

## **Nuclear Prevention and Red Lines: The Case of Iran**

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The adage “an ounce of prevention is worth a pound of cure” rings true in most cases. It is why the World Health Organization last year recommended vaccinations against the H1N1 flu virus. This precautionary principle also constitutes the very basis of nuclear safety. Unfortunately, it has not been given sufficient weight when it comes to protecting against the risks of nuclear proliferation. The case of Iran is particularly relevant. Emphasis should be placed on legal, peaceful ways to dissuade Iran from crossing red lines that would signal an intention to acquire nuclear weapons.

Red lines drawn to date for Iran’s nuclear program have been crossed with impunity. In September 2003, the International Atomic Energy Agency (IAEA) Board of Governors adopted by consensus a resolution calling on Iran “to suspend all further uranium enrichment-related activities, including the further introduction of nuclear material into Natanz [...] pending provision by the Director General of the assurances required by Member States...”<sup>2</sup>

At the time, Iran had no significant stock of UF6—the Uranium Conversion Facility (UCF) in Esfahan was not yet operational—and no enriched uranium had been produced at the Natanz enrichment facility.

In November 2003, following negotiations with France, Germany and the UK (the “E3”), Iran informed the IAEA that it had decided to sign and implement the Additional Protocol pending its ratification, and to suspend “all enrichment-related activities in Iran, and specifically: to suspend all activities on the site of Natanz, not to produce feed material for enrichment processes and not to import enrichment related items.”<sup>3</sup>

However, in April 2004, Iran informed the IAEA that it would conduct hot tests of the UF6 production line at the UCF conversion facility, and in June 2004 that it would “resume, under IAEA supervision, manufacturing of centrifuge

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<sup>2</sup> IAEA GOV/2003/69.

<sup>3</sup> IAEA GOV/2003/75 § 19.

components and assembly and testing of centrifuges” and convert 37 tons of yellowcake into UF6.<sup>4</sup> Two “red lines,” one requested by the IAEA Board and one undertaken by Iran,<sup>5</sup> had been crossed without the matter being reported to the UN Security Council (UNSC) as had been foreshadowed by the Board the previous November<sup>6</sup> or Iran having to suffer any penalty.

To relieve the mounting pressure, on November 15, 2004, under an agreement signed in Paris with France, Germany, and the UK, Iran “decided, on a voluntary basis, to continue and extend its suspension to include all enrichment related and reprocessing activities...and all tests or production at any uranium conversion installation. The suspension will be sustained while negotiations proceed on a mutually acceptable agreement on long-term arrangements.”<sup>7</sup>

Obviously not impressed by past responses to its safeguards transgressions, Iran resumed uranium conversion activities at the UCF in August 2005. In January 2006, Iran requested that the IAEA remove seals applied at Natanz and other facilities for monitoring the freeze of enrichment-related activities. In a Note Verbale to the IAEA dated January 22, 2006, Iran stated that its enrichment R&D activities would be conducted on a “small scale and not planned for nuclear fuel production. Thus, the suspension of enrichment on commercial scale, started since 2003, will be sustained.”<sup>8</sup>

As a consequence, after finding in September 2005 that Iran had been in non-compliance with its safeguards agreement since November 2003,<sup>9</sup> the IAEA Board finally adopted, on February 4, 2006, a resolution requesting the Director General to report the matter to the Security Council.

It was only in December 2006 that the Security Council, acting under Article 41 of Chapter VII of the UN Charter, decided that Iran had to suspend, without further delay, all enrichment-related activities to be verified by the IAEA.<sup>10</sup> By that time Iran had fed UF6 in the enrichment cascade at Natanz where some 3,000 centrifuges were being installed. The UNSC sanctions adopted against 10

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<sup>4</sup> IAEA GOV/2004/83 § 132.

<sup>5</sup> On 10 November 2003 Iran informed the Director General of its decision “not to produce feed material for enrichment processes” as reported to the IAEA Board in paragraph 19 of GOV/2003/75.

<sup>6</sup> On November 26, 2003, the IAEA Board adopted a resolution (GOV/2003/81) deciding “that should any further serious Iranian failures come to light, the Board of Governors would meet immediately to consider [...] all options at its disposal, in accordance with the IAEA Statute...”, which was a clear reference to Article XII.C of the Statute, which foresees the referral of non-compliant states to the UN Security Council.

<sup>7</sup> A copy of the Paris agreement was attached to IAEA INFCIRC/637 and distributed on November 26, 2004. It was easy for Iran to claim a few months later that negotiations had failed and that the voluntary suspension was therefore terminated.

<sup>8</sup> IAEA INFCIRC/665, January 27, 2006.

<sup>9</sup> The delay was due to purely political reasons, not for the lack of non-compliance evidence.

<sup>10</sup> UN Security Council Resolution 1696, adopted on July 31, 2006, under Article 40 of the UN Charter, “demands” that Iran suspends its enrichment-related activities.

entities and 12 designated persons were unlikely to deter Iran from ignoring UNSC resolutions and pursuing its nuclear program. Such mild UNSC sanctions may have worked in 2003, but certainly not at the end of 2006. In the meantime, Iran was able to convince the Non-Aligned Movement that it was the victim of a neo-colonialist plot by Western states to deprive Iran of its inalienable rights under the Non-Proliferation Treaty (NPT) to develop nuclear energy for peaceful purposes, and that this policy would later be extended to other developing states as well.

In response to the new situation, and looking for a way to contain the growing crisis, in November 2007 Gareth Evans, former Australian Foreign Minister, suggested that “the only way forward seems to be to go back to basics, for the international community to draw a new red-line where it matters most—between civilian and military capability—and to enter into unconditional negotiations on that basis. If the objective is not ‘zero enrichment,’ but ‘delayed limited enrichment with maximum safeguards,’ an agreement is within reach that both Iran and even the most nervous members of the wider international community should be able to sign up to.”<sup>11</sup> More recently, the International Commission on Nuclear Non-proliferation and Disarmament (ICNND), which is co-led by Evans, endorsed a similar approach.<sup>12</sup>

I agree that the most important objective for the IAEA is to implement “intrusive safeguards” in Iran, namely IAEA verification rights extending beyond the Additional Protocol for as long as the Agency is unable to conclude that there are no undeclared nuclear material and activities in Iran. Unfortunately, since the end of 2005, Iran has shown no intention of moving in that direction, but rather demonstrates resolve to further impede safeguards verifications.<sup>13</sup>

A major difficulty with the ICNND proposal is that the international community cannot simply ignore the repeated calls by the IAEA Board of Governors and legally binding UNSC resolutions<sup>14</sup> requiring Iran to suspend all enrichment-related and other sensitive nuclear activities.

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<sup>11</sup> Gareth Evans, “Doable Deal with Iran,” *EU Observer*, November 30, 2007.

<sup>12</sup> “Eliminating Nuclear Threats,” ICNND, November 2009, pp. 184-185. Gareth Evans is co-chair of the ICNND.

<sup>13</sup> Since February 5, 2006 Iran has not been implementing the provisions of its Additional Protocol. In March 2007, Iran, in violation of Article 39 of its safeguards agreement, unilaterally “suspended” the implementation of the modified Code 3.1 of the Subsidiary Arrangements, which requires the submission of design information as soon as a decision to construct a new facility has been taken.

<sup>14</sup> It should be noted that under Article 103 of the UN Charter, obligations under the Charter take precedence over any other treaty. The Security Council resolutions on Iran invoke Chapter VII of the Charter making its decisions legally binding.

The main objective of these Security Council resolutions is to obtain Iran's full cooperation with the IAEA in order to enable the Agency, without further delay, to provide to the international community an assurance that all nuclear material and activities in Iran are exclusively for peaceful purposes. However, to reach such a conclusion in light of Iran's past deception and concealment efforts over many years, Iran would have to fully implement measures along the lines of the Temporary Complementary Protocol (TCP) that this author has previously proposed.<sup>15</sup> To move along the line recommended by the ICNND, the Security Council would have to decide that for as long as the IAEA Director General can report that Iran is fully and without interruption implementing a TCP, the continued production of enriched uranium up to 5 percent U-235 would not *per se* be a cause for new sanctions. This would represent a major concession to Iran which should be acknowledged as such by China and the non-aligned states. It is, however, likely that a number of Western states will raise objections of principle to such a compromise.

## **Preventing Escalation**

Effective deterrence requires convincing others that the cost to them of taking an action one wishes to prevent is far greater than any benefits. However, once such an action has been committed, such as North Korea testing a nuclear device, reversing the situation is much more difficult (if possible at all) than preventing it in the first place.

When dealing with Iran's nuclear program the international community has always been one step behind. Over the last few years, Iran's parliament and leadership have on a number of occasions threatened that Iran could withdraw from the NPT.<sup>16</sup> Most recently, in February 2010, Iran stepped over the implicit red line of enriching uranium beyond the 5 percent U-235 limit. It is easy to guess what the next provocative move could be: producing high-enriched uranium (HEU) by enriching to a level exceeding 20 percent U-235, for example, to 63 percent U-235 under the pretext of fabricating irradiation targets for a more efficient production of Tc-99m used for medical radio-diagnostics.<sup>17</sup>

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<sup>15</sup> Pierre Goldschmidt, "IAEA Safeguards: Dealing Preventively with Non-Compliance," Harvard Belfer Center, July 12, 2008, <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=20308>; and "Concrete Steps to Improve the Nonproliferation Regime," Carnegie Paper No. 100, April 2009, <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=22943>.

<sup>16</sup> See, for instance, "Iran may consider withdrawing from NPT" Press TV 29 September 2009 at <http://www.presstv.ir/classic/detail.aspx?id=107441&sectionid=351020104>. and "Iran renews threat to exit NPT" AP May 8, 2006 [http://www.chinadaily.com.cn/world/2006-05/08/content\\_584154.htm](http://www.chinadaily.com.cn/world/2006-05/08/content_584154.htm).

<sup>17</sup> "Iranian Supreme National Security Council Advisor: 'Circumstances May Arise Under Which Iran Will Require Uranium Enriched to 63%,'" MEMRI, October 19, 2009, <http://www.memri.org/report/en/0/0/0/0/0/3717.htm>.

Iran is already producing in the Tehran research reactor most of the Tc-99m it needs<sup>18</sup> and, as any other state, buys the balance on the international market.

In other ways as well, Iran may be coming closer to crossing a red line signaling efforts to acquire a nuclear weapons capability. The February 18, 2010, IAEA report on Iran “raises concern about the possible existence in Iran of past or current undisclosed activities related to the development of a nuclear payload for a missile.”<sup>19</sup>

To prevent the Iranian nuclear crisis from escalating, it would be advisable to clearly define the red lines and the consequences of crossing them. The best way would be for the Security Council to adopt a resolution under Chapter VII of the UN Charter deciding that if Iran were to produce HEU, to separate plutonium, or to notify its withdrawal from the NPT—**before** the IAEA is able to draw the necessary conclusion about the exclusively peaceful nature of Iran’s nuclear program—a number of strong and well-defined sanctions would automatically be applicable and implemented without requiring a further UNSC resolution. This should also be the case if Iran is found to proceed with nuclear weaponization activities or were to divert nuclear material.

The merit of such an approach would be to make Iran responsible for any negative consequence of its decisions, knowing in advance that it cannot count on any UNSC permanent member’s right to veto. It could help any part of the Iranian leadership or civil society that is not determined to reach a nuclear weapons capability at all cost, to make a more compelling case to follow another course.

No country, including Russia, China and Turkey, has an interest in Iran acquiring nuclear weapons. All should therefore be willing to support a preventive resolution entirely contingent on Iran’s future actions. It would also set a valuable precedent to discourage any other state which may otherwise be tempted to follow suit.

To be sure, there is no precedent of the UNSC adopting a resolution requiring automatic sanctions if a state undertakes certain actions. This makes it hard to do so in this case, but it is not a valid reason for not trying. There always needs to be a first case to establish a precedent, and the purpose for establishing the case this time is certainly justifiable. Iran has been ignoring for more than three years

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<sup>18</sup> Most likely by irradiating natural UO<sub>2</sub> targets, as can be inferred from: R. Sayareh, M. Ghannadi Maragheh and M. Shamsaie, “Theoretical Calculations for the Production of <sup>99</sup>Mo Using Natural Uranium in Iran,” *Annals of Nuclear Energy*, Vol. 30, Issue 8, May 2003, pp. 883-895; and “Production Line for Mo99-Tc99m Radiopharmaceutical Launched: AEOI,” *Mehr News Agency*, September 9, 2007, <http://www.mehrnews.ir/en/NewsDetail.aspx?NewsID=549239>.

<sup>19</sup> IAEA GOV/2010/10 §41.

legally binding UNSC resolutions and refusing to comply with IAEA resolutions for more than six years. Its recent actions have increased the threat to international peace and security. Ensuring that the economic costs to Iran will be severe, swift, and certain if it crosses the red lines signaling weapons intentions is a far better course for the international community than the options of military action or acquiescence in weapons production,

On the other hand, if against all expectations, Iran adopts the cooperative attitude that has been requested by the IAEA and required by the Security Council for so many years, Security Council members and others have promised a wide range of benefits, including the normalization of diplomatic relations, the provision of nuclear power technology and other technical assistance, and the abolition of trade and investment barriers. Such benefits have been described in Annex II of UNSC Resolution 1747. Thus far, Iran has unfortunately shown little interest in converting the P5+1<sup>20</sup> offer into a binding long-term multilateral agreement.

## **Conclusion**

George Bernard Shaw has stated that “the only thing we learn from experience is that we don’t learn from experience.” The way a disunited P5+1 have been managing the North Korean and Iranian nuclear files seem to prove him correct.

The international community should not wait passively for Iran to carry out previous threats to produce HEU and even to withdraw from the NPT. A legitimate and verifiable preventive Security Council resolution as proposed here, while representing a major concession to Iran, should be more effective and easier to adopt than any post facto curative measure.

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<sup>20</sup> The P5+1 are China, France, the Russian Federation, the United Kingdom and the United States, plus Germany.