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The right to dual-use technologies and the case of Iran

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Iran's insistence on a "right to enrichment" is a sticking point in the diplomatic impasse over its nuclear programme. More generally, questions over the rights of nations to pursue technologies that can be used for both civilian and military purposes heighten political tensions between more- and lesser-developed countries. The latter often challenge the legitimacy of export-control regimes, on grounds that they discriminate between 'haves and have-nots'. As a non-proliferation tool, however, those regimes are extremely useful.

The debate in the nuclear areas is the most pronounced. The "inalienable right" stated in Article IV of the Nuclear Non-Proliferation Treaty (NPT) to develop and use nuclear energy for peaceful purposes clashes with the controls applied by the Nuclear Suppliers Group and by UN Security Council resolutions directed against countries such as Iran. Article IV does not refer to uranium enrichment and plutonium reprocessing. The negotiating history shows that this omission was purposeful; several efforts to introduce explicit language were rejected. Some countries have argued, therefore, that the right does not extend to sensitive dual-use technologies. Most

countries, however, argue for a more expansive interpretation.

Note that NPT Article III says safeguards should not hamper the international exchange of "equipment for the processing, use, or production of nuclear material," which would mean enrichment and reprocessing. The passage would seem to rest on the premise that there is a right to such technologies.

It is sometimes overlooked, however, that the rights in Article IV are conditional on conformity with the non-proliferation obligations of Articles I and II. The 2000 NPT Review Conference Final Document affirmed that this conditionality also applies to Article III, which sets out the obligation to accept safeguards applied by the International Atomic Energy Agency (IAEA). "Inalienable" does not mean that rights cannot be fettered in the event of abuses. Because of Iran's safeguards violations, the Security Council mandated that it suspend all enrichment-related and reprocessing activities.

In the Iran case, its negotiating partners have skirted the issue of the right to enrichment. The proposal to Iran by China, France,

Germany, Russia, the UK, the US and the EU of 14 June 2008, which remains on the table, stated their readiness “to treat Iran’s nuclear programme in the same manner as that of any non-nuclear Weapon State Party to the NPT once international confidence in the exclusively peaceful nature of Iran's nuclear programme is restored”. Since no other party to the NPT (save for North Korea, whose NPT withdrawal is not universally accepted) is prohibited from developing enrichment and reprocessing, the conditional right to these technologies is implicit in the proposal.

At some point in the negotiations, the six powers may wish to make this recognition explicit, and to specify what is required to restore international confidence in the exclusively peaceful nature of Iran’s nuclear programme. The most objective criteria would be faithful implementation of the safeguards Additional Protocol that would enable the IAEA to draw conclusions about the absence of undeclared nuclear material and activities.

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