The Challenges to the NPT from Iran – and how to Cope with them in a Peace- and Security-compatible Way

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0  **Context and problématique: the controversy over Iran and its dynamics**

The Iran dispute is best characterized by highlighting the major single events, starting with the Tehran agreement as the primary focus of this Briefing Paper. After a period of “détente”, achieved through the Tehran and Paris agreements, there was a steady increase of tensions culminating in the IAEA's referral of the “Iran case” to the UN Security Council. This development was accompanied by confrontational and even bellicose rhetoric both from the Iranian President and the Bush administration. Then, all of a sudden, in spring 2006, the US government announced its preparedness to participate in talks with Tehran in a multilateral arrangement. Washington, together with China and Russia, actively supported the offer crafted by the E3/EU. This package, which reportedly omits punitive measures, was submitted by the EU High Representative Javier Solana to the Iranian government on 6 June.

**Schedule of Major Events:**

- **21 October 2003:** Tehran Agreement
- **15 November 2004:** Paris Agreement
- **23 June 2005:** Mahmoud Ahmadinejad’s election as President
- **August 2005:** E3/EU offer of Framework for a Long-Term Agreement – Tehran’s adamant rejection of this proposal – Break-down of E3/EU-Iran negotiations and Iran’s start of uranium conversion in Isfahan
- **23 September 2005:** IAEA (Board of Governors) Resolution on Tehran’s non-compliance with IAEA Safeguards Agreement
- **10 January 2006:** Resumption of Iran’s enrichment activities on the research and development (R&D) level as announced by Tehran on 3 January 2006
- **4 February 2006:** IAEA Board of Governors’ Resolution to “report” Iran to the United Nations Security Council
- **29 March 2006:** UNSC Statement calling on Iran to end enrichment
- **April - June 2006:** Tehran’s announcement of successful uranium enrichment – Tabling of a draft UNSC Resolution and subsequent work on a package of incentives among the P-5 plus Germany submitted by Javier Solana on June 6 in Tehran

Hence, where do we stand in summer 2006 on substantial issues? Based on the relevant reports presented by IAEA General Director ElBaradei, it seems fair to conclude that Iran’s record has been mixed and in the final analysis not satisfactory. This regards all vital dimensions – Tehran’s cooperation with the IAEA and its inspectors in implementing

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controls; the transparency regarding nuclear activities; its consistency of actions and declarations; the Iranian government’s willingness to accept additional conditions to restore trust.

The Resolution passed by the IAEA Board of Governors on 4 February can still be regarded as a viable indicator for the contentious topics, as it relates to previous reports by the Director General, has to be seen in the context of the Update Brief by the IAEA Deputy Director General for Safeguards of 31 January 2006, and reflects concerns and criticism expressed in subsequent IAEA reports.²

- “(...) the Director General noted that after nearly three years of intensive verification activity, the Agency is not yet in a position to clarify some important issues relating to Iran’s nuclear programme or to conclude that there are no undeclared nuclear materials or activities in Iran (...).”

- “(...) Iran’s many failures and breaches of its obligations to comply with its NPT Safeguards Agreement and the absence of confidence that Iran’s nuclear programme is exclusively for peaceful purposes resulting from the history of concealment of Iran’s nuclear activities, the nature of those activities and other issues arising from the Agency’s verification of declarations made by Iran since September 2002 (...).”

- “(...) the Director General has stated that Iran’s full transparency is indispensable and overdue for the Agency to be able to clarify outstanding issues (...).”

- “(...) the requests of the Agency for Iran’s cooperation in following up on reports relating to equipment, materials and activities which have applications in the conventional military area and in the civilian sphere as well as in the nuclear military area (...).”

- “(...) in November 2005 the Director reported (...) that Iran possesses a document related to the procedural requirements for the reduction of UF6 (uranium hexafluoride, the author) to metal in small quantities, and on the casting and machining of enriched, natural and depleted uranium metal into hemispherical forms (...).”

- “(...) the Agency is not yet in a position to clarify some important issues relating to Iran’s nuclear programme, including the fact that Iran has in its possession a document on the production of uranium metal hemispheres, since, as reported by the Secretariat, this process is related to the fabrication of nuclear weapon components; and, noting that the decision to put this document under Agency seal is a positive step, requests Iran to maintain this document under Agency seal and to provide a full copy to the Agency (...).”³

As of mid-June 2006, a “smoking gun” has not been found. For some observers the last – and new – point of the Resolution was an indication for such a clear evidence. But so far the suspicion regarding the document that “is related to the fabrication of nuclear weapon components”, could not be confirmed. ⁴ “Iran continued to decline the Agency’s request to


⁴ Ibid.
have a copy of the document, but had agreed to allow the Agency to review the document, to take notes from it and to keep it under seal in Iran.”

For all these specific questions and its possible answers the broader political context cannot be ignored. On the Iranian side, it has been overshadowed by the unacceptable rhetoric of Iran’s President to “wipe off” Israel from the map. This is the opposite of a confidence building measure, and it has raised – probably more implicitly than explicitly – the yardsticks required from Iran to restore trust in the peaceful nature of its nuclear activities. The repeatedly uttered threats have raised the “nightmare question”: What would such a determined politician in Tehran do if he had the bomb?

This rhetoric underscores the case for preventing Tehran from achieving a nuclear weapons capability. By the same token, there should be no doubt that the Iranian government has to fulfil the requests by the IAEA/Board of Governors. After the first shock waves around the world, the utterly confrontational statements by the Iranian President have been assessed in a moderate way, for three main reasons. First, Ahmadinejad is not the central person in the decision-making process in Tehran on security issues. Secondly, the President is rhetorically responding to his electorate, whose economic and social situation he has promised to improve. Thirdly, he cannot be reduced to a war-prone politician whose thinking is entirely eschatological, after he has proven that he is also a tactician who, in a historical gesture, stretched out his hand by writing a letter to President Bush representing the “Great Satan”.

Also American rhetoric was part of a strategy for psychological warfare. It reached its peak when threats on possible use of tactical atomic weapons to destroy underground nuclear facilities in Iran were pronounced.

Ironically, the rhetoric from Tehran and Washington should be seen as part of a complex set of reasons which seems to have prepared the ground for a rapprochement. Ahmadinejad’s rhetoric signalled to the world a high degree of determinedness and the capability of mobilizing the Iranian population, regime critics included, thus creating a “rally-around-the-flag” effect. The US rhetoric, in turn, is likely to have signalled to the Iranian elite how high the stakes are for Tehran in case of sanctions and especially of military options. But from today’s perspective, it seems that it is the Bush administration which has somewhat softened its uncompromising policy towards Iran by declaring its willingness (albeit conditional) to join a multilateral framework of negotiations.

Yet it is much too early to tell whether this marks a real change or if it is merely a tactical a tactical move intended to make possible the establishment of an alliance which can then be used for pushing a policy of sanctions and even military options by invoking Article 40, 41 and 42 of the UN Charter, respectively. Even more time is needed for assessing whether the signalled rapprochement is of a strategic – and sustaining – nature, i.e. if it is a prelude to a new policy of direct, compromise-oriented diplomacy aiming for a long-term normalization process with Tehran, whose regime would then not be toppled.

It could well be that a new chapter has been opened in the dispute over Iran’s atomic program. But it could well be that it turns out to be as volatile, contradictory, complex and not constructive as the former periods. It is in this context that the challenges to the NPT and ways of coping with them in a peace- and security-compatible way are to be discussed.

1. First challenge: IAEA safeguards in Iran – how to re-establish and maintain an efficient system?

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5 IAEA, Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran, Report by the Director General, 31 August 2006 (GOV/2006/53, p. 3.
All non-nuclear weapon states (NNWS) parties to the NPT are required to conclude a so-called full-scope Safeguards Agreement with the IAEA. At present, as many as 32 NNWS out of some 190 NPT members do not, however, have any such agreement in force. Their status is in this respect similar to the non-NPT countries Israel, India, and Pakistan, whose Safeguards Agreements apply only to certain facilities and/or nuclear materials. Under full-scope Safeguards Agreements each NNWS is obliged to declare to the Vienna-based Agency all its nuclear facilities and the inventory of all its nuclear materials (needless to say that they are exclusively for peaceful purposes).

The declared facilities and materials are subject to verification by the IAEA safeguards system to ensure timely detection of diversion to military purposes of what the Agency considers as a significant quantity of nuclear material. The classical safeguards system focuses on accountancy and control of nuclear materials by which the IAEA confirms that quantities of declared nuclear materials remain at safeguarded sites or can otherwise be accounted for. The IAEA makes routine on-site inspections and implements containment and surveillance measures (e.g. seals and surveillance cameras). Annex I lists all the declared facilities under safeguards in Iran.

The traditional safeguards system has never been regarded as fool-proof and has over the past decades revealed serious deficits. The concern still is that Iran, after having mastered all relevant segments of the nuclear fuel cycle (see Annex II) may legally withdraw from the NPT (see section 3 for more detail).

In order to overcome major deficits of this inspection and safeguards system, the Model Additional Protocol was agreed upon by the IAEA Board of Governors in 1997. The scope of inspections is expanded in several respects, the most important being that the IEAE is given (non-mechanic and non-systematic) access to:

- any place on a declared site or any location identified by the State Party.
- several nuclear related non-declared sites, such as those that use unsafeguarded nuclear materials.

The latter locations are identified by the State Party under Article 2 of the Additional Protocol to resolve a problem relating to the correctness and completeness of the information provided or to resolve an inconsistency related to that information [Article 4 a.(ii)]. In case the signatory to the Additional Protocol is unable to provide such access, it shall make every effort to satisfy the IAEA’s requirements, without delay, by other means. Access to any so-called decommissioned facility or decommissioned location outside facilities where nuclear material was customarily used, must be granted to the extent necessary for the IAEA to confirm, for safeguards purposes, the member’s declaration of those facilities. However, “for the purposes of the Agency’s (non-mechanic and non-systematic) verification of the information provided by the State Party, it is anticipated (and apparently accepted) that the State Party cannot always provide full access to the Agency inspectors”.7

The process of negotiating, signing and bringing Additional Protocols into force has been slow. To date, only 109 countries have signed, and no more than 76 nations have put them into force. Iran signed an Additional Protocol on 18 December 2003 and pledged to act as if

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6  IAEA, Model Protocol Additional to the Agreement(s) Between State(s) and the International Atomic Energy Agency for the Application of Safeguards, INFCIRC/540 (Corrected).
the (not yet ratified) agreement were already in force. In connection with the IAEA Board of Governors’ decision on 4 February 2006 to “report” Iran to the UN Security Council, Tehran informed the IAEA that it would immediately stop the voluntarily expanded inspections under the Protocol. This stop was required by a law passed by the Iranian Parliament.

Tehran’s reaction enormously reduced the control capability of the IAEA by aggravating the basic problem: all declared nuclear materials are accounted for, yet a number of outstanding questions regarding possible undeclared materials have been the focus of international concern that Iran’s nuclear activities may not be exclusively peaceful. Therefore, re-establishing the Additional Protocol in Iran as part of a more comprehensive bargain could be a first step to an even more intrusive inspection system which has been asked for by the IAEA Director General in the past to clarify outstanding issues.

1 The second challenge: filling the Article IV loophole of the NPT – why have they failed so far?

2.1 Ambivalence of the NPT

The international discussion on Iran’s nuclear activities displays two déjà vu phenomena of structural character. The first one is as old as the atom and the efforts since the 1950s to embark on an “Atoms for Peace” policy: The atom is a Janus head phenomenon – it can be used for civil/peaceful and for military purposes. Conversely, it cannot be clearly split into a civil and military component. From this dilemma follow all other legal, institutional and political ambivalences. This regards the NPT, the IAEA, as well as all initiatives to promote the use of atomic energy for civil/peaceful purposes on the one hand, and to halt the spread of (military) nuclear capabilities and weapons on the other hand.

The second structural phenomenon is related to the political bargaining and compromise inherent in the NPT, without which it would not have come into being. Article II of the NPT emphasises the pledge of all non-nuclear weapon states party to the treaty to renounce nuclear weapons and the activities related to them. Article IV, however, underscores the “inalienable right” of all parties to conduct nuclear-related activities.

The Final Document of the 2000 NPT Review Conference strongly reaffirmed this “inalienable right”. In legal terms, Article IV and its interpretation is the focus – and the major problem – of the current international controversy, as the precise extent of this right remains undefined. The concern that haunts non-proliferation-minded experts and policy-makers alike is that Article IV can be interpreted especially by ambitious actors as giving all non-nuclear weapon states the “inalienable right” to develop a complete nuclear fuel cycle for civil/peaceful nuclear activities.

North Korea withdrew from the NPT in January 2003, after a three-month notification period and after having unilaterally removed monitoring equipment used by the IAEA. It stated that “extraordinary events, related to the subject matter of this Treaty” had jeopardized its “supreme interests”. The withdrawal “horror scenario” has been alluded to by the IAEA Director General ElBaradei with respect to Iran.

Yet Article IV cannot be interpreted as a “free ride” article. It explicitly does not stand by itself, but is related to two other articles of the NPT: The allowed nuclear activities are

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exclusively designed “for peaceful purposes without discrimination and in conformity with articles I and II of this Treaty”.9 It is this wording which tries to square the circle of the promoted civil/peaceful and the renounced military atom. Iran rejects this very connection. In insisting on its right to implement all elements of a nuclear fuel cycle – including enrichment and reprocessing – the Iranian government argues strictly legally, citing Article IV while stressing that it has no intention whatsoever of acquiring a nuclear weapons capability. This is at odds with the EU approach meanwhile supported by all major powers, including the United States, Russia, and China.

The existence of these two opposite rights under the NPT means that there is no clear-cut legal basis for dealing with this dilemma. At the same time, this implicitly provides leeway and, in fact, implies an obligation to find constructive ways – in the concrete case of Iran, to bridge Tehran's right under Article IV with its obligation not to violate its non-proliferation obligations stipulated in Article II.

Reinterpreting Article IV so as to exclude enrichment and reprocessing from the nuclear activities, which every state has the right to conduct for peaceful purposes, has been proposed, inter alia by the Carnegie Endowment for International Peace:

9 Emphasis added. Article IV reads:

“1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I and II of this Treaty.

2. All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also cooperate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.”

Article I prohibits nuclear weapon states from helping other states to acquire nuclear weapons:

“Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or the nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices.”

Article II prohibits non nuclear weapon states from striving to acquire such weapons:

“Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.”
The majority of member countries interpret Article IV to allow nuclear material production, but there is nothing inherent in the right to enjoy the benefits of peaceful nuclear technology that explicitly guarantees or requires possession of enrichment or reprocessing facilities.”

There would, however, hardly be a majority for such a change in the international community of states. For Article IV was one of the two fundamental bargains between the “nuclear haves” and the “nuclear have-nots”; the second fundamental bargain was the commitment by the nuclear weapon states under Article VI to reduce their nuclear arsenals and to pursue measures towards nuclear disarmament).

As there is no practical legal solution to the Article IV problem in general, and to the Iranian issue in particular, technical and political proposals (or a mixture of both) have been put forward and discussed, notably:

- A proposal by US President George W. Bush of 11 February 2004 to deny countries which currently do not reprocess plutonium or enrich uranium the right to do so in the future, in return for a guaranteed supply of such fissile materials. This proposal interprets the “inalienable right” under Article IV in a restrictive way, as Bush suggested that the “40 nations of the Nuclear Suppliers Group should refuse to sell enrichment and reprocessing equipment and technologies to any state that does not already possess full-scale, functioning enrichment and reprocessing plants”. As Undersecretary Robert Joseph remarked on March 8, 2006 during a hearing before the House International Relations Committee: Instead of tackling the “major loophole” by reinterpreting Article IV of the NPT, the approach offered by President Bush should be seen as a “new path” in terms of restructuring “the fundamental deal that’s reflected in the NPT as it was written back in the late ‘60s”.
- Multinational Fuel Cycle Centres, including fuel banks: These concepts, which date back to the 1970/80s, have recently been renewed by IAEA Director General ElBaradei. He convened an Expert Group on this issue whose report was published in early 2005. Their authoritative report emphasises that establishing such centres

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12 In fact, according to Robert Joseph in the same Q&A session, the Bush administration holds the view that it “could be counter-productive to try to re-interpret the NPT” – Article IV, “or any other article”. Yet is doubtful that such a major restructuring will be more acceptable to the majority of states than the legal reinterpretation.


14 Multilateral Approaches to the Nuclear Fuel Cycle. Expert Group Report to the Director General of the IAEA, Vienna, February 2005, INFCIRC/640; see in this context also Harald Müller, Peaceful uses of
would rest on “voluntary participation” and that, conversely, “a new binding international norm stipulating that sensitive fuel cycle activities are to be conducted exclusively in the context of MNAs (multilateral nuclear approaches, the author) and non longer as a national undertaking would amount to a change in the scope of Article IV of the NPT”.15

- The “grand bargain” between the EU and Iran as codified in the Paris Agreement and the incentive package offered by the P-5 plus Germany to Tehran on 6 June 2006.

2.2 First failure: the Paris Agreement and the August 2005 Framework for a Long-Term Agreement

The E3/EU approach as presented in the Paris Agreement16 can be interpreted in principle as an attempt to build on the NPT by reducing or even overcoming the ambivalences of Article IV, i.e. the above-mentioned opposite goals of the allowed civil/peaceful activities and the forbidden military efforts to build the bomb. Later, in August 2005, the Europeans concretised their understanding of the Paris Agreement by presenting their Framework for a Long-Term Agreement.17


- US was obliged under the contract made prior to 1979 to supply new fuel for Tehran 5 MW Research Reactor, being under the Agency comprehensive Safeguards, producing radioisotope for application in medicine, agriculture and industry. It neither gave the fuel nor the millions of dollars received for.

- Iran is 10% share holder of the Enrichment Company, Eurodif in France, for the last three decades. Iran did donate one billion dollars to help the company from financial crisis but it has not received even a gram of the uranium produced in the factory in order to use in the research reactor and power plant.” (Ibid.)

15 Multilateral Approaches to the Nuclear Fuel Cycle. Expert Group Report to the Director General of the IAEA, Vienna, February 2005, INFCIRC/640, p. 11. The report continues by cautioning: “The wording and negotiating history of this article emphasize the right of each party in good standing to choose its national fuel cycle on the basis of its sovereign considerations. (…) Waving this right would thus change the ‘bargain’ of the NPT.” (Ibid, p. 11, emphases in original). Different from the above mentioned Bush proposal the Expert Group suggests instead a broader negotiating framework which on the part of the nuclear weapons states would include their disarmament obligation plus a verifiable Fissile Material Cut-Off Treaty which would terminate the right of any participating non-nuclear and nuclear weapons state to run reprocessing facilities for nuclear purposes. (Ibid, pp. 11-12.)


17 IAEA, Communication dated 8 August 2005 received from the Resident Representatives of France, Germany and the United Kingdom to the Agency, 8 August 2005, INFCIRC/651.
The signatories of the Paris Agreement – France, Germany, and the United Kingdom for the European Union, and the Islamic Republic of Iran – “reaffirm their commitment to the NPT. The “E3/EU recognise Iran’s rights under the NPT exercised in conformity with its obligations under the Treaty, without discrimination”. Tehran “reaffirms that, in accordance with Article II of the NPT, it does not and will not seek to acquire nuclear weapons”. What is more:

- Tehran “commits itself to full cooperation and transparency with the IAEA. Iran will continue implementing voluntarily the Additional Protocol pending ratification”.
- “To build further confidence, Iran has decided, on a voluntary basis, to continue and extend its suspension to include all enrichment related and reprocessing activities, and specifically: the manufacture and import of gas centrifuges and their components; the assembly, installation, testing or operation of gas centrifuges; work to undertake any plutonium separation, or to construct or operate any plutonium separation installation; and all tests or production at any uranium conversion installation.”

Building trust by requiring far-reaching restraints, notably the suspension of enrichment and reprocessing – is that covered by the legal stipulations of the NPT? In a nutshell the answer is “No” if those requirements were meant to be legally binding. Due in particular to the vague wording of the NPT and the inherent ambivalence mentioned (see section 3), such restraints can only be voluntary, legally non-binding confidence building measures. It is not by accident that the “grand bargain” between the Europeans and the Iranians was based on these principles, explicitly recognising Iran’s concessions as voluntary and legally non-binding.

Thus, because of the legal shortcomings of the NPT/IAEA framework, this “grand bargain” (and the major contentious issues between the EU and Iran included) is of political character. In short, the “grand bargain” as codified in the Paris Agreement was not a legal matter, it was a political construct. In the author’s view, a suspension of Iran’s enrichment and reprocessing activities can in strict legal terms not be derived from the NPT. This, however, does not imply that the European-Iran Agreement as a political effort is at odds with the spirit of the treaty, which seeks to prevent its non-nuclear members from becoming nuclear powers. The EU-Iranian Paris Agreement of 15 November 2004 tries to close the Article IV loophole by additional major provisions. Both the E3/EU and Iran reaffirmed not only their commitment to the NPT, but to the Tehran Agreed Statement of 21 October 2003, and that they have decided “to move forward, building on that agreement”. The Paris Agreement further stipulates that

- the “suspension (as defined above, the author) will be sustained while negotiations proceed on a mutually acceptable agreement on long-term arrangements”.
- the E3/EU “recognize that this suspension is a voluntary confidence building measure and not a legal obligation”.
- the agreement “will provide objective guarantees that Iran’s nuclear programme is exclusively for peaceful purposes. It will equally provide firm guarantees on nuclear, technological and economic cooperation and firm commitments on security issues”.

18 The 21 October 2003 agreement stated that Iran “has decided voluntarily to suspend all enrichment and reprocessing activities as defined by the IAEA”. (IAEA, IAEA and Iran Statement by the Iranian Government and visiting EU Foreign Ministers, 21 October 2003, http://www.iaea.org/NewsCenter/Focus/iaeairan/statement_iran21102003.shtml.)
• “noting the progress that has been made in resolving outstanding issues, the E3/EU will henceforth support the Director General reporting to the IAEA Board as he considers appropriate in the framework of the implementation of Iran’s Safeguards Agreement and Additional Protocol”.19 (Here, the IAEA and additional criteria regarding Iran’s behaviour come in.)

2.3.1 Dimensions of a sub-optimal EU offer

The “firm guarantees” offered by the European Union in August 2005 fall short of the promise given in Paris in November 2004 and are sub-optimal for a major trading power. In the blunt words of a leading Western diplomat during a background interview with the author for this Briefing Paper in Vienna on 9 March 2006: The proposal was not worth the paper it was printed on. The major reasons for this hard judgment being that the European states

• provide no real assurances regarding Iran’s access to nuclear fuel;20
• provide no economic incentives for international nuclear technologies and fuel;21
• are vague when it comes to cooperation in supporting Iran’s civil nuclear programme.22

In contrast to these deficits, the EU Framework for a Long-Term Agreement of 8 August 2005 is unmistakably clear in its list of far-reaching and additional demands from Iran as confidence building measures. In this respect the European offer as part of the “grand bargain” cannot be judged as fair, symmetrical, or balanced. To be more specific:

“36. As an essential element of this mechanism for international confidence building, Iran would undertake to:

a. make a legally binding commitment not to withdraw from the NPT and to keep all Iranian nuclear facilities under IAEA safeguards under all circumstances;

b. ratify its Additional Protocol, in accordance with its existing commitment, by the end of 2005;

c. in the meantime, fully implement the Additional Protocol pending its ratification and to co-operate proactively and in a transparent manner with the IAEA to solve all outstanding issues

19 IAEA, Communication dated 8 August 2005 received from the Resident Representatives of France, Germany and the United Kingdom to the Agency, 8 August 2005, INFCIRC/651 (emphases added).

20 Para. 22: “The E3/EU recognise that Iran should have sustained access to nuclear fuel (...). The E3/EU note that under the Iran/Russia agreement on nuclear co-operation, Russia has committed itself formally to supplying nuclear fuel for the life-time of Russian-built reactors in Iran. But the E3/EU stand ready to explore additional ideas in this context.” – Para. 28: “Any such alternative supply mechanism would be dependent on satisfactory arrangements being established for long-term management of spent fuel outside Iran.”

21 Para. 18 a: “Iran would have access to the international nuclear technologies market where contracts are awarded on the basis of open competitive tendering, recognising the right of companies to determine their own commercial strategies and choices”. – Para. 25 on fuel: “Any fuel provided would be under normal market conditions and commercial contracts (…)”

22 Para. 19 a.: “in the field of civil nuclear research through implementation of the E3/EU’s offer of an expert mission to help identify the requirement for a research reactor in Iran and how best to meet that requirement. The E3/EU would ensure Iran faced no discriminatory obstacles to filling the requirements jointly identified; (...) b. in other fields of peaceful use of nuclear energy, excluding fuel-cycle related activity, the E3/EU would commit themselves not to impede participation in open competitive tendering.”
pursuant to the Safeguards Agreement and Additional Protocol including by allowing IAEA inspectors to visit any site or interview any person they deem relevant to their monitoring of nuclear activity in Iran; and

d. agree (to) arrangements for the supply of fresh fuel from outside Iran and commit to returning all spent fuel elements of Iranian reactors to the original supplier immediately after the minimum cooling down period necessary for transportation.

37. In line with IAEA Board Resolutions, the E3/EU would also expect Iran to stop construction of its Heavy Water Research Reactor at Arak, which gives rise to proliferation concerns.

(...)

58. The E3/EU and Iran would agree to implement the agreement in good faith. The agreement would be subject to review, at Ministerial level, every ten years. (…)"23

2.3.2 Why did this “grand bargain” fail?

Both parties to the Paris Agreement accuse each other of having breached or at least violated or contravened it. The E3/EU can indeed make its case for violation (breach is inappropriate for a voluntary commitment, as the Iranians had promised that the “suspension will be sustained while negotiations proceed on a mutually acceptable agreement on long-term arrangements”). When Tehran resumed its conversion activities in August 2005, it violated this very stipulation – this behaviour cannot be regarded as a confidence building measure, to say the least. One can reach this conclusion if one takes the above quoted commitment at face value. A leading Iranian diplomat confirmed to the author during a background interview for this Briefing Paper on 11 March 2006 that not setting a clear deadline was a major Iranian mistake which would never occur again, in fact all subsequent Iranian proposals would contain precise deadlines.

At the same time, it appears plausible to assume that the contexts and the standards for confidence building measures were different and that the Iranians made verbally clear in the talks that they were assuming a very short time span for the suspension of enrichment (see also below).24 The European view can be best summarized by US Under-Secretary Nicholas Burns’ metaphor:

“Iran, in essence, is like a person who has fallen into bankruptcy: He may believe he has a right to a bank loan, but the bank manager has no obligation to give him one until he earns back the bank’s trust. And that is Iran’s fundamental problem. Its plea that its nuclear objectives are entirely peaceful


24 The corresponding remarks in his extensive interview with the hardliner evening daily “Keyhan” (published by the Kayhan Institute and edited by Hoseyn Shariatmadari, Leader Khamenei’s representative at the institute) on 26 July 2005 (typescript) sound like a justification: “(Mohammadi) And eventual no time was specified in the Paris agreement, was it? (Rowhani) No, it wasn’t. The Paris agreement does not consider any certain time for the end of talks. This is why I said it had to be brought and discussed in the Council of Heads (decision-making body in Tehran for ‘important or strategic decisions’[Rowhani], the author). Of course, in general, we assumed that the time of negotiations should n’t be very long, because the suspension was connected to the period of the talks. Before accepting the Paris deal, I had emphatically stated this matter to the three European ministers and after that in a press conference. If you remember, I repeatedly said that the time of negotiations would be less than a year.” – Rowhani’s point should be taken into account in the following argumentation of Ambassador Soltanieh who tries to present the Iranian position as consistent as possible without mentioning the missing deadline.
is simply not trusted by most of the rest of the world, with the possible exceptions of Cuba and Syria and Venezuela, countries that have spoken up on behalf of Iran.  

Even when rejecting Tehran’s reasoning, it is important to reconstruct it. From the Iranian perspective, the standards look different especially;  

- as Tehran did react with a number of necessary and voluntary steps. For instance, as the IAEA Director General has stated, Iran failed to meet its obligation under its Safeguards Agreement with respect to the reporting of nuclear material, the subsequent processing and use of that material, and the declaration of facilities where the material was stored and processed. “These failures, and the actions taken thus far to correct them,” were summarized by him. This list of both failures and corrections is quite remarkable (see Annex III). As already mentioned, Iran signed the Additional Protocol on 18 December 2003. It claims to be the only country which implemented it as if it were ratified (this holds true until 4 February 2006, when the Board of Governors decided to report Iran to the UN Security Council). And the “over 1500 man-days of inspections” were emphasized by the Tehran government as “unprecedented in the history of the IAEA”.  

- if the scope of the voluntary suspension of Iranian nuclear-related activities as codified in the Paris Agreement is taken into account. The scope had been enormously expanded since the Tehran Agreement of October 2003 (see Annex IV). The concessions by Iran can be regarded as considerable in this respect. The IAEA report of the Director General of 15 November 2004 presents a good overview of this expanded scope of suspension. This development, which started with the IAEA Director General’s call reflecting the Resolutions of the Board of Governors to conclude an Additional Protocol, is telling with respect to the political character of the “grand bargain” – in fact, of the steadily increasing yardsticks for proving confidence according to which Iran has “fallen into bankruptcy”. The expansion of the scope of suspension as a confidence building measure as seen from Iran is summarized in the following statement:  

“In June 2003 Iran was first requested: Not to introduce nuclear material at the pilot enrichment plant as a confidence building measure that is only suspend enrichment process. Gradually in subsequent meetings, September 2003, November 2003, February 2004, March 2004, June 2004, September 2004, November 2004, Iran was requested to expand its voluntary suspension to: testing, assembling  

25 Remarks by Nicholas Burns, Undersecretary of State for Political Affairs, Johns Hopkins School of Advanced Studies, Washington, D.C., 30 November 2005 p. 6 (unofficial transcript).  
28 Ibid. (Statement Soltanieh).  
of the machines, manufacturing of centrifuge components, production of UF6, and finally to suspend complete uranium conversion at UCF (uranium conversion facility, the author), and not to conduct R&D. Considering the fact that the suspension was recognized even by Agency’s resolutions as voluntary, non-legally binding, and as a confidence building measure, therefore these requested measure are in contrary to all provision of the NPT and Agency's Statute.31

The most controversial point became the question of suspension vs. cessation, especially of the enrichment activities. The Iranian argumentation as presented by Ambassador Soltanieh started from the observation that in the October 2003 Tehran Agreement, and in the November 2004 Paris Agreement both sides accepted “a suspension of enrichment activities and not their cessation”. Soltanieh reaffirmed that the scope of the suspension was expanded to “also cover the research and testing of course”.32 On the basis of the Tehran and Paris Agreements, the Europeans “unfortunately rejected our proposal for objective guarantees” which was offered in Geneva in spring 2005.

This proposal was from the Iranian point of view designed as a confidence building measure (see below). According to Ambassador Soltanieh, the Iranians expected the Europeans “to bring their own proposal so that it [would] be within the framework of the Paris agreement. What they did [instead], they brought a proposal that explicitly and clearly rejected and deleted and excluded nuclear fuel cycle activities in Iran, including enrichment. (…) And this was in full contravention to the Paris agreement. In fact, the Europeans violated the agreement (…). The EU-3 in fact did not follow the Paris agreement.”33 From the Iranian perspective the EU position on cessation instead of suspension of the enrichment process seemed to be carved in stone. Cessation was indeed in contravention to the Paris Agreement. As one leading Western diplomat put it during a background interview with the author for this Briefing Paper in Vienna on 13 March 2006: From the European perspective, the entire agreement was about cessation, and the required “objective guarantees” was the diplomatic term for this objective.34 Against this backdrop, it seems not surprising that the Iranians did not find the above quoted possible time span of ten years for the Iranian enrichment suspension acceptable (“The agreement would be subject to review, at Ministerial level, every ten years.”). Following this logic, the Iranians reacted to the contravention of the Europeans, and the negotiation process was stopped.35

32 Iran’s Foreign Minister Mottaki reportedly suggested, however, that his government had not violated the 2004 Paris Agreement because Iran had proceeded only with research and not with fuel production. (See Elaine Sciolino and Michael Slackman, Before the Nuclear Regulator’s Meeting, Iran Allows Inspectors Access to One Site, The New York times, nytimes.com, 30 January 2006). This statement is at variance with Ambassador Soltanieh’s position quoted above.
34 This point was confirmed by then Iranian top negotiator Hasan Rowhani in his interview with the journal “Keyhan” on 26 July 2005 (typescript).
35 “And in the Paris agreement there is one paragraph that says that the suspension has to be sustained as long as negotiations for a long-term agreement continue. When this proposal was given, contrary to the Paris agreement, the negotiations, therefore, were stopped, and therefore, the suspension could be stopped, because they were linked in the Paris agreement. Therefore, we started, and we had the right to start, the UCF. And now after again some time we decided that we cannot continue depriving our scientists of the ability to conduct research and, therefore, we started research.” (Ibid.); see similar wording in: Statement by Ambassador A.A. Soltanieh, Resident Representative of Islamic Republic of Iran to the IAEA, 2 February
This argumentation is only in part convincing. Soltanieh refers to the Iranian proposal ("General Framework for Objective Guarantees, Firm Guarantees, and Firm Commitments" of spring 2005). This plan starts from the assumption of a very short suspension time, at least for the resumption of the uranium conversion facility in Isfahan. According to that proposal the Iranians wanted to begin uranium conversion in the first phase (April – July 2005) already. The second phase provides for the assembly, installation and testing (of an unacceptably high number) of 3,000 centrifuges in Natanz. (This provision, if implemented at that time without the consent of the Europeans, would have been the second contravention of the Paris Agreement.) Yet it is remarkable that the Iranians did not indicate a concrete time span for the resumption of the enrichment activities in Natanz (this holds true for the three phases that follow). This seems to indicate a certain flexibility.

To sum up this point, different as the 2005 proposals from both sides are, they seem to imply the possibility for a compromise both with respect to the number of centrifuges and the time span of suspension. At least it would have been worthwhile to explore it. The following question arises with respect to Iran, the classical bazaar state: Why did Tehran not take that European August 2005 Framework as an initial platform with maximalist positions which could be the subject of negotiations, with the aim of getting more out of the Europeans in the economic, technological, and energy sector and by trying to turn the cessation into a real suspension? The following points come to mind:

- Was the Paris Agreement just a welcome tactical tool at the right time to escape from a referral of Iran to the UN Security Council?
- Did Tehran hope the Paris Agreement would establish a negotiating mechanism that would draw the United States in the process the way the six-party-talks have done so with the US and North Korea?
- As the United States remained only the tolerating, yet not actively committed power which was not willing to start a policy of selective engagement: Did Tehran expect the

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37 Ambassador Soltanieh: „Now the question is why we restarted the UCF (Uranium Conversion Facility, the author) in August or whether any short notice or prior notice had been given. I want to draw your attention to the fact that Secretary Larijani met the three distinguished foreign ministers of the [United Kingdom], France, and Germany in Geneva, and he announced officially that you have rejected our proposal and we will wait for your proposal. But, if your proposal excludes Iran’s rightful nuclear fuel cycle including enrichment, you can assume that it will be rejected right away. It was announced well in advance in August when the Europeans gave their proposal. And when we noticed that their proposal excluded this right, there was no necessity to study it any more, because this was in contravention and contrary to the Paris agreement. Since the Paris agreement in fact was not followed by the Europeans, negotiations did not continue.\)” (Ibid.; see similar wording in Statement by Ambassador A.A. Soltanieh, Resident Representative of Islamic Republic of Iran to the IAEA, 2 February 2006, available at Berlin Information-center for Transatlantic Security [BITS]), http://www.bits.de/public/documents/iran/BoG-Statements020206.pdf.)

38 In his extensive interview with the hardliner journal “Keyhan” on 26 July 2005 (typescript), former Iranian top negotiator Hasan Rowhani went a big step even further: “The day I undertook this (atomic, the author) case (…) the circumstances were such that we weren’t very far from the Security Council and the option of America’s military attack was not very unlikely. At that time, they (the Americans, the author) assumed that they were at the peak of victory in Iraq, and they were thinking that Iran would be next. (…) If they had managed to introduce such an expression (non-compliance, the author), in the November resolution against us, their work in confronting Iran would have become very simple. If we had not started our talks with the Europeans on October (2003, the author), this matter definitely would have happened.”
Europeans to be honest brokers with a profile of their own and with an authoritative flexibility beyond their “all-or-nothing”-approach – or to put it in negative terms: Did Tehran initially hope to drive a wedge between the Europeans and the United States (this hope did not come true, as the Resolutions by the IAEA Board of Governors showed)?

With respect to the E3/EU the following questions seem appropriate:

- Why did the Europeans make it so easy for the Iranians to reject the entire Framework for a Long-Term Agreement of August 2005, as it was so vague and deficient regarding its economic, technological and energy-related offers? Most of the following criticism can in fact not be dismissed:

  “The Paris Agreement is founded on an equal exchange of objective and firm guarantees between Iran and Europe to form the basis of a mutually acceptable agreement. The recent proposal of the E3/EU never even mentions the terms ‘objective guarantees’, ‘firm guarantees’ or ‘firm commitments’, thereby indicating the total departure of its authors from the foundations of the Paris Agreement. The proposal replaces ‘objective guarantees’ with termination of Iran’s hard gained peaceful nuclear program. At the same time, it equates ‘firm guarantees and firm commitments’ with vague, conditional and partial restatements of existing obligations.”

- Was the European “all-or-nothing”-position on the enrichment issue originally theirs, or did the Europeans at least at the beginning intend to signal flexibility? Such a flexible position could still be a viable attempt to fill the gaps of the NPT and to overcome the current impasse with the Iranians. It should be remembered that the “objective guarantees” and the expanded scope of enrichment suspension demanded by the EU from Iran was a political construct. This, conversely, means that such a strict requirement needs not to be carved in stone, given the presumption that the Europeans negotiated under extreme restraint from the Bush administration which put their partners under strong pressure, especially by charging then Undersecretary for Arms Control and International Security Affairs, John Bolton, to deal with the Europeans. A compromise position could include both a small number of centrifuges and a (shorter) time span for suspension, let’s say between five and at least eight years as proposed by IAEA Director General ElBaradei in early 2005 and in 2006.

2.3 Amidst a second failure to fill the Article IV loophole? The six powers’ 6 June 2006 incentive package.

At this point an analysis of this incentive package can only be temporary, as the text presented by the EU High Representative Javier Solana on 6 June 2006 in Tehran has not be officially released. Compared to the EU August 2005 Framework for a Long-Term Agreement, the new offer includes some more positive elements:

40 As one leading Western diplomat put it during a background interview with the author for this Briefing Paper in Vienna on 9 March 2006: “Can you imagine how humiliating Bolton was to us?”
It avoids terms that had triggered a negative reaction on the Iranian side such as “objective guarantees” which was a synonym for the complete cessation of the Iranian enrichment activities. Instead the tone of the June offer is more conciliatory (“mutual respect”).

Some offers seem to be more concrete and comprehensive, e.g. “Civil aviation cooperation, including possible (sic!) removal of restrictions on US and European manufacturers from exporting civil aircraft to Iran, thereby opening up (...) the prospects of Iran renewing its fleet of civil airliners.”.

The uranium conversion facility at Isfahan which was forbidden within the August 2005 Framework is now apparently permitted: “Subject to negotiations, such a facility (i.e. an international enrichment facility in Russia, the author) could enrich all the UF6 produced in Iran.”

The “fuel guarantees” are new, and so is the following (and probably somewhat attractive) element, namely the “development of a standing multilateral mechanism for reliable access to nuclear fuel with the IAEA based on ideas to be considered at the next Board of Governors”.

At the same time, the conditions for the Iranians are the same ones and in part even more restrictive: Iran will

- “commit to addressing all the outstanding concerns of the IAEA through full cooperation with the IAEA;
- suspend all enrichment-related and reprocessing activities to be verified by the IAEA, as requested by the IAEA Board of Governors and the UN Security Council, and commit to continue these negotiations; and
- resume implementation of the Additional Protocol and commit to taking the other steps called for by the IAEA Board of Governors.”

Against this backdrop, Teheran has sought clarification on several issues, including the following:

- “The incentive package mentions respecting Iran’s rights under the Nuclear Nonproliferation Treaty, the only treaty articles mentioned are Articles I and II, pertaining to nonproliferation, and not Article IV, pertaining to a country’s ‘inalienable right’ to acquire nuclear technology;
- Iran wants firm guarantees on the proposed offers of nuclear assistance, such as the sale of light-water reactors to Iran, as well as a secured nuclear-fuel supply;
- Iran seeks clarification on the status of U.S. sanctions, which presently prohibit those offers of nuclear and technological assistance to Iran: Is the United States willing to lift some if not all of those sanctions?
- The package’s promise of an Iranian-European cooperation agreement needs to be fleshed out;
- The package’s brief reference to security and its hint of Iran’s participation in a ‘regional security’ arrangement needs further clarification; and,
- The timeline on the promised incentives, including the economic and trade incentives, has to be made specific.”

Above all the nucleus of the conflict has not changed: It continues to exclude the security guarantee for the regime in Tehran, which makes it impossible for the Iranian government to

43 Abbas Maleki and Kaveh L. Afrasiabi, Saving face with Iran, International Herald Tribune, 26/27 August 2006. Both scholars seem to know the text of the 6 June offer and the official Iranian response.
accept the suspension of all its enrichment-related and reprocessing activities for an unspecified period. By the same token, even such a guarantee may not be sufficient to suspend those activities forever, but for a certain time only, as Maleki and Afrasiabi put it:

“Clearly, given the tight interplay between the nuclear issue and Iran’s political identity, no one should be surprised that Iran’s leaders have opted against committing political suicide by giving in to international pressure and suspending the nuclear-fuel cycle. But Iran’s response makes rather clear that suspension is feasible through the proposed talks, which Iran is willing to start immediately, particularly if Iran’s abstract rights under Article IV of Nonproliferation Treaty are explicitly recognized by the Security Council coalition.”

The contradiction in terms which is included in the Article IV-related remarks of the two authors makes once again clear: A cessation of those sensitive nuclear activities is not in the Iranian cards, yet a compromise (small number of centrifuges and a short time span for suspension under strict verification measures) might still be a possibility. This could and should be explored by the EU/six powers as part of a new “grand bargain” (see section 5).

Finally, not to explicitly mention Tehran’s “inalienable right” under Article IV of the NPT is based on a – presumably US – restrictive interpretation which is not covered by the wording of the article or by the NPT text as a whole. It is plausible that this disputable interpretation is on the Iranian list of questions that needs clarification.

3. Third challenge: Iran’s threats to withdraw from the NPT – are measures to strengthen Art. X enough?

The fear has been expressed that Iran, after having legally mastered the entire nuclear fuel cycle under civil disguise, might legally withdraw from the NPT at short notice, in accordance with its Article X.1, following the example of North Korea. Given the strong unilateral tendencies especially in early 2006 by the Iranian government, the increasing unwillingness to cooperate with the IAEA, the rejection of an offer of enrichment in Russia, and Iranian threats to withdraw from the NPT – an official announcement of withdrawal was at that time not unlikely. In view of the history of the Iranian conflict with its ups and downs as well as its uncertainties, future withdrawal cannot be excluded if, for instance, the package of incentives of June 2006 does not lead to a compromise, but triggers another negative dynamic.

North Korea’s action has led to calls for a reinterpretation of Article X.1 that would build real hurdles to leaving the treaty. Here, the proposals of New Zealand and Australia presented at the last NPT Review Conference in 2005 could be helpful. According to them, a notice of withdrawal from the NPT should trigger automatic referral to the UN Security Council. Withdrawal would not absolve a member state from meeting obligations it had not met at the time of withdrawal. Nuclear materials, equipment and technology required by a member state would remain subject to peaceful use obligations with verification also after the withdrawal.

44 Ibid.

45 UN Security Council Resolution 1696 seems to have implicitly adopted this interpretation, as it nowhere in the texts mentions Iran’s right under Article IV (United Nations Security Council, Resolution 1969 [2006], Adopted by the Security Council at its 5500th meeting, on 31 July 2006, S/Res/1969 [2006].

In the EU Framework for a Long-Term Agreement of August 2005, a proposed stipulation (para. 36 a.) would require Iran to make “a legally binding commitment not to withdraw from the NPT and to keep all Iranian nuclear facilities under IAEA safeguards under all circumstances”. This provision, which would single out Iran, is an utmost stringent requirement and a completely new reinterpretation – in fact it is a reversal of the meaning of Article X.1. It would interfere with the explicitly granted right to withdraw from the treaty as a matter of “national sovereignty”. In view of the historical record of negotiation, it was this very issue of “national sovereignty” which emerged as a compromise between the US and the Soviet position.47 In fact, “(d)uring the NPT negotiations a very limited number of countries objected to the right of withdrawal (…).”48

To avoid singling out Iran and to look instead for universal solutions seems to be a constructive way to deal also with the withdrawal issue. This approach does not exclude looking at the specifics of each case. As to Iran, it would be useful to get more information about what Hassan Rohani, Iran’s former top negotiator and current representative of the Supreme Leader, Ayatollah Ali Khamenei on the Supreme National Security Council, proposed in May 2006 in an article: “Iran would address the question of preventing break-out from the NPT.”49

In a broader sense the break-out problem is a matter of designing a strategy that addresses the underlying security concerns of a country such as Iran as a way of keeping the country within the treaty framework, or at least extending the timeframe for a break-out (see section 5 for some elements of such a strategy). The Article X problem is of course also a specific aspect of the more comprehensive non-compliance issue (see section 4) and has to be dealt with in the context of a more comprehensive strategy.

4. Fourth challenge: dealing with non-compliance – are sanctions a promising way?

What applies to the Article X topic in particular holds true for the issue in general: the strange and crucial weakness of the entire non-proliferation regime (in particular of its main legal base, the NPT), that it does not include an effective enforcement mechanism begs the question "After Non-Compliance, What?"50. There is only an implicit reference to compliance in the NPT, where nuclear safeguards are delegated to the IAEA.

Many NPT parties do not have IAEA full-scope safeguards in force. What is more, accession to the treaty and the signing of the IAEA Safeguards Agreements are not congruent. This

48 Ibid., p. 887.
leads to the ironic situation that for instance the non-NPT signatory India, which keeps rejecting full-scope safeguards, as a member of the IAEA Board of Governors judges the compliance of countries, such as Iran, with legal obligations which it refuses to take on itself.

Moreover, the IAEA is not responsible for verifying the disarmament obligations of the nuclear weapon states under Article VI of the NPT. The sole mechanism for monitoring or assessing compliance by all NPT signatories with all their obligations under the treaty is the Review Conference. Taking place every five years, these conferences, together with the annual preparatory meetings for them, review the general implementation of the NPT. Yet, in case of non-compliance, there is no built-in requirement to assemble special sessions to deal with the matter.

Yet both the IAEA Statute and the INFCIRC/153 Safeguards Agreement provide that if a state violates its Safeguards Agreement with the IAEA, the Director General can refer the case to the Board for ‘appropriate action” (INFCIRC/153, para. 9). Moreover, the IAEA Statute has established the Board of Governors as the compliance body within the Agency.

The Board’s mandate to report established cases of non-compliance to the UN Security Council and General Assembly is a powerful politico-psychological means, as the Iran issue shows. The UNSC is the only body which can impose international sanctions on Iran. If the Security Council finds that the situation brought about by the violations could lead to international friction it may, under Chapter VI of the UN Charter, recommend to the state or states concerned appropriate procedures or methods of adjustment. In addition, or as an alternative, the UN Security Council could determine that the breach is a threat to international peace and security and recommend measures under Chapter VII, for instance imposing economic or military sanctions. Thus, the Security Council has competences that go far beyond those of the IAEA. If the Security Council considers that a threat to international peace and security exists, its recommended measures may relate

- to the political, economic, military and financial area in a broad sense and include sanctions such as a worldwide embargo on purchases of Iranian oil or other trade items or an embargo on international investment in Iran’s energy sector; a global embargo on weapons sales to Iran; reductions in diplomatic exchanges with Iran or banning/limiting travel by Iranian officials; banning international traffic to and from Iran; limiting lending to Iran by international financial institutions;

- in the nuclear area, to sanctions aimed at enforcing a suspension of uranium enrichment activities, e.g. prohibiting Iranians from conducting nuclear-related studies abroad; banning travel of Iranian scientists and government officials involved in the procurement processes for the nuclear industry; and suspending ongoing nuclear activities (such as completing the reactor in Busher). Enforcement measures especially related to Iranian enrichment activities could also include military action to destroy facilities.  

Sanctions, and, in the final analysis, military options, are unlikely to be effective in preventing Iran from acquiring nuclear capabilities. As of early September 2006, the

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52 See on this in greater detail the forthcoming PRIF report by the author (in cooperation with Sven Fikenscher).

53 This conclusion is based on the author’s assessment of the various presentations (above all the Special Lecture by Zbigniew Brzezinski) made at the Second Transatlantic Conference on The Nuclearization of the Broader Middle East as a Challenge for Transatlantic Policy Coordination, organized by the Peace Research
problem that may arise for countries embarking on the UNSC path is an automatism which may ultimately lead to military action. UN Security Council Resolution 1696 adopted on 31 July 2006 can be regarded in this respect as the first step. It stipulates that the UNSC is acting under Article 40 of Chapter VII of the Charter in order “to make mandatory” the suspension required by the IAEA. What is more, UNSC Resolution 1696 ends by explicitly expressing its intention “in the event that Iran has not by that date (31 August 2006, the author) complied with this resolution and its requirements of the IAEA, then to adopt appropriate measures under Article 41 of Chapter VII” of the UN Charter. 54

By the same token, the scepticism regarding comprehensive sanctions should not exclude targeted export restrictions in the military and dual-use area, nor should they exclude the strengthening of national and international export controls and material security measures as required by UNSC Resolution 1540, which aims at preventing illicit trafficking in nuclear, biological, and chemical materials and means of delivery.

5. Contextualizing the challenges: 10 elements of a EU policy towards Tehran and the NPT

The nuclear policies of the Islamic Republic of Iran include at least four challenges to the NPT and the endeavours to slow down its erosion, not to mention efforts to strengthen the treaty. The following recommendations for a certainly sub-optimal strategy are on the one hand informed by a traditionally defiant and hardly compromising Iran. On the other hand the recommendations aim at achieving modest results by peaceful means rather than striving for grand successes which may not be achievable at all or which may require military means. It is needless to say that counterproductive steps that would play into the hands of the government in Tehran and which would aggravate the situation should be avoided. Slowing down the erosion process of the NPT comprises, in the case of Iran, at least the following elements of EU policy:

- **First, keeping or re-establishing the inspection regime in Iran as intrusively and as long as possible.** Therefore, the current conditions for negotiations should be changed so that Tehran accepts comprehensive controls on the basis of the Additional Protocol. This Additional Protocol could be a first step towards even more intrusive inspections that are necessary to resolve the outstanding issues listed by the IAEA.

- **Secondly, slowing down the process of acquiring a nuclear weapons capability and keeping Iran as long as possible within the treaty** (or, in other words extending the timeframe of a possible NPT break-out as much as possible). Strengthening Article X would mean introducing legal barriers to leaving the NPT. Applying more restrictive export controls and creating the domestic and international legal preconditions for such efforts which are required by UNSC Res. 1540 are important, too.

But the NPT is certainly not only about non-acquisition, but also about civilian uses of the atom and about disarmament. All three elements are integral parts of one unified whole. The second element has been discussed in the context of the ambivalences of Article IV (on the disarmament commitment of the nuclear powers contained in Article VI and its specific

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relevance for a non-proliferation strategy towards Iran, see below). In the case of Iran, Article IV constitutes the greatest challenge and requires the greatest skills. In order to achieve the main goals of the NPT the following elements are suggested for European policy:

1. **Developing a realistic timeline which would exclude an alarmist position:** As long as a “smoking gun” has not been found in Iran, the case of this country is not a matter of urgency. This position is underscored by the judgment of the US coordinator of the intelligence services, John Negroponte, who reportedly stated before the Intelligence Committee of the US Senate that it is unlikely that Iran has the bomb already or that it has produced nuclear material suitable for such bombs. It is widely believed that Tehran’s lead time to build a nuclear bomb is between five and ten years.\(^{55}\) Such a timeframe is not only important with regard to Tehran, but vis-à-vis Washington as well, if one believes that the next US administration might be less committed to a fundamental change of the entire Middle East/Persian Gulf landscape (with regime change in Tehran as an integral part).

2. **The talks and negotiations with the Iranians should continue on the basis of the premise that a modus vivendi is possible between democratic governments on the one hand and an authoritarian-theocratic regime on the other hand:** Europeans have the experience of having successfully ended the East-West conflict by initiating in the 1970s the CSCE process. It contributed to peaceful and incremental regime evolution in Moscow as the alternative to a bloody regime change. It seems to be vital to design a peaceful coexistence with democratic and Islamic countries such as Iran. Therefore, it is fundamental that the nuclear issues be decoupled from the regime issue. The dual strategy of dialogue plus containment which have been vital factors in the unravelling of the superpower USSR should work even more so with respect to the emerging regional power in the Persian Gulf.

3. **The objective should be to integrate Iran instead of isolating it:** All doors of communications with Tehran and its splintered elite should be kept open. In fact, new (N)GO channels outside the UNSC-related six powers path should be established. The dialogue without any demonizing of each other must go on at all times; the “targets” should be expanded beyond Tehran and include Hamas and Hezbollah. Tehran should be engaged in regional settings and initiatives.

4. **It is worthwhile to explore vital elements of a comprehensive package.** Such a “grand bargain” could include the outlined compromises in the nuclear field or common political ground (a constructive and stabilizing – as opposed to an expansionist, not status quo oriented – regional role of the Islamic Republic for instance in Lebanon, Iraq, Afghanistan). It is vital to get Iran out of its “rogue” corner in which Tehran is condemned and has an easy game to behave accordingly as a “rogue”.

5. **EU policy should be realistic and not hold out for maximalist demands towards Tehran:** The Iranian government is unlikely to stop its sensitive nuclear activities, including uranium enrichment as a precondition for negotiations. Such unrealistic conditions should be skipped, and non-negotiable ultimatums should be avoided.

6. **The advantage of Germany’s dual leadership in the first half of 2007 (G-8 context, EU Presidency) should be used:** Unity within the EU for embarking on a “Diplomacy First!” path could be optimised in that period by forging a solid coalition operating on the same basis. This would have to include ways to convince Washington to start its

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\(^{55}\) “Iran hat weder Atomwaffen noch Material dafür”, Spiegel online, 2 February 2006, [http://www.spiegel.de/politik/ausland/0,1518,398791,00.html](http://www.spiegel.de/politik/ausland/0,1518,398791,00.html).
direct diplomacy with Tehran in a multilateral negotiation setting. Washington should be persuaded to leave its counterproductive neoconservative path of regime change in Tehran. The provision of US security guarantees for Tehran will reduce pressure on Tehran and may in the final analysis strengthen the moderates in Iran.

7. **Demanding the implementation of vital disarmament obligations should rank high on the EU agenda:** Article VI of the NPT (the disarmament commitment of the nuclear weapons states as the third basic element of the treaty) enters the debate about Iran in at least two respects:

First, in its most extreme and counterproductive way, as the Bush administration has approved nuclear-use policies that allow for the use of nuclear weapons to defeat chemical and biological threats, thereby undercutting previous commitments to non-nuclear weapons states in the context of the NPT that they will not be under attack ("negative security guarantee").

Secondly, in an indirect way the renaissance of nuclear weapons both as a tool and as prestige-creating issue may endorse the decision of the elite in Tehran to go ahead with its nuclear course. Therefore, it is important to counter this trend by de-legitimizing nuclear weapons, their acquisition, possession, and use (and thereby the basic norms of the NPT) on an international scale. A number of measures come to mind: refraining from the development of new nuclear weapons; further reducing the alert status and the size of their strategic and tactical nuclear stockpiles including the anachronistic ones in Russia and in Europe; permanently barring nuclear test explosions by ratifying the Comprehensive Test Ban Treaty; and, last but not least, barring the production of fissile materials for weapons by negotiating a Fissile Material Cut-Off Treaty).

8. **Dangerous traps have to be avoided:** One trap is a possible automatism within the UNSC framework which might lead from sanctions to military options. Given the high stakes associated especially with the military destruction of Iranian nuclear facilities, they are likely to turn out to be counterproductive. Empty threats ("This is our last offer") are another dangerous trap, as they will minimize European credibility and influence.

9. **No singularisation of Iran – no double standards for and rewarding of non-NPT countries:** To be sure, each case has its specifics, and Iran as a member of the NPT has to abide by its rules. New restrictive proposals, e.g. for sensitive technologies, may be easier to accept by Tehran if they are discussed not just with respect to Iran but to other countries as well. What is more, the NPT was designed as a universal template with actually no place for one-off exceptions that undercut global standards. Therefore, it is counterproductive to punish Tehran, whereas Islamabad and New Delhi are treated with benign neglect and rewarded, respectively. Despite the discovery of a major nuclear black-market ring run by scientists, military and intelligence officials in Pakistan, the regime in Islamabad has received extraordinarily lenient treatment by the UNSC. Resolution 1540, which was passed in response to the uncovering of the worst nuclear proliferation scandal in history, is in stark contrast to the harsh wording of 1696 ("to make mandatory"), as it makes no reference to Pakistan at all. This double standard is due to the fact that Pakistan (which from the US perspective actually fulfils in the non-proliferation area all criteria as a “rogue states”) is an important member of the global war on terrorism.

As to India (which in the US strategy is designed as a bulwark against China), the nuclear cooperation deal between Washington and New Delhi is an actual endorsement of India’s nuclear weapons status and makes the task of blocking the
spread of nuclear weapons more difficult in at least two ways: First, from an Iranian perspective, being a member of the NPT does not pay off – an assessment which may increase Tehran’s temptation to withdraw at a certain point from the NPT. Second, problem countries which are not members of the NPT, and which are treated like Pakistan and India, do not see real incentives to join the treaty. For the European members of the Nuclear Suppliers Group the US-Indian deal means abandoning their traditional strict policies by allowing full civilian nuclear cooperation with nuclear-armed India, even though New Delhi does not allow full-scope safeguards, continues to produce missile material for nuclear weapons and has not agreed to restraint measures in the nuclear weapons area.

Not singularising Iran has one more important aspect: It amounts to universalising principles that apply to all states. In this respect universalising the Additional Protocol should be an imperative and a priority for EU policy.

10. Iran’s security concerns need to be addressed and a perspective should be provided for Tehran. Europe should take the lead in suggesting concrete steps for the immediate establishment of a multilateral security structure in the Broader Middle East: Such a confidence building measure with its conceptual focus on a WMD (weapons of mass destruction) free zone could improve the security environment in that region. This could reduce, if not remove, additional pressure on Tehran to go ahead with its nuclear activities.

In short, if Plan A (efficient sanctions) are unlikely to work, and Plan B (military options) are highly likely to be counterproductive, i.e. catastrophic, the EU should embark on the above presented sub-optimal Plan C.
## Annex I

List of Locations Relevant to the Implementation of Safeguards in Iran

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>AS OF NOVEMBER 2004</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>TEHRAN NUCLEAR RESEARCH CENTRE</td>
<td>Tehran Research Reactor (TRR)</td>
<td>Operating</td>
</tr>
<tr>
<td></td>
<td>Molybdenum, Iodine and Xenon Radioisotope Production Facility (MIX Facility)</td>
<td>Constructed, but not operating</td>
</tr>
<tr>
<td></td>
<td>**Jabr Ibn Hayan Multipurpose Laboratories (JHL)</td>
<td>Operating</td>
</tr>
<tr>
<td></td>
<td>**Waste Handling Facility (WHF)</td>
<td>Operating</td>
</tr>
<tr>
<td>TEHRAN</td>
<td>**Kalaye Electric Company</td>
<td>Dismantled pilot enrichment facility; being converted to centrifuge enrichment R&amp;D</td>
</tr>
<tr>
<td>BUSHEHR</td>
<td>Bushehr Nuclear Power Plant (BNPP)</td>
<td>Under construction</td>
</tr>
<tr>
<td>ESFAHAN NUCLEAR TECHNOLOGY CENTRE</td>
<td>Miniatrurized Neutron Source Reactor (MNSR)</td>
<td>Operating</td>
</tr>
<tr>
<td></td>
<td>Light Water Sub-Critical Reactor (LWSCR)</td>
<td>Operating</td>
</tr>
<tr>
<td></td>
<td>Heavy Water Zero Power Reactor (HWZPR)</td>
<td>Operating</td>
</tr>
<tr>
<td>Location</td>
<td>Facility Name</td>
<td>Status</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------------------------------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>Fuel Fabrication Laboratory (FFL)</td>
<td>Operating</td>
<td></td>
</tr>
<tr>
<td>Uranium Chemistry Laboratory (UCL)</td>
<td>Closed down</td>
<td></td>
</tr>
<tr>
<td>Uranium Conversion Facility (UCF)</td>
<td>Hot testing/commissioning stage</td>
<td></td>
</tr>
<tr>
<td>Graphite Sub-Critical Reactor (GSCR)</td>
<td>Decommissioned</td>
<td></td>
</tr>
<tr>
<td><strong>Fuel Manufacturing Plant (FMP)</strong></td>
<td>In detailed design stage, construction to begin in 2004</td>
<td></td>
</tr>
<tr>
<td><strong>Zirconium Production Plant (ZPP)</strong></td>
<td>Under construction</td>
<td></td>
</tr>
<tr>
<td><strong>Pilot Fuel Enrichment Plant (PFEP)</strong></td>
<td>Operational; currently suspended</td>
<td></td>
</tr>
<tr>
<td><strong>Fuel Enrichment Plant (FEP)</strong></td>
<td>Under construction; currently suspended</td>
<td></td>
</tr>
<tr>
<td><strong>Radioactive Waste Storage</strong></td>
<td>Partially operating</td>
<td></td>
</tr>
<tr>
<td><strong>Pilot Uranium Laser Enrichment Plant</strong></td>
<td>Dismantled</td>
<td></td>
</tr>
<tr>
<td><strong>Iran Nuclear Research Reactor (IR-40)</strong></td>
<td>In detailed design phase</td>
<td></td>
</tr>
<tr>
<td><strong>Hot cell facility for production of radioisotopes</strong></td>
<td>Declared as no longer being under consideration</td>
<td></td>
</tr>
<tr>
<td><strong>Heavy Water Production Plant (HWPP)</strong></td>
<td>Under construction</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>-------------------</td>
<td></td>
</tr>
<tr>
<td><strong>ANARAK</strong></td>
<td><strong>Waste storage site</strong></td>
<td>Waste to be transferred to JHL</td>
</tr>
</tbody>
</table>


** Declared in 2003.
Annex II

Nuclear Fuel Cycle*

[Diagram of the nuclear fuel cycle showing the processes from uranium mining to waste disposal, including enrichment, fabrication, and use in research and power reactors.]

Annex III

Iran: failures to meet obligations and corrections*

Findings and Initial Assessment

32. Iran has failed to meet its obligations under its Safeguards Agreement with respect to the reporting of nuclear material, the subsequent processing and use of that material and the declaration of facilities where the material was stored and processed. These failures, and the actions taken thus far to correct them, can be summarized as follows:

(a) Failure to declare the import of natural uranium in 1991, and its subsequent transfer for further processing.

On 15 April 2003, Iran submitted ICRs on the import of the UO2, UF4 and UF6. Iran has still to submit ICRs on the transfer of the material for further processing and use.

(b) Failure to declare the activities involving the subsequent processing and use of the imported natural uranium, including the production and loss of nuclear material, where appropriate, and the production and transfer of waste resulting therefrom.

Iran has acknowledged the production of uranium metal, uranyl nitrate, ammonium uranyl carbonate, UO2 pellets and uranium wastes. Iran must still submit ICRs on these inventory changes.

(c) Failure to declare the facilities where such material (including the waste) was received, stored and processed.

On 5 May 2003, Iran provided preliminary design information for the facility JHL. Iran has informed the Agency of the locations where the undeclared processing of the imported natural uranium was conducted (TRR and the Esfahan Nuclear Technology Centre), and provided access to those locations. It has provided the Agency access to the waste storage facility at Esfahan, and has indicated that access would be provided to Anarak, as well as the waste disposal site at Qom.

(d) Failure to provide in a timely manner updated design information for the MIX Facility and for TRR.

Iran has agreed to submit updated design information for the two facilities.

(e) Failure to provide in a timely manner information on the waste storage at Esfahan and at Anarak.

Iran has informed the Agency of the locations where the waste has been stored or discarded. It has provided the Agency access to the waste storage facility at Esfahan, and has indicated that access will be provided to Anarak.
33. Although the quantities of nuclear material involved have not been large**, and the material would need further processing before being suitable for use as the fissile material component of a nuclear explosive device, the number of failures by Iran to report the material, facilities and activities in question in a timely manner as it is obliged to do pursuant to its Safeguards Agreement is a matter of concern. While these failures are in the process of being rectified by Iran, the process of verifying the correctness and completeness of the Iranian declarations is still ongoing.

34. The Agency is continuing to pursue the open questions, including through:

(a) The completion of a more thorough expert analysis of the research and development carried out by Iran in the establishment of its enrichment capabilities. This will require the submission by Iran of a complete chronology of its centrifuge and laser enrichment efforts, including, in particular, a description of all research and development activities carried out prior to the construction of the Natanz facilities. As agreed to by Iran, this process will also involve discussions in Iran between Iranian authorities and Agency enrichment experts on Iran’s enrichment programme, and visits by the Agency experts to the facilities under construction at Natanz and other relevant locations.

(b) Further follow-up on information regarding allegations about undeclared enrichment of nuclear material, including, in particular, at the Kalaye Electric Company. This will require permission for the Agency to carry out environmental sampling at the workshop located there.

(c) Further enquiries about the role of uranium metal in Iran’s nuclear fuel cycle.

(d) Further enquiries about Iran’s programme related to the use of heavy water, including heavy water production and heavy water reactor design and construction.

35. The Director General has repeatedly encouraged Iran to conclude an Additional Protocol. Without such protocols in force, the Agency’s ability to provide credible assurances regarding the absence of undeclared nuclear activities is limited. This is particularly the case for States, like Iran, with extensive nuclear activities and advanced fuel cycle technologies. In the view of the Director General, the adherence by Iran to an Additional Protocol would therefore constitute a significant step forward. The Director General will continue to keep the Board informed of developments.

* IAEA, Implementation of the NPT safeguards agreement in the Islamic Republic of Iran, Report by the Director General, 6 June 2003, GOV/2003/40, pp. 7-8.

** The total amount of material, approximately 1.8 tonnes, is 0.13 effective kilograms of uranium. This is, however, not insignificant in terms of a State’s ability to conduct nuclear research and development activities.
Annex IV

The expanding scope of suspension*

121. In a Note Verbale dated 29 December 2003, Iran informed the Agency that:

- it would suspend the operation and/or testing of any centrifuges, either with or without nuclear material, at PFEP;

- it would suspend further introduction of nuclear material into any centrifuges;

- it would suspend installation of new centrifuges at PFEP and installation of centrifuges at the FEP; and

- it would withdraw nuclear material from any centrifuge enrichment facility if and to the extent practicable.

(...)

124. On 24 February 2004, Iran informed the Agency that instructions would be issued by the first week of March to implement the further decisions voluntarily taken by Iran to: (i) suspend the assembly and testing of centrifuges, and (ii) suspend the domestic manufacture of centrifuge components, including those related to the existing contracts, to the furthest extent possible. Iran also informed the Agency that any components that were manufactured under existing contracts that could not be suspended would be stored and placed under Agency seal. Iran invited the Agency to verify these measures. Iran also confirmed that the suspension of enrichment activities applied to all facilities in Iran.

125. In resolution GOV2004/21, adopted on 13 March 2004, the Board called on Iran to extend the application of its commitment on suspension to “all enrichment related and reprocessing activities throughout Iran, and requested the Director General to verify the full implementation of these steps.”

126. On 15 March 2004, Iran notified the Agency that the Agency’s verification of the suspension of centrifuge component production could begin as of 10 April 2004.

(...)
129. On 18 June 2004, in resolution GOV/2004/49, the Board called on Iran “immediately to correct all remaining shortcomings, and to remove the existing variance in relation to the Agency’s understanding of the scope of Iran’s decisions regarding suspension, including by refraining from the production of UF6 and from all production of centrifuge components, as well as to enable the Agency to verify fully the suspension.” In the context of Iran’s voluntary decisions to suspend all enrichment related and reprocessing activities, the Board also called on Iran, “as a further confidence building measure, voluntarily to reconsider its decision to begin production testing at [UCF] and also, as an additional confidence building measure, to reconsider its decision to start construction of a research reactor moderated by heavy water, as the reversal of those decisions would make it easier for Iran to restore international confidence undermined by past reports of undeclared nuclear activities in Iran.”

130. On 23 June 2004, the Director General received a letter from Iran informing him that Iran “plan[ned] to suspend implementation of the expanded voluntary measures conveyed in [its] Note dated 24 February 2004” and that Iran “thus, intend[ed] to resume, under IAEA supervision, manufacturing of centrifuge components and assembly and testing of centrifuges as of 29 June.” In the letter, Iran requested the Agency “to take steps that may be necessary to enable resumption of such operations as of 29 June.” On 29 June 2004, the Agency received a letter forwarding a list of seals which would be removed from material, components and equipment related to centrifuge component manufacturing and assembling. In a letter dated 29 June 2004, the Agency acknowledged receipt of Iran’s letter and agreed to the removal of the seals by the operator in the absence of Agency inspectors.

131. On 18 September 2004, the Board of Governors adopted resolution GOV/2004/79, in which it requested Iran, inter alia, to “immediately suspend all enrichment-related activities, including the manufacture or import of centrifuge components, the assembly and testing of centrifuges and the production of feed material, including through tests or production at the UCF, under Agency verification.” The Board also called again on Iran “as a further confidence building measure, voluntarily to reconsider its decision to start construction of a research reactor moderated by heavy water.”

132. In a letter dated 14 November 2004, the Government of Iran notified the Director General that, in the context of an agreement reached on 14 November 2004 between the Government of Iran and the Governments of France, Germany and the United Kingdom, and the High Representative of the European Union, Iran had “decided, on a voluntary basis and as further confidence building measure, to continue and extend its suspension to include all enrichment related and reprocessing activities, and specifically: the manufacture and import of gas centrifuges and their components; the assembly, installation, testing or operation of gas centrifuges; and all tests and production for conversion at any uranium conversion installation”. In its letter, Iran “recall[ed] and reconfirm[ed] that Iran does not have any reprocessing activity” or “any activity for undertaking plutonium separation, or for constructing or operating any plutonium separation installation”. In addition, Iran stated that “material at Isfahan UCF will be brought to a safe, secure and stable state, not beyond UF4, in coordination with the Agency.” Iran invited the Agency to verify this suspension starting from 22 November 2004.