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Does Iran Have an "Inalienable Right" to Enrich Uranium?

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Most articles in the Iranian media on the nuclear issue reiterate Iran's "inalienable right" to enrich uranium according to the NPT. Iran contends that as a member of the NPT, it is treated unfairly by the international community when demands are made that it suspend enrichment. Iran has repeated this mantra so often that many experts and policymakers – even if critical of Iran's nuclear program – concede that as a member of the NPT, Iran indeed has the right to enrich uranium. Ahead of a fresh round of negotiations with Iran that could begin soon after the US presidential elections, it is important to examine the veracity of this claim.

Since 2006, Iran's claim is actually negated by the six resolutions passed by the UN Security Council instructing Iran to suspend enrichment-related activities, which Iran has blatantly violated. These Security Council resolutions "trump" any privilege provided by the NPT, as was clarified in analyses published by the Carnegie Endowment.¹ The demand that Iran suspend uranium enrichment is currently a legally binding demand.

But there is a more fundamental issue at stake. The right of Iran – or any other non-nuclear state – to pursue nuclear energy, including uranium enrichment activities, is not absolute. According to the NPT, this right is explicitly conditional. Iran's ongoing claim to an inalienable right is based on a partial reading of the relevant clause in Article IV of the NPT. What the continuation of the critical sentence clarifies is that the right to nuclear energy – including enrichment activities – is contingent upon upholding Articles I and II of the treaty, including the stipulation that states not manufacture nuclear weapons.² In other words, if a state engages in weapons-related activities, the right no longer holds.

The crux of the question of Iran's right to enrich, therefore, is whether it has been engaged in military work. Because Iran has not yet produced a nuclear device, and because it is making every effort to conceal its military program, the question – pressing for the past decade – is not easy to answer. What would serve as acceptable evidence? There is a need to define relevant criteria short of an actual nuclear weapon, at which time the question loses its relevance. What follows are some ideas based on the Iranian

case, but setting clearer criteria for determining that a state is "working on a military program" is essential for stopping additional nuclear proliferators down the road.

One important criterion for making this call is evidence of concealment efforts on the part of the proliferator. In a recent article in the *New York Times*, Ray Takeyh recalls that both of Iran's known uranium enrichment plants, at Natanz and Fordow, began as "surreptitious plants that were later discovered by the International Atomic Energy Agency."³ Indeed, the violation of its safeguard agreements with the IAEA is the reason why the Iranian case was reported to the UN Security Council in the first place.

The evidence does not stop there, and another important category relates to details regarded by the IAEA as highly suspicious. In February 2008, then-deputy director general of the IAEA, Olli Heinonen, convened a special meeting of the IAEA Board of Governors in order to present the evidence he possessed regarding Iran's nuclear program, and was quoted as saying that some of the evidence was "not consistent with any application other than the development of a nuclear weapon."⁴ This later evolved into a long debate over the fate of the full Iranian nuclear file that then-director general Mohamed ElBaradei refused to include in his open reports. The issue was resolved only after ElBaradei was replaced by Yukiya Amano in late 2009, and the full annex was included in Amano's report on Iran in early November 2011.

This development underscored a third and related concern: lack of cooperation with the IAEA. The 2011 report set the stage for renewed IAEA requests to visit the military facility at Parchin, where the IAEA suspects that high explosive testing has been carried out. In the early months of 2012, Iran twice led inspectors to believe they would be allowed to visit Parchin, and then denied them access. In parallel, satellite imagery over recent months shows evidence of a clean-up operation at the facility. This is not the first time Iran has cleaned up suspicious evidence: in 2004, following IAEA suspicions of undeclared and problematic nuclear activities at Lavizan, Iran razed the site in order to interfere with soil samples.

A final criterion can be called analytic inference. One piece of evidence that fits this category is that the facility at Fordow has room for only about 3000 centrifuges, which is not nearly enough to logically serve as part of a civilian nuclear program, but would make perfect sense as a clandestine facility where stocks of LEU could be secretly enriched to the high levels needed for a nuclear device. Another relevant issue is Iran's enrichment to 20 percent. Iran's civilian explanation here is weak because Iran was offered fuel for its Tehran reactor in the context of a deal proposed by the P5+1 in October 2009, and rejected by Iran. The military-related explanation – namely, that 20 percent enrichment advances Iran significantly toward the level needed for breakout

capability – is much more plausible. One can add the US *National Intelligence Estimate* released in late 2007, whereby at least up until 2003 – which means for close to 20 years – Iran had been working on a military nuclear program, under government direction. There is no reasonable basis for believing that it scrapped this program.

The suspicions that have arisen with regard to Iran's nuclear program are strong in all of the aforementioned categories, and because waiting until there is evidence of a bomb means waiting until it is too late, this is the kind of evidence that must be taken as indication that Iran has worked on a military program and continues on that route today. Stopping uranium enrichment should thus not be considered a confidence-building measure on Iran's part. Rather, it is a requirement, until Iran abandons its military program. Iran is not being discriminated against – it has no inalienable right to enrich.

A final word: initiating an international effort to begin codifying criteria for "work on a nuclear weapon" along the lines drawn above is highly advisable, including assigning relative weights to the different categories. This would help the international community better evaluate future cases of nuclear proliferation and confront proliferators more effectively, and hopefully at a much earlier stage, than was the case with Iran.

¹ See Amy Reed, "UN Resolution 1696 Moots Iranian Legal Claims," *Proliferation Analysis*, Carnegie Endowment, August 21, 2006; and a continuation of this debate in "Continued Analysis of 1696," Carnegie Endowment, August 24, 2006. See also David Albright and Andrea Stricker, "NAM Countries Hypocritical on Iran," *The Iran Primer*, USIP, September 7, 2012.

² From the NPT: "Article IV 1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and *in conformity with Articles I and II of this Treaty*" (emphasis added). In Article II the non-nuclear weapons states undertake, inter alia, "not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices."

³ Ray Takeyh, "Talk to Iran's Leaders, but Look beyond Them," *New York Times*, September 19, 2012.

⁴ William J. Broad and David E. Sanger, "Meeting on Arms Data Reignites Iran Debate," *New York Times*, March 3, 2008.