

ZOOM IN

The question:

The Joint Comprehensive Plan of Action five years on: Legal questions and future prospects

Introduced by Maurizio Antonini and Enrico Milano***

The Joint Comprehensive Plan of Action (JCPOA) is a detailed, 159-page agreement with five annexes reached by Iran and the P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States) on July 14, 2015. In accordance with the agreement, Iran committed to eliminate its stockpile of medium-enriched uranium, cut its stockpile of low-enriched uranium by 98%, and reduce by about two-thirds the number of its gas centrifuges for 15 years. Iran also agreed not to build any new heavy-water facilities during the same period. Uranium-enrichment activities are to be limited to a single facility using first-generation centrifuges for 10 years. The agreement provides that, in return for compliance with verifiable commitments, Iran will receive gradual relief from US, European Union, and United Nations Security Council nuclear-related sanctions. Moreover, Iran's compliance with the nuclear-related provisions of the JCPOA is to be verified by the International Atomic Energy Agency (IAEA) according to requirements set forth in the agreement. The nuclear deal was endorsed by UN Security Council Resolution 2231 of July 20, 2015.

On May 8, 2018, President Trump announced that the United States would withdraw from the JCPOA and reinstate U.S. nuclear sanctions on the Iranian regime.

Following the U.S. withdrawal from JCPOA, Iran's supreme leader, Ali Khamenei, presented seven conditions for Europe to meet its commitments. Among them was that European States must take steps to preserve business relations with Iranian banks and purchase Iranian oil

* Counsellor, Italian Ministry of Foreign Affairs and International Cooperation.

** Of the board of editors.

despite U.S. pressure. He also stated there was no need to hold new discussions about Iran's ballistic missile program and regional activities.

One year after the United States withdrew from the JCPOA and reimposed several unilateral sanctions on Iran, Iran responded in five phases, on the basis of Articles 26 and 36 of the JCPOA, by progressively disengaging from some of the provisions of the deal. Iran made this decision after all the major European companies had abandoned doing business with Iran out of fear of US retaliation.

Iranian Foreign Minister Mohammad Javad Zarif has affirmed on many occasions that, contrary to a US Senate Foreign Relations Committee statement, Iran never violated the terms of the 2015 Joint Comprehensive Plan of Action. He referred explicitly to paragraph 36, which details how signatories can resolve disputes. According to the treaty text, Iran has the right to complain to the Joint Commission or the Ministers of Foreign Affairs about European signatories not meeting their commitments under the deal, after which 15 days are allotted to resolve the issue. If no resolution is found, Iran can delegate the issue to an appointed Advisory Board, which then has an additional 15 days to identify a resolution. 'If the issue still has not been resolved to the satisfaction of the complaining participant . . . then that participant could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part,' according to the document.

Zarif also referred to Annex II of the deal, which notes that lifting sanctions under the deal will enable a number of economic and financial processes, including money transfers, shipping and ship-building, and oil and gas trade, among other issues. After the Trump administration unilaterally withdrew from the deal in 2018, Washington reimposed sanctions targeting 'critical sectors of Iran's economy, such as the energy, shipping and shipbuilding, and financial sectors,' according to the US Department of Treasury. Zarif also stated that, according to the JCPOA, lifting sanctions in exchange for Iran's nuclear-related commitments constitutes an essential part of the deal.

In the meantime, the E3 (UK, France and Germany) have repeatedly expressed serious concerns to Iran, and urged it to come back into compliance. After the last step in the disengagement process by Iran, on 5 January 2020, the E3 decided to refer Iran to the JCPOA's Dispute Resolution Mechanism. The DRM is the procedure set out in the deal to resolve disputes between the parties to the agreement. The E3 also stated



that they will use this to press Iran to come back into full compliance with its commitments, and honor the agreement.

This brief summary of the troubled history of the JCPOA five years since its conception shows that several important international law questions remain open, such as: the legal nature of the deal as endorsed by SC Resolution 2231; the effects of the US withdrawal in 2018; the legality of Iran's reaction and the USA's extra-territorial measures; and the implications of the E3 activating the dispute settlement mechanism under the agreement. These questions are all entangled in the dynamic of 'bilateralism' and mutual commitment, on the one hand, and the community interest in the maintenance of international peace and security, on the other. At another level, the prospects of the US re-entering the system under different political circumstances must be evaluated against the backdrop of significant domestic political and legal constraints pertaining to the US domestic system.

We have asked three leading scholars and experts in the law of peace and security – Mirko Sossai, Tyler Cullis and Shahrzad Noorbaloochi – to address these thorny issues.

We would also like to acknowledge the contribution of Marco Roscini in devising the present Zoom-in.

