

Comparison of criminal procedure and inspection

Sang Cheol Hyung

*Expo-Ro, Yusung-Gu, Daejeon 305-348
wakendragon@kinac.re.kr*

1. Introduction

While a criminal investigation and international inspection are similar in the purpose of identifying any possible violator, there are also differences between them.

Especially in the case of a criminal procedure, the defendants are presumed to be innocent until he or she is convicted, but states must make efforts to prove their nuclear transparency.

Let's compare both of them to find out the reason why these different points have happened.

2. Concept and Basis

2.1 Criminal procedure

This is the procedure to investigate and judge a crime and implement a punishment, which applies justly to every person who is in the territory or in any other place under the jurisdiction of any state.

2.2 Inspection

IAEA apply safeguards for the purpose of verifying that special fissionable material is not diverted to nuclear weapons or other nuclear explosive devices.

CTBTO conduct on-site inspection to clarify whether a nuclear weapon test explosion or any other nuclear explosion has been carried out and to gather any facts which might assist in identifying any possible violator.

The acceptance of safeguards is a purely voluntary act by the State concerned and the IAEA has no power to compel any State to sign any treaty or agreement[1]. However all the treaties directed towards the aim of nonproliferation require their parties to conclude safeguards agreements with the IAEA and the coverage of the NPT and of the regional nuclear weapon free zones expands.

3. Procedure

3.1 Criminal procedure

When an investigation organ as a judicial police or a prosecutor finds a clue to a crime, it begins an investigation and then prosecute. The judge impose a punishment against him or her through a trial. Any person who witnessed a crime may accuse and provide a clue.

3.2 Inspection

The IAEA's safeguards program is carried out chiefly by the Department of Safeguards under the direction of the Deputy Director General for Safeguards. And the Board deals with any case of non-compliance that the Director General reports to it and if it finds that a State is in noncompliance with a safeguards agreement it reports the matter direct to all IAEA Member States, to the Security Council and to the General Assembly and it may impose sanctions. All inspections are undertaken under the authority of the Director General, and Member States have no formal role in triggering the inspection and do not take part in. But the CWC places much emphasis on 'challenge inspections'. If a party to the CWC suspects another party of violating it, it may demand an inspection of the site that it believes is used for producing the agent[2]. In the case of CTBT, each state party has the right to request an on-site inspection. The executive council shall begin its consideration immediately upon receipt of the on-site inspection request. It has been suggested to add challenge inspections to the range of activities the IAEA carries out in future verification regimes.

4. Status of the accused and the Inspected State

4.1 Obligation to cooperate

An investigation organ may ask an accused an appearance and demand his or her statement. But he or she may exercise the right to remain silent and the judge should not make a conviction on the basis of that.

In the case of inspection, the government and the IAEA shall co-operate to facilitate the implementation of the safeguards(INFCIRC/153 Article 3), and in order to ensure the effective implementation of safeguards the government shall provide the IAEA with information(Article 8). Inspection reports shall contain an account of the cooperation granted during the on-site inspection(CTBT Article IV 62)

4.2 Right to participate

The accused may participate in the seizure, search and verification and the defendant may exclude or avoid a judge who, he or she concerns, is unjust. The Government shall likely have the right to have inspectors accompanied during their inspections by representatives of the government, provided that

inspectors shall not thereby be delayed or otherwise impeded in the exercise of their functions (INFCIRC/153 Article 89) and the Director General may designate each official who has been accepted by the government as one of the inspectors.

4.3 Presumption to be innocent

A defendant in the criminal procedure is presumed to be innocent until the judgement of a conviction is settled, so he does not need to prove his innocence. If a prosecutor does not prove the case beyond a reasonable doubt, a judge should acquit a defendant of the charge. But in the case of inspection, if the Board subsequently concludes "that the Agency is not able to verify that there has been no diversion", it shall report the matter to all memberstates, to the UN General Assembly and the Security Council and it may impose sanctions.

5. Right to withdraw

Each Party shall in exercising its national sovereignty have the right to withdraw from the NPT if it decides that extraordinary events, related to the subject matter of this treaty, have jeopardized the supreme interests of its country(NPT article X). CTBT has a same article(CTBT article IX). So any state may withdraw from the treaty and reject the inspection. But no one in the country may reject the application of the national criminal procedure.

6. Conclusions

When any person violates the criminal law, he will be punished through the criminal procedure. The character of the responsibility is purely domestic and legal, and he or she must accept the investigation, judge and punishment. But if any state violates the safeguards agreement, international procedure begins and the sanctions are political.

Because of the difference between 'legal' and 'political' , both differ in several aspects.

REFERENCES

- [1] THE EVOLUTION OF IAEA SAFEGUARDS INTERNATIONAL NUCLEAR VERIFICATION SERIES No.2, INTERNATIONAL ATOMIC ENERGY AGENCY, 1998, p34.
- [2] Ibid, p 67.