

Minilateralisms, Formal Institutions and Transatlantic Cooperation:
The EU-3 Initiative vis-à-vis Iran's Nuclear Program

Sebastian Harnisch

The Argument

When it comes to the E-3's initial mediation initiative *vis-à-vis* Iran, many European officials and commentators remain in a state of denial: whilst they rightly argue that the Iraq experience led the "Big Three" (the United Kingdom, France and Germany) to get their act together in order to prevent another split in the EU itself and between the EU with the United States, too few acknowledge that the role of the E-3 (2003–2005) depended on the implicit or tacit recognition it received from others, namely the Bush administration, the Iranian leadership, other EU member states and the IAEA Board of Governors. This recognition in turn depended upon conjunctural factors: one could argue that the initiative worked as a convenient buffer for both Tehran and Washington, allowing them to sort out their respective domestic disagreements over whether to follow a line of cooperation or confrontation with one another. For Tehran's hardliners the brief period from August 2003 to November 2005 offered major benefits—firstly, to exploit the nuclear dispute domestically in the Presidential elections (July 2005) and secondly, to overcome some of the technical problems Iran encountered when converting yellow cake into UF₆ and feeding their first centrifuges with it.¹

¹ Jeffrey Lewis, *Iran & the Bomb I. How Close is Iran?*, 19 January 2006, www.armscontrolwork.com/945/iran-focus-part-1-how-close-is-iran-to-the-bomb. Yellow cake is a source material made from uranium ore. The yellow uranium powder needs to be converted into a gas, uraniumhexafluorid (UF₆), so that the low natural level of the uranium isotope 235 (0.7 per cent) can be increased by separating the heavier isotope 238 from isotope 235 through gas diffusion, centrifuge or laser isotope enrichment processes. Up to this point, Iran has proved unable to produce pure enough feed material (UF₆) domestically for its centrifuge enrichment process. As a consequence, Iran has used imported UF₆ (from China before 1992) to prove its ability to enrich while preserving its few working centrifuges.

For hardliners in Washington the E-3 mediation not only brought some breathing space after North Korea had become the ninth nuclear weapon state (Summer 2003): the initiative also offered the chance to reassert the strategy of "hawk engagement" which had miserably failed in North Korea. By first softening them up through the pursuit of peace via negotiations, this strategy of hawk engagement involves convincing hesitant allies of the need for more forceful action when these negotiations subsequently appear inadequate to the task at hand.²

Thus, the E-3 mediating role may have been initiated by the Big Three, but its existence depended on the fact that it suited the interests of many of the other parties involved. The EU-3 mediation died after the "consensus to defer" between Tehran and Washington broke down in August 2005 over Iranian yellow cake conversion efforts. By stressing recognition from others, this analysis does not neglect the impetus from within (the ego part of the E-3's mediator role, if you will). The argument simply insists on the co-constitutive nature of the E-3 mediation role. The underlying assumption is: in order to draw generalizations from this and other cases of "multilateralism"³ beyond formal institutions (for example the Contact Group on Kosovo; Middle-East quartet, Six-Party Talks) one has to ask which functions these platforms have to fulfil in order to be accepted as legitimate tools of policy-making by members and non-members. This question is of growing relevance, because equal representation in formal institutions such as NATO is oftentimes circumvented by multilateralisms which fulfil tasks that formal institutions can no longer fulfil.⁴ Recognition and authorization by others became even more important in February 2006

when the E-3 took up the more serious role of coalition-builder, seeking to bring about and subsequently enforce UN Security Council resolutions under Chapter VII.

Unilateral platforms facilitate cooperation *vis-à-vis* the hurdles posed in formal institutions, (for example, by enhancing the confidentiality of negotiations) yet, they give rise to the question which sub-group of states can legitimately commit *all* the other members of the formal institutions they claim to represent in internationally binding agreements. In the Iranian case, Europe's Big Three still insist that their mediating role (and therefore the time for diplomacy) has not expired. However, as the Security Council in December 2006 finally agreed upon resolution 1737 based on Chapter VII to sanction Iranian entities and individuals that are engaged in WMD proliferation activities, it became obvious that the requirements for the E-3's coalition-building and enforcing role are challenging. It is essential that the E-3 will have to enlist additional approval from P-5 member states (Russia and China) to be successful.

When compared to its mediation role, why does the E-3 format need additional domestic and external approval for coalition-building and enforcing collective action? Or in a more abstract sense, why does a unilateral platform have to gain additional legitimacy when it changes its role from mediation to coalition-building and enforcement?

The first answer to this question addresses the competitive relationship between the existing structures of formal institutions (in this case, the EU) and the informal character of multilateralisms (the E-3). The assumption is that multilateralisms are niche-phenomena in a highly institutionalised environment for new policy problems in negotiations.⁵ Once they leave their niche (here, the negotiation environment) and address bigger problems, such as norm-setting or enforcement, they compete with existing formal institutions. When this occurs, multilateralisms have to prove that their specific advantages—resistance to crisis and the facilitation of cooperation among the few—outweigh their disadvantages—weaker legitimacy for the group they claim to represent

2 Robert Einhorn, "A Transatlantic Strategy on Iran," *The Washington Quarterly*, Vol. 27, No. 4 (Autumn 2004), p. 31; Victor Cha, "Hawk Engagement Preventive Defense on the Korean Peninsula," *International Security*, Vol. 27, No. 1 (Summer 2002), pp. 40–78.

3 Multilateralisms in my reading can be distinguished from "coalitions of the willing" according to three criteria: 1. Origin: they are initiated by small or medium powers not by hegemons; 2. Membership: they are run by a small number of states/organizations to gain flexibility and crisis resistance. In contrast "coalitions of the willing" are set up to provide legitimacy through a large number of participants; 3. Scope: multilateralisms try to safeguard the existing international order, e.g. the role of the Security Council as a rule-setting body in international security affairs. In comparison, coalitions of the willing display a greater willingness to go beyond the existing order.

4 Miles Kahler, "Multilateralism with Small and Large Numbers," *International Organization*, Vol. 46, No. 3 (1992), p. 682.

5 Christoph Schwegmann, *Kontaktgruppen und EU-3-Verhandlungen*, Berlin: Stiftung Wissenschaft und Politik, December 2005 (SWP-Aktuell 62/05), www.swp-berlin.org/de/common/get_document.php?id=1529; Carolyn Rhodes, "Introduction: The Identity of the European Union in International Affairs," in Carolyn Rhodes (ed.), *The European Union in the World Community*, Boulder/London 1998, pp. 1–18.

and smaller external credibility as they still have to “deliver” the group they claim to represent. In the Iranian case, the E-3 has been able to fill a niche in the non-proliferation policy area because the EU itself had not developed a strong and formalized actorness.⁶ As a result, the bigger the consequences of E-3 actions become, the higher the pressure within the EU gets to use formal policy channels to preserve maximum transparency and equality. We can detect this pressure because what started as a trilateral undertaking of the British, French and German Foreign Ministers became the EU-3 plus or the E-3/EU when the EU High Representative joined the core group in late 2004.

The second answer to the question relates to the shift in policy roles of multilateral platforms (from norm interpretation towards norm redefinition and enforcement) and the fact that the strengths of the multilateral format lie firmly in the former function. To begin with, multilateralisms are good at interpreting the specific meaning of existing norms in negotiations, i.e. the rights and obligations of norms, because their crisis resistance and confidentiality allows them to reduce public posturing. They also provide ample room to paper over policy differences in technical working groups. However, when it comes to redefining norms that enjoy a high degree of acceptance or enforcing norms which may affect most of the other parties of a regime, multilateralisms lose their advantage over more representative and formal institutions. In the Iranian case, E-3 mediation succeeded through the Tehran Statement and the Paris Agreement in establishing “temporary interpretations” of the rights and obligations of Non-proliferation Treaty member states. More specifically, those agreements foresaw that Iran would suspend certain sensitive activities to (re)gain the NPT community’s confidence in exchange for a deferral of UN SC action and civil nuclear energy cooperation with the EU-3. Yet, when it came

6 Christer Ahlström, “The EU Strategy against Proliferation of Weapons of Mass Destruction,” in Shannon N. Kile (ed.), *Europe and Iran. Perspectives on Non-Proliferation*, New York: OUP, 2005 (SIPRI Research Report, No. 21), pp. 27–46; Oliver Meier, “The EU at the NPT Review Conference: A Modest Success for the EU’s Emerging Policy in Nuclear Non-Proliferation,” *Foreign Policy in Dialogue*, Vol. 6 (25 October 2005), Issue 17, pp. 8–14, www.deutsche-aussenpolitik.de/newsletter/issue17.pdf; Harald Müller and Lars van Dassen, “From Cacophony to Joint Action: Successes and Shortcomings of the European Nuclear Non-Proliferation Policy,” in Martin Holland (ed.), *Common Foreign and Security Policy. The Record and Reforms*, London/Washington, D.C. 1997, pp. 52–72.

to judging whether Iran’s past and some of its ongoing behaviour constituted a breach of the IAEA safeguards and therefore of Iran’s NPT obligations as a Non-Nuclear Weapon State, the EU-3 lacked leverage; the U.S., China and Russia were thus added to the group. In addition, the situation in Iran has become much less suited for treatment by multilateral action because the technical and political environment has changed substantially since mid-2005. On the one hand, Tehran has mastered the process of uranium conversion and enrichment somewhat faster than most experts⁷ predicted.⁸ As a consequence, any enforcement of the previous E-3/EU-position—namely that Iran must not gain knowledge of and access to the full fuel cycle—must take into account that this is no longer achievable without massive Iranian cooperation or decisive military action on the part of the United States, Israel or any other coalition of countries. On the other hand, the political goal posts have shifted in the non-proliferation field, because the Bush administration has seriously compromised the NPT’s central principle (that in the interest of international security, no more states should acquire nuclear weapons). By exempting India from this norm in the proposed U.S.-India nuclear deal, “the United States has legitimated India’s condition on the (less than honest) assertion of its exceptionally good behaviour.”⁹ Thus, if the agreement is ratified in both India and the U.S., it becomes much harder to argue that Iran, as an NPT member state

7 David Albright and Corey Hinderstein, *Iran’s Next Steps: Final Tests and the Construction of a Uranium Enrichment Plant*, Washington, D.C.: Institute for Science and International Security, 12 January 2006, www.isis-online.org/publications/iran/irancascade.pdf; Jeffrey Lewis, *Iran & the Bomb*, op. cit.

8 Of course, the minute enrichment in a small and single cascade in March/April 2006 does not present a major breakthrough or prove the Iranian capacity to run a complex multi-cascade enrichment process over several months and years. Thus, an Iranian technical capacity to produce enough weapons-grade uranium is still years away, assuming that no hidden and successful P-2 centrifuge program exists. However, when measured against the standard by some Israeli officials that Iran must be prevented from gaining the expertise to successfully enrich uranium, the point of no return has passed. From now on any military action would have to take out both the known enrichment facilities and the personnel who have the expertise to rebuild and run it successfully, in order to limit an Iranian nuclear weapons capacity in the future. Paul Rogers, *Iran: Consequences of a War*, Oxford 2006 (Oxford Research Group Briefing Paper, No. 8), p. 8.

9 Robert Gallucci, *The Proposed US-India Nuclear Deal*, Testimony before the Senate Foreign Relations Committee, 26 April 2006, p. 3, www.senate.gov/~foreign/testimony/2006/GallucciTestimony060426.pdf.

without nuclear weapons, must forego uranium enrichment and plutonium re-processing having submitted itself to the relevant safeguards a long time ago.¹⁰

Against this background, the article proceeds as follows: the first section provides a brief overview of the E-3 mediation role (2003–2005), focussing on its recognition and authorization by others, cohesion among the Big Three and its autonomy *vis-à-vis* formal institutions such as the IAEA Governors Board or the Security Council. It is argued that the E-3/EU mediation experience is not easily transferable to other forms of transatlantic collective action or other policy fields. The next section reflects upon the shift in the E-3's role from mediation to coalition-building and enforcement. The analysis suggests that the E-3 format has not run its course, but that it must be considerably expanded and modified to be successful in denying Iran a nuclear weapons capacity. The final section makes several specific recommendations designed to make the EU-3 a "progressive club within the transatlantic club."¹¹

The Record: The E-3 as a Mediator 2003–2005

Before the existence of Iran's nuclear fuel cycle program became known in August 2002, the EU pursued a "critical and constructive dialogue" with Tehran. Its purpose was to moderate Iran's behaviour in such diverse fields as human rights, regional security affairs and combating terrorism through economic incentives, namely a comprehensive Trade and Cooperation Agreement (TCA).¹² By contrast, the United States continued to isolate and contain Iran militarily through alignments in the region and through unilateral means such as the Iran-Libya Sanctions Act (1996). Washington also refused to cooperate in Iran's civilian nuclear program, exerting pressure on third parties,

10 Gary Milhollin, *Iran: Cutting off the Means to Make a Bomb*, Testimony before the House Committee on International Relations, 8 March 2006, www.iranwatch.org/Gary/hic-milhollin-030806.htm.

11 Miles Kahler, "Multilateralism with Small and Large Numbers," *International Organization*, Vol. 46, No. 3 (1992), p. 706.

12 Johannes Reissner, "Iran und seine Nachbarn: Konkurrenz, Pragmatismus und der Ruf nach Kooperation," in Jens van Schepenberg and Peter Schmidt (eds.), *Stabilität und Kooperation: Aufgaben internationaler Ordnungspolitik*, Baden-Baden 2000, pp. 140–60; Johannes Reissner, "Europas Beziehungen zu Iran," *Aus Politik und Zeitgeschichte*, Vol. 54, No. 9 (2004), pp. 48–54.

especially Russia, to do the same. In 2002, the Bush administration also started to challenge the regime politically by condemning it as part of the "axis of evil."¹³

Against this background, the origins of the E-3 initiative can be traced back to Spring 2003. At this time, the Iranian government came under intense pressure from the international community. In March, Tehran invited IAEA Director General (DG) El Baradei to visit the previously undisclosed enrichment facility in Natanz. Iran promised to submit the facility to inspections and to consider adopting the Additional Protocol to allow more intrusive examination of other sites.

In early May 2003, Tehran reportedly sent a message to Washington through the Swiss government that it was prepared to negotiate a "grand bargain." Iran offered to address, amongst other things, international concerns about its nuclear program and its support for terrorism in exchange for the establishment of diplomatic relations with United States and the lifting of economic sanctions by United States. Deeply divided over the question of whether to seek regime-change in Iran as well, the Bush administration did not respond to the initiative. Instead, Washington called for a non-compliance resolution in the run-up to the September 2003 IAEA Board of Governors meeting.¹⁴

At the same time, the EU started to consider drafting a "European Security Strategy" (ESS), an initiative of the Swedish Presidency, in response to the deep intra-EU split on Iraq. Simultaneously, the staff of the High Representative on CFSP worked on an EU strategy against the Proliferation of Weapons of Mass Destruction.¹⁵ When UK Foreign Secretary Jack Straw suggested to his German and French counterparts a tripartite mediation initiative on Iran in April, the effort received the early, but unofficial, backing of the U.S. State

13 Phebe Marr, "US Policy of Sanctions: Prospects for Revision," in Sven Behrendt and Christian-Peter Harpell (eds.), *Bound to Cooperate – Europe and the Middle East*, Göttingen 2000, pp. 263–86; Kenneth M. Pollack, *The Persian Puzzle: The Conflict between Iran and America*, New York 2004.

14 Gary Samore, *Meeting Iran's Nuclear Challenge*, Stockholm: The Weapons of Mass Destruction Commission, October 2004 (Report, No. 21), p. 2, www.wmdcommission.org/files/No21.pdf.

15 Christer Ahlström, "The EU Strategy against Proliferation of Weapons of Mass Destruction," in Shannon N. Kile (ed.), *Europe and Iran. Perspectives on Non-Proliferation*, New York: OUP, 2005 (SIPRI Research Report, No. 21), pp. 32f.

Department. In May 2003, John Wolf, U.S. Assistant Secretary of State for Nonproliferation, had called upon Europeans to use their diplomatic weight to convince Iran to give up its fuel cycle activities.¹⁶

Over the following 15 months, the E-3 initiative gained speed, substance and recognition. In June 2003, the EU General Affairs Council (GAC) raised serious concern about the Iranian effort to close the fuel cycle. However, while the Council called for full cooperation with the IAEA and ratification of the Additional Protocol it stopped short of suggesting or supporting a E-3 mediation. In fact, the GAC and the EU Presidency held back open and unconditional support for the E-3 initiative until November 2004, when the High Representative joined the E-3, which was then rechristened to E-3/EU or EU-3. From August 2003 until October 2004, the EU as a formal institution offered only indirect support for the E-3. The GAC praised the IAEA effort to resolve the outstanding issues, and EU member states on the IAEA Board of Governors voted in favour of resolutions that supported the E-3 mediation. All the same, several member countries (including Italy, Belgium, Austria, Czech Republic) feared a directorate of the Big Three and the idea that this might set a precedent for circumventing formal structures in security and non-proliferation affairs.¹⁷ Consequently, the EU shied away from open approval until late 2004.

By contrast, Secretary Powell, openly welcomed the first E-3 negotiated suspension of critical fuel cycle activities in November 2003 (the so-called Tehran Statement or Joint Statement). Yet, reflecting the deep split in the Bush administration on how to proceed *vis-à-vis* Tehran, the White House, the National Security Council and the Pentagon kept silent on the initiative until early 2005. Only then did the President himself endorse the effort, lifting his objections to Iranian membership in the WTO and the delivery of spare parts for the dilapidated Iranian aircraft fleet.¹⁸

16 "UE/Etats-Unis/Nucléaire: John Wolf souhaite qu'UE et Etats-Unis travaillent étroitement contre la prolifération nucléaire et insiste sur le problème iranien," *Bulletin quotidien Europe* (Agence Europe), 3 May 2003, p. 3.

17 Schwegmann, *Kontakgruppen und EU-3-Verhandlungen*, op. cit., p. 2; Communication with Official of the German Foreign Ministry.

18 Sebastian Harnisch and Ruth Linden, *Einsame Vermittler. Die EU-3 müssen ihre diplomatischen Hebel stärken*, Trier: Universität Trier 2005 (Nichtverbreitungsbrief, 05/2005), www.politik.uni-trier.de/mitarbeiter/harnisch/pubs/Nichtverbreitungsbrief05-2005.pdf.

At first, E-3 gained ground mainly because it was warmly welcomed by the community of IAEA member states and the IAEA DG El Baradei. Both endorsed the Tehran Joint Agreement, because it provided for two things.

First, the suspension of critical fuel cycle activities would allow Iran to regain the confidence lost through more than 18 years of undisclosed proliferation activities with a non-member state entity, the A. Q. Khan network.

Secondly, the suspension period was supposed to allow the IAEA and Iran to settle outstanding issues and questions, most importantly the history and development of Iran's P-2 centrifuge program and the reception of plans and drawings to form uranium metal into hemispherical spheres, a code-word for specifications of a nuclear weapon explosive mechanism.¹⁹

While the E-3 mediation received substantial recognition from November 2003 onwards, it still lacked wider authorization by the EU, the U.S. or the IAEA signatories. In particular, there was no formal and therefore credible agreement on the issue whether the E-3 could promise and deliver financial and economic benefits such as a Trade and Cooperation Agreement (TCA) on behalf of the EU. More importantly, the absence on the part of the Bush administration of open and binding support for E-3 mediation (such open support might have included a multilateral security commitment and a multilateral pathway for a bilateral U.S.-Iranian normalization) seriously limited the E-3 effort. The E-3 countries, too, constrained their mediation by agreeing that the suspension of critical fuel cycle activities would only last as long as E-3-Iranian negotiations were ongoing. This restrictive position immediately proved volatile when the Iranian government insisted in early 2004 that uranium conversion and the production of additional (P-1) centrifuges did not violate the suspension as agreed upon in the Tehran Statement. To reinstate the suspension in the Paris Agreement (PA, December 2004), the E-3 mediation role needed additional authorization to uphold its legal position of a "tempo-

19 IAEA Board of Governors, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, Resolution adopted on 26 November 2003, GOV/2003/81, www.iaea.org/Publications/Documents/Board/2003/gov2003-81.pdf.

rary suspension," which it received through a sharply worded IAEA resolution in September 2004.²⁰

The Paris Agreement drew some lessons from the failure of the Tehran statement.

First, the PA is a two-sided "agreement." It includes the Iranian side and is not merely a statement by the three European Foreign Ministers. This adds *commitment* in the face of vanishing *trust* on both sides.

Secondly, the terms and scope of the suspension of uranium enrichment and plutonium reprocessing were much more detailed, including procurement, conversion, assembly, production and testing activities.

Thirdly, the PA called for "objective guarantees" that Iran would not misuse its nuclear program for military purposes. The term "objective guarantees" is of course key, and stands for the European demand that Iran must for the time being suspend key elements of the full fuel cycle to bullet-proof its peaceful intentions after having seriously violated its safeguards obligations for decades.

Fourthly, concerning the duration of the suspension, the agreement defined that suspension would be essential, "while negotiations on a longer-term agreement are underway."²¹

Fifthly, the E-3/EU offered more detailed benefits in case of Iranian cooperation, including additional political and economic inducements such as the resumption of talks on a TCA.

Finally, the PA committed the parties to set up a steering committee which in turn convened three working groups on political and security issues (subsequently chaired by the UK), on technology and cooperation (subsequently chaired by Germany), and on nuclear issues (subsequently chaired by France). The working groups were asked to provide progress reports to the steering

committee, thereby adding momentum to the negotiation process towards a final settlement.²²

Subsequent developments show that the EU-3 reading of the Paris Agreement lacked both recognition by Iran and authorization by the IAEA and NPT community. But the Paris Agreement bolstered transatlantic cooperation because the European insistence on "objective guarantees" (i.e. an extended period of suspension of all full fuel cycle activities) was much closer to the U.S. position that Iran should lose "the privilege to develop full fuel cycle activities" than to the Iranian demands that it should be allowed unrestricted access to uranium enrichment and plutonium reprocessing technology.²³ As a consequence, Secretary of State Rice and National Security Advisor Hadley persuaded the President to grant additional backing to the E-3/EU effort. In February 2005, the President publicly supported it during his trip to Europe and even added a few economic incentives to keep the mediation effort going and the Iranian full fuel cycle suspension in place. And yet, the EU-3's legal position never really gained acceptance with the wider NPT community. Similar efforts by DG El Baradei, who called for a 10 year suspension (cooling off) period, also went nowhere. Several non-aligned states feared another "nuclear oktroj" by industrialized states which had mastered the fuel cycle and wanted to withhold critical technology from them.

According to the EU-3's interpretation of Iran's legal obligations under the Nonproliferation Treaty, the 2002 revelations about Iran's undeclared nuclear activities raised serious concerns that Tehran had not only failed to comply with its IAEA safeguard agreements, but that it was also coming very close to breaching its NPT obligations as a Non-Nuclear Weapon State. Thus, the EU-3 held that in order to regain trust of the international community and to foster

20 IAEA Board of Governors, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, Resolution adopted on 18 September 2004, GOV/2004/79, www.iaea.org/Publications/Documents/Board/2004/gov2004-79.pdf.

21 The E-3/EU also recognizes in the PA that the suspension is a voluntary confidence building measure and not a legal obligation.

22 AEA Communication dated 26 November 2004 received from the Permanent Representatives of France, Germany, the Islamic Republic of Iran and the United Kingdom concerning the agreement signed in Paris on 15 November 2004, INF/CIRC/637, www.iaea.org/Publications/Documents/Infcircs/2004/infcirc637.pdf; Olivier Meier and Gerard Quille, "Testing Time for Europe's Nonproliferation Strategy," *Arms Control Today*, May 2005, www.armscontrol.org/act/2005_05/Oliver_Quille.asp?print.

23 For an elaborate version of this legal position cf. Henry Sokolski, *The Nuclear Non-proliferation Treaty and Peaceful Nuclear Energy*, Testimony before the House Committee on International Relations, Subcommittee On International Terrorism and Non-proliferation, 2 March 2006, www.npec-web.org.

confidence in its peaceful intentions, Iran should not exercise the right to acquire and run facilities to enrich uranium, nor should it enjoy facilities to reprocess spent nuclear power plant fuel to obtain plutonium, since both of these technologies can also be used for nuclear arms production.²⁴

The EU-3 legal position stresses a strict, but plausible interpretation of NPT Article IV in combination with Articles I, II and III. According to this reading, Article IV. 1, which asserts the inalienable right of all NPT parties to carry out civilian nuclear activities in conformity with Articles I and II, does mean that Iran's inalienable right is conditional upon the provision of "objective guarantees" of the exclusively peaceful nature of its nuclear program. The EU posits that uranium enrichment and conversion, as well as plutonium reprocessing activities, are not "normal activities" in the case of Iran, because it has concealed several activities from the IAEA that could be used to produce nuclear weapons.²⁵

Iran constantly opposed this interpretation in 2005. Tehran insisted that its temporary suspension of full fuel cycle activities did not represent a legal or political obligation by a Non-Nuclear Weapons State that had been under intensive scrutiny for safeguard violations. Accordingly, in mid-March 2005 the Iranian side tabled a new offer at an EU-3-Iran steering committee meeting in Vienna. The proposal contained the idea of a phased introduction of uranium enrichment and reprocessing activities in Iran under full scope IAEA safeguards.²⁶ The EU-3 rejected the proposal, because it did not meet the requirements of an "objective guarantee." Instead the Europeans promised to present a new proposal by early August 2005, acknowledging that a newly elected Iranian President would then be able to assess the European offer.

The 2005 NPT review conference in May was indicative of the limited international support for the EU-3 interpretation of Article IV NPT. Egypt and

²⁴ EU Presidency Statement on Iran, 21 September 2005, para. 11, www.acronym.org.uk/docs/0509/doc17.htm.

²⁵ Annalisa Giannella, "Interview with Oliver Meier," *Arms Control Today*, 26 July 2005, www.armscontrol.org/interviews/20050726_Giannella.asp; IAEA Board of Governors, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, Report by the Director General, 2 September 2005, GOV/2005/67, www.iaea.org/Publications/Documents/Board/2005/gov2005-67.pdf.

²⁶ General Framework for Objective Guarantees, Firm Guarantees and Firm Commitments 2005, http://abcnews.go.com/images/International/iran_eu_objectives.pdf.

Malaysia and several other non-aligned countries supported the Iranian claim and rejected the strict European reading. In addition, the Iranian presidential election campaign bolstered the position of those policy-makers who claimed that the possession and mastery of the full fuel cycle was not only an inalienable right under the NPT but also a matter of national pride and technological prowess.²⁷

Thus, it came as little surprise that the outgoing Iranian President Khatami declared in early August—even before receiving the new E-3/EU proposal—that Tehran would start the uranium conversion process.²⁸ After taking office, the incoming President Mahmoud Ahmadinejad backed his predecessor's strategy of continued cooperation with the IAEA and continued talks with E-3/EU officials while breaking free of Iran's promise to suspend full fuel cycle activities during negotiations.²⁹ Tehran announced the start of uranium conversion in order to allow appropriate IAEA monitoring, but it rejected the E-3/EU's August 5th proposal as "absurd, demeaning and self-congratulatory."³⁰ In their proposal, EU-3 officials had offered more comprehensive benefits and cooperation in the political, economic and security realm. However, the Europeans stuck to their legal position that Iran must not be allowed to independently master uranium enrichment and plutonium reprocessing. Instead, the proposal foresaw guaranteed access to the civilian nuclear market for Iran, a non-discriminating EU nuclear export control policy towards Iran and EU cooperation to build a new research plant as well as exchanges in Light Water Reactor technology.³¹ Since the EU-3 proposal was closely coordinated with the Bush administration, the limited scope of benefits to Iran, especially the lack of initiatives to normalize U.S.-Iranian relations, indicated that the Bush administration had decided to hold back its own crucial bargain-

²⁷ Hamisch and Linden, *Einsame Vermittler*, op. cit.

²⁸ Communication dated from 4 November received from the Permanent Mission of the Islamic Republic of Iran to the Agency, 17 November 2005, INF/CIRC/661, www.iaea.org/Publications/Documents/Infircs/2005/infirc661.pdf.

²⁹ Pirouz Mottahedzadeh and Kaveh Afrasiabi, "Iran's Nuclear Program. A Crisis of Choice, Not Necessity," *Iran Daily*, 14 August 2005.

³⁰ Response by the Islamic Republic of Iran to the Framework Agreement proposed by the E-3/EU, www.basicint.org/countries/iran/IranResponse.pdf.

³¹ Letter of E-3 Ministers and the EU High Representative to Dr. Rouhani dated 5 August 2005, www.basicint.org/countries/iran/IranIAEA20050808.pdf.

ing incentives for a later stage or indeed forever. In the EU-3's August proposal, the U.S. only went as far as recognizing Iran's right to the use of LWR technology and research facilities for civilian purposes—something which it had previously rejected.

After Iran restarted uranium conversion on 8 August 2005, the EU called for a special session of the IAEA Board which urged Iran to restore the suspension of uranium conversion activities. In addition, the Board directed the IAEA Director General to prepare a comprehensive report on Iran's past activities and ongoing cooperation with the IAEA for the next Board meeting on 19 September. From the European point of view, the resumption of uranium conversion should have triggered the referral of the Iranian case to the Security Council, because the EU-3 had agreed in Paris to hold off reporting only as long as Tehran suspended its most sensitive fuel cycle activities.³²

In the run-up to the IAEA Board meeting, E-3/EU countries made clear that they would not settle for anything less than permanent suspension. E-3 ministers responded very critically to the maiden speech of the Iranian President at the UN Summit meeting on 18 September in which he defended Iran's inalienable right to all full fuel cycle activities.³³ During the Board meeting, the EU-3 presented a draft resolution that would ask the Governors to report to the Security Council Iran's past "breaches and failures to comply with its NPT safeguards agreement." However, the tougher E-3/EU approach failed to garner support from Russia and China. The subsequent IAEA resolution stated only that the absence of confidence in the peaceful purposes of Iranian activities "have given rise to questions that are within the competence of the Security Council" and "that Iran's many failures and breaches of its obligations to comply with its NPT Safeguards Agreement [...] constitute non compliance in the context of Article XII.C of the Agency's Statute."³⁴ Adding insult to injury, several European countries questioned the EU-3's authority to negotiate and to

conclude negotiations with Iran on behalf of the EU.³⁵ Thus, what started as a multilateral effort to mediate between a defiant member of the NPT and the broader community of signatories ended when the core multilateral group failed to gather support in the wider multilateral regime for an extended mandate to (re)interpret key provisions of the constitutional bargain between NWS and NNWS states.

The Record: From Mediation to Coalition-building and Enforcement

From November 2005 to February 2006 the EU-3 initiative entered a twilight zone. It still tried hard to find common ground between its own and the Iranian position on uranium enrichment. The EU-3 now leaned towards the so-called "Russian proposal," but it also prepared for a later stage of coalition-building and enforcement.³⁶ In terms of the mediator role, the Europeans once again proved successful in drawing the Bush administration closer to a position that in principle accepts a limited Iranian right under the NPT to engage in uranium enrichment. Washington still opposed any compromise that would allow Iran to retain even a small research enrichment capability (one spinning centrifuge), but it accepted in November 2005 a "sequenced and sanitized approach" that would withhold sensitive technological knowledge and materials from Iran until Tehran had regained U.S. confidence.³⁷

The EU-3 *cum* Russia mediation effort received wider support. DG El Baradei and several IAEA members stated their approval. Iran did not accept the proposal—while not completely rejecting it—and instead Tehran in early

32 "Iran Willing to Offer Nuclear Aid to Islamic States," *Global Security Newswire*, 16 September 2005, www.nni.org/d_newswire/issues/W_2005_9_16.html#47F2852F.
36 The so-called Russian proposal is based on a pragmatic legal perspective that does not fix the legal status of Iran's (claimed) right to the full fuel cycle. It foresees, similar to the Russian-Iranian cooperation to build and run the LWR in Bushehr, that Iran would convert uranium ore into yellow cake, but would transfer the conversion to uranium-hexafluoride and the enrichment process to Russia and also return the spent fuel rods to Russia, so that the most sensitive technical processes and materials would not take place on Iranian territory, cf. Daniel Dombey et al., "Russia Tries to Break Impasse with Iran," *Financial Times Online*, 25 October 2005; "Russia, Iran Eye Nuclear Fuel Venture," *Moscow Times*, 7 November 2005.

37 Kenneth Katzman, *Iran: U.S. Concerns and Policy Responses*, Washington, D.C.: Congressional Research Service 2006 (CRS Report RL 32048), updated April 6, 2006, p. 15.

January resumed uranium enrichment for research purposes in very small quantities, as it claimed. Consequently, on 12 January the E-3/EU issued a statement that called for the involvement of the Security Council, because the mediation efforts had reached an impasse. The statement also held that the IAEA now needed “additional authority” from the Security Council to clarify the outstanding questions with Iran.³⁸

In reaction to Iran’s continuing effort to master the enrichment process and with its recognition and authority as a mediator seriously challenged, the E-3/EU turned towards another unilateral format (they teamed up with the remaining P-5 members, plus Germany and the EU High Representative) as well as the authorities of the IAEA and UN. On 31 January the P-5 + 2 agreed that the IAEA would hold an emergency meeting and instruct DG El Baradei “to report” his next findings to the Security Council. The resulting Board of Governors resolution (4 February) supported this approach, but it again fell short of accepting the EU-3’s legal position. Whereas the resolution called for the reinstatement of the confidence-building measures (the complete suspension of full fuel cycle activities, ratification of the additional protocol etc.) it explicitly stated that these measures were “voluntary and non-legally binding.”³⁹

The IAEA resolution had already made it clear that the reporting of the DG’s findings to the Security Council by early March 2006 would not get the support needed for a stronger enforcement-based approach on the part of the Security Council. In finding that the suspension of full fuel cycle activities is voluntary and non-legally binding, the IAEA Board of Governors collectively rejected the EU-3 legal position. In addition, the Board did not limit (under Article XII c of the IAEA Statute) the civilian nuclear cooperation with Iran;⁴⁰ nor did it instruct and vest the DG with additional competences to investigate

38 Statement on the Iran Nuclear Issue, Berlin, 12 January 2006, www.iranwatch.org/international/EU/germany-mfa-eustatement-011206.pdf.

39 IAEA Board of Governors, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, Resolution adopted on 4 February 2006, GOV/2006/14, www.iaea.org/Publications/Documents/Board/2006/gov2006-14.pdf.

40 Sebastian Hamisch, *Ohne Hast zum Ziel: Der IAEA-Gouverneurrat, seine Kompetenzen und die Chance auf eine friedliche Lösung des iranischen Atomstreits*, Trier: Universitäts Trier (Nichtverbreitungsbroschüre, 09/2006), www.politik.uni-trier.de/mitarbeiter/hamisch/pubs/Nichtverbreitungsbroschue09-2006.pdf.

Iran’s past NPT violations more forcefully (such violations included the reception of a document by Iran from an entity of a NPT non-member state—Pakistan—on the production of uranium metal hemispheres—something which is clearly related to the fabrication of nuclear weapon components).⁴¹

The subsequent Security Council action reflected the split on the IAEA Board. In early March 2006, the Council issued a Presidential Statement that set a 30-day time limit for Iran to cease uranium enrichment and meet the other IAEA requirements. The statement lacked any reference to sanctions or to additional means granted to the IAEA to clarify outstanding issues. Thus, the Council (read Russia and China) again rejected the EU-3 position that past transgressions justify current and future limitations. More disturbingly, the Council did not institute a mechanism by which additional proof of the seriousness of Iran’s past violations could be identified.

With the Security Council bogged down, Iran again shifted the parameters of the debate by announcing on 10 April that it had mastered the enrichment process, producing minute quantities of low enriched uranium, a claim that was later confirmed by the IAEA.⁴² As a consequence, the Israeli position and the position held by Vice President Cheney that Iran must be prevented from gaining the knowledge to enrich uranium was technically no longer feasible by peaceful means in the absence of Iranian cooperation. Politically, the Russian proposal that Iran should produce energy without gaining sensitive knowledge applicable in producing weapons grade uranium appears much less attractive, given the current problems Iran has with Russia in implementing the Light-Water-Reactor project in Bushehr. In short, while Iran is still not independent when it comes to closing the fuel cycle (or for that matter capable of producing an uranium-based nuclear warhead in the near future), it appears that in April 2006 it had gained enough technical expertise to reject the benefits it may have

41 David Albright and Jaqueline Shire, *Latest IAEA Report on Iran: Continued Progress on Cascade Operations. No New Cooperation with IAEA*, Washington, D.C.: The Institute for Science and International Security, 14 November 2006, www.isis-online.org/publications/iran/continuedprogress.pdf. Cf. IAEA Board of Governors, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, Report by the Director General, 28 September 2006, GOV/2006/27, www.iaea.org/Publications/Documents/Board/2006/gov2006-27.pdf, para. 34, in which the DG explicitly requests additional transparency measures.

42 *Ibid.*, para. 31.

gained from agreeing to the Russian proposal. Instead, Iran could plausibly argue that peaceful nuclear cooperation on Iranian territory under extensive safeguards is the best bargain the E-3/EU (and the United States for that matter) can hope for as long as Russia and China block punitive actions.⁴³

The EU-3 (and the Bush Administration) has not come to grips with this new situation thus far. In early May 2006, a new Security Council Resolution, this time based on Chapter VII, was introduced by the Europeans, which was immediately rejected by Russia because it was interpreted as paving the way for military action. Since the Resolution was based neither on additional proof of more serious past violations nor on additional diplomatic efforts to resolve the crisis, the EU-3 initiative had little chance of success. The same applies for the "benefit-based proposal" announced on 10 May, after the P-5 *cum* Germany could not agree on an SC resolution based on Chapter VII. On the one hand, a rejection by Iran is likely, given the current restrictions in the EU-3 position towards enrichment on Iranian territory. On the other hand, a rejection will not trigger serious Security Council action, given the current Russian position that ongoing enrichment campaigns in Iran do not constitute a violation of Iran's obligations under the NPT.

In a nutshell, unless the EU-3 (or the IAEA for that matter) finds more convincing evidence that Iran's past violations justify current and future limitations of full fuel cycle activities, the chances for a rule-based curtailment of the Iranian nuclear program that includes a suspension of enrichment and reprocessing are not high. Therefore, in early summer 2006 several European officials and some U.S. senators started to call for direct talks between Tehran and Washington,⁴⁴ implicitly suggesting that their strained relations (and U.S. forward presence around Iran) may be the most important driver behind Iran's quest to become a virtual nuclear weapons state by mastering the fuel cycle as a first step. The Bush Administration has (so far) rejected this argument and instead advocated a sanctions-based approach outside the legal framework of

43 On the technical status of the Iranian enrichment program (as of November 2006) David Albright and Jacqueline Shire, *Iran's NPT Violations – Numerous and Possibly Ongoing?*, Washington, D.C.: The Institute for Science and International Security, 29 September 2006, www.isis-online.org/publications/iran/iranpvtviolations.pdf.
44 Seymour Hersh, "The Next Act," *The New Yorker Online*, 20 November 2006, www.newyorker.com/fact/content/articles/061127fa_fact.

UN Security Council action. Given the mounting domestic pressure on the Bush Administration after the Republican defeat in the mid-term elections (November 2006) and given that Iran continues to encounter technical problems, a window of opportunity that may be filled by an emerging transatlantic coalition of the willing to negotiate is still open. But Tehran's rejection of a U.S.-French proposal in September 2006, which posed no preconditions for the resumption of EU-3-Iran talks and which potentially included U.S. participation at a later stage,⁴⁵ should make us cautious about whether Iran is still willing to settle for anything less than a full scale enrichment capacity.

Conclusion

Minilateral EU-3 mediation *vis-à-vis* Iran has been a product of the unwillingness of the United States to negotiate with an illiberal state that (rightly or wrongly) feels intimidated, if not threatened, by the new U.S. defence posture. The EU-3 mediation effort aims to uphold as much as possible of the existing treaty-based nuclear order by working consistently on behalf of formal institutions (such as the IAEA Governors Board) or towards them. As the recognition and authority of the initiative waxed and waned, the EU-3 broadened their base (EU High Representative, P-5 *cum* 2) and specified their approach (Russian proposal). Among the Big Three, the initiative provided additional leverage for France and the UK to influence the diplomatic process preceding Security Council action. For Germany, the EU-3 format offers the additional benefit that the country gets a "privileged backseat" at the Security Council table. To secure these joint benefits and to garner additional support from other EU member states, the E-3 were ready to delegate some of the negotiations to the High Representative. Hence, this minilateral platform provided for several additional benefits which other, bigger and formal institutions such as the EU Council or NATO could not.

But it would be naïve to think that the EU-3 platform could replace formal institutions beyond its mediator role and become a coalition-builder and enforcer. From the EU-3 point of view the purpose of this minilateralism is to build coalitions within existing institutions, and not to bypass them. Thus, the

45 *Ibid.*

initiative struggled to achieve a consensus among the signatories of the norms involved and violated (the NPT and the IAEA Statute).

The EU-3 has proven repeatedly that it is unable to forge this common understanding. There are two explanations for this failure:

First, according to Iran and more recently the non-aligned member states of the IAEA Board of Governors, Iranian behaviour has not, after all, been that bad and therefore warrants no specification or reinterpretations of IAEA/NPT norms and rules, and also no enforcement. Consequently, these countries argue that there is nothing wrong with continued IAEA support for the “peaceful use” of nuclear energy, e.g. the completion of the Arak heavy water reactor.

Second, several members of the IAEA/NPT community appear to hold a position that Iran should be allowed—as other virtual nuclear weapons states—to engage in all fuel cycle activities, but under very close IAEA safeguards. The rationale behind this position is that Iran has legitimate grounds for developing a nuclear break-out option as a “declared axis of evil state.” Thus, Iran may be enabled to prevent an Iraq scenario, but it should not be in the position to terminate the NPT and test a nuclear weapon as North Korea has done. As there are several illiberal regimes represented on the IAEA Board of Governors and in the Security Council, these states, most prominently Russia, reject the central notion of the National Security Strategy (NSS) 2002 of the United States. Through this document, the U.S. defines by virtue of a capabilities based threat assessment which regime is a legitimate member of the international community and which regime is not. While the new NSS of 2006 deemphasizes pre-emptive action and the cooperation among Great Powers, it features more prominently a community of democratic states. Against this background, Russia is unlikely to bow to U.S. pressure, if it can use the Iranian case as a proxy to signal to the Bush administration that there are clear limits to Washington’s drive for democratization in the Middle East or elsewhere.⁴⁶

As a consequence, the EU-3 will have to decide in the near future, if no negotiated deal can be reached, whether they will stick to an institution-based

approach that involves the IAEA and the UN Security Council or whether they are prepared to join a “coalition of the willing” that enforces international law on the basis of a consensus among transatlantic democracies. Thus, while the obstacles in both courses of action appear considerable, the EU-3 multilateral platform provides a helpful device to effectuate European and transatlantic co-operation.

46 Alexei Arbatov, *Russia and the Iranian Nuclear Crisis*, Washington, D.C.: Carnegie Endowment, 2006 (Proliferation Analysis, 23 May 2006), www.carnegieendowment.org/npp/publications/index.cfm?fa=view&id=18363.