

ACCEPTING NUCLEAR INDIA AS A MEMBER OF NSG: CHALLENGES FOR NON-PROLIFERATION AND SOUTH ASIAN STRATEGIC STABILITY

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Introduction

India is now recognized as a nascent major power and as a 'natural partner' of the US. India is also viewed as a potential counterweight to China's growing power. Since 2004, Washington and New Delhi have pursued a 'strategic partnership'. Numerous economic, security and global initiatives, including the plans for 'full civilian nuclear energy cooperation,' are underway. In 2005, the US and India signed a ten-year defence framework agreement which called for expansion of bilateral security cooperation. In the same year, the US President George Bush and Prime Minister Manmohan Singh declared to transform this relationship agreeing to establish a global partnership. Subsequently, the US undertook an intense diplomatic campaign to persuade Nuclear Supplier Group (NSG) members for an India-specific exemption from the full scope International Atomic Energy Agency (IAEA) safeguards and NSG conditionality.

The debate over proposed incorporation of India into the NSG needs to consider several key issues; a) Claimed non-proliferation benefits; b) International non-proliferation norms; c) The likelihood of expansion in India's nuclear weapons programme and; d) Regional impact.

In 2005, the US President Bush and Indian Premier Manmohan Singh agreed to transform the US-India relationship to establish a global partnership. Subsequently, the US began an intense diplomatic campaign to persuade other NSG members for India-specific exemption from the full scope IAEA

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safeguards and NSG conditionality. Full scope safeguard is a requirement under the NSG guidelines for supply of nuclear materials. While backers of the deal expected strategic and commercial advantages, the US administration had chosen India for the containment of rising Chinese power. Michael Krepon of Henry L. Stimson Centre, Washington DC, wrote that 'the deal's backers in the United States expected profits, jobs and a transformed US-India partnership to help counter China's rise.'¹ Fears were raised over the rationale of the deal and perceived objectives fell on deaf ears while the US passed US-India Civil Nuclear Cooperation Act in 2008. In early November 2010, President Obama visited India where he announced the US support for India's membership in the Multilateral Export Control Regimes (MECRs) such as NSG, Missile Technology Control Regime (MTCR), Australia Group (AG), and the Wassenaar Arrangement (WA) in a phased manner, Obama also pledged to remove some Indian entities from the US Department of Commerce's 'Entity List.' The question is whether the states should ignore the non-proliferation commitments made during the earlier Non-Proliferation Treaty (NPT) Review Conferences (Revcons). Wherein they had reaffirmed that new supply arrangement for nuclear transfers, or should they require the recipient to accept IAEA's full scope safeguards and international legally binding commitments not to acquire nuclear weapons.² The debate over proposed incorporation of India into the NSG needed to consider several key issues, such as claimed non-proliferation benefits; International non-proliferation norms; the likelihood of expansion in India's nuclear weapons programme, and the regional impact of India's membership of NSG.

This paper attempts to explore whether the acceptance of nuclear India into the fold of NSG would have any negative or positive implications for international non-proliferation efforts and South Asian strategic stability. Pakistan and Israel both, being non-NPT states, like India, would not be comfortable with such discrimination. This observation would be less applicable to Israel due to its non-declaration of its nuclear capability.

The evolution of export control and MECRs

The nuances of the cold war dictated strategic controls for many years. During this period, the Western bloc, led by the US, pursued its containment policy towards the communist countries i.e. Soviet Union, China and their allies. To maintain technological edge, the US-led western camp implemented armament and economic superiority export control regimes centring on Coordinating Committee for Multilateral Strategic Export Control (COCOM). In the early 1950s, the peaceful use of nuclear energy was promoted through Eisenhower's 'Atom for Peace' programme. To prevent further spread of nuclear weapons, negotiations on arms control and disarmament resulted into the NPT which opened for signature on 1 July 1968 and entered into force on 5 March 1971.³

The supplier states wanted to reach a common understanding on how to implement Article III.2 of the treaty. Within this context, in 1971, a group of supplier states framed a list of equipment or materials which were especially

designed or prepared for processing, the use or production of special fissionable materials and the conditions and procedures to govern their exports. This group came to be known as the Zangger Committee. The 1974 nuclear test by India revealed that the items transferred for peaceful purposes could be diverted to military use as well. According to Seema Gahlaut, 'the nuclear test by India of 1974 necessitated the creation of an alternate arrangement that would regulate nuclear trade more strictly than the NPT bound Zangger Committee.'⁴ This resulted in the creation of NSG. In the 1980s, the use of chemical and biological weapons during Iran-Iraq War spurred the establishment of AG in 1985. The growing availability of missile technology precipitated the formation of MTCR in 1987. Towards the end of the cold war, COCOM was abolished and a new regime which aimed to prevent the destabilization of accumulation of munitions was established in 1995 WA. Under COCOM, control was based on end-user (Communist Countries) whereas under the new regimes, the control was placed on commodities as well as destinations. In the post-Cold War period, there has been a heightened interest in international mechanisms to focus on the supply side of the proliferation chain, in addition to destination and end use. This is the basis of current 'strategic export controls,' which broadly envisage controls on the export of all items specially designed for military use and those with dual application.⁵

Current structure of international non-proliferation/export controls

The current structure of international non-proliferation/export controls is made up of formal and informal arrangements that have a mixed record of failures and successes. While the regimes have similarities regarding membership criteria, non-proliferation objectives and conditions of supply and others, they are different in commodity jurisdiction, while supplementing each other. 'The existing non-proliferation regime is built around a complex web of freely negotiated multilateral arms control and disarmament treaties i.e. NPT, Chemical Weapons Convention (CWC), Biological and Toxin Weapons Convention (BTWC), and Comprehensive Nuclear-Test-Ban Treaty (CTBT)Export control arrangements such as the Zangger Committee, NSG, WA, MTCR and the AG.'⁶ They supplement existing formal agreements such as the NPT, CWC and BTWC etc. Moreover, there have been other informal initiatives like Container Security Initiative (CSI), Proliferation Security Initiative (PSI) and Middle Power Initiative (MPI) which are largely led by the US for the implementation of Washington's nuclear non-proliferation policy.

The role of MECRs: An analysis

Each regime has emerged as a response to some major event highlighting the vulnerability of the current system and weaknesses in preventing proliferation of Weapons of Mass Destruction (WMDs). One factor behind the 'Atoms for Peace' programme remained to prevent the use of nuclear technology for military purposes through the induction of other countries in the

peaceful use of nuclear technology. To restrict the number of Nuclear Weapon States (NWS) the NPT was formed, which was a complex bargain between the NWS and Non-Nuclear Weapon States (NNWS). Under the terms of the treaty, NWS undertook:

not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

While the NNWS agreed:

not to receive the transfer from any transfer or whatsoever; of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.⁷

In May 1974, India conducted nuclear tests using plutonium produced by the Canadian supplied CIRUS along with the US provided reactor which was to be used for peaceful purposes only. The Indian nuclear test dispensed a big blow to the NPT and highlighted that technology provided for peaceful purposes could be diverted to weapons programme. This led to the establishment of NSG in 1975. The use of chemical and biological weapons during the Iran-Iraq War precipitated the establishment of AG in 1985 that aimed to prevent the spread of materials and technology that could be used for developing chemical and biological weapons. In the early 1980s, growing availability of missile technology spurred by 'several events, including South Korea's 1978 ballistic missile test, Iraq's attempt in 1979 to purchase retired rocket stages from Italy. Also, India's July 1980 SLV-3 test, and the former German firm Orbital Transport and Raketen Aktien Gesellschaft (OTRAC) 1981 testing of a rocket in Libya, contributed particularly to the US apprehensions about the growing danger.'⁸ These events led to the establishment of MTCR in 1987 by Canada, France, Germany, Italy, Japan, the United Kingdom and the US. Another major multilateral regime is WA, which was established in 1996. Towards the end of the Cold War, COCOM was abolished as it had lost its rationale which was East-West acrimony. Within this context, WA was established as a successor to COCOM.

Each regime has a basic set of membership criteria that a prospective state is required to meet. It broadly includes having membership of major non-proliferation treaties and/or regional/international agreements like membership of Nuclear Weapon Free Zone (NWFZ) and others. The regimes have some common characteristics. For example, they are informal (political) agreements, they are not legally binding, they issue common guidelines for exports of WMD related and dual use items, they issue lists of controlled items that are

periodically revised. Their decisions are based on consensus but allow for national discretion in implementation.⁹ The regimes have closed or restrictive membership and no undercut policy except in the case of WA. However, there are neither any formal means of identifying violation by a member nor an institutionalized means of imposing sanctions for such violations. There is also a lack of information sharing within these regimes and their consensus based decision-making process hinders changes that are essential due to rapid technological developments. The following table captures common rules of operation of the four MECRs:

Table 1
Common Rules of Operation

Rule/Regime	NSG	AG	MTCR	WA
Informal	X	X	X	X
Closed Membership	X	X	X	X
Consensus	X	X	X	X
National Discretion	X	X	X	X
Annual Plenary	X	X	X	X
Detailed Control Lists of Items	X	X	X	X
Broad Guidelines for Export Conduct	X	X	X	X
Technical Working Groups	X	X	X	X
Episodic Review of Control Lists	X	X	X	X
Episodic Review of Guidelines	X	X	X	X
Rotating Chairmanship	X	X	X	X
Permanent Secretariat	-	-	-	X
Permanent Point of Contact	X	X	X	-
Secured Database of Shared Information	X	X	X	X

Source: Seema Gahlaut, 'Multilateral Export Control Regimes: Operations, Successes, Failures and the Challenges Ahead,' in Daniel Joyer, ed., *Non-proliferation Export Controls: Origins, Challenges, and Proposals for Strengthening*, (Hampshire, England: Ashgate Publishing Limited, 2006), p.11

Today, proliferation threat is more diverse and increasingly difficult to counter. Goods and technologies with sensitive military applications frequently have legitimate commercial applications as well. Economic liberalization empowers private enterprises at the altar of state control, thus influencing governmental decisions. As mentioned in the US Government Accounting Office (GAO) report, 'the regimes have adapted to changing threats in the past. Their continued ability to do so will determine whether they remain viable in curbing proliferation in the future or not'.¹⁰

MECRs have played an important role in regulating and controlling the export of sensitive materials to enhance international non-proliferation efforts. They have worked to establish international standards and helped in the prevention of proliferation of WMDs. In January 1992, United Nations Security Council (UNSC), inter alia underlined the importance of effective export controls in preventing proliferation, though one may point out many weaknesses and failures. For example, Iraq's procurement of key components for its WMD

programme, Iran's acquisition of sensitive nuclear materials and India's efforts to circumvent export controls for the acquisition of sensitive equipment from the US and perhaps elsewhere.¹¹

Why focus on NSG

Established in 1975, NSG is an informal grouping of 48 countries including the five NPT recognized NWS who are also permanent members of the UNSC.¹² Aim of the NSG guidelines is to ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of nuclear weapons or other nuclear explosive devices without hindering international trade and cooperation in the nuclear field. The NSG was created following India's explosion of a nuclear device which was a non-nuclear-weapon State. India's nuclear explosion, which demonstrated that nuclear technology transferred for peaceful purposes could be misused.¹³ At a time when the NPT and MECRs are severely tested by Iran, South Korea and possibly Syria, opening doors for India's acceptance in the NSG would impact international efforts in reaching a diplomatic resolution of these issues. This could set a precedent for future non-proliferation efforts, and could have an impact on regional environment as well. For India, it appears to be more a matter of prestige, to sit on the high table of nuclear suppliers and thus get a semblance of recognition as a nuclear weapon state. Anil Kakodar, former chairman of India Atomic Energy Commission and Director Bhaba Atomic Research Centre (BARC), reacting to NSG's June 2011 decision on strengthening controls over transfer of Enrichment and Reprocessing (ENR) technology to non-NPT members. He stated that 'the world needs to understand our sensitivities, we cannot be made a pariah all over again.'¹⁴ On the technological level, India's NSG membership would allow access to advanced nuclear materials and technology that could be exploited for the modernization of its nuclear weapons, and commercially it would open up India's burgeoning nuclear market to foreign investments. Majority of the existing NSG member states are also members of other key MECRs. Accepting new members in NSG would therefore facilitate eventual entry into other regimes as well. For this reason, it would also be an important landmark for India's prestige to have a subsequent entry into other regimes.

Efforts to incorporate India into MECRs

Recognizing India as a key to the US strategic and commercial interests in the region, the US has sought to enhance its partnership with India in multifarious fields. Impetus for this new found friendship emerged in the early 1990s following India's economic reforms. The US President Bill Clinton's visit to India in 2000 further cemented the US-India ties. As part of the Next Steps in Strategic Partnership (NSSP), signed in 2004, both states 'agreed to expand cooperation in three specific areas; civilian nuclear activities, civilian space programmes and high-technology trade.'¹⁵ The movement towards cooperation in the civil nuclear field was formally endorsed during Indian premier's visit to Washington in July 2005. According to the Joint Statement, President Bush told

the Indian prime minister for achieving full civil nuclear energy cooperation with India as it realizes its goals of promoting nuclear power and achieving energy security. President Bush also pledged that he would seek an agreement from the Congress to adjust the US laws and policies, and that the US would work with friends and allies to adjust the international regimes to enable full civil nuclear energy cooperation and trade with India. The Indian prime minister on his part conveyed that India would reciprocally agree to assume the same responsibilities and practices, to acquire the same benefits like other leading countries with advanced nuclear technology such as the US.¹⁶ The momentum continued and finally resulted in the Indo-US Civil Nuclear Cooperation Agreement. The US had to amend domestic laws especially the Atomic Energy Act 1954 and persuaded other NSG members for India-specific exemption from the NSG conditionality on nuclear trade with states outside the NPT. The Bush administration lobbied intensely and even arm twisted reluctant members of the NSG to support India's specific exemption.

This gradual process continued and the next US president categorically supported India's membership in the MECRs. During his November 2010 visit to India, President Obama announced the US support for Indian membership into four regimes: the NSG, MTCR, AG, and WA, which aim to prevent the proliferation of nuclear, biological, chemical weapons and de-stabilization through the accumulation of conventional munitions. The US administration launched diplomatic efforts to persuade the NSG members for a favourable vote on India's NSG membership. Prior to the NSG June 2011 plenary meeting, a confidential May 23 US drafted 'Food for Thought' paper, which was circulated to NSG members. This paper offered two options for bringing India into the group. One was to revise the admission criteria 'in a manner that would accurately describe India's situation.' The other would be to 'recognize' that the criteria, known as 'Factors to Be Considered,' are not 'mandatory criteria' and that a candidate for membership does not necessarily have to meet all of them.¹⁷

Export control is not a stand-alone field, rather it is an integral part of a country's larger political, security and economic infrastructure. The efforts to support India's membership in MECRs suggest that commercial interests and power politics are more dominant than the broader non-proliferation agenda and established norms. The efforts are part of a grand design to build India as a major power for counter balancing neighbouring China. NSG membership could perhaps be a stepping stone for India's bid to gain a permanent seat in the United Nation Security Council (UNSC). On his trip to India in November 2010, Obama announced the US support for India's bid to become a permanent member of the UNSC hoping to elevate the nation of a billion people to 'its rightful place in the world' alongside an assertive China.¹⁸

After years of discussion on revisiting the guidelines for transference of Enrichment and Reprocessing (ENR) technology, NSG in its meeting on 23-24 June 2011 at Noordwijk, Netherlands, tightened its controls over the transfer of sensitive ENR technology. According to Arms Control Association, 'The main change from the previous guidelines is the addition of the list, known as "objective criteria". Among other requirements, potential recipients of sensitive

technology must be parties to and “in full compliance” with the NPT, and they must be adhering to IAEA safeguards requirements.’¹⁹ Yet India’s NSG candidature has strong support of the US, Russia, France, Britain and Germany and some supplier states are keen to circumvent guidelines of the regimes and indulge in nuclear cooperation with India. For example, the US Assistant Secretary of State stated that ‘The Obama administration remains fully committed to the civil nuclear deal and to all of the commitments that were made during the president’s visit in November 2010.’²⁰ Later, identical views were expressed by the Russian and French officials also.

India as an NSG member: Implications

NSG was created to reinforce the NPT by establishing guidelines and laying down conditions for supply of nuclear technologies. For commercial and geo-strategic interests, few NSG states have entered into nuclear cooperation with India in disregard to the regime’s guidelines and now efforts are underway to incorporate it as partner country into MECRs. On its part, India has also desired so, in order to gain a place at the high table of nuclear politics. Efforts are made to bring India into the non-proliferation mainstream, in the run up to the 123 Agreement, supporters of the deal has argued that it would benefit non-proliferation. The US companies would fetch their share of the 100 billion dollar pie, address India’s energy needs and create over 27,000 jobs in the US. However, India did not budge, rather its contractual deliberations with other states like France, Russia, Canada and others intensified after the 123 Agreement, whereas the US industry has thus far not benefited. Hi-tech commerce is not a one way street. To be a part of hi-tech trade, states have to abide by the regimes’ guidelines in order to gain benefits. Taking the Indo-US civil nuclear deal as an example, Manmohan Singh had announced that ‘India would reciprocally agree that it would be ready to assume the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology such as the United States.’ In his recent analysis, Michael Krepon maintained that:

Six years later, what do the costs and benefits of the US-India civil nuclear deal look like? First, even with the positive outcome of the 2010 NPT Revcon, non-proliferation norms have been weakened and, at best, will take time to reinforce. The deal has added to the IAEA’s woes and has made the NSG a weaker institution....the notion of India joining the “non-proliferation mainstream,” as advocates of the deal predicted, has been a mirage.... India remains in limbo on the CTBT.... Fissile material production for nuclear weapons continues²¹

This manifests what policies India is likely to pursue whether or not it is part of the NSG. Notwithstanding this, NSG’s membership is akin to the Indo-US civil nuclear agreement in its impact on non-proliferation and regional stability. Without signing the NPT, India would become eligible for commerce in hi-tech nuclear trade and gain access to advanced nuclear technology. This

would enable it to divert indigenous resources for enhancing and modernizing its nuclear weapons. It could possibly lead to an arms race between India and China, on the one hand, and India and Pakistan on the other, thus igniting destabilizing tendencies within countries of the region. Michael Krepon has observed that 'it is even harder to stabilize a triangular nuclear competition, as in the case with China, India and Pakistan.'²² As China seeks to balance the US, India, in turn, measures its requirement against China, and Pakistan takes measures to balance against India. Pakistan voiced its reservations at the Conference on Disarmament (CD) through its envoy, who stated that 'the plan, announced during Obama's visit to India, would further destabilize the volatile nuclear-armed South Asian region.... These developments will amount to a paradigm shift in strategic terms.... The message that such steps transmit is that the major powers can change the rules of the game if it is in their interest to do so.'²³ He also said that the India's NSG membership would enable it to improve its nuclear weapons and delivery capability and as a consequence, Pakistan will be forced to ensure the credibility of its (nuclear) deterrence. China has also objected to the exception being made for a single country - India.²⁴

Export control regimes should be more inclusive and should not create any exceptions. Discriminatory policies based on subordinating principles to politics could weaken international non-proliferation institutions and may fuel arms race. In his address to the Conference on Disarmament, Pakistani envoy also said, 'apart from undermining the validity and sanctity of the international non-proliferation regime, these measures shall further destabilize security in South Asia.'²⁵ The NSG's membership would allow India for an access to ENR materials and technologies that could be used for the improvement and enhancement of its nuclear arsenals. The latest NSG's move to condition transfer of ENR technologies and equipment to NPT membership and IAEA full scope safeguards has probably not been received well in India. An NTI report suggests, 'the move could prevent India from importing the nuclear fuel technologies to bolster its nuclear weapons activities.'²⁶ Increasingly, it would become difficult to push Iran, Syria, North Korea and other countries towards fulfilling their non-proliferation obligations and would set a dangerous precedent for the countries who gave up their nuclear pursuits as part of the NPT bargain. Commenting on the impact of the 2008 Indo-US deal, William C. Potter, Director Centre for Non-proliferation Studies, Monterey said, 'having rewarded India, a nuclear weapons possessor, with nuclear trade benefits previously reserved to states in compliance with the NPT, what incentives remain for other states to join the Treaty? How can one tighten control on nuclear exports to NPT members of sensitive uranium enrichment and plutonium reprocessing technology having just created a giant loophole for such exports to a non-NPT state?'²⁷ Pakistan and Israel who are the other two states outside the NPT and possess nuclear weapons may also demand similar treatment and it would be hard to reject their demands. Pakistan has made its bid for membership of the four principle export control regimes when its National Command Authority (NCA) reiterated Pakistan's desire to constructively contribute to the realization of a world free of nuclear weapons and to the goals

of non-proliferation on the basis of equality and partnership with the international community and stated that Pakistan was keen to join the four export control arrangements.²⁸

Since the decisions of the NSG are based on consensus, it would allow India to veto any decisions which are against its interests especially in the context of regional countries. Asif Ezedi argues that 'once India becomes a member of the NSG, it will get a veto over any future proposal to open up trade in peaceful nuclear technology with Pakistan.'²⁹ The move to bring India into the NSG's fold has all the ingredients of undermining India's commitments to the Indo-US civil nuclear cooperation agreement. As far as 2008 agreement is concerned, NSG could revisit its bargain in case India conducted further nuclear tests but having become a member, India would be in a position to exploit the NSG's consensus rule and block any such move within the group.³⁰

Conclusion

This paper has discussed the challenges for nuclear non-proliferation and strategic stability of South Asia if India is accepted as a member of NSG. International export control arrangements, while preventing proliferation of WMDs should not be allowed to hamper international cooperation in the peaceful uses of technology, including nuclear technology, which is the right of every state. Export control regimes should be more inclusive and should not create any exceptions. There is a need for transparent and non-discriminatory policies towards all states. A criteria-based, non-discriminatory and non-selective approach towards civilian nuclear cooperation would be beneficial for global non-proliferation regime. 'The damage of India's exception is done, but some repair is possible while considering the criteria applicable not only to India, but to all non-NPT States, thereby avoiding further discrimination among them.'³¹

Reacting to the proposed move of incorporating India into MECRS, Pakistan's National Command Authority (NCA) expressed concern over the policies of exclusiveness. The statement issued at the conclusion of NCA's 14 July 2011 meeting, an apex body headed by the Prime Minister and empowered to take decisions on all nuclear and strategic matters of interest, maintained that 'the NCA expressed concern over the continued pursuit of policies that detract from the globally shared norms and rules of equality, inclusiveness and objectivity. The NCA cautioned that such policies represent regression in the non-proliferation regime and tend to erode the strategic balance in South Asia. Pakistan would continue to take appropriate counter measures to ensure its security and to maintain regional stability.'³²

The US strategic and commercial interests in fostering strong partnership with India are well understood but in so doing the principles set forth by Export Control Regimes must be upheld. Policies based on subordinating principles to politics would weaken international non-proliferation institutions and may fuel arms races. 'If the NSG is to remain effective and credible, member states must respect and uphold their own rules, avoid actions

that feed the nuclear arms race, and strengthen their guidelines to prevent weapons-related nuclear technology from proliferating in the years ahead.³³

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