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Priority Steps to Strengthen the Nonproliferation Regime

By Pierre Goldschmidt

Introduction

The greater the number of states possessing nuclear weapons, the greater the risk that one day, by design or accident, they will be used by a state or a non-state actor with catastrophic consequences. The international community must therefore reject the recent tendency to accept the idea that, sooner or later, more countries will possess nuclear weapons, and that we can do nothing to stop it. There are more steps that can be taken to “dissuade” and “deter” non-nuclear weapons states (NNWS) from acquiring such weapons, if the international community—particularly the nuclear weapons states—make this a higher priority other than in words.

“Dissuasion” entails persuading a state (both the leaders and the people) that it is not in that state’s best interest to acquire a nuclear weapons capability. In order to create the necessary geopolitical environment, dissuasion can mainly, if not exclusively, be achieved through bilateral and multilateral negotiations, including, first of all, appropriate security guarantees. The most remarkable achievement in recent years has been the success of secret diplomacy in convincing Libya’s leadership that abandoning its weapons of mass destruction (WMD) and missile programs would increase the country’s security and improve its economic development. As with the Libya case, persuasion efforts should be undertaken well in advance of any anticipated crisis to be most effective.

“Deterrence” plays its role when a NNWS cannot be persuaded that acquiring a nuclear weapons capability is not in its best interest. It is essential for any such state to know both that any undeclared nuclear weapons program has a high probability of *early* detection, and that, if detected, negative consequences would be *unavoidable* (and not simply possible). Unfortunately, neither of these two deterrents is credibly in place today, and it is therefore essential to take the practical steps necessary to improve the situation. In order to derive conclusions about best practices in strengthening deterrence, we need to draw on the lessons learned from previous nuclear proliferation crises.

Strengthening the IAEA Verification System

The “Model Protocol Additional” was adopted by the International Atomic Energy Agency (IAEA) in 1997, in the wake of the first Gulf War. After it was discovered that Saddam

Hussein had secretly been developing nuclear weapons at undeclared sites, the Additional Protocol (AP) was designed to better enable the Agency to confirm the lack of undeclared nuclear materials and activities in a NNWS. To date, however, some 20 NNWS with known nuclear activities have no Additional Protocol in force, including at least three—Argentina, Brazil, and Iran—that are known to have uranium enrichment activities. Centrifuge uranium enrichment, a dual-use technology that may be reconfigured to produce weapons grade uranium with little technical difficulty, is of particular concern for the nonproliferation community. When a country pursues dual-use technologies in its fuel cycle, the risks increase that the technology may be used at an undeclared site for weapons purposes or to rapidly produce weapons grade material in case the country withdraws from the Nuclear Non-proliferation Treaty (NPT).

Due to the heightened risk associated with dual-use technologies, *the first step toward strengthening the verification system requires the international community to demand much more forcefully that states utilizing dual-use fuel cycle technologies bear a greater responsibility for assuring others of the peaceful nature of their nuclear programs. Such states should be pressed to sign and ratify the Additional Protocol, and the IAEA should mention explicitly in its annual report those which have not yet done so.* The Nuclear Suppliers Group could also play a significant role in this respect by adopting a rule that no nuclear material, equipment, or know-how would be transferred to any country having conversion, enrichment, or reprocessing activities unless it has an Additional Protocol in force and unless these and all other nuclear facilities are covered by an INFCIRC/66-type Safeguards Agreement.¹

For its part, the IAEA Secretariat has recently made a number of very valuable recommendations to the so-called IAEA “Committee 25,” the advisory committee on safeguards and verification. These recommendations can primarily be classified as either those based on existing legal obligations or those proposing voluntary actions.

In addition to the recommended improvements that should be made within the existing legal obligations, more should be done to ensure that inspectors have access to any and all individuals necessary to determine a country’s compliance with its safeguards agreements, as foreseen in the IAEA statute.²

With regard to voluntary actions, the Secretariat makes the particularly important recommendation that states should provide extensive information related to exports, procurement inquiries, and export denials to allow the Agency greater ability to detect undeclared nuclear activities.³ Another very important recommendation that should be added to the Secretariat’s list is to request that all Member States provide the Agency, on a regular basis, information regarding each *import* of specified equipment and non-nuclear material (listed in Annex II of the AP). Today such information is not obligatory and requires a specific request from the Agency of Member States.

There is reason to doubt that the Board of Governors, in the present circumstances, will adopt such recommendations any time soon. However, *to ensure a stronger verification system, the recommendations made to the IAEA Committee 25 should be extended and implemented.* It would be much faster and more effective for the Director General to circulate a note (INFCIRC) to all Member States wherein he would draw their attention to the fact that the above mentioned information is most valuable for the Agency to fulfill its mandate and that the Agency would expect Member States to provide such information on a regular basis under Article VIII.A. of the IAEA Statute.⁴

But clearly, none of these recommendations, even if they were adopted, would be sufficient to meet the two goals of early detection of a nuclear weapons program and making negative consequences inevitable in such a case. So what can be done? In the present geopolitical environment and considering in particular the frustration of most NNWS regarding the lack of progress in nuclear disarmament by the five nuclear weapons states, any attempt to amend the NPT, Comprehensive Safeguards Agreement, or the Model Protocol Additional⁵ would be doomed to failure and possibly counter-productive.

In considering practical options, one should definitely avoid penalizing all Member States because a couple of them have violated their commitments. It is therefore important to focus attention on those states that have been in *non-compliance* and those which are *withdrawing or threatening to withdraw* from the NPT.

Non-compliance

Experience with both North Korea and Iran has shown that, in order to conclude in a *timely* manner that there are no undeclared nuclear materials or activities in a state as a whole, *after a state has been found by the IAEA to be deliberately in non-compliance with its safeguards undertakings, the Agency needs verification rights extending beyond those of the Comprehensive Safeguards Agreement and Additional Protocol.*⁶ Acknowledging this, in September 2005, the Board of Governors adopted a resolution urging Iran “to implement transparency measures which extend beyond the formal requirements of the Safeguards Agreements and Additional Protocol” as a means to more efficiently determine the peaceful nature of its program. The problem here is that such IAEA Board resolutions do not provide the Agency with any additional legally binding verification authority—they are merely requests for voluntary action on the part of non-compliant states.

The most effective, unbiased, and feasible way to establish a legal basis for the necessary verification measures in circumstances of non-compliance is for the United Nations Security Council (UNSC) to adopt (under Chapter VII of the UN Charter) a generic (i.e. not state specific) and legally binding resolution stating that if a state is reported by the IAEA to be in non-compliance, a standard set of actions would result.

First, the non-compliant state would have to suspend all sensitive nuclear fuel cycle activities for a specified period of time,⁷ but it could continue to produce electricity from nuclear power plants. Second, if requested by the IAEA, the UNSC would automatically adopt a *specific* resolution (under Article 41 of the UN Charter) making it mandatory for the non-compliant state to provide the Agency with the necessary additional verification authority. Areas in which the verification authority would increase should include assurance of prompt access to persons, broader and prompt access to locations, access to original documents and copies thereof, broader and faster access to information, and the lifting of other types of restrictions (for example, on the use of Agency equipment including wide area environmental sampling, recording meeting, limitations on the number of designated inspectors, visas, etc.). Such authority would last until the Agency could conclude that there is no undeclared nuclear material and activities in the state and that its declarations to the Agency are correct and complete. Finally, no nuclear material would henceforth be delivered to that state without the guarantee that all nuclear material and facilities declared to the IAEA would remain under Agency’s safeguards,⁸ even if the state withdraws from the NPT.

Possible objections to this proposal are analyzed in the Appendix. None appears to be decisive or justify not pursuing the implementation of the proposed generic resolution.

On the contrary, if such a generic resolution had been adopted before November 2003, when the Director General reported to the Board of Governors that Iran was in breach of its

obligation to comply with its safeguards undertakings,⁹ it is most likely that Iran would have been reported at the time to the UNSC. The main, if not the only, consequence at that point would have been to make the “suspension” mandatory. Adopting a generic resolution would have made clear that, contrary to what many Member States feared, no “sanction” would have been envisaged at such an early stage. Therefore, there would have been no incentive for France, Germany, and the UK (the so-called EU-3) to agree to delay referring Iran’s non-compliance to the UNSC in exchange for the temporary and voluntary suspension of enrichment activities in Iran. In the particular case of Iran, the request to suspend all sensitive nuclear fuel cycle activities is all the more justified in that there is evidence that Iran has violated Article II of the NPT,¹⁰ upon which its rights to develop nuclear energy under Article IV of the Treaty are predicated.

Withdrawal From the NPT

The current crisis in Iran appears to be a repetition of the earlier (and ongoing) crisis in North Korea. Since 1993, North Korea has repeatedly been declared by the IAEA to be in non-compliance with its safeguards agreement and has been reported to the UNSC without the latter taking any action. In 2003, North Korea gave notice that it was withdrawing from the NPT and, in 2004, declared that it possessed nuclear weapons. The UNSC did not act because China was threatening to use its veto right against any resolution adverse to North Korea.

It was only after North Korea’s nuclear test on October 9, 2006 that the UNSC finally adopted a resolution, under Chapter VII of the UN Charter, deciding that all Member States shall take a number of targeted measures aimed at preventing any direct or indirect contribution to North Korea’s nuclear, ballistic or other WMD-related programs. It remains to be seen to what degree these measures will be implemented in practice by all Member States.

The incapacity of the UNSC over thirteen years to take any dissuasive measure against North Korea’s nuclear weapons program until it was too late has considerably undermined the nuclear nonproliferation regime. This was not inevitable, nor is it the “fault” of the non-proliferation regime. Rather, this weakness is the result of some nuclear weapon states choosing to delay or oppose reasonable enforcement measures by the UNSC when states are breaking the rules.

If the international community does not seem to have learned the lessons from the crisis in North Korea, Iran has. There are signs that it may be preparing to follow the same steps as North Korea if the development of its nuclear program is threatened by the UNSC or any of its members.

While the international community was debating what to do with the Iranian nuclear program, Iran’s leaders have made stunning advances in mastering all technological aspects of uranium conversion and enrichment without incurring any negative repercussion. Although it has no use for domestically produced low enriched uranium for peaceful purposes for at least the next ten years,¹¹ Iran is nonetheless busy installing centrifuge enrichment cascades at Natanz.

By ignoring the repeated requests of the IAEA Board of Governors and recently of the UNSC to suspend these activities, Iran is jeopardizing its chances of concluding broad cooperation agreements as offered in August 2005 by the European Union (EU) and in July 2006 by the five Nuclear Weapons States and Germany (the P5+1) that would open the door to large foreign investments, high-tech transfers, and security guarantees.

By cleverly using to their advantage the divisions among the major powers, fuelling fears of a rapid rise in oil prices, and threatening to share their sensitive nuclear know-how (including uranium enrichment) with other states and increase their support to terrorist movements in the region, Iran’s leaders have so far been confident that the UNSC will be unable to agree on any

significant sanctions and that if eventually it does, their imposition will further increase the popular support for Iran to carry on with its nuclear program. It may prove to be a miscalculation.

This being said, one should not discount the fact that Iran's uncompromising attitude may be a step toward preparing for its withdrawal from the NPT. Under Article X of the NPT, a nation may leave the treaty if it decides that extraordinary events have jeopardized its supreme interests. In a letter addressed on March 21, 2006 to Secretary General Kofi Annan, Iran complained about the fact that senior U.S. officials have publicly threatened to resort to force against Iran "*in total contempt of international law and the fundamental principles of the Charter of the United Nations.*" The letter conveyed in an international forum Iran's feelings of insecurity that could legitimize withdrawal from the NPT. Also in a letter to Secretary General Kofi Annan on May 7, 2006, the Iranian Parliament threatened to force Iran's government to withdraw from the NPT if pressure continued for Tehran to suspend uranium enrichment activities. More recently, on September 5, it was announced that the Iranian Parliament's National Security and Foreign Policy Commission was considering a bill that would suspend all IAEA inspections in Iran, in clear violation of Iran's safeguards agreement and tantamount to withdrawing from the NPT. Similar threats have been repeated a number of times since then.

It is therefore essential for the international community not to wait for Iran's withdrawal from the NPT¹² without taking any preventive action. As a step toward strengthening the nonproliferation regime, *the UNSC should adopt (under Chapter VII of the UN Charter) a generic and legally binding resolution stating that if a state withdraws from the NPT (an undisputed right under its Article X) after being found by the IAEA to be in non-compliance with its safeguards undertakings, then such withdrawal constitutes a threat to international peace and security as defined under Article 39 of the UN Charter.* Under these circumstances, all materials and equipment made available to such a state or resulting from the assistance provided to it under a Comprehensive Safeguards Agreement would be forthwith removed from that state under IAEA supervision and remain under Agency's Safeguards.¹³

As for the specific case of Iran, and considering its numerous threats to withdraw from the NPT, it would be irresponsible for Russia to deliver fuel assemblies to Bushehr, if that nuclear power plant (NPP) (as well as all other facilities where Russian fuel would be stored or used) is not subject to an INFCIRC/66-type Safeguards Agreement with the IAEA. Also, the fuel for the Bushehr NPP should only be delivered under the condition suggested above: that in case of withdrawal from the NPT the fuel would have to be forthwith removed from the country and returned to Russia.

It is most regrettable that the UNSC, in Resolution 1696 of July 31, 2006, did not define which additional mandatory verification authority should be granted, on a temporary basis, to the IAEA but only called upon Iran to act more transparently. UNSC Resolution 1737 of December 23, 2006 requires (under Article 41 of the United Nations Charter) Iran to provide such access and cooperation as the IAEA requests in order to resolve all outstanding issues. It remains to be seen whether this decision will, in practice, enable the Secretariat to implement fully the Additional Protocol, interview relevant individuals, take copies of documents and access promptly military owned workshops and locations where fuel cycle related R&D is taking place. The fear was expressed that if Iran refuses to comply with such requests, it may lead to an escalation scenario similar to what has happened in Iraq.

Isn't it illogical for the IAEA to repeatedly state that Iran needs to provide the Agency more transparency than required in its the Safeguards Agreement and Additional Protocol, and that until such openness is achieved, the IAEA is unable to verify the peaceful nature of its

program, while at the same time refraining from explicitly requesting from the UNSC the necessary legally binding additional verification authority? Could it be that those states that have contributed most to Iran's undeclared nuclear activities may fear that, with more investigation rights, the Agency could discover so far unknown and possibly embarrassing evidence of their previous collaboration? Some have objected that, under pressure, Iran could withdraw from the NPT. If this were to happen it is doubtful that Russia would still be willing to deliver fresh fuel to Bushehr and it would be a clear indication that nuclear electricity is not Iran's priority. If Iran's endgame is to withdraw from the NPT, isn't it better now rather than in five or ten years?

Conclusion

The very much publicized divisions among the five veto-wielding members of the UN Security Council regarding how the Council should deal with the crises in North Korea and Iran are profoundly damaging the credibility of the nonproliferation regime and encourage states found to be in non-compliance with their safeguards agreements to defiantly ignore the resolutions adopted by the IAEA Board of Governors and the UN Security Council. Adopting the generic resolutions suggested in this paper would be a step in the right direction toward restoring the credibility of the nuclear nonproliferation regime.

In summary, this paper recommends the following actions:

- 1. Press states utilizing dual-use fuel cycle technologies to ratify the Additional Protocol thereby demonstrating greater responsibility for assuring others of the peaceful nature of their nuclear programs.*
- 2. Extend and implement the recommendations made to the IAEA Committee 25.*
- 3. The UNSC should adopt a generic and legally binding resolution stating that if a state is reported by the IAEA to be in non-compliance, a standard set of actions would result. These actions include providing the Agency with verification rights extending beyond those of the Comprehensive Safeguards Agreement and Additional Protocol, and the temporary suspension of sensitive fuel cycle activities.*
- 4. The UNSC should also adopt another generic and legally binding resolution stating that if a state withdraws from the NPT after being found by the IAEA to be in non-compliance with its safeguards undertakings, then such withdrawal constitutes a threat to international peace and security as defined under Article 39 of the UN Charter.*

APPENDIX

Answers to possible objections about the proposed generic UNSC Resolutions

1. Some Member States may object to the idea of adopting generic resolutions for the reason that the UNSC is not and should not become a legislative body. Some fear that the proposal made in the paper could set an unwelcome precedent for other similar cases.

Answer:

The anachronistic limitations and the loopholes contained in the NPT and safeguards agreement (including the Additional Protocol) should be corrected one way or the other if the credibility of the nonproliferation regime is to be saved. Any attempt to amend the NPT or Comprehensive Safeguards Agreement or the Model AP would be doomed to failure and most likely counter-productive because NNWS would be irritated and would perceive the changes as intensifying discrimination against the nuclear have-nots. For the same reason, one should avoid any measure that could be seen as penalizing states in good standing with their safeguards undertakings because a couple of states has violated their commitments. This is why the proposed generic UNSC resolutions would deal exclusively with the case of NNWS that have been in *non-compliance* and those that are withdrawing from the NPT. A rule-based regime defeats itself if it does not embrace reasonable enforcement such as this.

Would the alternative of doing nothing be preferable?

2. The 5 veto-wielding nuclear weapons states will never accept to give up their veto right on any UNSC Resolution. Doing so could undermine their political leverage or their ability to protect an allied country.

Answer:

The generic resolutions proposed do *not* deprive the five nuclear weapons states of their veto right on any state specific resolution. What these generic resolutions do achieve is to make sure that the UNSC will consider the matter without undue delay and will not avoid discussing it even when a state, such as North Korea, violates its safeguards agreement and thereafter withdraws from the NPT.

3. It is not appropriate for the UNSC to decide on *sanctions* outside any state specific case.

Answer:

It is not a sanction to ensure that all nuclear material and facilities declared to the IAEA would legally remain under IAEA Safeguards (cf. INFCIRC/66-type Safeguards agreement) even if the state withdraws from the NPT. The question is then whether the *temporary* suspension of sensitive fuel cycle activities (if any) in a *non-compliant* state should be qualified as a “sanction” or simply seen as a “precautionary” measure, or to put it in Dr. ElBaradei’s words: a “*rehabilitation period*” or a “*probation period, to build confidence again, before you can exercise your full rights.*”¹⁴ Providing, *temporarily*, to the IAEA additional verification authority should not be considered to be a sanction. In any case that measure would *not be automatic* and would require a state specific resolution that could be vetoed by any of the five veto-wielding members of the UNSC.

A more delicate point may be the “removal” of nuclear material and equipments delivered to a NNWS under a Comprehensive Safeguards Agreement if the state, *after being found in non-compliance*, decides to withdraw from the NPT. As mentioned in the paper this is not a new concept.¹⁵ This action should not be seen as a “sanction” but as a normal and predictable consequence of a state’s behavior.

4. Adopting the proposed generic resolutions would deter states—such as Brazil or Egypt—from signing and ratifying the Additional Protocol.

Answer:

States like Brazil or Egypt have so far refused to sign the AP for reasons that have nothing to do with the proposed resolutions. It is difficult to see how they could use these generic resolutions as a pretext for not signing the AP since the resolutions deal only with states in *non-compliance*.

5. The concern was expressed that adopting the proposed generic resolutions could make it even more difficult for the IAEA Board of Governors to declare that a state has been in non-compliance under Article XII.C. of the Statute.

Answer:

First of all, one should not forget that no Member of the IAEA Board of Governors has a veto right, and that Board resolutions need only a simple majority to be adopted. Also, it is most likely that, if such UNSC generic resolutions had been adopted before November 2003, when the Director General reported to the Board of Governors that Iran was in breach of its obligation to comply with its safeguards undertakings,¹⁶ Iran would have been reported at the time to the UNSC because the main if not the only consequence would have been to make the “suspension” mandatory. It would have made clear that, contrary to what many Member States feared, no “sanction” would have been envisaged at that stage. Therefore there would have been no incentive for the EU-3 to agree to delay referring Iran’s non-compliance to the UNSC in exchange for the temporary and voluntary suspension of enrichment activities in Iran.

With regard to the risk of sanctions if and when a country is referred to the UNSC, one should recall that on March 10, 2004 the IAEA Board of Governors adopted a resolution finding that Libya’s past failures to meet the requirements of the relevant Safeguards Agreement constituted non-compliance and, in accordance with Article XII.C. of the Statute, requested the Director General to report the matter to the Security Council *for information purpose only*, with no negative consequence for Libya.

6. The question has also been raised about what type of safeguards failure or violation would trigger a report to the Board of Governors and what kind of failure will be considered by the Board of Governors to be “non-compliance” that needs to be reported to the UNSC under Article XII.C of the Statute.

Answer:

It would not be advisable to try to define what constitutes non-compliance. Indeed it should be left to IAEA’s inspectors and the Director General to decide what kind of finding and/or failure of a state to comply with its Safeguards Agreement justifies reporting the matter to the Board of Governors under Article XII.C. of the Statute,¹⁷ and what kind of failure, anomaly, discrepancy, question or inconsistency will only be reported by the Secretariat in its annual Safeguards Implementation Report. Any such state specific report to the Board of Governors, whatever the language used to describe the failure, breach, or access denial should, by definition, be considered

as a report on non-compliance and would therefore have to be reported to the UNSC. The IAEA Secretariat's reports to the Board of Governors on the implementation of Safeguards Agreement in a state are factual and objective. Transmitting these reports systematically to the UNSC can only improve confidence in the effectiveness and transparency of the IAEA's verification system. One should avoid the risk of setting precedents similar to what happened with regard to "special inspections" which makes the implementation of such inspections so problematic today.

One could object that since a state-specific report to the Board of Governors would automatically entail the temporary suspension of sensitive fuel cycle activities (if any) in that state, IAEA inspectors and the Director General would be more reluctant to report failures and breaches outside the annual Safeguards Implementation Report. I believe that the inspectors and the Director General, being the only individuals to have at their disposal all the facts and detailed first hand information available, are by far in the best position to make an objective and non-discriminatory judgment about what needs to be specifically reported to the Board of Governors. It would thereafter be up to the Board of Governors, in a state specific resolution to express as it deems appropriate its degree of concern with regard to the reported non-compliance and possibly its satisfaction with the corrective actions taken by the state and the cooperation provided to the Agency, and to request the Director General to report the matter to the Security Council.¹⁸

7. The adoption of the proposed generic resolutions would make it even less likely that a country would voluntarily admit some previous wrongdoing because of the consequences and the risk of sanctions.

Answer:

On the contrary, it would make clear to such a state that if it voluntarily admits previous breaches, and fully cooperates with the IAEA (as Libya did), there would be no economic or political sanctions. The only consequence would be a temporary suspension of sensitive fuel cycle activities (that needs to be coupled with strong nuclear fuel supply guarantees for any operating nuclear power plant) until such time the IAEA has concluded that there is no undeclared nuclear material and activities in that state and that its declaration is correct and complete.

Pierre Goldschmidt was the former deputy director general of the IAEA, head of the Department of Safeguards, and is presently a non-resident scholar at the Carnegie Endowment for International Peace. This paper is an expanded version of a paper presented at Wilton Park on December 19, 2006.

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

² The IAEA statute outlines that inspectors “*should have access at all times [...] to any persons [...] as necessary [...] to determine whether there is compliance with the undertaking against use in furtherance of any military purpose.*”

³ The full recommendation is quite specific about what aspects of exports should be reported to the IAEA. The recommendation “requests all States to provide to the Agency relevant information on exports of specified equipment and non-nuclear material, procurement enquiries, export denials, and relevant information from commercial suppliers in order to improve the Agency’s ability to detect possible undeclared nuclear activities”.

⁴ Article VIII.A. states that: “*Each member should make available such information as would, in the judgment of the member, be helpful to the Agency.*”

⁵ Except that Article 16.b of the AP provides that “*The list of activities specified in Annex I, and the list of equipment and material specified in Annex II, may be amended by the Board upon the advice of an open-ended working group of experts established by the Board. Any such amendment shall take effect four months after its adoption by the Board.*”

⁶ This appears clearly from the Director General’s report of April 28, 2006 to the IAEA Board of Governors, where it is stated that “*the Agency is unable to make progress in its efforts to provide assurance about the absence of undeclared nuclear material and activities in Iran,*” nor can it assess “*the role of the military in Iran’s nuclear program.*”

⁷ At least as long as the IAEA has not drawn the conclusion that the State declaration is correct and complete, or possibly longer, in line with what Dr. ElBaradei has called a “*rehabilitation period*” or a “*probation period, to build confidence again, before you can exercise your full rights.*” (cf. interview with *Newsweek*, January 23, 2006)

⁸ Under an INFCIRC/66- type Safeguards Agreement

⁹ In IAEA document GOV/2003/75, the Director General reported, “*The recent disclosures by Iran about its nuclear programme clearly show that, in the past, Iran had concealed many aspects of its nuclear activities, with resultant breaches of its obligation to comply with the provisions of the Safeguards Agreement.*” In the Board resolution of September 24, 2006, this action was determined to constitute “*non-compliance*”

¹⁰ The Agency revealed, in November 2005, and confirmed in January 2006 that Iran had been found in possession of documents for “*the casting of enriched and depleted uranium metal into hemispheres, related to the fabrication of nuclear weapon components,*” in violation of Article II of the NPT.

¹¹ The fuel supply for Iran’s only nuclear power plant at Bushehr is covered by a firm ten-year contract with a Russian state owned company, and guaranteed under an intergovernmental agreement for the lifetime of the reactor.

¹² ... or similar actions such as denying or limiting IAEA inspectors access to its territory, facilities, or locations that would impede the effective implementation of the IAEA’s inspections and verifications.

¹³ This is not a new concept. Under Article XII.A.7 of the IAEA Statute, the Agency has the right to “withdraw any material or equipment made available by the Agency or a member” in furtherance of an Agency project in the event of non-compliance and failure by the recipient state to take fully corrective action within a reasonable time. Article XII.C. has also a similar provision.

¹⁴ Mohamed ElBaradei’s interview with *Newsweek*, January 23, 2006.

¹⁵ Please see footnote thirteen.

¹⁶ Please see footnote nine.

¹⁷ Article XII.C. of the IAEA Statute states that: “*The inspectors shall report any non-compliance to the Director General who shall thereupon transmit the report to the Board of Governors.*” “*The Board shall report the non-compliance to all members and to the Security Council and General Assembly of the United Nations.*”

¹⁸ As an example, in its resolution of March 10, 2004 (GOV/2004/18), the Board of Governors finds Libya in non-compliance and, “*in accordance to Article XII.C., requests the Director General to report the matter to the Security Council for information purposes only, while commending [Libya] for the actions it has taken to date, and has agreed to take, to remedy the non-compliance.*”