

India-Pakistan Candidacy for NSG

Zafar Nawaz Jaspal*

Abstract

The trends reveal that both India and Pakistan might encounter tough resistance in getting the membership of NSG in the near future. Many members of the Group seem determined to thwart non-NPT members attempt to join the Group without a criteria-based approach. Nevertheless, New Delhi has robustly been lobbying with the intense support of Washington and its like-minded countries since 2010 to get a 'special treatment' by the NSG members. Simultaneously, Islamabad is equally determined to join the NSG.

Key words: Nuclear, Supplier, Recipient, Horizontal Proliferation, Criteria-based, Plenary, Peaceful use.

The Nuclear Supplier Group's (NSG) plenary meeting in Seoul on June 23-24, 2016 was remarkable for Group's future outlook, operation and credibility. The 48 members had seriously deliberated to increase the membership of the cartel that controls nuclear exports. The increasing of the membership of the Group seems a cumbersome process due to the trends in the global politics and distinct characteristics of the new aspirants i.e. India and Pakistan. The members ended up balancing between the political necessities and the norms based equitable non-discriminatory criteria. Though, they attempted to resolve this balancing puzzle, yet failed to create a consensus. Both the Great Powers' politics and mantra in support of the principal of universality or criteria-based approach resulted in a status quo during the June 2016 NSG plenary meeting.

*The author is an Associate Professor at the School of Politics and International Relations, Quaid-i-Azam University, Islamabad.

The nuclear renaissance and trends in global politics signify the probability of change in the current membership of the NSG in the near future. India and Pakistan had formally applied for the membership in May 2016.¹ Both states realize that inclusion in the Group not only enhances their prestige or status in the global politics but also legitimizes their import and export of nuclear material for peaceful application. Hence, economic dividends of the NSG membership are equally important for Islamabad and New Delhi.

Paradoxically, keeping India and Pakistan out of the Group that was created around the year 1975, presents a complex situation. At the same time allowing the NSG membership to non-NPT states could undermine the NSG's objectives. The change in the membership of NSG would affect the credibility of the Group. Therefore, the current members of the NSG are obliged to chalk out an intelligent cum judicious strategy to entertain the applications of both India and Pakistan. This study is an attempt to answer two interlinked questions. Why it is important to grant the membership of NSG to India and Pakistan? What is the realistic stratagem to treat both India and Pakistan candidacy for the NSG?

The study is divided into four sections. The first section contains discussion on the background of NSG, its administrative procedures and requirements to join the NSG. The second section deliberates on India's endeavour to join the club. The third section examines Pakistan's attempt for entry into the club. The fourth section underscores the significance of criteria-based approach.

Managing Nuclear Technology

Since the very beginning of nuclear age, the dual use characteristic of the nuclear technology has been the primary concern of the nuclear

¹“Pakistan applies for accession to NSG,” *The Express Tribune*, May 21, 2016.

supplier countries.² The probability of the manipulation of nuclear technology for the military purposes kept the technologically advanced nuclear nations from transferring nuclear material and know-how to the less-developed nations. Conversely, the technologically advanced nations desire to benefit from the export of nuclear related items. The monetary benefits of nuclear technology gradually led to the emergence of a nuclear commercial lobby within the technologically advanced nations. The commercial feature of nuclear technology not only resulted in the advent of the national nuclear legislation, but also ensue both international nuclear trade regulatory arrangements and nuclear supplier nations' cartel. Precisely, these arrangements created a Nuclear Non-Proliferation Regime (NNPR) i.e, 'an integrated network of treaties and other standard-setting arrangements, which provide a comprehensive framework for the behaviour of States, international organizations and other actors in the nuclear area'.³

Presently, the NSG monitors and regulates nuclear trade between/among the nuclear supplier and recipient nations. It equally accommodates the concerns of nuclear arms control and disarmament advocates. Nevertheless, the nuclear non-proliferation objective of the NNPR has permanently created the split of states into two blocs — the Nuclear Weapon States and non-nuclear weapon states. The nuclear weapon states (NWS)—the United States, the Russian Federation, Britain, France and China—are permitted to maintain and modernize their weapons. Precisely, NWS have a legitimate right to defend themselves with nuclear weapons. Simultaneously, it is illegitimate for Non-Nuclear Weapon States (NNWS) party to the NPT to possess

²The United Nations General Assembly unanimously adopted Resolution 1 on January 24, 1946, and established an Atomic Energy Commission. The main objective of the Commission was to halt the proliferation of nuclear weapons. "Establishment of a Commission to deal with the problem raised by the discovery of Atomic Energy", Resolutions Adopted on the Reports of the First Committee, January 24, 1946. <http://daccess-dds-n.un.org/doc/RESOLUTION/GEN/NR0/032/52/IMG/NR003252.pdf?OpenElement>

³John Simpson and Darryl Howlett, "The NPT Renewal Conference Stumbling toward 1995," *International Security*, Vol. 19, No. 1(Summer 1994), pp. 43-44.

nuclear weapons for their national security. Therefore, the nuclear supplier states ensure before transferring nuclear technology and material to the recipient states that the latter should not exploit the dual-use feature of nuclear technology for developing nuclear weapons. For the prevention of military use of nuclear technology various international institutions and voluntary groups were established.

Although, the critics of NNPR opine that the constructs of the regime obstruct the processes of denuclearization,⁴ yet one cannot deny the fundamental role of International Atomic Energy Agency (IAEA) in the prevention of horizontal nuclear weapons proliferation. Importantly, it does not only regulate and facilitate transfer of nuclear technology for peaceful use, but also provides and lays safeguards apparatus at the recipient states' nuclear facilities to check the misapplication of nuclear technology. In addition, voluntary groups also assist IAEA in preventing the misuse of nuclear technology. For instance, Zangger Committee (ZAC), also known as 'NPT Exporters Committee', was established in 1971. It was an informal and not legally binding Committee. The objective of the ZAC was to regulate nuclear exports and to strengthen the IAEA safeguards.⁵

NSG: Establishment

The NSG was created as a voluntary cartel in 1975 on the behest of the United States. The cartel was established in response to India's May 18, 1974, Peaceful Nuclear Explosion (PNE), codenamed "Smiling Buddha". India violated its agreement with IAEA by using a Canadian-Supplied Reactor (CIRUS) spent-fuel for making plutonium. The violation of peaceful nuclear use assurances by New Delhi resulted in adoption of stringent measures by nuclear supplier nations to prevent the horizontal proliferation". The PNE sent shockwaves across the world.

⁴A review of nuclear weapon history reveals that the nuclear weapon states always guard their nuclear weapons and gang up against the horizontal nuclear weapons proliferation. Zafar Nawaz Jaspal, "Future of FMCT: assessing the prospects and constraints," *Strategic Studies*, Vol. XXX, No. 1 & 2, Spring & Summer 2010, pp. 46-71.

⁵Currently, 38 states are member to the ZAC, for further details see, "Zangger Committee (ZAC)," *The Nuclear Threat Initiative (NTI)*, August 8, 2015, <http://www.nti.org/treaties-and-regimes/zangger-committee-zac/>

Meetings spearheaded by the US and the UK, and backed by Moscow, set up the 'London Club', later renamed the NSG, in 1975.”⁶ Thus, the initial objective of the NSG was to impede its members from assisting India in making nuclear weapons. Strangely, today, United States wishes to make India its full-fledged member.

Since the entry into force in 1978, the NSG members have been transferring nuclear material and technology to the parties of Nuclear Non-Proliferation Treaty (NPT), who are observing comprehensive IAEA safeguards and adhering to the NSG export guidelines. India and Pakistan keep a few of their nuclear facilities unsafeguarded to mature their nuclear weapons programs. Consequently, the NSG members adopted denial approach against both India and Pakistan. The former's nuclear program was not affected due to its close relations with the former Soviet Union. Moscow assisted New Delhi in developing its nuclear infrastructure.

The NSG members imposed sanctions against Pakistan without any logical justifications in 1970s. The sanctions not only undermined Pakistan's infant nuclear power programme, but also obstructed its access to dual-use high technology. Certainly, the suspension of the Canadian assistance to Karachi nuclear power plant in 1974 and quashing of France-Pakistan reprocessing deal in 1978 were stern blows to the nascent nuclear industry of Pakistan. The constructive outcome of the denial approach was the progress in Pakistan's nuclear industry.

The NSG embargo obliged both India and Pakistan to invest in their indigenous nuclear industry. So, today, both are nuclear weapons states as well as successfully managing their civil nuclear industry for boosting agriculture yield, treating patient in hospitals and above all operating nuclear power plants. Importantly, India's geo-strategic significance in United States strategic calculation resulted in Indo-US civil nuclear cooperation in 2005. This cooperation has made a positive contribution to the Indian nuclear industry.

⁶G. Parthasarathy, “Failed NSG bid: China is a formidable adversary,” *Mail Today*, July 5, 2016, <http://www.dailyo.in/politics/nsg-nina-xi-jinping-npt-pakistan-nuclear-weapons-programme/story/1/11562.html>, accessed on July 20, 2016.

Conversely, it severely undermined the credibility of the NSG. The NSG members denied similar treatment to Pakistan but it continues its nuclear cooperation for peaceful use with China under the 'grand-father' clause of international law.

Today, India and Pakistan are states with nuclear arms and both having ambitious indigenous civilian nuclear energy programs. They make virtually every listed item needed for equipping nuclear reactors. Therefore, both New Delhi and Islamabad applied for the NSG membership to enter the global market as nuclear supplier states.

Neither India nor Pakistan is party to the NPT and thereby both states do not qualify to be a member of NSG, nor as a recipient of nuclear material and technology from the group. This rule, however, was evaded in September 2008 to accommodate India. The NSG members made an amendment in the trade laws of the Group and granted a special waiver to India.⁷ The granting of an exceptional waiver to India under American influence and short-term economic and geopolitical interests by the members of NSG was in conflict with the objectives of the cartel. "This trade waiver has allowed New Delhi to vertically proliferate and destabilise the region".⁸ The special treatment extended to India has largely undermined the credibility of NSG.

NSG: Administrative Procedures⁹

The member states of NSG have voluntarily agreed to coordinate their export controls governing transfers of civilian nuclear material and nuclear-related equipment and technology to non-nuclear-

⁷It was reported that 'during the first NSG meeting on August 21-22, 2008, was inconclusive, with China leading countries with reservations - primarily Austria, Switzerland, Norway, Ireland and New Zealand. A fortnight later, following direct intervention by President Bush, China relented and the NSG ended sanctions on September 6, 2008.'

⁸Waseem Qutab, "What India's NSG application does not say?" *The News International*, July 20, 2016, <https://www.thenews.com.pk/print/136214-What-Indias-NSG-application-does-not-say>, accessed on July 20, 2016.

⁹This section was already published in my article, i.e. Zafar Nawaz Jaspal, "Indo-US Nuclear Deal: Altering Global Nuclear Order," *Strategic Studies*, Vol: XXVII, Nos. 2 & 3 Summer & Autumn 2008.

weapon states. All NSG decisions are made by consensus. The NSG has two sets of guidelines listing the specific nuclear materials, equipment, and technologies that are subject to export controls. The NSG Guidelines require that importing states provide assurances to NSG members that the proposed deals would not contribute to the creation of nuclear weapons. Potential recipients are also expected to have physical security measures in place to prevent theft or unauthorized use of their imports and to promise that nuclear materials and information will not be transferred to a third party without the explicit permission of the original exporter.¹⁰ In addition, final destinations for any transfer must have IAEA safeguards in place. The IAEA is charged with verifying that NNWS are not illicitly pursuing nuclear weapons. IAEA safeguards to prevent nuclear material or technology from being stolen or misappropriated for weapons include inspections, remote monitoring, seals, and other measures.

The guidelines are comprised of two parts, each of which was created in response to a significant proliferation event that highlighted shortcomings in the then existing export control systems. Part I lists materials and technology designed specifically for nuclear use. These include fissile materials, nuclear reactors and equipment, and reprocessing and enrichment equipment. First published in 1978, Part I responded to India's diversion of nuclear imports for supposedly peaceful purposes to conduct a nuclear explosion in 1974. Part II identifies dual-use goods, which are non-nuclear items with legitimate civilian applications that can also be used to develop weapons. Machine tools and lasers are two types of dual-use goods. NSG members adopted Part II in 1992 after discovering how close Iraq came to realizing its nuclear weapons ambitions by illicitly employing dual-use imports in a covert nuclear weapons program before the 1991 Persian Gulf War. Moreover, since 1992 the NSG has not allowed nuclear trade with non-NPT states. In December 2002, in response to the threat of nuclear terrorism, the NSG agreed to strengthen its guidelines in an attempt to prevent and counter the threat of diversion of nuclear exports to nuclear terrorism. In 2004 meeting, NSG members adopted a 'catch-all' mechanism, which authorizes members to block any export suspected

¹⁰“Report,” *Arms Control Today*, June 2004.

to be destined to a nuclear weapons program even if the export does not appear on one of the control lists. To be eligible for importing Part I items from an NSG member, states must have comprehensive IAEA safeguards covering all their nuclear activities and facilities. In the case of Part II goods, IAEA safeguards are only required for the specific nuclear activity or facility that the import is destined for.

NSG: Membership Requirements

The NSG did not have any fixed or rigid criteria for the membership of a club till the end of Cold War. The members deliberated seriously in the 1990s to chalk out requirements imperative for entry into the club. In this context, the first formal plenary meeting was held in Warsaw in 1992. During the subsequent 1993 Lucerne Plenary, the participating members of the NSG adopted the first procedural Arrangement. According to this, the membership criteria were:

- a. Membership of the NSG initially consists of the countries adhering to the Nuclear Supplier Guidelines (INFCIRC/254/Rev. 1, Part 1 and 2) and fully participating in the Plenary Meeting in Lucerne in 1993.
- b. Countries other than those referred to in paragraph 1 (a) may be invited to join the NSG by a consensus decision of its members. Consensus may be achieved intersessionally by the Chair through regular channels.
- c. While it is understood that prospective members would, as a rule, adhere to INFCIRC/254/Rev. 1 in its entirety before being considered for membership, it would also be possible to invite adherents to part 1 of INFCIRC/254/Rev. 1 to participate in Plenary Meetings prior to their adherence to Part 2. Until these countries have adhered to Part 2, they will only take part as observers in Plenary Meeting discussions on issues related to Part 2.¹¹

¹¹G. Balachandran, Reshmi Kazi and Kapil Patil, "Membership Expansion in the Nuclear Suppliers Group," Special Feature, Institute for Defence Studies and Analysis, New Delhi, June 22, 2016, http://www.idsa.in/specialfeature/membership-nuclear-suppliers-group_gbalachandran_220616, accessed on August 2, 2016.

The NSG members had further stringent membership criteria during their May 10-11, 2001 Aspen, Colorado, United States Plenary meeting. According to it, the requirements are the following:

- The candidate ought to have the ability to supply items (including items in transit) covered by the Annexes to Parts 1 and 2 of the NSG Guidelines;
- It's adherence to the Guidelines and action in accordance with them;
- The applicant should abide by the enforcement of a legally based domestic export control system which gives effect to the commitment to act in accordance with the Guidelines;
- The NSG aspirants express adherence to one or more of the NPT, the Treaties of Pelindaba, Rarotonga, Tlatelolco, Bangkok, Semipalatinsk or an equivalent international nuclear non-proliferation agreement, and full compliance with the obligations of such agreement(s);
- The applying state's support of international efforts towards non-proliferation of Weapons of Mass Destruction and of their delivery vehicles.

The Aspen Plenary also defined what it meant by adherence thus:

“To be eligible to become a new NSG Participating Government, a government must have adhered to the Guidelines for the Export of Nuclear Material, Equipment and Technology, and the Guidelines for Transfers of Nuclear Related Dual-Use Equipment, Materials, Software and Related Technology. Such adherence is accomplished by sending an official communication to the Director-General of the IAEA stating that the government will act in accordance with the Guidelines. This communication is to be intended for publication in the INFCIRC series.”¹²

¹²“Nuclear Suppliers Group,” *Civil Services Mentor Magazine*, June 2016, <http://iasexamportal.com/civilservices/magazine/csm/june-2016/nuclear-suppliers-group>, accessed on August 2, 2016.

Importantly, the NSG is neither an international treaty nor replica of NPT. Its scope, intent and functionality are different from that of the NPT. It is a group of “nuclear supplier countries that seeks to contribute to non-proliferation of nuclear weapons through implementation of two sets of Guidelines for nuclear exports and nuclear-related exports.” Indeed, its intent to contribute to non-proliferation of nuclear weapons is consistent with the objectives of the nuclear non-proliferation regime. Therefore, “the purpose of the NSG is to support the NPT. The NSG has supported the NPT in the past by tightening export controls. If this remains the primary purpose of the NSG in the future, then new NSG applicants need only to tighten up their export controls to NSG standards to gain entry.”¹³ Supporting NPT objectives does not make it an implicit necessity for the candidates of NSG membership to be a party to NPT. Therefore, “NPT membership is not a requirement for membership in the NSG, but “adherence” is a “factor” in INFCIRC/539, and many participants would favour India making binding legal commitments—including to NPT Articles I and VI and to the Comprehensive Nuclear Test Ban Treaty—that would bring India closer to the global non-proliferation mainstream.”¹⁴

NSG Membership: India's Endeavour

Since the beginning of the 21st century, the Nuclear Non-Proliferation Regime (NNPR) has been facing serious challenges due to the transformation in the global politics. The United States determination to sustain its sole super power stature in the global politics resulted in its Containment of China/Pivot to Asia/Rebalancing Strategies. The strategic outlook of the Washington has enhanced India's significance in the former's foreign and strategic policy. Consequently, the Indo-US Strategic partnership has been cemented. The strategic partnership obliges Washington to assist Indian nuclear and space

¹³Michael Krepon, “Club Membership,” *Arms Control Wonk*, June 26, 2016, <http://www.armscontrolwonk.com/archive/1201515/club-membership>, accessed on June 28, 2016.

¹⁴Mark Hibbs, “India's quest for NSG Membership,” *Nuclear Intelligence Weekly*, July 8, 2016, <http://carnegieendowment.org/2016/07/08/india-s-quest-for-nsg-membership-pub-64070>, accessed on July 13, 2016.

industry. The Washington and Delhi nuclear cooperation required amendment in both the United States Foreign Assistance Act of 1954 and NSG trade rules. The adjustments were made in both to facilitate and legitimize the Washington and New Delhi nuclear trade.¹⁵

India received a special treatment by NSG in 2008. Since then, it has been under the impression that it would always be treated individually or granted special status by the members of the NSG. Therefore, without taking into account the current trends in the global strategic environment, India's bid for NSG membership in May 2016 failed to receive a favourable response from the participating members of the club in the 2016 NSG Seoul Plenary meeting. Despite the failure in Seoul, Premier Narendra Modi has been lobbying with the support of the United States to erase obstacles, which hinder New Delhi's entrance into the NSG. According to Mark Hibbs, "The US, close allies, and India collaborated toward the goal of admitting India into several multilateral export control regimes, an important objective for India after years of being frozen out of international nuclear trade. The plan called for India to first join the Missile Technology Control Regime (MTCR), then the NSG, and finally the control arrangements for conventional and chemical weapon."¹⁶ India secured the membership of MTCR in June 2016.¹⁷ The June 2016 plenary meeting for the Group in Seoul couldn't yield any positive results for India as no decision on its membership had taken place.¹⁸ Presently, New Delhi is vigorously endeavouring to join

¹⁵Zafar Nawaz Jaspal, "Indo-US Nuclear Deal: Altering Global Nuclear Order.

¹⁶Mark Hibbs, "India's quest for NSG Membership".

¹⁷As of today, the MTCR has 35 members: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, India, Italy, Ireland, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, the Russian Federation, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States of America. "Chairs' statement on the accession of the Republic of India to the Missile Technology Control Regime (MTCR)," The Hague, Luxembourg, Paris, June 27, 2016, file:///Users/drzafarnawazjaspal/Downloads/160627-chairs-statement-on-india.pdf, accessed on July 24, 2016.

¹⁸Baqir Sajjad Syed, "US Likely to Push for India's Entry in NSG in October", *Dawn*, July 30, 2016, <http://www.dawn.com/news/1274178/us-likely-to-push-for-indias-entry-in-nsg-in->

the Nuclear Supplier Group.

The membership of the NSG seems very vital for the Premier Modi's government because the membership of the group would allow New Delhi to trade in nuclear materials and technology with the rest of the world. "India feels that NSG membership will enable it to become an international player in nuclear commerce, as it will not only be able to access the latest nuclear technology, but will be in a position to supply its indigenous technology."¹⁹ Perhaps, it would be an economic venture. In strategic parlance, however, the membership would eradicate the last remnants of 'the pariah status that was imposed following the first nuclear tests in Pokhran in 1974, and reinforced after the Pokhran II tests in 1998.' Aroon Purie opined that: "If the civil nuclear agreement between India and the US in 2005 was the first step towards ending the ostracism, becoming a full member of the NSG would make India an integral part of the global nuclear club." The full membership of the Group certainly boosts India's political stature in the global politics in general and underscores its nuclear program's credibility in particular. Ashok Sajjanhar argued, "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."²⁰

India's NSG membership endeavours to attain explicit objectives which are political, economic and diplomatic. External Affairs Minister Sushma Swaraj pointed out: "We got waiver in 2008 but we are pursuing

october?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+da
wn-news+(Dawn+News)

¹⁹K S Venkatachalam, "Will China ever allow India to be part of the Nuclear Suppliers Group?" *The Express Tribune*, July 8, 2016, <http://blogs.tribune.com.pk/story/36213/will-china-ever-allow-india-to-be-part-of-the-nuclear-suppliers-group/>, accessed on July 15, 2016.

²⁰Ashok Sajjanhar, "Why is NSG Membership important for India?" *IDS Comment*, June 21, 2016, http://www.idsa.in/idsacomments/why-is-nsg-membership-important-for-india_asajjanhar_210616, accessed on July 28, 2016.

to become a member of NSG because there is a difference between sitting inside the room and sitting outside it. We are outside the room despite the waiver we got. When you are in, you are a part of the decision making process.”²¹ However, one cannot underestimate that membership of the NSG would facilitate New Delhi in modernizing its nuclear industry. The advancement of the Indian nuclear industry certainly boosts the modernization process of India's nuclear arsenal.

Prime Minister Modi had toured many countries, including United States to muster support for India's Nuclear Supplier Group membership application endorsement during the first half of June 2016. New Delhi claimed that: “India's participation in the NSG would strengthen international efforts to prevent the proliferation of nuclear weapons.” Moreover, the Indian diplomats claim, “without NSG membership India faces supply-chain interruptions for nuclear projects, and cannot meet climate change commitments, irrespective of whether these claims are true, they are extraneous to the NSG's export control and non-proliferation missions.”²² The review of NSG June 2016 plenary meeting at Seoul, South Korea, reveals that some members of the Group are not convinced by India's unjustified declarations.

The NSG membership 'appears to have emerged as the single most critical foreign policy priority for the Modi Government.' Therefore, Prime Minister Narendra Modi's whirlwind foreign trips' failure to ensure smooth entry of India in NSG is a big setback for his foreign policy agenda. Conversely, the denial of special treatment to India would contribute definitely in restoring the credibility of the NSG. Since 2008, India has been enjoying the exceptional treatment by the Group due to its cementing strategic partnership with the United States. “For years, the United States has sought to bend the rules for India's nuclear

²¹“English Rendering of Annual Press Conference by External Affairs Minister,” Ministry of External Affairs, Government of India, June 19, 2016. http://www.mea.gov.in/media-briefings.htm?dtl/26955/English_Rendering_of_Annual_Press_Conference_by_External_Affairs_Minister_June_19_2016, accessed on July 26, 2016.

²²Mark Hibbs, “India's quest for NSG Membership”.

program to maintain India's cooperation on trade and to counter China's growing influence. In 2008, President George W. Bush signed a civilian nuclear deal with India that allowed it to trade in nuclear materials."²³ Washington's twisting of Nuclear Non-proliferation regimes rules/norms in favour of India has increased the fragility of the regime and also created conducive environment for India's nuclear program advancement.

Presently, India enjoys President Obama's strong support in its bid to join the group. Notably, President Obama first expressed support for India's membership in the NSG in November 2010 joint statement with Prime Minister Manmohan Singh. Since then, he has been lobbying for India to win membership through a special exception. Nevertheless, the trends in the international politics and debates on the nuclear non-proliferation regime indicate that India may not receive the special or exceptional treatment in securing NSG membership. India's application for the NSG membership and United States plea to treat it as a special case were immensely debated in the international media prior to the group meeting on June 9, 2016 in Vienna, Austria. The debate confirms that special treatment of one state and discriminatory approach against the others would be perilous for NSG in particular and Nuclear Non-proliferation regime in general.

Although Obama Administration had immensely lobbied for India's NSG membership, yet a few Congressmen at the Capitol Hill did express their serious reservations on India's nuclear non-proliferation record. They seem disturbed due to New Delhi's non-compliance of nuclear related commitments with Washington since the entry into force of Indo-US Nuclear Deal in 2008. For instance, Senator Markey's statement in the US Senate hearing on May 24, 2016, was quite revealing. He pointed out that: "since 2008 when (we) also gave them an exemption, India has continued to produce fissile material for its nuclear weapons programme virtually un-checked. At that time Pakistan warned us that the deal would increase the chances of the nuclear arms race

²³The Editorial Board, "No Exceptions for a Nuclear India", *The New York Times*, June 4, 2016.

in South Asia.”²⁴ The continuity of vertical nuclear proliferation in South Asia and absence of arms control arrangement between India and Pakistan, endorses Senator Markey's proclamation in the Senate of United States.

The general impression is that India lost its chance to become a full-fledged member of NSG in June 2016. Many Indians, however, seem optimistic about the club membership, especially after India's entry into the MTCR. Ashok Sajjanhar opined: “India became a Member of the MTCR on 7 June 2016. All 34 members of MTCR are members of the NSG. India is hence assured of support of these 34 members in its quest for NSG membership.”²⁵ Notably, China applied for MTCR membership in 2004. Many states questioned its missile proliferation record and thereby it failed to join MTCR. India would use its MTCR membership in softening China's stance at NSG. In simple words, New Delhi would support Beijing's bid for MTCR and in return the latter will facilitate the former's entry into the nuclear supplier's club by renouncing its strident opposition on special treatment of India by the participating members of NSG.

Pakistan's Calculated Bid

Pakistan formally applied for the NSG membership on May 18, 2016. Perhaps, Pakistan's move to join NSG surprised both India and the United States. Since its bid for membership, Islamabad has been lobbying for the support of like-minded states. In this context, it also sent letters to US officials and lawmakers, urging them to support its bid for joining the NSG. Due to its visible tilt towards New Delhi, Washington asked Pakistan 'to put its case before all 48 members of the Group, instead of seeking individual endorsements for joining the NSG'²⁶. The response of Washington to Islamabad reflects chill in bilateral relations as well as continuity of former's opposition to latter's nuclear weapon program.

²⁴ Quoted in Anwar Iqbal, “India joining NSG will escalate nuclear race in South Asia: US senator,” *Dawn*, May 26, 2016.

²⁵ Ashok Sajjanhar, “Why is NSG Membership important for India?”

²⁶ Anwar Iqbal, US asks Pakistan to seek NSG's acceptance, not individual endorsements,” *Dawn*, June 11, 2016.

Perhaps, "Washington's consistent opposition to Pakistan's membership of the NSG is part of its campaign against our nuclear weapons programme, which it wants Islamabad to unilaterally freeze despite the threat to our security posed by the growing Indian conventional and nuclear arsenal, which the US has itself facilitated by the 2008 waiver."²⁷

Importantly, Pakistan instead of asking for favour or special treatment has maintained a principled stance on NSG membership. It is demanding non-discriminatory criteria for non-NPT states for entry into the NSG. It accentuates that an equitable criteria-based or norm-based approach ought to be adopted for the membership of non-NPT nuclear weapon states. More explicitly, Islamabad has been advocating that the norms and rules applied to give membership to India should also apply to all new entrants to the NSG. Many members have appreciated Pakistan's principled stance. Therefore, they have supported Islamabad's attempt to become a member of the group.

Islamabad is cognizant to the fact that without having a criteria-based approach, Pakistan would be permanently in a disadvantageous position. It would be vulnerable to supply-chain interruptions for nuclear projects. Moreover, NSG operates on the basis of consensus. Once India becomes the member of NSG, it would be in a position, as a member, to permanently block the entry of Pakistan in the Group by using the consensus clause. In simple words, it would veto the attempt of Pakistan to join the NSG. Therefore, the Advisor to Prime Minister on Foreign Affairs, Sartaj Aziz, categorically stated that "Pakistan is opposed to yet another country-specific exemption from NSG rules to grant membership to India, as this would further compound the already fragile strategic stability environment in South Asia, would further undermine the credibility of NSG, and weaken the non-proliferation regime."²⁸ Hence, Pakistan is determined to prevent the special treatment of India by the NSG.

²⁷Zamir Akram, "The NSG after Seoul," *The Express Tribune*, July 5, 2016.

²⁸"Trenchant Critique: Pakistan Opposes US-India Nuclear Deal," *The Express Tribune*, January 28, 2015, <http://tribune.com.pk/story/828765/trenchant-critique-pakistan-opposes-us-india-nuclear-deal/> also see, Pakistan Criticizes India's

Importantly, Islamabad's application to join the Group not only subverted the smooth entry of India in the NSG with the support of the United States, but also created a legitimate right of Pakistan to be a member of the Group. Islamabad maintains that it possesses “the expertise, manpower, infrastructure and the ability to supply NSG controlled items, goods and services for a full range of nuclear applications for peaceful uses.” Moreover, it has successfully institutionalized the safety and security of its nuclear program. According to the Pakistan national statement at 2014 NSS these steps include;

- Establishment of Pakistan Centre of Excellence for Nuclear Security (PCENS) with a potential to grow into a regional and international hub with the support of the IAEA;
- The establishment of a National Institute of Safety and Security (NISAS) under Pakistan Nuclear Regulatory Authority (PNRA) in 2014. The School was inaugurated by IAEA Director General, Yukiya Amano;
- Pakistan initiated its Nuclear Security Action Plan (NSAP) in 2006, with a renewal after every five years. Recently under its NSAP, Pakistan has revised safety parameters of nuclear power plants following the Fukushima accident;
- Pakistan has also installed a Nuclear Security Cooperation Programme (NSCP) at fifteen nuclear medical centres and upgraded measures are underway at eight more.
- To enhance radiological safety, the country has established a Nuclear and Radiological Emergency Support Centre (NURESC) and a National Radiation Emergency Coordination Centre (NRECC) as well.
- The newly established National Detection Architecture deploys special nuclear material sensors at important entry

Inclusion in Nuclear Suppliers Group, *New York Times*, January 28, 2015, <http://www.nytimes.com/2015/01/28/world/asia/pakistan-criticizes-indias-inclusion-in-nuclear-suppliers-group.html>

and exit locations to prevent illicit trafficking of nuclear related materials.²⁹

The primary objective of the NSG is to prevent the horizontal proliferation. Therefore the candidate for the Club membership ought to demonstrate its sincere efforts to foil horizontal proliferation. Since September 2004, Islamabad has been implementing United Nations Security Council (UNSC) Resolution 1540. The Resolution keeps States “from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery.”³⁰ It has created “extensive legal obligations for states to take measures against proliferation of weapons of mass destruction through controls over their employees and sites etc.”³¹ Pakistan was one of the states which immediately acted on a supplication of the UNSC Resolution 1540. It responded by legislating and executing *Pakistan Export Control on Goods, Technologies, Material and Equipment Related to Nuclear and Biological Weapons and their Delivery System Act, 2004* (Export Control Act 2014) in April 2004. The Export Control Act 2014 is consistent with the NSG 'Non-Proliferation Principle', adopted in 1994, “whereby a supplier, notwithstanding other provisions in the NSG Guidelines, authorises a transfer only when satisfied that the transfer would not contribute to the proliferation of nuclear weapons.”³²

Pakistan's National Command Authority Act was legislated and enacted in March 2010. Its statement of objectives refers:

Whereas, it is necessary and expedient to establish an Authority for complete command and control over research, development, production and use of nuclear

²⁹“Pakistan National Statement at Nuclear Security Summit,” *Ministry of Foreign Affairs*, March 26, 2014, <http://www.mofa.gov.pk/zahidan/pr-details.php?prID=1846>

³⁰Resolution 1540 (2004), United Nations Security Council, April 28, 2004, <http://www.ipu.org/splz-e/civ1540/1540.pdf>, accessed on August 3, 2016.

³¹ Ahmer Bilal Soofi, “International law & foreign policy,” *Dawn*, July 25, 2016.

³²“About the NSG,” <http://www.nuclearsuppliersgroup.org/en/about-us>, accessed on August 2, 2016.

and space technologies and other related applications in various fields and to provide for the safety and security of all personnel, facilities, information, installations or organizations and other activities or matter connected therewith or ancillary thereto.³³

The national laws legislated by the Parliament and executed by the Government of Pakistan manifest Islamabad's seriousness for the implementation of the Resolution 1540, adherence to NP, i.e., prevention of horizontal proliferation and above all compliance to the NSG export laws. These developments have enhanced Pakistan's nuclear material and facilities safety and security apparatus and changed the perceptions of international community about Pakistan's nuclear program. Consequently, the international community during the recent Nuclear Security Summit held in Washington on March 31 and April 1, 2016, also acclaimed (NSS) Pakistan's genuineness with its binding legal commitments to thwart the misapplication of both nuclear technology and materials.

The membership of the NSG would ensure political, diplomatic, economical and technological benefits for Pakistan. Therefore, instead of impeding India's entry into the club, Islamabad needs to lobby for its own membership to seek investment for its nuclear power sector. Coincidentally, the prevalent global political environment is conducive for Pakistan's petitioning for the club membership. It is because many members of NSG are convinced that granting a special treatment to India would not only tarnish immensely the credibility of the club, but also destabilize the strategic environment of South Asia. Second, despite being a non-NPT state, Pakistan's nuclear policies are consistent with the key provisions of the Treaty that apply to nuclear weapon states. Third, despite nuclear related sanctions, Pakistan honoured its contracts with the IAEA. For instance, Pakistan was sanctioned after India's peaceful nuclear explosion of 1974; it voluntarily continued its IAEA safeguards on Karachi Nuclear Power Plant. Fourth, it maintains impeccable safety

³³“The National Command Authority Act 2010,” *The Gazette of Pakistan*, Registered No. M-302/L-7646, Islamabad, March 11, 2010.

and security record. Hence, during ensuing period, till the next plenary in Switzerland in 2017 or the interim meeting(s) before the end of 2016, Islamabad ought to engage with all the members of the NSG and intelligently plead its case for the membership of the club.

Criteria-based Approach

The NSG membership has gradually increased since 1970s. The membership of the Club was generally granted to a candidate that ensures that it would reinforce the objectives and purposes of the NSG. The puzzling factor is that NSG members write and rewrite the procedures or rules of the Club. The record of these procedures reveals that NSG members adopted occasionally a flexible approach while scrutinizing the applications of a new aspirant of the Club membership. Though the technical capacity of a candidate is taken seriously, yet the regional and international strategic environment equally play a decisive role in the decision-making process of the Club. Therefore, today, India instead of declaring its firm support for the full, complete and effective implementation of the NPT has been using its September 2008 NSG waiver to justify its application. The statement on Civil Nuclear Cooperation with India states that “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.”³⁴

New Delhi has been insisting that 2008 NSG waiver is enough to establish its right to join the club. Conversely, the opponents of India have been demanding the criteria-based rule. Michael Krepon opined: “The notion of a criteria-based approach to new membership resonated with enough NSG members to give Beijing – which dislikes doing it alone – the company it sought. India advocated a merit-based approach, but this begged the question of how to measure merit. Standards are

³⁴“Communication dated 10 September 2008 received from the Permanent Mission of Germany to the Agency regarding a “Statement on Civil Nuclear Cooperation with India,” INFCIRC/734, September 19, 2008, <https://www.iaea.org/sites/default/files/publications/documents/infcircs/2008/infcirc734c.pdf>, accessed on August 2, 2016.

needed to assess merit, whether they are called criteria or not.”³⁵ Nevertheless, both India and Pakistan failed to get the membership of the Club because 2016 Seoul communiqué demands the full, complete and effective implementation of the NPT. In 2008 the former secured the waiver because 2008 NSG communiqué speaks of contribution to the provisions and objectives of the NPT.

The Chinese principled stance, i.e., only party to NPT is qualified to be the member of the NSG is viewed in New Delhi and Washington a major roadblock, which had hindered India from becoming the Group member. Importantly, the 48 members of NSG have signed the NPT, either as nuclear weapons states or as non-nuclear weapons states. Whereas; India is not a party to the NPT. That's why; in addition to China, 11 other members of the Group including New Zealand, Turkey, South Africa, Austria, etc. also opposed the US move to include India in the 48-nation NSG. Consequently, on June 24, 2016 during the NSG plenary meeting “the discussions centred on the issue of criteria for membership of nuclear weapon states not party to the NPT, such as India, Pakistan and Israel.”³⁶

China has been keeping a firm stance on the subject of the NSG membership. On May 13, 2016, Chinese Ministry of Foreign Affairs spokes-person Lu Kang stated that NPT membership is a necessary qualification for membership. He added, 'Not only India, but also many other non-NPT members have voiced their aspirations to join the NSG.' Many NSG members, including China, believe that this matter shall be fully discussed and then decided based on consensus among all NSG members in accordance with the rules of procedure of the NSG. The recent reports reveal that China has shown flexibility on its stance by announcing that it is against the exception being granted to India and may favour a criteria-based approach to address the question of all non-NPT states being granted membership to NSG.

³⁵Michael Krepon, “Club Membership,” *Arms Control Wonk*, June 26, 2016, <http://www.armscontrolwonk.com/archive/1201515/club-membership>, accessed on June 28, 2016.

³⁶Zamir Akram, “The NSG after Seoul”, *The Express Tribune*, July 05, 2016.

India promised in 2008, to undertake certain non-proliferation initiatives in reciprocity of NSG waiver, i.e., exemption from full scope safeguards agreement with the IAEA as “a condition for the future supply of Trigger List items to any non-nuclear-weapon State. This decision ensured that only NPT parties and other states with full-scope safeguards agreements could benefit from nuclear transfers.” The review of New Delhi's nuclear policy reveals that India had not honoured its promise with NSG during the last eight years. Daryl G. Kimball pointed out that: “The NSG waiver for India was granted in return for several Indian non-proliferation 'commitments and actions', including maintaining its nuclear test moratorium, supporting negotiations to halt fissile material production for weapons, and developing a plan to separate its civilian and nuclear sectors.” New Delhi did not fully separate its civilian and military nuclear reactors till the writing of these lines. It neither observed moratorium on fissile material production for weapons use nor signed Comprehensive Test Ban Treaty (CTBT). Moreover, it did not adhere to the limited IAEA Additional Protocol. India's noncompliance attitude not only upset a few NSG members, but also weakened its case for the NSG membership. Therefore, they expressed their reservations over India's application to join the Group.

New Delhi instead of honouring its 2008 promised non-proliferation commitments, has been blaming and condemning both Beijing and Islamabad for blocking India's entry into the NSG. It was reported that: “frustrated and angry Indians are demanding that we punish China, boycott their goods, and join forces with the US to take on China and other such remedies.” Moreover, India has been trying to cash its strategic partnership with United States and thereby it has been publicizing Indo-Pacific strategy to check Chinese role in the

³⁷Mark Hibbs, “Toward a Nuclear Suppliers Group Policy for States Not Party to the NPT,” Carnegie Endowment for International Peace, February 12, 2016, http://carnegieendowment.org/files/2-3-16_Hibbs_NSg_final_CTG.pdf, July 16, 2016.

³⁸*Arms Control Today*, June 2016.

Manoj Joshi, “India's Abortive NSG Bid and the Kautilyan Lessons it Needs to Learn” *The Wire*, June 26, 2016, <http://thewire.in/46014/indias-abortive-nsg-bid-and-the-kautilyan-lessons-it-needs-to-learn/>, accessed on July 25, 2016.

Indian Ocean in general and South East Asia in particular. Despite these tactics, New Delhi has failed to quash criteria-based approach advocated by a few members for the non-NPT candidates for entry into the NSG.

Conclusion

The general perception is that NSG effectively pursued its objectives. The IAEA comprehensive safeguards at the nuclear facilities of the non-nuclear weapon states prevented the horizontal proliferation of nuclear weapons. Conversely, many argued that NSG achievements record is not appreciable. It failed to prevent the horizontal proliferation due to its preferential treatment of favourites. The political and economic objectives overwhelm the norms in the context of NSG treatment of India on the behest of United States in September 2008, which dented the credibility of the Group.

India and Pakistan have the infrastructure capable of producing highly enriched uranium and plutonium for both peaceful and non-peaceful nuclear uses. Both New Delhi and Islamabad are capable of assisting many developing states to advance their nuclear infrastructure for the peaceful use of nuclear technology. Many states had already benefited from Pakistan's Centre of Excellence for Nuclear Security. New Delhi had assisted a few developing states with their nuclear infrastructure for peaceful use of the technology. Therefore, the club members stress that India and Pakistan ought to adhere to the NSG guidelines. Indeed, the existent adherence is only possible, if both join the NSG as members. So, granting of the NSG membership to New Delhi and Islamabad would be in the interest of both NSG and lesser-developed states.

To conclude, both New Delhi and Islamabad remain optimistic about the membership of NSG in the near future. It's because, instead of rejecting their applications for membership of the group, the members of NSG have shelved the matter for future deliberations. Therefore, New Delhi has steadily been contacting the opposing forces in the NSG. New Delhi had already approached Beijing for its supports, which has been maintaining a principle stance in the group. Hence, Islamabad needs to

vigorously continue its diplomatic efforts for its own entry into the NSG and for recognition by the international community as a legitimate and responsible nuclear power.