

## **Iran and the Security Council: Points and Recommendations**

Lawyers' Committee on Nuclear Policy, February 22, 2006

On 4 February 2006 the IAEA Board of Governors adopted a resolution on Iran requesting the Director-General "to report to the Security Council all IAEA reports and resolutions, as adopted, relating to this issue." The resolution further requests that the Director-General provide a report on Iran's implementation of IAEA resolutions to the Council immediately after the next meeting of the Board in March, together with any additional resolution. The response of the Security Council will be crucial in halting further escalation of the situation into crisis and ensuring that the IAEA is able to complete its investigation of Iran's past nuclear activities and present intentions, allowing it to determine if Iran's nuclear program is exclusively for peaceful use. We offer the following points and recommendations for your consideration.

**The urgency of the matter is overstated.** Numerous governmental and non-governmental analysts believe that Iran is at least three years from acquiring the material necessary for a single nuclear explosive, should it make the decision to do so. There is time for diplomacy to work. Escalation undermines this possibility.

**There has been no diversion of nuclear material to military purposes.** The IAEA's nearly three year old investigation uncovered broad and undeclared Iranian research programs involving all aspects of the nuclear fuel cycle going back nearly two decades. However, the IAEA concluded in November 2004 that all declared nuclear materials had been accounted for and therefore none had been diverted to military purposes.

**Drawing the conclusion that there are no undeclared nuclear activities takes a great deal of time in any circumstance.** Further, the IAEA is only able to reach this conclusion for states that have implemented the additional protocol. As an example, Japan's additional protocol entered into force in 1999, yet the IAEA concluded the absence of undeclared nuclear activities in Japan for the first time in 2003. As of the latest annual IAEA Safeguards Report, of the 61 states where both the NPT safeguards and the additional protocol are implemented, in only 21 of these states has the IAEA concluded the absence of undeclared nuclear activity. The IAEA has stated this process will take longer in Iran due to the history of concealed nuclear activities.

**Verification is a matter separate from enrichment.** Two issues underlie this standoff, which must be kept separate. The first issue relates to the IAEA fulfilling its statutory obligation to verify the peaceful nature of Iran's nuclear program. The second issue is Iran's pursuit of nuclear fuel cycle capabilities, which has been the focus of U.S. and EU efforts. The Security Council should consider whether and how it can practically facilitate the IAEA's task of verifying the peaceful use of nuclear energy.

**Reaching a solution regarding Iran's uranium enrichment program is likely best done outside the Security Council.** Requiring suspension of enrichment activities would seek to have the Security Council enforce what until now has been a voluntary, non-legally binding, confidence-building measure. When Iran's large-scale concealment of nuclear activities and facilities first came to light three years ago, a reasonable case could have been made that Iran should have been required to suspend the pursuit of nuclear fuel cycle technologies, at least pending the resolution of all outstanding safeguard issues. But now, after extended negotiations that contemplated "objective guarantees" that would enable Iran's program to proceed, an absolute halt seems less appropriate. One compromise worth considering is operation of the pilot uranium enrichment plant under continuous, in-person IAEA monitoring, perhaps in combination with a facility located in Russia.

**The use of force is unacceptable, however rationalized or authorized.** The use of violence begets violence. In this case the threat or use of force could drive Iran's nuclear program underground, prompt Iran to develop nuclear arms in a misguided effort to increase its security, and unite the population strongly behind anti-western sentiments, preventing dialogue and further jeopardizing security in the Middle East.

**Disarmament is key to successful non-proliferation.** The total elimination of nuclear weapons is the only absolute guarantee against the use or threat of use of nuclear weapons. Lackluster progress on the nuclear disarmament commitments made at the 2005 NPT Review Conference undermines support for nonproliferation efforts. The breakdown of the Review Conference signals that the non-nuclear weapon states are increasingly unwilling to accept de facto limitations on their right to develop nuclear technology without tandem progress on the total elimination of nuclear arsenals.

In light of the above, we recommend that:

- 1) **Above all, the Security Council and its members should work to promote effective diplomacy.**
  - a) **It is essential that the United States and Iran be strongly encouraged to engage in direct talks, breaking the silence of more than a quarter century.**
  - b) **Formation of a negotiating group wider than the EU3 should be considered. It could include Russia, China, the United States, an EU representative, and a Non-Aligned Movement representative.**
  - c) **Another productive avenue may be involvement of the Secretary-General.** Kofi Annan was scheduled to visit Iran in September 2005, but his visit was cancelled. As demonstrated in 1998 when he visited Iraq, the involvement of the Secretary-General can deescalate tension and prompt a new round of negotiations. Mr. Annan could also be asked to set up a mediation commission.
- 2) **If the Security Council approves a presidential statement or adopts a resolution, it should be done in the conviction that it will lead to positive results and, in the case of a resolution, on a non-Chapter VII basis.** There is no point in putting the "credibility" of the Council or its members on the line, leading to hardening of positions and confrontation. A presidential statement or a resolution could:
  - a) call on Iran to cooperate with the IAEA in clarifying all outstanding safeguards issues regarding its nuclear program;
  - b) recommend a method of adjustment, like a mediation commission, pursuant to Article 36(1) of the UN Charter;
  - c) call for progress on development of regional or global arrangements, instead of national capabilities, to produce or guarantee the supply of nuclear fuel, and on development of sustainable energy alternatives to nuclear power;
  - d) call for progress on the creation of a WMD-free zone in the Middle East, in particular with regard to nuclear fuel cycle capabilities, and on implementation of nuclear disarmament obligations and commitments globally.
- 3) **If at some point the Security Council considers adopting a binding resolution in response to the Iran situation, a generic approach could be taken.** For example, the Council could mandate that when the IAEA Board determines that issues regarding implementation of safeguards so warrant, the IAEA shall have enhanced powers to monitor and inspect.