

July 11, 2008

Press Statement

The Left parties have issued the following statement:

On The IAEA Safeguards Agreement

Why the Text was Hidden till Submission to the IAEA?

The Left Parties had opposed the operationalisation of the Indo-US Nuclear Deal after the passage of the Hyde Act. After the 123 agreement was finalised, it was pointed out that the agreement was in conformity with the Hyde Act. The Left Parties had then asked the UPA Government not to take further steps to operationalise the nuclear deal.

In the UPA-Left Committee, the UPA claimed that they should be allowed to proceed with the IAEA Safeguards Agreement, which would incorporate uninterrupted fuel supplies and various corrective measures, which the Government had failed to secure in the 123 agreement. The Left Parties were skeptical about these issues being resolved in the IAEA. The UPA refused to show the negotiated text for the last four months.

The text of the Safeguards Agreement has now become public. **It is clear that the text was hidden from the Left Parties and the Indian people in order to suppress the fact that India is about to bind its entire civilian nuclear energy programme into IAEA safeguards in perpetuity without getting concrete assurances for uninterrupted fuel supply, right to build strategic reserves and right to take corrective steps in case fuel supplies are stopped.**

IAEA Safeguards in Perpetuity without Concrete Fuel Supply Assurance

The text of the draft "Agreement Between the Government of India and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities"; the so-called 'India-specific Safeguards' agreement sent to the IAEA Board of Governors on July 9, 2008, makes it clear that the repeated assurances made by the UPA Government in Parliament and outside, on securing uninterrupted fuel supply assurances and strategic fuel reserves have not been fulfilled. There are no concrete corrective measures in the main enforceable body of the Agreement, only a vague mention of "corrective measures" in the preamble.

Under the Hyde Act, IAEA safeguards are to be imposed on India's civilian nuclear facilities in perpetuity. The UPA government had repeatedly claimed that India would put its civilian reactors under safeguards under the **strictly reciprocal** condition of assured fuel supply. If fuel supply was disrupted, as happened in Tarapur, India would have the right to take corrective measures, including taking reactors out of IAEA safeguards.

The key question therefore with respect to IAEA safeguards is: how to ensure that once India's civilian reactors go under safeguards in perpetuity, the country would not be blackmailed by the withholding of nuclear fuel supplies, as the United States did in Tarapur following Pokhran-I?

The preamble to the Safeguards Agreement notes that India is offering its civilian nuclear facilities for IAEA safeguards on the "essential basis" of "the conclusion of international cooperation arrangements creating the necessary conditions for India to obtain access to the international fuel market, including reliable, uninterrupted and continuous access to fuel supplies from companies in several nations, as well as support for an Indian effort to develop a strategic reserve of nuclear fuel to guard against any disruption of supply over the lifetime of India's reactors." **The real point is that the preamble merely 'notes' India's intentions in these respects. IAEA has neither any obligation regarding fuel supplies or building strategic reserves nor does this noting India's basis for this offer give India any additional rights through this agreement. Therefore to read into this clause either a guarantee for fuel supplies or IAEA's support for building up a strategic reserve is misleading the people.**

"Corrective Measures": Vague and Ineffective

The preamble of the IAEA Agreement notes: "India may take corrective measures to ensure uninterrupted operation of its civilian nuclear reactors in the event of disruption of foreign fuel supplies." Neither the "corrective measures" nor the precise relationship between these "corrective measures" and the in-perpetuity imposition is spelt out in any meaningful terms in the text. This means that should India for any reason decide to take the items subject to the Agreement out of IAEA safeguards on the contention that the "essential basis" no longer applies, it will open itself to the serious charge of violating an international agreement. In this connection, it is worth remembering that although India claims the right, under the provisions of the 1963 Indo-US agreement on Tarapur, to reprocess the considerable quantities of Tarapur spent fuel that have accumulated to India's great inconvenience and expense, it has not been able to enforce the claimed right to reprocess, which has long been disputed by the United States.

As against the vagueness of the "corrective measures" figuring in the preamble, what is spelt out clearly in the body of the agreement (Paragraph 32) is that India can withdraw its facilities from safeguards only if it is (a) jointly agreed between India and IAEA, and (b) if these facilities are no longer usable for any nuclear activity. What does this mean? It can only mean that India can withdraw any facility it wants out of IAEA safeguards only if it strips it of all capability of producing nuclear energy and that too only after the IAEA determines that "the facility is no longer usable for any nuclear activity relevant from the point of view of safeguards."

Even if the Agreement is terminated by mutual consent, the termination of safeguards on the items subject to the Agreement [these are material and facilities as defined in Paragraph 11(a)] would stay in place in accordance with GOV/1621 till all the conditions of GOV/1621 are met. The conditions of GOV/1621 are so stringent that the rights and obligations of the parties continue to apply on all nuclear materials till they have been

returned or all fissionable materials supplied or produced goes out of the inventory – that is, until all the facilities and material, nuclear or non-nuclear, supplied to the country under these safeguards are either returned or consumed or no longer usable for any nuclear activity. Therefore, this provision will not allow a single reactor to be taken out of safeguards.

Preambular References Non-Enforceable

It is well established in international law that the preamble is a part of the treaty or international agreement and it can be used to give colour and tone to the interpretation of the operative part of the treaty/agreement. This does not however mean that it can be used to create additional rights or obligations that are not contained in the clauses of the Treaty/Agreement.

The text of the IAEA Draft Agreement makes clear there are no corrective measures identified in the operative of the clauses of the Agreement. The mention of corrective measures is only in the preamble and here too, no concrete corrective measures have been defined. Unless there are specific provisions in the operative clauses, a phrase such as "corrective measures" inserted in the preamble cannot create either omnibus rights or obligations outside the text of the treaty. A similar example is for instance the TRIPS Agreement in WTO. The preamble states that it recognizes "the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives". However, can any country use the "public policy objectives" to override, for instance, the need for providing product patents as contained the body of the TRIPS agreement?

The way a facility can be withdrawn from safeguards has been spelt out in the main body of the draft agreement. Therefore, if the UPA government is trying to argue that the preambular statement of "corrective measures" gives India some kind of overriding right over all clauses in the body of the Agreement, it is committing a deliberate fraud on the people.

The final arbiter with regards to any interpretation of the Agreement and dispute settlement is the Board of Governors of IAEA. **The Board of Governors decision is final in this regard and if India is held to be non-compliant, even though it is not so by its own interpretation, India can be referred to the Security Council for action including sanctions. The Iran case is an example.** Though many countries including India had publicly endorsed Iran's right to the fuel cycle, it was referred to the Security Council for violation of its Safeguards Agreement by the Board of Governors at US's instance.

Left Parties' Concerns Not Addressed

The Left Parties, on July 8, 2008, asked the UPA government to spell out the following:

- ❖.... In case the US or other countries in the Nuclear Suppliers Group renege on fuel supply assurances for imported reactors, will India have the ability to withdraw these reactors from IAEA safeguards?
- ❖.... If the US/NSG countries renege on fuel supply assurances, can we withdraw our indigenous civilian reactors from IAEA safeguards?

- ❖.... If we have to bring nuclear fuel from the non-safeguarded part of our nuclear programme for these reactors in case of fuel supply assurances not being fulfilled, will we have the ability to take it back again?
- ❖.... What are the corrective steps India can take if fuel supplies are interrupted by the US/NSG countries?
- ❖.... What are the conditions that India must fulfill if the corrective steps are to be put into operation?

What is clear now is that every one of these concerns remains, and that the unspecified "corrective measures" inserted in the preamble of the Safeguards Agreement will not address any of them.

India to be treated as a Non-Nuclear Weapons State for Safeguarded Facilities

Except for the preamble, which explains the context in which India is entering this Safeguards Agreement and outlines the basis of India's concurrence, the main body of the Text is a true copy of INFCIRC-66/Rev.2 (1968), which is the standard agreement applicable to all Non-Nuclear Weapon States of the NPT. The India-specific part comes not from INFIRC 66 but from the fact that India has kept a part of its nuclear programme out of IAEA safeguards. **But for the facilities it proposes to put under IAEA safeguards, it will be treated as a Non-Nuclear Weapon States. Clearly, India will not have any special rights in its safeguarded facilities and this directly contradicts the assurances given by the Prime Minister to Parliament. Nuclear weapon states, as defined in the NPT, have the right to take any facility out of safeguards, a right India will not have for the reactors it is offering to IAEA for safeguards.**

Against India's Interests

It is clear that the IAEA Safeguards Agreement does not address the fundamental problems in the Hyde Act and the 123 Agreement. As a result of operationalising the Indo-US Nuclear Deal, India will place its costly imported reactors under perpetual IAEA safeguards and risk their permanent shutdown in case it fails to toe the US line on foreign policy issues. Thus going ahead with the Safeguards Agreement will be harmful to India's interests.

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