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## India's NSG Membership: Examining the Relationship between NPT and the NSG

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### Introduction

The Nuclear Suppliers Group (NSG)'s annual plenary sessions, since 2011 to date, have seen discussions on India's relationship with the Group. Although the statements issued at these plenary sessions have remained restricted to the mere mention that the Group “discussed the NSG relationship with India”<sup>1</sup> and that India has still not officially approached the NSG for participation, the debate nonetheless has progressed to assess the merits and risks of India's participation at the NSG. One of the major risks, as has been flagged by some of the 46-participating governments (PGs) at the NSG, is that the inclusion of India (which is not a party to the Nuclear Non-Proliferation Treaty) in the Group, would result in “decoupling of NPT and NSG memberships.”<sup>2</sup> According to them, by including India, “the NSG would lose credibility because its members have affirmed time and again that the NPT non-proliferation norm is the point of reference for their export control activities.”<sup>3</sup>

This paper examines the relationship between the NSG and the NPT and assesses the relevance of NPT to the debate on India's participation at the NSG. The paper will begin by studying in brief the debate on India's participation at the NSG and highlight the arguments put forth against India's participation at the Group, with emphasis on the factor of India's non-NPT-signatory status. The next section will examine the history of the relationship between the NSG and the NPT and argue that NSG was not meant to be bound within the mandate of the NPT. Subsequently, the paper will underline the importance of assessing the levels of commitment that a government participating at the NSG demonstrates towards the goal of non-proliferation, and argue that membership of the NPT fails to serve as an accurate indicator of this commitment. The paper will conclude by arguing that NPT-membership should, therefore, not be a significant factor in consideration of India's entry into the Group.

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## Debate on India's Participation at the NSG

Talks around India's participation at the NSG (commonly referred to as membership) began during US President Barack Obama's visit to India in November 2010. The two countries issued a joint statement which stated that:

“the United States intends to support India's full membership in the four multilateral export control regimes (Nuclear Suppliers Group, Missile Technology Control Regime, Australia Group, and Wassenaar Arrangement) in a phased manner, and to consult with regime members to encourage the evolution of regime membership criteria, consistent with maintaining the core principles of these regimes, as the Government of India takes steps towards the full adoption of the regimes' export control requirements to reflect its prospective membership, with both processes moving forward together.”<sup>4</sup>

In the following year, a month before the NSG annual plenary of June 2011, held in the Netherlands, the US government circulated a “Food for Thought” paper within the NSG that discussed the case for India's participation at the Group.<sup>5</sup> The common set of factors, given under Section 7 of the NSG Procedural Arrangement, which is considered by PGs when dealing with possible inclusion of a new PG, includes the requirement of the government to “be a party to and in full compliance with the obligations of the NPT.”<sup>6</sup> The US circular, however, noted that the Procedural Arrangement requires the PGs to *consider* these factors when assessing inclusion of a new PG and that these factors must not be seen as mandatory criteria.<sup>7</sup> Some have argued that if India is to be included at the NSG, without having met the NPT-membership factor, then such exception may also be generalised for other non-NPT states.<sup>8</sup> But the “Food for Thought” paper clarified this point by highlighting that “participation decisions are made on a case-by-case basis, with each Partner deciding for itself whether to support a particular candidacy. The admission of one country does not set precedent for others.”<sup>9</sup>

Since the annual plenary in the Netherlands in June 2011, up until the recently held annual plenary in Buenos Aires in June 2014, the NSG PGs have discussed NSG's relationship with India. Though India has received support from the US, Russia, the UK, Australia, Japan, France and, recently, Canada<sup>10</sup> for its participation at the NSG, some PGs, primarily led by China, continue to oppose India's inclusion into the Group.

Among several issues that these PGs associate India's participation at the NSG with, one key issue has been around the fact that India is not a signatory to the NPT. Addressing this issue, the US government has already noted in the “Food for Thought” paper that NPT membership is just one of the factors for consideration and not a mandatory criterion that a nation must meet. Nonetheless, the governments opposing India's entry into the Group have argued that the inclusion of a non-NPT state into the NSG would result in decoupling of NSG and NPT memberships and would also make the Group lose its credibility as it has been established to uphold the agenda of non-proliferation as laid out in the NPT.<sup>11</sup> To better understand these arguments and to assess their validity, it becomes vital to examine how the relationship between the NSG and the NPT has developed over the years, in order to assess how significant NPT membership is vis-à-vis participation at the NSG.

## Examining the relationship between NSG and NPT

NSG was established in 1974 after India conducted the Peaceful Nuclear Explosion (PNE). The reason behind NSG's inception was that some nations considered that the NPT alone was inadequate in managing the global nuclear exports which could lead to nuclear proliferation. For NSG, the non-proliferation of nuclear weapons was the point of reference, and it was tasked to assist the NPT. But the NSG was not established to remain bound within the framework of the NPT. To the contrary, since its inception, the NSG has gone beyond the NPT to tighten control over global nuclear exports where the latter did not have any mandate.

To just give one instance, France joined the NPT in 1992, but it has been a member of the NSG since 1975-76. In 1974, SGN, a French company, had signed a contract with the Pakistan Atomic Energy Commission (PAEC) to construct a reprocessing facility which could have enabled Pakistan to produce between 100 kg and 200 kg of weapons-grade plutonium.<sup>12</sup> However, soon after joining the NSG, France terminated the contract with the PAEC and also abandoned its other plans of nuclear and related exports to countries who were then seeking latent nuclear capabilities.<sup>13</sup> As Ambassador Tadeusz Strulak, NSG's chair for the year 1992, has argued:

“The inclusion of France in the NSG had special significance, because France was not a party to the NPT and therefore was not a member of the Zangger Committee. The establishment of the NSG brought France, a major supplier, into the multi-lateral discussions with the other major suppliers.”<sup>14</sup>

The argument that NSG was meant to support NPT's end-goal – nuclear non-proliferation – but not remain bound within its mandate and framework can be substantiated further by considering the fact that NPT itself includes an Article that addresses nuclear export control. According to Article III.2 of the NPT:

“Each state Party to the Treaty undertakes not to provide: (a) source or special fissionable material or (b) equipment or materials especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear weapon state for peaceful-purposes, unless the source or special fissionable material shall be subject to the safeguards required by this article.”<sup>15</sup>

Thus when the NPT was thrown open for signatures (in 1970), it included the article that laid out the foundation for nuclear export practices and the requisite control measures. Use of unclear phrases such as “especially designed or prepared,” however, led to confusion over the items that required safeguards. To mitigate the confusion, the Zangger Committee (named after its first chair, Prof. Claude Zangger) was established in 1971.<sup>16</sup> The committee was given the task of, firstly, identifying the list of items, called the trigger list, whose unsafeguarded supply could potentially result in proliferation of nuclear weapons. Its second task was to establish obligations which nuclear suppliers were required to comply with in order to engage in nuclear commerce. The committee, in September 1974, issued two memoranda that comprised of the requirements from the nuclear suppliers and the

trigger list, respectively. These memoranda were published by the IAEA on September 03, 1974 in its document INFCIRC/209.<sup>17</sup>

Examination of Article III.2 and the Zangger Committee captures the fact that the NPT already addresses nuclear export control measures. Even though the language in Article III.2 was initially ambiguous, the Zangger Committee, since its creation to date, has been updating both supply guidelines as well as the trigger list. It is also important to note here that the Zangger Committee had circulated the two memoranda two months after India carried out the Peaceful Nuclear Explosion (PNE), an event that is marked as the point for the inception of the NSG.

A communication, received by the IAEA on October 01, 2009 from Hungary on behalf of the PGs of the NSG, highlights that while the mandate and scope of the NSG and the Zangger committee differ, the difference is marginal and is specifically on the items of their respective trigger lists.<sup>18</sup> Creation of the NSG, despite the existence of NPT's Article III.2 and the Zangger Committee, exemplifies the argument that it was established to go beyond the NPT, in terms of its scope and membership, to address the challenges to the global non-proliferation efforts where the NPT could not.

It is also true that in 1974, when the NSG was established, the NPT had limited membership, and thus there was a pressing need for the NSG to go beyond the NPT during that period. However, over the last few decades, the membership of the NPT has increased significantly and at present it is nearly universal. But is the NPT, with its membership at 189, *the point of reference* for nuclear non-proliferation? Is the NPT broad and flawless enough to manage global nuclear exports alone?

There are certain instances, like that of Iraq (in early 1990s), North Korea and Iran which showcase NPT's inability in containing proliferation of nuclear weapons, even among its member states. The fact that three states – India, Israel and Pakistan – all of which have (or known to have) active nuclear weapons programme, do not even fall under the mandate of the NPT, further lowers its ability to control nuclear exports. This is where the NSG has a decisive role to play. If the Group remains contained within the mandate of the NPT, then it will not really have any significant contribution to make. Restricting NSG within the NPT's framework will inhibit NSG's capability of controlling nuclear exports that does not fall under the purview of the Zangger Committee.

Examination of the case of France and of the purpose behind the inception of the NSG suggests that the NPT was never meant to be the point of reference or the framework within which the NSG was to operate. It has in the past gone beyond the NPT by accepting members that were not party to the Treaty. If it does so in the future, it will not be the first time.

But in going beyond the NPT, the NSG will also have to be careful in including only those governments that are committed to the goal of nuclear non-proliferation. This is important not only because it forms the basis for the establishment of the Group, but also due to the fact that the Group functions on consensus and inclusion of nations that are not equally committed can bring the Group's decision-making processes to a stand-still.

Although NPT, with its near-universality, is considered to be the point of reference for the assessment of the like-mindedness of governments on nuclear non-proliferation, NPT-membership, however, fails in accurately determining or predicting the path a nation may take in so far as nuclear proliferation or non-proliferation is concerned. The following section will examine the cases that capture the argument that the NSG cannot blindly rely on NPT membership of a government to confirm its commitment to the goal of nuclear non-proliferation.

## Importance of Goal over Means

In this debate, it is important to emphasise on the goal, which is nuclear non-proliferation, than means, which has been the NPT. It is important to underline this argument because, over the last few decades, the NPT has been made into *the only* point of reference for all non-proliferation related activities. This phenomenon has resulted in the flaws of the NPT, as well as any other nuclear non-proliferation efforts beyond the NPT, being overlooked. When carefully examined, NPT fails to assure that its member states will not contribute to nuclear proliferation. Thus, an assessment of a nation's commitment to nuclear non-proliferation cannot be made by merely looking at that nation's relationship with the NPT. There is a need to therefore lay greater emphasis on a nation's history and track-record on nuclear non-proliferation.

The goal of the NPT, as well as the NSG, is nuclear non-proliferation. The NPT has merely served as a means to that goal. But with NPT's near universal membership and with increase of its salience in global non-proliferation efforts, it has been made into the point of reference for all non-proliferation efforts, including that of the NSG. The necessity of PGs' commitment to the goal of non-proliferation of nuclear weapons is understandably critical considering that the NSG functions on consensus and including countries which do not adhere to the common principles and norms of non-proliferation could diminish the efficiency of the Group significantly. But those using India's non-NPT-signatory status to argue against India's participation at the NSG appear to be making an assumption that being a signatory to the NPT succinctly reflects a nation's position on nuclear non-proliferation. Examination of the track-record of some of the NPT states, including those who are within the NSG, proves this assumption to be flawed.

For instance, for over a decade after the NSG meeting of 1977 in London, the NSG PGs did not meet to implement or even discuss the proposal of making full-scope safeguards at the recipient state a condition for exports of nuclear materials, equipments and technologies that were covered under the NSG's trigger list. Though the guidelines as established by the NSG in 1977 were not violated by any of its PGs and 12 new countries also joined the Group during that period, due to commercial and political interests of some of the PGs, as has been argued by Ambassador Tadeusz Strulak, the PGs did not meet and consequently failed to converge on the issue.<sup>19</sup> This absence of like-mindedness also hindered the expansion of the NSG trigger list (of sensitive nuclear and related materials, equipments and technologies) which allowed some NPT nations, in particular Iraq, to acquire dual-use equipments during that period to run a clandestine nuclear programme.<sup>20</sup>



Another example is that of China and its export of two additional nuclear reactors to Pakistan at sites Chashma-3 and Chashma-4. China claimed that the export of the reactors is grandfathered by an agreement made between China and Pakistan in the 1980s, much before 2004 when China joined the Group.<sup>21</sup> But the fact remains that China did not disclose its plans of exporting new reactors to the NSG PGs in 2004 which it was required to notify.<sup>22</sup> On the contrary, it had assured the NSG that it will not export any reactors other than Chashma-1 and -2.<sup>23</sup> China's decision to export reactors is a clear violation of the NSG guideline that requires Pakistan to place its entire nuclear programme under IAEA safeguards if it receives any additional reactors from China. In fact, Pakistan was not even asked to separate its civil nuclear and weapons programme. This threatens the credibility and the legitimacy of the Group.

These two instances exemplify the argument that membership at the NPT does not necessarily reflect a country's approach to nuclear non-proliferation. The cases of Iraq (in the early 1990s), Iran and North Korea further strengthen the validity of this argument. While being party to the NPT, they have either run a clandestine nuclear programme or have left the Treaty and developed and tested weaponised nuclear devices. Although the rationale behind their actions has varied, such instances showcase that NPT membership fails in determining the path a nation takes in so far as nuclear non-proliferation is concerned. Thus, while nuclear non-proliferation remains the cornerstone of the NSG, the Group cannot blindly rely on NPT-membership to determine a government's commitment to the goal of non-proliferation.

India, on the other hand, despite being outside the NPT, has maintained an “impeccable” record in so far as nuclear non-proliferation is concerned. It has put in stringent export controls which ensure that India does not contribute to nuclear proliferation in any way. It has furthermore maintained high levels of security and safety around its nuclear and related materials, equipments and technologies—at par with some of the best international practices.<sup>24</sup>

## Conclusion

The debate on India's participation at the NSG is critical, as this could usher a transformation in the global nuclear architecture. There are many other factors, including India's moratorium on nuclear tests, its position in the negotiations for Fissile Material Cut-off Treaty (FMCT), its policy of no first-use, and its impeccable record on nuclear non-proliferation, which all require careful examination in order to better assess the possibility of India's entry into the NSG. This paper gives an assessment of how relevant India's non-NPT-signatory status is to the debate on its participation at the NSG.

While nuclear non-proliferation is definitely the point of reference for the NSG, the Group was not meant to remain contained within the framework of the NPT. NPT already contains Article III.2 which lays the foundation for nuclear export controls within the Treaty's mandate. The Zangger Committee, with assistance from the IAEA, can ensure the adherence to the nuclear export guidelines (established and updated by the Committee) by all NPT-signatories. To the contrary, the NSG was established with the purpose of going beyond the NPT in controlling nuclear exports where the latter

could not. Considering India's case, which is not a party to the NPT, the NSG will garner greater credibility by including the country as that will allow the Group to keep Indian nuclear exports in check, which otherwise are not subject to Article III.2 of the NPT.

Simultaneously, the NSG also needs to ensure inclusion of only those governments which are like-minded on nuclear non-proliferation. It is not only because nuclear non-proliferation is the cornerstone of the NSG, but also because the Group runs on consensus and inclusion of states which are not like-minded on nuclear non-proliferation could jeopardise the decision-making processes and bring the Group's export control activities to a halt.

But, here again, the NSG cannot solely rely on NPT-membership to assess a prospective PG's commitment to nuclear non-proliferation. The cases of Iraq, North Korea and Iran highlight the flaws embedded within the NPT and they capture how inaccurate NPT-membership can be as an indicator to a government's approach to nuclear non-proliferation. Meanwhile, the NSG faces a big challenge to its credibility from one of its PGs – China – which also happens to be one of the nuclear-haves under the NPT. Despite the fact that the reactors at Chashma-3 and Chashma-4 would be under IAEA safeguards, China's sale of additional nuclear reactors to Pakistan remains a blatant violation of NSG guidelines.

NPT-membership neither indicates reliably the commitment of a nation to the goal of nuclear non-proliferation – a necessity for the NSG – nor can it restrict NSG's expansion as the Group since its inception was meant to go beyond the NPT in contributing to the goal of nuclear non-proliferation. The arguments, backed with instances examined in the paper, render India's non-NPT-signatory status insignificant to the debate on India's participation at the NSG.

#### ABOUT THE AUTHOR

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