

Associate Paper

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India, China, the United States and the NSG Impasse: Competing Objectives or Just a Distraction?

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Key Points

- The failure of India's application for membership of the NSG now sees China awaiting a future decision by the MTCR on its own application for membership.
- China's negotiating skills outweighed US diplomatic pressure to bring about the NSG's decision in June 2016
- The Indo-US Nuclear Agreement is a remarkably slow process
- The question remains: is NSG membership an important step forward for India or not?

Summary

India's attempt to secure membership of the Nuclear Suppliers Group (NSG) failed at the plenary meeting in Seoul on 24 June 2016, when China led some sixteen of the forty-eight member countries, to deny it membership on "procedural" grounds, its arguments supported by India's long-held decision not to sign the Nuclear Non-Proliferation Treaty (NPT). The NSG decision may be seen in the light of the decade-long slow-motion history of the Indo-United States Nuclear Agreement signed in 2005, without which NSG membership for India would not have arisen. As background, the Indo-US 'deal' was built on enabling legislation and agreements: The Hyde Act (2006), the 123 Agreement (2007), the India-International Atomic Energy Agency (IAEA) safeguards agreement (2008), and the waiver granted to India by the NSG also in 2008. The latter allowed privileges normally available only to member states, which India was not, and US President Obama prematurely recognised India as a nuclear power in 2010. India's Nuclear Liability Legislation, an enabling aspect of civilian nuclear trade remained contentious for the US until 2016. Within the frame of the Indo-US Nuclear Agreement, China's blocking of India's NSG membership in tandem with its encircling of India both physically, and with investments across South Asia, raise questions: was China's blocking of India's NSG bid a bilateral move? Does the NSG's decision affect Indian and Chinese regional objectives? Is India affected by remaining outside the NSG?

Analysis

The Nuclear Suppliers Group's decisions

It may appear that China has tied another knot in its terrestrial and maritime girdle around India and, at the same time, demonstrated that the United States' influence on the members of the Nuclear Suppliers Group has limits. India failed to gain NSG membership, the group's second decision regarding India, in Seoul in June 2016. This is a reversal of the situation in 2008 when the United States' Bush administration overcame Chinese opposition to the exemption sought for India from NSG rules to allow it to engage in civilian nuclear trade. The 2008 "waiver", the NSG's first decision on India, was a unique act and reversed a thirty-two year old American-led embargo on all civilian nuclear trade with India following its test of a nuclear device in 1974. The Nuclear Suppliers Group was formed as a response to that test and first met eighteen months later, in November 1975. Pressure then increased on India to join the Nuclear Non-Proliferation Treaty (NPT), operational from 1970, which it has continued to resist.

India's nuclear test in May 1998, followed by Pakistan's, saw international outrage and sanctions imposed on both nations. President Clinton, as required to do so by United States law, imposed economic sanctions under the 1994 Glenn Amendment to the Arms Export Control Act. They were a light penalty. The US began winding back its sanctions as early as July that year, nonetheless, the path to an NSG waiver in a decade seemed unimaginable.

In 2008 China's opposition to exemptions for India from NSG procedures were overcome by President George W. Bush, who made direct overtures to President Hu Jintao and, with the support of the other nuclear states, Britain, France and Russia, India was granted its "waiver", effectively membership of the nuclear club, that allowed it to engage in civilian nuclear commerce. Despite its 1974 and 1998 outrage at India's nuclear tests, the United States' leadership determined that it was in its Indo-Pacific interests to forge bilateral agreements with non-aligned India and civilian nuclear trade was the reward. In gaining the support of the other nuclear states in 2008, it has been argued that their support for the waiver was "motivated" by trade possibilities. (<http://thediplomat.com/2015/05/can-india-join-the-nuclear-suppliers-group>). India argued correctly it had a flawless non-proliferation regime, and other groups of NSG member countries did not strongly oppose the exemption, although some proposed non-proliferation conditions were included. These India rejected as unacceptable although it agreed to separate its civilian and military nuclear facilities, placing the former under IAEA regulations, endorsing the moratorium on nuclear testing and agreeing to bans on the transfer to non-nuclear states of enrichment and reprocessing technologies.

In June 2016 and during the preceding period of strong diplomacy and negotiations, China's President Xi showed that he was made of sterner stuff than his predecessor. His message associated India's bid for membership with NSG procedures that would not be met by India, with an unacceptable bid from Pakistan, and a consequential assumption that the admission of any non-NPT signatory to the NSG might open a floodgate. This aspect is not addressed in this paper.

India's objective, to extend its global influence and reach through wide-ranging bilateral agreements, in line with its 'independent' foreign policy, while maintaining its regional autonomy, may appear limited by China's ability to deny it membership of the club that would recognise its nuclear credentials. India's immediate reaction should be to project confidence and pursue its bilateral plans both independent of, and in concert with China.

China's assurance that the NSG outcome will not affect their relationship is interesting as India now has something China wants. India became a full member of the Missile Technology Control Regime (MTCR), having been opposed in 2015, within days of failing to gain entry to the NSG. MTRC membership, which is based on a country's non-proliferation records, is of advantage to India and will enable it to purchase 'high-end' and 'dual-use' technology and enhance its joint ventures, but is a group that has not yet embraced China.

Formed in 1987 by the then G-7 countries, the Regime now has thirty-five partner states, and is an informal grouping that seeks to limit the proliferation of missiles, missile technology and delivery systems. After earlier approaches, China applied to join in 2004 but was not, and still has not, been offered membership due to its export of such technology.

It is in India's hands as to whether or not it blocks a future application by China as a quid pro quo, but Ministry of External affairs spokesperson, Vikas Swarup, records that any country's application should be assessed on its merits. China can only wait.

The Indo-US Nuclear Agreement

A *Times of India* headline noted in mid-June 2009 that the Indo-US nuclear deal continued to play out in slow motion, and this remained the case with two outstanding issues, India's future eligibility for membership of the NSG and, important to the United States, India's Nuclear Liability legislation. The path to this point has been lengthy.

The first part, the protracted attempts to reach agreement for co-operation between the American and Indian governments concerning the peaceful uses of nuclear energy, set out in the 123 Agreement, were first published in 2007. (<http://www.cfr.org/india/agreement-co-operation-between-government-united-states-america-government-india-concerning-peaceful-uses-nuclear-energy-123-agreement/p15459>) The second part, India's Nuclear Liability legislation, first listed for the Lok Sabha in March 2010, continued to cause delays to full operation of the Indo-US Nuclear Agreement.

Amongst sticking points on the first part were India's right to future nuclear testing and its requirement to reprocess spent nuclear fuel, demanding bilateral agreement. The 2008 debate between Pranab Mukherjee, India's Minister for External Affairs, and later President of India, and Under Secretary of State, Nicholas Burns, was intractable, and compromise then proposed by the United States was deemed unacceptable by India.

The importance of the nuclear agreement to the United States was clear in the compromises that were made – the agreement to grant India consent to reprocess spent fuel, described in *Business News*, 29 March 2010, as a significant step forward for India-US commercial nuclear co-operation, while *The Times of India* report that agreement to subject India's civilian nuclear power plants to IAEA safeguards was another piece in the jigsaw puzzle that made up the bilateral civilian nuclear pact.

The second delaying issue was the continuing disagreement on India's civil nuclear liability essential for American nuclear interests to gain Congress approval to enter the Indian market. The bill's introduction was delayed and then withdrawn while the Manmohan Singh Government sought to build consensus with the opposition parties and the Bharatiya Janata Party (BJP) which opposed the bill on grounds of compensation levels.

Nonetheless, India reached agreement with France's Areva SA and Russia's Rosatom State Nuclear Energy Corporation, amongst others, in 2008 when the Indo-US Nuclear Agreement was signed, and construction began on a first block of reactors in 2009.

The Nuclear Liability legislation, finally listed for introduction in the Lok Sabha in March 2010, was introduced into the Parliament as The Civil Liability for Nuclear Damage Act in May that year, passed both Houses and received the President's assent in September. The Act, as passed, left suppliers (such as US companies), rather than operators, accountable for any accident at a nuclear facility. Up until its enactment, all liability in relation to a nuclear power plant was the responsibility of the operator, and other states, such as France, with different domestic law to the US, took advantage of the opportunities. (<http://www.thehindu.com/opinion/lead/dont-waver-now-on-nuclear-liability/article5147177.ece>).

The Act's provisions continued to hold up the finalisation of US commercial contracts and were not fully resolved when Prime Minister Modi visited the US in September 2014, shortly after his election. This remained the case until 2016.

An equivocal response at a Department of State press briefing in Washington DC on 5 February 2016 to a question about the usefulness of India's signature to the Convention on Supplementary Compensation for Nuclear Damages (CSG) in implementing their civil nuclear deal, signalled a possibility of more work to come: signing was cited as a "step" towards the global nuclear liability regime required by the IAEA's Nuclear Safety Action Plan, and will "facilitate participation" by US companies in the construction of nuclear reactors in India, leaving again some lack of clarity at the end of this particularly long road. <http://www.state.gov/r/pa/prs/dpb/2016/02/252232.htm#INDIA>

In June 2016, however, Obama and Modi reached agreement for Westinghouse to construct nuclear reactors in India. This followed the Indian Government setting up a RS 1500-crore nuclear insurance pool during the previous year and allowed the first US civil nuclear venture since 2008 when the civilian nuclear agreement was signed between Bush and Singh.

The years lost in negotiation over the Indo-US Nuclear Arrangement have, as noted, seen a change in leadership in China that has continued its One Belt One Road progression to its west, its accompanying terrestrial and maritime infrastructure investments increasing its influence across South Asia and the Indian Ocean. The period has also seen the United States, in its perceived national interest, give way to India's conditions on their nuclear agreement, based on the original terms set out in the 123 Agreement.

China's and India's objectives

It has been argued by C. Raja Mohan in *The Indian Express*, 20 July 2015, that an important objective in pursuing the nuclear agreement was to effect a reconciliation between the United States and India, long alienated on non-proliferation, and build a partnership. (<http://indianexpress.com/article/explained/10-yrs-of-indo-us-civil-nuclear-deal-transformation-of-the-bilateral-relationship-is-the-real-big-deal/>)

Despite the demands and compromises that characterised the original plan, their relationship has expanded to encompass wide ranging engagements from technology transfers, to intelligence-sharing, defence collaborations and broad commercial dealings. Their range of partnerships, are, however, bilateral agreements, governed by principles enshrined in India's Cold War non-alignment.

The United States' embrace of India, enabling its civilian nuclear industry and drawing it into its global ambit and Indo-Pacific pivot, appears to be the antithesis of China's physical and infrastructure-funded encirclement of India, and its heavy investment in India's regional neighbours at times to India's detriment.

However, in addition to their bilateral and multinational engagement, and despite areas of friction, China's opposition to India's admission to the NSG appears an exhibition of its diplomatic and negotiating powers rather than a bilateral play against India. Interestingly, civil nuclear co-operation to advance their energy requirements, is in operation and 'essential component' of China's and India's foreign policy,

India's NSG waiver gives it much the same privileges as other NSG members and it retains its non-NPT status. With this in mind, and with the United States' India-orientated interests, it may be argued that China's opposition to India's membership was based on its continued refusal to become a signatory to the NPT. Linking India and Pakistan as inferred in China's argument had one purpose, in effect the denial of membership to India that ensured no compromise to NSG procedures and admission criteria.

China faces a similar 'no compromise' judgement in seeking membership of the MTCR.

While India's admission to the nuclear club on its terms is important to its national interest and image and to its international reputation, its on-going waiver status sees that in terms of civilian nuclear trade it is not disadvantaged.

In the contexts above, the NSG impasse, whether or not resolved in India's favour in the short or long term, may be seen as a distraction rather than a disadvantage in conducting its now wide civilian nuclear agreements.

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