

International Atomic Energy Agency (IAEA) Request from the Islamic Republic of Iran to Provide Clarifications and Complimentary Access on Two Locations:

Legal Aspects

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Abstract

The International Atomic Energy Agency's (IAEA) new quarterly report requests access to and clarification on two locations in Iran. Such access has been requested by the IAEA, based on the fake information and documents claimed to be acquired through espionage operation by Israel. The Islamic Republic of Iran considers these allegations as unprincipled and illegitimate precedence and seeks to prevent its creation. The Islamic Republic of Iran has announced that such requests shall be based on clear legal reasons and within the IAEA verification system framework. Iran believes that the Member States should not allow such undesirable precedence in the process of the IAEA monitoring under political pressures.

Keywords: Clarification, Complimentary Access, Verification, Comprehensive Safeguards Agreement, Additional Protocol, Reports, Declarations, Open Source, Third Party

???????Introduction

————— **NETWORK** —————

As reported by the IAEA's Director-General, the most robust verification system is presently being implemented over Iran's nuclear program, compared to any other part of the world. This is a clear example of the contradictions and injustices of today's world in applying the Comprehensive Safeguards Agreement (CSA) of the Nuclear Non-Proliferation Treaty (NPT) and the Additional Protocol^[1] (AP) thereto to a Member State.

However, following the Joint Comprehensive Plan of Action (JCPOA), approximately a total of 20 percent^[2] of the total Agency's inspections worldwide have been carried out in Iran, with an average of six inspectors per day performing verification tasks in Iran. Eighteen quarterly reports from the IAEA's Director General over the past four years have also indicated the constructive and extensive cooperation between the Islamic Republic of Iran and the Agency. Provision of access to IAEA inspectors is a sign of cooperation and shows the full adherence of the Islamic Republic of Iran to its commitments under the JCPOA, CSA, and the AP. However, according to the claims made by Iran's archenemy (Israel), there are always accusations against Iran's entirely peaceful nuclear program. The Israeli regime and the United States' put tremendous pressure on the IAEA to reopen the closed past issues^[3] on the Iranian nuclear program by bringing up unsubstantiated information or allegations. This entails the danger of exerting political pressure on this international body to advance illegitimate purposes. However, the IAEA should not be used as an object to advance the vicious policies of some governments, and regimes. Ignoring these issues will undermine the impartiality, professionalism, and independence of the IAEA.

Representatives of various countries, despite the great damage inflicted on the JCPOA, especially after the United States' unilateral withdrawal contrary to international rules, still attach great importance to this international achievement, as they have always emphasized and supported it in various international meetings, including during the IAEA Board of Governors (BOG). At the latest meeting of the BOG, a majority of States, with the exception of a few, such as the United States, Iran's staunch enemy (Israel), and some Arab countries, reaffirmed the importance of this deal and expressed their support for it.

Legal Considerations Governing the IAEA's Request for Information and Complimentary Access

According to Article 59 of the CSA^[4], Iran is required to provide nuclear material accountancy reports^[5] as well as special reports to the Agency. In addition, in accordance with Articles 2 and 3 of the AP, the information and their updates shall be provided to the Agency in the form of a declaration.

In case of questions or ambiguity for the Agency regarding the submitted information, after the State provides the Agency with the information and declarations in accordance with the aforementioned Articles, and in so far as relevant for the purpose of safeguards, the Agency would based on Article 69 of the CSA and/or Article 2(c) of the AP, raise the issue with the Member State^{[6],[7]}. In special circumstances, the IAEA may also ask questions about any location in accordance with Article 5(c) of the AP or request access, where under certain conditions the Member State and the Agency shall have interactive cooperation. It is worth mentioning that according to Article 4(c) of the AP, any request for complimentary access "shall specify the reasons for access and activities to be carried out" and in accordance with Article 4(d) of the AP, "in the case of a question or inconsistency, the Agency shall provide the State the opportunity to clarify and facilitate the resolution of the question or inconsistency".

The opportunity mentioned in this article is not limited only to time-related issues; rather it encompasses the legality, authenticity, consistency, and other related aspects of the issue which in this case has not yet been provided to Iran. Therefore, and for the above reasons, the Agency's questions should be regarded in a legitimate context based on the framework of its Statute, the CSA, and the AP, while answering the Agency's questions and providing any access would be a function of legal considerations.

The Agency's recent request does not comply with Article 69 of the CSA and Article 4(d) of the AP, as Iran has not submitted a report to the Agency in accordance with Article 69 of the CSA and the AP based on which the Agency seeks to ask Iran for clarification or amplification.

Regarding the Agency's requests from a State based on information provided by third parties, the Agency should fully respect its obligation under its Statute, inter alia, to:

"Conduct its activities in accordance with the purposes and principles of the United Nations to promote peace and international co-operation ..." (Article III.B.1)^[8];

“In carrying out its functions, the Agency shall not make assistance to members subject to any political, economic, military, or other conditions incompatible with the provisions of this Statute” (Article III.C)[9];

“... the activities of the Agency shall be carried out with due observance of the sovereign rights of States” (Article III.D)[10].

The Agency handling of information collected or provided by third parties in a manner contradictory with sovereign rights of States, as well as the purposes and principles of Charter of the United Nations for political exploitation against the target countries, is inconsistent with the Agency Statute.

In general, the manner in which the information is collected or handled should not provide grounds for the abuse of certain third parties, without the prediction of deterrent provisions in this regard. Moreover, this can take the purpose of inspections out of their ordinary manner and by concentrating the basis of the Agency’s verification of information provided by the third party, endangers the security of the country.

In this line, the Russian Federation representative in his statement at the IAEA Safeguards Symposium[11] asserted that:

“...It (IAEA) should not become an instrument for political pressure against certain countries or a means for rewarding their political loyalty...”

...Member States according to this approach[12] should simply trust the Secretariat’s choice of information....

...Moreover, the intelligence services of some States may be tempted to use the IAEA as a tool to verify the information they receive via their operative channels....

...We stress that the right to use all available safeguards relevant information should not be perceived as a blank check that the Member States have given to the Secretariat in the area of information handling.....”[13].

Some other countries have issued warnings on various occasions regarding the use of open-source information, for example:

India: ... it sounded a warning about the potential for abuse in using intelligence information from outside sources[14].

Cuba: ...his country continued to believe that recourse to data from intelligence sources should be explicitly excluded[15].

Brazil: ... recourse to data from intelligence sources should be explicitly excluded[16].



A few days after the Israeli claims, the Agency's former Director-General in its statement^[17] in October 2018 said, "... it does not take any information at face value ...all information obtained, including from third parties, is subject to rigorous review and assessed together with other available information to arrive at an independent assessment based on the Agency's own expertise".

It should not be overlooked that this type of information can be invalidated, manipulated, or mischievous, or designed with an aim to create baseless suspicion and misconception against a country.

Conclusion

Given the Fatwa issued by the Supreme Leader of the Islamic Republic of Iran banning the production, reproduction, accumulation, and use of weapons of mass destruction, together with the high unprecedented level of transparency represented in the IAEA robust verification mechanism, the Islamic Republic of Iran has nothing to hide and essentially does not need nuclear weapons for its own strategic reasons.

Despite the Islamic Republic of Iran's history of positive engagement with the IAEA and the emphasis of all eighteen IAEA quarterly reports on Iran's peaceful nuclear activities, some are unfortunately shifting Iran's dossier from the technical-legal to a political-security phase. Undoubtedly, requests beyond the obligations specified in the CSA and the AP will damage Iran's bilateral cooperation with the IAEA. The Islamic Republic of Iran believes that putting pressure outside the framework of obligations, commitments of countries and beyond the IAEA Statutory authority, the CSA and the AP will strike the foundation of countries' agreement with the IAEA. In any case, the Islamic Republic of Iran will never succumb to such pressures and calls on other countries to make their efforts in the direction of independence and to strengthen the IAEA in order to achieve the non-proliferation objectives of nuclear weapons in a non-discriminatory manner.

International organizations, especially the IAEA, in addition to their professionalism, independence, and impartiality, as well as considerations to the international law and practices, must be careful not to deviate from the path and railways set and desired by the Member States through factors such as political pressures, funding methods, and so on.

In the case of any request for complimentary access based on Article 5(c), the Agency should merely focus on resolving the question or inconsistency relating to the correctness and completeness of the provided information under the AP, without any prejudgment or conclusions, and should refrain from linking this kind of accesses directly to the absence of undeclared nuclear material or activities.

Given the prevailing circumstances, the possibility of citing forged and alleged documents instead of legal considerations cannot be the basis for access. Needless to say that any request for access should have legal ground. It is obvious that in the absence of such a legal basis, the act of the Member State should not be labeled as "denial".

To conclude, the Islamic Republic of Iran recommends that the Agency shall not rely on and validate the information obtained through espionage operatives or claim to be obtained through unreliable sources. In fact, any request for clarification or complementary access by the Agency on the basis of alleged and forged documents is inconsistent with the Agency's statute and its verification system and therefore does not create any obligation for the Islamic Republic of Iran to comply with such requests. The arguments of the Islamic Republic of Iran are detailed in the speeches given by the Permanent Representative of Iran to the IAEA, as well as the published explanatory notes [18]. Such unjustified citations should not and cannot be a justification and legal basis for requesting access to nuclear sites or other locations, or as a means of putting pressure on countries and accusing them. The IAEA and its members must confront and prevent the creation of such unprincipled and illegitimate precedence which undermines the national sovereignty of States.

[1] Model Protocol Additional to the Agreement(s) between State(s) and the IAEA for the Application of Safeguards, INFCIRC/540 (Corrected).

[2] IAEA Safeguards Implementation Report (GOV/2020/9).

[3] On 2 December 2015, during the JCPOA implementation, The IAEA Director-General reported to the Board of Governors in the document entitled “Final Assessment on Past and Present Outstanding Issues regarding Iran’s Nuclear Programme”, that “The Agency has found no credible indications of the diversion of nuclear material in connection with the possible military dimensions to Iran’s nuclear program”, (GOV/2015/68).

[4] The Text of the Agreement between Iran and the Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, INFCIRC/214.

[5] Such as ICR, PIL, and MBR.

[6] The Work of the Advisory Committee on Safeguards and Verification within the Framework of the IAEA Statute, Report of the Advisory Committee, GOV/2007/27.

[7] The Work of the Advisory Committee on Safeguards and Verification within the Framework of the IAEA Statute, Report of the Advisory Committee, GOV/2007/27, para.22.

[8] The IAEA Statute.

[9] Ibid.

[10] Ibid.

[11] Symposium on International Safeguards: Linking Strategy, Implementation, and People, Vienna, 20-24 October 2014.

[12] Points out to “data from the open-source or third-party”.

[\[13\]](#) Statement by Russian Federation Ambassador, Mr. Grigory Berdennikov, at the IAEA Symposium on International Safeguards in 2014.

[\[14\]](#) Paragraph 57 of GOV/OR.840.

[\[15\]](#) Paragraphs 45-57 of GOV/OR.870.

[\[16\]](#) Paragraphs 18-35 of GOV/OR.870.

[\[17\]](#) Statement by IAEA Director General Yukiya Amano, 2 October 2018.

[\[18\]](#) Communication dated 4 March 2020 Received from the Permanent Mission of the Islamic Republic of Iran to the Agency, INFCIRC/993, 5 March 2020.

