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## **THE ROLE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY WITH REGARD TO HUMAN SECURITY**

### **Conference on Nuclear Weapons and Human Security**

Sanremo International Institute of Humanitarian Law

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Good afternoon. Thank you very much for the kind invitation to speak at this conference and for the opportunity to come to Sanremo.

As part of this panel, I have been asked to speak on the role of the International Atomic Energy Agency (IAEA) with regard to human security. According to the common understanding agreed upon by the UN General Assembly,<sup>1</sup> “human security” includes “the right of people to live in freedom and dignity, free from poverty and despair” and “freedom from fear.” It “calls for people-centred, comprehensive, context-specific and prevention-oriented responses that strengthen the protection and empowerment of all people and all communities.” In the context of this conference, human security implies a people-centred approach in addressing issues posed by nuclear weapons, and it aims at protecting people from the fear and risks associated with those weapons.

I will therefore look at the IAEA’s role to protect people, often through the protection of states, against the dangers posed by nuclear weapons and their proliferation.

Interestingly, former IAEA Director General Mohamed ElBaradei himself advocated for “an overall approach to global security that must be people-centred - that is, based on *human* security”.<sup>2</sup> He noted that such an approach was different from a more traditional one “rooted in the protection of national borders and concepts of sovereignty”.

Yet, the IAEA’s mandate is still very much enshrined in a state centred approach: it is framed by international agreements concluded between and with states protective of their national interests and security, and its effective implementation largely depends on states cooperation and political will. However, the relevant legal framework and the activities of the Agency undoubtedly take into account and contribute to human security.

I will examine those activities, which include the traditional role of the IAEA to safeguard nuclear material and facilities to detect and deter the proliferation of nuclear weapons, but also more recent functions in the field of nuclear security and disarmament. I will then conclude with an example of what can be done by organisations such as VERTIC to strengthen the Agency’s role.

### *The traditional role: safeguards*

The IAEA came into existence in 1957, when its Statute entered into force. Article II of the Statute sets out the objective of the Agency: the organisation “shall seek to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world. It shall ensure, so far as it is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose.” This allows the Agency to perform its functions with the interests of states but also people in mind, to further their peace, health, prosperity and security.

One of the Agency’s functions, provided for in Article II. A. 5 of the Statute, is to “establish and administer safeguards designed to ensure that special fissionable and other materials, services, equipment, facilities, and information made available by the Agency or at its request or under its supervision or control are not used in such a way as to further any military purpose; and to apply safeguards, at the request of the parties, to any bilateral or multilateral arrangement, or at the request of a State, to any of that State's activities in the field of atomic energy; (...)”. The implementation of safeguards provides assurances in the peaceful nature of states’ nuclear programmes, and thereby in the security of other states but also people.

The safeguards function of the Agency expanded considerably with the adoption of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). As the Statute enables the Agency to “apply safeguards, at the request of the parties, to any *bilateral* or *multilateral arrangement* (...)”, the task of applying safeguards to all nuclear material in all nuclear peaceful activities of non-nuclear-weapon states parties to the treaty was entrusted to the IAEA. As provided for in Article III.1 of the NPT, “each non-nuclear-weapon state party to the treaty undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency (...) for the exclusive purpose of verification of the fulfilment of its obligations assumed under [the] treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices.”

IAEA safeguards are now recognized as a “fundamental pillar of the nuclear non-proliferation regime”, playing “an indispensable role in the implementation of the NPT”.<sup>3</sup> They contribute to the achievement of the treaty’s objectives as stated in its preamble, including the “need to make every effort to avert the danger of [a nuclear] war and to take measures *to safeguard the security of peoples*”.

IAEA Information Circular 153 (Corr.) contains the structure and content of the NPT “comprehensive safeguards agreements”. Their objective is “the timely detection of diversion of significant quantities of nuclear material from peaceful nuclear activities to the manufacture of nuclear weapons or of other nuclear explosive devices or for purposes unknown, and deterrence of such diversion by the risk of early detection.” To do so, the Agency applies nuclear material accountancy, containment and surveillance measures. It analyses information concerning nuclear material subject to safeguards provided by the state, collected from open sources and third parties, and obtained through its own verification activities including on-site inspections.

After the discovery in the early 1990s of a clandestine nuclear weapons programme in Iraq, a non-nuclear-weapon state party to the NPT, the Agency adopted a model protocol additional to the agreement between states and the IAEA for the application of safeguards, “in order to strengthen the effectiveness and improve

the efficiency of the safeguards system as a contribution to global nuclear non-proliferation objectives.” When in force, the additional protocol gives the IAEA access on a more routine basis to more information and locations related to the state’s nuclear activities.

The Agency’s conclusions on safeguards implementation in a given state depend on the results of the verification activities but also on the legal framework applicable to that state. The Secretariat is able to conclude that all nuclear material remained in peaceful activities only for states with both a comprehensive safeguards agreement and an additional protocol in force, if it finds no indication of the diversion of declared nuclear material from peaceful nuclear activities and no indication of undeclared nuclear material or activities. For states with only a comprehensive safeguards agreement in force, the Secretariat has limited tools to verify the absence of undeclared nuclear material and activities. Therefore, it concludes that *declared* nuclear material remained in peaceful activities.

The Agency also contributes to states and human security by triggering an alarm that can lead to the adoption of remedying measures when states are found to be non-compliant with their safeguards obligations and raise proliferation concerns. Per Article XII. C of the IAEA Statute, “the inspectors shall report any non-compliance to the Director General who shall thereupon transmit the report to the Board of Governors. The Board shall call upon the recipient state or states to remedy forthwith any non-compliance which it finds to have occurred. The Board shall report the non-compliance to all members and to the Security Council and General Assembly of the United Nations. (...)” Article III. B. 4 of the Statute further provides: “(...) if in connection with the activities of the Agency there should arise questions that are within the competence of the Security Council, the Agency shall notify the Security Council, as the organ bearing the main responsibility for the maintenance of international peace and security”.

Sanctions and enforcement measures are then left to the UN Security Council itself. In that respect, much could be said about the extent to which the UNSC pays attention to human security and adopts a people-centred approach when deciding on UN Charter Chapter VII measures, but that would be the object of a different conference.

Let me now discuss more recent roles of the IAEA with regard to human security.

### ***An expanding role: security and disarmament verification***

#### *Security*

“Nuclear security focuses on the prevention of, detection of, and response to, criminal or intentional unauthorized acts involving or directed at nuclear material, other radioactive material, associated facilities, or associated activities”.<sup>4</sup> Nuclear security goals include protecting persons, property, society and the environment, in particular from other people with criminal intentions such as terrorists.

The legal framework for nuclear security is complex and comprises many instruments addressing various areas of international law and various aspects of nuclear security. They include the Convention on the Physical Protection of Nuclear Material (CPPNM) and its Amendment, the International Convention for the Suppression of Acts of Nuclear Terrorism, UN Security Council Resolution 1540, the Code of Conduct on the safety and security of radioactive sources. Those instruments have a human security component: for

example, the CPPNM criminalizes acts involving nuclear material that could cause serious injury to any person, ICSANT criminalizes acts involving radioactive material and nuclear devices committed with the intent to cause death or injury, and both include administrative, regulatory and other enforcement measures that aim to prevent such acts.

The IAEA Statute does not specifically envisage a nuclear security role for the IAEA, as issues such as nuclear terrorism were not a main concern at the time of its adoption. Nevertheless, the Agency's broad objective to "accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world" allowed for the development of a number of nuclear security activities, supported by the Agency's member states through resolutions of the Board of Governors and General Conference.

Such activities include assistance to states, upon request, in their efforts to establish effective and sustainable national nuclear security regimes; ensuring a coordinating role for strengthening international cooperation and sharing information; completing international guidance on nuclear security and supporting its implementation; encourage and assist states to adhere to relevant international instruments and to adopt implementing national legislation. The international instruments for nuclear security themselves, in particular the CPPNM and ICSANT, foresee specific coordinating roles for the Agency and encourage states parties to take into account relevant recommendations and functions of the organisation.

#### *Disarmament verification*

According to Article III. B. 1 of its Statute, the Agency shall, in carrying out its function, "conduct its activities (...) and in conformity with policies of the United Nations furthering the establishment of safeguarded worldwide disarmament and in conformity with any international agreements entered into pursuant to such policies." This does not mean that the Agency should have an advocating role in the area of disarmament, but the organisation can certainly contribute to the establishment of safeguarded worldwide disarmament.

In that sense, the statutory provision enabling the Agency to "apply safeguards, at the request of the parties, to any bilateral or *multilateral arrangement* (...)" constitutes a solid legal basis for an Agency's role in disarmament verification. States can request the Agency to apply safeguards not only to detect diversion of nuclear material and undeclared material, but also to verify various aspects of disarmament including: the disposition of weapons-origin nuclear material, the decommissioning or conversion of military enrichment and reprocessing facilities; the dismantlement of nuclear warheads; and the cessation of nuclear weaponisation research and development, and associated capabilities. There is precedent for such a disarmament verification role: from 1996 to 2002, the Trilateral Initiative involving Russia, the United States and the IAEA investigated a system of verification of classified forms of weapons-origin and other fissile material deemed no longer required for defence purposes.

While the legal and technical modalities of a framework for IAEA disarmament verification are still being discussed,<sup>5</sup> political support for that role has already largely been expressed. In the resolution on safeguards adopted at its 58<sup>th</sup> session, the IAEA General Conference noted that "the Agency must remain ready to assist, in accordance with its Statute, with verification tasks under nuclear disarmament or arms control agreements that it may be requested to carry out by the states parties to such agreements." The draft

final document of the 2015 Review Conference of the NPT also foresaw a disarmament verification role for the Agency. It noted: “the Conference encourages all States, including in cooperation with international organisations and civil society, to pursue and intensify efforts to develop nuclear disarmament verification capabilities, taking into account the role of the International Atomic Energy Agency in the area of verification, that will be required to provide assurance of compliance with nuclear disarmament agreements for the achievement and maintenance of a world without nuclear weapons (...)”.

### ***Support for the IAEA’s role with regard to human security***

Much can be said about what should be done to strengthen the IAEA’s role with regard to human security. I am going to focus on one particular example here, building on the UN General Assembly’s understanding that “human security requires greater collaboration and partnership among governments, international and regional organizations and civil society”. The latter can certainly help promote a human security approach to nuclear non-proliferation, security and disarmament. It can additionally assume a facilitation and assistance role to support and help strengthen the IAEA existing activities related to human security.

VERTIC has been working in that sense, and I would like to briefly give you the example of our additional protocol project.

As I discussed earlier, the protocol additional to safeguards agreements significantly increases the Agency’s ability to detect undeclared nuclear material and activities and provides greater assurance in the peaceful nature of states’ nuclear programmes. 125 states today have an additional protocol in force. This is a significant number – there are 191 NPT states parties – but universality has not been reached yet. Political reasons partly explain the opposition of a few states to conclude an additional protocol, but there also seems to be a lack of understanding of what the instrument involves, which can explain reluctance to bring one into force. Furthermore, even when the additional protocol is in force in a given country, it is sometimes not being fully implemented.

VERTIC has therefore been carrying out a project to provide assistance on adherence to and implementation of the additional protocol. The objective of the project is to assist governments wishing to conclude an additional protocol; increase their understanding of how to implement safeguards effectively and efficiently, including when renewing nuclear activities plans, and increase their understanding of the non-proliferation regime and their countries’ role in it. The project activities include: awareness-raising initiatives through bilateral engagement, contributing to forums, disseminating materials; provision of legal, technical and practical materials, including learning tools explaining the NPT, safeguards, and what they mean for a country; identifying countries’ potential needs through gap analysis surveys and stakeholder consultation; in-country visits, on invitation by governments, to provide tailored workshops for government stakeholders across relevant departments.

We are also developing a safeguards database to facilitate knowledge and experience sharing on safeguards implementation.<sup>6</sup> The database sets up country profiles with information on their geographic region, legal system and nuclear activities. It also identifies the existing national legislative framework for safeguards, to show how obligations in comprehensive safeguards agreements and additional protocols have been translated into a given country’s national legislation, including references to the relevant laws, decrees or

regulations. Additionally, information is provided on the organisational structure for safeguards implementation, including nuclear regulators and related bodies. Finally, the database gives an overall description of safeguards implementation, highlighting the key elements of different implementation approaches and their factors. This tool will enable states and other relevant stakeholders to learn from each other's experiences and approaches. Ultimately, it will provide a better understanding of the challenges associated with safeguards implementation and how countries with various legal and institutional traditions have overcome those challenges, encouraging other states to adhere to and implement a comprehensive and effective safeguards regime.

## ***Conclusion***

The IAEA's objectives and functions have contributed to human security since the creation of the Agency. Even though the needs of states, the protection of their sovereign rights and national security still very much guide the Agency's actions, the latter also inherently contribute to the security of all.

The IAEA contributes to protecting states but also people from the fears and dangers associated with nuclear weapons, by: safeguarding nuclear material and facilities worldwide to detect and deter their diversion to nuclear weapons; assisting in the development and strengthening of a nuclear security regime which protects people from malicious acts involving nuclear and radioactive materials and devices; and remaining ready to undertake a verification role to provide credible assurances of nuclear disarmament.

Non-governmental institutions and academia have a role to play in helping to strengthen and possibly expand this role. I would be happy to further discuss how to do so, and envisage other functions for the IAEA with regards to human security during the questions and answers session.

Thank you very much for your attention.

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<sup>1</sup> [Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome](#) , Resolution 66/290 adopted by the General Assembly on 10 September 2012.

<sup>2</sup> IAEA Director General Dr. Mohamed ElBaradei, [In Search of Human Security](#), Bari, Italy Libera Università Mediterranea, 29 September 2006.

<sup>3</sup> See Final Document of the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, vol. I, Part I Review of the operation of the Treaty, para. 11.

<sup>4</sup> [Objective and Essential Elements of a State's Nuclear Security Regime](#), IAEA Nuclear Security Series No.20, p. 1.

<sup>5</sup> See for instance Shea, Thomas E. and Rockwood, Laura, [IAEA Verification of Fissile Material in Support of Nuclear Disarmament](#), Cambridge, Mass.: The Project on Managing the Atom, Belfer Center for Science and International Affairs, Harvard University, May 2015; David Cliff, Hassan Elbahtimy, David Keir and Andreas Persbo, [Nuclear disarmament verification: the case for multilateralism](#), VERTIC Brief 19, April 2013.

<sup>6</sup> See Alberto Muti and Larry MacFaul, [Engagement and Cooperation on IAEA Safeguards - Additional Protocol: VERTIC Initiative and Methods](#), IAEA Symposium on International Safeguards, 23 October 2014.