



P R E H L A D

INTERNATIONAL ATOMIC ENERGY AGENCY AND THE IRAN CRISIS

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ABSTRAKT

Úloha Medzinárodnej agentúry pre atómovú energiu (MAAE) počas jadrovej krízy v Iráne sa ukázala byť dostatočne závažná. Napriek skutočnosti, že kompetencie MAAE nie vždy odrážajú jej požiadavky, MAAE bola dôležitým článkom v jej pokusoch o riešenie krízy v Iráne. Právne základy však neboli vždy splnené Iránom. Cieľom tejto práce je analyzovať vzťah medzi MAAE a Iránom a ako sa tento vzťah vyvíjal počas jadrovej krízy v Iráne.

Kľúčové slová: Medzinárodná agentúra pre atómovú energiu, Zmluva o nešírení jadrových zbraní, jadrové zbrane, záruky, dohoda o komplexných bezpečnostných zárukách, Irán

ABSTRACT

The role of the International Atomic Energy Agency (IAEA) in the nuclear crisis of Iran has proven to be rather significant. Despite the fact that the competencies of the IAEA do not reflect its requirements at times, the IAEA has been a keen agent in its attempts to resolve the Iran crisis. However, legal grounds have not always been met by Iran. The aim of this paper is to analyze the relationship between IAEA and Iran, and how it has evolved throughout the nuclear crisis in Iran.

Key words: International Atomic Energy Agency, Nuclear Non-Proliferation Treaty, nuclear weapons, safeguards, Comprehensive Safeguards Agreement, Iran

JEL: F51, F53

INTRODUCTION

The threat of nuclear weapons is a final threat presented in our world today. The international body, which has been created to regulate the possession of such weapons, among its other competences, falls short of its goals in specific cases, such as the case of the Iranian nuclear crisis. Looking at the background of the creation of the IAEA, this occurred due to a number of reasons. The need to control the emerging, for

lack of a better term, market with nuclear weaponry was an alarming situation, which the post-World War II world stumbled upon.

D. D. Eisenhower portrayed the conditions in his *Atoms for Peace* address in 1953 to the General Assembly of the United Nations, where he addressed the following concerns:” Today, the United States’ stockpile of atomic weapons, which, of course, increases daily, exceeds by many times the total equivalent of the total of all bombs and all shells that came from every plane and every gun in every theatre of war in all the years of World War II.“¹

In the time period of approximately ten years, the nuclear weapons have increased to such a number, that the need for overseeing their existence, use and trade was more than necessary.

In the address, Eisenhower also proposed the following: “The Governments principally involved, to the extent permitted by elementary prudence, should begin now and continue to make joint contributions from their stockpiles of normal uranium and fissionable materials to an International Atomic Energy Agency. We would expect that such an agency would be set up under the aegis of the United Nations.“²

The address is considered a crucial preparatory moment for building the IAEA. Over the years, the set principles and rules of the agency have always aimed to prevent non-peaceful use of nuclear energy. The following text will depict the concrete situation, which has arisen in Iran, or rather between Iran and the Agency, citing the main responsibilities and competences of the Agency on one hand, alongside the responsibilities and competences of Iran, as one of the members of the IAEA since 1958.

The present paper was inspired by C. A. Ford’s work on legal history of the relationship between the Agency and Iran. The central focus is on the legal competences of both sides, analyzing their rights and obligations, which stem from their mutual affiliation.

1 The policies and competences of the International Atomic Energy Agency (IAEA)

In the 1950s, one of the main priorities of the United Nations (UN) was to control the instruments of war. These proved to be more diverse than any other time before, due to the materialization of nuclear weapons. This premise was not the lone factor, which stood behind UN’s issues with the control of arms. Although it was the key factor, it was aided by two other aspects of the post-World War II world. These include, on one hand, the forming of the existence of two super-powers with vastly conflicting ideologies. On the other hand, it was the emergence of a number of new states, whose demands “produced a degree of instability in international relations”³.

The IAEA was formed on the grounds of the turbulent political situation. After the end of the war, one of the main issues was nuclear technology and power and how to assure and maintain that this power would be used in a peaceful way. The need for

¹ EISENHOWER, D. D. (1953): *Atoms for Peace Speech*. P. 14.

² EISENHOWER, D. D. (1953): *Atoms for Peace Speech*. P. 65.

³ BENNETT, A. L. (1995): *International Organizations-Principles and Issues*. 6th edition. P. 215.

an international body, which should have the key interest in regulation of such nuclear power, as well as the promotion of its peaceful utilization, was inevitably present. This was the background, in which the formation of the International Atomic Energy Agency (IAEA) took place.

The ideas following Eisenhower's proposal to create such an agency helped to shape the IAEA with the main goals of guaranteeing nuclear security, safety and technology transfer in the IAEA statute of 1956, supported by 81 nations.⁴

The statute listed the main competencies and functions of the IAEA, which were crucial to its continuation as a legal entity. Among the core competencies were mostly functions related to research and development of nuclear power as well as health protection.⁵ The statute ensured that the Agency's central interest would be the peaceful use of nuclear power. However, for this objective to be carried out, the IAEA would also need to possess the power to prevent and sanction the utilization of nuclear energy for military purposes, or other purposes, which were not compliant with peaceful exercise, mostly in the area of research and development.

These competences include a number of safeguards, which may be applied in specific situations. These include steps to be taken in the event of non-compliance of a state or states with the request of the agency, as well as the creation of posts of inspectors, whose main agenda is comprised of „examining all operations conducted by the Agency itself to determine whether the Agency is complying with the health and safety measures prescribed by it for application to projects subject to its approval, supervision or control, and whether the Agency is taking adequate measures to prevent the source and special fissionable materials in its custody or used or produced in its own operations from being used in furtherance of any military purpose.“⁶

When discussing the competences of the agency, a special focus should be applied to the relationship of the agency and its members. The provisions of the Statute state, that „the Agency shall enjoy in the territory of each member such legal capacity and such privileges and immunities as are necessary for the exercise of its functions.“⁷ Also, „the legal capacity, privileges, and immunities referred to in this article shall be defined in a separate agreement or agreements between the Agency and the members.“⁸

The legal capacity of the agency is therefore defined via its relationship with its members, stating that all the members of the IAEA should comply with the needs and requirements of the agency to the same or similar extent. For the purpose of this paper, it is necessary to state, that Iran has been a member of the agency since 1958.

⁴ *Ibid.*

⁵ *International Atomic Energy Agency Statute. Article 2I:* The Agency shall seek to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world. It shall ensure, so far as it is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose.

⁶ *Ibid, Article 12, part 8:* The Agency shall, as necessary, establish a staff of inspectors... The Agency shall take remedial action forthwith to correct any non-compliance or failure to take adequate measures.

⁷ *Ibid, Article 15 A:* The Agency shall enjoy in the territory of each member such legal capacity and such privileges and immunities as are necessary for the exercise of its functions.

⁸ *Ibid, Article 15 C:* The legal capacity, privileges, and immunities referred to in this article... the members.

The policies of IAEA have aimed to ensure peaceful use of nuclear power and prevention of its military utilization. When mentioning the policy-making of the Agency, the Nuclear Non-Proliferation Treaty (NPT) should not be overlooked.

This treaty is a significant agreement, when we consider the goals, aims and rights and obligations of the IAEA. The NPT has three main aims: (i) civilian use of nuclear energy, (ii) non-proliferation of nuclear weapons and (iii) disarmament of nuclear weapons.⁹ Again, for the purpose of this text, it is suitable to mention, that Iran has been a party to the Treaty, but the status of its nuclear program continues to diverge from the provisions of the NPT.

Now that the role of the Agency has been established, we can proceed to identify the issues, which arose between the Agency and Iran. However, before making any far-reaching conclusions, historical background of Iran's nuclear development analysis should be reviewed in order to achieve a complete understanding of the relations between IAEA and Iran today.

2 Iran's Nuclear History

It has only been a little over a decade since a secret existence of Iran's nuclear program was revealed to the rest of the world¹⁰. Ever since the disclosure of the program, the IAEA has been attempting to essentially pinpoint the magnitude of Iran's non-compliance with its obligations. We will look at the legal background of the relationship between Iran and IAEA for the past ten years in order to establish their rights and obligations under international law.

When examining the situation of Iran, one thing which is necessary to initially address is the Comprehensive Safeguards Agreement (CSA). Under the CSA, Iran had a number of obligations towards the Agency, which were not met according to expectations of the IAEA. One of the concrete incidents, when Iran claimed the IAEA had no jurisdiction, was Iran's denying of presence of low-enriched uranium and high-enriched uranium in the country, which was later proved to be false. In fact, it was proved, that the presence should have been reported to the IAEA, but Iran had failed to do so, thus violating the CSA.¹¹

It was also found on a number of occasions that "Iran had failed to meet its obligations under the CSA with regard to reporting the possession, processing, and use of nuclear material, and with regard to declaring facilities where such material was processed and stored."¹² The CSA specific to Iran necessitates the availability of information such as the existence of nuclear material, which is subject to safeguards as well as the information on facilities, which are required to preserve such material.¹³ The nuclear material, which has been imported to Iran, must be declared at the time of arrival or earlier. It is required to place the material under safeguards and the Agency must be provided with the latest information on the matter. If the material is used

⁹ JOYNER, D. H. (2011): *Interpreting the Nuclear Non-Proliferation Treaty*. P. 33.

¹⁰ FORD, C. A. (2012): *Iran, Nonproliferation, and the IAEA: A Legal History*. P. 1.

¹¹ *Ibid.* P. 2.

¹² *Ibid.*

¹³ *Ibid.* P. 3.

outside of the stated facilities, this information has to be provided to the IAEA and changes in the inventory of such material must also be provided.¹⁴

Once the Agency has established that Iran did in fact violate the CSA, under the IAEA Statute the IAEA was obliged to report the occurrence to the United Nations, specifically to the UN Security Council. Expressly, “(the) inspectors shall report any non-compliance to the Director General who shall thereupon transmit the report to the Board of Governors. The Board shall call upon the recipient State or States to remedy forthwith any non-compliance which it finds to have occurred. The Board shall report the non-compliance to all members and to the Security Council and General Assembly of the United Nations.

In the event of failure of the recipient State or States to take fully corrective action within a reasonable time, the Board may take one or both of the following measures: direct curtailment or suspension of assistance being provided by the Agency or by a member, and call for the return of materials and equipment made available to the recipient member or group of members. The Agency may also, in accordance with article XIX, suspend any non-complying member from the exercise of the privileges and rights of membership.”¹⁵

However, the referral has been put on hold in order to protect Iran from the sanctions, which would have been imposed by the UN Security Council.¹⁶ This placed the IAEA in breach of its own statute while attempting to guard and protect Iran.

3 The CSA and the SA

Terms of the Comprehensive Safeguard Agreement between Iran and the Agency are relatively general, with the specifics provided by a Subsidiary Arrangement (SA).¹⁷ According to Article 39 of the CSA between Iran and IAEA: “The Government of Iran and the Agency shall make Subsidiary Arrangements which shall specify in detail, to the extent necessary to permit the Agency to fulfill its responsibilities under this Agreement in an effective and efficient manner, how the procedures laid down in this Agreement are to be applied. The Subsidiary Arrangements may be extended or changed by agreement between the Government of Iran and the Agency without amendment of this Agreement (CSA)”¹⁸

¹⁴ *Comprehensive Safeguards Agreement between IRAN and IAEA. Article 57:* For all inventory changes and physical inventories the records shall show, in respect of each batch of nuclear material: material identification, batch data and source data... material balance area and the receiving material balance area or the recipient, shall be indicated.

¹⁵ *International Atomic Energy Agency Statute. Article 12 C:* The staff of inspectors shall also have the responsibility of obtaining and verifying the accounting... The Agency may also, in accordance with article XIX, suspend any non-complying member from the exercise of the privileges and rights of membership.

¹⁶ FORD, C. A. (2012): *Iran, Nonproliferation, and the IAEA: A Legal History*. P. 3.

¹⁷ *Ibid.* P. 4.

¹⁸ *Comprehensive Safeguards Agreement between IRAN and IAEA. Article 39:* The Government of Iran and the Agency shall make Subsidiary Arrangements which shall specify in detail, to the extent necessary to permit the Agency to fulfil its responsibilities under this Agreement... between the Government of Iran and the Agency without amendment of this Agreement.

The SA agreed on in 1976 stated that Iran is required to provide information on design of a new facility 180 days or earlier before the facility is to receive its first nuclear material. The 1976 SA was later considered inadequate and a 1992 modification was provided by the Agency, which required a country to make design information available at the time of the decision to construct a new facility.¹⁹

However, Iran did not agree with the 1992 modification. This was of no concern to the Agency at the time, due to the fact, as mentioned in the previous text, that Iran was thought not to possess any nuclear material or to have any nuclear program at the time.

The 1992 modification was agreed upon by Iran in 2003.²⁰ This agreement was later revoked in 2007 arguing that only the 1976 version is currently operative, which makes it the only state with a valid CSA, where the SA modification of 1992 has not been implemented. Also, this uncertainty over implementation or non-implementation of the SA modification has made it more challenging for the IAEA to pinpoint a number of alleged safeguards violations which took place around the time of revoking of the 1992 modification.²¹

Iran has attempted to indicate, that an SA is not legally binding in order to remove some of the Agency's allegations. In order to clear this misconception, we will look at the legal status of SAs. As stated by Ford, an SA gets its "legal legitimacy and binding force from the CSA's own ratification, for that document expressly requires the creation of SA, provides a mechanism for their establishment, and obliges parties to follow their provisions.

Whatever might (or might not) be the legal status of something like SA if it was simply "agreed" on its own absent the overarching framework of a CSA, there is nothing inherently problematic about having one binding treaty instrument establish a mechanism for the creation and modification of further detailed arrangements that will also be binding under the framework created by that first instrument."²² Therefore, via the ratification of the CSA in the first place, Iran provided for any future SA to be legally binding for it (Iran) and the 1992 modification of the SA can be applied to Iran as well.

Another issue was the Agency's Additional Protocol (AP), established in the 1990s as a reaction to a number of inadequacies provided by the CSA. Iran committed to comply with the AP in 2003. However, already at the beginning of 2006, Iran abandoned the commitment to comply with the AP and declared that it (Iran) is only bound by the CSA. At this time, due to Iran's non-compliance and IAEA's delayed reporting which breached its own statute, the Security Council (SC) of the UN began to be involved.²³

The UN SC passed the Resolution 1696, which compelled Iran to "suspend all enrichment-related and reprocessing activities, including research and development, and gave it one month to do so or face the possibility of economic and diplomatic

¹⁹ FORD, C. A. (2012): *Iran, Nonproliferation, and the IAEA: A Legal History*. P. 4.

²⁰ KERR, P. (2007): *Security Council Broadens Iran Sanctions*.

²¹ FORD, C. A. (2012): *Iran, Nonproliferation, and the IAEA: A Legal History*. P. 5.

²² *Ibid.* P. 9.

²³ *Ibid.* P. 11.

sanctions to give effect to its decision.”²⁴ Still, Iran refused to fully cooperate with the Agency.

Another resolution was passed by the UN SC, resolution 1737, which requested the following: “Iran should, without further delay, suspend the following proliferation sensitive nuclear activities: all enrichment-related and reprocessing activities, including research and development; and work on all heavy-water related projects, including the construction of a research reactor moderated by heavy water. The halt to those activities would be verified by the International Atomic Energy Agency.”²⁵ This resolution created the main basis of important obligations imposed on Iran empowering the Agency even further. The obligations of the Resolution 1737 have been confirmed by later Resolution 1747 of 2007, Resolution 1803 of 2008 as well as resolution 1929 of 2010.²⁶

Nevertheless, Iran has failed to comply with the above resolutions and has only acknowledged the CSA, where it relies on its (Iran’s) own interpretation of the agreement. When we review the aims and objectives of the IAEA, we can establish that one of its highest priorities is the peaceful use of nuclear material. It appears, that not only has Iran not complied with the IAEA and the resolutions of the UN SC, it has also been using nuclear material for non-peaceful purposes.²⁷

There is also another side to the case. It has been claimed, that “IAEA still possesses only the authority vis-à-vis Iran that was originally given it by Iran’s CSA, and that therefore essentially all of its efforts to investigate Iran’s nuclear program have been *ultra vires*, i. e. illegitimate.”²⁸

On the other hand, it is considerably inaccurate to challenge the fact that the Agency is acting *ultra vires* in order to confirm that there are no undeclared activities in Iran, that Iran has informed it (IAEA) correctly on its (Iran’s) nuclear material and to certify that Iran has complied with the requirements imposed by the UN SC concerning non-proliferation.²⁹

²⁴ UNITED NATIONS. (2006): *United Nations Press release on Resolution 1696*.

The Security Council, seriously concerned that the International Atomic Energy Agency (IAEA) was still unable to provide assurances about Iran’s undeclared nuclear material and activities after more than three years, today demanded that Iran suspend all enrichment-related and reprocessing activities, including research and development, and gave it one month to do so or face the possibility of economic and diplomatic sanctions to give effect to its decision.

²⁵ UNITED NATIONS. (2006): *United Nations Press release on Resolution 1737*.

Unanimously adopting resolution 1737 (2006) under Article 41 of the Charter’s Chapter VII, the Council decided that Iran should, without further delay, suspend the following proliferation sensitive nuclear activities: all enrichment-related and reprocessing activities, including research and development; and work on all heavy-water related projects, including the construction of a research reactor moderated by heavy water. The halt to those activities would be verified by the International Atomic Energy Agency (IAEA).

²⁶ FORD, C. A. (2012): *Iran, Nonproliferation, and the IAEA: A Legal History*. P. 13.

²⁷ *Ibid.* P. 15.

²⁸ *Ibid.* P. 17.

²⁹ *Ibid.* P. 19.

CONCLUSION

A number of considerations may be derived from the information stated above. The relationship between Iran and the Agency, which has been developing for a number of decades, has not yet reached a high level of confidence between the two parties. There are more than one dimension to this relationship. First of all, the right of a country to possess nuclear material for peaceful purposes forms one dimension of the relationship between Iran and the IAEA. The second dimension is the right, or obligation of the Agency to investigate the possession of such material, as well as analyze the actual or potential use of the material. The third dimension, which is a key factor in the relationship between the country and the Agency, is the possibility of an ambiguous nature of determining who holds the burden of proof in specific situations. Hence, it is highly demanding to ascertain the situation in Iran for the Agency; it can be argued though that Iran has not complied with the measures imposed by the Agency.

The role of the UN SC in this case could be researched as well, but the reporting obligation of the IAEA is indisputable, and so is Iran's failure to act upon the Agency's demands prior to the involvement of the UN SC. The UN SC could be considered a third party distanced from the mutual relationship of the IAEA and Iran. Although the UN SC is working outside of the relationship between the Agency and Iran, its involvement undoubtedly has a significant effect on the position of the IAEA in its relationship with Iran.

Overall, it is essential for the Agency to take all the legal measures it is provided with by the IAEA Statute in order to identify the violation of safeguards which could have been committed by a country and to prevent non-peaceful utilization of nuclear material. However, for these measures to be carried out, it is necessary for Iran to assist the Agency and allow for particular procedures. The development of the relationship between the IAEA and Iran and its character and depth is therefore crucial for the resolution of the current nuclear situation.

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