INTRODUCTORY NOTE TO THE JOINT PLAN OF ACTION ON IRAN'S NUCLEAR PROGRAM

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Introduction

On November 24, 2013, the Islamic Republic of Iran, together with the E3/EU—comprised of France, Germany, the United Kingdom of Great Britain and Northern Ireland (UK)—as well as the People's Republic of China (China), the Russian Federation (Russia), and the United States of America (US) agreed to the Joint Plan of Action on Iran's nuclear program (Joint Plan of Action).[1] The Joint Plan of Action aims at ensuring the Islamic Republic of Iran's exclusive peaceful nuclear program through mutually-agreed steps between the so-called E3/EU+3 and the Islamic Republic of Iran.[2] Though much has been said about the Joint Plan of Action since its adoption, not enough attention has been paid to its historical context; such neglect risks the Joint Plan of Action being, at best, viewed in isolation. This note bridges that gap by providing an overview of the events that led the Islamic Republic of Iran, the five permanent members of the United Nations Security Council (UNSC), and Germany (P5+1) to agree on the Joint Plan of Action.

Background

March 5, 1957 constitutes the genesis of Iran's nuclear program, when, under the Eisenhower administration's Atoms for Peace program, the US and the Imperial Government of Iran signed a nuclear cooperation agreement that included the leasing of low-enriched uranium (LEU) to Iran for the purposes of a "research and development program looking towards the realization of the peaceful and humanitarian uses of atomic energy."[3] By 1967, through a "contract" between the Imperial Government of Iran, the International Atomic Energy Agency (IAEA) and the US, the US provided the Tehran Nuclear Research Center with the so-called Tehran Research Reactor (TRR), as well as highly enriched uranium (HEU) and plutonium.[4] From then on, and throughout the 1970s, the Imperial Government of Iran laid the legal and technological foundations for an ambitious nuclear program. Legally, the Imperial Government of Iran signed the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) on July 1, 1968, the day it was opened for signature. By ratifying the NPT in February 1970, the Imperial Government of Iran became one of the first of forty-three Parties—including the UK, the US, and the USSR, three of the five nuclear-weapon States—that effected the NPT's entry into force on March 5, 1970.[5] On May 15, 1974, pursuant to Article III of the NPT, the Imperial Government of Iran concluded a comprehensive safeguards agreement with the IAEA. In terms of access to nuclear material, during the setting up of Eurodif—the European enrichment consortium that would ultimately produce 25% of world HEU—Iran acquired 10% of the consortium's shares, entitling it to 10% of Eurodif's HEU production.[6] Regarding nuclear technology, the Imperial Government of Iran also signed contracts with France's Framatome and Germany's Kraftwerk Union for the construction, near the Persian Gulf, of two pairs of pressurised water reactors (PWR) in Darkhovin (under license from the US Westinghouse) and Bushehr, respectively.[7] The Imperial Government of Iran and the US would further sign a broad trade agreement on the purchase of eight PWRs and supply of nuclear fuel.[8]

On February 11, 1979, however, the Iranian revolution ended 2,700 years of Iranian monarchy, paving the way for the proclamation of the Islamic Republic of Iran on March 30–31, 1979. From then on, the situation drastically changed. For 444 days, beginning on November 4, 1979, the US diplomatic and consular staff were held hostage in Tehran.[9] In parallel with the Islamic Republic of Iran's initial disengagement from nuclear energy, cooperation was halted with Iran's partners such as the US. On September 22, 1980, seeking to take advantage of the chaos surrounding the nascent Islamic Republic, Saddam Hussein's secularist Baathist Iraq invaded Iran. Apart from becoming the first State to use a nerve agent—Tabun, a weapon of mass destruction—on the battlefield against Iranians,[10] Iraq also destroyed the core of both of Bushehr's PWRs.[11] Faced with this sudden vacuum, the Islamic Republic of Iran turned in the 1990s to other suppliers of nuclear technology by entering into cooperation agreements with Argentina, China, and Russia for the re-configuration of the TRR, the completion of the Bushehr PWRs and also the provision of HEU.[12] Ensuing events however would increasingly turn the Islamic Republic of Iran towards self-sufficiency.

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In the 2000s, a series of events—not least the 2002 disclosure of the Natanz Fuel Enrichment Plant and the Arak heavy-water reactor (IR-40)—gave rise to concerns regarding the Islamic Republic of Iran's nuclear program.[13] In September 2003, this resulted in the IAEA Board of Governors' first resolution on the issue, wherein the Islamic Republic of Iran was asked to suspend its enrichment activities and to "unconditionally sign, ratify and fully implement" an IAEA safeguards Additional Protocol (Additional Protocol) "as a confidence-building measure."[14] As a result of this and negotiations with the E3/EU, the Islamic Republic of Iran signed the Additional Protocol on December 18, 2003 and began its voluntary implementation pending ratification by the Iranian parliament, also declaring a voluntary suspension of enrichment.[15]

In September 2005, however, with the gradual growth of concerns from both sides, an IAEA Board of Governors resolution found the position of the Islamic Republic of Iran *vis-à-vis* its NPT obligations to "constitute non-compliance in the context of article XII.C" of the IAEA Statute and that "the absence of confidence" in the Islamic Republic of Iran's exclusive peaceful nuclear program gave rise to issues within the competence of the UNSC.[16] Following this turn, the Islamic Republic of Iran announced in January 2006 that it would resume research and development of its nuclear program.[17] The IAEA Board of Governors followed suit by referring the Islamic Republic of Iran's non-compliance to the UNSC in February 2006.[18] Immediately thereafter, the Islamic Republic of Iran announced that it would end its voluntary implementation of the Additional Protocol[19] and resume its enrichment activities, which would rapidly achieve a 3.6% enriched uranium in 2006.[20]

Now seized of the matter, the UNSC would adopt six resolutions between 2006 and 2010: 1696 (July 2006),[21] 1737 (December 2006),[22] 1747 (March 2007),[23] 1803 (March 2008),[24] 1835 (September 2008),[25] and 1929 (June 2010).[26] These resolutions, explicitly or by reference to an earlier resolution, called on the Islamic Republic of Iran to suspend all uranium enrichment and reprocessing activities. They also initially demanded the Islamic Republic of Iran to "act in accordance with the provisions of the Additional Protocol"[27] before "call[ing] upon Iran to ratify promptly the Additional Protocol."[28] Additionally, the second, third, fourth, and sixth resolutions imposed a variety of restrictions on Iran.[29]

Despite the computer virus Stuxnet affecting Iranian nuclear installations in 2007−2010,[30] and the deaths of a number of Iranian nuclear scientists up to 2011,[31] by the summer of 2013, Iran would manage to enrich uranium at nearly 20%,[32] as well as develop a network of uranium mining, nuclear research reactors, and plants,[33] including the full operationalization of the Bushehr nuclear power plant.[34] On the other hand, UN, multilateral, and unilateral (US) sanctions crippled the Iranian economy and, ironically, hurt the Iranian victims of Saddam Hussein's chemical weapons, due to the shortage of medicines and medical tools.[35] This complex situation brought the Islamic Republic of Iran on the one hand, and the E3/EU+3 or P5+1 on the other hand, to agree to the Joint Plan of Action.

Analysis

A four-page document agreed to by the E3/EU+3 and the Islamic Republic of Iran and communicated to the IAEA, the Joint Plan of Action aims at ensuring the long-term exclusive peaceful nature of the Islamic Republic of Iran's nuclear program, through a short- (First Step) and mid-term (Final Step) approach, managed by a Joint Commission of the E3/EU+3 and the Islamic Republic of Iran and verified by the IAEA.

The First Step consists of a series of reciprocal actions to be undertaken by the Islamic Republic of Iran and the E3/EU+3. The former's consists of reducing the enriched uranium stockpile; limiting enrichment to 5%; not advancing activities at Natanz, Fordow or IR-40; no new locations for the enrichment or reprocessing; and an enhanced monitoring; although enrichment research and development would continue. For their part, the E3/EU+3 would essentially ease off existing sanctions while refraining from imposing new UNSC, EU, and US nuclear-related sanctions.

Clearly, unlike the above-described UNSC resolutions that require a series of immediate and full actions by the Islamic Republic of Iran, the Joint Plan of Action adopts a dynamic approach. This becomes more explicit in particular in the Final Step where, unlike the UNSC resolutions that required the full suspension of the Islamic Republic of Iran's uranium enrichment, the Joint Plan of Action focuses on "scope and level of enrichment activities, capacity, where it is carried out, and stocks of enriched uranium." Equally, the ratification of the Additional Protocol falls

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not in the First Step, but comes as part of the Final Step, which would also "[c]omprehensively lift UN Security Council, multilateral and national nuclear-related sanctions." Interestingly, the Joint Plan of Action concludes that once the Final Step has been realised, "the Iranian nuclear programme will be treated in the same manner as that of any non-nuclear weapon state party to the NPT."

Conclusion

Stretching back to the last days of the winter of 1957, the history of Iran's nuclear program remains complex, both factually and legally. This complexity was echoed in the above-mentioned UNSC resolutions which, notwithstanding their demands, calls, and sanctions, did not find NPT violations and unanimously recalled "the right of States Party, in conformity with Articles I and II of that Treaty, to develop research, production and use of nuclear energy for peaceful purposes without discrimination." This was in turn echoed in the Joint Plan of Action, which, by its own words, is a

> comprehensive solution [that] would constitute an integrated whole where nothing is agreed until everything is agreed. This comprehensive solution would involve a reciprocal, step-by-step process, and would produce the comprehensive lifting of all UN Security Council sanctions, as well as multilateral and national sanctions related to Iran's nuclear programme.

In short, reciprocity and "good faith" are the Joint Plan of Action's central notions. Appearing only a couple of times in the text, these are among public international law's key concepts, which will condition the objective of realising the comprehensive solution aimed for in the Joint Plan of Action.[36]

ENDNOTES

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2 For the text of the Joint Plan of Action, see IAEA, COMMUNICATION DATED 27 NOVEMBER 2013 RECEIVED FROM THE EU HIGH REPRESENTATIVE CONCERNING THE TEXT OF THE JOINT PLAN OF ACTION (2013), http://www.iaea.org/Publications/Documents/Infcircs/2013/infcirc855.pdf. *See also* IAEA, COMMUNICATION DATED 28 NOVEMBER 2013 RECEIVED FROM THE PERMANENT MISSION OF THE ISLAMIC REPUBLIC OF IRAN TO THE AGENCY CONCERNING THE TEXT OF THE JOINT PLAN OF ACTION (2013), http://www.iaea.org/Publications/Documents/Infcircs/2013/infcirc856.pdf.

3 Agreement for Co-Operation Concerning Civil Uses of Atomic Energy, U.S.-Iran., art. 4, Mar. 5, 1957, 4898 U.N.T.S. 28.

4 Contract for the Transfer of Enriched Uranium and Plutonium for a Research Reactor in Iran, art.1, Mar. 10, 1967, 8866 U.N.T.S. 108.

5 In accordance with Article IX(3) of the NPT, a nuclear-weapon State as a State that "manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January, 1967." These States are China, France, Russia (succeeding the USSR), the UK, and the US.

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JOINT PLAN OF ACTION ON IRAN'S NUCLEAR PROGRAM*
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Joint Plan of Action

Preamble

The goal for these negotiations is to reach a mutually-agreed long-term comprehensive solution that would ensure Iran's nuclear programme will be exclusively peaceful. Iran reaffirms that under no circumstances will Iran ever seek or develop any nuclear weapons. This comprehensive solution would build on these initial measures and result in a final step for a period to be agreed upon and the resolution of concerns. This comprehensive solution would enable Iran to fully enjoy its right to nuclear energy for peaceful purposes under the relevant articles of the NPT in conformity with its obligations therein. This comprehensive solution would involve a mutually defined enrichment programme with practical limits and transparency measures to ensure the peaceful nature of the programme. This comprehensive solution would constitute an integrated whole where nothing is agreed until everything is agreed. This comprehensive solution would involve a reciprocal, step-by- step process, and would produce the comprehensive lifting of all UN Security Council sanctions, as well as multilateral and national sanctions related to Iran's nuclear programme.

There would be additional steps in between the initial measures and the final step, including, among other things, addressing the UN Security Council resolutions, with a view toward bringing to a satisfactory conclusion the UN Security Council's consideration of this matter. The E3+3 and Iran will be responsible for conclusion and implementation of mutual near-term measures and the comprehensive solution in good faith. A Joint Commission of E3/EU+3 and Iran will be established to monitor the implementation of the near-term measures and address issues that may arise, with the IAEA responsible for verification of nuclear-related measures. The Joint Commission will work with the IAEA to facilitate resolution of past and present issues of concern.

Elements of a first step

The first step would be time-bound, with a duration of 6 months, and renewable by mutual consent, during which all parties will work to maintain a constructive atmosphere for negotiations in good faith.

Iran would undertake the following voluntary measures:

- From the existing uranium enriched to 20%, retain half as working stock of 20% oxide for fabrication of fuel for the TRR. Dilute the remaining 20% UF6 to no more than 5%. No reconversion line.
- Iran announces that it will not enrich uranium over 5% for the duration of the 6 months.
- Iran announces that it will not make any further advances of its activities at the Natanz Fuel Enrichment Plant[1], Fordow[2], or the Arak reactor[3], designated by the IAEA as IR-40.
- Beginning when the line for conversion of UF6 enriched up to 5% to UO2 is ready, Iran has decided to convert to oxide UF6 newly enriched up to 5% during the 6 month period, as provided in the operational schedule of the conversion plant declared to the IAEA.
- No new locations for the enrichment.
- Iran will continue its safeguarded R&D practices, including its current enrichment R&D practices, which are not designed for accumulation of the enriched uranium.
- No reprocessing or construction of a facility capable of reprocessing.
- Enhanced monitoring:

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- Provision of specified information to the IAEA, including information on Iran's plans for nuclear facilities, a description of each building on each nuclear site, a description of the scale of operations for each location engaged in specified nuclear activities, information on uranium mines and mills, and information on source material. This information would be provided within three months of the adoption of these measures.
- Submission of an updated DIQ for the reactor at Arak, designated by the IAEA as the IR-40, to the IAEA.
- Steps to agree with the IAEA on conclusion of the Safeguards Approach for the reactor at Arak, designated by the IAEA as the IR-40.
- Daily IAEA inspector access when inspectors are not present for the purpose of Design Information Verification, Interim Inventory Verification, Physical Inventory Verification, and unannounced inspections, for the purpose of access to offline surveillance records, at Fordow and Natanz.
- IAEA inspector managed access to:
  - centrifuge assembly workshops[4];
  - centrifuge rotor production workshops and storage facilities; and,
  - uranium mines and mills.

In return, the E3/EU+3 would undertake the following voluntary measures:

- Pause efforts to further reduce Iran's crude oil sales, enabling Iran's current customers to purchase their current average amounts of crude oil. Enable the repatriation of an agreed amount of revenue held abroad. For such oil sales, suspend the EU and U.S. sanctions on associated insurance and transportation services.
- Suspend U.S. and EU sanctions on:
  - Iran's petrochemical exports, as well as sanctions on associated services.[5]
  - Gold and precious metals, as well as sanctions on associated services.
- Suspend U.S. sanctions on Iran's auto industry, as well as sanctions on associated services.
- License the supply and installation in Iran of spare parts for safety of flight for Iranian civil aviation and associated services. License safety related inspections and repairs in Iran as well as associated services.[6]
- No new nuclear-related UN Security Council sanctions.
- No new EU nuclear-related sanctions.
- The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from imposing new nuclear-related sanctions.
- Establish a financial channel to facilitate humanitarian trade for Iran's domestic needs using Iranian oil revenues held abroad. Humanitarian trade would be defined as transactions involving food and agricultural products, medicine, medical devices, and medical expenses incurred abroad. This channel would involve specified foreign banks and non-designated Iranian banks to be defined when establishing the channel.
  - This channel could also enable:
    - transactions required to pay Iran's UN obligations; and,
    - direct tuition payments to universities and colleges for Iranian students studying abroad, up to an agreed amount for the six month period.
- Increase the EU authorisation thresholds for transactions for non-sanctioned trade to an agreed amount.

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Elements of the final step of a comprehensive solution*

The final step of a comprehensive solution, which the parties aim to conclude negotiating and commence implementing no more than one year after the adoption of this document, would:

- Have a specified long-term duration to be agreed upon.
- Reflect the rights and obligations of parties to the NPT and IAEA Safeguards Agreements.
- Comprehensively lift UN Security Council, multilateral and national nuclear-related sanctions, including steps on access in areas of trade, technology, finance, and energy, on a schedule to be agreed upon.
- Involve a mutually defined enrichment programme with mutually agreed parameters consistent with practical needs, with agreed limits on scope and level of enrichment activities, capacity, where it is carried out, and stocks of enriched uranium, for a period to be agreed upon.
- Fully resolve concerns related to the reactor at Arak, designated by the IAEA as the IR-40. No reprocessing or construction of a facility capable of reprocessing.
- Fully implement the agreed transparency measures and enhanced monitoring. Ratify and implement the Additional Protocol, consistent with the respective roles of the President and the Majlis (Iranian parliament).
- Include international civil nuclear cooperation, including among others, on acquiring modern light water power and research reactors and associated equipment, and the supply of modern nuclear fuel as well as agreed R&D practices.

Following successful implementation of the final step of the comprehensive solution for its full duration, the Iranian nuclear programme will be treated in the same manner as that of any non-nuclear weapon state party to the NPT.

ENDNOTES

1 Namely, during the 6 months, Iran will not feed UF6 into the centrifuges installed but not enriching uranium. Not install additional centrifuges. Iran announces that during the first 6 months, it will replace existing centrifuges with centrifuges of the same type.

2 At Fordow, no further enrichment over 5% at 4 cascades now enriching uranium, and not increase enrichment capacity. Not feed UF6 into the other 12 cascades, which would remain in a non-operative state. No interconnections between cascades. Iran announces that during the first 6 months, it will replace existing centrifuges with centrifuges of the same type.

3 Iran announces on concerns related to the construction of the reactor at Arak that for 6 months it will not commission the reactor or transfer fuel or heavy water to the reactor site and will not test additional fuel or produce more fuel for the reactor or install remaining components.

4 Consistent with its plans, Iran's centrifuge production during the 6 months will be dedicated to replace damaged machines.

5 "Sanctions on associated services" means any service, such as insurance, transportation, or financial, subject to the underlying U.S. or EU sanctions applicable, insofar as each service is related to the underlying sanction and required to facilitate the desired transactions. These services could involve any non-designated Iranian entities.

6 Sanctions relief could involve any non-designated Iranian airlines as well as Iran Air.

* With respect to the final step and any steps in between, the standard principle that "nothing is agreed until everything is agreed" applies.

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