

Debate of 1696

Note: This is the fourth contribution to discussion of American and Iranian experts on UN Resolution 1696. For the full collection of analyses of UN Resolution 1696, please visit: http://www.carnegieendowment.org/static/npp/analysis_8-29-06.htm

Security Council and Iran's "Legal Rights", a Rejoinder

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On the eve of the Security Council's deadline of August 31st, it is imperative for the Council to take the appropriate measures that would not be received by major aspects of the international community as unfair, unbalanced, or prejudicial below the bar of UN Charter, irrespective of how it has steered action with respect to Iran's nuclear dossier so far.

Presently, the US Government has as its permanent representative a gentleman who not long ago derided the notion of treaties as legally binding. Yet, today, Mr. Bolton not only acts like a born-again UN believer, he and other like-minded US officials and pundits labor the point against Iran that its self-defense within the framework of Non-Proliferation Treaty is moot in light of the Security Council Resolution 1696 demanding a complete cessation of Iran's nuclear fuel cycle, sanctioned by Article IV of NPT.

The absence of treaty constraints warranting a UN censure of Iran for pursuing an independent fuel cycle has now been declared irrelevant to the coming UN Security show down on Iran, as if the Security Council operates in a legal vacuum.

According to the International Law Commission's Draft Articles, an intentionally wrongful act of a state comprises two elements (Article 3): the objective element consisting in an action or omission contrary to an international obligation, and the subjective element having to do with intentions of a state.

Neither element can be found with respect to Iran's nuclear program, however. The absence of any evidence of diversion to military activities, based on extensive inspection of Iran's facilities by the IAEA inspectors, together with explicit renunciation of nuclear weapons on political and moral and religious grounds by Iran's leadership, constitute a bar to the application of sanctions against Iran by the United Nations.

Jus cogens and obligations ergo omnes are two sides of the same coin, and Iran's immunity from any UN sanctions is predicated on the absence of any empirical evidence confirming Iran's pursuit of nuclear weapons.

There is no questioning the evident power of Security Council and its binding decisions on all UN members. But, Resolution 1696 does not specify the duration of time for Iran's suspension of enrichment-related activities, deemed as a necessary "confidence-building

measure" by both the Council and the IAEA. Henceforth, Iran can conceivably suspend these activities, albeit on a temporary basis, and then resume them, as it did in the recent past, in which case the question arises anew: should there be a follow-up resolution demanding the re-suspension?

This hypothetical scenario merits our attention precisely because both it is empirically feasible and in the realm of possibilities and also because it draws our attention to the fact that the legal burden of a UN case against Iran is not completely settled. Rather, we must revisit the issue of Iran's alleged safeguard violations and determine if they muster to substantial violations implicating international peace and security.

It is worth recalling that the Council did not act even half as forcefully against North Korea when it was reported to the Council by the IAEA, despite a wealth of incontrovertible evidence that North Korea was proliferating nuclear weapons. Why then this double standards and "Iran exceptionalism" when there is neither a "smoking gun" nor declared intentions by Iran confirming the disinformation-filled allegations against her?

Indeed, it is quite ironic that the Council is now poised to take punitive actions against Iran without taking into consideration the significance of Iran's detailed response to the international incentive package, which has not yet received the due response by the Permanent Five plus Germany, as tacitly called for by item (4) of Resolution 1696 endorsing this package.

Both professor William Burke-White and Amy Reed overlook this rather delicate point warranting serious attention, that is, the fact that Resolution 1696 imposes a double obligation, on the one hand an explicit obligation on Iran to comply with its nuclear demands and, on the other, a more implicit, indirect obligation on the P 5 +1 to pursue the path of negotiation with Iran respecting their "proposals."

The two sets of demands are internally linked, irrespective of the language of 1696 which does not make one impinged on the other, and this, in turn, warrants a linkage approach and or interpretation of this Resolution, whereby Iran's fulfillment or lack of fulfillment of the "confidence-building" measures would be linked to the fulfillment or lack of fulfillment of incentive package, notwithstanding Iran's response requesting clarifications and timeline on such promises as sale of state-of-art nuclear technology, secured fuel supply, security guarantees, and trade and economic incentives.

The tacit obligation of P 5 + 1 to enter into good faith negotiation with Iran, reflected in the Security Council Resolution 1696, is germane, and one might even go further and say essential, to the resolution of Iran nuclear stand off. In other words, it is required of P 5 + 1 to enter into direct negotiations with Iran in order to settle the dispute. This calls for a process approach that is in sharp contrast, if not outright contradiction, with the other "instant" rampart of 1696 concerning the suspension of nuclear fuel cycle by Iran.

The temporal inner contradiction of 1696 militates against any uni-directional recourse to it come August 31st and the absence of an Iranian compliance with the Council's request to halt enrichment-related activities. What is needed, however, is a bi-focal approach that simultaneously takes into consideration the net of 1696's demands, both explicit and implicit, direct and indirect, which must be respected in tandem.

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