

ENHANCING THE EFFICACY OF NUCLEAR NON-PROLIFERATION REGIME: SIGNIFICANCE OF PAKISTAN'S NSG MEMBERSHIP

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Abstract

The various arrangements of the nonproliferation regime have so far failed to address the political and security concerns of the states that are not a party to the Nonproliferation Treaty. Initiatives like the US-India nuclear deal and the sole Nuclear Suppliers Group waiver to India are undermining the efficacy and creditability of the nonproliferation regime. There is a need that the global community must cognizant of the nonproliferation motives before it attempts to resolve the issue of nuclear proliferation. This paper, therefore, explores the reasons behind the biased-behavior of the international community regarding Nuclear Suppliers Group membership. It also draws claim that an unbiased approach can sustain regional peace and security viz-a-viz strengthen the nonproliferation regime. It is also important to keep the threat of non-state actors in view, which are suspicious to acquire nuclear weapons-related technologies or materials for malicious objectives. In this regard, global efforts are required to ensure that all nuclear weapons-holder states remain engaged in nonproliferation efforts. Pakistan has always played a constructive role in nuclear nonproliferation and is part of many nonproliferation initiatives. Thus, it is imperative to bring Pakistan into the fold of the nonproliferation regime by taking it on-board in the Nuclear Suppliers Group.

Keywords: NSG, NPT, NPR, Nuclear Technologies, Nonproliferation.

Introduction

The main objective of the Nuclear Nonproliferation Treaty (NPT) and the Nuclear Suppliers Group (NSG) is to prevent nuclear weapons and transfer of nuclear technology. Yet, both mechanisms differ regarding their scope, legality, and features. NPT is considered to be a formal treaty with legal bindings, whereas, NSG is an informal consensus-based group that lacks enforcement apparatus. The basic prerequisite for NSG membership is that the applying-state should have the capacity of supplying specialized nuclear technology and material. NPT is considered to be the most important pillar of the international nuclear nonproliferation norm (NPR), which is a set of global standards related to nuclear nonproliferation.

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Moreover, the criteria-based approach for NSG membership can strengthen NPR and enables states to play a more constructive role in raising the credibility of NPR. This approach is meant to give a balanced opportunity to the states that seek NSG membership and the states that meet the criteria should be granted membership. Presently, NSG criteria cannot admit non-NPT states due to the technical hitch of the January 1967-cutoff principle of NPT; Pakistan and India cannot join NPT as Nuclear-weapon States (NWS) and both states are also not convinced to roll back their nuclear programs. Therefore, NSG membership can be one approach to take them on board the whole gist of NPR and yet address their peaceful energy needs. At present, the guidelines of NSG are the main hurdle, as the regulation restricts the states, which are not a party to NPT, to become NSG members. But this rule was amended while granting NSG waiver to India. Stephen Krasner debates that the rules are authoritative and acceptable when they are binding to all with mutual negotiations.¹ India's economic rise and growing relevance in Asia-Pacific politics is the core cause of US strategic partnership with India. This paper contends that the bilateral agreement and the strategic interests of the states should not affect the normative values of the international regimes and arrangements. The international community ignored the past track record of India which switched its nuclear program from peaceful to weapon purposes. Thus, considering India for the NSG membership and leaving Pakistan will worsen the normative structure of NPR and will raise questions on the credibility of decades-long developments of the rules and principles to counter nuclear weapons proliferation.

Nuclear Nonproliferation and Role of NPT and NSG

NPT is fundamentally premised on the idea of permanently balancing the primary pillars of nonproliferation, disarmament, and sharing of civilian nuclear technology to the Non-nuclear Weapons States (NNWS). The December 1953-speech of the US President, Dwight Eisenhower, in the United Nations General Assembly essentially encouraged the technologically-advanced states, NWS and Nuclear-supplier states, to stimulate global peace and technology by sharing nuclear technology for peaceful purposes.² After the 'Atoms for Peace' speech by the US President, several states became signatories of more than 2,000 bilateral agreements of civilian nuclear cooperation for nuclear technology exchange, know-how, and materials for peaceful objectives.³ However, since the inception of NPT, four states (Britain, France, USSR, and China) have also attained NWS status, which in essence puts the principles of the treaty in jeopardy.⁴ Various arrangements of the nonproliferation regime including NPT have failed to address the political and security apprehensions of the states that are not a party to NPT due to *realpolitik*; therefore, they refused to be a part of NPT. North Korea's case is a unique case, as the state signed NPT and later withdrew in 2003 and Israel also has exceptional status due to its nuclear policy of opacity. Thus, this study does not include North Korea due to its withdrawal procedure and recent nuclear / missile tests; this case has become complicated. It does not discuss Israel as well because it is not a declared NWS and it has not applied for the NSG membership. On the other hand, India and Pakistan both had submitted applications for the NSG membership in 2016 and both seem interested too.

Although all states have their national export-control acts, there is no formal international treaty available that addresses export-controls. Nonetheless, some informal arrangements are in place. So far, the nonproliferation architecture envisaged under NPT remains unfulfilled. The treaty has failed to maintain a satisfactory track-record, which is apparently due to multiple factors including major transformation in the global geostrategic power structure since 1968. These geostrategic transformations have a great impact on the global security context as well as the security postures of the states that are non-party to NPT. The shift in the global security structure also triggered the proliferation of dual-use and nuclear technologies. India is the best example as it acquired nuclear weapons with the claim of peaceful usage and named it as 'Smiling Buddha' in 1974 but then shifted its so-called peaceful technology towards nuclear weapons development. Whereas, NSG was formed to contain further proliferation under the umbrella of peaceful technology.

The International Atomic Energy Agency (IAEA) was established in 1957 and it introduced safeguards to prevent nuclear weapons development. Following this, many other initiatives were taken to set guidelines for the export controls of sensitive and dual-use technology and materials.⁵ NSG is one of the informal groups of a broader set of Multilateral Export Control Regimes (MECR). The MECR comprises of NSG, which deals with the nuclear-related export-control procedures, Australia Group, which provides rules and regulations for the chemical and biological material trade, Wassenaar Arrangement, which deals with the dual-use and conventional technology trade, and lastly, Missile Technology Control Regime (MTCR), which provides guidelines regarding the transfer of aerial vehicles like missiles/rockets and other delivery means. The scope of this paper, therefore, focuses on NSG as it deals with the export-control guidelines of the nuclear-related material and dual-use technology.

NSG was established as a result of India's 1974-nuclear test and its aim was to plug the gap, which was exploited by India so that any other state cannot do the same. It is comprised of like-minded states (having the capacity of nuclear-related sensitive material transfer) which formulate stringent measures regarding trade-related issues and introduce comprehensive regulations among the technology-holder states which, as of today, include 48 members. All participating governments of NSG have the right to exercise discretion regarding the implementation and interpretation of the measures. The group is consensus-based and its latter formulation permits the member states to develop strict measures within the group.⁶ Ironically, this group was formulated as the consequence of Indian attempts to divert peaceful technology towards nuclear weapons development and yet NSG waiver was given to India, which initiated the debate to introduce a criteria-based approach instead of country-specific approach.

Repercussions of US-India Nuclear Deal and NSG Waiver to India

The US-India nuclear deal was finalized in July 2005 and this deal led to NSG waiver to India which allowed access to peaceful nuclear technology despite being a non-member of NPT. The waiver was granted while violating the guidelines of NSG, which defines that a state which is not a party to NPT cannot be a member of NSG.⁷

Therefore, the deal has negative implications on the overall structure of NPR. Unfortunately, regimes are based on mutual gains viz-a-viz rules and this exception raises questions on the reliability and credibility of NSG. Additionally, the exception was created due to the geostrategic interest of the US in India and its geographical relevance.⁸ Whereas, this paper argues that bilateral agreements are diverse than regimes where criteria are evolved to justify the measures otherwise elements of mistrust and injustice can reduce its relevance, thus, may lead to the failure of the regime.

Moreover, this deal has regional implications as Pakistan and India are intertwined with a long history of rivalry and the deal has further intensified the enmity of both states. Pakistan considers that as a result of the US-India deal, India would acquire more nuclear material and technology potential. The deal basically states that the material and technology given to India in the aftermath of the deal will be monitored under the IAEA safeguards, but the domestic uranium of India, which is already used in the 22 reactors, will be directed towards the nuclear program of India. The imported material can “free up India’s limited uranium reserves and allow India to increase its production from the estimated 6 to 10 additional nuclear bombs per year to several dozen a year.”⁹ This will obviously facilitate India to increase its fissile material and will raise a security dilemma for Pakistan. After the US-India deal, the IAEA approved India-specific safeguards and India got an exemption from the comprehensive safeguards which are, otherwise, applicable to all NNWS. This India-specific safeguard, under the IAEA-Additional Protocol,¹⁰ provided India an opportunity to separate its civil and military reactors.

India has still not identified its eight reactors (as military or civilian) despite signing the IAEA-Additional Protocol.¹¹ India was supposed to separate its civilian and military reactors and it has to apply IAEA safeguards to its civilian reactors, yet Pakistan, by the dint of this vagueness, considers those reactors as military reactors.¹² Resultantly, this will facilitate India to build its nuclear weapons technology/material and push Pakistan to indulge in an arms race. Thus, the deal has negative repercussions on the region as well. The nonproliferation supporters believe that “it is not in the US strategic interest to ignore the expansion of India’s current arsenal of 50 to 100 nuclear weapons, which could prompt Pakistan to increase its nuclear and missile arsenals.”¹³ Some analysts believe that once a nuclear state achieves nuclear parity with a contender, it is its discretion to follow arms race or not. Pakistan takes these developments very seriously and considers it as a threat to its sovereignty and security.

Moreover, while criticizing the US benefits from the US-India nuclear deal, analysts believe that India has not adopted international standards of nuclear liability.¹⁴ Therefore, it has blocked US nuclear firms from actually executing agreements with the Indian government. Russians and French are ahead of the US in nuclear trade with India because they have a different commercial setup. The US-India cooperation, whether for the purpose of strengthening bilateral relations of both states or a part of the US containment policy of China,¹⁵ has already raised concerns for the formulation of some kind of mechanism for the rest of non-NPT NWS. Chinese perspective is quite

clear and based on the logic that the exception given to India should be given to Pakistan as well.¹⁶ Though critics of this view believe that Chinese reservation is due to India's economic rise and concerns of becoming an alternative market to China.¹⁷ This, however, stands on thin ice as the Chinese economic rise is far more stable and wider than India. Moreover, some argue that Chinese strategy is meant to support Pakistan in order to attain NSG membership. According to both arguments, it seems that after the Chinese opposition, it is difficult for both states (Pakistan and India) to get NSG membership. Thus, it is important to formulate a uniform criterion keeping in mind the current challenges to the regime.

Paradoxically, the US-India nuclear deal and NSG waiver given to India alone have become a matter of concern for the nonproliferation supporters as this exceptional treatment is likely to prove counterproductive for the nonproliferation norm. This is posing additional challenges for the regime. Moreover, this perpetual state of inertia due to multiple security and structural flaws in the treaty as well as the failure of the international community to tackle the problems that have plagued NPT are further complicating the containment of proliferation of nuclear-related technologies.¹⁸ Keeping in view the above-stated argument, there is a plausible option available for the international community to restructure the NSG-membership criteria so that states can fulfil their sovereign needs of peaceful nuclear energy and contribute positively to the domain of nonproliferation.

NSG Membership: Prospects for Pakistan

Pakistan has acquired nuclear weapons intending to address its security concerns in an anarchic global security system. Security can be assured in the global arena with cooperation among states under such "rules and procedures which reduce the fear of the states of being cheated by their partners and consenting to focus on the benefits."¹⁹ It is argued that the solution to increasing global nuclear challenges lies in a mechanism that will allow the absorption of non-members of NPT into the broad framework of NPR.

With reference to the case of Pakistan and India, ever since 1947, there has been existed an exceptional rivalry between the two states. Although the international community has claimed to diffuse the rivalry, both states have affirmed that they will not join the Comprehensive Test Ban Treaty (CTBT) or NPT till the improvement of security situation in the region.²⁰ The improvement in the political relationship with the initiation of several Confidence Building Measures (CBM) between two states in the backdrop of the Global War on Terror (GWOt) briefly gave hope to the international community but it was short-lived. In fact, after the Pulwama attack, the two nuclear-weapon states came to the verge of a nuclear war²¹ and the possession of nuclear weapons by both adversaries has played a significant role in the de-escalation of tension. Moreover, critics believe that due to the existence of nuclear weapons, there also exists an opportunity of negotiations over Kashmir (the disputed territory between India and Pakistan)²² as it helps to tone down the rhetoric over the historical dispute.²³ This anticipation has been depreciated after the Indian step of the revocation of Articles

370 and 35-A, which abolished Kashmir's independent status, and thus, multiplied the complexities of the relationship between both antagonist states.

Unfortunately, the US-India nuclear deal and discriminatory behavior of the international community may push Pakistan to build full-scale nuclear deterrence and thus, increase its nuclear development. In fact, this will be blowback to the global nonproliferation efforts. Nonetheless, India's exceptional entry in NSG can increase the dilemma in South Asia as well as raise questions on the efficacy of decades-long nuclear nonproliferation struggle. Hence, China took the principle-stand in the NSG plenary meeting²⁴ to introduce non-discriminatory criteria for the NSG membership. India has been granted NSG waiver and got the opportunity for peaceful nuclear trade, thus, the NSG membership demand of India is a matter of prestige rather than being its need. Technically, once India is in NSG, it will eliminate the chance of Pakistan's membership due to its consensus-based approach. Thus, this justifies Pakistan's demand to consider both states for NSG membership simultaneously.

Another important factor is the significance of NSG membership for Pakistan. It is pertinent to explore why Pakistan wants NSG membership. Essentially, Pakistan is facing an energy crisis and by building a Nuclear Power Plant (NPP), Pakistan can address this crisis effectively. France is the best example where 80% of its energy needs are being addressed with the help of nuclear energy. There is another debate in the scholarly circle which states whether Pakistan has the potential to build NPP or not; there is a need to explore Pakistan's civilian nuclear projects and its details for the deliberation. The Pakistan Atomic Energy Commission (PAEC) with the assistance of the UK and France established nuclear reprocessing plants in 1969. Then, in 1972, the Karachi Nuclear Power Plant (KANUPP) was launched with 137 MWs. An indigenous reactor was designed in 1986 with the 50 MWs capacity named Khushab-I²⁵ and it became operational in 1998. Afterward, in 1989, the Pak-China agreement was signed and as a result of it, Chashma Nuclear Power Plant (CHASNUPP) was built under the IAEA safeguards. Likewise, China expanded its contract with the PAEC to assist more 3-4 nuclear reactors. The above-discussed evidence draws an empirical claim that Pakistan has the potential to build NPP and, thus, proves the fact of having credentials for the NSG membership.

The Pak-China civilian nuclear commerce remained subject to criticism by the international community. Although both states claim that they have not violated any international rules as at that time neither side was NPT signatory (China joined NPT in 1992 and NSG in 2004).²⁶ Therefore, despite a well-planned defaming campaign of the western community, the collaboration between China and Pakistan continued in the domain of peaceful nuclear energy. Critics states that "China's sensitive nuclear assistance to Pakistan in the early 1980s was widely seen as a means of imposing strategic costs on India and diverting New Delhi's strategic attention away from Beijing. If states are to provide sensitive nuclear assistance to constrain rival states, it should be expected them to provide sensitive nuclear assistance to states with which they share a common enemy."²⁷ Yet, both states announced that the collaboration is under the *grandfatherly* clause²⁸ and, thus, is not violating international norms. Moreover, China is

assisting Pakistan for the nuclear reactor at Chashma and other plans of greater energy to have 8800 MW by 2030.²⁹ Nuclear energy is considered to play a crucial role in the economic growth of a state.³⁰ Therefore, “China is producing 19,050 MW at present and aspires to produce 400,000 MW by 2050.”³¹ Moreover, “India plans to boost its nuclear capacity 15 fold by 2032.”³² Consequently, Pakistan has to follow the trend to produce nuclear technology to address peaceful energy needs. The analysts are of the view that “nuclear power plants might just be Pakistan’s only chance to prevent power starvation and insufficiency on the sustainable ground. Nuclear energy, indeed, offers lower cost environmentally-safe source of energy for Pakistan.”³³

Pakistan’s involvement in the Soviet War and then GWOT intensified the challenges for the state, and Non-State Actors (NSAs) phenomenon added fuel to the fire. Pakistan continued to be the frontline state to fight against terrorism and yet suffered a lot of casualties. Pakistan along with fighting terrorism had also faced the A.Q. Khan saga in 2002 as he was blamed for the exploitation of global nuclear black-market and charged to facilitate nuclear material and technology transfer to the NPT states. Moreover, the proliferation of nuclear weapons is not a new phenomenon, for a matter of fact, the P-5 has also exploited these global networks for proliferation purposes.³⁴ Nonetheless, this is a separate debate but soon after that United Nations Security Council Resolution-1540 was introduced which obligated all the UN member states to take responsibility for monitoring nuclear safety and security issues on the national level. Thus, it will effectively keep a check on future proliferation incidents. Pakistan also adopted a more robust and comprehensive nuclear safety and security mechanism. As confirmed by the nuclear experts that:

*Pakistan’s nuclear security regime has four pillars: First, a well-defined command and control system comprising the National Command Authority (NCA), the Strategic Plans Division (SPD), and the Strategic Forces Command; second, strict regulatory regimes include Pakistan Atomic Energy Commission (PAEC) and Pakistan Nuclear Regulatory Authority (PNRA), which cover all matters related to nuclear safety and security including prevention of illicit trafficking and border controls as well as plans to deal with possible radiological emergencies; third, an extensive export control regime, and finally, international cooperation consistent with national policies and interests as well as international obligations.*³⁵

SPD is considered to be responsible for the physical protection of the nuclear facilities and to improve safeguards following international practices. International critics and nuclear experts have endorsed Pakistan’s robust nuclear safety and security structure by stating that: “Pakistan’s nuclear weapons and installations are protected by heavy guarding with defense-in-depth, reinforcing layers of security, a blanket of secrecy, deliberate deception, the separation of warheads from missiles, and security practices including PRP and the Human Reliability Program (HRP) for military and civilian personnel respectively.”³⁶

Despite all the above-discussed challenges, Pakistan has been acknowledged to have one of the finest command and control structures as well as astringent audit

system.³⁷ Thus, this paper contends that it is a high time to take Pakistan on board along with India into the NSG. This proves that by granting NSG membership, Pakistan will strengthen the overall structure of the broader NPR edifice. This will provide Pakistan an opportunity to address its legal energy needs and add prestige to its status. This approach can resultantly bring stability to the South Asian security structure.

Conclusion

The prevailing security environment of South Asia requires a rational approach from the international community. Acting out on the perceived security threats from other states might lead the region towards further instability and destruction. The vulnerabilities of the regime demand the international community to take concrete measures to strengthen NPR and explore more plausible options for these states. The potential risk of escalation demands that the leadership of these nations make sincere and committed efforts to explore the possible areas where cooperation with their adversaries is likely to happen for the furtherance of international efforts towards arms control.

At the same time, NWS also need to take steps addressing security concerns and genuine energy needs. In doing so, the NPT-states should make endeavors to address the political and security apprehensions, thus, provide both states (Pakistan and India) equal opportunity to become NSG members. It is imperative to note that access to legal civilian technology is the sovereign right of the states and it should be granted to the states having the capacity to build nuclear reactors to sustain their strategic needs. Therefore, to counter some of the adverse developments due to transformations in the global nuclear order, NPR objectives require rationalizing and rebalancing in keeping with the new global security challenges. The unresolved structural issues within NPT will continue to perpetually undermine it in the coming years and decades if the non-NPT nuclear-weapons states are not appropriately adjusted in the treaty. Neoliberalism works under the umbrella of realism; the Indian geostrategic position and its potential to play a counter-weight role against China made it worthy of being given the label of *good proliferator* and, thereby, winning membership of technical export control groups, all due to political reasons.

The arrangements of the US-India nuclear deal along with the NSG waiver given to India clearly depict the discriminatory behavior of the US-led international community. These steps are undermining the very ethics of NPR and destabilizing the South Asian region. Therefore, it is imperative to take on board Pakistan in NSG viz-a-viz India to adopt a criteria-based approach for the states that refused to sign NPT due to their strategic and security needs. Albeit, the international community can play a vital role as these regimes can assist states to join hands for the common goal of nuclear nonproliferation.

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