

## Information Circular

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# Communications dated 18 March 2013 received from the Permanent Mission of the Islamic Republic of Iran to the Agency regarding the Report of the Director General on the Implementation of Safeguards in Iran

1. The Secretariat has received two communications dated 18 March 2013 from the Permanent Mission of the Islamic Republic of Iran to the Agency enclosing explanatory notes by the Permanent Mission dated September 2012 and November 2012 respectively, on the reports of the Director General on “Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran” contained in GOV/2012/37 (30 August 2012) and GOV/2012/55 (16 November 2012).
2. The communications and, as requested by the Permanent Mission, the explanatory notes are circulated herewith for information.

*In the name of God*



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

No. 252/2013

The Permanent Mission of the Islamic Republic of Iran to the International Atomic Energy Agency presents its compliments to the Agency's Secretariat and has the honour to request the latter to circulate attached Explanatory Note by the Permanent Mission of the Islamic Republic of Iran to the IAEA on the report of the Director General on the Implementation of Safeguards in the Islamic Republic of Iran (*GOV/2012/37 dated 30 August 2012*) among the Member States and publish it as an INFCIRC document and make it available to the public through the IAEA website.

The Permanent Mission of Islamic Republic of Iran to the International Atomic Energy Agency avails itself of this opportunity to renew to the Agency's Secretariat the assurances of its highest consideration.

*B. Behi*  
18 March 2013



Secretariat of the Policy-Making Organs  
Attn. Mr. Vilmos Cserveny  
Assistant Director General

**Explanatory Note by the  
Permanent Mission of the Islamic Republic of Iran  
to the IAEA on the report of the Director General  
on the  
Implementation of Safeguards in the Islamic Republic of Iran  
(GOV/2012/37 dated 30 August 2012)**

**September 2012**

The following are comments on some paragraphs of the Director General's Report GOV/2012/37, dated 30 August 2012:

**A. General Observations**

1- The report is not balanced and factual since it has not duly reflected the cooperation, letters and explanations of the Islamic Republic of Iran to the questions of/or communication made with the Agency.

2- Paragraph 27 of the Safeguards Resolution adopted by the General Conference GC(53)/RES/14 as well as GC(54)/RES/11, mandate the Agency to prepare technically objective and factually correct reports with appropriate references to relevant provisions of the Safeguards Agreement. Regrettably, this statutory requirement has continuously been ignored and has not been observed in this and in the previous reports. The Agency should not arbitrarily step beyond its statutory and legal mandate in preparing its reports, assessments and comments without considering the relevant concrete obligations of a State.

3- More importantly, the IAEA is an independent inter-governmental organization, not a United Nations programme or fund. Therefore, the Agency's mandate is to carry out its activities in accordance with its rights and obligations under the Statute and the Safeguards Agreements. The Agency should therefore refrain from taking instructions from anonymous States and sources with vested interests or allow unauthorized parties to interfere with its mandates. There are no provisions in the Safeguards Agreements and IAEA Statute which may authorize the United Nations Security Council (UNSC) to take over the role of the IAEA in implementing the Safeguards Agreements, impose new requirements, or modify the obligations of the parties to the Safeguards Agreements; nor does the Agency have the right or authority to impose ultra vires demands on Iran by relying upon the UNSC resolutions.

4- The Islamic Republic of Iran has already made it clear, based on the legal provisions such as those of the Agency's Statute and the Safeguards Agreement as to why the UNSC resolutions against Iran are illegal and unjustified, which have been already explained in INFCIRCs/: 786, 804, 805, 810, 817, 823, 827, 833, 837 and 847. Iran's peaceful nuclear activities have unlawfully been put on the agenda of the UNSC and the Council has taken a wrong approach by adopting its politically-motivated, illegal and unacceptable resolutions against Iran. Therefore, any request by the Agency stemming from those resolutions is not legitimate and not acceptable.

5- Although the report once again reconfirmed that "*the Agency continues to verify the non-diversion of declared nuclear material at the nuclear facilities and LOFs declared by Iran under its Safeguards Agreement*", it keeps using "unusual" language with regard to the Safeguards conclusions. The Agency asserts is unable to achieve State-level safeguards conclusions for Iran, based on a

unilateral definition of safeguards verification activities and achievable conclusion, since the Agency has to simply confirm that all declared nuclear material is accounted for and therefore “*declared nuclear material in Iran remained in peaceful activities*”.

6- The Non-Aligned Movement in its several statements to the Board of Governors has stated 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 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.*”, NAM has also 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 for resolution of the Outstanding Issues" (INFCIRC/711), NAM still looks forward to the safeguards implementation in Iran being conducted in a routine manner*”. However, the Director General in preparing his report has unfortunately not heeded these important statements which reflect the concerns of a large number of the United Nations and the Agency Member States.

7- The Agency should strictly observe its obligations under Article VII.F of the Agency’s Statute and Article 5 of the Safeguards Agreement between the I.R. of Iran and the Agency, both emphasizing on the confidentiality requirements. As was emphasized in previous Iran's Explanatory Notes, the information collected during inspections of nuclear facilities should be considered as confidential information. However, once again, the report in contradiction to the Agency’s statutory mandate and the Safeguards Agreement (INFCIRC/214) contains a lot of confidential technical details that should have not been published. The DG by including detailed information in its reports such as the number of installed and/or operating centrifuges, amount of nuclear material fed and/or produced, etc., has demonstrated his inability to fulfill his commitments on confidentiality measures. It comes as no surprise that almost at the same time the DG report is released, some websites such as ISIS, publish the report contained with sort of fictitious calculations as its evaluation on the detailed information of the report. This fact leaves no doubt that ISIS has real time access to the safeguards confidential information. Thanks to DG generosity in disclosing confidential information to unauthorized circles before even the less privileged Member States have a chance to examine such reports. We strongly object to this unprofessional and wrong pattern of non-compliance with the legal framework of the IAEA. This continuous violation must be stopped.

8- Regrettably, the main portion of DG report is based on certain information related to missile issue, not involving nuclear material activities. The Agency is not entitled to step beyond its mandate to the bilateral Safeguards Agreement, or interfere with Iran’s national security concerns on the pretext of Iran’s nuclear program. Moreover, DG has relied on some forged, fabricated and false information provided by western intelligence services, assessed as “*overall credible*” information, without any authenticity verification, while independent observers have revealed part of the false information used by the Agency and criticized ironically its immature assessment on allegations against Iran.

9- In the light of the above, the claims and baseless allegations against Islamic Republic of Iran’s peaceful nuclear activities as contained in the DG report (GOV/2012/37, dated 30 August 2012) are unprofessional, unfair, illegal and politicized.

## **B. Clarification of Allegations**

### **B1. Negotiation on Modality (Structured Approach)**

10- Pursuant to high level political negotiation, a Work Plan (INFCIRC/711) was agreed between Iran and the IAEA on 27 August 2007 for clarification of all outstanding issues. As the result of Iran’s proactive cooperation all outstanding issues (six issues) were resolved by 2008 and reported by the former Director General to the Board of Governors.

11- In spite of the fact that the IAEA did not fulfill its obligations including delivery of the documents on “Alleged Studies” to Iran, Iran did submit to the Agency its assessment in a 117-pages document. The Work Plan was therefore concluded but the Agency contrary to the Work Plan has not declared it.

12- Despite this fact the Islamic Republic of Iran, once again, wrote to the IAEA Director General on 30 October 2011 that “*the DDG for Safeguards, Mr. Nackaerts, to be delegated to Iran for discussion aiming at resolution of matters and to put an end to the seemingly endless process*”.<sup>1</sup>

13- The Director General, through a communication made on 2 November 2011 rejected this historical invitation and postponed it. However, the Islamic Republic of Iran reemphasized on its offer by communication on 3 November 2011 that “*I hereby once again request you to send an Agency’s team headed by Mr. Nackaerts to Iran.*”<sup>2</sup> Regrettably, the DG did not pay attention to this and also refrained from truly reflecting these facts in his November report (GOV/2011/65) to the Board of Governors.

### **Observations on the Meetings after November 2011**

14- DG in his report to the Board of Governors (GOV/2012/9 dated 24 February 2012) refers to two rounds of talks on 29-31 January and 20-21 February 2012. However, the occurred events are not completely and factually reflected in the report and some are partially or incorrectly being reflected. The report without stating the agreed arrangements with the Agency delegation and with no reference to Iran’s active cooperation, just states harshly that Iran has not provided access to Parchin and that no agreement was made on a modality.

15- Similarly, it should be noted that the two rounds of talks in January and February 2012 pursuant to Iran’s invitation which had taken place before the Board of Governors meeting in November 2011, have not been reflected in the report.

16- Before the initiation of the first meeting, the parties reached to an agreement on the principles governing the talks including respect to the national security, respect to the agreed modality (INFCIRC/711), case by case observation and conclusion of the issues, delivering of the alleged evidence and documents, having full authority of the delegation for negotiation and ..., then the first round of talks began.

### **First Meetings in Tehran, 29-31 January 2012**

17- Iran and the Agency’s team composed of senior officials had intensive discussions on how to deal with the issues and identified main pillars. The Agency and Iran exchanged their drafts of text on structured approach and modality for subsequent elaborations.

18- During the January 2012 talks, the Agency and Iran explained their viewpoints on how to follow the issues and the lines to follow on the modality.

19- In Paragraph 5 of GOV/2012/9, the report states that: “... *it was agreed that an Agency’s team would visit Iran for talks.*” As the Director General has correctly stated, it had been agreed that the Agency’s team would come to Iran for talks following preparation of a modality the activities would begin in accordance with the agreed modality. Thus, any request prior to the agreement on the modality has been made contrary to the arrangements.

### **Intercessional Meetings in Vienna, 15-17 February 2012**

20- In order to facilitate the 2<sup>nd</sup> round of talks in Tehran, three meetings were held in Vienna where the following understandings were reached:

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<sup>1</sup>INFCIRC/829

<sup>2</sup>INFCIRC/829

- The Agency stated that all remaining issues are those exclusively reported in the GOV/2011/65, which will be given in priority list of Topics/Clusters in the 2<sup>nd</sup> draft of modality.
- The process would be Topic by Topic approach and the interrelated technical issues would be categorized in one Topic in order to facilitate intensive, effective and conclusive approach.
- In this context, the items such as detonator development, high explosive initiation, and hydrodynamic experiment that were originally proposed by the Agency as Topic-2, was agreed to be included in the first Topic. Therefore, the Topic-1 consists of 5 issues.
- It was agreed that the Agency will deliver documents which indicate if the alleged activities on each Topic are conducted by Iran.
- It was agreed that the text of the modality be concluded and agreed upon firstly and then based on this agreed modality the Topic by Topic approach be implemented.
- It was agreed that the Agency will prepare its questions on the Topic-1 (5 issues) and provide them to Iran in the subsequent meeting (20-21 February), in order to pave the way for effective implementation.
- Iran agreed to the Agency's request to provide the initial declaration on all allegations which existed about Iran's nuclear Program that the Director General reflected in the Annex of his report (GOV/2011/65) in the subsequent meeting (20-21 February).
- It was also agreed that although the Agency provides its questions on Topic-1, but the request for access to Parchin be postponed after the BOG's March meeting, in accordance with the Topic by Topic approach.
- Iran offered and declared its readiness in line with the demonstration of good faith based on proactive cooperation, to take practical steps including granting access on two issues in Topic-1, namely detonator development and high explosive initiation.

## **Second Meetings in Tehran, 20-21 February 2012**

21- Based on the proposed text of modality by the Agency, following steps were sequentially foreseen:

- a) Agreement on the modality.
- b) Iran provides its initial declaration on all allegations which exist about Iran's nuclear Program that the Director General reflected in the Annex of his report (GOV/2011/65).
- c) The Agency provides all questions on Topic-1 (5 issues) and delivers documents that indicate that alleged activities are conducted by Iran.
- d) Iran will answer to the Agency's questions.
- e) The Agency will review and analyze the answers and will discuss with Iran about all actions to be taken on Topic-1 (5 issues).
- f) The Agency will request implementation of action(s) on one issue of Topic-1, in accordance with Topic by Topic approach.

22- In spite of the agreement in Vienna (15-17 February 2012) and even contrary to the Agency's text as mentioned above, the Agency's team requested, based on DG instruction, access to Parchin.

23- It should be recalled that Parchin has been visited by the Agency twice in 2005 where the former DDG announced then that the issue was concluded and will be part of history and the former DG reported to the Board of Governors (GOV/2005/67, GOV/2006/15). Considering the fact that it is a military site, granting access is a time-consuming process and cannot be permitted repeatedly. In the light of this background and principle, the Agency was requested to combine all related issues such as

hydrodynamic experiments, and then once more, access would be granted. The process could be obviously started when the agreement on the modality is reached.

24- In spite of the fact that the modality was not concluded, but Iran in line with the demonstration of good faith based on proactive cooperation, decided to submit its initial declaration on all allegations existing about Iran's nuclear Program that the Director General reflected in the Annex of his report (GOV/2011/65). This was one of the actions envisaged in the draft modality provided by the Agency.

25- The Agency was not prepared to deliver all questions on the Topic-1 (5 interrelated issues) but it only did on Parchin and foreign expert. The Agency neither did provide any document nor any clarification on these questions.

26- Iran reoffered its readiness to take practical steps including granting access on two issues in Topic-1, namely detonator development and high explosive initiation to resolve the two alleged issues, but the Agency team did not accept the offer due to instruction of the DG to return back to Vienna.

27- Both sides however had intensive discussion on modality for the work on allegations, agreements were reached on many parts of modality, but due to the planned team return to Vienna and time constraint, the text was not concluded.

28- The Islamic Republic of Iran has already made its decision to work with the Agency in a professional manner to resolve outstanding allegations in order to prove to Member States and the world public that its nuclear activities are exclusively for peaceful purposes.

### **Third Meetings in Vienna, 14-15 May 2012**

29- In these meetings, the process of finalizing and concluding a new modality (Structured Approach) was ongoing. The aim was to find and establish accepted ways/procedures to look into the alleged matters raised by certain western country and followed by the Agency, in order to put an end to this seemingly endless process.

30- The result of these meetings was a text with some phrases in bracket that had to be further discussed and agreed upon. The Director General paid visit to Tehran and had meeting with H.E. Dr. Saeed Jalili, the Secretary of the Supreme National Security Council of I.R. of Iran, on 21 May 2012. H.E. Dr. Jalili cleared that reaching agreement with the Agency is easily accessible. However, from implementing point of view, the agreement requires cooperation of all parties involved, in order to avoid the fate of previous modality (INFCIRC/711) where the secretariat was not able to fulfill its obligations<sup>3</sup>.

31- Despite the initial agreement as described above, later the DG did not agree on delivering alleged documents that are being claimed to belong to Iran, and also did not agree on closing any of individual alleged Topics after its discussion.

32- In this regard, the DG states in paragraph 54 of his report GOV/2012/37 that "*The Agency reiterates its request for access to that location [Parchin] without further delay.*" While, it should be noted that the I.R. of Iran has expressed its readiness to resolve all ambiguities related to Iran's nuclear program, but adversely the Agency has mortgaged all other main issues by just focusing to have access to a sensitive military base (Parchin) which is irrelevant to the Agency's mandate, blocking the progress on the remaining ambiguities which do not require any access to any center of national security concern. We should first agree on the modality and then implement the agreed modality.

33- The I.R. of Iran urges the IAEA, pursuant to an agreement on the Modality (Structured Approach), to primarily proceed to resolve the remaining alleged issues to make progress onward. For instance, the case of high explosive test in Marivan which was a very harsh allegation against Iran shall be resolved, for which Iran proposed a visit, but was rejected by the Agency. So it is not clear why the IAEA refused to visit such an important alleged point.

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<sup>3</sup> See paragraph 11 above and INFCIRCS/: 786, 804, 805, 810, 817, 823, 827, 833, 837 and 847.

### **Forth Meetings in Vienna, 8 June 2012**

34- In these meetings, discussion on the process of finalizing and concluding a Structured Approach was continued from the last meetings. Finding and establishing an accepted procedures to look into the alleged matters that are raised by certain western country and followed by the Agency in order to put an end to this seemingly endless process, was the core of discussion. Area of maintaining confidentiality and delivering alleged documents were discussed. Yet the Agency is not in position to deliver the so called alleged documents in order to enable Iran to prepare respond to them.

35- Iran provided the Agency with its general view on the content of Structured Approach. These major general elements were discussed and views were exchanged.

### **Fifth Meetings in Vienna, 24 August 2012**

36- In these meetings drafts of Structured Approach from both sides were exchanged. Unfortunately, the draft of the Agency did not considered those major general elements especially delivery of the alleged documents. The Agency, by instruction of the DG, is constantly resists NOT to deliver documents that claim belong to Iran. This is really a dilemma. It is naturally very illogical that an alleged claim raises BUT no support on that claim is provided?!!!!

### **Summary on Negotiation on Modality (Structured Approach)**

37- Besides, the Islamic Republic of Iran showed its flexibility to achieve an agreed modality (structured approach) by extraordinary efforts beyond its obligation that could put an end to seemingly endless process of the alleged PMD matter; BUT, this is obvious that the DG does not intend to do so. DG's instructions and interferences to the negotiators demonstrated that they were not authorized to agree on an approach that brings an end to the circle. His intension is understood that to keep open the issue in order to pave the way for our enemies while this is another clear evidence of DG's partiality. The pattern of practice being shown was that in each meeting the DG raised a request that should be complied with, after concluding an agreed modality. Therefore, it is the DG's treat that makes hindrance in the process.

## **B2. Alleged Possible Military Dimensions**

38- Detailed history of the agreed Work Plan (INFCIRC/711) between the Agency and the Islamic Republic of Iran, including "*Alleged Studies*" on Possible Military Dimensions issue, has been explained in the previous Iran's explanatory notes to the DG reports with the latest one being INFCIRC/847.

39- On the basis of the Work Plan, there were only six outstanding issues that all have been resolved as the former Director General reported (GOV/2007/58 and GOV/2008/4). Based on the Work Plan, while the so called "*Alleged Studies*" was never considered as an outstanding issue, but it was planned that "*The Agency will however provide Iran with access to the documentation it has*", and then "*upon receiving all related documents, Iran will review and inform the Agency of its assessment*". While the required "*documentation*" has never been delivered to Iran by the Agency, the Islamic Republic of Iran carefully examined all the informal, nonobjective, and unauthentic material which has been shown, and informed the Agency of "*its assessment*". In this context, the following important points should be recalled:

- i. The Agency has not delivered to Iran any original and authenticated document which contains documentary evidence related to Iran with regard to the Alleged Studies.
- ii. The Government of the United States has not handed over original documents to the Agency since it does not in fact have any authenticated document and whatever it claims to have in possession, are forged documents. The Agency didn't deliver any original document to Iran



and none of the documents and material shown to Iran has authenticity and all proved to be fabricated, baseless allegations and false attributions to Iran.

iii. How the Agency can support or pursue allegations against a country without provision of original documents with authenticity and ask the country concerned to prove its innocence or ask it to provide substantial explanations? It is one of the actual concerns foreseen by some States during the BOG discussions which led to “*general endorsement*” (as quoted by chairman of GOV/OR meeting 872 in 1995) of measures, so called “Part 1”, aimed to strengthen Safeguards. With regard to Part 1 measures, it had expressed that:

- “*improving the efficiency of the safeguards system should be pursued on the basis of a presumption of States' innocence and not a presumption that each State was a potential wrongdoer*”. In this regard, the Agency has initiated unprecedented and illegal demands on Iran as baseless accusation.
- “*recourse to data from intelligence sources should be explicitly excluded*”, nonetheless the Secretariat explicitly on several occasions, has declared that the information received from the intelligence sources while it has been proven that they are fabricated and false.

iv. The Agency has explicitly expressed in a written document dated 13 May 2008 that: “... *no document establishing the administrative interconnections between ‘Green Salt’ and the other remaining subjects on Alleged Studies, namely ‘Highly Explosive Testing’ and ‘Re-entry Vehicle’, have been delivered or presented to Iran by the Agency*”. This written document proves that in fact the so called documents related to the Alleged Studies lack any internal consistency and coherence in this regard. It is regrettable that this explicit fact expressed by the Agency has never been reflected in the DG reports.

40- Taking into account the above-mentioned facts, and that no original document exists on the Alleged Studies, and there is no valid documentary evidence purporting to show any linkage between such fabricated allegations and Iran’s activities, and that the DG reported in paragraph 28 of GOV/2008/15 “*the Agency has not detected the actual use of nuclear material in connection with the alleged studies*” (because they do not exist in reality); also bearing in mind the fact that Iran has fulfilled its obligation to provide information and its assessment to the Agency, and the fact that the former DG has already indicated in his reports in June, September and November 2008 that the Agency has no information on the actual design or manufacture by Iran of nuclear material components for a nuclear weapon or of certain other key components, such as initiators, or on related nuclear physics studies; therefore this subject must be closed.

41- If it was intended to raise other issues in addition to the Alleged Studies (Green Salt, Re-entry Missile, High Explosive Test) such as possible military dimension, since all outstanding issues had been incorporated in the exhausted list prepared by the IAEA during the negotiations, then it should have been raised by the Agency in the course of the negotiations on the Work Plan. One can clearly notice that no issue and item entitled “*possible military dimension*” exists in the Work Plan (INFCIRC/711). It is recalled that the first paragraph of chapter IV of the Work Plan reads as: “*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.

42- According to paragraph 19 of the DG report in GOV/2009/55, the Agency expressed that the authenticity of the documentation that forms the basis of the Alleged Studies cannot be confirmed. This proved the assessment of the Islamic Republic of Iran that the Alleged Studies are politically-motivated and baseless allegations.

43- The first paragraph of chapter IV of the Work Plan reads as: “*These modalities cover all remaining issues and the Agency confirmed that there are no other remaining issues and ambiguities regarding Iran's past nuclear program and activities.*” It is obvious that all I.R. of Iran's nuclear activities in the past and present have been for peaceful purposes and will be continuously subject to

full-scope comprehensive safeguards. Therefore, any information contrary to this is a forged, fabricated, false and baseless allegation.

44- Paragraph 5 of Chapter IV of the Work Plan reads as: “*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.*” And also 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.

45- The Islamic Republic of Iran has fully implemented the tasks agreed upon in the Work Plan; in doing so, Iran has taken voluntary steps beyond its legal obligation under its Comprehensive Safeguards Agreement.

46- Considering the above, and the former DG report in GOV/2009/55, which confirms that Iran has completed its obligation on the Alleged Studies by informing the Agency of its assessment, and also very positive developments and the joint constructive cooperation between Iran and the Agency, the Agency is hereby highly expected to announce that the Safeguards implementation in Iran shall be conducted in a routine manner in accordance with the last paragraph of the Work Plan (INFCIRC/711).

47- Paragraph 54 of the former DG report in GOV/2008/4 regarding the Possible Military Dimension reads as: “*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 documents of the Alleged Studies lack authenticity, that no nuclear material was used and that no key components were made as declared by the former Director General, are also missing in this report.

48- 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 both spirit and letter of the negotiated and agreed Work Plan, which both parties undertook to comply with. 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 Policymaking Organs of the Agency with Iran and eventually acknowledged by the Board of Governors. Therefore, it is highly expected that the Agency respect its agreement with Member States; otherwise, the mutual trust and confidence which is essential for the sustainable cooperation would be jeopardized.

49- According to the Work Plan, the Agency was required to submit all documentation to Iran, and then Iran was only expected to “*inform the Agency of its assessment*”. No visit, meeting, personal interview, and swipe sampling, were foreseen for addressing this matter. The Government of the United States has not handed over any original document to the Agency, because in fact it has no authenticated documents as the former DG declared. Meanwhile, by refusing to submit all documentation to Iran, concerning the so-called Alleged Studies, the IAEA did not fulfill its obligation under part III of INFCIRC/711. Despite the above, and based on good faith and in a spirit of cooperation, Iran went beyond the above understanding by agreeing to hold discussions with the IAEA, providing necessary supporting documents and informing the Agency of its assessment in a 117-page document which all proved that the allegations have been all fabricated and forged. This is, in fact, reviewing the substance as well as the forms.

50- Followings are related reports from the Agency's team visiting Iran's military sites including Parchin which clearly shows that Iran has thoroughly cooperated and that the issue has been completed which the DG has intentionally opened again!

- GOV/2005/67, dated 2 September 2005, paragraph 41, “*As described by the DDG-SG in his 1 March 2005 statement to the Board, in January 2005, Iran agreed, as a transparency measure, to permit the Agency to visit a site located at **Parchin** in order*

to provide assurance regarding the absence of undeclared nuclear material and activities at that site. Out of the **four areas identified by the Agency** to be of potential interest, the Agency was permitted to select any one area. The Agency was requested to minimize the number of buildings to be visited in that area, and **selected five buildings**. The Agency was given **free access to those buildings and their surroundings** and was **allowed to take environmental samples**, the results of which **did not indicate the presence of nuclear material**, nor did the Agency see **any relevant dual use equipment or materials in the locations** visited.”

- GOV/2005/67, dated 2 September 2005, paragraph 49, “Iran has permitted the Agency, as a measure of transparency, to visit defense related sites at Kolehdoz, Lavisan and Parchin. The Agency found no nuclear related activities at Kolehdoz.”
- GOV/2005/87, dated 18 November 2005, paragraph 16, “On 1 November 2005, following a meeting held on 30 October 2005 between Mr. Larijani, the Secretary of the Supreme National Security Council of Iran, and the Deputy Director General for Safeguards (DDG-SG), the Agency was **given access to the buildings requested within the area of interest at Parchin**(see para. 41 of GOV/2005/67), in the course of which environmental samples were taken. **The Agency did not observe any unusual activities in the buildings visited**. Its final assessment is pending the results of the environmental sample analysis.”
- GOV/2005/87, dated 18 November 2005, paragraph 21, “The Agency welcomes the access provided to the Parchin site.”
- GOV/2006/15 dated 27 February 2006 paragraph 32, “On 1 November 2005, the Agency was **given access to a military site at Parchin** where several environmental samples were taken. **The Agency did not observe any unusual activities in the buildings visited, and the results of the analysis of environmental samples did not indicate the presence of nuclear material at those locations.**”
- GOV/2006/15 dated 27 February 2006 paragraph 52: *In this regard, Iran has permitted the Agency to visit defense related sites at Kolehdoz, Lavisan and Parchin. The Agency did not observe any unusual activities in the buildings visited at Kolehdoz and Parchin, and the results of environmental sampling did not indicate the presence of nuclear material at those locations.*

51- Referring to paragraph 5 of the DG report (GOV/2012/37), the Agency expects from the I.R. of Iran to grant access to all relevant information, documents, sites, material and personnel in Iran. Reciprocally, Iran also has legitimate right and expectation to have access to all alleged documents and information regarding the so called possible military dimensions in Iran’s nuclear program in order to prepare response.

52- It should be recalled that based on the Modalities agreed between Iran and the Agency in 2007 (INFCIRC/711)-which resulted in conclusion and closure of all remaining outstanding issues(the six outstanding issues)that are reported in the DG’s reports GOV/2007/58 and GOV/2008/4- on the issue of so called “*Alleged Studies*”, the Agency was to provide “*all related documents to Iran*” and it was expected so that, “*Iran will review and inform the Agency of its assessment*”.

53- Although the Agency was not able to provide any of those alleged documents to Iran, now the Agency has claimed to possess documents and information that are overall credible, and without providing them to Iran and conducting verification and authentication, has somehow made its own wrong assessment!

54- Referring to paragraph 8 of the DG report (GOV/2012/37), with respect to new positive developments and the DG visit to Iran, Iran once again expresses its readiness to reach an agreement on modalities for clarification of alleged unresolved issues. Therefore, providing access shall be conducted in accordance with Iran's obligations and based on a modality agreed by both sides. The

I.R. of Iran is by no way obliged to grant any sort of access to the Agency beyond the requirements of its Safeguards Agreement, unless a modality is agreed upon.

55- Referring to paragraphs 5 of the report GOV/2012/37, while the Agency states in its proposed “structured approach” that the boundary of allegations extends up to the annex of DG report on 8 November 2011(GOV/2011/65), but in previous and paragraph 39 of this report still claims that “*Since November 2011, the Agency has obtained more information which further corroborates the analysis contained in the aforementioned Annex*”. This trend makes a serious question on the conclusion of “structured approach”.

56- As an example, when the I.R. of Iran requested information from the Agency concerning the documents related to the missile nuclear payload, the Agency merely presented the same materials on the Alleged Studies again in a PowerPoint presentation during January 2012 meeting. Indeed, according to the Agency claim, the Alleged Studies were done in 2004, that is 8 years ago. More noteworthy is that the IAEA still refrains from delivering the Alleged Studies documents to Iran, and claims that the country possessing the documents is not cooperating in this regard. The significant point is that such non-cooperation by provider of alleged documents was mentioned in the former DG report in GOV/2009/35 - Paragraph 23 which reads: “*the Director General urges Member States which have provided documentation to the Agency to work out new modalities with the Agency so that it could share further information with Iran since the Agency’s inability to share additional information with Iran, and to provide copies or, if possible, originals, is making it difficult for the Agency to progress further in its verification.*” However, this non-cooperation is not reflected at all in the recent reports of the DG, though it is verbally asserted.

57- The DG in paragraph 39 of the report GOV/2012/37 states: “*Since November 2011, the Agency has obtained more information which further corroborates the analysis contained in the aforementioned Annex*”. This statement is completely false, because whatever the Agency presented on the power point to Iran on 30<sup>th</sup> January 2012 was exactly the same information related to Alleged Studies raised by the United States in 2004, and there was not any new piece of information. However, the Agency had highlighted some slides with the word “NEW” which in fact were not new, and indeed were the same fabricated and forged 2004 information delivered again recently and gradually to the IAEA by U.S and the Agency has not provided Iran with that information, as complained in previous explanatory Note by Iran.

58- Referring to paragraph 39 of the DG report (GOV/2012/37), regarding information received which was “*assessed by the Agency to be, overall, credible*”, if the information received and verified by the Agency is credible, as it is claimed; firstly by what reason the Agency refuses to deliver the supporting documents to Iran. Secondly, the Agency has made its prejudgment on the credibility and authenticity of its received documents and information, without objective and independent verification and without providing the least opportunity for Iran to have documents that are subject to verification measures. This method of work definitely jeopardizes the professionalism and credibility of the Agency.

59- In paragraph 39 of the report (GOV/2012/37) DG also states: “*that some continued after 2003; and that some may still be ongoing*” in relation to possible military dimensions in Iran’s nuclear program. It is worth to recall that the former DG reported in GOV/2005/67, Paragraph 41 in September 2005 that “*The Agency was given free access to those buildings [located at Parchin] and their surroundings and was allowed to take environmental samples, the results of which did not indicate the presence of nuclear material, nor did the Agency see any relevant dual use equipment or materials in the locations visited.*” as well as in paragraph 52 of GOV/2006/15 in February 2006 report which reads: “*Iran has permitted the Agency to visit defense related sites at Koleh Douz, Lavisan and Parchin. The Agency did not observe any unusual activities in the buildings visited at Koleh Douz and Parchin, and the results of environmental sampling did not indicate the presence of nuclear material at those locations.*” While such factual verification has been already taken place and reported, setting forth allegations ruins the credibility of the Agency verification system. Moreover, frequently marked with “*may*” is not only displays non-professional and doubtful assessments, but also

inconsistent and far from any expected conclusive results stemming from information asserted to be “overall credible”.

60- Concerning the phrase “... *and from information provided by Iran itself, ...*” stated in paragraph 39 of the report, it has to be recalled that Iran has never confirmed the unfounded allegations posed by the Agency, and has always called on the Agency to present the relevant supporting documents, if it has any. It should be noted that the only information avenue of the Agency originates from the sources hostile to the I.R. of Iran i.e. United States of America, terrorist groups supported by USA, and the Zionist regime of Israel.

61- Reference to paragraph 44 of the DG report (GOV/2012/37), granting immediate access to a particular location inside Parchin site, requires drawing up a legal framework for cooperation (modality) as well as not providing necessary legal guarantees.

62- The clause in paragraph 42 which reads “*Satellite imagery available to the Agency for the period from February 2005 to January 2012 shows virtually no activity at or near the building housing the containment vessel*”, is in contradiction with the clause stated in paragraph 39 of the report which reads: “*that some continued after 2003*”. Satellite imagery and media information cannot constitute a foundation for judgment. The I.R. of Iran can easily prove that such information is not correct. For instance, when some newspapers were making fuss about the soil displacement in Parchin by trucks, the DG promptly confirmed their claim. Whereas, those trucks transportations were due to construction of Parchin new road (the previous road was submerged as a result of dam construction across the river). Such hasty stance by the DG has discredited the Agency. It is worth mentioning that according to the document adopted and circulated in 1995 titled as “Part one” of strengthening the safeguards, the Agency should primarily assume all Member States to be innocent, while such prejudgment is in contradiction with the spirit of the said decision.

63- Referring to paragraph 40 of the DG report (GOV/2012/37), Iran will submit its evidences for repealing the Agency allegations only after receiving the relevant documents. The Agency has only submitted a single document to Iran known as “document 18” (GOV/2008/15 Annex A2, Document 3) on which Iran has asked simple questions from the Agency in its initial declaration in this respect. The first question is why the Agency claimed in 2008 that this document “*belonged to Iran*”, but then claimed in November 2011 report that Iran “*had access to it*”? The Agency has not yet given any response about its contradictory statements and the sole answer of the Agency is that, a country has claimed so. The Agency has presented its conclusions in form of a colored diagram attached to the November 2011 report, merely based on that document which has no validity and is just manipulated by the provider country.

## **C. Implementation of Iran’s Safeguards Agreement**

### **C1. General**

64- Article 2 of the Iran’s safeguards agreement (INFCIRC/214) requires that safeguards to be implemented “*in accordance with the terms of this Agreement*”. Every DG report to the Board of Governors including GOV/2012/37 shows and confirms that the Safeguards implementation in the I.R. of Iran is in accordance with its Safeguards Agreement without any failure, inconsistency or ambiguity, as reflected in different parts of the report, such as the followings:

- a. Paragraph 9 reads: “*Iran has declared to the Agency 16 nuclear facilities and nine locations outside facilities*” and “*... the Agency continues to verify the non-diversion of declared material at these facilities and LOFs.*”
- b. All Iran’s nuclear facilities are under Agency's Safeguards (paragraph 9), specifically enrichment facilities (paragraphs 10-26), heavy water research reactor (paragraphs 29-31), Tehran Research Reactor (TRR) (paragraphs 28&50), Radioisotope Production Facility (paragraph 28), Uranium Conversion Facility (UCF) and Fuel Manufacturing Plant (paragraphs 32-37), Bushehr Nuclear Power Plant (paragraph 51), Jabr Ibn Hayan Multipurpose Research Laboratory (JHL) (Paragraph 49).

- c. The Agency has been able to take samples from nuclear facilities to verify Iran's declarations, specifically at Natanz Fuel Enrichment Plant as read in paragraph 16: "*Based on the results of the analysis of environmental samples taken at FEP since February 2007 and other verification activities, the Agency has concluded that the facility has operated as declared by Iran in the relevant Design Information Questionnaire (DIQ)*"; and at Natanz Pilot Fuel Enrichment Plant as read in paragraph 22: "*Based on the results of the analysis of the environmental samples taken at PFEP and other verification activities, the Agency has concluded that the facility has operated as declared by Iran in the relevant DIQ*".

## **C2. Enrichment**

65- I.R. of Iran's all enrichment activities have peaceful purposes which according to paragraph 10 of the report: "*All of these activities are under Agency safeguards, and all of the nuclear material, installed cascades and the feed and withdrawal stations at those facilities are subject to Agency containment and surveillance*". Moreover, based on the analysis of environmental samples taken at Natanz Fuel Enrichment Plant (FEP) and Pilot Fuel Enrichment Plant (PFEP), according to paragraphs 16 and 22 respectively, for each facility: "*the Agency has concluded that the facility has operated as declared by Iran in the relevant DIQ*".

66- With regard to the Fordow Fuel Enrichment Plant (FFEP), despite Iran's caution to Agency not to report immature results, the Agency had raised concern, in previous report, over "*presence of particles with enrichment levels of up to 27% U-235*" (paragraph 28 of the report GOV/2012/23 dated 25 May 2012). This report confirms Iran's technical explanation on presence of such particles, as reflected in paragraph 26: "*Iran's explanation is not inconsistent with the further assessment made by the Agency since the previous report.*" This is another example of harshening practice of the Agency to report detailed, unnecessary and confidential information which must not be revealed, besides sabotaging professionalism, as well as, making fuss.

## **C3. Design Information (Modified Code 3.1 of Subsidiary Arrangements)**

67- Iran was voluntarily implementing the modified code 3.1 of the Subsidiary Arrangements since 2003, but suspended its implementation pursuant to the illegal UNSC resolutions against Iran's peaceful nuclear activities. However, Iran is currently implementing code 3.1 of its Subsidiary Arrangements and therefore the statement in paragraph 45 of the report that "*Iran is not implementing the provisions of the modified Code 3.1 of the Subsidiary Arrangements General Part to its Safeguards Agreement...*" is misinforming and false. Iran is not obliged to implement modified code 3.1 and Iran has adhered to its obligations to provide design information in proper timing.

68- In respect of IR-40 reactor at Arak, Iran voluntarily provided access to the facility for the Agency to carry out Design Information Verifications (paragraph 30).

69- With regard to paragraphs 45 and 55 of the report (GOV/2012/37) that respectively reads: "*Iran is not implementing the provisions of the modified Code 3.1 of the Subsidiary Arrangements General Part to Iran's Safeguards Agreement*" and "*The Director General continues to urge Iran, as required in the binding resolutions of the Board of Governors and mandatory Security Council resolutions, to take steps towards the full implementation of its Safeguards Agreement and its other obligations, and to urge Iran to engage with the Agency to achieve concrete results on all outstanding substantive issues*"; Since Iran is not obliged to implement modified code 3.1, thus statement in paragraph 55 of the report GOV/2012/37 has no legal base, and Iran has adhered to its obligations to provide design information in proper timing.

70- With regard to paragraph 47 of the report (GOV/2012/37) that asks Iran to: "*confirm or provide further information regarding its stated intention to construct new nuclear facilities ...*" 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.

#### **C4. Heavy Water Related Projects**

71- The Agency's requests stipulated in paragraph 31 of the report GOV/2012/37, regarding access to Heavy Water Production Plant (HWPP), is not a legal request under the safeguards agreement but fully seats in the provisions of the Additional Protocol, and also the request of taking samples of heavy water stored at the Uranium Conversion Facility (UCF) is even beyond the Additional Protocol requirements.

72- Moreover, requesting any information or access 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). The Agency's requests 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!

#### **D. Additional Protocol**

73- The report has inserted, as a chapeau for paragraph 48, the subtitle of "Additional Protocol" assuming Iran should implement the Additional Protocol. Based on this wrong assumption, Director General is requesting illegal measures and misleads the BOG by asserting false statements in his reports by announcing (paragraph 52) that "*Iran is not providing the necessary cooperation, including by not implementing its Additional Protocol...*".

74- The misrepresentation of Iran's commitments in respect to the Additional Protocol or extracting legally-binding obligations from the illegal resolutions of the UNSC, apart from unauthorized interference in the application of Iran's Safeguards Agreement, are all unrealistic and non-binding to the Islamic Republic of Iran; and any action requested by the Board of Governors in this respect would be unconstitutional, politically-motivated and illegal. It should be emphasized that Iran has already fulfilled its safeguards obligations completely and continues to do so.

75- The Additional Protocol (AP) is not a legally binding instrument and is voluntary in nature. Hence, many Member States (61 as reported by SIR 2011) including Iran are not implementing this voluntary protocol. However, it should be reminded that Iran implemented AP for more than 2.5 years voluntarily as a confidence-building measure.

76- In spite of Iran's cooperation to implement AP voluntarily for more than 2.5 years (2003-2006) as a confidence-building measure, regrettably in the same period, seven illegal and politically-motivated resolutions were adopted against Iran by the Board of Governors (BOG) under the pressure of few western states, which clearly indicates that the case of the Islamic Republic of Iran is neither technical nor legal, but just politicized.

77- As the sovereignty right, Iran has not yet ratified the Additional Protocol and therefore is not obliged to implement it. The statement reflected in paragraph 52 of the report to the effect that "*Iran is not providing necessary cooperation, including by not implementing its Additional Protocol*" has no legal basis and is beyond the DG's statutory mandate. The Agency is obliged to verify the compliance of Member States on the basis of the Statute of the IAEA and the relevant Safeguards Agreements.

78- Basically, it is not acceptable that a voluntary instrument to be turned into a legal obligation without consent of a sovereign State. This basic concept regarding Additional Protocol has been affirmed in the 2010 NPT Review Conference (NPT/CONF.2010/50 (Vol. I)) as well as in the Agency General Conference (GC (56)/RES/13) which the latter reads: "*it is the sovereign decision of any State to conclude an additional protocol*".

79- The footnote 49 of the report reads that "*the BOG has confirmed on numerous occasions, since as early as 1992, that paragraph 2 of INFCIRC/153 (Corr.), which corresponds to Article 2 of Iran's Safeguards Agreement, authorizes and requires the Agency to seek to verify both the non-*

*diversion of nuclear material from declared activities (i.e. correctness) and the absence of undeclared nuclear activities in the State (i.e. completeness) (see, for example, GOV/OR.864, para. 49)*". In this regard the following points should be noted:

- a. Although the footnote states that "*Article 2 of Iran's Safeguards Agreement, authorizes and requires the Agency to seek to verify both the non-diversion of nuclear material from declared activities (i.e. correctness) and the absence of undeclared nuclear activities in the State (i.e. completeness)*", but it fails to transcribe Article 2 of Iran's Safeguards Agreement completely as it clearly reiterates on Agency's "*right and the obligation to ensure that safeguards will be applied, in accordance with the terms of this Agreement, on all source or special fissionable material*"! Therefore, requiring Iran to implement verification measures outside the purview of Iran's Safeguards Agreement, such as implementing Additional Protocol, is beyond the Agency's rights and obligations, illegal and non-binding.
- b. The BOG has never authorized or required the Agency to seek to verify both the non-diversion of nuclear material from declared activities (i.e. correctness) and the absence of undeclared nuclear activities in a Member State. The records of GOV/OR.864 clearly show that this was a personal view and only a sum-up made by Chairman at that BOG meeting. He reads: "*the Board endorses the general direction of Programme 93+2*", followed by reservations expressed by some Board Members, for example: "*acceptance of the recommendations made in document GOV/2784 would not imply endorsement of any of the specific measures described in that document or of the legal interpretations advanced by the Secretariat*". The BOG did not confirm Chairman's view asserted in the statement. So this neither means a "*unanimous interpretation*" nor would it create any "*unilateral obligation*". If the unilateral interpretation asserted in footnote 49 was true, there was no need to codify the AP and therefore, the Safeguards Agreements would have been sufficient concerning correctness and completeness.

80- Basically, any unilateral interpretation of a bilateral agreement, including Safeguards Agreements, which may affect its application, would not be binding, before its approval by both parties.

81- The Islamic Republic of Iran has fully cooperated with the Agency in implementation of safeguards application on its nuclear material and facilities. Therefore, a statement such as "*... Iran is not providing the necessary cooperation, including by not implementing its Additional Protocol, the Agency is unable 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.

82- The fact is that all declared nuclear material in Iran is accounted for and has not been diverted to military purposes, and remained in peaceful activities under the Agency's full-scope surveillance. Mixing the notions of "*declared nuclear material*" and "*all nuclear material*" in the context of the CSA and Additional Protocol, respectively, in a non-professional manner is not legally justified, which misleads the public at large, and is contrary to the expectation of the Non-Aligned Movement which in its several statements addressed 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.*" Thus the derived conclusion on aforementioned notion is absolutely wrong and must be corrected accordingly.

83- Interestingly, the Agency not only unilaterally interprets the Safeguards Agreement, but also in paragraph 52 claims to have right and mandate of implementing Additional Protocol by asserting "*Agency is unable to provide credible assurance about the absence of undeclared nuclear material and activities*", because "*Iran is not providing the necessary cooperation, including by not implementing its Additional Protocol*". But the Agency is indeed required to explain its extraordinary and discriminatory focus on implementation of Additional Protocol in Iran.

84- It is worth mentioning that the Safeguards Implementation Report for 2011 reads: "*Safeguards activities were implemented for 61 States [including I. R. of Iran] with comprehensive safeguards agreements in force, but without additional protocols in force. For these States, the*



*Secretariat found no indication of the diversion of declared nuclear material from peaceful nuclear activities. On this basis, the Secretariat concluded that, for these States, declared nuclear material remained in peaceful activities.”*

85- The mandate of Director General is stipulated in the Statute of the Agency, so that by no ways and means Director General is a UNSC supervisor and/or evaluator.

86- Any request for implementation of AP is in contradiction with the Agency’s Statute and Iran’s Safeguards Agreement. So these illegal requests should not be repeated in future reports of the Director General.

87- In this regard, Islamic Republic of Iran reserves its rights to claim all damages caused by misinterpretation of the Director General’s views in reporting to the BOG.

## **E. Illegal Resolutions of the IAEA Board of Governors and UNSC regarding Iran peaceful nuclear program**

88- 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 BOG resolutions against Iran are illegal and unjustified. The issue of Iran’s peaceful nuclear program has unlawfully been conveyed to the UNSC and the Council has taken a wrong approach by adopting the politically-motivated, illegal and unjust UNSC resolutions against Iran. Therefore, any request by the Agency stemming from those resolutions is not legitimate and not acceptable.

89- Since the said Security Council Resolutions have not passed through the pertinent legal proceedings and have been issued in contravention of UN Charter, they are by no means legally-binding. Referring Iran's case to the Council, issued in violation of Article XII.C of the IAEA Statute; consequently, the UNSC resolutions also issued in contrast with the Purposes and Principles of the Charter (breach of Article 24 of U.N Charter). Moreover, even if its issuance might be deemed a legal practice in a way, reference cannot be made to Article 41 of chapter VII, and it is not legally-binding either; because international peace and security has not been menaced at all. In fact, the Agency has become more Catholic than the Pope by seeking to implement the provisions of non-legal resolutions, which are portrayed as Iran's legal obligations throughout its reports, as well as frequently mentioning Iran to have refrained from fulfilling of those so-called legal obligations. The Director General of the IAEA had better entrust the task of implementing the UNSC resolutions to the drafter of such resolutions, that is, the possessors of nuclear weapons; rather, he should pursue his own neglected responsibilities incarnated in the Statute related to the peaceful utilization of nuclear energy reiterated in Article 4 of the NPT, that is, the peaceful utilization of nuclear energy and the relevant technology transfer, as well as elimination of double standards and parallel groups. The Director General ought to ponder upon why it has not yet fulfilled the most primary duty of the DG in order to protect confidential information provided by Member States to the IAEA inspectors, or report on political obstacles to materialize nuclear fuel supply upon request of Member States without discrimination. The Director General should think something about it’s piled-over functions and leave out the tasks of others for themselves.

90- 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 program is in full contravention with the organizational, Statutory and Safeguards requirements governing the IAEA practices and procedures. Indeed, the substantive and procedural legal requirements, that are necessary for engaging the Security Council in the issues raised by the Agency, have been totally ignored in this regard. Referring a country’s nuclear issue to the Security Council is only possible under certain conditions as described below:

- a) Determination of non-compliance (diversion) according to paragraph C, Article XII of the IAEA Statute is the essential pre-condition for referring an issue to the Security Council which is entrusted to the IAEA inspectors who should report it to the Board of Governors through the IAEA's Director General. There has never been any reference in the Agency's reports to any "non-compliance" by Iran or any diversion in its peaceful nuclear activities. More importantly, the IAEA Director General has repeatedly stressed that there has been no diversion of the declared nuclear material and activities in the Islamic Republic of Iran. This conclusion has been reiterated in every report of the IAEA Director General.
- b) Furthermore, according to Article 19 of the Safeguards Agreement between Iran and the IAEA, dated 15 May 1974(INFCIRC/214), any referral of the issue by the Agency to the Security Council in accordance with Paragraph C, Article XII of the Statute of the IAEA, could only be possible "*if the Board, upon examination of relevant information reported to it by the Director General, finds that the Agency is not able to verify that there has been no diversion of nuclear material required to be safeguarded under this Agreement, to nuclear weapons or other nuclear explosive devices*". It is worth mentioning in this regard that the IAEA Director General has constantly stated in all his reports that the Agency has been able to verify that the declared nuclear material and activities in Iran have not been diverted towards military purposes, and that they have remained absolutely under peaceful use, and therefore the BOG conveyed Iran's nuclear file to UNSC, not based on Article 19, but based on XII.C which is not justified.
- c) Also the nuclear activities of a country may be reported by the IAEA to the Council in cases where a threat against international peace and security is involved and, consequently, according to Paragraph b (4), Article III of the IAEA's Statute, the Agency would notify the Security Council in this regard. It is noteworthy that contrary to the baseless allegations made by those few States- allegations that have worked as the basis for conveying the Iranian nuclear program to the Security Council- none of the IAEA Director General's reports have ever described Iran's nuclear activities as "*a threat to international peace and security*". Rather, they have expressly declared that such activities are peaceful, and that there is no diversion of nuclear material and activities in Iran.

91- 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).

## **F. Contradiction of the UN Security Council & IAEA Board of Governors Resolutions with the United Nations Charter and the International Law**

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

93- The Security Council, as a UN organ created by Member States, is subject to legal requirements, and is obliged to comply with the same international normative rules that the Member States are bound to. The Council shall observe all international norms, in particular the UN Charter and the peremptory norms of international law, in the process of its decision making and in its taking actions. Needless to say that any measure adopted in contradiction to such rules and principles will be void of any legally binding effects<sup>4</sup>.

94- In accordance with the Article 25 of the Charter, Member States of the United Nations,

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<sup>4</sup>As the International Criminal Tribunal for former Yugoslavia (ICTY) has stated in one of its judgments "in any case, neither the text nor the spirit of the Charter conceives the Security Council as *legibus solutus* (unbound by law)." Likewise, as the International Court of Justice has held in its 1971 advisory opinion, the Member States are required to comply with Security Council decisions only if they are in accordance with the United Nations Charter.

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 the Article 24 of the Charter, the Security Council’s decisions shall be “in accordance with the Purposes and Principles of the United Nations”, which the matter has not been met in respect of UNSC’s resolutions against Islamic Republic of Iran. Therefore, these resolutions are not acceptable and their implementation is not plausible by the Islamic Republic of Iran.

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

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

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

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

Safeguards Agreement. Only the IAEA and the “*arbitration panel*”, foreseen in Article 22 of Safeguards Agreement, in the case of dispute, have the authority to “enforce” or “interpret” Member State's Safeguards Agreement.

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

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

The Security Council has never determined Iran’s Nuclear Program as a “*threat to the peace, breach of the peace, or act of Aggression*” (according to Article 39 of the Charter); nevertheless, it has adopted some resolutions against the Islamic Republic of Iran under Chapter VII of the United Nations Charter. The Security Council, before resorting to the measures stipulated in Articles 40 and 41 of the UN Charter must have exhausted all required procedures under Chapter VI of the UN Charter. While the outstanding issues defined by the Agency have been settled, “alleged studies” accusations based on forged data lacking authenticate information to be substantiated, and all Iran’s nuclear activities are under Agency Safeguards, regrettably, the Security Council has resorted to an incremental hostile approach with regard to Iran’s peaceful nuclear activities, in contrast to stipulated “*peaceful means with the principles of justice and international law*”. It is ridiculous that if the Islamic Republic of Iran was not a party to the NPT, similar to some States in the region, it would benefit more rights and fewer obligations. Moreover, unjust acts of the Council have sound a destructive signal that the membership to NPT is futile and its universalization is far-reaching objective.

- c. In accordance with paragraph 3 of Article 1 of the Charter (*the Purposes*), Security Council resolutions against Islamic republic of Iran are in contrast with the UN Purposes regarding “*international co-operation in solving international problems of an economic, social, cultural, or humanitarian character*”. Developments of peaceful nuclear technologies to meet national needs in the field of energy and medicine, which are regarded as vital needs of people in every country, are not disputable and each issue in this regard should be resolved through collective and cooperative manners instead of resorting to embargo and threat.
- d. Contrary to paragraph 1 of Article 2 of the Charter, “*the principle of the sovereign equality of all its Members*” regarding the Islamic Republic of Iran has not been observed, as mentioned above.

- e. Pursuant to paragraph 4 of Article 2 of the Charter, “*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations*”. 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 translation of those threats against Iran and some pretext for resorting to use of force which are illegal and unacceptable.



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

No. 253/2013

The Permanent Mission of the Islamic Republic of Iran to the International Atomic Energy Agency presents its compliments to the Agency's Secretariat and has the honour to request the latter to circulate attached Explanatory Note by the Permanent Mission of the Islamic Republic of Iran to the IAEA on the report of the Director General on the Implementation of Safeguards in the Islamic Republic of Iran (GOV/2012/55 dated 16 November 2012) among the Member States and publish it as an INFCIRC document and make it available to the public through the IAEA website.

The Permanent Mission of Islamic Republic of Iran to the International Atomic Energy Agency avails itself of this opportunity to renew to the Agency's Secretariat the assurances of its highest consideration.

*B. Bahiri*  
18 March 2013



Secretariat of the Policy-Making Organs  
Attn. Mr. Vilmos Cserveny  
Assistant Director General

**Explanatory Note by the  
Permanent Mission of the Islamic Republic of Iran  
to the IAEA on the report of the Director General  
on the  
Implementation of Safeguards in the Islamic Republic of Iran  
(GOV/2012/55 dated 16 November 2012)**

**November 2012**

The following are comments on some paragraphs of the Director General's Report GOV/2012/55, dated 16 November 2012:

**A. General Observations**

1- The report is not balanced and factual since it has not duly reflected the cooperation, letters and explanations of the Islamic Republic of Iran to the questions of/or communication made with the Agency.

2- Paragraph 27 of the Safeguards Resolution adopted by the General Conference GC(53)/RES/14 as well as GC(54)/RES/11, mandate the Agency to prepare technically objective and factually correct reports with appropriate references to relevant provisions of the Safeguards Agreement. Regrettably, this statutory requirement has continuously been ignored and has not been observed in this and in the previous reports. The Agency should not arbitrarily step beyond its statutory and legal mandate in preparing its reports, assessments and comments without considering the relevant concrete obligations of a State.

3- More importantly, the IAEA is an independent inter-governmental organization, not a United Nations programme or fund. Therefore, the Agency's mandate is to carry out its activities in accordance with its rights and obligations under the Statute and the Safeguards Agreements. The Agency should therefore refrain from taking instructions from anonymous States and sources with vested interests or allow unauthorized parties to interfere with its mandates. There are no provisions in the Safeguards Agreements and IAEA Statute which may authorize the United Nations Security Council (UNSC) to take over the role of the IAEA in implementing the Safeguards Agreements, impose new requirements, or modify the obligations of the parties to the Safeguards Agreements; nor does the Agency have the right or authority to impose ultra vires demands on Iran by relying upon the UNSC resolutions.

4- The Islamic Republic of Iran has already made it clear, based on the legal provisions such as those of the Agency's Statute and the Safeguards Agreement as to why the UNSC resolutions against Iran are illegal and unjustified, which have been already explained in INFCIRCs/: 786, 804, 805, 810, 817, 823, 827, 833, 837 and 847. Iran's peaceful nuclear activities have unlawfully been put on the agenda of the UNSC and the Council has taken a wrong approach by adopting its politically-motivated, illegal and unacceptable resolutions against Iran. Therefore, any request by the Agency stemming from those resolutions is not legitimate and not acceptable.

5- Although the report once again reconfirmed that "*the Agency continues to verify the non-diversion of declared nuclear material at the nuclear facilities and LOFs declared by Iran under its Safeguards Agreement*", it keeps using "unusual" language with regard to the Safeguards conclusions, since the

Agency has to simply confirm that all declared nuclear material is accounted for and therefore “*declared nuclear material in Iran remained in peaceful activities*”.

6- The Non-Aligned Movement in its several statements to the Board of Governors has stated 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 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.*”, NAM has also 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 for resolution of the Outstanding Issues" (INFCIRC/711), NAM still looks forward to the safeguards implementation in Iran being conducted in a routine manner*”. However, the Director General in preparing his report has unfortunately not heeded these important statements which reflect the concerns of a large number of the United Nations and the Agency Member States.

7- The Agency should strictly observe its obligations under Article VII.F of the Agency’s Statute and Article 5 of the Safeguards Agreement between the I.R. of Iran and the Agency, both emphasizing on the confidentiality requirements. As was emphasized in previous Iran's Explanatory Notes, the information collected during inspections of nuclear facilities should be considered as confidential information. However, once again, the report in contradiction to the Agency’s statutory mandate and the Safeguards Agreement (INFCIRC/214) contains a lot of confidential technical details that should have not been published. The DG by including detailed information in its reports such as the number of installed and/or operating centrifuges, amount of nuclear material fed and/or produced, etc., has demonstrated his inability to fulfill his commitments on confidentiality measures. It comes as no surprise that almost at the same time the DG report is released, some websites such as ISIS, publish the report contained with sort of fictitious calculations as its evaluation on the detailed information of the report. This fact leaves no doubt that ISIS has real time access to the safeguards confidential information. Thanks to DG generosity in disclosing confidential information to unauthorized circles before even the less privileged Member States have a chance to examine such reports. We strongly object to this unprofessional and wrong pattern of non-compliance with the legal framework of the IAEA. This continuous violation must be stopped.

8- Regrettably, the main portion of DG report is based on certain information related to missile issue, not involving nuclear material activities. The Agency is not entitled to step beyond its mandate to the bilateral Safeguards Agreement, or interfere with Iran’s national security concerns on the pretext of Iran’s nuclear program. Moreover, DG has relied on some forged, fabricated and false information provided by western intelligence services, assessed as “*overall credible*” information, without any authenticity verification, while independent observers have revealed part of the false information used by the Agency and criticized ironically its immature assessment on allegations against Iran.

9- In the light of the above, the claims and baseless allegations against Islamic Republic of Iran’s peaceful nuclear activities as contained in the DG report (GOV/2012/55, dated 16 November 2012) are unprofessional, unfair, illegal and politicized.

## **B. Clarification of Allegations**

### **B1. Negotiation on Modality (Structured Approach)**

10- Pursuant to high level political negotiation, a Work Plan (INFCIRC/711) was agreed between Iran and the IAEA on 27 August 2007 for clarification of all outstanding issues. As the result of Iran’s proactive cooperation all outstanding issues (six issues) were resolved by 2008 and reported by the former Director General to the Board of Governors.



11- In spite of the fact that the IAEA did not fulfill its obligations including delivery of the documents on “Alleged Studies” to Iran, Iran did submit to the Agency its assessment in a 117-pages document. The Work Plan was therefore concluded but the Agency contrary to the Work Plan has not declared it.

12- Despite this fact the Islamic Republic of Iran, once again, wrote to the IAEA Director General on 30 October 2011 that “*the DDG for Safeguards, Mr. Nackaerts, to be delegated to Iran for discussion aiming at resolution of matters and to put an end to the seemingly endless process*”.<sup>1</sup>

13- The Director General, through a communication made on 2 November 2011 rejected this historical invitation and postponed it. However, the Islamic Republic of Iran reemphasized on its offer by communication on 3 November 2011 that “*I hereby once again request you to send an Agency’s team headed by Mr. Nackaerts to Iran.*”<sup>2</sup> Regrettably, the DG did not pay attention to this and also refrained from truly reflecting these facts in his November report (GOV/2011/65) to the Board of Governors.

### **Observations on the Meetings after November 2011**

14- DG in his report to the Board of Governors (GOV/2012/9 dated 24 February 2012) refers to two rounds of talks on 29-31 January and 20-21 February 2012. However, the occurred events are not completely and factually reflected in the report and some are partially or incorrectly being reflected. The report without stating the agreed arrangements with the Agency delegation and with no reference to Iran’s active cooperation, just states harshly that Iran has not provided access to Parchin and that no agreement was made on a modality.

15- Similarly, it should be noted that the two rounds of talks in January and February 2012 pursuant to Iran’s invitation which had taken place before the Board of Governors meeting in November 2011, have not been reflected in the report.

16- Before the initiation of the first meeting, the parties reached to an agreement on the principles governing the talks including respect to the national security, respect to the agreed modality (INFCIRC/711), case by case observation and conclusion of the issues, delivering of the alleged evidence and documents, having full authority of the delegation for negotiation and ..., then the first round of talks began.

### **First Meetings in Tehran, 29-31 January 2012**

17- Iran and the Agency’s team composed of senior officials had intensive discussions on how to deal with the issues and identified main pillars. The Agency and Iran exchanged their drafts of text on structured approach and modality for subsequent elaborations.

18- During the January 2012 talks, the Agency and Iran explained their viewpoints on how to follow the issues and the lines to follow on the modality.

19- In Paragraph 5 of GOV/2012/9, the report states that: “... *it was agreed that an Agency’s team would visit Iran for talks.*” As the Director General has correctly stated, it had been agreed that the Agency’s team would come to Iran for talks following preparation of a modality the activities would begin in accordance with the agreed modality. Thus, any request prior to the agreement on the modality has been made contrary to the arrangements.

### **Intercessional Meetings in Vienna, 15-17 February 2012**

20- In order to facilitate the 2<sup>nd</sup> round of talks in Tehran, three meetings were held in Vienna where the following understandings were reached:

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<sup>1</sup>INFCIRC/829

<sup>2</sup>INFCIRC/829

- The Agency stated that all remaining issues are those exclusively reported in the GOV/2011/65, which will be given in priority list of Topics/Clusters in the 2<sup>nd</sup> draft of modality.
- The process would be Topic by Topic approach and the interrelated technical issues would be categorized in one Topic in order to facilitate intensive, effective and conclusive approach.
- In this context, the items such as detonator development, high explosive initiation, and hydrodynamic experiment that were originally proposed by the Agency as Topic-2, was agreed to be included in the first Topic. Therefore, the Topic-1 consists of 5 issues.
- It was agreed that the Agency will deliver documents which indicate if the alleged activities on each Topic are conducted by Iran.
- It was agreed that the text of the modality be concluded and agreed upon firstly and then based on this agreed modality the Topic by Topic approach be implemented.
- It was agreed that the Agency will prepare its questions on the Topic-1 (5 issues) and provide them to Iran in the subsequent meeting (20-21 February), in order to pave the way for effective implementation.
- Iran agreed to the Agency's request to provide the initial declaration on all allegations which existed about Iran's nuclear Program that the Director General reflected in the Annex of his report (GOV/2011/65) in the subsequent meeting (20-21 February).
- It was also agreed that although the Agency provides its questions on Topic-1, but the request for access to Parchin be postponed after the BOG's March meeting, in accordance with the Topic by Topic approach.
- Iran offered and declared its readiness in line with the demonstration of good faith based on proactive cooperation, to take practical steps including granting access on two issues in Topic-1, namely detonator development and high explosive initiation.

### **Second Meetings in Tehran, 20-21 February 2012**

- 21- Based on the proposed text of modality by the Agency, following steps were sequentially foreseen:
- a) Agreement on the modality.
  - b) Iran provides its initial declaration on all allegations which exist about Iran's nuclear Program that the Director General reflected in the Annex of his report (GOV/2011/65).
  - c) The Agency provides all questions on Topic-1 (5 issues) and delivers documents that indicate that alleged activities are conducted by Iran.
  - d) Iran will answer to the Agency's questions.
  - e) The Agency will review and analyze the answers and will discuss with Iran about all actions to be taken on Topic-1 (5 issues).
  - f) The Agency will request implementation of action(s) on one issue of Topic-1, in accordance with Topic by Topic approach.
- 22- In spite of the agreement in Vienna (15-17 February 2012) and even contrary to the Agency's text as mentioned above, the Agency's team requested, based on DG instruction, access to Parchin.
- 23- It should be recalled that Parchin has been visited by the Agency twice in 2005 where the former DDG announced then that the issue was concluded and will be part of history and the former DG reported to the Board of Governors (GOV/2005/67, GOV/2006/15). Considering the fact that it is a military site, granting access is a time-consuming process and cannot be permitted repeatedly. In the light of this background and principle, the Agency was requested to combine all related issues such as hydrodynamic experiments, and then once more, access would be granted. The process could be obviously started when the agreement on the modality is reached.

24- In spite of the fact that the modality was not concluded, but Iran in line with the demonstration of good faith based on proactive cooperation, decided to submit its initial declaration on all allegations existing about Iran's nuclear Program that the Director General reflected in the Annex of his report (GOV/2011/65). This was one of the actions envisaged in the draft modality provided by the Agency.

25- The Agency was not prepared to deliver all questions on the Topic-1 (5 interrelated issues) but it only did on Parchin and foreign expert. The Agency neither did provide any document nor any clarification on these questions.

26- Iran reoffered its readiness to take practical steps including granting access on two issues in Topic-1, namely detonator development and high explosive initiation to resolve the two alleged issues, but the Agency team did not accept the offer due to instruction of the DG to return back to Vienna.

27- Both sides however had intensive discussion on modality for the work on allegations, agreements were reached on many parts of modality, but due to the planned team return to Vienna and time constraint, the text was not concluded.

28- The Islamic Republic of Iran has already made its decision to work with the Agency in a professional manner to resolve outstanding allegations in order to prove to Member States and the world public that its nuclear activities are exclusively for peaceful purposes.

### **Third Meetings in Vienna, 14-15 May 2012**

29- In these meetings, the process of finalizing and concluding a new modality (Structured Approach) was ongoing. The aim was to find and establish accepted ways/procedures to look into the alleged matters raised by certain western country and followed by the Agency, in order to put an end to this seemingly endless process.

30- The result of these meetings was a text with some phrases in bracket that had to be further discussed and agreed upon. The Director General paid visit to Tehran and had meeting with H. E. Dr. Saeed Jalili, the Secretary of the Supreme National Security Council of I.R. of Iran, on 21 May 2012. H. E. Dr. Jalili cleared that reaching agreement with the Agency is easily accessible. However, from implementing point of view, the agreement requires cooperation of all parties involved, in order to avoid the fate of previous modality (INFCIRC/711) where the secretariat was not able to fulfill its obligations<sup>3</sup>.

31- Despite the initial agreement as described above, later the DG did not agree on delivering alleged documents that are being claimed to belong to Iran, and also did not agree on closing any of individual alleged Topics after its discussion.

32- In this regard, the DG states in paragraph 55 of his report GOV/2012/55 that "*The Agency reiterates its request that Iran, without further delay, provide both access to that location and substantive answers to the Agency's detailed questions regarding the Parchin site and the foreign expert.*" While, it should be noted that the I.R. of Iran has expressed its readiness to resolve all ambiguities related to Iran's nuclear program, but adversely the Agency has mortgaged all other main issues by just focusing to have access to a sensitive military base (Parchin) which is irrelevant to the Agency's mandate, blocking the progress on the remaining ambiguities which do not require any access to any center of national security concern. We should first agree on the modality and then implement the agreed modality.

33- The I.R. of Iran urges the IAEA, pursuant to an agreement on the Modality (Structured Approach), to primarily proceed to resolve the remaining alleged issues to make progress onward. For instance, the case of high explosive test in Marivan which was a very harsh allegation against Iran shall be resolved, for which Iran proposed a visit, but was rejected by the Agency. So it is not clear why the IAEA refused to visit such an important alleged point.

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<sup>3</sup>See paragraph 11 above and INFCIRCS/: 786, 804, 805, 810, 817, 823, 827, 833, 837 and 847

### **Forth Meetings in Vienna, 8 June 2012**

34- In these meetings, discussion on the process of finalizing and concluding a Structured Approach was continued from the last meetings. Finding and establishing an accepted procedures to look into the alleged matters that are raised by certain western country and followed by the Agency in order to put an end to this seemingly endless process, was the core of discussion. Area of maintaining confidentiality and delivering alleged documents were discussed. Yet the Agency is not in position to deliver the so called alleged documents in order to enable Iran to prepare respond to them.

35- Iran provided the Agency with its general view on the content of Structured Approach. These major general elements were discussed and views were exchanged.

### **Fifth Meetings in Vienna, 24 August 2012**

36- In these meetings drafts of Structured Approach from both sides were exchanged. Unfortunately, the draft of the Agency did not considered those major general elements especially delivery of the alleged documents. The Agency, by instruction of the DG, is constantly resists NOT to deliver documents that claim belong to Iran. This is really a dilemma. It is naturally very illogical that an alleged claim raises BUT no support on that claim is provided?!!!!

### **Summary on Negotiation on Modality (Structured Approach)**

37- Besides, the Islamic Republic of Iran showed its flexibility to achieve an agreed modality (structured approach) by extraordinary efforts beyond its obligation that could put an end to seemingly endless process of the alleged PMD matter; BUT, this is obvious that the DG does not intend to do so. DG's instructions and interferences to the negotiators demonstrated that they were not authorized to agree on an approach that brings an end to the circle. His intension is understood that to keep open the issue in order to pave the way for our enemies while this is another clear evidence of DG's partiality. The pattern of practice being shown was that in each meeting the DG raised a request that should be complied with, after concluding an agreed modality. Therefore, it is the DG's treat that makes hindrance in the process.

## **B2. Alleged Possible Military Dimensions**

38- Detailed history of the agreed Work Plan (INFCIRC/711) between the Agency and the Islamic Republic of Iran, including "*Alleged Studies*" on Possible Military Dimensions issue, has been explained in the previous Iran's explanatory notes to the DG reports with the latest one being INFCIRC/847.

39- On the basis of the Work Plan, there were only six outstanding issues that all have been resolved as the former Director General reported (GOV/2007/58 and GOV/2008/4). Based on the Work Plan, while the so called "*Alleged Studies*" was never considered as an outstanding issue, but it was planned that "*The Agency will however provide Iran with access to the documentation it has*", and then "*upon receiving all related documents, Iran will review and inform the Agency of its assessment*". While the required "*documentation*" has never been delivered to Iran by the Agency, the Islamic Republic of Iran carefully examined all the informal, nonobjective, and unauthentic material which has been shown, and informed the Agency of "*its assessment*". In this context, the following important points should be recalled:

- i. The Agency has not delivered to Iran any original and authenticated document which contains documentary evidence related to Iran with regard to the Alleged Studies.
- ii. The Government of the United States has not handed over original documents to the Agency since it does not in fact have any authenticated document and whatever it claims to have in possession, are forged documents. The Agency didn't deliver any original document to Iran and none of the documents and material shown to Iran has authenticity and all proved to be fabricated, baseless allegations and false attributions to Iran.

iii. How the Agency can support or pursue allegations against a country without provision of original documents with authenticity and ask the country concerned to prove its innocence or ask it to provide substantial explanations? It is one of the actual concerns foreseen by some States during the BOG discussions which led to “*general endorsement*” (as quoted by chairman of GOV/OR meeting 872 in 1995) of measures, so called “Part 1”, aimed to strengthen Safeguards. With regard to Part 1 measures, it had expressed that:

- “*improving the efficiency of the safeguards system should be pursued on the basis of a presumption of States' innocence and not a presumption that each State was a potential wrongdoer*”. In this regard, the Agency has initiated unprecedented and illegal demands on Iran as baseless accusation.
- “*recourse to data from intelligence sources should be explicitly excluded*”, nonetheless the Secretariat explicitly on several occasions, has declared that the information received from the intelligence sources while it has been proven that they are fabricated and false.

iv. The Agency has explicitly expressed in a written document dated 13 May 2008 that: “... *no document establishing the administrative interconnections between ‘Green Salt’ and the other remaining subjects on Alleged Studies, namely ‘Highly Explosive Testing’ and ‘Re-entry Vehicle’, have been delivered or presented to Iran by the Agency*”. This written document proves that in fact the so called documents related to the Alleged Studies lack any internal consistency and coherence in this regard. It is regrettable that this explicit fact expressed by the Agency has never been reflected in the DG reports.

40- Taking into account the above-mentioned facts, and that no original document exists on the Alleged Studies, and there is no valid documentary evidence purporting to show any linkage between such fabricated allegations and Iran’s activities, and that the DG reported in paragraph 28 of GOV/2008/15 “*the Agency has not detected the actual use of nuclear material in connection with the alleged studies*” (because they do not exist in reality); also bearing in mind the fact that Iran has fulfilled its obligation to provide information and its assessment to the Agency, and the fact that the former DG has already indicated in his reports in June, September and November 2008 that the Agency has no information on the actual design or manufacture by Iran of nuclear material components for a nuclear weapon or of certain other key components, such as initiators, or on related nuclear physics studies; therefore this subject must be closed.

41- If it was intended to raise other issues in addition to the Alleged Studies (Green Salt, Re-entry Missile, High Explosive Test) such as possible military dimension, since all outstanding issues had been incorporated in the exhausted list prepared by the IAEA during the negotiations, then it should have been raised by the Agency in the course of the negotiations on the Work Plan. One can clearly notice that no issue and item entitled “*possible military dimension*” exists in the Work Plan (INFCIRC/711). It is recalled that the first paragraph of chapter IV of the Work Plan reads as: “*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.

42- According to paragraph 19 of the DG report in GOV/2009/55, the Agency expressed that the authenticity of the documentation that forms the basis of the Alleged Studies cannot be confirmed. This proved the assessment of the Islamic Republic of Iran that the Alleged Studies are politically-motivated and baseless allegations.

43- The first paragraph of chapter IV of the Work Plan reads as: “*These modalities cover all remaining issues and the Agency confirmed that there are no other remaining issues and ambiguities regarding Iran's past nuclear program and activities*.” It is obvious that all I.R. of Iran's nuclear activities in the past and present have been for peaceful purposes and will be continuously subject to full-scope comprehensive safeguards. Therefore, any information contrary to this is a forged, fabricated, false and baseless allegation.

44- Paragraph 5 of Chapter IV of the Work Plan reads as: “*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.”* And also 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.

45- The Islamic Republic of Iran has fully implemented the tasks agreed upon in the Work Plan; in doing so, Iran has taken voluntary steps beyond its legal obligation under its Comprehensive Safeguards Agreement.

46- Considering the above, and the former DG report in GOV/2009/55, which confirms that Iran has completed its obligation on the Alleged Studies by informing the Agency of its assessment, and also very positive developments and the joint constructive cooperation between Iran and the Agency, the Agency is hereby highly expected to announce that the Safeguards implementation in Iran shall be conducted in a routine manner in accordance with the last paragraph of the Work Plan (INFCIRC/711).

47- Paragraph 54 of the former DG report in GOV/2008/4 regarding the Possible Military Dimension reads as: *“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 documents of the Alleged Studies lack authenticity, that no nuclear material was used and that no key components were made as declared by the former Director General, are also missing in this report.

48- 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 both spirit and letter of the negotiated and agreed Work Plan, which both parties undertook to comply with. 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 Policymaking Organs of the Agency with Iran and eventually acknowledged by the Board of Governors. Therefore, it is highly expected that the Agency respect its agreement with Member States; otherwise, the mutual trust and confidence which is essential for the sustainable cooperation would be jeopardized.

49- According to the Work Plan, the Agency was required to submit all documentation to Iran, and then Iran was only expected to *“inform the Agency of its assessment”*. No visit, meeting, personal interview, and swipe sampling, were foreseen for addressing this matter. The Government of the United States has not handed over any original document to the Agency, because in fact it has no authenticated documents as the former DG declared. Meanwhile, by refusing to submit all documentation to Iran, concerning the so-called Alleged Studies, the IAEA did not fulfill its obligation under part III of INFCIRC/711. Despite the above, and based on good faith and in a spirit of cooperation, Iran went beyond the above understanding by agreeing to hold discussions with the IAEA, providing necessary supporting documents and informing the Agency of its assessment in a 117-page document which all proved that the allegations have been all fabricated and forged. This is, in fact, reviewing the substance as well as the forms.

50- Followings are related reports from the Agency's team visiting Iran's military sites including Parchin which clearly shows that Iran has thoroughly cooperated and that the issue has been completed which the DG has intentionally opened again!

- GOV/2005/67, dated 2 September 2005, paragraph 41, *“As described by the DDG-SG in his 1 March 2005 statement to the Board, in January 2005, Iran agreed, as a **transparency measure**, to **permit the Agency to visit** a site located at **Parchin** in order to provide assurance regarding the absence of undeclared nuclear material and activities at that site. Out of the **four areas identified by the Agency** to be of potential interest, the Agency was permitted to select any one area. The Agency was requested to minimize the number of buildings to be visited in that area, and **selected five buildings**. The Agency was given **free access to those buildings and their surroundings** and was allowed to take environmental*

*samples, the results of which did not indicate the presence of nuclear material, nor did the Agency see any relevant dual use equipment or materials in the locations visited."*

- GOV/2005/67, dated 2 September 2005, paragraph 49, "Iran has permitted the Agency, as a measure of transparency, to visit defense related sites at Kolehdoz, Lavisan and Parchin. The Agency found no nuclear related activities at Kolehdoz."
- GOV/2005/87, dated 18 November 2005, paragraph 16, "On 1 November 2005, following a meeting held on 30 October 2005 between Mr. Larijani, the Secretary of the Supreme National Security Council of Iran, and the Deputy Director General for Safeguards (DDG-SG), the Agency was **given access to the buildings requested within the area of interest at Parchin**(see para. 41 of GOV/2005/67), in the course of which environmental samples were taken. **The Agency did not observe any unusual activities in the buildings visited. Its final assessment is pending the results of the environmental sample analysis.**"
- GOV/2005/87, dated 18 November 2005, paragraph 21, "The Agency welcomes the access provided to the Parchin site."
- GOV/2006/15 dated 27 February 2006 paragraph 32, "On 1 November 2005, the Agency was given access to a military site at Parchin where several environmental samples were taken. **The Agency did not observe any unusual activities in the buildings visited, and the results of the analysis of environmental samples did not indicate the presence of nuclear material at those locations.**"
- GOV/2006/15 dated 27 February 2006 paragraph 52: *In this regard, Iran has permitted the Agency to visit defense related sites at Kolehdoz, Lavisan and Parchin. The Agency did not observe any unusual activities in the buildings visited at Kolehdoz and Parchin, and the results of environmental sampling did not indicate the presence of nuclear material at those locations.*

51- Referring to paragraph 4 of the DG report (GOV/2012/55), the Agency expects from the I.R. of Iran to grant access to all relevant information, documents, sites, material and personnel in Iran. Reciprocally, Iran also has legitimate right and expectation to have access to all alleged documents and information regarding the so called possible military dimensions in Iran's nuclear program in order to prepare response.

52- It should be recalled that based on the Modalities agreed between Iran and the Agency in 2007 (INFCIRC/711)-which resulted in conclusion and closure of all remaining outstanding issues(the six outstanding issues) that are reported in the DG's reports GOV/2007/58 and GOV/2008/4- on the issue of so called "Alleged Studies", the Agency was to provide "all related documents to Iran" and it was expected so that, "Iran will review and inform the Agency of its assessment".

53- Although the Agency was not able to provide any of those alleged documents to Iran, now the Agency has claimed to possess documents and information that are overall credible, and without providing them to Iran and conducting verification and authentication, has somehow made its own wrong assessment!

54- Referring to paragraph 4 of the DG report (GOV/2012/55), Iran once again expresses its readiness to reach an agreement on modalities for clarification of alleged unresolved issues. Therefore, providing access shall be conducted in accordance with Iran's obligations and based on the modality agreed by both sides. The I.R. of Iran is by no way obliged to grant any sort of access to the Agency beyond the requirements of its Safeguards Agreement, unless a modality is agreed upon.

55- As an example, when the I.R. of Iran requested information from the Agency concerning the documents related to the missile nuclear payload, the Agency merely presented the same materials on the Alleged Studies again in a PowerPoint presentation during January 2012 meeting. Indeed, according to the Agency claim, the Alleged Studies were done in 2004, that is 8 years ago. More noteworthy is that the IAEA still refrains from delivering the Alleged Studies documents to Iran, and claims that the country possessing the documents is not cooperating in this regard. The significant point is that such non-

cooperation by provider of alleged documents was mentioned in the former DG report in GOV/2009/35 - Paragraph 23 which reads: *“the Director General urges Member States which have provided documentation to the Agency to work out new modalities with the Agency so that it could share further information with Iran since the Agency’s inability to share additional information with Iran, and to provide copies or, if possible, originals, is making it difficult for the Agency to progress further in its verification.”* However, this non-cooperation is not reflected at all in the recent reports of the DG, though it is verbally asserted.

56- The DG in paragraph 40 of the report GOV/2012/55 states: *“Since November 2011, the Agency has obtained more information which further corroborates the analysis contained in the aforementioned Annex”*. This statement is completely false, because whatever the Agency presented on the power point to Iran on 30<sup>th</sup> January 2012 was exactly the same information related to Alleged Studies raised by the United States in 2004, and there was not any new piece of information. However, the Agency had highlighted some slides with the word “NEW” which in fact were not new, and indeed were the same fabricated and forged 2004 information delivered again recently and gradually to the IAEA by U.S and the Agency has not provided Iran with that information, as complained in previous explanatory Note by Iran.

57- Referring to paragraph 40 of the DG report (GOV/2012/55), regarding information received which was *“assessed by the Agency to be, overall, credible”*, if the information received and verified by the Agency is credible, as it is claimed; firstly by what reason the Agency refuses to deliver the supporting documents to Iran. Secondly, the Agency has made its prejudgment on the credibility and authenticity of its received documents and information, without objective and independent verification and without providing the least opportunity for Iran to have documents that are subject to verification measures. This method of work definitely jeopardizes the professionalism and credibility of the Agency.

58- In paragraph 40 of the report (GOV/2012/55) DG also states: *“that some continued after 2003; and that some may still be ongoing”* in relation to possible military dimensions in Iran’s nuclear program. It is worth to recall that the former DG reported in GOV/2005/67, Para 41 in September 2005 that *“The Agency was given free access to those buildings [located at Parchin] and their surroundings and was allowed to take environmental samples, the results of which did not indicate the presence of nuclear material, nor did the Agency see any relevant dual use equipment or materials in the locations visited.”* as well as in paragraph 52 of GOV/2006/15 in February 2006 report which reads: *“Iran has permitted the Agency to visit defense related sites at Kolehdoz, Lavisan and Parchin. The Agency did not observe any unusual activities in the buildings visited at Kolehdoz and Parchin, and the results of environmental sampling did not indicate the presence of nuclear material at those locations.”* While such factual verification has been already taken place and reported, setting forth allegations ruins the credibility of the Agency verification system. Moreover, frequently marked with “*may*” is not only displays non-professional and doubtful assessments, but also inconsistent and far from any expected conclusive results stemming from information asserted to be *“overall credible”*.

59- Concerning the phrase *“... and from information provided by Iran itself, ...”* stated in paragraph 40 of the report, it has to be recalled that Iran has never confirmed the unfounded allegations posed by the Agency, and has always called on the Agency to present the relevant supporting documents, if it has any. It should be noted that the only information avenue of the Agency originates from the sources hostile to the I.R. of Iran i.e. United States of America, terrorist groups supported by USA, and the Zionist regime of Israel.

60- Reference to paragraph 45 of the DG report (GOV/2012/55), stating *“it is necessary to have access to this location [Parchin] without further delay”* without drawing up a legal framework for cooperation (modality) as well as not providing necessary legal guarantee is not acceptable.

61- The clause *“Satellite imagery available to the Agency for the period from February 2005 to January 2012 shows virtually no activity at or near the building housing the containment vessel”* in paragraph 44 is in contradiction with the clause stated in paragraph 40 of the report which reads: *“that some continued after 2003”*. Satellite imagery and media information cannot constitute a foundation for judgment. The I.R. of Iran can easily prove that such information is not correct. For instance, when some newspapers were making fuss about the soil displacement in Parchin by trucks, the DG promptly



confirmed their claim. Whereas, those trucks transportations were due to construction of Parchin new road (the previous road was submerged as a result of dam construction across the river). Such hasty stance by the DG has discredited the Agency. It is worth mentioning that according to the document adopted and circulated in 1995 titled as “Part one” of strengthening the safeguards, the Agency should primarily assume all Member States to be innocent, while such prejudgment is in contradiction with the spirit of the said decision.

62- Referring to paragraph 41 of the DG report (GOV/2012/55), regarding the cooperation with the Agency on all outstanding issue, Iran will submit its evidences for repealing the Agency allegations only after receiving the relevant documents. The Agency has only submitted a single document to Iran known as “document 18” (GOV/2008/15 Annex A2, Document 3) on which Iran has asked simple questions from the Agency in its initial declaration in this respect. The first question is why the Agency claimed in 2008 that this document “*belonged to Iran*”, but then claimed in November 2011 report that Iran “*had access to it*”? The Agency has not yet given any response about its contradictory statements and the sole answer of the Agency is that, a country has claimed so. The Agency has presented its conclusions in form of a colored diagram attached to the November 2011 report, merely based on that document which has no validity and is just manipulated by the provider country.

## **C. Implementation of Iran’s Safeguards Agreement**

### **C1. General**

63- Article 2 of the Iran’s safeguards agreement (INFCIRC/214) requires that safeguards to be implemented “*in accordance with the terms of this Agreement*”. Every DG report to the Board of Governors including GOV/2012/55 shows and confirms that the Safeguards implementation in the I.R. of Iran is in accordance with its Safeguards Agreement without any failure, inconsistency or ambiguity, as reflected in different parts of the report, such as the followings:

- a. Paragraph 7 reads: “*Iran has declared to the Agency 16 nuclear facilities and nine locations outside facilities*” and “*... the Agency continues to verify the non-diversion of declared material at these facilities and LOFs.*”
- b. All Iran’s nuclear facilities are under Agency’s Safeguards (paragraph 7), specifically enrichment facilities (paragraphs 8-25), heavy water research reactor (paragraphs 28-30), Tehran Research Reactor (TRR) (paragraphs 27&51), Radioisotope Production Facility (paragraph 27), Uranium Conversion Facility (UCF) and Fuel Manufacturing Plant (paragraphs 31-38), Bushehr Nuclear Power Plant (paragraph 52), Jabr Ibn Hayan Multipurpose Research Laboratory (JHL) (Paragraph 50).
- c. The Agency has been able to take samples from nuclear facilities to verify Iran’s declarations, specifically at Natanz Fuel Enrichment Plant as read in paragraph 14: “*Based on the results of the analysis of environmental samples taken at FEP since February 2007 and other verification activities, the Agency has concluded that the facility has operated as declared by Iran the relevant Design Information Questionnaire (DIQ)*”; and at Natanz Pilot Fuel Enrichment Plant as read in paragraph 21: “*Based on the results of the analysis of the environmental samples taken at PFEP and other verification activities, the Agency has concluded that the facility has operated as declared by Iran in the relevant DIQ*”; and at Fordow as read in paragraph 25: “*Based on the results of the analysis of the environmental samples taken at FFEP, and other verification activities, the Agency has concluded that the facility has operated as declared by Iran in its most recent DIQ for FFEP*”.

### **C2. Design Information (Modified Code 3.1 of Subsidiary Arrangements)**

64- Iran was voluntarily implementing the modified code 3.1 of the Subsidiary Arrangements since 2003, but suspended its implementation pursuant to the illegal UNSC resolutions against Iran’s peaceful

nuclear activities. However, Iran is currently implementing code 3.1 of its Subsidiary Arrangements and therefore the statement in paragraph 46 of the report that *“Iran is not implementing the provisions of the modified Code 3.1 of the Subsidiary Arrangements General Part to its Safeguards Agreement...”* is misinforming and false. Iran is not obliged to implement modified code 3.1 and Iran has adhered to its obligations to provide design information in proper timing.

65- In respect of IR-40 reactor at Arak, Iran voluntarily provided access to the facility for the Agency to carry out Design Information Verifications (paragraphs 30&46 of the previous DG report GOV/2012/37).

66- With regard to paragraph 48 of the report (GOV/2012/55) that asks Iran to: *“confirm or provide further information regarding its stated intention to construct new nuclear facilities ...”* 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.

### **C3. Heavy Water Related Projects**

67- The Agency’s requests stipulated in paragraph 30 of the report GOV/2012/55, regarding access to Heavy Water Production Plant (HWPP), is not a legal request under the safeguards agreement but fully seats in the provisions of the Additional Protocol, and also the request of taking samples of heavy water stored at the Uranium Conversion Facility (UCF) is even beyond the Additional Protocol requirements.

68- Moreover, requesting any information or access 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). The Agency’s requests 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!

### **D. Additional Protocol**

69- The report has inserted, as a chapeau for paragraph 49, the subtitle of “Additional Protocol” assuming Iran should implement the Additional Protocol. Based on this wrong assumption, Director General is requesting illegal measures and misleads the BOG by asserting false statements in his reports by announcing (paragraph 53) that *“Iran is not providing the necessary cooperation, including by not implementing its Additional Protocol...”*.

70- The misrepresentation of Iran’s commitments in respect to the Additional Protocol or extracting legally-binding obligations from the illegal resolutions of the UNSC, apart from unauthorized interference in the application of Iran’s Safeguards Agreement, are all unrealistic and non-binding to the Islamic Republic of Iran; and any action requested by the Board of Governors in this respect would be unconstitutional, politically-motivated and illegal. It should be emphasized that Iran has already fulfilled its safeguards obligations completely and continues to do so.

71- The Additional Protocol (AP) is not a legally binding instrument and is voluntary in nature. Hence, many Member States (61 as reported by SIR 2011) including Iran are not implementing this voluntary protocol. However, it should be reminded that Iran implemented AP for more than 2.5 years voluntarily as a confidence-building measure.

72- In spite of Iran’s cooperation to implement AP voluntarily for more than 2.5 years (2003-2006) as a confidence-building measure, regrettably in the same period, seven illegal and politically-motivated resolutions were adopted against Iran by the Board of Governors (BOG) under the pressure of few western states, which clearly indicates that the case of the Islamic Republic of Iran is neither technical nor legal, but just politicized.

73- As the sovereignty right, Iran has not yet ratified the Additional Protocol and therefore is not

obliged to implement it. The statement reflected in paragraph 53 of the report to the effect that “*Iran is not providing necessary cooperation, including by not implementing its Additional Protocol*” has no legal basis and is beyond the DG’s statutory mandate. The Agency is obliged to verify the compliance of Member States on the basis of the Statute of the IAEA and the relevant Safeguards Agreements.

74- Basically, it is not acceptable that a voluntary instrument to be turned into a legal obligation without consent of a sovereign State. This basic concept regarding Additional Protocol has been affirmed in the 2010 NPT Review Conference (NPT/CONF.2010/50 (Vol. I)) as well as in the Agency General Conference (GC (56)/RES/13) which the latter reads: “*it is the sovereign decision of any State to conclude an additional protocol*”.

75- The footnote 56 of the report reads that “*the BOG has confirmed on numerous occasions, since as early as 1992, that paragraph 2 of INFCIRC/153 (Corr.), which corresponds to Article 2 of Iran’s Safeguards Agreement, authorizes and requires the Agency to seek to verify both the non-diversion of nuclear material from declared activities (i.e. correctness) and the absence of undeclared nuclear activities in the State (i.e. completeness) (see, for example, GOV/OR.864, para. 49)*”. In this regard the following points should be noted:

- a. Although the footnote states that “*Article 2 of Iran’s Safeguards Agreement, authorizes and requires the Agency to seek to verify both the non-diversion of nuclear material from declared activities (i.e. correctness) and the absence of undeclared nuclear activities in the State (i.e. completeness)*”, but it fails to transcribe Article 2 of Iran’s Safeguards Agreement completely as it clearly reiterates on Agency’s “*right and the obligation to ensure that safeguards will be applied, in accordance with the terms of this Agreement, on all source or special fissionable material*”! Therefore, requiring Iran to implement verification measures outside the purview of Iran’s Safeguards Agreement, such as implementing Additional Protocol, is beyond the Agency’s rights and obligations, illegal and non-binding.
- b. The BOG has never authorized or required the Agency to seek to verify both the non-diversion of nuclear material from declared activities (i.e. correctness) and the absence of undeclared nuclear activities in a Member State. The records of GOV/OR.864 clearly show that this was a personal view and only a sum-up made by Chairman at that BOG meeting. He reads: “*the Board endorses the general direction of Programme 93+2*”, followed by reservations expressed by some Board Members, for example: “*acceptance of the recommendations made in document GOV/2784 would not imply endorsement of any of the specific measures described in that document or of the legal interpretations advanced by the Secretariat*”. The BOG did not confirm Chairman’s view asserted in the statement. So this neither means a “*unanimous interpretation*” nor would it create any “*unilateral obligation*”. If the unilateral interpretation asserted in footnote 56 was true, there was no need to codify the AP and therefore, the Safeguards Agreements would have been sufficient concerning correctness and completeness.

76- Basically, any unilateral interpretation of a bilateral agreement, including Safeguards Agreements, which may affect its application, would not be binding, before its approval by both parties.

77- The Islamic Republic of Iran has fully cooperated with the Agency in implementation of safeguards application on its nuclear material and facilities. Therefore, a statement such as “*... Iran is not providing the necessary cooperation, including by not implementing its Additional Protocol, the Agency is unable 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.

78- The fact is that all declared nuclear material in Iran is accounted for and has not been diverted to military purposes, and remained in peaceful activities under the Agency's full-scope surveillance. Mixing the notions of “*declared nuclear material*” and “*all nuclear material*” in the context of the CSA and Additional Protocol, respectively, in a non-professional manner is not legally justified, which misleads the public at large, and is contrary to the expectation of the Non-Aligned Movement which in its several statements addressed 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.” Thus the derived conclusion on aforementioned notion is absolutely wrong and must be corrected accordingly.*

79- Interestingly, the Agency not only unilaterally interprets the Safeguards Agreement, but also in paragraph 53 claims to have right and mandate of implementing Additional Protocol by asserting “*Agency is unable to provide credible assurance about the absence of undeclared nuclear material and activities*”, because “*Iran is not providing the necessary cooperation, including by not implementing its Additional Protocol*”. But the Agency is indeed required to explain its extraordinary and discriminatory focus on implementation of Additional Protocol in Iran.

80- It is worth mentioning that the Safeguards Implementation Report for 2011 reads: “*Safeguards activities were implemented for 61 States [including I. R. of Iran] with comprehensive safeguards agreements in force, but without additional protocols in force. For these States, the Secretariat found no indication of the diversion of declared nuclear material from peaceful nuclear activities. On this basis, the Secretariat concluded that, for these States, declared nuclear material remained in peaceful activities.*”

81- The mandate of Director General is stipulated in the Statute of the Agency, so that by no ways and means Director General is a UNSC supervisor and/or evaluator.

82- Any request for implementation of AP is in contradiction with the Agency’s Statute and Iran’s Safeguards Agreement. So these illegal requests should not be repeated in future reports of the Director General.

83- In this regard, Islamic Republic of Iran reserves its rights to claim all damages caused by misinterpretation of the Director General’s views in reporting to the BOG.

## **E. Illegal Resolutions of the IAEA Board of Governors and UNSC regarding Iran peaceful nuclear program**

84- 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 BOG resolutions against Iran are illegal and unjustified. The issue of Iran’s peaceful nuclear program has unlawfully been conveyed to the UNSC and the Council has taken a wrong approach by adopting the politically-motivated, illegal and unjust UNSC resolutions against Iran. Therefore, any request by the Agency stemming from those resolutions is not legitimate and not acceptable.

85- Since the said Security Council Resolutions have not passed through the pertinent legal proceedings and have been issued in contravention of UN Charter, they are by no means legally-binding. Referring Iran's case to the Council, issued in violation of Article XII.C of the IAEA Statute; consequently, the UNSC resolutions also issued in contrast with the Purposes and Principles of the Charter (breach of Article 24 of U.N Charter). Moreover, even if its issuance might be deemed a legal practice in a way, reference cannot be made to Article 41 of chapter VII, and it is not legally-binding either; because international peace and security has not been menaced at all. In fact, the Agency has become more Catholic than the Pope by seeking to implement the provisions of non-legal resolutions, which are portrayed as Iran's legal obligations throughout its reports, as well as frequently mentioning Iran to have refrained from fulfilling of those so-called legal obligations. The Director General of the IAEA had better entrust the task of implementing the UNSC resolutions to the drafter of such resolutions, that is, the possessors of nuclear weapons; rather, he should pursue his own neglected responsibilities incarnated in the Statute related to the peaceful utilization of nuclear energy reiterated in Article 4 of the NPT, that is, the peaceful utilization of nuclear energy and the relevant technology transfer, as well as elimination of double standards and parallel groups. The Director General ought to ponder upon why it has not yet fulfilled the most primary duty of the DG in order to protect confidential information provided by Member States to the IAEA inspectors, or report on political obstacles to materialize nuclear fuel supply upon request of Member States without

discrimination. The Director General should think something about it's piled-over functions and leave out the tasks of others for themselves.

86- 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 program is in full contravention with the organizational, Statutory and Safeguards requirements governing the IAEA practices and procedures. Indeed, the substantive and procedural legal requirements, that are necessary for engaging the Security Council in the issues raised by the Agency, have been totally ignored in this regard. Referring a country's nuclear issue to the Security Council is only possible under certain conditions as described below:

- a) Determination of non-compliance (diversion) according to paragraph C, Article XII of the IAEA Statute is the essential pre-condition for referring an issue to the Security Council which is entrusted to the IAEA inspectors who should report it to the Board of Governors through the IAEA's Director General. There has never been any reference in the Agency's reports to any "*non-compliance*" by Iran or any diversion in its peaceful nuclear activities. More importantly, the IAEA Director General has repeatedly stressed that there has been no diversion of the declared nuclear material and activities in the Islamic Republic of Iran. This conclusion has been reiterated in every report of the IAEA Director General.
- b) Furthermore, according to Article 19 of the Safeguards Agreement between Iran and the IAEA, dated 15 May 1974(INFCIRC/214), any referral of the issue by the Agency to the Security Council in accordance with Paragraph C, Article XII of the Statute of the IAEA, could only be possible "*if the Board, upon examination of relevant information reported to it by the Director General, finds that the Agency is not able to verify that there has been no diversion of nuclear material required to be safeguarded under this Agreement, to nuclear weapons or other nuclear explosive devices*". It is worth mentioning in this regard that the IAEA Director General has constantly stated in all his reports that the Agency has been able to verify that the declared nuclear material and activities in Iran have not been diverted towards military purposes, and that they have remained absolutely under peaceful use, and therefore the BOG conveyed Iran's nuclear file to UNSC, not based on Article 19, but based on XII.C which is not justified.
- c) Also the nuclear activities of a country may be reported by the IAEA to the Council in cases where a threat against international peace and security is involved and, consequently, according to Paragraph b (4), Article III of the IAEA's Statute, the Agency would notify the Security Council in this regard. It is noteworthy that contrary to the baseless allegations made by those few States- allegations that have worked as the basis for conveying the Iranian nuclear program to the Security Council- none of the IAEA Director General's reports have ever described Iran's nuclear activities as "*a threat to international peace and security*". Rather, they have expressly declared that such activities are peaceful, and that there is no diversion of nuclear material and activities in Iran.

87- 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).

## **F. Contradiction of the UN Security Council & IAEA Board of Governors Resolutions with the United Nations Charter and the International Law**

88- Besides the illegal non-compliance reporting by the IAEA Board of Governors and conveying the Iran's peaceful nuclear program to the United Nations Security Council, adoption of all UNSC resolutions

against the Iran's peaceful nuclear program, have been in contradiction with "Charter of the United Nations" and in violation of the international law.

89- The Security Council, as a UN organ created by Member States, is subject to legal requirements, and is obliged to comply with the same international normative rules that the Member States are bound to. The Council shall observe all international norms, in particular the UN Charter and the peremptory norms of international law, in the process of its decision making and in its taking actions. Needless to say that any measure adopted in contradiction to such rules and principles will be void of any legally binding effects<sup>4</sup>.

90- In accordance with the 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 the Article 24 of the Charter, the Security Council's decisions shall be "*in accordance with the Purposes and Principles of the United Nations*", which the matter has not been met in respect of UNSC's resolutions against Islamic Republic of Iran. Therefore, these resolutions are not acceptable and their implementation is not plausible by the Islamic Republic of Iran.

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

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

- a) According to the first paragraph of the Charter's preamble, the Security Council shall act "*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom*".
  - Requiring suspension of peaceful nuclear activities, which are under the Agency full surveillance, without any effect on the Agency verification activities:
    1. will only hinder improvements of public "*better standards of life*", as well as "*hampering the economic and technological development of Iran*" (contrary to the Safeguards Agreement, Article 4 (a));
    2. will be contrary to Agency's obligation under Article 4 (b) of the Safeguards Agreement to "*avoid undue interference in Iran's peaceful nuclear activities, and in particular in the operation of facilities*";
    3. will be in contradiction with "*to establish conditions under which justice and respect ... can be maintained ...*" and "*principles of justice*". In fact, there is not any report by the Agency on the diversion of nuclear material and activities or any determination of "*threat to the peace, breach of the peace, or act of Aggression*" (according to Article 39 of the Charter) due to Iran's nuclear activities, except some vague, baseless and unverified allegations so called "*alleged studies*" which can not substantiate as a mean to undermine "*inalienable right*" of a Member State under Article 4 of the NPT.

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<sup>4</sup> As the International Criminal Tribunal for former Yugoslavia (ICTY) has stated in one of its judgments "in any case, neither the text nor the spirit of the Charter conceives the Security Council as *legibus solutus* (unbound by law)." Likewise, as the International Court of Justice has held in its 1971 advisory opinion, the Member States are required to comply with Security Council decisions only if they are in accordance with the United Nations Charter.

- The Security Council, in resolution 1803 (2008), inter alia, reaffirmed Iran's obligation to *"without further delay, take the steps required by the Board of Governors in its resolution GOV/2006/14, which are essential to build confidence in the exclusively peaceful purpose of its nuclear programme and to resolve outstanding questions"*, which *"extend beyond the formal requirements of Iran's Safeguards Agreement and Additional Protocol"* (GOV/2008/38).

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

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

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

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

benefit more rights and fewer obligations. Moreover, unjust acts of the Council have sound a destructive signal that the membership to NPT is futile and its universalization is far-reaching objective.

- c) In accordance with paragraph 3 of Article 1 of the Charter (*the Purposes*), Security Council resolutions against Islamic republic of Iran are in contrast with the UN Purposes regarding “*international co-operation in solving international problems of an economic, social, cultural, or humanitarian character*”. Developments of peaceful nuclear technologies to meet national needs in the field of energy and medicine, which are regarded as vital needs of people in every country, are not disputable and each issue in this regard should be resolved through collective and cooperative manners instead of resorting to embargo and threat.
- d) Contrary to paragraph 1 of Article 2 of the Charter, “*the principle of the sovereign equality of all its Members*” regarding the Islamic Republic of Iran has not been observed, as mentioned above.
- e) Pursuant to paragraph 4 of Article 2 of the Charter, “*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations*”. 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 translation of those threats against Iran and some pretext for resorting to use of force which are illegal and unacceptable.