

DOCUMENTS IN INTERNATIONAL LAW

THE IRAN
NUCLEAR ISSUE

Yaël Ronen

THE IRAN NUCLEAR ISSUE

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Controversy over the Iranian nuclear policy has been mounting in both legal and political circles since the early 2000s. Most recently, the IAEA, tasked with verifying compliance of member states with the NPT, has been expressing concern that Iran's nuclear efforts are directed not solely at peaceful uses but also at military purposes. In response, various states have tried, individually and collectively, to engage Iran in agreed frameworks of action that would include an Iranian self-imposed restraint on its nuclear development. This volume documents the Iranian nuclear issue, tracing the evolution of international interest and concern with Iran's nuclear policy. It covers the period beginning in the 1970s, when Iran began earnest efforts to acquire nuclear capabilities; through the early 2000s, when it was established that Iran had concealed certain aspects of its nuclear activities from the IAEA; until the end of 2009, by which time it has been subject to three years of enforcement measures by the UN Security Council, aimed at inducing Iran to suspend or terminate its nuclear development.

This volume analyses the legal aspects of the Iran nuclear issue by reference to documents of the UN Security Council, IAEA, dedicated ad hoc bodies, individual states and more.

DOCUMENTS IN INTERNATIONAL LAW

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ALSO IN THIS SERIES

THE LEGAL ORDER OF THE OCEANS
Vaughan Lowe and Stefan Talmon (2009)

PREFACE

This book is concerned with legal aspects of the Iranian nuclear dispute. It does not deal directly with the question whether Iran is carrying out a military nuclear programme, or what its intentions are. This is not for lack of material; indeed there is vast literature on these questions. However, at the time of writing, whether Iran is pursuing non-peaceful objectives remains a matter for assessment rather than established fact. The legal process, with which this book is concerned, is driven and governed by this factual uncertainty.

The Iranian nuclear dispute raises questions from a variety of legal spheres: the law relating to non-proliferation, treaty interpretation in general and the interpretation of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in particular, the law of international organizations, most notably of the UN Security Council, international responsibility of states, use of force (*ius ad bellum*) in general and specifically with regard to weapons of mass destruction, and more. The analysis addresses these areas of law as they relate to the treatment of the Iranian dossier in the International Atomic Energy Agency (IAEA) and its referral to the Security Council. It also briefly touches upon issues that at least at the time of writing are still in the realm of the speculative, such as use of force against Iran.

The purpose of the analysis is to present the legal questions that have arisen and relate them to the documents included in the compilation. As a roadmap for readers wishing to make use of the primary sources, it does not purport to present a definitive position on the correct application of the law, but rather to delineate the parameters which inform the debate.

The documents are organised according to international players, and within each category of players, chronologically. Each document is allocated a unique number in the table of contents and thereafter navigation within the book is by document number, not page number. References to documents in the footnotes and subject index also use this document number, which can be found at the top outside corner of each page and next to each document's title.

In preparing the compilation I benefited from the kind assistance of the Media and Outreach Section of the IAEA. The Feinberg Fund of the Hebrew University of Jerusalem generously funded the research. Many people offered me their insights and counsel, including Dr. Hans Blix, Dr. Daniel Joyner and Dr. Eitan Barak, as well as Prof. Moshe Hirsch, Dr. Emily Landau, Dr. Robbie Sabel, Prof. Yuval Shany and Prof. Stefan Talmon. Moria Cohen and Akiva Miller also assisted in bringing the manuscript to print. Last but not least, Richard Hart and the Hart Publishing team have been patient and helpful throughout the project. I am grateful to them all.

The manuscript was signed on 15 September 2009.

Yaël Ronen
Jerusalem, September 2009

ABBREVIATIONS

1737 Committee	Committee established by Security Council Resolution 1737
AEOI	Atomic Energy Organization of Iran
CTBT	Comprehensive Test Ban Treaty
EU3	France and Germany and the United Kingdom
EU3+3	China, France, Germany, Russia, the UK and the US (also referred to as P5+1)
FEP	Fuel Enrichment Facility
HEU	High Enriched Uranium
IAEA BOG	International Atomic Energy Agency Board of Governors
IAEA DG	International Atomic Energy Agency Director General
IAEA	International Atomic Energy Agency
LEU	Low Enriched Uranium
NAM	Non-Aligned Movement
NNWS	Non-Nuclear-Weapon States
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NSG	Nuclear Supply Group
NWS	Nuclear-Weapon States
PFEP	Pilot Fuel Enrichment Facility
UCF	Uranium Conversion Facility
UNSC	United Nations Security Council
WMDs	Weapons of Mass Destruction

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Analytical Introduction

1. Introduction

The present dispute over Iran's nuclear programme erupted in August 2002, when an Iranian opposition group revealed in Washington, DC, the existence of two previously-undisclosed nuclear facilities under construction in Iran: a fuel enrichment plant in Natanz and a heavy water reactor in Arak. In December 2002 the United States published satellite pictures of the two facilities, as proof of its long-held suspicions that Iran was pursuing both weapons of mass destruction and long-range missile capabilities. Iran reacted by stating repeatedly that it was committed to the prevailing international legal regimes on weapons of mass destruction, including the Treaty on the Non-Proliferation of Nuclear Weapons, not merely on the basis of its contractual obligations but, more importantly, because of its religious convictions and historical experience.¹ Iran maintained that its programme, which was aimed at mastering the complete fuel cycle, was intended solely to support a civilian nuclear energy programme.² It explained that it had operated clandestinely because of obstructions by the US and other countries to its overt activities.³

Suspicion nonetheless arose and increased among various governments⁴ that the Iranian nuclear programme was run clandestinely for reasons other than evading obstruction of peaceful activities, and that particularly the uranium enrichment work which Iran was carrying out was intended not solely for use in peaceful energy production but also for the manufacturing of nuclear weapons. The matter was taken up by the international Atomic Energy Agency (IAEA), which began an intensive inspection and verification operation in Iran. The IAEA found that Iran had made substantial efforts over the previous two decades to master an independent nuclear fuel cycle, had performed some laboratory-scale experiments related to the reprocessing of irradiated fuel, and was carrying out research and development activities related to the treatment, storage and disposal of radioactive waste.⁵ In June 2003, and several times subsequently, the IAEA Director-General (IAEA DG), Mohamed ElBaradei, declared that Iran had failed to comply with its obligations under its NPT Safeguards Agreement.⁶

Amid calls on the one hand to take decisive measures against Iran, including referral to the Security Council,⁷ and on the other hand to give it a chance to rectify its conduct,⁸ the UK, France and Germany (EU3) undertook to negotiate directly with Iran. In October 2003 the two sides issued the Tehran Statement, in which Iran agreed to cooperate fully with the IAEA to settle all outstanding issues and to correct any failures to comply with its Safeguards Agreement. To that end, Iran announced its willingness to sign and commence

¹ Doc. 15; Doc. 98-Doc. 101.

² Doc. 99; Doc. 100.

³ Eg Doc. 63 para 8.

⁴ Eg Doc. 149; Doc. 150.

⁵ Doc. 33; Doc. 35.

⁶ Doc. 35 para 50; Doc. 39 para 107; Doc. 40 para 42.

⁷ Canada: Doc. 62 para 19.

⁸ Doc. 60-Doc. 63.

the ratification process of a protocol additional to its Safeguards Agreement. The protocol would enable the IAEA to conduct a wider scope of verification activities, throughout Iran and with regard to undeclared material and activities. It also agreed to 'voluntarily suspend all uranium enrichment and reprocessing activities as defined by the IAEA'. On their part, the EU3 informed Iran that 'in their view, full implementation of Iran's decisions, confirmed by the IAEA's Director General, should enable the immediate situation to be resolved by the IAEA Board'.⁹ This sentence was understood to mean that if Iran complied with its commitments, the EU3 would not seek referral of Iran's dossier to the Security Council.¹⁰

In mid-2004 Iran resumed work on uranium conversion, which is the preparatory process for uranium enrichment. The IAEA informed it that given the quantity of nuclear material involved, this testing would technically amount to production of feed material for enrichment processes, which Iran had undertaken to suspend. Iran responded that its voluntary suspension had not at any time covered the production of feed material for the enrichment process.¹¹ The IAEA Board of Governors (BOG) nonetheless called on Iran to suspend this activity.¹² To defuse the crisis, the EU3 engaged in negotiations with Iran, and on 15 November 2004, the EU3 and Iran signed the Paris Agreement, outlining how negotiations were to proceed. Iran agreed to continue and extend its suspension to include all tests or production at any uranium conversion installation. The EU3 recognised that this suspension was a voluntary confidence-building measure and not a legal obligation. The EU3 and Iran agreed that during the suspension they would negotiate long-term arrangements. According to the Paris Agreement, the aim of the negotiations was to produce objective guarantees that Iran's nuclear programme was exclusively for peaceful purposes, as well as firm guarantees on nuclear, technological and economic cooperation, and firm commitments on security issues.¹³

Negotiations did not progress well. In April 2005 Iran threatened that unless negotiations progressed, it would start up uranium conversion.¹⁴ In June 2005 Mahmoud Ahmadinejad was elected Iran's president. On 1 August 2005 Iran announced the resumption of uranium conversion at the Esfahan facility.¹⁵ This was shortly before, and in anticipation of, the EU3's delivery on 5 August of a proposal for a framework for a long-term agreement with Iran.¹⁶ Iran explained its step as a result of its disappointment with the EU3's broken promises, procrastination and bad faith.¹⁷ The EU3 considered the Iranian step a retraction from previous commitments.¹⁸ Consequently, they aligned with the US, which had already been pressing the IAEA BOG to refer the Iranian issue to the Security Council.¹⁹ The IAEA BOG urged Iran to re-establish full, IAEA-verified suspension of all enrichment-related and reprocessing activities, including research and development.²⁰

In January 2006 Iran began to enrich uranium in centrifuges at the Natanz plant.²¹ On 4 February, the IAEA BOG adopted a resolution in which it demanded of Iran that

⁹ Doc. 7.

¹⁰ Pierre Goldschmidt, 'Exposing Nuclear Non-Compliance' (2009) 51 *Survival* 143, 150.

¹¹ Doc. 39 paras 118-132.

¹² Doc. 27.

¹³ Doc. 8 paras 5, 6.

¹⁴ Sharon Squassoni, 'The Iranian Nuclear Program' in Nathan E Busch and Daniel H Joyner (eds) *Combating Weapons of Mass Destruction* (University of Georgia Press 2009) 281, 287-288.

¹⁵ Doc. 107.

¹⁶ Doc. 126.

¹⁷ Doc. 106.

¹⁸ Doc. 127; Doc. 128.

¹⁹ Doc. 72 para 82.

²⁰ Doc. 29 operative para 3; Doc. 30 operative para 4(II); Doc. 32 operative para 1.

²¹ Doc. 42.