

Criteria-based Approach to the NSG Membership: An Equal Opportunity for India and Pakistan

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Abstract

The 1974 multilateral Nuclear Suppliers Group (NSG), an integral part of the nuclear non-proliferation regime, is aimed at ensuring that nuclear trade is consistent with global non-proliferation norms. Although the NSG is a voluntary and consensus based arrangement, granting country-specific exceptions, waivers and memberships, could undermine the Group's credibility. Allowing nuclear trade, based on political and commercial interests only to favourable countries, and denial to weaker and developing states, could seriously erode the trust in nuclear non-proliferation regime. Eventually, deprived states will acquire nuclear technology through clandestine which could be diverted for weapons development. Instead of denial of their "inalienable" right, the international community should accommodate these states for peaceful nuclear trade. A non-discriminatory criteria-based approach of NSG membership can help pacify these concerns as it would be equally helpful to accommodate non-nuclear weapon states (NNWS), and nuclear weapon states, outside the domain of Nuclear Non-Proliferation Treaty (NPT). Pakistan, who has emerged as a responsible nuclear weapon state, is equally interested in nuclear trade purely for peaceful purposes, and supports an equal approach for its entry to the NSG. In this regard, the purpose of this study is to analyse the implications of country-specific approach and highlight the need for a non-discriminatory criteria-based approach of the NSG membership. The study argues that a criteria-based approach could help developing countries, including Pakistan, to overcome their growing energy shortages by utilising peaceful nuclear trade. This engagement will also broaden the support for the international nuclear non-proliferation regime.

Keywords: Nuclear Suppliers Group, Criteria-Based Approach, Country-Specific NSG Membership, India, Pakistan, Nuclear Non-Proliferation Regime, Nuclear Exports, Peaceful Nuclear Energy.

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Introduction

Since the advent of sensitive dual-use nuclear technology, concerns of its proliferation for weapons development has become a top priority on global agenda. The demand for nuclear technology for peaceful purposes has increased manifold as the current era is termed as an era of “nuclear renaissance.” Therefore, in order to control and manage the two objectives, i.e., to control proliferation of nuclear weapons technology and to promote peaceful nuclear use, the international community has devised many instruments, norms, and tools.¹ These measures broadly constitute international nuclear non-proliferation regime, and the 1974 NSG forms an integral part of it. The multilateral NSG aims to strengthen “non-proliferation principle,” by governing nuclear exports and nuclear-related exports under its set of guidelines, which is consistent with nuclear non-proliferation regime.² The NSG is a flexible and informal tool and its arrangements are not legally binding. Since 1974, the number of NSG Participating Governments (PGs) has grown to 48 as compare to seven at the time of its creation.³ As the demand and trade for peaceful nuclear technology is growing, the fears of its misuse

¹Some of these measures includes, 1953 Atoms for Peace proposal; the establishment of International Atomic Energy Agency (IAEA) in 1956; 1963, Partial Test Ban Treaty (PTBT); 1967, Treaty for the Prohibition of Nuclear Weapons in Latin America, commonly know as Tlatelolco Treaty; 1968, global treaty on the Non-Proliferation of Nuclear Weapons (NPT); 1971 Zangger Committee (ZAC); 1974 Nuclear Suppliers Group (NSG); establishment of South Pacific Nuclear Weapons-Free Zone Treaty (Rarotonga Treaty) on August 6 1985; Treaty on the African Nuclear Weapons-Free Zone (Pelindaba Treaty) of 1995; Treaty on the Southeast Asia Nuclear Weapons-Free Zone (Bangkok Treaty) of 1995; approval of the Comprehensive Test Ban Treaty (CTBT) in 1996; adoption of conventions such as the 1996 Convention on Nuclear Safety and Chemical Weapons Convention (CWC) of 1997; and 1997 Additional Model Protocol on the NPT.

²“About the NSG,” *Nuclear Suppliers Group (NSG)*, July 24, 2015, <http://www.nuclearsuppliersgroup.org/en/about-us>

³The current Participating Governments (PGs) of the NSG are: Argentina, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Republic Of Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, and United States. “Participants,” *Nuclear Suppliers Group (NSG)*, access date, August 17, 2015, <http://www.nuclearsuppliersgroup.org/en/participants1>

for weapons development are also growing. New states — especially non-NPT nuclear weapon states — are seeking NSG membership for peaceful nuclear trade. However, there are concerns that the group, instead of applying a criteria-based approach, is encouraging selective states for nuclear trade to become its part through country-specific exemptions. The main theme of this study revolves around the fact that the NSG follows a consensus-based approach and it provides nuclear related transfers only by ensuring that it will not be diverted for nuclear weapons development. And also that the recipient states will abide by strict rules set by NPT and other instruments of nuclear non-proliferation regime. However, in 2008, the NSG made India an “exception” by relaxing NSG rules for legal nuclear trade with NSG PGs. This suggests that the NSG has contravened its own rules and laws to accommodate a nuclear weapons state which was the main reason behind the creation of the NSG back in 1974, which is non-signatory to the NPT and other international non-proliferation instruments.

Based on this assumption, the study argues that the NSG should adopt an equal and non-discriminatory approach for the entry of non-NPT signatory states like India and Pakistan. However, the Indian bid to seek the NSG membership in June 2016 was blocked by more than 10 PGs, including China.⁴ Any selective or country-specific approach, in future, will not only undermine the NSG but it will also work against the norms of nuclear non-proliferation regime. The NSG should not make India the only exception again but has to accommodate countries like Pakistan, whose export control laws are in harmony with the NSG and other multilateral export control regimes. A universal and non-discriminatory criteria-based approach for the NSG membership for non-NPT nuclear weapons states can work in the best interest of nuclear non-proliferation regime. Therefore, this study explores the need for a criteria-based approach to the NSG membership. An equal and simultaneous participation of Pakistan and India in the NSG can help these states to play an effective role in promoting nuclear non-proliferation regime. It will also help bring normalcy in Indo-Pak strategic relations besides promoting regional peace.

⁴“China Thwarts India’s NSG Membership Bid,” *Live Mint*, June 25, 2016, <http://www.livemint.com/Politics/Kt9rHil08i1PShIt9B3NIJ/No-decision-on-Indias-NSG-membership-as-China-rejects-bendi.html>

To support the above arguments, the study is divided into two parts. The first part gives a historical overview of the NSG and its expansion. This overview helps understand the role and significance of the NSG as an international nuclear export control body and its expansion in the past. The second part analyses the implications of country-specific criteria on nuclear non-proliferation regime. This part also debates the need for a non-discriminatory criteria-based approach for the NSG membership. To analyse these two membership approaches, the study takes into account the examples of India and Pakistan. The study concludes its main argument in support of criteria-based approach for the NSG membership as a logical solution to strengthen nuclear non-proliferation regime and to promote regional as well as international peace. The study utilizes primary and secondary sources such as official documents, journal articles, newspaper articles and web-based sources.

Overview of the NSG

During 1960s and early 1970s, nuclear weapons technology proliferated to more states due to the flaws in the International Atomic Energy Agency (IAEA) safeguards system and through unauthorised nuclear commerce between states. States like India and Israel exploited these flaws and established their nuclear weapons programmes. In 1971, the first important step, to regulate nuclear exports and to strengthen the IAEA safeguards, was the formation of informal and non-legally binding Zangger Committee (ZAC), also known as “NPT Exporters Committee.”⁵ The ZAC, under the NPT Article III.2, mandated the IAEA to put in place its safeguards on “material or equipment,” related to special fissionable material for export from major NPT parties to any NPT NNWS.⁶ Since 1974, the Committee maintains a “Trigger List,” which has been amended several times.⁷ Currently, there are 39 states

⁵ Currently, 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/>

⁶ For further details on ZAC history and NPT Article III. 2, see, “The Treaty on the Non-Proliferation of Nuclear Weapons (NPT),” United Nations (UN), “Zangger Committee,” FOI, Swedish Defence Research Agency, <http://www.foi.se/en/Customer--Partners/Projects/zc/zangger/history/> <http://www.un.org/en/conf/npt/2005/npttreaty.html>

⁷ For latest revised ZAC Trigger List see, “Consolidated Trigger List,” INFCIRC/209/Rev. 3, June 19, 2014, “Zangger Committee: Publications,” FOI,

member to ZAC but its scope is not broad enough to cover all the nuclear export related problems, as it does not cover technologies involved in enrichment and processing.

In 1974, India conducted its so-called Peaceful Nuclear Explosion (PNE) by converting the spent fuel into Plutonium from the nuclear reactor provided by Canada. Canada and the US admitted that safeguards have failed to deter India from conducting its nuclear weapons activities.⁸ The Indian PNE jolted the nuclear non-proliferation regime as it raised concerns that nuclear trade for peaceful purposes could be misused. This raised concerns about an emerging nuclear proliferation risk among the major nuclear exporting states, particularly the US.⁹ The international community accelerated its efforts to control export of sensitive nuclear and dual-use equipment, materials and technologies. Initially, France was reluctant to join such measure (NSG) on the grounds that it does not want to “gang-up” as a “cartel” against nuclear supplies to NPT and non-NPT member states.¹⁰ However, to prevent diversion to non-peaceful uses and to strengthen the arrangements of the ZAC, the NSG, also known as “London Club” was created in 1974.¹¹ The group was created to fill the gaps of NPT regime, as the treaty lacks a mechanism to prevent NNWS from being equipped by sensitive nuclear technology imports, and it does not cover exports of sensitive nuclear technology which was not even covered by the ZAC.¹² In 1978, the NSG issued its voluntary ‘London guidelines,’ also known as “Trigger List,” (NSG Guidelines Part 1,) under the IAEA safeguards.¹³ From 1978 to 1991, the NSG remained dormant; however, its guidelines stayed active.

Swedish Defence Research Agency, <http://www.foi.se/en/Customer--Partners/Projects/zc/zangger/publications/>

⁸ William Burr, “The Making of Nuclear Suppliers Group, 1974-1976,” Wilson Center, http://www.wilsoncenter.org/publication/the-making-the-nuclear-suppliers-group-1974-1976?gclid=COaAxvWLnscCFdQZtAod0_0GGQ

⁹ Ibid.

¹⁰ Ibid.

¹¹ “History,” Nuclear Suppliers Group (NSG), <http://www.nuclearsuppliersgroup.org/en/history1>

¹² William Burr, “The Making of Nuclear Suppliers Group, 1974-1976,” op., cit.

¹³ “NSG Guide Lines - Part 1,” *Nuclear Suppliers Group*(NSG), revised on June 2013,

http://www.nuclearsuppliersgroup.org/images/Files/Updated_control_lists/Prague_2013/NSG_Part_1_Rev.12_clean.pdf

Criteria-based Approach to the NSG Membership

It was in 1992 in Warsaw, when 27 NSG PGs agreed to a comprehensive arrangement, known as Dual-Use Guidelines, as Part 2 of its earlier guidelines, to control the export of nuclear related dual-use material, equipment, and technology items – a list of some 65 items.¹⁴ The group also adopted to apply full-scope IAEA safeguards to all current and future nuclear exports to non-nuclear weapon states.”¹⁵ In 1993, the Group reaffirmed its continued support for peaceful nuclear activities by adhering to the full-Scope IAEA safeguards, new membership procedures and adherence to the NSG guidelines by all PGs.¹⁶ The Group opened up its membership to new states which emerged after the Soviet Union’s disintegration. The membership of the group started to expand by April 1994, the NSG membership reached to 29 states. The same year in Madrid, the NSG reviewed its Part 1 Guidelines on the recommendations of its Technical Working Group (TWG) and formed another TWG to review Part 2 Guidelines.¹⁷

In 1995, with 31 PGs, the NSG stressed on the openness and transparency measures.¹⁸ The international efforts to promote nuclear non-proliferation objectives also accelerated as international community agreed to extend the NPT indefinitely in 1995, agreed to conclude and sign Comprehensive Nuclear Test ban Treaty (CTBT) in 1996, and agreed to adopt a programme for preventing and combating illicit trafficking in nuclear material. In 1996 NSG plenary meeting in Buenos Aires, the NSG membership expanded further to 34 states. The Group made full-scope IAEA safeguards as a precondition for new supply agreement, endorsed early conclusion and signing of the CTBT, and

¹⁴ “NSG Guide Lines - Part 2,” Nuclear Suppliers Group, revised on June 2013, http://www.nuclearsuppliersgroup.org/images/Files/Updated_control_lists/Prague_2013/NSG_Part_2_Rev_9_clean.pdf

¹⁵ “Meeting of States Adhering to the Nuclear Suppliers Group Guidelines,” Press Statement, Warsaw, Poland, April 3, 1992.

¹⁶ “The 1993 Meeting of the Nuclear Suppliers Group,” Press Statement, Lucerne, Switzerland, April 1993.

¹⁷ “The 1994 Plenary Meeting of the Nuclear Supplier Group,” Press Statement, Madrid, Spain, April 12-14, 1994.

¹⁸ “The 1995 Plenary Meeting of the Nuclear Supplier Group,” Press Statement, Helsinki, April 5-7, 1995.

supported programme to combat illicit trafficking in nuclear material.¹⁹ The Group also endorsed “Principles and Objectives of Nuclear Non-Proliferation Disarmament,” adopted at 1995 NPT Review Conference as one of the group’s key aims.²⁰

To promote “transparency” and “openness,” the NSG enhanced its dialogue process with non-NSG member states in its 1997-98 meetings in Ottawa and Edinburgh.²¹ The Group adhered to the IAEA model Additional Protocol (AP) in 2000, to strengthen safeguards regime and to cooperate for peaceful nuclear technology.²² By the year 2001, the NSG membership grew to 39 states. During the 2001 plenary meeting, held in Aspen, the Group “agreed to consider options for engaging non-NSG countries that have developed nuclear programmes and are potential nuclear suppliers.”²³ The Group’s Chair was mandated to pursue dialogue with China, Egypt, India, Iran and Pakistan.²⁴ In 2002, the NSG followed its mandate to pursue dialogue with non-NSG states and included Israel in the list.²⁵ On December 12, the NSG held its extraordinary plenary meeting with its 40 member states to respond to the threat of “nuclear terrorism,” and agreed to make several comprehensive amendments to strengthen its guidelines.²⁶ The Group reiterated its commitment, throughout these years, that peaceful use of nuclear energy would not be hampered.

During the following years the NSG agreed to continue its dialogue with non-NSG member states; redefined NSG guidelines; expressed concern over North Korean and Iranian nuclear programmes; and in

¹⁹ “The 1996 Plenary Meeting of the Nuclear Supplier Group,” Press Statement, Buenos Aires, April 25-26, 1996.

²⁰ “The 1997 Plenary Meeting of the Nuclear Supplier Group,” Press Statement, Ottawa, May 8-9, 1997.

²¹ For further details see, *Ibid.*, and “The 1998 Plenary Meeting of the Nuclear Supplier Group,” Press Statement, Edinburgh, April 1-2, 1998.

²² “The Plenary Meeting of the Nuclear Supplier Group,” Press Statement, Paris, June 22-23, 2000.

²³ “Nuclear Suppliers Group Plenary Meeting,” Press Statement, Aspen, May 10-11, 2001.

²⁴ *Ibid.*

²⁵ “Nuclear Suppliers Group Plenary Meeting,” Press Statement, Prague, May 16-17, 2002.

²⁶ “Nuclear Suppliers Group Extraordinary Plenary Meeting,” Press Statement, Vienna, December 13, 2002.

2004 adopted a “Catch All” mechanism in all the NSG guidelines. The NSG also reiterated its firm support for NPT and its 2005 Review Conference outcomes; welcomed the adoption of United Nations Security Council (UNSC) Resolution 1540; and recognised NSG control measures as international benchmark. The NSG encouraged states to strengthen their nuclear export control laws; and continued to expand its membership.²⁷ The NSG support for implementation of national basis exports control and international peaceful nuclear technology also continued.

The most significant development through which the NSG contravened its own laws and questioned its credibility was the adoption of “Statement on Civilian Nuclear Cooperation with India,” on September 6, 2008.²⁸ Recognising India’s ‘energy needs, the NSG granted country specific waivers and made India as an exception for full-scope IAEA safeguards. Decades of international efforts to control the spread of sensitive technology finally became hostage to commercial interest of the “Cartel”. The Group continued its business as usual.

By the year 2009, the NSG membership reached to 46 PGs with European Commission as a permanent observer. In June 2013, the NSG made around 54 agreed amendments in already revised Part 1 and Part 2 Guidelines. Since its creation, the NSG has revised its Trigger List or Part 1 Guidelines for 12 times, and nine times revised “Dual-Use” Guidelines part 2. The current membership status of NSG is 48. In June 2015, in its 25th plenary meeting, the Group, once again assured that everyone has access to peaceful nuclear energy, and appreciated the developments regarding Iranian nuclear deal besides showing interest to expand its outreach to non-NSG nuclear states.

The above overview of the NSG is provided to strengthen the main argument of this study that such international arrangements are, in principle, meant to promote the objectives of nuclear non-proliferation

²⁷ For further details see Press statement of Nuclear Suppliers Group Plenary Meetings of 2003, 2004, 2005, 2006, 2007, and 2008, <http://www.nuclearsuppliersgroup.org/en/>

²⁸ “Communication dated September 10, 2008, Received from the Permanent Mission of Germany to the Agency regarding a ‘Statement on civilian Nuclear Cooperation with India,’ IAEA, INFCIRC/734 (Corrected), September 19, 2008.

regime and to promote peaceful nuclear energy for all, without discrimination. The NSG has almost incorporated all important measure of the regime which includes; the NPT and its Non-Proliferation Principles; full-scope IAEA safeguards; adoption of export control laws to control sensitive nuclear and related dual-use material, equipment and technology; promotion of peaceful nuclear technology; and to expand its outreach. However, the NSG after passing all the tests during its evolution and development phase has turned itself into a ‘Cartel,’ which is more interested in commercial and political interests of its key members. Instead of following universal criteria-based approach, the Group has started to erode its own credibility by following a country-specific approach. It even compromised over its key principle i.e. the full-scope of IAEA safeguards. One can argue that to promote peaceful nuclear energy, the NSG can work with existing realities by looking beyond the discriminatory nature of ‘haves’ and ‘have nots’ of nuclear non-proliferation regime. It can accommodate NNWS and non-NPT nuclear weapons states through a universal criteria-based approach to make these states a responsible part of the non-proliferation regime. In order to strengthen this argument further, the following section initiates a debate between country-specific and criteria-based approaches for the NSG membership.

Criteria-based Approach to the NSG Membership

The country-specific exemption for India for nuclear trade with NSG PGs in 2008 has made it easy for India to pursue its NSG membership. This waiver has manifested a greater discrimination towards other NNWS and non-NPT nuclear weapons states, like Pakistan, which supports a non-discriminatory criteria-based approach for the NSG membership. Recently, the plenary session of the NSG in June 2016 in Seoul, NSG PGs including US, UK and France once again tried to adopt a selective approach to accommodate India as a member to the NSG. Some members including China blocked the efforts of these major powers and India but the door for the selective Indian entry into the NSG is still open as the Group would continue to discuss the participation of the countries which have not signed NPT. This reflects that major NSG PGs, like US, will continue to exert pressure on the Group to selectively include India. However, if the discriminatory country-specific approach

is adopted again, it will raise severe stability and security implications for the region and the international nuclear non-proliferation regime.

The expansion of the NSG from seven to 48 PGs clearly marks its significance and recognises its international character. To become an NSG PG, a state should be able to fulfil following eligibility criteria:

- The ability to supply items (including items in transit) covered by the Annexes to Part 1 and 2 of the NSG Guidelines;
- Adherence to guidelines and actions in accordance with them;
- Enforcement of a legally based domestic export system that gives effect to commitments to act in accordance with the Guidelines;
- Adherence to one or more treaties, such as, the NPT, the treaties of Taltelolco, Rarotonga, Bangkok, Semipalatinsk or an equivalent nuclear non-proliferation agreement, and full compliance with the obligations of such agreement (s);
- Support of international efforts towards non-proliferation of weapons of mass destruction and of their delivery vehicles.²⁹

However, the NSG contrary to its principles to contribute to the effectiveness of non-proliferation regime; to implement objectives of the NPT; to prevent proliferation of nuclear weapons; and to promote principles of safeguards and export control; only recognised India's energy (needs) and granted a country-specific exemption to it in 2008. The NSG granted this exemption on India's voluntary commitments not on groups agreed principle criteria.³⁰ These voluntary commitments includes; a) separation of India's civilian nuclear facilities and a phased placement of these under the IAEA safeguards; b) Signing and adherence of the IAEA AP; c) India will refrain from transfer of enrichment and reprocessing technology to other states and its efforts to control their spread; d) to institutionalise national export control system; e) commitment to the NSG Guidelines and to harmonise its export control list accordingly; f) to continue its unilateral moratorium on nuclear

²⁹“The Nuclear Suppliers Group: its Origins Role and Activities,” IAEA, INFCIRC/539/Rev.6, January 12, 2015.

³⁰“Communication dated September 10, 2008, Received from the Permanent Mission of Germany to the Agency regarding a ‘Statement on Civilian Nuclear Cooperation with India.’”

testing; and, g) efforts to early conclude Fissile Material Cut-off Treaty (FMCT).³¹

Prior to granting 2008 India-specific exemptions, some NSG PGs like Austria, New Zealand, Ireland, Norway, the Netherlands and Sweden, did not support country-specific exemptions on the grounds that it will become a “slippery slope” for other nuclear suppliers and recipient states.³² These countries wanted to impose strong non-proliferation conditions on the exemption, but failed due to the US pressure. These past deliberations at the NSG for granting India an exemption clearly shows the US influence on the PGs, and how things were gradually made favourable for India. Overall four drafts (March 2006, August 2008, September 3, 2008 and September 6, 2008) were prepared and they were gradually made clean and unconditional for India.³³ Majority of the NSG PGs compromised their strict non-proliferation objectives of; a) eventual accession to the full-scope IAEA safeguards; b) accession to the NPT; c) signing of the CTBT; and d) an automatic termination of exemption if India conducts a nuclear test.³⁴

Despite a clear split, the PGs compromised and did not use the power of their votes in a consensus-based group. This clearly reflects that India-specific NSG exemption was not based on the non-proliferation principles, rather it was based on the political and commercial interests of major nuclear supplier states. As, at the time of Indo-US nuclear deal, it was expected that it would attract US\$ 100-150 billion worth of business through nuclear trade. This clearly supports the main argument of this study that country-specific approach of an international body like the NSG was detrimental to the principles of nuclear non-proliferation regime.

The international community has not been successful to bring India into the folds of non-proliferation regime as it was expected that India will play a major role to promote nuclear non-proliferation regime when

³¹ For further details of these commitments see, Ibid.

³² Saira Bano, “India and Nuclear Suppliers Group (NSG) Membership,” *Global Change, Peace and Security*, vol. 27, no.2 (2015):123-137, <http://www.tandfonline.com/doi/pdf/10.1080/14781158.2015.998992>

³³ Ibid.

³⁴ Ibid.

the Indo-US nuclear deal was signed. Instead of moving in the direction of harnessing peaceful nuclear technology, India is creating strategic partnerships with powerful states; signing defence contracts; modernising its armed forces; expanding its nuclear weapons complex and their delivery systems; threatening regional strategic balance by developing limited war fighting doctrines; and fuelling up its hostile intentions towards Pakistan. It is unfortunate for the spirit of non-proliferation regime that a non-NPT nuclear weapons state like India, which has critically rejected all regional proposals and international non-proliferation treaties, is now a part of the regime and enjoying benefits of nuclear commerce with other states. Whereas, majority of the developing nations and other nuclear weapons states are striving to get similar treatment from the international community, but they are helpless against international discrimination and double standards.

More than 10 years have been passed since the US and India signed a cooperative framework agreement in 2005. India still stands outside NPT and CTBT and it has not demonstrated its support for FMCT because it is still producing fissile material for its nuclear weapons programme. According to a report of the International Panel on Fissile Material (IPFM), India is the only country that is actively expanding and pursuing a reprocessing programme and is continuing with controversial breeder reactor programme.³⁵ In 2013, the IPFM estimated that India's stockpile of fissile materials is estimated to include 2.4 ± 0.9 tonnes of highly enriched uranium, 0.54 ± 0.18 tonnes of weapon-grade plutonium, and 4.9 ± 0.4 tonnes of reactor-grade plutonium that includes 4.7 ± 0.4 of material considered strategic reserve and 0.24 tonnes of safeguarded plutonium.³⁶ According to Stockholm International Peace Research Institute (SIPRI), India is planning to build six fast breeder reactors, which will increase its capacity to produce plutonium for nuclear weapons.³⁷ India's plan was materialised during Indian Prime Minister, Narendra Modi's visit to Washington DC in June 2016, when the US and

³⁵“Plutonium Separation in Nuclear Power Programs: Status, Problems, and Prospects of Civilian Reprocessing Around the World,” International Panel on Fissile Material (IPFM), July 2015, <http://fissilematerials.org/library/rr14.pdf>

³⁶“Countries : India,” International Panel on Fissile Material (IPFM), <http://fissilematerials.org/countries/india.html>

³⁷“Nuclear Forces: India,” Stockholm International Peace Research Institute (SIPRI), <http://www.sipri.org/research/armaments/nuclear-forces/india>

India agreed to construct six nuclear reactors by a US company in India.³⁸ India has also no plans to send back the spent-fuel discharged by reactors provided by Russia. This reflects that India is interested to expand its nuclear weapons complex.

Even after a decade, India has not been able to fully separate its civilian nuclear facilities from military ones and its safeguards agreements with the IAEA are flexible enough to move nuclear material between safeguarded and un-safeguarded nuclear programmes.³⁹ India may not place all imported nuclear material under the IAEA safeguards as the safeguards applies only where specific agreement requires safeguards.⁴⁰ This also reflects that India can manipulate IAEA safeguards once again and can divert more nuclear material for weapons development. Therefore, the above arguments validate the point that the NSG followed a country-specific approach, which may help to achieve political and commercial objectives, but it will not help to achieve broader objectives of nuclear non-proliferation regime. This approach has undermined the credibility of the NSG and blocked the way of non-proliferation regime.

It is argued that if the Group considers a country-specific approach to grant India its membership by bypassing NPT, it will not only destabilise regional balance but it will also undermine nuclear non-proliferation regime. The US President Obama, during his visit to India in January 2015, supported India's efforts to become a member of the NSG and the other three export control regimes.⁴¹ China has reacted strongly to the US backing of India's bid for the NSG membership on the grounds that

³⁸“US Firm to Build Six Nuclear Reactors in India,” *Wall Street Journal*, June 7, 2016, <http://www.wsj.com/articles/u-s-and-india-agree-u-s-company-to-build-six-nuclear-reactors-1465317345>

³⁹ John Carlson, “Nuclear Cooperation with India- Non-Proliferation Success or Failure,” Carnegie, February 15, 2015, http://carnegieendowment.org/files/India_-_nuclear_cooperation_15_Feb_15_2.pdf

⁴⁰ Ibid.

⁴¹“US-India Joint Statement: Shared Effort Progress for all,” The White House, Office of the Press Secretary, January 25, 2015, <https://www.whitehouse.gov/the-press-office/2015/01/25/us-india-joint-statement-shared-effort-progress-all>

India should first accept NPT and also cautioned to use consensus rule.⁴² Similarly, Pakistan also strongly reacted to India's bid for NSG membership on the grounds that it could lead to nuclear proliferation and nuclear arms race, which could destabilise strategic balance in the region.⁴³ Advisor to Prime Minister on National Security and 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 and would further undermine the credibility of NSG and weaken the non-proliferation regime."⁴⁴

The country-specific approach has raised many questions about the legitimate desires of other non-NSG NNWS who want to seek international cooperation in nuclear filed purely for peaceful and energy purposes. These states may not serve larger commercial interests of major nuclear suppliers and they are not politically strong enough to muster support of key international players to get India like exemption. Despite the fact that they are equal members of the international community. It is the responsibility of the major nuclear supplier states to provide these states with equal access to peaceful nuclear technology without discrimination as their "inalienable" right.⁴⁵ Therefore, the best solution for the NSG to regain its credibility as an adherent of principles

⁴² "China Red-Flags India's Entry into NSG, may Push for Pakistan," *Times of India*, January 27, 2015. <http://timesofindia.indiatimes.com/india/China-red-flags-Indias-entry-into-NSG-may-push-for-Pakistan/articleshow/46024533.cms>

⁴³ "Granting India NSG Membership to Trigger Arms Race," *Daily Times*, January 29, 2015, <http://www.dailytimes.com.pk/national/29-Jan-2015/granting-india-nsg-membership-to-trigger-arms-race>

⁴⁴ "Trenchant Critique: Pakistan Opposes US-India Nuclear Deal," *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 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>

⁴⁵ The Article IV of the NPT clearly states that "Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty." For further details see "The Treaty on the Non-Proliferation of Nuclear Weapons (NPT)."

of non-proliferation that lies in non-discriminatory criteria-based approach for its membership.

As of March 2015, around 164 states are member to the IAEA and around 30 states are operating around 438 nuclear power reactors.⁴⁶ A total of 70 nuclear reactors are under construction in 32 states. The two additional states are Belarus and the United Arab Emirates (UAE), which are constructing their nuclear reactors for the first time.⁴⁷ According to the IAEA more than 30 states, mainly from the developing world, have shown interest in nuclear technology for peaceful purposes.⁴⁸ Similarly, 182 states have signed safeguards agreements with IAEA and out of this, 174 states have comprehensive safeguards agreements, five states have voluntary offer agreements, and three states have item-specific safeguards agreements. Furthermore, 126 AP are in force with 125 states and Euratom and another 21 states have signed AP, but have yet to bring it into force.⁴⁹ This represents a significant opportunity for the major nuclear suppliers to promote peaceful nuclear technology as IAEA safeguards have a universal acceptance.

Keeping in mind the growing interest in peaceful nuclear energy and to accommodate the existing and emerging concerns over the NSG membership, there is a need to focus on a non-discriminatory criteria-based approach. This approach will enable weak and developing states to become part of the NSG — to equally benefit from nuclear cooperation of major nuclear supplier states. In return, these states will effectively contribute to the international non-proliferation regime. Furthermore, the international community should not ignore this fact that there are other non-NPT nuclear weapons states, like Pakistan, that want to benefit from nuclear trade, purely for peaceful purposes. Although, due to its legitimate national security concerns, Pakistan would never compromise over nuclear weapons programme yet, at the same time, it is making

⁴⁶ “Nuclear Power Reactors in the World,” International Atomic Energy Agency (IAEA), Reference Data Series No. 2, 2015 Edition, <http://www-pub.iaea.org/MTCD/Publications/PDF/rds2-35web-85937611.pdf>

⁴⁷ Ibid.

⁴⁸ “IAEA at Work,” International Atomic Energy Agency (IAEA), 2014 Edition, <https://www.iaea.org/sites/default/files/iaework.pdf>

⁴⁹ “IAEA Safeguards: Serving Non-Proliferation,” International Atomic Energy Agency (IAEA), June 2015, https://www.iaea.org/sites/default/files/safeguards_web_june_2015_1.pdf

every effort to strengthen the international nuclear non-proliferation regime. The international community should also recognise this fact that they cannot mainstream and make Pakistan a “normal nuclear state” by pursuing a discriminatory approach.⁵⁰ Pakistan’s stance on CTBT and FMCT is based on non-discriminatory principles as Pakistan’s civilian nuclear programme is already under the IAEA safeguards system, and its full spectrum deterrence posture is aimed to deter India’s growing conventional and nuclear capability. However, a simultaneous effort by the international community to accommodate India and Pakistan can help normalise both nuclear states, and can enhance greater cooperation for the promotion of nuclear non-proliferation regime between them.

Therefore, without making any equal arrangement for Pakistan in the NSG, any preferential treatment for India will not only undermine the credibility of the NSG and other instruments of non-proliferation regime but will also destabilise regional peace. Instead of isolating states like Pakistan, there is a need to make it an equal effective part of non-proliferation regime, as it is already willing to fully cooperate with the principles of non-proliferation. A non-discriminatory criteria-based approach means an equal chance of entry for Pakistan too, from where it can further strengthen the objectives of nuclear non-proliferation.

Pakistan has also submitted its application for membership in the 26th Plenary Session of the NSG, but unfortunately it did not receive a positive response from the Group. Pakistan’s willingness to join the NSG and other export control regimes are based on its efforts to make and prove itself as a responsible nuclear weapon state. Pakistan National Command Authority (NCA), in its statement of July 14, 2011, 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

⁵⁰ Recognising Pakistan’s legitimate security concerns vis-à-vis, Toby Dalton and Michael Krepon in their recent essay have argued that Pakistan should become “a normal nuclear state” by following strategic deterrence instead of full spectrum deterrence; follow a recessed deterrence posture and limit production of its battlefield nuclear weapons and delivery systems and by signing FMCT and CTBT. For complete essay see, Toby Dalton and Michael Krepon, “A Normal Nuclear Pakistan,” Stimson Center and Carnegie Endowment for International Peace, 27, 2015, <http://www.stimson.org/images/uploads/research-dfs/NormalNuclearPakistan.pdf>

community.”⁵¹ Pakistan, in order to fulfil its international obligations to support the objectives of non-proliferation, has achieved tremendous progress. It has not only enhanced its status as a responsible nuclear state by taking practical steps but has also earned international recognition. Amano, Director General of the IAEA visited Pakistan in March 2014 and expressed his confidence in the steps the country has taken so far to safeguard its nuclear assets.⁵² Pakistan’s participation in all four Nuclear Security Summits (NSS), which were respectively held in 2010, 2012, 2014, and 2016, also endorses this status. During the 2014 NSS, the US officials expressed satisfaction and confidence over the safety and security of Pakistan’s nuclear assets.⁵³

Pakistan has achieved key milestones in the nuclear filed. Since 2002, Pakistan has been strengthening its command and control structure under NCA. It has strengthened its 2004 Export Control Act, consistent with the scope of the NSG and other exports control regimes. In 2005, Pakistan issued its control list of goods and technologies subject to regulatory controls, and completed a latest review process in 2015.⁵⁴ In 2007, Pakistan also established Strategic Export Control Division (SECDEV) as part of Ministry of Foreign Affairs, which has also issued its export control rules in 2009, and Internal Compliance Programme (ICP) Guidelines in 2014.⁵⁵

⁵¹ “Pakistan’s Engagement with Multilateral Export Control Regimes,” Ministry of Foreign Affairs, February 20, 2013, <http://www.mofa.gov.pk/secdiv/pr-details.php?prID=1430>

⁵² “IAEA Praises N-Power Plant Safety,” *Dawn*, March 13, 2014, <http://www.dawn.com/news/1092870>

⁵³ “US Satisfied with Pakistan Nuclear Security Arrangements,” *Nation*, March 24, 2014, <http://nation.com.pk/national/24-Mar-2014/us-satisfied-with-pakistan-nuclear-security-arrangements>

⁵⁴ For latest export control list of Pakistan see, “Control List,” S.R.O. 276(I)/2015, Ministry of Foreign Affairs, March 28, 2015, [http://www.mofa.gov.pk/secdiv/documents/Control-Lists\(S.R.O.%20276%20\(I\)2015\).pdf](http://www.mofa.gov.pk/secdiv/documents/Control-Lists(S.R.O.%20276%20(I)2015).pdf)

⁵⁵ “The Export Control (Licensing and enforcement) Rules 2009,” Ministry of Foreign Affairs, Strategic Export Control Division (SECDEV), May 29, 2009, <http://www.mofa.gov.pk/secdiv/documents/Doc-3,Licensing%20&%20Enforcement%20Rules.pdf>, and “Internal Compliance Programme (ICP) Guidelines 2009,” Ministry of Foreign Affairs, Strategic Export Control Division (SECDEV), October 3, 2014, <http://www.mofa.gov.pk/secdiv/documents/ICP-Guidelines.pdf>

Furthermore, to address nuclear safety and security issues, Pakistan has taken many steps in the past years. 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, to be renewed 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 centres;
- 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 and exit locations to prevent illicit trafficking of nuclear related materials.⁵⁶

Through these measures Pakistan has also enhanced the safety and security of its nuclear assets against theft, diversion and accidental or unauthorised use. In addition to this, Pakistan held the position of Chairman IAEA Board of Governors for 2010-11 and became a member of the UN Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) in December 2011. Moreover, Pakistan is a member of the Nuclear Safety Convention; the Convention on Physical Protection of

⁵⁶“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>

Nuclear Material; the Convention on Early Notification of a Nuclear Accident; and the Convention on Assistance in Case of a Nuclear Accident or Radiological Emergency. Pakistan is also an active member of and a contributor to the Global Initiative to Combat Nuclear Terrorism (GICNT). The country has been fully cooperating with the 1540 Committee and has so far submitted four comprehensive reports.⁵⁷ Notably, since 2010, Pakistan has been in a position to provide nuclear fuel cycle services under the IAEA safeguards with a non-discriminatory nuclear fuel cycle assurance mechanism.

Based on these positive steps, Pakistan has clearly demonstrated that it is a responsible nuclear state and its efforts are aimed at strengthening the objectives of nuclear non-proliferation regime. However, future aspirations to develop a self-sustaining nuclear power programme of 40,000 MWe by 2050 may prove to be an unattainable goal without the active international cooperation.⁵⁸ The international community should consider and compensate Pakistan's efforts by engaging it in peaceful nuclear trade. By following a non-discriminatory criteria-based NSG membership for countries like Pakistan, major supplier states can open up new avenues of cooperation and engagement. More Recently, China has also supported Pakistan's aspirations to become an NSG member. China has acknowledged Pakistan's key steps taken towards strengthening international nuclear non-proliferation regime, and supported Pakistan's engagement with the NSG.⁵⁹ Similarly, the rest of the international community should also consider Pakistan's entry into NSG on a non-discriminatory criterion.

⁵⁷For detailed reports see, "Pakistan: National Reports," 1540 Committee, United Nations, <http://www.un.org/en/sc/1540/national-implementation/national-reports.shtml>

⁵⁸"Nuclear plants capacity will likely be around 40,000MW by 2050, says Dr Ansar Pervaiz," *Daily Times*, March 20, 2015, <http://www.dailytimes.com.pk/business/20-Mar-2015/nuclear-plants-capacity-will-likely-be-around-40-000mw-by-2050-says-dr-ansar-pervaiz>

⁵⁹"China Supports Pakistan for NSG Membership," *Daily Times*, June 4, 2015, <http://www.dailytimes.com.pk/national/04-Jun-2015/china-supports-pakistan-for-nsg-membership>

Conclusion

The recent Indian claim that it had the backing of around 38 PGs at the 26th Plenary Session of the NSG in June 2016, shows that majority of the NSG members were willing to undermine the core principles of the NSG. This clearly underlines the need that those NSG PGs including the US, who have supported recent application of India should first establish universal criteria for non-NPT signatory states for their entry into the Group. Such criteria should be an equal opportunity for states like Pakistan. As country-specific exemption, waiver, and membership will not only be damaging for the NSG but it is also equally detrimental for the principles and objectives of international nuclear non-proliferation regime and for regional as well as international peace and security.

It is an established fact that the international community has not been successful in bringing India in the folds of non-proliferation regime. Therefore, following a criteria-based approach will restore the credibility of the NSG and will enhance the respect for international non-proliferation regime. The NSG terms its arrangements as voluntary and non-legally binding, but according to the definition of customary international law, once states start to follow any practice consistently and with a sense of legal obligation it clearly becomes a customary international law.⁶⁰

Similarly, since the NSG enjoys international recognition and status, if it is made accessible under non-discriminatory criteria-based approach for all responsible states, its voluntary obligations would automatically become legally binding for all concerned states. As a result, the benefits of peaceful nuclear energy will bring economic prosperity and growth in the developing world. Therefore, any positive step by the international community in this regard will be widely welcomed by the smaller and developing states like Pakistan. This will strengthen the international nuclear non-proliferation regime and will make peaceful nuclear technology more accessible and safer for the mankind.

⁶⁰ For a detailed legal definition of customary international law see, “Customary International Law,” *Cornell University Law School*, https://www.law.cornell.edu/wex/Customary_international_law