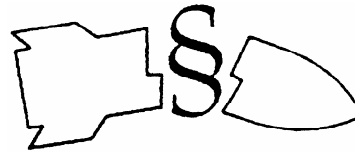


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The Security Council and Iran: Further Escalation and Isolation

Commentary on the draft resolution on Iran

Michael Spies, March 21, 2007

On March 15, 2007, the permanent members of the Security Council plus Germany circulated a draft resolution to the elected members of the Council following up on Iran's failure to implement the Council's demands in resolution 1737 (2006), as indicated by the IAEA's February 22, 2007 report.¹ The resolution, if adopted, would follow through with the Council's stated intention in resolution 1737 to adopt further measures under Article 41 (sanctions) of the UN Charter in the event of Iranian non-compliance. Although the negotiating process for the draft text led to agreement among the permanent members of the Council (P5) far more quickly than the previous resolution—less than four weeks, rather than the nearly three months it took the P5 to agree on the measures contained in resolution 1737—the present resolution contains an arguably greater potential for controversy and may bear directly on the likelihood for a military strike on Iran.

The decisions taken by the Council in the present draft text would represent a relatively minor escalation beyond the previous resolution. Beyond reaffirming the obligations imposed on Iran in resolution 1737 to suspend its “proliferation sensitive nuclear activities” (OP1), the draft adds to the list of entities and individuals targeted for financial sanctions (OP4), calls upon states and financial institutions to not enter into new financial arrangements with Iran (OP7), and requires all UN member states to report to the Council within 60 days on their implementation of the resolution (OP8). The draft text would also impose a ban on all arms exports from Iran (OP5) and calls upon all states (non-binding) to restrain and inhibit the transfer of arms to Iran (OP6).

Arms Embargo

The strongest new measure contained in the draft resolution is the binding prohibition of all arms exports from Iran. This provision also obligates all states to prohibit their nationals from procuring Iranian arms. Iran's principal clients for major weapons systems—mainly ballistic missiles and artillery rockets—are Hezbollah militants in Lebanon.² Due to Iran's lack of transparency in small arms transfers it is difficult to assess the significance of this provision.³ But

¹ International Atomic Energy Agency, “Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolution 1737 (2006) in the Islamic Republic of Iran: Report of the Director General,” GOV/2007/8, International Atomic Energy Agency, Vienna, February 22, 2007.

² Source: Stockholm International Peace Research Institute

³ *Small Arms Survey 2006*, Oxford University Press, 2006.

while Iran is a known producer and minor-scale exporter of small arms and related materiel, in total these amounts are likely dwarfed by exports from industrialized and Western states.⁴ More significantly, Iran is widely suspected of providing arms to sub-state actors in the region, such as militants in the Palestinian territories and Shiite militias in Iraq.⁵ Due to the relatively small scale of Iran's arms exports, this ban could largely be seen as a symbolic punitive measure intended to isolate Iran. But in light of ongoing tension and struggles in the region, an embargo on exports could have a greater implications, particularly for Iraq and Lebanon. As Iran's suspected clients in these states are also government factions or supported by government factions, enforcing compliance with this provision could be a politically complicated affair.

Given the lack of any connection between the embargo on arms exports and Iran's nuclear program, one also has to consider to wider geopolitical implications of the Council's actions. U.S. Under Secretary of State Nicholas Burns recently described Iran's "aggressive foreign policy and hegemonic aspirations" in the region as a threat to U.S. interests.⁶ However, the emergence of Iranian hegemony in the Middle East is currently impeded by existing U.S. hegemony in the region. Therefore, these measures seem more in line with U.S. goals of curtailing Iranian influence rather than something that might further non-proliferation objectives. Also, and more importantly, these measures also correlate with steps the United States would take in preparation for war.

Overcoming Russian objections, the present draft contains non-binding language calling upon all states "to exercise vigilance and restraint" in the provision of large-scale conventional weapons systems⁷ to Iran, "in order to prevent a destabilising accumulation of arms." Again, this provision may be seen largely as a symbolic punitive measure, but in light of ongoing speculation regarding the likelihood of a U.S. attack and the lack of any obvious connection to the nuclear program, the call for an arms embargo seems overly provocative and threatening. Another questionable point is the requirement that all states report to the Iran Sanctions Committee, established under resolution 1737, on the steps they have taken to implement "effectively" this non-binding embargo. It is not clear what the effect of this would be if any state chooses to sell arms to Iran and whether the it would be obligated to report those sales to the Committee. Despite the lack of clarity here and the oddity of imposing reporting requirements on non-binding measures—also a feature of resolution 1737—the reporting obligation cannot easily be interpreted as requiring states to report any arms sales to Iran. Regardless, it remains uncertain as to how states would be expected to reflect such transactions in their report to the Sanctions Committee.

Financial Sanctions

Resolution 1737 imposed financial sanctions, mandating that all states freeze the funds, financial assets, and economic resources on their territories of key entities and individuals associated with the particular nuclear and ballistic missile activities Iran was required to suspend. Adding to

⁴ *Source:* Norwegian Initiative on Small Arms Transfers

⁵ See R. Nicholas Burns, U.S. Under Secretary of State for Political Affairs, "United States Policy Toward Iran," Testimony Before the House Committee on Foreign Affairs, March 6, 2007.

⁶ Burns, 2007.

⁷ Specifically, battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems as defined by the UN Register on Conventional Arms.

those measures, the current draft effectively expands the scope of these sanctions to nuclear fuel-cycle research generally. New entities that would be targeted for sanctions include the research and production sites at Esfahan (responsible for preparation of uranium for enrichment), the nuclear research center at Karaj, the Atomic Energy Organization of Iran (AEOI)-associated Kavoshyar company, and the Novin Energy Company (involved in financial transactions related to the nuclear program). Extending beyond the nuclear program, the financial sanctions and travel restrictions would also be applied to several industries related to the Iranian Revolutionary Guard Corps (IRGC), including several companies listed as producing items useful for Iran's "asymmetrical warfare doctrine," likely reflecting the concerns of the United States. As with the embargo on arms exports, taking action impeding Iran's ability to defend itself against an attack from a major power has no obvious connection to non-proliferation and seems overly provocative.

The draft also adds to the list of individuals targeted for financial sanctions. Individuals added to the list due to their connection to nuclear programs include additional senior scientists related to fuel-cycle facilities and to the nuclear program generally, and also a head scientist that Iran has not allowed to be interviewed by the IAEA. It further makes a non-binding appeal to states to "exercise vigilance and restraint regarding the entry into their territories or transit through their territories" of individuals listed in both resolutions. The text also individually targets the key leadership of the IRGC and the heads of each of its primary divisions, including the ground forces, Navy, Bassij militia, and the Qods force, although the connection to nuclear non-proliferation here is unclear. The resolution would also renew the requirement of all states to notify the Sanctions Committee of the entry into or transit through their territories of the individuals listed.

Despite initial Russian and Chinese concerns, the text also calls upon states and financial institutions to refrain from entering into new financial agreements with Iranian entities except for humanitarian or development purposes. Although this provision is non-binding, it is unusual in that it applies directly to sub-state actors in addition to the states. States would also be obligated to report to the Sanctions Committee on the steps they have taken to implement this provision.

Objectives of the Resolution: the Role and Authority of the Council

In the preambular paragraphs of the draft resolution the Council states it is "determined to give effect to its decisions by adopting appropriate measures to persuade [really coerce] Iran to comply" with its previous resolutions and the "requirements" of the IAEA, and "to constrain Iran's development of sensitive technologies in support of its nuclear and missile programs" (PP6). That the Council has the authority to make decisions that are binding on all member states is widely recognized and non-controversial. However, while it almost seems logical that the Council should have the power to enforce its own decisions, in fact the power to "give effect" to its decisions, specifically by adopting measures under Article 41 (sanctions) and Article 42 (military force), is largely circumscribed by the Charter. Article 39 of the Charter makes the enactment of these measures contingent on the Council's determination that a given situation constitutes a threat to international peace, which the drafters of the present resolution have declined to do.

The current draft takes a similar approach as resolution 1737 and imposes measures under Article 41 without making such a finding, as Article 39 makes requisite of the Council prior to the adoption of any enforcement measures. Instead the Council states once again that it is “mindful of its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security,” affirming that indeed the Charter does grant the Council the power to take action, but without bothering to specify whether that authority applies to the present situation as had been the norm in Chapter VII situations.

Recycling language used in earlier resolutions, the present draft again assumes that the IAEA Board “required” Iran to suspend its enrichment related activities. However, it is doubtful that the Board has this authority under the IAEA Statute, although it has recently taken action with the scope of its mandate to curtail nuclear cooperation with Iran. Further, while clever drafting of the IAEA Board’s February 2006 resolution has obscured the matter, it fell well short of imposing “requirements” upon Iran. In the first operative paragraph, the Board refers to the need to build confidence and “deems it necessary” for Iran to take certain steps. Operative paragraph 5 refers to “non-legally binding” and “voluntary” confidence building measures.

In light of the Council’s stated purpose, its innovative approach here lends itself to several non-mutually exclusive interpretations. The optimistic view would be to read the Council’s action as an innovative reinterpretation of its role and the UN Charter to deal with new types of emerging threats not anticipated by the Charter. The drafters of the Charter, against the backdrop of the second world war, initially envisioned the Council’s role as responding to instances of armed attack across international borders. Interpretation of the Council’s mandate has expanded over time to include intervention on matters such as humanitarian crises or in cases of gross human rights violations, which are broadly considered “threats to international peace.” Given the tenuous and imperfect nature of nuclear non-proliferation regime, here the Council’s role could be seen as it acting to fill a legal void by enforcing the rules that bear upon matters related to international peace and security. However, as necessary as this function is in ensuring the long term viability of certain security treaty regimes, the Security Council may be ill-suited to this task. The Council is not a judicial institution, like a court, and is not required to make any finding of law or to cite any violation of any legal instrument prior to taking action. In fact, in the present draft text, the only reference the Council makes to the Nuclear Non-Proliferation Treaty is to reaffirm the right of states parties to nuclear energy in conformity with their obligation not to acquire or manufacture nuclear weapons. Further, in light of the lack of evidence thus far that Iran has violated this obligation, the present case cannot be easily defended as being merely about enforcing the rules of the nuclear non-proliferation and disarmament regime. Also relevant is the fact that the permanent members of the Council, the only recognized nuclear weapon states under the NPT, are more than 35 years overdue in complying with their own obligation in that treaty to negotiate dismantlement of their nuclear arsenals.

The Council’s omission of a finding of a “threat,” with its implication that force may used, can be viewed as a purposeful act intended to preclude the United States from interpreting the resolution as authorizing the use of force. In the post-Iraq invasion context, the members of the Council are seeking innovative ways to sidestep past abuse of the Charter and past resolutions while still finding way to make the Council adaptive and responsive to the needs of the moment. One purpose of this innovation would be to restrain the U.S. from exercising its raw power to use

the Council to achieve its national political objectives, while still keeping the world's most powerful state engaged in process of ensuring collective security.

Regardless of the reasoning behind the language used by the Council, the objective of the majority of its permanent members is clear: to use coercion as tool to bring about the pacific settlement of a political dispute. Under this view, the members of the Council are problem-solvers working to reform their mandate within an institutional context in order to develop modern solutions to situations that might evolve into a threat to the peace. While Chapter VI of the Charter restricts the Council to making non-binding recommendations in such circumstances, as with the innovation of peacekeeping operations, the Council's actions here can be described as adapting its role to fit the needs of the day. However, under the present circumstances this position is also troubled by legitimacy concerns. As a non-representative, non-judicial body the Council is acting here to impose one side's negotiating position (the EU's position that negotiations with Iran require the suspension of uranium enrichment as a prerequisite) over the other's. The Council acting to settle the dispute in this fashion is suspect due to the fact that several permanent members, and the driving powers behind the resolutions, are parties themselves to the dispute.

The problem raised in this last point is cynically emphasized by the self congratulatory fifth preambular paragraph, which *welcomes* "the continuing commitment" of the P5 plus Germany (the drafters of the resolution), and the High Representative of the EU, "to seek a negotiated settlement." The term "negotiation," as it is generally referred to in the context of international relations, refers to a process where two or more sides meet and are willing to modify their initial positions in order to reach a *mutually acceptable* outcome. However, aside from sporadic and non-coordinated diplomatic contacts between some EU states, the EU High Representative, and Iran, since the passage of resolution 1737 this group as a whole has done little more than to devise new coercive measures meant to cause Iran's capitulation to the demands of the Council.

Next steps

Matching the public pronouncements of the permanent members of the Council, the present draft resolution represents a gradual escalation on a path to a progressively heightening confrontation. In keeping with the notion of a steady approach, the resolution would request the IAEA to again report in 60 days regarding Iran's compliance with the Council's decisions. The Council also once again affirms that it will adopt further measures under Article 41 in the event of further non-compliance. The draft text also reaffirms that the Council will decide to terminate sanctions once Iran complies. This falls short of an earlier EU's condition that any measures adopted by the Council be automatically reversible as any move to end sanctions would be subject to a U.S. veto. In effect, this means Iran's compliance would have to ultimately satisfy the each individual member of the P5 including the United States.