

## Information Circular

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# Communication dated 15 September 2011 received from the Permanent Mission of the Islamic Republic of Iran to the Agency regarding the Report of the Director General on Implementation of Safeguards in Iran

The Secretariat has received a communication dated 15 September 2011 from the Permanent Mission of the Islamic Republic of Iran to the Agency enclosing an explanatory note, dated 14 September 2011, by the Permanent Mission on the report of the Director General on “Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran” contained in GOV/2011/54 (2 September 2011).

The communication and, as requested by the Permanent Mission, the explanatory note are circulated herewith for information.

*In the name of God*



*Permanent Mission of  
ISLAMIC REPUBLIC OF IRAN  
to the International Atomic Energy Agency (IAEA)*

INFCIRC/827  
Attachment

بنگاه

No. 167/2011

15 September, 2011

**His Excellency Mr. Yukiya Amano  
Director General  
IAEA, Vienna**

*In the name of God, the most Gracious and the most Merciful*

Excellency,

Enclosed please find a copy of the Explanatory Note by the Permanent Mission of the Islamic Republic of Iran to the IAEA on the report of the Director General on Implementation of Safeguards in the Islamic Republic of Iran (GOV/2011/54) as well as the related electronic version. I would appreciate if attached Explanatory Note be published as an IAEA-INFCIRC for the information of the all Member States

Ali Asghar Soltanieh

Ambassador & Resident Representative

**Explanatory Note**  
**by the**  
**Permanent Mission of the Islamic Republic of Iran to the IAEA**  
**on the report of the Director General**  
**on Implementation of Safeguards in the Islamic Republic of Iran**  
*(GOV/2011/54 dated 2 September 2011)*  
**14 September 2011**

The followings are comments on the Director General report GOV/2011/54, on 2 September 2011:

**A- General Observations**

- 1- According to paragraph 27 of the Resolution on the Safeguards adopted by the General Conference GC/53/RES (14) as well as GC/54/RES (11), the Agency should provide objective technically and factually based reports with appropriate reference to relevant provisions of the Safeguards Agreement. Regrettably, this rule is continuously being neglected and has not been respected in this and in the previous reports. This rule requires the Agency not to step beyond its statutory and legal mandate in preparing its reports.
- 2- More importantly, the IAEA is an independent inter-governmental organization, not a subsidiary or other affiliate of the United Nations. Therefore, the Agency is confined only to carry out and report its obligations under Safeguards Agreements, and should refrain to take measures which are in line with or would pave the way of interferences by any unauthorized party. There are no provisions in the Safeguards Agreements and IAEA Statute which give the UNSC an authority to enforce Safeguards Agreements, impose new requirements, or modify the obligations of the parties to the Safeguards Agreements; Nor the Agency has right to introduce ultra vires demands on Iran by relying upon the UNSC resolutions.
- 3- The Islamic Republic of Iran has already made it clear, based on the legal provisions such as those of the Agency's Statute and the Safeguards Agreement, why the UNSC resolutions against Iran are illegal and unjustified. The issue of Iran's peaceful nuclear program has unlawfully been conveyed to the UNSC and the Council has taken a wrong approach by adopting the politically-motivated, illegal and unacceptable UNSC resolutions against Iran. Therefore, any request by the Agency stemming from those resolutions is not legitimate and not acceptable. Illegality of the UNSC and the BOG resolutions against Iran are discussed in section F below.
- 4- Although the report once again reconfirmed that "*the Agency continues to verify the non-diversion of declared nuclear material at the nuclear facilities and LOFs declared by Iran under its Safeguards Agreement*", it keeps using "*unusual*" language with regard to the Safeguards conclusions, since the Agency has to simply confirm that all declared nuclear material is accounted for and therefore "*declared nuclear material in Iran remained in peaceful activities*", as already has been reported by the Agency such as in 2010 Safeguards

Implementation Report (SIR); and whether it has any question or ambiguity regarding undeclared nuclear material in Iran. While the Agency has achieved its inspection goals regarding all declared nuclear material in Iran (discussed in section B below), but the report has evaded confirming that “declared nuclear material in Iran remained in peaceful activities”.

- 5- Notwithstanding that the Non-Aligned Movement has stated in its several statements to the Board of Governors that “*NAM emphasizes the fundamental distinction between the legal obligations of states in accordance with their respective Safeguards Agreements, as opposed to any confidence building measures undertaken voluntarily and that do not constitute a legal safeguards obligation.*” and also “*NAM takes note that the latest report of the Director General includes many references to events that transpired prior to the previous report contained in document GOV/2009/74 dated 16 November 2009, and contrary to the expectation of NAM, does not mention the responses provided by Iran to the Agency on several issues.*”, and also NAM has stated that “*taking into account the recent developments mentioned above as well as previous Director General's reports on the implementation of the Work Plan on "Understanding of the Islamic Republic of Iran and the Agency on the Modalities of resolution of the Outstanding Issues" (INFCIRC/711), NAM still looks forward to the safeguards implementation in Iran being conducted in a routine manner*”, discouragingly the Director General has not welcomed these statements in preparing his report.
- 6- The Agency should strictly observe its obligations to the Article VII.F of the Agency’s Statute and Article 5 of the Safeguards Agreement between the I. R. of Iran and the IAEA, both emphasizing on the confidentiality. As it was objected in previous Iran's Explanatory Notes, the information collected during inspections of nuclear facilities should be considered as confidential information. However, once again, despite these crystal clear instructive articles, the report in contradiction to the Agency’s statutory mandate and the Safeguards Agreement (INFCIRC/214) contains a tremendous amount of confidential technical details that should not be published. The Agency by reporting tremendous detail information such as the number of installed and/or operating centrifuges, amount of nuclear material fed and/or produced, etc., has demonstrated its inability to fulfill its commitment on confidentiality measures. It is routinely witnessed that almost at the same time of releasing the DG report, the ISIS website publishes the report as well as its evaluation on the detailed information contained in the report that shows it has access to the safeguards confidential information. We strongly object this unprofessional and wrong trend and non-compliance with the aforementioned articles. This violation must be stopped.
- 7- Regrettably the Secretariat relying on the open source forged or obscure information and using them as credible information paving the way to put pressure on Iran as a party to the Safeguards Agreement, while the Iran’s objection regarding the clear failure on observing confidentiality requirements by the Agency, as the other party to Safeguards Agreement, is being overlooked.

## **B- Implementation of the Safeguards Agreement in Iran’s Nuclear Facilities**

- 8- The report GOV/2011/54 shows, that implementation of the Safeguards in the I.R. of Iran is in accordance with its Safeguards Agreement (INFCIRC/214) without any failure, inconsistency or ambiguity, as reflected in different parts of the report, such as following:

- i. paragraph 7 reads: *“Iran has declared to the Agency 15 nuclear facilities and nine locations outside facilities”*,
  - ii. All Iran’s nuclear facilities are under Agency’s Safeguards (paragraph7), specifically enrichment facilities (paragraph8), heavy water research reactor (paragraph31), Tehran Research Reactor (TRR) (paragraph30), Radioisotope Production Facility (paragraph30), Uranium Conversion Facility (UCF) and Fuel Manufacturing Plant (paragraph34).
  - iii. Iran has provided required information to the Agency, including the Fordow Fuel Enrichment Plant and Fuel Manufacturing Plant (paragraphs20, 21, 23, 24, 26, 40 and 42).
  - iv. The Agency has been able to access Iran’s nuclear facilities to carry out DIV and PIV verification activities (paragraphs 26, 30, 32, 39 and 41). Moreover, beyond its obligations and as a proactive measure, *“Iran also provided access to an installation where research and development (R&D) on advanced centrifuges was taking place”* (paragraphs 5 and 29).
  - v. The Agency and Iran agreed on Safeguards Approach for Fordow Fuel Enrichment Plant which is not operational yet as read in paragraph 25: *“On 7 August 2011, the Agency and Iran agreed on a safeguards approach for FFEP”* and also updating the Safeguards Approach for Uranium Conversion Facility as read in paragraph 38: *“On 8 August 2011, Iran and the Agency agreed to an updated safeguards approach for UCF that takes into account the production of natural UO<sub>2</sub>, natural UF<sub>6</sub>, and 20% U-235 as U<sub>3</sub>O<sub>8</sub>”*. In addition to those already agreed Safeguards Approaches for Natanz Fuel Enrichment Plant (FEP) and Natanz Pilot Fuel Enrichment Plant (PFEP), the Safeguards Approach for Bushehr Nuclear Power Plant (BNPP1) is also agreed.
  - vi. The Agency has been able to take samples from nuclear facilities to verify Iran’s declarations, specifically of Natanz Fuel Enrichment Plant as read in paragraph 12: *“Based on the results of the analysis of environmental samples taken at FEP since February 2007 and other verification activities, the Agency has concluded that the facility has operated as declared by Iran”*), Natanz Pilot Fuel Enrichment Plant as read in paragraph 19: *“Based on the results of the analysis of the environmental samples taken at PFEP and other verification activities, the Agency has concluded that the facility has operated as declared by Iran in the DIQ”*) and Fordow Fuel Enrichment Plant as read in paragraph 27: *“The results of the analysis of the environmental samples taken at FFEP up to 29 December 2010 did not indicate the presence of enriched uranium”*, that have been conclusive.
- 9- About 70% of the report (paragraphs 7 to 42 out of all 52 paragraphs) deals with the implementation of successful routine Safeguards verification activities in Iran. The report concludes in paragraph 51: *“the Agency continues to verify the non-diversion of declared nuclear material at these facilities and LOFs”* that confirms the fulfillment of Iran’s commitments according to its Safeguards Agreement.

### **C- Possible Military Dimensions**

- 10- Detailed history of agreed Work Plan (INFCIRC/711) between the Agency and the Islamic Republic of Iran has been explained in the previous Iran’s explanatory notes to the DG reports with the latest one being INFCIRC/823.

- 11- On the basis of the Work Plan, there were only six outstanding issues that all have been resolved as the former Director General reported (GOV/2007/58 and GOV/2008/4). Based on the Work Plan, while the so called "*Alleged Studies*" was never considered as an outstanding issue, but it was planned so that "*The Agency will however provide Iran with access to the documentation it has*", and then "*upon receiving all related documents, Iran will review and inform the Agency of its assessment*". While the required "*documentation*" has never been delivered to Iran, the Islamic Republic of Iran carefully examined all the informal, nonobjective, and unauthentic material which has received, and informed the Agency of its assessment. In this context, the following important points should be recalled:
- i. The Agency has not delivered to Iran any official and authenticated document which contained documentary evidence related to Iran with regard to the Alleged Studies.
  - ii. The Government of the United States has not handed over original documents to the Agency since it does not in fact have any authenticated document and whatever it claims has in possession, are forged documents. The Agency didn't deliver any original document to Iran and none of the documents and material shown to Iran has authenticity and all proved to be fabricated, baseless allegations and false attributions to Iran.
  - iii. How the Agency can support or pursue allegations against a country without provision of original documents with authenticity and ask the country concerned to prove its innocence or ask it to provide substantial explanations? It is one of the actual concerns foreseen by some States, during the BOG discussions which led to "*general endorsement*" (as quoted by chairman of GOV/OR meeting 872 in 1995) of measures so called "Part 1", aimed to strengthen Safeguards. With regard to Part 1 measures, it has been expressed that:
    - "*improving the efficiency of the safeguards system should be pursued on the basis of a presumption of States' innocence and not a presumption that each State was a potential wrongdoer*". In this regard, the Agency has initiated unprecedented and illegal demands on Iran as baseless accusation.
    - "*recourse to data from intelligence sources should be explicitly excluded*", nonetheless the secretariat explicitly in several occasion, has declared that the information received from the intelligence sources that it has been proven that they are fabricated and false.
  - iv. The Agency has explicitly expressed in a written document dated 13 May 2008 that: "... *no document establishing the administrative interconnections between 'Green Salt' and the other remaining subjects on Alleged Studies, namely 'Highly Explosive Testing' and 'Re-entry Vehicle', have been delivered or presented to Iran by the Agency*". This written document proves that in fact the so called documents related to the Alleged Studies lack any internal consistency and coherence in this regard. It is regrettable that this explicit fact expressed by the Agency has never been reflected in the DG reports.
- 12- Taking into account the above-mentioned facts, and that no original document exists on the Alleged Studies, and there is no valid and documentary evidence purporting to show any linkage between such fabricated allegations and Iran activities, and that the DG reported in paragraph 28 of GOV/2008/15 no use of any nuclear material in connection with the Alleged Studies (because they do not exist in reality); also bearing in mind the fact that Iran has fulfilled its obligation to provide information and its assessment to the Agency, and the fact that the former DG has already indicated in his reports in June, September and November 2008 that the Agency has no information on the actual design or manufacture by Iran of

nuclear material components for a nuclear weapon or of certain other key components, such as initiators, or on related nuclear physics studies; therefore this subject must be closed.

- 13- If it was intended to raise other issues in addition to the Alleged Studies (Green Salt, Re-entry Missile, High Explosive Test) such as possible military dimension, since all outstanding issues had been incorporated in the exhausted list prepared by the IAEA during the negotiations, then it should have been raised by the Agency in the course of the negotiations on the Work Plan. One can clearly notice that no issue and item entitled "*possible military dimension*" exists in the work plan (INFCIRC/711). It is recalled that the first paragraph of chapter IV of the Work Plan reads: "*These modalities cover all remaining issues and the Agency confirmed that there are no other remaining issues and ambiguities regarding Iran's past nuclear program and activities*"; therefore, introducing a new issue under the title of "*possible military dimension*" contradicts the Work Plan.
- 14- According to paragraph 19 of the DG report in GOV/2009/55, the Agency expressed that the authenticity of the documentation that forms the basis of the Alleged Studies cannot be confirmed. This proved the assessment of the Islamic Republic of Iran that the Alleged Studies are politically- motivated and baseless allegations.
- 15- The first paragraph of chapter IV of the Work Plan reads: "*These modalities cover all remaining issues and the Agency confirmed that there are no other remaining issues and ambiguities regarding Iran's past nuclear program and activities.*" It is obvious that all I.R. of Iran's nuclear activities in the past and present have been in peaceful purposes and will be continuously subject to full scope comprehensive safeguards. Therefore any information in contrary to this is forged, fabricated, false and baseless allegation.
- 16- Paragraph 5 of Chapter IV of the Work Plan reads: "*The Agency and Iran agreed that after the implementation of the above Work Plan and the agreed modalities for resolving the outstanding issues, the implementation of safeguards in Iran will be conducted in a routine manner.*"
- 17- In Paragraph 3, chapter IV of the Work Plan, the Agency has acknowledged that "*the Agency's delegation is of the view that the agreement on the above issues shall further promote the efficiency of the implementation of safeguards in Iran and its ability to conclude the exclusive peaceful nature of Iran's nuclear activities*". On this basis, while the Work Plan has been implemented, the Agency is obliged to confirm the exclusive peaceful nature of Iran's nuclear activities.
- 18- The Islamic Republic of Iran and the Agency have fully implemented the tasks agreed upon in the Work Plan; in doing so, Iran has taken voluntary steps beyond its legal obligation under its Comprehensive Safeguards Agreement.
- 19- Considering the above and the former DG report in GOV/2009/55, which confirm that Iran has completed its obligation on the Alleged Studies by informing the Agency of its assessment, and also very positive developments and the joint constructive cooperation between Iran and the Agency, the Agency is hereby highly expected to announce that the Safeguards implementation in Iran shall be conducted in a routine manner in accordance with the last paragraph of the Work Plan (INFCIRC/711).
- 20- Paragraph 54 of the former DG report in GOV/2008/4 regarding the Possible Military Dimension reads: "*However, it should be noted that the Agency has not detected the use of nuclear material in connection with the alleged studies, nor does it have credible information in this regard.*" The facts that the material of the Alleged Studies lack authenticity, no nuclear

material was used and no components were made as declared by the former Director General, are also missing in this report.

- 21- According to the Work Plan, the Alleged Studies have been fully dealt with by Iran, thus this item in the Work Plan is also being concluded. Any request for another round of substantive discussion, provision of information and access is absolutely in contravention with the spirit and the letter of such an agreement negotiated, which both parties have agreed upon and are committed to. It should be recalled that the agreed Work Plan is the outcome of fruitful and intensive negotiations by three top officials in charge of Safeguards, Legal and Policy Making Organs of the Agency with Iran and eventually acknowledged by the Board of Governors. Therefore, it is highly expected that the Agency respect its agreement with Member States; otherwise, the mutual trust and confidence which is essential for the sustainable cooperation would be put in jeopardy.
- 22- According to the Work Plan, the Agency was required to submit all documentation to Iran and then Iran was only expected to "*inform the Agency of its assessment*". No visit, meeting, personal interview, and swipe sampling were foreseen for addressing this matter. The Government of the United States has not handed over any original documents to the Agency, because in fact it has no authenticated document as the former DG declared. Meanwhile, by refusing to submit all documentation to Iran concerning the so-called Alleged Studies, the IAEA did not fulfill its obligation under part III of INFCIRC/711. Despite the above, and based on good faith and in a spirit of cooperation, Iran went beyond the above understanding by agreeing to hold discussions with the IAEA, providing necessary supporting documents and informing the Agency of its assessment in a 117-page document that all proved that the allegations have been all fabricated and forged. This is, in fact, reviewing the substance as well as the forms.
- 23- Considering the above, the Agency's request on paragraph 44 for "*providing access without delay to all sites, equipment, persons and documents requested by the Agency*" is not justifiable and consequently not acceptable. The Agency is highly expected to observe the utmost professionalism, impartiality and justice in its evaluation.
- 24- Finally, as the Work Plan has fully been implemented, thus the implementation of Safeguards in Iran has to be conducted in a routine manner.

#### **D- Design Information (Modified Code 3.1 of Subsidiary Arrangements)**

- 25- Iran was voluntarily implementing the modified code 3.1 of the Subsidiary Arrangements since 2003, but it suspended its implementation pursuant to the illegal UNSC resolutions against Iran's peaceful nuclear activities. However, Iran is currently implementing code 3.1 of the Subsidiary Arrangements.
- 26- In respect of IR-40 reactor at Arak, Iran voluntarily provided access to the facility for the Agency to carry out Design Information Verifications (paragraph 32).
- 27- With regard to the design of a reactor similar to TRR as well as any new facility (paragraphs 45 and 46), Iran will act in accordance with its Safeguards Agreement and will inform and provide the relevant Design Information Questionnaire (DIQ) under the provision foreseen in its code 3.1.
- 28- Since Iran is not obliged to implement modified code 3.1, thus the statement in paragraph 50 "*Iran is not implementing a number of its obligations, including: ... implementation of the modified Code 3.1 of the Subsidiary Arrangements General Part to its Safeguards Agreement*"



has no legal basis; so Iran has adhered to its obligations to provide design information in proper timing.

#### **E- Additional Protocol**

- 29- The Additional Protocol is not a legally binding instrument and is voluntary in nature. Hence, many Member States including Iran are not implementing this voluntary protocol. However, it should be reminded that Iran implemented AP for more than 2.5 years voluntarily as a confidence building measure.
- 30- Therefore, Iran has no obligation to implement the Additional Protocol and such a request as reflected in paragraph 50 "*Iran is not implementing a number of its obligations, including: implementation of the provisions of its Additional Protocol*" has no legal basis and is beyond the DG's statutory mandate.
- 31- Heavy water product is a non-nuclear material that is not covered by the Comprehensive Safeguards Agreements (CSA). The Agency's request as reflected in paragraph 33: "*Iran has not provided the Agency access to the heavy water stored at the Uranium Conversion Facility (UCF) in order to take samples*" is beyond Iran's Safeguards Agreement (INFCIRC/214) so is not a justifiable demand.
- 32- Moreover, the Agency's requests stipulated in paragraph 44 seats in the provisions of the Additional Protocol and even beyond it, which Iran is not obliged to implement it.
- 33- However, the I. R. of Iran, despite the Safeguards requirements in force, has voluntarily provided access to its R&D installation on advanced centrifuges as the paragraph 5 reads: "*Iran also provided access to an installation where research and development (R&D) on advanced centrifuges was taking place*".
- 34- Basically, it is not acceptable that a voluntary instrument be turned into a legal obligation. This basic concept regarding Additional Protocol has been affirmed in the 2010 NPT Review Conference (NPT/CONF.2010/50 (Vol. I) as well as the Agency General Conference (GC(54)/RES/11).
- 35- The DG report in February 2011 (GOV/2011/7) has taken a partial step forward in response to frequent requests of the Non-Aligned Movement as well as the Islamic Republic of Iran in order to make distinction between the implementation of legal obligations of States in accordance with their respective Safeguards Agreements and those beyond their legal obligations such as Additional Protocol. However, contrary to the request to make such distinction, the DG has again neglected this request in this report.
- 36- The false depicting of Iran's commitments with respect to Additional Protocol or similar demands due to the UNSC resolutions, apart from its unauthorized interference in the application of Iran's Safeguards Agreement (see paragraph 37 below), are all unrealistic and non-binding to I. R. of Iran; and any action requesting by the BOG in this regard is ultra vires demand, politically motivated and illegal. However it should be emphasized that Iran has already fulfilled its safeguards obligations completely and continues to do so according to its Safeguards Agreement.

## **F- Illegal resolutions of the IAEA Board of Governors regarding Iranian peaceful nuclear program**

- 37- The Islamic Republic of Iran has already made it clear, that based on the legal provisions such as those of the Agency's Statute and the Safeguards Agreement, the Board of Governors' resolutions against Iran are illegal and unjustified. The issue of Iran's peaceful nuclear program has unlawfully been conveyed to the UNSC and the Council has taken a wrong approach by adopting the politically-motivated, illegal and unjust UNSC resolutions against Iran. Therefore, any request by the Agency stemming from those resolutions is not legitimate and not acceptable.
- 38- Since the said Security Council Resolutions have not passed through the pertinent legal proceedings and have been issued in contravention of the UN Charter, they are by no means legally-binding. Conveying Iran's case to the Council was in violation of Article XII.C of the IAEA Statute, consequently, the UNSC resolutions were also issued in contrast with the Purposes and Principles of the Charter (breach of Article 24 of the UN Charter). Moreover, even if its issuance might be deemed a legal practice in a way, reference cannot be made to Article 41 of chapter VII, and it is not legally-binding either; because international peace and security has not been menaced at all. In fact, the Agency has become more Catholic than the Pope by seeking to implement the provisions of non-legal resolutions, which are portrayed as Iran's legal obligations throughout its reports, as well as frequently mentioning Iran to have refrained from fulfillment of those so-called legal obligations. The Director General of the IAEA had better entrust the task of implementing the UNSC resolutions to the drafter of such resolutions, that is, the possessors of nuclear weapons; rather, he should pursue his own neglected responsibilities incarnated in the Statute related to the peaceful utilization of nuclear energy and reiterated in Article 4 of the NPT, that is, the peaceful utilization of nuclear energy and the relevant technology transfer, as well as elimination of double standards and parallel groups. The Director General ought to ponder upon why he has not yet fulfilled the most primary duty of the DG in order to protect confidential information provided by Member States to the IAEA inspectors, or report on political obstacles to materialize nuclear fuel supply upon request of Member States without discrimination. The Director General should think something about his piled over functions and leave out the tasks of others for themselves.
- 39- According to the Agency's Agreement with the United Nations (INFCIRC/11), paragraph 2 of Article III "*The Agency shall report to the Security Council and the General Assembly any case of non-compliance within the meaning of Article XII, paragraph C, of its Statute.*" The requirements of Article XII, paragraph C, of its Statute have never happened in the case of the implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran. Therefore, involvement of the Security Council in the Iranian peaceful nuclear program is in full contravention with the organizational, statutory and safeguards requirements governing the IAEA practices and procedures. Indeed, the substantive and procedural legal requirements, that are necessary for engaging the Security Council in the issues raised by the Agency, have been totally ignored in this regard. Referring a country's nuclear issue to the Security Council is only possible under certain conditions as described below:
- a) Determination of non-compliance (diversion) according to paragraph C, Article XII of the IAEA Statute is the essential pre-condition for referring an issue to the Security Council which is entrusted to the IAEA inspectors who should report it to the Board of Governors through the IAEA's Director General. There has never been any reference in the Agency's reports to any "*non-compliance*" by Iran or any diversion in its peaceful nuclear activities.

More importantly, the IAEA Director General has repeatedly stressed that there has been no diversion of the declared nuclear material and activities in the Islamic Republic of Iran. This conclusion has been reiterated in the every report of the IAEA Director General.

- b) Furthermore, according to Article 19 of the Safeguards Agreement between Iran and the IAEA, dated 15 May 1974 (INFCIRC/214), any referral of the issue by the Agency to the Security Council in accordance with Paragraph C, Article XII of the Statute of the IAEA, could only be possible "*if the Board, upon examination of relevant information reported to it by the Director General, finds that the Agency is not able to verify that there has been no diversion of nuclear material required to be safeguarded under this Agreement, to nuclear weapons or other nuclear explosive devices*". It is worth mentioning in this regard that the IAEA Director General has constantly stated in all his reports that the Agency has been able to verify that the declared nuclear material and activities in Iran have not been diverted towards military purposes, and that they have remained absolutely under peaceful use and therefore the Board of Governors conveyed Iran's nuclear file to UNSC not based on Article 19, but based on XII.C which is also not justified.
- c) Also the nuclear activities of a country may be reported by the IAEA to the Council in cases where a threat against international peace and security is involved and, consequently, according to paragraph b (4), Article III of the IAEA's Statute, the Agency would notify the Security Council in this regard. It is noteworthy that contrary to the baseless allegations made by those few States - allegations that have worked as the basis for conveying the Iranian nuclear program to the Security Council - none of the IAEA Director General's reports have ever described Iran's nuclear activities as "*a threat to international peace and security*". Rather, they have expressly declared that such activities are peaceful, and that there are no diversion of nuclear material and activities in Iran.

Based on the above-mentioned reasons, there is no justification for the involvement of the Security Council in the work of the Agency. The Agency should continue its responsibility in the implementation of the Safeguards Agreement with Iran in strict observance of the provisions foreseen in the Safeguards Agreement with Iran (INFCIRC/214).

### **G- Contradiction of the UN Security Council & IAEA Board of Governors resolutions with the United Nations Charter and the international law**

Besides the illegal non-compliance reporting by the IAEA Board of Governors and conveyance of Iran's peaceful nuclear program to the United Nations Security Council, the adoption of all UNSC resolutions against Iran's peaceful nuclear program has been in contradiction with "Charter of the United Nations" and in violation of the international law.

The Security Council, as a UN organ created by Member States, is subject to legal requirements, and is obliged to comply with the same international normative rules that the Member States are bound to. The Council shall observe all international norms, in particular the UN Charter and the peremptory norms of international law, in the process of its decision making and in its taking actions. Needless to say that any measure adopted in contradiction to such rules and principles will be void of any legally binding effects<sup>1</sup>.

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<sup>1</sup> As the International Criminal Tribunal for former Yugoslavia (ICTY) has stated in one of its judgments "in any case, neither the text nor the spirit of the Charter conceives the Security Council as *legibus solutus* (unbound by law)." Likewise, as the International Court of Justice has held in its 1971 advisory opinion, the Member States are required to comply with Security Council decisions only if they are in accordance with the United Nations Charter.

In accordance with Article 25 of the Charter, Member States of the United Nations, including the Islamic Republic of Iran, “agree to accept and carry out the decisions of the Security Council in accordance with the present Charter”. However, pursuant to paragraph 2 of Article 24 of the Charter, the Security Council’s decisions shall be “in accordance with the Purposes and Principles of the United Nations”, a matter which has not been met in respect of the UNSC’s resolutions against the Islamic Republic of Iran. Therefore, these resolutions are not acceptable and their implementation is not plausible for the Islamic Republic of Iran.

Based on the IAEA Statute, the Agency’s Board of Governors decisions regarding the Islamic Republic of Iran’s peaceful nuclear program have the same flaw. Article III.B.1 of the Agency Statute links the functions of the IAEA to the UN through Article III.B.1. It reads as: “*In carrying out its functions, the Agency shall: 1. Conduct its activities in accordance with the purposes and principles of the United Nations to promote peace and international co-operation, and in conformity with policies of the United Nations furthering the establishment of safeguarded worldwide disarmament and in conformity with any international agreements entered into pursuant to such policies.*”.

The following cases are some instances of violating the preamble as well as *Purposes and Principles* of the UN Charter through Security Council & IAEA Board of Governors resolutions against the Islamic Republic of Iran:

- a) According to the first paragraph of the Charter’s preamble, the Security Council shall act “*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom*”.
  - Requiring suspension of peaceful nuclear activities, which are under the Agency full surveillance, without any effect on the Agency verification activities:
    1. will only hinder improvements of public “*better standards of life*”, as well as “*hampering the economic and technological development of Iran*” (contrary to the Safeguards Agreement, Article 4 (a));
    2. will be contrary to Agency’s obligation under Article 4 (b) of the Safeguards Agreement to “*avoid undue interference in Iran’s peaceful nuclear activities, and in particular in the operation of facilities*”;
    3. will be in contradiction “*to establish conditions under which justice and respect ... can be maintained ...*” and “*principles of justice*”. In fact, there is not any report by the Agency on the diversion of nuclear material and activities or any determination of “*threat to the peace, breach of the peace, or act of aggression*” (according to Article 39 of the Charter) due to Iran’s nuclear activities, except some vague, baseless and unverified allegations in the so called “*alleged studies*” which can not substantiate as a means to undermine “*inalienable right*” of a Member State under Article 4 of the NPT.
  - The Security Council, in resolution 1803 (2008), inter alia, reaffirmed Iran’s obligation to “*without further delay, take the steps required by the Board of Governors in its resolution GOV/2006/14, which are essential to build confidence in the exclusively peaceful purpose of its nuclear programme and to resolve outstanding questions*”, which “*extend beyond the formal requirements of Iran’s Safeguards Agreement and Additional Protocol*” (GOV/2008/38).

It is worth to mention, reporting certain matters to the Security Council is not to enable the Security Council to “enforce or interpret” Iran's Safeguards Agreement. The IAEA is not a subsidiary or other affiliate of the United Nations. Though the two bodies cooperate in many ways they are entirely separate and neither has a right to exercise any authority granted to the other. If Iran breaches its Safeguards Agreement, the IAEA may terminate assistance, or demand the return of materials and equipment, being provided to Iran under the IAEA Statute. If its violations persist, Iran may even be expelled from membership in the IAEA. These are the remedies available for any Member State's violation of its Safeguards Agreement. Only the IAEA and the “*arbitration panel*”, foreseen in Article 22 of the Safeguards Agreement, in the case of dispute, have the authority to “enforce” or “interpret” a Member State's Safeguards Agreement.

Requiring adoption or implementation of the Additional Protocol, as “*the steps required by the Board of Governors*”, while being a “voluntary and not legally binding” instrument, as well as suspension of peaceful nuclear activities, is in contravention of international norms, the Convention on the Law of Treaties, and the Iran's Safeguards Agreement, therefore, in contradiction “*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained*”.

- More generally, requiring suspension of peaceful nuclear activities will be in contradiction to the “right to development”, “right to natural resources” and “right to self-determination”. Such rights are among the fundamental rights of nations and their breach entails international responsibility for those who have violated them. Any action by States or the international organizations to limit such rights constitutes a violation of the fundamental principles of international law including, inter alia, non-interference in internal affairs of other States. In the Final Document of the Sixth NPT Review Conference, all State Parties to the Treaty confirmed “that each country's choices and decisions in the field of peaceful uses of nuclear energy should be respected without jeopardizing its policies or international cooperation agreements and arrangements for peaceful uses of nuclear energy and its fuel-cycle policies”. This was reaffirmed in the 2010 NPT Review Conference Final Document which was adopted by all States Parties to the Treaty. Therefore, the Security Council's actions against Iran are in clear contradiction with the NPT principles and the Agency's Statute.
- b) According to paragraph 1 of Article 1 (*the Purposes of the Charter*), for the purpose of “*adjustment or settlement of international disputes or situations which might lead to a breach of the peace*”, the Security Council shall take measures of “*peaceful means, and in conformity with the principles of justice and international law*”.

The Security Council has never determined Iran's nuclear program as a “*threat to the peace, breach of the peace, or act of Aggression*” (according to Article 39 of the Charter), nevertheless, it has adopted some resolutions against the Islamic Republic of Iran under Chapter VII of the United Nations Charter. The Security Council, before resorting to the measures stipulated in Articles 40 and 41 of the UN Charter must have exhausted all required procedures under Chapter VI of the UN Charter. While the outstanding issues defined by the Agency have been settled, “alleged studies” accusations based on forged data lacking authenticated information to be substantiated, and all Iran's nuclear activities being under the Agency Safeguards, regrettably, the Security Council has resorted to an incremental hostile approach with regard to Iran's peaceful nuclear activities, in contrast to stipulated “*peaceful means with the principles of justice and international law*”. It is ridiculous that if the Islamic Republic of Iran was not a

party to the NPT, similar to some States in the region would benefit more rights and fewer obligations. Moreover, unjust acts of the Council have sent a destructive signal: that the membership to NPT is futile and its universalization is a far-reaching objective.

- c) In accordance with paragraph 3 of Article 1 of the Charter (*the Purposes*), the Security Council resolutions against the Islamic Republic of Iran are in contrast with the UN Purposes regarding “*international co-operation in solving international problems of an economic, social, cultural, or humanitarian character*”. Developments of peaceful nuclear technologies to meet national needs in the field of energy and medicine, which are regarded as vital needs of people in every country, are not disputable and each issue in this regard should be resolved through collective and cooperative manners instead of resorting to embargo and threat.
- d) Contrary to paragraph 1 of Article 2 of the Charter, “*the principle of the sovereign equality of all its Members*” regarding the Islamic Republic of Iran has not been observed, as mentioned above.
- e) Pursuant to paragraph 4 of Article 2 of the Charter, “*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations*”. Threats to use force against Iran’s nuclear facilities are frequently expressed, including by some permanent members of the Security Council, while the Council has proven to be unable or unwilling to restrain such declarations and compel them to “*refrain in their international relations from the threat*”. Therefore, it can be reasonably inferred that resolutions drafted in contravention of UN Charter Principles, indeed are a translation of those threats against Iran and pretext to resorting to use of force which are illegal and unacceptable.