



CARNEGIE
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INTERNATIONAL PEACE

TOWARD A NUCLEAR SUPPLIERS GROUP POLICY FOR STATES NOT PARTY TO THE NPT

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The Nuclear Suppliers Group (NSG) needs a policy governing the participation of candidate states that are not parties to the Nuclear Non-Proliferation Treaty (NPT).

There are four main rationales for such a policy: the global evolution of states' nuclear supply capabilities; the nuclear-weapon-related capabilities of India and Pakistan; the desire of some NSG participating governments (PGs) to admit India as a member, including for reasons unrelated to nuclear trade controls; and the absence of clarity concerning the NSG's nonproliferation mission since 2008, when the PGs agreed to except India from the NSG guidelines conditioning nuclear trade with NSG participating countries on NPT membership or full-scope International Atomic Energy Agency (IAEA) safeguards.

Nuclear supply capabilities: The number of states that can supply NSG-listed items is growing faster than the NSG's membership. When the NSG was created in 1975–1978, fewer than a dozen countries could produce controlled items. In response to globalized economic development and the spread of nuclear technologies beyond the few countries that established the NSG, since the 1990s NSG controls have also included dual-use nuclear goods. One NSG member state estimated in 2011 that 110 countries—more than half of them outside the NSG—can supply NSG-listed dual-use items.¹ The number of states capable of supplying listed items will continue to increase in the years ahead, in parallel with greater deployment of nuclear technology and equipment for nuclear-power generation and other applications. The NSG must develop an approach to capture these suppliers and, especially, any states that have significant sensitive capabilities, specifically reprocessing and uranium enrichment.

Nuclear weapons capabilities in South Asia: Beginning in 1992, the NSG has required a full-scope safeguards (FSS) agreement with the IAEA as “a condition for the future supply of Trigger List items to any non-nuclear-weapon State. This decision ensured that only NPT parties and other states with full-scope safeguards agreements could benefit from nuclear transfers.”² When that policy was established, no state outside the NPT had declared that it possessed nuclear arms,

nor had any such state overtly deployed such weapons. Today, India and Pakistan have nuclear-weapon arsenals that have been growing since 1998, when New Delhi and Islamabad carried out nuclear explosive tests and declared they were nuclear armed. Both states have the infrastructure capable of producing highly enriched uranium and plutonium for both peaceful and nonpeaceful nuclear uses; both are developing more advanced nuclear-weapon capabilities and delivery systems; and both are engaged in a regional nuclear competition. The NSG and its members have a clear interest in getting India and Pakistan to adhere to the NSG guidelines as part of their national controls related to weapons of mass destruction (WMDs). Both India and Pakistan want to join the NSG as members.

NSG members' advocacy of Indian membership: Some PGs advocate admitting India as a member of the group. The United States, which together with India in 2005 announced their intention to conclude a bilateral agreement for peaceful nuclear cooperation, strongly urged other NSG members to agree by consensus to grant India an exception to the FSS rule. In 2010, the United States announced that it would support India's admission in four multilateral export-control arrangements governing nuclear, chemical, ballistic missile, and dual-use technologies. Other PGs share this aim. Officials from such PGs have said that, apart from nuclear export-control-related rationales, these states want to include India for national and, in some cases, geostrategic reasons.

Lack of clarity about the NSG's nonproliferation mission: Also since 2010, some NSG participating governments have resolved that NSG members should decide on Indian membership without advocates of Indian participation, including India, exerting undue pressure on their bilateral relationships. There is no clear consensus among the PGs about whether and under what conditions India should be admitted as a participant, reflecting a wide spectrum of views by observers, experts, and governments outside the group. Policymaking on Indian membership should proceed with the utmost care for two main reasons: the decision will define (or, at least, will be perceived to define) the relationship between the NSG and the NPT; and India, as a matter of policy, until recently has opposed multilateral nuclear trade controls. The decision by the NSG to grant India an exception in 2008 has prompted criticism from some quarters that has detracted from the NSG's aim of demonstrating its value as a nuclear nonproliferation instrument, including to the 185 non-nuclear-weapon parties to the NPT. The

NSG setting a policy on membership for India and other non-NPT states is an opportunity for the group to articulate a clear public message about what the NPT means to the NSG and what the NSG's nonproliferation mission is.

Expert Views and Carnegie Workshops

When the United States and India in 2005 announced their intention to conclude a bilateral nuclear cooperation agreement, implying that U.S. civil nuclear trade with India would require India be excepted from the NSG's FSS requirement, the reaction of nuclear policy experts was mixed, and to some extent polarized. Some observers argued variously that the U.S.-India initiative was overdue because India already had developed nuclear energy; India had suffered for decades from an arbitrary and unfair embargo imposed by advanced powers, some of which had nuclear weapons; and, more generally, India is too big and important to ignore. Others argued that in making an exception for India, the NSG would betray the NPT by opportunistically abrogating its own commitment to link nuclear trade privileges with FSS, asserting that the reasons of some PGs to include India reflected strategic policy goals that had little or nothing to do with nonproliferation or multilateral nuclear-export controls. A lack of consensus on this issue has persisted since the NSG decided to except India in 2008, and it was also apparent at the first Carnegie workshop on "The Nuclear Suppliers Group and the Future of Nuclear Trade" held for the PGs in Brussels in May 2011.

Three years later, expert opinion about the possible participation of non-NPT states expressed at the second Carnegie NSG workshop in Vienna in January 2015 was more focused on specific problems or challenges for policy-related considerations of whether and how to admit India as a member. The PGs registered diverse points of view. Some argued that the most important and pressing issues for the PGs to address are whether membership of non-NPT states would strengthen nonproliferation. Some asked whether the frequently postulated damage to the regime caused by admitting non-NPT states into the NSG would be rhetorical or real; whether, more specifically, other states would be encouraged to develop nuclear weapons in response to Indian participation; and whether the benefits for the nuclear export-control regime from Indian participation would be significant and tangible. Some workshop participants expressed the view

that, if participating governments concluded that the benefits of Indian membership would be real and significant, then the NSG should offer India a deal to obtain membership in return for specific concessions that the group believed would make a sustained contribution to nuclear proliferation and security. Others expressed the view that membership should not be extended to non-NPT parties as a matter of principle.

How Would Non-NPT Parties Be Admitted as NSG Participants?

In addressing the “whether and how” questions during the January 2015 workshop, some participants expressed the following views: a decision about Indian membership should be guided by what would be the best outcome for nonproliferation; the decision should express a general policy concerning non-NPT parties and not be made—as in 2008—on the basis of a singular exception; India, if admitted, may have to meet conditions and take actions in the interest of the first point above; and the decision must be informed by the PGs’ understanding of the overall risks and benefits of Indian membership and be made in consideration of the possible consequences for the nonproliferation and the nuclear trade regime.

Since the formation of the NSG, the group has gradually articulated the view that any candidate for membership not be considered on a strictly case-by-case basis. In 1997, the NSG publication INFCIRC/539 set forth factors for membership that were not exclusive and were not in the strict sense criteria.

To an extent, the terms “factors” and “criteria” may be seen as interchangeable. INFCIRC/539 informs that “factors [are] taken into account for membership” and provides examples of both technical considerations (an effective national export-control system) and state-specific considerations (NPT membership and a nonproliferation track record).³ But in describing the factors in this manner, INFCIRC/539 does not assert that any specific factor must be met in order for a prospective PG to become a member. Conversely, criteria, as distinct from factors, imply that fulfilling select or all conditions would be a strict prerequisite for membership.

While the NSG has never set forth that a new participant would be obligated to meet all factors or any specific factor, in fact most PGs have met most or all of the five factors listed in

INFCIRC/539, and, appropriate for non-nuclear-weapon states, the yardstick that all nuclear activities in the state be subject to IAEA safeguards. This factor would not apply to India—nor would membership in the NPT or in regional nuclear-weapon-free zones. And the factor regarding “support for international efforts toward nonproliferation of weapons of mass destruction and their delivery vehicles” would, in the case of India, require specification.⁴ The PGs might therefore try to identify other factors to fit India; however, in doing so, they might encourage deciding on Indian membership based on India being an exceptional case, rather than following from a broader policy on participation.

It may appear that deciding on the membership of India or any other state on a case-by-case basis would afford the group flexibility. Doing so, however, would likely not contribute to forming group consensus because the exceptional nature of the decision would encourage individual PGs to argue for or against Indian membership on grounds unrelated to multilateral nuclear-export controls. A decision made not on general policy may also result in powerful states—including India—influencing the outcome by exerting pressure, including through individual PGs’ bilateral relationships with these states.

A decision made on a case-by-case approach would likely deepen the distrust and exacerbate negative reception of the group in the eyes of many, especially non-nuclear-weapon parties to the NPT that have registered objections about the 2008 India exception either officially or unofficially during the NPT Review Conferences in 2010 and 2015. These objections suggest that the NSG represents for many such states the political will of nuclear-technology-endowed (and nuclear-armed) powers deciding on the basis of expediency and without regard for principles, rules, or norms.

In deciding on Indian membership, the PGs should seek to demonstrate a visible commitment to rules-based governance while upholding the NSG’s need to be flexible. Especially against the background of concern that non-NPT states may not fully share the commitment to robust multilateral nuclear-export controls, a policy regarding participation that utilizes factors or criteria should be considered. This approach might aid the PGs in judging whether the benefits of membership of non-NPT states would be tangible, and whether a state’s nonparticipation in the NPT should be grounds for exclusion.

One way to think about this issue is in terms of benchmarks for the desired factors or criteria, something that would permit the PGs to assess the costs and benefits of admitting a candidate state. If a non-NPT state would not sufficiently satisfy agreed-upon factors favoring participation, the PGs might propose that the state volunteer to make commitments that would permit the state to approach certain benchmarks for these factors. These commitments would become de facto criteria for participation, reflecting specific circumstances or challenges presented by candidate countries. If no equivalent benchmarks for any factor considered highly important or even essential are agreed upon by the PGs, then that factor for membership would function as a de facto criterion to exclude the candidate state from participation. Benchmarks could become as obligatory as criteria or as flexible as factors, depending on how important and critical the PGs deem them.

Technical Versus State-Specific Benchmarks

If the PGs were to set up benchmarks for membership of non-NPT states, these may provide confidence that a candidate state's participation will benefit the nonproliferation regime. Some of these benchmarks would be technical, others may be more state specific, and some may be overtly political. Technical benchmarks would permit the NSG to establish that a candidate has sufficient capacity to effectively implement the NSG guidelines and contribute to making informed decisions in the group concerning new measures and export-control challenges. The PGs may also apply state-specific considerations for membership, in light of particular local or regional political circumstances of some states. These might include a state's track record concerning nuclear security, nonproliferation, exports of sensitive technology, cooperation in multilateral regimes, and policies on terrorism, as well as the prevailing regional or domestic situation concerning political stability or security. These benchmarks might pertain, for example, to the factor on "support of international efforts toward nonproliferation."⁵

Such an approach would be consistent with the use of factors and in some cases de facto criteria during previous decisionmaking on candidates' participation. Before the PGs agree that a state be admitted as a participant, the NSG usually conducts outreach with the state, during which the group evaluates the state's export controls. A decision on the candidate state's membership

would be made in part on the cumulative result of outreach and demonstrations by the state that its capacity is sufficient. The PGs could raise state-specific issues during this process. There have been cases in which, following discussions with the PGs, a state carried out undertakings that were, in effect, prerequisites for participation. PGs could proceed in a similar fashion in considering the participation of non-NPT states.

What Does the NPT Contribute?

One of the factors cited by INFCIRC/539 is “adherence to one or more treaties, such as the NPT, the Treaties of Tlatelolco, Rarotonga, Pelindaba, Bangkok, Semipalatinsk, or an equivalent international nuclear non-proliferation agreement, and full compliance with the obligations of such agreement(s).”⁶ Because all 48 PGs are parties to the NPT and in some cases are also parties to the nuclear-weapon-free zone arrangements, the NSG, in considering India’s candidacy, must ask whether India’s not satisfying this factor must exclude it from NSG participation. To answer that question, the group must consider why the NPT is important to the NSG, as well as what NPT membership contributes to a member state’s credentials.

Membership in the NPT was referenced as a factor for NSG participation when INFCIRC/539 was drafted in 1997, and this has remained the case in all six revisions of the document, most recently in January 2015.⁷ During both Carnegie workshops, participants expressed the view that the PGs should take into account the history of the NSG’s relationship with the NPT in the group’s future consideration of non-NPT parties’ membership. The PGs may consider the following:

- The NSG’s relationship to the NPT has evolved and changed over four decades.
- After the Indian nuclear test in 1974 and during suppliers’ deliberations leading to the formation of the NSG, the United States held talks with India to encourage India to join the NPT. The United States also considered “declaring that we do not intend to enter into further Agreements for [nuclear] Cooperation . . . with non-parties to the NPT,” in order to create an incentive for holdouts to join the NPT.⁸

- At the same time, the United States considered that “there is a danger that preferential treatment for [NPT] parties would conflict with our attempts to enter into productive and safeguarded associations with nations who chose to remain outside the treaty.”⁹
- The NSG was established expressly because nuclear suppliers believed that the NPT would not suffice to prevent the proliferation of nuclear weapons. NSG founders believed the NPT was deficient for at least three reasons: France did not participate in the Zangger Committee; the NPT did not restrict exports of nuclear technology (as distinct from equipment and materials); and the NPT did not obligate its parties to restrict exports of sensitive nuclear fuel-cycle items for plutonium separation and uranium enrichment.¹⁰
- At the outset, the NSG was prepared to include suppliers outside the NPT, because some PGs believed that including them would demonstrate to developing countries that the NSG was not a cartel. That said, some participants cautioned at the time that including non-NPT states “would change the character of the group.”¹¹
- Until 1992 one PG, France, was not an NPT party. The NSG began to openly associate itself with the NPT after France joined the treaty. Since then, all PGs have joined the NSG either as established NPT parties, or after concluding FSS agreements with the IAEA.
- The decision by the PGs to make FSS a condition of supply for all non-nuclear-weapon states was taken one year after France joined the NPT.

The FSS rule was first proposed in 1977 but adopted only sixteen years later, after the challenge deriving from parallel nuclear programs that had been set up by certain countries outside the NPT began to recede. Subsequently, Argentina, Brazil, and South Africa joined the NPT as non-nuclear-weapon states. The FSS rule was meant to underscore that the NPT was a fundamental element of the nonproliferation regime having universal aspirations, with an eye to the decision scheduled for 1995 about whether the NPT would be indefinitely extended. Nuclear suppliers have continued to refer to the nexus between the NSG and FSS at all five-year NPT Review Conferences beginning in 1995 and most recently in 2015.

Two more states with undeclared nuclear programs—India and Pakistan—in 1998 tested nuclear explosive devices, declared that they had nuclear weapons, and since then have continued to develop more advanced nuclear-weapon capabilities and produce larger inventories of both weapons and weapons-grade fissile materials. These developments may have prompted some PGs more recently to question the utility of the FSS rule. Separately, revelation of a black-market network of nuclear suppliers operating out of Pakistan from the mid-1980s through 2003 increased the PGs’ awareness of the necessity to persuade all countries with nuclear weapons and sensitive nuclear fuel-cycle capabilities to adhere to the guidelines.

Some PGs may have therefore altered their views about the NSG’s link to FSS and the NPT, while other PGs’ positions may have remained consistent with the group’s consensus when the FSS rule was created. Before the PGs decide on future membership of non-NPT states, they should reach a common understanding about the value of the NPT to the group, and in particular the importance of the FSS rule. In doing so, the PGs may consider the following facts:

- The NPT is a nearly universal treaty, and its terms are legally binding on its parties.
- The NPT legally obligates supplier states to ensure that transfers of listed items do not contribute to the spread of nuclear weapons.
- The NPT legally obligates all non-nuclear-weapon states to subject all their peaceful nuclear activities to IAEA safeguards.
- The NPT legally obligates its parties to apply IAEA safeguards on all trigger list items supplied to any non-nuclear-weapon state.
- For good reasons, the scope of the NSG guidelines—including the export of technology and the criteria for transfers of sensitive items—goes beyond the scope of controls following from NPT Article III, limited to trigger list items subject to IAEA safeguards.
- The significance of the NPT’s Zangger Committee as a locus of technical knowledge on export control has declined.
- There are historical reasons why a few nuclear-armed states have not been NPT parties.
- While the NPT legally obligates its parties not to proliferate, these obligations have not deterred all parties to the NPT from cheating. However, when NPT parties cheat and are detected, they are subject to consequences arising from their legal obligations under the

treaty, including obligations expressed in their comprehensive safeguards agreements with the IAEA.

- The NPT legally obligates its parties to pursue negotiations in good faith on measures relating to nuclear disarmament.

To reach a common understanding about what NPT membership means and contributes to assisting the fulfillment of the NSG's mission, PGs must consider the relative importance of formally conditioning nuclear trade privileges upon states' participation in the NPT, as distinct from the NSG's mission of getting all countries with nuclear weapons and sensitive nuclear fuel-cycle infrastructure—irrespective of their NPT status—to adhere to its guidelines.

If the PGs prioritize the latter of these two objectives, it becomes more important to answer whether it is necessary that a non-NPT state formally participate in the arrangement for that state to adhere to its guidelines. One nuclear-armed non-NPT state subject to an NSG outreach program, Israel, in the past has formally notified the NSG that it is adhering to the guidelines without participating in the group. The PGs should explore whether other non-NPT states could make the same commitment. If not, why not?

In 1975, France was a founding member of the NSG. Other suppliers favored including France in the group to encourage that country to adhere to NPT Article I, prohibiting nuclear-weapon states from assisting others to obtain nuclear arms. The same thinking prevails today among PGs that advocate NSG membership for India. Because France conducted nuclear tests and declared itself a nuclear-weapon state three years before the NPT's cutoff date of 1967, France was free to join the NPT as a nuclear-weapon state. Indian nuclear tests took place after the cutoff date, and India therefore does not have the option to retain its nuclear arms after joining the treaty.

If the PGs can agree on what NPT membership means and contributes to a PG in assisting the group's mission, can they also agree—in the context of the earlier discussion of benchmarks, factors, and criteria—whether there are practical commitments that a state can make to compensate for NPT participation?

If a non-NPT state candidate were required to make such commitments, would these, like the NPT, have to be legally binding? Legally binding export-control laws and guidelines are a de facto requirement for NSG participation. The group might likewise require a non-NPT party to

make additional legal commitments as a condition of participation. In 1975, suppliers anticipated that France at some point would join the treaty as a nuclear-weapon state. Because India would have to unilaterally disarm to join the NPT, the PGs might require it to undertake legally binding obligations to adhere to NPT Articles I, III.2, and VI, especially if the PGs are concerned that non-NPT states would not embrace good nonproliferation standards expressed by benchmarks. (Article VI requires each state to “pursue negotiations in good faith” on nuclear disarmament.¹²) Such a commitment by India may serve to formalize its like-mindedness with all others in the NSG.

Political Considerations of NSG Membership

Beyond considerations of benchmarks governing any candidate’s qualification for NSG participation, the PGs must also decide whether they will consider the broader political background to and consequences of a candidate’s future participation.

The discussion in the NSG concerning the like-mindedness of some states for participation, and specifically for India’s 2008 exception, suggests that the PGs share the view that a candidate for participation should not be admitted if the PGs agree that the risk is too great that the state’s behavior will compromise the effectiveness of the group.

In some past instances, individual PGs have viewed the possible participation of other states according to utilitarian considerations quite apart from their like-mindedness. The PGs have considered, for example, whether a candidate’s future participation would advance national policy objectives or strategic interests, or impact their bilateral relations with third countries.

But like-mindedness has been considered during policymaking. The United States favored including Germany, Italy, Japan, and the Netherlands in the NSG during the 1970s because their “adherence to the NPT is especially important.”¹³ When China joined the group in 2004, it had already been an NPT party for twelve years. But the PGs were nonetheless concerned that China may not be committed to, or have sufficient capacity for, effective nuclear-export controls, in view of Chinese entities having supplied listed items and sensitive nuclear technology to proliferating destinations. Similar concerns have been raised about India, not because India has

exported listed items to proliferators, but because India for many years considered multilateral export controls on nuclear technology as an expression of neocolonialism by powerful wealthy countries. On some multilateral issues, India has adopted exceptionalist positions—for example, in blocking agreement in 2014 in the World Trade Organization on a new global trade treaty under negotiation for thirteen years, in concluding an Additional Protocol with the IAEA that is extremely limited in scope, and in resisting international standards for legal third-party liability in the case of a severe nuclear accident.¹⁴ While it may prove difficult for the NSG to identify attributes or yardsticks to measure like-mindedness in a way that it is not unduly subjective, the PGs might consider evidence of whether a state will behave in the best interest of the nuclear-export control regime. This might include the state's record of cooperating in multilateral rule-making or norm-setting organizations and mechanisms, and the state's implementation of commitments it made as a condition for participation in multilateral arrangements. For India, such commitments would include those India agreed to as a condition for bilateral peaceful nuclear cooperation with specific PGs and commitments expressed by India with respect to the 2008 NSG exception.

Clearly if a state's official actions—especially the export of technology and items relevant for the production of weapons of mass destruction—are contrary to the NSG's nonproliferation mission, it would be difficult to make a persuasive case that the state be considered for NSG participation. Conversely, a state's history of importing listed items in contravention of the group's guidelines need not be considered a *prima facie* ground for disqualification for participation.

As part of their risk assessment, the PGs should also examine the internal history of the group to understand where, when, and why unlike-mindedness arose as a challenge to effectiveness and credibility. A few participants at the Vienna Carnegie workshop asserted that all PGs have upheld the NSG guidelines. But the PGs should recall that the NSG since the late 1990s has been challenged by the actions of a few powerful PGs that in the view of many or most others have not conformed to the FSS rule.

Reaching a consensus agreement about the attributes of like-mindedness would be difficult and likely subject to individual PGs' efforts to favor or exclude certain candidates. A candidate's form of government and its international alliances in any case surely do not qualify as yardsticks.

The Soviet Union was an adversary of all other PGs when it was included in the original founding group without reservations, and Russia's subsequent participation has never been controversial or contested. A few Western European democracies during the 1980s resisted other PGs' efforts to introduce the FSS rule, and they also legally protected firms from prosecution after they exported listed and sensitive nuclear dual-use goods without bona fide end-use assurances.

At no time in the history of the NSG has any PG, on the basis of its national interest or policies, obstructed the consensus of the group that a particular candidate state may participate. In considering India's inclusion, the PGs must evaluate the possibility that India would in the future block participation by Pakistan. The PGs might later address this prospect by establishing rigorous and credible benchmarks or criteria for Pakistan's participation. But currently, the PGs should also assess India's motivation for participation. If the PGs conclude that India seeks entry to enhance its great-power status and also the legitimacy of its nuclear arms, they might also reflect upon whether India would therefore not welcome future participation by its South Asian rival.

The PGs must consider whether allowing non-NPT states to participate in the NSG would result in political damage to the nonproliferation regime. Especially in light of dissenting views expressed by a few PGs right after the 2008 decision on India's exception, and negative reaction registered more generally since 2008 during NPT diplomacy, the group needs to assess this risk. Negative reaction to Indian membership may be limited to rhetorical and superficial speculation by observers, politicians, and officials. Or it might instead be expressed by policymakers in non-nuclear-weapon states and lead to decisions by states to hedge, develop sensitive nuclear capabilities, and not to cooperate with future nonproliferation efforts. The open literature and public media record provide little guidance about how states will respond and behave; it may be more valuable for the PGs to directly solicit the views of non-PGs. In the final analysis, it will be up to the PGs to weigh this assessed risk against the anticipated benefits to the NSG of non-NPT states' participation.

Finally, the NSG is challenged by the national interest of some PGs to include specific non-NPT parties as participants. The rationales include nuclear and other trade, and broader geostrategic agendas. A PG's advocacy of membership for individual candidates based on such reasons may

create incentives and generate pressure favoring acceptance of these candidates by others; however, such advocacy also carries the risk that the PGs that do not share the interests of the candidate's advocates may, for overtly political reasons, obstruct consensus. The PGs might consider that the NSG's nonproliferation function is essential to their national strategic interest. But the PGs should take care that unrelated national strategic or economic aims be extraneous to a decision on participation, allowing the PGs to remain focused on the NSG's nuclear-export control objectives.

The PGs' understanding of the NSG's mission should likewise inform achieving a proper balance between technical and political factors and benchmarks used for judging a candidate's suitability for membership. If the PGs agree that the NSG's most important task is to include all supplier states, technical factors and benchmarks will be most important, led off by a state's capability to supply listed goods and its capacity to effectively implement the guidelines. The more that the PGs consider the NPT as an important norm-provider for the group, the more important political factors and benchmarks will be, since the PGs will prioritize getting confidence that a new member will conform to standards of good nonproliferation behavior.

The PGs may try to identify benchmarks that compensate for a candidate state's lack of NPT participation, but more generally they might identify a larger set of standards to which all new members should adhere. A number of factors might be considered—for example, the absence of testing or deploying new nuclear weapons; a record of cooperation with the IAEA on implementing safeguards; restraint in exporting items relevant for the production of WMDs including items related to chemical weapons, dual-use technology, and missiles; cooperation with the United Nations Security Council's Resolution 1540, which calls on all states to take and enforce effective domestic export-control measures; a record of criminalizing and prosecuting export-control violators and cooperation with other states in the criminal prosecution of violators; and cooperation in international conventions concerning civilian nuclear energy and nuclear security.

Finally, the participation of non-NPT states with nuclear arms would require the group to consider the definition of a "nuclear-weapon state" in administering the guidelines. The nuclear commodity control list document INFCIRC/254, under the "Guidelines for Nuclear Transfers," ordains that the NSG's "fundamental principles for safeguards and export controls should apply

to nuclear transfers for peaceful purposes to *any non-nuclear-weapon State*” (emphasis added).¹⁵ In 2008, representatives for the PGs said that the decision to except India from the FSS rule should not be interpreted to imply that the NSG or its members recognized that India is a nuclear-weapon state in the sense of the NPT. Should India be admitted as a participant, the PGs would have to decide whether India would be subject to the “fundamental principles” in INFCIRC/254. If not, INFCIRC/254 may have to be amended or a definition for a nuclear-weapon state may have to be included in the guidelines. In any case, non-nuclear-weapon parties of the NPT will be concerned that admitting non-NPT states to the NSG will validate their aspirations for status in a manner counterproductive to the treaty’s disarmament and nonproliferation aspirations. Should the PGs inform India, or another state outside the NPT with nuclear arms, that it may participate on the basis of its being treated as a non-nuclear-weapon state, the new participant may have to make commitments concerning its export behavior that are consistent with obligations undertaken by the PGs that have nuclear weapons.

Summary Conclusions

The PGs evaluating whether to allow non-NPT states to participate in the NSG should first answer the following questions:

- What should be the balance between getting all states with nuclear arms and sensitive nuclear capabilities to adhere to the NSG’s guidelines, and supporting the norms of the nuclear nonproliferation regime?
- Are there alternatives to membership for non-NPT states seeking to participate in the NSG that can serve the aim of universal adherence to the guidelines?
- What does the NPT mean to the group, and what are the value and the utility of the FSS rule?
- What does NPT membership bring to a candidate’s qualification for participation in the NSG? Can a candidate state inspire the PGs’ confidence in its nonproliferation credentials and political resolve without being a party to the NPT?
- What will be the tangible benefits to the NSG of participation by non-NPT states?
- What are the risks of admitting non-NPT states?

- Would participation by non-NPT states tangibly damage the regime, and if so, how?
- How should the PGs evaluate like-mindedness among candidate states?

The answers to these questions would provide a basis for policymaking concerning participation by non-NPT states, permitting the PGs to conclude how important NPT membership should be for NSG admission. Only under the following conditions should the PGs consider whether non-NPT states could enter into commitments and obligations to compensate for the absence of NPT membership: the PGs conclude that the adherence of these states to the NSG guidelines is very important; the overall benefit of these states' participation would clearly exceed tangible risks; and there are no realistic alternatives to membership for these states to adhere to the guidelines. If the PGs on this basis decide that non-NPT states should be considered for participation, the PGs should then define the commitments and obligations these candidates should undertake. The greater the value of the NPT to the group, the more challenging it may be to identify actions or commitments by non-NPT states that could balance the perceived risk that participation by these states would pose. The lesser the perceived risk to the regime that non-NPT states' participation would represent, the easier it may be to identify actions and commitments to be undertaken by these states to address that risk.

¹ Mark Hibbs, *The Future of the Nuclear Suppliers Group* (Washington, DC: Carnegie Endowment for International Peace, 2011), 23, http://carnegieendowment.org/files/future_nsg.pdf.

² International Atomic Energy Agency, "The Nuclear Suppliers Group: Its Origins, Role and Activities," INFCIRC/539, revision 6, January 22, 2015, 4, <https://www.iaea.org/sites/default/files/infcirc539r6.pdf>.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid., 6.

⁷ Ibid.

⁸ U.S. Department of State, "Analytical Staff Meeting on Non-Proliferation Strategy," Briefing Memorandum [declassified], July 31, 1974, 11, <http://nsarchive.gwu.edu/nukevault/ebb467/docs/doc 6 7-31-74 PPS-ACDA paper for staff meeting.pdf>.

⁹ Ibid.

¹⁰ Ibid., 2.

¹¹ UK Foreign and Commonwealth Office, Ministerial Group on Nonproliferation, “NSG Future Plans: Enlargement,” confidential [derestricted], March 28, 1977, 7.

¹² United Nations Office for Disarmament Affairs, “The Treaty on the Non-Proliferation of Nuclear Weapons,” last accessed February 10, 2016, <http://www.un.org/disarmament/WMD/Nuclear/NPTtext.shtml>.

¹³ U.S. Department of State, “France and Other Key Suppliers,” Briefing Memorandum, Secret Annex A.

¹⁴ The Doha Round of multilateral trade talks “has been blocked almost single-handedly by India over agriculture issues”: Arul Louis, “India Firm on Objections to WTO Doha Round Deal over Food Security,” *Business Standard*, October 24, 2014, http://www.business-standard.com/article/news-ians/india-firm-on-objections-to-wto-doha-round-deal-over-food-security-114102400039_1.html. In 2015, India and other World Trade Organization (WTO) members have continued negotiating trade terms: “India Will Stay Firm on Agri, Food Issues at WTO, Says Commerce Secretary,” *Business Standard*, December 4, 2015, http://www.business-standard.com/article/economy-policy/india-will-stay-firm-on-agri-food-issues-at-wto-says-commerce-secretary-115120301063_1.html. Concerning India’s positions on third-party nuclear liability and on bilateral safeguards under the U.S.-India nuclear cooperation agreement, see Press Trust of India, “India’s Nuclear Liability Law Will Not Be Amended: Government,” *Indian Express*, February 8, 2015, <http://indianexpress.com/article/india/india-others/indias-nuclear-liability-law-will-not-be-amended-government/>. On February 4, 2016, India agreed to the terms of an international third-party nuclear liability agreement; questions remained concerning whether this agreement could be implemented in India. See “Nuclear Ambiguities,” *Hindu*, February 7, 2016, <http://www.thehindu.com/opinion/editorial/nuclear-ambiguities/article8206363.ece>.

¹⁵ International Atomic Energy Agency, “Communication Received From the Permanent Mission of the Czech Republic to the International Atomic Energy Agency Regarding Certain Member States’ Guidelines for the Export of Nuclear Material, Equipment and Technology,” INFCIRC/254, revision 12, November 13, 2013, 1, <http://www.iaea.org/sites/default/files/publications/documents/infcircs/1978/infcirc254r12p1.pdf>.

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