ORF OCCASIONAL PAPER
150
APRIL 2018

# India and Non-Proliferation Export Control Regimes

Rakesh Sood

ORF OBSERVER RESEARCH FOUNDATION

# India and Non-Proliferation Export Control Regimes

Rakesh Sood

ORF OBSERVER RESEARCH FOUNDATION

## ABOUT THE AUTHOR

**Rakesh Sood** is a Distinguished Fellow at Observer Research Foundation (ORF), New Delhi. He joined the Indian Foreign Service in 1976, first serving in Brussels, Dakar, Geneva, and Islamabad in different capacities, and as Deputy Chief of Mission in Washington, D.C. He set up the Disarmament and International Security Affairs Division in the Foreign Ministry and led it for eight years. He also served as India's first Ambassador and Permanent Representative to the Conference on Disarmament in Geneva and later as Ambassador to Afghanistan, Nepal and France. After retiring in 2013, Ambassador Sood was Special Envoy of the Prime Minister for Disarmament and Non-proliferation, a position he held until May 2014.

ISBN : 978-81-937032-3-6

# India and Non-Proliferation Export Control Regimes


## ABSTRACT

Over the years, there has been an evolution in India's policy towards non-proliferation-related export controls and the associated regimes. During the Cold War, India considered itself a target; beginning in the 1990s, its policy began to shift in keeping with economic liberalisation at home and changing global perceptions about the threat of proliferation. India's nuclear weapon tests in 1998 gave it political space to claim credit for its impeccable non-proliferation record and gain acceptance as a responsible nuclear power. The exceptional waiver issued by the Nuclear Suppliers Group in 2008 encouraged India to move towards seeking membership in all four export control regimes.


## INTRODUCTION

In 2016, India's bid for membership in the Nuclear Suppliers Group (NSG) generated considerable interest and debate, both at home and within the international non-proliferation community. India's push was

a natural follow-up to the 2008 exceptional waiver granted by the NSG to India, though the political judgement regarding the timing was questionable, given the shift in China's position between 2008 and 2016. The stand-off at the Seoul plenary in June 2016 generated controversy in India because nuclear-related issues enjoy greater play in domestic politics. In comparison, India's engagement with other export control regimes – Australia Group (AG), Missile Technology Control Regime (MTCR), and Wassenaar Arrangement (WA) – has attracted less attention, though India's policy towards all four export control regimes is consistent, its evolution being part of the same organic policy shift. All four export control regimes are informal in character; these are not treaty-based undertakings but rather arrangements among groups of like-minded countries. The reason that India's quest for NSG membership exposed such sharp differences within the NSG has less to do with India's bid, and more about NSG's origins in the aftermath of the 1974 Indian peaceful nuclear explosion (PNE), its ambiguous relationship with the Nuclear Non-Proliferation Treaty (NPT), and the changing geopolitics overshadowing the politics of nuclear non-proliferation.

This paper seeks to analyse the NSG issue as part of the larger picture of India's policy on non-proliferation-related export control regimes and its evolution in a generic sense, together with the origins and development of the four regimes. While the purpose is not merely to provide a chronological account, a historical approach is being employed to capture the policy shifts as India sought to reconcile its interests with the political changes taking place in the region and beyond. During the Cold War, India saw itself as a target of these export control regimes. A shift occurred in the 1990s when India began to introduce its own export controls. Over the next decade and a half, India saw merit in greater engagement with these export control regimes as a means of demonstrating its own credentials as a responsible member of the

international community. The process culminated with the decision to seek membership—which has now been achieved, with the exception of the NSG.

The first section seeks to understand the ideological underpinnings of India's traditional approach towards these regimes as part of the disarmament and non-proliferation debate within the policy-making and the scientific community, while the second looks at the origins and growth of the four regimes. Section three examines the gradual shift in India's position with the end of the Cold War together with the changing global perceptions about proliferation threats and its impact on these regimes. The subsequent section deals with the special waiver provided by the NSG to India in 2008 and the politics surrounding it, while the last section looks at developments in 2016, particularly China's role and its drivers. It also looks at the policy changes that began with the end of the Cold War, took a decisive turn in 2008, but got overtaken by geopolitical shifts in 2016. The last two sections focus on India's quest for membership in the NSG since that has been the subject of maximum commentary. The paper closes by recapturing the issue as an organic whole, in so far as India's policy shift is concerned.

## I.

The nuclear age began in 1945 while India emerged as an independent country in 1947. India's position on export controls evolved between 1950s and the end of the Cold War, in response to changes in India's security environment and the regional and global developments in the field of export controls. Initially, both disarmament and non-proliferation were two sides of the same coin; this divergence crystallised two decades later during the Non-Proliferation Treaty negotiations in the 1960s, and by the mid-1970s, after the 1974 Peaceful Nuclear Explosion (PNE), India found itself on the other side of the

fence. However, India was not alone; France and China had objected to the NPT concluded in 1968 and only joined it in 1992. In fact, when the NPT initially entered into force in 1970, it had less than 60 adherents.

## An age of idealism

For the first decade and a half after independence, India was part of the global consensus that non-proliferation and disarmament were desirable objectives and needed to be achieved in tandem. India's first Prime Minister, Jawahar Lal Nehru, enjoyed a stature on the global stage and launched some of the early disarmament initiatives at the United Nations, including the call for a "nuclear stand-still accord"[1] and a ban on nuclear testing. At the 1965 session of the UN General Assembly, India, as the lead co-sponsor, introduced the resolution (A/RES/2028(XX), 19 November 1965) calling upon the "Conference of the Eighteen-Nation Committee on Disarmament to give urgent consideration to the negotiation of an international treaty to prevent the proliferation of nuclear weapons, based on five main principles"[2]. Among the principles was one calling for "an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers".

The Indian scientific community was a privileged group and enjoyed Nehru's admiration and patronage. Given his international standing as a physicist, Dr Homi Bhabha (who was elected a Fellow of the Royal Society of London in 1941 at the age of 31) took charge of the fledgling Department of Atomic Energy after independence. Apsara, the first nuclear research reactor in Asia, went critical in 1956 and the Tarapur nuclear power reactors, also the first in Asia, went on-stream in 1969. Bhabha opened doors for a number of cooperation projects that boosted the capabilities of the small and young Indian scientific community and gave them the confidence to pursue the path of autonomy, even after India was cut off from international cooperation projects after the 1974 PNE. There emerged a group within the nuclear establishment for whom

indigenous growth and autonomy became articles of faith and any suggestions about the need for accessing foreign technologies were considered as heresy.

## A dose of reality

During the 1960s, India came face-to-face with two harsh realities. The first was the 1962 India-China war, where India suffered a humiliating defeat. The second was the Chinese nuclear test in 1964 and its acceptance as a *de jure* nuclear weapon state in the context of the NPT (the NPT defines a nuclear weapon state as one that tested a device before 1 January 1967)–though at that point, it neither occupied the Chinese seat in the UN nor was it a party to the NPT. Accompanying this was a realisation that the US and USSR, the two superpowers, shared an interest in differentiating proliferation: horizontal proliferation, which was to be prevented; and vertical proliferation, which would be dealt with in the context of bilateral US-USSR arms control negotiations since these two countries accounted for more than 90 percent of global nuclear weapon stockpiles. Disarmament was no longer on the agenda.

Under the circumstances, it was hardly surprising that India stepped aside from the NPT as it finally emerged in 1968. In Indian thinking, it confirmed that the NPT legitimised possession of nuclear weapons in the hands of five countries (USA, USSR, UK, France and China) that had exploded a nuclear device before 1 January 1967 without any meaningful obligations to disarm. After being subjected to nuclear blackmail in 1971 during the height of the Bangladesh crisis, when the USS Enterprise aircraft carrier group sailed into the Bay of Bengal in a gesture of support for Pakistan, India was left with little choice. The 1974 PNE was the Indian response, which became the catalyst for the creation of the London Club (later becoming the NSG) in 1975.[3]

A similar development impacted India's space programme. The Indian Space Research Organisation (ISRO) was created in 1969 to institutionalise India's space-related activities that had begun nearly a decade earlier. These activities had benefitted considerably from international cooperation with other countries with advanced space programmes. The first Indian satellite, Aryabhata, was launched on a Soviet launch vehicle in 1975 and by 1980, India had launched a small satellite Rohini, on an indigenous launch vehicle. Through the 1970s, ISRO scientists enjoyed extensive cooperation with their counterparts in the US, USSR and France as they sought to develop launch technologies, telemetry and satellite-based applications for agriculture, education and meteorology. In 1983, India announced its Integrated Guided Missile Development Programme (IGMDP).[4] The same year, the G-7 countries began talks about controlling missile proliferation and the Missile Technology Control Regime (MTCR)[5] was launched in 1987 with the purpose of controlling proliferation of missile systems capable of delivering nuclear payloads. Significantly, the MTCR made no distinction between military and civilian space launch activities. As a result, international cooperation with many of ISRO's programmes was curtailed even though the IGMDP was managed by the DRDO, an agency under the Ministry of Defence.

## Technology denial and neo-colonialism

During the 1970s and 1980s, India looked at the export control regimes as technology denial regimes that intended to deny developing countries access to advanced technologies for civilian application under the guise of curbing horizontal proliferation, even as vertical proliferation grew. In ideological terms, this was seen as another dimension of neo-colonialism. During the 1980s, in multilateral fora like the UN General Assembly, India consistently urged that negotiations for non-discriminatory disarmament related agreements

would be the more acceptable approach instead of understandings aimed at export controls, reached among ad hoc groupings of like-minded countries.

The UN General Assembly had held its first Special Session on Disarmament with much fanfare in 1978; the session would give shape to the Geneva-based Conference on Disarmament (CD) as the sole permanent multilateral disarmament negotiating forum. Yet this forum remained a debating club even as the Cold War intensified following the Soviet invasion of Afghanistan in 1979 and the Reagan administration announcing its Strategic Defence Initiative in 1983.

Following the use of chemical weapons (CW) in the Iran-Iraq war, the Australia Group (AG)[6] was set up (by 15 Western countries and the European Union) in 1985 to control exports of CW-related chemicals, equipment and knowhow even as negotiations on a Chemical Weapons Convention (CWC) gathered momentum in Geneva. The establishment of the AG led to debates in the CD about the political motives behind such a decision, since the CWC was being negotiated as a comprehensive disarmament treaty that would cover both — elimination of existing chemical weapon stockpiles as well as to bring in restrictions on transfers of related sensitive materials and technologies, thereby addressing the proliferation aspect, but in a non-discriminatory manner. The emergence of a like-minded group of countries that set up the AG and were also part of the CD negotiations raised questions about how the future CWC would relate to the AG.

While the USSR was a founding member of the London Club in 1975, the other two groupings—AG and MTCR—comprised western countries. Meanwhile, India had seen the negative impact of unchecked nuclear and missile proliferation in its neighbourhood. Chinese nuclear and missile cooperation with Pakistan had continued unchecked despite the existence of these regimes, accelerating in the 1980s.[7] Of course,

China was neither a party to the NPT nor a member of any of these export control regimes. Yet the inability of these groupings to curb proliferation also became evident.

A related development was the realisation that exports of dual-use chemicals by Indian manufacturers were finding their way to Iran and Iraq, where the use of chemical weapons had been documented. All of these factors contributed to a re-evaluation by India, leading to the shift in the country's approach towards these regimes, beginning with the introduction of export controls on dual-use chemicals. This policy shift became more pronounced after the 1998 nuclear tests as explained in Sections II and III.

## II.

This section describes the motivations leading to the four export control regimes, their evolution during the Cold War and up to the early 1990s when they began to be modified as a response to a new set of emerging proliferation concerns. Not all four regimes were perceived as targeting India, but NSG and MTCR were. This explains India's reactions to these regimes during the 1970s and 1980s. After the Cold War, the Indian position too began to shift, driven as much by changing global perceptions of proliferation, as by the compulsions of an economy that was beginning to open up.

### Nuclear Suppliers Group

The NSG came into being in 1975 with seven countries (US, USSR, UK, Canada, France, Germany and Japan) to tackle the challenges of nuclear proliferation by focusing on export controls, outside the framework of the NPT, which had entered into force in 1970. While the immediate catalyst was the 1974 PNE conducted by India, there were also concerns about French plans to export a reprocessing plant to Pakistan (France

was not a party to the NPT) and German plans to export key elements of the fuel cycle to Brazil (Germany was a party to the NPT and Brazil was not). Canada and the US tried to push for more stringent export controls, but France and Germany saw this as an attempt to exclude them from potential export markets.[8] Japan too, was still debating internally and only ratified the NPT in 1976, after having joined the London Club.

After the first few years, the NSG remained dormant and did not meet from 1977 to 1991, when concerns about Iraq's nuclear programme surfaced following the first Gulf War. The idea of making full-scope safeguards, the condition for nuclear transfers — first proposed in 1977 — was eventually adopted in 1992, which was partly a consequence of the break-up of the USSR and also a result of changing global perceptions about security threats.[9] With the end of the Cold War, the threat of a US-USSR conflict receded and proliferation emerged as the new threat. In response, NSG export control lists were expanded to include dual-use items and technologies. By this time, NSG membership had expanded to 26 countries. France had joined the NPT, as had China (though China was to join the NSG only in 2004). Thereafter, NSG has had regular meetings, both at the technical and policy levels. Legally, though, it remains an informal grouping of like-minded states committed to nuclear non-proliferation, implemented through a system of harmonised export controls. Decisions in the group are taken by consensus, which has become more difficult with the growth in membership.

The internal dilemma for the NSG has always been to decide whether it is a group of like-minded states committed to upholding a common set of non-proliferation related export controls, or a group that includes all states capable of exporting nuclear materials, equipment and technology. At the outset, the interest in including France reflected the

latter approach as did the desire to bring in China, which joined in 2004. The growth in its membership and the indefinite and unconditional extension of the NPT in 1995 (initially, it had a life of 25 years) also created closer affinity between the NSG and the NPT in terms of "factors" to be considered for NSG membership, adding a political dimension to the dilemma. This dilemma surfaces occasionally, most recently in 2016, when it was exploited by China to block India from joining the NSG.

## Australia Group

During the early 1980s, it was discovered that Iraq had used CW during the Iran-Iraq war and some of the precursor chemicals had been procured through legitimate trade. Negotiations for a comprehensive CWC were underway in the CD in Geneva. These were proving to be more complex than the Biological Weapons Convention (BWC), which had been negotiated in 1972 because of extensive verification provisions that were being proposed by the Western countries. While these negotiations were going on, a group of 15 western nations, led by the US, met in Brussels in 1985 to develop a list of key chemicals to be subjected to export controls in order to prevent further proliferation of CW. Annual meetings of the group are held at the Australian mission in Paris, hence the name. Subsequently, control lists were expanded to include biological agents as well as technologies and equipment that can be used to produce CW and BW. The membership of the AG has since grown to 43 states plus the EU.[10]

## Missile Technology Control Regime

Discussions among the G-7 members (USA, UK, Canada, France, Germany, Italy, and Japan) began in 1983 to develop export controls as a means of curbing missile proliferation. It was the same year that India

launched its missile development programme. In 1987, the MTCR came into being to restrict proliferation of missiles with a range of 300 km and capable of carrying a payload of 500 kg, i.e., a nuclear capable missile. The controlled items are divided into two categories. Category I items include complete rocket and unmanned-air-vehicle delivery systems and sub-systems, while Category II items include launch and ground support equipment as well as materials for missile production. While there is a strong presumption of denial for the items listed in Category I, the exports of the items in Category II are permitted after certification that the end-use is exclusively civilian. This is sometimes accompanied by on-site inspections.[11]

As with other regimes, the MTCR too does not possess any formal mechanism to enforce compliance and effective implementation depends on the political will of the member states. Individual states can impose additional requirements. For instance, US sanctions law has extra-territorial applicability. This happened when Indian and Russian entities came under US sanctions in 1993 with regard to transfer of cryogenic engines (listed in Category I) from Glavkosmos to ISRO, which were patently intended for use in the Indian civilian satellite launch vehicle programme, even though neither Russia nor India were members of MTCR.[12]

**Wassenaar Arrangement**

Technology controls for curbing proliferation originated with the London Club in 1975, but export controls of strategic materials and technologies to serve political ends began as early as 1950. The Coordinating Committee for Multilateral Export Controls (CoCom) was an attempt led by the US to coordinate national controls in the Western bloc over the export of strategic materials and technologies to the Communist world.[13] The original membership consisted of the US, UK,

France, Italy, Belgium, the Netherlands and Luxembourg. Following the Berlin crisis, by 1953 new members included the Federal Republic of Germany, Norway, Denmark, Canada, Portugal, Japan, Greece and Turkey. Countries like Sweden, Switzerland, Austria and Sweden chose not to join but informally engaged in a degree of coordination with CoCom.

Following the end of the Cold War, CoCom was wound up and a new regime, the Wassenaar Arrangement (WA) came into being in 1995. Consisting of 41 countries, the WA includes the original 17 CoCom members and many of the former Communist bloc including Russia, Czech Republic, Slovakia, Hungary, Poland, Romania and Bulgaria. Member states harmonise their national policies to control transfers of conventional arms (Munitions List) and dual-use goods and technologies (Dual Use Goods and Technologies List) so that destabilising accumulation of these capabilities is prevented. The WA maintains a permanent secretariat in Vienna. However, implementation remains a national prerogative and regular reporting ensures a degree of transparency.[14]

## III.

The end of the Cold War created a unique geopolitical moment. The USSR disintegrated and three of the new republics—Belarus, Kazakhstan and Ukraine—possessed nuclear capabilities. The US and Russian interests converged in getting these countries to denuclearise and join the NPT as non-nuclear weapon states. In South Africa, before handing over power to black majority rule, the apartheid regime dismantled its secret nuclear weapons programme and also joined the NPT as a non-nuclear weapon state.[15] The first UN Security Council summit meeting held in January 1992 identified "proliferation" as the principal threat to regional and global security.[16] With France and China

joining the NPT in 1992, the P-5–N-5 symmetry was complete. More and more countries were persuaded to join the NPT and in 1995, it was extended into perpetuity.[17] Today, with 192 member states, it is the most widely adhered to agreement in the non-proliferation field. Yet, it has also become a victim of its own success. It is unable to deal with the political reality of the four nuclear weapon states outside the NPT (India, Pakistan, Israel and DPRK) and therefore unlikely to be the forum to push for global nuclear disarmament. The post-Cold War politics and the changing nature of threat perceptions influenced the evolution of the export control regimes and created space for a shift in India's policy.

Contrary to popular perception, India had never been an "outlier state" and though not a member of the nuclear non-proliferation regime, had maintained an impeccable non-proliferation record coupled with a strong commitment to controlling exports of nuclear materials, equipment and technologies. India also believed with some justification that both the NSG and the MTCR had targeted its civilian nuclear and space programmes whereas in the neighbourhood, the China–Pakistan collusion had been tacitly permitted. (The US had in fact periodically sanctioned Pakistani and Chinese entities from 1990 onwards once the USSR had withdrawn from Afghanistan and the Cold War had thawed.)

## Beginnings of change

Two factors were significant in changing India's stand on proliferation-related export controls. One was the changing nature of global threat perceptions and the rise of jihadi extremism. The latter became a major security challenge for India in the early 1990s, though it would take another decade before the rest of the world acknowledged the threat posed by global terrorist groups acquiring weapons of mass destruction (WMD) and related equipment and technologies. The second factor for

India was economic liberalisation, under which India was committed to dismantling the plethora of licensing controls and commencing economic reforms, including in the high-technology sectors. The first export controls related to dual-use chemicals and the fact that the CWC had been opened for signature in 1993 provided the perfect political opportunity.[18]

The end of the Cold War led to more frequent exchanges with the US (and other countries including ASEAN, Japan and France) on issues pertaining to regional and global security, arms control and non-proliferation, confidence building measures (which would be an agenda item in the India-Pakistan talks in 1992) and developments in ongoing multilateral negotiations. In many of these dialogues, export controls also figured as an agenda item, leading to internal deliberations involving relevant government agencies and industry associations.

In 1994, the Ministry of External Affairs proposed the setting up of an expert group to examine the idea of strategic export controls and identify items and technologies to be placed in this list. In parallel, the Department of Atomic Energy was advised to come up with its own list of nuclear materials, equipment and technologies, since the Atomic Energy Act gave it the omnibus authority in this domain. The CWC schedules (comprising chemical warfare agents, precursors and certain dual-use chemicals) were notified first by the Directorate General of Foreign Trade (DGFT) in 1993, followed by a Special Materials, Equipment and Technology (SMET) List, and a Nuclear List in 1995. A review mechanism was instituted in 1999 and based on feedback from industry associations, a more elaborate and rationalised system was introduced in 2000. With the inclusion of chemicals and bio-organisms and additional categories for 'nuclear' and 'armaments', a Special Chemicals, Organisms, Materials, Equipment and technologies (SCOMET) list consisting of eight categories was notified. The

advantage of this categorisation provided adequate transparency, flexibility in terms of revisions and helped develop familiarity and competence in this field. Further, it has made it easier to harmonise the SCOMET categories with control lists issued by the export control regimes.

As further elaborated in Section IV, the 1998 nuclear tests by India and the consequent policy shift announced by the government also facilitated this evolution in Indian policy on export controls.

**NSG developments**

In 1991, following the disintegration of the USSR, the NSG expanded the trigger list to include all nuclear-related dual-use materials, equipment and technologies in the list, and also introduced full scope safeguards as the conditionality for transfers to non-nuclear weapon states.[19] With the maturing of nuclear technology, there was a growing desire to include all states with the technical capability to export the listed items. Developments in Iraq, Iran and DPRK indicated that the NPT was no longer adequate to deal with nuclear proliferation. In order to deflect criticism of being a club or cartel, the NSG in its outreach document (INFCIRC/539/Rev.4) replaced the term "member states" with "participating governments" (PGs).

In 2001, the NSG adopted new Procedural Arrangements, which also had a section relating to participation in the NSG. It listed five factors to be considered while admitting a new PG. These are: a) the ability to supply – either as a producer or as a transit point – the items on the control lists; b) adherence to NSG guidelines; c) enforcement of the guidelines through legally based export control system; d) support for international efforts for non-proliferation of WMD systems and of their delivery systems; and e) adherence to one or more of the NPT, Nuclear Weapon Free Zone treaties (Bangkok, Pelindaba, Rarotonga, Tlatelolco,

Semipalatinsk) and compliance with its obligations.[20] It has been clarified that these factors are intended for "consideration" but not mandatory criteria. Since there are four countries with nuclear weapons outside the NPT (India, Pakistan, Israel and DPRK), any expectation of their adherence to the NSG would imply that the fifth factor will not be met, since they did not become nuclear weapon states before 1 January 1967, which is the cut-off date laid out in the NPT to define a nuclear weapon state.[21]

Today, all 48 NSG PGs are parties to the NPT; five as nuclear weapon states that exploded their devices before the cut-off date, and the rest as non-nuclear weapon states. India was the first non-NPT state to express interest in joining and has now been followed by Pakistan. Some have expressed concern that this might lead to a decoupling of the NSG and the NPT, but this argument misses the point that the NSG emerged only because the NPT had certain limitations, which are politically insurmountable. If the export controls provided for in the NPT and periodically reviewed by the Zangger Committee had been adequate, the NSG would have lapsed into insignificance.

Yet the NSG has also found it difficult to deal with major powers as reflected in the Chinese adherence in 2004. At that time, China had informed the NSG that it would continue with its civilian nuclear cooperation with Pakistan in accordance with the agreement signed earlier. These covered the Chashma II nuclear power plant, which was under construction at the time (operational since 2011); lifetime support and fuel supply for Chashma I, which had gone operational in 2000; supply of heavy water and safety services for the Karachi nuclear power plant; and supply of fuel and safety services for the two research reactors at PINSTECH. The Chinese statement did not make any other reference to future commitments and accordingly, these projects were "grandfathered" as these were subjected to specific safeguards, but not

full-scope ones as mandated by the NSG since 1992. Since then, China has informed the NSG that there are additional obligations – Chashma III and IV for which agreements were actually signed in 2009, and Chashma V and KANUPP 2 and 3 for which announcements were made only in 2013. The NSG could do nothing but accept it as a *fait accompli*.[22]

## AG and CWC

The CWC negotiations were concluded in 1992 and it was opened for signature the following year, entering into force in 1997. On account of its detailed verification provisions, the first for any disarmament agreement, the CWC has often been cited as a model for other disarmament agreements. Since it has a list of chemicals intended for monitoring and export controls, there has been a constant debate as to the rationale for the continuation of the AG, particularly since all AG members are parties to the CWC and the BWC. The AG has sought to justify that its role is limited to curbing proliferation through export controls (it added biological organisms and dual use CBW equipment on its control lists post-Cold War) and second, the BWC does not have a verification regime like that of the CWC. It has sought to engage with the OPCW as a sign of its transparency while acknowledging the political legitimacy that treaty-based regimes like the CWC and BWC enjoy. Its engagement with the OPCW also ensures it does not seek to impede the normal trade of chemicals and equipment used for legitimate purposes.

The political reality is that while the widespread adherence that the BWC and CWC enjoy gives these agreements greater legitimacy, it also makes decisionmaking more protracted and cumbersome. An informal grouping like the AG, which is not treaty-based, can respond to technological changes with greater flexibility, even with the consensus rule, unless politics intervenes. Hence the desire to ensure a degree of

"like-minded members" in the group. The AG has continued to update its control lists periodically, an easier exercise than modifying CWC control lists.

Unlike the NSG, which has "factors for consideration", the AG has set out "criteria" for membership. These include adherence to the BWC and CWC, an ability to produce/export the items on the AG control list, adherence to the AG guidelines and an effective national export control system, including both licensing and enforcement mechanisms.

**MTCR developments**

The MTCR Annexes also went through some quick updates after the end of the Cold War while expanding its membership. By 1995, Russia, South Africa, Brazil, and other European countries had joined the MTCR, bringing the membership to 27; it now stands at 35 with India joining the regime at the 2016 plenary. Once again, it was Chinese transfers of the 3,000 km range CSS-2 missiles to Saudi Arabia in 1988, which posed the first challenge to the MTCR where it was unable to do anything. Later, Chinese and Pakistani entities came under US sanctions when China transferred M-9 and M-11 missiles and production lines for the same to Pakistan. These were lifted when China agreed not to export missiles featuring the primary parameters of the MTCR. Subsequent Chinese behaviour, including recent transfers of MIRV-ing technologies tested on the Pakistani missile Ababeel[23] indicates why the Chinese application for joining MTCR remains pending.

In recent years, the MTCR focus has been more on "intangibles" and "catch all controls". Since there is no treaty-based regime dealing with ballistic missiles, the MTCR regime has escaped the kind of internal debates that have taken place within the NSG and the AG. In any event, the MTCR places no restriction on its members to restrict indigenous

missile development. In other words, it only addresses horizontal proliferation. This is why some of the European member countries of the MTCR decided to open negotiations that have led to The Hague Code of Conduct (HCoC), which seeks to address this lacuna. All MTCR members have not signed on to the HCoC. Further, the HCoC, as the name suggests is a code of conduct and does not have the force of a treaty. With more countries exploring missile defence technologies, the challenge of making a distinction between offensive and defensive missile systems will only grow.

MTCR guidelines do not distinguish between exports to MTCR members and those to non-members. In other words, MTCR membership does not provide for any preferential access to advanced space and missile technologies. For India, joining has the advantage that it provides reassurance to other members about the soundness of India's export controls, thereby facilitating export authorisations for MTCR-controlled items. It also enables India as a responsible nuclear power, to play a more active role in curbing global missile proliferation.

Like the NSG, the MTCR sets out "factors" to be considered while admitting new members. The key is whether the prospective country has the ability to produce/export items on the MTCR control lists, demonstrates a commitment to non-proliferation of WMD and related delivery systems and has a legally effective export control system that can implement and enforce MTCR guidelines effectively.

**From COCOM to WA**

Unlike the other regimes, the WA, in its present incarnation, is a post-Cold War creation. Second, somewhat like the MTCR, it covers areas where there is no international treaty regime. It is also less restrictive in that the WA cannot veto export decisions by a member state and

information is provided on a half-yearly basis to the WA secretariat located in Vienna. Within the WA, there is a sharing of non-binding best practices and information is exchanged on licences denied, which translates into an informal approach towards identifying areas of conflict.

With the global diffusion of technology accelerated by globalisation and the ICT revolution, the WA's role has become more significant. The challenge is that unlike the nuclear and space technologies that were developed and consequently controlled by governments, these new ICT and related technologies like encryption, surveillance and data analytics have been developed by the private sector and found early applications in the commercial world. This makes it difficult for governments in WA to coordinate export regulation, particularly of the dual-use technology items. Identifying and controlling the munitions list items is comparatively a simpler task.[24]

Like the AG, the WA has set out eligibility "criteria" for future members as distinct from "factors" to be considered in the case of participation in the NSG and MTCR. These include the ability to produce/export items on the WA control lists; adherence to WA guidelines together with a legally-based, effective and enforceable export control system; demonstrated support for non-proliferation of WMD and related delivery systems; and adherence to NSG, Zangger Committee, MTCR, AG, CWC, BWC and NPT, "where applicable".

Post-Cold War developments brought about closer coordination between the four export control regimes, with extensive overlapping membership and similarly defined criteria/factors for new adherents. The key remains the informal nature of the regimes as none of these are treaty-based outcomes, and the consensus rule of decisionmaking; both of these reflect their political origins.

## IV.

Significant political decisions are often preceded by preparatory groundwork which invariably goes unnoticed by most observers. The "exceptional waiver" granted by the NSG to India in 2008 is also one such decision and therefore covered in some detail in this section, in order to illustrate the political backdrop and the extensive technical preparations. Some analysts felt that this was a decision taken too quickly, but the reality is that it had been in the making for nearly a decade. Officials working on it had to clear various legacy issues so that should the political opportunity arise, the decision could be pushed forward. Such an opportunity presented itself in 2005. Even then, despite the Indian and the US governments pushing it, it took three years for the NSG waiver to come about in 2008.

The end of the Cold War and the growing salience of proliferation-related threats had led India to re-examine its approach towards export controls of sensitive materials and technologies. This shift however, crystallised in the formal statement issued after the May 1998 nuclear tests when India declared itself a 'responsible nuclear weapon state'. The paper titled 'Evolution of India's Nuclear Policy', tabled by Prime Minister Atal Bihari Vajpayee in Parliament on 27 May 1998,[25] contained elements of what would eventually become India's nuclear policy, including inter alia, the maintenance of "stringent export controls to ensure that there is no leakage of our indigenously developed know how and technologies".

### 1998 and India-US engagement

The nuclear tests in 1998 led to US sanctions on India. Talks between External Affairs Minister Jaswant Singh and Deputy Secretary of State Strobe Talbott – best described as the "most intense dialogue process that remained inconclusive" – was nevertheless highly productive. It

laid the ground for a better appreciation of India's security concerns and its non-proliferation credentials. The agenda for the talks had included export controls, in keeping with India's newly declared policy.

As then US President Bill Clinton's term was ending, most of the sanctions introduced in 1998 had been eased,[26] clearing the way for the incoming Bush administration to pick up the thread and move forward with the Next Steps in Strategic Partnership (NSSP), launched in 2003.[27]. One of the achievements of the NSSP was the strengthening of Indian export controls, which in turn led to the removal of sanctions on certain entities engaged in nuclear safety and civil space applications. With the acceptance of end-use inspections, the incidence of denial of licences also came down significantly. A High Technology Cooperation Group helped build better understanding on both sides of the political and legal constraints in each country.

Meanwhile, defence relations between the two countries had also been growing, following the Kicklighter proposals (proposed by Lt. Gen. Claude Kicklighter in 1991) that helped establish a strategic dialogue at a military to military level, joint training exercises, and exchanges and visits by senior military commanders. In 1995, an Agreed Minute on Defence Cooperation was signed, expanding the dialogue to include civilian policy officials and the setting up of a Joint Technology Group. After a decade, this led to the New Framework for US-India Defence Relationship concluded in 2005[28] for a 10-year period and renewed in 2015. A key element flowing from this has been the Defence Technology and Trade Initiative, which has facilitated acquisition of advanced US military hardware and also identifies projects for co-development and co-production of defence platforms.

Following the 9/11 terror attacks in the US, there were growing concerns about jihadi terrorism and non-state actors. These were exacerbated by the revelations regarding Dr AQ Khan's widespread

proliferation networks covering Iran, North Korea and Libya.[29] To ensure that such groups did not get access to WMD or related technologies, the UN Security Council unanimously adopted Resolution 1540 and the Indian government passed a new law in 2005, commonly known as the WMD Act.[30] This was intended to prevent proliferation of sensitive technologies that could be used for development of WMD and related delivery systems by non-state actors. The WMD Act incorporated international standards in export controls covering intangibles, catch all controls, end use certification and inspections, as well as controls on brokering and transhipment, into national legislation.

With the conclusion of the NSSP, a new policy for Asia took shape in the Bush administration's second term. In India, Prime Minister Manmohan Singh had taken over in 2004, and was also keen to impart a greater momentum to the bilateral relationship. The time was therefore ripe for setting an ambitious target which would help clear the legacy of mistrust.

## Setting ambitious goals

The 18 July 2005 Joint Statement[31] issued following PM Manmohan Singh's visit to the US recognised India as "a responsible state with advanced nuclear technology" and acknowledged its right to "acquire the same benefits and advantages as other such states". Towards this end, the US committed to "work to achieve full civil nuclear energy cooperation with India as it realised its goals of promoting nuclear power and energy security. In turn, India undertook to separate its military and civilian nuclear facilities, place its civilian facilities under IAEA safeguards, adhere to IAEA's Additional Protocol and strengthen its export controls by harmonising it with MTCR and NSG guidelines.

The following year, India completed its separation plan amid concerns that accepting in perpetuity the safeguards set by the

International Atomic Energy Agency (IAEA) must be balanced by assurances regarding lifetime supply of fuel. Once again, this was a reflection of the legacy issue when the US unilaterally cut off fuel supplies for the Tarapur nuclear power plant after the 1974 PNE by India. Discussions about facilities other than power reactors proved difficult, as did the separation of personnel between the civilian and the military facilities. Once an agreement was reached regarding the separation plan, the US administration pushed for an amendment to its Atomic Energy Act, which would authorise the administration to open negotiations with India on civil nuclear cooperation. India's commitment to non-proliferation, a credible separation plan, willingness to adhere to NSG and MTCR guidelines, continuing moratorium on testing and cooperation on FMCT negotiations were the arguments used by the administration to push for a waiver. The Hyde Act was finally passed in December 2006, but with riders that made India uncomfortable. Eventually, the two governments overcame their misgivings and began negotiations on a bilateral civil nuclear cooperation agreement, popularly known as the 123 Agreement.

India was willing to continue the moratorium on testing, but remained opposed to formalising it by signing the CTBT. US needed assurances that its cooperation would not assist in India's nuclear military programme and renewed testing by India would lead to a termination of the cooperation. How this would square with technologies already transferred, lifetime fuel supply assurances and reprocessing of US origin spent fuel, were among the difficult issues in the negotiations. The US was guided by the parameters spelt out in the Hyde Act while the Indian negotiating stand was based on the assurances that PM Dr Manmohan Singh gave in Parliament. By July 2007, the negotiations were concluded.

Thereafter, India began discussions with the IAEA with regard to the safeguards' agreements to be concluded for the voluntarily declared

civilian nuclear facilities. Meanwhile, the details of the bilateral agreement created strains within the coalition government in Delhi. Even as the discussions with the IAEA reached a concluding phase, the government narrowly won a vote of confidence on this issue. For the first time, foreign policy issues in India had become politically divisive. Finally the IAEA Board approved the new safeguards agreements in August 2008, clearing the way for the NSG waiver. This waiver was "exceptional" because it was intended to enable NSG members to engage in civil nuclear cooperation with India, which did not have full-scope safeguards, a condition that NSG had introduced in 1991 (Para 30).

## NSG waiver in 2008

Both India and the US had mounted an extensive outreach with the NSG members, given that NSG decisions are taken by consensus. The first round of meetings in end August was inconclusive and another plenary was convened a fortnight later. India had made it clear to the US that it could not engage in another set of negotiations in Vienna that would impose any additional constraints. For the US too, its bilateral agreement with India could not be subjected to NSG monitoring. Eventually, after considerable telephone exchanges at the highest level between capitals, the NSG waiver was approved. The previous day, then External Affairs Minister Pranab Mukherjee addressed the Indian parliament, spelling out the country's non-proliferation commitments, a statement that was intended to reassure the NSG audience.[32] The NSG waiver cleared the way for the India-US agreement[33] to be concluded and the final exchange of diplomatic notes was completed in December 2008, a month before President Bush completed his second term.

Critics of the waiver maintained that the US decision was driven by commercial considerations since both GE and Westinghouse were looking at lucrative contracts to build new power reactors. However, as

this account makes clear, the India-US agreement was not about reactor sales, but changing the nature of the relationship. This shift was driven from the top and had survived changes of government, in both Washington and Delhi. The preparatory work undertaken for the NSSP and by the HTCG was a much needed process that inculcated the habit of talking despite disagreements on tactical issues. Gradually, the tone of the dialogue changed from adversarial, to one reflecting a convergence of interests. For India, there was a legacy of mistrust accumulated over the decades of the Cold War to be overcome. For the US, which was used to dealing with allies like Germany or Japan and adversaries like USSR, the challenge was to find a vocabulary to deal with India, which did not fit into either category. At the same time, the US also had to get out of the groove of hyphenating its India-Pakistan policies, particularly evident since the Nixon years.

For the incoming Obama administration, the priorities were the reset in relations with Russia and the ongoing wars in Iraq and Afghanistan. It took time before the India file drew his attention but by that time, India was gearing up for elections. The step forward was the Joint Statement[34] issued in late 2010, which stated that the US "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".

The following year, the US circulated a Food for Thought paper[35] in advance of the NSG plenary meeting to encourage discussions on India

joining the NSG. The paper took up the factors identified in the NSG's Procedural Arrangement, adopted in 2001 and emphasised that these were 'factors' to be considered and not 'mandatory criteria'. This distinction is relevant in view of the fact that one of the factors to be considered is that a new Participating Government should "be a party to the NPT, the Treaties of Pelindaba, Rarotonga, Tlatelolco or Bangkok or an equivalent international nuclear non-proliferation agreement, and in full compliance with the obligations of such agreement(s), and, as appropriate, have in force a full-scope safeguards agreement with the IAEA". This aspect was discussed every year at the NSG plenary meetings even as India continued its engagement with the NSG members.

## V.

The fundamental shift in India's approach towards export controls that led to the NSG waiver was followed by the expression of interest in joining the export control regimes in 2010. Since India had perceived itself as having been targeted by NSG and MTCR, it was natural that joining these two regimes assumed priority, compared to AG and WA. The transition in Indian thinking created some internal political tensions in India but was broadly supported by the major political groups. Indian strategic community too played a significant role in changing public opinion on the issue.

The Narendra Modi government's push in 2016 for NSG membership was a logical next step, but failed to take into account the changed global power equations since 2008. The NSG pitch was therefore, challenged—primarily by China and with occasional support by a few other countries—who raised contentious issues of NSG's relationship with NPT, India's quest for "status", and even-handed policy in dealing with Indian and Pakistani applications. These issues will need to await a favourable political environment before they can be

resolved. However, the "exceptional waiver" granted to India in 2008 remains in place, enabling India to continue its civilian nuclear cooperation with the dozen NSG members with whom it has concluded civil nuclear cooperation agreements since 2008.

## Politics and decisionmaking

The decisionmaking in the NSG was a clear indicator of the politics in the group. While the proposal for a special waiver for India in 2008 enjoyed broad support, there were a number of countries (Austria, Ireland, Netherlands, New Zealand, Norway and Switzerland) that wanted to impose additional conditions. China did not come up with any amendments of its own, but insisted that the concerns of these six NSG members needed to be addressed. Following back-channel conversations with these countries at the highest levels by the US and India, and the statement by then External Affairs Minister Pranab Mukherjee in Parliament on 5 September 2008,[36] these six countries withdrew their reservations. Not wanting to be seen as the only country blocking the decision, China too "acquiesced" by absenting itself at the crucial moment. The NSG accorded India the exceptional waiver in the early hours of 6 September 2008.[37]

Another lesson in the political nature of decisionmaking became apparent in the decision pertaining to India's MTCR adherence. After engaging in talks with key MTCR countries and having harmonised its export controls with the MTCR provisions, India formally applied to join the regime in June 2015. At the plenary meeting held in October in Rotterdam, India's application enjoyed overwhelming support but was vetoed by Italy,[38] which had been unhappy with India because of the prolonged judicial process involving two Italian marines who had shot dead two Indian fishermen in the Indian EEZ off the coast of Kerala in early 2012. Evidently, the issue had nothing to do with non-

proliferation or export controls. Subsequently, the issue was resolved bilaterally and Italy withdrew its reservations. In June 2016, India formally joined the MTCR as the 35th member state.[39]

With a renewed focus on developing a domestic defence industry, which would also open up the possibility of defence exports, India had been engaging with the WA secretariat in Vienna. India's software industry was also monitoring the new controls that were being introduced by WA regarding encryption software. India followed these developments and sought to harmonise its SCOMET lists with the revised WA dual use technology lists. The harmonisation with the 22 categories in the Munitions List is relatively easier since these relate to well-established technologies and definitions. Undeterred by the NSG debacle at the 2016 Seoul plenary, India continued its outreach with the WA and in December 2017, joined WA as the 42nd Participating State.[40]

With far-reaching developments in the fields of biotechnology and biochemistry, the relevance of the AG had also been growing. India had continued its outreach with the AG and at the plenary session in June 2017, had indicated its interest in joining the group. India's intention was welcomed and in January 2018, it formally became the 43rd member of the AG.[41]

## Changed politics in NSG in 2016

Even as the four regimes are characterised by their own internal politics, India's policy on export control regimes reflects an organic consistency in terms of its evolution. What was perhaps not realised adequately by the Modi government was that China in 2016 was different from what it was in 2008, and was quite willing to oppose India openly. Pakistan's application to join the NSG provided China with the pretext to indulge in dilatory tactics.

Therefore, the idea that India is seeking "legitimacy as a nuclear weapon state" was propagated to block India's joining the NSG for political reasons that have little to do with non-proliferation. Much has been made of the argument that the NSG needs to have a policy regarding candidate states that are not parties to the NPT. Such an assertion is inconsistent with NSG's own history. France, a founding member of the NSG, only joined the NPT in 1992. Second, it is a specious argument because there are only four countries that possess nuclear weapons and these are not part of the NPT, namely DPRK, Israel, Pakistan and India. Of these, Israel and DPRK are not going to join the NSG, for their specific reasons. Israel officially maintains a posture of nuclear ambiguity and DPRK is perceived as a "rogue state". Pakistan is a different case. Its policy is reactive to India's moves and this became apparent when after India formally applied, Pakistan followed suit. As Foreign Policy Adviser Sartaj Aziz declared, "Our strategy was to apply after India did, after which we would have immediately followed. We have had our application in an advance state of readiness for the past three months for this purpose".

On 9 May 2016, India sent a formal communication to the IAEA Director General indicating that it was now in full adherence with the NSG guidelines and the following day, applied for formal membership of the NSG. Pakistan did the same on 18 and 19 May 2016. The key difference was that Pakistan had neither undertaken a separation of its civilian and nuclear fuel cycles, nor concluded a safeguards agreement with the IAEA nor had it signed on to the Additional Protocol. Further, India had been engaged for nearly a decade with the NSG and the IAEA on these issues.

Pakistan's application however, added another dimension to the NSG politics by providing political cover for China to argue that since there were two applicants, the NSG should evolve a policy regarding non-NPT candidate states. Reports appeared that India and Pakistan's

applications should be considered together so that India could not subsequently use a veto to block Pakistan. India made it clear that this was not the case and an indication to this effect is there in US Secretary of State John Kerry's letter to NSG members, circulated in June 2016 to NSG member states, urging them to support India's bid and adding that with respect to other applications (read Pakistan), "India would take a merit based approach and would not be influenced by extraneous (read bilateral) regional issues". Put simply, the suggestion was that India could be admitted in 2016 with a decision at Seoul and Pakistan's application would be considered on merits after it completes the necessary requirements thereafter. Cognizant that Pakistan's non-proliferation credentials were weak and may face hurdles, China continued to play the hyphenation game by raising the issue of tensions in South Asia.

The fact is that Pakistan was far from ready to join the NSG even if the politics could be made conducive. However, China's opposition also encouraged some of the other countries to once more rake up the issue of linkages between NPT and NSG. This issue had been addressed in 2008 too when the NSG decision unambiguously stated that it reflected the "desire to contribute to the effectiveness and integrity of the global non-proliferation regime, and to the widest possible implementation of the provisions and objectives of the Treaty on the Non-Proliferation of Nuclear Weapons". In fact, in 2008 India also committed not to transfer enrichment and reprocessing technologies to countries that did not possess them.

Linking NSG to NPT is an impossible exercise in reconciliation if India (or for that matter any of the other three nuclear weapon states outside the NPT) had to brought in. The reason is that these states cannot accept full scope safeguards because they are not going to give up their nuclear weapons which they consider necessary for their national

security. This was the case in 2008, which was settled in terms of acknowledging not India's nuclear weapons, but its impeccable non-proliferation credentials and its export capabilities. The reason that the same did not work in 2016 is because the geopolitics of 2016 was different from that in 2008. Eight years ago, China was not ready to be singled out as the country blocking the exceptional waiver decision but in 2016, it was a more assertive China.[42]

Chinese opposition became evident months earlier, in April, when it unsuccessfully tried to block an Indian presentation on its nuclear export controls in Vienna. Pakistan's submission was the second indicator that India tried to finesse by clarifying that it would not exercise a "political veto" on Pakistan's application. Chinese opposition ensured that the Seoul plenary ended inconclusively, stating that discussions on the issue of "technical, legal and political aspects of the participation of non-NPT states in the NSG" had taken place. The incoming chair (ROK) asked the outgoing chair (Argentina) to explore this further to take this discussion forward in the coming months.

Based on Argentinean Ambassador Rafael Grossi's consultations, an NSG meeting was held on 11 November in Vienna. It did not register any progress.[43] China maintained that "any formula for membership worked out should be non-discriminatory and applicable to all non-NPT states, without prejudice to the core value of the NSG and the effectiveness, authority and integrity of the international non-proliferation regime with the NPT as its cornerstone and without contradicting customary international law in the field of non-proliferation". China added that it remained committed to a two-step process where the first step should be development of such a formula, with country specific applications being taken up in the second step.

Politics with regard to NSG membership is not a new development. Neither France nor Japan was a party to the NPT when they joined as

founding members of the NSG in 1975. Argentina joined the NSG in 1994, though it only acceded to the NPT the following year. China was already a party to the NPT for over a decade when it joined the NSG in 2004. In the case of France and Japan, it was their export potential that made their entry into the NSG necessary. Argentina had accepted full scope safeguards under a bilateral agreement with Brazil, and so the NPT requirement was overlooked. In China's case, its adherence to NPT was seen as inadequate in meeting larger non-proliferation commitments and therefore, there was interest in bringing China into the NSG. In admitting China, the NSG overlooked one of its "factors" for admission, which demands that the candidate state already be in harmony with the NSG guidelines, whereas China made it clear in its application that "China will, once admitted into NSG, act in accordance with the NSG guidelines." The real reason was that China needed to be certain about how much questioning it would be subjected to and how much "grandfathering" it could manage with regard to its nuclear cooperation with Pakistan.

## China's idea of a nuclear India

Given China's key role, it is worth exploring the evolution in Chinese thinking regarding the nuclear factor in India-China relations as this has a bearing on future developments as well.[44] Until recently, notwithstanding India's 1974 PNE and the tests in 1998, China had not permitted the nuclear issue to become part of its strategic discourse with regard to India. The status of the Dalai Lama and the border dispute were regular elements in the bilateral dialogue. In recent years, maritime issues had also begun surfacing both with regard to India's presence in South China Seas and Chinese presence in the Indian Ocean.

The Chinese strategy of dealing with a nuclear India was designed to address two possible challenges: a security challenge and a challenge to

China's status as the NPT legitimised nuclear weapon state in Asia. The 1974 PNE did not pose a near term security threat. Further, at that time China was not a party to the NPT, and so the issue of a challenge to status did not arise. Therefore, Chinese reaction was low key. While acknowledging India's right to use nuclear technology for peaceful applications, China began its cooperation with Pakistan's clandestine nuclear weapons programme, which was launched by PM Zulfikar Ali Bhutto.

China's initial reaction to India's 1998 tests was critical, but more in the context of destabilising security in South Asia, and also in terms of the CTBT to which China was a signatory. Chinese attitude changed significantly after PM Vajpayee's letter to President Clinton was leaked to *The New York Times*. The letter elaborated on India's threat perceptions, mentioned "an overt nuclear weapon state on the border which had committed armed aggression against India in 1962" and pointed out that this state "helped another neighbour to become a covert nuclear weapon state."[45] China claimed to be shocked by Indian assertions and heightened its rhetoric about India's actions damaging the NPT and the CTBT. Pakistan's tests were glossed over as having been provoked by India.

While the US engaged with India in the previously mentioned Strobe Talbott-Jaswant Singh dialogue, China adopted an over-zealous non-proliferationist approach about the need for India to sign the NPT (as a non-nuclear weapon state) and the CTBT.[46] In other words, China remained opposed to the idea of any accommodation for India as it would diminish Chinese notion of its "status". By this time, it had also joined the NSG and felt itself qualified to take on a puritan role.

In the run-up to the NSG meeting in 2008, President Hu Jintao declined to take PM Manmohan Singh's call, but President Bush spoke to him on the penultimate day after which the Chinese delegation

conveyed that they would be absent from the meeting, thereby permitting the decision to go through in the early hours of 6 September. By this time, the concerns of the other hold-outs had been addressed and with some political persuasion, they were no longer in opposition. The 2008 decision highlighted India's position as "a responsible nuclear power". However, the exceptional waiver for India emboldened China to announce new projects in Pakistan claiming that these were part of its 2004 "grandfathering" understanding and it had merely omitted to mention it then.

Between 2008 and 2016, the geopolitical centre of gravity began to shift. The financial crisis in the US and the Eurozone marked the emergence of China as the new principal actor on the global stage. In addition, President Xi Jinping was more willing to assert that the moment had arrived for China to assume its greater responsibilities on the global stage. The issue of "status", therefore, became more sensitive for China in 2016. China could continue to ignore any security threat posed by India's modest nuclear weapon capabilities, but India's entry into the NSG on account of its "impeccable non-proliferation credentials" would have provided India a legitimacy, which China perceived as threatening to its "status". It would also catapult India out of the South Asia (India-Pakistan) framework. Consequently, the stakes were higher for China in 2016 and it certainly felt that it was better placed to play the blocking game.

Left to itself, Pakistan would have preferred some kind of a "nuclear deal" with the US, but this would not have addressed China's concerns on "status". It was preferable, therefore, to get Pakistan to apply for NSG membership (knowing that there was no possibility for it to go through) and use this to get the non-proliferation lobby to support the idea that the NSG should first develop a policy for non-NPT candidate states, since there were now two applicants. It also banked on the realistic

assessment that the Obama administration and the Modi government could not exert the same influence on the states with reservations (Austria, Brazil, Ireland, Mexico, New Zealand, Switzerland and Turkey) as the Bush administration and the Manmohan Singh government had been able to do in 2008. Simply put, the geopolitical reality was different.

This approach encouraged the hold-out states to suggest that more conditions be explored and introduced (for instance, signing the CTBT, ending fissile material production, among others) which India would not accept. A bogey was generated that without such additional commitments, the non-proliferation regime would be weakened.[47] Another hypothesis floated was that all NSG members were NPT members and CTBT signatories, (conveniently forgetting the NSG's history and also the fact the CTBT's entry into force has not happened because the leading signatories are unable to ratify it) and India is seeking an exception, which would not only create disruption but also, according to China, de-stabilise the regional balance. As long as these bogeys retained their following, President Xi was able to turn down PM Modi in the bilateral meeting on the margins of the SCO summit on 23 June in Tashkent, even as the NSG plenary was underway in Seoul. Finally, at the conclusion of the NSG plenary, China was able to blithely state that the issue of India's membership was not on the agenda and what was discussed was the need for a policy for dealing non-NPT candidate states.

In bilateral talks, China has declined to discuss bilateral nuclear issues with India, limiting the negotiations to multilateral issues of disarmament, safety and security. The reason was that any discussion with India on nuclear strategic talks would bring India out of the India-Pakistan straitjacket and so far, India's modest capabilities were not perceived as threatening to China. This perception may change as Indian capabilities develop and as Chinese perceptions about US-India ties changes. At Track II level, there is a shift and now Chinese experts often point to the India-China (nuclear) relationship as stabilising because

both countries follow a no-fist-use policy together with keeping nuclear arsenals in a de-alert mode. The fact that India is now developing long-range missile capability and SSBN capability will gradually bring a shift in official Chinese thinking. Until this happens, China will continue to don the mantle of non-proliferation puritanism and talk about India as a nuclear outsider.

## Drawing lessons

The debate within India in 2016 has focused on whether the Modi government failed to read the Chinese tea leaves correctly, overestimated its own and US diplomatic clout, and whether the Seoul decision has been a setback for India. In hindsight, the answer to the first two questions is Yes and the answer to the third is No. A more complex question is the related issue of whether "membership" would bring India additional advantages or confer enhanced status, over and above the exceptional waiver granted to India in 2008. The fact is that considerable momentum was lost after 2010 because of India's domestic politics. The Nuclear Liability Act passed in 2010 adversely impacted sentiment among all nuclear equipment vendors, both foreign and domestic. Unable to address the liability concerns, the Manmohan Singh government focused instead on consolidating the gains of the waiver by concluding a large number of civil nuclear cooperation agreements to ensure long-term fuel supplies. There was never a doubt in India though that the logical conclusion of the process was India joining all four non-proliferation regimes. The intervening years were therefore, used by the officials to step up engagement with all the contact points of all four regimes. The fact that India concluded nearly a dozen cooperation agreements with NSG members after 2008 provides it reassurance that NSG rules are unlikely to be changed overnight to its disadvantage. So membership of NSG would not have added to the advantages provided in 2008, but would have been a tacit acknowledgement of India's standing as "a responsible nuclear power".

The Modi government decided to accelerate the membership process, for both domestic and foreign policy reasons. The Seoul decision and other developments in relations with China have made it clear that overcoming Chinese reservations will be a long process, relating to the overall relationship. The Berne NSG plenary meeting in June 2017 only confirmed that the impasse is likely to continue and the Modi government now realises it.

As the nature of engagement between India and China changes, it will indicate its readiness to withdraw its reservations, but will certainly demand a favour in return. What that might be will depend on the cards that India holds. And for that shift to take place, China needs to realise that the Asian century cannot be only China's century.

Meanwhile, what is encouraging is that notwithstanding the debacle about the NSG, the Modi government continued to push the overall policy on non-proliferation-related export controls that it inherited, to its logical culmination. Having learnt its lesson, the government went about its business without fanfare. China not being a member of any of the other three regimes (its MTCR membership application has remained on hold for a number of years) also took away the political edginess. By January 2018, India had formally joined the MTCR, WA and the AG. Brief factual statements were issued in each case minus the political rhetoric that had accompanied the high-profile push for the NSG in 2016. This has certainly been a positive achievement for the Modi government during its term. Of the 48 NSG members, 30 are members of all four regimes and stand reassured about a constructive Indian role and demonstrated committed to the global non-proliferation objectives. Given the politics that has clouded India's quest for NSG membership, the country's bid is likely to remain pending for some time. This, however, affects neither India's 2008 special waiver nor its new policy on export controls. ORF

## ENDNOTES


1. CTBTO acknowledges Pandit Nehru's role in its history of global efforts to end nuclear testing. https://www.ctbto.org/the-treaty/history-1945-1993/1945-54-early-efforts-to-restrain-nuclear-testing/
2. The preambular section of the Resolution includes India. http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2028(XX)
3. William Burr, A Scheme of 'Control': The United States and the Origins of the Nuclear Suppliers Group, 1974-1976 in *The International History Review*, Volume 36, Issue 2 (pages 252-276) http://www.tandfonline.com/doi/abs/10.1080/07075332.2013.864690
4. Brahmos website provides an account of the origins of the IGMDP. http://www.brahmos.com/content.php?id=10&sid=25
5. MTCR website. http://mtcr.info/frequently-asked-questions-faqs/
6. Australia Group website. http://www.australiagroup.net/en/origins.html
7. China's Military and Security relationship with Pakistan, Testimony before the US –China Economic and Security Review Commission on May 20, 2009 by Lisa Curtis. http://www.heritage.org/testimony/chinas-military-and-security-relationship-pakistan
8. William Burr, op.cit. http://www.tandfonline.com/doi/abs/10.1080/07075332.2013.864690
9. Tadeusz Strulak, "The Nuclear Suppliers Group" in *The Nonproliferation Review*/Fall 1993. https://www.nonproliferation.org/wp-content/uploads/npr/strula11.pdf
10. Australia Group website. http://www.australiagroup.net/en/index.html
11. MTCR website. http://mtcr.info/frequently-asked-questions-faqs/
12. Raj Chengappa, US blocks critical cryogenic deal, forces India to indigenise, *India Today*, 15 August 1993. http://indiatoday.intoday.in/story/us-blocks-critical-cryogenic-deal-forces-india-to-indigenise/1/302683.html
13. Multilateral Export Control Policy: The Coordinating Committee (CoCom) in *Technology and East-West Trade*, November 1979. https://www.princeton.edu/~ota/disk3/1979/7918/791810.PDF
14. Wassenaar Arrangement website. https://www.wassenaar.org/about-us

15. Provides a brief account of South Africa's nuclear programme. http://www.nti.org/learn/countries/south-africa/nuclear/

16. An account of the UNSC meeting along with Final Statement. http://www.un.org/en/sc/repertoire/89-92/Chapter%208/GENERAL%20ISSUES/Item%2028_SC%20respons%20in%20maint%20IPS.pdf

17. The text of the decision taken at the NPT Review Conference in 1995. https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/1995-NPT/pdf/NPT_CONF199503.pdf

18. India's System of Controls over Exports of Strategic Goods and Technologies, 1 August 2004 disseminated by the Ministry of External Affairs as part of its outreach programme. http://mea.gov.in/in-focus-article.htm?18843/Indias+System+of+Controls+over+Exports+of+Strategic+Goods+and+Technology

19. Nuclear Suppliers Group website. http://www.nuclearsuppliersgroup.org/en/guidelines

20. Nuclear Suppliers Group website. http://www.nuclearsuppliersgroup.org/en/participants1

21. The definition of a nuclear weapon state in the NPT http://www.un.org/en/conf/npt/2015/pdf/text%20of%20the%20treaty.pdf (Article IX)

22. Sharad Joshi, "The China – Pakistan Nuclear Deal: A Realpolitique Fait Accompli", 11 December 2011, for the *Nuclear Threat Initiative*, http://www.nti.org/analysis/articles/china-pakistan-nuclear-deal-realpolitique-fait-accompli-1/

23. Franz-Stefan Gady, "Pakistan Tests New Ballistic Missile Capable of Carrying Multiple Nuclear Warheads", 25 January 2017, *The Diplomat*, http://thediplomat.com/2017/01/pakistan-tests-new-ballistic-missile-capable-of-carrying-multiple-nuclear-warheads/

24. Wassenaar Arrangement website. http://www.wassenaar.org/control-lists/

25. Evolution of India's Nuclear Policy, Paper Laid on the Table of the House http://www.nti.org/media/pdfs/32_ea_india.pdf?_=1316627913

26. Clinton Lifts Sanctions, India Welcomes Move, 28 October 1999, Rediff on the Net http://m.rediff.com/business/1999/oct/28bomb.htm

27. Next Steps in Strategic Partnership, *Global Security.org*, http://www.globalsecurity.org/ military/world/india/nssp.htm

28. Gen V. P. Malik (Retd), "India-US Defence Relations: A Close Look at the Emerging Realities", 20 October 2010, Commentary for ORF.

http://www.orfonline.org/research/india-us-defence-relations-a-close-look-at-the-emerging-realities/

29. Christopher Clary, "Dr Khan's Nuclear WalMart", *Disarmament Diplomacy Issue No. 76*, March/April 2004, http://www.acronym.org.uk/old/archive/dd/dd76/76cc.htm

30. The Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005, http://www.legalindia.com/the-weapons-of-mass-destruction-and-their-delivery-systems-prohibition-of-unlawful-activities-act-2005/

31. Joint Statement by President George W. Bush and Prime Minister Manmohan Singh, 18 July 2005, US Department of State website. https://2001-2009.state.gov/p/sca/rls/pr/2005/49763.htm

32. Statement by External Affairs Minister of India Shri Pranab Mukherjee On the Civil Nuclear Initiative on 5 September 2008, to reiterate India's stand on disarmament and non-proliferation, http://mea.gov.in/in-focus-article.htm?18806/Statement+by+External+Affairs+Minister+of+India+Shri+Pranab+Mukherjee+on+the+Civil+Nuclear+Initiative

33. Suo-Motu Statement by Shri Pranab Mukherjee, Minister of External Affairs, on "India's Civil Nuclear Energy Initiative" in Parliament on 20 October 2008. http://www.mea.gov.in/in-focus-topic.htm?24/Civil+Nuclear+Cooperation

34. Joint Statement by President Obama and Prime Minister Singh of India, 8 November 2010 https://obamawhitehouse.archives.gov/the-press-office/2010/11/08/joint-statement-president-obama-and-prime-minister-singh-india

35. "Food for Thought" Paper on Indian NSG Membership, circulated at US's request on 23 May 2011 https://www.armscontrol.org/system/files/nsg1130.pdf

36. External Affairs Minister's Statement on 5 September 2008. http://mea.gov.in/in-focus-article.htm?18806/Statement+by+External+Affairs+Minister+of+India+Shri+Pranab+Mukherjee+on+the+Civil+Nuclear+Initiative

37. India Gets NSG Waiver By Consensus, 6 September 2008, *Rediff.com,* http://www.rediff.com/news/2008/sep/06ndeal4.htm

38. Tom Kington and Vivek Raghuvanshi, Italy Blocks Indian Application to MTCR, 17 October 2015, *Defense News*. http://www.defensenews.com/story/defense/policy-budget/warfare/2015/10/17/italy-blocks-indian-application-mtcr-uav-missile-technology-control-regime/74019832/

39. Douglas Busvine, India Clears Final Hurdle to join MTCR, diplomats Say, 7June 2016, *Reuters,* http://in.reuters.com/article/usa-india-mtcr-modi-nsg-idINKCN0YT1ID

40. Wassenaar Arrangement website. https://www.wassenaar.org/app/uploads/2017/12/WA-Plenary-2017-Chairs-Statement.pdf

41. Australia Group Press release, http://www.australiagroup.net/en/india_statement.html

42. MEA Spokesperson's Comments, 24 June 2016, http://mea.gov.in/press-releases.htm?dtl/26949/Spokespersons_comments_on_NSG_Plenary_meeting_in_Seoul

43. Devirupa Mitra, "Ahead of NSG Meeting, Austria, Ireland and China Still Oppose India's Membership Bid", 2 November 2016, *TheWire.in*, https://thewire.in/ 77333/ahead-nsg-meeting-austria-ireland-china-still-oppose-indias-membership-bid/

44. Nicola Horsburgh, "Chinese views of a Nuclear India: From the 1974 Peaceful Nuclear Explosion to the Nuclear Suppliers Group Waiver in 2008", *Competing Visions of India in World Politics*, Ed: Kate Sullivan, (pages 34-48), Springer Press, https://link.springer.com/chapter/10.1057%2F9781137398666_3

45. Nuclear Anxiety, PM Vajpayee's letter published by *The New York Times* on 13 May 1998 http://www.nytimes.com/1998/05/13/world/nuclear-anxiety-indian-s-letter-to-clinton-on-the-nuclear-testing.html

46. John W. Garver, "Nuclear Weapons and the International Status of China and India", in *The Protracted Contest* (2001), University of Washington Press. https://muse.jhu.edu/chapter/1249646

47. Mark Hibbs, The Nuclear Suppliers Group's Critical India Decision, 18 June 2016, Carnegie Endowment, http://carnegieendowment.org/2016/06/18/nuclear-suppliers-group-s-critical-india-decision-pub-63848

**Observer Research Foundation (ORF)** is a public policy think-tank that aims to influence formulation of policies for building a strong and prosperous India. ORF pursues these goals by providing informed and productive inputs, in-depth research, and stimulating discussions. The Foundation is supported in its mission by a cross-section of India's leading public figures, including academic and business leaders.


**Ideas • Forums • Leadership • Impact**

20, Rouse Avenue Institutional Area, New Delhi - 110 002, INDIA
Ph. : +91-11-43520020, 30220020. Fax : +91-11-43520003, 23210773
E-mail: contactus@orfonline.org
Website: www.orfonline.org