

SOME ISSUES PERTAINING TO CIVIL NUCLEAR COOPERATION AGREEMENTS

I. On UPA Government's Foreign Policy

The UPA government has continued to follow and build upon the basic tenets of India's independent foreign policy – a foreign policy of peace, non-alignment and autonomous choice based on national self interest and the expansion of India's strategic autonomy and capability.

The fundamental tenets of India's foreign policy have remained steadfast and unaltered despite the changing world order, and successive Governments have reinforced these guiding principles. At the core is our independence in decision making on foreign policy issues. The principles of *Panchsheel*, enunciated by India's first Prime Minister are still relevant and we have, over the years, on every occasion, reiterated our commitment to an independent foreign policy – and the strengthening of multi-lateral mechanisms and institutions.

In an international situation marked by simultaneous competition and cooperation among the major powers, and of unprecedented interdependence created by globalization, representing both a threat and an opportunity for developing countries, the government has steadily improved India's relations with all major powers.

India is recognized in today's world as an independent minded nation. In fact, India's national interests require that it should maintain this while simultaneously cultivating close ties with key global players and playing a key role in global affairs – whether trade or security or climate change issues. India today has strategic dialogues with Brazil, China, EU, France, Germany, Iran, Indonesia, Japan, Russia, South Africa, the United Kingdom, United States of America and Vietnam.

In its interaction with the other major powers and the EU, India believes that multilateral and multi-polar solutions are the need of the hour for the world's major issues. Today's challenges – terrorism, proliferation of weapons of mass destruction, climate change, energy security and food security – cut across borders and demand broad-based multilateral cooperation between nations and groups of nations.

Our international friends and partners recognize our commitment to pursue an independent foreign policy. They understand that a country like India cannot be persuaded to follow a course in its foreign policy which does not pass the litmus test of meeting our interests. If India could exercise autonomy in its

decision-making during the cold-war period, there is no reason to believe that today, when our strength as a global power is recognized, we can be coerced into following a foreign policy dictated by another country.

As the world moves into a more complicated environment of interdependence and competition, multilateral solutions to international problems become even more necessary. The UPA Government has strengthened India's contribution and role in international organizations such as the UN and added meaningful content to other multilateral groupings in which India participates, such as IBSA, India-China-Russia Trilateral Forum and other such fora.

Relations with US

The aim of our Foreign Policy is to create conditions where we can focus on the economic development of our people. The Government is thus committed to continuously improving bilateral relations with our immediate neighbours, the countries in our region and all other major powers in the world. Development of good relations with all major powers without being constrained by Cold War-era thinking of blocs and alliances adds to our ability to pursue our independent path as dictated by our national interest. This provides us the leverage and space to pursue our independent foreign policy. It is in this context, Government has pursued cooperation with the USA to the extent that it helps to achieve the goals set by successive governments for the welfare of our people, and in overall national interest.

Relations with Arab countries

India has close and long-standing relations with the Arab countries of the Gulf, bolstered by the presence of the large Indian community in the region, the substantial economic relationship and India's consistent and principled stand on issues of concern to the Arab world such as that on the Palestinian issue. The recent past, marked by a number of high level visits, has witnessed considerable strengthening of India's relations with the region. The Gulf Cooperation Council (GCC) countries who have close relations with the United States have noted the new dynamism in the relations between India and the US. The GCC members have themselves in December 2006 collectively decided to develop a joint nuclear technology programme for peaceful purposes. In this effort and for their individual programmes discussions to engender cooperation have been held by them with the US and other Western countries.

II: Climate change and relevance of nuclear energy in addressing global warming concerns.

The National Action Plan for Climate Change which was released by Prime Minister recently states that we need to identify and prioritize strategies that promote development goals while also serving specific climate change objectives.

- In this context, it is imperative to identify cost-effective energy efficiency and energy conservation measures are of particular importance. Similarly, development of clean energy technologies, though primarily designed to promote energy security, can also generate large benefits in terms of reducing carbon emissions.
- The Integrated Energy Policy which was adopted in 2006 provides for:
 - promotion of energy efficiency in all sectors
 - emphasis on mass transport
 - emphasis on renewables including bio-fuels plantations
 - accelerated development nuclear and hydro-power for clean energy
 - focused R&D on several clean energy related technologies
- Promotion of nuclear energy through enhancing nuclear capacity and adoption of fast breeder and thorium-based thermal reactor technology in nuclear power generation would bring significant benefits in terms of energy security and environmental benefits, including GHG mitigation.

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III: Answers to some objections to the India-specific Safeguards Agreement with the IAEA

Question: The fuel supply assurances and India's right to take corrective measures are only reflected in the preamble to the safeguards agreement with the IAEA, and are not included in the operative portion. Therefore, they are of no value in terms of assurance of supplies.

Answer: Under Article 31 of the Vienna Convention on the Law of Treaties, 1969, all parts of international treaties and agreements are binding. The text of a Treaty includes its preamble and annexes.

It may be noted that in the safeguards agreement the preamble ends with the following words: "Now, therefore, taking into account the above, India and the Agency have agreed as follows".

The agreement clearly stipulates that "an essential basis of India's concurrence to accept Agency safeguards under an India-specific Safeguards Agreement (hereinafter referred to as "this Agreement") is the conclusion of international cooperation arrangements **creating the necessary conditions for India to obtain access to the international fuel market, including reliable, uninterrupted, continuous access to fuel supplies.**"

This makes it amply clear that whatever is included in the preamble constitutes the essential condition under which the safeguards are to be applied.

Question: India's indigenous reactors will go under safeguards in perpetuity under this Agreement, affecting our indigenous programme.

Answer: Article 5 of the Agreement clearly stipulates that safeguards would be implemented in a manner "designed to avoid hampering India's economic or technological development, and not to hinder or otherwise interfere with any activities involving the use by India of nuclear material, non-nuclear material, equipment, components, information or technology produced, acquired or developed by India independent of this Agreement for its own purposes."

This makes it clear that India's indigenous civilian nuclear programme will in no way be affected by the application of safeguards.

It has all along been our position that we have no problem with the continuance of safeguards as long as there is reliable, uninterrupted and continuous access to fuel supplies. In case of disruption, India is entitled to take corrective measures as it deems appropriate.

IV: India-specific Safeguards Agreement with the IAEA Salient Features

(i) The finalized text of the India-specific Safeguards Agreement reflects the key understandings relating to fuel supply assurances, strategic fuel reserves and corrective measures. Provisions have been included making it clear that India is offering civilian nuclear facilities voluntarily for safeguards keeping in view these assurances. It states that “an essential basis” of our concurrence to accept IAEA safeguards is:

- 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;
- 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; and
- that India may take corrective measures to ensure uninterrupted operation of its civilian nuclear reactors in the event of disruption of foreign fuel supplies.

The agreement states that India and the IAEA have agreed to the text taking into account these provisions. It is therefore implicit that if these conditions are not met at any point of time in the future that would impact on application of safeguards.

(ii) The key understandings relating to fuel supply assurances and strategic fuel reserves are recognized in the Agreement as “bilateral or multilateral arrangements to which India is a party.” The

Agreement is intended to facilitate the implementation of these 'bilateral or multilateral arrangements'. The Agreement will therefore facilitate foreign fuel supplies to our safeguarded civilian nuclear reactors.

- (iii) The Agreement is based on the standard template of IAEA facility specific safeguards (INFCIRC 66/rev.2) applicable to states that are not a party to the NPT. So far all the safeguards which we have in place (TAPS, RAPS) are based on the INFCIRC 66/rev.2 template. The Agreement will be an umbrella agreement that will subsume all the previous agreements.
- (iv) The agreement provides for individual civilian nuclear facilities and material to be brought under safeguards in a phased manner only when India files a declaration to that effect based on its sovereign decision. The declaration will be filed when India determines that all conditions conducive to the accomplishment of the objective of the Agreement, which is to facilitate implementation of relevant bilateral and multilateral arrangements to which India is a party, have been achieved. These conditions will include NSG adjusting its Guidelines to enable full civil nuclear cooperation with India.
- (v) The determination of which facilities are to be put under safeguards and when will be a sovereign decision by India. Facilities will be offered for safeguards in a phased manner in accordance with India's Separation Plan.
- (vi) Provisions have been included to protect our other rights and obligations under international law, and to enable us to exercise our right to take corrective measures, as envisaged in the Separation Plan, should there be a disruption of foreign fuel supplies to our

safeguarded civilian nuclear facilities. India can also provide special reports to the IAEA if there is a disruption of operation of our safeguarded reactors on account of material violation or breach of bilateral or multilateral arrangements.

- (vii) The finalization of this agreement will now enable us to have civil nuclear cooperation including implementation of fuel supply assurances with other interested countries when conditions permit.
- (viii) The agreement will not affect our strategic programme. Provisions in the Agreement make it clear that the IAEA shall implement safeguards in a manner so as not to hinder or otherwise interfere with any activities involving the use by India of nuclear material, non-nuclear material, equipment, components, information or technology produced acquired or developed by India independent of the Agreement for its own purposes.
