

Nuclear negotiators have not learnt from Tarapur experience

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With the negotiations in progress regarding the IAEA safeguards agreement, the Indo-US nuclear deal seems to be inching forward to bring it in shape so as to facilitate clinching the same subject to the political hurdles being overcome. To what extent the pros and cons of the deal, hotly debated in the media and elsewhere so far, will have ultimate effect on the final outcome is not clear.

Since the implementation of the deal is "showcased" essentially in the way and the intensity with which the safeguards implementation is carried out, it is important to ensure that all the basic concerns are properly addressed technically as well as legally. Any laxity at this stage could prove disastrous in the long run as safeguards agreements with the IAEA, once in place, are practically irrevocable, more so when the commitments are in perpetuity. It is in this context it may be appropriate to examine some of the issues of concern in negotiating the safeguards agreement.

The US has made it clear both in the Hyde Act as well as clarifications issued subsequent to the finalisation of the 123 text that the safeguards agreement has to follow the standard IAEA practices, while India has committed to an 'India-specific' agreement. It would have been better if India had insisted right at the beginning and managed to get a safeguards arrangement similar to the one applicable to the weapons states. This would have been in the spirit of the July 18, 2005, joint statement where there was an expression of intent that India will be treated at par with other advanced countries such as the US. Unfortunately this is not to be. In fact throughout the evolution of the deal, since India has not insisted on the parity issue and resigned itself to playing second fiddle as a 'client' State, there are problems galore in having to contend with a deal with conditions heavily loaded against India on technical and economic issues with political overtones.

The IAEA, as per established safeguards practice in dealing with non-weapon States not party to the non-proliferation treaty, will try to stick to the format of its own document INFCIRC 66/Rev2 with the major difference that even those facilities wholly designed and built by India and the R&D institutions as listed in the separation plan which were hitherto outside the scope of safeguards, as well as all the future civil facilities which will grow substantially in numbers, will be included in the safeguards agreement compulsorily with all the implications, even though in the separation plan document it is stated that the facilities which are to come under civil list will be decided solely by India, obviously only on paper! In contrast, the nuclear weapon States enjoy the privilege of moving facilities from civil to military and vice-versa, a

flexibility denied to India.

One of the most contentious issues to be resolved while negotiating the safeguards agreement is to address the assurances of fuel supply and building-up strategic reserve to be linked to India agreeing to safeguards in perpetuity. This is a commitment to the nation by the prime minister himself.

The so-called 'corrective measures' should address this as well as various other issues such as fate of safeguards agreement when the cooperation agreement gets abrogated or terminated for any reason enumerated in the Hyde Act or any changes, revisions or new Acts passed by the US in future as it happened in the case of the Tarapur agreement when the 1963 Indo-US bilateral agreement was unilaterally dumped by the US when a new nuclear non-proliferation Act (NNPA) was promulgated in 1978 in the aftermath of the 1974 nuclear test by India.

This concern is relevant because in the 123 agreement India has initialed a blank cheque by agreeing to abide by the US national laws without any qualification by which it gets exposed to any future damaging changes in law. The 123 agreement also has no provision for arbitration in case disagreement persists. In fact, it could be said, 123 agreement provides India with generous opportunities to hold bilateral consultations to resolve disputes with no leverage, leaving the ultimate decision to US to be taken as per their national laws.

Unfortunately, India does not have laws to match the one like the Hyde Act which surely will dominate the operation of the agreement from behind with 123 staying in front for whatever it is worth contrary to what the supporters of the deal are swearing!

The way the sequencing of actions has evolved, it is clear that the Nuclear Suppliers Group wishes to see India firmly fixed in a system of commitment in perpetuity with IAEA by initialing and then unleash their own conditions for making changes in their guidelines. In all probability NSG will prominently demand no testing by India in future as a precondition. There could be other conditions as well. To forestall these dangers, India while finalising the safeguards agreement with IAEA should proactively avoid getting into a trap by insisting on clear unambiguous language.

This is important because in trying to get over stalemates on technical issues, diplomats under advice from politicians could find language fixes and push the issue to be resolved later when the focus is off. This could be really damaging in the long run. In fact, this is what has happened in the case of the finalisation of the 123 agreement which is a fine piece of artistry in language but quite damaging in content!

One classic example is, the way the core issue of 'reprocessing' is dealt with in the 123 text, which, in all probability, will tie India up in all sorts of knots forcing to wade through uncertainties. It is unfortunate, the negotiators have not learnt from Tarapur experience.

It will be interesting to know how this is being dealt with in the safeguards agreement.

One other aspect, which is crucial, is the status of discussion on the protocol additional to the safeguards agreement, which India has agreed to enter into. This is a document which cannot be taken lightly as it will include all the intrusive provisions of safeguards inspections. There is a possibility this could be under wrap or deferred to avoid immediate stalemate. This needs to be gone into in detail before taking any decision to go forward.

The pattern of presentation of the crucial documents to public scrutiny is now set. The 123 agreement was initialled and presented as a fait-accompli and it appears the same may be done in the case of the safeguards agreement with the IAEA. Instead of discussing the content and extent of damage without any scope for constructive suggestions and changes, one may be left with discussing the status and legality of 'initialing' vis-a-vis 'signing' the document!!

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