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# Implementation of the JCPOA: Risks and Challenges Ahead

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## 1. Introduction.

The purpose of this paper is nothing more than stimulate discussion about potential risks awaiting JCPOA during its implementation. The short and rather tumultuous life of the Iran Nuclear Deal after the historic day of 14 July, when it was approved by top P5+1 and Iran negotiators already shows that things will not be easy. The Deal is an extraordinary achievement, the positive potential of which is far from being felt and understood yet, and that every effort should be undertaken to support and encourage its reasonably effective implementation and to prevent its collapse.

Part of this task, it seems, is to be able to understand well in advance, where, when and under which circumstances the Deal might come under particular stress. Not all the risks are, of course, grave, not all the risks are directly connected with the content of the agreement and to the quality and resilience of its internal balances and compromises. Not all the risks or potential problems are seen and understood identically if you look at them from Moscow, Washington, Teheran, Riyadh, Tel-Aviv or Jerusalem (there are differences between the latter two perceptions as well), or, finally, from Vienna, i.e. the IAEA .

## 2. Methodology.

The risk assessment should be based on integration of various factors, such as:

- a) susceptibility of specific requirements of the agreement (what should be done and in which time-frame) to different interpretation and their importance to respective stake-

- holders – in terms of achieving their expectations from the deal;
- b) political calendars of participating countries, in the first place Iran and the US;
  - c) internal political balances and evolving politics in participating countries (such as the need to satisfy the hawks in order to move forward);
  - d) the quality and degree of political independence of analytical machinery, including intelligence, in states parties while assessing the course of implementation and interpreting the motives and priorities of respective political leaders;
  - e) experience (or the lack thereof) in managing own compliance concerns or those of the partners or "opponents";
  - f) broader regional and global political developments and reactions to them in countries involved.

One has to bear in mind that there are no serious arms control/non-proliferation agreements that have been implemented without any questions asked and without any complications. JCPOA is complicated enough technically and contains quite a lot of labour-intensive provisions (meaning that a number of people would have to be tasked with implementing certain projects against certain deadlines) that technical non-compliance and/or delays are quite possible. But what can be a small easily resolvable inconvenience under other agreements, with JCPOA the heavy mutual distrust immediately inflates beyond reason any small compliance concerns on the one side and severely curtail the willingness to cooperate on the other. A further serious complicating factor is the tradition – both in the West and in Iran of looking at everything through the prism of worst-case scenarios and the tendency, especially in the West, to pass unilateral judgement on compliance publicly before any discussion can take place in an appropriate framework.

### **3. Adoption Day**

JCPOA reached its Adoption Day 18 October, after having successfully cleared several important preliminary stages – adoption of the UNSC Resolution 2231, certain bilateral steps between Iran and the IAEA and national approval and confirmation processes in all participating states. Only in two of those states: in Iran and especially in the US the approval processes – as expected – were difficult and at times dramatic.

Parliamentary debates in Iran have concluded with the adoption of the law, allowing the government to proceed with the implementation under certain conditions, which are primarily of defensive nature; besides, we see in the law the legislative confirmation of the Fathwa against nuclear weapons – something that Iran had been advised to implement for many years now. However, the hawks had to be satisfied by way of proving to them and to the world that conclusion of JPOA does not deprive Iran of its defence assets, such as high precision ballistic missiles and the missile base deep in the mountain.

The debate in the US Congress produced, luckily, no resolution or law, which was the best of all thinkable outcomes. But some price also had to be paid to the anti-JCPOA party - both inside and outside the US. The US administration de-facto committed itself to approaching the questions of Iran's compliance from the positions of total distrust, which is potentially dangerous, and, at least on the surface, accepted the argument that the key US allies need additional US security guarantees and assistance in the light of the conclusion of the JCPOA (despite saying that JCPOA will increase security of all countries in the region, including the US allies).

The successful achievement of the Adoption Day has shown that the frontal attacks on the Iran Deal by its opponents have not succeeded, but that they will continue to use every possibility to exploit both any hiccup with the implementation as well as wider political and security problems, starting with Iran's missile activities and including its policies in the region, detention and trial of US citizens, etc. Another lesson is that both in the US and Iran the authorities managed so far to protect JCPOA provisions against attempts to misinterpret them, but had to placate the enemies in some other way.

#### **4. The critical (how many???) months between the Adoption Day and the Implementation Day**

The period before the Implementation Day will be critical for several reasons.

This phase will determine initial patterns for the longer term implementation of JCPOA and, if successful, will contribute

substantially to the sustainability of the process (and make possible attempts to subvert it more problematic); it may or may not contribute to the achievement of the following objective stipulated in the JCPOA: *“The E3/EU+3 envision that the implementation of this JCPOA will progressively allow them to gain confidence in the exclusively peaceful nature of Iran’s programme.”* It goes without saying that the success of this stage depends on accurate and timely implementation by all parties of their respective commitments.

This phase envisages a number of activities that must be undertaken by Iran, by P5+1 and by the IAEA, some of which are pretty straightforward and easily implementable, while other requiring significant efforts, especially from Iran. Iran made clear its intention to implement the required actions on the centrifuges, Arak, existing stocks of enriched material, fast, but there are some doubts as to how fast it can do the job. Potentially that can lead to some conflict situations. Yet, from the verification point of view, there are no significant challenges and relatively little room for misunderstandings (NB: application of AP by Iran will commence from the Implementation Day onwards, and not before).

This phase further includes preparation and submission by 15 December of the IAEA report on the outcome of its work with Iran on the Roadmap; although the content of the IAEA report will not directly affect the timing for the implementation day, one may expect pressures on DG Amano and his top team, as well as various damaging “leaks” through “existing channels” in Vienna in order to influence the report and use the situation politically to at least delay the Implementation Day.

From the political perspective the Iranian leadership has all the reasons to complete this phase soon enough in order to be able to report at least some sanctions relief to the Iranians before the elections in February. But that also presupposes a rather careful line of the Iranian side on compliance with JCPOA proper, so as to avoid accusations of cheating. Simply put, Iranian cheating is unlikely not only for technical reasons (Iran cannot hope to use cheating to compensate for what it had negotiated away during the talks, nor is cheating necessary to maintain the know-how it has anyway today), but also for wider internal and external political considerations of the Iranian leadership.

One cannot rule out some attempts to “cut corners” on some implementation projects, even at the “local initiative”. It would be advisable for other parties to JCPOA not to over-react to such situations and use - constructively and in a low key - a combination of bilateral consultations and the mechanism of the Joint Commission. Excessive vigilance, which might be good for certain propagandistic reasons, should not cloud the realistic vision and obstruct realistic approach to the situation on the ground.

What should be avoided, is sending a message to the Iranian side that the US may be in delaying the Implementation Day so as to delay the sanctions relief, and such a risk may exist, especially as a result of US internal politics and 2016 election campaign, as well as due to pressures from some of the US allies. That may well result in the erosion of the current level of support for JCPOA in Iran and to the reappearance on the Iranian political arena of people like Ahmedinejad, who are now being kept behind the scene and in reserve by the Supreme leader.

Incidentally, one may argue that achieving Implementation Day earlier, rather than later, would reinforce the sustainability of JCPOA in the US context and strengthen the arm of its supporters in the wake of the US elections in November next year.

The risk of sending above-mentioned “delaying” signals to Iran from the European countries, not to mention Russia and China is significantly lower, as all of them, maybe in different ways, have demonstrated their strong interest in keeping the JCPOA in good health and in engaging Iran actively in trade and many other issues, including security (NB the preparatory meeting in Tehran for the Munich Security Conference).

## **5. Beyond Implementation Day and broader political risks.**

Assuming the JCPOA successfully steers through the Implementation Day and survives the US presidential elections and the consequential “review”, it’s life may become more tranquil for a while, especially if there are no significant violations of the deal from whatever side. However, the macro-political factors of destabilisation would not go away by themselves, even if in the narrow context of JCPOA the parties concerned succeed in developing more trust and mutual understanding, and will continue to generate crisis situations of

varying gravity. Yet, such trust will make the JCPOA better shielded from external factors.

However, 5-6 years down the road there may develop a situation of fatigue from JCPOA, both on the Iranian side, where internal political dynamics may push for earlier termination of various restrictions and sanctions, and on the US side (especially if internal political forces and key allies decide to impress upon Washington the need to punish Iran or to make sure that JCPOA restrictions on Iran remain unchanged and are not lifted for much longer time. However, it is too early to address those kinds of future risks, enough is to keep in mind that they might one day materialize.

## **6. In conclusion:**

Below is the list of recommendations, following which it may be possible to address some of the risks that JCPOA is facing and reduce the other:

- a) Make sure that all sides do their best to comply with and implement their respective commitments, while ensuring that the implementation progresses on the basis of principles of reciprocity and fairness (avoiding and resisting attempts to present the implementation as primarily or exclusively an Iranian obligation, while the others will be the judges);
- b) Maintain both the capacity (collective and individual, but without taking away the function from the IAEA) of early detection of all irregularities and difficulties with the implementation, but exercise patience and restraint with passing judgements and make *buona fide* efforts to understand the problem before passing public judgement or making demands; make full use of the mechanism of the Joint Commission;
- c) Maintain the necessary degree of cohesion on the subject among P5+1, because the failure to do that will create incentives for provocations against the JCPOA from various quarters;
- d) Make sure that the IAEA is duly protected from attempts to politicise its work on Iran, as well as from traditional leakages of selective damaging information on Iran;
- e) Start involving Iran more actively into various activities on non-proliferation and nuclear safety/security;

- f) Avoid trying to delay or being perceived by Iran as delaying the Implementation Day and the lifting of sanctions;
- g) Avoid imposition of new sanctions on Iran, that can be seen as functionally replacing the previous sanctions, lifted or terminated under JCPOA;
- h) Stimulate both Iran and its regional opponents (applying rational distribution of labour among the P5+1) towards improving relations, exploring regional CBMs and discussing some kind of cooperative security in the area (including the possibility of greater OSCE involvement);
- i) Carefully stimulate Iran towards making at least some limited initial steps towards recognition of Israel (perhaps conditional);
- j) Explore the chances for the admission of Iran to the WTO, or starting such a process (in 2004-05 the EU3 was making such promises to Iran, but that was not followed up ). At some point explore the possibility for Iran of joining the NSG.