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**LEGAL OBLIGATIONS AND SOVEREIGN RIGHTS:  
THE CASE OF IRAN'S NUCLEAR PROGRAMME****L. Kazemi Shariat Panahi**

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**Introduction:** *the nature of obligations varies in terms of compliance and liability. This point can be aptly illustrated in the case of Iran's nuclear programme since Iran opted not to cooperate in presenting guarantees verifying that its nuclear programme would be peaceful. In the case of Iran's nuclear programme, each significant actor has had its own instrument to deal with the problem of verifying the peaceful nature of Iran's nuclear activities.*

**Purpose:** *the paper aims to examine the relationship between legal obligations and state rights while studying the relations and cooperation between legal actors of significance contributing to the case of Iran's nuclear programme. Methods:* *the author employed descriptive and qualitative analyses to study the content of legal documents and discover the correlations and dependencies. Results:* *the research has established that the assessments and resolutions on the case of Iran's nuclear programme have been based on probability and assumptions, not on concrete evidence. The legal actors have failed to achieve a full balance between the rights and obligations. Conclusion:* *there is a need for new multilateral agreements to introduce legal obligations and commitments compatible with present circumstances and predictably flexible for monitoring of the developing situation while preserving Iran's sovereign rights.*

Keywords: international law; legal obligations; sovereign rights; commitment; principles of nuclear law; doctrines of international law; treaty; agreement



## **ЮРИДИЧЕСКИЕ ОБЯЗАННОСТИ И СУВЕРЕННЫЕ ПРАВА: ПРИМЕР ЯДЕРНОЙ ПРОГРАММЫ ИРАНА**

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**Введение:** характер обязательств зачастую различен в аспектах соблюдения и ответственности, что может быть проиллюстрировано ситуацией с ядерной программой Ирана. Иран не предоставляет гарантий, что его ядерная программа носит мирный характер. В этом случае у каждой заинтересованной стороны есть собственный инструмент для проверки мирного характера ядерной деятельности Ирана. **Цель:** установление взаимосвязи между юридическими обязательствами и правами государства через изучение взаимодействия значимых действующих лиц, вносящих вклад в разрешение вопросов о ядерной программе Ирана. **Методы:** описательный и качественный анализ содержания правовых актов. **Результаты:** установлено, что оценки и решения по делу об иранской ядерной программе основываются на вероятности и предположениях, а не на конкретных доказательствах. Задействованным субъектам не удалось добиться полного баланса между правами и обязанностями Ирана. **Вывод:** существует необходимость в новых многосторонних соглашениях для введения правовых и политических обязательств, совместимых с нынешними обстоятельствами и предсказуемо гибких для мониторинга меняющейся ситуации при сохранении суверенных прав Ирана.

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Ключевые слова: международное право; юридическое обязательство; суверенное право; политическое обязательство; принципы международного ядерного права; доктрины международного права; договор; соглашение

### **Introduction**

Legal obligations with regard to nuclear energy and weapons can be classified into two types: those associated with general principles of nuclear law and those related to fundamental doctrines of international law. The nuclear dispute can be seen from different angles. It is a matter of focus rather than a real division between general and specific, technical and legal questions.

The nuclear dispute is complicated and controvertible from the international law perspective, particularly when compliance with obligations gains increasing importance.

It has become a point of contention between Iran, the International Atomic Energy Agency (IAEA), the UN Security Council (UNSC), and the E3/EU+3 (China, France, Germany, Russia, the United Kingdom and the United States) to

figure out how executive guarantees ought to be provided. Three legally main actors of significance have a key role in determining and imposing obligations on Iran's nuclear activities: the IAEA, the UNSC, and the E3/EU+3 States.

Apart from the IAEA Safeguards and the UN Security Council's Resolutions, the Joint Comprehensive Plan of Action (JCPOA) as a regional nuclear deal has ostensibly been meant to resolve the global dispute, mitigate the regional contention, and provide the legal framework for nuclear security.

This article aims to expose the development of legal relations between different actors (IAEA, UN Security Council, and E3/EU+3) in chronological order, to analyze their legal nature and substance, and to discover their influence on Iran's rights to nuclear power and its obligations in the nuclear field.

### **Initial Development of Iran's Nuclear Programme**

Under general nuclear law, there are a substantial number of regulatory principles of peaceful use of nuclear energy. The first and most important instrument respecting nuclear law is the Nuclear Non-Proliferation Treaty (NPT) of 1968<sup>1</sup>.

The NPT is a multilateral treaty restricting the spread and mass production of nuclear weapons through principles of non-proliferation, disarmament, and peaceful use of nuclear energy, leading to pivotal negotiations between the five nuclear-weapon states and non-nuclear weapon states. Since it entered into force in 1970, the NPT has strived to create legal barriers against the proliferation and armament of nuclear weapons through a five-year series of Review Conferences. In the sphere of nuclear weaponization, the NPT is still a unique treaty imposing obligations on the nuclear weapon states to take nuclear disarmament measures. The NPT's uniqueness, however, is not only in its objectives but also in its content and terms.

By virtue of Article I, the NNWSs are not allowed to get any assistance from the NWSs so that the former possess and proliferate nuclear weapons. Nevertheless, Article II urges the nuclear weapon states to prevent the non-nuclear weapon states from the acquisition of nuclear weapons, and Article III, in turn, places all nuclear facilities under 'the Agency's safeguards system'<sup>2</sup>. According to Article III of the NPT, the NNWSs must be subject to its safeguards concluded by the IAEA. In the event of non-compliance with the NPT safeguards, the IAEA calls for a special resolution through the UN Security Council and General Assembly. The IAEA Board of Governors (BOG) seeks a specific remedy such as suspension of the right to peaceful nuclear development and cessation of cooperation. In case of blatant violations of the commitments, the UN Security Council may apply sanctions, embargos, and other mechanisms in relation to the non-compliant party. Therefore, negotiations can be conducted under the NPT so that non-nuclear weapon states never have the opportunity to acquire nuclear weapons, nuclear weapon states make efforts for disarmament, and every state party, whether nuclear or non-nuclear,

can have the accessibility to nuclear technology for peaceful uses provided that the NPT safeguards are observed. The NNWSs undertake to remain in compliance with the IAEA safeguards on all nuclear materials within their territories or under their possession.

The first three articles of the NPT are devoted to nonproliferation of nuclear weapons. Article IV of the NPT recognizes 'the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination'<sup>3</sup>. As Article VI urges the NWSs for the disarmament, it allows each of the state parties to 'pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control'<sup>4</sup>. Through Article VII, moreover, the NPT establishes 'the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories'<sup>5</sup>.

The NPT is concluded on the basis of alternative status of states. In contrast to the principle of sovereign equality, the NPT is based on difference between Nuclear Weapon States (NWS) and Non-Nuclear Weapon States (NNWS) and enroots this difference. Article IX of the NPT defines a nuclear weapon state as 'one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967'<sup>6</sup> and regards all other states as non-nuclear weapon states. The five nuclear weapon states are China, France, Russia, the United Kingdom, and the United States of America. State parties to the NPT, literally accede to such differentiation in nuclear weapon possession and accept it. The NNWSs withhold their rights of nuclear weapon possession.

The NPT establishes a safeguard system under the responsibility of the IAEA, which plays a central role under the aegis of the NPT, in areas relating to technology transfer for peaceful purposes. The NNWSs require the IAEA's verification implying their compliance with the Agency's obligations and commitments they must fulfill under the NPT safeguards which 'shall be applied on all source or spe-

<sup>1</sup> *Treaty on the Non-Proliferation of Nuclear Weapons* (NPT). International Atomic Energy Agency, INFCIRC/140.

<sup>2</sup> Ibid. Art. III.

<sup>3</sup> Ibid. Art. IV.

<sup>4</sup> Ibid. Art. VI.

<sup>5</sup> Ibid. Art. VII.

<sup>6</sup> Ibid. Art. IX.

cial fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere<sup>1</sup> in order to limit nuclear weapon acquisition for them. Historically, there were only five cases identified by the IAEA where states were in non-compliance with the NPT safeguards which are as follows: Iraq (1991), Romania (1992), North Korea (1993), Libya (2004), and Iran (2006), while under the NPT there is not a single provision to verify the commitments and obligations related to nuclear disarmament and non-proliferation.

In 1958 Iran joined the IAEA. Roughly a decade later, Iran constructed its first nuclear reactor plant, and the United States supplied a series of nuclear material for Iran. However, the international nuclear obligations were only imposed on Iran in the 1970s, after the country joined the NPT through signing it in July 1968 and ratifying it in February 1970<sup>2</sup>. The cooperation of the Iranian state with the IAEA also commenced based on international law. As Iran became a signatory to the NPT, its relationship with the United States went beyond amicable relations and, as a non-nuclear state member, Iran became subject to a series of legal obligations imposed by the NPT.

Iran institutionalized the application of nuclear material and technology through the establishment of the Atomic Energy Organization of Iran (AEOI) in 1974. The former Iranian Government, meanwhile, announced 'plans to generate about 23,000 megawatts of energy over 20 years, including the construction of 23 nuclear power plants and the development of a full nuclear fuel cycle' [5]. However, Iran had founded a 5MWt pool-type light water nuclear plant named the Tehran Research Reactor (TRR) a year before the NPT was signed<sup>3</sup>. As part of Eisenhower's Atom for Peace programme<sup>4</sup>, the United States supplied nuclear materials to Iran for civil uses including 'the production of medical isotopes and 5.58kg of highly enriched uranium (HEU) fuel' [12, p. 84].

In the same 1974, '[t]he idea of the establishment of a nuclear-weapon-free zone in the Middle East was proposed for the very first time by Iran...

This initiative indicates the long-standing commitment of Iran to the realization of a nuclear-weapon-free world, including in particular through the establishment of a nuclear-weapon-free zone in this volatile region'<sup>5</sup>. Nuclear-Weapon-Free Zones (NWFZ) is a regional approach to reinforce world-wide nuclear non-proliferation and disarmament norms and ensure international attention and measures taken toward nuclear peace and security. In pursuant to Article VII of the NPT, General Assembly adopted Resolution 3472 (XXX) B<sup>6</sup> recognizing Nuclear-Weapon-Free Zone as 'any group of States, in the free exercises of their sovereignty, has established by virtue of a treaty or convention whereby:

(a) The statute of total absence of nuclear weapons to which the zone shall be subject, including the procedure for the delimitation of the zone, is defined;

(b) An international system of verification and control is established to guarantee compliance with the obligations deriving from that statute'<sup>7</sup>.

Iran developed its international agreements on nuclear advancement and the nuclear states acknowledged Iran's nuclearization. For example, in 1975, 'the West German company Siemens agreed to construct two 1200-megawatt light water reactors to produce nuclear energy at Bushehr in southern Iran. Additionally, the Massachusetts Institute of Technology reached an agreement with Iran to train Iranian nuclear engineers, and France signed a joint venture agreement with Iran for nuclear fuel production' [13, p. 170].

According to the US National Security Decision Memorandum 324, Iran remained in 'a strong political commitment to pursue the multinational/binational reprocessing plant, to consult closely with [the] US on its prospective reprocessing plans before making any firm decision whether multinational or otherwise' and to 'establish a multinational plant'<sup>8</sup>. Shortly after, Iran was urged by the

<sup>5</sup> *Establishment of a nuclear-weapon-free zone in the region of the Middle East: Report of the Secretary-General*, 16 August 2017, A/72/340 (Part I). P. 10.

<sup>6</sup> United Nations General Assembly, *Resolution 3472 (XXX)*, B A/RES/3472 (XXX).

<sup>7</sup> *Ibid.*

<sup>8</sup> *Foreign Relations of the United States 1969-1976*. Vol. XXVII, Iran; Iraq, 1973-1976. Washington: United States Government Printing Office, 2012. Available at: <https://history.state.gov/historicaldocuments/frus1969-76v27>; *National Security Decision Memorandum 324*. Available at: <https://www.fordlibrarymuseum.gov/library/document/0310/n sdm324.pdf>.

<sup>1</sup> *Treaty on the Non-Proliferation...* Art. III.

<sup>2</sup> See further: <https://treaties.unoda.org/t/npt>.

<sup>3</sup> The Tehran Research Reactor was erected in 1967, then the NPT was concluded in 1968.

<sup>4</sup> Dwight D. Eisenhower, 'Atoms for Peace', speech before the the United Nations General Assembly, New York City, 8 December 1953.

US to take on more obligations and commitments related to proliferation risks. The prevention of such proliferation risks was specified in Article 6<sup>1</sup> devoted to reprocessing and enrichment with emphasis on agreement between the US and Iran. In para. 2 of this article, Iran guaranteed no uranium enrichment, equipment transfer, and jurisdiction pursuit 'unless the parties agree'<sup>2</sup>.

Iran committed itself to more specified obligations and detailed restrictions on the application and implementation of nuclear technology as the country 'agreed to accept safeguards measures beyond the IAEA's requirements' [13, p. 170]. Based on provisions of US-Iranian nuclear cooperation agreement of 1957, Iran had three alternatives to choose for nuclear fuel storage and reprocessing. The most significant and practically restrictive alternative was reprocessing in 'other mutually agreed states'<sup>3</sup>. In Article 5 of the agreement, Iran emphasized to have 'an equal choice of reprocessing'<sup>4</sup> in other state parties including UK and France and expected the US 'to ensure non-discriminatory treatment'<sup>5</sup> but '[the] paragraph promising such treatment was the most difficult to negotiate with US wishing to limit such treatment.'<sup>6</sup> Indeed, 'non-discriminatory treatment would be with regard to approval to meet fuel cycle management needs and where Iran had comparable needs with comparability to be jointly determined'<sup>7</sup>.

In the other words, Iranian state singled out principles such as equal choice and non-discriminatory treatment, whereas the American party set out legal restrictions on Iran's nuclear activities on the pretext of non-proliferation objectives. 'Non-discriminatory treatment on processing provision has raised some concern... with regard to its linking implementation of US agreements for cooperation and the precedent it may set for other suppliers'<sup>8</sup>.

After the Islamic Revolution, in 1979 Iran stopped pursuing its nuclear programme. In the late 1980s, Iran declared its interests to resume the nuclear

programme, seeking for international cooperation and assistance to finish construction of the plant located at Bushehr. To this end, 'Pakistan signed a nuclear cooperation agreement with Iran in 1987... Iran also strengthened its nuclear research ties with the People's Republic of China. The two countries signed a formal nuclear research cooperation agreement in 1990, although cooperation had begun as early as 1985 – after Iran had suffered its first major chemical attacks from Iraq and had started to give its nuclear effort high priority' [4]. 'Iran resumed the nuclear power programme in 1991 with a bilateral agreement with China for the supply of two 300 MW(e) PWR units of Chinese design, similar to the Qinshan power plant. The agreement was confirmed in 1993 (but never realized)<sup>9</sup>. It was a pivotal moment for Iranian nuclear programme as it was experiencing some new legal obstacles.

In the mid-1990s, the United States proposed the Comprehensive Test-Ban Treaty (CTBT) which could be placed as the second most important legal instrument after the NPT in the sphere of nuclear safety and security. The CTBT was aimed to ban all nuclear explosions in all surroundings. Iran pursued a set of active and constructive participations in negotiations over the CTBT, as well. Iran, finally, signed the CTBT in September 1996. Neither USA, which floated the CTBT, nor Iran, which contributed to its negotiations, has ratified it though till present (June 2022). The treaty has not, therefore, been put into effect as China, Egypt, India, Iran, Israel, North Korea, Pakistan, United States have yet to ratify the treaty.

The basic obligations of the CTBT are elaborated in Article 1 which are as follows:

a. 'Each State Party undertakes not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control.

b. Each State Party undertakes, furthermore, to refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion'<sup>10</sup>.

<sup>1</sup> U.S. State Department of Defense, *U.S.-Iran Nuclear Cooperation Agreement*, 31a: State Department cable 125971 to Embassy Tehran, 17 May 1978, Confidential. Art. 6.

<sup>2</sup> Ibid.

<sup>3</sup> U.S. State Department of Defense, *Provisions of US-Iranian Nuclear Agreement*, 31b: State Department cable 226045 to Embassy Canberra, 6 September 1978, Secret/Limdis.

<sup>4</sup> Ibid. Art. 5.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid. Art. 6

<sup>9</sup> IAEA (2002) Iran – Scientific, technical publications in the nuclear field. Available at: [https://www-pub.iaea.org/mtcd/publications/pdf/cnpp2004/cnpp\\_webpage/countryprofiles/Iran/Iran2003.htm](https://www-pub.iaea.org/mtcd/publications/pdf/cnpp2004/cnpp_webpage/countryprofiles/Iran/Iran2003.htm).

<sup>10</sup> *The Comprehensive Nuclear-Test-Ban Treaty (CTBT)*. Art. 1. P. 4.

Under the aegis of Article 5 of the NPT, the CTBT 'avoids hampering the economic and technological development of the States Parties for further development of the application of atomic energy for peaceful purposes'<sup>1</sup> and 'each State Party shall have the right to take measures to protect sensitive installations and to prevent disclosure of confidential information and data not related to this Treaty'<sup>2</sup>.

A few months prior to the CTBT conclusion, in July 1996, a question arose before the International Court of Justice (ICJ) resulting in its Advisory Opinion on whether the threat or use of nuclear weapons is in any circumstance permitted under international law. The ICJ contemplated 'the full importance of the recognition by Article 6 of the Treaty on the Non-Proliferation of Nuclear Weapons of an obligation to negotiate in good faith a nuclear disarmament. The legal import of that obligation goes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result – nuclear disarmament in all its aspects – by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith. This twofold obligation to pursue and to conclude negotiations formally concerns the 182 States parties to the Treaty on the Non-Proliferation of Nuclear Weapons, or, in other words, the vast majority of the international community. Indeed, any realistic search for general and complete disarmament, especially nuclear disarmament, necessitates the cooperation of all States'<sup>3</sup>.

In 1999, the UN Disarmament Commission arranged the following principles as guidelines for the establishment of a nuclear-weapon-free zone:

- 'Nuclear-weapon-free zones should be established on the basis of arrangements freely arrived at among the States of the region concerned.

- The initiative to establish a nuclear-weapon-free zone should emanate exclusively from States within the region concerned and be pursued by all States of that region.

- The nuclear-weapon States should be consulted during the negotiations of each treaty and its relevant protocol(s) establishing a nuclear-weapon-free zone in order to facilitate their signature to and

ratification of the relevant protocol(s) to the treaty, through which they undertake legally binding commitments to the status of the zone and not to use or threaten to use nuclear weapons against States parties to the treaty.

- A nuclear-weapon-free zone should not prevent the use of nuclear science and technology for peaceful purposes and could also promote, if provided for in the treaties establishing such zones, bilateral, regional and international cooperation for the peaceful use of nuclear energy in the zone, in support of socio-economic, scientific and technological development of the States parties'<sup>4</sup>.

In the late 1990s, the Iranian state initiated its nuclear activity through signing an agreement with Russia to complete the construction of the Bushehr reactor.

Serious legal obstacles commenced in 2002 when the International Atomic Energy Agency found Iran's nuclear activities undeclared and clandestine as there was disclosed information 'about Iran's undeclared nuclear enrichment facilities in Natanz and heavy-water production plant in Arak. The revelation ignited an international crisis' [15]. 'As a result, China did not ultimately supply Iran with the research reactor (which would have been suitable for plutonium production), the two Qinshan power reactors, or the uranium conversion plant it had previously offered Iran. The United States also blocked Iran's agreement with Argentina for uranium enrichment and heavy water production facilities' [14]. In fact, the IAEA presumed that Iran would breach the NPT safeguard agreement and the Additional Protocol. As to the Additional Protocol, it is mainly introduced as a voluntary arrangement<sup>5</sup> that would help with the IAEA inspection in nuclear sites and information related to a country's nuclear programme aimed at special monitoring of nuclear activities of the state as well as verification of peaceful use of nuclear materials. Iran and the IAEA reached a special monitoring arrangement<sup>6</sup> in December 1997.

<sup>4</sup> United Nations General Assembly, *Report of Disarmament Commission, Supplement No. 42 (A/54/42)*, 6 May 1999, ISSN 0251-7892.

<sup>5</sup> IAEA, *Model Protocol Additional to the Agreement(s) Between State(s) and the International Atomic Energy Agency for the Application of Safeguards*, September 1997, INF/CIRC/540.

<sup>6</sup> IAEA, 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, INF/CIRC/214, 13 December 1974, entered into force on 15 May 1974.

<sup>1</sup> *The Comprehensive Nuclear-Test-Ban Treaty*. Art. 4 (13). P. 37.

<sup>2</sup> *Ibid.* Art. 4 (7). P. 35.

<sup>3</sup> *International Court of Justice, Reports of Judgments, Advisory Opinions and Orders, Legality of the Threat or Use of Nuclear Weapons*, 8 July 1996. P. 264.

In para. 32 of the IAEA 2003 report on the implementation of the NPT safeguards agreement in the Islamic Republic of Iran, the Agency explicitly concluded that 'Iran has failed to meet its obligations under its Safeguards Agreement with respect to the reporting of nuclear material, the subsequent processing and use of that material and the declaration of facilities where the material was stored and processed.'<sup>1</sup>

'In 2002, safeguards were implemented in 28 States with comprehensive safeguards agreements and additional protocols in force or being provisionally applied. Only in such States are Agency safeguards able to provide credible assurance of the absence of undeclared nuclear material and activities...the Secretariat concluded that all nuclear material in those States or under their jurisdiction or control had been placed under safeguards and remained in peaceful nuclear activities or was otherwise adequately accounted for'<sup>2</sup>.

The military application of nuclear material and technology was not assumed as a probable option for Iran's nuclear activities until the IAEA provided information on possible military use of atom within 1987–1989 resulted from 'a foreign intermediary that includes a disassembled P-1 centrifuge, drawings and specifications for centrifuge production and for a complete plant, and materials for 2,000 centrifuge machines'<sup>3</sup>. Iran disclosed that only some equipment, including centrifuge components, was supplied from the intermediary known as A. Q. Khan's Nuclear Smuggling Network. Apart from the fact that A. Q. Khan 'was arrested on January 31, 2004 for his key role in the black-market sale of nuclear technology and equipment to Iran, North Korea, Libya, and possibly others' [11], the IAEA Board issued another Additional Protocol to be signed by Iran. 'The Board called on Iran to co-operate fully with the Agency in its on-going work. It welcomed Iran's readiness to look positively at signing and ratifying an Additional Protocol and urged Iran to promptly and unconditionally con-

clude and implement such a protocol, in order to enhance the Agency's ability to provide credible assurances regarding the peaceful nature of Iran's nuclear activities, particularly the absence of undeclared material and activities'<sup>4</sup>.

As can be inferred from the discussion above, the development of Iran's nuclear programme is tied to the cooperation with the IAEA. When Iran managed to begin and advance its nuclear programme, it laid the legal foundations for gaining legal credit from its cooperation with the IAEA at the international level. This cooperation has been a key criterion since Iran started its nuclear programme. Although since 2002 onward other significant actors has taken part in this issue, the contribution of the IAEA has never become marginal. As will be shown below, the establishment, longevity, stability, and validity of the JCPOA are intricately linked to the control and verification of the IAEA.

### **Iran and the E3/EU+3**

The E3 or the E3/EU refers to a group of states comprising France, Germany, and the United Kingdom which joined together in 2003 to pursue negotiations with Iran over its nuclear reprocessing and enrichment activities. This group plays a key role in resolving Iran's nuclear concern. Following the invasion of Iraq (1980-1988) as well as the international community's concerns regarding Iran's nuclear programme, the E3 was coined to avert the possibility of military actions by the USA through holding a set of meetings with Iran. Regarding Iran's enrichment activities, two matters of concern can be taken into consideration, respecting gas centrifuges and heavy water.

As to the E3, France and the United Kingdom are parties to the NPT and enjoy the position of official nuclear-weapon states. They are permanent members of the UNSC with the power of veto, which enables any one of them to prevent the adoption of any 'substantive' draft of the UN Security Council resolution, regardless of the level of international support. Under the NATO nuclear weapons sharing arrangements<sup>5</sup>, the USA provides nuclear weapons for Germany. Germany

<sup>1</sup> IAEA, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, Report by the Director General, GOV/2003/40, 6 June 2003. Item 7 (b) of the provisional agenda (GOV/2003/32). P. 8.

<sup>2</sup> IAEA *annual report 2002*. P. 65. Available at: [https://www.iaea.org/sites/default/files/anrep2002\\_full.pdf](https://www.iaea.org/sites/default/files/anrep2002_full.pdf)

<sup>3</sup> Iran Watch, *Iran Nuclear Milestones: 1967-2021*. 2021. Available at: <https://www.iranwatch.org/our-publications/weapon-programme-background-report/iran-nuclear-milestones-1967-2021>.

<sup>4</sup> IAEA, *Report by the Director General*, GOV/2003/9, 10 November 2003. P. 3.

<sup>5</sup> North Atlantic Treaty Organization, *NATO's Nuclear Sharing Arrangements*. Public Diplomacy Division (PDD) – Press & Media Section, February 2022. Available at: [https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/2022/2/pdf/220204-factsheet-nuclear-sharing-arrange.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/2022/2/pdf/220204-factsheet-nuclear-sharing-arrange.pdf).

has no permanent membership of the UNSC. Thus, Germany is the only one in the E3 team which is neither a nuclear weapon state nor a permanent member of the UNSC.

On September 12, 2003, the IAEA Board made the first resolution on Iran 'recognizing the basic and inalienable right of all Member States to develop atomic energy for peaceful purpose'<sup>1</sup>, while it called on Iran 'to provide accelerated cooperation and full transparency'<sup>2</sup> as well as 'to suspend all further uranium enrichment-related activities, pending satisfactory application of the provisions of the additional protocol'<sup>3</sup>. As a result, there appeared two pivotal issues which have been the Agency's great concerns on Iran's nuclear case which are as follows: full transparency and suspension of uranium enrichment. Both matters, in fact, refer to the possible source and material of nuclear weapon proliferation by Iran.

The IAEA, in general, stresses regulatory principles and technical codes. Uranium can potentially be enriched by gas centrifuges ranging from less than 20 % (low) to 85 % (high). Low-enriched uranium is typically used in the civil nuclear power generation and high-graded uranium is required for military nuclear armament. 'Gas centrifuges enrich uranium by spinning uranium hexafluoride gas at high speeds to increase the concentration of the uranium-235 isotope. Such centrifuges can produce both low-enriched uranium (LEU), which can be used in nuclear power reactors, and highly enriched uranium (HEU), which is one of the two types of fissile material used in nuclear weapons. The HEU can also be used as fuel in certain types of nuclear reactors' [9].

In February 2004, the IAEA General Director reported that 'although bismuth is not nuclear material requiring declaration under the Safeguards Agreement, its irradiation is of interest to the Agency as it produces polonium-210 (Po-210), an intensely radioactive alpha emitting radioisotope that could be used not only for certain civilian applications (such as radioisotope thermoelectric generators (RTGs), in effect, nuclear batteries), but also, in conjunction with beryllium, for military purposes (specifically, as a neutron initiator in

some designs of nuclear weapons)... The scientists confirmed that the purpose of the project had been only for research on the chemical separation of polonium and the development of RTGs... Iranian officials said that the experiments involving Po-210 were also part of a study about neutron sources... However, Iran has stated that there are few remaining records related to the bismuth irradiation project and, as a result, has not been able to provide evidence to support its claims as to the stated purpose'<sup>4</sup>. Therefore, Iran was found in non-compliance with its safeguard agreement<sup>5</sup>.

In late 2004, the E3 evolved into the E3+EU headed by the High Representative for Common Foreign and Security Policy (Javier Solana) as the EU's point of correspondence with Iran. This reflects that the E3's negotiations with Iran went through the path of diplomacy with so many ups and downs as the EU was increasingly worried that the E3 would bypass EU's interests<sup>6</sup> to keep the interstate negotiations with Iran flexible and smooth.

In spite of such worries, the E3/EU proposed Iran a framework agreement known as the Paris Agreement of 2004<sup>7</sup> to pursue a series of long-term term negotiations between the E3/EU and Iran over 'cooperation in three areas: political and security issues, economy and technology, and nuclear issues. Iran reiterated that it would implement the Additional Protocol pending ratification' [2].

In the preamble of the Paris Agreement the E3/EU and Iran stated that they '(d) welcome Iran's commitment that, in accordance with Article II of the Treaty on the Non Proliferation of Nuclear Weapons, it does not and will not seek to acquire nuclear weapons or other weapons of mass destruction; (e) recall that Article IV of the Treaty on the Non Proliferation of Nuclear Weapons stipulates that nothing in the Treaty shall be interpreted as affecting the inalienable rights of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with

<sup>1</sup> IAEA, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, GOV/2003/69, 12 September 2003. Para. (k).

<sup>2</sup> Ibid. Para. 1.

<sup>3</sup> Ibid.

<sup>4</sup> IAEA, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, Report of the Director General, GOV/2004/11, 24 February 2004. Pp. 5-6.

<sup>5</sup> Ibid. Para. 2.

<sup>6</sup> The EU continued its coordination in the diplomatic process as the chair or co-chair of negotiations with Iran, through its high representatives for foreign affairs and security policy (HR/VPs).

<sup>7</sup> Agreement (Paris - 15 November 2004), INFCIRC/637. P. 3.

Articles I and II of the Treaty; (f) affirm that a final agreement on long-term arrangements providing objective guarantees that Iran's nuclear programme is exclusively for peaceful purposes would lead immediately to a higher state of relations based on a process of collaboration in different areas.<sup>1</sup> Thus, 'the E3/EU approach as presented in the Paris Agreement can be interpreted in principle as an attempt to build on the NPT by reducing or even overcoming the ambivalences of Article IV, i.e. the above-mentioned opposite goals of the allowed civil/peaceful activities and the forbidden military efforts to build the bomb' [8]. Iran did not commit to the Paris Agreement.

According to the IAEA report of 2005, the Board Governors were concerned not only about transparency and suspension of Iran's nuclear activity, but also expressed the grave concerns over the atomic contamination due to Iran's violation of its obligations under its NPT Safeguard Agreement. 'As in November 2004, while there are a number of other matters requiring follow-up, the two important outstanding issues relevant to the Agency's efforts to provide assurance that there is no undeclared nuclear material and that there are no undeclared enrichment activities in Iran are: the origin of LEU and HEU3 particle contamination found at various locations in Iran; and the extent of Iran's efforts to import, manufacture and use centrifuges of both the P-1 and P-2 designs'<sup>2</sup>.

This is reflected in the Safeguard Statement for 2005 clarifying that 'the Agency was still not in a position to conclude that there were no undeclared nuclear material or activities in Iran after three years of intensive Agency verification. At the close of 2005, there remained two major issues of direct relevance to these efforts: the origin of low enriched uranium (LEU) and high enriched uranium (HEU) particle contamination found at various locations in Iran; and the extent and nature of Iran's enrichment programme'<sup>3</sup>. The IAEA Board also adopted a resolution which identified that 'Iran's many failures and breaches of its obligations to comply with its comprehensive safeguards

agreement constituted non-compliance in the context of Article XII.C of the Agency's Statute'<sup>4</sup>.

It is noteworthy to mention that Article XII of the IAEA Statute refers to the Agency safeguards and its paragraph C pertains to the suspension for non-compliance with safeguards undertakings, i.e. '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.'<sup>5</sup>

The main part of negotiations took place in 2005 over Iran's centrifuges and enrichment programme. 'Iran proposed to the three European powers – Britain, France and Germany – an initial cap of 3,000 IR-1 centrifuges. But Tehran also insisted that it be allowed to continue increasing the number of its centrifuges after a relatively short time. Iran's proposal called for stages:

- Stage 2 – 3,000 centrifuges in operation, a cap that would only be in place temporarily.
- Stage 3 – installation of 50,000 centrifuges, the number envisioned for Natanz, then the only enrichment site.

• Stage 4 – operation of all 50,000, alongside the parliament's approval of the Additional Protocol' [1].

The European states rejected this proposal. Rather they demanded Iran to let the IAEA inspectors visit Iran's power reactor. In this respect, Iran would not have been required having more centrifuges for its power plant. The negotiations on the number of centrifuges did not reach a final agreement and Iran resumed its nuclear programme.

Deadlock in the negotiations on the amount of uranium enrichment forced the world community to seek for a way out. In the meanwhile, Iran received an offer from Russia proposing a Russian-Iranian joint venture. 'In general terms, the proposal called for Iran to outsource to Russia the most sensitive part of its enrichment programme. Iran would be permitted to continue converting uranium ore into uranium tetrafluoride (an intermediate step in the production of uranium hexafluoride) at the Esfahan facility, under IAEA safeguards and with appropriate transparency meas-

<sup>1</sup> IAEA, Information Circular, General Distribution, IN-FCIRC/651, 8 August 2005.

<sup>2</sup> IAEA, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, Report of the Director General, GOV/2005/67, 2 September 2005. Art. 8.

<sup>3</sup> IAEA, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, Resolution adopted in September 2005, GOV/2005/77. Art. 1.

<sup>4</sup> Ibid.

<sup>5</sup> *The Statute of the IAEA*, 1957. Art. XII.C.

ures. The uranium tetrafluoride would then be shipped to a facility in Russia for conversion into uranium hexafluoride and subsequent enrichment into LEU fuel for nuclear power plant; this facility could operate under joint Iranian-Russian ownership. Iran would return the spent reactor fuel to Russia for long-term storage and disposition, as it had already agreed to do with the Russian-supplied fuel for the Bushehr plant' [10].

Through this joint venture with Russia, the process of uranium enrichment would have been located in Russia's territory. Therefore, other countries could have used it and Iran would have been a 'primary beneficiary' [7]. Although Iran was inclined to 'have its uranium enriched by an international joint venture, it insisted that it be located in Iran'<sup>1</sup>. Since they failed to reach an agreement over the location for uranium enrichment process, Iran rejected the joint venture for production of nuclear fuel proposed by Russia.

### Iran and the UN Security Council

In January 2006, the E3/EU+3<sup>2</sup> was formed as China, Russia, and the US joined the negotiations with Iran. The other permanent members of the UN Security Council (UNSC), in turn, came to realize that a collective approach to negotiation on Iran's nuclear programme was required. This approach entailed UN-mandated sanctions and diplomacy.

In that year, Iran's nuclear activities became an increasingly insoluble dilemma for the Agency and for the world community in general. Even the UN Security Council engaged in this dilemma to take legal action against Iran's will of nuclear enrichment. For example, in 2006 the Council adopted Resolution 1696 'in order to make mandatory the suspension required by the IAEA'<sup>3</sup>.

The resolution demanded that 'Iran shall suspend all enrichment-related and reprocessing activities, including research and development, to be verified by the IAEA'<sup>4</sup>. During 2006-2008, the UN Security Council adopted three more resolutions imposing sanctions on Iran as the Iranian state continued to disagree with the initiatives taken by the Agency and Security Council and pursued its own plan and will. The UN Security Council Resolution 1737 confirmed the Board's decision on that 'all

States shall take the necessary measures to prevent the supply, sale or transfer directly or indirectly ... which could contribute to Iran's enrichment-related, reprocessing, or heavy water-related activities, or to the development of nuclear weapon delivery systems'<sup>5</sup>.

Resolution 1747 emphasized 'to exercise vigilance and restraint regarding...individuals who are engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities...'<sup>6</sup>. In return, the Resolution gave Iran a 60-day deadline to report its action for the suspension of its entire nuclear enrichment activities. It also called on 'all States and international financial institutions not to enter into new commitments for grants, financial assistance, and concessional loans, to the government of the Islamic Republic of Iran, except for humanitarian and developmental purposes'<sup>7</sup>. In addition to urging Iran to take steps on the suspension and terminations of its nuclear enrichment, Resolution 1803 of /date/ was aimed to 'adopt further appropriate measures under Article 41 of Chapter VII of the Charter of the United Nations to persuade Iran to comply with these resolutions and the requirements of the IAEA...'<sup>8</sup>.

In 2009, Iran disclosed some information on its undeclared enrichment activities at Fordow Fuel Enrichment Plant (FFEP) near Qom to the IAEA. Iran initially declared its intention to 'install only IR-1 centrifuges at FFEP, but that the facility could be reconfigured to contain centrifuges of more advanced types should Iran take a decision to use such centrifuges in the future.... Iran also stated that no nuclear material had been introduced into FFEP'<sup>9</sup>. Although Iran had never implemented its plans, the lack of transparency and the presence of contradiction in information on Iran's nuclear activities and facilities led the six states to open up a new series of negotiations with Iran, which turned the page for Iran and its nuclear programme as 'the Agency verified that FFEP was being built to con-

<sup>1</sup> *The Statute of the IAEA*, 1957. Art. XII.C.

<sup>2</sup> Also known as the P5+1.

<sup>3</sup> *UN Security Council Resolution 1696*, 2006, S/RES/1696 (2006).

<sup>4</sup> *Ibid.* Art. 2.

<sup>5</sup> *UN Security Council Resolution 1737*, 2006, S/RES/1737 (2006). Art. 3.

<sup>6</sup> *Resolution 1747* (2007) adopted by the Security Council at its 5647th meeting on 24 March 2007, S/RES/1747 (2007). Provision 2.

<sup>7</sup> *Council Resolution 1747*, 2007, S/RES/1747 (2007). Art. 7.

<sup>8</sup> *UN Security Council Resolution 1803*, 2008, S/RES/1803 (2008). Art. 19(C).

<sup>9</sup> IAEA, *Implementation of the NPT Safeguards*, GOV/2009/74, 16 November 2009.

tain sixteen cascades with a total of approximately 3,000 centrifuges<sup>1</sup>.

Later, Iran announced 'production of the required fuel for the Tehran Research Reactor'<sup>2</sup>. Apart from the previous concerns over Iran's nuclear activities such as fuel enrichment, reprocessing, heavy water, uranium conversion and so forth, the possibility of military application drew the Board's attention. The Board point out that 'Since August 2008, Iran has declined to discuss the above issues with the Agency or to provide any further information and access (to locations and/or people) to address these concerns, asserting that the allegations relating to possible military dimensions to its nuclear programme are baseless and that the information to which the Agency is referring is based on forgeries'<sup>3</sup>. Nonetheless, the Agency persisted in persuading Iran to collaborate and clarify suspicions about possible military dimensions. As the Agency came to a conclusion that, in contradiction to the relevant resolutions, Iran did not suspend the enrichment, construction of the IR-40 reactor and heavy water operation, it urged Iran to 'take steps towards the full implementation of its Safeguards Agreement and its other obligations, including the implementation of its Additional Protocol'<sup>4</sup>.

Resolution 1929 was adopted by the UN Security Council in 2010 as Iran signed the Additional Protocol to its IAEA safeguards (but never ratified the Protocol in its parliament). This resolution noted that 'Iran has taken issue with the IAEA's right to verify design information which had been provided by Iran pursuant to the modified Code 3.1, and emphasizing that in accordance with Article 39 of Iran's Safeguards Agreement Code 3.1 cannot be modified nor suspended unilaterally and that the IAEA's right to verify design information provided to it is a continuing right, which is not dependent on the stage of construction of, or the presence of nuclear material at, a facility'<sup>5</sup>. In general, the Modified Code 3.1 refers that 'states

must notify the IAEA as soon as the decision to construct or to authorize construction'<sup>6</sup>. This obliged Iran to inform the Agency on its plans of new constructions and facilities before it would start. Hence the Modified Code 3.1 as a fundamental part of 'Strengthening of Agency Safeguards – the Provision and Use of Design Information'<sup>7</sup> would come into force if Iran would ratify it in its parliament.

Resolution 1929 also urged Iran to abandon its activities and plans with respect to 'ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missile technology, and that States shall take all necessary measures to prevent the transfer of technology or technical assistance to Iran related to such activities'<sup>8</sup>.

Ultimately the IAEA adopted a resolution in 2011 which incited Iran to 'comply fully and without delay with its obligations under relevant resolutions of the UN Security Council, and to meet the requirements of the IAEA Board of Governors, including the application of the modified Code 3.1 and the implementation and prompt ratification of the Additional Protocol', while supporting 'a diplomatic solution'<sup>9</sup>.

In light of the report made by the IAEA in 2012, the UNSC affirmed that 'the steps required by the Board of Governors in its resolutions are binding on Iran. The relevant provisions of the aforementioned UN Security Council resolutions were adopted under Chapter VII of the United Nations Charter, and are mandatory, in accordance with the terms of those resolutions'<sup>10</sup>. The Agency showed a high aspiration to continue negotiations with Iran while noting that Iran did not fully cooperate. 'Despite the intensified dialogue between the Agency and Iran since January 2012, efforts to resolve all outstanding substantive issues have achieved no concrete results'<sup>11</sup>. Finally, Iran signed

<sup>1</sup> IAEA, *Implementation of the NPT Safeguard*, GOV/2009/74, GOV/2009/74, 16 November 2009

<sup>2</sup> IAEA, *Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1835 (2008) in the Islamic Republic of Iran*, Report by the Director General, GOV/2010/10, 18 February 2010. Art. 8.

<sup>3</sup> Ibid. Art. 44.

<sup>4</sup> Ibid. Art. 50.

<sup>5</sup> US Security Council, *Resolution 1929 (2010)* adopted by the Security Council on 9 June 2010, S/RES/1929 (2010). Pre-ambulatory clause 10.

<sup>6</sup> IAEA, *Guidance for States Implementing Comprehensive Safeguards Agreements and Additional Protocols*. Para. 5.1: Information on facility design, Vienna, 2016, Service Series 21. P. 24.

<sup>7</sup> Ibid.

<sup>8</sup> *Resolution 1929 (2010)*... Art. 9.

<sup>9</sup> IAEA, *Implementation of the NPT Safeguards Agreement and relevant provisions of United Nations Security Council resolutions in the Islamic Republic of Iran*, Resolution adopted by the Board of Governors, GOV/2011/69, 18 November 2011. Art. 3.

<sup>10</sup> IAEA, *Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran*, Report by the Director General, GOV/2012/37, 30 August 2012. Art. 2.

<sup>11</sup> Ibid. Art. 8.

the so-called Joint Statement on a Framework for Cooperation in 2013 and committed itself to 'cooperate further with respect to verification activities' as well as to 'provide the access and information within three months'<sup>1</sup>. Accordingly, the Agency received main information provided by Iran in relation to the modified Code 3.1.

The IAEA Director General reported main developments regarding the Iranian collaboration with the Agency in 2014. The report noted that in 2013 the E3+3<sup>2</sup> agreed on the Joint Plan of Action (JPA) with Iran. The JPA, inter alia, stated that the 'goal for these negotiations is to reach a mutually-agreed long-term comprehensive solution that would ensure Iran's nuclear programme will be exclusively peaceful'<sup>3</sup>. As practical measures, Iran and the Agency agreed to take three initial steps including 'the conduct of large-scale high explosives experimentation in Iran'<sup>4</sup>. The E3/EU+3<sup>5</sup> and Iran made a joint statement concerning 'solutions on key parameters of a Joint Comprehensive Plan of Action'<sup>6</sup>.

#### JCPOA as a Dispute Resolution Mechanism

In July 2015, as a result of more than a decade-length diplomatic process initiated mainly by the E3, the Joint Comprehensive Plan of Action (JCPOA) was concluded between Iran and the E3/EU+3.

At the beginning of this document, its parties explicitly outlined the key intention of their participation. Particularly Iran assured to have a peaceful intention of the nuclear programme. 'Iran reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons'<sup>7</sup>. According to the first provision of the preamble, 'reciprocal commitments' are required 'to be endorsed by the United Nations (UN) Security Council

cil'<sup>8</sup>. Indeed, this document legally contains the enforcement practice attribute as long as it comes with the UN resolution. Thus, the matter of enforcement practice is implied on the JCPOA by Resolution 2231. This can be inferred from the clauses of the Implementation Plan in the JCPOA document.

According to Annex V of the JCPOA, the implementation plan comprises three pivotal stages which are as follows: the day of finalization would take place after the endorsement by all the parties to the JCPOA. The day of adoption would come '90 days after the endorsement of this JCPOA by the UN Security Council, or ...by mutual consent'<sup>9</sup>. The day of implementation depends 'upon the IAEA-verified implementation by Iran of the nuclear-related measures... and, simultaneously, the E3/EU+3 taking the actions...with the actions... taking place at the UN level in accordance with the UN Security Council resolution'<sup>10</sup>. In other words, the implementation of the JCPOA commitments is stipulated by the UNSC Resolution 2231 and the adoption was supposed to take a legal form either through the endorsement by the UNSC or through mutual consent of the parties to the JCPOA. The UNSC Resolution 2231 is a main requirement to legally make all the arrangements and commitments implemented. As this document provides a series of legal arrangements for monitoring and verification of Iran's nuclear programme, the mutual consent and negotiation are still key means for application of the JCPOA.

Shortly after, the Security Council unanimously adopted resolution 2231, endorsing the JCPOA as well as lifting the United Nations sanctions against Iran imposed by the previous resolutions. 'Under Article 41 of the Charter of the United Nations, also that the measures imposed in resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), and 1929 (2010) shall not apply to the extent necessary to carry out transfers and activities, as approved on a case-by-case basis in advance by the Committee established pursuant to resolution 1737 (2006)'<sup>11</sup>.

Therefore, the JCPOA, also known as the nuclear deal, can be characterized as an international

<sup>1</sup> IAEA, Board of Governors, *Joint Statement on a Framework work for Cooperation*, GOV/INF/2013/14.

<sup>2</sup> China, France, Germany, the Russian Federation, the United Kingdom, and the United States of America.

<sup>3</sup> IAEA, *Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran*, Report by the Director General, GOV/2014/58, 7 November 2014.

<sup>4</sup> Ibid.

<sup>5</sup> China, France, Germany, the Russian Federation, the United Kingdom, the United States, the High Representative of the European Union (the E3/EU+3).

<sup>6</sup> EEAS, Joint Statement by EU High Representative Federica Mogherini and Iranian Foreign Minister Javad Zarif, Switzerland, Statements by the HR/VP.

<sup>7</sup> *Joint Comprehensive Plan of Action (JCPOA)*. Vienna, 14 July 2015. P. 1. Available at: <https://www.europarl.europa.eu/cmsdata/122460/full-text-of-the-iran-nuclear-deal.pdf>.

<sup>8</sup> Ibid. Preamble and General Provisions. Provision i.

<sup>9</sup> Ibid. Provision 34. Clause ii.

<sup>10</sup> Ibid. Annex V. Clause 14.

<sup>11</sup> *Security Council Resolution 2231 (2015)* adopted by the Security Council at its 7488th meeting on 20 July 2015, S/RES/2231 (2015). Art. 23.

agreement concluded in response to a series of escalating tensions over Iran's nuclear programme. The JCPOA was meant to put Iran's nuclear programme under surveillance of the Agency under legal framework of the NPT and its Additional protocol. In return, Iran would have been exempted from the sanctions imposed by the UN.

The JCPOA had the UNSC endorsement through the adoption of Resolution 2231. However, the JCPOA is still complex and controversial by nature and legal status. This deal was presented by the United Nations as a pivotal milestone to reach world peace and security through nuclear diplomacy.

All legal views toward the nature of the JCPOA can be divided into two groups: those regarding the JCPOA as a legal agreement and those considering the JCPOA to be a political commitment.

Legal nature of every agreement can be analyzed through the lens of 1969 Vienna Convention on the Law of Treaties (1969 VCLT). Here, the question about the nature of JCPOA can be answered through the definition and characteristics of a treaty the 1969 VCLT provides.

The 1969 VCLT principally deals with 'treaties between States'<sup>1</sup>. Article 2 of the 1969 VLTC defines the term Treaty as 'an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation'<sup>2</sup>. This statement alone has distinguishing criteria to differentiate a legal agreement (treaty) from a political commitment (gentleman's agreement). A state can be legally subject to obligations of an international agreement through 'ratification, acceptance, approval and accession' after it gives the consent to be bound by the agreement<sup>3</sup>. This follows with 'full powers...emanating from the competent authority of a State'<sup>4</sup>.

The JCPOA was concluded in accordance with the comprehensive agreement on Iran nuclear programme pursuing to Lausanne nuclear agreement between Iran and the 5 + 1 group (the E3/EU+3 and China). After the conclusion of the JCPOA, the UNSC adopted Resolution 2231 endorsing the

JCPOA. 'Adoption Day will occur 90 days after the endorsement of this JCPOA by the UN Security Council through the resolution'<sup>5</sup>. In this aspect, the JCPOA document is not able to emanate any power for law enforcement practice as it depends on the UNSC Resolution 2231 resulting from a series of negotiations over lifting the sanctions. In a word, the JCPOA does not have mandating powers itself due to its dependency on and attachment to the Resolution, as remarked 'This JCPOA, reflecting a step-by-step approach, includes the reciprocal commitments ...and is to be endorsed by the United Nations (UN) Security Council'<sup>6</sup>.

Although the JCPOA establishes 'the reciprocal commitments'<sup>7</sup> for all its parties to implement the terms, it does not provide any executive guarantees for the fulfillment of these commitments. Instead, the implementation is 'based on mutual respect, and to refrain from any action inconsistent with the letter, spirit and intent of this JCPOA that would undermine its successful implementation'<sup>8</sup>. There is no clause in the JCPOA which would provide the implementation with legal obligation and enforcement. Rather, such enforcement emanates from the UNSC Resolution 2231. The implementation not only depends on the adoption of the Resolution, but also the imposition of Resolution relies on the IAEA's report.

Apart from the JCPOA implementation depending on the Resolution, this document has another weakness: it does not include a mechanism to debunk the allegation that Iran's nuclear programme was introduced in an inadequate manner. This mainly relates to the provision 34 of the JCPOA containing a requirement for the implementation of a legal agreement, which is an enforcing measure. By virtue of the JCPOA, Iran, and E3/EU+3 were supposed to take a series of 'voluntary measures'<sup>9</sup> within a specific detailed timeframe which insinuates non-legally binding enforcement practice in spite of the first clause of the preamble pointing out enforcing measures. Consequently, the parties to the JCPOA are already aware of the non-binding nature of the commitments which fails to be categorized in the 1969 Convention's definition of a treaty.

<sup>1</sup> *Vienna Convention on the Law of Treaties*, signed at Vienna on 23 May 1969, entered into Force on 27 January 1980. Part I. Introduction. Art. 1.

<sup>2</sup> *Ibid.* Art. 2(a).

<sup>3</sup> *Ibid.* Art. 2(b).

<sup>4</sup> *Ibid.* Art. 2(c).

<sup>5</sup> *Joint Comprehensive Plan of Action... Annex V – Implementation Plan B. Adoption Day. Clause 6.*

<sup>6</sup> *Ibid.* Preamble and General Provisions. Provision i.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.* Provision viii.

<sup>9</sup> *Ibid.* P. 6.

As to the consent of the parties to the JCPOA, the document never included a clause establishing the parties' consent to imposition of restrictions on the parties' actions. Based on their free will, interest as well as discretion, the parties can unlimitedly take actions namely admitting commitments and remaining on the compliance with them. Legally speaking, the JCPOA does not contain appropriate legal language and structure compatible with the 1969 VCLT's definition of a treaty.

Last but not least, unlike the VCLT (Article 11)<sup>1</sup>, the JCPOA provides no place for the parties' signatures expressing their consent to be bound by a treaty.

This makes it impossible to consider this agreement to be legally binding since the importance of signature of each party to a treaty is established in the 1969 VCLT (e.g. Articles 11 and 12). However, the list of means of expressing consent provided in Article 11 is open and not confined solely to a signature as, according to this article, the consent of a state can be expressed 'by other means, if so agreed'. It shall be understood as covering any other form. Here arises the following question: Why shall not the submission for the UNSC endorsement be considered as 'by other means'<sup>2</sup>?

Article 11 enumerates the means of consent specifically. According to this Article, means of consent include signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession. However, means of consent are not confined to the listed means as Article 11 leaves the form of consent open by stating 'by other means if so agreed'. In pursuance of Article 11, Articles 12-15 explain such means one by one. Even though the wording 'by other means' remained unclear, the 1969 VCLT should have been more specific about this phrase; but there is no Article in the treaty to provide an appropriate substitution for it. This literally makes the option 'by other means' redundant as an alternative of expressing consent. Since it is not clear what means can be regarded as other means of consent, the parties to a treaty rely on those options presented as certain means of consent expounded in the specific Articles. The predominating and commonly recognized means of expressing consent is an intention of the state, which can be inferred from the negoti-

ation state parties have had over drafting and concluding the agreement. 'The intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation'<sup>3</sup>.

In virtue of the 1969 VCLT, means of expressing consent can be reflected in the negotiation as the negotiation can reveal the intention of state parties to an agreement. In other words, the 1969 VCLT left the other means open for parties to a treaty to negotiate. Through negotiation they might announce the intention, as well as introduce other means to express their consent.

As regards the JCPOA document, the intention of the parties to this deal was shaped and developed during negotiation. The content shows the parties' intention not to introduce a legally binding instrument. That is why the parties all agreed to conclude their agreement under plan of action. 'All provisions and measures contained in this JCPOA are only for the purpose of its implementation between E3/EU+3 and Iran and should not be considered as setting precedents for any other state or for fundamental principles of international law and the rights and obligations under the NPT and other relevant instruments, as well as for internationally recognized principles and practices.'<sup>4</sup>

Without a signature, the JCPOA is not able to take a legal form of an agreement, remaining a political arrangement. Nevertheless, the finalization day detailed in the JCPOA cannot sufficiently function as a signature.

To sum up, the JCPOA does not contain any attributes of a treaty (e.g., enforcing measures, a clear mechanism and legal guarantee for implementation, the power to determine rights and obligations, etc.) which would lead the parties to take it as a legally binding agreement.

The endorsement of the JCPOA by the UNSC does not necessarily mean that this international document is a treaty, rather a unilateral document with many parties relying on the UNSC endorsement. The context and content of the JCPOA is quite different from that of a treaty. The adoption of Resolution 2231 implies that the JCPOA is some part of this UNSC resolution. The JCPOA derives some of its validity from Resolution 2231.

<sup>1</sup> *Vienna Convention on the Law of Treaties...* Art. 11.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.* Art. 12 (c).

<sup>4</sup> *Joint Comprehensive Plan of Action...* Preamble and General Provisions. Provision xi.

Since the JCPOA cannot be categorized as a treaty, it never needed to be adopted by the State bodies or officials since Article 25 of the UN Charter states that UNSC resolutions are legally binding to every state: 'The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter'. The JCPOA, therefore, was concluded on basis of international law, however, the parties to the JCPOA did not consider it as a treaty.

Thus, the rules of international law elaborated in the 1969 VCLT, known as the Treaty on Treaties, do not apply to it. Whether the JCPOA is an instance of misuse of the 1969 VCLT to serve national interests of a state cannot be a true inference, because the JCPOA never meant to be a treaty, as discussed above. To put into a nutshell, the JCPOA is a set of commitments overseen by the UNSC. In the end, the JCPOA was a multilateral form of political commitment by nature. The connection between the UNSC Resolution 2231 and the JCPOA suggests that they are related to each other, while one influencing the other. Indeed, a breach of Resolution 2231 does not make the JCPOA violated. Thus, regardless of whether the JCPOA is a treaty or not, substantially it is an obligatory document by virtue of Article 25 of the UN Charter and in case of the corresponding wording of the JCPOA.

Whatever the case, the JCPOA was an attempt to ease the severe sanctions imposed on the Iranian state's body, to legitimize Iran's right to peaceful nuclear activities. 'Successful implementation of this JCPOA [would] enable Iran to fully enjoy its right to nuclear energy for peaceful purposes under the relevant articles of the nuclear Non-Proliferation Treaty (NPT) in line with its obligations therein. This JCPOA [would] produce the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran's nuclear programme, including steps on access in areas of trade, technology, finance, and energy'<sup>1</sup>.

Resolution 2231 put more emphasis on the surveillance and control over Iran's nuclear activities by virtue of the Agency authorities' reports. For instance, the IAEA Director General was required 'to undertake the necessary verification and monitoring of Iran's nuclear-related commitments for the full duration of those commitments under

the JCPOA (3), and also to report to the IAEA Board of Governors and in parallel to the Security Council at any time if the Director General has reasonable grounds to believe there is an issue of concern directly affecting fulfilment of JCPOA commitments (4)'<sup>2</sup>.

The parties to the JCPOA negotiated, drafted and concluded their agreement on the basis of the bona fide principle, as mentioned in preamble and general provisions as well as provision 28 of the JCPOA: 'The E3/EU+3 and Iran commit to implement this JCPOA in good faith'<sup>3</sup>. Provision 26 of the JCPOA remarks that 'the United States will make best efforts in good faith to sustain this JCPOA'<sup>4</sup>. Regarding international safeguard practice it was agreed that 'requests for access pursuant to provisions of this JCPOA will be made in good faith, with due observance of the sovereign rights of Iran, and kept to the minimum necessary to effectively implement the verification responsibilities under this JCPOA'<sup>5</sup>.

The terms and conditions in the JCPOA document urge the parties to comply with the principle of *bona fide*<sup>6</sup> to make them bound with the procedural initiatives introduced by the JCPOA. The JCPOA was designed to ensure the parties remain in compliance with the obligations, to alleviate tensions, and to resolve the allegation in virtue of the 1969 VCLT, 'noting that the principles of free consent and of good faith and the *pacta sunt servanda*<sup>7</sup> rule are universally recognized'. Article 26 of the Treaty singles out the rule of *pacta sunt servanda* saying 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith.' In turn, interpretation and validity of a treaty, elaborated in Articles 31, 46 and 69 of the Treaty, reveal the significance of the bona fide principle. This principle obliges parties to an agreement to make the deal with honesty, trust, and fairness and avoid taking any dishonest advantage of each other.

The principle of bona fide is a legacy that remained from historical order. Hence it plays a key role in modern order and international law, functioning to observe state conduct, establish interstate negotiations, create legal obligations and

<sup>1</sup> *Joint Comprehensive Plan of Action...* Preamble and General Provisions. Arts. 4–5.

<sup>2</sup> *Security Council Resolution 2231 (2015)*... Arts. 3–4.

<sup>3</sup> *Joint Comprehensive Plan of Action...*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> Latin for 'in good faith'.

<sup>7</sup> Latin for 'treaties must be observed'.

commitments, affirm rights and privileges, regulate international legal relations, and assert a claim under a treaty.

In the JCPOA, the significance and necessity of implementation of the Modified Code 3.1 of the Subsidiary Arrangement were affirmed and acknowledged. Iran was, therefore, expected to 'notify the IAEA that it will fully implement the Modified Code 3.1 of the Subsidiary Arrangement to Iran's Safeguards Agreement as long as the Safeguards Agreement remains in force'<sup>1</sup>.

The JCPOA addresses such binding commitments including fully cooperation with the IAEA's investigation into Iranian nuclear activities, initiatives for the suspension of the enrichment projects and the development of heavy water reactors and cascades. In accordance with the JCPOA, Iran imposed more restrictions on its enrichment and heavy-water reactor activities than before the nuclear deal. The Iranian state, moreover, applied the additional protocol and the modified Code 3.1 in 2016 when was meant for the implementation of the JCPOA terms.

### **A Collective Approach**

When the JCPOA was concluded, the USA adhered to a monitoring approach under which Iran's nuclear programme could be put under international legal surveillance and observation. When the government administration changed, the USA opted to pursue a different approach requiring radical changes in the international legal mechanism for Iran's nuclear programme. In the American party's view, the JCPOA is not an appropriate instrument as it could not eliminate the risk of Iran's nuclear armament. Since the American state was of the opinion that Iran had a key role in destabilizing the peace and security of Middle East region and the JCPOA could not keep Iran in compliance with the obligations thereunder, it finally withdrew from it in 2018. There was no any evidence confirming its claim over the possibility of Iran's ballistic missile programme under the JCPOA.

The United States never presented any evidence of Iranian noncompliance with the JCPOA when it withdrew. Nevertheless, Iran remained in full compliance with the deal for a year after the US withdrawal. The US was committed to give a 90-day period for some of the waivers detailed in the JCPOA terms to permit certain nuclear cooper-

ation projects in Iran to continue, including waivers for the conversion of the Arak reactor, the Fordow facility, the Bushehr reactor, and the Tehran research reactor. However, in May 2019, the US re-imposed the sanctions which had been suspended for nuclear cooperation projects under the JCPOA, including the transfer of enriched uranium out of Iran, the transfer and storage of heavy water outside of Iran, and the construction of additional reactor units at the Bushehr nuclear reactor. Within a two-year period, the US terminated all the waivers for cooperative nuclear projects, except the one for operation of the Bushehr power plant.

The American party's withdrawal posed a significant challenge to other parties to the JCPOA. Unlike the USA, the European countries, China, and Russia believed that the JCPOA was serving to the peaceful nuclear development. They, therefore, showed their continuing commitment to resolve the dispute on Iran's nuclear programme with diplomacy, to maintain Iran in compliance with the terms of the JCPOA, to ameliorate the tension and pressure on European trade with Iran due to the re-imposition of American sanctions, and to encourage the USA to re-join the JCPOA.

The E3 have made a collaborative contribution to resolving the dilemma of Iran's nuclear programme by using a collective approach comprising effective policy, international cooperation, consensus as well as diplomatic negotiation. The effectiveness of such an approach has been fruitful for all the parties. For instance, the E3 had regular summits on implementation of the JCPOA while following up other issues relevant to international meetings such as the UN General Assembly<sup>2</sup>. For Iran's nuclear case, the E3 applied an effective policy for interstate coordination, interregional consensus, alternative diplomatic mechanism. In a word, the E3 managed to take a series of practical steps and measures in line with the international security development and global peace. That is why Iran has tried to put more pressure on the E3 and EU to re-engage the USA since its withdrawal.

Since 2019, the nuclear dispute between Iran and the EU has been overseen by the E4/EU comprised of the E3, the EU External Action Service (EEAS) and Italy. The E4/EU has been negotiating with Iran over chaotic tensions and conflicts in the Middle East region, particularly over the most no-

<sup>1</sup> *Joint Comprehensive Plan of Action...* Para. 65.

<sup>2</sup> Including Syria, Yamen, Golan Heights, and so forth.

torious armed conflict in Yemen as well as Iran's activities in the region such as its advocacy for Shia groups in Iraq, Ba'ath Party in Syria, Hezbollah party in Lebanon, and the Houthi movements in Yemen, all this leading to concerns expressed by other states in the region, namely Israel, Saudi Arabia and the United Arab Emirates (UAE), over Iran as a nuclear-power state destabilizing the region.

The E4/EU has taken a set of clear-cut initiatives to tackle the overwhelmingly challenging situation. Although the E3 team performed a bridging function in institutionalization of Iran's nuclear programme, this team has faced shortcomings outside of the EU domain in diplomatic and cooperative aspects because it could act based on the EU collective objectives and initiatives. The foundation of the E3 was based on specific circumstances as well. It was meant to appropriately alleviate tensions and resolve disputes over international security development such as the issue of nuclear security of Iran. Nevertheless, the E3 could act in accordance with the procedures introduced by the EU. So, it is difficult to juxtapose legal interests meant to suffice for Iran. This shrinks the scope for E3 cooperation to broad statements or calls for respect of international law, especially when there is a palpable resistance within the EU. Italy and Spain, for instance, attempted to take arbitrary initiatives to bypass the EU's collective measures.

In January 2018, Italy signed 'a Master Credit Agreement between InvItalia Global Investment and the Iranian Banks, Bank of Industry and Mine and the Middle East Bank'<sup>1</sup> because it was important for Italy to maintain its diplomatic commercial relations with Iran. This Master Credit Agreement was an effective instrument to regulate relations between the signers accounting for €5 billion provided by Iran's warranty. Soon after, other main state parties to the EU expressed their concerns about re-imposition of sanctions and blockages on trade and commerce with Iran, emphasizing full support and cooperation of the EU for the strength and implementation of the JCPOA. Spain, as an example, stressed that 'cementing relations with Iran is very important for Spain and the European Union member

states'<sup>2</sup>, and their wish to strengthen Iran-EU relations through maintenance of the JCPOA.

The E4/EU and Iran first had a meeting at the Munich Security Conference in February 2018. They have held three more meetings since then<sup>3</sup>. The nature of those meetings was not legal, rather these were political negotiations under the EEAS<sup>4</sup> chairmanship. Moreover, the central issue of the meetings was not aimed at Iran's nuclear programme<sup>5</sup>. Consequently, the negotiations conducted between the E4/EU and Iran have had a minimal practical impact on international legal terms.

In May 2018, the United States withdrew from the JCPOA and, accordingly, began re-imposition of the sanctions on Iran. Due to the US withdrawal from the JCPOA and re-imposition of the sanctions in 2018, Iran gradually lost its interest in fulfilling obligations of the JCPOA. According to the JCPOA terms, UN Security Council resolutions 'will be terminated subject to re-imposition in the event of significant non-performance by Iran of JCPOA commitments, and specific restrictions, including restrictions regarding the transfer of proliferation sensitive goods will apply'<sup>6</sup>. Thus, the compliance of the Iranian state with the JCPOA terms was based on Iran's interest in ceasing the imposition of sanctions by the US. Therefore, when the US withdrew from the JCPOA, further fulfilment of commitments by Iran did not make sense any more.

In light of the JCPOA, the United States will sustain the JCPOA and 'prevent interference with the realization of the full benefit by Iran of the sanctions lifting specified in Annex II. The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from imposing new nuclear-related sanctions specified in Annex II that it has ceased applying under this JCPOA, without prejudice to the dispute resolution process provided for under this JCPOA... Iran has stated that it will treat such a re-introduction or re-imposition of the sanctions specified in Annex II, or such an imposition of new nuclear-related sanctions, as grounds to cease per-

<sup>1</sup> The Ministry of Economy and Finance (MEF), Italy and Iran sign a Master Credit Agreement for investments in Iran. Organization for Investment, Economic and Technical Assistance of Iran. Rome, 11 January 2018.

<sup>2</sup> Alfonso Dastis, Spanish Foreign Minister, cited in the Iran Project.com. 21 February 2018.

<sup>3</sup> One meeting in Rome in May and two meetings in Brussels in September and December 2018.

<sup>4</sup> The EU External Action Service.

<sup>5</sup> The main discussion was mostly on Yemen and briefly – on Syria.

<sup>6</sup> *Joint Comprehensive Plan of Action...* Provision 18.

forming its commitments under this JCPOA in whole or in part'<sup>1</sup>.

After the US withdrawal, Iran continued its cooperation with the Agency and permitted it to visit nuclear sites and conduct surveillance, transparency, and containment measures. In return, 'the Agency continues to verify the non-diversion of declared nuclear material at the nuclear facilities and locations outside facilities where nuclear material is customarily used (LOFs) declared by Iran under its Safeguards Agreement'<sup>2</sup>. The Agency verified Information had been sent by Iran. During 2016–2018, Iran fulfilled all obligations and maintained its compliance with the JCPOA commitments. The fulfillment of obligations by Iran was verified until 2019.

Finally, Iran opted to act contrary to its commitments rather than raise the issue of the US withdrawal before the UNSC or by any other means. On 1 July 2019, the IAEA Board Governors received the report by the Director General regarding Iran's breach on uranium stockpile limit. 'Iran's total enriched uranium stockpile, therefore, has exceeded 300 kg of UF<sub>6</sub> enriched up to 3.67% U-235'<sup>3</sup>. 'Since that date, Iran has been enriching uranium up to 4.5% U-235'<sup>4</sup>. The report noted that that Iran regraded its commitments toward the heavy water and reprocessing activities, but it pursued the enrichment of UF<sub>6</sub>. The additional protocol also remained 'pending its entry into force'<sup>5</sup>.

According to the IAEA Director General report of September 8, 2019 regarding the enrichment activities, on 5 September 2019 the then Iranian President stated that 'all of our commitments for research and development under the JCPOA will be completely removed'<sup>6</sup>. In the following report, the Agency verified the installation of cascades, the reinstallation of the piping and centrifuges and manufacturing more centrifuge rotor tubes. In November, however, 'Iran informed the Agency that its stock of heavy water had exceeded 130 metric tonnes. The Agency verified that the

Heavy Water Production Plant (HWPP) was in operation and that Iran's stock of heavy water was 131.5 metric tonnes'<sup>7</sup>.

To summarize, Iran and other parties to the JCPOA started the cooperation under specific circumstances. The US withdrawal from the deal changed the circumstances under which the JCPOA had been concluded, thus jeopardizing Iran's interests. Consequently, Iran realized that the cooperation was no longer beneficial for it. Hence, the country lost interest in cooperating with the IAEA for nuclear safety and security.

As a result, in 2020 the IAEA and Iran restarted 'reinforcing cooperation and enhancing mutual trust while resolving outstanding safeguards implementation issues in Iran'<sup>8</sup>. Such a trust has not come to exist in between them, as the US withdrawal and re-imposition of sanctions were not taken into consideration by the IAEA. The main part of the JCPOA concerns lifting sanctions imposed on Iran by the US and UN Security Council. The US withdrew from the JCPOA while Iran remained in compliance with the JCPOA obligations for a long time but could not enjoy its rights as sanctions were re-imposed and maximum pressure was brought on it.

The US withdrawal made the JCPOA a one-sided agreement which jeopardized Iran's rights and interests. Iran willingly entered into this multilateral agreement with reciprocal consent, but in the halfway of the JCPOA implementation, Iran found itself with a pile of commitments without satisfaction of its initial purpose aimed at paving a legal path in the international sphere for Iran to become exempt from the US sanctions. However, this plan of action became literally a legal instrument to impose maximum pressure on Iranian state, as is evident from reports Submitted to the IAEA Board.

The lack of balance between legal obligations and rights in the JCPOA illustrates the weakness of Iran in making international legal deals, particularly multilateral ones. Every party, pursues its own interests while serving the international benefit. Aiming at lifting the sanctions, Iran failed to

<sup>1</sup> *Joint Comprehensive Plan of Action...* Para. 26.

<sup>2</sup> IAEA Safeguards Serving Nuclear Non-Proliferation, June 2015.

<sup>3</sup> IAEA, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, Report by the Director General, GOV/INF/2019/8, 1 July 2019.

<sup>4</sup> *Ibid.* Para. 11.

<sup>5</sup> *Ibid.* Para. 29.

<sup>6</sup> IAEA, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, Report by the Director General, GOV/INF/2019/10, 8 September 2019. Art. 2.

<sup>7</sup> IAEA, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, Report by the Director General, GOV/INF/2019/17, 18 November 2019. Art. 2.

<sup>8</sup> IAEA, *NPT Safeguards Agreement with the Islamic Republic of Iran*, Report by the Director General, GOV/2020/47, 4 September 2020.

legally accredit its nuclear programme through committing to the JCPOA, whereas the US withdrawal perpetuated sanctions regardless of whether Iran would remain compliant with the JCPOA commitments or not.

Between 2019 and 2020, the E3 undertook several measures to support the JCPOA. Of them, the Instrument in Support of Trade Exchanges (INSTEX)<sup>1</sup> was notably significant as it was a mechanism of trade and commerce which was meant to facilitate lawfully trading relations with Iran regardless of the USA sanctions. This trading mechanism has never had an effective function.

Another significant device was the European-Led Maritime Awareness in the Strait of Hormuz (EMASOH)<sup>2</sup> aimed at the safety of sea navigation around the Strait of Hormuz and at stabilizing in the Strait of Hormuz through an integrative regional dialogue under the leadership of France as substitute for the USA, so that the American maximum pressure would deteriorate. Accordingly, the regional tensions between Iran and the USA would decline.

The withdrawal of the United Kingdom from the European Union on 31 January 2020 (Brexit) has had an adverse effect on the scope and degree of implementation of the E4's decisions for the wider EU policy. Overall, the E3 has developed into a well-established *ad hoc* coordination mechanism for France, Germany, the UK, and sometimes the EU High Representative for Foreign Affairs and Security Policy / Vice President of the Commission (HR/VP), to react jointly to a larger extent of international security developments.

The G4, comprising the UK and the new EU big three (Germany, France and Italy), now function as a substitute of E3 that are the main founding members of the European Communities playing a leading role in Europe. 'In a letter dated 13 January 2021, Iran informed the Agency that pursuant to steps taken by Iran to reduce its commitments under the JCPOA, there were seen no more limitation on Research and Experimental Development (R&D) activities and that the modification and installation of the relevant equipment for the mentioned R&D activities have been already started'<sup>3</sup>.

<sup>1</sup> Available at: <https://instex-europe.com/about-us/founding-statement/>.

<sup>2</sup> Available at: <https://www.mica-center.org/en/european-led-maritime-awareness-in-the-strait-of-hormuz-emasoh>.

<sup>3</sup> IAEA, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution*

One of the May 2021 reports by IAEA Director General admits that 'the agreement of 24 May 2021 is to enable the Agency to recover and re-establish the necessary continuity of knowledge'<sup>4</sup>.

On 8 December 2020, the Iranian parliament passed a bill<sup>5</sup> under the title 'Strategic Action to Lift Sanctions and Protect the Interests of Iranian Nation'<sup>6</sup>. The Iranian administration, then, adopted this legal act which allows reducing some Iran's nuclear commitments and, in turn, enhancing the uranium enrichment activities, namely production of uranium, to 20% purity. The Agency received a letter from Iran regarding its compliance with the legal act stating that 'the AEOI [Atomic Energy Organization of Iran] intends to produce LEU [low-enriched uranium] up to 20%' at the Fordow Fuel Enrichment Plant (FFEP), and that the relevant part of the design information questionnaire for FFEP will be updated accordingly'<sup>7</sup>.

As mentioned in the February 2021 report by the IAEA Director General, Iran proceeded its plan. Iran, for instance, began 'feeding UF6 into the second recently installed cascade of 174 IR-2m centrifuges', conducting R&D with UF6 and stopped implementing 'voluntary transparency measures as envisaged in the JCPOA, including the Additional Protocol'<sup>8</sup>. This Law played a key role in the process of verification and monitoring measures such as transparency. The Safeguards Agreement, the Additional Protocol to the CSA and 'Modified Code 3.1 of the subsidiary arrangements to Iran's Safeguards Agreement were affected by the Law. Afterward, the Agency and Iran reached a so-called temporary bilateral Technical

2231 (2015), Report by the Director General, GOV/INF/2021/3. Art. 8.

<sup>4</sup> IAEA, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231* (2015), Report by the Director General, GOV/2021/28, 31 May 2021. Art. 46. (GOV/2021/24).

<sup>5</sup> In Persian: قانون اقدام راهبردی برای لغو تحریمها و صیانت از منافع ملت ایران.

But in Annex I of the Report by the Director General of 23 February 2021 it was referred as 'Strategic Action to Cease Actions and Protect the Interest of Iranian Nation (The Law)'. See further: <https://www.iaea.org/sites/default/files/21/03/gov-2021-10.pdf>.

<sup>6</sup> Executive Regulations of the Strategic Action Law to Lift Sanctions and Protect the Interests of the Iranian Nation. Available at: <https://www.rrk.ir/Laws/ShowLaw.aspx?Code=22670>.

<sup>7</sup> IAEA, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231* (2015), Report by the Director General, GOV/INF/2021/1, 1 January 2021.

<sup>8</sup> Ibid.

Understanding, compatible with Iranian law for 'necessary verification and monitoring activities related to the JCPOA for up to three months'<sup>1</sup>. By virtue of the bilateral Technical Understanding, the Agency managed to continue 'its full verification and monitoring of Iran's nuclear-related commitments under the JCPOA if and when Iran resumes its implementation of those commitments'<sup>2</sup>.

Gradually Iran restrained its cooperation with the IAEA's monitoring and verification inspections and stopped implementing the Additional Protocol to its Comprehensive Safeguards Agreement which facilitates accessibility to the nuclear sites and inspections of the nuclear facilities and assets. Iran even paused implementation of the Code 3.1 subsidiary arrangement, which requires notification of construction of any new nuclear facility when the decision is made: and of other JCPOA-related transparency measures. Cooperation, transparency and inspection in Iran's nuclear programme remarkably decrease. In February 2021 IAEA and Iran reached a 'Temporary Technical Understanding' on inspections of the nuclear sites within Iran's territory for three months. According to this Iran-IAEA cooperation deal, 'the temporary bilateral technical understanding between Iran and the Agency is to enable the Agency to continue with its necessary verification and monitoring activities related to the JCPOA for up to three months. It is also to enable the Agency to resume its full verification and monitoring of Iran's nuclear-related commitments under the JCPOA if and when Iran resumes its implementation of those commitments'<sup>3</sup>.

Nonetheless, the Director General summarized in the report on 30 May 2022 that 'From 23 February 2021 onwards, the Agency's verification and monitoring activities have been seriously affected as a result of Iran's decision to stop the implementation of its nuclear-related commitments under the JCPOA, including the Additional Protocol'<sup>4</sup>. In the meantime, in a separate report it is

emphasized that all actions undertaken in the IAEA – Iran Joint Statement of 5 March 2022 ought to be practically completed to 'accelerate and strengthen their cooperation and dialogue aimed at the resolution of the issues'<sup>5</sup>.

On 8 June 2022, the Agency verified that Iran expanded new installations of centrifuges and cascades<sup>6</sup>. So, the IAEA Board of Governors approved a resolution<sup>7</sup> criticizing Iran for insufficient disclosure of information on its nuclear programme. Thereafter the US and E3 welcomed the adoption of the resolution by the IAEA Board of Governors in response to Iran's lack of cooperation with the IAEA on serious and outstanding issues related to Iran's commitments, while making a joint statement which urged 'Iran to heed the call of the international community to fulfill its legal obligations and cooperate with the IAEA to fully clarify and resolve issues without further delay'<sup>8</sup>. Russia and China voted against the resolution though.

In August 2022, however, the president of the United States uttered ahead of the 10th Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons that 'diplomacy – in coordination with our Allies and regional partners – we have developed a proposal to secure a mutual return to full implementation of the Joint Comprehensive Plan of Action to ensure that Iran does not acquire a nuclear weapon, ... re-establishing our leadership in the peaceful use of nuclear energy, including seeking to establish the IAEA Additional Protocol as a universal standard for both international safeguards and for nuclear supply arrangements, and continuing our efforts to limit the spread of sensitive enrichment and reprocessing technology'<sup>9</sup>.

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*ic Republic of Iran in light of United Nations Security Council resolution 2231 (2015), Report by the Director General.*

<sup>5</sup> IAEA, GOV/2022/26, 30 May 2022, (GOV/2022/22 and Add. 1), *NPT Safeguards Agreement with the Islamic Republic of Iran*, Report by the Director General.

<sup>6</sup> IAEA, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, Report by the Director General, GOV/INF/2022/13, 8 June 2022.

<sup>7</sup> IAEA, *NPT Safeguards Agreement with the Islamic Republic of Iran*, Resolution adopted by the Board of Governors on 8 June 2022, GOV/2022/34, 8 June 2022.

<sup>8</sup> France, Germany, UK, and US approve IAEA resolution on Iran. 2022. Available at: <https://www.interfax.ru/world/845440>.

<sup>9</sup> The White House, President Biden Statement ahead of the 10th Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons. 1 August 2022.

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<sup>1</sup> IAEA, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, Report by the Director General, GOV/2021/10, 23 February 2021.

<sup>2</sup> Ibid.

<sup>3</sup> GOV/2021/10, 23 February 2021, (GOV/2021/6), *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, Report by the Director General.

<sup>4</sup> Board of Governors, GOV/2022/24, 30 May 2022, (GOV/2022/22 and Add.1), *Verification and monitoring in the Islam-*

Now, all the international actors in Iran's nuclear programme reached this conclusion that the 2015 JCPOA cannot appropriately respond to the current and ongoing circumstances. Emphasis on keeping terms of the JCPOA is not wise action as well. Since July 2022 another agreement has been proposed by the EU foreign policy chief which is more compatible with the current situation hoping to act more fruitfully [6].

### **Conclusions**

The legal dispute over Iran's nuclear programme arises from two principal resources in the sphere of international nuclear law: one is related to the rights and obligations affirmed by the NPT such as Article IV and the other deals with the Middle East Nuclear-Weapon-Free Zone (MENWFZ).

In light of Article IV of the NPT 'all the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy'. Therefore, Iran as a member of the NPT has the right to enjoy information and technology for peaceful uses of nuclear energy whereas Article VII of the NPT supports regional treaties with regard to nuclear disarmament, noting that 'nothing in this Treaty affects the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories'.

The MENWFZ is one of those regional Initiatives respecting non-proliferation of nuclear weapons. As regards Iran, 'by ratifying all international treaties banning weapons of mass destruction, namely the Treaty on the Non-Proliferation of Nuclear Weapons; the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction; and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, and fully implementing their provisions, has demonstrated its strong resolve in support of the establishment of a nuclear-weapon-free zone in the Middle East'<sup>1</sup>.

As Iran is one of the members of the NPT and under obligations of a comprehensive safeguard agreement with the IAEA, the Agency is capable

of monitoring and verifying the nuclear material and technology used only for peaceful purposes and for the prevention of nuclear proliferation. Therefore, undeclared nuclear information regarding material, technology, plant site and other facilities is non-compliance with the safeguard agreement. It is the IAEA's authority to monitor and verify nuclear activities and programmes of a state, but this authority is limited. Since every state is sovereign, the state's permission and consent entitle the Agency to conduct monitoring within the state's borders. The Agency does not possess sufficient mechanisms and instruments for monitoring and detecting non-compliant behavior. Although the Additional Protocols to the IAEA comprehensive safeguard agreements can be practically a working instrument to raise the Agency's ability to assess and detect non-compliant activities, such an instrument comes into effect only if ratified by the state. Thus, pending ratification disaffects it even if the state has already signed it. As argued earlier, Iran signed the Additional Protocol in 2003 but it never ratified it to implement.

Iran and the IAEA never reached an agreement for a totally steady cooperation. Acts of cooperation between Iran and the Agency have been episodic, and each of them did not last longer than a couple of years, because Iran has never wished to be bound by such obligations. Another issue is the executive guarantee of the JCPOA. In 2005, when Iran was stated by the IAEA non-compliant with its safeguard agreements, Iran was given another chance to comply with the IAEA rules, and the Agency adopted a resolution.

In 2007 the so-called provision modified Code 3.1 was the center of argument. The modified Code 3.1 seems to have conveyed unclear, vague meaning regarding Iran since the Iranian state interpreted this provision as it is not required to declare the design and construction of new facilities to the Agency as it would plan them. Shortly after, the UNSC Resolution 1929 (2010) noted 'in accordance with Articles 24 and 39 of Iran's Safeguards Agreement, Iran's Safeguards Agreement and its Subsidiary Arrangements, including modified Code 3.1, cannot be amended or changed unilaterally by Iran'<sup>2</sup>.

<sup>1</sup> *Establishment of a nuclear-weapon-free zone...* P. 11.

<sup>2</sup> IAEA, *Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran*, Report by the Director General, GOV/2010/46, 6 September 2010.

The E3/EU and later E4/EU applied mechanisms to catalyze a profound growth in the EU consensus in respect of Iran's nuclear programme. One of the main strengths of these mechanisms for the nuclear case was that they intended to ensure a full cooperation and transparency from all parties (Iran, and the USA and its allies). The E4/EU managed to dynamically generate convergent approach within the entire EU toward Iran's nuclear programme and its contribution to the Middle East region. Meanwhile, it strived to lower the pressure imposed by the USA including snapback mechanism. Not only Russia and China but also the EEAS, Italy, Austria, Spain, Poland and other EU countries have been advocating a balancing approach with divergent dynamics, including dialogue and diplomacy. The E4/EU could provide for a convergent framework enabling EU to resolve disputes and reconcile different points of view on a systematic basis rather than through occasional meetings held by the European Council. The E4/EU would ameliorate the EU susceptibility to the US pressure and opposite stance particularly on the Middle East region.

By means of the JCPOA, the E4/EU could establish an open mutual communication between Iran and the world community including the USA and its allies in the Middle East and Europe. The E3/EU took initiatives such as its engagement in the JCPOA Joint Commission on the nuclear arena and the creation of the INSTEX Special Purpose Vehicle (SPV) to protect E3-Iran trade from US sanctions. The E4/EU has been aimed to urge Iran that compliance with legal obligations would make a legitimate way to pursue its legal interests and to enjoy its alienable rights without paying the cost of isolation and frustrating dissension. The privilege of the E4/EU in comparison to the E3/EU is that it has occupied a more concrete position among the EU, which help them focus on their priorities and reflect their expectations about continuing the nuclear diplomacy and management. As regards the E4 effectiveness, there are two opposite points of view. One promotes the E4's measures on the nuclear dispute as the cornerstone of utmost diplomatic breakthroughs. The other viewpoint, focusing on the E4's pitfalls, is that the E4 is not an 'advanced version' of the E3 for such legally delicate situations.

The role of UN Security Council cannot be overshadowed. It is acknowledged that the UN Security Council resolutions have affected the Iran's inconsistency with the IAEA obligations to

some extent but have never been sufficient to make Iran committed permanently. The US withdrawal from the JCPOA violated Iran's interests. The JCPOA was once recognized as the most historical, significant multilateral deal between Iran and the power states, but after the US withdrawal, it turned to lose its attractiveness as well as benefits for Iran in the international legal sphere. Instruments such as sanctions, freezing assets, financial embargo and so forth, used to make Iran remain in compliance with the obligations, have lost their efficacy, as Iran has never violated the NPT.

The UNSC has never announced Iran to be in non-compliance with the corresponding obligations. The resolutions the UNSC adopted against Iran were with regard to the IAEA Board's decisions and judgments. Every assessment the Agency has made was based on the probability and estimation, not on concrete evidence. For example, 'possible military dimensions' of Iran's nuclear programme have never been detected by the Agency, and it still remains a possibility. However, Iran has always been suspected of violating provisions of Article II of the NPT. Interestingly, the Agency has never declared that Iran has attempted nuclear armament. The United States Department's report in 2005 argues the NNWS Party's compliance with Article II of the NPT obligations: 'compliance assessments are highly contextual, and no single, comprehensive definition, unrelated to specific factual situations, would be useful. However, the United States has explicitly stated that the prohibition against the 'manufacture' of a nuclear weapon, as well as against seeking or receiving any assistance in this regard, reaches more than simply the final assembly of such a device. facts indicating that the purpose of a particular activity was the acquisition of a nuclear explosive device would tend to show noncompliance'<sup>1</sup>.

The balance between rights and obligations was not fully observed when the JCPOA was tailored and implemented. In general, the JCPOA was an attempt to assure Iran's compliance with the commitments, mainly serving to the American party's interests, as it was meant to be an executive guarantee for the Iranian party's peaceful nuclear activities. In return, other parties' commitments to guarantee Iran's rights were overshadowed by

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<sup>1</sup> U.S. Department of State (2005) Adherence to and Compliance with Arms Control, Non-Proliferation and Disarmament Agreements and Commitments, August 2005.

Iran's commitments. There was not any executive guarantee for the parties to remain in non-compliance with their commitments except Iran. The commitments of other state parties to the JCPOA depended on the fulfilment of Iran's commitments. They obviously had more freewill to act but Iran would face more limitations in practice if one of those parties did not comply with its commitments.

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