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Communication dated 4 November 2005 received from the Permanent Mission of the Islamic Republic of Iran to the Agency

The Secretariat has received a Note Verbale dated 4 November 2005 from the Permanent Mission of the Islamic Republic of Iran, attaching a letter to the Director General and a further attachment concerning resolution GOV/2005/77 adopted by the Board of Governors on 24 September 2005.

In accordance with the request contained in the letter, the Note Verbale and its attachments are reproduced herein for the information of Member States.

Permanent Mission of the
Islamic Republic of Iran
to the United Nations and other
International Organizations in Vienna

جمهوری اسلامی ایران
نمایندگی دائم نزد دفتر ملل متحد و سازمانهای بین المللی
وین

Verbal Note No.: 350-1-17/1609

The Permanent Mission of the Islamic Republic of Iran to the United Nations and other International Organizations in Vienna presents its compliments to the Secretariat of the International Atomic Energy Agency and has the honour to transmit the views of the Islamic Republic of Iran concerning the Board of Governors' Resolution on the Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran, September 2005, GOV/2005/77, addressed to His Excellency the Director-General of the International Atomic Energy Agency.

The Permanent Mission of the Islamic Republic of Iran to the United Nations and other International Organizations in Vienna avails itself of this opportunity to renew to the Secretariat of the International Atomic Energy Agency the assurances of its highest consideration.

Vienna, 4 November 2005

PERMANENT MISSION OF THE ISLAMIC REPUBLIC OF IRAN
جمهوری اسلامی ایران
نمایندگی دائم نزد دفتر ملل متحد
وین

To the
IAEA Secretariat

Attn. H.E. Dr. Mohamed ElBaradei
Director-General
IAEA

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His Excellency Dr. Mohamed ElBaradei
Director General of International Atomic Energy Agency

Excellency,

The cooperation of the Islamic Republic of Iran with the Agency in the course of almost 3 years is remarkable. Especially by granting access to the most sensitive sites and providing the most confidential information through more than 1400 person-days of the most rigorous inspections. Regrettably, despite the desire of Iran to continue its cooperative relationships with the Agency, a small number of members of the Agency presented a resolution that was politically motivated and ignored the fundamental role of the Agency and accomplishments resulting from Iran's cooperation.

For technical and legal reasons, some of which are explained in the attached letter, a number of Member States issued a statement clearly explaining that this action weakens the role of IAEA as a technical and specialized Agency, opens

the door to confrontation among and between member countries, and finally sets a dangerous precedence. These member countries openly declared their support by their vote and by departing for the first time from the usual practice of attaining "consensus" and breaking the so-called "spirit of Vienna". It is also noteworthy that the point of weakness in the way the report was presented by the Secretariat to the Board of Governors lays the ground for exploitation of technical processes for ulterior political motives.

Consequently, we expect by prioritizing and refraining from repetitive issues, and reflecting the realities, especially the positive accomplishments of the Islamic Republic of Iran resulting from its cooperation with Secretariat of IAEA which is under your supervision, there will be a more favorable climate for promotion of cooperation among member countries for peaceful uses of nuclear energy.

We request this letter, which is a critical review of the September 2005 Resolution of the Board of Governors and the 50th IAEA General Conference, to be officially distributed.

Contradiction and legal problems of the Board of Governors resolution on the implementation of the NPT Safeguard Agreement in the Islamic Republic of Iran September 2005 (GOV/2005/77)

Indeed the September resolution was adopted by the Board of Governors as a follow up of the August 2005 resolution of the same body. The main reason for August resolution was the resumption of the activities of the Uranium Conversion Facility (UCF) which had been suspended voluntarily as a confidence building measure. The UCF has been under the Agency *Safeguards* and its DIQ was submitted to the Agency four years prior to the obligatory timeline in accordance with INFCIRC/214. There is neither failure nor outstanding issues reported for this facility. The inspection of this site as reported by the Director General is a routine Safeguard matter. While suspension of the enrichment activities, as clearly indicated in Agency's resolutions is a voluntary confidence building measure and non-legally binding obligation, in the framework of the

Paris Agreement Iran voluntarily extended the scope of its suspension to the UCF.

On the issue of non-legally binding nature of the suspension, it should be noted that sustaining the suspension was essential for the resolving of the outstanding issues. As aforementioned, there is neither outstanding issue nor failure reported for the UCF. The outstanding issues were mainly related to the centrifuge enrichment and the origin of contamination, which there have been lots of progress for their resolution; therefore there is no justification for linking the outstanding issues to the UCF. The UCF activity is not related to the enrichment process and was suspended as a voluntary confidence building and non-legally binding measure, so there is no legal bases and justification for issuing such an unfair and imbalanced resolution.

Operative paragraph number 4 of the resolution asks Iran to reconsider the construction of the heavy water reactor, while there is neither outstanding issue nor failure reported for the heavy water reactor and while *it's construction is* under the Agency *Safeguards* and its declarations are regularly submitted and updated in accordance with the Additional Protocol that Iran

voluntarily implements. There is no legal bases and justification for reconsideration of the decision of Iran to build heavy water reactor. Taking into account this fact that the life of Tehran Research Reactor, which is responsible for production of radioisotopes for the hospitals, is approaching to its end and its productivity is limited, the request of this resolution is in clear contradiction of the promotional objectives of the Agency's statute.

Paragraph I of the resolution is in contravention of the generally recognized principle of International Law. In accordance with the principle of international law and also the provisions of 1969 Vienna Convention, joining, ratification and acceding to the international treaties should be done with clear consent of the states and also stases con not be forced to join the international legally binding instruments. Furthermore ratification of a legally binding instrument is a time consuming process and thus the phrase "promptly" is unacceptable condition in that paragraph.

Director General in paragraph 50 of his report to the board session in September 2005 requested more legal authority for

the Agency. He requested that "[Iran's] transparency measures should extend beyond the formal requirements of the Safeguards Agreement and Additional Protocol and include access to individuals, documentation related to procurement, dual use equipment, certain military owned workshops and research and development locations." but Iran and many other states believe that any increase of legal authority can be done only after negotiation and reaching consensuses among member states and this increase shall not be beyond the boundaries of the Agency's Statute (paragraph 16 of NAM statement to the September 2005 Board of Governors) .

Regarding the so called failures, though Iran had a different view regarding the failures, but as it has been expressed in different documents the corrections have already taken place. This fact is also mentioned in the Board resolution itself. Therefore they are in the process of settlement and after two years of robust inspection a balanced approach should have been followed in this regard and take all the remedies and progress into account. The Board itself in different resolutions noted the progress and the different reports by Director General

reaffirmed this fact (paragraph 19 and 107 and 43 and 46 of the Report Gov/2004/38).

Paragraph F of the resolution reaffirmed the report of the Director General that "good progress has been made in Iran's corrections of the breaches and in the Agency's ability to confirm certain aspects of Iran's current declarations".

In the light of paragraph F, Operation paragraph 1 is a contradiction and seeking to constitute Iran's non-compliance with its obligations.

Iran has always viewed the so-called failures as a difference of interpretation of the Safeguards regulations. Despite that, Iran extended a vast and sincere cooperation with the Agency to resolve the outstanding questions. Different reports by the DG and even the current resolution referred to this reality. Returning to the year 2003 by this Board resolution and mentioning the failures and also aggrandizement of them could only emanate from the political motivations and ignoring all the progress that the Agency made in that regard. Besides that the

DG in his reports clearly expressed that the Iranian peaceful nuclear activities had no diversions to the prohibited purposes.

Neither the DG nor the inspectors have used the term "non-compliance" regarding the implementation of safeguards in Iran. Therefore the use of the term "non-compliance" in the Beard resolution is a clear deviation from the objectivities and has no legal basis.

Regarding the paragraph O of the resolution that express "the Agency is not in a position to conclude that there are no undeclared nuclear materials or activities in Iran", I have to note that the DG in many reports informed the Board that conclusion on the issue that there is a bill of health regarding nuclear activities of member states is a time consuming effort. It may take years for the Agency to provide assurances that there is no undeclared nuclear activity in the territory of every member state. Therefore it is a general term and is not only related to the case of Iran. Bearing in mind this reality the content of paragraph O of the resolution which seeks to attribute this general term only to the case of Iran is an unfair statement.

Reports by the D.G. show that until now only handful countries could receive that bill of health from the Agency.

Since the peaceful nuclear activities of the I.R. of Iran had no diversion to the prohibited purposes and the progress made by the Agency after *more than* 1400 man days inspections and also continuation of the Agency's inspections of peaceful nuclear activities of I.R. Iran there is no room for security concerns regarding the Iranian nuclear activities to justify that the issue is within the competence of security council. Therefore the operative paragraph 2 of the resolution has no legal basis and is a clear indication that the Agency is being manipulated by the political motives. By ignoring the objectivities that reported by the DG this resolution also undermined the efforts and competence of the Agency.

Although the resolution in paragraph B is recalling "the inalienable rights of all Parties to the NPT to develop, research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles 1 and 2 of the Treaty". But on the contrary, the operative paragraph 4 provided element that clearly deprives the I.R. of Iran for the

implementation of its inalienable rights under the Treaty. Such measures that are stipulated in operative paragraph 4 are also against the purposes and functions of the Agency and its Statute.

Paragraph K of the Board resolution requested Iran to suspend the uranium conversion facility which is completely under supervision and surveillance of the Agency and also there is no any outstanding question regarding the same facility and it is under the routine inspection of the Agency. Such a call by the resolution doesn't have even any circumstantial basis.

Paragraph L and sub paragraph 4 (iii) also requested Iran to reconsider the construction of a research reactor moderated by heavy water. It is clear that such a call is beyond the authorities of the Board and in contradiction with all the legal instruments governing the non-proliferation and safeguard activities. The NPT itself and also the outcomes of the review conferences of the Treaty reaffirmed that a state party until its activities are under the monitoring of the Agency should not be deprived from the research and development and the use of nuclear technology particularly the heavy water reactor.

Paragraph 4 (iv) requested Iran "promptly to ratify and implement in full the Additional Protocol". It is also clear that such a call goes beyond the authority of the Board and it is also with blind ignorance of the objectivities. The I.R. of Iran signed the protocol in 18 December 2003 and since that time voluntarily implements the protocol. Requesting a state to promptly ratify a legal instrument is not within the authority of the Board and according to the principles of international law it is under the discretion of the state to ratify a legal instrument and the consent of the state is the main condition. One has to note that the ratification of an instrument such as the Additional Protocol in any established legal system is a time consuming process and cannot be done "promptly" as requested by the resolution.