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Measures needed to strengthen the nuclear non-proliferation regime

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Introduction

The greater the number of States possessing nuclear weapons, the greater the risk that, one day, by design or accident they will be used or will fall into the hands of non-state actors with catastrophic consequences.

We must therefore reject, as irresponsible, the idea that the international community should get used to the fact that sooner or later more countries will possess nuclear weapons, and that we can do nothing about it.

Rather, it is essential to take all the necessary steps to “dissuade” and “deter” non-nuclear weapons States (NNWS) from acquiring such weapons.

“**Dissuasion**” entails persuading a State (both the leaders and the people) that it is not in that State’s best interest to acquire a nuclear weapons capability.

The most remarkable achievement in recent years has been the success of secret diplomacy in convincing Libya’s leadership that abandoning its WMD and missile programmes would increase the security and improve the economic development of the country.

“Dissuasion” can mainly, if not exclusively, be achieved through bilateral and multilateral negotiations, in order to create the necessary geo-political environment, including first of all appropriate security guarantees. To be most effective persuasion efforts should be undertaken well in advance of any anticipated crisis. We will not dwell further on this important facet.

“**Deterrence**” plays its role when a NNWS cannot be persuaded that acquiring a nuclear weapons capability is not in its best interest.

It is essential for any such State to know:

- First, that any undeclared nuclear weapons programme has a high probability of **early** detection, and
- Second, that if detected, extremely negative consequences would be **inevitable** (and not simply possible).

Unfortunately, neither of these two deterrents is credibly in place today, and it is therefore essential to take the practical steps necessary to improve the situation.

For that, we need to draw on the lessons learned from previous nuclear proliferation crises.

Sensitive fuel cycle activities

In the wake of the First Gulf War, when it was discovered that Saddam Hussein had secretly been developing nuclear weapons at undeclared sites, the IAEA passed the 1997 "Model Additional Protocol," designed to enable the Agency to confirm that there are no undeclared nuclear materials and activities in a NNWS. To date, however, some 20 NNWS with known nuclear activities have no Additional Protocol in force, including at least three -Argentina, Brazil, and Iran- that are known to have uranium enrichment activities.

The international community should demand much more forcefully that such States sign and ratify the Additional Protocol, and the IAEA should mention them explicitly in its annual report.

The Nuclear Supplier Group (NSG) could also play a significant role in this respect by adopting a rule that no nuclear material, equipment and know-how would be transferred to any country having conversion, enrichment or reprocessing activities unless they have an Additional Protocol in force and unless these and all other nuclear facilities are covered by an INFCIRC/66-type safeguards Agreement¹.

Non-compliance

If a State has been found by the IAEA to be in non-compliance with its safeguards undertakings, experience with both North Korea and Iran has shown that, in order to conclude in a **timely** manner that there is no undeclared nuclear material and activities in the State as a whole, the Agency needs verification rights extending beyond those of the Comprehensive Safeguards Agreement and Additional Protocol.

This appears clearly from the Director General's report of 28 April 2006 to the IAEA Board of Governors, where it is stated that "*the Agency is unable to make progress in its efforts to provide assurance about the absence of undeclared nuclear material and activities in Iran*", nor can it assess "*the role of the military in Iran's nuclear programme*".

The report also states that "*any progress in that regard requires [...] transparency that goes beyond the measures prescribed in the Safeguards Agreement and Additional Protocol*"².

Already in September 2005 the Board of Governors adopted a resolution urging Iran "*to implement transparency measures which extend beyond the formal requirements of the Safeguards Agreements and Additional Protocol*".

¹ A Comprehensive Safeguards Agreement remains in force only for so long as the state remains party to the NPT, whereas under a INFCIRC/66-type agreement, all nuclear material supplied or produced under that agreement would remain under safeguards, even if the state withdraws from the NPT, until such time the IAEA has determined that such material is no longer subject to safeguards

² This report also states that: "*Additional transparency measures, including access to documentation, dual use equipment and relevant individuals, are, [...], still needed for the Agency to be able to verify the scope and nature of Iran's enrichment programme, the purpose and use of the dual use equipment and materials purchased by the PHRC [Physics Research Center] and the alleged studies which could have a military dimension*".

The problem here is that such IAEA Board resolutions do not provide the Agency with any additional legally binding verification authority.

One should remember that in November 2003, in a damning report to its Board of Governors, the IAEA revealed that Iran had for the past eighteen years been pursuing an undeclared centrifuge uranium enrichment programme and had concealed a considerable number of nuclear facilities, materials and activities in violation of its safeguards obligations. This should have been reported to the UNSC as foreseen in the Agency's Statute. It was not, for a number of reasons.

First because many countries insisted, as indicated in the IAEA's report, that "*to date, there is no evidence that the previously undeclared nuclear material and activities referred to above were related to a nuclear weapons programme*", even if everyone was well aware that the Agency had neither the authority nor the means required to prove that this could be the case before it is too late.

Secondly, Iran was not reported to the Security Council because of the fear of many Member States that if the issue got out of the IAEA's hands it could initiate a scenario similar to the one that led to the conflict in Iraq.

Also, there was the fear that if Iran was referred to the Security Council, Russia and China would use their veto right to block any resolution adverse to the Islamic Republic, as was the case for North Korea, with no concrete outcome whatsoever.

This explains why, during the last quarter of 2003, France, Germany and the United Kingdom (the so-called EU-3) opted for a diplomatic approach in exchange for a commitment by Tehran to suspend all enrichment related activities. It is regrettable that the US did not, at that time, actively support these efforts. This was a major missed opportunity.

Three years later, ignoring the repeated requests of the IAEA, Iran has continued its tactics of obfuscation and delay and has made significant progress in developing its nuclear programme. It now has a stockpile of more than 100 tons of natural uranium hexafluoride (the feed material for the enrichment process) safely stored in underground tunnels. It is also producing low enriched uranium in its pilot enrichment plant and is continuing the construction of the large underground enrichment facility at Natanz. Iran has also made significant progress with respect to its intermediate ballistic missiles, which now appear capable of carrying a nuclear warhead a distance of 2000 Km or more.

The Agency revealed, in November 2005, and confirmed in January 2006 that Iran had been found in possession of documents for "*the casting of enriched and depleted uranium metal into hemispheres, related to the fabrication of nuclear weapon components*", in violation of Article II of the NPT. It was also reported that the Agency had obtained information concerning "*tests related to high explosive and the design of missile re-entry vehicle, all of which could have a military nuclear dimension*", but it was not until February 4, 2006 that the Board of Governors finally decided to inform the UNSC.

It took another seven months for the UNSC to adopt, on 31 July 2006, a resolution under Chapter VII of the UN Charter demanding that Iran "*suspend all enrichment-related and reprocessing activities, including research and development*".

The resolution also expresses the Security Council's "*determination to reinforce the authority of the IAEA process*" and calls "*upon Iran to act in accordance with the provisions of the Additional Protocol and to implement without delay all transparency measures as the IAEA may request in support of its ongoing investigation*". It seems that this formulation does not provide the IAEA with the legally binding authority the Agency has repeatedly stated is needed in Iran. This is another major missed opportunity, all the more baffling, given that such a demand does not in any way involve sanctions, and therefore should find unanimous support in the Security Council.

The tardiness of the Security Council in making the necessary decisions has mainly been due to the attitude of Russia and China, both of which have and still are threatening to veto any UNSC resolution adverse to Iran. Everyone agrees that a diplomatic solution to the crisis would be by far the best. But a weak and divided Security Council will not help in this regard.

Could it be that Russia, which clearly does not want to see Iran acquiring nuclear weapons, is making its cooperation dependent upon a number of US commitments such as not meddling in Ukrainian and Georgian affairs?

This deserves serious consideration. It would indeed be dreadful if Russia by delaying or watering down any involvement of the UNSC, while delivering more and more sophisticated weapons to Iran, were to push the exasperation of the US and possibly the EU to the point where they would opt for unilateral sanctions? This would inevitably fuel further anti-American feelings worldwide, while Russia would take advantage not only of higher oil prices but of appearing to behave more responsibly, particularly in the eyes of the countries belonging to the non-aligned movement.

The latter bear their share of responsibility in the growing crisis of the non-proliferation regime. They have for too long pretended to be blind to the developments in Iran and, beyond simply remaining silent, they have actively supported Iran by minimising the seriousness of the situation. It is only recently that some Arab countries seem to have realized the danger that nuclear weapons in Iran would represent for the stability of the region.

As is well known the May 2005 NPT Review Conference has been a complete failure, in part because of Egypt uncompromising negotiation stance, and in part because of the lack of progress by the 5 NWS with regard to the implementation of the 13 practical steps agreed upon in the final document of the 2000 NPT Review Conference, "*for the systematic and progressive [disarmament] efforts to implement Article VI of the NPT*". This has been a major cause of frustration among almost all NNWS. If the most powerful nations on earth insist, as they have in recent years, that they need to maintain and further improve their nuclear arsenals, how can they convince weaker nations that they don't need those weapons even as a deterrence?

And, as if all this was not enough to undermine the credibility of the NPT, in July 2005 the US offered India a broad nuclear cooperation agreement, granting India all the benefits that are reserved for non-nuclear weapon States under the NPT, without requesting from India any real counterbalancing commitment such as ratifying the Nuclear Comprehensive Test ban Treaty (CTBT)³. If the US now succeeds in curbing the Nuclear Supplier Group (NSG) export rules for what the US has unilaterally defined as the "special case" of India, it is hard to see

³ It is quite astonishing that NNWS and in particular those belonging to the Non-Aligned Movement did not react (more) strongly to the announcement of this agreement.

why Russia, China and others would not feel free to strike similar deals with countries such as Pakistan and Iran.

Is it therefore too late to salvage the credibility of a Treaty ratified by 188 States and which has been, until recently, an indisputable success? Unfortunately, the answer is most likely: Yes, unless the international community without further delay acts upon the lessons learned from the crisis in North Korea and Iran and takes the necessary actions.

The most effective, unbiased and feasible way to establish the necessary measure is for the UNSC to adopt (under Chapter VII of the UN Charter) a **generic** (i.e. not State specific) and legally **binding** resolution stating that if a State is reported by the IAEA to be in **non-compliance**:

- a. the non-compliant State will have to suspend all sensitive nuclear fuel cycle activities for a specified period of time,⁴ but could by all means continue to produce electricity from nuclear power plants,
- b. if requested by the IAEA, the UNSC would automatically adopt a **specific** resolution (under Article 41 of the UN Charter) making it mandatory for the non-compliant State to provide the Agency with the necessary additional verification authority until it has been able to conclude that there is no undeclared nuclear material and activities in the State and that its declarations to the Agency are correct and complete, and
- c. no nuclear material would henceforth be delivered to that State without the guarantee that all nuclear material and facilities declared to the IAEA would remain under Agency's safeguards even if the State withdraws from the NPT.

Withdrawal from the NPT

The current crisis in Iran appears to be a repetition of the earlier (and ongoing) crisis in North Korea.

Since 1993 North Korea has been declared every year by the IAEA to be in non-compliance with its safeguards agreements and has been reported to the UNSC, without the latter deciding to take any action.

In 2003, North Korea gave notice that it was withdrawing from the NPT, and in 2004 declared that it possessed nuclear weapons, without any move from the UNSC because of China threatening to use its veto right against any resolution adverse to North Korea.

If the international community does not seem to have learned the lessons from the crisis in North Korea, Iran has.

⁴ At least as long as the IAEA has not drawn the conclusion that the State declaration is correct and complete, or possibly longer, in line with what Dr. ElBaradei has called a "*rehabilitation period*" or a "*probation period, to build confidence again, before you can exercise your full rights*". (cf. interview with Newsweek- January 23, 2006)

There are signs that it may be preparing to follow the same steps as North Korea if the development of its nuclear programme is threatened by the UNSC or any of its members.

While the international community was debating what to do, Iranian leaders have made stunning advances in mastering all technological aspects of uranium conversion and enrichment without incurring any negative repercussion.

Although they have no use for domestically produced low enriched uranium (LEU) for peaceful purposes for at least the next 10 years, Iran is nonetheless busy installing centrifuge enrichment cascades at Natanz.

By ignoring the repeated requests of the IAEA Board of Governors and recently of the UNSC to suspend these activities, Iran is jeopardising any chance of concluding a broad cooperation agreement with the EU that would open the door to large foreign investments, high tech transfers and security guarantees.

By cleverly using to their advantage the divisions among the major powers, by fuelling the fears of a rapid rise in oil prices and by threatening to share their sensitive nuclear know-how (including uranium enrichment) with other states and to increase their support to terrorist movements in the region, Iran's leaders seem confident that the UNSC will be unable to agree on any significant sanction and that if, eventually, it does, it will further increase the popular support for Iran to carry on its nuclear programme.

Isn't Iran's deliberately provocative attitude a step to prepare for its withdrawal from the NPT, as is the letter addressed on 21 March 2006 to Secretary General Kofi Annan, complaining about the fact that senior US officials have publicly threatened to resort to force against Iran "*in total contempt of international law and the fundamental principles of the Charter of the United Nations*".

Also on May 7, 2006, the Iranian Parliament in a letter to Secretary General Kofi Annan, threatened to force Iran's government to withdraw from the NPT if pressure continues for Tehran to suspend uranium enrichment activities.

Most recently, on September 5, it was announced that the Iranian Parliament's National Security and Foreign Policy Commission is considering a bill which would suspend all IAEA inspections in Iran, in clear violation of Iran's safeguards agreement and tantamount to withdrawing from the NPT.

It is therefore essential for the international community not to wait for Iran's withdrawal from the NPT⁵ and for the UNSC to adopt (under Chapter VII of the UN Charter) a **generic** and legally **binding** resolution stating that if a State **withdraws** from the NPT **after** being found by the IAEA to be in **non-compliance** with its safeguards undertakings:

- a. such withdrawal constitutes a threat to international peace and security as defined under Article 39 of the UN Charter; and
- b. all materials and equipment made available to such a State, or resulting from the assistance provided to it under a Comprehensive Safeguards Agreement

⁵ or similar actions such as denying IAEA inspectors access to its territory, which would make it impossible for the Agency to fulfil its verification mandate.

will be forthwith removed from that State under IAEA supervision and remain under Agency's Safeguards⁶.

Conclusion

The very much publicized divisions among the five veto-wielding members of the UN Security Council, on how the Council should deal with the crisis in North-Korea and Iran is profoundly damaging the credibility of the non-proliferation regime and encourages States found to be in non-compliance with their safeguards agreements to defiantly ignore the resolutions adopted by the IAEA Board of Governors and the UN Security Council.

This is why it is so urgent for the UNSC to adopt the generic resolutions suggested in this paper.

Einstein said: *"The world will not be destroyed by those who do evil, but by those who let them do and refuse to intervene"*.

⁶ This is not a new concept. Under Article XII.A.7 of the IAEA Statute, the Agency has the right to "withdraw any material or equipment made available by the Agency or a member" in furtherance of an Agency project in the event of non-compliance and failure by the recipient State to take fully corrective action within a reasonable time. Article XII.C. has also a similar provision.