

Ten Regrets: America's Nonproliferation Efforts against Iran

By

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Overview

When it comes to assessing America's efforts to prevent Iran from acquiring the bomb, there is a natural tendency to demur and argue that the jury is still out. Perhaps, but for many, Iran already has become a virtual nuclear state. Yes, Tehran is not operating all of its centrifuges and, yes, it might take it another year to get its first bomb. But a. that's not much time; b. this is hardly as far along as Washington ever wanted Tehran to get; and c. Washington's ability to block Iran from taking the final steps to acquiring its first bomb is now marginal at best.

For all these reasons, then, it's not too early to ask whether or not Washington could have done better in its efforts to scotch Iran's march toward the bomb. Certainly, if the United States wants to avoid future Irans, which some experts insist is about to happen, it's not too early to answer this question now.

How well has Washington done? The short answer is it fumbled on several fronts. The long answer is that on ten specific points, it could have done better. Washington officials certainly could have publicly articulated earlier, more consistently and clearly how great a threat the Iranian regime was to its neighbors, the U.S. and its allies; and what the U.S. and other states needed to do to block the threat.

In addition, Washington has been far too reluctant to spell out the limits of IAEA inspections. On the other hand, the U.S. has been too enthusiastic in promoting the peaceful benefits of nuclear energy in the Middle East to help it hedge diplomatically and militarily against Iran's nuclear misbehavior.

Beyond these shortfalls, America's wars in Iraq and Afghanistan have tended to crowd out serious thinking about other serious security concerns like Iran. This and other factors have encouraged Washington to rely too much on military threats, covert operations, and manipulating intelligence assessments in its efforts to manage the Iranian nuclear threat.

Ten Faux Pas

These are the broad conclusions. Taking each point in turn, the U.S. might have done better in constraining or reversing Iran's nuclear weapons related activities had it not

1. Failed to act consistently in public against nuclear commerce with Iran: Shortly after the Islamic revolution eliminated any prospect for moderate Iranian rule, the U.S. and its European allies terminated the various nuclear projects they had begun under the Shah. When US officials first discovered Russia was about to sell Tehran uranium enrichment technology, that the IAEA was going to assist Iran in the production of UO₂ and UF₆, and that Iran was approaching India, China, and others to sell Iran a heavy water plutonium production reactor, Washington acted quickly and succeeded in scotching the deals. The U.S. also stepped in and successfully blocked Chinese, Germany, French, and Argentine attempts to sell Iran light water reactor related assistance either to build new reactors or to complete Bushier.¹

Unfortunately, these blocking actions were almost always taken initially under the veil of partial or total secrecy and rarely, if ever, defended as a part of a coherent public policy. It was as if the U.S. and its allies were somehow ashamed of what they were doing. As a result, the impact of many of these successful blocking actions were subsequently undermined by other steps that were at odds with keeping the pressure up on Iran's nuclear misbehavior. Certainly, when it came to less obviously dangerous nuclear transactions,

1. See NTI, "Iran Nuclear Chronology," available at http://www.nti.org/e_research/profiles/Iran/Nuclear/chronology.html.

Washington too often averted its gaze in ways that reduced its moral authority to call on other nuclear suppliers to block similar nuclear trade.

Even after U.S. officials learned of Iran's efforts to restart its nuclear program in the late 1980s, Washington, for example, continued to approve the annual export of hundreds of millions of dollars worth of dual-use nuclear items to Tehran. In fact, for four years under the first Bush Administration, U.S. officials continued to approve the export of controlled dual use items to Iran under a policy that presumed approval unless it could be clearly demonstrated that the item in question was going to Iran's nuclear program. This policy continued despite efforts to change the policy to a presumption of denial unless it could be clearly demonstrated that the item in question was clearly not going to contribute to Iran's nuclear program. What is stunning is that this continued even after the U.S. CIA determined in June of 1990 that Iran was seeking to develop nuclear weapons. And US dual use exports worth hundreds of millions of dollars also continued to flow to Iran during the Bill Clinton Administration.²

One of the key arguments made at U.S. interagency meetings to approve these sales was that European and Asian exporters would simply fill the trade vacuum that the U.S. government would create if it denied U.S. exporters the right to make these sales. Although there was some truth to this contention, it was a point that was too clever by half: U.S. trade with Iran, after all, also served as an example that made subsequent attempts to throttle European high tech trade with Iran all that more difficult.³

2. See Kenneth Timmerman, *Countdown to Crisis* (New York: Crown Forum, 2005), pp. 106-07. From 1989 through early 1993, he author served as Deputy for Nonproliferation Policy in the Office of the U.S. Secretary of Defense and had oversight over roughly 5,000 nuclear and missile-related licensed U.S. exports. Throughout this period, the author opposed all U.S. nuclear and missile dual use exports to Iran but was frequently unsuccessful in blocking their export.

3. Even after Washington adopted a presumption of denial policy and subsequently cut off all technology trade with Iran, it continued to allow U.S. exporters to trade freely with states, such as the United Arab Emirates, which facilitated the retransfer of controlled goods to Iran. This loophole also served as an example that significantly limited Washington's moral authority to get the

Then there was Washington's handling of intelligence it gained in the early 1990s that China had exported 1,000 kilograms of UF₆ – essential feed stock for any uranium enrichment effort -- to Iran in 1991. Although China shared this information with the U.S. in the early 1990s and there were repeated public news reports throughout 1991 that U.S. officials believed Iran was pursuing a uranium enrichment program, Washington kept China's UF₆ transfer secret for nearly a decade. It only publicly released it and put significant diplomatic pressure on the International Atomic Energy Agency (IAEA) to pursue the matter *after* Iran admitted that it had an undeclared enrichment facility under construction at Natanz late in 2002.⁴

By this time, however, almost a decade had passed. Iran's enrichment program was a much more serious proposition and the revelations about Natanz rather than the importation of Chinese UF₆ became the driving force behind international demands that Iran submit to more intrusive IAEA inspections. Certainly, the potential international diplomatic impact that would have been produced if Washington had revealed Iran's importation of the Chinese UF₆ in the early 1990s was lost.

Why did Washington sit on this information? It's not entirely clear. Perhaps, the UF₆ imports were dismissed since there was no compelling intelligence at the time indicating that Iran was actually working on a large scale enrichment program. The U.S., after all, had just gotten the Russians to back off helping Iran build a large centrifuge plant.

Yet another possible factor, though, was the Clinton and Bush Administration's determination to consummate a nuclear cooperative

European Union to cut off continued high-technology exports to Iran beyond whatever was required by United Nations sanctions.

4. The U.S. actually did share what it knew about the hexafluoride transfer with senior IAEA officials earlier in the 1990s but asked that the IAEA not do anything to reveal that the agency had this information. Only after 2002 did the U.S. make it public and authorized the IAEA to confirm the transaction publicly. Interviews with a senior former IAEA official and a former U.S. assistant secretary of state.

agreement with China and to export U.S. nuclear reactors there. Certainly, revealing that China had secretly exported uranium hexafluoride to Iran would endanger this campaign.

In fact, Washington had initiated a nuclear cooperative agreement with Beijing back in 1984 but the U.S. Congress conditioned its implementation upon a Presidential certification that China was not assisting any nonnuclear weapons state to acquire the means to make nuclear weapons. The president also had to certify that China had given the U.S. unequivocal assurances that it would not proliferate nuclear technology in the future.

This requirement effectively prevented the deal from being implemented until the late 1990s. This clearly discouraged the White House from volunteering information regarding Chinese proliferation. This last point is hardly speculation: As President Bill Clinton made clear in his formal certification filed in January of 1998, he wanted to implement the deal earlier but was deterred from doing so not only because of continued Chinese assistance to the Pakistani nuclear program, but to previously undisclosed assistance to Iran's program as well.⁵

With regard to Iran, a specific issue that the press reported on in 1998 was China's continued construction of a uranium hexafluoride plant that was nearly 80 percent complete. Again, there was no reason for this plant to be constructed unless Iran was planning to follow through on its plans to enrich uranium. What competed with this concern, however, was China's interest in buying American reactors and Westinghouse's keen interest in selling Beijing its AP 1000 series reactors. In short, by 1997, President Clinton decided to make the certification and implement the deal. To allay Congressional concerns, he separately secured a secret pledge from Beijing in October of 1997 that it would not begin any new nuclear

5. See, U.S. Congressional Research Service, Shirley Kan and Mark Holt, "U.S. – China Nuclear Cooperation Agreement," December 13, 2005 (Washington, DC: Order Code RL33192), available <http://www.au.af.mil/au/awc/awcgate/crs/rl33192.pdf>.

projects in Iran and subsequently an additional Chinese commitment not to complete construction of the hexafluoride plant.⁶

Although China forwarded Iran all of the plant's blue-prints (and this was made public), these Chinese assurances proved to be sufficient for Congress, which was being told that \$300 billion in reactor sales were waiting to be made. The only additional requirement was that China would agree not to retransfer U.S. - origin nuclear technology without prior U.S. consent. Again, China was not forthcoming on this point until after 2002. As a result, the U.S. Nuclear Regulatory Commission was legally forced to hold up approval of 16 individual requests for U.S. nuclear technology transfers to China.⁷

Each of these Congressional hurdles to nuclear commerce with China would have discouraged U.S. officials revealing Beijing's earlier transfer of 1000 kilograms of uranium hexafluoride to Iran. The question now in hindsight is whether or not Washington got its priorities straight in holding back on the release of this information.

Finally, Washington repeatedly suppressed intelligence it had regarding Russian assistance to Iran's nuclear program out of fears that it might undermine U.S.-Russian relations. Thus, the U.S. Congress waived the requirement that the U.S. President certify that Russia was not assisting Iran's nuclear capable missile programs before spending U.S. taxpayer dollars to buy space related technology, goods or services from Russian government-sponsored aerospace firms. The U.S. intelligence services confirmed that Russia was assisting such programs as late as 2007. Yet, at no time were the details of this assistance ever shared. Presidential requests for a waiver on the Congressional requirement that the White House file the required certification was done twice: In 2005 and in 2008.⁸

6. Interview with former senior U.S. State Department official.

7. U.S. CRS, "U.S.-China Nuclear Cooperation," note 4 above.

8. U.S. Congressional Research Service, Kenneth Katzman, "Iran Sanctions," December 9, 2009 (Washington, DC: US CRS, RS20871, December 9, 2009), p. 17 ff., available at <http://www.au.af.mil/au/awc/awcgate/crs/rs20871.pdf>.

There were numerous news reports of Russian assistance to Iran's nuclear weapons program too. Russian implosion experts had visited Iran. Russia shipped high-speed diagnostic cameras useful for weapons design to Iran. Iran's heavy water reactor fuel looked to be of Russian design. Iranians were being trained in Russian nuclear schools. Again, none of these reports became the focus of any public diplomacy or U.S. sanctions actions.⁹ Instead, on two separate occasions – 2008 and 2010 – the Bush and Obama administrations gave Russia a clean bill of nuclear nonproliferation health in anticipation of securing a nuclear cooperative agreement with Moscow.

Again, the message, intended or not, was that Washington was not all that upset with Russian nuclear military cooperation with Iran and that it viewed it much as it did Chinese assistance – as tolerable so long as there were other equities to be served by downplaying it.

All of these inconsistent actions regarding nuclear proliferation to Iran later weakened America's hand in trying to secure support for economic sanctions against Iran once it secured almost all it needed to make its first bomb.

2. The stresses of the Iraq and Afghanistan wars exhausted Washington intellectually when it came to dealing with Iran. It has long been argued and has been the subject of Presidential commissions that Washington exhausted much of its credibility regarding proliferation related intelligence in crying wolf over Saddam's nuclear activities in the lead up to the 2002 invasion of Iraq. As a result, many analysts have noted that Washington was incapable of mobilizing opinion against Iran even when it had

9. See, Joby Warrick, Evidence of Iran's Nuclear Arms Expertise Mounts," *The Washington Post*, December 15, 2009; Institute for Science and International Security, "Update on the Arak Reactor in Iran," ISIS Report, August 11, 2009; available at http://isis-online.org/uploads/isis-reports/documents/Arak_Update_25_August2009.pdf; and Congressman Jeff Fortenberry, Dear Colleague letter, May 24, 2010, "Does Russia Want Nuclear Cooperation with the United States or with Iran and Syria? Available at <http://fortenberry.house.gov/2010/05/fortenberry-nuclear-cooperation-agreement-with-russia-should-be-stopped.shtml>

evidence that Tehran was inching toward development of a nuclear bomb that was at least as credible as anything it had against North Korea when Washington succeeded in getting the United Nations Security Council to urge North Korea to submit to special IAEA inspections. Much has been made of this.

The bigger point, however, is that the U.S. actually did not push as hard as it might against Iran's nuclear misbehavior, in part, because it simply was tied up so much in the war in. To square the difference, some officials tried to square the difference by arguing that if Saddam was toppled and Baathist rule replaced with a working liberal democracy, Iran's revolutionary government would follow suit and collapse in due course.¹⁰ This as-goes-Iraq-so-goes-Iran talking point conveniently justified redoubling U.S. efforts to win and secure the peace in Iraq and allowed handing as much of the Iran headache off to Europe as Washington did in 2003 to let them seek a "negotiated" solution to Iran: The thinking was that the U.S. was busy with the war in Iraq and that this was the main event. If things went well in Baghdad, in time, though, the government in Iran would lose public support due to the democratic example being established in Iraq and either soften or collapse.

It is hardly clear that this theory was entirely wrong: Arguably, the current Revolutionary government in Iran is certainly politically more embattled than at any time since the 1979 revolution. On the other hand, it is fairly clear that Iran's government has hardly collapsed and that the theory that Iraq's example would undo Iranian revolutionary rule is, at most, a work in progress. What is clearer still is that simply hoping for the best and delegating important work to others came at the cost of pushing a clear agenda and a focused strategy against Iran's regime and its nuclear misbehavior.

3. Relied too much on covert operations and military threats rather than public diplomacy and sanctions: By Bush's second term, it was evident that the war in Iraq was not going well and would

10. For an excellent analysis along these lines, see, e.g., David Wurmser, *Tyranny's Ally: America's Failure to Defeat Saddam Hussein* (Washington DC: American Enterprise Institute, 1999). Mr. Wurmser served on Vice President Cheney's national security staff.

not be won quickly. The US had already diplomatically delegated the Iranian nuclear problem to the European Union and the P-5. To make up for European Union weakness on this front without producing a public affront of its allies, Washington increasingly favored covert operations against Iran and making public references to possible military action against the known nuclear facilities.

This produced a fairly schizophrenic public policy profile. On the one hand, it encouraged America's allies to reach a diplomatic solution with Tehran to *avoid* American or Israeli military strikes against Iran and to demonize sanctions against Tehran as being the first step toward launching a military invasion. On the other hand, it encouraged U.S. officials publicly to emphasize how "unacceptable" it was for Iran to get a bomb and how necessary it was to "keep the military options on the table". Finally, it fostered the mistaken hope that covert operations alone might interfere enough with Iran's nuclear progress to buy an indefinite amount of time before Iran might get a bomb. This, in turn, reduced the perceived urgency in Washington to publicly push its allies to move decisively to sanction Iran or to argue publicly for regime change.

Only when it became clear, after Obama's fuel swap proposal and Iran's rejection of it, that Iran was not about to be talked out of continuing its nuclear fuel making activities, did the Obama Administration finally press the United Nations Security Council to pass a fairly serious sanctions resolution (and complain about Iran's abuse of human rights) . By this time, though, Iran had consolidated its grip over its political Green opposition, largely insulated itself economically from much of the sanctions' potential impact, and advanced to within a year or less of acquiring all it needed to make its first bomb.

4. Downplayed the importance of regime change to produce desirable nonproliferation outcomes. In pushing the United Nations Security Council to support the latest, most comprehensive set of UN economic sanctions, the Obama Administration resorted to criticizing Iran's human rights record (this to help secure support among European states that are rightly sensitive to such matters). The White House, however, has yet to grasp the full implications of this critique. Back in the late 1970s, the U.S. reversed course in

promoting nuclear power for Iran. Implicit in this reversal was a judgment about the Revolutionary government and its trustworthiness, to say nothing about its legitimacy. Sadly, Washington never made this point sufficiently explicit in its public diplomacy not only in the late 1970s, but throughout the 1980s and 1990s. Now, many regional experts argue that our best hope is that the ruling regime in Iran will change again – this time to a government that is less hostile to the West and more humane to and liberal with Iran’s population. Yet, the U.S. and its key allies are still focused on strategies that emphasize bombing Iran or groveling before its current set of rules – neither of which will do anything but aggravate the problems of keeping a. others from getting nuclear weapons capabilities, b. preventing Iran from overtly pushing a weapons program, or c. persuading others from following Iran’s example.

5. Established a stunning record of retreat on one Iranian nuclear “redline” after another. In her excellent analysis, “Strategic Implications of the Iranian Nuclear Program,” Therese Delpech sets out in excruciating detail how the IAEA, UNSC, the EU, the EU+3, and the US repeatedly determined that Iran had failed to report fully on its nuclear activities as required by its IAEA safeguards agreement under the NPT. She further details how each of these organizations nonetheless repeatedly offered to negotiate with Iran and offered it a variety of possible inducements, including dual-use exports, light water reactors, uranium enrichment services, 20 percent enriched research reactor fuel and the like if it would somehow retard its nuclear fuel making activities. The difficulty in all this is that over time the offers were made in exchange for Iran meeting less and less stringent constraints on their nuclear program. Thus, whereas initially the U.S. opposed Iran’s completion of Bushehr and demanded Iran suspend all nuclear fuel making and heavy water reactor related activities, by 2010, Washington and other like-minded nations were offering Iran 19.75 percent enriched research reactor fuel (thereby implicitly conceding that Iran had a legitimate need for such fuel), had confirmed Iran’s right to bring Bushehr online, and

were privately considering the merits of allowing Iran to enrich at low levels.¹¹

6. Showcased the dangers of nuclear proliferation in the Middle East more to spook Iran and reassure its neighbors than to prevent others from following Iran's nuclear example. Since 2004, the US made a conscious effort to encourage the sharing of civilian nuclear technology with Iran's neighbors and Iran for several reasons. The first of these was to disprove Iran's and other Muslim states' complaints that the US did not trust them with large nuclear reactor programs. In this regard, President Bush announced America's willingness to share the peaceful atom with as many countries in the Middle East as possible, including Iran, so long as they promised to conduct such programs under IAEA safeguards and pledged not to make nuclear fuel. Unfortunately, this Middle Eastern civilian nuclear energy promotion effort quickly deteriorated into a nuclear supplier state free for all. No sooner did the US get the UAE to pledge not to make nuclear fuel and to ratify the IAEA Additional Protocol in order to buy American reactors, than the UAE bought Korean. Turkey, Egypt, Saudi Arabia and Jordan, meanwhile, tendered nuclear reactor offers from Russia, China, Canada, Japan, Korea and France and all rejected US demands that they forswear making nuclear fuel or ratify the Additional protocol.¹²

The second reason Washington promoted nuclear sharing in the Middle East was its increasing and arguably premature nuclear fatalism. A view articulated privately at the start of President Bush's second term was that the U.S. might as well get credit for promoting the "peaceful atom" in the Middle East since Iran's neighbors were sure to pursue with or without Washington's support. There even was hope that by being at the forefront of such commerce,

11. See, Therese Delpech, "Strategic Implications of the Iranian Nuclear Program," presented at the Aspen European Strategy Forum, Berlin Germany, 22-24 September 2010.

12. See United Nations, "2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons Final Document," as revised June 18, 2010, NPT/CONF.2010/50 (Vol. I), available at [http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50 \(VOL.I\)](http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50 (VOL.I)).

Washington might gain more leverage to control it. At the very least, it was argued, facilitating such plans would get Iran to realize that its continued pursuit of making nuclear fuel risked prompting its neighbors into acquiring “peaceful” nuclear programs that could serve as the basis for weapons programs directed against Iran’s.

This view was part of a larger idea Bush Administration officials considered as an ultimate answer to the kind of security problems further nuclear proliferation might generate. This idea was deliberately to promote what they called a kind of “armed restraint”. This would be accomplished by arming America’s friends with the capacity to breakout with military force capabilities and nuclear weapons if necessary, against America’s most likely adversaries. The first would be accomplished by conventional arms sales; the second by sharing “peaceful” nuclear technology. The aim would be to deter America’s most likely competitors and so produce a nonproliferation result through hard – headed realism.

Although this policy perspective was never made public, it played a role in justifying the approach the U.S. took to dealing not only with China (i.e., the U.S-Indian nuclear deal and strategic partnership), but with Iran, as well.¹³ Unfortunately, these rationales for sharing nuclear energy technology with Iran’s neighbors – to serve as a security hedge and to increase and earn Muslim states’ trust in the U.S. – came at a fairly high nonproliferation cost. As already noted, Washington has hardly controlled the nuclear fuel making appetites of Iran’s neighbors. Nor is it all that clear that the supplier states’ current nuclear largesse in the region will lead to the enhancement of nuclear inspections or restraint in the Middle East.

7. Exaggerated the value of peaceful nuclear energy and NPT member states’ right to it. One of the reasons Washington felt so comfortable promoting civilian nuclear energy in the Middle East is that it was a diplomatic path that already was well worn. Back in the 1970s, the US endorsed the Shah’s fantastic nuclear plans to assure Iran’s dominate role in the Persian Gulf and its strategic ties to the US. Even after initial plans were dropped to transfer reprocessing

13. Private meeting with senior U.S. State Department policy planning officials, September 2005.

technology, Carter subsequently offered the Shah access to this technology again. At the same time, the U.S., Russia, Germany, and France all competed for nuclear sales and political influence in the Middle East by offering nuclear reactors to Jordan, Israel, Turkey, Egypt, Libya, Iraq, Iran, and Algeria. This was the state of play just before the Shah was deposed.

Meanwhile, the US and nuclear supplier states gave up demanding through the International Nuclear Fuel Cycle Evaluation (INFCE), which President Carter had called for, that states back off making nuclear fuel and let the market dictate what was safe and dangerous. This meant the US and others essentially winked at Brazil, South Africa, Germany, Holland, and Japan as they stood up nuclear fuel making efforts. Finally, when the crisis over Iranian fuel making came in 2002, the US and the EU almost reflexively jumped to affirm Iran's right to develop "peaceful nuclear energy" in ways that only made Iran's efforts to make nuclear fuel seem *more* legitimate.

Thus, the EU was careful in its first offering of incentives to Iran to allow that Iran retained its right to peaceful nuclear energy and to offer it light water reactors. Shortly thereafter, President Bush's national security advisor conceded Iran had the right to make nuclear fuel for peaceful purposes but suggested that it would be best if Iran could see the wisdom of exercising that right on Russian soil. It was about this time in 2006 that the US backed off its objections to Bushehr as a front for and possible path to acquiring nuclear weapons. Instead, Washington announced that it deemed that Bushehr was a peaceful and legitimate project and that the U.S. was willing to help Iran build more such machines.¹⁴

More recently, the U.S and others offered to supply Iran with nuclear fuel enriched to 19.75 percent. When the negotiations for such supplies broke down over differences regarding the swap out of low enriched Iranian fuel, Iran insisted that it must proceed to enrich to 19.75 percent – which technically is on the cusp of being weapons-

14. See, Henry Sokolski, "Policy Implosion, Bush Backs Moscow's Fueling of Bushehr," December 21, 2007, *National Review Online*, available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/014/504sqxfu.asp>.

grade. Finally, in May of 2010, the U.S. backed countries' rights to develop peaceful nuclear energy in the final declaration of the NPT Review Conference. This declaration, though, not only iterates all countries' right to peaceful nuclear energy. It prohibits reinterpreting the NPT's protection of peaceful nuclear activities under Article IV in any way that would "limit" these rights. It also affirms the importance of all member states availing themselves of Gen IV International Forum efforts and moving toward a "sustainable fuel cycle" – i.e., all code for recycling nuclear fuel and moving toward fast reactors – technologies historically associated with making nuclear reactor fuels that can be quickly converted into nuclear weapons – activities that are all too similar to those the IAEA is most worried Iran is toying with.¹⁵

These views and actions correspond with the conventional wisdom that any reading of the NPT that might curtail NPT members' rights to peaceful nuclear energy is simply a nonstarter. Such a view, however, is mistaken about how absolute these rights are. In fact, some of the NPT's peaceful nuclear energy benefits have already been significantly reinterpreted and effectively read out of the treaty.

Consider the Article V of the NPT and its call on nuclear weapons states to share the possible benefits of peaceful nuclear explosives. When Article V was first proposed in the 1960s, most nations, including the U.S. and Russia, believed that nuclear explosives could be employed as "ploughshares" to create canals and to complete other civil engineering tasks, including mining and excavation. To assure nonweapons states the possible benefits of such nuclear applications, the NPT allowed nuclear weapons states to share such benefits by supplying nuclear explosive services to nonweapons states on a turn-key basis.

To date, no state, though, has applied for such assistance nor has any state offered it for two unanticipated reasons. First, the "possible benefits of peaceful nuclear explosives" turned out to be negative:

15. See, "2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons," NPT/CONF.2010/1.2 paragraphs 32-56; May 27, 2010, available at <http://www.reachingcriticalwill.org/legal/npt/revcon2010/DraftFinalDocument.pdf>

Given the costs of cleaning up the radioactive debris that the use of peaceful nuclear explosives would produce, it became clear that it would be far cheaper to use conventional explosives for civil engineering applications. In short, there were no “benefits” to share.

Second, the few states that insisted on conducting their own “peaceful nuclear test explosions” – India and Russia – were strongly suspected of using Article V as a cover for nuclear weapons testing. Certainly, the U.S. and most nuclear supplying states sanctioned India for its 1974 test of a “peaceful nuclear device” by depriving it access to most controlled civilian nuclear supplies and, in time, any nuclear explosion, “peaceful” or not, was seen as a violation of a norm against any form of nuclear testing.

Not surprisingly then when the most recent NPT review conference assessed the implementation of Article V it merely stated that “The Conference affirms that the provisions of article V of the Treaty with regard to the peaceful applications of any nuclear explosions are to be interpreted in the light of the Comprehensive Nuclear-Test-Ban Treaty” – i.e., that Article V was dead letter.¹⁶

This ignored reinterpretation of Article V speaks directly to several of the NPT’s most pressing current difficulties. As already noted, the prevailing view of the “inalienable right” to “peaceful nuclear energy” recognized by the NPT is that this right automatically allows states to participate in any nuclear activity, no matter how uneconomical or dangerous, so long as it has some conceivable civilian application and the materials or activities in questions are occasionally inspected by IAEA inspectors or their equivalent. This is Japan’s view, and that of the Netherlands, Germany, South Africa, Brazil, Iran, and the US.

Yet, how Article V is now interpreted suggests that there is another more sensible way to view the right to peaceful nuclear energy referenced in Article IV. This view would recognize the explicit qualifications made in the NPT on exercising the inalienable right to peaceful nuclear energy. This right, the NPT notes in Article IV, though, must be implemented “in conformity” with the treaty’s clear strictures in Articles I and II. These two articles, in turn, prohibit nuclear weapons states “in any way to assist, encourage, or induce

16. See *Idem.*, paragraph 79.

any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices,” and ban nonweapons states from seeking or receiving “any assistance in the manufacture of nuclear weapons.”

Properly understood, being “in conformity” with Articles I and II implies also being in conformity with Article III, the NPT requirement that all nonweapons states accept the imposition of international nuclear safeguards on all of their civilian nuclear activities and materials to prevent their military diversion to make bombs. Certainly a nonweapons state refusing such safeguards would be an implicit violation of Article II. Thus, the final statement of the 2000 NPT Review Conference refers to the need for nonweapons state members to exercise their Article IV activities in conformity with Articles I, II *and* III.¹⁷

Technically, this condition is difficult to meet. Not all nuclear activities and materials can in fact be safeguarded to prevent their diversion to make bombs. Some activities, e.g., nuclear fuel making and operating large nuclear programs in hostile, noncooperative states (e.g., North Korea or Iran), cannot be inspected in a fashion that can reliably assure detection of a possible military diversion early enough to provide sufficient time to intervene to prevent the production of a bomb. Similarly, some nuclear materials are so weapons usable (e.g., highly enriched uranium, separated plutonium or plutonium based fuels) that reliable and timely detection of their diversion to make bombs is simply not possible.¹⁸

This, then, raises the question: If a nuclear activity or material is so close to bomb making that it cannot be safeguarded against military

17. See, “2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons Final Document,” NPT/CONF.2000/28 (Parts I and II), p. 3, available at http://www.armscontrol.org/act/2000_06/docjun.

18. See, Thomas B. Cochran, “Adequacy of IAEA’s Safeguards for Achieving Timely Detection,” in Henry D. Sokolski, editor, *Falling Behind: International Scrutiny of the Peaceful Atom* (Carlisle, PA: Strategic Studies Institute, 2008), pp. 121-58, available at <http://www.npolicy.org/sites/all/files/Books/20080327-FallingBehind.pdf>

diversion, is it protected as being “peaceful” under Article IV of the NPT? In the 1970s, it was hoped that nuclear fuel making in Japan, Brazil, South Africa, the Netherlands, and Germany could be safeguarded. Yet, recent discoveries of nuclear weapons usable materials unaccounted for (MUF) in Japan and the UK raise serious questions as to whether or not these assumptions were ever sound. We also know from experience in Iraq, Libya, Iran, Syria, and North Korea that the IAEA inspections system cannot be relied upon to find covert nuclear weapon related activities in states that refuse to cooperate fully with IAEA inspectors.

Many less developed states would answer, as Iran has, that the NPT’s preamble explicitly stipulates that all of peaceful nuclear energy’s benefits, including “any technological by products which may be derived from the development of nuclear explosives” should be “available” for civilian purposes to all states. This would suggest that the NPT recognizes and protects a *per se* right of all states to get to the very brink of making bombs.

Yet, if The NPT is dedicated to sharing the “benefits” of peaceful nuclear energy,” these benefits presumably must be measurably “beneficial” *and* be distant enough from bomb making or the risk of being easily diverted to that purpose so that inspections could reliably detect their military conversion to bombs in a timely fashion (i.e., well before any bombs might be made). At the very least, what is protected ought not to be both clearly dangerous and unprofitable. That, after all, is why the NPT bans the transfer of civilian nuclear explosives, only allowed the sharing of civilian nuclear explosive services on a turn key basis, and why this NPT offer ultimately was never acted upon.¹⁹

At times, this strict view of Article IV enjoyed U.S. support. Thus, in the first term of the Bush administration, the State Department went out of its way to point out just how uneconomical Iran’s nuclear power

19. See Henry Sokolski, “The Nuclear Nonproliferation Treaty’s Untapped Potential to Prevent Proliferation,” in Henry D. Sokolski, editor, *Reviewing the Nuclear Nonproliferation Treaty* (Carlisle, PA: Strategic Studies Institute, 2010), pp. 3-13, available at <http://www.npolicy.org/reviewingthenpt#intro>.

program was. It also questioned the need for nuclear power in gas rich nations, such as Iran and Saudi Arabia. Economic analyses were conducted to determine just how uneconomical such nuclear programs were when compared to making power with readily available natural gas.

The suggestion in all this was that depriving Iran of nuclear power and nuclear fuel making in no way deprived it of any benefits. This line of inquiry, however, was hardly allowed to proceed very far and was almost entirely shut off in Bush's second term.

8. Glossed over and denied the limits of what IAEA inspections could safeguard regarding Iran's nuclear activities. Yet another line of inquiry that failed to get the attention it deserved was the adequacy of IAEA nuclear safeguards to supply reliable timely detection and warning of possible military diversions. Up until the early 1990s, the U.S. and other like-minded countries not only were uninterested in this question, they actually used the lack of IAEA findings regarding Iranian violations of IAEA safeguards as a justification for continuing business with Iran as usual. When the U.S. received intelligence in the 1990s that Iran might be pursuing a nuclear weapons program, Washington urged the IAEA to conduct additional inspections.

When the IAEA failed to find anything, little action was taken against Iran publicly until the revelations of late 2002, which forced the Iranians to admit that they had a covert enrichment program. From that point on, Washington spotlighted how Iran was failing to live up to its IAEA safeguards agreement obligations. The aim in such scolding thought was limited to getting Iran to cooperate fully with all of the IAEA's rules and demands. Implicit in all of this was the notion that if Iran declared all of its nuclear activities and admitted to its past infractions, all would be forgiven. More important, it was assumed that if Iran made such admissions, the IAEA could effectively guard against possible future Iranian military diversions, know early on if Iran were cheating at covert facilities, reliably safeguard declared Iranian fuel making plants, and adequately monitor spent and fresh fuel at declared Iranian reactor sites.

In fact, the IAEA is incapable of doing any of this. It surely has difficulty finding covert nuclear facilities (e.g., Natanz, Quom, Syria's reactor, and the Libyan program). It also has failed to keep accurate track of activities at Iran's declared fuel making plants (e.g., its inability to monitor Iranian hexafluoride production). The IAEA also has long had difficulties accounting for many bombs' worth of separated plutonium and recycling waste at Japanese and British civilian fuel plants and admits that it lacks continuity of safeguards over fresh and spent fuel at sites it inspects that lack near-real time surveillance capabilities (something missing at over half of the sites the IAEA currently inspects).²⁰

These facts, which Washington and its supporters against Iran's nuclear misbehavior have generally downplayed or ignored, should matter. U.S., allied, IAEA, and UN demands that Iran suspend its fuel making was sold as a confidence building measure but it actually was something quite different -- a not so well disguised attempt to keep Iran from continuing to engage in activities that the IAEA could not reliably safeguard against being diverted to make bombs.

By turning a relative blind eye to these IAEA deficiencies, the U.S. and the EU have left themselves open to the accusation that they picking on Tehran over minor IAEA technical violations. Repeatedly, Iran has asked that it be treated as Brazil, India, Germany, and Japan are regarding nuclear fuel making: Let us continue under IAEA safeguards. To this proposition, the U.S. and its supporters have not given all that convincing an answer. As a result, Iran's neighbors are also wondering why the U.S. is so opposed to them making nuclear fuel as well. Instead of Iran's case serving as an opportunity to strengthen international nuclear nonproliferation, then, it has arguably done just the reverse.

9. Relied on intelligence (or the lack of it) more to put off public action against Iran than to prompt it. In 1990, Henry S. Rowen, then assistant secretary of Defense for International Security Affairs,

20. See J. Whichello, J. Regula, K. Tolk, and M. Hug, "A Secure Global Communications Network for IAEA Safeguards and IEC Applications," *IAEA User Requirements Document*, May 6, 2005.

visited Pakistan. In a meeting with then Army Chief of Staff General Beg, Rowen learned from General Beg that Pakistan was intent on helping Iran acquire nuclear weapons.²¹ This private official conversation between senior US and Pakistani officials was passed on up the U.S. chain of command in the Pentagon in a memo Rowen submitted. It was duly filed away. Meanwhile, U.S. and European intelligence agents were tracking the nuclear activities of A.Q. Khan, which included dealings with Iran. None of this prompted any change in U.S. or European public policy. Presumably, one needed clearer proof. Yet, by the time we had such proof – arguably in the late fall of 2002 – U.S. and European officials were resistant to additional information. As already noted, the war in Iraq, the poor weapons of mass destruction intelligence associated with the war's justification, and the threat of the US or Israel bombing Iran all conspired to harden policy makers against taking making any major change in public policy merely on the basis of intelligence findings. Perhaps the apex of such policy making hesitation was reflected in the 2007 National Intelligence Estimate (NIE) on Iran – an intelligence analysis that seized upon secret data that strongly suggested Iran may have suspended its nuclear warhead design work as it continued to perfect its nuclear fuel making activities. This NIE was immediately seized upon as argument against imposing stiff sanctions against Iran. In all this, one is reminded of Dr. Kissinger's and President Nixon's response to learning that Israel almost certainly had a bomb. Rather than press to find out if Israel had actually acquired nuclear weapons or get Israel to disarm, Kissinger urged President Nixon to stop pressing for more inspections or proof lest the worst be demonstrated and making the failure of international and U.S. nonproliferation efforts all too evident, and a Middle Eastern nuclear arms race inevitable.²² With Iran, we say we want more intelligence but the truth is we want more diplomatic room and are constantly hoping that Iran will not ever get to a point where it has clearly go "it" – read (depending on when one is talking about) enough nuclear fuel for Iran to make a bomb, an actual Iranian bomb, an actual Iranian missile deliverable bomb, or an Iranian nuclear test.

21. See, Matt Kelley, "Pakistan Threatened to Give Iran Nukes," *Associated Press*, February 27, 2004.

22. Memorandum for the President, Israeli Nuclear Program, Henry Kissinger, July 19, 1969. Available upon request to the author.

10. Failed to bribe Russia and other suppliers early and positively enough in the right way. Russia apparently had its price not to ship S300 air defense missiles to Iran. It was hardly sparing U.S. imposition of specific sanctions under the Iran Sanctions Act or the Iran Libya Sanctions Act (ILSA), which some Congressmen pleaded with the Obama Administration to impose. Instead, Moscow wanted coproduction of unmanned air vehicles with Israel that would be sold to India plus significant Saudi purchases of Russian arms. Once the U.S. winked at these transactions, Russia relented.²³ This suggests that the US could have given positive bribes to Russia and gotten more traction to over Russian behavior by thinking more positively about what it could offer Russia. One idea never seriously pursued that the Russians now clearly have an interest in, would have been to cooperate with them on the commercialization of Russian centrifuges to supply the U.S. civilian nuclear fuel market. Another might have been to work together on promoting an expansion or adaptation of the Intermediate Nuclear Forces Agreement to pressure China on Beijing's continued INF missile build up. It is likely that Moscow would have taken such offers seriously. It is also likely that such "cooperation" could have helped slow Russian assistance to Iran. Unfortunately, these ideas were never offered. Instead, US tried to jaw bone Moscow on sanctions, ultimately showed weakness on what it settled for in this regard, dropped its objections to Bushehr, and withdrew its European ballistic missile defense plans in hopes this would bring Russia around. In the end, these moves, which were not positive bribes, probably only emboldened Russia and others to continue to misbehave.

Why All This Matters

23. See "Saudis Bargain with Russia over Iran Missile," RT, August 12, 2010, available at http://wn.com/saudis_bargain_with_russia_over_iran_missile_shield_system_deal and Pavel Felgenhauer, "The 'Unravelling Relationship' between Russia and Iran," BBC, 24 July, 2010, available at <http://www.bbc.co.uk/news/world-europe-10684110>.

We can't reverse history. Short of a major war or regime change, the opportunities to keep Iran from going nuclear, moreover, may be all but exhausted at this point. Still, one cannot help but wonder where Iran's nuclear program might be today had the U.S. and other nuclear suppliers been more consistent in denying Tehran access to controlled goods and had they publicly explained their actions much more clearly with first signs of suspicious Iranian nuclear misbehavior. Even more tempting is to speculate what might have happened had the U.S. and other like-minded states publicly challenged the legitimacy of the Iranian Revolutionary Government not in the last three months or last three years but over the last three decades? Would the Greens or some such similar opposition group have arisen sooner and actually succeeded in taking over? Would Iran then have dropped the bomb project, as some argue they might? Finally, if the U.S. and other like-minded states had adopted a harder line as to what constituted peaceful nuclear energy and modified their own nuclear export policies to reflect this harder line, would it have been easier to sanction both Iran and its nuclear suppliers earlier? We will never know.

What is clear, though, is that now Washington and other like-minded states will have far fewer means to limit the harm Iran's nuclear activities might inflict. Agreeing to automatic country neutral sanctions for any nonweapons state that tests nuclear weapons or leaves the NPT while it still in technical violation of its IAEA safeguards obligations may help deter Iran from taking either of these two steps. It also would be useful for the U.S. and its allies to reassure Iran's neighbors militarily against being intimidated by possible Iranian actions.

As for limiting the further prospect of future Irans, we will need not only avoid repeating some of the key regrettable steps we took with Iran but actively promote several standard country neutral approaches to the promotion of nuclear energy. In specific, we need to be much more candid about what the IAEA can and cannot effectively safeguard against possible military diversion and present much more honest economic and environmental evaluations of the merits of nuclear power over its alternatives.

