

Standing at the Nuclear Precipice: Iran

Aslı Ü. Bâli*

I. Introduction: Iran and the Dual-Use Dilemma

The Nuclear Non-Proliferation Treaty (NPT) underwent its most recent five-year review session in May 2005. There were numerous proposals on the table to strengthen nonproliferation mechanisms, reinforce disarmament commitments, close loopholes in the verification and monitoring procedures associated with the regime, and create more effective multilateral arrangements for the management of fissile materials. Despite the urgency of the issues addressed by these proposals, none were adopted and the review session was widely regarded as a failure.¹

Perhaps even more puzzlingly, despite the fact that the United States “repeatedly declared that nuclear proliferation, including the risk of terrorists obtaining a nuclear weapon, is the biggest single threat to the United States, the administration decided against sending Secretary of State Condoleezza Rice to the conference, leaving arguments to midlevel diplomats.”² The source of the dispute at the conference was the bargain at the heart of the NPT framework: non-proliferation in exchange for disarmament and civilian nuclear energy cooperation. The breakdown of the conference reflects an international climate in which non-nuclear weapons states are unwilling to accede to additional demands for the limitation of their access to the nuclear fuel cycle, while the nuclear weapons states fail to implement their disarmament commitments under Article VI of the NPT and, more specifically, those commitments undertaken at the 2000 NPT Review Conference.

With the failure of the 2005 NPT Review Conference, the existing nonproliferation regime status quo will remain in effect until at least the next review conference in 2010. The regime as it currently stands is comprised of NPT obligations, the inspections regime established under the NPT Safeguards Agreement and, for countries that have ratified additional obligations, the stricter inspection regime of the Additional Protocol. While this regime is widely credited with averting a world of rapid proliferation in the sixty years following the invention of atomic weapons, it is under increasing strain. As an example of the fraught politics of nonproliferation compliance

* The author is a doctoral candidate in the Department of Politics and a lawyer in private practice in New York. This paper was originally presented on February 24, 2006 at the Nuclear Age Peace Foundation’s 2006 International Law Symposium, Panel II.

¹ See, e.g., David E. Sanger, “Month of Talks Fails to Bolster Treaty,” *The New York Times*, May 28, 2005 at A1 (noting that the “month-long conference at the United Nations to strengthen the Nuclear Nonproliferation Treaty ended Friday in failure, with its chairman declaring that the disagreements between nuclear-armed and non-nuclear states ran so deep that ‘very little has been accomplished.’”).

² *Id.*

and enforcement, this paper will examine the emerging crisis over Iran's nuclear energy program.

The Iranian case is conventionally understood as an enforcement problem. Iran, like all non-nuclear weapons state parties to the NPT, has two obligations under the treaty: not to manufacture or acquire nuclear weapons (Article II) and to accept safeguards, implemented by the IAEA, to prevent the diversion of nuclear energy to military uses (Article III). Because enforcement of the Article II obligations of non-nuclear weapons states would require unacceptably intrusive inspections, there is no specific enforcement mechanism for this obligation. Rather, the reporting obligations of countries and the IAEA's monitoring and verification authority associated with Article III are designed to ensure that declared nuclear energy facilities are being operated according to relevant safety requirements and that there is no diversion of fissile materials from permitted civilian facilities. The IAEA discovered since 2002 that Iran had failed, over an extended period, to comply with some of its reporting obligations. While there has been no concrete evidence of the diversion of nuclear materials to weapons program or other military use, Iran was in non-compliance with its obligations under the Safeguards Agreement.

Following the revelations that countries like Iraq and North Korea had developed clandestine nuclear weapons programs despite their IAEA Safeguards Agreements, the IAEA adopted an Additional Protocol for broader inspections that would enable the Agency to monitor not only declared facilities but also to uncover the presence of undeclared facilities. From 2003 until 2006, Iran voluntarily complied with the Additional Protocol inspections regime.³ While Iran has permitted extensive inspections of its nuclear facilities since 2002, such inspections were not deemed to be an adequate confidence-building measure to permit Iran to proceed with its civilian nuclear energy program. Although the IAEA has certified that none of the declared nuclear materials in Iran have been diverted to military purposes and has found no evidence of a militarized nuclear program in Iran, outstanding questions about the Iranian program persist. As negotiations to persuade Iran to forgo the development of an indigenous nuclear fuel cycle have stalled, the Iranian government decided in early 2006 to resume limited uranium enrichment activities, prompting a decision by the IAEA Board to have the Agency report on the Iranian dossier to the Security Council.

This paper will outline the broader context for non-proliferation enforcement with respect to Iran and alternatives to the course currently being adopted by the IAEA. Towards this end, a significant portion of this paper will trace recent developments in the Iranian nuclear dossier since the revelation in 2002 that Iran had a clandestine nuclear energy program, with a particular emphasis on the most recent six month period. This

³ Iran has signed the Additional Protocol but the Iranian parliament has refused to ratify the agreement until it is assured that Iran's "legitimate right" to a civilian nuclear energy program including uranium enrichment facilities is recognized by the IAEA. Moreover, as a consequence of the decision to refer the Iranian nuclear dossier to the United Nations Security Council, as will be discussed further below, Iran has suspended its voluntary compliance with the stricter inspections under the Additional Protocol as of February 2006.

review will include an evaluation of the record of Iranian violations of NPT obligations in light of Iranian explanations. After an assessment of the current approach adopted by the IAEA, including the limitations of enforcement through the Security Council, the remainder of the paper will turn to a discussion of alternative approaches to promoting non-proliferation and more consistent enforcement of the NPT regime.

II. Overview Chronology of the Dispute over Iran's Nuclear Program

Iran is pursuing the development of a domestic centrifuge enrichment plant, which it claims will be used for the production of low-enriched uranium (LEU) for civilian nuclear energy purposes. As with all centrifuge enrichment plants, such a facility has an inherent dual-use capability since the production of weapon-grade uranium involves a similar enrichment process. Iran's eighteen-year clandestine enrichment efforts, which were revealed in August 2002 by the National Council of Resistance of Iran (NCRI), and subsequently subjected to IAEA monitoring and verification, have brought into international focus this dual-use dilemma.⁴ Article IV of the NPT gives non-weapons states party to the treaty the "inalienable right" to enjoy the benefits of the peaceful uses of nuclear energy. Iran, together with several other non-weapons states such as Japan, Brazil, Germany and the Netherlands, has interpreted this provision as entitling it to develop indigenous fuel cycle facilities provided that those facilities are placed under IAEA verification. The IAEA maintains that the reference to inalienable rights does not encompass the right to develop enrichment facilities, but simply to operate nuclear reactors for energy purposes and to have access to enriched uranium on open markets.

The dual-use dilemma arises from the fact that an ostensibly peaceful civilian enrichment program can provide the basis for a latent nuclear weapons capability. A country that masters the technology for its overt civilian enrichment program might build a parallel covert program that would be used to enrich uranium for military purposes. Alternatively, after developing an overt civilian enrichment capability, a country might opt to exercise its rights under the NPT withdrawal clause to terminate IAEA safeguards and enrich uranium to weapons-grade.⁵ Several non-nuclear weapons states currently operate enrichment facilities and their possession of such a latent capability has not raised significant concerns or become the subject of alarm for the IAEA. By contrast, Iran has been singled out for developing facilities that raise specific non-proliferation concerns. In this section, I will briefly review the sources of these concerns and the recent trajectory

⁴ The NCRI is an Iranian opposition group operating in exile and affiliated with the *Mujahideen el-Khalq* organization, based in Iraq. For the series of IAEA reports on inspection and monitoring of Iran's enrichment facilities, see www.iaea.org/NewsCenter/Focus/iaeaIran/index.shtml.

⁵ It is worth noting that reprocessing plants, used to separate plutonium out of spent fuel, raise similar problems. Plutonium separated from spent fuel can be mixed with uranium and recycled as fuel for nuclear power reactors. However, separated plutonium can also be used for nuclear weapons purposes. Because plutonium recycling is not economical it is a less popular avenue, though some states have reprocessing facilities in order to avoid the environmental concerns raised by long-term spent-fuel storage. Among non-nuclear weapons states, only Japan has both enrichment and reprocessing facilities.

of the confrontation between the IAEA Board of Governors and Iran concerning its nuclear energy activities.

The NCRI revelations and the subsequent IAEA inspections uncovered the existence of two undeclared nuclear facilities in Iran: a centrifuge-based uranium enrichment plant at Natanz and a heavy water production plant at Arak.⁶ Following the revelations, the Iranian representative to the regular session of the IAEA General Conference in September 2002 declared Iran's intention to embark on a "long-term plan to construct nuclear power plants with a total capacity of 6000 MW within two decades...[including] all out planning, well in advance, in various fields of nuclear technology such as fuel cycle, safety and waste management."⁷ While the goals of the current Iranian energy program are significantly more modest than the nuclear energy program that had been undertaken by Iran, with American approval, in the 1970s under the Shah, they are considerably more advanced than anything the Islamic Republic had publicly stated previously.

In the aftermath of its declaration of its civilian uranium enrichment program, Iran's approach towards intensified IAEA inspections and its own obligation to take corrective actions has gone through different phases. In the fall of 2003, Iran entered into negotiations with the governments of the United Kingdom, France and Germany (the so-called "EU-3") to engage in confidence-building measures including the temporary, voluntary suspension of its uranium conversion and enrichment programs while negotiating arrangements to establish "objective guarantees" that its nuclear activities could not be diverted to military use. The most recent round of these negotiations failed in August 2005, resulting in Iranian resumption of uranium conversion activities at its Isfahan plant followed by a strongly-worded resolution issued by the IAEA Board of Governors in September. Over the last six months there have been no further negotiations between Iran and the EU-3. By January 2006, it was evident that further progress in negotiations with the EU-3 was unlikely and Iran took the next step towards reversing the confidence-building measures that it had undertaken in the context of the negotiations by requesting that the IAEA remove its seals from the Natanz uranium enrichment facility. This move prompted intensive diplomatic efforts among the EU-3, the United States, Russia and China, culminating in an emergency session of the IAEA Board from February 2-4, 2006, which issued a resolution reporting the Iranian nuclear file to the United Nations Security Council.⁸

⁶ On the NCRI revelations of 2002, see, e.g., Sharon Squassoni, "Iran's Nuclear Program: Recent Developments," CRS Report for Congress, *Congressional Research Service*, August 2, 2005.

⁷ Statement of the Vice President of the Islamic Republic of Iran and President of the Atomic Energy Organization of Iran (AEOI), H.E. Mr. Reza Aghazadeh, cited in, *Implementation of the NPT safeguards agreement in the Islamic Republic of Iran*, Report by the Director General, GOV/2003/40, June 6, 2003, at para. 2.

⁸ The semantics of the action recommended in the IAEA Board Resolution are of some significance. The Board has not referred the Iranian case to the Security Council, which would have implied that the Iranian dossier had been transferred from IAEA jurisdiction to that of the Council. Rather, the Board agreed to request that the Agency report on the matter to the Council to inform and advise the Council. The Board has still not made a finding of Iranian non-compliance in any resolution. Such a finding would trigger automatic referral of the dossier to the Council, divesting the Agency of authority.

To better understand the trajectory of events that led from the 2002 revelations concerning the clandestine Iranian enrichment program to the 2006 IAEA Board resolution reporting the matter to the Security Council, it will be helpful first to examine the Iranian explanation for its clandestine program and then the course of negotiations with the EU-3 from 2003 to 2005. A useful starting point would be a brief analysis of the relationship between Iran's clandestine facilities and its NPT obligations. IAEA inspections in Iran beginning in 2002 have confirmed the existence of a uranium enrichment program and a heavy water production program in Iran.⁹ The heavy water reactor program consists of a heavy water production plant under construction at Arak and a planned 40 MW heavy-water reactor on which construction has not yet begun. The uranium enrichment program consists of a pilot-scale gas centrifuge enrichment plant that went into operation in June 2003 but was suspended following an agreement with the EU-3 in December 2003 and may have become operational again in mid-February 2006. A commercial-scale enrichment facility is also under construction at Natanz, the site of the pilot-scale plant.

The intense three-year inspection process that ensued has, however, revealed numerous violations of Iran's reporting obligations. The record of covert Iranian nuclear activities uncovered by the IAEA inspectors includes the conduct of undeclared enrichment activities, the conduct of undeclared reprocessing experiments, and the import of undeclared fissile materials from foreign suppliers.¹⁰ In addition, evidence revealed by IAEA inspections led to the discovery of Iranian ties to the A.Q. Khan black market nuclear supply network. The principal areas in which Iran was discovered to have undeclared nuclear activities during the course of three years of inspections by the IAEA, from 2002 to 2005, are the following: the import, manufacture and use of P-1 and P-2 centrifuge designs; the one-time import of fissile materials in 1991; the testing of a pilot centrifuge enrichment facility; work on a laser enrichment program; the conduct of plutonium reprocessing experiments and limited polonium production. In addition, there have been reports that additional nuclear activities might be occurring at military sites at Parchin and Lavizan. The IAEA has made what it has described as "good progress" in investigating each of these categories of violations and its secretariat has taken the position that non-proliferation objectives are better served by on-going inspections and

⁹ See, e.g., *Implementation of the NPT safeguards agreement in the Islamic Republic of Iran*, Report by the Director General, GOV/2003/40, June 6, 2003, at paras. 25-31.

¹⁰ It is important to bear in mind when assessing this record, as described in the following subsection, that none of these activities are in and of themselves prohibited under the NPT and the related safeguards agreements. Nor do any of these activities necessarily go beyond the requirements of a civilian energy production program. The violations of Iran's obligations are, to date, limited to *reporting* violations. Had these activities been conducted with notification to the IAEA, they would not have been considered problematic from an NPT perspective. However, as Iran has consistently argued, the activities would have been deemed problematic for political reasons because the United States has opposed the provision of nuclear technologies to Iran since the early 1990s and has repeatedly pressured foreign suppliers to cancel contracts or penalized them with sanctions. As a result, while none of Iran's activities would have been proscribed legally had they been reported to the IAEA, Iran alleges that it was forced to conduct these activities clandestinely because they would not have been feasible otherwise for geopolitical reasons. Bearing in mind the distinction between the legality of the underlying activity and the obligation to report the activity is important in assessing the seriousness of Iranian violations.

negotiations with the Iranian government for a suspension of its enrichment program than by a referral to the Security Council.¹¹

Iran's explanation for the clandestine development of these programs is that it has been systematically barred from transparently developing a civilian nuclear energy program, principally by U.S. efforts to prevent it from making necessary purchases. To substantiate this claim, Iran has pointed to U.S. pressure that blocked its efforts in the late 1980s and throughout the 1990s to enter into talks with German, Argentine, Brazilian, Chinese and Russian companies for completion of work on the Bushehr nuclear reactor, begun under the Shah, and to acquire additional research reactors.¹² Further, Iran claims that it requires an independent and indigenous nuclear fuel cycle because it has also faced discrimination in its efforts to purchase nuclear fuel to power its nuclear reactors.¹³ The restriction of Iranian access to open market sources for its civilian nuclear energy program, and particularly efforts to block its development of a light water reactor at Bushehr have contributed to Iranian arguments in favor of developing a domestic fuel-cycle that would provide it with nuclear energy independence. Although motivated by non-proliferation concerns, the blocking of Iranian access to civilian technologies and nuclear fuel to which it is entitled under the NPT has been counter-productive.

Iran's arguments for developing a domestic nuclear fuel-cycle suggest the basic prerequisites of any negotiation for the suspension of its enrichment program. Logically,

¹¹ For example, the Director-General of the IAEA, Mohamed El-Baradei, voiced his hope that all parties "will go back to the negotiating table" following the first suggestion that the UN Security Council might become involved following the September IAEA Board Resolution. Mark Landler "Nuclear Agency Votes to Report Iran to UN Security Council for Treaty Violations," *New York Times*, September 25, 2005, at Sec. 1, p. 6.

¹² For a discussion of the efforts in the late 1980s to find a partner to restart work at Bushehr, see Andrew Koch and Jeanette Wolf, "Iran's Nuclear Facilities: A Profile," Center for Nonproliferation Studies (1998), available at <http://www.iran-e-sabz.org/news/nucl1a.htm>. In one example, there were numerous reports that Iran had approached Kazakhstan following an Iranian visit to the Ulba Metallurgical Plant, for the purchase of highly enriched uranium (HEU) or for the purchase of parts towards the completion of the Bushehr facility. Discovery of the Iranian interest in Ulba by U.S. officials prompted immediate American requests to the Kazakh government to block any transactions with Iran and ultimately resulted in an agreement through which the United States bought all of the Ulba HEU inventory by 1994. David Albright, "An Iranian bomb?," *Bulletin of the Atomic Scientist* 51(4), (July/August 1995): 20-26, at 20. See, also, Christina Lamb, "Brazilian nuclear deal row," *Financial Times*, December 5, 1991, at 6 (noting that in the face of U.S. protests, a Brazilian report of a potential reactor sale to Iran had been retracted).

¹³ Comments by a senior Iranian official, October 2005 (on file with author). This observation is reinforced with the difficulty Iran has had recouping on its \$1 billion investment in the Eurodif enrichment plant, which was made under an agreement that Iran would be given access to a uranium enrichment supply from the facility. Iran has sought the return of its investment in the uranium enrichment plant constructed by the French nuclear energy commission for the Eurodif consortium, and France has sought payment for the cancellation of its Shah-era contracts with Iran for the provision of two reactors. The proceedings did not result in a settlement and Iran now invokes the example of its blocked Eurodif investment as a reason that it cannot trust that it will be given open market access to nuclear fuel and must therefore develop an indigenous nuclear fuel cycle. On the Eurodif dispute, see, e.g., George Graham, "Tehran wins ruling in French nuclear dispute," *Financial Times*, February 4, 1991, at 4; and William Dawkins, "France, Iran near contracts accord," *Financial Times*, October 26, 1991, at 3. It is worth noting that the proposed Russian "compromise" of a joint venture on Russian soil for Iranian uranium enrichment is largely analogous to the French arrangement. The Iranian Eurodif experience may explain their reluctance to accept this proposal.

such prerequisites would include fuel supply guarantees, guarantees of the right to acquire light water reactors for energy production purposes,¹⁴ and security guarantees that will dissuade Iran from the view that it requires a latent nuclear capacity as a virtual deterrent. Unfortunately, in both the areas of guaranteed open market access to dual-use technologies and in terms of a security guarantee, the absence of the United States in the negotiations to suspend Iran's enrichment program limited the incentive package that the EU-3 was able to propose. The course of the negotiations between the EU-3 and Iran underscores the significance of the U.S. position, first by virtue of the U.S. decision to withhold its support from the discussions and then as a result of direct American intervention with the Europeans to alter their position.

The EU-3 negotiations with Iran were premised on the framework set forth in the Paris Agreement of November 2004.¹⁵ The purpose of the negotiations were to find a formula, satisfactory to the Europeans, for "objective guarantees that Iran's nuclear program was exclusively for peaceful purposes." The framework included a recognition of Iran's rights to pursue the acquisition of civilian nuclear technology, provided such rights were exercised in conformity with its obligations under the Treaty "without discrimination." This signaled good faith that a formula could be reached that would acknowledge Iran's right to enrich uranium while also satisfying the demands of the international community that such enrichment be conducted under tight controls that would prevent the diversion of materials or technology to military purposes. However, in March 2005, the premise of the Paris Agreement framework was altered. Under pressure from the United States, the EU-3 revised their strategy, adopting the new position that the only acceptable "objective guarantee" would be the total cessation of enrichment in Iran.

The signing of the Paris Agreement had coincided with a positive development in the Iranian IAEA dossier: the November 2004 IAEA report found that all nuclear materials in Iran had been accounted for and that no evidence had been uncovered of a military nuclear program.¹⁶ While the report cautioned that the existence of a weapons program could not be discounted as a result of incomplete information and a series of unresolved questions, it seemed that serious progress was being made with Iran. A series of U.S. actions between January and March 2005 altered the perception of progress.

¹⁴ The acquisition of a light-water reactor is widely acknowledged to have little potential to contribute to efforts to develop a nuclear weapons program. For instance, proliferation specialist with the Center for Strategic and International Studies, Anthony Cordesman, has written that "the reactor design Russia is selling Iran produces only very limited amounts of plutonium, and no country has as yet used a similar reactor design to acquire fissile material." Anthony Cordesman, "Iran and Nuclear Weapons: A Working Draft," Center for Strategic and International Studies, February 21, 2000, *available at* <http://www.csis.org/media/csis/pubs/irannuclear.pdf>, at p. 15.

¹⁵ For the text of the Paris Agreement, see IAEA INFCIRC/637 (Communication Dated 26 November 2004) Received from the Permanent Representatives of France, Germany, the Islamic Republic of Iran and the United Kingdom concerning the Agreement signed in Paris on November 16, 2004), *available at* <http://www.iaea.org/Publications/Documents/Infcircs/2004/infcirc637.pdf>. The Paris Agreement succeeded the earlier Tehran Agreement of October 21, 2003, setting forth a more detailed mutual understanding of the specific obligations of the Iranian government in its suspension of uranium enrichment activities as a confidence-building measure during the course of its negotiations with the EU-3.

¹⁶ *Implementation of the NPT safeguards agreement in the Islamic Republic of Iran*, Report by the Director General, GOV/2004/83, November 15, 2004.

As negotiations between Iran and the EU-3 were getting underway, the U.S. State Department announced that it was penalizing eight foreign companies under the Iran Nonproliferation Act of 2000 for transferring technologies to Iran deemed restricted under U.S. legislation.¹⁷ Secondary sanctions imposed by the U.S. on foreign companies engaging in trade with Iran were an important source of frustration for Iranian diplomats relying on the Paris Agreement for improved access to open market sources for technology and nuclear cooperation.¹⁸ Secretary of State Condoleezza Rice's statement in February that the U.S. would withhold its support from the incentives package offered to Iran by the EU-3 was also a blow to the credibility of European commitments.¹⁹ Following President George W. Bush's late February trip to Europe, senior Iranian officials concluded that the Paris Agreement was dead for lack of U.S. support and because the EU-3 was perceived to have accepted the American position that only a permanent cessation of all uranium enrichment activities could provide sufficient guarantees for any long-term agreement with Iran.²⁰

The Iranian conclusion that the Paris Agreement was a dead letter by March 2005 did not, however, prompt an immediate withdrawal from negotiations or a resumption of enrichment activities. Rather, Iranian officials continued to press to see whether "objective guarantees" short of complete permanent cessation of enrichment activities were attainable. For instance, President Khatami publicly stated that although ending Iran's uranium enrichment program would be "completely unacceptable," Iran would be willing to provide any "objective guarantees" of the peaceful uses of enrichment requested by the EU-3 or the IAEA.²¹ Iran proposed a package to the EU-3 in late March, agreeing to a permanent halt of its broader uranium enrichment program and of its planned reprocessing program in exchange for economic and technical assistance and the continued operation of its pilot enrichment facility. This pilot program would operate under a system of "objective guarantees" implemented by the IAEA to ensure that no materials or activities would be diverted to non-peaceful uses. Iran also offered to permit on-site IAEA inspectors to be permanently stationed at the enrichment facility.²² The Europeans were reportedly not prepared to accept any measure short of complete cessation of enrichment activities as an adequate "objective guarantee."²³ Once it

¹⁷ David E. Sanger, "U.S. is punishing eight Chinese firms for aiding Iran," *New York Times*, January 17, 2005, at A6.

¹⁸ It is worth noting that these efforts also strengthened Iranian arguments that an independent nuclear fuel cycle is necessary to its national interests because Iran cannot rely on international markets and cooperation to meet its energy needs. Analysts have noted that U.S. efforts to block Iranian acquisition of nuclear technologies from third parties may have contributed to the Iranian decision to pursue an indigenous fuel cycle. See, e.g., George Perkovich, Testimony before the United States Foreign Relations Committee, May 19, 2005, at 10.

¹⁹ Steven R. Weisman, Elaine Sciolino and David E. Sanger, "Rice Says U.S. Won't Aid Europe On Plans For Incentives to Iran," *New York Times*, February 4, 2005, at A1.

²⁰ Comments by a senior Iranian official, October 2005 (on file with author).

²¹ "Iran Offers 'Objective Guarantees' on Nuclear Program, But No End to Uranium Enrichment," *Global Security Newswire*, March 17, 2005, available at http://www.nti.org/d_newswire/issues/2005_3_17.html#8C76AC79.

²² Comments by a senior Iranian official, October 2005 (on file with author).

²³ Elaine Sciolino, "Nuclear Accord Eludes Iran and Europeans," *New York Times*, March 24, 2005, at A12.

became clear that the European position would not admit of any Iranian enrichment activities, further progress in negotiations was undermined.

Iranian negotiators imposed a July 31 deadline on the EU-3 to prepare a counter-proposal following their rejection of the Iranian proposal. In May 2005, reports began to emerge suggesting that the EU-3 had reached an agreement with the U.S. to call for UN Security Council action if their negotiations with Iran failed to secure an agreement to full cessation of enrichment activities.²⁴ Despite these reports, Iran again offered a proposal to the European delegation in July to try to break the impasse in negotiations. A senior Iranian official reported that Iran offered a proposal on July 18 for phasing any permitted enrichment activity to prevent sufficient quantities of nuclear material from ever accumulating while also offering multi-national participation in the enrichment pilot project to add an additional layer of international supervision and control.²⁵ This proposal, too, was rejected. The EU-3 offered their counter-proposal on August 5, 2005, five days after the Iranian deadline had expired. In the interim, Iran announced on August 1, 2005 that it would resume uranium conversion activities under IAEA supervision.²⁶ The resumption of uranium conversion by Iran was treated by the EU-3 as a violation of the Paris Agreement and negotiations came to an end.

The course of events between August 2005 and January 2006 suggest that the Iranians came to the conclusion that confidence-building measures and negotiations with the Europeans had weakened their position. With conservative Mahmoud Ahmadinejad having replaced reformist Mohammad Khatami as president of Iran following the June 2005 presidential elections, changes were made in the Iranian nuclear negotiating team and Iranian diplomacy took a tougher turn. While talks with the EU-3 were suspended, Russia emerged with a new offer for Iranian consideration. Although the details of the Russian proposal remain subject to negotiation, the basic contours of the proposal involve a joint venture between Iran and Russia whereby Iranian uranium would be enriched in a jointly operated facility in Russia. The degree of permitted Iranian participation in the enrichment process, whether some enrichment research would be permitted on Iranian soil and various other aspects of the proposal are open negotiating points. By January 2006, the Russian proposal was the only serious diplomatic option available to Iran for a negotiated solution. This option led some commentators to note that despite the confrontational approach adopted by the U.S. and the Europeans, a non-confrontational solution was still achievable.²⁷

²⁴ Dafna Linzer, "Europeans Agree to Meeting with Iran on Nuclear Program," *Washington Post*, May 17, 2005, at A14 ("If Iran is not dissuaded from resuming the nuclear work, U.S. and European officials said its program will become the subject of discussion inside the U.N. Security Council, which can impose sanctions.").

²⁵ Comments by a senior Iranian official, October 2005 (on file with author).

²⁶ Nazila Fathi and Alan Cowell, "Iran Says It Will resume Uranium Enrichment, Jeopardizing Nuclear Talks with Europe" *New York Times*, August 1, 2005, at A8; Nazila Fathi and Thomas Fuller, "Iran Reopens Uranium Processing Plant as UN Agency Meets," *New York Times*, August 11, 2005, at A3.

²⁷ John Burroughs, et al, "Letter to IAEA Board Opposing Referral to the Security Council," January 23, 2006, available at http://www.lcnp.org/disarmament/iaea_letter-jan06.htm.

Unfortunately, January 2006 witnessed a new round of unilateral actions on both sides that led to a serious escalation of the situation. Beginning with Iran's announcement of its decision to resume activity at the Natanz enrichment facility in early January, the United States initiated negotiations first with the EU-3, then with China and Russia, to prompt an emergency session of the IAEA Board of Governors in order to refer the Iranian file to the UN Security Council. As mentioned above, the IAEA Board adopted a resolution to report the Iranian file to the Security Council on February 4, 2006.²⁸ The resolution itself was the product of extremely aggressive diplomatic efforts, principally on the part of the U.S., to bring Russia, China, India and non-aligned movement (NAM) countries into line with its strategy on Iran. The United States secured Russian and Chinese support by offering a compromise on the speed with which the Council would address the matter,²⁹ and Indian support by linking the country's IAEA vote to the promise of a civilian nuclear technology cooperation agreement between the U.S. and India.³⁰ Once the IAEA Board convened to discuss the resolution, the U.S. faced an additional hurdle. Egypt, backed by the NAM countries, demanded that language indirectly referring to the Israeli nuclear program be included in the resolution. U.S. resistance to this proposal delayed the issuance of the resolution by two days until the Americans relented and agreed to language on a "Middle East free of weapons of mass destruction" to maintain the support of the NAM countries.³¹ In the end the resolution passed with the support of 27 countries, five abstentions and only Venezuela, Cuba and Syria voting against.³²

Following the issuance of the IAEA resolution, Iran made good on its warning that it would decrease the degree of its cooperation with IAEA inspectors, specifically by suspending its voluntary compliance with inspections pursuant to the Additional Protocol

²⁸ The language of "reporting" rather than referral was adopted because Russia and other countries insisted that the IAEA retain its control over the Iranian nuclear file, providing information to the Security Council but not relinquishing its authority over the case, as discussed in note 8 above. American diplomats have cast doubt on the difference between referral and reporting and suggest that regardless of the language, authority over the Iranian compliance with the NPT has now transferred to the Security Council. It is likely that there have been significant closed-door negotiations between the US and Russian and Chinese officials over the scope of action that may be taken by the Council upon receipt of the IAEA's report on Iranian compliance.

²⁹ One reason that the Russians and Chinese may have sought to delay any Council consideration of the matter until March may have been to avoid having the issue arise during the American presidency of the Council with Ambassador John Bolton presiding. Argentina will hold the presidency of the Council in March and will be seen as a less ideologically and politically invested actor in this issue. In addition, of course, the delay was designed to create additional time and pressure for Iran to accept a version of the open Russian proposal to engage in a joint venture with Iran to enrich uranium in Russia and transfer the nuclear fuel to Iran.

³⁰ See, e.g., "US warns India over Iran stance," *BBC*, January 25, 2006, available at http://news.bbc.co.uk/2/hi/south_asia/4647956.stm.

³¹ Elaine Sciolino, "Dispute over Israel Delays Vote on Iran Nuclear Resolution," *New York Times*, February 4, 2006.

³² IAEA GOV/2006/14 (February 4, 2006), available at <http://www.iaea.org/Publications/Documents/Board/2006/gov2006-14.pdf>. The five abstentions were: Algeria, Belarus, Indonesia, Libya and South Africa.

to the NPT.³³ The Iranian regime seemed somewhat divided over the course of February and March 2006 as to the reprisal measures it was willing to take in response to the IAEA action: at one point President Ahmadinejad threatened withdrawal from the NPT as a whole, but the record was swiftly corrected by the Iranian Foreign Ministry, which immediately denied that any such move was being contemplated. Despite the deterioration of relations between Iran and the IAEA, Iran appeared willing to continue negotiations on the Russian proposal and offered to resume compliance with inspections under the Additional Protocol were it permitted to enrich limited quantities of uranium for research purposes under stricter IAEA controls.³⁴ Reports surfaced in early March that the Russians offered a compromise proposal that would permit such small-scale enrichment activities for research purposes in Iran, with commercial enrichment taking place exclusively through a joint venture facility on Russian soil.³⁵ The U.S. immediately rejected any possibility of continued small-scale enrichment within Iran and Russian Foreign Minister Sergei Lavrov denied claims that any such offer had been made in a joint press conference with U.S. Secretary of State Condoleezza Rice.³⁶ Following the issuance of the March 2006 Report of the IAEA on its inspections of Iranian nuclear facilities and the transfer of the report to the Security Council, further talks between Russia and Iran were suspended pending the outcome of Security Council consultations.³⁷

With the European negotiating track suspended, discussions with the Russians on hold and the United States insisting that no solution permitting limited enrichment research on the part of the Iranians would be acceptable, the stage was set for a confrontation over Iran's nuclear file in the Security Council in March 2006. As expected, however, reporting the dossier to the Security Council has not obscured international divisions over how to proceed in the Iranian case. While bringing the issue before the Council has reduced the role of the non-aligned movement countries in the discussion and increase American control, this shift has not resulted in consensus.³⁸ The report on Iran's nuclear program was sent to the Security Council at the close of IAEA

³³ As one of its early confidence-building measures, Iran signed the Additional Protocol – which provides for a greater scope of inspections and verification of compliance than required under the Safeguards Agreement. While the Iranian parliament has refused to ratify the Additional Protocol, Iran had voluntarily complied with its requirements as if it were in effect from 2003 until February 2006.

³⁴ On the NPT withdrawal threat, see “Iran ‘could quit nuclear treaty,’” *BBC*, February 11, 2006, available at http://news.bbc.co.uk/2/hi/middle_east/4703434.stm; on Iranian willingness to resume spot inspections, see Steven R. Weisman, “Iran Hints at Compromise on Nuclear Inspections,” *New York Times*, February 18, 2006.

³⁵ See, e.g., Elaine Sciolino, “Russia and West Split on Iran Nuclear Issue,” *New York Times*, March 7, 2006 (reporting that “the Russians floated a last-minute proposal to allow Iran to make small quantities of nuclear fuel”).

³⁶ See, e.g., “U.S. Stands Firmly Against Iranian Nuclear Enrichment,” *Associated Press*, March 7, 2006. The article notes that Secretary of State Condoleezza “Rice and Russian Foreign Minister Sergey Lavrov rejected the notion of a separate compromise that would see Iran suspend full-scale uranium enrichment for up to two years but retain a small enrichment program” at a joint press conference. See, also, David Gollust, “Lavrov Denies Russian Nuclear Compromise Offer to Iran,” *Voice of America*, March 8, 2006.

³⁷ See, e.g., “Russia deal ‘off Iran’s agenda,’” *BBC*, March 12, 2006, available at http://news.bbc.co.uk/2/hi/middle_east/4798340.stm

³⁸ Particularly with John Bolton acting as U.S. ambassador to the United Nations, the powerful American presence on the Council has no doubt set the tone for the closed-door discussions of the 15-member body.

Board meetings in Vienna on March 8, 2006.³⁹ Within days, reports of divisions on the Council concerning how to proceed on the Iranian case quickly emerged.⁴⁰ Two weeks of discussions and consultations among Council members did not yield the consensus necessary for the issuance of a presidential statement, the measure preferred by the U.S., France and Britain.⁴¹ The deadlock reportedly stems from opposition by some Council members to the inclusion of a threat of possible punishment following a two-week deadline once the statement issues. The threat, in turn, was proposed in a draft statement prepared by Britain and France with U.S. support.⁴² Should the delay in talks continue, the principal supporters of the statement might have forgo their desire for a common and united statement to Iran to retain the tough language and settle for a Council resolution instead.

Even once the current divisions are resolved through the issuance of a statement or a resolution, the Security Council's options for meaningful measures to coerce Iranian compliance will remain relatively limited. There are three principal scenarios for Security Council action: the first is censure and a demand that the Iranians comply fully with IAEA requests; the second is economic, trade or other sanctions to secure such demands; and the third, and least likely, option is the authorization of multilateral coercive intervention to forestall Iran's nuclear ambitions. Let us consider each of these options in turn.

The likeliest scenario at this point, which is censure by the Council, would back the IAEA's demands with the threat of further Security Council action. It would have the benefit of strengthening the IAEA's hand. In addition, by virtue of their presence on the Council, both the United States and China would be brought directly into discussions over the Iranian nuclear file. On the other hand, censure would increase pressure on Iran in a way that might prompt a nationalist backlash within the country. Iranian diplomacy has historically been sensitive to matters of international standing and reputation and what is viewed in Iran as double standards in the treatment of the Islamic Republic. These concerns will likely be heightened as a result of any Council action. Further, Iran's threat perception – a factor that is perhaps the strongest rationale for Iran's current

³⁹ IAEA, "Report on Iran's Nuclear Programme Sent to UN Security Council," *IAEA Staff Report*, March 8, 2006, available at <http://www.iaea.org/NewsCenter/News/2006/bog080306.html>.

⁴⁰ Patrick Goodenough, "Security Council Divided Over Iran," *Cybercast News Service*, March 10, 2006, available at <http://www.cnsnews.com/ViewForeignBureaus.asp?Page=%5CForeignBureaus%5Carchive%5C200603%5CFOR20060310a.html> (last accessed on March 26, 2006).

⁴¹ A Presidential statement from the Security Council requires the unanimous support of all 15 Council members, while a resolution only requires that a minimum of nine countries vote in favor and that none of the permanent members issues a veto.

⁴² Other areas of dispute apparently include whether to refer to Iranian activities as a "threat to international peace and stability" (which might be interpreted as a reference to the Council's Chapter VII authority), how quickly the IAEA would need to issue its next report and whether that report will be presented to the IAEA Board or directly to the Council. Agency officials as well as the representatives of China and Russia reportedly believe that a two-week timeline is too short for additional inspections to yield results and that more time would be needed. See Warren Hoge, "Security Council Is Stalled Over Iran's Nuclear Program," *New York Times*, March 22, 2006; see, also, Warren Hoge, "Text on Iran's Nuclear Work Under Study by U.N. Council," *New York Times*, March 15, 2006, at A8.

pursuit of nuclear energy – will be further heightened as it braces for potential Security Council action against it. In the end, censure by the Council followed by a return of the nuclear file to the IAEA would likely escalate tensions and undermine diplomatic options without providing a strong countervailing benefit.

In the case of the remaining two options before the Council – sanctions or coercive intervention – the prospects are even more grim. In the case of sanctions, it is extremely unlikely that the Council would impose full economic or trade sanctions. Rather, they would likely opt for a travel ban on regime officials, the freezing of Iranian government assets or other similar symbolic sanctions that will further isolate the Iranian government and tarnish its image without causing the disruption to the world economy that sanctions on Iranian oil exports would trigger. Further, Iran has strong trade relations with Europe and Russia and is a significant energy supplier for India and China. Each of these trading partners would have some stake in preventing more significant sanctions from being applied to Iran. With American unilateral sanctions already in effect, Iran is also extremely adept at evading the harshest impact of sanctions through recourse to black market channels. As a result of its experience with U.S. sanctions, the Iranian economy is unusually resilient in the face of an embargo; the effects of broad economic sanctions, were they to be imposed, would likely be offset to some degree by Iranian preparedness.⁴³ Despite these considerations, U.S. Secretary of State Condoleezza Rice has reportedly been making diplomatic overtures to Council members advocating for sanctions against Iran.⁴⁴

The final option of multilateral coercive intervention is the least likely and most potentially damaging option available to the Council. While the Council has the authority to find that the Iranian nuclear program represents a threat to international peace and security triggering coercive intervention under its Chapter VII powers, this is an unlikely scenario. First, Russia and China would be likely to veto any Council-led military action against Iran. Second, in the aftermath of the debacle of the American and British efforts to secure Council support for their intervention in Iraq, it is unlikely that either country would seek authorization to use military force from the Council again so soon after their failed 2003 effort. Finally, there is no good military option to deter the Iranians from pursuing nuclear energy or a latent nuclear weapons capacity, as will be discussed further below. In part because of the limitations of each of the options available to the Council, several prominent international figures including both Hans Blix, the former head of UN weapons inspections in Iraq, and UN Secretary General Kofi Annan have publicly warned that they consider referral to the Council both premature and potentially counter-productive.⁴⁵

⁴³ Reports of Iranian capital transfers out of European financial markets in late 2005 and early 2006 underscore Iranian preparedness for the kinds of sanctions that the Council would most likely consider initially – namely the freezing of government assets.

⁴⁴ See, e.g., “Rice warns Iran of UN sanctions,” *BBC*, February 9, 2006, available at http://news.bbc.co.uk/2/hi/middle_east/4249529.stm.

⁴⁵ “Annan doubts prompt Iran decision,” *BBC*, January 25, 2006, available at http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/4648276.stm. For a transcript of Hans Blix’s comments, see Hans Blix, Address to the Arms Control Association: “Repairing the Nonproliferation System,” January 25, 2006, available at http://www.armscontrol.org/events/20060125_transcript_blix.asp.

As this review of the course of the Iranian nuclear file has sought to demonstrate, the degeneration of negotiations to limit Iran's nuclear enrichment program and place it under international controls was avoidable and may still be repairable. In the following section, I will consider the alternatives to Security Council involvement in the Iranian case.

III. Alternatives to the current approach in the Iranian case

The present course on the Iranian nuclear file appears to be one of confrontation and referral to the Security Council for possible coercive action to force Iran to desist in its efforts to develop a domestic nuclear fuel-cycle. Such coercive efforts are unlikely to succeed. When the North Korean nuclear file was brought before the Council, the result was censure by the Council but no further action, undoubtedly due to Chinese reticence on permitting more coercive measures to be adopted. While Iran may not be shielded on the Council from coercive intervention to the same degree, any effort to undertake stiffer coercive measures will likely be viewed in much of the developing world as the application of a double standard. In an international context in which numerous non-nuclear weapons states have been permitted to develop domestic fuel-cycles and where countries that have developed known nuclear weapons capacity outside of the treaty regime have faced few sanctions for their efforts, a confrontational approach to the Iranian case raises the specter of inconsistency.

Beyond the Iranian case, numerous developments over the last decade have undermined the bargain underlying the NPT. For illustrative purposes, here are six examples of such developments. First, the open testing of nuclear weapons by India and Pakistan heralded the first addition to the list of nuclear weapons states since the NPT came into force.⁴⁶ Second, the withdrawal of North Korea from the Treaty, exercising its Article X rights, set a dangerous precedent of a country developing a latent nuclear capacity within the treaty system and then exercising a "break out" option by withdrawing. Third, the United States decision to withdraw from the ABM Treaty, continue investment in a missile defense program and the design of "useable" mini-nukes undermined the credibility of the disarmament commitments it made at the 2000 NPT Review Conference. Fourth, the failure of the 2005 NPT Review Conference to strengthen the non-proliferation regime has exposed the conflict between the "haves" and the "have-nots" under the treaty. Fifth, the decision by the U.S. to engage in a civilian nuclear cooperation agreement with India, despite India's status as an illicit nuclear weapon state, undermined the claim that membership in the NPT and agreement to forgo weapons is the exclusive basis for such cooperation. Finally, the adoption by both the American and French governments of nuclear doctrines that permit the use of nuclear weapons against non-nuclear weapons states undermines the argument that nuclear weapons are chiefly intended as a nuclear deterrent (the "no first use" standard) and the claim that non-nuclear weapons states enjoy a security guarantee that they will not be

⁴⁶ Of course, neither India nor Pakistan are NPT signatories, but are nonetheless bound by the broader non-proliferation norm attendant to the numerous WMD-related conventions to which they are parties, as well as the positions taken on proliferation by the UN Security Council.

attacked with nuclear weapons so long as they are party to the NPT. In addition to these six developments, the proposal of new measures by the Bush administration to limit access to the nuclear fuel cycle for countries that do not currently have enrichment and reprocessing capabilities further antagonized non-nuclear weapons states that fear the addition of further discrimination within the non-proliferation regime.⁴⁷ Escalating the confrontation over the Iranian case by taking it to the Security Council may further harm the NPT regime. In this section I will consider the alternatives to a Council enforcement action in dealing with the Iranian nuclear file.

No military option

Before considering the various multilateral options available, it is worth addressing reports that both the United States and Israel are developing contingency plans for unilateral (or possibly bilateral) air strikes against Iranian nuclear installations. There are two strong reasons to doubt the effectiveness of air strikes as a means of deterring the Iranian nuclear program. First, few analysts believe that air strikes would be able to destroy all of Iran's nuclear program – while strikes may result in a delay of Iran's nuclear development, Iran would retain the capacity to develop an indigenous fuel cycle. Unlike Libya, for example, Iran has not developed its nuclear program strictly through the acquisition of turn-key equipment on black markets. Rather, Iran has developed a domestic nuclear engineering capacity that would very likely survive strikes. It is this indigenous knowledge base, more than the physical infrastructure of Iranian nuclear facilities, that is the basis of the Iranian nuclear program. Secondly, strikes against Iranian facilities would very likely trigger a rally-round-the-flag effect that would consolidate domestic support for an accelerated nuclear program. Indeed, one of the strongest motivators for Iran's current nuclear program is likely the desire to acquire a virtual deterrent by evolving a latent weapons capacity in response to Iran's threat perceptions. The best way to slow Iran's nuclear program is to alter its threat perception. This is the reason that prominent commentators have argued for providing Iran with security guarantees as part of any negotiation over its nuclear program. Engaging in strikes would, of course, have the opposite effect of security guarantees – it would confirm Iran's view that it is surrounded by hostile states or forces with nuclear capacities and validate the view that Iran requires a nuclear deterrent for its domestic national security.⁴⁸

⁴⁷ The Bush proposal was widely seen as crafted to ensure access to domestic fuel-cycles to U.S. allies – such as Japan, Taiwan, South Korea, Germany, Belgium, the Netherlands and Brazil – while denying it to much of the developing world and specifically Iran. The text of President Bush's announcement of the new policy on February 11, 2004 at the National Defense University is available at: <http://www.whitehouse.gov/news/releases/2004/02/20040211-4.html>.

⁴⁸ In this sense, the U.S. military strategy in the Middle East has been, to some degree, too successful. Iran's strategic motivations for seeking a nuclear deterrent have certainly been strengthened by the presence of U.S. forces in Iraq, Afghanistan and the Persian Gulf. American agreements for the use of bases in Central Asia have also exacerbated the Iranian perception of encirclement. When Israeli and Pakistani nuclear weapons and the presence of NATO air bases and arsenals in Turkey are added to this equation, it is clear that without security guarantees it will be difficult to persuade Iran to abandon nuclear research.

In addition to these considerations, unilateral strikes against Iran would be an extremely difficult undertaking. Iran's territory is mountainous with a rugged terrain. The country is almost triple the land mass of Iraq with four times the population. Further, the Iranian shoreline permits it substantial control over access to the Straits of Hormuz through which a substantial portion of the world's oil supply is shipped. Following its brutal experience in the Iran-Iraq war, Iran has also developed an arsenal of missiles that are capable of reaching a wide variety of targets in the Middle East. Iranian ties with significant factions in Afghanistan, Iraq, Lebanon and Palestine are also sources of concern. Finally, Iranian nuclear facilities are widely dispersed across the country and have large underground components. In order to effectively strike at Iran's nuclear program, it would be necessary to disable Iran's ability to use missiles in retaliation and to secure the Straits of Hormuz in addition to destroying its nuclear facilities. Such a military undertaking has been estimated by some military analysts to require over 500 separate strikes in an operation that would take several days.⁴⁹ Other analysts have suggested that the Israeli air force may not have the conventional bombing capacity to undertake such air strikes.⁵⁰ Reports emerged in February that the Pentagon had commissioned urgent contingency plans for aerial strikes on Iran, to be delivered directly to the office of Defense Secretary Donald Rumsfeld.⁵¹ The reality remains that as a result of Iran's strategic economic position and its links to other actors in the region, there is no good military option against Iran's nuclear program, whether unilateral or multilateral. Any military approach would run the risk of starting a nuclear confrontation in the Middle East, provoking a serious fuel shortage in the world economy and destabilizing countries from Afghanistan to Israel-Palestine.

What then are the principal alternatives to a coercive, confrontational or military approach to the Iranian case? While this is a complicated and multi-dimensional question, in the remainder of this section I will consider the following four principal alternatives: the current Russian enrichment proposal together with limited Iranian enrichment; multinational participation and controls over an enrichment program within

⁴⁹ See, e.g., comments of retired Air Force Colonel Dam Gardiner, who has taught strategy for the U.S. Department of Defense at its National War College, as reported in the *Wall Street Journal*. Carla Anne Robbins and Greg Jaffe, "Why U.S. Wages Diplomacy with Defiant Iran," *Wall Street Journal*, February 3, 2006, at A4 (quoting Gardiner as stating that air strikes on Iranian nuclear facilities would require "upwards of 500 aim-points [separate strikes.] That is not an overnight operation. It is at least three or four days.")

⁵⁰ For instance, the former Israeli forces chief of strategic planning, Shlomo Brom, was quoted in one article as stating that the logistics of air strikes against Iran would pose a significant obstacle for the Israeli air force. "Will Israel Strike Iran?," *Newsweek*, February 13, 2006. Further, recent reports have suggested that the U.S. is trying to blunt the likelihood of Israeli unilateral action by extending a defensive shield over Israel. Dan Williams, "US shield blunts Israeli military option on Iran," *Reuters*, February 9, 2006. On the other hand, Israel may pursue other tactics to sabotage the Iranian nuclear program and/or assassinate Iranian nuclear scientists along the lines of its efforts to disrupt the Iraqi nuclear program prior to the Israeli strike on the Osiraq facility. See, e.g., Terrence Henry, "Can sabotage and assassination stop Iran from going nuclear?," *Atlantic Monthly* (December 2005).

⁵¹ Philip Sherwell, "US prepares military blitz against Iran's nuclear sites," *Sunday Telegraph (UK)*, February 12, 2006 (noting that "strategists at the Pentagon are drawing up plans for devastating bombing raids back by submarine-launched ballistic missile attacks against Iran's nuclear sites as a 'last resort' ... They are reporting to the office of Donald Rumsfeld.... 'This is more than just the standard military contingency assessment,' said a senior Pentagon adviser. 'This has taken on much greater urgency in recent months.'")

Iran; the development of a much stricter on-site inspection system within Iran to monitor permitted civilian enrichment activities; and the long-term development of a multilateral fuel cycle control regime applied on an equitable basis. The key to any viable proposal is a compromise that permits some symbolic degree of enrichment with “objective guarantees” of the non-diversion of enriched uranium to military uses and the appearance of a non-discriminatory resolution to the current stand-off.

Options for effective multilateralism

The principal option for a negotiated solution to the Iranian nuclear program on the table prior to the reporting of Iran’s nuclear file to the Security Council was the Russian proposal to develop an enrichment facility located in Russia as part of a joint venture with Iran. The idea underlying this proposal is that the Iranians would be able to participate economically through an equity stake in the facility and a guaranteed nuclear fuel supply, while limiting Iran’s access to an indigenous enrichment capacity. The strength of the proposal lies in addressing Iran’s concerns about the stability of its market access to nuclear fuel. The shortcoming, however, is that if the Iranians are not permitted access to sensitive technologies at the facility, the proposal does not address the Iranian demand that it be permitted to engage in limited enrichment research on its own soil. The Iranian argument against the proposed JV should it have no access to the underlying technologies is presumably that it does not offer greater security than Iran’s earlier equity investment in the French Eurodif enrichment facility. In the Eurodif case, Iran had an equity stake in the facility but as a result of changes in political circumstances it was denied access to the nuclear fuel supply in which it had invested. Recent reports confirm that the obstacle to reaching agreement on the Russian proposal is the “red line” declared by the United States and Europe that there can be no compromise on permitting Iran limited domestic enrichment capacity restricted to research under strict IAEA inspections and controls.⁵² This opposition to limited Iranian enrichment is based on the desire to close the “loophole” in the NPT that permits countries to develop enrichment technologies within the treaty regime that might contribute to a latent weapons capacity. While this loophole is an appropriate source of concern, singling out Iran as the one case in which this loophole is to be closed is a risky strategy. Failure to secure a negotiated solution in the Iranian case may do greater damage to the already wounded non-proliferation regime than a compromise would. To find a compromise that will take most enrichment activities out of Iran while permitting a face-saving symbolic domestic capacity that enables the Iranian government to claim that it has not relinquished its “inalienable right” to pursue a domestic fuel cycle may be the best available course. Such a compromise should then be followed by a multilateral initiative to strengthen the inspections regime across the board in a fashion that appears equitable and non-discriminatory. Perhaps through discussion under the aegis of the Security Council, a compromise position that would enable Iran to accept the Russian proposal may yet become possible.

⁵² See notes 35-37 above and accompanying text.

A second alternative to the Russian proposal might be to locate an enrichment facility in Iran but under direct multilateral control. Under this scenario, Iran would invite foreign investment and participation in any enrichment facility on its territory. Arrangements for the multinational controls on the facility might even extend to installing “black box” enrichment technologies in the facility, to be operated by multinational staff that would not, however, have access to the technical specifications of the centrifuge configuration necessary for enrichment. The model of a multilateral arrangement for the ownership of the facility, perhaps including regional participation by some of the Gulf Arab states, would be an attractive option, particularly if the provision of “black box” technology could be rendered truly proliferation-resistant.⁵³ Moreover, Iranian President Ahmadinejad has frequently invited multinational investment in Iran’s nuclear energy sector, which might enable Iranian officials to place a multinational facility within a framework acceptable to the hard-line leadership of the current Iranian regime.⁵⁴

Iran has also offered to place any limited enrichment capability it would be permitted to operate under strict on-site, in-person 24-hour IAEA monitoring. This option might be pursued in conjunction with the Russian proposal or in its place. Iran’s oft-stated willingness to accept extremely intrusive inspections to meet the standards of “objective guarantees” that it is operating a proliferation-resistant nuclear energy program may enable an acceptable compromise to be reached that would set an excellent precedent for strengthening monitoring and verification standards under the non-proliferation regime while simultaneously providing strong safeguards against the diversion of fissile materials under cover of a civilian energy program in the Iranian case.

The final, more long-term option would be to seek to develop a regional or global arrangement to produce or guarantee reliable access to nuclear fuel on a proliferation-resistant basis. If such an arrangement were limited to guaranteeing supply, it would closely parallel the recent proposal by IAEA Director-General Mohamed El-Baradei who has argued for the creation of a fuel bank as a last-resort supplier and the adoption of “objective, apolitical nonproliferation criteria” to guarantee fuel supplies such that a country that meets its NPT obligations should be assured of access to nuclear fuel.⁵⁵ The better alternative may be a multinational alternative to the indigenous fuel cycle. This would entail the creation of regional or international fuel cycle centers, either through the conversion of existing national facilities in the case of regions where such facilities exist,

⁵³ On the possibility of developing proliferation-resistant “black box” facilities for a regional joint venture enrichment plant, see Babur Habib et. al, “Stemming the Spread of Enrichment Technology: Fuel-Supply Guarantees and the Development of Objective Criteria for Restricting Enrichment,” *Liechtenstein Institute of Self-Determination at Princeton University* (January 2006), available at http://www.princeton.edu/~lisd/doc/exec_summary.pdf.

⁵⁴ For instance, in his address to the UN General Assembly in September 2005, President Ahmedinejad stated that “as a further confidence building measure and in order to provide the greatest degree of transparency, the Islamic Republic is prepared to engage in serious partnership with private and public sectors of other countries in the implementation of uranium enrichment program in Iran.” President Mahmoud Ahmadinejad’s address to the United Nations General Assembly, September 17, 2005, available at <http://www.un.org/webcast/ga/60/statements/iran050917eng.pdf>.

⁵⁵ On El-Baradei’s comments regarding such a proposal, see David Holley, “Nuclear Chief Offers a Nonproliferation Plan: Promise Them Fuel,” *L.A. Times*, October 6, 2005.

or through the construction of new facilities. Such centers could be developed on the Eurodif model, whereby recipient states would have an equity share in the facility but would not have access to sensitive technologies. Alternatively, they could be developed on the Urenco model that would permit members to share resources, access to technologies and expertise on the fuel cycle. The course of the Iranian nuclear dispute suggests that the United States and Europe would strongly prefer the Eurodif model while most developing countries would prefer the Urenco model. These issues would need to be addressed in the event that such multinational fuel cycle centers are seriously considered as a solution for meeting the increasing energy needs of developing countries while addressing concerns about the dual-use potential of sensitive enrichment technologies. However, the adoption of such a solution will likely not materialize in time to present a serious alternative to resolve the dispute over the Iranian nuclear program. That said, many analysts believe that Iran is a decade away from a complete indigenous fuel-cycle that would give it a latent weapon capability.⁵⁶ With a timeline of a decade or more, it may be possible to consider this alternative, even in the Iranian case.

IV. Iran and the damage to the non-proliferation regime.

The Iranian case has drawn attention to an issue that has been of concern to non-proliferation advocates for years – the potential to develop a civilian nuclear energy program in compliance with the NPT and then exploit the dual-use nature of nuclear fuel cycle technology to acquire a latent weapons capacity or to develop an actual arsenal. Most commentators have focused on this aspect of the Iranian case, however, to the exclusion of other, less apparent damage that has been done to the non-proliferation regime as a result of the handling of the Iranian file since 2002.

The Iranian case has been interpreted by developing countries as calling into question their right to civilian nuclear energy programs under the NPT. This perception combined with the failure of nuclear weapons states to engage in serious disarmament and the lack of meaningful technical cooperation between the weapons states and others under the Treaty represents a serious and less well-studied threat to the bargain underlying the regime.⁵⁷ The energy needs of the developing world in the next century are clearly going to require the rapid development of alternatives to fossil fuel consumption. Developing world energy consumption will set the stage for a century in

⁵⁶ Dafna Linzer, “Iran Is Judged 10 Years From Nuclear Bomb: US Intelligence Review Contrasts with Administration Statements,” *The Washington Post*, August 2, 2005, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/01/AR2005080101453.html>. A recent article has noted that estimates of when Iran might acquire a nuclear weapon generally range from a few months to 15 years. The article notes that because such estimates and forecasts are “sometimes colored by judgments of the risks of guessing wrong. That may explain the gulf between Israel’s claim that the world has as little as six months before the ‘point of no return’ and estimates that an Iranian warhead is many years away.” William J. Broad and David E. Sanger, “As Crisis Brews, Iran Hits Bumps in Atomic Path,” *New York Times*, March 5, 2006.

⁵⁷ On the failure of the 2005 Review Conference, see notes 1-2 above and accompanying text.

which the expansion of the use nuclear energy is a near certainty.⁵⁸ Under these circumstances, the developing world is watching the course of the Iranian case very closely to determine the extent to which the Iranian precedent will limit their rights under Article IV of the NPT. If the developing world perceives a new form of discrimination being introduced to the NPT regime – one which distinguishes between states permitted to have a nuclear fuel-cycle and others – the costs of membership in the NPT may come to be seen as outweighing the benefits. Particularly when set beside the nuclear weapons states record of compliance with their disarmament commitments, and more recent developments in which some states are even considering expanding and modernizing their existing nuclear arsenals, further restrictions on the rights of non-weapons states under the NPT regime may undermine its legitimacy and credibility in much of the developing world. Should the current crisis with Iran result in an Iranian withdrawal from the NPT, the non-proliferation regime may not be able to withstand the damage. The worst fears of non-proliferation experts that the Iranian case might trigger a cascade proliferation effect, particularly in the Middle East, would then become far more plausible. As a result, the stakes of promoting a nuclear-free Middle East are higher today, perhaps, than they have ever been. Yet the prospects for a WMD-free zone in the region are grim.

For this reason, it is imperative to find a way to resolve the conflict over the Iranian nuclear file within the NPT framework. The recent moves to report the Iranian file to the Security Council are unhelpful in this regard. The Council has already been weakened by the course of the military intervention in Iraq. For instance, the introduction of American intelligence regarding Iran's nuclear program will be reminiscent of the case for intervention against Iraq in a way that may delegitimize the role of the Security Council in this case. Finally, as discussed above, the Council is not an attractive forum for resolving the Iranian crisis precisely because there are no good options available to the Council for action to unblock the current impasse. Moving the Iranian file to the Council absent an IAEA report that Iran is in violation of its Article II obligations under the NPT (to forgo acquisition or production of nuclear weapons) is premature.

Instead of continuing to take a relatively *ad hoc* approach to the Iranian case, it would be far more beneficial to view the Iranian case in the context of a broader effort to strengthen the NPT monitoring and inspections system as well as non-weapons states' incentives to remain within the Treaty regime. In the words of UN Secretary-General Kofi Annan, "we cannot continue to lurch from crisis to crisis, until the regime is buried beneath a cascade of proliferation."⁵⁹ Treating the Iranian case as an opportunity to move

⁵⁸ In light of the energy needs of the developing world, policy planners concerned with stemming the proliferation of nuclear technologies would do well to invest rapidly in alternative energy sources including the following forms of energy: solar thermal, solar photo-voltaic, wind, hybrid wind-solar, fuel cell, geothermal, small-scale hydro-electric and tidal. For more information on the availability and sustainability of such alternative sources of energy, see "International Sustainable Energy Fund: Proposed Model Statute," *Global Resource Action Center for the Environment (GRACE)*, April 2001, available at <http://www.gracelinks.org/energy/docs/ISEF-Statute-final.pdf>.

⁵⁹ UN Secretary-General Kofi Annan, "Address to United Nations Association of the United Kingdom," January 31, 2006, available at <http://www.un.org/News/Press/docs/2006/sgsm10332.doc.htm>.

towards a proliferation-resistant global nuclear fuel-cycle is perhaps the best alternative to the present course. By putting the emphasis on long-term solutions applicable beyond the Iranian case, a more sustainable approach to the regime as a whole may be possible. While a good interim solution for the current Iranian crisis would be to pursue a modified version of the Russian proposal, with strong support from the United States and Europe, including security guarantees, the long-term emphasis should be on a broader approach. Working towards a proliferation-resistant fuel cycle regime at the international level will require a balanced and nondiscriminatory approach. Within Iran's own region, such an approach would also have to bear in mind the present threat perceptions of the states of the region. For instance, developing a multilateral fuel cycle solution in the Middle East will only be feasible if it is accompanied by a commitment to achieving a WMD-free zone in the region. Otherwise, incentives to defect will remain difficult to deter.

Iran remains a decade away from being able to enrich sufficient quantities of uranium for militarized use – the international community should pursue a non-confrontational solution to the problem while time still permits. One key will be shifting Iran's threat perception both by providing it with security guarantees and by abandoning an approach that sets the Iranian case apart from all others. The IAEA's Director-General has publicly argued that the international community must “abandon the unworkable notion that it is morally reprehensible for some countries to pursue nuclear weapons but morally acceptable for others to rely on them for security – and indeed continue to refine their capacities and postulate plans for their use.”⁶⁰ Policy makers reviewing options for dealing with the Iranian case would do well to heed this cautionary advice. The doctrine of preemption, even where designed to curtail proliferation, will in all likelihood exacerbate proliferation as other states seek to acquire weapons as a deterrent. Rather than adopting a confrontational approach that may stimulate proliferation, the Iranian case presents an important opportunity for the international community to find a diplomatic solution within the NPT framework that will set a positive precedent for developing multilateral approaches to the management of the global fuel cycle.

⁶⁰ Mohamed El-Baradei, “Saving ourselves from self-destruction,” *New York Times*, February 12, 2004.