
A Framework for Diplomatic Engagement: The Iran Nuclear Weapons Program

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Introduction and Overview

The Security Council's primary responsibility under the United Nations Charter is the maintenance of international peace and security. Chapter VII of the Charter empowers the Security Council to determine a 'threat to the peace, breach of the peace or act of aggression.' Based upon its findings, it may act in a manner deemed necessary, such as adopting economic sanctions and military measures.¹

As a party to the Non-Nuclear Proliferation Treaty (NPT), Iran is obligated to refrain from manufacturing and acquiring nuclear weapons or other nuclear devices. Iran does have the right to develop nuclear energy for peaceful purposes under inspection of the International Atomic Energy Agency (IAEA). Having clandestinely developed an enrichment program and other nuclear activities for over 18 years, Iran violated its NPT obligations.² Upon referral by the IAEA Board of Governors, the Security Council passed four resolutions urging Iran to stop enrichment until its peaceful intentions can be fully established.³ As a measure to enforce the Security Council resolutions, economic sanctions were imposed on Iran.

Iran continues to deny that its nuclear activities are for the development of a nuclear arsenal, yet there is fear among the international community that once Iran is able to highly enrich uranium it will be both able and tempted to build nuclear weapons. Unfortunately, the sanctions imposed by the Security Council have so far been ineffective because of Iran's non-compliance with the resolutions. Iran has not suspended its

¹ Article 39 authorizes the U.N. Security Council to determine the nature of the conflict and to make recommendations accordingly – either through non-forcible means (Article 41) or the use of force (Article 42). Also See Christine Gray, *The Use of Force and the International Legal Order*, in *International Law* by Malcolm D. Evans, 2nd ed., (Oxford University Press, 2006), p. 590- 594.

² From the mid-1980's to 2003, Iran violated its NPT Safeguards Agreement with the IAEA by failing to declare numerous activities primarily involving experiments with nuclear material. In addition, Iran was non-compliant with Article II of the NPT which requires 'that non-nuclear weapon states undertake no activities designed to develop a nuclear weapons capability' and that there should be sufficient transparency in their activities to demonstrate peaceful intent.

³ U.N. Security Council Resolution 1696 (July 2006), 1737 (December 2006), 1747 (March 2007) and 1803 (March 2008). In Resolution 1696, the Security Council did not adopt sanctions under Article 41, but underlined that further means would be adopted if Iran failed to cooperate. The implications of these resolutions are subsequently examined in this paper. Please refer to the Appendix for the full text of each resolution.

continuation of sensitive nuclear activities and failed to provide the access and cooperation requested by the IAEA. As a consequence, its nuclear research and development have not been fully verified.

The Iran Nuclear Weapons issue and the ongoing quest to find a diplomatic solution to this impasse will have profound consequences for regional and global stability. A tangled web of issues, other than the non-proliferation issue, all factor into the calculus of how this crisis unfolds: the war in Iraq and its aftermath, the Arab-Israeli conflict, the heightening tensions between the West and Islam, access to oil and the alarming increase in terrorism. Consequently, the stakes for resolving the impasse are not only high but also have far-reaching implications for international peace and security.

Although there currently appears to be no easy way out of the Iran nuclear weapons dilemma, successful resolution of the Iran case requires creative and skillful diplomatic engagement on the part of all parties involved. In “The End of the Non-Proliferation Regime?,” Perkovich maintains that “the fundamental requirement today is to establish a basis for cooperation between the most powerful state- the United States – and the others, without which proliferation problems cannot be solved.”⁴ In framing the diplomatic engagement strategy, the United States ought to accept Iran as a regional power with legitimate interests. In this paper, I argue that by altering U.S.-Iran relations and opening the dialogue to address the broader underlying differences a solution to the nuclear weapons issue may materialize. Without such diplomatic engagement the parties risk further isolation, misconstrued intentions, increased politically charged rhetoric, and escalation towards military confrontation.

Although the European Union, Russia and China also all have divergent interests to varying degrees in this issue, working within the multi-lateral framework of the United Nations Security Council to pressure Iran to cooperate is important. However, the efficacy of a sanctions regime is not an enduring one and as a result the focus ought to be on diplomatic engagement.⁵ As IAEA Director General Dr. Mohammed El-Baradei

⁴ George Perkovich, *The End of the Nonproliferation Regime?*, (2006) Current History at p. 355, http://www.carnegieendowment.org/files/perkovich_current_history.pdf.

⁵ United Nations sanctions are only useful if they induce the punished party to comply. A successful case in point is that of Libya in the Pan Am Flight 103 Lockerbie case – where sanctions were combined with other elements that “blended carrots and sticks” and trust-building diplomacy. Also See Bruce W. Jentleson,

emphasized in his comments at the most recent Board of Governors meeting in Vienna: “A durable solution requires confidence about Iran’s nuclear programme; it requires a regional security arrangement; it requires normal trade relationships between Iran and the international community. As the Security Council stated, the ultimate aim should be the normalization of relationships between Iran and the international community.”⁶

By examining the confluence of factors that continue to fuel the Iran nuclear weapons conflict, this study will focus on the underlying issues that require critical examination in order for constructive diplomatic efforts to succeed. [Chapter I](#) highlights the history of the Iran nuclear program and its evolution to its current phase. [Chapter II](#) focuses on Iran’s rights under the nuclear Non-Proliferation Treaty (NPT) and the reasons for its non-compliance as a party to the treaty. [Chapter III](#) examines the role of the United Nations Security Council as the ultimate enforcer of the NPT and its efforts to pressure Iran into compliance through the implementation of graduated sanctions. [Chapter IV](#) underscores the importance of the commitment to multilateralism in approaching the Iran case and chronicles the dangers inherent in a unilateralist agenda by resorting to the use of force against Iran outside the parameters of the U.N. Charter. [Chapter V](#) presents a picture of the current geo-political climate in the Middle East, the prospects for a diplomatic solution and proposals the parties ought to consider once they are committed to making positive strides in the diplomatic sphere.

Sanctions Against Iran: Key Issues, A Century Foundation Report, 2007 at <http://www.tcf.org/publications/internationalaffairs/jentleson.pdf>.

⁶ Comments made by Director General Mohammed El Baradei after the latest Iran safeguards report was circulated to the IAEA Board, at <http://www.iaea.org/NewsCenter/News/2008/iranreport0208.html>.

❖ Chapter I:

History of Iran's Nuclear Program

Iran's nuclear program was launched in the 1950's with the help of the United States as part of the Atoms for Peace program. In 1968, Iran signed the nuclear Non-Proliferation Treaty (NPT), which was ratified by the Head of State in 1970 and its obligations went into force. The support, encouragement and participation of the U.S. and Western European governments in Iran's nuclear program continued throughout the duration of Mohammad Reza Pahlavi's (the Shah's) reign.⁷ The Shah anticipated a time when the world's oil supply would run out and declared, "Petroleum is a noble material, much too valuable to burn... We envision producing, as soon as possible, 23,000 megawatts of electricity using nuclear plants."⁸ Up until the 1979 revolution that toppled the Shah, Iran's nuclear program was considered one of the most advanced in the Middle East.

The 1979 revolution was a turning-point in foreign cooperation on nuclear technology. Foreign suppliers withdrew from Iran and abandoned their nuclear power contracts. The tensions highlighted by the 1979 hostage crisis at the U.S. embassy in Iran induced the U.S. to sever all nuclear agreements. The Iran-Iraq war from 1980-1988 further aggravated the situation and as a result of direct threats from Iraq's chemical and nuclear weapons program, Ayatollah Khomeini's government resumed its own nuclear program.⁹

In the late 1980's, Iran turned to the Soviet Union to restart its civil nuclear program. Unknown at the time, however, was that around 1985 Iran secretly tapped into

⁷ In the decade of the 1970's, Iran concluded contracts for construction of nuclear plants and for the nuclear fuel supply with the U.S. in 1974, Germany 1976 and France in 1977. During this same period, Iran made a contract for uranium yellowcake (impure uranium concentrates), bought a stake in a uranium mine in Namibia and purchased a stake in a uranium enrichment plant in France. See Joseph Cirincione, Jon Wolfsthal and Miriam Rajkumar, *Deadly Arsenal: Nuclear Biological and Chemical Threats*, (Carnegie Endowment for International Peace, 2005), p. 299 excerpt at <http://www.carnegieendowment.org/files/DeadlyII.Ch01.FINAL.pdf>.

⁸ Iran Profile – Nuclear Chronology 1957-1985. Nuclear Threat Initiative at http://www.nti.org/e_research/profiles/1825_1826.html.

⁹ See Iran Profile supra.

the nuclear black market run by the father of Pakistan's nuclear program – A.Q. Khan.¹⁰ For 18 years, Iran successfully hid – in violation of international law and its voluntary treaty commitments to the IAEA – its clandestine nuclear procurement and development program. During its meetings with IAEA officials in 2003, Iran for the first time provided evidence of its violations of the NPT. Iran admitted building an enrichment facility at Natanz and a heavy water production plant at Arak, a fuel fabrication plant, and that it undertook research into conversion and enrichment activities including centrifuges.¹¹

Faced with the probability of sanctions and international isolation, Iran announced in 2003 that it would cooperate with the IAEA with full transparency. In December of 2003, it signed the Additional Protocol on Nuclear Safeguards and declared that all enrichment and reprocessing activities would be suspended.¹² Nevertheless, Iran failed to provide the IAEA with comprehensive and timely support. In addition, it denied IAEA inspectors entrance to several sites. As a result, some of Iran's conduct in connection with undeclared nuclear activities has led Western governments to be highly suspicious of its intent.

¹⁰ Open Democracy: *The Nuclear Shopping Mall* – A.Q. Khan and Iran at http://www.opendemocracy.net/globalization-india_pakistan/khan_iran_3956.jsp. Khan had established a robust network of front companies and clandestine shipments to fuel Pakistan's own nuclear weapons program. According to this article, he has done huge damage to prevent the spread of nuclear weapons. He has increased supply by putting more knowledge and technology in the marketplace.

¹¹ See Cirincione study supra. The National Council of Resistance of Iran (NCRI), an opposition group, revealed the facts of Iran's clandestine uranium enrichment operations in 2002.

¹² Additional Protocol on Nuclear Safeguards, 18 December 2003 at IAEA website: <http://www.iaea.org/NewsCenter/News/2003/iranap20031218.html>. The Additional Protocol on Nuclear Safeguards strengthens the classical safeguards system and enables the IAEA to conduct enhanced, unannounced, and on-the-spot inspections. Under the Additional Protocol, the IAEA is to be given considerably more information on nuclear-related activities. In addition to short notice (as little as two hours), the IAEA can deploy environmental sampling and remote monitoring techniques to detect illicit activities.

❖ Chapter II:

The NPT and Iran's Right to Peaceful Nuclear Energy

Iran, like all countries, has a right to “develop research, production and use of nuclear energy for peaceful purposes...in conformity with Articles I and II of the Treaty.”¹³ Under Article IV of the Nuclear Non-proliferation Treaty (NPT), Iran can expect international cooperation in exercising such rights to benefit from peaceful nuclear energy. Iran points to the fact that its population has more than doubled in 20 years, it regularly imports gasoline and electricity, and that burning fossil fuel in large amounts severely harms Iran's environment. In addition, Iran's oil reserves are diminishing at a rapid rate and may only last until the next 75-90 years.¹⁴ In essence, Iran wishes to diversify its sources of energy and argues that it has a legal right to enrich uranium for peaceful purposes under the NPT.

Under Article II, rights under the NPT are conditioned on the obligation “not to manufacture or otherwise acquire nuclear weapons; and not to seek or receive any assistance in the manufacture of nuclear weapons.”¹⁵ Specific rules guiding the international management of nuclear technology evolve through negotiation and custom.¹⁶ Consequently, there is no explicit right in the NPT for any nation – including Iran – to possess uranium enrichment or plutonium separation technology, just as there is not a specific prohibition on possession of such technology. Perkovich further maintains that if a state does not comply with its “obligations not to seek or receive any assistance

¹³ Treaty on the Non-Proliferation of Nuclear Weapons (NPT) at http://www.nti.org/e_research/official_docs/inventory/pdfs/npt.pdf. The NPT is the most widely adhered to treaty in the area of arms control and disarmament. Only four states are not parties to this treaty – India, Pakistan, Israel and North Korea (withdrew) – and all have developed nuclear arsenals.

¹⁴ Country Analysis Briefs, Iran – Official energy statistics from the U.S. Government at <http://www.eia.doe.gov/cabs/Iran/Oil.html>.

¹⁵ NPT see supra.

¹⁶ George Perkovich, *Defining Iran's Nuclear Rights, Proliferation Analysis* (Carnegie Endowment for International Peace Publication, 2006) at <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=18687>. Perkovich provides a comparison with automobile driving to help clarify the issue of nuclear “rights”: a citizen has the “right” to drive a car, but no particular car technology is specified as a matter of right.

in acquiring nuclear weapons, and to use nuclear technology and know-how solely for peaceful purposes, it loses its rights under the NPT.”¹⁷

Article X of the NPT allows for a party to withdraw under paragraph 1, which provides:

Each party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of the Treaty, have jeopardized the supreme interests of the country. It shall give notice of such withdrawal to all other Parties to the Treaty and the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.¹⁸

Iran may threaten to leave the NPT should it decide that the “supreme interests of its country” are being jeopardized by the Treaty. With the continued escalation in political rhetoric and the U.S. position being that “all options are on the table”, it would not be unreasonable for Iran’s leaders to conclude that Iranian interests would be better served by withdrawing from the treaty. For example, Iran could comply with the NPT for years while amassing a stockpile of fissile material. A research analyst at the Monterey Institute warns that “If at some future juncture Iran found itself threatened by the United States...[or another regional player], it could withdraw from the NPT, seize its stockpile, and manufacture nuclear weapons in a matter of weeks.”¹⁹

However, should Iran withdraw from the NPT it would only be exacerbating the situation and injecting itself outside the bounds of international law. In that instance, the U.N. Security Council may very well stipulate that customary international law bars a state from withdrawing from a treaty to escape the consequences of having violated it beforehand. Iran’s ongoing non-compliance with four binding Security Council

¹⁷ Perkovich, see supra.

¹⁸ NPT, Article X paragraph 1 see supra. One particular example which is often cited is that of North Korea. North Korea maintained that it was withdrawing from the NPT because the United States was threatening its security.

¹⁹ Leonard Specter, Deputy Director (Washington, DC), Monterey Institute of International Studies, in *The Biological Threat Reduction Program of the Department of Defense: From Foreign Assistance to Sustainable Partnerships*, 2007 at http://books.nap.edu/openbook.php?record_id=12005&page=105.

resolutions as well as its refusal to fully cooperate with the IAEA are serious matters that continue testing the international community's resolve. Iran may at some future point elect to exercise its right to withdraw from the NPT under Article X and an attempted withdrawal from the NPT would clearly fit the Security Council's description of proliferation as a "threat to international peace and security."

There are several underlying inequities within the Non-Proliferation Treaty regime that need to be addressed and remedied. Several developments over the last decade have undermined the legitimacy of the NPT as a non-proliferation mechanism and may have contributed to Iran's continued defiant posture in complying with its NPT obligations. The most notable example is that of North Korea and the lack of resolve displayed by several key international players in the enforcement of NPT principles.

North Korea declared its withdrawal from the NPT under Article X in 2003 because it was developing a "latent" nuclear program and decided to exercise its "break out" option under the treaty system by withdrawing.²⁰ Like Iran, North Korea maintained that it had no intention of developing nuclear weapons and that its nuclear activities were confined only to power production and other peaceful purposes.²¹ However, the IAEA Board of Governors declared that North Korea was in non-compliance with its obligations under its Safeguards Agreement pursuant to the NPT and decided to report its non-verifiable activities to the Security Council. Despite the ground-breaking precedent North Korea was setting by exercising its right to withdraw under Article X of the NPT, the U.N. Security Council took no action and did not institute any punitive measures provided for in the U.N. Charter.²²

²⁰ Fredrick L. Krings, *North Korea's Withdrawal from the Nuclear Non-Proliferation Treaty*, The American Society of International Law Insights, January 2003 at <http://www.asil.org/insights/insigh96.htm>. North Korea's reasons for withdrawing from the NPT were that the U.S. was threatening its security by its hostile policy toward it. According to North Korea, the U.S. had signaled it out as a target of a pre-emptive nuclear attack and had threatened it with a blockade and military punishment. Consequently, North Korea argued that these "extraordinary events jeopardized its supreme interests" as a country and that it now had sufficient cause to withdraw under Article X of the NPT.

²¹ Jean du Preez and William Potter, *North Korea's Withdrawal from the NPT: A Reality Check*, James Martin Center for Nonproliferation Studies publication at <http://cns.miis.edu/pubs/week/030409.htm>.

²² The efficacy and resolve of the Security Council in pressuring North Korea to come into compliance with its IAEA Safeguard Agreement and its NPT obligations was compromised for several reasons. First, North Korea stipulated that any sanctions imposed by the Security Council would be considered a "declaration of war" and this most likely influenced the Council to avoid sending a strongly message to Pyongyang.

Although the Security Council has deemed nuclear proliferation to be a “threat to international peace and security” (despite its inaction in the case of North Korea), the question of whether nuclear nonproliferation is customary international law merits consideration.²³ In its controversial opinion on the legality of the threat or use of nuclear weapons, the International Court of Justice (ICJ) undercut the argument that nuclear nonproliferation has evolved into a binding norm of customary international law. The ICJ held by eleven votes to three that “there is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such.”²⁴ By seven votes to seven, with a tie broken by the vote of the ICJ President, the Court held that while “the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict,” however, the Court could not “conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake.”²⁵ The Court could have helped solidify the NPT framework by better elucidating its position on the threat or use of nuclear weapons (and thereby shaping the trajectory of customary international law). However, its lack of clarity and decisiveness on the issue has bolstered the position of proliferating states.

Aside from the ICJ advisory opinion on nuclear weapons, there are several incidents that have brought the inherent “double standards” dilemma in the application of the NPT to the forefront. Article VI of the NPT stipulates that nuclear weapon states bear a special responsibility under the NPT to pursue effective measures relating to

Second, the United States approved this stance and did take an opposing position because the Bush administration did not want politically to diminish its own prerogatives to withdraw from treaties such as the Anti-Ballistic Missile Treaty. This “double standard” only serves to highlight the inequities that continue to plague the NPT treaty regime.

²³ Customary international law is commonly described as law that results from a general and consistent practice of states followed by them out of a sense of legal obligation.

²⁴ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996, International Court of Justice available at <http://www.icj-cij.org/docket/files/95/7495.pdf>.

²⁵ *Id.*

cessation of the nuclear arms race and to nuclear disarmament.²⁶ Unfortunately, the actions of several “nuclear weapon” states to uphold their “good faith” disarmament commitments continues to present a challenge to progress that may be attained in the enforcement of non-compliant states like Iran.²⁷ The five nuclear-weapon states have failed to meet their disarmament responsibility, assisted select non-NPT nations in the achievement of nuclear technologies and discriminated against NPT parties (like Iran and North Korea) who they *perceived* as a threat.²⁸

The imbalance of power and inequities under the NPT has created a ‘twin crisis of compliance and confidence’ prompting U.N. Secretary-General Kofi Annan to declare in 2006 that, “Today, the contract between the nuclear-weapon States and the rest of the international community, which is the basis of the NPT, has been called into question.”²⁹ The political will to enforce NPT non-proliferation commitments has proven to be highly problematic, especially since nuclear-weapon states have shown little interest in limiting their weapons. For example, the “U.S. still has 10,600 nuclear bombs, Russia 18,000 and the U.K. 200 – and they all want to keep them. Add in France, China and others, and the

²⁶ NPT see supra. In 1996, the International Court of Justice (ICJ) offered another interpretation of the Article VI obligation in its ruling on the legality of the threat or use of nuclear weapons – an advisory opinion issued at the request of the UN General Assembly. The Court unanimously held that Article VI of the NPT requires the nuclear weapon states “to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all aspects under strict and effective international control.” See ICJ advisory opinion on *Legality of The Threat or Use of Nuclear Weapons* at <http://www.un.org/law/icjsum/9623.htm>.

²⁷ For example, the United States decision to withdraw from the Anti-Ballistic Missile Treaty (ABMT) and to continue investment in a missile defense program and the design of “useable” mini-nukes has undermined the credibility of the disarmament commitments it made at the 2000 NPT Review Conference. See Nikolai Sokov, *U.S. Withdrawal from the ABM Treaty: Post-Mortem and Possible Consequences*, James Martin Center for Nonproliferation Studies publication at <http://cns.miis.edu/pubs/reports/2abm.htm>.

²⁸ With the covert assistance of France and the United Kingdom, Israel became the first Middle Eastern State to gain nuclear weapons. It enjoys what is essentially a “don’t ask, don’t tell” U.S. policy. India and Pakistan are also examples of outside the NPT legally developing nuclear weapons by aligning with one or more NPT states. For example, the U.S. appears increasingly comfortable with the acquisition of nuclear arsenals by Israel, India and Pakistan – provided they remain allies in the “war on terrorism” and their nuclear ambitions remain within certain quantitative limits.

²⁹ Press Release, Secretary-General, Non-Proliferation Treaty Facing Twin Crisis of Compliance, Confidence, Secretary-General says in Address to Conference on Disarmament, U.N. Doc. SG/SM/10527 (June 21, 2006), available at <http://www.un.org/News/Press/docs/2006/sgsm10527.doc.htm>.

world tally is about 29,800 nuclear warheads, a relatively small drop from 38,000 in 1968.”³⁰

At the heart of the twin “crisis of confidence and compliance” elucidated by Secretary-General Anan is the fact that in agreeing to be bound by the NPT, the non-nuclear weapon states gave up a greater portion of their sovereignty than the nuclear weapon states. In essence, the NPT agreement required an ‘equalizing’ of this sovereignty through nuclear disarmament. However, when Bush recommits the United States as he did in 2007 to a national strategy of producing new nuclear weapons on the basis that disarmament entails too many strategic risks – the very foundations of the NPT agreement are compromised.

The non-nuclear-weapon states “gave up their sovereign right to receive, manufacture and acquire nuclear weapons on the understanding that there would be a corresponding commitment by nuclear-weapon States to disarm. Regrettably, the nuclear [weapon] States...backtracked in their commitment.”³¹ The nuclear-weapon states must not continue to treat their disarmament obligations as second class commitments. This lack of political will has contributed to the erosion of the effectiveness of the NPT and undermined progress on the diplomatic front in the Iran nuclear weapons case. Armed with a legitimate excuse, Iran could now argue that the nuclear weapon states’ refusal to meet their commitments justifies its own right to withdraw from NPT obligations. Therefore, it has become increasingly difficult to justify penalizing Iran for past wrongs especially when nuclear-weapon states have avoided compliance with substantive provisions under the NPT treaty without any consequence. Recognizing the asymmetry of obligations between both camps that continues to undermine the non-proliferation regime, Dr. El Baradei directly addressed the inconsistencies in the NPT framework: “We must abandon the unworkable notion that it is morally reprehensible for some countries to pursue weapons of mass destruction yet morally acceptable for others to rely on them

³⁰ *The Final Straw for a Fragile Treaty*, New Scientist, June 19, 2004 available at <http://www.newscientist.com/article/mg18224521.200-the-final-straw-for-a-fragile-treaty.html>.

³¹ See Press Release, Security Council, Terrorist Acquisition of Nuclear Weapons ‘Dangerously Close,’ Norway’s Foreign Minister Tells Review Conference, U.N. Doc. DC/2962 (Oct. 5, 2005), available at <http://www.un.org/News/Press/docs/2005/dc2962.doc.htm>.

for security – indeed to continue to refine their capacities and postulate plans for their use.”³²

The example of states like Israel, India and Pakistan developing a nuclear arsenal outside the framework of the NPT highlights the double-standards that are applied in nuclear disarmament policy and discourse.³³ Such disparities only serve to increase proliferation and embolden rising regional powers, like Iran, to claim not only their right to peaceful energy but may also propel them towards amassing nuclear weapons for their own security. Dr. El Baradei has called this a clash between the “haves” and the “have-nots” and warned that “as long as countries feel insecure for whatever reason, they will continue to proliferate and develop weapons of mass destruction.”³⁴

The focus, therefore, ought to be on the universal application of the NPT to all states – and bringing the three states currently outside the treaty to become parties like other member states who have resolved to be bound by a duty and an obligation not to proliferate. International peace and security can only be attained if all states abide by their duties under treaties like the NPT and move towards the gradual elimination of their nuclear arsenals.³⁵ More importantly, non-compliant states need to be pressured into aligning themselves with the universal values enshrined in the U.N. Charter and other international law instruments that emphasize the “prevention and removal of threats to the peace.” Even though Iran is a party to the NPT and ought to respect its obligations, other proliferators like [India, Pakistan, Israel and North Korea] continue to erode the

³² Dr. Mohammed El Baradei quoted in *Saving Ourselves from Self-Destruction*, N.Y. Times Op-Ed, February 12, 2004, available at <http://query.nytimes.com/gst/fullpage.html?res=9A06E1DE133AF931A25751C0A9629C8B63&sec=&spn=&pagewanted=2>.

³³ Although Israel is not a party to the NPT, it is thought to possess some 200 nuclear weapons. Iran has long maintained that there is a double standard between nuclear “haves” and “have-nots”. In addition, there have long been calls for a Middle East Nuclear Weapons-Free Zone, including at the 1995 Non-Proliferation Treaty Review and Extension Conference, which have been largely ignored by Israel and the Western countries.

³⁴ Dr. Mohammed El Baradei quoted in *Tracking Nuclear Proliferation*, 2005 at http://www.pbs.org/newshour/indepth_coverage/military/proliferation/diplomacy.html.

³⁵ Reference here is made to the 2000 Non-Proliferation Treaty Review Conference and subsequent conferences that have emphasized nuclear disarmament at <http://disarmament.un.org/wmd/npt/finaldoc.html>.

very fabric of international security that the international community is striving to preserve. In a response to the May 1998 Indian nuclear detonations, Canadian Foreign Minister Axworthy emphasized the importance of the NPT as a globally legally binding instrument committing nuclear-weapons states (NWS) to disarm:

The nuclear non-proliferation regime is based on, and anchored in, international law and a complex system of multilateral and bilateral agreements, arrangements and mechanisms intended to promote and achieve a world without nuclear weapons, sooner rather than later. This was valid during the Cold War and remains valid today. At the same time, the regime is intended to provide a framework to enable the world to make effective use of nuclear capability for peaceful purposes.³⁶

President John F. Kennedy captured the dangers of a world where the proliferation of nuclear weapons poses a grave risk and a detrimental blow to any semblance of peace we may strive to achieve:

I ask you to stop and think for a moment what it would mean to have nuclear weapons in so many hands, in the hands of countries large and small, stable and unstable, responsible and irresponsible, scattered throughout the world. There would be no rest for anyone then, no stability, no real security, and no chance of effective disarmament. There would only be the increased chance of accidental war, and an increased necessity for the great powers to involve themselves in what otherwise would be local conflicts.³⁷

President Kennedy's words reflect the prevailing geo-political 'Cold War' order of the 1960's and 1970's where the prospects of a nuclear confrontation stemmed primarily from nation states. In this post 9/11 era, non-state actors and terrorist organizations such as Al-Qaeda pose a particularly unrelenting challenge to the existing structures that are in

³⁶ Tariq Rauf, Head of the Verification and Security Policy Coordination Section, IAEA. *Successes of the Nuclear Non-Proliferation Regime - Curbing the Spread of Nuclear Weapons*, a panel discussion organized by the IAEA, 1999 at <http://cns.miis.edu/pubs/ionp/iaea.htm>.

³⁷ John F. Kennedy, Address to the American People on the Nuclear Test Ban Treaty, July 26, 1963. Nuclear Age Peace Foundation, 2003 at http://www.wagingpeace.org/articles/2003/11/17_carnegie_jfk-nuclear.htm. President Kennedy words reflected the prevailing geo-political order of his day.

place to safeguard non-proliferation of all types of Weapons of Mass Destruction (WMD).

Compounding the Iran nuclear weapons issue are the continued allegations and accusations linking Iran to sponsoring terrorist activities. President Bush's labeling of Iran as a member of the "Axis of Evil" has accentuated and heightened the level of compliance demanded of Iran's nuclear weapons program. According to Professor Gary Sick, director of the Middle East Institute at Columbia University, "terrorism is murky and highly ambiguous...Iran's past reputation for supporting terrorism, the incendiary rhetoric of its ultraconservative leaders, and its almost total lack of transparency concerning issues of national security have created an environment in which it is easy to believe the worst."³⁸

The risk of nuclear materials falling into the hands of terrorists has enabled Iran's opponents to question its legitimacy for obtaining nuclear material and technology. William Potter of the Center for Nonproliferation Studies articulates the serious challenges the NPT regime faces from terrorist-related threats: "Iranian defection from the NPT, or a demonstrated nuclear capability by a non-state actor such as Al-Qaeda could set in motion a chain reaction or cascades of proliferation that would gravely weaken if not undermine altogether the NPT and its associated institutions."³⁹ According to the 9/11 Commission report, Al-Qaeda leaders called it "a religious duty to acquire weapons of mass destruction...and thought their leader was intent on carrying out a 'Hiroshima.'"⁴⁰ This hybrid of religious and political zeal that continues to motivate

³⁸ Gary Sick, *Iran: Confronting Terrorism*, The Washington Quarterly, Autumn 2003, at 86 available at http://www.twq.com/03autumn/docs/03autumn_sick.pdf. Professor Gary Sick's description of terrorism as "murky and highly ambiguous" is especially interesting when comparing the United States' treatment of Iran and Pakistan. Even though the Bush Administration continues to forbid Iran's use of nuclear technology, it continues to support and turn a blind eye to Pakistan as a nuclear-weapon state. Like Iran, Pakistan is not a democracy and is politically unstable. In fact, the current climate in Pakistan is more conducive to its nuclear stockpile falling into the hands of terrorists.

³⁹ William C. Potter, *The Once and Future NPT: In Search of Political Will*, Center for Nonproliferation Studies, Monterey Institute of International Studies, presentation prepared for the public hearing before the European Parliament on The Future of the Non-Proliferation Treaty, Brussels, Belgium (September, 14 2006) available at http://abolition2000europe.org/resserver.php?blogId=1&resource=Potter_EN.doc.

⁴⁰ The Threat of Nuclear Terrorism in *Tracking Nuclear Proliferation*, 2005 at http://www.pbs.org/newshour/indepth_coverage/military/proliferation/terrorist_threat.html. Al-Qaeda has tried to purchase highly enriched uranium (HEU) at least once and an operative for the terrorist network testified in a U.S. court that he agreed to pay \$1.5 million for a cylinder containing HEU.

organizations like Al-Qaeda represents the new face of “proliferation challenges” that our civilization must effectively address.⁴¹ The larger issue that ought to be analyzed is whether the NPT can be used to prevent non-state actors like Al-Qaeda from the acquisition of nuclear weapons? Of course, Al-Qaeda is neither a nation-state nor a traditionally viable negotiating party. However, negotiations do take place with proliferators like North Korea, India, Israel and Pakistan to attempt to achieve some measure of cooperation on nuclear disarmament issues. I am not advocating immediate direct negotiations with Al-Qaeda but rather reforming the NPT to factor in terrorist threats.⁴²

Substantive reforms to the NPT regime outlining the threats posed by terrorism may be implemented with the addition of a few key institutions that may serve to strengthen the underpinnings of the regime. For example, the creation of an NPT secretariat with the ability to call an emergency gathering may assist states in more effectively addressing urgent crises such as terrorist threats. It also would increase WMD non-proliferation cooperation between states and ensure more concerted diplomatic action. An enhanced role for civil society and NGO’s with expertise in nuclear proliferation and terrorism issues may also prove helpful in providing advice to government delegations on NPT issues.

⁴¹ Gilles Arbellot du Repaire, *The Nuclear Weapon Non-Proliferation Treaty and Terrorism: The Consequences of 11 September 2001 on the Treaty Review Process*, http://www.nea.fr/html/law/nlb/nlb-71/017_043.pdf.

⁴² This issue is beyond the scope of this thesis, however, the following analysis may clarify my argument. “Although many governments say that they will not negotiate with terrorists, in practice they often do. The primary argument against negotiating with terrorists is that such negotiations give legitimacy to terrorists and their methods ...and undermine actors who have pursued political change through peaceful means.” See Peter R. Neumann, *Negotiation with Terrorists*, *Foreign Affairs*, January-February 2007 at <http://www.foreignaffairs.org/20070101faessay86110/peter-r-neumann/negotiating-with-terrorists.html>. Another issue that merits examination is the neutralization of terrorists through economic integration and development. Several scholars have argued that the major terror threat around the world today does not emanate primarily from Al-Qaeda and its centrally planned operations, but rather from “homegrown” marginalized young men and women that have resorted to adopting a radical world view as a reaction to their own life condition and what they perceive as a “War on Islam” from the West. Much like the Iran crisis, what is needed here is dialogue, constructive engagement, and economic integration. Engaging “marginalized” groups through these measures serves the larger goal of peace-building in much the same way as engaging a rising power like Iran [through these means, and an emphasis on economic integration] may help place the outstanding “nuclearization” issue in perspective.

The malicious and abhorrent intent of Al-Qaeda has manifested itself in crimes such as 9/11 that some have argued were beyond the scope of our imagination (i.e. airplane carriers being navigated into populated civilian structures). The scenario of detonating a dirty nuclear bomb or spreading a lethal pathogen in a major metropolitan city killing thousands of innocent people is now a chilling, yet real possibility. The risk of nuclear terrorism is arising not only from illicit nuclear trafficking around the world but also the likelihood of theft of weapons-usable nuclear materials.⁴³ An Al-Qaeda nuclear threat looms over the horizon and effective contingency plans can mitigate the catastrophic consequences of such a possible nuclear threat. Governments must review their security arrangements, strengthen the rule of law under the NPT, and prevent nuclear weapons from falling into the hands of terrorists like Al-Qaeda. There is always the possibility that a non-compliant state like Iran [or for that matter a non-NPT party like Pakistan, India, North Korea or even Israel –although less likely for economic and political reasons- may share technology for hard currency.⁴⁴

Finding a solution to the twin crisis of compliance and confidence challenging the NPT regime will require nonproliferation leadership, political will, and creativity on the part of both the nuclear and non-nuclear weapon states. There can be no question that the nuclear weapon states must lead the initiative in upholding their NPT disarmament commitments. In order to strengthen the foundations of the NPT regime, the power imbalances between the non-nuclear weapons states and what Perkovich calls the “advantaged minority” need to be addressed by enforcing “compliance universally, not selectively, and that includes the obligations the nuclear states have taken on

⁴³ Many counter-terrorism scholars have also indicated that groups like Al-Qaeda have already threatened and planned to execute attacks against nuclear facilities – reactors and nuclear fuel making plants – in hopes of producing Chernobyl-like results. In the process, these terrorist groups seek to undermine the credibility of the states responsible for maintaining these facilities’ safe operation.

⁴⁴ The analogy that Charles D. Ferguson, fellow at the Council on Foreign Relations and co-author of “The Four Faces of Nuclear Terrorism”, uses is that many of these countries could become like nuclear “Wal-Marts.” In addition, intelligence has also revealed that Pakistan and North Korea have been running “proliferation bazaars” for some time which could potentially become a source of nuclear materials for Al-Qaeda or other terrorist groups. Tracking Nuclear Proliferation, 2005 at http://www.pbs.org/newshour/indepth_coverage/military/proliferation/terrorist_threat.html.

themselves.”⁴⁵ This can be achieved through a cooperative approach to collective security and adhering to a rule-based international legal framework.⁴⁶ By making all states (regardless of nuclear-weapon status) stakeholders in the effort, international progress towards peace, order and disarmament can best be attained through the participation and cooperation of all governments.⁴⁷

As the NPT continues to face challenges, Iran’s nuclear dossier and its eventual outcome will likely have a detrimental impact on trends in non-proliferation and the future of the NPT regime. The fear in the international community is that Iran may damage the nonproliferation regime by developing a civilian nuclear energy program in compliance with the NPT and then exploit the “dual-use” nature of nuclear fuel cycle technology to develop an actual nuclear arsenal. Therefore, states cannot afford to overlook their commitment to strengthening the NPT treaty-based regime because the potential consequences of a weakened or defunct NPT regime are more likely to lead to a nuclear catastrophe – whether it is by accident, terrorist design or state aggression. Emphasizing the importance and urgency of making a good-faith commitment to nonproliferation efforts, U.N. Secretary General Kofi Annan stated:

We cannot continue to lurch from crisis to crisis, until the regime is buried beneath a cascade of proliferation. Twice last year, governments had the chance to strengthen the foundations of the NPT regime, by agreeing on more robust IAEA inspections; incentives and guarantees for countries to forgo enrichment and reprocessing of fissile materials; and energetic

⁴⁵ George Perkovich et al, *Universal Compliance: A Strategy for Nuclear Security*, Carnegie Endowment for International Peace, 2005 at pg. 35 available at <http://www.carnegieendowment.org/files/UC2.FINAL3.pdf>.

⁴⁶ A cooperative approach to collective security is based on the Westphalian idea of a consensual coalition between states that come to each other’s defense. Under a ‘cooperative’ approach, states form multilateral alliances to achieve collective security and stress the need for all regional states (even those of potential concern) to cooperate to eliminate military conflict.

⁴⁷ The government of Libya’s announcement in December 2003 that it would reveal and eliminate its weapons of mass destruction programs was seen as a remarkable nonproliferation compliance success story – achieved through a cooperative approach to collective security. Libya pledged to eliminate its nuclear weapons program, declare all its nuclear activities to the IAEA, and allow immediate inspections and monitoring to verify these actions. As Libyan leader Colonel Muammar Qaddafi stated: “Libya has re-assessed its commitment to nuclear weapons. . . today, if you built a nuclear bomb you would be in big trouble.” Jack Boureston, *Verifying Libya’s Nuclear Disarmament*, Trust and Verify publication January 2004 available at <http://www.vertic.org/assets/TV112.pdf>.

steps to meet disarmament commitments. Both times they failed. We cannot afford any more such squandered chances.⁴⁸

This is why it is so fundamentally important for the United Nations Security Council, considered to be the most legitimate enforcer of the NPT, to continue pressuring Iran to comply with its safeguards obligations.⁴⁹

⁴⁸ UN Secretary-General Kofi Annan, address to United Nations Association of the United Kingdom, Central Hall, Westminster, United Kingdom, January 31, 2006, available at <http://www.un.org/News/Press/docs/2006/sgsm10332.doc.htm>.

⁴⁹ However, as argued before in this paper, the focus throughout the “engagement process” with Iran should not only be through the U.N. Security Council and the P-5 – but rather complete diplomatic engagement with all parties at all stages.

❖ Chapter III:

Pressuring Iran into Compliance: The Role of the U.N. Security Council

In situations like Iran's "non-compliance" with its safeguards obligations, there are two legal bases for referral to the Security Council: the U.N. Charter and the IAEA Statute.⁵⁰ Under Chapter VI and VII, Article 37 and 39, states may "refer their dispute to the Security Council, who will assess whether the dispute endangers the maintenance of international peace and security."⁵¹ Consequently, there are two independent justifications for Security Council referral: (1) international security concerns; and (2) non-compliance or breaches with respect to provisions of the Safeguards Agreement.⁵²

In the Iran nuclear weapons case, the IAEA Board of Governors cited Iran's non-compliance with the safeguards framework and also declared that it is not in a position to determine whether Iran's nuclear program is for civilian purposes – a question which falls under the Security Council's competence.⁵³ Highlighting Iran's many failures and breaches of its obligations, the IAEA Board of Governors indicated that "the history of

⁵⁰ The misapplication of the term "non-compliance" has propelled and fueled the Iran crisis since its referral to the Security Council. The term "non-compliance" does not appear in the Safeguards Agreement, yet is referred to in the IAEA Statute. Under the Statute, non-compliance requires a finding that nuclear material has been diverted for military purposes. In the case of Iran, its failure to declare various activities violated the Safeguards Agreement but there is no finding of "non-compliance" in the sense of diversion of nuclear materials.

⁵¹ U.N. Charter – See Article 37 and 39 set out in Chapter VI and VII.

⁵² Under the IAEA Statutes (Article XII:C) if states are found in breach of their IAEA safeguards agreement, they will be provided with an opportunity to return back to compliance within a reasonable time, before any punitive action taken against them or before their cases are referred to the United Nations Security Council. Section 19 of the IAEA's safeguards agreement (INFCIRC/153), which deals with measures in relation to verification of non-diversion and any possible non-compliance makes it clear that the IAEA's Board of Governors 'shall take account of the degree of assurance provided by the safeguards measures' and 'shall afford the State every reasonable opportunity to furnish the Board with any necessary reassurance.' See Elahe Mohtasham, *The Clash of Ideologies or Peaceful Multilateral Negotiations Based on National Interests: The Degree of Iran's Commitment to the Treaty of Nuclear Weapons*, Address before the U.N. 2005 Review and Extension Conference (May 11, 2005), available at <http://www.reachingcriticalwill.org/legal/npt/RevCon05/NGOpres/iran10.pdf>.

⁵³ Iran points to contradictions in the decision of the Board of Governors to refer it to the Security Council. Iran maintains that the IAEA inspectors found no conclusive evidence to support allegations of a clandestine nuclear program in Iran. Iran holds that this referral to the Security Council, without a supporting report by IAEA inspectors providing evidence that Iran is in breach of its substantive NPT obligations, or that it is in continuing breach of its IAEA Safeguards Agreement, is not only an indication that the Board's decision is premature but also that this decision of the IAEA Board is *ultra vires* its authority under Article XII(7) section c of the IAEA Statute.

concealment of Iran's nuclear activities...the nature of these activities...issues brought to light in the course of the Agency's verification..., and the resulting absence of confidence that Iran's nuclear program is exclusively for peaceful purposes have given rise to questions that are within the competence of the Security Council.”⁵⁴ The IAEA subsequently ‘referred’ Iran's non-compliance with its safeguards obligations to the U.N. Security Council on April 28, 2006.

‘Referral’ to the Security Council is formally considered little more than a petition to place a matter on the Council's agenda and is typically viewed as a prelude to all the necessary fact-finding, deliberation before deciding upon an enforcement action such as censure, sanctions or the use of force.⁵⁵ However, in the arena of proliferation crises, the “threat” associated with “referral” (which carries a range of implications, the most serious of which is the eventual –though not necessary- threat of force) can be interpreted by a targeted state such as Iran as a step towards coercive measures rather than a good-faith effort towards dispute resolution. For example, when the IAEA referred Iran's ‘non-compliant’ nuclear program to the Security Council, Iran not only characterized the referral as a hostile act signaling the “end of diplomacy” but also as an infringement on its legal rights. Iran's perception of the referral as a “threat” also had serious repercussions on the diplomatic front with key players such as the France, Germany and the United Kingdom (EU-3). Even as the EU-3 insisted that the “diplomatic path is not closed,” the Iranian leadership felt that ‘referral’ to the Security Council compromised the opening for negotiation and that this was the beginning of campaign to enforce non-military sanctions, if not ultimately the use of force.

⁵⁴ IAEA Board of Governors resolution, adopted on 25 September 2005 at <http://www.iaea.org/Publications/Documents/Board/2005/gov2005-77.pdf>. In August 2005, one month prior to the Board of Governors resolution, Iran resumed its uranium enrichment program at Isfahan. The IAEA called on Iran to halt its nuclear program, but Tehran refused stating that the nuclear fuel cycle was its right as a party to the NPT.

⁵⁵ Certain international law scholars maintain that ‘referral’ to the Security Council is more than just merely a procedural step, but rather a kind of enforcement measure in and of itself. For example, during its withdrawal crisis, North Korea indicated that any resolution from the Security Council would be an “act of war.”

Although negotiations between Iran and the EU-3 sought to bring Iran into compliance with its international obligations by offering it trade incentives in exchange for abandoning its nuclear aspirations, the 2005 Iranian elections ushered in the ultra-conservative Mahmoud Ahmadinejad who took a hard-line anti-U.S., anti-Israeli approach. Another detrimental factor included pressure from the U.S. to revise the EU-3 strategy, adopting a new position that the only acceptable “objective guarantee” would be the total cessation of enrichment in Iran. Both of these developments dealt a major blow to the diplomatic process which both Iran and the European representatives seemed committed to at the 2004 Paris Agreement.⁵⁶

After three years of unsuccessful negotiations between Iran and the IAEA and EU-3, The Security Council adopted Resolution 1696, which gave Iran until August 31, 2006 to “suspend all enrichment-related and reprocessing activities, including research and development.”⁵⁷ Even though this resolution is legally binding, Iran flatly rejected its terms and acted as if it were the aggrieved party. In the months leading to Resolution 1696, the Security Council was divided on whether sanctions should be adopted if Iran did not comply and in the event sanctions were to be applied – what form they should take. For example, there were clear disparities in the positions of the U.S., France, and the U.K. on the one hand (who endorsed a commitment to sanctions), and Russia and China on the other (who were more vague in their statements with respect to the position they would endorse should Iran refuse to comply).

These divisions among the P-5 may have been one reason why Iran continued to posture defiantly, with Ahmadinejad exclaiming that one of the Security Council

⁵⁶ *Iran – Jack Straw welcomes signature of nuclear agreement*, Foreign & Commonwealth Office News, 15 November 2004, at http://www.fco.gov.uk/resources/en/press-release/2004/11/fco_npr_151104_iranstraw. The Paris Agreement emphasized Iran’s obligations under the NPT – the basis of which was a framework built on the recognition that included “objective guarantees that Iran’s nuclear program was exclusively for peaceful purposes.” This signaled a “good faith” formula that could be reached that would acknowledge Iran’s right to enrich uranium while also satisfying the demands of the international community that such enrichment could be conducted under tight controls that would prevent the diversion of materials or technology to military purposes. The Paris Agreement, in essence, gave Iran the incentives it sought while addressing any fears of Iran exploiting the “dual-use” element that comes within the domain of enriching uranium.

⁵⁷ U.N. Security Council Resolution 1696, adopted on 31 July 2006. The resolution was passed by fourteen (14) votes in favor one (Qatar) against.

resolutions was no more than a “torn piece of paper.”⁵⁸ Perkovich highlights the challenges that the Security Council faces in inducing and coercing states such as Iran to comply with a given resolution:

When a state like Iran defies the Security Council, the council can accept defeat and allow the dangerous behavior in question to continue and its own credibility plummet, or it can adopt various forms of sanctions or even authorize military action to compel the state to comply. Problems that are grave enough to require Security Council action generally are not resolved in one step; often a progression of political statements and sanctions of increasing intensity occurs. The more powerful the noncompliant state is, the more cautiously the Security Council acts.⁵⁹

Iran’s failure to respond promptly and satisfactorily to Resolution 1696 led to the adoption of U.N. Security Council Resolution 1737 on 23 December 2006. It mandates all U.N. member states “to prevent the supply, sale or transfer...of all items, materials, equipment, goods and technology which could contribute to Iran’s enrichment-related, reprocessing or heavy water related activities or to the development of nuclear weapon delivery systems.”⁶⁰ Once again, the deep divisions within the Security Council were evident from the onset where it took over two months for the agreement on a draft resolution, which was later amended several times after objections from Russia and China. Further complicating the Security Council’s sense of “cohesiveness and solidarity” was the last minute call from Russian President Vladimir Putin to U.S. President George W. Bush to finalize the vote.⁶¹

⁵⁸ See supra Bruce W. Jentleson, *Sanctions Against Iran: Key Issues*, at pg. 3. Reference here is made to Security Council Resolution 1737.

⁵⁹ See supra George Perkovich, *The End of the Nonproliferation Regime?*, at pg. 359.

⁶⁰ U.N. Security Council Resolution 1737, adopted on 23 December 2006. Along with Resolution 1737, the Bush administration has also taken a number of steps to impose additional U.S. “unilateral” sanctions – primarily targeting financial institutions. In 2006, two European banks (Credit Suisse First Boston and UBS) decided they would not do any business with Iran. This trend appears to be continuing, with the U.S. Department of Treasury pressuring more global banks to sever ties with Iran.

⁶¹ It should be noted that many countries like Russia and China were skeptical from the onset that U.N. sanctions would change Iranian behavior but went along because they had no better alternative, and felt that if sanctions were not imposed through the Security Council, then more severe US actions would probably be implemented (i.e. a military strike). Both Russia and China continue to exercise restraint in their decisions regarding the imposition of sanctions against Iran. This is clearly as a direct result of their

Iran capitalized on these divisions and responded by not only condemning the resolution but also criticizing the Security Council. A spokesman for Iran's Foreign Ministry said "the resolution cannot affect or limit Iran's peaceful nuclear activities, but will discredit decisions of the Security Council, whose power is declining."⁶² Iran's chief nuclear negotiator at the time, Ali Larijani, stated that Iran's response to Resolution 1737 was to accelerate its nuclear program by speeding up installation of 3,000 centrifuges at its Natanz enrichment plant.⁶³ In a similar stance of defiance, the Iranian Ambassador to the U.N. expressed his views on the resolution, stating that "a nation is being punished for exercising its inalienable rights...and the Security Council is acting at the behest of a dangerous regime with aggression and war crimes as its signature behavior."⁶⁴

As a direct result of Iran's continued non-compliance, the sanctions implemented in Resolution 1737 were "incrementally intensified" in Security Council Resolution 1747 to further pressure Iran into compliance. Adopted unanimously in March 2007, Resolution 1747 seeks to tighten the squeeze on Iran's nuclear and missile programs by preventing dealings with state Bank Sepah and 28 named people and organizations – many connected to the elite Revolutionary Guard. Furthermore, member states have been told to exercise restraint in their financial dealings with Iran and to report the travel of individuals connected to these programs. In addition, imports of arms have been banned and member states have also been told to exercise restraint in selling major arms systems to Iran. According to the Resolution, loans are to be limited to humanitarian and development purposes.⁶⁵

concerns about the U.S.'s power in the international system and their interest in containing such power – a power which has often been abused and used indiscriminately in promoting self-serving needs and economic interests (i.e. Iraq).

⁶² Mohammad Ali Hosseini, spokesman Iran's Foreign Ministry in "Iran rejects U.N. resolution and accuses Security Council of hypocrisy" at <http://www.signonsandiego.com/news/world/20061223-1548-un-iransview.html>.

⁶³ Iranian chief nuclear negotiator Ali Larijani, in "Iran gears up for uranium enrichment," Reuters, Parisa Hafezi, available at <http://www.abc.net.au/science/articles/2007/01/16/1827819.htm>

⁶⁴ Iranian Ambassador M. Javad Zarif, in "Iran rejects U.N. resolution and accuses Security Council of hypocrisy" *See supra*.

⁶⁵ U.N. Security Council Resolution 1747, adopted on 24 March 2007.

Iran's reaction to Resolution 1747 stressed the inherent injustices and so-called "hypocrisy and double-standards" in the system by maintaining that the West's resort to the Security Council to pressure states like Iran to give up their inalienable right to enrichment for peaceful purposes - while these same Western states continue to violate their duty under the NPT by not getting rid of their own nuclear arsenals. Comments such as this revealing no future intentions for compliance with binding Security Council resolutions led to a third round of sanctions under Resolution 1803.

U.N. Security Council Resolution 1803 extends asset restrictions and travel bans on more Iranian individuals said to be involved in nuclear work and on more Iranian companies.⁶⁶ It bans the sale to Iran of so-called "dual-use" items (which can have either a military or civilian purpose). The resolution also calls on governments to withdraw financial backing from companies trading with Iran, to inspect cargo going into and out of the country, and to monitor the activities of two Iranian banks.⁶⁷ Once again, Iran reiterated its refusal to comply with the Council's demands to suspend its nuclear enrichment activities and stated that it "cannot accept a requirement which is legally defective and politically coercive."⁶⁸

In addition to the U.N. imposed sanctions, the United States has led the effort to persuade not only foreign governments but also non-American companies to refrain from engaging in business with Iranian banks. A unit within the U.S. Treasury Department called the Financial Crimes Enforcement Network (FinCEN) has leveraged its extraterritorial legal powers and its financial clout to convince other governments as well as the international private sector that doing business with Iran carries with it significant risks. U.S. Secretary of the Treasury Henry Paulson has engaged in an extensive global outreach campaign with other governments emphasizing Iran's illicit conduct (not only its WMD related activity but also its deceptive financial practices) and also making the compelling case that Iran's business practices make it difficult to "know your customers."

⁶⁶ Resolution 1803 goes further in scope than the prior resolutions by targeting and naming individuals and companies. It freezes the foreign assets of 13 Iranian companies and 13 Iranian officials.

⁶⁷ U.N. Security Council Resolution 1803, adopted on 03 March 2008.

⁶⁸ Peter Crail, *Security Council Adopts More Iran Sanctions*, Arms Control Association, April 2008 available at http://www.armscontrol.org/act/2008_04/IranSanctions.

Paulson cautioned that Iran's terrorist and proliferation activities are inextricably linked to its financial institutions, "it is increasingly likely that if you are doing business with Iran, you are somehow doing business with the Iranian Revolution Guards Corps (IRGC)...because the IRGC is so deeply entrenched in Iran's economy and commercial enterprises."⁶⁹ Echoing Paulson's concerns, a lesser-known international organization called the Financial Action Task Force (FATF) has also urged Iran to immediately address the shortcomings in its anti-money laundering and terrorist financing regimes.⁷⁰

According to Paulson, the U.S. has been able to garner international cooperation with respect to the unilateral sanctions because the "United States is the key hub of the global financial system; we are the banker to the world."⁷¹ Access to the U.S. market for most banks is crucial for their survival and consequently it is not a worthwhile risk for them to maintain ties with Iranian banks that have ties to designated terrorists or WMD proliferators. The \$80 million fine sustained by the Dutch bank ABN Amro in 2005 for having an inadequate program in place to ensure compliance with the U.S. sanctions against Iran and Libya sent "seismic waves through the international banking system...and the reverberations are still being felt today."⁷² As a result, the temptation to deal with high-risk Iranian financial institutions becomes a strong deterrent and also a strong reputational risk to well-established banks.

⁶⁹ U.S. Secretary of the Treasury Henry Paulson in *Remarks by Treasury Secretary Paulson on Targeted Financial Measures to Protect Our National Security*, HP-457, June 14, 2007 available at <http://www.ustreas.gov/press/releases/hp457.htm>. The Iranian Revolutionary Guards Corps (IRGC) is a paramilitary arm of the Iranian regime and according to the U.S. State Department the IRGC has been directly involved in planning, funding and supporting terrorist acts. The primary justification for the designation of the IRGC as a "proliferator of weapons of mass destruction" had less to do with nuclear materials and more to do with ballistic missiles. Even though Iran's ballistic program remains in its nascent stages, the IRGC has been "outspoken about its willingness to proliferate ballistic missiles capable of carrying weapons of mass destruction." Ballistic missiles are not weapons of mass destruction but the State Department executive order covers both "proliferation of weapons of mass destruction and the means of delivering them."

⁷⁰ The Financial Action Task Force (FATF), launched by the Group of Seven (G-7) in 1989, is a 34-member body based in Paris that seeks to set global standards on combating money laundering and terrorism financing. Also See http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1_1,00.html.

⁷¹ Id.

⁷² Stephanie Kirschgaesner, *Banks Braced for Fines*, Financial Times, August 29, 2007 available at <http://www.ft.com/cms/s/0/0527e010-5672-11dc-ab9c-0000779fd2ac.html>.

As with most sanctions, the results of this global U.S.-led effort to pressure Iran financially has been mixed. On the one hand, the number of foreign banks operating in Iran has sharply declined since 2006, dropping from 46 to 20.⁷³ Consequently, Iran is finding it increasingly difficult to raise loans, obtain foreign currency or hold any assets offshore. Because Iran is being isolated economically and its ability to obtain foreign currency is becoming more difficult, it is no longer able to purchase essential imports. On the other hand, despite the U.N. imposed sanctions and unilateral sanctions that have been imposed, enforcing economic sanctions in Iran has been difficult. One key difficulty is the fact that Iran's economy is more of a 'command economy' than a free market. This means that the government controls nearly 80% of the total economy and the absence of a vibrant private sector creates the lack of a business class that could pressure the government to comply with U.N. or other, unilaterally imposed sanctions.⁷⁴

Further exacerbating the enforcement issue is the fact that record oil prices have given Iran an advantage which enables it to "counter-sanction" against the West by limiting oil production to further drive up prices. In effect, the Iranian leadership has been able to disguise an array of internal problems that have been plaguing the country – from overspending and inflation near 25 percent to high unemployment. One Iranian official has summed up the state of affairs by saying "we could survive in this country with \$15 billion per year, and now we're making \$100 billion...there is no way we should give in under pressure."⁷⁵ The nuclear crisis may have imposed a heavy opportunity cost in terms of increased Iranian trade or revenue opportunities, however, as long as Iran's economy retains its oil lifeline it is unlikely that sanctions alone will convince Iran to abandon its uranium enrichment efforts.

⁷³ David Blair, *Banks Recruited to Wage Financial War on Tehran*, Telegraph, September 18, 2007 available at <http://www.telegraph.co.uk/news/worldnews/1563482/Banks-recruited-to-wage-financial-war-on-Teheran.html>. Major global financial institutions, including three major Japanese banks, Switzerland's Credit Suisse, Germany's Deutsche Bank and Commerzbank, and the United Kingdom's HSBC, have either terminated or dramatically reduced their business with Iran. In recent months, both China and the United Arab Emirates have also taken measures to exercise greater caution in their business dealings with Iran.

⁷⁴ Scott Peterson, *Iran's Nuclear Program: Will More Sanctions Work?*, The Christian Science Monitor, June 13, 2008 available at <http://www.csmonitor.com/2008/0613/p06s01-wome.html>.

⁷⁵ Scott Peterson, *See supra*.

Coping with the U.N.-imposed sanctions has been one challenge for Iran (which are largely restricted to nuclear-and missile-related activities and people involved in such activities). However, the financial sanctions imposed and advocated by the U.S. Department of Treasury have hit Iran more intensely than U.N. sanctions because they attempt to completely cut off Iran's access to dollar financing and the U.S. financing system. Despite this challenge, Iran has found avenues to get around U.S. imposed sanctions by establishing links with small and medium-sized banks that have less U.S. exposure than bigger lenders. According to the managing director of Bank Mellat, "the U.S. sanctions initially had a negative impact on the bank's reputation and created troubles, but in practice there was no halt in our operations...we are now working with important international commercial and correspondent banks on a daily basis...including European, Asian and African ones."⁷⁶

Many experts on the "effects of economic sanctions" argue that sanction efforts like the ones imposed on Iran tend to show modest successes and many failures. The examples of Cuba, Panama, Yugoslavia, and Iraq all point to the fact that sanctions have often failed to meet their core objectives.⁷⁷ Jeffrey Schott maintains that in the 1990's sanctions contributed to the achievement of U.S. foreign policy goals in less than 20% of the cases.⁷⁸ Schott further believes that in recent years sanctions have increasingly become a "way station" to the use of military force.⁷⁹ According to experts, there are

⁷⁶ Najmeh Bozorgmehr, *Iran Gets Around U.S. Bank Sanctions*, Financial Times, August 21, 2008 available at <http://www.ft.com/cms/s/0/a05a3cb2-6f9f-11dd-986f-0000779fd18c.html>.

⁷⁷ *Cuba* has been able to sustain the effect of economic sanctions for over 48 years. When Manuel Noriega successfully resisted U.S. pressure in *Panama*, sanctions proved to be an ineffective tool and marines had to be sent in to achieve U.S. objectives. Similarly, the *Iraqi* regime was able to use the oil-for-food program to build palaces and blamed the worsening of the standards of living for Iraqi citizens on the U.N. sanctions. Oil was also smuggled and sold on the black market to solely benefit the regime. Many analysts argue that although the sanctions in the Iraqi case may have stopped Saddam from rebuilding his military and WMD capabilities, the costs of these sanctions may have outweighed their benefits. Sanctions on Slobodan Milosevic's *Yugoslavia* were effective because the U.S. and European Union devoted considerable resources to targeting Milosevic's illegal financial holdings. The only clear and significant example of success was the sanctions regime imposed against apartheid *South Africa*, but it took nearly 30 years from the first U.N. resolution in 1962 to the release of Nelson Mandela in 1990.

⁷⁸ Jeffrey J. Schott, *U.S. Economic Sanctions: Good Intentions, Bad Execution*, testimony before The Committee on International Relations, U.S. House of Representatives, June 3, 1998 available at http://www.fas.org/spp/starwars/congress/1998_h/h980603js.htm.

⁷⁹ Jeffrey Schott, *See supra*.

several reasons why economic sanctions have had a poor success record: (1) Sanctions are often violated through smuggling and backdoor deals to benefit the ruling elite while hurting the general population; (2) With a globalized economy, countries under sanctions have alternatives. While some countries abide by sanctions, there are many nations and companies that are willing to trade and violate imposed restrictions to advance economic commercial interests; (3) Sanctions are highly politicized and this gives other nations the reasons to violate them. Political rivalries between nations often drive some to utilize sanctions to advance strategic, military, and commercial interests; (4) Technology and capital markets are widely available to other nations to import from third parties. For example, even if the U.S. stops the export of its computer chips to a nation, the same product of a close substitute exists elsewhere and can be easily imported.⁸⁰

The U.S. argues that the targeted financial sanctions that it has sought to promote have a number of advantages over traditional, broad-based sanctions. Although “smart sanctions” aimed at key sectors such as the Iranian financial institutions are one effort to pressure Iran into compliance, they do not always target with precision and often end up having un-intended consequences. The effects of such sanctions could prove to be counterproductive because they could “backfire” and have severe repercussions on the Iranian people, destroy the civil society infrastructure, and give the leaders of Iran more reason to repress their populace. As was the case with the sanctions against Iraq, the victims of a sanctions campaign will not be the Iranian leadership but rather Iran’s overwhelmingly young population, including innocent children.⁸¹ John McGlynn describes the potential effects of such sanctions:

If the U.S. succeeds, an international quarantine on Iran’s banks would disrupt Iran’s financial linkages with the world by blocking its ability to process cross-border payments for goods and services exported and

⁸⁰ Anthony Cordesman and Khalid Al-Rodhan, *Iranian Nuclear Weapons? Options for Sanctions and Military Strikes*, Center for Strategic and International Studies publication, 2006 available at http://www.csis.org/media/csis/pubs/060830_iranoptionssanctions.pdf.

⁸¹ Almost 70 percent of Iran’s population is under 30 years of age. An estimated 40 percent of Iranians live under the poverty line. Iran needs to create an estimated 800,000 jobs each year to keep up with its burgeoning population; it creates only 400,000. See Kenneth Pollack, *The Persian Puzzle: The Conflict Between Iran and America*, New York: Rand House, 2004.

imported. Without those linkages, Iran is unlikely to be able to engage in global trade and commerce. As 30% of Iran's GDP in 2005 was imports of goods and services and 20% was non-oil exports, a large chunk of Iran's economy would shrivel up. The repercussions will be painful and extend well beyond lost business and profits. For example, treating curable illnesses will become difficult. According to an Iranian health ministry official, Iran produces 95% of its own medicines but most pharmaceutical related raw materials are imported.⁸²

The side effects of U.S. unilateral sanctions are already visible and are having adverse consequences on the Iranian population rather than altering Iran's behavior. The World Bank recently suspended \$5.4 million of aid scheduled for projects in Iran until it can find financial institutions other than the blacklisted Bank Melli, which has been accused by the U.S. of being involved in nuclear proliferation and terrorism, to handle transactions.⁸³ The aid package was intended to assist Iran with recovery from the deadly Bam earthquake in 2003, as well as with water treatment, environmental management and urban renewal. Some members of the U.S. Congress have continued to call for more financial pressure, signaling that the U.S. should completely block World Bank aid programs for Iran. In addition, corporate giants Yahoo! and Microsoft removed Iran from the country lists of their webmail services.

Economic sanctions are punitive measures and not serious efforts at diplomacy. Therefore, sanctions are more likely to increase public support for the regime, unite the moderates behind the hardliners, cause coalitions to falter by driving Iran into the hands of Russia and China and ultimately make it more difficult for the U.S. and the EU-3 to gain traction in the negotiations. However, despite these drawbacks and the humanitarian casualties that may result, the U.S. continues to maintain that unilateral and U.N. imposed

⁸² John McGlynn, *Day of Infamy: The March 20, 2008 U.S. Declaration of War on Iran*, Centre for Research on Globalization, March 2008 available at <http://www.globalresearch.ca/index.php?context=va&aid=8429>.

⁸³ Steven Weisman, *U.S. Sanctions Force World Bank to Halt Some Iran Aid*, The New York Times, November 4, 2007 available at <http://www.nytimes.com/2007/11/04/world/middleeast/04sanctions.html>. The World Bank has nine active projects in Iran and had financed 48 operations worth \$3.4 billion last year. The payments for World Bank projects have usually gone through Bank Melli, one of Iran's largest banks. Bank Mellat and Bank Saderat have also been listed by the U.S. as being involved in the financing of terrorism. Only one Iranian Bank, Bank Sepah, has been identified by the Security Council as being involved in nuclear and ballistic missile programs.

multi-lateral sanctions are the most expedient measure available. According to the authors of the Shock and Awe doctrine, lethal force may be too politically expensive in terms of both local and international support. Consequently, the United States Treasury Department has been able to implement this Shock and Awe doctrine by making it fully operational with respect to its Iran policy:

Economic sanctions are likely to continue to be a preferable political alternative or a necessary prelude to an offensive military step... In a world in which nonlethal sanctions are a political imperative, we will continue to need the ability to shut down all commerce into and out of any country from shipping, air, rail and roads. We ought to be able to do this in a much more thorough, decisive, and shocking way than we have in the past... Weapons that shock and awe, stun and paralyze, but do not kill in significant numbers may be the only ones that are politically acceptable in the future.⁸⁴

The financial pressure exerted on Iran by the U.N. and the U.S. Treasury Department in the form of sanctions and export controls have made it more difficult for Iran to acquire needed components for its nuclear ambitions. However, as portrayed by the innumerable failures of past sanctions, the effectiveness of future sanctions on Iran is likely to follow a similar path. Many nonproliferation experts have emphasized that Iran's scientists already have much of the needed know-how and that "given the state of the international black market, we have little doubt that Iran would be able to develop a program regardless of sanctions. But perhaps we can at least slow it down somewhat."⁸⁵

⁸⁴ Harlan K. Ullman and James P. Wade, *Shock and Awe: Achieving Rapid Dominance*, pg. 44 available at http://www.dodccrp.org/files/Ullman_Shock.pdf. Rapid dominance is defined by its authors as attempting to "affect the will, perception and understanding of the adversary to fit or respond to our strategic policy ends through imposing a regime of Shock and Awe." The authors maintain that rapid dominance will "impose this overwhelming level of Shock and Awe against an adversary on immediate or sufficiently timely basis to paralyze its will to carry on... to seize control of the environment and paralyze or so overload an adversary's perception and understanding of events that the enemy would be incapable of resistance at the tactical and strategic levels." What is perhaps most relevant to the Iran situation and what the Department of Treasury may be attempting to eventually achieve is what the following description entails: "Shutting the country down would entail... shutdown and control of the flow of all vital information and associated commerce so rapidly as to achieve a level of national shock akin to the effect that dropping nuclear weapons on Hiroshima and Nagasaki had on the Japanese."

⁸⁵ International Crisis Group publication, *Iran: Is There a Way Out of the Nuclear Impasse?*, Middle East Report No. 51, February 2006 available at <http://merln.ndu.edu/archive/icg/iranimpasse.pdf>.

No matter how unjust Iran deems the U.N. Security Council resolutions and the sanctions to be, Iran must come to realize that if it wants to be accepted as a rising regional player in the Middle East then only responsible behavior (i.e. statements, disclosure of intentions, overt actions) can create the elusive legitimacy that it continues to seek. At the same time, coercive diplomacy by powers such as the United States ought to be framed constructively – as opposed to using rhetoric like “all options are on the table,” a more fitting formulation ought to be “all *diplomatic* options are on the table.”⁸⁶

Perhaps if both sides resort to more balanced behavior, then tensions on both sides may be relaxed so that an opening for creative and constructive dialogue may emerge. Although Iran’s intransigent position continues to demand international condemnation, if the United States and EU-3 [along with China and Russia] do not take a different position soon then the strategy of containment through sanctions may lead to heightened escalation. Security Council resolutions and international financial pressure by means of sanctions will not bring about a diplomatic solution to the Iran nuclear weapons impasse. Rather, they are merely short-term fixes to a complex problem that requires a multi-lateral diplomatic approach based on honest, open, and just “engagement.”

⁸⁶ Diplomatic engagement strategies such as the effective use of ‘carrots and sticks’ and trust-building diplomacy will be examined more fully in the last chapter of this paper. It should be noted, however, that Iran has agreed to hold further talks –without precondition- to halt its uranium enrichment program. The U.S. has opposed this, even though it has agreed to hold direct talks relating to other subjects like the war in Iraq.

❖ Chapter IV:

The Legality of the Preemptive Use of Military Force Against Iran

As evidenced by the escalation of major U.S. covert operations in Iran and the recent Israeli major military exercise involving more than 100 F-16 and F-15 fighters, there is little question that both the U.S. and Israel are developing contingency plans for unilateral (or possibly bilateral) air strikes against Iranian nuclear installations.⁸⁷ Despite advocating diplomacy publicly, both the U.S. and Israel have initiated “operational plans” that are deemed to be beyond the “ordinary” scope of contingency planning that is routinely undertaken.⁸⁸

The Bush administration’s preparation for war, aimed at comprehensively targeting Iran’s nuclear and military infrastructure, has not only included war planning exercises but also the recruitment of local tribes to encourage ethnic tensions within Iran. This support granted to various internal sympathizers and more militant anti-hardliner elements serves the Bush administration’s broader aim of “democracy promotion” which

⁸⁷ United States Special Operations Forces have been conducting cross-border operations from southern Iraq for several years with Presidential authorization. These clandestine operations have included capturing members of Al-Quds, the commando arm of the Iranian Revolutionary Guard, and taking them to Iraq for interrogation. In addition, U.S. commandos along with likely coordination with Israeli forces, have been entering Iran since 2004 and planting radiation sensors in an attempt to uncover more information on Iran’s nuclear program. In addition, Israel also launched an air strike against a presumed nuclear facility in Syria in September 2003. The most recent Israeli military exercises, conducted over the eastern Mediterranean involving 100 military airplanes, were carried out about the same distance between Israel and Iran’s uranium enrichment plant at Natanz. See Seymour M. Hersh, *The Iran Plans: Would President Bush go to War to Stop Tehran from Getting the Bomb?*, The New Yorker, April 2006 at http://www.newyorker.com/archive/2006/04/17/060417fa_fact. Also See Seymour M. Hersh, *Preparing the Battlefield: The Bush administration Steps Up its Secret Moves Against Iran*, The New Yorker, July 2008 at http://www.newyorker.com/reporting/2008/07/07/080707fa_fact_hersh.

⁸⁸ Admiral William Fallon, who was the head of U.S. Central Command and in charge of American forces in Iraq and Afghanistan, recently resigned under pressure as a direct result of stating his reservations about an armed attack on Iran. A former senior intelligence official substantiated Fallon’s observations about the “build-up” to war and described the activity as “enormous in scope”- with coordination at the U.S. Central Command headquarters, in Florida; the Joint Warfare Analysis Center, in Virginia; and the U.S. Strategic Command, in Nebraska. The war planning to date has involved space assets, submarine-launched ballistic missiles (SLBMs), tactical air and sabotage operations, cooperation from the Turkish and Russian governments. Other recent maneuvers carried out by American Naval tactical aircraft, operating from carriers in the Arabian Sea, have been flying simulated nuclear-weapons delivery missions within range of Iranian coastal radars. Many of these missions have been aimed at intimidating Iran and their increased frequency may be the “final act of provocation” that ultimately proves to be the basis for war. See Hersh supra.

is only possible by destabilizing the existing internal structures and eventually undermining the current Iranian regime.

The sequence of events unfolding with regard to Iran are eerily reminiscent of the “hype” that occurred in the immediate period before President Bush ordered “a pre-emptive” strike against Iraq. A series of intricately woven Security Council resolutions have already been adopted building up a case for military intervention in the case of continued non-compliance by Iran. Like the Iraq scenario, the issues pertaining to Iran are much more profound than Weapons of Mass Destruction and the prevailing nuclear issue. With oil peaking at \$145 a barrel and projected to reach level-highs of over \$200 a barrel, the real issue appears to be who is going to control access to Middle East oil in the next ten years. The Iranian nuclear threat at present is not as urgent as the Bush administration and the Israeli intelligence are professing it to be. According to I.A.E.A. estimates, Iran is at least five years away from building a nuclear bomb. Even then, the centrifuges that Iran is operating are not only fragile but difficult to operate on a large scale. Furthermore, building a nuclear weapon also requires fashioning the enriched uranium into a nuclear device – a process called “weaponization.”⁸⁹

In short, Iran is still years away from a nuclear program and the Bush administration’s claims (much like the unsubstantiated claims about WMD’s before the illegal 2003 Iraqi invasion) are not only “questionable” but lacking in evidence.⁹⁰ According to Cirincione, director for nonproliferation at the Carnegie Endowment for International Peace, the Bush administration’s strategy appears to be an effort to duplicate its quasi-successful campaign in the “promotion and selling” of a dubious and

⁸⁹ A weaponization program would not only require more material but also the massive expansion of Iran’s currently limited enrichment program. Although Iran has presently declared its ambition to build more than 50,000 centrifuges which can produce a larger volume of enriched uranium., any move in that direction would be immediately apparent to not only the I.A.E.A. – but also the U.S., Israel and the larger intelligence community who is monitoring Iran’s activities with increasing vigilance. *See* IAEA Again Confirms: No Weaponization in Iran, May 2008 at <http://www.indymedia.org.uk/en/2008/05/399625.html>.

⁹⁰ Creative State Department officials and attorneys argued that “Operation Iraqi Freedom” was lawful because Iraq never complied with the Security Council’s demands on disarmament (*See* Security Council Resolution 1441), which later activated the previous Security Council Resolution 678 authorization of force (reference here is made to Iraq’s failure to comply with the terms of the 1991 Gulf War cease-fire – as set out in Security Council Resolution 687). Although this argument may have been a clever way to find legitimacy in applying the doctrine of preemptive self-defense, it is nothing more than an abuse of the law as well as an abuse of power. The Security Council did not authorize the use of force and the invasion did not constitute a legitimate act of self-defense.

precarious rationale for war. Cirincione unveils the uncanny parallels between the campaign for the Iraq war and what may emerge as the basis for a war against Iran: “The Vice President of the United States gives a major speech focused on the threat from an oil-rich nation in the Middle East. The U.S. Secretary of State tells Congress that the same nation is our most serious global challenge. The Secretary of Defense calls that nation the leading sponsor of global terrorism.”⁹¹

The legal question of the pre-emptive use of military force against Iran by either the United States or Israel demands not only an examination of *jus cogens* international law principles but also revisiting state practice and *opinio juris*. Under Article 2(4) of the U.N. Charter, states are called upon to refrain from the threat or use of force against the ‘territorial integrity or political independence’ of other states. The U.N. Charter contains two exceptions to this general prohibition. First, under Article 42, the Security Council is empowered to take military action itself to protect and restore international peace and security.⁹² Second, under Article 51, all states are afforded an “inherent right” to use force in self-defense. Although the U.N. Charter’s basic rules governing the recourse to the use of force constitute customary international law, the problem with state behavior is the interpretation and application of the law to particular facts.⁹³

In the aftermath of 9/11, the Bush National Security Strategy (NSS) served as a powerful doctrine for the legitimacy of United States foreign policy. According to the 2002 NSS, the Bush administration contends that “we must adapt the concept of imminent threat to the capabilities and objectives of...rogue states and terrorists.”⁹⁴ Although the NSS addresses several issues in the post-911 world such as the fact that the

⁹¹ Joseph Cirincione, *Fool Me Twice*, Foreign Policy, March 2006 at <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=18208>.

⁹² U.N. Charter – See Article 42 set out in Chapter VII which delineates Security Council measures that are binding on all states.

⁹³ Christine Gray, *The Use of Force and the International Legal Order*, in *International Law* by Malcolm D. Evans, 2nd ed., (Oxford University Press, 2006), p. 590- 594. Christine Gray argues that the U.N. Charter provides the “first expression of the basic rules,” however, these “are brief and cannot constitute a comprehensive code.”

⁹⁴ See White House, *The National Security Strategy of the United States of America* (2002) pg. 15 at <http://www.whitehouse.gov/nsc/nss.pdf>.

imminence of a terrorist attack is much harder to detect, it also examines questions related to weapons of mass destruction and proliferation.

The policy of the Bush administration towards Iran presently is framed within the parameters of a notion of “anticipatory self-defense” that is defined in the NSS. President Bush’s newly revised 2006 NSS also endorses a preemptive war policy and also specifically mentions Iran as a grave threat: “We face no greater challenge from a single country than from Iran.”⁹⁵ The argument elucidated by the Bush administration is that the right implied by anticipatory self-defense to act against a threat before it is “too late” may require establishing a threshold at some earlier point in the proliferation process, with that point serving as the equivalent of an “imminent threat.” Therefore, within the Iran context, the Bush administration and Israeli policy makers argue that the presence of a danger (the enrichment of enough uranium to create a nuclear bomb) justifies a “defensive” first-strike. Compounded with a compelling case that Iran is a “state sponsor of terrorism” that continues to de-stabilize the region, the Bush administration and Israeli policy makers may posit that they have the legal basis and justification for a preemptive military attack against Iran.

The more poignant question is whether the resort to such unilateral pre-emptive force is legal in the absence of a clear and overwhelming imminent threat? Here, an examination of the traditional bases for the resort to force may shed some light on current state practice in this controversial area. In addition, the question of “imminence” as applied to a potential Iranian nuclear threat merits consideration in order to determine the legality of any future U.S. and Israeli military pre-emptive measures against Iran.

The recognized right of a state to use force for purposes of self-defense traditionally included the preemptive use of force or the use of force in anticipation of an attack. This principle has its roots in the 17th century writings of Hugo Grotius, the father of international law, who asserted that “it be lawful to kill him who is preparing to kill.”⁹⁶

⁹⁵ See White House, *The National Security Strategy of the United States of America* (2006) at <http://www.whitehouse.gov/nsc/nss/2006/>.

⁹⁶ Hugo Grotius, *The Law of War and Peace*, at <http://socserv.mcmaster.ca/~econ/ugcm/3ll3/grotius/Law2.pdf>.

Similarly, Emmerich de Vattel stated the foundational principle of the right to resort to self-help and exercise force in self-defense:

The safest plan is to prevent evil, where that is possible. A Nation has the right to resist the injury another seeks to inflict upon it, and to use force...against the aggressor. It may even anticipate the other's design, being careful, however, not to act upon vague and doubtful suspicions, lest it should run the risk of becoming itself the aggressor.⁹⁷

In another formulation that is even more representative of the NSS perspective, Charles Hyde encapsulates the recognized principle of self-defense as a lawful basis for the use of force within the framework of customary international law:

An act of self-defense is that form of self-protection which is directed against an aggressor or contemplated aggressor. No act can be so described which is not occasioned by attack or fear of attack. When acts of self-preservation on the part of a State are strictly acts of self-defense, they are permitted by the law of nations, and are justified on principle, even though they may conflict with the...rights of other states.⁹⁸

The most widely cited case for the preemptive use of force under customary international law is the *Caroline* incident of 1837 which resulted in then Secretary of State Daniel Webster's articulation of the essential elements that must be observed as a proper justification for an act of self-defense. According to Webster, an intrusion into the territory of another state can be justified as an act of self-defense only in those cases in which the "necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment of deliberation."⁹⁹ He went on to assert that the force used in

⁹⁷ Emmerich De Vattel, *The Law of Nations*, Vol. IV. Also See Vattel quoted in Randall Dipert, *Preemptive War and the Epistemological Dimension of the Morality of War*, at <http://www.usafa.edu/isme/JSCOPE05/Dipert05.html>.

⁹⁸ Charles Cheney Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, 1945 quoted in Marian Nash Leich, *Contemporary Practice of the United States Relating to International Law*, U.S. Digest, Ch. 9 § 1 at <http://www.questia.com/googleScholar.qst?docId=93964696>.

⁹⁹ Letter from Secretary of State Daniel Webster to Lord Ashburton of August 6, 1842 quoted in Anthony Clark Arend, *International Law and the Preemptive Use of Military Force*, *The Washington Quarterly*, 2003 at http://www.twq.com/03spring/docs/03spring_arend.pdf.

such circumstances has to be proportionate to the threat. Consequently, both elements of necessity and proportionality are deemed to be essential components of any legitimate preemptive use of force.¹⁰⁰

Since the United Nations Charter is a binding treaty, an overriding question is the meaning of Article 51 which is the sole provision authorizing the use of force. Article 51 expressly recognizes the inherent right of all states to engage in self-defense in the case of an “armed attack.” The interpretation of Article 51 was affirmed by the ICJ in the *Nicaragua* case. The Court’s judgment in the case drew on customary international law principles rather than Article 51. The ICJ ruled that:

For one state to use force against another...is regarded as lawful, by way of exception, only when the wrongful act provoking the response was an armed attack...In the view of the Court, under international law in force today – whether customary international law or that of the United Nations system – states do not have a right of ‘collective’ armed response to acts which do not constitute an ‘armed attack.’¹⁰¹

However, how a state defines “an armed attack” and the circumstances surrounding such an attack are usually the impetus for whether such a state decides to exercise its “inherent right” to self-defense. As Clark Arend argues, “although the basic contours of Article 51 seem straightforward, its effect on the customary right of anticipatory self-defense is unclear.”¹⁰² Two historical examples involving Israel’s

¹⁰⁰ In its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the ICJ stated that “the submission of the exercise of the right of self-defense to the conditions of necessity and proportionality is a rule of customary international law.” See ICJ opinion *supra*.

¹⁰¹ Fred L. Morrison, *Legal Issues in the Nicaragua Opinion*, *American Journal of International Law* 81: 160-166 at <http://bailey83221.livejournal.com/55750.html>. Also See Case Concerning Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v. United States*) at <http://www.gwu.edu/~jaysmith/nicus3.html>.

¹⁰² Anthony Clark Arend, *International Law and the Preemptive Use of Military Force*, *The Washington Quarterly*, 2003 at http://www.twq.com/03spring/docs/03spring_arend.pdf. Clark maintains that scholars on Article 51 are divided into two camps: the “restrictionists” and the “counter-restrictionists.” According to the “restrictionists”, the intent of Article 51 was explicitly to limit the use of force in self-defense to those circumstances in which an armed attack has actually occurred. Therefore, it would be unlawful to engage in any kind of preemptive actions. Arend further maintains that a “would-be victim would first have to become an actual victim before it would be able to use military force in self-defense.” Unlike restrictionists, who argue that the inherent right could be exercised only after a clear armed attack, the “counterrestrictionists” take the opposing view. They would maintain that the framers of the U.N. Charter

expansive interpretation of Article 51 reflect how a state evaluates political considerations in shaping its decision to resort to the preemptive use of force as a measure of self-defense. On June 5, 1967, Israel launched a preemptive attack against the United Arab Republic (Egypt and Syria) and a number of other Arab states.¹⁰³ Israel maintained that its attack was defensive in nature and necessary to forestall an Arab invasion. Although there was no clear consensus opposed to Israel's action, the majority of the international community refrained from endorsing a doctrine of preemption.¹⁰⁴

In 1981, Israel once again claimed that it was acting in anticipatory self-defense when it used force to destroy the Osirak reactor in Iraq – which Israel asserted was producing nuclear weapons-grade material for the purpose of constructing nuclear weapons to be used against Israel. Israeli Ambassador Yehuda Blum stated that “Israel was exercising its inherent and natural right of self-defense, as understood in general international law and well within the meaning of Article 51 of the U.N. Charter.”¹⁰⁵

Despite these assertions by Dr. Blum, the reaction of the international community overwhelmingly opposed Israel's preemptive attack. For example, the Sierra Leonean delegate stated “the plea of self-defense is untenable where no armed attack has taken place or is imminent.” Sir Anthony Parsons, the British representative of to the Security Council, also agreed underscoring the need to abide by international legal norms as previously highlighted in the *Caroline* case, “it has been argued that the Israeli attack was an act of self-defense. But it was not a response to an armed attack on Israel by Iraq.

envisioned a broad customary right to anticipatory self-defense and that an “armed attack” was one instance that would empower an aggrieved state to act in self-defense.

¹⁰³ In what came to be known as the “Six Day War” – Israel in six days routed Egypt and its Arab allies and occupied the Sinai Peninsula, the West Bank, and the Gaza Strip.

¹⁰⁴ Although the Security Council rejected proposals to condemn Israel's “aggressive” actions, it did however, adopt Resolution 242 which called on Israel to withdraw from the territories and for the termination of all claims or states of belligerency and the acknowledgement of the territorial integrity as well as the right of every State in the region to live in peace. Support for Israel on the question of preemption tended to fall along predictable political lines. The Soviet Union, Syria and Morocco all spoke against Israel. The United States and the United Kingdom, as supporters of Israel, took a more neutral stance and did not overtly support the preemptive action taken by Israel.

¹⁰⁵ Yehuda Blum, United Nations Security Council Official Records, 2282ND Meeting of 15 June 1981 at <http://domino.un.org/unispal.nsf/eed216406b50bf6485256ce10072f637/8ccf55e28df86b1b052567fd005a09de!OpenDocument>.

There was no instant or overwhelming necessity for self-defense. Nor can it be justified as a forcible measure of self-protection. The Israeli intervention amounted to a use of force which cannot find a place in international law or in the Charter and which violated the sovereignty of Iraq.”¹⁰⁶ Israel has consistently argued that strategic circumstances and the consequences of strategic surprise have propelled it to act in a manner that enables it to best safeguard and protect itself. Despite criticism from some members of the international community, Israel (very much like the United States in the post-9/11 era) has not only relied on a very liberal interpretation of Article 51 but also set forth the argument that it is a “vulnerable state” facing sworn adversaries armed with nuclear weapons.¹⁰⁷ Framed within this perspective, Israel continues to maintain that resorting to anticipatory self-defense could be entirely lawful given the external threats it faces.

It is precisely in keeping with such an expansive –as opposed to a restrictive–reading of Article 51 that President Bush outlined his vision for a post-911 world in the NSS. According to the Bush Doctrine, states need not wait for an “imminent attack” before invoking the right to self-defense. Rather, the Bush Doctrine advocates the position that states ought to be authorized to launch pre-emptive strikes because we currently live in an unpredictable age marked by terrorists that are poised to cross borders and unleash weapons of mass destruction. The NSS emphasizes the urgency with which states have to react to potential threats:

Given the goals of rogue states and terrorists, the United States can no longer solely rely on a reactive posture as we have in the past. The inability to deter a potential attacker, the immediacy of today’s threat, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit that option. We cannot let our enemies strike first.¹⁰⁸

¹⁰⁶ Statement of Sir Anthony Parsons, United Nations Security Council Official Records, 2282ND Meeting of 15 June 1981, See supra. Also See Anthony Clark Arend, *International Law and the Preemptive Use of Military Force*. The U.S. Ambassador to the U.N. at the time, Jeane Kirkpatrick, also spoke out against the Israeli action but did not take make direct reference to the doctrine of anticipatory self-defense.

¹⁰⁷ President Ahmedinijad’s has made many ill-conceived threats against Israel. His remarks about “wiping Israel off the map” echo similar threats made by Ayatollah Khomeini when he stated that “this regime [Israel] occupying Jerusalem must vanish from the page of time.” Both statements are unfortunately extremely provocative and only serve to heighten tensions further.

¹⁰⁸ National Security Strategy, See supra.

Although the Bush Doctrine presents a picture of the current realities in the international system, it lacks the sophistication to address the more nuanced legal questions that arise from WMD. The distinction between the development of WMD and the actual use of such weapons by either “rogue” states or non-state actors like Al-Qaeda is one that is often overlooked in policy circles. Terrorists like Al-Qaeda often use tactics that evade international scrutiny and make it almost impossible to detect their activities until they are well underway or have caused significant harm. On the other hand, states that develop WMD are usually under the “radar screen” of intrusive monitoring agencies such as the I.A.E.A. or are under sanctions that may work towards bringing the state into compliance.

The question therefore from a purely legal perspective is not only drawing this very significant distinction but also knowing exactly where to draw the line with respect to the criterion of necessity. For example, many questions continue to linger with respect to Iran’s possession of a nuclear weapon and whether the appropriate response justifies a preemptive attack. First, there is no evidence that Iran currently has a nuclear weapon and any party that indicates otherwise is succumbing to mere speculation – all the while heightening existing tensions. IAEA Director General Mohamed El Baradei has never reported any evidence of “undeclared” sources or special nuclear material in Iran, or any diversion of nuclear material. There has been a lot of misinformation about Iran’s nuclear program and this distortion of truth has been used to “hype” the situation in both the political and public sphere. In El Baradei’s words, “We are not in the business of judging intentions. What we look for are facts and proof, and so far we have no proof of a nuclear-weapons program. The jury is still out... Unless you are ready to bomb your way through every country you suspect of developing weapons of mass destruction, I see no alternative to international inspectors. The lesson of Iraq is that we should be very cautious about jumping to conclusions.”¹⁰⁹

Second, if Iran had a nuclear weapon, why would this be so vastly different than Pakistan, India, or North Korea possessing one? In fact, the situation in Pakistan is

¹⁰⁹ Dr. Mohamed El Baradei quoted in Director General’s Interview on Iran, “The Jury is Still Out,” Time Europe Magazine, 24 November 2005 available at <http://www.globalsecurity.org/wmd/library/news/iran/2003/iran-031117-iaea.htm>.

probably more precarious and prone to hardliners undermining Pervez Musharaf's regime and controlling its nuclear arsenal. Third, while Iran's Shahab short and medium range ballistic missiles can reach Israel, they are completely out of the range of American soil. Even Israel, with its Arrow-2 anti-ballistic missile which is designed to intercept the full range of Iranian Scud missiles, has an effective protective shield.¹¹⁰ Therefore, before the Bush administration can claim to be acting in self-defense, it must present compelling evidence that Iran has the capability of launching such an "implausible" attack or that terrorist groups linked to Iran are able and willing to launch an imminent attack on the American homeland.

The Bush administration therefore faces the important challenge of articulating its own policies more precisely and carefully in order to contribute to the establishment of a stable international legal framework that can be respected by all states. The "unilateralist" adventure that the Bush administration embarked upon during "Operation Iraqi Freedom" has not only undermined existing international legal structures but also contributed to domestic imbalances that need to be redressed. For example, the U.S. Constitution unequivocally declares that treaties approved by the Senate are the "supreme Law of the Land" and it explicitly requires President Bush to "take care that all the laws be faithfully executed." As a solemn treaty overwhelmingly approved by the Senate in the aftermath of World War II, the U.N. Charter ought to be respected by President Bush.

In the event of an escalation with Iran, the case for congressional approval would be particularly compelling and ought to not be taken lightly. President Bush has acted without the authorization of the Security Council before during "Operation Iraqi Freedom" and (depending on the confluence of factors in his final months in office) may choose to ignore international law if faced with a decision to preemptively target nuclear installations in Iran. According to Greenpeace International, as a result of the Iraq war, "the framework of international law is currently under threat by the determination of the

¹¹⁰ Efraim Inbar, *The Need to Block a Nuclear Iran*, Middle East Review of International Affairs, Vol. 10, No. 1, March 2006 available at <http://meria.idc.ac.il/journal/2006/issue1/Inbar.pdf>. According to Inbar, "while the U.S. is developing a Ballistic Missile Defense (BMD) system and Russia claims to have a missile intercept capability with its S-300 missile system, only Israel possesses a serious capability to deflect a nuclear missile attack. Israel's program, which began in the late 1980's, benefited from generous American funding and amounts to the only deployed operational anti-ballistic missile system so far in the world. Since 2000, Israel has deployed several operational batteries of Arrow missiles. The interception range is about 150 kilometers away from Israel's borders."

United States, to redraw international law to allow its strategic imperatives.”¹¹¹

Greenpeace International asserts that:

Nations have a stark choice: they can choose multilateralism, the rule of law and respect for international law, treaties and institutions; or, they can choose a unilateralist approach in which they pursue their interests, irrespective of the will of the world community.¹¹²

A U.S. or Israeli policy of preemption with respect to Iran is problematic not only because of the disastrous regional consequences that may occur but also because the desired outcome of such a policy is uncertain. In order to avoid a repeat of Israel’s 1981 attack on Iraq, Iran has deliberately posed a challenge to western intelligence services by spreading the nuclear facilities underground across the country. Furthermore, it is unclear whether the latest U.S. conventional bunker buster missiles are able to penetrate the hardened ceilings of the underground enrichment facilities which are built eight meters below ground with additional thick concrete walls above.¹¹³ Consequently, any successful attack by either the U.S. or Israel would require the destruction of a large number of targets – including Iran’s significant air defenses. In addition, the likelihood is high that many of the targets are situated in heavily civilian-populated areas – dramatically increasing collateral damage involved in such an operation. Therefore, military strategists that maintain that a preemptive strike against Iran is merely a “surgical” operation are sending the wrong signals. An attack on Iran is nothing short of a full-scale war.

In the event of an attack, the Iranian response could be equally devastating with the potential to destabilize the entire region. Iran could not only target U.S. forces based in Iraq but also leverage its asymmetric capabilities vis-à-vis the various militias and insurgents in Iraq and Afghanistan. Iran’s proxy agents Hamas and Hezbollah could also unleash a series of terrorist attacks that could carry unforeseen and precarious risks. A

¹¹¹ Duncan Currie, Greenpeace International, *Preventive War and International Law after Iraq*, May 2003 at <http://www.globelaw.com/Iraq/Preventive%20War%20After%20Iraq.pdf>.

¹¹² Duncan Currie, *See supra*.

¹¹³ Shahram Chubin and Robert S. Litwak, *Debating Iran’s Nuclear Aspirations*, The Washington Quarterly, Autumn 2003 available at http://www.twq.com/03autumn/docs/03autumn_chubin.pdf.

military strike would also most likely send the price of oil skyrocketing, giving Iran the incentive to close the Strait of Hormuz – the world’s principal passageway for oil exports.¹¹⁴ In addition to all of these retaliatory measures, Iran would likely accelerate its attempts to acquire nuclear weapons and withdraw from all international mechanisms of inspection such as the IAEA. Finally, it is foreseeable that any strike against Iran would result in a domestic backlash by further uniting the population behind the regime and possibly attracting sympathy for Iran internationally.

Unlike the broad-sweeping stereotypes of an uncontrollable rogue state on a destructive path towards nuclear holocaust, Iran (like most states) is actually a rational, pragmatic actor with a deep-seated interest for self-preservation. Retired Army General John Abi-zaid emphasizes the notion of ‘rational deterrence theory’ by stating that “Iran is not a suicide nation...I doubt that the Iranians intend to attack us with a nuclear weapon. I believe that we have the power to deter Iran, should it become nuclear. War, in the state-to-state sense, in that part of the region would be devastating for everybody and we should avoid it – in my mind – to every extent that we can.”¹¹⁵ Similarly, Thomas Powers argues that Iran’s quest for nuclear weapons is a defensive rather than an offensive gesture and that misconstruing such intentions only serves to heighten tensions. According to Thomas the notion that:

Iran wants a bomb in order to dominate the Persian Gulf region and to threaten neighbors, especially Israel...is a misreading of how other nuclear powers have made use of their weapons. As tools of coercive diplomacy, nuclear weapons are almost entirely useless but they are extremely effective in blocking large-scale or regime-threatening attack. There is no evidence that Iran has

¹¹⁴ Approximately 25 percent of the world’s daily oil supply travels via the Strait of Hormuz. However, Iran would find it very difficult to maintain closure in the face of U.S. naval counter-measures. The Strait was mined several times during the 1980-1988 Iran-Iraq war but was kept open by international naval patrols.

¹¹⁵ Amitai Etzioni, *On Deterring Iran*, The Huffington Post, May 29, 2008 available at http://www.huffingtonpost.com/amitai-etzioni/on-deterring-iran_b_104070.html. According to ‘rational deterrence theory’ espoused by Abi-zaid, nuclear deterrence can be reliably achieved through the threat of mutual destruction. This theory suggests that even rogue states such as Mahmoud Ahmadienad’s Iran can be counted on to act rationally regarding the use of nuclear weapons.

a different motive, and plenty of reason for Iran to fear that attack is a real possibility.¹¹⁶

Unless there is a strategic shift in perception and policy on both sides, any possibility for serious diplomatic engagement remains elusive. More importantly, the choices that the Bush administration makes today will shape the future contours of international law. A preemptive military attack based on the Bush doctrine of the ‘best defense is a good offense’ is untenable for the global order because in reality the best defense in the case of Iran is the prevention of conflict through diplomatic channels and a more conciliatory approach. Only a powerful broker, like the United States, can lead a truly multilateral effort to address the core issues that continue to threaten international peace and security in the Middle East. How it responds to the Iran nuclear weapons crisis will determine whether it capitalizes on the potential possibilities that lie in the hope of constructive diplomatic engagement.

¹¹⁶ Thomas Powers, *Iran: The Threat*, The New York Review of Books, Vol. 55, No. 12, July 17, 2008 available at <http://www.nybooks.com/articles/21592>.

❖ Chapter V:

Diplomatic Engagement: A Proposal for Ending the Impasse

Diplomacy has been described as the application of “intelligence and tact to the conduct of foreign relations” and as a “method of influencing the decisions and behavior of foreign governments and peoples through dialogue, negotiation, and other measures short of war or violence.”¹¹⁷ The current U.S. strategy of only agreeing to engage with Iran in face-to-face talks if it agrees to the *precondition* of suspending its uranium enrichment program is inflexible in the diplomatic sense.¹¹⁸ In essence, the U.S. is demanding that Iran relinquish its most significant bargaining chip before even sitting at the table and this formula makes it almost impossible for either party to reach a *mutually acceptable* outcome. This U.S. approach has proven to be disastrous and has only served to heighten the rhetoric as well as the tensions on both sides. On the other hand, the E.U.-led negotiations, which many have characterized as coercive diplomacy, have had mixed results. Finally, Iran’s concerns for secure and reliable energy development need to be addressed in a manner that factors in the underlying sources of the conflict.

This chapter examines the actors and diplomatic approaches in the Iran nuclear weapons crisis and proposes alternatives to both the inflexible U.S. and coercive E.U. style of diplomacy. I argue that principled negotiation, which is an interest-based approach to problem solving, and recommendations based on a dual-emphasis on finding common ground on (1) core issues (such as turning Iran’s national enrichment efforts into a multinational program); and (2) broader issues (such as cooperation on regional stability issues in Iraq) serve as the best promise for resolving the current impasse.

¹¹⁷ Encyclopedia Britannica, *Definition of Diplomacy*, available at <http://www.britannica.com/EBchecked/topic/164602/diplomacy>.

¹¹⁸ Jim Lobe, *Scowcroft, Brzezinski Urge Bush to Drop Iran Preconditions*, Inter Press Service, July 24, 2008, available at <http://rightweb.irc-online.org/pdf/4938pdf.pdf>. Scowcroft and Brzezinski are two of the most prominent foreign policy advisers, having respectively served under George H.W. Bush and Jimmy Carter. Both have been strongly critical of U.S. policy in the Middle East (including the decision to invade Iraq) and both have indicated that a war with Iran is bound to produce mass calamities and is not in line with U.S. interests.

The Bush Administration's refusal to pursue direct, open-ended and comprehensive talks with Iran is not only profoundly misguided but also imposes real opportunity costs in the broader "war on terror." Senator Arlen Specter (R-PA) characterized this approach as "27 years of silence broken only by a few whispers" which does not benefit U.S.-Iranian relations.¹¹⁹ The Bush Administration's "unilaterally suspend enrichment" directive has led to a number of missed potential "breakthroughs" to this crisis. For example, the 2003 Iranian proposal responded to U.S. interests on every single one of the four issues that the Bush Administration demanded. The proposal offered to (1) provide "full transparency" assurances that Iran was not developing weapons of mass destruction; (2) leverage Iranian influence in Iraq to support "political stabilization and the establishment of democratic institutions and a non-religious government"; (3) stop material support to Palestinian opposition groups from Iranian territory as well placing "pressure on these organizations to stop violent actions against civilians within [Israel's] borders of 1967"; (4) accept the Arab League Beirut declaration, which was a Saudi-sponsored initiative in March 2002 which proposed a comprehensive peace, including the establishment of normal relations, with Israel based on Israel's withdrawal to pre-1967 war lines.¹²⁰

¹¹⁹ Senator Arlen Specter quoted in, *Prominent Calls for Diplomacy with Iran*, The Center for Arms Control and Non-Proliferation, June 9, 2008 available at http://www.armscontrolcenter.org/policy/iran/articles/calls_for_iran_diplomacy/.

Senator Specter further stated: "The United States should be willing to negotiate directly with Iran...Frankly, I think it's insulting to go to another person, or another country, and say 'we're not going to talk to you unless you agree to something in advance.' What we want them to do is to stop enriching uranium. That's the object of the talks. How can we insist on their agreeing to the object that we want as a precondition for having the talks?"

¹²⁰ Gareth Porter, *Burnt Offering: How a 2003 Secret Overture from Tehran Might Have Led to a Deal on Iran's Nuclear Capacity – If the Bush Administration Did not Rebuff it*, The American Prospect, May 21, 2006, available at <http://www.prospect.org/cs/articles?articleId=11539>.

Iran felt that the timing of this 2003 proposal was ripe as a direct result of its rising influence in the region in the wake of the Iraqi insurgency. Iran cooperated with the U.S. on many levels in the "war on terror" by providing technical assistance and know-how for operations conducted in Afghanistan. Unfortunately, it felt increasingly threatened and not properly rewarded when it was labeled as a member of the "Axis of Evil" during President Bush's 2002 State of the Union Address. Despite this, it went ahead and offered this proposal to establish diplomatic relations with the U.S. and address outstanding grievances. Although some analysts have indicated that the proposal was submitted because Iran feared it would be "next" on the Bush Administration's list after Iraq and Afghanistan, other key officials such as then-National Security Advisor Condoleezza Rice claim they never even saw the Iranian proposal.

In return for these concessions, Iran requested an end to U.S. “hostile behavior” (including the “axis of evil” label) and its designation as a “terrorist” state. It also wanted an end to commercial sanctions and most importantly to put an end to the nuclear dispute by granting it access to peaceful and other technologies (a fundamental right under the NPT). Finally, Iran asked for the recognition of its “legitimate security interests in the region” which many analysts believe includes assurances against U.S. attack as well as recognition of Iran as a party to future security arrangements in the region.¹²¹

Unfortunately, the Bush Administration firmly rejected this overture for a broad diplomatic consensus that would deal with Iran’s major political grievances and would also advance U.S. interests in the region.

In 2004, the Gates-Brzezinski report was another attempt to persuade the Bush Administration that it could engage in diplomacy more successfully than it had in the previous 25 years. The report, entitled *Iran: Time for a New Approach*, was commissioned by an independent task force sponsored by the Council on Foreign Relations and it emphasized that “by definition, diplomacy seeks to address issues between nations, and so it would be unwise (and unrealistic) to defer contact with Tehran until all differences between the two governments have evaporated.”¹²² The report highlighted that changed circumstances on the ground opened a new window of opportunity on the diplomatic front: “the U.S. military intervention along Iran’s flanks in both Afghanistan and Iraq has changed the geopolitical landscape in the region... these changes may offer both the United States and Iran new incentives to open a mutually beneficial dialogue, first on issues of common interest, such as regional stability, and eventually on the tough issues of terrorism and proliferation.”¹²³

Five years after Iran’s initial proposal for rapprochement and the subsequent 2004 Gates-Brezekinski report, which may have ended or altered the direction of the Iran conflict, the U.S. continues to believe in the efficacy of sanctions and the threat of force. Today, Iran has grown more confident and less likely to offer concessions because it has

¹²¹ Gareth Porter, *See supra*.

¹²² Report of an Independent Task Force Sponsored by the Council on Foreign Relations Co-chaired by Zbigniew Brzezinski and Robert M. Gates, *Iran: Time for a New Approach*, Council on Foreign Relations, 2004, pg. 40 available at http://www.cfr.org/content/publications/attachments/Iran_TF.pdf.

¹²³ Report of an Independent Task Force Sponsored by the Council on Foreign Relations, *See supra*, pg. 4.

gained considerable bargaining leverage vis-à-vis the changed geo-political regional landscape. The U.S. is entangled in a seemingly hopeless, unrelenting quagmire in Iraq and Iran perceives this as an opportunity to advance its influence in the region at the expense of the United States. In addition, Iran's confidence soared in the aftermath of the Israeli-Lebanese conflict of 2006 where Hezbollah's ability to counter Israel's military apparatus changed perceptions once again regarding the balance of power in the Middle East. Given that the mantra in the Bush Administration had been "regime change," Iran now sought to achieve three important objectives: (1) deter U.S. interference in Iran's internal affairs; (2) consolidate regional dominance; and (3) sustain Iranian nationalism by pressing forward in developing its uranium enrichment capacity.

The nuclear issue and the sanctions that have been imposed changed the calculus of the equation and Iran once again finds itself prepared to negotiate a settlement in the framework of a broader agreement with the United States. Iranian Foreign Ministry spokesman Asefi stated, "If America abandons its threats and creates a positive atmosphere in which it does not seek to influence the process of negotiations by imposing preconditions, then there will be no impediment to negotiations."¹²⁴ One would ordinarily assume that statements such as this may prompt the Bush Administration to reassess its long-standing policy of non-engagement with Iran. However, what has been termed as "Cowboy Diplomacy" has become the hallmark of the Bush Administration – a policy where "war" became the "weapon of first resort" and U.S. diplomacy came to be recognized for its "shoot first, ask questions later" approach. This has led some theorists to ponder exactly how far the limits of such a policy can be stretched and whether it will continue to endure. According to Ahrari, the "real test of whether the use of cowboy diplomacy as a *modus operandi* has ended or not will come if Iran rejects the

¹²⁴ Gareth Porter, *Iran Pushes for Talks with U.S. on Nukes, Security*, Inter Press Service, April, 2006 available at <http://ipsnews.net/news.asp?idnews=33070>.

Foreign Ministry spokesman Asefi indicated that Iran would negotiate on "large-scale enrichment" and that a Russian proposal aimed at breaking the international deadlock by enriching the fuel in Russia and shipping it to Iran is still on the table. According to this article, even Mahmoud Ahmadenijad (also known for his inflexibility and inflammatory rhetoric) expressed a willingness to talk with the U.S. (under certain undeclared conditions).

comprehensive diplomatic package and continues with its uranium enrichment program.”¹²⁵

Perhaps what is most puzzling about the U.S. position is its inability to perceive the magnitude of the mutual gains that are possible and the opportunities that will be created should these gains materialize. Iran and the United States have a common interest in stabilizing Iraq and in laying the foundations for democratic reform. A pre-mature U.S. pull-out will likely lead to the emergence of a classic scenario of a ‘failed state’ leading to further regional conflict. Such a failed state is sure to be a magnet for Salafi and Wahhabi extremists who will capitalize on a U.S. withdrawal and escalate terrorist activity. Iranian-U.S. cooperation may be the best solution to effectively address the security issues in the region. The bipartisan Iraq Study Group, co-chaired by James Baker and Lee Hamilton, maintains that “Of all the neighbors, Iran has the most leverage in Iraq...the United States ought to engage directly with Iran and [Syria] in order to try to obtain their commitment to constructive policies toward Iraq and other regional issues.”¹²⁶

In 2005, then-secretary Hassan Rowhani of Iran’s Supreme National Security Council to France, Germany and the United Kingdom highlighted these shared commonalities by stipulating: “For twenty-five years, I have focused on security issues surrounding Iran and the region. Never have I seen such potential for commonality of purpose and concern about mutual sources of threat in significant areas.”¹²⁷ In fact, as part of the nuclear negotiations between Iran and the EU-3, Iran signaled its willingness to assist the U.S. and the U.K. in Iraq. In a proposal presented by Iran to the EU-3 political working group in Geneva in January 2005, Iran indicated that security and

¹²⁵ Ehsan Ahrari, *Has “Cowboy Diplomacy” Really Ended?*, Time Magazine, Foreign Policy in Focus, July 13, 2006 available at <http://www.fpiif.org/pdf/gac/0607cowboydiplomacy.pdf>. Also See Mike Allen and Romesh Ratnesar, *The End of Cowboy Diplomacy*, Time Magazine, July 9, 2006 available at <http://www.time.com/time/magazine/article/0,9171,1211578-1,00.html>.

¹²⁶ Gawdat Bahgat, *Iran and the United States: The Emerging Security Paradigm in the Middle East*, Parameters, Summer 2007 available at <http://www.carlisle.army.mil/USAWC/PARAMETERS/07summer/bahgat.pdf>.

¹²⁷ Keith Putnam-Delaney and Paul Ingram, *Resolving the Nuclear Dispute with Iran by Negotiation*, British American Security Information Council, August 31, 2006 available at <http://www.basicint.org/pubs/Notes/BN060901.pdf>.

stability of the Persian Gulf region could only be attained through cooperation among countries in the region. Iran further expressed its support for the establishment of security and cooperation arrangements with the participation of regional countries under the umbrella of the United Nations.¹²⁸ Given these regional security issues, Iraq presents a fertile starting ground for the U.S. and Iran to build confidence and develop diplomatic relations.

Several new developments over the past couple of months have created new opportunities, which if properly harnessed, can serve as a catalyst for improved relations between the U.S. and Iran. In recent talks held in Geneva in July 2008, the decision of the United States to send the William Burns, the State Department's third-ranking official, to sit in on the meeting between E.U. foreign affairs chief Javier Solana and Iran's nuclear negotiator was seen by some as a major diplomatic breakthrough.¹²⁹ Some interpreted the move as a "double shift" U.S. policy and as an effort to make strides towards meaningful diplomatic engagement with Iran. Mr. Burns delivered what many believed was a "serious" incentives package but he reiterated that negotiation would be pursued only if Iran upheld its end of the bargain. The incentive package consisted of a "freeze for freeze" offer under which Iran would suspend its nuclear activities (including the installation of any new centrifuges) and the P-5 would simultaneously refrain from imposing any new Security Council sanctions. The package specified that once Iran suspended enrichment activities, negotiations can then begin on long-term deals recognizing Iran's right to develop nuclear energy for civilian purposes as well as the gradual lifting of sanctions.

Iran was expected to accept the "freeze for freeze" offer during or at the conclusion of the Geneva meeting. However, as a result of the inconclusive outcome of

¹²⁸ Gawadat Bahgat, *See supra*.

¹²⁹ Gareth Porter, *Seismic Shift or Non-Decision by Bush on Iran?*, Inter Press Service, July 18, 2008 available at <http://ipsnews.net/news.asp?idnews=43231>. It is important to note that William Burn's participation was a "one-time" offer and that his role in the meeting was limited to listening rather than negotiating. Porter explains that "the combination of a one-time participation and the absence of any negotiation brief sharply reduces the significance of the decision." Consequently, some analysts in various policy circles have regarded Burn's participation as a Bush "non-decision" to commit to serious diplomatic engagement – noting that Bush has a history of pulling back from negotiating decisions under Dick Cheney's influence.

the meeting, Iran was presented with an ultimatum: unless it accepts the “freeze for freeze” approach within two weeks it could be subjected to new sanctions.¹³⁰ In response, Iran presented a brief one-page document to E.U. foreign affairs chief Solana which did not include a definitive reply to the offer from the major world powers. In fact, the letter made no mention of the “freeze for freeze” issue and many analysts have regarded it as merely a “non-response” to the package and a method of delay. Although many expect U.S pressure for a tougher international response and a possible new round of sanctions, Russia and China have expressed their reservations because of the high price of oil and the repercussions that may be felt in an already fragile global economy.

The Iran nuclear weapons crisis appears to be at another juncture where another attempt at diplomacy has failed. In examining the most recent fallout in Geneva, one can arrive at divergent conclusions but the primary one is the inability of the parties to reach a compromise or a mutually agreeable solution. This may be attributed to several underlying factors in communication, preferred negotiation style and perceived intentions. In *The Fine Art of Hiding What You Mean*, Michael Slackman argues that the method of communication between Americans (or for that matter Westerners in general) and Iranians is complicated from the initial encounter. Slackman maintains that “In the West, 80 percent of language is denotative. In Iran 80 percent is connotative.”¹³¹ He further articulates that a breakdown in communication often results between the parties because the Persian language is often shrouded in symbolism and vagueness, whereas, in the Western tradition words often denote what they mean:

In the West, “yes” generally means yes. In Iran, “yes” can mean yes,
But it often means maybe or no... This creates a rich poetic linguistic
culture... a multi-dimensional culture where people are adept at picking
up on nuances. On the other hand, it makes for bad political discourse.
In political discourse people don't know what to trust. Americans and

¹³⁰ Ian Black, ‘Freeze for Freeze’ Package Ignored as Iran Stalls for Time on Nuclear Demands, The Guardian, August 6, 2008 available at <http://www.guardian.co.uk/world/2008/aug/06/iran.nuclear>.

¹³¹ Michael Slackman, *The Fine Art of Hiding What You Mean to Say*, The New York Times, August 6, 2006 available at <http://www.nytimes.com/2006/08/06/weekinreview/06slackman.html>. Words have both denotative and connotative meanings. The denotative meaning for a word is its clearly stated definition in a dictionary. On the other hand, the connotative meaning of a word is the emotional or attitudinal response people have to words.

Iranians speak two different languages. Americans are pragmatists and word choice is often based on the shortest route from here to there. Iranians are poets and tend to use language as though it were paint, to be spread out, blended, swirled. Words can be presented as pieces in a puzzle, pieces that may or may not fit together neatly.¹³²

Consequently, the complexities of interpersonal communication is one detrimental factor that is inextricably intertwined with diplomacy. Understanding Iranian culture and the manner in which Iranians present and react to language may help facilitate dialogue at the highest political levels. In addition understanding Iranian history may also help explain Iranian mannerisms and cultural differences. For example, Slackman states that centuries of foreign occupation and hegemony by Arabs, Mongols, French, British and not to mention American interference has taught Iranians “the value of hiding their true faces.”¹³³ There is a little known concept in Shiite Islam known as *Takiya* where Shiites are permitted and encouraged to “hide their belief or faith to protect their life, honor or property.”¹³⁴ Applied to the nuclear issue, this reveals that Iranians bring a high level of mistrust to any diplomatic encounter: “Diplomacy everywhere is the art of not showing your hand, and if Iranians have shown skill at forcing negotiations over negotiations, or winning by stalling, it would be an overstatement to say that it can be explained solely by a culture of *Takiya*.”¹³⁵

In the context of the latest Geneva talks, Iran’s diplomatic maneuverings and the drama revolving around the letter may have been protocol on one level but on another they reflect the internal realities of Iranian politics. It further underscores the fact that for Iran, negotiations are not viewed as a means of reaching compromise and agreement, but rather as a means of delaying or warding off punitive measures that may interfere with its

¹³² Michael Slackman, *See supra*

¹³³ Michael Slackman, *See supra*.

American interference here refers to the U.S. role in the 1953 overthrow of the Mossadeq government and reinstallation of the Shah.

¹³⁴ Michael Slackman, *See supra*.

¹³⁵ Michael Slackman, *See supra*.

According to the Slackman article, western diplomats based in Iran maintain that Iran’s cultural foundation gives it a “leg up” when dealing with the more studied negotiation skills of the Americans.

nuclear enrichment program. In juxtaposition to “Cowboy Diplomacy,” a new expression called “Carpet Diplomacy” was coined when Iran’s senior negotiator poetically described their approach: “Our diplomacy is like a Persian carpet, delicate and precise...which goes ahead in millimeters and God Willing, with a beautiful, long-lasting and graceful ending.”¹³⁶

The sharp contrasts and differences between both Iranian and U.S. cultural milieus and negotiation techniques reflect the fundamental gaps in understanding that continue to hinder both parties from grasping the rare opportunities for diplomatic engagement. What is needed is a change in perception of the “other” and a more concerted effort at understanding the cultural divide. Although diplomacy has sometimes been defined as the “patriotic act of lying for one’s country,” it is nothing less than patriotic to lie to one’s country especially when a solution to a crisis could be implemented in good faith and the ravages of war can be avoided. This logic applies to both Iran and the United States and both have been equally guilty of employing this malevolent version of diplomacy. For example, in an article entitled *When “Diplomacy” Means War*, Normon Solomon reveals that intentions are sometimes not all what they seem and that once these intentions become apparent to ‘the other side’ it becomes a challenge to negotiate with them in good-faith:

In the run-up to war, appearances are often deceiving. Official events may seem to be moving in one direction while policymakers are actually headed in another. On their own timetable...strategists implement a siege of public opinion that relies of escalating spin. One administration after another has gone through the motions of staying on the diplomatic track while laying down the flagstones on a path to war...[Policymakers sometimes]...strive for appearances to be deceiving, the result is a pantomime of diplomacy that’s scarcely like the real thing. When the actual goal is war, the PR task is to make a show of leaving no diplomatic stone unturned.¹³⁷

¹³⁶ Murray Eiland, *Mixed Messages and Carpet Diplomacy: Opportunities for Détente with Iran*, BNET Business Network, Middle East Policy, October 1998, available at http://findarticles.com/p/articles/mi_qa5400/is_199810/ai_n21430006. Also See Saeed Jalili quoted in, “*Diplomacy is Like a Persian Carpet*”, The View from Iran, July 22, 2008 available at <http://viewfromiran.blogspot.com/2008/07/diplomacy-is-like-persian-carpet.html>.

¹³⁷ Normon Solomon, *When ‘Diplomacy’ Means War*, AlterNet, April 20, 2006 available at http://www.alternet.org/columnists/story/35245/when_'diplomacy'_means_war/.

The Bush Administration, in particular, has had a checkered past with respect to deliberately employing disingenuous diplomatic efforts. Five days prior to then-Secretary of State Colin Powell’s infamous U.N. Security Council speech in 2003 which made the “case for war” against Iraq based on inaccurate intelligence information, the British Prime Minister David Manning noted in a memo: “Our diplomatic strategy had to be arranged around the military planning.” President Bush and top officials in the White House meanwhile consistently informed the public that they were pursuing “all diplomatic channels in hopes of preventing war.”¹³⁸ The lesson here is that the consequences of such diplomacy has led to a disastrous path that the U.S. may not be able to disengage from with grace. In essence, the U.S. has not only lost its moral high-ground but also lost command of its good-will – making it that much more difficult to engage nations like Iran with a ‘mistrustful’ diplomatic posture. Iran now perceives U.S. “diplomacy” through a different prism and holds that U.S. instigated sanctions against Iran are part of a plan to frustrate meaningful negotiations.

As opposed to this form of diplomacy that has left both parties in a dangerous predicament, what is needed is “fresh thinking” and a return to a form of diplomacy called “principled negotiation.” In *Getting to Yes*, Roger Fisher and William Ury advocate four fundamental principles of negotiation that can be applied to the Iran nuclear weapons impasse: (1) separate the people from the problem; (2) focus on interests, not positions; (3) invent options for mutual gain; and (4) insist on objective criteria.¹³⁹ The approach favored by Fisher and Ury is a strategy based on negotiation on the merits that ultimately leads to a “win-win” outcome. Like most forms of negotiation, there are many impediments that must be navigated before arriving at a favorable compromise.

Fisher and Ury would argue that because Iran and the U.S. pay attention too closely to their positions, less attention is devoted to addressing the underlying concerns

¹³⁸ Normon Solomon, *See supra*.

¹³⁹ Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, Penguin Books, 1981 partially available at <http://www.williamury.com/media/pdf/GTY-Ch1.pdf>.

of both parties. In essence, agreement becomes less likely as the focus is shifted to less important and oftentimes tangential concerns. Second, problems of perception oftentimes take over and make effective negotiation difficult to achieve. Third, negotiations are people-oriented engagements that often involve difficult emotions such as fear, anger, distrust and anxiety. It is therefore not surprising that when you have controversial personalities like Bush and Ahmadenijad using inflammatory rhetoric, the emotions get intertwined with the substantive issues in the dispute and this further frustrates negotiation efforts. Fourth, insisting on objective criteria for decisions can greatly simplify the negotiation process. For example, if the U.S. and Iran are able to refer to other similar disputes of this nature for guidance and can decide on such external “objective” criteria as parameters of “fairness” – then the prospects of an agreement become more acceptable and likely for both parties (one example is a multi-lateral supervision program, discussed below, which has been implemented successfully in Europe). In summary, Fisher and Ury maintain that conflicts between parties like Iran and the U.S. can be resolved with a principled approach to negotiation if both parties do not exacerbate the process through “positional bargaining”:

Bargaining over positions creates incentives that stall settlement. In positional bargaining you try to improve the chance that any settlement reached is favorable to you by starting with an extreme position, by stubbornly holding to it, by deceiving the other party as to your true views, and by making small concessions only as necessary to keep the negotiation going. The same is true for the other side. Each of those factors tends to interfere with reaching a settlement promptly. The more extreme the opening positions and the smaller the concessions, the more time and effort it will take to discover whether or not agreement is possible.¹⁴⁰

The upcoming presidential elections in the U.S. may provide a fitting opportunity for employing the notion of “principled negotiation” espoused by Fisher and Ury. Should Barack Obama be elected the next president, he has openly stated that he will embark upon a path of “aggressive, *principled* diplomacy without self-defeating preconditions,

¹⁴⁰ Roger Fisher and William Ury, *See supra*.

but with a clear-eyed understanding of our interests.”¹⁴¹ Unlike the Bush Administration’s position, Obama’s statements reveal that he is willing to engage in direct talks with the Iranian regime and offer them economic incentives in exchange for greater cooperation. For example, Obama has emphasized that “changes in behavior” by Iran could be rewarded with membership in the World Trade Organization and a range of other security guarantees. By not sending the wrong signals of “regime change” and using credible “carrots and sticks” that are rooted in principled diplomacy, Obama offers real hope for reconciliation. However, if John McCain wins the election, then the crisis may unfortunately reach another level of escalation with more sanctions and more of the same failed patterns of diplomatic jockeying. In that case, military escalation and preemptive strikes are not far-fetched because McCain has had the audacity to sing “bomb, bomb, bombing” Iran.

Both the U.S. and the EU-3 (U.K., France and Germany) have critical, although different roles, in framing the dialogue and choices for Iran. Although the U.S. is the most important player because it has the power to grant Iran its two assurances of (1) a credible security guarantee; and (2) solid economic rewards, the EU-3 has taken the lead in the negotiations in trying to offer Iran incentives to curb its nuclear program. However, the E.U. cannot provide Iran with any security assurances because it does not pose a threat to Tehran. Rather, the U.S. has encircled Iran with military ships in the Gulf and an intimidating presence in nearby Iraq. In contrast to the U.S., the EU-3 has viewed Iran as a “security seeker” and has actively pursued a policy of “conditional” engagement to mitigate the effects of U.S. sanctions. Throughout the negotiation process, the EU-3 has retained a “soft” posture and even when “sticks” were implemented as a diplomatic tool they consisted mostly of “threats to postpone, not withdraw, anticipated benefits until the nuclear issue is resolved.”¹⁴²

¹⁴¹ Michael R. Gordon, *Obama Envisions New Iran Approach*, The New York Times, November 2, 2007 available at <http://www.nytimes.com/2007/11/02/us/politics/02obama.html>. Also See Barbra Starr, *The Next President’s National Security Challenge*, CNN, June 10, 2008 available at <http://www.cnn.com/2008/POLITICS/06/10/candidates.military/index.html>.

¹⁴² Tom Sauer, *Coercive Diplomacy Revisited: The Iran Nuclear Weapons Crisis*, International Studies Association 48th Annual Convention: Politics, Policy and Responsible Scholarship, University of Antwerp, March 2007, available at http://www.allacademic.com/meta/p_mla_apa_research_citation/1/7/8/7/0/pages178706/p178706-1.php.

Some analysts have theorized that the U.S. and the EU-3 have entered into a “*Good Cop / Bad Cop*” arrangement in order to pressure Iran into compliance. According to this diplomatic variant, one actor acts in a threatening, hostile and abusive manner while the other actor adopts a more non-threatening and sympathetic posture. By employing a “mix of rewards and punishments” the two actors increase the target’s stress and the eventual goal is to “alter the target’s perception of the conflict situation such that the individual comes to accept the team’s offer.”¹⁴³ Clearly, the U.S. has played the role of the “bad cop” by branding Iran as a member of the “axis of evil,” leading the effort to implement unilateral sanctions of Iran’s banking establishment and opposing any direct diplomatic engagement. The EU-3, on the other hand, has occasionally implemented “sticks” but has been receptive to open dialogue on many levels. At the same time, European dependence on Iranian oil has undermined any leverage it may have had in bilateral negotiations. In fact, between 2000 and 2005, European-Iranian trade nearly tripled.¹⁴⁴

The underlying problem with this “*Good Cop/Bad Cop*” formulation is that it gives Iran little incentives to consider a bargain. Increased U.S. threats of “more sticks” may not be very credible because Iran has already sustained considerable sanctions and elevating the “bad cop” routine may “backfire” and lead to military escalation. On the other hand, EU-3 offers of more “carrots” would also not give Iran sufficient reason to abandon its nuclear ambitions. Curtis Martin has proposed that the U.S. and the EU-3 change roles with the EU playing more of a “bad cop” role in an attempt to bring Iran back into line and remedy any imbalances that may have resulted.¹⁴⁵ However, even a reversal of these roles will likely not yield beneficial results because the fundamental

¹⁴³ Curtis H. Martin, “*Good Cop/Bad Cop*” *As a Model for Nonproliferation Diplomacy Toward North Korea and Iran*, *Nonproliferation Review*, Vol. 14, No. 1, March 2007, available at <http://cns.miis.edu/pubs/npr/vol14/141/141martin.pdf>.

¹⁴⁴ Curtis H. Martin, *See supra*.

¹⁴⁵ Curtis H. Martin, *See supra*. Martin argues that creating a little more “emotional contrast” by having the EU play the “bad cop” may be an alternative strategy because fear of the U.S. as a “bad cop” has not given Iran a reason to abandon its nuclear ambitions. Although this strategy may produce some diplomatic traction, it is unlikely to resolve the impasse because it does not address the underlying substantive core issues. Furthermore, any additional credible threats from the EU are unlikely to deter Iran. The “good cop” / “bad cop” paradigm is more likely to succeed against states that are weaker than Iran politically and there is no reason why the application of this paradigm would be more efficient than the application of traditional sanctions.

concept of *coercive* diplomacy has been exhausted. A more flexible approach based on principled negotiation is more likely to deliver the desired outcome.

According to Alexander George, coercive diplomacy is characterized by a (1) demand; (2) threat; (3) time pressure.¹⁴⁶ Alexander stipulates that the *demand* has to be supported by a *threat*, “if you do not agree with this demand, I will punish you by doing X or Y” and the end goal is to “create in the opponent the expectation of costs of sufficient magnitude to erode his motivation to continue what he doing.”¹⁴⁷ However, the time element is crucial because any opponent will not perceive a threat of force as credible unless it is accompanied by a deadline for compliance. However, as exemplified by the Iran nuclear weapons crisis, coercive diplomacy is difficult and has a relatively low success rate. In his book, *The Limits of Coercive Diplomacy*, George Alexander warns about the efficacy of the technique and postulates that regardless of the final outcome, “coercive diplomacy diminishes the ‘marge de manoeuvre’ of the threatening state.”¹⁴⁸ In a similar cautionary note, Art and Cronin, recommend: “Do not resort to coercive diplomacy, unless, should it fail, you are prepared to go down the path of war or you have prepared a suitable escape hatch.”¹⁴⁹ Therefore, the negative consequences of employing coercive diplomacy as a technique in the Iran nuclear weapons case far outweigh the potential gains.

Finally, in conjunction with the principled negotiation model proposed above, the U.S. and EU-3 should seriously consider converting Iran’s national enrichment efforts into a multi-national program. Under this approach, the Iranian government would agree to allow two or more additional governments (such as France or Germany) to participate in the management, operation and supervision of the sensitive enrichment activities that

¹⁴⁶ Tom Sauer, *See supra*.

¹⁴⁷ Tom Sauer, *See supra*.

¹⁴⁸ Tom Sauer, *See supra*. Also *See Policy Analysis Brief, Coercive Diplomacy: Scope and Limits in the Contemporary World*, The Stanley Foundation, December 2006, available at <http://www.stanleyfoundation.org/publications/pab/pab06CoerDip.pdf>. George Alexander also highlighted the “attractiveness” of coercive diplomacy by stating: “it can achieve reasonable objectives in a crisis with less cost; with much less, if any, bloodshed; with fewer political and psychological costs; and often with less risk of unwanted escalation that is true with traditional military strategy.”

¹⁴⁹ Tom Sauer, *See supra*.

Iran is currently undertaking.¹⁵⁰ This multi-lateral approach would enable Iran to continue to *own* its existing nuclear facilities and centrifuges, but only the operation and management would be shared with other governments.

Another diplomatic proposal that has gained some traction and which requires a strong commitment from all parties involved is the so-called “Zero-Enrichment” option. Under this formula, Iran, the E.U. and Russia (with U.S. support) would agree on terms where: (1) Iran would indefinitely suspend enrichment activity; and this would be (2) verified by a highly intrusive inspections regime such as the IAEA. In exchange, Iran would be guaranteed: (1) an international fuel supply; (2) access to advanced nuclear technology; (3) U.S. backed security assurances; and (3) a gradual lifting of sanctions; and (4) resumption of normal diplomatic relations with the U.S. As a “power broker” and as a gesture of good-will, the U.S. would agree: (1) not to threaten or use force against Iran; (2) refrain from interfering with Iran’s importation of nuclear technologies for civilian purposes, which is permitted under the NPT; (3) support, where needed, E.U. economic incentives, in particular by backing Iran’s WTO accession; (4) recognizing Iran’s regional role and engage in discussions with Tehran on Iraq’s reconstruction and political future; and (5) unfreeze Iran’s assets in the U.S.¹⁵¹

A diplomatic solution to Iran’s uranium enrichment program requires serious diplomatic engagement based on principle, good-will, and identifying common ground by isolating areas of conflict in order to formulate an a workable compromise. Neither coercive diplomacy nor empty threats of force have generated concrete offers by either the U.S. or the EU that are even remotely satisfactory. The U.S. must take “regime change” off the table and replace it with a more conciliatory framework that addresses Iranian concerns about national sovereignty. By examining the underlying root causes of the conflict more closely and moving the focus from Iran’s nuclear program to the promotion of regional security, a broader range of stakeholders become involved in the problem-solving equation. In an article on the Disarmament Conference held in February

¹⁵⁰ William Luers, Thomas R. Pickering and Jim Walsh, *A Solution for the US-Iran Nuclear Standoff*, The New York Review of Books, Vol. 55, Number 4, March 20, 2008 available at <http://www.nybooks.com/articles/21112>.

¹⁵¹ International Crisis Group publication, *Iran: Is There a Way Out of the Nuclear Impasse?*, Middle East Report No. 51, February 2006, available at <http://merln.ndu.edu/archive/icg/iranimpasse.pdf>.

1932 in Geneva, Albert Einstein best described how negotiations on such intractable issues may succeed: “Success in such great affairs is not a matter of cleverness, or even shrewdness, but instead a matter of honorable conduct and mutual confidence. You cannot substitute intellect for moral conduct in this matter.”¹⁵² Perhaps if Iran and the U.S. both hold themselves to Einstein’s exacting moral standards, then maybe a solution to this challenging conflict may finally present all aggrieved parties with their ‘end of the bargain’.

¹⁵² Albert Einstein, *The 1932 Disarmament Conference*, The Nation, June 12, 2002 available at <http://www.alternet.org/globalaffairs/13366/>.

Conclusion

The Iran dossier will remain open as long as the parties remain inflexible and attached to ineffective diplomatic methods. Iran and the U.S. must come to realize that real diplomatic options exist and that a “face-saving” solution can be found for either party to approach the table. More importantly, the U.S. and the E.U. must enter into direct negotiations with Iran without pre-conditions. The U.S., specifically, should engage with Iran on broader regional issues and strive to create a new regional security architecture that alleviates many of Iran’s vulnerability concerns. One such method would entail orchestrating a permanent forum for security and cooperation in the Middle East based on the OSCE model. Although many obstacles to regional stability make peace an elusive goal at the present time, the complex challenges facing the Middle East require fresh thinking along new lines. When the time is ripe, an integrated Middle East OSCE model may prove to be more effective than the vastly inefficient Arab League. In addition, supporting multi-track diplomatic initiatives by working with international organizations would also serve to bolster any principled negotiation efforts. Finally, a more collaborative approach that incorporates creative thinking and introduces new players, such as NGO’s and think tanks, may provide a catalyst that enables the parties to re-define their conflicting interests.

The current geo-political balance in the Middle East does not favor a preemptive military strike. The ramifications of such an attack could be devastating, not only for the millions of Iranians, but also for the prospects of peace in the region. Radioactive contamination could also pose horrific consequences. The sheer scale and complexity of U.S. involvement in the region (military, ideological, and economic) all make it less palatable for the U.S. to commit to such a destructive endeavor. Speculation about whether the Bush Administration will finally succumb to its “Cowboy” mentality in its final months in office by proceeding with a preemptive strike has only served to further destabilize oil markets. The U.S. is currently embroiled in a massive quagmire in Iraq and is suffering massive casualties – it is therefore not prudent to embark on another foolish adventure on another front.

Israel, on the other hand, has been sending “mixed signals” by (1) engaging in military exercises that are intended to send strong messages to Iran reminding it that developing nuclear capabilities carry consequences and (2) reaching out to other regional actors (such as Syria, Hamas and Hezbollah) by conducting sporadic diplomatic activity. Some analysts believe that Israel’s diplomatic overtures are nothing more than deceiving appearance on the path to war. However, once again, the realities of war with Iran are much different than any other antagonist that Israel has previously faced. Both Israel and the U.S. must come to accept the reality that no matter how punitive any military strike may be, it would only set back Iran’s nuclear capability. Iran has already achieved mastery of the nuclear fuel cycle and has the technological know-how to easily re-create such its facilities with more speed and precision should they be destroyed.

A negotiated solution to the Iran impasse is therefore the only logical and sane course of action. An awareness of the consequences of not engaging in pro-active principled diplomatic negotiation must be amplified on all levels. The vast differences in cultural values and perception, which may have contributed to the failure of previous negotiations, need to be effectively addressed. As Solomon elucidated above, cultural differences between Americans and Iranians are at the core of negotiation breakdowns. Therefore, Americans must come to better understand Iranians because with Iranians, “the mind thinks something, the heart feels something else, the tongue says something else, and manners do something else.”¹⁵³ In essence, the U.S.’s best hope for remedying the nuclear weapons crisis is by investing more in cultural sensitivity and making an effort to better understand the enigma that is the “Persian Puzzle.”

¹⁵³ Normon Solomon, *See supra*.

Brief Timeline of Events

- In 2002, Iran admitted to clandestine development of two uranium enrichment facilities at Natanz, a heavy water production plant and nuclear reactor at Arak, and undeclared receipt of natural uranium in 1991.
- In June 2003, IAEA Director General declared that Iran had “failed to meet its obligations under its Safeguards Agreement.”
- Despite subsequent partial cooperation by Iran, IAEA continued to discover undisclosed nuclear materials.
- Negotiations: UK, France and Germany (EU-3) have been negotiating with Iran with an aim toward achieving Iran’s compliance with NPT and Safeguards Agreement obligations.
- Iran suspended its enrichment-related activities several times, but always has restarted following breakdown in negotiations.
- In 2004, IAEA Director General reported, and IAEA Board of Governors accepted, that all declared nuclear materials and activities were accounted for; outstanding questions concern undeclared nuclear materials and activities.
- In 2005, the U.S. signals a major change in policy and indicates that the U.S. will back the negotiation track led by the EU-3 and offer economic incentives to Iran to give up alleged nuclear ambitions.
- In 2006, the U.N. Security Council passes series of resolutions imposing sanctions on Iran.

Appendix



Prior to August 2002, the sites circled above were kept hidden by Iran. These locations were revealed as a result of subsequent investigations by the IAEA.



Synopsis of U.N. Security Council Resolutions (1737 / 1747 / 1803)

Resolution 1737, Dec. 2006, imposes sanctions that target:

- ✓ Proliferation-related goods and technology (enrichment, reprocessing or heavy-water related), and those that could contribute to the development of nuclear weapons delivery systems
- ✓ Related technical assistance, training, financial assistance and other services
- ✓ Proliferation-related training and education programs for Iranian nationals
- ✓ Financial assets of selected individuals and organizations closely related to the Iranian nuclear program

Available at: http://www.iaea.org/NewsCenter/Focus/iaeaIran/unsc_res1737-2006.pdf

Resolution 1747, March 2007, imposes further sanctions:

- ✓ Banning arms exports from Iran
- ✓ Requiring U.N. member states to exercise restraint in sales to Iran of certain categories of heavy conventional arms
- ✓ Designating additional individuals and entities, including Bank *Sepah* and those affiliated with IRGC, as subject to the asset freeze requirement
- ✓ Urging U.N. member states and international financial institutions not to enter into new commitments for financial assistance to the government of Iran (except humanitarian / developmental purposes).
- ✓ Reaffirming Iran's obligation to suspend nuclear activities or face additional sanctions.

Available at: http://www.iaea.org/NewsCenter/Focus/iaeaIran/unsc_res1747-2007.pdf

Resolution 1803, March 2008, imposes further sanctions:

- ✓ Imposing travel bans on five Iranian officials
- ✓ Freezing foreign assets of 13 Iranian companies and 13 Iranian officials
- ✓ Banning sale of dual-use items to Iran (military/civilian)
- ✓ Urging governments to withdraw financial backing from firms trading with Iran
- ✓ Inspecting cargo going in and out of the country
- ✓ Requesting IAEA to report on whether Iran has complied with demand to suspend uranium enrichment
- ✓ If not, threatens further sanctions

Available at: http://www.iaea.org/NewsCenter/Focus/iaeaIran/unsc_res1803-2008.pdf

Bibliography

Books, Periodicals and Journals

Anthony Clark Arend, *International Law and the Preemptive Use of Military Force*, The Washington Quarterly, 2003 at http://www.twq.com/03spring/docs/03spring_arend.pdf.

Bruce W. Jentleson, *Sanctions Against Iran: Key Issues*, A Century Foundation Report, 2007 at <http://www.tcf.org/publications/internationalaffairs/jentleson.pdf>.

Curtis H. Martin, “*Good Cop/Bad Cop*” *As a Model for Nonproliferation Diplomacy Toward North Korea and Iran*, Nonproliferation Review, Vol. 14, No. 1, March 2007, available at <http://cns.miis.edu/pubs/npr/vol14/141/141martin.pdf>.

Duncan Currie, Greenpeace International, *Preventive War and International Law after Iraq*, May 2003 at <http://www.globelaw.com/Iraq/Preventive%20War%20After%20Iraq.pdf>.

Efraim Inbar, *The Need to Block a Nuclear Iran*, Middle East Review of International Affairs, Vol. 10, No. 1, March 2006 available at <http://meria.idc.ac.il/journal/2006/issue1/Inbar.pdf>.

Joseph Cirincione, Jon Wolfsthal and Miriam Rajkumar, *Deadly Arsenals: Nuclear Biological and Chemical Threats*, (Carnegie Endowment for International Peace, 2005), p. 299 excerpt at <http://www.carnegieendowment.org/files/DeadlyII.Ch01.FINAL.pdf>.

William Luers, Thomas R. Pickering and Jim Walsh, *A Solution for the US-Iran Nuclear Standoff*, The New York Review of Books, Vol. 55, Number 4, March 20, 2008 available at <http://www.nybooks.com/articles/21112>.

Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, Penguin Books, 1981 partially available at <http://www.williamury.com/media/pdf/GTY-Ch1.pdf>.

Shahram Chubin and Robert S. Litwak, *Debating Iran’s Nuclear Aspirations*, The Washington Quarterly, Autumn 2003 available at http://www.twq.com/03autumn/docs/03autumn_chubin.pdf.

Thomas Powers, *Iran: The Threat*, The New York Review of Books, Vol. 55, No. 12, July 17, 2008 available at <http://www.nybooks.com/articles/21592>.

George Perkovich, *The End of the Nonproliferation Regime?*, (2006) Current History at p. 355, http://www.carnegieendowment.org/files/perkovich_current_history.pdf.

George Perkovich, *Defining Iran's Nuclear Rights, Proliferation Analysis* (Carnegie Endowment for International Peace Publication, 2006) at <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=18687>.

Leonard Specter, Deputy Director (Washington, DC), Monterey Institute of International Studies, in *The Biological Threat Reduction Program of the Department of Defense: From Foreign Assistance to Sustainable Partnerships*, 2007 at http://books.nap.edu/openbook.php?record_id=12005&page=105.

Fredrick L. Krigs, *North Korea's Withdrawal from the Nuclear Non-Proliferation Treaty*, The American Society of International Law Insights, January 2003 at <http://www.asil.org/insights/insigh96.htm>.

Tom Sauer, *Coercive Diplomacy Revisited: The Iran Nuclear Weapons Crisis*, International Studies Association 48th Annual Convention: Politics, Policy and Responsible Scholarship, University of Antwerp, March 2007, available at http://www.allacademic.com/meta/p_mla_apr_research_citation/1/7/8/7/0/pages178706/p178706-1.php.

Jean du Preez and William Potter, *North Korea's Withdrawal from the NPT: A Reality Check*, James Martin Center for Nonproliferation Studies publication at <http://cns.miis.edu/pubs/week/030409.htm>.

Nikolai Sokov, *U.S. Withdrawal from the ABM Treaty: Post-Mortem and Possible Consequences*, James Martin Center for Nonproliferation Studies publication at <http://cns.miis.edu/pubs/reports/2abm.htm>.

Tariq Rauf, Head of the Verification and Security Policy Coordination Section, IAEA. *Successes of the Nuclear Non-Proliferation Regime - Curbing the Spread of Nuclear Weapons*, a panel discussion organized by the IAEA, 1999 at <http://cns.miis.edu/pubs/ionp/iaea.htm>.

John F. Kennedy, Address to the American People on the Nuclear Test Ban Treaty, July 26, 1963. Nuclear Age Peace Foundation, 2003 at http://www.wagingpeace.org/articles/2003/11/17_carnegie_jfk-nuclear.htm.

Gary Sick, *Iran: Confronting Terrorism*, The Washington Quarterly, Autumn 2003, at 86 available at http://www.twq.com/03autumn/docs/03autumn_sick.pdf

William C. Potter, *The Once and Future NPT: In Search of Political Will*, Center for Nonproliferation Studies, Monterey Institute of International Studies, presentation prepared for the public hearing before the European Parliament on The Future of the Non-Proliferation Treaty, Brussels, Belgium (September, 14 2006) available at http://abolition2000europe.org/resserver.php?blogId=1&resource=Potter_EN.doc.

Gilles Arbellot du Repaire, *The Nuclear Weapon Non-Proliferation Treaty and Terrorism: The Consequences of 11 September 2001 on the Treaty Review Process*, http://www.nea.fr/html/law/nlb/nlb-71/017_043.pdf.

Peter R. Neumann, *Negotiation with Terrorists*, Foreign Affairs, January-February 2007 at <http://www.foreignaffairs.org/20070101faessay86110/peter-r-neumann/negotiating-with-terrorists.html>.

George Perkovich et al, *Universal Compliance: A Strategy for Nuclear Security*, Carnegie Endowment for International Peace, 2005 at pg. 35 available at <http://www.carnegieendowment.org/files/UC2.FINAL3.pdf>.

Elahe Mohtasham, *The Clash of Ideologies or Peaceful Multilateral Negotiations Based on National Interests: The Degree of Iran's Commitment to the Treaty of Nuclear Weapons*, Address before the U.N. 2005 Review and Extension Conference (May 11, 2005), available at <http://www.reachingcriticalwill.org/legal/npt/RevCon05/NGOpres/iran10.pdf>.

Mohammad Ali Hosseini, spokesman Iran's Foreign Ministry in "Iran rejects U.N. resolution and accuses Security Council of hypocrisy" at <http://www.signonsandiego.com/news/world/20061223-1548-un-iransview.html>.

Peter Crail, *Security Council Adopts More Iran Sanctions*, Arms Control Association, April 2008 available at http://www.armscontrol.org/act/2008_04/IranSanctions.

Anthony Cordesman and Khalid Al-Rodhan, *Iranian Nuclear Weapons? Options for Sanctions and Military Strikes*, Center for Strategic and International Studies publication, 2006 available at http://www.csis.org/media/csis/pubs/060830_iranoptionssanctions.pdf.

John McGlynn, *Day of Infamy: The March 20, 2008 U.S. Declaration of War on Iran*, Centre for Research on Globalization, March 2008 available at <http://www.globalresearch.ca/index.php?context=va&aid=8429>.

Keith Putnam-Delaney and Paul Ingram, *Resolving the Nuclear Dispute with Iran by Negotiation*, British American Security Information Council, August 31, 2006 available at <http://www.basicint.org/pubs/Notes/BN060901.pdf>.

Gawdat Bahgat, *Iran and the United States: The Emerging Security Paradigm in the Middle East*, Parameters, Summer 2007 available at <http://www.carlisle.army.mil/USAWC/PARAMETERS/07summer/bahgat.pdf>.

Harlan K. Ullman and James P. Wade, *Shock and Awe: Achieving Rapid Dominance*, pg. 44 available at http://www.dodccrp.org/files/Ullman_Shock.pdf.

Seymour M. Hersh, *The Iran Plans: Would President Bush go to War to Stop Tehran from Getting the Bomb?*, The New Yorker, April 2006 at http://www.newyorker.com/archive/2006/04/17/060417fa_fact

Seymour M. Hersh, *Preparing the Battlefield: The Bush administration Steps Up its Secret Moves Against Iran*, The New Yorker, July 2008 at http://www.newyorker.com/reporting/2008/07/07/080707fa_fact_hersh.

Christine Gray, *The Use of Force and the International Legal Order*, in *International Law* by Malcolm D. Evans, 2nd ed., (Oxford University Press, 2006), p. 590- 594

Hugo Grotius, *The Law of War and Peace*, at <http://socserv.mcmaster.ca/~econ/ugcm/3ll3/grotius/Law2.pdf>

Emmerich De Vattel, *The Law of Nations*, Vol. IV. Also See Vattel quoted in Randall Dipert, *Preemptive War and the Epistemological Dimension of the Morality of War*, at <http://www.usafa.edu/isme/JSCOPE05/Dipert05.html>.

Charles Cheney Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, 1945 quoted in Marian Nash Leich, *Contemporary Practice of the United States Relating to International Law*, U.S. Digest, Ch. 9 § 1 at <http://www.questia.com/googleScholar.qst?docId=93964696>.

Letter from Secretary of State Daniel Webster to Lord Ashburton of August 6, 1842 quoted in Anthony Clark Arend, *International Law and the Preemptive Use of Military Force*, The Washington Quarterly, 2003 at http://www.twq.com/03spring/docs/03spring_arend.pdf.

Fred L. Morrison, *Legal Issues in the Nicaragua Opinion*, American Journal of International Law 81: 160-166 at <http://bailey83221.livejournal.com/55750.html>.

Senator Arlen Specter quoted in, *Prominent Calls for Diplomacy with Iran*, The Center for Arms Control and Non-Proliferation, June 9, 2008 available at http://www.armscontrolcenter.org/policy/iran/articles/calls_for_iran_diplomacy/.

Gareth Porter, *Burnt Offering: How a 2003 Secret Overture from Tehran Might Have Led to a Deal on Iran's Nuclear Capacity – If the Bush Administration Did not Rebuff it*, The American Prospect, May 21, 2006, available at <http://www.prospect.org/cs/articles?articleId=11539>.

Report of an Independent Task Force Sponsored by the Council on Foreign Relations Co-chaired by **Zbigniew Brzezinski and Robert M. Gates**, *Iran: Time for a New Approach*, Council on Foreign Relations, 2004, pg. 40 available at http://www.cfr.org/content/publications/attachments/Iran_TF.pdf.

Murray Eiland, *Mixed Messages and Carpet Diplomacy: Opportunities for Détente with Iran*, BNET Business Network, Middle East Policy, October 1998, available at http://findarticles.com/p/articles/mi_qa5400/is_199810/ai_n21430006.

Saeed Jalili quoted in, “*Diplomacy is Like a Persian Carpet*”, The View from Iran, July 22, 2008 available at <http://viewfromiran.blogspot.com/2008/07/diplomacy-is-like-persian-carpet.html>.

Norman Solomon, *When ‘Diplomacy’ Means War*, AlterNet, April 20, 2006 available at http://www.alternet.org/columnists/story/35245/when_'diplomacy'_means_war/.

International Crisis Group publication, *Iran: Is There a Way Out of the Nuclear Impasse?*, Middle East Report No. 51, February 2006, available at <http://merln.ndu.edu/archive/icg/iranimpasse.pdf>.

Yehuda Blum, United Nations Security Council Official Records, 2282ND Meeting of 15 June 1981 at <http://domino.un.org/unispal.nsf/eed216406b50bf6485256ce10072f637/8ccf55e28df86b1b052567fd005a09de!OpenDocument>.

Newspaper and Magazine Articles

Albert Einstein, *The 1932 Disarmament Conference*, The Nation, June 12, 2002 available at <http://www.alternet.org/globalaffairs/13366/>.

Steven Weisman, *U.S. Sanctions Force World Bank to Halt Some Iran Aid*, The New York Times, November 4, 2007 available at <http://www.nytimes.com/2007/11/04/world/middleeast/04sanctions.html>.

Michael Slackman, *The Fine Art of Hiding What You Mean to Say*, The New York Times, August 6, 2006 available at <http://www.nytimes.com/2006/08/06/weekinreview/06slackman.html>.

David Blair, *Banks Recruited to Wage Financial War on Tehran*, Telegraph, September 18, 2007 available at <http://www.telegraph.co.uk/news/worldnews/1563482/Banks-recruited-to-wage-financial-war-on-Teheran.html>.

Scott Peterson, *Iran's Nuclear Program: Will More Sanctions Work?*, The Christian Science Monitor, June 13, 2008 available at <http://www.csmonitor.com/2008/0613/p06s01-wome.html>.

Michael R. Gordon, *Obama Envisions New Iran Approach*, The New York Times, November 2, 2007 available at <http://www.nytimes.com/2007/11/02/us/politics/02obama.html>.

Najmeh Bozorgmehr, *Iran Gets Around U.S. Bank Sanctions*, Financial Times, August 21, 2008 available at <http://www.ft.com/cms/s/0/a05a3cb2-6f9f-11dd-986f-0000779fd18c.html>.

Gareth Porter, *Seismic Shift or Non-Decision by Bush on Iran?*, Inter Press Service, July 18, 2008 available at <http://ipsnews.net/news.asp?idnews=43231>

Ian Black, *'Freeze for Freeze' Package Ignored as Iran Stalls for Time on Nuclear Demands*, The Guardian, August 6, 2008 available at <http://www.guardian.co.uk/world/2008/aug/06/iran.nuclear>.

The Final Straw for a Fragile Treaty, New Scientist, June 19, 2004 available at <http://www.newscientist.com/article/mg18224521.200-the-final-straw-for-a-fragile-treaty.html>.

Iran – Jack Straw welcomes signature of nuclear agreement, Foreign & Commonwealth Office News, 15 November 2004, at http://www.fco.gov.uk/resources/en/press-release/2004/11/fco_npr_151104_iranstraw.

Stephanie Kirschgaesner, *Banks Braced for Fines*, Financial Times, August 29, 2007 available at <http://www.ft.com/cms/s/0/0527e010-5672-11dc-ab9c-0000779fd2ac.html>.

Jim Lobe, *Scowcroft, Brezezinski Urge Bush to Drop Iran Preconditions*, Inter Press Service, July 24, 2008, available at <http://rightweb.irc-online.org/pdf/4938pdf.pdf>.

Dr. Mohammed El Baradei quoted in *Saving Ourselves from Self-Destruction*, N.Y. Times Op-Ed, February 12, 2004, available at <http://query.nytimes.com/gst/fullpage.html?res=9A06E1DE133AF931A25751C0A9629C8B63&sec=&spon=&pagewanted=2>.

Dr. Mohammed El Baradei quoted in *Tracking Nuclear Proliferation*, 2005 at http://www.pbs.org/newshour/indepth_coverage/military/proliferation/diplomacy.html.

Dr. Mohamed El Baradei quoted in Director General's Interview on Iran, "The Jury is Still Out," Time Europe Magazine, 24 November 2005 available at <http://www.globalsecurity.org/wmd/library/news/iran/2003/iran-031117-iaea.htm>.

Ehsan Ahrari, *Has "Cowboy Diplomacy" Really Ended?*, Time Magazine, Foreign Policy in Focus, July 13, 2006 available at <http://www.fpif.org/pdf/gac/0607cowboydiplomacy.pdf>

Mike Allen and Romesh Ratnesar, *The End of Cowboy Diplomacy*, Time Magazine, July 9, 2006 available at <http://www.time.com/time/magazine/article/0,9171,1211578-1,00.html>.

The Threat of Nuclear Terrorism in *Tracking Nuclear Proliferation*, 2005 at http://www.pbs.org/newshour/indepth_coverage/military/proliferation/terrorist_threat.html.

Open Democracy: *The Nuclear Shopping Mall* – A.Q. Khan and Iran at http://www.opendemocracy.net/globalization-india_pakistan/khan_iran_3956.jsp.

Iranian chief nuclear negotiator Ali Larijani, in "Iran gears up for uranium enrichment," Reuters, Parisa Hafezi, available at <http://www.abc.net.au/science/articles/2007/01/16/1827819.htm>

International Crisis Group publication, *Iran: Is There a Way Out of the Nuclear Impasse?*, Middle East Report No. 51, February 2006 available at <http://merln.ndu.edu/archive/icg/iranimpasse.pdf>.

IAEA Again Confirms: No Weaponization in Iran, May 2008 at <http://www.indymedia.org.uk/en/2008/05/399625.html>

Joseph Cirincione, *Fool Me Twice*, Foreign Policy, March 2006 at <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=18208>.

Gareth Porter, *Iran Pushes for Talks with U.S. on Nukes, Security*, Inter Press Service, April, 2006 available at <http://ipsnews.net/news.asp?idnews=33070>.

Encyclopedia Britannica, *Definition of Diplomacy*, available at <http://www.britannica.com/EBchecked/topic/164602/diplomacy>.

Press Releases, Remarks and Miscellaneous Commentary

Press Release, Security Council, Terrorist Acquisition of Nuclear Weapons 'Dangerously Close,' Norway's Foreign Minister Tells Review Conference, U.N. Doc. DC/2962 (Oct. 5, 2005), available at <http://www.un.org/News/Press/docs/2005/dc2962.doc.htm>.

Press Release, Secretary-General, Non-Proliferation Treaty Facing Twin Crisis of Compliance, Confidence, Secretary-General says in Address to Conference on Disarmament, U.N. Doc. SG/SM/10527 (June 21, 2006), available at <http://www.un.org/News/Press/docs/2006/sgsm10527.doc.htm>.

Comments made by Director General Mohammed El Baradei after the latest Iran safeguards report was circulated to the IAEA Board, at <http://www.iaea.org/NewsCenter/News/2008/iranreport0208.html>.

Jeffrey J. Schott, *U.S. Economic Sanctions: Good Intentions, Bad Execution*, testimony before The Committee on International Relations, U.S. House of Representatives, June 3, 1998 available at http://www.fas.org/spp/starwars/congress/1998_h/h980603js.htm.

UN Secretary-General Kofi Annan, address to United Nations Association of the United Kingdom, Central Hall, Westminster, United Kingdom, January 31, 2006, available at <http://www.un.org/News/Press/docs/2006/sgsm10332.doc.htm>.

U.S. Secretary of the Treasury Henry Paulson in *Remarks by Treasury Secretary Paulson on Targeted Financial Measures to Protect Our National Security*, HP-457, June 14, 2007 available at <http://www.ustreas.gov/press/releases/hp457.htm>.

Country Analysis Briefs, Iran – Official energy statistics from the U.S. Government at <http://www.eia.doe.gov/cabs/Iran/Oil.html>.

Treaties, Legislation and Resolutions

Treaty on the Non-Proliferation of Nuclear Weapons (NPT) at http://www.nti.org/e_research/official_docs/inventory/pdfs/npt.pdf.

Additional Protocol on Nuclear Safeguards, 18 December 2003 at IAEA website: <http://www.iaea.org/NewsCenter/News/2003/iranap20031218.html>.

Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States) at <http://www.gwu.edu/~jaysmith/nicus3.html>.

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996, International Court of Justice available at <http://www.icj-cij.org/docket/files/95/7495.pdf>.

White House, *The National Security Strategy of the United States of America* (2002) pg. 15 at <http://www.whitehouse.gov/nsc/nss.pdf>.

White House, *The National Security Strategy of the United States of America* (2006) at <http://www.whitehouse.gov/nsc/nss/2006/>.

IAEA Board of Governors resolution, adopted on 25 September 2005 at <http://www.iaea.org/Publications/Documents/Board/2005/gov2005-77.pdf>.

