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India's Membership to the Nuclear Suppliers Group

RAJESWARI PILLAI RAJAGOPALAN AND ARKA BISWAS

ABSTRACT India seeks to join the Nuclear Suppliers Group with the objective of playing a more proactive role in the nuclear non-proliferation realm. Political issues remain, however, particularly with regard to its status outside the Treaty on the Non-Proliferation of Nuclear Weapons. This brings to fore questions on the relationship between the Treaty and the Group with regard to their scope, mandate and membership. An assessment of prospective benefits which the Group can derive from including India in its fold is important for a nuanced understanding of the implications of India's accession. If it is the Group that stands to benefit equally, if not more, then political objections could be resolved.

INTRODUCTION

After being estranged from the global non-proliferation architecture for several decades, India is making efforts to integrate itself with the regime. These efforts include gaining entry into the four technology export control groups – the Nuclear Suppliers Group (NSG), Missile Technology Control Regime (MTCR), Australia Group, and the Wassenaar Arrangement.

The shift in India's approach to the global non-proliferation architecture has been gradual. Starting in the 1990s, India began to deliberate upon its approach to export controls as it pertained to dual-use chemicals, especially

following its signing of the Chemical Weapons Convention in 1993. However, with regard to nuclear non-proliferation regimes, India's open support to the principles of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was best captured in a speech given at the Parliament in 2000 by the then India's Minister of External Affairs, Jaswant Singh. That speech redefined India's broader approach to the existing mechanisms of global nuclear non-proliferation. This shift was further catalysed by the growing convergence of interests between India and the US at the geopolitical and strategic

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level. India's more nuanced response to President George W. Bush's speech on National Missile Defence of 01 May 2001 is a case in point.² Discussions between India and the US on "Next Steps in Strategic Partnership" in 2003-04 provided the grounds for the negotiation of a civil nuclear agreement which was recognised as a way to both bring India into the nuclear non-proliferation architecture and also bolster India-US strategic relations.³ The India-US civil nuclear agreement of 2005 also provided the formal framework for India and the US to pursue trade in strategic goods, which is controlled through US domestic regulations as well as multilateral export control regimes.

This shift in India's approach to the global non-proliferation architecture culminated in the completion of what can be called the first stage of India's integration process in 2008, when the NSG gave waiver to India to participate in global nuclear commerce without requiring New Delhi to implement IAEA's full scope safeguards. This waiver was given on the condition that India would separate its civilian nuclear facilities from others and that all of its civilian facilities will fall under IAEA safeguards - an understanding that applies to all nuclear weapons states under the NPT. Having separated its civilian nuclear facilities from its military facilities and signing the Safeguards Agreement, India also ratified the Additional Protocol to its Safeguards Agreement, thereby fulfilling its commitment.

The next stage in India's integration process is for it to gain entry into the four export control regimes, an objective which was noted in the India-US joint statement issued on 8 November 2010, during US President Barack Obama's visit to New Delhi. The joint statement noted that India and the US were "committed to work together to strengthen the global non-proliferation and export control framework and further transform [their] bilateral export control cooperation to realise the full potential of the strategic partnership between the two countries." This commitment was reiterated in subsequent joint statements issued by the two governments in 2012, 5 2013, 6 2014, 7 and 2015.

As India rises in the global supply chains of nuclear and related items, it will be in the interest of the nuclear non-proliferation community to have India under the same roof as other similar suppliers. India, for its part, will benefit by its acceptance as the global norm-setter in nuclear non-proliferation. India's inclusion in the NSG will be testimony to the journey New Delhi has travelled from once being referred to as an 'outlier', to being now recognised as a responsible nuclear weapons state ready to share the burden of effecting global nuclear non-proliferation goals.

This brief outlines the prospects of India's inclusion into the NSG. It begins with a background to the NSG, examining its evolution and objectives. The second section examines the technical requirements for a country to be considered for membership in the group. For India, its membership to the NSG hinges more on the political understanding and acknowledgement of the country's credentials as a responsible nuclear weapons state despite it not being an NPT-signatory—this is discussed in the third section. The paper concludes by calling on both the NSG members and India to have greater engagement in understanding the merits and demerits of New Delhi's accession to the NSG. This could possibly facilitate the resolution of political issues highlighted in this brief.

EVOLUTION OF NSG

Initially referred to as the London Club, the Nuclear Suppliers Group was established following the 1974 "Peaceful Nuclear Explosion" (PNE) conducted by India to ensure that transfer of nuclear material and technology for peaceful purposes does not lead to the proliferation of nuclear weapons. The seven founding members of the Group (Canada, Germany, France, Japan, Soviet Union, the UK and the US) considered the formation of the Group after taking note of the inadequacy of the NPT framework in restricting nuclear proliferation. NPT, in particular Article III. 2, contains the mandate for export controls on sensitive nuclear and related items. To substantiate the definition of which items were to

be controlled, the Zangger Committee was set up in 1971. In 1974, the Committee came up with the Trigger List which contained all items recognised as sensitive; it also issued guidelines which would govern exports of these items. However, at that time, NPT had limited signatories and not all suppliers of nuclear items fell under the mandate of the NPT and the Zangger Committee. This made it more important to establish a separate group which will include all suppliers and establish guidelines for export controls. This is exemplified by the fact that one of NSG's first agenda was to bring France into its fold.9 France was then not party to the NPT and thus was not obligated to abide by the guidelines issued by the Zangger Committee. Meanwhile, a French company called SGN had signed a contract to build a reprocessing facility for the Pakistan Atomic Energy Commission (PAEC) in 1974. 10 The contract was terminated soon after France joined the NSG.

Soon after its establishment, however, NSG members hit a road-block in updating the guidelines to the point where the NSG members did not meet from 1978 to 1990. During those years, the membership of the NSG grew and all its members continued their adherence to the guidelines set up by the Group in 1978. But the members failed in agreeing to discuss proposals for updating the guidelines, resulting in the deadlock. For instance, attempts at kickstarting discussions on making full-scope safeguards a condition for exports fell through. The end of the Cold War and disintegration of the Soviet Union in the 1990s significantly increased the threat of nuclear proliferation as, overnight, many former Soviet Union countries came in possession of nuclear weapons and technology. Meanwhile, detection of Iraq's clandestine nuclear activities captured how dual-use items could be used in the development of nuclear weapons. These circumstances motivated the NSG members to gather again and address some of the gaps in the Group's guidelines, particularly with regard to the absence of dual-use items in the NSG control lists and that of the condition of full-scope safeguards for export of controlled items.

Over the years, NSG members have been conducting regular meetings to update guidelines and control lists. While these remain tasks in progress, one aspect where much of the debate has happened is the future expansion of the Group in terms of membership. Considering that the Group's primary objective has been to ensure that export of sensitive nuclear and related materials does not contribute to proliferation of nuclear weapons, inclusion of all suppliers of such sensitive items becomes vital to establishing the Group's credibility. At the same time, the Group needs to ensure that only like-minded countries are included in the Group as it functions on the principle of consensus. Any lack of consensus could lead to a stalemate and render the Group defunct. The challenge for the Group and its members, therefore, remains on how best to meet its objectives and bring in suppliers, while preserving the effectiveness of the Group.

TECHNICAL REQUIREMENTS FOR NSG MEMBERSHIP

NSG members consider five factors, as set forth in NSG's procedural arrangement, while taking decisions on new membership. These are: "the ability to supply items (including items in transit) covered by the Annexes to Parts 1 and 2 of the NSG Guidelines"; "adherence to the Guidelines and action in accordance with them"; "enforcement of a legally based domestic export control system which gives effect to the commitment to act in accordance with the Guidelines"; "adherence to one or more of the NPT, the Treaties of Pelindaba, Rarotonga, Tlatelolco, Bangkok, Semipalatinsk or an equivalent international nuclear nonproliferation agreement, and full compliance with the obligations of such agreement(s)"; and "support of international efforts towards nonproliferation of weapons of mass destruction and of their delivery vehicles." $^{^{12}}$

On factor one, regarding the ability to supply items included in the NSG Control Lists, India has already made it clear that it intends to rise up in the global supply chains of nuclear and related

items. Iterating New Delhi's objective of establishing itself as a "competitive" nuclear supplier, Srikumar Banerjee, Chairman of the Atomic Energy Commission of India and leader of the Indian delegation to the IAEA, had stated at the 54th General Conference of the IAEA on 22 September 2010 that "Indian industry is not only poised to play a bigger contribution to India's own nuclear programme but also is on the way to becoming a competitive supplier in the global market with regard to special steels, large size forgings, control instruments, software, other nuclear components and services."13 India also intends to supply small and medium nuclear reactors. The same was noted by Banerjee in his address to the 55th General Conference of the IAEA on 21 September 2011. He stated that "India has rich experience in the entire gamut of activities related to nuclear power plants, which places it in a position to export reactors, equipment and components, as well as services, to the global nuclear energy market. [India] posseses all technologies and infrastructure relevant to small and medium sized [Pressurised Heavy Water Reactors] PHWRs of 220 MWe, 540 MWe and 700 MWe capacities, which would be a safe, proven and cost effective option for countries with small grids planning to start their nuclear power programme. In this context, India is looking forward to exporting its proven Small and Medium Reactors (SMR)."14

On factor two, related to the NSG Guidelines, India by 2008 had sent a note to the IAEA notifying it of New Delhi's adherence. The same was notified by then US President Bush to the US Congress on 12 September 2008. 15 The statement issued by the NSG members on Civil Nuclear Cooperation with India also noted that India has "voluntarily... [harmonised] its export control lists and guidelines with those of the Nuclear Suppliers Group and [has committed] to adhere to the Nuclear Suppliers Group Guidelines."16 India has regularly updated its export control list, called the Special Chemicals, Organisms, Materials, Equipments and Technology (SCOMET) List, including in March 2011, April 2012, March 2013, May 2013, July 2013 and March 2015 to incorporate the updates introduced by NSG and other export control regimes to their respective control lists.¹⁷

With regard to the factor on enforcing a legally-binding domestic export control system, India already has in place a high-standard legal export control system that encompasses over nine legislations, including the Foreign Trade Development and Regulation Act (FTDR) of 1992, the Atomic Energy Act of 1962, the Customs Act of 1962, and the Weapons of Mass Destruction (WMD) Act of 2005. 18 WMD Act of 2005 incorporates best international practices on export controls, covering technology transfers, end-user or "catch-all" controls, brokering, transhipment and transit controls. This legallybinding domestic export control system is enforced rigorously, bringing India at par with members of the export control regimes, including the NSG. Similarly, India's support to international efforts on nuclear nonproliferation has been well recognised. In a foodfor-thought paper on India's NSG membership prospects, for instance, the US government noted that two of the most important factors in consideration of a new member are its support for international efforts on nuclear nonproliferation and its own domestic export control system which gives effect to its commitment to act in accordance with the NSG guidelines. 19

The only factor which India does not meet is that of adherence to the NPT or other international non-proliferation treaties. There are two critical dimensions on the subject which require careful examination. Firstly, in pure technical terms, while India does not meet this factor, it is not necessary for a prospective applicant to meet all the factors, to begin with. As the Procedural Arrangement of the NSG notes, these factors "should be considered by Participating Governments". The US government notes here that these factors, therefore, should not be looked upon as mandatory criteria.²⁰ If a consensus is built, then countries that do not meet all the factors can be brought into the Group as well. Second and quite important is the political understanding on this subject, especially among NSG members. Questions on relationship between NSG and NPT, NSG's mandate and objectives become important in this regard.

POLITICAL UNDERSTANDING BEHIND INDIA'S ENTRY INTO NSG

India meets all the requirements as far as the technical parameters of NSG and MTCR are concerned. However, NSG will prove to be the most challenging of all the export control regimes. This is not based on the technical qualifications but on political factors that have had a significant impact on how these regimes function. The US-India civil nuclear agreement of July 2005 remains an important development in this context. In an ideal situation the special and clean waiver that India was given in 2008 should make things easy for India; the reality is, it has not. The 2008 waiver provided India with provisions that were otherwise available only to nuclear weapons states recognised under the NPT, thus acknowledging India's nonproliferation credentials and, albeit indirectly, accepting the political reality of its status as a nuclear weapons state. Most critical was the $In dia-specific \, exemptions \, that \, were \, provided \, in \, 4$ (a), 4 (b) and 4 (c) of the NSG Guidelines typically dealing with non-nuclear weapons states. A number of countries changed the rules of the game without amending the NPT to accommodate India, which provided the basis for nuclear commerce between India and the global nuclear community. This in effect acknowledged and reconciled to the fact that India is a de facto nuclear weapons state.

Like mentioned earlier, India's membership to the NSG is likely to be most challenging particularly given the origins of the group. India's pending candidature into the NSG is likely to be made part of the agenda when the group convenes for its plenary in June 2016. NSG chairman Rafael Grossi, who was in India in November 2015, met Indian leaders and discussed the country's case.²¹ He said, "It has all the elements in place for membership. There have been some deliberations already, and I am trying

to make the process more dynamic."22 Yet even with active support from the major powers including the United States, United Kingdom, France and Russia, India's accession into the NSG is not at all going to be uneventful. Given that the NSG's decisions are based on the principle of consensus, it is not enough that a majority of the members are in support of India's accession. Had India gotten entry into the MTCR in October 2015, the case of its membership to the NSG would have been stronger. However, India's MTCR membership bid also ran into rough waters when Italy stated that it would need more time to consider the case—a strategy, essentially, to stall the process. While Italy is not necessarily against India's MTCR accession, political issues pertaining to an entirely different bilateral issue came in the way, hampering the process.

As noted earlier, major powers have endorsed India's potential entry into the global export control regimes but India's troubles in particular with NSG membership are likely to come from some of the European countries, including Austria, Ireland, the Netherlands, and Switzerland, as well as China. Norway, which had reservations earlier, for its part has come around to acknowledging the importance of having India as a member in the regimes. During his visit to India in November 2015, Norwegian Foreign Minister Borge Brende underlined the fact that there was "broad consensus for Indian membership ... but regrettably no consensus yet."²³ A statement from the Ministry of External Affairs issued at that time also said Mr. Brende confirmed Norway's support for India's entry into the NSG and MTCR. The European powers argue that while India's membership to these regimes would be welcome, there are prerequisite steps for New Delhi to take.

China is perhaps the one big power that has maintained the stiffest opposition to India's membership. ²⁴ Beijing argues that the NSG membership debate is critical to NPT and thus any consideration of the inclusion of a non-NPT-signatory must be done with "prudence and caution." ²⁵ Official spokesperson of China's Foreign Ministry, Hua Chunying, is reported to

have said that, "As for the expansion of the group, the members should make the decision on consensus after thorough discussions. India's inclusion into this group is an internal matter of the group. It needs prudence and caution and thorough discussions among all members." This is despite the fact that India has been granted the clean waiver and a de facto recognition as a nuclear weapons state. At the same time, Beijing also says that if India were to be considered for accession into the NSG, then other non-NPT countries must also be considered. In this regard, Beijing has been making a case for its ally, Pakistan, to be offered a similar package and be granted membership in the NSG and other export control regimes. Despite Pakistan having a completely different track-record on nuclear nonproliferation, China has equated its membership case to that of India's. This attempt by China does not capture the ground reality and thus has failed to gather support from any other major power. China is likely, however, to remain steadfast in its position until such time as the NSG reaches a consensus on admitting India into the Group.

India recognises the difficulties associated with its membership into the NSG. For instance, some of these members of the NSG have tried to establish criteria for admission of new countries, the purpose of which is to coerce India into undertaking international obligations that go against its interests. In an attempt to address some of these issues, New Delhi has reached out to many, if not all, members of the Group. A case in point is Prime Minister Narendra Modi's stopover in Ireland en route to the US in September 2015. One of the primary objectives of the visit was to acknowledge, understand, and address Ireland's concerns with regard to the NSG expansion and India's membership, which was done at the highest level by the Prime Minister himself. In 2015, visits by President Pranab Mukherjee to Sweden, and by Foreign Secretary S Jaishankar to Switzerland, were undertaken with the same objective. Media reports suggest that the issue of India's membership to the NSG dominated these visits. These European countries remain significant as they have taken a negative view of India remaining a non-NPT signatory and thus maintain a tough stand against its bid for an NSG seat. However, the visits and outreach efforts by India have made these countries realise that while India is not an NPT-signatory, it has honoured every single principle enshrined in the treaty. Such efforts have been undertaken both by the bureaucracy and the political leadership. Indian diplomats have been similarly engaged with China regarding New Delhi's accession to NSG. China has nevertheless held onto its view that India should not be granted a country-specific exemption. India has to therefore continue its outreach efforts in strengthening its case among these countries.

CONCLUSION

As examined in this brief, India already complies with the guidelines of the NSG and updates its national export control list to reflect changes introduced by NSG in its own lists. Factors considered in granting membership to new countries have both technical and political spin. In pure technical terms, India meets all prerequisites, except that of being a signatory to the NPT.

It is here that the political spin comes into play. Firstly, though India remains outside the NPT, it continues to adhere to the principles enshrined in the Treaty as a nuclear weapons state. This, of course, is not equivalent to India undertaking a legally binding international commitment to this effect. Secondly, these factors are arguably not mandatory criteria for all prospective applicants.

India's membership to the NSG will be a milestone in the process of its integration with the global non-proliferation architecture. But it is this same global non-proliferation community which also needs to assess the benefits which it would gain by including India into the NSG and other export control regimes. Including a prospective supplier of sensitive nuclear and related items into the Group will only enhance the credibility of the Group. It will allow the members of the NSG to ensure that all transfers to and from India of these

sensitive items are conducted as per the guidelines of the NSG. India, on the other hand, is willing to continue abiding by the rules of the game in return for limited benefits that membership to the NSG would entail.

An objective assessment of the benefits of India's entry into the NSG for India and the Group could further shape the political understanding of NSG members on the more difficult issues such as that of India not being a

NPT-signatory. If it is the NSG which stands to gain equally, if not more, than India, then there is a strong case for New Delhi to be welcomed to the Group. Yet any assessment of benefits, to a significant extent, remains political in nature as well. It therefore becomes important for NSG to not only debate among themselves the issues at hand, but also to engage India in dialogues to assess the potential mutual benefits of India's accession to the group. ©RF

ABOUT THE AUTHORS

Dr. Rajeswari Pillai Rajagopalan is Senior Fellow and Head of the Nuclear and Space Policy Initiative at ORF. Arka Biswas is a Junior Fellow at ORF's Nuclear and Space Policy Initiative.

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