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IRAN AND THE NUCLEAR NON- PROLIFERATION TREATY

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DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION
DIRECTORATE B
- POLICY DEPARTMENT -

IRAN AND THE NUCLEAR NON-PROLIFERATION TREATY
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Abstract:

This Briefing Paper examines the legal basis of EU policy towards Iran in the context of the Nuclear Non-Proliferation Treaty (NPT) and of the International Atomic Energy Agency (IAEA) legal framework. Its major emphasis is on the compatibility of the Paris Agreement concluded between the EU and Iran on 15 November 2004 with the stipulations of the NPT. In addition, the Briefing Paper addresses also the issue of Tehran's reduced cooperation with the IAEA and its repeated threats to withdraw from the NPT. The analysis of this Briefing Paper predates the June 2006 incentive package agreed upon by the P-5 plus Germany. But, guided by the "Diplomacy First!" principle, it makes some recommendations for the EU role in the context of the efforts of direct diplomacy efforts between Washington and Tehran in a multilateral setting.

Any opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

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Executive summary: discussing relevant dimensions of the Iran atomic dispute

The objective of this Briefing Paper is to analyse the legal basis of EU policy towards Iran in the context of the Nuclear Non-Proliferation Treaty (NPT)¹ and of the International Atomic Energy Agency (IAEA) legal framework. After a brief introduction into the overall context of the discussion and the *problématique* which is characterized by a steady increase of tensions until Washington's possibly tactical softening of its position in Spring 2006, section 1 addresses the question: Which Iranian nuclear activities are under which international legal obligations allowed and which are forbidden by the NPT and the Vienna-based Safeguards Agreement?

The shortcomings of the traditional IAEA control system and the strengths of the Additional Protocol are dealt with in section 2. Two points are especially relevant here. First, while all *declared* nuclear materials are accounted for, 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. Second, when the IAEA Board of Governors on 4 February 2006 decided to report the "Iran case" to the United Nations Security Council (UNSC), the more intrusive inspections under the Additional Protocol, signed and until then implemented by Tehran as if it were ratified, were stopped by Iran. Tehran's reaction enormously reduced the control capability of the IAEA.

The NPT, which is designed to prevent non-nuclear states from acquiring nuclear weapons, leaves open a possibility for the parties to it to master all segments of the fuel cycle and then withdraw legally under Article X. This loophole, and the current efforts to compensate for it, are dealt with in section 3. The analysis here focuses on the compatibility between the Paris Agreement concluded between the E3/EU (France, Germany and the United Kingdom, supported by the EU) and Iran on 15 November 2004 and the NPT.

Section 4 deals with the more specific question whether the measures, above all the "objective guarantees" as required by the EU in the Paris Agreement to restore trust are covered by 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, such restraints can only be voluntary, legally non-binding confidence building measures. The "grand bargain" between the Europeans and the Iranians explicitly recognised Iran's concessions as voluntary and legally non-binding. The E3/EU proposed Framework for a Long-Term Agreement of August 2005 which was aimed at implementing the Paris Agreement by offering incentives in return for Iranian enrichment suspension/termination, is assessed as sub-optimal for a major trading power. In the blunt words of a leading Western diplomat during a background interview with the author of this paper in Vienna on 9 March 2006, the E3/EU proposal was not worth the paper it was printed on.

Section 5 discusses whether a country loses the extensive right to use of nuclear technologies for peaceful purposes laid down in Article IV NPT after it has been found violating the NPT/Safeguards Agreements of the IAEA. This question concerns a much debated crucial weakness of the entire non-proliferation regime: the absence of more effective enforcement mechanisms. It is strange that the NPT does not establish a compliance mechanism and only makes an implicit reference to the compliance issue when delegating to the IAEA nuclear

¹ <http://www.iaea.org/Publications/Documents/Treaties/npt.html>

safeguards. However, the IAEA Board of Governors' 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 and military actions on Iran. As of mid-June 2006, the problem that may arise for countries embarking on the UNSC path is an automatism which may ultimately lead to military action.

The Briefing Paper finally addresses the issue of Tehran's reduced cooperation with the IAEA and its repeated threats to withdraw from the NPT. As North Korea did in 2003, Iran could legally withdraw after having mastered the entire nuclear fuel cycle under civil disguise. Proposals to raise the barrier for such a move – among them the requirement that a notice of withdrawal from the NPT should trigger automatic referral to the UN Security Council – could be helpful.

The aim of this analysis is not to provide policy recommendations. It still concludes that if the current efforts to find a diplomatic solution fail, sanctions, and, in the final analysis, military options, are unlikely to be effective in preventing Iran from acquiring nuclear capabilities. Therefore, the possible automatism even within the UNSC framework which might lead from sanctions to military options should be avoided – given the high stakes associated with destruction of Iranian nuclear facilities.

Tehran's nuclear ambitions have to be taken seriously, but they are not urgent in military terms, as long as a "smoking gun" has not been found in Iran and as long as there is agreement that Tehran's lead time to build a nuclear bomb is between five and ten years. In addition, direct diplomacy between Washington and Tehran in a multilateral negotiation setting holds the unprecedented promise for exploring all diplomatic opportunities for compromises. In this vital and presumably politically bumpy rapprochement process between the two traditionally hostile powers the Europeans – with the European Parliament as a distinct and important actor – should take the role as a facilitator and bridge-builder. Europeans have the experience of successfully ending the East-West conflict by initiating in the 1970s the CSCE process which led to peaceful and incremental regime evolution in Moscow as alternative to a bloody regime change. Moreover, without being able to provide security guarantees which Tehran seeks from Washington, 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.

For this Briefing Paper, interviews conducted in Vienna were extremely helpful as background information. The author wishes to thank the high-ranking delegates of major states to the International Atomic Energy Agency as well as the IAEA officials who spend their time discussing the pertinent issues.

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.²

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 – Teheran'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,³ 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 controls; the transparency regarding nuclear activities; its consistency of actions and declarations; the Iranian government's willingness to accept additional conditions to restore trust.

A "smoking gun" has not been found. For some observers, however, the last – and new – point of the Resolution of 4 February 2006 was an indication) for such a "smoking gun". The Resolution expressed concern that "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 (...) this process is related to the fabrication of nuclear weapon components". The IAEA "noting that the decision to put this document under Agency seal is a positive step, requests Iran to

² As of mid-June 2006, these proposals are not yet known and, therefore, are not subject of this Briefing Paper.

³ IAEA, Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran, Reports by the Director General, 6 June 2003 (GOV/2003/40) 26 August 2003 (GOV/2003/63), 10 November 2003 (GOV/2003/75), 24 February 2004 (GOV/2004/11), 1 June 2004 (GOV/2004/34), 1 September 2004 (GOV/2004/60), 15 November 2004 (GOV/2004/83), 2 September 2005 (GOV/2005/67), 18 November 2005 (GOV/2005/87).

maintain this document under Agency seal and to provide a full copy to the Agency (...).”⁴. But so far, the suspicion regarding the document that “is related to the fabrication of nuclear weapon components”, could not be confirmed. “Iran has yet to provide”⁵ the Agency with a copy of the relevant document.

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 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 following sections should be seen.

⁴ IAEA, Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran, Resolution adopted on 4 February 2006, GOV/2006/14.

⁵ IAEA, Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran, Report by the Director General, 8 June 2006 (GOV/2006/38), p. 2.

1. IAEA safeguards in Iran: the shortcomings of the traditional control system – the strengths of the Additional Protocol

All non-nuclear weapon states (NNWS) parties to the NPT are required to conclude a so-called full scope Safeguards Agreement with the IAEA.⁶ There is, however, no corresponding obligation for the five official nuclear weapon states – US, UK, Russia, France and China. At present, as many as 32 NNWS out of some 190 NPT members do, however, not have any such agreement in force⁷. 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.

This *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 6 for more detail).

In order to overcome major deficits of this inspection and safeguards system, the Model Additional Protocol⁸ 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 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-

⁶ This framework of safeguards is known as INFCIRC/153; the basis for the dealings between the IAEA and Iran is: IAEA, The Text of the Agreement Between Iran and the Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, 13 December 1974, INFCIRC/214; see also Trevor Findlay with the assistance of Erik Asplund, Andreas Persbo and Angela Woodward, WMD Verification & Compliance: The State of Play, The Weapons of Mass Destruction Commission, No. 19, Stockholm (no year indicated), pp. 9-15; Stockholm International Peace Research Institute (SIPRI), Review of Recent Literature on WMD Arms Control, Disarmament and Non-Proliferation, The Weapons of Mass Destruction Commission, No. 1, Stockholm (no year indicated), pp. 16-17.

⁷ NPT Comprehensive Safeguards Agreement, overview of status:
http://www.iaea.org/Publications/Factsheets/English/nptstatus_overview.html

⁸ 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).

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".⁹

The process of negotiating, signing and bringing Additional Protocols into force has been slow. To date, only 109 countries has signed and no more than 76 nations have put it into force¹⁰.

Iran signed an Additional Protocol on 18 December 2003 and pledged to act as if 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.

2. Ambivalences of the NPT: the debate about Article IV in the Iran context

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 the 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 parties 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".¹¹ 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 to give all non-nuclear weapon states the "inalienable right" to develop a *complete* nuclear fuel cycle for civil/peaceful nuclear activities (Annex II).

⁹ Guido den Dekker, *The Law of Arms Control. International Supervision and Enforcement*, The Hague et al. 2001 (Martinus Nijhoff Publishers), p. 303.

¹⁰ Strengthened safeguards system: status of Additional Protocols, http://www.iaea.org/OurWork/SV/Safeguards/sg_protocol.html.

¹¹ 2000 NPT Review Conference Final Document, in: *Arms Control Today*, Vol. 30, No. 5 (June 2000), p. 29.

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.¹² Robert Joseph, Undersecretary of State for Arms Control and International Affairs in the US State Department, emphasized on 8 March, 2006 during a hearing before the House International Relations Committee that “Iran has used the provision (Article IV, the author) as a means of gaining access to sensitive technologies for the purpose of moving forward to acquire a nuclear weapon. *This is a major loophole in the regime (...).*”¹³

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 exclusively designed “for peaceful purposes without discrimination and in conformity with articles I and II of this Treaty”.¹⁴ 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 for implementing 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 to acquire 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:

“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.”¹⁵

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

¹² GOV/2004/83, 15 November 2004, p. 23.

¹³ Unofficial transcript, emphasis added.

¹⁴ Emphasis added. Article I prohibits nuclear weapon states from helping other states to acquire nuclear weapons. Article II prohibits non nuclear weapon states from striving to acquire such weapons.

¹⁵ George Perkovich, Jessica T. Mathews, Joseph Cirincione, Rose Gottemoeller, and Jon B. Wolfsthal, Universal Compliance. A Strategy for Nuclear Security, Washington, D.C., June 2004 (Carnegie Endowment for International Peace), p. 93 (emphasis in original). Interestingly enough, two authors of this Carnegie proposal – Joseph Cirincione and Jon B. Wolfsthal – have rejected this legal approach, as it is “impractical and inadvisable”. See Joseph Cirincione and Jon B. Wolfsthal, North Korea and Iran: Test Cases for an Improved Nonproliferation Regime?, in: Arms Control Today, Vol. 33, No. 10 (December 2003), pp. 11-14 (quotation: p. 12).

the nuclear weapon states under Article VI to reduce their nuclear arsenals and to pursue measures towards nuclear disarmament).¹⁶

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 guaranteed supply of such fissile materials. This proposal interprets the “inalienable right” under Article IV in a restrictive way, i.e. “to limit expansion of enrichment and reprocessing technology beyond those states that *now* have full-up and functioning facilities”.¹⁷ 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 re-interpreting 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”.¹⁸
- Multinational Fuel Cycle Centres, including fuel banks: These concepts which date back to the 1970/80s,¹⁹ have recently been renewed by IAEA Director General ElBaradei. He convened an Expert Group on this issue whose report was published in early 2005.²⁰

¹⁶ Mohamed I. Shaker, *The Nuclear Non-Proliferation Treaty. Origin and Implementation 1959-1979*, Vol. I, London et al., 1980 (Oceana Publications, Inc.), esp. pp. 293-299; William Epstein, *The Last Chance. Nuclear Proliferation and Arms Control*, New York/London 1976 (The Free Press), p. 93. – On the Article IV problem see also Stockholm International Peace Research Institute (SIPRI), *Review of Recent Literature on WMD Arms Control, Disarmament and Non-Proliferation*, The Weapons of Mass Destruction Commission, No. 1, Stockholm (no year indicated), pp. 16-17.

¹⁷ Mark Fitzpatrick (US Acting Deputy Assistant Secretary), Meeting Nonproliferation Challenges: UNSCR 1540 and the 2005 NPT Review Conference, Remarks at the Meeting of the Organization of American States Committee on Hemispheric Security, Washington, D.C., 17 March 2005, <http://www.state.gov/t/isn/rls/rm/43638.htm> (emphasis added).

¹⁸ 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”.

¹⁹ Bernd W. Kubbig, *Nuklearenergie und nukleare Proliferation. Die inneramerikanischen Auseinandersetzungen um die Grundsätze der US-Nonproliferationspolitik*, Frankfurt am Main 1981 (Haag + Herchen), pp. 24-28; id., *Kernenergie und Kernwaffen: Strategien zur Eindämmung nuklearer Proliferation. Analyse und Dokumentation*, Frankfurt am Main 1981 (Haag + Herchen), pp. 30-32.

²⁰ 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 nuclear energy and the stability of the non-proliferation regime, in: Burkard Schmitt (ed.), *Effective non-proliferation. The European Union and the 2005 NPT Review Conference*, Paris April 2005 (Institute for Security Studies, Chaillot Paper No. 77), esp. pp. 47-57; for a critical assessment of such centres in the context of the Iran debate, see Oliver Meier, *Iran and Foreign Enrichment: A Troubled Model*, in: *Arms Control Today*, Vol. 36, No. 1 (January/February 2006), http://www.armscontrol.org/act/2006_01-02/JANFEB-iranenrich.asp; see also 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>, citing the “bitter past history of monopoly, sanctions as well as the lack of any international legally binding instrument for assurances of nuclear supply (...)”. Moreover, in the Iranian view

“• 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.

- The “grand bargain” between the EU and Iran as codified in the Paris Agreement on which the following section of this Briefing Paper will focus.

3. Filling the Article IV loophole: the EU approach as codified in the Paris Agreement and in the August 2005 Framework for a Long-Term Agreement

The E3/EU approach as presented in the Paris Agreement²¹ 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.²²

The signatories of the Paris Agreement – France, Germany, 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 incident 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) are 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

• 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.)

²¹ IAEA, Communication dated 26 November 2004 received from the Permanent Representatives of France, Germany, the Islamic Republic of Iran and the United Kingdom concerning the agreement signed in Paris on 15 November 2004, 26 November 2004, INFCIRC/637; see also 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>.

²² 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.

and reprocessing activities can in strict legal terms not be derived from the NPT. This does, however, *not* imply that the European-Iran Agreement *as a political effort* is at odds with the spirit of the treaty, which wants to prevent its non-nuclear members to become 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 reaffirm not only their commitment to the NPT, but to the Tehran Agreed Statement of 21 October 2003,²³ and that they have decided “to move forward, building on that agreement”.²⁴ 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”.²⁵
- 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”.
- “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”. (Here, the IAEA and additional criteria regarding Iran’s behaviour come in.)

5. After violations of the NPT/Safeguards Agreement: losing the right to apply Article IV?

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?”²⁶. There is only an implicit reference to compliance in the NPT, where nuclear safeguards are delegated to the IAEA.

As mentioned in section 3, 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

²³ 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.

²⁴ IAEA, Communication dated 26 November 2004 received from the Permanent Representatives of France, Germany, the Islamic Republic of Iran and the United Kingdom concerning the agreement signed in Paris on 15 November 2004, 26 November 2004, INFCIRC/637.

²⁵ 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.)

²⁶ International Security Research and Outreach Programme, Foreign Affairs Canada, Weapons of Mass Destruction Verification and Compliance: Challenges and Responses, The Weapons of Mass Destruction Commission, No. 20 (no year indicated), p. 14 (in original bold and in italics); an extremely informative and problem-oriented overview is provided by Daryll Howlett and John Simpson, Nuclear non-proliferation – how to ensure an effective compliance mechanism, in: Burkard Schmitt (ed.), Effective non-proliferation. The European Union and the 2005 NPT Review Conference, Paris April 2005 (Institute for Security Studies, Chaillot Paper No. 77), pp. 9-25. The author wishes to thank John Simpson for additional information provided on related issues.

Agreements are not congruent. This 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 for assembling 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. Its findings, which may open the way to the application of enforcement mechanisms provided in the IAEA Statute and the INFCIRC/153 Safeguards Agreement, relate to non-compliance with the country’s obligations. These correction or enforcement measures are not triggered by an *established* violation of the NPT Treaty. They are rather set in motion by the *inability* of the IAEA to verify that there has been no diversion of nuclear materials to military purposes – or if the IAEA considers verifiability to be in jeopardy (INFCIRC/153, paras 18-19).

If, as in the case of Iran, the Vienna-based Agency finds a country in possible or actual non-compliance with its Safeguards Agreement, the Board of Governors may take certain action – including seeking clarification, “complementary access” by special inspections, or punitive measures. The report (see INFCIRC/153, para. 19) of non-compliance will be sent to all members of the IAEA, to the UN Security Council and the UN General Assembly (see Article XII. C of the IAEA Statute). If the country fails to take full corrective action within a reasonable time, the Board of Directors may curtail or suspend technical assistance being provided by the IAEA or by a member state; the IAEA may also call for the return of materials and equipment which was made available to the problematic recipient member.

Based on Article XIX of its Statute, the IAEA may also suspend any non-compliant country from the privileges and rights of membership (this happened to Israel after the destruction of the Iraqi nuclear reactor in June 1981). No mentioning is made that a state would lose the right under Article IV of the NPT, i.e. building even a complete nuclear fuel cycle – provided, one would hasten to add, that as emphasized earlier, the nuclear activities of the specific country are regarded in conformity with Article I and II of the NPT as exclusively peaceful. Requiring suspension of Iran’s enrichment activities is beyond the authority of the IAEA.

And yet, the Board of Governors’ 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*, impose *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.²⁷

As of mid-June 2006, the problem that may arise for countries embarking on the UNSC path is an automatism which may ultimately lead to military action.

6. Iran's reduced cooperation with the IAEA and its threats to withdraw from the NPT

As mentioned in section 3, 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 on 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 leave 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 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 withdrawal²⁸.

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

²⁷ Kenneth Katzman, Iran: U.S. Concerns and Policy Responses, Washington, D.C., updated 20 January 2006, CRS Report for Congress, pp. 29-30.

²⁸ 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Working paper on article X (NPT withdrawal) submitted by Australia and New Zealand, NPT/Conf.2005.WP.16, New York, 2-27 May 2005.

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.²⁹ In fact, “(d)uring the NPT negotiations a very limited number of countries objected to the right of withdrawal (...).”³⁰

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.”³¹

The involvement of the UN Security Council is one matter, the criteria and the special circumstances are another. 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 and 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.³²

If things run badly after the deadline for the Iranians to respond to the 6 June proposal and the call to stop all enrichment activities, this author would argue and conclude the following. Sanctions, and, in the final analysis, military options, are unlikely to be effective in preventing Iran from acquiring nuclear capabilities. Therefore, the possible automatism even within the UNSC framework which might lead from sanctions to military options should be avoided – given the high stakes associated especially with military destruction of Iranian nuclear facilities.³³

²⁹ Mohamed I. Shaker, *The Nuclear Non-Proliferation Treaty. Origin and Implementation 1959-1979*, Vol. II, London et al., 980 (Oceana Publications, Inc.), p. 885.

³⁰ Ibid., p. 887.

³¹ Hassan Rohani, Iran’s Nuclear Program: The Way Out, in: *Time*, 9 May 2006, <http://www.time.com/time/world/printout/0,8816,1192435,00.html>.

³² “Iran hat weder Atomwaffen noch Material dafür”, *Spiegel online*, 2 February 2006, <http://www.spiegel.de/politik/ausland/0,1518,398791,00.html>.

³³ 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 Institute Frankfurt (PRIF) in Berlin on 27 and 28 March 2006. See in greater detail the Documentation, edited by Bernd W. Kubbig, Axel Nitsche, Carolin Anthes, and Sascha Knaus (available at PRIF).

Annex I

List of Locations Relevant to the Implementation of Safeguards in Iran

LOCATION	AS OF NOVEMBER 2004	STATUS
TEHRAN NUCLEAR RESEARCH CENTRE	Tehran Research Reactor (TRR)	Operating
	Molybdenum, Iodine and Xenon Radioisotope Production Facility (MIX Facility)	Constructed, but not operating
	**Jabr Ibn Hayan Multipurpose Laboratories (JHL)	Operating
	**Waste Handling Facility (WHF)	Operating
TEHRAN	**Kalaye Electric Company	Dismantled pilot enrichment facility; being converted to centrifuge enrichment R&D
BUSHEHR	Bushehr Nuclear Power Plant (BNPP)	Under construction
ESFAHAN NUCLEAR TECHNOLOGY CENTRE	Miniaturized Neutron Source Reactor (MNSR)	Operating
	Light Water Sub-Critical Reactor (LWSCR)	Operating
	Heavy Water Zero Power Reactor (HWZPR)	Operating
	Fuel Fabrication Laboratory (FFL)	Operating
	Uranium Chemistry Laboratory (UCL)	Closed down
	Uranium Conversion Facility (UCF)	Hot testing/commissioning stage
	Graphite Sub-Critical Reactor	Decommissioned

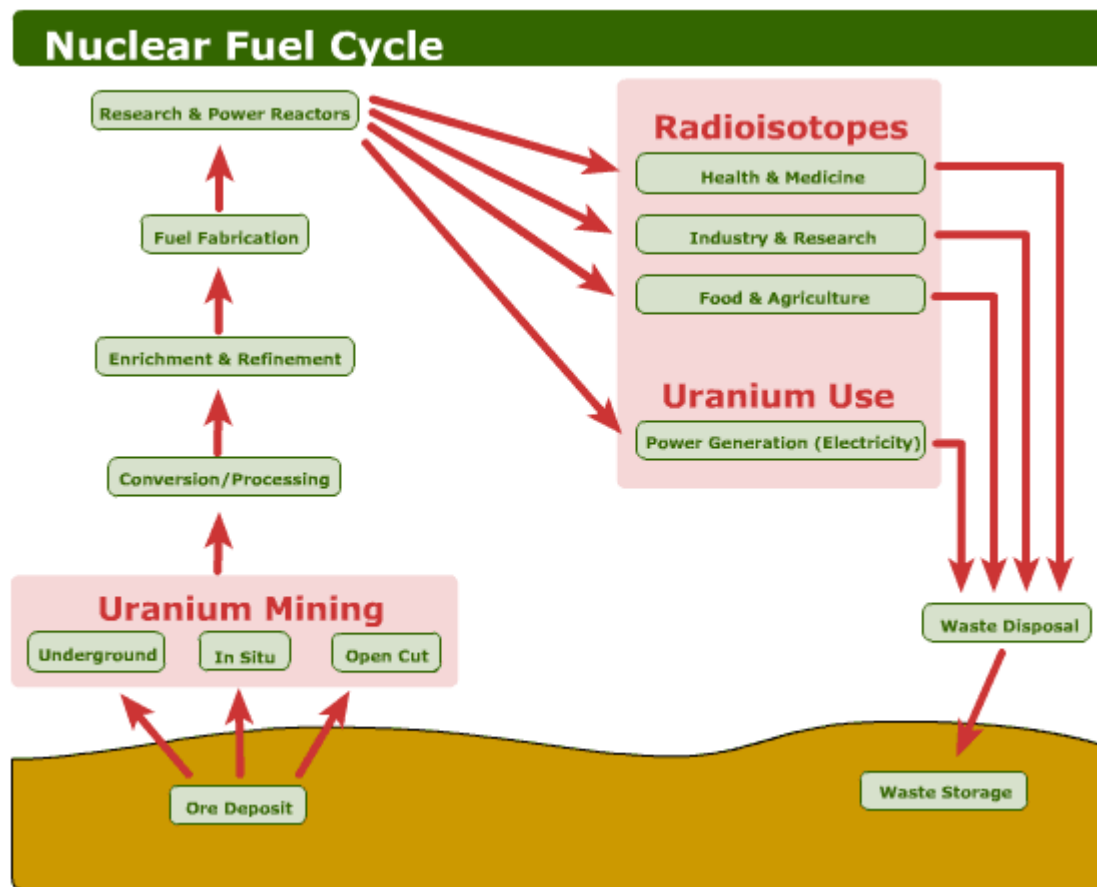
	(GSCR)	
	**Fuel Manufacturing Plant (FMP)	In detailed design stage, construction to begin in 2004
	**Zirconium Production Plant (ZPP)	Under construction
NATANZ	**Pilot Fuel Enrichment Plant (PFEP)	Operational; currently suspended
	**Fuel Enrichment Plant (FEP)	Under construction; currently suspended
KARAJ	**Radioactive Waste Storage	Partially operating
LASHKAR AB'AD	**Pilot Uranium Laser Enrichment Plant	Dismantled
ARAK	**Iran Nuclear Research Reactor (IR-40)	In detailed design phase
	**Hot cell facility for production of radioisotopes	Declared as no longer being under consideration
	**Heavy Water Production Plant (HWPP)	Under construction
ANARAK	**Waste storage site	Waste to be transferred to JHL

* IAEA, Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran, Report by the Director General, 15 November 2004, GOV/2004/83, Annex 1.

** Declared in 2003.

Annex II

Nuclear Fuel Cycle*



* Source: http://www.uraniumsa.org/fuel_cycle/nfcycle.htm.

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 2004.” 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.

* IAEA, Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran, Report by the Director General, 15 November 2004, GOV/2004/83, pp. 26-27.