

The Iran Nuclear Dilemma
Draft Elements: Points and Recommendations
20 March 2006

This week the Security Council continues to consider the draft of a presidential statement in response to the February resolution of the IAEA Board. We offer the following points and recommendations for your consideration.

The draft "calls upon Iran to take the steps needed to begin building confidence... by fully complying with the requirements set out by the IAEA Board." The draft lists as requirements the series of measures identified in the February IAEA Board resolution (GOV/2006/14) including the re-establishment of "full and sustained suspension of all enrichment-related and reprocessing activities," reconsideration of the construction of a heavy water research reactor, the prompt ratification of the Additional Protocol and its continued implementation pending its entry into force, and the implementation of transparency measures beyond its legal requirements under its Safeguards Agreement and Additional Protocol.

The draft elements refer to these confidence building measures as requirements. However, operative paragraph 5 of the February Board resolution refers to these measures as "voluntary" and "non legally binding" in accordance with previous requests by the IAEA Board. Operative paragraph 1 of that resolution notes "that outstanding issues can best be solved and confidence built in the exclusively peaceful nature of Iran's programme by Iran responding positively... and in this context deems it necessary". The paragraph, which lists the measures identified in the present draft elements, does not use the language of requirement.

Operative paragraph 2 "requests the Director General to report to the Security Council... that these steps are required". However, the IAEA Board does not possess the authority to implement such a request. The Board may call on Iran to take urgent action if it decides, pursuant to Article 18 of Iran's Safeguard Agreement (INFCIRC/214), that such action "is essential and urgent in order to ensure verification that nuclear material... is not diverted to nuclear weapons or other nuclear explosive devices". But the February Board resolution makes clear that the steps required of Iran are for the purpose of confidence building, not for assurance against diversion.

Prior to September 2005, the IAEA Board had requested Iran to maintain suspension of all uranium enrichment related activities as a voluntary, non-legally binding, confidence building measure, pending the outcome of all outstanding issues related the IAEA investigation. In the present draft elements, suspension of enrichment related activities is no longer linked to the outcome of the IAEA investigation. The Council stands poised to make suspension a matter of contention removed from authority of the IAEA to apply and verify safeguards.

The approach advocated by the present text is all stick and no carrot. Confidence building is a two way street, yet the Council is set to make a very clear demand for Iran to enact confidence building measures without any mention of inducements for cooperation. The very short time period it gives Iran to comply, a mere 14 days, underlies the expectation that Iran will decline to adopt the confidence building measures. The next step would be a resolution, which would need to be backed by meaningful consequences in the event of noncompliance. Such rapid escalation

will invariably lead to increased tensions and create an atmosphere ill-suited for the resumption of diplomatic discussions under any modality.

The draft elements, if passed in their present form, will make future negotiations less likely. While the February IAEA resolution unconditionally reaffirmed the "Board's resolve to continue work for a diplomatic solution to the Iranian nuclear issue" the draft elements casts the confidence building measures as an end in themselves and requisite for any negotiated solution.

For its part Iran should comply with past Board resolutions by re-suspending all uranium enrichment related activities at least pending the outcome of all outstanding issues related to the IAEA investigation. As a transparency measure Iran should continue to implement both its Safeguards Agreement and the Additional Protocol, as if it had entered into force, above and beyond its formal requirements, as requested by Director-General Mohammed ElBaradei and the IAEA Board. Any presidential statement should call upon Iran to comply with past IAEA Board resolutions and to cooperate with the IAEA to the extent necessary for the prompt resolution of all outstanding issues.

While the suspension of enrichment related activities is desirable and would help greatly to reduce international tension on this matter, it is not necessary for the completion of the IAEA investigation. The Security Council should not put its reputation on the line by preemptively engaging in confrontation with Iran over this issue. The question of Iran's pursuit of the nuclear fuel cycle is a matter separate from its legal obligations under the NPT and IAEA safeguards. Following the conclusion of the IAEA investigation the international community should consider the compromise suggested by ElBaradei, allowing for pilot scale enrichment in Iran subject to restrictions and a heightened level of safeguards.

Above all, the Security Council and its members should work to promote effective diplomacy. To this end the Council should form a negotiation group wider than the EU3, including Iran, Russia, China, the United States, an EU representative, and a Non-Aligned Movement representative. The goal of this group would be to achieve a long term framework that addresses the full range of political, economic, and security concerns. The advent of such a group would consolidate the bargaining position of the international community, creating the widest possible international consensus on this issue, and engaging all interested parties in direct negotiations.