

## Information Circular

**INFCIRC/817**

Date: 24 May 2011

**General Distribution**

Original: English

---

# Communication dated 9 May 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 9 May 2011 from the Permanent Mission of the Islamic Republic of Iran to the Agency enclosing an explanatory note on the report of the Director General on “Implementation of the NPT Safeguards Agreement and the relevant provisions of Security Council resolutions in the Islamic Republic of Iran” contained in GOV/2011/7.

As requested by the Permanent Mission, the explanatory note is circulated herewith for information.

**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/2011/7 dated 25 February 2011)**  
**9 March 2011**

The following are comments on some parts of the IAEA report GOV/2011/7:

**A- General observations:**

1- According to paragraph 27 of the Resolution on the Safeguards adopted by the General Conference (GC(53)/RES/14), the Agency should provide objective technically and factually based reports with appropriate reference to relevant provisions of the Safeguards Agreement. This rule requires the Agency not to step beyond its statutory and legal mandate in preparing its reports. Regrettably, this rule is continuously being neglected and has not been respected in this and in the previous reports.

2- The main mandate of the Agency in the course of inspections is to verify non-diversion of declared nuclear material. The Agency should restrictedly reflect in its reports to the Board of Governors the results of its verification work. Unfortunately in this report, again, the Agency has acted in contradiction to the IAEA Statute and the Comprehensive Safeguards Agreement by providing detailed information such as status of activities, number and function of the centrifuges, quantity of production and consumption of the nuclear material etc., that are coming to the inspectors' knowledge through carrying out the verification work.

3- Although the report once again reconfirmed that *"While the Agency continues to verify the non-diversion of declared nuclear material at the nuclear facilities and LOFs declared by Iran"*, it seems that the report has been prepared to use the *"unusual"* language with regard to the safeguards obligations, since the Agency has to simply confirm that it has already verified non-diversion of the declared nuclear material and that all declared nuclear material are accounted for and remained in peaceful purposes, as already reported by the Agency's inspectors.

4- The report is expected to reflect the results of the Agency's verification for the period of December 2010 to March 2011. It has to report simply whether the inspectors have been able to conduct verification or not. If so, whether their findings are consistent with the declarations or not.

5- The report consists of unnecessarily extensive details on the ongoing ordinary technical activities of the peaceful nuclear activities in the Islamic Republic of Iran, which contravenes the protection of the sensitive proprietary information of the Member States.

6- Reporting so many technical details proves that the Agency has full access to all nuclear material and facilities in the Islamic Republic of Iran, including the frequent inspections with using the Agency's containment and surveillances. Therefore, claiming that *"Iran is not providing the necessary cooperation"* is incorrect and misleading. It has to be

noted that additional requests are beyond the provisions of the NPT Comprehensive Safeguards, and that they have been made under the pretext of the illegal UNSC resolutions.

7- 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"*, not only no attention has been paid to these statements when preparing the report but quite the opposite acted in contradiction.

8- Once again are recalled Article VII.F of the Agency's Statute and Article 5 of the Safeguards Agreement between the Islamic Republic of Iran and the IAEA, both emphasizing the confidentiality. However, despite these clear instructive articles, the report in contradiction to the Agency's statutory mandate and the Safeguards Agreement (INFCIRC/214) contains tremendous amount of confidential technical details which do not have to be published. Unfortunately, the Agency, so far, has not been able to protect the confidential information gathered from the conduction of inspections at the safeguarded facilities in the Islamic Republic of Iran, which has been revealed to the media. Such events are profoundly in violation of above mentioned articles and also the IAEA Statute.

9- Issues at stake to be clarified are also statements made by Messrs. Goldschmidt and Heinonen, the former Deputy Directors of the IAEA Safeguards Department, which were manipulated by abusing confidential information acquired through the Agency composed with false expressions and lies, in addition to the Agency's inability to prevent and punish them. Moreover, unfortunately the DG's report is disseminated by the ISIS website upon its distribution to the Board of Governors exactly the date of its issuance marked as *"Restricted Distribution"*.

10- Since the Agency contrary to its duties and legal and statutory obligations has not been and is not able to protect sensitive information of Member States' nuclear activities, it is not authorized to reflect detailed information on Iran's nuclear activities in its reports or even reveal them in its so-called technical briefing sessions. It should also be emphasized that the current incorrect reporting approach taken by the Agency, which seems to become a common practice, must be stopped and corrected.

## **B- Distinction between the Safeguards' obligations and the ultra vires demands from outside of the Agency**

1- The report of the DG for the first time made a distinction between the obligations of a member of the Agency which is in accordance with the Safeguards Agreement and the ultra vires demands from outside of the Agency. The illegal resolutions of the UNSC against the Islamic Republic of Iran are clear ultra vires demands from outside of the Agency. However, it should be emphasized that Iran has already fulfilled its safeguards obligations completely and continues to do so.

2- Although the Agency has partially taken a step forward to the Non-Aligned Movement's as well as the Islamic Republic of Iran's frequent requests for making a distinction between the legal obligations of states in accordance with their respective Safeguards Agreements and those beyond their obligations such as Additional Protocol and illegal UNSC resolutions in the DG report GOV/2011/7, but this task would be completed when such a distinction clearly appears in the main content of the DG report and not as an attachment to the report.

### **C- Unlawful engagement of the Security Council in the Iranian peaceful nuclear programme**

1- 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 UNSC resolutions against Iran are illegal and unjustified. The issue of Iran's peaceful nuclear programme has unlawfully been conveyed to the UNSC and the Council has taken a wrong approach by adopting 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.

2- 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. Referring Iran's case to the Council in violation of Article XII.C of the IAEA Statute, consequently, the UNSC resolutions have been issued also in contrast with the Purposes and Principles of the Charter (breach of Article 24 of 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 have 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 fulfilment of those so-called legal obligations. The honourable Director General of the IAEA had better entrust the task of implementing the UNSC resolutions to the drafters of such resolutions, that is, the possessors of nuclear weapons; rather, he should pursue his own neglected responsibilities incarnated in the Statute, which basically consist of disarmament and non-discriminatory prevention of nuclear weapons proliferation, in particular those possessed by the criminal regime of Israel. The Director General should, instead, take proper steps towards the implementation of 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 why the Agency has not been able to materialize nuclear fuel supply upon request of Member States without discrimination. The Director General should think something about his piled up functions and leave out the tasks of others for themselves.

3- 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 noncompliance 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 programme 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) According to paragraph C, Article XII of the IAEA Statute, determining the non-compliance (diversion towards military purposes) is the essential pre-condition for referring an issue to the Security Council. This task, according to the same paragraph, 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.
- 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 programme 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 is no diversion of nuclear material and activities in Iran.

#### **D- Contradiction of the Security Council resolutions with the United Nations Charter and the international law**

1- Taking into account the illegality of the UNSC resolutions against 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). 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 UNSC's resolutions against the Islamic Republic of Iran. Therefore, these resolutions are not acceptable and their implementation is not plausible by Islamic Republic of Iran.

The following cases are some instances of violating the preamble as well as *Purposes and Principles* of the UN Charter through Security Council 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*". Certain requests such as suspension of peaceful nuclear activities which are under the Agency's full surveillance, without any effect on the verification activities, will only hinder improvements of public welfare, as well as "*hampering the economic and technological development of Iran*" (contrary to the Safeguards Agreement, Article 4 (a)), in addition to violation of the Islamic Republic of Iran's inalienable right under Article 4 of the NPT, in a discriminatory manner.
- 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 resolutions are not issued in accordance with international law. Requests such as adoption and implementation of Additional Protocol are in contravention of international norms and the Convention on the Law of Treaties. In addition, the Security Council has not adopted any peaceful and conciliatory module to resolve such matters; and while there is no "*threat to the peace, breach of the peace, or act of aggression*" (according to Article 39 of the Charter), and the issues inquired by the Agency have been settled gradually, and all Iran's nuclear activities are under Agency Safeguards, the Security Council has resorted to an incremental hostile approach. Furthermore, Security Council resolutions have not been drafted based on the "*principles of justice*"; while there is not any report by the Agency on the diversion of nuclear material in the Islamic Republic of Iran, the Security Council acts as a means to diminish fundamental rights of Member State based on some vague, baseless and unverifiable allegations, rather than protecting rights of the NPT Member State.
- c) It is ridiculous that if the Islamic Republic of Iran was not a party to the NPT, similar to some States in the region, she would benefit more rights and would have fewer obligations. Moreover, unjust acts of the Council have sent a destructive signal that membership to the NPT is futile and its universalisation a far-reaching objective.
- d) In accordance with paragraph 3 of Article 1 of the Charter (*the Purposes*), Security Council resolutions against the Islamic Republic of Iran are in contrast with the UN Purposes regarding to "*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.
- e) Contrary to paragraph 1 of Article 2 of the Charter, "*the principle of the sovereign equality of all its Members*" with regard to the Islamic Republic of Iran has not been observed, as mentioned above.

- f) 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"*. Threat to use of 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 a pretext to resorting to the use of force which are illegal and unacceptable.
- g) Based on the IAEA Statute, the Agency Board decisions regarding the Islamic Republic of Iran's nuclear case have the same flaws mentioned above; because 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: *"B. 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;"*

2- Furthermore, we should elaborate the contradiction of the Security Council resolutions with the United Nations Charter and the international law. The measures taken through the Security Council resolutions are in contradiction to the United Nations Charter and in violation of the peremptory norms of international law:

- a) The United States and the EU3, by putting pressure on, and instrumental exploitation of, the Security Council, brought about a situation in which some measures have been adopted in contradiction to Articles 1, 2 and 24 of the United Nations Charter. Iran's peaceful nuclear programme has never posed any threat to international peace and security and Iran has not violated its obligations according to the Non-Proliferation Treaty (NPT). Not only the IAEA Director General's reports have never contained any such a conclusion, but they have also confirmed the non-diversion of the declared nuclear activities and material in Iran and their peaceful nature. Therefore, engagement of the Security Council in Iran's nuclear programme is clearly contrary to the United Nations Charter.
- b) The Security Council has never determined Iran's nuclear programme as a threat to international peace and security under Article 39 of the United Nations Charter and, thus, it could not adopt any measures against the Islamic Republic of Iran under Chapter VII of the United Nations Charter. Moreover, 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. Regrettably, with regard to Iran's issue, the Council has acted in contradiction of these requirements.
- c) In the Security Council resolutions it is claimed that the aim of the Council is to strengthen the authority of the IAEA. This claim is not genuine, since for this statement to have any validity, at least, the Council should have acted within the framework of the Agency's regulations and the NPT. The Council, in taking unlawful actions against Iran's peaceful nuclear programme, has gone beyond the legal

requirements of the NPT, the IAEA Statute and the Safeguards Agreement. While the IAEA Board of Governors has itself emphasized on the "voluntary and not legally binding" nature of most of its requests for Confidence Building Measures (CBMs), the Security Council that claims to be supporting the authority of the Agency, has acted in contradiction to the Board of Governors and has considered these CBMs as Iran's obligations. Making "voluntary measures a mandatory requirement" - as it was mentioned in a letter dated 16 March 2006 from the then British Political Director (UK current Permanent Representative to the UN) to his American, French and German counterparts - through instrumental use of the Council, has been from the outset for narrow political objectives.

- d) The right of the people of Iran to peaceful uses of nuclear technology is a clear example of the realization of "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 vis-à-vis the nation whose rights have been violated and also towards the international community as a whole. Nations' right to the peaceful uses of nuclear energy has been expressly recognized in the Non-Proliferation Treaty. 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. I wish to emphasize that 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.
- e) 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. 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)."<sup>1</sup> 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.
- f) In light of the Security Council's declared purposes in its resolutions on the one side, and the resolution of all outstanding issues related to the nuclear programme of the Islamic Republic of Iran in accordance with the Work Plan<sup>2</sup>, on the other, it was logically expected that the Security Council should rectify its wrong approach and return the issue to the IAEA.

---

<sup>1</sup> . Prosecutor v. Dusko Tadic a/k/a "dule", Decision On The Defense Motion For Interlocutory Appeal On Jurisdiction, ICTY, Case IT-94-I, 2 October 1995, Para. 28.

<sup>2</sup> . INFCIRC/711, dated: 27 August 2007



## E- Comments on technical issues

Fordow Fuel Enrichment Plant:

1- According to Articles 43, 46 and 48 of the Safeguards Agreement (INFCIRC/214), the information which a Member State should submit to the Agency is as it reads:

Article	Article text	Actions taken by Iran
43	<p>The design information to be provided to the Agency shall include, in respect of <b>each facility</b>, when applicable:</p> <p>(a) The <b>identification</b> of the facility, stating its <b>general character</b>, <b>purpose</b>, <b>nominal capacity</b> and <b>geographic location</b>, and the <b>name and address</b> to be used for routine business purposes;</p> <p>(b) A description of the <b>general arrangement</b> of the facility with reference, to the extent feasible, to the <b>form</b>, <b>location</b> and <b>flow of nuclear material</b> and to the <b>general layout</b> of important items of equipment which use, produce or <b>process nuclear material</b>;</p> <p>(c) A description of features of the facility relating to <b>material accountancy</b>, <b>containment</b> and <b>surveillance</b>; and</p> <p>(d) A description of the existing and proposed procedures at the facility for <b>nuclear material accountancy and control</b>, with special reference to material balance areas established by the operator, measurements of flow and procedures for physical inventory taking.</p>	<p>DIQ of IRS- has been provided to the Agency in October 2009</p> <p>a) All these points are answered and reflected in the provided DIQ.</p> <p>b) All are indicated in the provided DIQ.</p> <p>c) This is also a part of DIQ that at the time of introducing material will be established. Please note that nuclear material has not been introduced yet.</p> <p>d) As explained in c above.</p>
46	<p><b>Purposes of examination of design information</b></p> <p>The design information provided to the Agency shall be used for the <b>following purposes</b>:</p> <p>(a) To identify the <b>features of facilities and nuclear material</b> relevant to the application of safeguards to nuclear material in sufficient detail to facilitate verification;</p> <p>(b) To determine <b>material balance areas</b> to be used for Agency accounting purposes and to <b>select those strategic points</b> which are</p>	<p>Please note that since November 2009 the Agency has performed 16 Design Information Verifications (DIV) with satisfaction.</p> <p>a) The Agency is performing monthly DIV at this site that is definitely exceeding the necessities.</p> <p>b) By performing DIV's and using experiences gained at Natanz sites, definitely this will also be</p>

<p>key measurement points and which will be used to <b>determine flow and inventory of nuclear material</b>, in determining such material balance areas the Agency shall, inter alia, use the following criteria:</p> <p>(i) The <b>size of the material balance area</b> shall be related to the accuracy with which the material balance can be established;</p> <p>(ii) In determining the material balance area advantage shall be taken of any opportunity <b>to use containment and surveillance</b> to help ensure the completeness of flow measurements and thereby to simplify the application of safeguards and to <b>concentrate measurement efforts at key measurement points</b>;</p> <p>(iii) A number of material balance areas in use at a facility or at distinct sites may be combined in one material balance area to be used for Agency accounting purposes when the Agency determines that this is consistent with its verification requirements; and</p> <p>(iv) <b>A special material balance area may be established at the request of the Government of Iran around a process step involving commercially sensitive information</b>;</p> <p>(c) To establish the <b>nominal timing</b> and procedures for taking of <b>physical inventory</b> of nuclear material for Agency accounting purposes;</p> <p>(d) To establish the <b>records and reports requirements</b> and records evaluation procedures;</p> <p>(e) To establish <b>requirements and procedures</b> for verification of the quantity and location of <b>nuclear material</b>; and</p> <p>(f) To select appropriate combinations of <b>containment and surveillance</b> methods and techniques and the strategic points at which they are to be applied.</p> <p><b>The results of the examination of the design information shall be included in the Subsidiary Arrangements.</b></p>	<p>established.</p> <p>i) As explained in b above.</p> <p>ii) As explained in b above.</p> <p>iii) As explained in b above.</p> <p>iv) -----</p> <p>c) This will be determined at the time of preparation of Safeguards Approach as well as its Facility Attachment.</p> <p>d) When nuclear material entered the facility it would be functional as the other facilities.</p> <p>e) As explained in c.</p> <p>f) As explained in c.</p> <p>This will be in the Facility Attachment of IRS-.</p>
---	---

48	<b>Verification of design information</b> The Agency, in co-operation with the Government of Iran, may send inspectors to facilities to verify the design information provided to the Agency pursuant to Articles 42-45, for the purposes stated in Article 46.	Please note that since November 2009, the Agency has performed <b>16</b> Design Information Verifications (DIV) with satisfactory results.
----	--	--

It is very crystal clear that there is not any reference in the Safeguards Agreement (INFCIRC/214) in respect of the Agency's requests as: "...provide supporting information regarding the chronology of the design and construction." and "... to have access to the companies involved in the design of the facility and to relevant design documents of IRS- ..."

2- It should be recalled that the Agency has provided the standard format of "Design Information Questionnaire (DIQ)" required for the IRS- by the letter MB-IRA-30/OB2/2009-0825 dated 25 September 2009.

3- The Islamic Republic of Iran has already provided the information requested in the said format of DIQ for the IRS- facility and was submitted on 18 October 2009 to the Agency. Consequently, the second revision of the DIQ on 28 October 2009 and the third revision of the DIQ on 22 September 2010 have been submitted to the Agency.

4- Since November 2009, sixteen "Design Information Verifications (DIV) have been conducted at this facility (IRS-) by the Agency's inspectors with satisfactory results. It is also worth to recall paragraph 10 of GOV/2009/74 of the DG report in November 2009 that reads: "Iran provided access to all areas of the facility [IRS-]. The Agency confirmed that the plant corresponded with the design information provided by Iran".

5- Based on our Safeguards Agreement with respect to provide design information of a facility to the Agency, specifically Articles 42-48, the Islamic Republic of Iran has fulfilled its obligations in providing the required design information of IRS- to the Agency.

6- It is worth mentioning that Iran voluntarily informed the Agency 18 months prior to introduction of material to the plant. In addition, Iran provided its DIQ, granted unlimited access to the facility, held meetings and provided detailed information, permitted taking swipe samples, conducting on average one design information verification (DIV) per month and reference photos which even under the provision of code 3.1 of 1976 Iran is not obliged to do so. It is clear that the Agency's requests in providing additional information regarding the chronology of the design, construction and original purpose of FFEP are beyond our safeguards obligation. In addition, requesting access to the companies involved in the design and construction is neither foreseen in the Safeguards Agreement nor in its Subsidiary Arrangement. Therefore, the Agency's requests stipulated in paragraph 20 of the report (GOV/2011/7) are beyond the Safeguards Agreement and there are no legal bases for such requests, and the Agency is not mandated to raise any question beyond the Safeguards Agreement.

#### **Other Enrichment Related Activities:**

7- In response to the Agency requests for further information in relation to some interviews of the officials and announcements made regarding the site selection of new facilities, the Islamic Republic of Iran has already replied to all of them to the Agency at an appropriate time.

#### **Heavy Water Related Projects (Suspension):**

8- The Islamic Republic of Iran did not suspend its uranium enrichment and heavy water research reactor activities, aiming at producing radioisotopes for medical purposes, since there is no logical and legal justification to suspend such peaceful activities which is its inalienable right according to the Statute and NPT and under surveillance of the Agency. It should be recalled that Iran implemented suspension for more than 2.5 years voluntarily, as a non-legally binding and confidence building measure.

9- The Agency's request in paragraph 27 of the report (GOV/2011/7): "... Iran make the necessary arrangements to provide the Agency, at the earliest possible date, with access to: the Heavy Water Production Plant (HWPP); the heavy water stored at the Uranium Conversion Facility (UCF) for the taking of samples, and any other location in Iran where projects related to heavy water are being carried out" is not justified and there is no legal basis since they are not falling within Iran's Safeguards Agreement (INFCIRC/214) and are even beyond Additional Protocol.

10- Requesting such information under the pretext of the illegal UNSC resolutions is technically and legally unjustified and shall establish illegal precedence. It should be noted that heavy water plants are not covered by the Comprehensive Safeguards Agreement (CSA). They are also beyond the illegal relevant UNSC resolutions that request only verification of suspension. Therefore, when Iran clearly and loudly states in accordance with its inalienable rights under the IAEA Statute and NPT, that work on heavy water related projects have not been suspended, there is no need of such baseless requests by the Agency. Thus, the request to check whether or not Iran has suspended its activities is ridiculous!

#### **Possible Military Dimensions:**

11- Detailed history of the agreed Work Plan (INFCIRC/711) between the Agency and the Islamic Republic of Iran are being explained in the previous Iran's explanatory notes to the DG reports with the latest one being INFCIRC/805.

12- On the basis of the Work Plan, there were only six outstanding issues that all have been resolved as the former Director General in his reports of November 2007 and February 2008 has explicitly stated that all six outstanding issues had been resolved and the Islamic Republic of Iran had responded to all questions about the outstanding issues in accordance with the Work Plan.

13- The so called "*Alleged Studies*" has never been considered as an outstanding issue.

14- Following the successful implementation of the Work Plan which led to the resolution of all six outstanding issues, the Government of the United States, being dissatisfied about the results, began a political campaign on a part of the Work Plan entitled the *Alleged Studies*. Therefore, by interfering in the work of the IAEA and exerting various political pressures, the Government of the United States attempted to spoil the spirit of cooperation between the Islamic Republic of Iran and the IAEA.

15- In spite of the fact that the so called *Alleged Studies* documents had not been delivered to Iran, the Islamic Republic of Iran carefully examined all the material which had been prepared by the US Government for power point presentations for the Agency, and informed the Agency of its assessment. In this context, the following important points should be recalled:

- a. 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*.

- b. 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 all it has are forged documents. The Agency didn't deliver any original documents 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.
  - c. How can one make 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?
  - d. 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".
  - e. This written document proves that in fact the 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.
- 16- 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, 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 to the Agency, and its assessment, 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 of a nuclear weapon or of certain other key components, such as initiators, or on related nuclear physics studies, therefore this subject must be closed.
- 17- 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 have 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 modalities. It is recalled that the first paragraph of chapter IV of the Work Plan says: "*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.
- 18- According to 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.
- 19- 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.*"
- 20- According to the first paragraph of chapter IV of the Work Plan which reads that "*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*", introducing new wording in paragraph 36 of the report (GOV/2011/7) reading that "...based on the Agency's analysis of additional information which has come to its attention



since August 2008, including new information recently received, there are further concerns which the Agency also needs to clarify with Iran.” is contrary to the Work Plan.

21- 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.”*

22- 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.

23- 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 the Comprehensive Safeguards Agreement.

24- Considering the above and the former DG report in GOV/2009/55, that confirmed that Iran has completed its obligation on the Alleged Studies by informing the Agency of its assessment, and 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).

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

26- 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 respects its agreement with Member States, otherwise the mutual trust and confidence which is essential for the sustainable cooperation shall be put in jeopardy.

27- 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, swipe sampling were foreseen for addressing this matter. 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 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. Notwithstanding 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, to provide necessary supporting documents, and informed the Agency of its assessment in a 117-page document



proving that the allegations have been all fabricated and forged. This is in fact reviewing the substance and also the forms.

28- Considering the above, the Agency's request in paragraph 39 "... the Agency be permitted to visit all relevant sites, have access to all relevant equipment and documentation, and be allowed to interview all relevant persons, without further delay." is not justifiable and consequently not acceptable. The Agency is highly expected to observe the utmost professionalism, impartiality and justice in its evaluation.

29- Finally, as the Work Plan has fully been implemented, thus the implementation of safeguards in Iran has to be conducted in a routine manner.

#### **Design Information (Modified code 3.1 of Subsidiary Arrangement):**

30- Iran was implementing voluntarily the modified code 3.1 of the Subsidiary Arrangement since 2003, but it suspended its implementation pursuant to the illegal UNSC resolutions against Iran's peaceful nuclear activities. However, Iran currently is implementing code 3.1 of the Subsidiary Arrangement.

31- In respect of IR-40 reactor at Arak, Iran voluntarily provided access to the Agency for carrying out design information verifications (paragraph 29 of GOV/2011/7).

32- In respect of any new enrichment facility as well as design of a reactor similar to TRR (paragraph 40 of GOV/2011/7), 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.

33- Since Iran is not obliged to implement modified code 3.1, thus statement in paragraphs 40 and 46 on design information of the report (GOV/2011/7) has no legal base, and Iran has adhered to its obligations to provide design information in proper timing.

#### **Additional Protocol:**

34- 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 25 years voluntarily as a confidence building measure.

35- Therefore, Iran has not any obligation on implementation of the Additional Protocol and such a request as reflected in paragraph 46 of the report (GOV/2011/7) "*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.

36- Moreover, the Agency's requests stipulated in paragraph 24 of the report (GOV/2011/7) fully scats in the provisions of the Additional Protocol which Iran is not obliged to implement and therefore such requests have no legal basis.

37- Iran has not let the voluntary undertakings be turned into legal safeguards obligations; it should be recalled that Iran and other like-minded State Parties successfully prevented the Additional Protocol, being a voluntary document, to be turned into a legally binding instrument and to be annexed to the Comprehensive Safeguards Agreement of the NPT in the 2010 Review Conference.

**Other Matters:**

38- Currently there are 157 Agency inspectors designated by the Islamic Republic of Iran. In respect of designation withdrawal of 38 Agency inspectors from France, UK, Germany and USA in 2006, it should be recalled that it was the EU3 and the USA who illegally, unjustifiably and partially conveyed Iran to the UNSC. However, this withdrawal never hampered the Agency's verification in Iran so far. It is very surprising that after five years, this matter continuously is coming to the DG's report.

39- Para 44 of the DG report is relating to the assessment of the activities involving mining and uranium concentration plants using satellite imagery. Regrettably, this once again are actions taken by the Agency beyond its mandate and function which is neither in the statute nor in the safeguards coverage.

**Paragraph 47 of the report (Summary):**

40- The fact that all declared nuclear material is accounted for and has remained under the Agency's full scope surveillance for peaceful purposes, in contrary to the main object of Safeguards stipulated in article 28 of the Agreement, is not reflected and is a missed element in this report while it is a real fact as reported in the SIR2009.

41- The Islamic Republic of Iran has fully cooperated with the Agency in safeguards application on nuclear material and facilities. Therefore, a statement such as *"...Iran is not providing the necessary cooperation to enable the Agency to provide credible assurance about the absence of undeclared nuclear material and activities in Iran, and therefore to conclude that all nuclear material in Iran is in peaceful activities"*, is absolutely wrong, has no legal basis and is another example of losing impartiality.

42- Mixing the notions of "declared nuclear material" and "all nuclear material" in the context of the Comprehensive Safeguards Agreement (CSA) and Additional Protocol, respectively, in a non-professional manner, has undermined the full cooperation of Iran in accordance with its CSA obligation and has also misled the public.