Expert opinion: India’s Additional Protocol and the IAEA

In late June, India announced pending ratification of an Additional Protocol with the IAEA that gives the agency powers to inspect civil installations. Could this be a prelude to Nuclear Suppliers’ Group membership? Some have their doubts about the value of the Additional Protocol. Here, WorldECR talks to SIPRI associated senior research fellow Robert Kelley about India’s decision to ratify the protocol.

WorldECR: India’s decision to ratify the Additional Protocol (AP) with the International Atomic Energy Agency (IAEA) to the Indian specific safeguards agreement was said to be a ‘signal’ that the country will abide by its international obligations. Why now?

RK: In early June, Jane’s published an article by Brian Cloughley and myself describing activities at the Mysore uranium enrichment plant. In it, we made specific challenges that India had signed an AP in 2009 and never ratified it. Jane’s sent the article to the Indian Ministry of Foreign Affairs at that time and the MFA replied with: ‘No comment.’ Several days’ later The Hindu newspaper reported that India had decided to ratify the AP.

Hence, we believe that our article in Jane’s questioning India’s sincerity about the AP was the cause of their announcement. Furthermore, this criticism, coming five years after the protocol was signed, could possibly cause parties to rethink the weak agreement – putting pressure on India to ratify before any possible reconsideration. Remember that India ratifies a treaty through executive order and not through the legislature, so the new government acted quickly before opposition could react and apply pressure.

Also, the fact that the Nuclear Suppliers Group (NSG) meeting was imminent might have spurred the ratification announcement.

WorldECR: It has been pointed out that the protocol’s ratification, ahead of Prime Minister Narendra Modi’s visit to Washington in September, sends the right signals to the U.S. How will it boost India’s nuclear commerce with countries such as Japan and the United States?

RK: The ratification sends good signals to both countries, especially if the politicians involved do not know that the Indian AP does not contain the usual accesses and increased rights of the IAEA. This is a unique and very weak AP.

WorldECR: India, despite being a nuclear-armed state, is not a signatory to the Non-Proliferation Treaty (NPT). Will there be any problems if India gets its foot in the door of a club of countries that trade in nuclear materials?

RK: This is kind of a loaded question. The thesis of my writings is that India negotiated an AP that gives the IAEA virtually no greater access or insights into India’s civil programme. If you read the protocol draft, it is toothless, weaker than the additional protocols written for Russia and China, which are legally recognised nuclear weapons states. This is, therefore, a political matter. If politicians are satisfied that India signed something, anything, then they will grant India some room for joining. If they accept my thesis that the new protocol is nothing more than an empty gesture, there might be some reluctance. Remember, too, it is not just complying with the NSG. Countries that have other obligations, like Australia in the Nuclear Weapon Free Zone Treaty of Raratonga, may have other barriers to trading with India in nuclear matters.

WorldECR: In the Nuclear Threat Initiatives 2014 Security Index, India scored worse than both Pakistan and China for nuclear materials security. How will the new agreement with the
IAEA address these issues?

RK: The new agreement does not address safety and security in any way. Safeguards and verification of nuclear materials are completely separate from Nuclear Security and Safety (‘NSS’) within the IAEA and NSS is not part of the NPT. The new agreement is only related to the IAEA’s NPT nuclear materials verification activities. Unfortunately, the two IAEA missions – NPT verification and NSS – are completely separate. In addition, safety and security are the sole responsibility of a state; the IAEA only provides advice when asked and its advice is not binding.

WorldECR: Could allowing the IAEA greater scrutiny over India’s civil nuclear programme also help India’s quest for membership in the Nuclear Suppliers Group?

RK: I think I have answered this. IAEA did not gain any meaningful additional scrutiny. But, as with the original U.S.-India 123 Agreement, if the political will is to make this happen whilst ignoring precedent, language and past practice, then a strong state might push it through.

The serious issue is that Pakistan wants the same deal as India. But the NSG operates on consensus and if any one state objects to a new member it will be blackballed. If India joins NSG, they alone can keep Pakistan out. The only way to bypass this would be to admit India and Pakistan at the same time. I am opposed to Pakistan in the NSG because of their serial nonproliferation transgressions, so that is my bias!

Since this interview was conducted, India has signed a Civil Nuclear Cooperation Agreement with Canberra which will see Australia selling uranium to Delhi for use in its civil nuclear programme. The move is seen as a sign of India’s potential acceptance into the non-proliferation community. Having signed a ‘safeguards’ pact with his counterpart Narendra Modi, Prime Minister Tony Abbott told reporters: ‘We signed a nuclear cooperation agreement because Australia trusts India to do the right thing in this area, as it has been doing in other areas. That is why we are happy to trust India with our uranium in months, years and decades.’

Links and notes

1. Nuclear Option: As India and China compete for regional dominance, the arms race is being driven underwater. Brian Cloughley and Robert Kelley look at India’s nuclear programme and assess how an expanding submarine fleet has necessitated new enrichment capabilities. Jane’s Intelligence Review July 2014.

2. On India’s IAEA agreements, in diplomatic cables released by WikiLeaks in 2011, the U.S. mission to international organisations in Vienna expressed concern that ‘the [Indian] Additional Protocol does not go as far as even Russia’s or China’s’, which are already exceptionally weak. The U.S. Congress’s stipulation that the 123 Agreement must be contingent on India completing an ‘Additional Protocol’ is subverted because it is not a ‘Model Additional Protocol’, and is a very weak one.

Notably, the Mysore enrichment plant is not a declared facility for either set of agreements. This is perhaps why India keeps its enrichment plant plans so secret. It only needs to declare civilian facilities, and by not declaring Mysore as a nuclear facility at all, New Delhi is making a tacit admission that it may have a military purpose, such as enriching uranium for nuclear submarine reactors or second stages in thermonuclear bombs. Despite apparently going against the spirit of the 123 Agreement, India is still formally in compliance with its international commitments and Washington can claim ignorance of any suspected enrichment in excess of 20%. The secrecy of Mysore is therefore driven by a need to not bring attention to breaking the spirit of the 123 Agreement, and furthermore it exploits the old IAEA agreements that limit powers of inspection.