

Iran Seeks to Untangle UN Sanctions

by [Steven Ditto \(/experts/steven-ditto\)](#)

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ABOUT THE AUTHORS

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Brief Analysis

The Islamic Republic has added to its nuclear negotiating team a law professor who has extensive experience making Iran's case in international disputes.

On April 9, Iran and the P5+1 (Britain, China, France, Russia, and the United States, plus Germany) concluded the latest two-day round of talks on a nuclear deal, setting the next round for May 13. Earlier in the week, on April 7, Iranian media reported the appointment of Dr. Jamshid Momtaz as head of a "legal advisory group" to the Iranian negotiating team. A French-educated expert on sanctions, disarmament, and UN procedure, Momtaz has represented the Iranian government in some of its highest-profile international legal proceedings, including in claims against the U.S. government at the Hague-based International Court of Justice (ICJ). Momtaz's familiarity with the United Nations, his extensive practice in Europe, and his proven history of leveraging complex legal arguments to advance Iran's international interests indicate that in these latest rounds of P5+1 talks Tehran is likely looking for unconventional ways to "address" and "bring a satisfactory conclusion to" the UN Security Council resolutions against it, as called for in the Joint Plan of Action (JPOA) agreed to in Geneva last November.

Enter Momtaz

On paper, Momtaz appears to be the consummate professional. He has authored more than thirty books and academic articles; his father and grandfather both served in the pre-1979 Iranian foreign service; and he was raised in Turkey and Egypt, and educated in Paris. In 2005, Momtaz was appointed chair of the UN International Law Commission -- an elected body on which he had served since 2000 and that is subordinate to the General Assembly -- and charged with deliberating on and codifying complex cases of international law. Most recently, he has been a professor at the University of Tehran, and he is a thirty-year advisor to Iran's Ministry of Foreign Affairs. Momtaz litigated Iranian claims at the ICJ concerning the territorial dispute over Abu Musa island; the 1988 accidental downing of Iran Air flight 655; and reparations from the Iran-Iraq War, including the U.S. use of force against Iranian oil platforms.

Perhaps most interestingly, Momtaz served as a legal advisor to current foreign minister Mohammad Javad Zarif in the 1990s, when the latter submitted an oral statement concerning the Iranian government's legal opinion on the

"Legality of the Threat or Use of Nuclear Weapons," a case being heard by the ICJ at the UN General Assembly's request.

In the sterile discipline of international law, Momtaz's publications and proceedings on this issue, as with other issues, are quite dry. However, he appears to have been more open in a 1998 speech to Iranian legal experts. Reflecting on the ICJ's nuclear weapons ruling, Momtaz accentuated the "principle of proportionality" in international law and noted: "In certain cases, when an enemy attacks another country or government, or when a government invades another country, the use of nuclear weapons may be permissible, because the goal in using the nuclear weapons is to push back the invader and a military goal is of utmost importance." Although cloaked in legal reasoning, Momtaz's statement held that the use of nuclear weapons is not unconditionally prohibited under international law -- a position at odds with Zarif's public testimony and the Iranian government's line. Momtaz put forward more legal reasoning in his speech, noting that the "argument of suffering" -- used in international law to prohibit weaponry that causes harm to either civilians or soldiers -- in fact does not apply in cases of war. "We must consider the military results of nuclear weapons," he claimed. In short, Momtaz conceded that nuclear weapons could lawfully be used for tactical purposes, when aimed at military rather than civilian targets. This argument -- made primarily by nuclear weapons states, including the United States -- had been rejected by Zarif himself in testimony disavowing nuclear weapons "irrespective of type and size."

In the same speech, Momtaz went beyond these legalisms, intimating that in Iranian decisionmaking the interests of the republic trump international law. He characterized Iran's ratification of the Chemical Weapons Convention (CWC) and decision to work within the "UN system" as a choice between "bad and worse," primarily motivated by the high price Iran would have paid for staying outside the treaty. "I am of the opinion that had we not joined the CWC, we would have had to tolerate the extreme reactions of the international community and the UN Security Council," he argued. "It would have been better for us to accept the oversight and control systems of these conventions, because it was a more institutional system and, ultimately, would consequently have more assurances for us." This passage suggests the commonality of practical power politics in the Islamic Republic, rather than moral and legal opposition to weapons of mass destruction (WMD), even by exceptional individuals such as Momtaz who have spent their careers upholding the primacy of international law.

Iranian Negotiators: UN Security Council Resolutions

"Illegal"

The roots of the current round of P5+1 negotiations go back to September 2005, when the International Atomic Energy Agency (IAEA) Board of Governors voted -- with a majority twenty-seven out of thirty-five countries -- to refer Iran's nuclear file to the Security Council, based on Article 12, Subsection C, of the IAEA statute concerning noncompliance. Earlier that year, nuclear negotiator Hassan Rouhani had warned that Iran would oppose such a measure and also consider it contrary to international law. "So far as international law is concerned, there is no way to refer Iran's nuclear dossier to the Security Council," Rouhani exhorted in March 2005. "If they want to send the dossier to the Security Council, they would be doing something totally illegal, purely political, and irrational."

According to Iranian legal experts' interpretation, the IAEA statute only allows UN referrals in clear cases of nuclear diversion, or when a signatory to the Nuclear Nonproliferation Treaty is accused of "fault or negligence." The Iranians argued, in their defense, that longstanding questions about contamination of nuclear equipment by high-enriched uranium, as well as secret procurement networks for P1 and P2 centrifuges, had been satisfactorily resolved by the IAEA, making the Security Council referral illegitimate under international law.

In November 2013, following the adoption of the JPOA, Zarif echoed Rouhani's earlier sentiments and characterized the Security Council sanctions as "illegal, unreasonable, and cruel." He noted further that "we have always said that

referring Iran's dossier to the Security Council was illegal." Seeking to implicate the United States, he noted it was "a political move masked under a legal basis."

Assuming Momtaz and the newly appointed legal advisory team share these longstanding claims about the Security Council resolutions' illegitimacy, questions will naturally arise regarding the team's approach to satisfying the JPOA's requirement for Iran to, "among other things, [address] the UN Security Council resolutions, with a view toward bringing to a satisfactory conclusion the UN Security Council's consideration of this matter."

Challenges for U.S. Policymakers

Given this context, the P5+1 faces two broad challenges as it seeks to secure Iranian compliance with Security Council demands.

The first is whether the Iranians -- as they seek the "return" of their nuclear file from the Security Council's agenda back to the IAEA's purview -- will premise their engagement on the illegitimacy of the Security Council resolutions. As expressed by one Iranian academic who has written extensively on nuclear negotiations, seeking to engage Western concerns would "practically be tantamount to recognizing the resolutions as an international phenomenon" and "entering into the issue of the resolutions will not be very different from recognizing their legitimacy." And if the Iranians do seek compromise on premises they consider illegitimate, their sense of "respect" and "dignity" could be violated in the process. Momtaz's record of tenacious advocacy for Iran's legal stances suggests he would insist that any final agreement not endorse the Security Council's authority to take positions to which Iran has objected. These challenges in recognizing the Security Council resolutions passed against Iran are compounded by statements by prominent Iranian parliamentarians, including National Security and Foreign Policy Committee chairman Alaeddin Boroujerdi, asserting that resolving the resolutions is a prerequisite for the Iranian parliament's ratification of the IAEA's Additional Protocol. "As long as Iran's nuclear dossier is on the UN Security Council agenda, discussing the implementation of the additional protocol is not possible," Boroujerdi has said.

The second is the contentious issue of addressing nonnuclear items of the Security Council, U.S., and European Union sanctions, including missile technology and human rights. Security Council Resolution 1929, for instance, passed in 2010, places limits on Iran's development of ballistic missile systems. Although U.S. officials seem to be holding a tough line on including such elements in the P5+1 proceedings, Iranian nuclear negotiator Abbas Araqchi has been clear: "Our mandate as the negotiating team only concerns the nuclear issue."

The optimistic view about Momtaz's appointment to the negotiating team is that the Iranians are beefing up their expertise for a final nuclear agreement on the horizon. The pessimistic view is that Iran could be reinforcing a tough stand focused on legalisms and international legal arguments. The truth likely lies somewhere in between.

Steven Ditto is an independent Middle East researcher and author of the Washington Institute studies [Reading Rouhani: The Promise and Peril of Iran's New President](http://www.washingtoninstitute.org/policy-analysis/view/reading-rouhani-the-promise-and-peril-of-irans-new-president) (<http://www.washingtoninstitute.org/policy-analysis/view/reading-rouhani-the-promise-and-peril-of-irans-new-president>) and [Red Tape, Iron Nerve: The Iranian Quest for U.S. Education](http://www.washingtoninstitute.org/policy-analysis/view/red-tape-iron-nerve-the-iranian-quest-for-u.s.-education) (<http://www.washingtoninstitute.org/policy-analysis/view/red-tape-iron-nerve-the-iranian-quest-for-u.s.-education>). ❖

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