

AS DELIVERED

**INTRODUCTORY STATEMENT TO THE
BOARD OF GOVERNORS**

Vienna

1 August 2008

Mohamed ElBaradei

Director General



INTERNATIONAL ATOMIC ENERGY AGENCY

Our agenda for this meeting covers issues relevant to safeguards, technical cooperation and management.

Draft Safeguards Agreement with India

I am pleased to put before you the draft *Agreement with the Government of India for the Application of Safeguards to Civilian Nuclear Facilities*. As the Secretariat has already provided an extensive briefing on this, I will emphasize just a few points.

The text before you is an INFCIRC/66-type safeguards agreement based on the Agency's standard safeguards practices and procedures. These 66-type agreements are not comprehensive or full-scope safeguards agreements. They are concluded in accordance with Article III.A.5 of the Agency's Statute and provide for the application of safeguards to specific facilities or other relevant items. In the case of the draft before you, it is an "umbrella agreement", which provides for any facility notified by India to the Agency in the future to become subject to safeguards. The draft also envisages the possibility of applying current Agency safeguards in India under this new agreement by suspending, subject to agreement by the relevant parties, the application of safeguards under existing agreements. The "umbrella" nature of this agreement provides a more efficient mechanism for ensuring that safeguards requirements can be met. It satisfies India's needs while maintaining all the Agency's legal requirements. Such an "umbrella" approach could also be used for the conclusion of other 66-type safeguards agreements. As you can see from India's Plan, which has been circulated for the information of all IAEA Member States, a total of 14 reactors are envisaged to come under Agency safeguards by 2014. I should note that the Agency already applies safeguards to six of these 14 reactors under existing 66-type agreements with India. We expect to start implementing the agreement at new facilities in 2009. Facilities will be notified by India to the Agency in stages and the Secretariat will keep you informed when facilities are submitted for safeguards.

As with other safeguards agreements between the Agency and Member States, the agreement is of indefinite duration. There are no conditions for the discontinuation of safeguards other than those provided by the safeguards agreement itself. The termination provisions contained in the agreement are the same as for other 66-type agreements. Naturally — as with all safeguards agreements — this agreement is subject to the general

rules of international law. Therefore, the agreement should be read as an integral whole. The preamble provides for contextual background and safeguards are implemented in accordance with the terms of the agreement.

Finally, I should note that India and the IAEA have already begun discussions on an additional protocol to the draft safeguards agreement.

Technical Cooperation Fund Targets

I welcome the fact that agreement has been reached on targets for the Technical Cooperation Fund for the years 2009–2011. This will enable us to press ahead with the finalization of the Technical Cooperation Programme for that cycle, which we will present to Member States in November. I should stress that in future the target for the TCF should be based on a priori criteria agreed in advance in order to avoid the contentious and protracted negotiations with which we have become all too familiar.

AIPS

I am also pleased that Member States have reached agreement on funding the first phase of an Agency-wide Information System for Programme Support (AIPS). This will be of benefit to all Member States in all areas of Agency activity in terms of improving efficiency, as it will bring greater transparency and improved internal control to our financial and procurement operations. It will also enable us to make best efforts to introduce International Public Sector Accounting Standards (IPSAS) in 2010, in line with the Board's decision of June last year.

**INTERVENTION BY THE DIRECTOR GENERAL
IN THE BOARD OF GOVERNORS ON AGENDA ITEM 1
("Nuclear verification: the conclusion of safeguards agreements and of
additional protocols")
Application of Safeguards in India**

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INTERNATIONAL ATOMIC ENERGY AGENCY

Board Intervention by the Director General: 1 August 2008

Application of Safeguards in India

Mr. Chairman

I listened carefully to the discussion and I would like to share with you some reflections — as Director General, but also as a lawyer, and as a person who has been concerned throughout most of his professional life with establishing a world free from nuclear weapons.

Let me start with my responsibility as Director General.

Under the Statute, any State has the right, and the Agency is authorized, to conclude so-called INFCIRC/66 safeguards agreements — the original safeguards system established by the Agency. The NPT came later and it requires States party to make a commitment not to develop nuclear weapons. Agreements of the 66-type are not comprehensive safeguards agreements and are not a commitment by the country to become a non-nuclear-weapon State; they reflect a State's right under the Statute to submit specific facilities, material and equipment to Agency safeguards.

Some Member States have noted that in the preamble India mentions the importance of an uninterrupted fuel supply and states it might have to take corrective measures in order to ensure it. This is no different from most other 66-type safeguards agreements. In fact, 66-type agreements have naturally been the result of supply agreements; this has been the history over the last 50 years. They come as a result of a bilateral or multilateral agreement between the supplier, the recipient and the Agency. As part of the agreement, the recipient country accepts the application of safeguards to a particular facility and also expects an uninterrupted supply of fuel.

The question was raised whether the agreement is of indefinite duration. Some used the term 'in perpetuity'. This is not a term we use in Agency agreements. We use 'indefinite duration' because under international law there are always conditions under which an agreement might be terminated.

The law of treaties contains the principle of change of circumstances, *rebus sic stantibus*. Lawyers — and I'm talking now as a lawyer — don't use 'in perpetuity', but rather 'indefinite duration'. Even with NPT safeguards agreements the agreement continues as long as the country is party to the NPT.

With the Indian agreement, the conditions for termination are provided for in the clauses that deal with that subject. These are the specific clauses which override any general clauses in the agreement. The principle is that *lex specialis* overrides *lex generalis*; and the *lex specialis* on termination is clear in the agreement.

The agreement will be implemented in an effective way in accordance with its objective. Naturally, material that comes under safeguards could not be used for military purposes. There is a separation plan: the agreement is neutral on the issue of India's weapons programme but will safeguard the civilian programme. So we will make sure that its civilian programme is used exclusively for peaceful purposes.

Some suggested that the agreement is an empty shell. It is not. In the interpretation of an agreement, the underlying principle is that of good faith. India is not coming here, I assume, to provide us with an empty shell. It is coming here as a result of a bilateral agreement with the USA which led to a separation plan committing India to bring eight additional facilities under Agency safeguards by 2014. We thought, rightly I believe, that it was best to have an "umbrella agreement" and then, as facilities come under safeguards, they will be added to the agreement. The alternative would have been to come to the Board with a new agreement every six months, which obviously would not have been the most efficient way. We expect the agreement to be operational as early as 2009.

There has been mention of the integrity of the NPT and disarmament, and obviously we all share this objective. However, we have to see how best we can move in that direction. I have been saying for some years that if we want a universal non-proliferation regime — a world free from nuclear weapons — we have to bring everybody on board. And we cannot achieve that whilst one fifth of the world's population is outside the regime. To me that is common sense. If we need to move forward, we have to continue to bring India, to bring Pakistan, to bring Israel closer to the regime. India is not coming today as a non-nuclear-weapon State, but it is taking a step which is — in my view — in the right direction. It is putting additional civilian facilities under safeguards, and is harmonizing its laws to be in line with existing nuclear suppliers' guidelines to ensure that nuclear material will not fall into the wrong hands, namely extremist groups.

We need to reflect on how best to move forward to achieve a world free from nuclear weapons; this, in my view, has to be an incremental process. I see the agreement with India today as a step in that direction, and I would hope that it will contribute to a new environment for arms control and non-proliferation. I would hope that it will help lead to a universal moratorium on testing — to be followed by bringing the CTBT into force — and that it will also lead to a moratorium on the production of nuclear material for weapon purposes, until we have the so called "cut-off treaty" in place.

When we talk about non-proliferation, and the integrity of the regime, we need to look at the big picture. We need to talk about the need to move towards nuclear disarmament, the need to see how we can deal with the fuel cycle, the need to see how we can strengthen the Agency's verification authority, and we need to revisit the compliance mechanisms. There's a lot we need to do.

Clearly, we are not moving forward on these fronts with the necessary speed. But any regime needs to evolve if it is to continue to be effective. So the agreement today should be seen in that light. The best is always the enemy of the good. Yes, we all want the NPT to be universal by tomorrow; we want to see nuclear disarmament tomorrow. But we know that's not going to happen. So let us at least commit to working together — with a road map how to move forward. We need to achieve what forty years ago we committed to in the NPT: a world free from nuclear weapons.

So — this is my personal view — one can either work on the basis of division as we have done for many years, or work on the basis of cooperation. We have learned through experience that cooperation, and not isolation, is the way to move forward and, as I mentioned, I would like to see the agreement today result in creating a new

environment, reinvigorating the nuclear non-proliferation and arms control regime. I should emphasize that this agreement is also an agreement for development. It would help to ensure that the 300 million people in India who live on under one dollar a day, the 650 million who still live under two dollars a day, have access to energy and to electricity, which is the engine for development. If you want to talk about development and security, if you want to talk about climate change, then it is important that India should have access to state-of-the-art nuclear technology. It is good for India, and for the world, to make sure that India has the highest level of technology available for its development needs. And I am talking now as a person who is concerned about non-proliferation, who is concerned about development, and who understands the linkage between development, nuclear non-proliferation and disarmament.

To conclude. As Director General and as a lawyer, I consider that that the agreement is solid, in full conformity with our rules and standards; it makes no exception from the basic rules in terms of duration, in terms of conditions. And — as a person concerned with nuclear disarmament and non-proliferation — I believe this is a step in the right direction.