

CHAPTER 9

IT'S CALLED NONPROLIFERATION*

Henry Sokolski and George Perkovich

Iran's Foreign Minister Kamal Kharrazi has just stated in no uncertain terms that if today's talks with France, Britain, and Germany fail, there will be "no choice but to restart" his country's uranium-enrichment program. The Iranian people, he says, "believe it is their inalienable right to have access to this technology for peaceful purposes."¹

Iranian negotiators recognize the leverage that nuclear "rights" give them; so they say that the only issue is to establish the procedures under which they will exercise their rights to operate enrichment centrifuges. In February, Hassan Rohani, Iran's national security council secretary, offered to open up Iran's enrichment plants to even more intrusive inspections than those now currently allowed. If this was not acceptable, he suggested that Iran would be willing merely to run a pilot enrichment plant that he claimed would be too small to make even one bomb's worth of highly enriched uranium. He even offered to allow the U.S. to buy up to one-half of Iran's entire nuclear program to build confidence that Iran's program would only be used for peaceful purposes.

These offers are beguiling. They are also bad. The reasons why, though, are likely to remain obscure so

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long as our diplomats continue to agree with Mr. Kharrazi that all states that are not in violation of the Nuclear Nonproliferation Treaty (NPT) have a right to make nuclear fuel, and that such activity can be monitored to prevent quick diversions to make bombs. In fact, there is no such right, and nuclear fuel-making of the sort Iran is planning to engage in still cannot be safeguarded in any meaningful way.

The NPT's history and common sense clarify why the right to peaceful nuclear energy is qualified. First, the NPT, to which Iran is a signatory, is a nuclear nonproliferation treaty, not a nuclear bartering tool. If it authorized states to get all they needed to come within days of having a nuclear arsenal, perversely it would be no more than a legal cover for proliferation. A state could be fully compliant with the NPT so long as it declared all of its nuclear activities and avoided taking the final step (which in extreme cases would take no more than hours or days) of assembling the nuclear weapons-usable materials it had into bombs.

Second, if there are different ways to interpret a contract, the one that lends the greatest support to its provisions and prime intent is the one any sound lawyer or judge must back. Unfortunately, nuclear promoters and diplomats have disobeyed this sensible rule. When it comes to the NPT, they read the treaty's "inalienable right" to develop "peaceful nuclear energy" as being absolute. This is what leads them to conclude that a state has a right under the treaty to get everything up to but not including a complete nuclear weapon so long as it continues to claim that its nuclear activities are peaceful and there is no clear international determination otherwise.

This reading of the treaty, besides making a hash of the NPT's intent to block bomb makers, is simply

wrong. Article IV of the NPT makes clear that non-nuclear weapons state members are free to exercise their right to develop peaceful nuclear energy, but only if they do so “in conformity” with the NPT’s nonproliferation restrictions. Which restrictions are these? The first is the stipulation in Article II that nonweapons states are “not to seek or receive any assistance in the manufacture of nuclear weapons.” The other is the requirement in Article III of the treaty that all nonweapons states must place all of their civil nuclear activities under International Atomic Energy Agency (IAEA) nuclear safeguards—i.e., nuclear inspections geared “to preventing diversion of nuclear energy from peaceful uses to nuclear weapons.”²

Nuclear activities and materials that cannot be safeguarded, then, cannot count on being protected by the NPT. Centrifuge enrichment of uranium for power reactors, which can be switched to produce weapons-grade uranium overnight; chemical separation of weapons-usable plutonium from spent reactor fuel; and the fabrication of weapons-usable plutonium and highly enriched uranium (HEU) reactor fuels, all fall into this category.

The following recent examples betray the inherent limitations of IAEA efforts to try to safeguard such plants. Earlier this year, the United Kingdom (UK) publicly admitted to having “lost” nearly 30 kilograms—or five crude nuclear devices’ worth—of weapons-usable plutonium at its commercial reprocessing facility. The year before, the British reported 19 kilos had gone missing. Japan, meanwhile, announced in early 2003 that it had lost 206 kilos of plutonium at its pilot reprocessing plant. These losses, it claimed, occurred over the previous 15 years. This revelation came after the Japanese had already admitted to hav-

ing lost 70 kilos at an entirely different plutonium fuel fabrication plant.

All of these facilities were under the IAEA's watchful eyes. What's more frightening, the IAEA found all of these losses to be within permissible limits: Inspectors assumed the material simply was "lost in the plant's pipes." This is not the margin of safety needed to ensure that all safeguarded nuclear activities are solely for peaceful purposes, as required under the NPT. With facilities like these and with uranium enrichment and HEU fabrication plants, the IAEA should admit that it cannot yet know if and when a bomb's worth of bomb-usable material might have been stolen. It also should admit that a state could divert these activities and the materials they produce to make a bomb well before the IAEA or any outside power could step in to block it.

WHAT, THEN, DOES THIS RECOMMEND?

First, unless there is a clear economic imperative to proceed with these dangerous nuclear fuel-related activities, the security reasons for holding back should take precedence. The burden of proof should clearly be on those who seek to expand such activities to demonstrate clear civilian benefits and market economic competitiveness in comparison with alternatives. Reprocessing plutonium for civilian use, fabricating HEU or plutonium-based fuels, building new enrichment capacity to expand now beyond the world's already large surplus of uranium-enrichment capacity, are unnecessary to promote peaceful nuclear energy today and, in most cases, are clear money losers.

This suggests adoption of some variant of President Bush's or IAEA Director General Mohamed El

Baradei's proposed curbs on these activities. Certainly, nuclear industry can well afford to put the further addition of any new net capacity to make enriched uranium or to recycle plutonium-based fuels on hold for several years. The European Union (EU) has already signed on board to some kind of limits. This pause could be used to try to establish just what nuclear activities and materials the IAEA can and cannot truly safeguard against quick diversion.

Second, using the time gained from this pause, the United States and others should return to the NPT's original, commonsensical intent regarding what is peaceful, what is protected, and what is dangerous and should be curbed as much as possible. In this regard, Congress, and especially the U.S. Senate, should ask for clarification of what nuclear activities are allowed under what circumstances under Article IV of the NPT and why.

Certainly, it makes no sense for the United States to be disputing with Iran and other would-be bomb makers if we share their views on how much is allowed under the rules. Indeed, if we cannot get others to return to the NPT's original, tougher view of what peaceful nuclear energy means, our current campaign to prevent Iran from going nuclear will not only fail, but will make the rules all but meaningless.

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1. See Susanna Loof, "Iran Will Restart Uranium Enrichment if European Talks Fail, Foreign Minister," *Associated Press*, April 28, 2005, available from www.accessmylibrary.com/article-1G1-135697037/iran-restart-uranium-enrichment.html.

2. See Articles II and III of *The Treaty on the Non-Proliferation of Nuclear Weapons*, available from www.state.gov/www/global/arms/treaties/npt1.html.