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Issue Brief

India and the NSG Membership: What Lies Ahead

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S*ummary*

India will have to make a judicious political decision on accepting any additional criteria that the NSG might come up with as a precondition for accepting its membership application. While criteria that would strengthen the NSG's core objectives and do not negatively affect India's national security would be acceptable, India should not accept any criterion or practice that is not currently being followed by all the NSG members.

In the pre-2005 period, the Indian government as well as most Indian analysts had approached the four export control regimes – the Nuclear Suppliers Group (NSG), the Missile Technology Control Regime (MTCR), the Wassenaar Arrangement (WA) and the Australia group (AG) – with suspicion. Such an approach was not unnatural considering the fact that the first two, namely the NSG and the MTCR, had actively worked against Indian interests. The NSG denied fuel for the Tarapur Atomic Power station (TAPS) while the United States used MTCR provisions to prevent the transfer of cryogenic engine technology – a purely civilian space technology – by Russia to India thereby setting back the Indian space programme by more than a decade.

With the conclusion of the India-US nuclear cooperation agreements after July 2005 and the September 2008 NSG exemption for India from some of the restrictive provisions of the group's Guidelines, the Indian attitude and approach to these regimes turned favourable. India began to positively consider the possibility of becoming a member of all these regimes. This attitude was further reinforced by the November 2010 Joint Statement issued during President Barack Obama's visit to India, which explicitly endorsed India's candidature for the four multilateral export control regimes. India had then considered the NSG membership as being the most important. The US "Food for Thought" paper on the question of India's membership circulated to NSG members for their consideration and feedback just prior to the June 2011 Consultative Group (CG) and Plenary meeting in Noordwijk, the Netherlands, further vetted India's aspirations.

Even though all NSG Plenaries from 2011 onwards continued to discuss "NSG(s) relationship with India" (in the words of the NSG communiqués), there was very little forward movement. To a certain extent, the delay could be attributed to India as well. For one, India had not even applied for NSG membership until May 2016, that is, just prior to the 2016 Seoul Plenary. Nor could it have because one of the important requirements for applying for the group's membership, leave alone being actually admitted, was that an applicant state should be a NSG adherent. It is true that as part of its commitments to the NSG for obtaining the September 2008 exemption India had addressed a communication to the IAEA Director General stating that "India has adhered to the Guidelines and Annexes of the Nuclear Suppliers group". But this was not in line with the actual NSG requirement that, for recognition as an NSG adherent, the adherence letter to the IAEA Director General must also include a statement to the effect that the adherence communication be published as an IAEA Information Circular (INFCIRC). India sent such a communication to the IAEA only on May 9, 2016, just before formally applying to the NSG for membership on the next day. (It is, of course, altogether another matter that the then US President sent to the US Congress in October 2008 a false certification to the effect that "the U.S. assesses that India has adhered to the guidelines and annexes of the NSG and the MTCR, and has done so in a manner consistent with the procedures and/or practices of those regimes.")

Pakistan followed India's footsteps about a week later by sending to the IAEA Director General a NSG adherence communication on May 18, 2016 and subsequently on the very next day a letter to the NSG Chair applying for membership in the grouping. Both India's and Pakistan's applications were sent well ahead of the June 23-24, 2016 Seoul NSG Plenary. Given the special nature of the applications, the first by non-NPT states and that too by states possessing nuclear weapons, the then Chair of the NSG, Ambassador Rafael Grossi of Argentina, had recommended an extraordinary plenary session to discuss the special characteristics of the applications prior to the regular plenary session.

Grossi later admitted in an interview that "we came to Seoul thinking that we could take a decision (on India's membership application) there and then." However, discussion on the two applications was not put on the agenda of the plenary by the incoming NSG chair, who usually sets the agenda as per NSG procedural rules. It was reported at that time that this was done so by the South Korean Chair under pressure from China, although the outgoing Chair, Grossi, did state in a post-Seoul Plenary interview that "it is clear to all that a decision on the membership issue was not possible to be taken in Seoul." Whatever the reason, the Seoul plenary limited itself to discussions on the issue of "Technical, Legal and Political Aspects of the participation of non-NPT States in the NSG" and decided to continue its discussion. However, the incoming Chair asked the outgoing Chair "to reach out and see what is possible in the coming months."

It has been more than three months since Grossi began his exercise by speaking to all NSG governments to find out what is acceptable and then go back to the group after which the group will have to take a decision on how to proceed further. Grossi's job is to assist the NSG Chair to get to a future decision with a clear understanding and purpose. Therefore, hopefully by the next Plenary, regular or special, the NSG would have arrived at a final decision on India's and Pakistan's applications. The next regular plenary session will be held in Switzerland in the summer of 2017. According to some press reports, a special plenary may be called later this year, around December, to decide on the membership applications. While Grossi has not been to India since June 2016, it is quite possible that Indian diplomats may have had talks with him on the inputs he had received from NSG members about what is required to be done to take a decision on the membership applications at the next plenary.

What lies ahead?

Even before the Seoul Plenary, a large number of the 48 Participating Governments (PGs) in the NSG had openly declared their support for India, many of them unconditionally. However at Seoul, some members, while supporting India's admission, felt that some questions need to be answered. A few others had felt that there should be further discussion before a decision.

Thus, at the end of the Seoul Plenary, there were three groups of countries weighing in on India's application. The first, the overwhelming majority, felt that India had fulfilled all the requirements and should be admitted. The second group consisted of a handful of countries who were, in general, supportive of India's application but felt that admission of non-NPT States to the NSG should be decided after the group had formulated a common criteria for such admissions and then decide on individual applications. Finally, a third group consisted of a lone member, China, which, without rejecting the common criteria requirement, had held that:

“NSG has explicit rules in terms of the acceptance of new members. There are five standards concerning not only technology but also political and legal issues. The most important one is the NPT, which means the applicant must be a NPT signatory. This is a mandatory standard which is not set by China but commonly recognized by the international community.”

As an aside, it is not clear whether China felt that all the five standards set by the NSG are mandatory or only one of these five standards, namely the NPT signatory requirement, was mandatory. China could not have referred to all five being mandatory requirements since, at the time of its own application for NSG membership, it had failed to fulfil one of these five requirements, namely, NSG adherence as per NSG procedure. Further, it should also be mentioned that the NSG had not in any public statement referred to NPT membership as a requirement for a state's admission into the grouping. In all of their communications to the IAEA, the NSG had only referred to “adherence to NPT”, a vague and undefined term, as one of the requirements for membership.

Grossi's mandate was to reconcile the positions of these three groups of countries. If China continues to insist on NPT membership as a precondition, there can be no reconciliatory position that will be acceptable to India. However, it is quite possible that Grossi would be able to craft a common criterion acceptable to all the other 47 NSG members without the NPT requirement. Under such circumstances, it is unlikely that China would continue to hold on to the NPT requirement, especially after the recent South China Sea dispute judgment at The Hague when it faced almost universal isolation. However, it must also be noted that after the September 13 consultation between India and China relating to arms control, the Chinese foreign ministry issued a statement stating that “China supports the notion of two step approach within the Group to address the above question, i.e., at the first stage, to explore and reach 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.”

It is, therefore, very likely that Grossi's recommendation, after his extended discussion with NSG members, would include the two-step process with a common criterion. The

final decision on the India and Pakistan NSG applications would rest on the following issues:

- i) Can a common criterion acceptable to all the parties – NSG members, India and Pakistan – be crafted?
- ii) If that can be done, what will be the outcome?

As for the second question, it seems very unlikely that, at this stage, the NSG would approve both applications. India's application will find favour at the next NSG plenary, given the nature of India's relations with the grouping in the recent past. These include: the 2008 NSG exemption, India's record of full compliance with the exemption requirements, the regular annual discussion at the NSG since the 2011 Plenary on India's relations with the NSG, and the already committed support from the vast majority of NSG members.

It is not clear at this stage whether Pakistan enjoys a similar favourable view among the NSG members except, of course, China. It is quite likely that the next NSG Plenary will not result in Pakistan being admitted as a member. In that case, China will have to reconcile itself to a position where it accepts (i) the two-step process, (ii) a common criterion acceptable to India, and (iii) the rejection/deferment of Pakistan's application. China's vote on the Indian application will depend on the political compulsions it faces in its relations with Pakistan. If it feels very strongly that Pakistan must be admitted at the same time as India, and this is unlikely to happen, it may revert back to its stand on NPT membership and block a consensus on India's application.

However, even if China goes along with the two-step formulation, the going may not be easy for Pakistan. The 2008 NSG exemption for India was conditioned upon eight commitments and actions by India. It is quite likely that the criterion for membership may contain commitments and actions beyond those required for exemption. However, as far as Pakistan is concerned, even the conditions for the grant of an exemption may not be acceptable to it. While seven of the eight actions undertaken by India can possibly be accommodated by Pakistan, the eighth condition may pose domestic political problems for Pakistan. This condition relates to "its readiness to work with others towards the conclusion of a multilateral Fissile Material Cut-off treaty (FMCT)." Pakistan has been blocking any discussion on a FMCT at the Conference on Disarmament for more than decade. It was also the only country (among the 189 UN member states) that voted against a December 2012 UN General Assembly resolution (A/RES/67/53) calling for a "Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices." (Incidentally China was one of the few countries that abstained from voting on that resolution).

Where does that leave India?

As a former Foreign Secretary who was intimately connected with the 2008 NSG exemption had written,

“The waiver in 2008 had involved very difficult and complex negotiations on the wording of the decision reconciling the different requirements posed by certain key member countries. ... It is only if there is a fresh discussion on so-called ‘criteria’ applicable to all non-NPT applicants that the criteria on the basis of which India has already received a waiver could be reopened. This is a slippery road and India should be careful that in subsequent deliberations the NSG does not revisit the terms and conditions of the India-specific waiver. In case such a threat is perceived, it is better to preserve the substantive gains already obtained through the waiver rather than to push hard for membership.”

As explained above, there is a real possibility of both a discussion on “common criteria applicable to all non-NPT applicants” and the inclusion of some additional elements into the new “criteria” over and above the 2008 NSG exemption criteria. What should be India’s approach then? Should it withdraw its application for membership as suggested above by the former Foreign Secretary? Or, should India base its approach on an evaluation of whether or not such additions have any possible adverse impact on any of the real or perceived future threats to India’s national security?

Fortunately, India can draw a ‘red line’ on what constitutes acceptable additions to the 2008 criteria. The considerations in this regard are:

- 1) Any additional criteria should be relevant to the NSG’s objectives, which, according to the NSG, is “to contribute to the non-proliferation of nuclear weapons through the implementation of two sets of Guidelines for nuclear exports and nuclear-related exports.” The requirement of a moratorium on the production of fissile material will not fall under this objective and cannot be accepted.
- 2) The criteria should not include any practice that is not currently accepted by all the NSG members. India has already accepted certain practices not accepted by one or more members. These include: the IAEA Additional Protocol, which has been rejected by some NSG members; and, placing facilities under permanent IAEA safeguards that are not required to be so placed on the basis of any bilateral/multilateral/international agreement or treaty – a practice that is not followed by NPT Nuclear Weapons States.
- 3) India cannot agree to any requirement that would declare all its grid-connected reactors as civilian reactors. The United States and other Nuclear Weapons States had for a long period declared, and still may be continuing to do so, some of their grid connected reactors as not being used for civilian purposes. The Hanford reactor

and the Tennessee Valley Authority's tritium-producing light water reactors in the US are pertinent examples, as indeed are the RMBK reactors in Russia.

- 4) Any additional criteria should not adversely affect India's national security.
- 5) Any criteria that adds to the strengthening of international norms relating to nuclear non-proliferation and which are accepted by all NSG members should not pose any problem.

It is very likely that NSG members would be amenable to a formula within the above delineated boundaries. In such a scenario, India will have to make a political decision whether or not to accept the additional criteria. If China feels very strongly about the non-admission of Pakistan and the admission of India at the next plenary, its strategy would be to include in the common criteria some element that would conform to all the requirements stated above and yet not be acceptable to India.

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