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Emmanuelle Maître

Research Fellow, Fondation pour la recherche
stratégique

Satisfaction, frustration and vigilance for the JCPOA's first anniversary

Résumé

Un an après sa signature, le simple fait que le JCPOA soit toujours vivant et mis en œuvre par les deux camps est en soi une source de satisfaction. Cependant, il avait soulevé en 2015 de nombreux espoirs (mais aussi des craintes) qu'il soit à l'origine de transformations des relations entre l'Iran et l'Occident, d'une part, et d'un décollage économique visible en Iran. De ce point de vue, les conclusions doivent être nuancées : le comportement de Téhéran dans son environnement régional n'a pas connu de réels changements depuis un an, et la relance économique anticipée peine à se matérialiser. De plus, l'accord reste fragile car il dépend de l'engagement des acteurs clé, engagement qui peut potentiellement être

remise en cause par des changements politiques internes ou des événements géopolitiques autonomes. Si l'évaluation après un an est donc plutôt positive, il faut reconnaître que le futur reste semé d'embûches.

Abstract

After one year of existence, the fact that the JCPOA is alive and implemented on both sides is in itself a major source of satisfaction. However, as it led to many hopes (and fears) of potentially altering the relations between Iran and the West, as well as Iranian domestic policy, it must be recognized that so far the conclusions must be nuanced: little has changed in the behavior of Tehran in its

regional environment and the economic boost anticipated has yet to materialize. Moreover, the deal is still fragile and relies on the continuous commitment of its key players, commitment that is potentially brought into question by domestic political changes, but also unrelated geopolitical events. While the assessment after one year is therefore rather positive, it must be recognized that the path ahead is fraught with pitfalls.



The JCPOA one year later

A year ago, the E3+3 (China, France, Germany, Russia, United Kingdom, United States and the European Union) and Iran concluded a marathon diplomatic achievement with the signature of the Joint Comprehensive Plan of Action (JCPOA) on Iran's nuclear program. This deal was the fruit of almost two years of negotiations, first initiated in November 2013 with the signature of an interim agreement, several times expanded, and marked in April 2015 by the adoption of a framework deal.

During its first year of existence, the JCPOA reached important milestones. It was officially endorsed by the United Nations on 20 July 2016, which led to its formal Adoption 90 days later, on 18 October 2016. Finally, in relation with the reports published by the IAEA, the deal was declared implemented on 16 January 2016. Everything went therefore according to schedule in this first year, and even faster than some expected.

This does not mean that it fully all parties involved. Those who were very optimistic about the deal can feel frustration to see that relations are still tensed between Iran and the West and that economic benefits are slow to materialize in Iran. Conversely, those who had doubts and reservations about the text may still fear that the deal will only empower Iran and encourage it to adopt an obstructive and even sometimes disruptive behavior for the regional security.

A compromise reached after months of harsh negotiations, the JCPOA must however be considered in the West for its primary objective: blocking the development of an Iranian bomb. Its ability to do so and the confidence of the IAEA after one year is already a sign of success.

An acceptable level of implementation

The reports from the IAEA

The IAEA is the main actor when it comes to assessing the level of implementation of the JCPOA on the Iranian side. So far, its conclusions and reports have been accepted by all. On 16 January 2016, it released a document on the verification and monitoring of the Iranian nuclear program that confirmed that the Islamic Republic had taken all steps necessary for the official implementation of the deal.¹ These measures include notably the reduction of the number of centrifuges at Natanz and Fordow, the reduction of its low enriched uranium stockpiles and the limitation of the level of enrichment, the cessation of all work at the Arak heavy water reactor according to the initial design, the closing of the file at the IAEA on possible military dimensions of the program and the authorization of IAEA inspectors to access new facilities.²

Since then, the Agency has released two reports that are updating its member states on the continuous implementation of the deal by Tehran. The first was published on 29 February 2016³ and the second on 27 May 2016⁴. Both insist on the fact that Iran has not conducted any forbidden activities even if they are less informative on the details of what the country has positively been doing on the different sites during this period. The reports give however enough evidence to be confident that Iran has respected the letter of the nuclear deal.

The lifting of sanctions

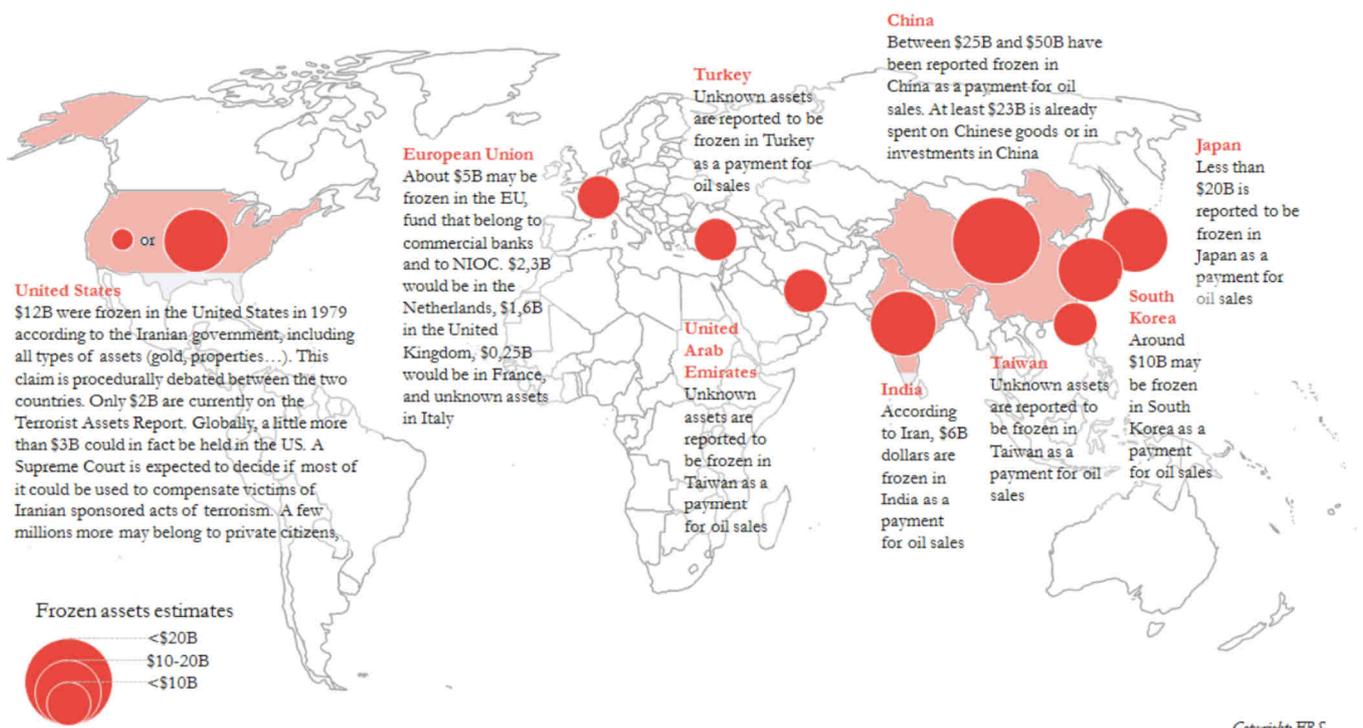
In the wake of the signature of the deal in July 2015, the first steps regarding the lifting of

1. Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015), Report by the Director General, 16 January 2016, < <https://www.iaea.org/sites/default/files/gov-inf-2016-1.pdf>>

2. Ellie Geranmayeh, "Iran deal Implementation Day: How it works", ECFR, 18 January 2016.

3. Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015), Report by the Director General, 29 February 2016, < <https://www.iaea.org/sites/default/files/gov-2016-8-derestricted.pdf>>

4. Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015), Report by the Director General, 27 May 2016, < <https://www.iaea.org/sites/default/files/16/06/gov2016-23.pdf>>



sanctions were taken, first at the United Nations level with the adoption of the UN Security Council Resolution 2231 which put an end to all previous UN sanctions related to the nuclear program.⁵

The European Union also proceeded to the lifting of nuclear-related sanctions thanks to the adoption of Council Regulation (EU) 2015/1861. Some restrictions linked to the banking systems and individuals and entities have also been abrogated early on.⁶

All these measures only applied after Implementation Day (16 January 2016), when the IAEA could confirm that Iran had respected its commitments according to the JCPOA.

In the United States as well, this date meant that some sanctions were lifted or ceased to be applicable, through executive orders, or suspended by waivers for those provided for by laws. Secondary sanctions were especially concerned, and Iranian banks and financial institutions were formally allowed to be connected to the international system. Iran was authorized access to its money frozen on

5. UN Security Council, Resolution 2231 (2015), 20 July 2015, S/RES/2231, < [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231(2015))>

6. Council Regulation (EU) 2015/1861 of 18 October 2015 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran, < <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R1861>>

Focus: Frozen assets

Although it is very difficult to know for sure the worth of the Iranian assets abroad, it seems clear that most of them are illiquid, privately owned or have already been committed to previous purchase (see figures). The budgetary surplus of unfreezing this assets therefore exists but is limited and its impact much less important than the lifting of trade restrictions.

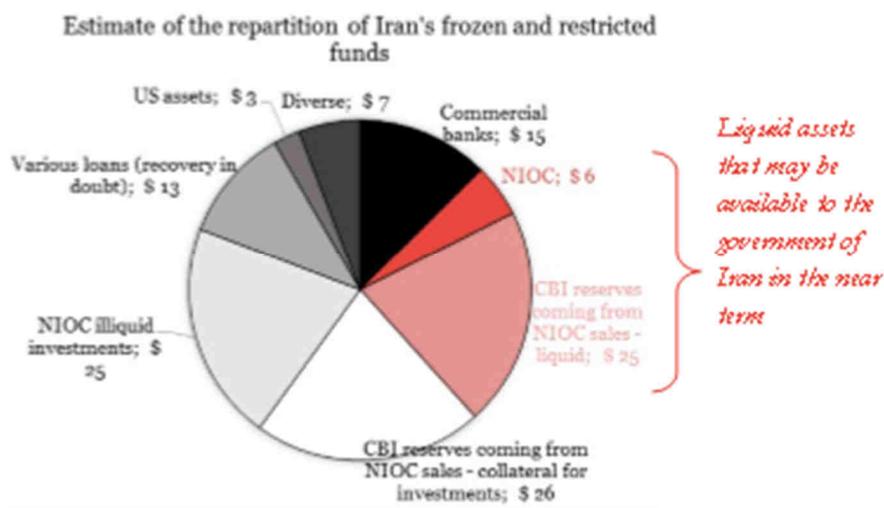
foreign accounts according to the sanction regimes, with the caveat that an important share of this money had already been spent which limited the influx of cash flow for Tehran⁷ (see box below.)⁸

Both the United States and the European Union have tried to clarify to their private sector communities the new regulations in place to give them the keys to make informed decisions on the opportunity to do business in Iran, through official websites, publications and other means.⁹

7. Patrick Clawson, "Iran's 'Frozen' Assets: Exaggeration on Both Sides of the Debate", *Policywatch* 2480, The Washington Institute for Near East Policy, 1 September 2015.

8. Nader Habibi, "Iran's frozen funds: how much is really there and how will they be used?", *The Conversation*, 11 August 2015.

9. See in particular the Statement by France, Germany, United Kingdom, United States and the High Representative of the European Union for Foreign Affairs and Security Policy on Post-JCPOA Business with Iran, 19 May 2016.



The E3+3 has therefore implemented its side of the deal so far, even if the positive results for Iran will take much longer to materialize. The reintegration of its banks to the international system is for instance a long term process, which moved forward with their reconnection to SWIFT in February 2016, and thanks to the decisions of some minor European banks to take the bold step of financing transactions to or from Iran.¹⁰ But the major ones, especially those hit hard by US fines in the previous years or having important activities on the other side of the Atlantic, are still reluctant to engage in such operations, despite the open pressure from European policy makers who pushed them to support the concrete implementation of the JCPOA.¹¹

The decision of the private sector can also be conditioned by elements such as the report of the Financial Action Task Force, which fights against money laundering and the financing of terrorism, which decided in June 2016 to keep Iran on its blacklist even if it agreed to suspend its counter-measures for a year.¹²

A year after the signature of the deal, the key players have kept their basic promises. This should be enough to convince for the moment all parties of the necessity to keep complying with the JCPOA after the celebration of its first anniversary. However it does not mean that the deal in itself has been sufficient to create momentum towards a real rappro-

10. Martin Arnold, "Europe's banks begin tentative return to Iran", *The Financial Times*, 4 April 2016.

11. Laurence Norman, "U.S., EU Urge European Banks, Businesses to Invest in Iran", *The Wall Street Journal*, 19 May 2016.

12. Louis Charbonneau, "Money laundering body keeps Iran blacklisted, freezes some steps", *Reuters*, 24 June 2016.

chement between them, or that they are fully satisfied with the cards in their hands after a year of implementation.

Reserved conclusions after the first year

No real improvement in the relationship between Iran and the West

After the signature of the JCPOA, one of the major sources of disagreement remaining between the E3+3 and Iran concerned its ballistic missile program. Ballistic missiles are at the root of Iran's national security, as they are perceived as a way to deter any attack on its soil, especially from a country like Israel. They are also an instrument of pride and prestige for the regime who announced many times that it would never barter it away. At the same time, many of them are, according to the MTCR criteria, nuclear-capable, and there are reasons to suspect that if Iran decided to build the bomb, it would use its ballistic arsenal to deliver it.¹³

Although the international community initially aimed at reining in the Iranian ballistic program, it was unable to negotiate any restriction on this matter in the JCPOA. Its regulations are therefore still contained in UN resolutions, and more precisely in Resolution 2231 which "calls upon Iran not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons." This formulation is not without ambiguities, since the binding power of "calling upon" is controversial and since Iran regularly claims that its missiles are not

13. "Iran", *Observatoire de la Non-prolifération, numéro special Balistique*, 2015/2, n° 102, September 2015.

designed to carry nuclear weapons.

In October 2015, the Iranians proceeded to the launch of an Emad missile, a variation of the Shahab-3. In November 2015, the Ghadr-100 was tested, another improvement of the Shahab-3 missile with a range of about 2000 km. Finally, in March 2016, Iran proceeded to two tests of variants of this missile, which were described as “in defiance” and “inconsistent” with Resolution 2231 by France, Germany, the United States and the United Kingdom.¹⁴

The development of this program is one of the main frustrations for these four countries so far, and led the US Congress to adopt new sanctions in March against groups working on it.

More globally, if the nuclear deal is probably an essential step for the Rouhani’s policy of overture, the administration is clearly more committed to bringing Iran’s back in the global economy rather than changing its foreign policy. The Supreme Leader Ayatollah Khomeini especially stated that the JCPOA had no influence on Iran’s foreign policy nor its opposition to the United States, a declaration slightly nuanced by President Rouhani who declared that Iran “should not have any permanent enemies” and that the deal “is a beginning for creating an atmosphere of friendship and cooperation with various countries”.¹⁵

Tehran’s actions abroad are generally motivated by a mix of national and revolutionary interests, and have been seen in the recent years as opposite to the global order supported by the West. The last year has not witnessed any major changes in this regard. The State Department Report on International Terrorism for 2015, released on 2 June 2016, still asserts that Teheran is the “foremost state sponsor of terrorism”, mostly for its ongoing and open support for the Lebanon-based group Hezbollah.¹⁶

Since the adoption of the JCPOA, Iran has not proved an easier partner in the Middle East, where it is still a strong support of President Assad in Syria and insists that he must be involved in the political resolution of the

crisis. It finances terrorist organizations in Iraq such as the Kata’ib Hizballah and has been caught arming violent opposition groups in Bahrain. After a period of tensions, it is still a major financier and weapon provider for the Hamas and the Palestine Islamic Jihad (Shiqaqi Faction). Finally, although not mentioned by the State Department, it is a weapon provider for the Yemeni Houthis, which pushed in April 2016 the United States and Gulf countries to agree on leading joint patrols to intercept Iranian weapon cargos.

Finally, the strong tensions between Iran and Saudi Arabia (as well as other Gulf monarchies) in January 2016, which resulted in the severing of diplomatic ties, proves that the deal has not led to appeasement in the region.

The JCPOA has therefore not resulted in a clear improvement of overall relationships between the West and Tehran, and it is far too early to mention any “partnership” in resolving regional crises. That being said, a few positive elements should be noticed, which show that the two sides are still committed to resorting to diplomatic means to resolve ongoing tensions. First, in January 2016, Iran rapidly released American sailors who had been caught in Iran’s territorial waters, and at the same time American-Iranian citizens were also set free, in both cases in exchange of the release of Iranian prisoners. Also, an arbitration was accepted by both sides in January 2016 which led to the reimbursement to Iran of sums that were paid by the Shah in the 1970s for never-delivered weapons.

The negotiation of the deal by Iran was proof of its willingness to reintegrate, to some extent, the international community, which seems to be sincerely felt by an important part of the population and which gives hope for further diplomatic progress in the future. That being said, the JCPOA had not been the precursor of an upheaval of Iran’s foreign policy, which remains in many ways fundamentally antagonistic to the West.

A slow recovery for the Iranian economy

When it signed the JCPOA, the goal of the Rouhani administration was to lift a major obstacle to any economic development and to reap immediate economic benefits to be able to pursue additional domestic structural reforms. Politically, the deal “had to deliver” to prove that overture was the best policy. This objective had mixed results.

14. Louis Charbonneau, “Exclusive: Iran missile tests were ‘in defiance of’ U.N. resolution - U.S., allies”, *Reuters*, 30 March 2016.

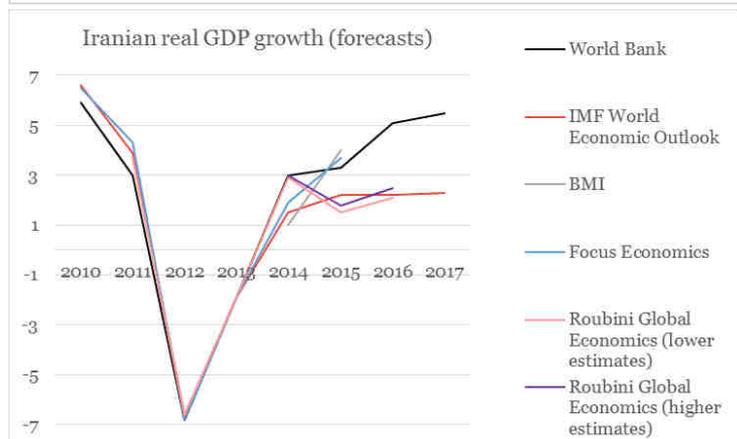
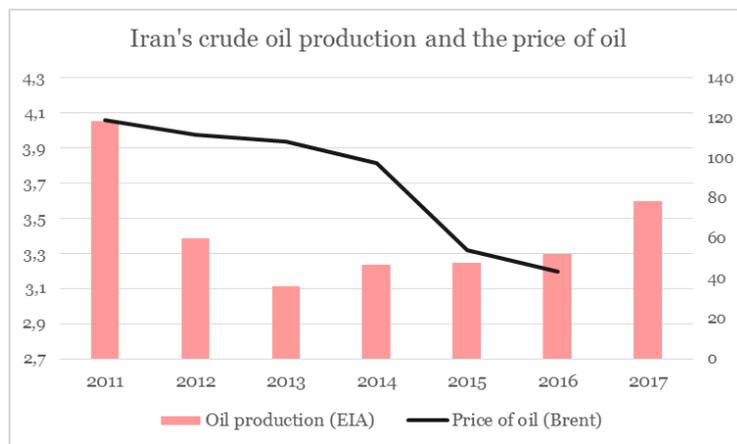
15. Kenneth Katzman, “Iran’s Foreign Policy”, *Congressional Research Service*, 27 June 2016.

16. State Department, *Country Reports on Terrorism 2015*, June 2016, <<http://www.state.gov/documents/organization/258249.pdf>>.

As might be expected, the signature of the deal did not lead to remarkable changes overnight, which resulted in disappointment in various parts of the country. To justify these difficulties to their domestic audiences, Iranian officials have complained publicly that the West was not doing its part. Ayatollah Khamenei stated that “the Americans say banks can trade with Iran but in practice they act in such an Iranophobic way that no trade can take place with Iran” and that “the Americans are engaged in obstruction and deception.”¹⁷ The director of the Central Bank Valiollah Seif claimed that as long as it could not access the U.S. financial system, Iran would get “almost nothing” out of the deal.¹⁸

While exaggerated, these grievances reflect the fact that the economic benefits reaped from the JCPOA will be slow to come. The international banking actors show a great reluctance to invest in Iran, and direct investors are also very cautious given the regularly criticized business climate in Iran, characterized by corruption, a dominance of the public sector and general involvement of the Islamic Revolutionary Guard Corps, and other unfavorable indicators. Finally, the reopening of energy markets for Iran has coincided with a sharp decline in the price of oil, which obviously diminished the expected incomes made out of new sales. This low price of oil combined to restrictive monetary policy aiming at curbing inflation resulted in sluggish growth for the period from March 2015 to March 2016 and estimated to be only 0.5% by the World Bank.¹⁹

That being said, the JCPOA has led to positive developments for the Iranian economy. In November 2015, it exported 0.9 million barrels of oil per day, in May, this figure had surged to 2.6 million.²⁰ Its global exports increased by about 20% and investments reached 30% of GDP. European major firms have shown a deep interest in returning to Iran through visits and official propositions. As it is, while it calls for structural reforms, the IMF still previews a growth rate of about 4



GDP growth and FDI

The impact of the lifting of sanctions on Iran’s GDP was perceived differently by different statistical organizations after the signature of the deal, but all of them agree on an increase in the growth rate which should have been visible as soon as 2015. The reality was a little bit more complicated with a growth rate of only 0.5% recorded between March 2015 and March 2016 by the World Bank. The statistical organizations are still expecting improvements over the next years.

-5% in the coming years.²¹ In this context, President Rouhani already mentioned the positive outcomes from the deal (“Providing the economy with momentum, improving employment, attracting domestic and foreign investments, access to new technologies, and in the meantime, enhancing exports”), a statement that may derive more from political objectives than a close assessment of statistics, but is still a welcome posture.²²

17. Ayatollah Khamenei, “US continues deception after JCPOA”, *Khamenei.ir*, 27 April 2017.

18. Kambiz Foroohar, “Iran Seeks Access to Its \$100 Billion Via U.S. Financial System”, *Bloomberg Markets*, 15 April 2016.

19. World Bank, Overview of Iran’s economy, updated in April 2016. <<http://www.worldbank.org/en/country/iran/overview>>.

20. Matt Egan, “Iran’s oil exports have tripled since late 2015”, *CNN Money*, 16 June 2016.

21. Statement by Mr. David Lipton, First Deputy Managing Director of the IMF, at the Conclusion of his Visit to Iran, IMF Press Release N° 16/224, 17 May 2016.

22. “Rouhani Stresses Positive Influence of JCPOA on Iran’s Economy”, *FARS News Agency*, 4 July 2016.

Given the general economic outlook, it is unrealistic to expect the lifting of sanctions alone to bring an immediate and tangible change for Iranians. As a first step to more comprehensive reforms, it could however lead to a medium term improvement of the Iranian economy, which may convince the domestic audience of the need to continue reformist policies and stick to the JCPOA. On the other hand, this anticipated development may empower Iran and give it the additional means to act in a more assertive way in its regional environment. This is a risk that all parties to the negotiation have agreed to take in Vienna last year to make sure that the nuclear program was kept in check. To this day, Europeans and the current US administration have been sincere in their willingness to promote economic development in Iran which would be proof of the success of the deal. This position must endure if the bet made in Vienna is to be sustained and if the E3+3 are still convinced that the deal is worth preserving, notwithstanding Iran's attitude in the Middle East.

The initiatives taken by some members of the American Congress are however clearly not following this logic and focus on the dangers created by a richer Iran. The November election may bring clarification on the priorities of each sides in this domain.

Challenges and perspectives for the future

A fragile diplomatic breakthrough

While there was no real difficulty in selling the deal in Europe or at the United Nations after its adoption in July 2015, the United States and the Iranian governments both had to work to convince their national public and parliamentarians of the need to respect the agreement. A year after the beginning of these efforts, the deal seems to have more chances to survive politically and especially to subsist to the change of American administration in January 2017.

On the Iranian side, some expressed fears of a decline in the support for the deal because of the publication of overt critics by the Ayatollah Ali Khamenei, who accused the Americans of deception and obstruction, and of warnings of Foreign Minister Mohammad Javad Zarif that the United States needs to do more and that "if one side does not comply with the agreement then the agreement will start to

falter."²³

However, the Rouhani government has publicly stated its support for the deal, and in particular in April 2016 with the publication of a JCPOA public report, which insisted on the benefits of the deal for Iran and did not blame the E3+3 for any delays or lack of commitment on the lifting of sanctions. It adopted a realistic and nuanced approach on the implementation of the deal thus far.²⁴ Still eager to explain that the negotiation of the deal had been a positive step for Iran, the Rouhani government was reinforced by the legitimacy conferred by the February Parliamentary elections, in which the coalition of moderates largely gained a majority of seats.²⁵

In the United States, the deal also seems in a slightly better position than a year ago, but is not entirely safe. In September 2015, the Republicans in Senate failed to bring together the 60 votes necessary to pass a resolution of disapproval that would have crippled the administration's attempt to waive sanctions.²⁶

The attempts by Congressmen to pass new laws containing additional restrictions towards Iran (based on human rights abuses, actions in Syria and the ballistic missile program) have not resulted in the adoption of any text openly violating the JCPOA, even if many of them are clearly not in coherence with the spirit of the deal. Henceforth, the main debate in Congress will most likely regard the extension of the Iran Sanction Act (currently waived by an Executive Order), which is expiring at the end of 2016. Iran has warned that extending it would "relieve Iran from its commitments" but the Administration had not yet stated on how it would react to such a move and several senators from both parties have called for the extension of the text to keep leverage on Iran. Given the sensitive political timeframe, one could assume that the position of the President-elect would be influential on this issue.²⁷

23. Suzanne Maloney, "Is the Iran deal unraveling? Think again," *Brookings Institution*, 20 May 2016.

24. Ariane Tabatabai, "Iran issues first progress report on nuclear deal", *Bulletin of the Atomic Scientists*, 19 April 2016.

25. Saeed Kamali Dehghan and Ian Black, "Iranian elections deal blow to hardliners as reformists make gains," *The Guardian*, 28 February 2016.

26. Patricia Zengerle, "Last bid to kill Iran nuclear deal blocked in Senate", *Reuters*, 17 September 2016.

27. Kenneth Katzman, "Iran Sanctions," *Congressional Research Service*, 18 May 2016.

During the primary campaign, many Republican candidates harshly criticized the deal and some even promise to “rip to shreds” the text on their first day in White House.²⁸ However, the Republican nominee, Donald Trump, has not been transparent regarding his intentions in this matter. Although he regularly repeats that he would have negotiated a much more robust agreement, he did not pledge to get rid of this one and so there is a good chance that he would not reimpose the sanctions immediately after taking office.²⁹ The Democratic nominee, Hillary Clinton, is logically supporting a deal that her early actions as Secretary of State helped bring about as early as 2012.

The deal receives far less attention in the United States media than last year, and the public opposition of some parts of the civil society is much more hushed. If the future President is committed to implementing the deal, there is therefore a good chance that it will resist in the near term to the efforts of Congress to damage it, even if the debate over the extension of the ISA will probably be heated and may provoke open tensions with Tehran.

Vigilance and verification

The first year of implementation has been characterized by a willingness on all sides to be in conformity with the letter of the agreement. This avoided major crises among the parties and gave an opportunity to the IAEA to verify that the restraints enforced upon Iran’s nuclear program were in place, thereby gaining confidence in its peaceful nature

The relationships between the two sides are however still fraught with tensions and mistrust, which means that an emphasis will have to be made on technical and objective reports on implementation. The verification process currently put in place by the IAEA seems satisfying, but high standards need to be maintained, which means that the Agency needs to receive the funding it requires and that its reports must be as precise as possible. At the onset of the implementation of the deal, it is imperative to make sure that all its possibilities, in terms of verification, monitoring,

and information sharing, are explored, and that bad habits of resisting transparency or inspections are not taken. Similarly, good working processes should become the norm in the Joint Commission. If less than satisfactory behaviors came to be acceptable, this could encourage Iran to reconsider its fulfillment of its commitments and slowly degrade the worth of the JCPOA.

Such a path would be especially dangerous if it was provoked by apparently benign disputes and resistance, progressive refusal to undertake measures contained in the deal, or unexplained obstruction of verification procedures. The E3+3 could then be reluctant to confront Iran and put the JCPOA in jeopardy by denouncing its non-compliance. The early implementation practices are therefore essential to set high standards, convince Tehran that any violation would be met with consequences and avoid any difficulties in the future. The different countries involved in the deal, and especially in the West, seem very aware of this challenge and follow the implementation closely. One must hope that when new administrations will come to power in these countries (elections in 2016 in the United States and new Prime Minister in the United Kingdom, elections in 2017 in France and Germany), which may not have been as directly involved in the negotiations in Vienna in 2015, the same attention and focus will be brought to this issue. It will be necessary for the long-term success and value of the JCPOA, and making sure that Iran’s nuclear program remains exclusively peaceful during its timeframe.

Conclusion

The first year of implementation of the JCPOA has not seen any major surprises or revelations. Technically implemented by the two parts, it has not led to other diplomatic breakthroughs or an overall political modification of the relationships between the two sides. After one year, and six months of actual implementation, it proved its robustness in the short term and its ability to keep checks on Iran’s nuclear program, but also showed that expectations should not go much beyond this very important goal.

Its sustainability in the future will depend on the two sides’ commitments, and especially an effort by the international community to give itself the means to implement the relevant verification and transparency measures. The

28. Julian Hattem, “Cruz: ‘I will rip to shreds’ the Iran deal,” *The Hill*, 16 September 2016.

29. Michael Wilner, “Trump committed to preventing a nuclear Iran, senior aide says,” *The Jerusalem Post*, 6 June 2016.

activities of the US Congress will also be important in that matter, as any new sanctions could compromise the goodwill of Iran to keep in good faith its commitments.

To this day, the involved parties are still convinced of the validity of the bets they took in 2015: for Iran, that reintegrating the international economy was the best way to assure

the sustainability of the regime and was worth accepting restraints on its nuclear program; and for the E3+3 that making sure that this one was peaceful for at least 15 years justified giving additional means to Iran to develop itself economically and politically. The JCPOA will survive as long as all key parties keep faith in these strategic gambles.◇

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