Joint Comprehensive Plan of Action: Second Treaty on the Nonproliferation of Nuclear Weapons

Ali Javadi Aghdam
Master Student in International Law, Damavand Branch, Islamic Azad University, Damavand, Iran
javadiaghdam.a@gmail.com

Abstract

After World War II, a political and legal process that continues today has restricted the use of nuclear energy because of its destructive effects and military reasons. In the framework of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), and the International Atomic Energy Agency (IAEA), some restrictions on the use of nuclear energy have been defined for countries such as Iran which is the member of the IAEA. However, according to the Joint Comprehensive Plan of Action (JCPOA) signed at Vienna between Iran and permanent members of the UN Security Council plus Germany in 2015, some commitments beyond the NPT were accepted. This introduced a different strategy in dealing with nuclear states. In this study, after reviewing the JCPOA and its provisions, since JCPOA has been annexed to the UN Security Council Resolution 2231 (2015) and according to article 25 of the UN charter, we suggested that JCPOA can be used as the second NPT in taking measures to safeguard the peaceful nuclear activities in the world.

Keywords: Treaty on the Non-Proliferation of Nuclear Weapons, Joint Comprehensive Plan of Action, NPT, JCPOA.
1. Introduction
Due to the Cold War and the threat of Soviet nuclear technology transfer to developing countries, it was needed to take effective measures in limiting the transmission and use of atomic energy in order not to endanger international security. According to the Atomic Energy Act passed by the United States Congress in 1946, The federal government did not allow to transfer the nuclear technology to other countries; hence, those countries that wanted access to nuclear technology and nuclear weapons, according to Soviet access to this technology, they were able to engage with the Soviet, and facilitate the spread of Soviet influence in the East and other regions of the world; therefore, Since at that time like today, there was no international legal mechanisms such as the NPT and the International Atomic Energy Agency (IAEA) to monitor, control and ban on military use of nuclear energy, there was a risk of transfer of nuclear technology to other countries in the military by the Soviet, and it could endanger international peace and security and increase the risk of nuclear war. Due to these reasons, the need for legal political mechanism for controlling and international monitoring of nuclear-weapon states, and prevent other countries from acquiring nuclear weapons was necessary. In this respect, Dwight D. Eisenhower, the incumbent president of the United States, delivered his “Atoms for Peace” speech to the UN General Assembly in December 1953, and then it was approved in 1954. Based on this program, the right to the peaceful use of atomic energy for other countries was recognized. It determined the US nuclear policy against other countries, and caused the formation of the Atomic Energy Organization in October 23, 1956 and the Treaty on the Nonproliferation of Nuclear Weapons (NPT) on 1 July 1968 [1]. Today, 198 countries have joined the Treaty. Four UN member states have never joined the NPT: India, Israel, Pakistan and South Sudan. Iran signed the NPT in 1968 as a non-nuclear weapons state and ratified the NPT in 1970.

Considering these factors and the process of formation of international law based on soft law, it can be understood that the basis of IAEA and the NPT first was to prevent countries that had no nuclear weapons from the achievement of these weapons, and expand the peaceful use of nuclear energy for prosperity and development for humanity, and more important, to avoid Soviet monopoly on nuclear technology transfer to other countries in order to prevent countries from getting closer to the Soviet Union to achieve nuclear energy. Nowadays, countries seeking peaceful uses of nuclear energy can achieve their wishes within the framework of the IAEA and the NPT. According article 3, sub-paragraph A of the statue of IAEA, the agency is authorized (a) to assist the use of atomic energy for peaceful uses throughout the world, (b) to act for supplying of materials, equipment, or facilities by one member of the Agency for another, (c) to foster the exchange of scientific and technical information on peaceful uses of atomic energy, and (d) to ensure that all materials, services, equipment, facilities, and information made available by the Agency under its supervision. In this regard, in 2015, The E3/EU+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy) and the
Islamic Republic of Iran reached an agreement in Vienna and made an historic Joint Comprehensive Plan of Action (JCPOA) [2] which ensure Iran’s peaceful nuclear programme. With this introduction, in this study, we review this plan and discuss about its legal and common consequences from the perspective of international law. In first section we review the NPT treaty and its provisions; in section 2 we review the JCPOA, and finally we present our conclusions regarding this agreement and its future effects.

2. The NPT
In the NPT treaty of (1995) ; “the NPT non-nuclear-weapon states agree never to acquire nuclear weapons and the NPT nuclear-weapon states in exchange agree to share the benefits of peaceful nuclear technology and to pursue nuclear disarmament aimed at the ultimate elimination of their nuclear arsenals”. It generally divides the countries into two categories including Nuclear-Weapon States (NWS) which have somehow acquired and tested nuclear bomb before entering into NPT. Based on article 9 of this Treaty,

“Nuclear-Weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967”.

Second group is Non-Nuclear-Weapon-States (NNWS). The former are responsible for reducing and eliminating their nuclear bombs and the latter are committed to build a nuclear bomb or acquire nuclear bomb by any other way. It supports nuclear research and development in the framework of the effective protection systems of the IAEA for peaceful and unmilitary use of nuclear technology, and allows the parties to the treaty to exchange scientific and technical information on peaceful and non-military use. In fact, it causes the countries, which want to access to nuclear energy for peaceful use, achieve their goals with the help of countries with this technology. The parties to NPT are obliged to end the nuclear arms race, take effective measures for nuclear disarmament, avoid from nuclear weapon tests in the atmosphere, destroy the arsenal of nuclear bombs, avoid from the threat of force, or use of force against the territorial integrity or political independence of any state in their international relations based on the Charter of the United Nations.

The NPT consists of a preamble and eleven articles. According to article 1, each NNWS Party to the Treaty should not transfer any recipient of nuclear weapons or other nuclear explosive devices directly, or indirectly. Also, under article 3, it says that each NNWS party to the Treaty should accept safeguards, as set forth in an agreement to be negotiated and concluded with the IAEA and use nuclear energy for peaceful purposes, “unless the source or special fissionable material shall be subject to the safeguards required by this Article. Also, these safeguards should be implemented in a manner

“To avoid hampering the economic or technological development of the Parties or international cooperation in the field of peaceful nuclear activities, including the
international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes.” (Article 3)

According to this article, the NNWS Party to the Treaty should conclude agreements with the IAEA to meet the requirements of this Article. Under article 4 of the NPT, nothing should be interpreted such that affect the inalienable right of all the Parties in research, production and use of nuclear energy for peaceful purposes without discrimination. All the Parties should facilitate the exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. They should cooperate alone or together with other States or international organizations in further development of nuclear energy use for peaceful purposes, especially in non-nuclear weapon States. In this Treaty, article 5 states that any peaceful applications of nuclear explosions should be made available to non-nuclear weapon States

“Under appropriate international observation and through appropriate international procedures, potential benefits ... and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development”. (Article 5)

Moreover, under Article 6, NPT says that each of the Parties should negotiate in good faith on effective measures to stop the nuclear arms race and nuclear disarmament. Also, article 8 of this Treaty states that regional treaties on nuclear disarmament are recognized

According to the final document of the 2010 NPT review conference, the vital importance of the universality of the NPT was emphasized and all non-member countries were asked to immediately join the NNWS parties to the Treaty unconditionally and have commitment to eliminate all the nuclear weapons. To achieve the universality of Treaty, the NNWS were also requested to have commitment to avoid from any act which can have a negative effect on the universality of the Treaty. Furthermore, all NWS were requested to join the Comprehensive Nuclear-Test-Ban Treaty (CTBT). According to the NPT/CONF. 2010/28, the conference encouraged the NPT member states, which have not concluded and enforced the Additional Protocol till now, to ratify and implement the Protocol as soon as possible, and implement it temporarily. NPT review conference was a positive and effective effort to eliminate nuclear weapons and curb nuclear activities of the countries.

2. Joint Comprehensive Plan of Action

As said before, Iran and the E3/EU+3 on 14 July 2015 reached an agreement on the use of nuclear energy in Vienna which was called “Joint Comprehensive Plan of Action” or JCPOA which consists of 37 annexes and ensures the exclusively peaceful nature of Iran's nuclear programme. Formal negotiations toward JCPOA began with the adoption of the “Joint Plan of Action”, an interim agreement signed between Iran and the E3/EU+3 countries in November 2013. For the next twenty months, Iran and the E3/EU+3 countries engaged in negotiations, and in April 2015 agreed on an “Iran nuclear deal framework” for the final agreement and in July
2015, Iran and the E3/EU+3 agreed on the plan. Under this plan, Iran has its right to use nuclear energy for peaceful purposes under NPT. This plan lifts all UN Security Council sanctions as well as multilateral and national sanctions related to Iran’s nuclear programme in areas of trade, technology, finance and energy. Based on this agreement, Iran and the E3/EU+3 acknowledged that the NPT remains their basis for the pursuit of nuclear disarmament and for the peaceful uses of nuclear energy, and IAEA was requested to monitor and verify the voluntary nuclear-related measures set forth in this plan. All relevant rules and regulations of the IAEA will be fully observed by all involved parties. According to the JCPOA:

“Iran will continue to conduct enrichment R&D in a manner that does not accumulate enriched uranium” (Annex 3);

“For 15 years, Iran will carry out its uranium enrichment-related activities” (Annex 5).

During these years, Iran

“will keep its uranium stockpile under 300 kg of up to 3.67% enriched uranium hexafluoride (UF6)... The excess quantities are to be sold based on international prices and delivered to the international buyer in return for natural uranium delivered to Iran” (Annex 7).

Iran also agreed not to build any new heavy-water facilities for the same period of time. Uranium-enrichment activities will be limited to a single facility using first-generation centrifuges for 10 years. Other facilities will be converted to avoid proliferation risks:

“For 15 years Iran will not...engage in any spent fuel reprocessing or construction of a facility capable of spent fuel reprocessing, or reprocessing R&D activities... with the sole exception of separation activities aimed exclusively at the production of medical and industrial radio-isotopes” (Annex 12).

In January 16, 2016, the Director General of the IAEA issued a statement declaring Iran to be in compliance with all of its obligations under the JCPOA necessary to declare Implementation Day. This cleared the way for comprehensive sanctions relief for Iran while allowing IAEA inspectors continued, unprecedented access to Iranian nuclear facilities. [3]

3. Discussion
According to what we mentioned above, it can be concluded that in international law, the principle is the lack of freedom in the absolute use of nuclear energy. It has been defined that no country has the right to use nuclear energy unless it observes and implements all the relevant rules and regulations of the IAEA and its safeguards including NPT, and shows its peaceful nature in accordance with the Charter of the UN to obtain qualifications in using nuclear energy.
Therefore, if any country violate the use of nuclear energy, the UN Security Council is responsible for deprivation of the right to nuclear energy for defaulting State With punitive measures limited or unlimited to maintain international peace and security; however, Considering all international legal cases, Security Council and Permanent members of the Council deal have treated differently for dealing with nuclear programs in developing countries that are delinquent or suspicious, and adopted three strategies of economic sanction, military attack, or dismantled all the nuclear facilities in the bounds of an agreement(e.g. Libya), but against Iran, they used another approach which is the limitations of nuclear energy use by formulating JCPOA. This introduced a different approach in dealing with nuclear states which is beyond the NPT obligations. Although it has been explicitly stated in JCPOA that:

“The E3/EU+3 and Iran acknowledge that the NPT remains the cornerstone of the nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament and for the peaceful uses of nuclear energy.” (Provision vii), and also: “All provisions and measures contained in this JCPOA are only for the purpose of its implementation between E3/EU+3 and Iran 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 “(Provision xi),

But considering that the nuclear treaty JCPOA has been annexed to the UN Security Council Resolution 2231, and according to article 25 of the UN charter [4] says:

“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter”,

this Treaty does not require the approval of the competent authorities of the parties to be entered into force, because members’ international commitments should not be in conflict with the object and general purpose of the UN Charter; If any of the parties intends to prevent from the enforcement of the Treaty due to the unratification by the Treaty by the competent authorities, their act will be in conflict with article 25 of the Charter. For example, if the next president of the US intended to unilaterally cancel the agreement, according to the 1969 Vienna Convention on the Law of Treaties, it will be the violation of international treaty laws which will bring international responsibilities for this country. Also, based on the UN Charter, commitments of the members have been prioritized on obligations under treaties and other commitments made by international relations; so, under article 25 of the Charter of the UN and laws of treaties, the commitment of the parties is to adhere to the nuclear deal and its implementation. In this basis, the Iran deal can be a common strategy and instead of using NPT in dealing with different countries, they can be treated according to limitations set forth in this action plan. For example, the Saudi Arabia has shown a tendency to a nuclear program; in this case, this country can be
obliged to observe the limitations set forth in the JCPOA in using atomic energy. Shortly after the announcement of the Geneva Agreement between Iran and E3/EU+3, White House spokesman stated that the United States is ready to conclude an agreement with the North Korea like Iran deal. Thus, the Security Council has gone beyond the NPT and has considered the JCPOA as the criterion for the rights and obligations of the states seeking nuclear energy in the future. In this respect, the JCPOA cannot be called “the second Nonproliferation of Nuclear Weapons Treaty” or “NPT No. 2”.
References


