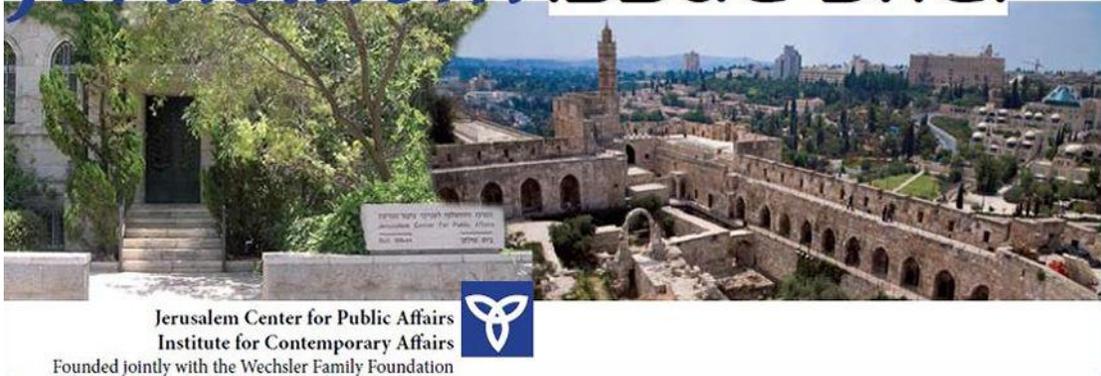


Jerusalem issue brief



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Did the International Atomic Energy Agency Recognize a Palestinian State?

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- **A newly signed safeguards agreement between the International Atomic Energy Agency (IAEA) and the “State of Palestine,” dated June 18, 2019, enables IAEA access to “the territory of Palestine” to ensure that safeguards are applied regarding nuclear materials.**
- **The IAEA represents that this “does not imply the expression by the IAEA of any opinion regarding the status of Palestine and doesn’t affect its status in the IAEA.”**
- **Such representation is totally unrealistic since any access by the Agency to “the territory of Palestine” implies recognition of the existence of a sovereign Palestinian state, with the jurisdiction and powers to enable IAEA inspections.**
- **The Palestinian 2015 accession to the International Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the denomination as the “State of Palestine,” as well as the Palestinian leadership’s signing of the safeguards agreement with the IAEA, constitute violations of their commitments under the Oslo Accords and a**

prejudgment of the outcome of agreed-upon negotiations on the permanent status of the disputed territories.

- **Regrettably, the IAEA has permitted itself to be abused and manipulated by the Palestinian leadership and has taken a distinct political position recognizing a Palestinian state.**
- **The IAEA is cooperating, perhaps unwittingly, with a political campaign conducted by the Palestinian leadership intended to bypass the agreed negotiation process to advance Palestinian political claims through the manipulation and abuse of international organizations and states in the international community.**

Introduction

On June 18, 2019, the International Atomic Energy Agency (IAEA) concluded a “Comprehensive Safeguards Agreement” with “the State of Palestine” granting the Agency access to the “**territory of Palestine**” to ensure that safeguards are applied regarding nuclear materials.¹

Following criticism and media reports claiming that by signing the agreement with the Palestinians the IAEA had, in fact, recognized a Palestinian state, the IAEA spokesperson issued a curious and somewhat illogical statement, dated June 21, 2019, according to which, “*The conclusion of a safeguards agreement does not imply the expression by the IAEA of any opinion regarding the status of Palestine and doesn’t affect its status in the IAEA.*”²

One may wonder how, by signing the safeguards agreement with the “State of Palestine” in which IAEA is given access to function “*in the territory of Palestine,*” the Agency can claim logically, honestly, and with *bona fides*, that it is not recognizing a Palestinian state? This even though by all accepted standards and international definitions, there exists no Palestinian state, and the question of the final and permanent status of territories is an ongoing and agreed-upon negotiating issue between the Palestinians and Israel under the internationally endorsed Oslo Accords.

Accordingly, since no such Palestinian state exists, there can be no sovereign Palestinian territory in which the IAEA can exercise its functions, and as such, the safeguards agreement has questionable validity and may well be devoid of any substantive and practical content.

International Atomic Energy Agency

The substantive, professional, and scientific character of the IAEA, composed of 171 sovereign member states,³ is set out in its 1957 Statute, according to which its fundamental objective is to “seek to accelerate and enlarge the contribution of atomic energy to peace, health, and prosperity throughout the world.”⁴

In its own publications, the agency presents itself as *“the international organization that seeks to promote the peaceful use of nuclear energy and to inhibit its use for any military purpose. It serves as an intergovernmental forum for scientific and technical co-operation in the peaceful use of nuclear technology and nuclear power worldwide.”*

“The programs of the IAEA encourage the development of the peaceful applications of nuclear energy, science, and technology, provide international safeguards against misuse of nuclear technology and nuclear materials, and promote nuclear safety (including radiation protection) and nuclear security standards and their implementation.”⁵

The IAEA taking political positions and permitting itself to be manipulated by the Palestinians, including by recognizing a non-existent Palestinian state, are prejudicial to the substantive and professional character of the agency.

Safeguards Agreements

Safeguards agreements are required by the International Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in which “non-nuclear weapons states parties” undertake not to manufacture or acquire nuclear weapons or other nuclear explosive devices, or to seek or receive assistance in their manufacture, and agree to submit to inspection by the IAEA.

The IAEA Statute enables the agency to *“establish and administer safeguards designed to ensure that nuclear material, services, equipment, facilities, and information are made available by IAEA or at its request or under its supervision or control are not used in such a way as to further any military purpose.”⁶*

Pursuant to this authority, IAEA concludes comprehensive safeguards agreements with non-nuclear-weapon States party to the NPT for the application of safeguards.

The concept of safeguards agreements is premised upon the sovereign consent of the State concerned, and according to IAEA professional material regarding safeguards, it is assumed that “States” entering into such agreements indeed have the legal capacity, the jurisdiction, and the capability to implement them. Such material is not geared to non-state entities that do not have such capacities and legal jurisdiction.

As stated in the IAEA publication entitled *“Legal Framework for IAEA Safeguards”*:

“Article III.1 of the NPT requires each non-nuclear weapon state (NNWS) to accept safeguards, as set forth in an agreement to be concluded with the IAEA, in accordance with its Statute and the IAEA’s safeguards system, on all source or special fissionable material in all peaceful nuclear activities within its territory, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear

weapons or other nuclear explosive devices (such agreements are commonly referred to as 'full scope' or 'comprehensive' safeguards agreements).⁷

"What is required for the implementation of safeguards is the consent of the State concerned, and that consent is most commonly manifested in the conclusion of a safeguards agreement with the IAEA."

"Once a comprehensive safeguards agreement enters into force, the State is required to submit to the IAEA an initial report of all nuclear material in the State, in accordance with the terms of the agreement. The IAEA then verifies the initial report with a view to ensuring that the declaration is not only correct but also complete. The State is also required to provide the IAEA with a list of all of its nuclear facilities, as also defined in the agreement, and information on the design of each of the facilities. The list must include not only operating facilities, but all facilities, even if they contain no nuclear material or are under construction. The IAEA then verifies the design information to ensure that the facility is constructed and is operated as declared by the State."⁸

IAEA Safeguards Agreement with the Palestinians

The need for the Palestinians to sign such a Safeguards Agreement arose following the Palestinian accession to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in February 2015, when the Palestinian leadership decided, in clear violation of their obligations pursuant to the Oslo Accords, to accede to a long list of international treaties, in order to further their efforts to join as many international organs as possible and to accede to international treaties, aiming to legitimize itself and gain recognition as a state.

The NPT requires "non-nuclear weapons states parties" to negotiate safeguard agreements with the IAEA *"for the exclusive purpose of verification, within the territory of such State, of the fulfillment of its obligations assumed under this Treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices."*⁹

In the second article of the IAEA agreement with the Palestinians, the latter *"undertakes to accept IAEA safeguards on all source or special fissionable material in all peaceful nuclear activities **within the territory of the State**, under its jurisdiction, or carried out under its control anywhere."*

Basically, IAEA inspectors will thus have the right to visit every part of the "territory of the Palestinian state" to check the safety of radioactive materials, including uranium, which are currently being used for peaceful purposes.

The agreement was initially signed in March 2018 and subsequently confirmed by the IAEA Board of Governors and approved by the IAEA at its 62nd General Conference on July 30, 2018.¹⁰



IAEA Director-General Yukiya Amano of Japan (IAEA)

The agreement was initially signed in March 2018 and subsequently confirmed by the IAEA Board of Governors and approved by the IAEA at its 62nd General Conference on July 30, 2018.¹¹

In his report to the General Conference, Director-General Yukiya Amano referred to the “State of Palestine” and added in a curious and somewhat unrealistic footnote, *“the designation employed does not imply the expression of any opinion whatsoever concerning the legal status of any country or territory or of its authorities, or concerning the delimitation of its frontiers.”*¹²

To avoid doubt, accusations and the perception of politicization by recognizing a non-existent Palestinian state, the IAEA would better have entered into an agreement with the “Palestinian Authority,” which is the accepted, agreed upon denomination of their administration.

To supervise the use by Palestinian medical and other institutions of nuclear materials for peaceful purposes, the correct reference would be to access the areas under the administration of the Palestinian Authority, and not the territory of a Palestinian state.

Palestinian Commitments vis-à-vis Israel and the International Community

Pursuant to its commitments in the 1993-1999 internationally endorsed Oslo Accords, and pending the completion of an agreement on the permanent status of the territories, the Palestinian leadership possesses neither the powers, responsibilities, nor jurisdiction to function as a state in the sphere of foreign relations and the exercise of diplomatic functions.¹³

Thus, by acceding under the denomination “State of Palestine” to the 1968 International Treaty on the Non Proliferation of Nuclear Weapons (NPT) in 2015, which restricts membership solely to genuine states parties,¹⁴ the Palestinian leadership has misrepresented itself as a sovereign state with territory in which it has the capacities to conduct nuclear activity.

In so doing, it violates its obligations under the Oslo Accords, which have been endorsed and witnessed by the United States, Russia, the UN, the EU, and leaders of Arab states.

By the same token, by the Palestinian leadership signing of the present Safeguards Agreement with the IAEA, it is abusing the *bona fides* of the Agency and manipulating it for political purposes having no bearing on the issue of nuclear arms and capabilities.

Conclusion

Deplorably, the IAEA has permitted itself to be abused and manipulated by the Palestinian leadership and has taken a distinct political position recognizing a Palestinian state.

This without regard to the legal impediments accepted by the Palestinian leadership in the internationally endorsed Oslo Accords in which the status of the territories is in dispute between Israel and the Palestinians pending a negotiated agreement on the final status of the territory.

Such a political position taken by IAEA prejudices the Agency’s professional status and reputation as well as its credibility.

IAEA’s contention that its agreement with the “State of Palestine” does not imply the “expression by the IAEA of any opinion regarding the status of Palestine” is incompatible with its commitment to conduct inspections “in the territory of the State of Palestine.” This indicates that the IAEA recognizes a Palestinian state with its own sovereign territory, powers, and jurisdiction to enable implementation of the agreement.

Had the IAEA, in its recent safeguards agreement with the Palestinians, used the agreed-upon and accepted denomination of the “Palestinian Authority,” and had it referred to the areas under the administration of the Palestinian Authority, the perception of politicization of the Agency would have been avoided.

The IAEA is cooperating, perhaps unwittingly, with a political campaign conducted by the Palestinian leadership intended to bypass the agreed negotiation process in order to advance Palestinian political claims through the manipulation and abuse of international organizations and states in the international community.

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Notes

¹ <https://www.i24news.tv/en/news/international/187606-181031-palestinian-authority-signs-nuclear-safeguards-deal-with-un-agency-report> see also <https://www.jpost.com/printarticle.aspx?id=592990> entitled "*International Atomic Energy Agency recognizes Palestine as a State*"

² <https://www.iaea.org/newscenter/pressreleases/iaea-spokesperson-statement-on-signing-of-safeguards-agreement>

³ IAEA Information Circular INFCIRC/2/Rev.84 dated 20 February 2019

⁴ https://www-pub.iaea.org/MTCD/Publications/PDF/Pub1608_web.pdf

⁵ https://en.wikipedia.org/wiki/International_Atomic_Energy_Agency

⁶ IAEA Statute, Article III.A.5

On the structure and content of such agreements see

<https://www.iaea.org/sites/default/files/publications/documents/infcircs/1972/infcirc153.pdf>:

"1. The Agreement should contain, in accordance with Article III. 1 of the Treaty on the Non-Proliferation of Nuclear Weapons, an undertaking by the State to accept safeguards, in accordance with the terms of the Agreement, on all source or special fissionable material in all peaceful nuclear activities within its territory, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices"

"2. The Agreement should provide for the Agency's right and obligation to ensure that safeguards will be applied, in accordance with the terms of the Agreement, on all source or special fissionable material in all peaceful nuclear activities within the territory of the State, under its jurisdiction or carried out under its control anywhere, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other nuclear explosive devices."

⁷ https://www-pub.iaea.org/MTCD/Publications/PDF/Pub1608_web.pdf para 3.2.1

⁸ Ibid. at para 4.2

⁹ <https://www.un.org/disarmament/wmd/nuclear/npt/text> article III

¹⁰ <https://www.jpost.com/printarticle.aspx?id=570751>

¹¹ <https://www.jpost.com/printarticle.aspx?id=570751>

¹² https://www-legacy.iaea.org/About/Policy/GC/GC62/GC62Documents/English/gc62-6_en.pdf, see footnote 2

¹³ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Article IX, para. 5. See also Article XXXI(7) in which the Palestinians are committed to refrain from taking “any step that will change the status of the West Bank and Gaza Strip pending the outcome of the permanent status negotiations”.

<https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx>

¹⁴ <https://www.un.org/disarmament/wmd/nuclear/npt/text>

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