

Unravelling of the Iran deal

Last week U.S. President Donald Trump announced that he could no longer certify that continuing the sanctions waiver for Iran, under the Joint Comprehensive Plan of Action (JCPOA), contributes to U.S. national security interests in view of Iran's aggressive behaviour. However, he carefully refrained from accusing Iran of violating the JCPOA given that International Atomic Energy Agency (IAEA) Director General Yukiya Amano has publicly stated that Iran is in full compliance with the deal and subject to the world's most robust nuclear verification regime. Mr. Trump's new policy therefore aims to "neutralize Iran's destabilizing influence and constrain... its support for terrorism... and ballistic missile [programme]".

Mr. Trump's decision does not re-impose the nuclear-related sanctions that were waived (though he could also have done so) but passes the ball to the U.S. Congress. Though Secretaries of State Rex Tillerson and of Defence James Mattis as well as Chairman Joint Chiefs of Staff General Joseph Dunford had bluntly stated that they were not in favour of the U.S. scrapping the deal, Mr. Trump's mind had been made up long ago.

For the first time since 1945, a clear divide with European allies has emerged, with German, French and British leaders jointly declaring that preserving the JCPOA is in their shared national security interests. The European Union (EU) foreign policy chief Federica Mogherini that the world cannot afford "to dismantle a nuclear agreement that is working". Only two countries have applauded Mr. Trump's decision — Saudi Arabia praised the U.S.'s firm strategy and Israeli Prime Minister Benjamin Netanyahu conveyed his congratulations.

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The JCPOA, signed on July 14, 2015, was the result of prolonged negotiations between Iran and P5+1 (U.S., U.K., France, Russia, China, Germany and EU). Talks began in 2003 between Iran and E-3 (Germany, France and U.K.), and in 2005 expanded to the P5+1 format. Negotiations frequently stalled leading to new sanctions on Iran but became purposeful after Hassan Rouhani's election as President in 2013.

In 2004, Iran had around 1000 centrifuges, and by 2015 the number had grown to 20,000. The U.S. concluded that Iran had recovered from the Stuxnet debacle and was barely months away from producing enough highly enriched uranium (20-25 kg) to produce a nuclear device. While other aspects of Iran's regional behaviour remained worrisome, the rationale driving the Obama administration was that a nuclear armed Iran would be more threatening. Therefore the JCPOA focussed exclusively on rolling back Iran's nuclear activities.

Under the JCPOA, Iran ended certain activities (converting the underground Fordow enrichment facility into a research centre and dismantling of the Arak heavy water research reactor), accepted restraints on other activities (reducing the number of operational centrifuges to 5060 at Natanz for 10 years, restricting enrichment level to 3.6% for 15 years, limiting the low enriched uranium stocks to 300 kg by shipping out nearly 10 tonnes of extra stocks and refraining from setting up a research reactor for 15 years) and accepted a highly rigorous inspection regime. In return, about \$100 billion of Iranian assets were unfrozen and Iran was allowed to resume sales of oil. January 16 last year was declared Implementation Day when the IAEA certified Iranian compliance and sanctions relief kicked in. The UN Security Council (UNSC) unanimously adopted Resolution 2231, endorsing the JCPOA and lifting the UNSC sanctions.

However, U.S. sanctions relief was more convoluted because of a multiplicity of sanctions (relating to nuclear and missile activities, human rights violations and terrorism) which also had extra-territorial application, implying that third country companies would be penalised if they engaged in activities from which U.S. companies were barred. Here, the relief was limited to “secondary” nuclear sanctions since U.S. companies still remained barred from dealings with Iran on account of the other sanctions, but third country companies were now free to engage with Iran. An exception was made in the civil aviation sector that enabled Boeing to secure a deal for nearly a hundred aircraft; otherwise Airbus would have locked it out of the Iranian market.

Since the Obama administration’s negotiations with Iran did not enjoy support in the Republican-dominated Congress, an additional piece of legislation, Iran Nuclear Agreement Review Act (INARA) was passed in May 2015 under Senator Bob Corker’s stewardship as chairman of the Senate Foreign Relations Committee. The objective was to constrain presidential authority to waive sanctions on Iran by obliging him to certify every 90 days that Iran was in full compliance with the deal and that continuing the waiver contributed to U.S. national security interests. INARA also obliged the President to provide a report on Iran’s support to terrorism, human rights violations and ballistic missile activities.

Given the hostility to the JCPOA, Barack Obama did not submit the JCPOA to the Senate for ratification as is mandated for a “treaty”; instead, JCPOA was described as a “political commitment” between P5+1 and Iran which lies within executive purview. According to a study carried out by Professors Jeffrey Peake and Glen Krutz, 94% of U.S. agreements with other countries, since 1930, have been on the basis of ‘executive agreements’. The JCPOA assumed legal character when it became part of the UNSC resolution 2231. However, unlike the JCPOA and the mandatory lifting of the U.S.’s secondary nuclear sanctions which is part of international law, INARA is U.S. domestic law.

In January, before handing over, the Obama administration had provided both the certification under INARA (to be renewed every 90 days) and the waiver of secondary nuclear sanctions under section 1245 of the National Defense Authorization Act (2012) that needs renewal every 120 days. Mr. Trump provided the INARA certification on April 18 and July 18 but drew the line last week.

He also renewed the waiver on secondary sanctions on May 17 and last month on September 14. This is why the U.S. sanctions have not kicked in because the current waiver will hold for 120 days, till mid-January 2018.

Since Mr. Trump had made his opinion about the JCPOA quite clear, describing it as the “worst deal ever”, he could have withheld renewal of sanctions waiver last month but that would have triggered re-imposition of secondary nuclear sanctions and violated international law since Iran remains in compliance with the JCPOA. It was therefore politically expedient to kick the ball to the Congress. Mr. Trump would like Congress to end some of the sunset clauses of 10/15 years in the JCPOA by making it permanent and also establish new benchmarks on missile activities and regional behaviour for continuing sanctions relief. This would imply an implicit renegotiation of the JCPOA, something that would attract a veto by both Russia and China were it to be taken up in the UNSC.

Amending INARA would require 60 votes in the Senate, eight more than the current Republican strength and not all Republicans will support Mr. Trump. Relations between Mr. Trump and Senator Corker have deteriorated with Mr. Trump blaming Mr. Corker for the “horrendous deal” and Mr. Corker comparing the White House to “an adult day care centre”. Congress could also do nothing, which would put Mr. Trump in the awkward position in January 2018 of either renewing the sanctions waiver for another 120 days or withholding it, which would put the U.S. in violation of the JCPOA.

In either case, the deal has broken down because Iran is not prepared to renegotiate it. Other countries have promised to uphold it but their ability to do so will depend on how their companies can be firewalled from U.S. sanctions if they continue their engagement with Iran.

However, implications of the breakdown are not limited to U.S.-Iran relations. Iran can make things difficult for the U.S. in Afghanistan as also in Iraq and Syria. The U.S.'s ability to work with Russia in Syria or with China regarding North Korea will also be impacted. And sooner or later, questions will be asked in Iran about why it should continue with the restrictions and inspections that it accepted under the JCPOA, which would have far-reaching implications for the global nuclear architecture. Coming after the rejection of the Trans-Pacific Partnership, the Paris climate change accord and the North American Free Trade Agreement, Mr. Trump's decision further diminishes U.S. credibility.

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