

## Work in progress: Iran and P5+1

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The big powers and Iran have agreed to keep the contents of the ongoing negotiations to themselves, except that the United States is briefing Israel after each meeting by a tradition to be upheld. Some elements of a future deal have nevertheless been indicated, and other elements are known from comments and discussions in other settings<sup>1</sup>.

At the September meeting between Iran and the P5+1, convened in connection with Hassan Rouhani's visit to the UN, the parties agreed to develop an outline of the *end state*, i.e. the final agreement that would resolve the conflict over Iran's nuclear program, and a *road map* visualizing how to get there. Presumably, the talks in Geneva 7-9 November focused on the end state and the first leg of the road map.

**The end state** has three main elements. For Iran, recognition of the right to enrich is a must. The confidence building measure that was discussed in the autumn of 2009 (and which Brazil and Turkey clinched with the Iranians in the spring of 2010<sup>2</sup>, to no avail), indirectly acknowledged the fact that Iran was enriching uranium. At the time, the United States was ready to issue a letter of support for the agreement, but not to be a party to it. So far, Washington has not been willing to acknowledge that the NPT confers such a right on the Islamic republic. The question is if the Administration is ready to do so now, as part of the end state.

In return, Iran would accept a number of limitations on its nuclear program. The issues are by and large known from public debate: a limitation on the degree of enrichment to, say, 5 percent, enough for use in power reactors; a limitation of the scale of enrichment, i.e. on the number and capacity of the centrifuges; a limitation on the number of enrichment facilities, e.g. at Natanz only; and special restrictions on the heavy water reactor at Arak. There may be others.

The restrictions would amount to a fire-gate between permitted civilian activities and prohibited military applications of nuclear energy. The Supreme leader has

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<sup>1</sup> Foreign minister Laurent Fabius disregarded this rule when he said, openly, that France had three concerns: about the heavy-water reactor at Arak, which should be dismantled; about the Iranian stock of uranium enriched to 19.75 per cent, which should be sent out of the country; and about new generations of centrifuges that are more effective than the first ones. By saying this, he revealed what was not in the draft agreement crafted by Ashton, Kerry and Zarif.

<sup>2</sup> One parameter was different. The amount of enriched uranium to be sent abroad (to Turkey) was the same, but since Iran had continued its enrichment works, by the spring it had become a smaller part of the total inventory.

emphasized that they must be compatible with Iranian sovereignty, but the operationalization of that concept is not known. It is hardly fixed; the negotiators want to retain some degree of flexibility for themselves, and the Supreme leader has allowed for that. Co-management of the nuclear program, with the United States or others, is ruled out.

The third element is transparency. Full transparency was Rouhani's initial offer. This comprises accession to the Additional Protocol; acceptance of code 3.1 of the subsidiary safeguards agreement, obliging Iran to inform the IAEA as soon as a decision to build a new facility has been made; and – quite possibly – voluntary inspection offers.

**The first leg** of the road map involves a temporary suspension of parts of the Iranian program, e.g. for half a year, and the lifting of some sanctions in that period. EU sanctions are not quite as hard to remove as are American ones. In Geneva, Kerry had a special meeting with Ashton and Zarif exploring, presumably, the possibilities of EU sanctions relief and Iranian views of the significance/insignificance of specific measures. The US government has some options as well - one of them being a tacit message to third countries that they may import more oil from Iran without being sanctioned against - but Congress is holding the government in tight reins. If the negotiations do not produce early results, Congress may impose additional sanctions.

During the period of suspension, transparency measures will be pursued. The technicalities will be worked out between Iran and the IAEA. The relationship between that track and the Iran-P5+1 negotiations is unclear. Generally, however, the former is subordinated to the latter.

**An outcome along these lines** combines elements from both legal platforms: the NPT and the Security Council resolutions. The end state draws on the NPT: Articles IV and III give member states the right to conduct fuel cycle activities as long as they act in conformity with articles I and II. In some form or other, this has to be acknowledged. The Security Council resolutions require Iran to suspend its fuel cycle works (and accept the Additional Protocol): the first step builds on that requirement, defining a time-limited suspension of sensitive parts of the nuclear program.

## **What can third countries do?**

Big powers prefer to handle their own conflicts. Third parties are kept at a distance. Still, there are a few things that other countries can do in support of a diplomatic resolution of the conflict.

**First**, third countries can stress that the outcome must be based on international law. For all the speculations about use of force, and despite the fact that international law knows no graver crime than wars of aggression, references to international law have been glaringly absent. It is as if the salience of the matter - for Israel and the United States in particular – has put international law out of order.

**Second**, third countries may emphasize that the final state must be based on the NPT, which is the normative backbone of international non-proliferation policies. Presumably, this is what makes it possible for Iran to accept that the first step would be a time-limited suspension. Rouhani has tried this route once before - in the period 2003-2005, when he was chief negotiator. However, after one and a half years, he was offered little in return and was heavily criticized for his failure to achieve a honorable result. Now, there can be no repeat: hence a fixed short-term suspension, and recognition of the right to enrich in the final package.

**Third**, third parties can act to soften the scepticism and opposition to a negotiated agreement in the United States and Iran. European countries should not be passive observers, but lean on members of Congress and explain the advantages of a diplomatic settlement. Countries that have business-like relations with Iran should do the same vis a vis Iranian sceptics. The more time that passes without a substantial agreement being reached, the stronger the nay-sayers will become.

Third parties may tell the sceptics that they do not have to trust the other side: instead, they can place their trust in the agreement. Either the agreement is complied with; or, if it is not, the combination of program limitations and comprehensive verification provides for “detection before consummation”, i.e. a warning time long enough to allow the US president to act on his promise to bomb before Iran gets the bomb.

**Fourth**, both Western intelligence and the IAEA claim that up to 2003, parts of Iran’s nuclear program were weapon-oriented. US intelligence says Iran stopped that year, while the IAEA indicates that some such activities may still be going on. Ideally, the historical record should be straightened. However, it may be hard to put all questions about activities prior to 2003 to rest. Insofar as they are judged to be of little consequence for current and future affairs, they may as well be “grandfathered”. Dubious activities of a later date must, however, be resolved.

In the safeguards field there are devils in many details, offering ample ground for spoilers. However, the Governing Board of the IAEA has 35 members, and third country governors can help keep the main stakeholders “honest”.

**Fifth**, if Iran follows up on its conciliatory approach while France and/or the United States are unwilling to reciprocate in a timely and appropriate manner, the P5+1 and the sanctions regime may unravel. The US administration has to attend to that scenario. There is little doubt that the US sanctions leverage has peaked. China, in particular, is unlikely to forsake its economic and strategic interests indefinitely to please the US Congress. A conciliatory Iran seeking win-win solutions is attractive to many other countries as well.

In the period 2003-2005, the Europeans were under the influence of US thinking, which downgraded the role of diplomacy and saw talks as rewards for good behaviour. Also, Europeans may have had in mind to negotiate bazaar style.<sup>3</sup> If so, it was a misjudgement: 2003-2005 was a great opportunity lost. This time, there can be no re-run of such attitudes and practices. Since US sanctions are the hardest to lift, it is primarily up to the European countries to offer the necessary sanctions relief to clinch an agreement.

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In Iran, there is a struggle between those who want Iran to behave as a nation caring for its national interests, and those who stick to the revolutionary track opposing the United States and its allies. The sanctions had a sobering effect that catapulted Rouhani to the presidency: today, he has a broad domestic platform for his policies, underwritten by the Supreme leader. However, that platform may vanish quickly for lack of reciprocal action.

The United States is in a similar situation. On the one hand, it is in its national interest to move resources and political attention toward East Asia and China. An agreement with Iran can, furthermore, yield significant dividends also in the Middle East. On the other hand, the hard core opposition wants to maximize pressures on the Islamic Republic to make it crumble. In the United States as well as in Iran, national interests are up against US-Iran cold war loyalists.

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<sup>3</sup> Mohamed ElBaradei, *The Age of Deception: Nuclear Diplomacy in Treacherous Times*, New York:Metropolitan Books, 2011.