

The Iranian Nuclear Issue: Negotiating a Win-Win Solution after Baghdad

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Ladies and Gentlemen,

As indicated in Congressman David Scott's excellent General Report:

“If Iran achieved the capability to produce a nuclear weapon, it would have severe consequences, for regional stability, global security, and not least, the nuclear non-proliferation regime.”

The high level P5+1 meeting with Iran in Istanbul on April 15 has generally been viewed as a modest but meaningful step towards negotiating a peaceful solution to the Iranian nuclear crisis. As expected, no breakthrough has been achieved in Baghdad two days ago. It was, however, crucial that the parties agreed to continue lower level negotiations on a regular basis, away from the limelight, with the objective of reaching an acceptable compromise perceived to be a win-win solution by all. Significant steps in that direction must be accomplished at the next plenary meeting that will take place in Moscow on June 18.

In the past, a number of opportunities to make progress in resolving the Iranian nuclear crisis have been missed because the two sides of the table were not willing or able (for internal political reasons) to negotiate simultaneously and in good faith.¹ Is the situation more favourable this time?

A positive sign in the most recent round of negotiations is that Iran's Supreme Leader Ayatollah Khamenei appears to be personally supervising the current nuclear negotiation.² Therefore, any opening made by Iran's negotiators will be with his blessing and is unlikely to be questioned by anyone in Iran.³

However, six months before the U.S. presidential election, President Obama is probably not in a position to respond to any concession offered by Iran by postponing some of the U.S.

sanctions due to start on June 28. Because of the complexity of its decision process it is also uncertain that the EU could rapidly suspend or postpone the sanctions scheduled to start on July first, though the UK could persuade fellow European Union members to postpone a ban on providing insurance for tankers carrying Iranian oil.

This is a real problem because the process cannot extend indefinitely, and it is unlikely that waiting for significant progress until after the U.S. presidential election would be acceptable to Israel, the United States, and a number of European and Gulf states.

The following proposals are intended to offer a guide for the Moscow negotiations, backchannel diplomacy, and subsequent talks. They can also be used as a framework for measuring modest successes and progress in what appears will be an ongoing process into the summer.

What is essential is that during the negotiation process, a common view is maintained among the members of the P5+1 on what they are willing to offer to Iran and what would be the consequences if Iran further escalates the nuclear crisis.

The cooperation proposal made to Iran by the P5 and the EU in June 2008 (and reproduced in Annex IV of United Nation Security Council (UNSC) Resolution 1929 on June 9, 2010) is made conditional inter alia upon suspension of Iran's enrichment-related activities.

Let's not delude ourselves. If in 2003 it was still possible to convince Iran to suspend its uranium enrichment-related activities in exchange for credible political, security and economic benefits, this is no longer the case today.

The Iranian regime has devoted ample resources to the nuclear program over a period of more than 25 years. Today, this program is too advanced to reasonably hope that any future government in Iran would be willing to, or even could (for internal political reasons), abandon all the components of its nuclear fuel cycle which have been declared, no matter the level of sanctions. What could possibly change is the tactic used by the Iranian leadership to minimize the level and impact of sanctions while most likely maintaining the option to restart weaponization activities at short notice.⁴

The first major goal in solving Iran's nuclear impasse is for the IAEA to be able to draw the "broad conclusion" that there are no undeclared nuclear materials and activities in Iran, and that Iran's declarations to the IAEA are correct and complete.

In his September 2005 report to the IAEA Board of Governors, ElBaradei stated that "Given Iran's past concealment efforts over many years, transparency measures should extend beyond the formal requirements of the Safeguards Agreement and Additional Protocol and include access to individuals, documentation related to procurement, dual use equipment, certain military owned workshops and research and development locations."⁵

What exactly these additional transparency measures should entail is described in my proposal for a "Model Temporary Complementary Protocol for the application of IAEA Safeguards in a noncompliant State" (TCP), which corrects the weaknesses of the Additional Protocol (AP).⁶ A TCP would enable the Agency to verify and evaluate in a timely manner the absence of undeclared nuclear material, equipment and activities in any state that is found

to be in non-compliance with its Safeguards Agreement and does not voluntarily cooperate with the IAEA.⁷

Indeed, in general terms, deterring states from violating their safeguards agreements requires them to know that should evidence of non-compliance come to light, they will be fully investigated and appropriate enforcement action would be taken. If, therefore, a state has been found to be in noncompliance with its safeguards undertakings and refuses to promptly, fully, and proactively cooperate with the Agency, the IAEA must, without delay, be given the required legally binding verification tools. A TCP would fill this gap in the existing safeguards regime.

The IAEA Board of Governors doesn't have the authority to force a non-compliant state to accept the TCP. The UNSC should, therefore, adopt a generic resolution (under Chapter VII of the UN Charter), deciding that if a state is found by the IAEA to be in noncompliance with its comprehensive safeguards agreement (in accordance with Article XII.C of the IAEA Statute), then, *upon request by the Agency*,⁸ the UNSC would automatically adopt a *specific* resolution under Chapter VII requiring the state to grant to the Agency legally binding extended access rights. These rights would be *terminated* as soon as the Agency's Secretariat and the Board of Governors have drawn the "broad conclusion." Although such a resolution would clearly be relevant to Iran, it would be non-discriminatory and equally applicable to any other state found to be in non-compliance with its safeguards agreement.

Before Iran could be expected to agree to fully implement the TCP, the IAEA Board of Governors (which includes the five permanent members of the UNSC) would have to formally commit to accord Iran a grace period during which Iran would not be penalized should it voluntarily disclose the existence of additional undeclared nuclear material and activities, and/or acknowledge any past violations of the NPT or of its safeguards agreement.⁹

On the contrary, Iran should be assured that it will be praised for its cooperation with the IAEA and its additional breaches would be reported to the UNSC for "information purposes only" (as was done for Libya when it acknowledged its nuclear weapons program). Without such a grace period, it is unlikely that Iran would fully cooperate with the IAEA or voluntarily declare any past violations.

Such disclosures could be very beneficial for confidence building. If Iran were to admit that it had been working towards becoming a nuclear threshold state and has undertaken some weaponization activities in the past, it would help persuade the international community that this time, Tehran has indeed opted for full cooperation and transparency. Understandably Iran will need to be reassured that acknowledging past NPT violations will not have negative consequences. Given the significant trust deficit between Iran and the West, this is easier said than done.

Iran will most probably not agree, initially, to implement the TCP, but it might offer to implement again the Additional Protocol it signed in December 2003. However, implementing the AP on a voluntary "on and off" basis as Iran has done in the past is not a satisfactory confidence building measure. By contrast, the ratification of the AP by the Majlis would be a significant step forward.

Iran knows perfectly well that a restrictive interpretation and application of the Additional Protocol would not enable the IAEA to draw the “broad conclusion” and certainly not in a reasonably short period of time.

In any case, until the IAEA has drawn the “broad conclusion,” Iran should be expected to commit to:

- Freeze (not dismantle) all activities at the deeply buried underground Fordow enrichment facility as verified by the IAEA;
- Cease enriching beyond 5% U-235, provided it is assured of receiving the fuel assemblies necessary for the operation of the Tehran Research Reactor (TRR); and
- Send abroad its domestic stockpile of low-enriched uranium (LEU) every six months for incorporation into fabricated fuel assemblies for the Bushehr nuclear power plant, the Tehran Research Reactor, and possibly other light water reactors.¹⁰

In return, the P5 should commit to not impose additional UNSC sanctions, even though continuing to enrich uranium below 5% U-235 would contravene five legally binding UNSC resolutions. Such a major concession to Iran would be meant to reciprocate Iran’s willingness to implement confidence building measures going beyond its legal obligations under its comprehensive safeguards agreement.¹¹ In addition the U.S. and the EU should commit to not impose unilateral or multilateral sanctions beyond those already decided and to suspend those which will take effect this summer as soon and as long as Iran implements the TCP.

At some point in time it is likely that negotiations will also include major bilateral and multilateral regional security issues which are beyond the scope of this presentation but of course relevant for NATO’s consideration.¹²

Another important confidence building measure would be for Iran to conclude an Infcirc/66-type safeguards agreement with the IAEA for all nuclear fuel cycle facilities. Contrary to Comprehensive Safeguards Agreements, Infcirc/66-type safeguards agreements do not lapse if the state withdraws from the NPT. In fact, consistent with NSG export criteria, the EU should promote the standard that all sensitive nuclear fuel-cycle facilities in non-nuclear-weapon states should be placed under an Infcirc/66-type safeguards agreement with the IAEA. EU Member States should lead by example and place the enrichment facilities located in Germany and The Netherlands under such safeguards agreements. Japan, Brazil and Argentina should be encouraged to follow suit. Infcirc/66 safeguards agreements would be subsumed (at no cost either to the state or the IAEA) to existing comprehensive safeguards agreements and become operational only if a state withdraws from the NPT.

The five NPT nuclear weapon states (NWSs) should also lead by example and conclude with the IAEA Infcirc/66 agreements for all their nuclear fuel-cycle facilities that are on their lists of eligible facilities declared to the IAEA under their Voluntary Offer Agreements (VOA). These Infcirc/66 agreements would be binding on the part of the NWSs and would be implemented by the IAEA so long as IAEA member states provide additional funds specifically for this task in the Agency’s regular budget. It would be an important first step in the direction of a Fissile Material Cut-Off Treaty (FMCT) and put the responsibility of choosing whether to implement these agreements on IAEA member states.

Members of NATO and Russia should also take the lead in promoting other preventive measures to deter states from withdrawing from the NPT. This is all the more important given that Iran has threatened a number of times to withdraw from the NPT and that high-ranking Iranian officials and influential clerics have, on many occasions, implied that they are in favour of acquiring a nuclear weapons capability since Iran's enemies already possess such weapons.¹³

To address this issue, the Security Council should adopt (under Chapter VII of the UN Charter) another generic and legally binding resolution, stating that if a state withdraws from the NPT (an undisputed right under its Article X.1) after being found by the IAEA to be in noncompliance with its safeguards undertakings, then such withdrawal constitutes a threat to international peace and security (as defined under Article 39 of the UN Charter). This resolution could – and indeed should – provide that in these circumstances, all UN member states would have to suspend all military cooperation with the withdrawing state.

In any case the P5+1 should start immediately to negotiate with Iran over how best to further define, expand, and implement the long-term cooperation agreement specified in Annex IV of UNSC Resolution 1929. There is a real need for a “cooperation offensive”, and the benefits for Iran of concluding a cooperation agreement with the P5+1 should be highlighted and widely publicized.

The P5+1 should also provide the assurance that, once the IAEA has reached the “broad conclusion” that Iran's declarations are correct and complete, Iran would no longer be required to export its domestic production of LEU, and UNSC sanctions would progressively be lifted. But even then Iran would likely be expected to agree to not produce uranium enriched beyond 5% U-235,¹⁴ to close down the Fordow enrichment plant, and to send to Russia all the spent fuel discharged from its Heavy Water research reactor at Arak.

Any significant opening or concession made by Iran during the negotiations should be praised (in particular by the media) and qualified as a demonstration of self-confidence of the regime and not as a sign that Iran is backing down under international sanctions.

Although the negotiation in Baghdad failed to immediately produce any concrete result, it is nevertheless necessary, before the parties meet again in Moscow on June 18, to discretely negotiate with Iran on how to avoid escalating the tension and to continue the discussion in order to achieve a win-win solution. If, however, because new U.S. sanctions (due to start on June 28) cannot be lifted before the November 2012 Presidential elections, Iran may decide that it will in the meantime continue to enrich uranium as it wishes, including to close to 20% U-235. Iran could even decide to further escalate the tension by enriching uranium beyond 20% under the pretext, for instance, of manufacturing high-enriched uranium (HEU) targets to produce Mo-99 by irradiation in the Tehran Research Reactor (TRR), or for a future submarine propulsion reactor.¹⁵

If Iran further escalates the tension and refuses to adopt confidence building measures such as those suggested above and no progress is made to reassure the world that it is not seeking a breakout capability, the P5 should make clear that international sanctions will continue and become more severe. Crippling economic sanctions are better than any military action and, if sustained, might be more effective in convincing an increasing fraction of Iran's society and

consequently Supreme Leader Ayatollah Khamenei that he should adopt a more constructive approach for the sake of both the Iranian people and the regime.

The direction of Iran's nuclear program is grim, but not certain. There seems to be agreement among intelligence agencies that Tehran has not decided to actually construct a nuclear weapon. The increasing international nervousness about Iranian nuclear developments is largely due to the fact that, as time goes by, it becomes more and more difficult to stop Iran if it decides to start manufacturing nuclear weapons.

In Istanbul on April 15 and in Baghdad two days ago, the P5+1 and the EU demonstrated their determination to use all diplomatic means to persuade Iran that it is in its best interest to fully cooperate with the IAEA and to dissuade Iran from withdrawing from the NPT and manufacturing and testing a nuclear weapon. There seems to be no reasonable alternative to diplomacy, but in the end it is Tehran who will decide whether it wishes to opt for a win-win solution.

The steps called for above should be a useful template against which to measure the more modest and slow-to-implement confidence building measures that the parties might take.

Ladies and Gentlemen, George Bernard Shaw once said, "The only thing we learn from experience is that we don't learn from experience." It is indispensable that members of NATO and associated members demonstrate through concrete actions that, at least when it comes to nuclear proliferation, Shaw was wrong. To do so and avoid the repetition of what happened with North Korea, it is more than time to convince the veto wielding members of the UN Security Council - Russia in particular - to endorse appropriate preventive nuclear non-proliferation measures. As we all know: "An ounce of prevention is worth a pound of cure."¹⁶

¹ For example, in early 2003, the US did not respond to Iran's secret offer to engage in negotiations; later in 2004 and 2005, Iran did not agree to seriously discuss EU-3 offers, nor the long-term cooperation agreements offered by the P5+1 and appended to UNSC resolutions 1747 (March 2007) and 1929 (June 2010). Early in his presidency, Barack Obama sent a letter to Ali Khamenei, the Supreme Leader of Iran, in an attempt to open dialogue between the two nations. It was ignored. Again, Iran did not accept the swap of LEU in exchange of fuel elements for the Tehran Research Reactor in October 2009, and when Iran accepted a similar offer brokered by Brazil and Turkey in January 2010, it was no longer acceptable because Iran had in the meantime enriched uranium to 19.75% U-235.

² Dr. Said Jalili, Iran's top nuclear negotiator, is speaking as the personal representative of the Supreme Leader.

³ The regime now appears confident that all opposition movements have been silenced and that even former president Hashemi Rafsanjani has been sidelined.

⁴ Some experts are of the view that this is a too pessimistic view and that Iran might (just might) be persuaded to abandon the objective of having the ability to manufacture nuclear weapons at short notice.

⁵ IAEA GOV/2005/67 para. 50.

⁶ For instance the AP does not specify deadlines for States to respond to Agency's requests for information or clarification. Access rights to undeclared locations can easily be delayed. The AP contains no provisions on the Agency's access rights to persons it wishes to interview. There is no explicit reference in the AP to the obligation of a state to submit the original documents supporting the state's declarations (possibly for forensic analysis) and copies thereof. For more on the limitations of the Additional Protocol, see P. Goldschmidt, "IAEA Safeguards: Dealing preventively with non-compliance," July 12, 2008. http://www.carnegieendowment.org/files/Goldschmidt_Dealing_Preventively_7-12-08.pdf

⁷ The full text of the TCP can be found in "Concrete Steps to Improve the Nonproliferation Regime," Carnegie Paper Number 100, April 2009, pp. 29-43 http://www.carnegieendowment.org/files/improve_nonpro_regime.pdf

⁸ Such a request would be made by the IAEA Board of Directors if a noncompliant state does not fully and proactively cooperate with the IAEA and the Agency is therefore unable to resolve all relevant issues in a timely manner.

⁹ In addition the US, the UK and France must convey these assurances to Iran privately.

¹⁰ In response and to gain time, Iran might propose to downblend its stockpile of 19.75 % U-235 with natural or depleted uranium in order to bring it below 5% U-235 and to keep the material in Iran. The P5+1 would likely welcome such a move, but would not view it as a sufficient confidence building measure.

¹¹ Such a concession is vigorously criticized by some US nuclear non-proliferation experts. They argue that it would not only make it easier for Tehran to break out and make nuclear weapons whenever it wants, but it would give Iran's neighbors every reason to demand similar nuclear-fuel-making "rights." See for instance <http://www.npolicy.org/article.php?aid=1174&rt=&key=Iran:%20Obama%27s%205%%20Uranium%20Enrichment%20Solution%20is%20No%20Solution%20at%20All%20&sec=article&author=>

¹² Considering the role played by the United States in NATO and in the Middle East, at some point, bilateral negotiations with Iran will have to take place. For that to happen the Iranian regime must realise that normalization with the U.S. is a great opportunity and not an existential threat.

¹³ For example, "Top Cleric: Iran Has Right to 'Special Weapons,'" Associated Press, June 14, 2010. <http://www.cbsnews.com/stories/2010/06/14/world/main6581622.shtml>

¹⁴ As long as it can import the fuel assemblies necessary for the operation of the Tehran research reactor.

¹⁵ Considering this possibility, NATO members might wish to discuss whether it would not be more than reasonable to encourage the US and Russia to lead by example and commit to stop the production of HEU for naval propulsion.

¹⁶ Pierre Goldschmidt is Non-resident Senior Associate at the Carnegie Endowment for International Peace, and former Deputy Director General of the International Atomic Energy Agency, Head of the Department of Safeguards. He thanks his colleagues James Acton and Jaclyn Tandler for their valuable comments on this paper.