoteric concept; people often confuse and use “safety” and “security” interchangeably. Although safety issues have a bearing on nuclear security, both should be understood as different concepts and analyzed accordingly. The International Atomic Energy Agency (IAEA) has a working definition of nuclear security as: “The prevention and detection of, and response to, theft, sabotage, unauthorized access, illegal transfer or other malicious acts involving nuclear material, other radioactive substances or their associated facilities.” But there is no universal acceptance of this definition.

UN Security Council Resolution 1540 (2004) imposes binding obligations on all states “to establish domestic controls to prevent the proliferation of nuclear, chemical and biological weapons, and their means of delivery, including by establishing appropriate controls over related materials.” The resolution defines a non-state actor as “an individual or entity, not acting under the lawful authority of any State in conducting activities which come within the scope of this resolution.” However, this definition poses problems in a situation where non-state actors act under the authorization of a state. When a non-state actor is sponsored, funded and supported by a national government, would it not lose its status as a non-state actor since it would be working under the lawful authority of a government in conducting activities that may come under the scope of UNSCR 1540? The definition of a non-state actor thus needs modification.

In the context of South Asia, comprising Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka — and considered by many to be the most dangerous nuclear fault line in the world — the concept of nuclear security assumes greater significance. This region has witnessed more turbulence than any other region in the world. Other than Bhutan, all of the South Asian countries have either engaged in war or been drawn into major insurgencies or civil unrest, making the region vulnerable to instability and organized crimes such as drug trafficking, smuggling and terrorism. The influence of al-Qaeda and the Taliban in Pakistan and Afghanistan has security implications for the entire region. No wonder then that the region has a very large number of terrorist organizations on the proscribed lists of the UN and the US. India has listed 35 terrorist organizations under its Unlawful Activities (Prevention) Act.

The most important factor, however, is the presence of two neighboring nuclear weapons states. India and Pakistan have gone to war four times, and the Nov. 26, 2008, terrorist attack on Mumbai pushed India to the limit of its endurance. The growing influence of nuclear-powered China in the region also has significant implications for global security, particularly against the backdrop of strained Indo-Pakistan relations.

Both India and Pakistan remain opposed to the Nuclear Non-Proliferation Treaty (NPT), because they find the provisions of the treaty to be discriminatory. Despite the fact that both countries have shown the world that they possess nuclear weapons, the treaty would not recognize them as nuclear weapons states. The other six countries in the region, however, are parties to this treaty. India and Pakistan also have not signed the Comprehensive Test Ban Treaty.

Being a victim of international terrorism for decades, India is deeply committed to the objectives of disarmament and non-proliferation, and has demonstrated this by implementing its obligations under UN Security Council Resolutions 1540 and 1373. It fully supports appropriate and effective measures to prevent non-state actors from gaining access to weapons of mass destruction (WMD) and their means of delivery and over the years has enacted effective laws, and regulations to prohibit WMD access to non-state actors and terrorists. India has instituted comprehensive administrative, legislative and security measures to ensure the safety and security of sensitive materials, facilities, technology and equipment.

But India is not a member of any of the four major export control regimes, namely the Wassenaar Agreement, the Nuclear Suppliers Group, the Missile Control Technology Regime and the Australia Group. India is a party to the Convention on Physical Protection of Nuclear Material (1979). India also signed and ratified the International Convention for the Suppression of Acts of Nuclear Terrorism (2005) in 2006.

LEGAL PROTECTIONS
India has a robust legal system and it has adopted a large number of laws in the field of WMDs, both prior to Resolution 1540 and thereafter, namely:
• The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act 2005
Foreign Trade (Development and Regulation)

Atomic Energy Act 1962 and Rules

The SAARC Convention (Suppression of Terrorism) Act, 1993

Unlawful Activities (Prevention) Act 1967, as amended in 2004 (Anti-Terrorism Act)


India has adopted a broad-spectrum definition of terrorism. The Unlawful Activities (Prevention) Act 1967, as amended, covers terrorism and its links with weapons of mass destruction. The Atomic Energy Act of 1962 provides the legal framework for the development, control and use of atomic energy in India and use of atomic energy for civilian purposes and for regulating associated activities. The government exercises strict control over all activities related to atomic energy. The Nuclear Material Accounting Cell of the Department of Atomic Energy is responsible for the State System of Accounting and Control for nuclear materials. India is committed to its safeguards agreements concluded with the International Atomic Energy Agency. India is also a state party to the Convention on Physical Protection of Nuclear Materials and ratified the Convention on Nuclear Safety in March 2005.

India has always exercised control over the export of WMD-usable materials, equipment and technologies. Long before Resolution 1540, India enacted an export control law to regulate this sector. In fact, the first control over exports of such materials was in place in 1947 in the form of controls on monazite and thorium nitrate export.

A comprehensive list of controlled “Special Materials, Equipment and Technology (SMET)” was included in India’s Export-Import Policy in 2005. In 2000, the Director General of Foreign Trade had specified a list of “Special Chemicals, Organisms, Materials, Equipment and Technologies” (SCOMET), the export of which is either prohibited or permitted only under license. The various lists are periodically reviewed and updated. India also has signed the declaration on implementation of the World Customs Organization (WCO) 2005 Framework of Standards to Secure and Facilitate Global Trade (SAFE). Provisions are also included in The Customs Act 1962 for prosecuting customs officials for conniving in fraudulent exports, including those on proscribed lists. The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act 2005 (WMD Act), an integrated and overarching legislation on prohibiting unlawful activities in relation to weapons of mass destruction, their delivery systems and related materials, equipment and technologies, adequately meets the requirements of the UNSC Resolution 1540. Pakistan, too, has enacted laws, namely:

- The Nuclear Safety and Radiation Protection Ordinance of 1984 and Regulation of 1990, which contain provisions for control of import/export of nuclear substances and radioactive materials.
- The Nuclear Regulatory Authority Ordinance, 2001, for controlling, regulating and supervising all matters related to nuclear safety and radiation protection measures.
- The Export Control on Goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and their Delivery Systems Act, 2004, a comprehensive national legislation to further strengthen controls on export. It provides for imprisonment of up to 14 years, fines of up to 5 million Pakistan Rupees or both, and an offender’s property and assets are liable for seizure.
- Pakistan has also been a party to the Convention on Physical Protection of Nuclear Material since 2000 and has formally informed the IAEA regarding its voluntary commitment to follow the requirements of the Code of Conduct for the Safety and Security of Radioactive Sources. But Pakistan has not yet signed the Nuclear Terrorism Convention 2005.

There are those who feel Pakistan’s refusal to adopt a no-first-use policy breeds mistrust, uncertainty and skepticism. This gives rise to worries that Pakistan’s military could launch them against India should a threshold level of Islamabad’s choosing be reached.

In May 2006, Pakistan approved a Nuclear Security Action Plan which aims at (1) strengthening the safety and security of nuclear and radioactive materials and facilities containing such materials; (2) prevention and detection of illicit trafficking in nuclear and other radioactive materials; and (3) responding to incidents of illicit trafficking and nuclear and radioactive security emergencies. The National Command Authority Ordinance 2007 was promulgated to further strengthen and augment the national strategic regime.

Since 2005, Pakistan has participated in the IAEA’s Illicit Trafficking Database, which is a voluntary reporting mechanism for incidents of illicit trafficking and other unauthorized activities involving nuclear and other radioactive materials. The database is meant to strengthen nuclear security worldwide and to prevent nuclear and radiological terrorism. In June 2007, Pakistan announced its participation in the Global Initiative to Combat Nuclear Terrorism by endorsing the Statement of Principles of the Initiative. Pakistan is also participating in the United States Container Security Initiative, under which containerized cargo bound for the US is targeted and screened before leaving Port Qasim, Karachi. It has also signed the Declaration on Implementation of the WCO’s SAFE Framework.

It thus appears that the de jure control regime is adequately in place in both India and Pakistan; the de facto control regime, however, is highly ineffective in many countries in the region.

BRINKMANSHP: INDIA AND PAKISTAN

Since 1974, when India first conducted a peaceful nuclear explosion, it has demonstrated its willingness to behave as a responsible nuclear-capable state. The growing nuclear co-operation between India and Pakistan, however, made India rethink its self-imposed moratorium, and it came out in the open by exploding a nuclear device in 1998. Atal Behari Vajpayee, when he was Indian prime minister, made a statement saying that India did not intend to use nuclear weapons for “aggression or for mounting threats against any country; these are weapons of self-defense, to ensure that India is not subjected to nuclear threats or coercion.” Since the 1998 test, India has made a no-first-use pledge and adopted a moratorium on nuclear testing. It has pursued the peaceful use of nuclear energy by refraining from the use of nuclear weapons even in the face of numerous attacks on Indian soil coming from Pakistan.

But the bomb test has not worked to India’s advantage. With the introduction of nuclear weapons, India lost its superiority over Pakistan in relation to conventional weapons. The very fact that Pakistan followed suit within days proves that...
Pakistan had been clandestinely preparing this capability for years. While Pakistan’s nuclear program is solely aimed at India, its arch rival since 1947, India is caught between two nuclear powers, China and Pakistan. So while Pakistan can be satisfied in developing a delivery system that can reach the eastern part of India, about 3,000 kilometers away, in order to achieve credible deterrence India has to deploy a system that can reach targets in China, more than 5,000 kilometers away.

India adopted a nuclear doctrine in 2003 with eight components that combine deterrence, non-use and non-proliferation: “(1) building and maintaining a credible nuclear deterrent; (2) no first use of nuclear weapons; (3) nuclear retaliation to a first strike will be massive and designed to inflict unacceptable damage; (4) nuclear retaliation will be authorized by civilian political leadership through the Nuclear Command Authority; (5) non-use of nuclear weapons against non-nuclear weapons states; (6) in the event of a major attack by biological or chemical weapons, it will have the option of retaliating with nuclear weapons; (7) continuance of strict control on export of nuclear and missile related materials and technologies, participation in the Fissile Material Treaty negotiations and continued observance of the moratorium on nuclear tests; and (8) continued commitment to the goal of a nuclear-free world, through global, verifiable and non-discriminatory nuclear disarmament.”

At the same time, to meet its growing energy needs, India has planned a major expansion of nuclear energy from a current 4,780 MW to reach 20,000 MW by 2020 and a projected 60,000 MW by the early 2030s, Dr. S. Banerjee, chairman of India’s Atomic Energy Commission, told a ministerial meeting of the IAEA in 2011.

“The safety track record of our nuclear power plants over the past 335 reactor-years of operation has been good,” Prime Minister Singh wrote in December 2011. Officials are quick to point to that record and to the Nuclear Power Corporation of India’s motto: “Safety First, Production Next.” The United States’ 123 Agreement on civil nuclear co-operation with India, the Nuclear Security Group exempting India from its conditions and Australia’s decision late last year to lift its ban on uranium exports to India all prove that India is perceived as a very responsible, if unofficial, member of the non-proliferation nuclear weapons club.

It is fair to view India’s no-first-use policy as contributing to strategic nuclear stability in the region and deterring a nuclear arms race with Pakistan. There are also those who feel that Pakistan’s refusal to adopt a no-first-use policy breeds mistrust, uncertainty and skepticism between the two countries. This gives rise to worries that Pakistan’s military, which controls the nuclear weapons, could launch them against India should a threshold level of Islamabad’s choosing be reached. Pakistan’s stance also adds confusion as India tries to determine its credible minimum deterrence.

In the meantime, of course, India and Pakistan have adopted some confidence-building measures and entered into the following agreements, although none of these has any verification mechanism:

- The India-Pakistan Non-Attack Agreement of 1998. Prohibits attacks against nuclear installations and facilities. This requires an exchange of lists of each state’s respective nuclear installations on January 1 of every year.
- Agreement on advance notification of ballistic missile tests (2005).
- Agreement on reducing the risk from accidents relating to nuclear weapons (2007).

THE GREATER DANGER

Pakistan’s nuclear program has mostly been pursued in response to the Indian program and to cover up the deficit in Pakistan’s conventional arms capability relative to India. Although critics do not rule out the possibility of Pakistan using nuclear weapons in the face of a defeat by India in a conventional war, the probability appears to be remote. However, the real threat may come from terrorists operating in the region. These cells may compromise the military and scientific community in Pakistan to obtain nuclear material to develop “dirty bombs.” The custodians of nuclear know-how in Pakistan may also pass on technology and material to other countries clandestinely pursuing nuclear programs. The memory of the safe haven in Abbottabad and the damage caused by the A.Q. Khan network is still fresh in everyone’s mind.

Since the relationship between Pakistan and the US began to sour in 2011, there has been domestic turmoil, regular terrorist attacks and internal strife in Pakistan; its fledgling democracy is under severe strain, lending credence to the fear of possible security breaches by terrorists and rogue elements, although Pakistani authorities vehemently dismiss any such concern. It can be anybody’s guess what will happen to India’s no-first-use policy if terrorists operating from Pakistani soil, with support from the military or its powerful intelligence arm, the Inter-Services Intelligence (ISI), use nuclear devices or radioactive substances to attack India. The tumultuous domestic politics in Pakistan are a matter of great concern for security in South Asia. As former Prime Minister Indira Gandhi once said during a tense standoff with Pakistan, “You cannot shake hands with a clenched fist.”

Debi Prasad Dash is a former Co-ordinator of the Panel of Experts of the UN Security Council and currently works as the Additional Director-General with Indian Customs. The views expressed are his own.