

European Parliament

Public Hearing on “The Future of the Nuclear Non-Proliferation Treaty”

The need to strengthen the nuclear non-proliferation regime

Lessons learned from two crises: Iran and North Korea

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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 Agreement which, in contrast to a Comprehensive Safeguards Agreement, remains in force even if the State withdraws from the NPT.

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 to 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*"¹.

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*".

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

Therefore, the most effective 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,² but could by all means continue to produce electricity from nuclear power plants, and

¹ 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, and the alleged studies which could have a military dimension*".

² 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)

- 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 shall 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

As for the specific case of Iran, 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 anyway involve sanctions, and therefore should find unanimous support in the Security Council.

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.

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.

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 NPT³ and for the UNSC to adopt (under Chapter VII of the UN Charter) a **generic** and legally **binding** resolution stating that if a State

³ 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.

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 will be forthwith removed from that State under IAEA supervision and remain under Agency's Safeguards⁴.

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”*

⁴ 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.