

A Bridge Too Far? Elements of a Permanent Nuclear Deal with Iran

Written by Zachary K. Goldman

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ZACHARY K. GOLDMAN, DEC 9 2013

The Joint Plan of Action (JPA), the interim agreement reached between the P5+1 and Iran, was a significant achievement, and a milestone in the annals of postwar American-Iranian relations. After a period of 34 years in which direct contact between the United States and Iran was extremely limited, senior U.S. government officials negotiated—privately and in secret—with Iranian counterparts and reached agreement on a framework deal that shaped the JPA ultimately adopted by P5+1 and the Islamic Republic.

Translating this interim agreement into an enduring deal that puts to rest the international community's concerns about Iran's nuclear program, however, will be exceedingly difficult. This is because any final arrangement that is stable must satisfy the interests of a wide range of countries, most particularly members of the P5+1 such as China, Russia, and the United States that will be party to any final agreement. But it also must satisfy non-parties to the agreement whose interests are nonetheless directly implicated by Iran's nuclear program, like Saudi Arabia and Israel. Reconciling the often-disparate concerns of these countries will, under any circumstances, be a significant challenge because the interests of each nation are not perfectly aligned, and each also has complex domestic political landscapes to navigate.

Complicating matters further, however, is the fact that any final agreement must tackle questions that are fraught with difficulty on two levels—both the political level, which directly addresses the nature of the Iranian nuclear program itself, and the technical level, which is concerned with the safeguards and verification measures that will exist, and the changes to the international sanctions regime Iran will demand in exchange for concessions on its nuclear program. If they are to have lasting value, the political and technical solutions reached in any final agreement must anticipate and be able to absorb potential future changes in Iran's political landscape that reduce the power of relative moderates like the current president, Hassan Rouhani. This article will identify some of the more complicated political and technical issues whose stable resolution is required before the JPA can be translated into a “long-term comprehensive solution that would ensure Iran's nuclear programme will be exclusively peaceful.”

Politically, the most significant question that Iran and the P5+1 will have to face is what sort of Iranian enrichment capability each side is willing to live with. In devising long-term answers to the question of what enrichment will be permissible (in reality, it is a series of questions), both sides will have to keep domestic political challenges, predominantly from the right-side of the political spectrum in each country, in mind. But in addition to the common concern of achieving an agreement that is politically bullet-proof, the P5+1 and Iran each also face a unique set of challenges.

The P5+1, led by the United States, will immediately have to confront the delicate political question of how to reconcile their agreement to a series of U.N. Security Council resolutions adopted over the last several years demanding that Iran suspend its enrichment activity. By failing to achieve this in the JPA, the P5+1 appears to have conceded this point, even while refusing to explicitly acknowledge Iran's claimed “right to enrich.” But that does not mean that it will be easy to reach agreement on what the enrichment ceiling should be; how much enriched uranium Iran should retain; how easily it should be able to purchase equipment that will enable it to enhance its enrichment capabilities; and how to manage the problem of the Arak heavy-water production plant. Answering these questions,

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difficult on their own, will require some manoeuvring around the previous demands of the UN Security Council.

Compounding the difficulties for the P5+1, such decisions need to be made with more than the apparent détente that seems to be characterizing the Rouhani era in mind. Rather, they must also take into account potential future political scenarios in Iran that could create an environment characterized by greater hostility between the Islamic Republic and the West.

Scenarios that usher in such change could include domestic events within Iran that push Rouhani to a more confrontational posture; developments elsewhere in the region that increase the insecurity of the regime and make it desire a more robust enrichment program; changes in the relationship between Rouhani and the Supreme Leader; or that the Supreme Leader and/or the president might be replaced by more confrontational members of the ruling elite. The P5+1 must also design any future deal having considered the possibility that a situation not specifically addressed in the agreement itself may nonetheless fundamentally affect Iran's desire to adhere to its terms. Such contingencies include the potential acquisition of a nuclear weapon by Saudi Arabia (or another country in the region), another all-out war between Israel and Hezbollah that threatens the fundamental survival of the latter group, dramatic escalation of the Syrian civil war in a way that directly affects Iranian interests, or other similar events. Any lasting agreement between the P5+1 and Iran must be able to withstand pressures like this.

For Iran's part, it will have to satisfy groups like the Islamic Revolutionary Guard Corps (IRGC) that have been "central" to Iran's ballistic missile and nuclear programs in the last several years. Such groups may presumably press Iran to test the limits of restrictions imposed on a nuclear program that generally enjoys public support. Iran will also have to carefully calibrate the support it provides to groups like Hamas and Hezbollah so that their actions do not touch off a wider war in which Iranian support could be seen to play an important role in the conflagration, making the Islamic Republic vulnerable to response by outside actors.

Beyond these political questions, which touch at the very centre of the state of affairs each group is willing to accept, technical questions about how to verify Iran's compliance with any final agreement, and about how to unwind the global sanctions regime built up over the last several years, exacerbate the difficulties inherent in reaching a final deal regarding Iran's nuclear program.

The heart of any long-term agreement between Iran and the international community regarding its nuclear program is likely to be a series of limitations on its ability to enrich nuclear materials. Indeed, such limitations were among the core provisions of the JPA, which also imposed controls on the operation of centrifuges and on the construction and operation of reprocessing facilities, among many other issues. While the JPA provides for extensive monitoring measures, the test of any long-term agreement will be Iran's willingness to submit to such intrusive measures over time (again, taking account of the kinds of potential political shifts described above). Moreover, how to construct such an effective regime will try the creativity of the international community, given the bitter experiences with the long-term monitoring of Iraq's WMD programs in the 1990s, and the revelation of Iran's own clandestine enrichment facility at Fordo in 2009. The key technical challenge will be to design an inspection regime in which all parties have confidence, ensuring that Iran will not be able to surprise the international community while staying within the agreed-upon limits to the program over a significant period of time.

Even more difficult will be devising a method to ease sanctions in a scenario in which Iran retains sufficient enrichment capability that neighbouring states (and the United States) may still fear a potential Iranian break-out. In these circumstances, financial institutions and other businesses that have been barred from doing business with Iran by sanctions may fear that whatever long-term agreement is reached between Iran and the international community may come undone at some point in the future. Reputable international banks may worry, in this scenario, that sanctions would be re-imposed, and that they would be unable entirely to cease prohibited transactions in time, thereby finding themselves subject to penalties. With such apprehensions, banks may be less willing to engage in the type of previously prohibited transactions with Iran necessary to fully unwind the sanctions regime. This is because the kinds of business deals that Iran seeks ultimately depend on the independent decisions of private actors to engage in them, meaning that any reluctance on the part of the private sector to do business here may minimize the benefits that Iran ultimately receives from its agreement with the West.

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The hesitance of financial institutions and others to engage in Iranian business may be exacerbated by two additional factors. First, in the next six months, the United States may embrace an aggressive posture with respect to the enforcement of existing sanctions adopted under the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) in order to maximize its leverage during the negotiations over a final agreement. CISADA was implemented in July 2010, and permits the U.S. to impose financial sanctions and restrictions on foreign companies (primarily financial institutions and petroleum companies) that do business with certain Iranian entities engaged in illicit conduct. CISADA was very effective in encouraging foreign governments to adopt robust sanctions regimes of their own, and in discouraging foreign companies from engaging in business transactions with Iran. Indeed, a good deal of the leverage that helped produce an agreement was generated by CISADA and its after-effects.

The implementation of sanctions under CISADA, however, faces important technical difficulties with the P5+1's undertaking in the JPA to refrain from imposing *new* "nuclear-related" sanctions during the term of its effectiveness. There is an ambiguity in the definition of what constitutes a "new" sanction under the terms of the JPA. The Obama Administration takes the position that it will "vigorously enforce" existing sanctions, presumably giving it license to impose sanctions on persons that have violated existing sanctions regimes, while refraining from implementing new sanctions programs. Iran might interpret this provision of the JPA differently, however, and consider any new enforcement measures as a "new" sanction. Meanwhile, businesses may find it difficult to predict whether conduct will subject it to sanctions under existing legislation and regulation.

Even after a final deal is reached with Iran that presumably will lift all nuclear-related sanctions, sanctions will likely remain on other illicit Iranian behaviour like its support for human rights abuses and terrorist groups. Since many of these sanctions programs target the same or similar entities as those who were designated for support to Iran's nuclear program (in particular the IRGC and many of its related front companies), substantial restrictions will likely remain on politically and economically important Iranian entities. The likely result will be a balkanized sanctions regime, which may restrict the amount of business that risk-averse financial institutions and other companies are willing to do with Iran, thus limiting the benefits to Iran of a permanent deal.

The JPA is to be lauded for what it symbolizes in the history of modern American-Iranian relations. But the agreement does not stand on its own, and its ultimate success or failure will depend in large measure on the contours of the final deal that emerges from it, if one emerges at all. With significant technical and political obstacles to a deal, conclusive evaluations of the JPA will need to wait, likely for some time to come.

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