



What's next for the Iran deal?

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Even before news sites were able to call the election in favor of Donald Trump, folks were beginning to think about what he might do with respect to the Iran nuclear deal if returns continued going in his favor. At the time, I indicated what I still believe now: that, in all probability, the Joint Comprehensive Plan of Action (JCPOA) is dead in a Trump Administration.

This has drawn some outrage from Iran deal proponents – though, interestingly enough, no disagreement from Iran deal opponents and skeptics – for its excessive sense of fatalism.

After rabid back and forth over Twitter in the last 24 hours, I think it is worth – in non-Tweet form – considering the situation dispassionately and with clarity.

Let's talk through the issues

First, let's dispense with one set of assumptions: that Donald Trump does not mean what he says and will do something completely different once in office. I suppose there is a universe in which this is true. Trump asserted it is his intention to remain unpredictable. But, as a college professor once told me, if you assume someone will do anything at any time, you might as well stop any attempt at analysis and go to the beach. We have to go with what we know and what we've heard *ad nauseum* for the last year, and we must believe that his intention is to either abandon the deal or to try to improve it in some meaningful fashion by leveraging the power of the U.S. military or economy to coerce Iranian concessions. To assume otherwise is to abandon analysis and grab a beach towel.

Second, let's take on the assumption that, like Nixon going to China, Trump is going to talk a big game but be prepared to cut a deal, even with Iran. It is certainly possible. After all, who would have assumed that George Bush – famous for his “Axis of Evil” speech – would also have sought some kind of negotiated outcome with Iran over its nuclear program? But, he did and, as a civil servant at the Energy and State Departments, I sought to carry out those instructions. They were sincere and they were earnest.

But, no one should underestimate the degree to which Iran policy has been radicalized over Obama's tenure. This is both within government (in the form of Congress) and outside of government. There is a persistent sense in some quarters in Washington that the only acceptable deal with Iran over its nuclear program (and much else) is one in which near complete Iranian capitulation is in order.



There were arguments within both the Bush and the Obama national security teams about how far Iran could be pushed. But, in my view, there was a common sense that some things were beyond the pale. For Bush, this was the reactor at Bushehr, which he normalized in December 2007 when its first fuel arrived in country. For Obama, this was the need for a nuclear fuel cycle. The shape and size of that fuel cycle and its monitoring requirements, not its existence, was a subject for negotiation. This approach to compromise was in part due to the tone set from the top about the need for a realistic appraisal of U.S. interests and capabilities to enforce our decisions.

Frankly, it is not apparent to me that such a prudent style to decision making will exist in the Trump Administration. Trump's own rhetoric is suggestive of a more "off-the-cuff" approach in which assertiveness and aggression will be the hallmarks, rather than patience or a search for compromise, between competing interests.

One way in which such realistic perspective enters decision-making is through staff. But, press reports indicate he is having difficulty filling key national security jobs, and it is unlikely he will invite the best and brightest Republican national security experts to join his Administration as a result of their decision to bravely and unapologetically oppose his nomination and election. This is deeply troubling because experienced people can provide nuance and sophistication in decision-making. Without them, Presidents are flying blind, with much to do and much more to think about.

But, let's assume – for the sake of argument – that rather than focusing on his tough talk about the nuclear program, Trump's real interest lies in getting U.S. business into Iran rather than dealing with the security issues. It is possible, I suppose since he suggested multiple times that his real problem with the Iran deal was that it opened the door for foreign business, instead of American business.

But, while it is possible Trump may think that, it is here that he will encounter a substantial amount of Washington resistance, including from some of the very people he may appoint to high office. The Republican Party opposed the nuclear deal extensively throughout 2013-2016 (as indeed did some members of the Democratic Party), and not because it failed to provide for business opportunities in the United States. The concerns were on security grounds: what Iran might do to Israel, to partners in the Middle East, to U.S. interests in Iraq and Syria, and the increased support it might grant to terrorists. Importantly, these arguments often were devoid of any sense of scale: ANY relief for Iran's economy created massive danger for the United States (as the controversy around a \$1.7 billion dollar debt payment under the Algiers Accord demonstrates). Why wouldn't these same arguments apply to a Trump decision to ease the comprehensive embargo against Iran? And, why wouldn't those in positions of power around Trump register these views?

It is naïve to suggest that those views are going to go away or that they were motivated solely by animus to the Obama Administration. These concerns were motivated by serious evaluation, though I believed then and now that they were overwrought and, in their final analysis, reached the wrong conclusion about the nuclear deal. Furthermore, it is those who harbor such concerns that occupy the wing of the



Republican Party that Trump absorbed in his campaign and will look to staff his Administration. They are unlikely to check their Iran assumptions at the door.

This takes me to my **third point: the Iran nuclear deal requires constant upkeep to succeed and it is implausible to believe a Trump Administration will take on this task.** At a minimum, the sanctions relief granted by President Obama under the deal must be renewed every 120 or 180 days, depending on the statutes involved. President Obama ordered that this be done, in keeping with the deal. Would President Trump? It is possible, but seems unlikely on the basis of what he has said thus far and what his presumed aides will recommend. Far more likely is that he will instruct them to withhold renewal of sanctions relief or to permit a time-limited renewal while moving forward with his plan to renegotiate the deal.

But, Iran's leaders have been emphatic that there is nothing left that they intend to give and that they believe the JCPOA is complete as it is (U.S. partners in the negotiation hold the same perspective). Iran's leaders have also been critical of the United States and its implementation to date, suggesting that their attachment to the deal – which has thus far borne limited economic fruit for Iran – is somewhat less than Trump may believe. It is possible, as some analysts have suggested, that Iran could be persuaded to amend the JCPOA in the future, though certainly in exchange for greater sanctions relief and economic engagement. But, it strains credulity to believe either that the target of a renegotiation by Trump is simply to reduce Iranian deployed centrifuges by another thousand or to extend the terms of the restrictions by another five years, or that Iran would be prepared to concede more sweeping changes to its nuclear program.

This is particularly the case for President Rouhani, who stands for reelection in May 2017. Though some outside of Iran may sneer at the possibility of politics in an authoritarian state like Iran, politics do exist and it is untenable for Rouhani to send his negotiators back into a room with their American counterparts and emerge with a weaker deal – from their perspective – than the JCPOA. I believe this was implausible before the JCPOA was concluded and that it is impossible now. Rouhani would surely lose office and – even if the population supported his candidacy – the Supreme Leader would never countenance it. Minor changes? Perhaps. Modest improvements for both sides? Possible. But, a predominantly one-sided negotiation and solely Iranian concession strategy is simply irreconcilable with reality.

Let us take, though, for the sake of argument the following proposition: Donald Trump accepts the need for the JCPOA to remain in place for a limited period of time, unaltered, until it can be renegotiated. And let us assume that this includes issuing the waivers necessary and working with Iran on the technical details of implementation. In other words, that the Obama status quo is maintained for some length of time. Then, **the fourth problem facing the JCPOA must be addressed: that there will be provocations from Iran that will sorely test even this implausible stance.**

It is no secret that the Iran nuclear deal is as unpopular in some circles in Iran as it is in some circles in the United States. In the United States, until now, those circles lacked control over any executive



functions of government. In Iran, the system is different: those circles control the security services. We have already seen provocations from Iranian security services that, if encountered by a Trump Administration, could prompt a U.S. response that would be prejudicial to the JCPOA. Critics of the Iran deal have been outspoken in their advocacy of a stern – even military – approach toward Iran in these areas. Even those more temperate have suggested that a unilateral expansion of U.S. sanctions – including in areas walled off by the JCPOA – is appropriate. Either set of responses could prompt an Iranian walk-back from the JCPOA, particularly (and perhaps ironically) those involving sanctions.

There were already concerns being expressed by supporters of the JCPOA that a Clinton Administration would be too tough on Iran in other areas, damaging the JCPOA. It is implausible to argue that a Trump Administration would do less and reasonably certain that Iranian provocations – even if uncoordinated, as I believe that they would be – would prompt an intemperate U.S. response.

But, some may ask: what about U.S. partners and allies, including those who were part of this negotiation, and their response? Would they not push back on Trump? This takes me to my **fifth point: Trump has demonstrated a palpable lack of regard for many U.S. partners and an explicit dismissal of their interests where at variance with those of the United States. It is implausible to suggest this position will change.**

Trump's campaign was built on "America First" and he sold himself to the American people as someone who would disregard alliance interests unless tied explicitly to our own or unless well compensated. It is hard to believe that European or Asian business interests in Iran will be persuasive arguments against taking a hardline stance against the JCPOA. It is somewhat more plausible to believe that certain key states – Russia and Israel – could be influential in steering U.S. policy. But, the result of this steering bears consideration.

First, on Russia, it is an open question in my mind what Russia's prevailing interest is with respect to Iran and its nuclear program. Russia certainly has opposed Iranian nuclear weapons development and its participation in the JCPOA negotiations demonstrated good faith toward this end. That said, the Iranian-Russian relationship remains fraught and, in my assessment, highly transactional. If Russia no longer needs to balance the United States in the region because the United States is prepared to be more accommodating to Russian interests, then Russian interest in Iran itself may dwindle. Moreover, conflict between the United States and Iran is not in and of itself bad for Russia: it would increase oil prices and potentially land the United States in a perpetual quagmire, if nothing else.

Second, on Israel, I continue to believe the JCPOA is in Israeli net national interest and understand that Israeli security and defense personnel believe the same. However, Prime Minister Netanyahu has been clear in his rejection of the JCPOA and concern over the future of Iran's nuclear program. Having lived through frustrating years of conflict with the Obama Administration over this point, Netanyahu may feel empowered – and even an imperative – to press for tougher action against Iran to check back its dangerous regional behavior and even to prevent future nuclear armament. The Israeli position may evolve to become a tougher version of its current form: accept the JCPOA and build around it. And, this



concept could prove attractive to a Trump Administration. But, as with the fourth point above, such a position is not necessarily conducive to the survival of the deal itself.

So what happens with sanctions relief?

Frankly, no one knows. Much will depend on what team Trump decides to do once in office. But, three key facts ought to focus our analysis:

1. Sanctions relief under the JCPOA is entirely controlled by the Executive Branch. Waivers, exemptions, and enforcement decisions are within the aegis of the State Department and the Treasury Department, as delegated by the President. And, those waivers and determinations can change at a moment's notice.
2. Additional sanctions can be placed on Iran and those who do business with Iran at the discretion of the President. The International Emergency Economic Powers Act (IEEPA) offers little by way of steer: declare a national emergency and report to Congress with regularity, and a President can do a great deal to use the power of the U.S. government and economy to enforce his will.
3. Flexible, adaptable interpretation decisions have permitted past Presidents to manage ally and partner expectations and needs around sanctions. From the Bill Clinton-era decision to waive sanctions against oil and gas investors in Iran to the George W. Bush-era decision to look the other way altogether, Presidents have chosen to sanction what they like and look away when they like. When President Obama decided to intensify sanctions in this area in 2010, he did so by instructing the State Department to begin investigations. Nothing was needed from Congress and nothing was needed from the public.

If sanctions covered under the JCPOA were to be re-imposed, a good many things could happen, none of which are easy to prove today. Beyond the nuclear expansion that Iran would likely begin (covered by the international perception that America is to blame), here are a few examples of what would come:

First, it is possible that companies and banks interested in doing business with Iran will abandon their pursuit. At a minimum, it seems likely that they will pause their interest until Trump's path forward is clearer than it is today.

Second, it is possible that some companies and banks interested in doing business with Iran will persevere, having de-risked from the U.S. market or made the decision that they are prepared to accept the consequences of their investment. Much as the power of U.S. sanctions has grown with global economic integration, there are still limits to how far U.S. sanctions can go (an interesting point that I will develop further in a follow-on piece is that Trump's stated plans for economic statecraft would almost certainly reduce the impact and power of U.S. economic tools around the world).

Third, it is possible that some in the international community, disgusted by the change in U.S. approach and concerned more broadly about the direction of U.S. policy, could seek remedy via the World Trade Organization or even normal court proceedings. This is not as farfetched as it sounds: the EU planned to



take the United States to the WTO over Iran and Cuba sanctions in 1996, a plan put on hold as a result of negotiations with the EU. The immediate impact of such contests is hard to judge, but – in time – precedents could be established in national and international courts that undermine U.S. sanctions authorities as a legal matter.

Fourth, of course, Iran would probably suffer considerable economic harm. U.S. sanctions still have power. Though Iran’s economic troubles today have as much to do with internal regulation and weak oil prices as sanctions, sanctions are a critical part of that alchemy. Positive projections of employment, GDP growth, and inflation would probably dip, and Iran could soon find its ability to sell oil around the world subject to U.S. economic pressure.

Less clear is what would happen as a result of such pressure. Some will doubtless crow that Iran would come back to the negotiations table, chastened by pressure and weakness. It is possible, though an optimistic read. Others (including myself) would argue that Iran’s leaders and population have a greater capacity to absorb economic pain than may be assumed, and – even if there are not widespread defections from the sanctions regime – will persevere in their resistance to the United States and nuclear development.

And, from an energy market perspective, much would depend on whether Iran is able to evade the sanctions once applied and how international partners decide to treat them. In 2012-2013, the United States had cooperation. Would we today?

So what does it all mean?

The JCPOA remains an effective instrument for blocking Iran’s acquisition of a nuclear weapons capability that would endanger U.S. interests in the Middle East and beyond. It should remain in place and it is incumbent on those of us who supported the deal to make our positions clear in this regard.

But, we must do so knowing that this an uphill struggle, sobered by the fact that certain key assumptions about how a Trump Administration would be staffed, would operate, and would receive and interpret information probably depart dramatically from our hopes and wishes.

This suggests to me that the best course of action is to underscore the threat that would be created to U.S. and allied interests from reversing the deal, and to articulate ways to manage Iran’s bad conduct in a fashion that does not create impetus to walk away from the JCPOA itself. This starts with sobriety around the threat the JCPOA now faces and avoiding overly optimistic projections. It ends with firm, clear statements from national security thinkers – on the left and on the right – that caution and care must be taken with this file.

There are those who may soon staff a Trump Administration that will understand these various tensions. It is my sincere hope that Trump appoints such individuals who may be able to offer a reasoned defense of the status quo and a more careful approach to the future. It is my sincere expectation that this will not prove realistic.