

**Contemporary Issues as to Nuclear Weapons and
International Law in the Post 9/11 World**

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« The Joint Comprehensive Plan of Action : a legal analysis »

« Today, after many months of tough, principled diplomacy, we have achieved the framework for that deal. And it is a good deal, a deal that meets our core objectives. This framework would cut off every pathway that Iran could take to develop a nuclear weapon » - President Barack Obama, Washington

« Folks, you cannot make a nuclear weapon with 300 kilograms and 3.67 percent—physically impossible. (...) Now, I'm not telling you they might not cheat. I'm not telling you they might not try to do something on the side. I don't know. (...) If they change their enrichment from 5% to 20%, or 20% and above, every red light is going to go off, and we will know that the day it happens. And we will be able to take action to find out what they're doing, why, and prevent any further exploitation. » - Secretary of State John Kerry

« It would be naive to suggest the Iranian regime will not continue to use its nuclear program, and any economic relief, to further destabilize the region. » - House Speaker John Boehner

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The three quotes on the first page of this paper illustrates quite accurately the predominant views of the Joint Comprehensive Plan of Action (JCPOA), also known as the Iran nuclear deal. This deal, recently adopted, is the first nuclear agreement reached outside of the Non-Proliferation Treaty (NPT), and thus constitutes an original document. This agreement, reached between, on one side, the Islamic Republic of Iran (Iran) and, on the other, the United States (U.S.), the United Kingdom, France, Russia, China, Germany, and the European Union (E.U.).

The purpose of this paper will be to provide a legal analysis of the content of the text, and to examine the solidity of the many critics that this deal received.

A. The Joint Comprehensive Plan of Action: background elements

In a first part, we will study the background elements necessary to conduct the analysis of the JCPOA : how and why Iran decided to launch a nuclear program, if Iran violated any obligations it contracted, how the international community reacted with sanctions and talks that eventually lead to the signature of the JCPOA in July 2015. The second part of this paper will treat the content of the text of the JCPOA, and all its legal implications.

A. 1. Background: Iran and the nuclear weapon

Before beginning our analysis of the text of the JCPOA, we have to understand Iran's nuclear ambition with a quick history of the elements that lead to the JCPOA (A.1.1), with the legal obligations of Iran regarding nuclear power (A.1.2.), and with the way the international community handled this nuclear ambition from 2006 and to the signature of the deal (A.1.3.). This will help us to have a bigger picture of the situation of Iran and why the country wanted to develop this kind of weapons, as well as help us to better understand the implications behind some provisions of the JCPOA.

A.1.1. Quick history of Iran nuclear ambition

Iran's nuclear ambition began in 1957, with the signature of a civil nuclear cooperation agreement between the country and the United States, as part of the U.S. Atoms for Peace program. This agreement included technical assistance and cooperation in research for

peaceful uses of nuclear energy¹. The first nuclear research center is established at Tehran University in 1959, following a wish of the Shah. At the time, Iran is an ally of the US.

On July 1st, 1968, Iran signed the NPT, and ratified it on February 1970 (see A.1.2. below).

The Shah had an ambitious nuclear programme for Iran, including the construction of 20 nuclear power reactors. In December 1972, the Iranian government announced its intention to obtain nuclear power plants within the next ten years², and starts building a uranium plant at Tricastin, France.

The Atomic Energy Organization of Iran (AEOI) was established in 1974. The cooperation with the US, France and other countries on nuclear is, in the 1970s, strong : establishment of an U.S.-Iran Joint Commission in 1974, trade agreement for the purchase of eight reactors valued at \$6.4 billion, supplies of uranium, etc. The AEOI became quickly powerful: in 1975, it employed approximately 150 individuals, and was supported by Argentina, the US, the UK, France, Germany, and India³. Its budget in 1975 was \$30.8 million, and more than \$1 billion for 1976, illustrating the acceleration of Iran's interest in acquiring nuclear power.

At the same time, Iran affirmed its opposition to nuclear weapons development⁴, while affirming that Iran has « *no intention of acquiring nuclear weapons but if small states began building them, then Iran might have to reconsider its policy* »⁵.

¹ US Department of State, "Atoms for Peace Agreement with Iran," Department of State Bulletin 36 (15 April 1957), p. 629

² « Nuclear Plant Study Started," Kayhan International, 19 December 1972

³ George Quester, "The Shaw and the Bomb" (unpublished paper, 1975)

⁴ Geneva Disarmament Conference of 1975

⁵ *Der Spiegel*, 8 February 1975

This programme is stopped with the Iranian revolution of 1979. Following the change of regime, the U.S. and other Western countries stopped all cooperation with the country, including for the U.S. its supply of highly enriched uranium. Iran canceled its agreement with Eurodif consortium in France and with Kraftwerk Union in Germany. Germany also stopped exporting components to Iran.

At first, Ayatollah Khomeini declared that the nuclear program was "un-Islamic" and ordered it stopped. However, he changed his mind in 1984 and began to look for partners to continue building the Bushehr reactors. Iran then secretly bought uranium from Namibia and from South Africa. The country worked with Pakistan on acquiring techniques like how to melt uranium, and also approached China to get some help in building a reactor. Iran discovered, in 1985, approximately 5,000 tons of high-quality uranium in the Saghand region of the Yazd province. The country thus had a strong will to continue the programme, and the means to do it.

On June 19, 1994, Iran addressed a written statement to the ICJ in regard with the issue of the « legality of the threat or use of nuclear weapons ». In this written statement, Iran stated that « *it is therefore plausible to conclude that the non-existence of a legally binding instrument on the prohibition of certain types of weapons does not mean that States have an absolute right to use them. It could also be argued that norms, rules and general principles adopted in the field of humanitarian international law with a view to prohibiting and limiting the use of some special conventional weapons is also effectively extended to nuclear weapons, due to the destructive nature of this kind weapons. (...) The Islamic Republic of Iran believes that the ICJ is now in a better position to (...) render its advisory opinion on the illegality of*

the threat or use of nuclear weapons »⁶. This long quote is useful in understanding that in 1994, Iran officially considered that the threat of use or the use of nuclear weapons was illegal, while continuing to seek to acquire nuclear technology.

The nuclear programme of Iran became problematic in 2002, when an Iranian dissident group, the National Council of Resistance of Iran (NCRI) identified a breach of Iran's engagements under the NPT. In fact, they accused Iran to have built an undeclared nuclear facility in Natanz, where uranium could be enriched to up to 20%, which is way more than what is required for a civil nuclear programme. Iran possessed nuclear facilities mainly in Natanz and in Fordow.

Because of its failure to respect its duties under the NPT, the International Atomic Energy Agency reported Iran to the United Nations Security Council in February 2006 (for more precisions, see A.1.3. Reactions of the international community).

Today, Iran possesses uranium enrichment facilities in Fordo and Natanz, research centers in Teheran and Ispahan, and other facilities in Karaj, Arak, Bouchehr and Darkhovin. All these facilities are officially for civil nuclear use.

⁶ Note verbale dated 19 June 1995 from the Embassy of the Islamic Republic of Iran, available at: <http://www.icj-cij.org/docket/files/95/8678.pdf>

A.1.2. Legal obligations of Iran regarding nuclear power

The Islamic Republic of Iran is part of the Treaty on the Non-Proliferation of Nuclear Weapons since February 2, 1970⁷. The country has NTP safeguards agreements that have entered into force as of October 31, 1992⁸.

Under the NPT and as a non-nuclear country, Iran is tied by the following articles :

« Article II

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices. (...)

Article IV

1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty. »

⁷ Signed on January 7, 1968, ratified on February 2, 1970. Source : « Signatories and parties to the NTP »

⁸ The Annual Report for 1992, International Atomic Energy Agency, Document GC(XXXVII)1060, July 1993, p. 140

Under the NPT, Iran is thus obligated not to seek to acquire any nuclear weapons, or to acquire the technology allowing the country to build nuclear weapons. Iran has a right to peaceful civil nuclear, which is what Iran claimed to do when accused of trying to develop a programme of production of nuclear weapons.

The Islamic Republic of Iran is also part of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction : it signed it on April 10, 1972, and ratified it on August 22, 1973. The Convention entered in force on 26 March 1975.

Finally, the Islamic Republic of Iran is part of the Convention on the Prohibition of Chemical Weapons : signed on 13 January 1993, ratified on 3 November 1997, entered into force on 2 December 1997.

A.1.3. Reactions of the international community to Iran nuclear ambition

The international community focused on the Iranian nuclear program after 2002, when it was found that Iran failed to respect its duties under the NPT, and after 2006, when Iran announced its intention to enrich uranium.

As a consequence of these violations, the International Atomic Energy Agency (IAEA) decided to report the fact that Iran had failed to report parts of its nuclear programme to the United Nations Security Council, with 27 states out of 35 on the IAEA board backing this move (three against, five abstentions). Iran denied, declaring that its nuclear program's aim was only nuclear energy, and not the construction of nuclear weapons.

The UN Security Council took action and adopted a first resolution on Iran nuclear program, followed by many others. This first resolution, 1696, was adopted on July 31, 2006, by 14 votes in favor and one against, Qatar⁹. Qatar's Ambassador Nassir Abdulaziz Al-Nasser declared « *we do not agree with the resolution at a time when our region is in flames* »¹⁰.

The resolution noted « *with serious concern that the IAEA Director General's report of 27 February 2006 lists a number of outstanding issues and concerns of Iran's nuclear programme, including topics which could have a military nuclear dimension* »¹¹, and « *demands (...) that Iran shall suspend all enrichment-related and reprocessing activities,*

⁹ At the time, the composition of the UNSC was the following : the P5 and the 10 temporary states : Argentina, Republic of Congo, Denmark, Ghana, Greece, Japan, Peru, Qatar, Slovakia, Tanzania.

¹⁰ BBC article, « UN issues Iran nuclear deadline », published on 31 July 2006, available at <http://news.bbc.co.uk/2/hi/5232288.stm>

¹¹ Resolution 1696 of the UNSC, adopted on July 31, 2006, ref. S/RES/1696 (2006), available at : <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?docid=453786b00>

including research and development »¹², and, finally, « expresses its intention, in the event that Iran has not by that date (August 31, 2006), complied with this resolution, then to adopt appropriate measures under Article 41 of Chapter VII of the Charter of the United Nations to persuade Iran to comply with this resolution and the requirements of the IAEA, and underlines that further decisions will be required should additional measures be necessary »¹³.

This resolution thus condemned Iran non-compliance with its duties, and left an open door to the possibility of sanctions by mentioning the Article 41 of the Chapter VII of the UN Charter.

« Article 41 - The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations. »

Between 2006 and 2015, ten resolutions were passed, so about one every year.

The central demand by the Security Council in the first six resolutions was that Iran suspends its uranium enrichment program, as well as undertakes several confidence-building measures outlined in a February 2006 International Atomic Energy Agency (IAEA) Board of Governors resolution.

¹² Resolution 1696 of the UNSC, adopted on July 31, 2006, ref. S/RES/1696 (2006), available at : <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=453786b00>

¹³ Id.

Almost all the resolutions were adopted under Chapter VII of the United Nations Charter, making most of the provisions of the resolutions legally binding on Iran, or all UN member states.

Four of them include a series of progressively expansive sanctions on Iran and or Iranian persons and entities.

In 2010, a Panel of Experts on the sanction was created and renewed every year.

All these resolutions, their provisions and the sanctions created were used in the negotiations and are part of the JCPOA.

A. 2. The talks that lead to the Plan of Action

The history, the frame and the different actors of the talks will be presented now. We'll then study what Iran gets in exchange of this deal, and how diplomacy and economic sanctions were used to force Iran into the talks and the agreement.

A.2.1. Implementation of the talks

In November 2013 the Joint Plan of Action, or Geneva interim agreement, was signed. This text can be defined as a temporary agreement, while a more long-term agreement was being negotiated. This deal included a freeze of some parts of Iran's nuclear program in exchange for decreased economic sanctions of Iran. This first agreement entered into action on January 20, 2014.

Several rounds of talks in Geneva in October and November 2013 culminated in a 6-month Joint Plan of Action (JPOA), and negotiations along a parallel track led to the Framework for Cooperation (FFC) between the IAEA and Iran.

One of the condition that allowed Iran to negotiate was the recognition by the EU3+3 of the right of Iran to peaceful civil nuclear power. The weight of the economic sanctions was another crucial argument.

A.2.2. Actors of the talk

The actors of the talks were the Islamic of Iran, and the P5+1 or E3+3, which are the United States, China, Russia, France, the United Kingdom, Germany, and the European Union.

The IAEA did not take part in the negotiations, but the organization gets a role in the JCPOA. According to the Preamble of the JCPOA, « *the IAEA will be requested to monitor and verify the voluntary nuclear-related measures (...), to provide regular updates to the Board of Governors (and) to the Security Council* ».

Why these particular countries? « P5 » stands for the « Permanent five » of the Security Council, that is, the five permanent members which have the veto right. Their approval was necessary, and thus their implication in the talks. Because of its economic power, Germany was also associated to the talks. In one of its articles, the New Yorker qualify the six countries as « *the world's six major powers* »¹⁴.

Moreover, the EU and the US were the main countries to impose sanctions on Iran, or, at least, the countries with the biggest economic weight in the sanctions. It was thus necessary that they all agreed to the deal, and thus all agreed to lift the sanctions, a condition for the success of the talks.

The main negotiators were John Kerry, U.S. Secretary of State, and Mohamed Javad Zarif, Minister of Foreign Affairs of Iran.

¹⁴ « An Iran deal, at last » New Yorker, July 14, 2015, available at: <http://www.newyorker.com/news/news-desk/an-iran-deal-at-last>

A. 2. 3. Adoption of the JCPOA and endorsement by concerned countries

After twenty months of negotiations, the JCPOA was signed in Vienna on July 14, 2015, by Iran, the P5+1 and the EU. To enter into action, the JCPOA needed to be endorsed by all actors and by the Security Council.

The JCPOA passed in the U.S. Congress on September 10, 2015, when a Resolution of disapproval presented by the Republicans was not adopted, validating de facto the deal. On September 15, 2015, the Congress voted for a second time against the Resolution of disapproval, allowing the Obama administration to begin to implement the deal.

The Security Council adopted, on July 20, 2015, the resolution 2231, which « *endorses the JCPOA, and urges its full implementation on the timetable established in the JCPOA* »¹⁵. This resolution was adopted by consensus.

On 13 October, 2015, The Iranian Parliament voted to approve the JCPOA, sending it to the Guardian Council for final approval. The following day, the Guardian Council found no religious reasons to disapprove of the deal and passed it. This approval allowed the Iranian administration to begin to implement the deal.

¹⁵ Resolution 2231 of the UN Security Council, S/RES/2231, available at : <http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>

B. The Joint Comprehensive Plan of Action: legal implications and obligations

The JCPOA is a long and detailed text. Thus, we will not examine all of the provisions in details, but, after seeing an overview of the general provisions, we will examine more carefully the main areas of concerns and see how relevant the critics might be.

B. 1. The legal provisions of the Joint Comprehensive Plan of Action: a general overview

The first part of the JCPOA, the Preamble and General Provisions, sets the frame of the rest of the Plan of Action. Before beginning to study the content of the deal, it's interesting to note that all measures Iran is taking are « *voluntary* », reflecting the political setting at the signature of the deal.

B.1.1. Preamble and General Provisions

The Preamble of the JCPOA sets the frame and the objectives of the deal. First of all, the full implementation of the JCPOA « *will ensure that Iran's nuclear programme will be exclusively peaceful* » (paragraph ii. of the Preamble of the JCPOA). In other words, « *Iran reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons.* » (paragraph iii. of the Preamble of the JCPOA). Finally, the Preamble reaffirms the right of Iran to « *its right to nuclear energy for peaceful purposes under the relevant articles of the nuclear NPT* ».

The JCPOA states clearly that it is a unique deal, an exception to the NPT which is the rule as well as the objective that the JCPOA will help reach: « *The E3/EU+3 and Iran acknowledge that the NPT remains the cornerstone of the nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament and for the peaceful uses of nuclear energy* ». The unicity of the deal is explicated: « *all provisions and measures contained in this JCPOA are only for the purpose of its implementation between EU+3 and Iran and should not be considered as setting precedents for any other state or for fundamental principles of international law and the rights and obligations under the NPT and other relevant instruments, as well as for internationally recognized principles and practices* »

In other words, the states want to avoid any other similar situation. The NPT should and must stay the text of reference when it goes to nuclear weapons and nuclear energy. This kind of deal should remain unique and extraordinary, because of very specific circumstances, and no other country should be in a position to ask for a similar deal in exchange for its respect of the NPT.

Moreover, the Preamble « *reaffirms the commitment of the actors to implement the JCPOA in « good faith », in a « constructive atmosphere, (...) based on mutual respect », and « to refrain from any action inconsistent with the letter, the spirit and intent of this JCPOA »*

High-level meetings every two years: One of the first and most important provisions of the JCPOA is the fact that the EU+3 will meet every two years, at a ministerial level. This is a very important disposition: dialogue will continue, teams will meet, « *in order to review and assess progress and to adopt appropriate decisions by consensus* ». This way, there will be a continued exchange of views and positions at a high-level, which is a key to the success of the implementation of the deal.

Creation of a Joint Commission: The JCPOA creates a Joint Commission, composed of the EU+3 and Iran, whose goal is to « *monitor the implementation of this JCPOA, and (to) carry out the functions provided for in this JCPOA* ». This Joint Commission will have a role to play in dispute resolution (see below), and will allow a more permanent, expert-level dialogue to ensure the good implementation of the deal.

Role of the IAEA regarding outstanding issues: Once the JCPOA went into action, Iran had until 15 October 2015 to fully implement the « Roadmap for Clarification of Past and Present Outstanding Issues » agreed with the IAEA. As a consequence, the Director General of the IAEA provided, on December 15, 2015, the final assessment of the resolution of all past and present outstanding issues to the board of Governors, and the E3+3, as members of the Board of Governors, submitted the resolution « Joint Comprehensive Plan of Action implementation and verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015) »¹⁶, which took necessary action with a view to close the issue.

Role of the IAEA in monitoring the implementation of the JCPOA: Iran will allow the IAEA to « monitor the implementation of the voluntary measures or their respective durations, as well as to implement transparency measures, (including:) a long-term IAEA presence in Iran; IAEA monitoring of uranium ore concentrate produced by Iran from all uranium ore concentrate plants for 25 years; containment and surveillance of centrifuge rotors and bellows for 20 years; use of IAEA approved and certified modern technologies including

¹⁶ available at: <https://www.iaea.org/sites/default/files/gov-2015-72-derestricted.pdf>

on-line enrichment measurement and electronic seals; and a reliable mechanism to ensure speedy resolution of IAEA access concerns for 15 years.

B.1.2. Enrichment, enrichment R&D, stockpiles

Enrichment: The total uranium stockpile Iran is authorized to keep is fixed to 300 kilograms, enriched at 3.67%, or the equivalent in other chemical forms. All excess quantities are to be sold to international partners. As John Kerry stated in front of the Council of Foreign Affairs, on July 24, 2015, « *We will have a limitation for 15 years for that, and for their enrichment at 3.67 percent. Folks, you cannot make a nuclear weapon with 300 kilograms and 3.67 percent—physically impossible.* »¹⁷.

For the first eight years, uranium enrichment and activities linked will have certain limitations, « *to be followed by gradual evolution, at a reasonable pace, to the next stage of its enrichment activities for exclusively peaceful purposes* ». The wording is voluntarily left vague, to leave room for interpretation and adjustments.

Centrifuges: During the first eight years, Iran will not manufacture or assemble other centrifuges and will replace centrifuges with centrifuges of the same type.

After eight years, Iran will start manufacturing agreed numbers of IR-6 and IR-8 centrifuges without rotors, and will store all of the manufactured machines at Natanz, under the IAEA continuous monitoring until they are needed under Iran's long-term enrichment and enrichment R&D.

¹⁷ « A conversation with John Kerry », Council of Foreign Affairs, July 24, 2015 - available at: <http://www.cfr.org/iran/assessing-iran-nuclear-accord/p36825>

More specifically, Iran will begin phasing out IR-1 centrifuges in ten years. During these ten years, a maximum of 5060 IR-1 centrifuges will remain in activity at Natanz. Excess centrifuges and enrichment-related infrastructure will be stored under the IAEA continuous monitoring.

During ten years, Iran' enrichment R&D with uranium will only include IR-4, IR-5, IR-6 and IR-8 centrifuges.

More simply, Iran will have to reduce its stock of centrifuges, use its less advanced centrifuges, and put all non-used centrifuges under the supervision of the IAEA. These measures seriously reduce the possibility for Iran to enrich uranium.

Research & Development: During fifteen years, all enrichment-related activities, including R&D, will be carried out at Natanz Enrichment facility. The maximum level of uranium enrichment will be 3.67%.

Fordow: Concerning Fordow, Iran will refrain from any uranium enrichment or enrichment-related R&D, and from keeping any nuclear material. Fordow will be converted into a nuclear, physics and technology center. 1044 IR-1 centrifuges will remain in one wing of Fordow, in six cascades. On these six cascades, two will be transitioned for stable isotope production, and four will remain idle. All other centrifuges or related material will be removed and stored under the IAEA continuous monitoring.

The Arak reactor: the question of heavy water: Under the JCPOA, the Arak heavy water research reactor will be redesigned and rebuilt based on an agreed conceptual design, and will « *support peaceful nuclear research and radioisotope production for medical and industrial purposes* ». The fuel used will be enriched up to 3.67%, and the Arak reactor will thus not

produce weapons grade plutonium. Moreover, all spent fuel will be shipped out of Iran for the lifetime of the reactor.

B. 1. 3. The JCPOA and the lifting of the nuclear-related sanctions

This JCPOA will produce the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran's nuclear programme, including steps on access in areas of trade, technology, finance and energy. All the sanctions linked to terrorism, human rights abuses, missile activities, will not be lifted.

The JCPOA ends all provisions taken about Iran in the UNSC (1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010) and 2224 (2015)), « *simultaneously with the IAEA-verified implementation of agreed nuclear-related measures by Iran* » (para. 18 of the Sanctions section).

Generally, the EU+3 « *will refrain from imposing discriminatory regulatory and procedural requirements in lieu of the sanctions and restrictive measures covered by this JCPOA* » (viii. preamble). This way, no disguised sanction can be reapplied. If this happens, a dispute resolution mechanism is planned (see below).

Similarly, the EU will gradually lift all its nuclear-related sanctions against Iran (transfer of funds, banking activities, provisions of insurance and reinsurance, supply of specialized financial messaging services, financial support for trader with Iran, etc.). The termination of these provisions will take place « 8 years after Adoption Day or when the IAEA has reached the Broader Conclusion that all nuclear materials in Iran remains in peaceful activities », whichever happens the earliest.

The United States will lift its sanctions, simultaneously with IAEA-verified implementation of the agreed nuclear-related measures by Iran. The same delays as for the EU apply (8 years or decision of the IAEA). The sanctions lifted will concern, among others: financial and banking transactions with Iranian banks and financial institutions, transactions in Iranian Rial, provision of U.S banknotes to the Government of Iran, but also transactions with Iran's energy sectors and sanctions on associated services for each of the categories of sanctions cited.

This has to be understood that the economic ENJEU for Iran is enormous. The frozen assets will be unlocked, which represents about 150 billion dollars.

All the measures are detailed in the annexes of the JCPOA.

The JCPOA also assesses that « *there will be no new nuclear-related UNSC sanctions and no new EU nuclear-related sanctions or restrictive measures* ». Thus, all nuclear-related issues will now be solved within the frame of the JCPOA. The same thing is said for the United States, with a slight difference due to its system: « *The U.S. administration, acting consistent with the respective roles of the President and the Congress, will refrain from re-introducing or re-imposing the sanctions specified in Annex II (...) and from imposing new nuclear-related sanctions* ».

Iran considers that any re-introduction or re-imposition of the sanctions in Annex II or any new nuclear-related sanctions would justify the lift of its commitments under the JCPOA (see dispute resolution mechanism below).

B.2. The JCPOA: main areas of concerns.

Even before its adoption, the JCPOA has been highly criticized. For exemple, in a letter addressed to President Obama, several senior officials from his administration or from the Bush administration expressed their concern concerning « *concessions that would weaken international inspection of Iran's facilities, back away from forcing Tehran to reveal its suspected past work on weapons, and allow Iranian research and development that would put it on a course to resuming intensive production of nuclear fuel as soon as the accord expires.* »¹⁸

The critics focused on several points: will the provisions of the deal be efficient to stop the nuclear process? Will the provisions of the deal ensure an effective control? And finally, what will happen once the deal is terminated?

B.2.1. How efficient if the JCPOA in stopping Iran's capacity to develop a nuclear weapon?

« *An important part of the parameters is a set of restrictions that would significantly increase the time it would take Iran to produce the nuclear material needed for a weapon — the breakout time — if it pursued one. The current breakout time is just two to three months. Under the JCPOA, that would increase to at least a year for at least 10 years, more than enough time to mount an effective response.* » - Ernest Moritz, U.S. Nuclear Secretary¹⁹

¹⁸ « Ex Advisors Warn Obama tha tIran Nuclear Deal 'May fall short » of Standards », the New York Times, David E. Sanger, June 24, 2015 - available at: http://www.nytimes.com/2015/06/25/world/middleeast/former-advisers-caution-obama-on-iran-nuclear-talks.html?_r=0

¹⁹ « A nuclear deal that offers a safer world » Ernest Moritz in the Washington Post, April 2015, available at: https://www.washingtonpost.com/opinions/a-safer-iran/2015/04/12/ae3a7f78-dfae-11e4-a1b8-2ed88bc190d2_story.html

This quote resumes accurately the effects of the deal: even if Iran still try to develop a nuclear weapon, it will take way more time because of all of the restrictions on enrichment, heavy water, etc.

The provisions of the JCPOA block Iran's pathways to a nuclear weapons through restrictions on plutonium production at the Arak reactor, through restrictions on uranium capacity in Natanz and Fordow facilities, and through the path of covert activity²⁰.

Concerning the uranium, the number of centrifuges will be taken from about 20,000 to 5,000 at Natanz. Moreover, the only model of centrifuges allowed is the centrifuge IR-1, which is the least efficient centrifuge. No centrifuge-related R&D will be allowed. Then, the stock of uranium currently owned by Iran will go from about ten tons to just three-hundred kilograms, and the limit of enrichment will be set at 3.67%. In Fordow, no uranium would be allowed, and about two-thirds of the centrifuges would be removed and placed under the IAEA continuous monitoring, with an ultimate goal of turning Fordow into a research center.

These two measures make it virtually impossible to develop a uranium weapon.

Concerning the plutonium, the Arak reactor will be redesigned following international standards, which will result in a very diminished capacity to produce weapons-grade plutonium. Moreover, all the plutonium-bearing spent reactor fuel will be sent out of Iran for the lifetime of the reactor, and no research and development can be allowed. Finally, the construction of any new heavy-water reactor is prohibited during fifteen years, and all the excess of heavy water needs to be sold to other countries. These measures are considered enough to avoid any plutonium-related weapon.

²⁰ A Conversation with John Kerry <http://www.cfr.org/iran/assessing-iran-nuclear-accord/p36825>

Concerning covert operations, the JCPOA implements a control of all of the supply chain of uranium: from the extraction to the transport and the manufacturing. This way, the IAEA knows where all the uranium goes and how it is used, which lowers the risks of a covert programme. Moreover, the IAEA will assign up to 150 inspectors to monitor the situation in Iran. This control will last during twenty-five years, and will ensure that the path to a covert development of a bomb will be impossible.

Finally, Iran will be required to implement the Additional Protocol to the IAEA safeguards agreement. The text provides with stricter control and inspections from the IAEA. Under this Protocol, the IAEA will be able to use advanced technologies to monitor the respect of Iran's obligations.

Of course, these restrictions are useful only if a strict control and monitoring is possible, which leads us to a second question: how efficient is the control of the implementation of the deal?

B. 2. 2. How efficient is the JCPOA in controlling the implementation of the provisions of the deal?

To guarantee the implementation of the provisions of the JCPOA, a role is given to the IAEA, which will deploy up to 150 inspectors in the country. Iran will « *permit the IAEA to implement continuous monitoring* » (para. 70. of the JCPOA), which includes: regular access (including daily access) to relevant buildings at Natanz, . These inspectors will have access to the nuclear facilities as well as a mandate to investigate suspected nuclear sites. This will last for fifteen years. Iran engages itself to cooperate with the IAEA, « *Including issuing long-term visas, as well as providing proper working space at nuclear sites* » (paragraphe 67. of the JCPOA).

Moreover, Iran, by becoming implementing the Additional Protocol²¹ of the IAEA, will permanently give increased access to the inspectors, including access to military installations where nuclear activity would be suspected.

A dispute resolution mechanism is implemented, which is part of the control system of the JCPOA.

If Iran believes that a nuclear-related sanction or restrictive measure is preventing the full implementation of the JCPOA the participant will consult with Iran in order to resolve the issue, and take appropriate action. If there is no resolution of the issue, the Joint Commission is seized to resolve the matter. More generally, if Iran believed that any of the E3+3 was not meeting its obligations, the country could seize the Joint Commission for resolution, and a contrario. The Joint Commission would have 15 days to resolve the issue, unless the delay is extended by consensus. After this first step, and if the issue is not resolved, the issue can be

²¹ Iran signed the Additional Protocol in 2003, but didn't ratify it.

referred to the Ministers of the Foreign Affairs. In parallel of the Ministerial consideration, the issue can be considered by an Advisory Board²². The Advisory board would have 15 days to issue a non-binding opinion. If the issue remains one, the Joint Commission would have 5 days to consider the opinion of the Advisory Board. If the situation is still blocked, then it would constitute enough ground to cease the obligations under the JCPOA in whole or in part, which implies, among other things, the reestablishment of the sanctions.

If such a situation happened, the Security Council would be notified. The SC would have to vote, within thirty days, a resolution that continue the lifting of the sanctions. This provision is interesting in the sense that it's not a resolution that reinstalls the sanctions: such a resolution would be easily blocked by Russia or China (or any P5), and would thus need a consensus among all the P5, which can be tough to reach. A resolution that continues the sanctions lifting would need only one member of the P5 to disagree, like the U.S. This way, all the countries part of the negotiations (except Germany) would be able to reestablish the sanctions if it wanted to. The reestablishment of the sanctions would also mean the end of Iran's obligations under the JCPOA, and thus the end of the JCPOA.

Are these delays reasonable, due to the fact that nuclear is very sensitive? What if, for exemple, the access of the facility was denied to the IAEA? The time to go through the process of dispute resolution could take up to thirty days or more if the delay is extended by consensus. While this is not enough to build a nuclear weapon, this would constitute a bad precedent and threaten the JCPOA. Moreover, what if the dispute remains unresolved at the end of the dispute resolution mechanism? Would it imply an automatic reestablishment of the sanctions?

²² composed of three members: one each appointed by the participants in the dispute and a third independent one.

Some last questions remain undecided. For example, the stock of uranium will be reduced from ten tons to 300 kilograms, but the JCPOA does not say how this will happen and who will be in charge of doing so.

B.2.3 What will happen after the JCPOA ends?

The JCPOA will seriously slow every attempt from Iran to develop a nuclear weapon during ten to fifteen years. However, what will happen once the JCPOA ends? Different scenarios exist. First, if the JCPOA is respected by all the parties, the sanctions will be lifted, and the IAEA will observe Iran's respect of the JCPOA. Under this scenario, Iran will have become a party to the Additional Protocol, and thus be under strict surveillance of the IAEA. When the JCPOA expires, Iran will become a non-nuclear country under the NPT, as indicated in the Preamble of the JCPOA: « *the Iranian nuclear programme will be treated in the same manner as that of any other non-nuclear-weapon state party to the NPT* ».

Then, there is the scenario where Iran does not respect its obligations under the JCPOA. A breach of its obligations would reinstall immediately the sanctions pre-JCPOA as explained above. U.S. officials don't exclude the use of force in case Iran tries again to acquire nuclear weapons.

Conclusion

« *Any agreement is a compromise. A compromise is never perfect.* » Gérard Araud, Ambassador of France to Washington

The legal analysis of the deal is part of a bigger question: is the JCPOA a good deal? It is hard to answer now that the ink just started to dry. A perfect deal was impossible to reach, but, as Frederic Wherey states, « *any notion that constructive engagement with Iran—and integrating it into a new and more inclusive Gulf security architecture—could help to restrain its dangerous behavior.* »²³. That is, the only existence of a deal is a good thing. The rest of the history will rely heavily on the behavior of Iran.

Another interesting path introduced by Politico in its article « The ultimate argument in favor of the Iran deal » is that the deal would help the U.S. to bomb Iran if the deal was not respected: « *administration officials argue that inspections of Iran’s nuclear facilities under the deal will reveal important details that can be used for better targeting should the U.S. decide to attack Iran* »²⁴. In fact, the inspections would allow to have a clearer, more precise view of how facilities are organized, and thus where to bomb the most strategic parts of it. Moreover, if Iran breaks the deal, it would be easier for the U.S. to justify an attack on Iran’s facilities.

²³ Regional Peace after the Iran deal, July 14, 2015, available at: <http://carnegieendowment.org/2015/07/14/bridging-gulf-i-gulf/idcv>

²⁴ « The Ultimate argument in favor of the Iran deal », Politico, by Michael Crowley, 08/24/15 - available at: <http://www.politico.com/story/2015/08/iran-nuclear-deal-argument-bomb-121613>

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