



Europe, the US and the Iran deal: The need to resolve transatlantic disagreements

European View
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journals.sagepub.com/home/euv**Daniel Schwammenthal****Abstract**

The importance of the transatlantic relationship and the seriousness of the Iranian threat demand that Europe and the US try their utmost to resolve their disagreement over the Joint Comprehensive Plan of Action—also known as the ‘Iran nuclear deal’ or simply the ‘Iran deal’. For the EU this means reviewing the legal and political context of Washington’s withdrawal from the nuclear deal and acknowledging the agreement’s shortcomings. European leaders themselves have identified Iran’s aggression as a major security threat and have also confirmed that the deal is not ‘sufficient’. This being the case, the article argues that, to counter Iran’s nuclear ambitions and regional aggression, the EU ought to cooperate with the US even after the latter’s withdrawal from the deal.

Keywords

Iran, JCPOA, Nuclear, Transatlantic, Security, Missiles, Hezbollah

Introduction

US President Donald Trump’s 8 May decision to withdraw from the so-called Iran nuclear deal, formally known as the Joint Comprehensive Plan of Action (JCPOA), has led to serious transatlantic tensions. The disagreement over Iran comes at a time when the bilateral relationship is already strained by other disputes, such as trade tariffs and US complaints about Europe’s low defence spending.

The US policy change on the nuclear deal collided with the stated EU consensus that the JCPOA is not only the best way to prevent a nuclear Iran, but that the deal is also a

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major European diplomatic accomplishment. As High Representative Federica Mogherini said on the day after the agreement was concluded, ‘Yesterday the European Union wrote one of the best pages of its history: the Iranian nuclear deal has been reached thanks to the facilitation of the EU . . . it is mainly thanks to the extraordinary work of an extraordinary team, the European one, that we made it’ (EEAS 2015).

In addition to the political fallout, the US move has had financial repercussions. The threat of American secondary sanctions, which could cut off non-American companies from the US market and financial system for doing business in Iran (Moehr 2018), is forcing European companies to choose between the \$19.4-trillion US economy and the \$440-billion Iranian economy (World Bank 2018), one that is compromised by corruption, terror financing and close entanglements with the Islamic Revolutionary Guard Corps. While this will be a fairly easy business decision for most firms, it nevertheless deprives European companies of potentially lucrative business deals. Therefore infuriated by the extraterritorial aspects of the US sanctions, the EU is looking for ways to neutralise them through a so-called blocking statute and a Special Purpose Vehicle. These efforts, while unlikely to succeed, are bound to intensify the tensions between the US and the EU.

Multinationals that have important US operations cannot be forced against their own business interests to remain in Iran. Indeed, numerous European companies have already announced their withdrawal from the Iranian market, and French President Emmanuel Macron has acknowledged that governments cannot interfere with the business decisions of private companies (*France24* 2017). The blocking statute and Special Purpose Vehicle may help smaller companies that do not have any US activities anyway. But even they may be hesitant to enter or to stay in Iran, as individual company heads could be sanctioned and because they may find it difficult to find the necessary business partners or financing (Soussan et al. 2018). Likewise, the €18 million the European Commission announced on 23 August ‘in support of sustainable economic and social development in the Islamic Republic of Iran’ will do little in the end for the troubled Iranian economy (European Commission 2018). But the announcement will have no doubt further angered Washington.

The disagreement over the Iran nuclear deal is worrying and not only because it damages the already strained transatlantic relationship. The underlying issue—how to deal with the revolutionary regime in Tehran—is one of the West’s most urgent national security challenges. Iran’s nuclear ambitions, aggression in the region and support for terrorism call for unprecedented transatlantic unity. Instead, the West is divided.

There are additional circumstances that unnecessarily intensify the disagreement about the Iran deal, which, if removed, could help both sides find common ground. Chief among them is Europe’s misinterpretation of the political and legal context in which the Trump administration withdrew from the JCPOA. Moreover, the lack of an informed debate within the EU about both the nuclear deal’s shortcomings and the challenges posed by the Islamic Republic also stands in the way of transatlantic understanding on this critical issue. At the same time, recent public statements by European leaders have shown that they, like the Americans, are worried about Tehran’s behaviour and some of

the deal's flaws. This ought to drive forward transatlantic cooperation to contain Iran, notwithstanding the dispute over the US withdrawal.

The political and legal context of the US withdrawal

Beyond the substantive disagreement over the US policy change on Iran, one often-heard European complaint is that the US had no right to withdraw from the JCPOA (EEAS 2018a). For the EU, which likes to define itself as a 'community of law' (Maňko 2017), the suggestion that the US violated international law or norms has made the US move particularly difficult to accept. That charge, however, is a misreading of the legal and political situation.

On 19 November 2015, Julia Frifield, then assistant secretary for legal affairs in the US State Department under Secretary of State John Kerry, sent a letter to then US House Representative Mike Pompeo (now President Trump's secretary of state) underlining the wholly political, rather than legal, nature of the Iran deal:

The Joint Comprehensive Plan of Action (JCPOA) is not a treaty or an executive agreement, and is not a signed document. The JCPOA reflects political commitments between Iran, the P5+1 (the United States, the United Kingdom, France, Germany, Russia, China), and the European Union. As you know, the United States has a long-standing practice of addressing sensitive problems in negotiations that culminate in political commitments.

The success of the JCPOA will depend not on whether it is legally binding or signed, but rather on the extensive verification measures we have put in place, as well as Iran's understanding that we have the capacity to re-impose—and ramp up—our sanctions if Iran does not meet its commitments. (French 2018)

However, few in Europe are aware that the JCPOA is not a signed document, and even fewer appreciate the legal consequences of this fact. Under US constitutional law, only international treaties that are ratified by Congress are legally binding. No such ratification took place, though. On the contrary, clear majorities in both houses of Congress rejected the agreement (United States Institute of Peace 2015).

It is another misconception that UN Security Council Resolution 2231, which endorsed the JCPOA, created legally binding obligations. The relevant operative paragraph simply 'calls upon all Members States, regional organizations and international organizations to take such actions as may be appropriate to support the implementation of the JCPOA' (UN Security Council 2015, 2). As Bellinger (2015) makes clear, because the text does not say 'decide' and because this paragraph was not adopted under Article 41, it merely urges member states to implement the JCPOA. It does not require them to do so as a matter of international law.

The reason why former US President Barack Obama was able to implement the Iran nuclear deal—that is, waive sanctions—was not because Congress passed new legislation, because the P5+1¹ reached an unsigned agreement or because of some UN resolution.

Rather, President Obama had the power to waive US sanctions because the previous legislation under which Congress had originally authorised sanctions against Iran also gave the president the authority to lift them. And that same legislation gave President Trump the right to re-impose sanctions (Rennack 2018).

Another criticism of the US withdrawal from the JCPOA is that it was supposedly another example of Washington snubbing its allies. But this is a rather Eurocentric view of international relations. As the underwriter of global security, the US has to take into consideration the interests of many allies, beyond just those in Europe. While the transatlantic alliance is of unique importance, that does not mean that Europe is always the most important ally Washington has to consider.

When it comes to Iran, the concerns of Israel and the Gulf countries—in other words those allies that are immediately threatened by Tehran—simply weigh more than the concerns of allies geographically more removed and not (yet) directly targeted by the Iranian regime. Similarly, if this were a policy dispute about security challenges from Russia, few would argue that the concerns of, say, Israel or Portugal were as relevant as, let alone more important than, those of Poland or the Baltic states.

Finally, it is also important to note that this decision falls into a separate category from other areas of transatlantic conflict. Unlike President Trump's position on tariffs or some of his statements on NATO, his policy on Iran enjoys broad political support, certainly within his party. And while in other policy areas President Trump seems to be breaking with long-held US policy positions, on Iran he is actually returning to more traditional US foreign policy.

This does not mean that Europeans have to agree with the US decision. But a more factual analysis of the legal and political context in which the Trump decision took place and the realisation that the EU would likely face similar challenges under a President Marco Rubio or Ted Cruz ought to help lower the tensions. This, in turn, should make it easier to reassess the actual policy differences at hand.

The flaws of the Iran deal

Of course, acknowledging that President Trump's decision was not only legal under both US and international law, but also enjoyed the political backing of his party and allies in the region, does not yet mean it was the right step to take. To properly assess this decision, Europe ought to finally have an informed debate about the JCPOA. Unlike in the US, where the JCPOA triggered an intense public discussion—carried out among experts, on the opinion pages of major newspapers and in Congress—no such public vetting took place in Europe.

Astonishingly, even when European leaders recently backtracked somewhat and acknowledged the deal's shortcomings, this too failed to trigger a public debate. During EU–US negotiations designed to preserve the JCPOA, French President Macron and German Chancellor Angela Merkel said publicly what no EU leader had said before—that

the agreement needed to be amended (Sen 2018; *Times of Israel* 2018). Strangely, the same people who had hailed the JCPOA as a major diplomatic breakthrough remained conspicuously silent when Europe's leaders redefined that very same breakthrough as 'not sufficient' (*Times of Israel* 2018).

As Dubowitz (2017) has repeatedly pointed out, the major problem with the JCPOA is that Iran does not have to violate it to become a nuclear weapons threshold state. Tehran simply has to patiently implement the agreement to gain an industrial-sized enrichment programme with near-zero nuclear break-out capacity, complete with the means to deliver nuclear weapons.

Any attempt to produce an exhaustive list of the deal's shortcomings would be far beyond the scope of this article. The following is thus a brief discussion of the deal's five major flaws that will (a) allow Iran to emerge in a few years as a nuclear threshold state, and (b) prevent the EU from effectively countering the regime's aggression at home or abroad.

Ballistic missiles

Every nuclear programme has three components: fissile material, nuclear warheads and delivery systems—that is, missiles. Iran's work on ballistic missiles was left out of the deal, a strategic blunder in its own right. Even worse, previous restrictions on the regime's missile tests were watered down as a consequence of the JCPOA.

UN Security Council Resolution 1929 originally demanded that 'Iran shall not undertake any activity related to ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missile technology' (UN Security Council 2010, 5). In its stead, UN Resolution 2231, adopted in July 2015 in the context of the nuclear agreement, says that Iran is only 'called upon not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology, until the date eight years after the [JCPOA] Adoption Day' (UN Security Council 2015, 99). The new resolution thus replaced a strict prohibition ('shall not') with a mere urging ('called upon'). In addition, this much softer restriction comes with an expiry date. And instead of targeting all missiles that are *capable* of delivering nuclear weapons, the new resolution says that the missiles must have been specifically *designed* to do so. This creates a legal loophole for Iran and its Russian UN backer to protect Tehran from Security Council condemnation for its missile tests. As Joyner (2016) has pointed out, Iranian ballistic missile tests are thus no longer in violation of international law: 'The most that could be said about them is that they are not in harmony with the UN Security Council's legally non-binding exhortation in Resolution 2231'.

Possible military dimension

Iran was originally supposed to come clean about the 'possible military dimension' of its nuclear programme—that is, its work on nuclear warheads and trigger mechanisms. However, it never properly did so. Without full knowledge of Iran's past activities in this area, and without knowing who conducted this research and where it used to take

place, it is difficult for inspectors to know whom and what to monitor (Michek 2015). The Iranian nuclear archive Israeli agents discovered and shipped out of the country, an archive that the regime actively moved and hid after the nuclear deal was reached, suggests that Tehran has not given up on its nuclear military aspirations (Ahren 2018).

Inspections

Before and even during negotiations, Western diplomats made promises about anytime–anywhere inspections, the only reasonable approach given Iran’s history of nuclear deception. Instead, the convoluted mechanism agreed upon in the JCPOA would give Iran not 24 hours but 24 days, and possibly more, before having to grant access to a suspect site. As Tobey (2015) suggests, depending on the interpretation of the ambiguous text and Iran’s readiness for brinkmanship, that period could be even longer, giving Tehran ample time to clean up any evidence before granting access to suspect sites.

What is more, Iran insists that military sites are off-limits to inspectors, which of course renders the entire monitoring mechanism absurd (Singh 2018).

Sunset clause

The nuclear deal’s fatal flaw is the so-called sunset clause (Doran 2018). This stipulates that the most important restrictions agreed upon in the JCPOA, as well as in the UN sanctions linked to the agreement, will expire in 8 to 13 years from now (Dubowitz and Fixler 2015). As a result, within this period the already weakened ballistic missile restrictions will fall away and Iran will be able to install and ultimately operate advanced centrifuges which are several times more efficient than Iran’s current models. This would allow Iran to produce much more rapidly than now enough fissile material for an entire arsenal of nuclear weapons. Tehran would at the same time be in possession of advanced ballistic missiles capable of delivering nuclear weapons. The deal’s faithful implementation would thus inevitably pave the way for Iran to become a nuclear power threshold state—and one enjoying full international legitimacy to boot.

Before the JCPOA, Iran’s break-out time, the time needed to produce enough fissile material for one bomb, was believed to be about three months. The restrictions of the nuclear agreement are believed to have increased this break-out time to between 9 and 12 months. Once the sunset clause fully kicks in, in about a decade, that break-out time will shrink to almost nothing, as President Obama himself acknowledged at the time (*NPR* 2015).

The argument that there is little to worry about because even after the sunset clause expires Iran would still be bound by the Nuclear Non-Proliferation Treaty and the Additional Protocol is not convincing. The restrictions were deemed necessary precisely because Iran’s history of deception and violations means that the regime simply cannot be trusted to respect international treaties.

Beyond the disagreement over whether the JCPOA adequately blocks Iran’s nuclear ambitions, the EU and the US disagree about the deal’s impact on Iran’s aggression in the region.

The EU position is that the nuclear deal is about just that, Iran's nuclear programme, and that the question of Tehran's behaviour must be handled separately. But that is precisely the problem. The fact that the JCPOA negotiators excluded Iran's conventional threat was a strategic mistake. Even worse, the deal has made addressing Iran's aggression much more difficult.

The very logic of the nuclear deal demands that Iran must economically benefit from it, something the EU continues to underline (EEAS 2018b). This consequently precludes the use of any serious sanctions to pressure Iran about its aggression in the region and instead provides the regime with additional resources for its nefarious activities. The desired deepening of economic and trade relationships with Iran also necessitates deepening diplomatic relations. As a result, numerous delegations of European ministers, commissioners and members of parliament have visited Tehran in the past three years, while corresponding official Iranian visits to Europe have taken place. It is therefore difficult to see the EU being able or willing to use the other major non-military tool to contain Iran's aggression: diplomatic pressure. For example, the EU continues to refuse to list Hezbollah, Iran's terror proxy in Lebanon and Syria, in its entirety as a terror organisation. Likewise, even Iran's own terror operations on European soil have so far failed to trigger any serious European diplomatic reaction or discussions about listing, for example, the Islamic Revolutionary Guards Corps as a terror organisation (*Gulf News* 2018).

Conclusion

The disagreement over the nuclear deal with Iran is one of the many transatlantic crisis points. The importance of the Western alliance and the seriousness of the national security challenge posed by Iran require that both sides find as much unity as possible. It is therefore incumbent on the EU to overcome its misunderstandings about the legal and political context of the US withdrawal, which are unnecessarily aggravating the tensions.

It is equally important for the EU to make up for past failures to conduct a rigorous public debate about the deal. An evidence-based look at the JCPOA would help European leaders gain public support to act upon the deal's shortcomings that they themselves have recently acknowledged. During the EU–US talks before President Trump withdrew from the JCPOA, President Macron and others were vocal about the need to expand on the nuclear deal to address its problems. Unless this was just a negotiating tactic designed to preserve the agreement, the EU has a duty, even after the US withdrawal, to devise effective policies to fix the deal's shortcomings and counter Iran's aggression.

While visiting Jordan in June, Chancellor Merkel said, 'Iran's aggressive tendencies must not only be discussed, but rather we need solutions urgently' (Rinke 2018). The challenges for which these solutions are needed are formidable. They range from stopping Iran's nuclear ambitions to pushing back against its aggression—whether in the form of ethnic cleansing in Syria, threats to destroy Israel, support for terrorism or even the plotting of terrorist attacks right here in Europe.

It is high time for European leaders to match their rhetoric with action. Even after the US withdrawal from the JCPOA, transatlantic cooperation on countering Iran remains vital.

Note

1. The P5+1 refers to the five permanent members of the UN Security Council—that is, China, France, Russia, the UK and the US—plus Germany.

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