

## **Law, Leverage and Iran's Nuclear Program: Understanding the New Sanctions Landscape**

Joint Workshop – U.S. Defence Threat Reduction Agency, NATO, the German Marshall Fund, and the Program on Nonproliferation Policy and Law

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### **Preventing the Iranian Nuclear Crisis from Escalating**

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The effectiveness of sanctions in influencing Iran's questionable nuclear activities has been extensively debated. So far, the European Union considers increased sanctions against Iran, coupled with strong incentives, as a better option than policies of "laissez faire" or of military action. The question is: for how long? Earlier this week, the UAE Ambassador to the United States, Yousef al-Otaiba, was quoted as saying in public that "the benefits of bombing Iran's nuclear program outweigh the short-term costs such attack would impose."<sup>1</sup> This is all the more worrying given recent remarks by CIA Director Leon Panetta that it is unlikely that sanctions will deter Iran from pursuing a nuclear weapons capability.

But, let's be clear: sanctions are in no way an objective per se. Imposing sanctions is unfortunately an inevitable part of maintaining the credibility of the nonproliferation regime in the face of Iran's persistent violations of its safeguards agreement, IAEA Board of Governors resolutions, and legally binding UN Security Council Chapter VII resolutions.

Iran has repeatedly deplored that its nuclear program is being addressed by the UN Security Council (UNSC), instead of remaining within the purview of the IAEA. The irony is that each time the Security Council adopts new sanctions Iran further diminishes its cooperation with the IAEA. The IAEA then highlights in its reports that the Agency is increasingly unable to verify that Iran's nuclear program is exclusively for peaceful purposes, thus contributing to further Security Council sanctions.

It is therefore essential to find a way to break this vicious circle because an effective IAEA safeguards system is fundamental to deterring nuclear proliferation.

If Iran's intention is to acquire a nuclear weapons capability without allowing the IAEA to quickly uncover Iran's progress towards that goal, then Iran's current tactics of delay and deception are understandable. But, if Iran is solely interested in the peaceful uses of nuclear energy, then it is necessary to convince its leadership, as well as the Iranian people, that Iran's present nuclear strategy is counterproductive. This will not be an easy task considering the huge and persistent mistrust between Iran and the main nuclear supplier states.

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<sup>1</sup> Eli Lake, "U.A.E. Diplomat Mulls Hit on Iran's Nukes," *The Washington Times*, July 6, 2010, <http://www.washingtontimes.com/news/2010/jul/6/uae-ambassador-endorses-bombing-irans-nuclear-prog/>

High-ranking Iranian officials and influential clerics have on many occasions implied<sup>2</sup> that they are in favor of acquiring a nuclear weapons capability since Iran's enemies already possess such weapons. Iran has also threatened a number of times to withdraw from the NPT. Perhaps the most troubling element is that the genesis and development of Iran's nuclear activities make much more sense if Iran's principal aim is to become a "virtual" nuclear weapon state, rather than developing an economically competitive and peaceful nuclear program.

If such is the case, and given present circumstances, it is unlikely that sanctions **alone**, at any level, will deter Iran from pursuing its course. The primary objective of sanctions is to slow down Iran's progress towards an eventual nuclear weapons capability in order to keep the door open for a diplomatic compromise for as long as possible, while allowing the country to safely carry out the legitimate peaceful use of nuclear energy. This has been the objective of four UNSC resolutions (1737, 1747, 1803 and 1929).

These Security Council resolutions have required (as requested repeatedly by the IAEA Board of Governors) that Iran suspend (not renounce any right under the NPT) all enrichment-related and reprocessing activities until the IAEA has been able to resolve all outstanding questions regarding Iran's nuclear activities and to conclude that its nuclear program is inherently peaceful. It is therefore logical that the UNSC resolutions, which are legally binding for all UN member states, require these states to prevent the supply of all items, material, and equipment which could contribute to Iran's enrichment-related and reprocessing (or heavy water-related) activities. This includes source and special fissionable material.

Nonetheless, and this should be highlighted, these resolutions explicitly allow the supply of low-enriched uranium for light water reactors such as the Bushehr NPP or the Tehran research reactor (TRR) "when it is incorporated in assembled nuclear fuel elements for such reactors."

Therefore, I believe that the delivery of the fabricated fuel assemblies required for the continuous operation of the Tehran research reactor (containing uranium enriched to 19.75 % U-235) **should not be made contingent on Iran agreeing to swap a limited quantity of low-enriched uranium produced in Iran**, but rather on Iran's formal agreement to export to Russia its small stockpile of uranium enriched beyond 5% (few kg so far) and to stop enriching uranium above that level.

One has to realize that Iran's present stockpile of some 350 tons of natural UF<sub>6</sub><sup>3</sup> is enough to produce more than 40,000 kg of low-enriched uranium (LEU) at 3.5 % U-235. Requiring Iran to deliver 1,200 kg of LEU as a condition for the delivery of fuel assemblies for the TRR may appear politically or symbolically useful, but it is meaningless for all technical and practical purposes. Iran, which currently doesn't have the capacity to manufacture fuel assemblies for the safe operation of the TRR, has been extremely clever in making the world believe that accepting the swap proposed by IAEA Director General ElBaradei in October 2009 would be a major concession from its part. In fact, the fuel swap proposal would have been in Iran's best interest and could have helped to facilitate broader cooperation negotiations with the West. It would, of course, be very different and a significant confidence-building measure if Iran were to commit to send to Russia (say, every six months) all LEU produced domestically

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<sup>2</sup> "Top Cleric: Iran Has Right to 'Special Weapons,'" *Associated Press*, June 14, 2010, <http://www.cbsnews.com/stories/2010/06/14/world/main6581622.shtml>

<sup>3</sup> Iran stopped producing UF<sub>6</sub> last summer, but still has some yellowcake available to produce more UF<sub>6</sub>.

for incorporation in fabricated fuel assemblies delivered to the Bushehr NPP and possibly other LWRs.

At a minimum, the delivery of fuel reloads for the TRR should take place under the condition that Iran export to Russia its entire stockpile of uranium enriched beyond 5% and commits not to produce any additional enriched uranium beyond that level as long as it is supplied with the fuel elements necessary for the continuous operation of the TRR. As always, the risk here is to exchange an irreversible advantage for a reversible commitment. Once Iran has received the reloads for the TRR it will have no need for additional fuel elements for the next ten years or more; therefore the consequences of not meeting its part of the deal must be agreed upon in advance and made clear to Iran by the P-5 and other key states, including Brazil and Turkey.

When dealing with Iran's nuclear program the international community has always been one step behind.

To prevent the Iranian nuclear crisis from escalating, two things should be achieved in parallel: convincing Iran that further Security Council sanctions will *inevitably* be adopted if Iran continues to ignore IAEA and UNSC demands, and persuading Iran that considerable international benefits would result if it meets international requirements—in particular its full and proactive cooperation with the IAEA, including the implementation of the Additional Protocol.

For that to happen it is necessary to give Iran the guarantee that if it fully and proactively implements the Additional Protocol and reveals to the IAEA the existence of still undeclared nuclear material and activities, or if it admits past violations of the NPT **within an agreed period of time**, Iran would not be penalized for such past violations.<sup>4</sup> Otherwise, there is no reason to expect that Iran would voluntarily confess any past wrongdoings.

To reach the first goal (i.e., inescapable new sanctions) the wording of UNSC resolution 1929 is too vague and not binding. It states that if Iran does not comply with the previous four UNSC resolutions, the Security Council “*Affirms that it shall...adopt further appropriate measures under Article 41 of Chapter VII of the Charter of the United Nations to persuade Iran to comply with these resolutions and the requirements of the IAEA....*”

This formulation should be improved in order to better dissuade Iran from adopting further provocative steps. Ideally, the best way would be for the Security Council to adopt a resolution under Article 41 of the UN Charter deciding that if Iran were to produce high-enriched uranium (HEU),<sup>5</sup> to separate plutonium, to divert nuclear material, or to notify its withdrawal from the NPT<sup>6</sup>—**before** the IAEA is able to draw the necessary conclusion about the exclusively peaceful nature of Iran's nuclear program—a number of well-defined additional sanctions would automatically be applicable and implemented without requiring a further UNSC resolution.

The merit of such an approach is to make Iran clearly responsible for any negative consequences of its decisions, knowing in advance that it cannot count on any UNSC

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<sup>4</sup> Libya has been widely praised after acknowledging at the end of 2003 that it had been working on a nuclear weapons program for some 20 years.

<sup>5</sup> HEU is uranium enriched at or above 20% U-235.

<sup>6</sup> Or if Iran were to make it impossible for the IAEA to fully implement the provisions of Iran's safeguards agreement.

permanent member's right to veto. It could help any part of the Iranian leadership or civil society not determined to reach a nuclear weapons capability at all costs to make a more compelling case and follow another course.

In order to persuade Iran that there would be huge diplomatic and economic benefits if it were to follow another course, it would be advisable to go beyond the proposals to Iran by China, France, Germany, the Russian Federation, the United Kingdom, the United States of America and the European Union presented to Iran in June 2006 and again in June 2008, and annexed to UNSC resolutions 1747 and 1929, respectively.

The P5+1, with the support of other major stakeholders such as Japan, Brazil and Turkey, should make it well known to the Iranian public and the world that there is an impressive array of positive actions that would be taken in favor of Iran if the IAEA and the UNSC can determine that Iran has fully complied with its nuclear obligations. Today, these benefits may seem too vague and uncertain from an Iranian perspective. There is a real need for a "cooperation offensive" so that the Iranian people know full well what they are missing as a result of their leaders' ongoing refusal to seriously engage in multilateral negotiations, and the costs of their leaders' abrasive policies.

Negotiating a multilateral agreement with Iran will be a long and frustrating process that can only move forward step by step, mainly through secret diplomacy. It would most likely have to be based on the principle of "commitment for commitment, action for action." Our experience with North Korea is certainly not encouraging. It will not reassure those who rightfully consider that time is playing to Iran's advantage, at least for now.

Even if Iran is considered a lost cause, the international community must, without delay, adopt the preventive measures necessary to dissuade any other would-be proliferators from following the North Korean or Iranian examples.

For many years, I have advocated a number of concrete preventive measures to improve the nonproliferation regime. Further discussion about this proposal would bring me beyond the time allocated to this presentation, but I would refer you to my papers available on the Carnegie website.<sup>7</sup>

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<sup>7</sup> See Pierre Goldschmidt, "Concrete Steps to Improve the Nonproliferation Regime," Carnegie Paper No. 100, April 2009, [http://www.carnegieendowment.org/files/improve\\_nonpro\\_regime.pdf](http://www.carnegieendowment.org/files/improve_nonpro_regime.pdf)