

Obstacles Ahead: Preserving the JCPOA

The next six months are critical for the survival of the Iran nuclear deal. Europe has a role to play in preserving the agreement and addressing the challenges it faces.

By Névine Schepers

Containing Iran's nuclear program remains in Europe's best strategic interest. Much depends on how US-Iran relations will develop in the coming months, particularly in the wake of November's elections. Yet, the EU and the E3 (Germany, France, and the UK) still have a role to play in safeguarding the Joint Comprehensive Plan Of Action (JCPOA), coordinating responses with Russia and China, and continuing to engage with the US on Iran. The JCPOA's non-proliferation restraints benefit regional security, and as long as the deal is implemented, even if only partially, it provides continuous and extended insights into Iran's nuclear activities. The collapse of the JCPOA could also severely damage the Non-Proliferation Treaty (NPT) ahead of its five-yearly Review Conference process, now postponed until early 2021. The corona crisis offers a window of opportunity for the Europeans to provide support to Iran through INSTEX – the Instrument in Support of Trade Exchanges established by the E3 in January 2019 to facilitate trade with Iran – and thereby help preserve the JCPOA. As the Trump administration seeks to snapback UN sanctions, ensuring the agreement's survival until the US elections will be difficult enough. Beyond November, it will be necessary to start thinking about either developing a broader agreement or a series of follow-up agreements that would address Iran's ballistic missile program and other destabilizing actions in the region. Ideally, such discussions would involve regional states.

Iran has been one of the hardest hit countries by the corona pandemic in the Middle East. As of 13 May, Iran reached nearly 111,000 cases and 7,000 deaths, although the real numbers are believed to be much higher. Severe government mismanagement coupled with the impact of US sanctions, reimposed following the US' withdrawal from the JCPOA in May 2018, have hampered Iran's ability to respond to the health crisis quickly and effectively.¹ Despite containing humanitarian exemptions, US sanctions on banking, shipping and insurance industries make it difficult for companies to sell medical supplies to Iran, which in some cases require additional licenses that are slow or difficult to obtain.

In the lead-up to the corona crisis, the JCPOA had reached a critical stage. Iran had abandoned most nuclear commitments under the deal in a step-by-step process, and,

Key Points

- The corona crisis has delayed Iran from taking further steps away from the JCPOA. It also gives European states an opportunity to provide needed support through the special-purpose vehicle INSTEX.
- The EU and European states should take further measures to ensure the agreement's survival in the next six months leading up to the US presidential elections. Notably, they should improve coordination with Russia and China, and address challenges related to Iran's potential breach of safeguards, as well as US attempts to extend the UN arms embargo on Iran.

in response, European signatories activated the agreement's dispute resolution mechanism. The pandemic has, however, also provided an opportunity for Europe to demonstrate the viability of INSTEX. On 31 March, as coronavirus cases reached their peak in Iran, INSTEX processed its first ever transaction. While the timing was incidental, INSTEX, which mainly serves to enable humanitarian trade, will hopefully be used in an efficient way to mitigate the effects of the virus.

Europe's ability to provide support to Iran during this crisis is a further stress test for the JCPOA. So too is its ability to protect the agreement from further US actions intended to tear it apart. The expiration of the UN arms embargo on Iran in October, as per the JCPOA, will be a particularly contentious issue, as the US seeks to extend the embargo, even after its withdrawal from the agreement. Iran's potential safeguards breach over a lack of cooperation with the International Atomic Energy Agency (IAEA) regarding undeclared past nuclear sites is yet another concern needing urgent attention. In order to avoid a nuclear crisis from unfolding on top of the existing health and economic ones, the EU and E3 should take steps to ensure the agreement's survival. Preserving the agreement, at least until November's elections, and paving the way for alternatives and new initiatives will be essential.

Iran's Nuclear Program and the JCPOA

When the coronavirus spread globally, the JCPOA faced yet another crisis. The dispute resolution mechanism, activated by the E3 on 14 January, was a response to Iran's declaration that its nuclear program was no longer bound by any operational restrictions. Following the US' withdrawal from the JCPOA, Iran continued to fully implement the agreement for exactly one year. From May 2019, however, it gradually reduced its commitments in a series of five steps, discarding various nuclear restrictions on, inter alia, enriched uranium stockpiles, enrichment levels, and R&D activities. Tehran has described these steps as fully reversible and a reaction to what it perceives as the failure of other signatories (the EU, E3, China, and Russia) to implement their commitments under the deal. The remaining parties to the JCPOA have unvaryingly defended the agreement, but due to the reach of US secondary sanctions, they were largely unable to safeguard trade with Iran.

The corona crisis has, to some extent, diverted Iran's attention away from its nuclear developments toward dealing with the unfolding health and economic crises. Planned celebrations for National Nuclear Technology Day on 8 April were cancelled, as was the unveiling of a new ad-



The Iranian flag flutters in front the International Atomic Energy Agency (IAEA) headquarters in Vienna, Austria July 10, 2019. *Lisi Niesner / Reuters*

vanced centrifuge model.² Suggested next steps further in breach of the JCPOA have not yet occurred, which benefits the Europeans trying to keep the agreement alive. This might change, however, if Iran were to make good on its threats to reach an enrichment threshold of up to 20 percent U_{235} or abandon the re-design of the Arak reactor intended to bar its plutonium pathway to a bomb. Both would represent a significant proliferation risk that might not be tolerable for Europe.

Every transgression of the JCPOA is recorded and released in quarterly reports by the IAEA. According to the latest report, Iran has stockpiled more than triple the amount of enriched uranium permitted under the deal, and is no longer respecting the limits imposed on the level of enrichment.³ This affects Iran's estimated 'breakout time'. Under the JCPOA, it would have taken at least a year to generate enough fissile material to produce a bomb. Now, the figure is closer to six months in a best- and three in a worst-case scenario. While this is highly concerning, Iran still abides by the JCPOA's enhanced verification and monitoring provisions. Continued IAEA presence and access to Iranian facilities are crucial, as they provide international oversight of Iran's program. As long as the IAEA is allowed to implement the JCPOA's additional verification and monitoring measures, Iran's claim of building leverage and not a bomb remains credible.

By triggering the dispute resolution mechanism, the E3 intended to secure time and space for resolving issues of non-compliance. Yet, without the lifting of US sanctions, prospects for Iran returning to full compliance with the JCPOA are slim. There is also a risk that, after exhausting the options under the mechanism, the issue is referred to the United Nations Security Council (UNSC). This would inevitably lead to a sanctions snapback and

Iran's definite withdrawal from the JCPOA and possibly even the NPT. It is in the interest of all remaining parties to the JCPOA to avoid such an outcome, and for the EU to ensure that the dispute resolution mechanism is indeed used as a means for resolving disagreements. Moreover, given that the latter was activated by the E3 without the support of Russia and China, ensuring better coordination between all parties will be necessary to address impending challenges.

The Next Six Months and Europe's Role

Looking to the near future, prospects for renewed engagement between the US and Iran on a new deal are close to zero. Instead of using the pandemic as an opportunity to improve relations, both the US and Iran have refused to leave geopolitics aside. The Trump administration is standing by its policy of maximum pressure, despite international calls to ease sanctions during the pandemic, and Iran has pressed on with a controversial military satellite launch and provocative actions toward the US Navy in the Persian Gulf. Much-needed diplomatic off-ramps are still missing as regional US-Iran tensions flare up again.

A best-case scenario would involve avoiding regional military escalation, and freezing Iran's nuclear developments until November's presidential elections – the largest unknown when it comes to the future of the JCPOA, Iran's nuclear program, and US-Iran relations at large. On the one hand, Trump's re-election would likely signify a continuation of the maximum pressure campaign, which leaves little room for finding a political understanding between the US and Iran or for de-escalation. Instead, it makes a potential chain of events, starting with the full collapse of the JCPOA and bolder Iranian actions in the region much more likely. On the other hand, presumptive democratic nominee Joe Biden has stated his intent to re-join the JCPOA, if elected, and using the agreement as a basis for addressing other issues, notably Iran's ballistic missile development and its support for militias in the region. Re-joining the JCPOA would be an important starting point, but given the last two years, also easier said than done. The sequencing related to the roll-back of US sanctions initially covered by the JCPOA, and the return to compliance by Iran will likely be contested in both countries, as will the inclusion of more recent sanction designations. Europeans should prepare for both scenarios. In the event of a second Trump term, this will mean continuing to engage with the administration, and coming up with initiatives similar to President Macron's four-point plan negotiated during the 2019 UN General Assembly that could provide opportunities for a US-Iranian dialogue. Thinking through the sequencing for such initiatives and the conces-

sions that could reasonably be offered would help prepare the ground for potential dialogue.

If April's events are anything to go by, the next six months are unlikely to be uneventful. Yet, the EU and E3 have several options available to prevent the crisis from worsening. INSTEX could be used to support Iran's efforts against the coronavirus. The health crisis has highlighted Iran's dependency on imported medical equipment and the weaknesses of the humanitarian exemptions under US sanctions. While Europe is facing its own health crisis, pushing for further transactions via INSTEX would provide needed supplies to Iran, and demonstrate the mechanism's ability to process a larger volume of transactions, perhaps paving the way for trade beyond non-sanctioned goods. Since INSTEX membership has already been extended to include Belgium, the Netherlands, Denmark, Finland, and Sweden, transactions should also come from as many members as possible. To enhance its legitimacy, further membership expansions could also be considered once larger amounts of transactions are processed.

Beyond INSTEX, the EU continues its civil nuclear cooperation with Iran, notably on nuclear safety and security. Given that Iran is the only state with an operational nuclear power plant that is not a party to the Convention on Nuclear Safety, such cooperation is important to maintain, and forms an integral part of the JCPOA. The UK, as one of the coordinators of the Arak reactor re-design project, should continue to push for progress on the project, which is largely dependent on Chinese contractors. Moreover, the JCPOA continues to survive to some extent because all remaining parties engage in the agreement's laid-out processes. At a time when, due to the coronavirus, meetings and conferences are cancelled or postponed, upholding processes, albeit with modifications, is important. The EU, which chairs the Joint Commission of the JCPOA, will be instrumental here.

Addressing Imminent Critical Challenges

The EU and E3 also face two noteworthy challenges to the JCPOA in the coming months. The first relates to Iran's

Further Reading

Iran's Nuclear Program: Tehran's Compliance with International Obligations Paul K. Kerr, *Congressional Research Service*, 17 April 2020. This report provides an overview of the latest IAEA safeguards report for Iran, and outlines the implications of Tehran's potential breach.

Protecting Europe-Iran Trade to Prevent War: A Provisional Assessment of INSTEX Esfandiyar Batmanghelidj and Sahil Shah, *European Leadership Network*, June 2019.

The report provides an overview of the workings and limitations of INSTEX.

potential breach of its safeguards agreement, and the second to the US' plans to try to extend the UN arms embargo on Iran.

Alongside its recent report on the implementation of the JCPOA, the IAEA also observed that Iran had not provided access to locations linked to unreported past nuclear activities, and refused to engage in the matter. This presents a more serious issue, as Iran risks breaching its safeguards agreement with the IAEA, as well as the terms of the provisionally implemented Additional Protocol, which together oblige Tehran to cooperate with the agency and provide access to undeclared sites for environmental sampling purposes. Iran could be referred to the UNSC, should it be found to violate its safeguards obligations – a move that will likely trigger Tehran's withdrawal from the JCPOA and possibly even the NPT. It is in the interest of the EU, E3, Russia, and China to make sure these matters are resolved quickly, quietly, and without risking further escalation through coordinated engagement with Iran and careful diplomacy.⁴ Russia, in particular, would be pivotal in convincing Tehran to cooperate, since the latter's breach of safeguards would potentially jeopardize Russia's involvement in further developments of the Bushehr nuclear power plant.

The EU and E3 could also help mitigate the upcoming attempts by the US administration to extend the arms embargo, which is set to expire on 18 October under the terms of the JCPOA. While the EU itself has a separate arms embargo in place, which expires in 2023, Russia and China will have the right to sell conventional arms to Tehran. The US administration is prepared to argue that, since it was never officially removed as a JCPOA participant, it can unilaterally force a referral to the UNSC and a snapback of UN sanctions along with the arms embargo. Ironically, the US may be proven right – at least from a legal perspective – but not without an acrimonious and time-consuming legal battle. All parties should thus coordinate their efforts to ensure that a sanctions snapback does not become an item on the UNSC agenda, as a referral to the UNSC via the JCPOA would require a resolution to continue sanctions relief, which the US can easily veto.⁵

Despite current Iranian non-compliance with the JCPOA, and even if an increase in Iranian conventional weapons could heighten tensions in the region, it would be difficult for the EU and E3 to defend extending the UN embargo. The E3 should coordinate a joint response with

Russia and China – the two most likely arms exporters to Iran – and either make potential sales conditional upon a return to compliance with the JCPOA, or, at a minimum, discuss a set of rules to prevent further regional proliferation. The EU has little leeway without Chinese or Russian support. If the delayed delivery of the Russian S-300 air defense system is anything to go by, Russian arms sales to Iran could take some time. Preventing the lifting of the embargo, which Iran sees as one of the few benefits of the agreement, would likely constitute the final straw for the JCPOA. Further militarization of the Middle East is by no means desirable, but an unconstrained Iranian nuclear program is equally detrimental to regional security. While the JCPOA was meant to provide a compromise in this regard, the last two years have evidently made this more difficult.

The next six months will be critical for the JCPOA's survival. Left unchecked, Iran's nuclear program would pose a critical regional and global security risk at a time when the resources of European states, as well as those of other actors, are tied up in dealing with the corona crisis. The EU and E3 have an important role to play in safeguarding what remains of the agreement, engaging with China, Russia, Iran, and the US to address prospective challenges, and laying the groundwork for what comes after November's elections. Especially in the absence of diplomatic off-ramps between Tehran and Washington, the EU and E3 should seize the limited opportunities for enhanced cooperation provided by the corona crisis.

Selected sources

1. Ellie Geranmayeh and Esfandiyar Batmanghelidj, "How Europeans can help Iran fight covid-19," *European Council on Foreign Relations*, 6 April 2020.
2. Kelsey Davenport and Julia Masterson, "Iran delays announcing nuclear achievements – The P4+1 and Iran nuclear deal alert," *Arms Control Association*, 15 April 2020.
3. IAEA Board Report, "Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015)," IAEA, 3 March 2020.
4. Mark Hibbs, "Is Iran's Nuclear Future in the Hands of Russia and China?" *Carnegie Europe – Judy Dempsey's Strategic Europe*, 7 April 2020.
5. Ellie Geranmayeh, "Avoiding the clash over the Iran arms embargo: how Europe can square the circle," *Bulletin of the Atomic Scientists*, 28 April 2020.

Névine Schepers is a Researcher in the Swiss and Euro-Atlantic Security Team at the Center for Security Studies (CSS).

Policy Perspectives is published by the Center for Security Studies (CSS) at ETH Zurich. The CSS is a center of competence for Swiss and international security policy.

Editors: Annabelle Vuille and Oliver Thränert
Language editing: Niklas Masuhr
Layout: Rosa Guggenheim

Feedback welcome: PolicyPerspectives@sipo.gess.ethz.ch
More issues and online subscription:
css.ethz.ch/en/publications/css-policy-perspectives

Most recent editions:

Policy Consulting in the Age of Corona (8/2)
Neo-Containment: a Strategy toward Russia (8/1)
Educating Engineers for Resilience (7/3)
A Politically Neutral Hub for Basic AI Research (7/2)
Trump's Missile Defense: Challenges for Europe (7/1)

© 2020 Center for Security Studies (CSS), ETH Zurich
ISSN: 2296-0244; DOI: 10.3929/ethz-b-000414206