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# Iran Nuclear Negotiations: Towards a Shared Understanding of the End State

Tehran and Washington are tantalizingly close to reaching an agreement on the final status of Iran's nuclear program, writes Samir Tata. The remaining step is for both sides to develop a shared understanding of the Nuclear Nonproliferation Treaty and its provisions. That's where revisiting the Cold War might help.

By Samir Tata for ISN

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The interim agreement between Iran and the P5+1 provides for a six-month period (extendible by mutual agreement) in which to negotiate the final status of Iran's nuclear program. The [Joint Plan of Action](#) is envisaged as comprising of two components: (1) a negotiated Iranian nuclear program with agreed upon parameters under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in return for a parallel negotiated phase-out of UN Security Council and other unilateral sanctions; (2) an end-state in which Iran would be free to pursue a nuclear program of its choosing within the safe harbor of the NPT which would be "treated in the same manner as that of any [ *sic*] non-nuclear weapon state party to the NPT." Surprisingly, while there has been extensive and ongoing discussion on the contours of a negotiated final agreement - particularly the likely or preferred parameters constraining the Iranian nuclear program, the optimal duration of the bridging period, and the scope and sequencing of sanctions relief - there has been virtually no consideration of the agreed upon end state.

If a final agreement is to be reached, there will have to be a shared understanding of what the NPT means. This is essential because once the bridging period is completed during which Iran agrees to limit the scope and scale of its nuclear program, Tehran's sole obligation will be to comply with the provisions of the NPT so long as it continues to be a party to the treaty. A fundamental disagreement on what the NPT means could be disastrous, since there would be no final agreement and the United States, which has consistently maintained that all options are on the table, could decide that war is its best option to prevent a nuclear-armed Iran.

## **What is not prohibited is permitted**

Fortunately, the United States has a well-documented record of its interpretation of the NPT. In his public statement and testimony during the US Senate Foreign Relations Committee hearings on ratification of the NPT on July 10, 1968, Secretary of State Dean Rusk summarized the US' understanding of the NPT and declared: "The treaty deals only with what is prohibited, not with what

is permitted.” This was the mantra that was [repeatedly invoked](#) by US officials in the lead up to the finalization of the NPT as they sought to reassure key allies that were non-nuclear weapons states (NNWS) that the US nuclear umbrella would not be jeopardized by the treaty, and that they would be free to pursue nuclear programs that did not result in the acquisition of nuclear weapons.

Secretary of State Rusk also emphasized that the NPT was narrowly targeted to prohibit NNWS from the manufacture, acquisition or transfer of nuclear weapons and not delivery vehicles or systems such as nuclear submarines. Deputy Secretary of Defense Paul Nitze reinforced this understanding and inserted into records a statement to the effect that military uses of nuclear energy not specifically related to nuclear explosive devices are not prohibited and therefore permitted under the NPT. Secretary of State Rusk clarified that the NPT would be inoperative in the event of major war and that in such circumstances the US would be free to transfer nuclear weapons to its NNWS allies.

William C. Foster, the lead negotiator of the NPT and Director of the Arms Control and Disarmament Agency, also emphasized that nuclear activities not prohibited under Article II were permitted. In particular, he articulated the link between the provisions of Article II of the treaty prohibiting NNWS from manufacturing, acquiring or transferring nuclear weapons, and the provisions of Article IV which acknowledged the right of NNWS to pursue peaceful nuclear activities consistent with the prohibitions of Article II. In a written submission extending his remarks for the record, Foster clarified that pursuing peaceful full cycle nuclear enrichment activities under the safeguards provisions of Article III of the treaty would be permitted: “Neither uranium enrichment nor the stockpiling of fissionable material in connection with a peaceful program would violate Article II so long as these activities were safeguarded under Article III.” He added that plutonium powered reactors and fast breeder reactors under safeguards were likewise permitted. Foster’s specific comments with respect to nuclear enrichment activities reinforced and expanded the earlier US declaration at the United Nations on May 15, 1968 that the NPT did not “impose inhibitions or restrictions on the opportunity for non-nuclear weapon states to develop their capabilities in nuclear science and technology.”

### **NNWS Interpretations: Germany and Japan**

Germany (then West Germany) had serious concerns that the NPT could jeopardize the US nuclear umbrella that underpinned NATO’s collective security arrangements, and also disadvantage NNWS states with respect to developing peaceful uses of nuclear energy. In order to address those concerns, it [sought reassurances](#) from both the US and the Soviet Union, and put in writing its understanding of the NPT in a declaration together with a series of reservations which it attached to [its signature](#) (and subsequently ratification) of the NPT. Germany’s objective in articulating its understanding of the NPT through its declaration and reservations was to ensure that it would have the option under the NPT to develop a nuclear weapons capability and, therefore, have an effective hedge against the loss of the US nuclear umbrella. Such a nuclear hedge would enable Germany to produce nuclear weapons very quickly after withdrawing from the NPT.

Accordingly, Germany underscored that the only prohibitions on nuclear activity of NNWS were those contained in Article II and, therefore, all other nuclear activity was permitted under the treaty. Germany also emphasized that no safeguarded peaceful nuclear activity that may have dual-use applications could be prohibited “merely on the basis of allegations that such activities ... could be used for the manufacture of nuclear weapons.” Unusually, Germany included in its declaration an extended quotation of US Ambassador Arthur Goldberg’s statement of May 15, 1968 at the UN assuring NNWS that the NPT would not restrict or disadvantage their peaceful nuclear activities. To underscore its option to withdraw from the treaty, Germany invoked the supreme national interest language of Article X’s exit clause and linked it to the inherent right of self-defense recognized by Article 51 of the UN Charter (thereby implicitly asserting its right to develop nuclear weapons

following withdrawal from the NPT). Finally, Germany insisted that it should be treated in the same manner as any other state party to the NPT with respect to the interpretation of the treaty and the application of IAEA safeguards.

Japan, like Germany, was ambivalent about the NPT because it also was deeply concerned about the treaty's impact on the US nuclear umbrella, and the ability of Japan to vigorously pursue peaceful nuclear activities. Moreover, [Japan](#) was also determined to develop a nuclear weapons capability under NPT as insurance against the loss of US extended deterrence. The key to crafting a nuclear hedge was the ability to have full control over the nuclear fuel cycle and accumulate fissile material under the NPT, and then exercise the option to withdraw from the treaty and quickly produce nuclear weapons. Japan [attached a statement](#) which reflected its interpretation of the NPT upon both signing and ratification.

Not surprisingly, Japan's statement was strikingly similar to Germany's declaration and reservations. Accordingly, Japan insisted that the only nuclear activities that were prohibited to NNWS were the acquisition of or control over nuclear weapons or other nuclear explosive devices, and that no other nuclear activities were proscribed. Japan's statement stressed that the pursuit of peaceful nuclear activities by NNWS could not be restricted or subject to discriminatory treatment. In particular, such activities could not be constrained on the grounds that they could also be used in connection with the manufacture of nuclear weapons. With respect to IAEA safeguards, Tokyo expected to be treated in the same manner as any other party to the treaty. Finally, the Japanese statement reaffirmed its right to withdraw from the treaty by incorporating a direct quote of the relevant sentence of Article X's exit provision.

## **An Inalienable Right**

Although Iran did not attach a declaration at signing or ratification of the NPT, it has consistently maintained that the right to the peaceful use of nuclear energy is recognized in Article IV of the NPT as an inalienable right, and that implicit in this right is the right to control the full nuclear fuel cycle, including enrichment of uranium to produce fuel rods for its nuclear reactors. Tehran's focus on Article IV as the basis for [its nuclear activities](#) has been remarkably consistent from the rule of the Shah to the present regime. Indeed, when Iran decided to [resume](#) its enrichment activities in 2006 after a voluntary two-year suspension, it invoked its right to pursue peaceful nuclear activities under Article IV. And in a [speech to the Council on Foreign Relations \(CFR\)](#) in New York on September 26, 2013, President Hassan Rouhani reiterated Tehran's view that the right to pursue nuclear activities for peaceful purposes was an inherent right recognized by Article IV and that nuclear enrichment was implicitly part of this right.

## **Course corrections**

In response, the US [shifted from its prior focus](#) on Article II and instead zeroed in on the specific language of Article IV and highlighted the fact that enrichment was not explicitly included in the types of peaceful nuclear activities referenced in the inalienable right clause: "Article 4 of the NPT does not use the word 'enrichment' and does not give or take away the potential for enrichment." Iran seems to have realized that by insisting on recognition of an implicit right to enrichment under Article IV it was painting itself into a corner. In a [recent interview](#), Foreign Minister Javad Zarif emphasized, "[W]e don't ask anybody to recognize our right [to enrichment]. What is important is that Iran's exercise of that right ... should not be obstructed." In response, Secretary of State [John Kerry](#) stressed, "Iran has a right to a peaceful nuclear program ... But it has to meet the international standards of accountability, transparency and restraints that exist in other programs in the world." He was silent

on the right to enrichment. In effect, both Tehran and Washington were finally signaling publicly an interest to frame the end state in terms of what is prohibited under the NPT instead of arguing over what is permitted.

It is quite likely that Iran will continue to shift its focus from Article IV to Article II and embrace the approach of the US, Germany and Japan that what is not prohibited is permitted. Accordingly, in conjunction with a final agreement, Iran is likely to make a declaration that incorporates the interpretation publicly articulated by the US in 1968 in connection with the ratification of the NPT, as well as the declarations and reservations of Germany and Japan. Washington is likely to remain silent on Tehran's declaration. Iran and the US are tantalizingly close to a final agreement resolving the nuclear impasse. They should not let this opportunity for success slip through their fingers.

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