



India's Way Forward in the Control Regime: An Analysis of India's Quest for Membership in the Nuclear Supplier's Group

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Introduction

India has been on the quest for membership in the nuclear and technological control regimes and most significantly in the Nuclear Suppliers Group (NSG) since being granted a waiver in the September of 2008 from the NSG guidelines. This waiver overturns the previous restriction on civilian nuclear trade with India, which was imposed after the first Indian nuclear test in Pokhran in 1974 as it allows India to significantly expand its nuclear power generation and also enter the export market in the coming years. Although the 2008 NSG waiver does provide significant possibilities for India to engage in civilian nuclear trade with other countries (and indeed, India has entered into such agreements with several countries like Russia, France, UK, USA, Kazakhstan, Australia, and others), membership of the NSG will provide greater certainty and a legal foundation for India's nuclear regime and thus greater confidence for those countries investing billions of dollars to set up ambitious nuclear power projects in India. Moreover, as India's international political, economic, military and strategic profile and clout increases, India would like to move into the category of international rule-creating nations rather than stay in the ranks of rule-adhering nations. For this, it is essential that India gets due recognition and a place on the NSG high table.

The NSG, originally known as the "London Club" due to the majority of the preliminary meetings being held there, was not a treaty. As the name suggests, it was rather a group which worked on promoting non-proliferation and regulating the trade and export of nuclear and radioactive materials and dual use technology, through putting into operation certain guidelines. The main aim behind forming the NSG was to oversee the nuclear technology owning countries to "coordinate their national rules for the supply of such technologies to states defined as non-nuclear weapon states (NNWS) under the Nuclear Non-Proliferation Treaty (NPT)".¹ It intended "to ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of

nuclear weapons or other nuclear explosive devices, and that international trade and cooperation in the nuclear field is not hindered unjustly in the process.”²

The NSG functions through operationalizing two specific guidelines. The first set of NSG guidelines oversee the export of items that are specifically prepared for nuclear use such as nuclear material, nuclear reactors and equipment for them, non-nuclear material for reactors, plants and equipment for the reprocessing, enrichment and conversion of nuclear material and fuel fabrication and heavy water production, and also technology associated with each of the above categories. The second set of guidelines govern the export of nuclear-related dual use items and technologies, which are items that can make major contribution to an unsafeguarded nuclear fuel cycle or nuclear explosive activity, but have non-nuclear uses as well, as for example in industrial scenarios. Additionally, these guidelines are also in harmony with the NPT or other such legally binding regional treaties in the subject of nuclear non-proliferation like the Treaties of Pelindaba, Bangkok, Semipalatinsk, Rarotonga, and Tlatelolco. The commitment of NSG participants to abide by the meticulous conditions of supply, on the perspective of furthering the development of nuclear energy for peaceful purposes, makes the NSG a significant element of the international nuclear non-proliferation regime.³ This provision made it difficult for the entry of non-NPT countries to avail the benefits of international nuclear cooperation. But the revised guidelines that were introduced in 2001 in the Aspen Plenary modified the previous guidelines to accommodate newer members in to the club. According to this, the membership of the NPT was to be taken merely as a guideline for applying in to the NSG and not a necessity as it was earlier.⁴

The NSG waiver in a manner acknowledges India as a nuclear capable country internationally and promotes India’s image in the international world order. But despite this, India is still not recognized fully as a Nuclear Weapons State (NWS). The waiver facilitated for Participating Governments to transfer trigger list items, nuclear technology and nuclear-related dual use items are listed in Annex A and B of the INFCIRC/254/Parts 1 and 2, and are to be used in the IAEA safeguarded civil nuclear facilities.^{5 6} Participating Governments have to notify one another of the bilateral nuclear agreements that they have conducted with India. The NSG chair also is entitled to make consultation with India regarding the implementation of the NSG guidelines.⁷

The 2016 NSG Plenary session that saw the first formal application of India in to the NSG, passed on without any significant action on the question of India’s NSG membership, despite the array of diplomatic and soft power efforts from the Indian government.⁸ The session saw the 2008 civilian nuclear cooperation agreement being discussed with India, along with the possibility of India forging a relationship with the NSG.⁹ The entry of India in to the NSG is a controversial topic, not merely because of the NPT membership requirement for the country and India’s opposition due to the NPT’s prejudiced nature, but also because of the fact that the NSG originated on the lines of containing India after the 1974 Pokhran test.¹⁰

Background

The pursuit on the Indian side to forge a relationship with the NSG has been resisted by the countries party to it for a long time. India has been kept out of the major export regimes as it had not agreed to previously comply with the International Atomic Energy Agency (IAEA) safeguards on its domestic nuclear facilities. On 1st October 2008, India and the United States signed the 123 Nuclear Agreement, which marked the exception that was made in order to conduct civilian nuclear trade with a country that was outside the NPT and possessed advanced nuclear capacity. It bore a special status because post the 1998 Indian Nuclear tests, the United States had supported the sanctions that were imposed as a penalty for the nuclear tests. The new Hyde Act made an exception for India from certain requirements of the United States' 1954 Atomic Energy Act and it was given clearance by the Nuclear Suppliers Group as well.¹¹ The Act facilitated India in receiving help to develop its civilian nuclear technology after India agreed to separate its 22 nuclear reactors, including 14 of its civilian facilities from its defence nuclear reactors for the purpose of regular inspection by the IAEA. This was done in accordance with the Separation Plan that was brought out in the INFCIRC/734.¹²

The 123 agreement was a watershed moment for Indian foreign and security policy. There is the opportunity for India to develop clean environment-friendly energy, where the sources of energy like non-renewable fossil fuels as well as renewable sources like hydro-power and solar energy are insufficient in meeting the energy demands of the country presently. However, in the long run, nuclear energy is crucial to create clean energy technologies in fully providing the clean energy supply needed by the country. In the light of the pressures of the international community to follow the safeguards against environmental degeneration and global warming, the commitment on India's side was evident after India submitted the Instrument of Ratification to the Paris Agreement which was adopted by the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) on 2nd October, 2016. "India has committed to reduce Green House Gas (GHG) emissions intensity of its Gross Domestic Product (GDP) by 33 to 35 percent by 2030 from 2005 level. Other quantified goals are- (a) to achieve about 40 percent cumulative electric power installed capacity from non-fossil fuel based energy resources by 2030 with the help of transfer of technology and low cost international finance including from Green Climate Fund (GCF), and (b) to create an additional carbon sink of 2.5 to 3 billion tons of CO₂ equivalent through additional forest and tree cover by 2030".¹³

Timeline of India's Pursuit for the NSG Membership

- 19th September 2008 - The exceptions made for India to be granted the waiver in the NSG had been noted in the document issued by the IAEA Information Circular No. 734, on civil nuclear cooperation with India, which was to be adopted by the NSG.¹⁴
- 23rd May 2011 - To bring India to the fold of nuclear material control regime and to be accepted as a responsible NWS to engage in nuclear commerce in a regulated manner with other nuclear states for civilian purposes, the United States forwarded a "Food for Thought" paper to be considered on the issue of the membership of India in to the group

at the 2011 Plenary Meeting held at Noordwijk. This paper was seen as a guarantee by the Indian side to not proliferate its home-grown nuclear technology by not sharing it with other NNWS.^{15 16}

- 23rd June 2014 - Prime Minister Narendra Modi's Cabinet ratified the Additional Protocol which declared that any nuclear-related activities that were conducted domestically in India were not a cause to be deemed as any "undeclared" and unsafeguarded proliferating concern.¹⁷
- 25th July 2014 - India handed over the ratification instrument by Rajiv Misra, the Indian ambassador to the IAEA to the IAEA Director General Yukiya Amano.¹⁸
- 19th June 2016 - Sushma Swaraj, the External Affairs Minister of India, maintained that despite obtaining the 2008 NSG waiver, India continued to pursue the NSG membership, as notwithstanding the waiver, India is still regarded as a non-member. Having full NSG membership would permit India to be a part of the decision-making process. Realizing the aim of developing the Indian civilian nuclear power would take huge investments in terms of capital, nuclear fuel and infrastructure.¹⁹

The Indian NSG Pursuit after the NSG Waiver

Though the waiver provides the scope for India to conduct trade in nuclear fuel and technology, yet it is still bound by ad-hocism and the uncertainty of there being a sudden revision in the guidelines surrounding the waiver. This can only be secured by becoming an active member of the NSG, which would ensure that no such negative actions could hinder the steady progress of the Indian nuclear industry. Besides, it would also go on to secure the nuclear agreements that India has made with foreign countries.²⁰ This could be greatly aided with the inclusion of India in the NSG that in turn could open the doors to the nuclear energy and technology regimes in the international sphere.²¹ The entry of India into the NSG could significantly boost India's hopes at advancing technological knowledge which could be brought in to the field of nuclear science to be put to use in energy production, health, defence and strategic development.

The External Affairs Minister Sushma Swaraj while answering a question in the Lok Sabha, held that for India being a part of rule making in the NSG is much better than being in the position of rule taking. Membership would provide for an uninterrupted access to nuclear energy required by the civilian nuclear programs of India.²² Full membership would exempt India from the element of unpredictability and also the attendant risks which might arise in the long term nuclear power programme, and in turn bring certainty to the global nuclear trade in technology, fuel and other dual use materials which might be instrumental in boosting the domestic nuclear programme and in turn would also strengthen the international nuclear non-proliferation.²³

Since former US President George W. Bush initiated deeper strategic cooperation with India in 2005, India and the United States have signed the 123 India-US Nuclear Agreement in 2008. As nuclear energy was the bed rock of this foundation, the 2008 nuclear waiver removed the obstacles that arose in the way of sharing nuclear technology with a NNWS. The effort to include

India as a member of the NSG also is geared towards protecting the United State's investments and strengthening the shared mutual commitment towards counter proliferation measures of weapons of mass destruction (WMD) and their delivery mechanisms. This led the US to call for support from the NSG Participating Governments to extend their support in India's formal request for membership in the chief nuclear control regimes, including the NSG, the Missile Technology Control Regime (MTCR), the Wassenaar Agreement and the Australia Group.²⁴

Can India Work its Way in the International Nuclear Regime without the NSG Membership?

Some of the policy-makers and strategists believe that India does not require pursuing the NSG membership, one of the chief reasons for this stand being the absence of any concrete timeline to achieve universal disarmament. In an interaction that the author had with Ambassador Rakesh Sood who has also served as Special Envoy of the Prime Minister Dr. Manmohan Singh for Disarmament and Non-Proliferation, he stated that the 2008 NSG waiver is sufficient to enable India to engage in civilian international nuclear trade and commerce. The waiver is unique because it is the only such waiver granted by the NSG and is an acknowledgement of India's exemplary non-proliferation record, despite not being a party to the NPT. India also undertook to comply with NSG Guidelines and harmonize its export controls accordingly. Having signed civil nuclear cooperation agreements with more than a dozen countries after the 2008 waiver, it is highly unlikely that the NSG would reverse its 2008 decision as these countries would also want to continue with their cooperation with India. Therefore, India's desire for membership is more for political reasons than otherwise, to be part of the decision making process within the NSG. It also marks a further acceptance and acknowledgement of India's special position as a responsible member of the international community.²⁵

As former Defence Minister of India A. K Antony mentioned at the 10th Asian Security Conference Keynote Address held at the Institute of Defence Studies and Analysis (IDSA), it was only after being recognized as a responsible country with advanced nuclear capability has India been granted the NSG waiver.²⁶ The NSG membership is also sought to sustain the uranium requirement of India's indigenous three stage nuclear program which was formulated by Dr. Homi Bhabha in the mid-1950s using India's limited uranium and the vast reserve of thorium as nuclear fuel. The first stage involved using uranium and heavy water reactor as a moderator and cooler to produce electricity and plutonium for the next stage.²⁷ The second stage saw the use of the spent fuel in a reprocessing facility where plutonium was separated and used in Fast Breeder Reactors. After the production of required plutonium, thorium is used in the reactor to produce uranium in the third stage. Hence, a full nuclear fuel cycle is created. Thus it is only at the first stage that the uranium is needed from outside India to sustain the fuel cycle.²⁸ The three stage nuclear cycle program was a big boost towards ensuring India's self-reliance in the field of nuclear energy production.

The MTCR and other Technology Control Regimes

Another example of India's exemplary record of non-proliferation is India's decision to sign the Hague Code of Conduct against Ballistic Missile Proliferation (HCOB) in June 2016 in Vienna, which showcases India's commitment in working towards global disarmament.²⁹ The Hague Code of conduct is a voluntary confidence-building and transparency mechanism to arrest the proliferation of WMD. This membership was also viewed to be instrumental in leading India on the track to the MTCR membership, which eventually India achieved on the 27th June, 2016, thereby becoming the 35th member to join the organization.³⁰ This could be of great assistance in gaining access to high end missile technologies, delivery systems, and space related expertise. The MTCR membership provides India the opportunity to invest and engage in the exchange of knowledge in the working and in the reinvention of developing the indigenous defence sector and other initiatives, such as the Make in India project.³¹ Additionally, it would also benefit India in expanding its commercial state ventures, like the "export of sub-systems, satellites and commercial launch services etc."³²

The International Opinion on India's Quest for NSG Membership

Post the 2008 nuclear waiver for India, there has been a spurt of civilian nuclear agreements that have been signed between India and a host of other countries like Argentina, Australia, Bangladesh, Canada, France, Japan, Kazakhstan, Mongolia, Namibia, Russia, South Korea, Sri Lanka, the United Kingdom, the United States and Vietnam, on the lines of promoting peaceful use of clean and green energy to combat the perils of climate change.³³ These agreements provide for exchanging knowledge on nuclear energy production, nuclear safety and security issues, as well as radioactive waste management.

Towards the pursuit of its NSG membership, India faced opposition from the countries like Austria, Brazil, China, Ireland, New Zealand, South Africa, and Turkey. This was not merely because of India not being a party to the NPT, but there were different reasons too which were contributing to the oppositional voices. South Africa, having suspended its nuclear programme in 1994, is opposed to all forms of nuclear testing.³⁴ But in the India-South Africa Joint Statement which was issued during the visit of the Indian Prime Minister Narendra Modi to South Africa in 2016, they expressed their support for India's membership bid³⁵. While others like New Zealand and Ireland wanted to discuss the criteria of entry of India and other non-NPT countries in to the NSG, Brazil had opposed India's membership on the grounds of stressing on non-discriminatory criteria for membership. But in the October 2016 meeting between the Brazilian President Mr. Michel Temer and the Indian Prime Minister Modi, Brazil committed to forwarding the cause of India's membership in to the NSG.³⁶ In the year 2013, the President of India also sought the help of Turkey to secure membership in to the Nuclear Supplier's Group. The then Turkish Foreign Minister Ahmet Davutoglu expressed the Turkish support for India's NSG membership to the President of India, Pranab Mukherjee.³⁷ The statement was also reiterated in the recent visit of the Turkish President Recep Tayyip Erdogan's visit to India.³⁸

In 2009, when the Namibian president Hifikepunye Pohamba visited India, it was mutually agreed that Namibia would cooperate in peaceful cooperation with India on matters of nuclear energy, with Namibia being the fourth largest supplier of uranium worldwide. However, with India being a non-member of the NPT and Namibia being a signatory of the Pelindaba Treaty, which is the African Nuclear Weapon Free Zone Treaty, the trade has been put on hold by the African Union. The NSG membership would resolve the issue and make India eligible to avail uranium for its domestic nuclear industry.³⁹

China which is also opposed to India's membership, however had decided to export two nuclear reactors to Pakistan by lieu of a "grandfather clause" that stated that the treaties were made with Islamabad were made prior to China's entering the NSG.⁴⁰ There was a lot of reaction to this act which was done by violating the NSG protocol that bars the sale of nuclear materials to NNWS.⁴¹ This act on China's part is instrumental in gauging the level of closeness between the two allies, China and Pakistan. Additionally, such an act would keep India tied to dealing with issues of terrorism and instability in South Asia and in its neighbourhood, then to engage in forwarding its civilian nuclear energy production. Thus the rationale of putting the applications of India and Pakistan at the same level for seeking entry in to the NSG is a flawed argument, citing the ambiguous proliferation records Pakistan has with North Korea. Towards the preparations of the 26th Plenary Session of the NSG held in South Korea in 2016, the Indian Prime Minister Narendra Modi along with the Minister of External Affairs Sushma Swaraj and the Foreign Secretary Subrahmanyam Jaishankar have been working on pursuing China to accede on the issue of Indian membership in the NSG. However, despite the diplomatic efforts to garner support and India submitting its application formally to be considered for approval, it was opposed by a small group of nations led by China. The rationale that China holds on to aside from "the non-admittance of non-NPT signatory states" is for India to come forward to accept the two-guidelines for admitting new members in to the NSG. The first step entails to "explore and reach an agreement on a non-discriminatory formula applicable to all the non-NPT states, and to proceed to take up country specific membership issues at the second stage".⁴²

But it can be safely assumed that any effort to get China to back the Indian application not only will be a difficult endeavour in itself, but also result in China gaining an upper hand diplomatically as China is already an NSG member. China was also concerned during the Seoul Plenary in 2016 that the US might push India's membership through as a farewell gift of the Obama administration. However, seeing the unsuccessful membership bid by India, the Indian government should take care to maintain a steady and healthy relation with the new US administration under Donald Trump, along with continuing efforts at securing a full-fledged membership to the NSG and other technology and fuel control regimes.

Conclusion

In the light of the 2008 nuclear waiver in the immediate period before the India-US nuclear cooperation agreement and the subsequent nuclear cooperation agreements with the various other countries for the transfer and development of nuclear energy, the NSG membership might not seem to be of a great value addition to the nuclear aspirations of the Indian state. However,

since immense political capital has already been invested on the issue of the NSG membership by the government of India, securing the membership would be helpful in boosting the image of India as a prominent nuclear power. This would promote India to be a part of the norm-making regime in the international nuclear fuel and technology control regimes. The recent round of strategic talks that took place between India and China in Beijing in the month of March 2017 concentrated on the issue of India garnering support from China to attain the membership of the NSG.⁴³ Thus, the Indian government ought to continue its pursuit of gaining the NSG membership with renewed pressure in the future plenary sessions. Nevertheless, as it had already been discussed before, being a part of the NSG is not something that India cannot do without, but achieving the membership would be beneficial to the extent of assisting in India having a voice inside the nuclear trade cartel. Additionally, as plenty of political capital has already been invested by the incumbent Modi government in pursuit of the NSG membership, obtaining the membership would provide a boost to Indian diplomacy.

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Disclaimer: Views expressed are of author and do not reflect the views of the Council.*

End Notes

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⁴³ Ministry of External Affairs, Government of India, "Transcript of Media Briefing by Foreign Secretary following India-China Strategic Dialogue", February 22, 2017, <http://www.mea.gov.in/media-briefings.htm?dtl/28089/Transcript+of+Media+Briefing+by+Foreign+Secretary+following+IndiaChina+Strategic+Dialogue> (accessed February 23, 2017).