

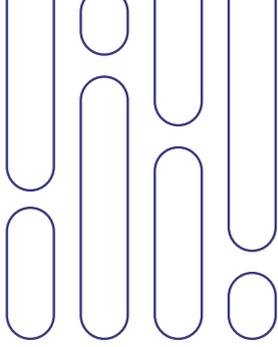
Position Paper

Extending the Arms Embargo on Iran: Dimensions and Expectations

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I- Introduction

As the date for lifting the embargo on the sale of conventional arms to Iran draws closer (October 18, 2020), the United States is continuing its diplomatic efforts to suspend one of the terms of the nuclear agreement and to extend the arms embargo.

These efforts aim not only to hamper one of the most important gains for Iran under the nuclear deal, but also seek to prevent Russia and China, which reject the extension of the arms embargo, from changing the balance of power in the Middle East and to deny Beijing and Moscow the ability to implement arms deals with Iran that were signed in the past.

The United States apparently failed to pressure the European parties to activate the snapback provision that would immediately return all previous international sanctions imposed on Iran that existed before the nuclear

agreement. There would be no need to vote on a new resolution, and no need to enter discussions with the United States about its request to extend the arms embargo on Iran.

The United States has shared a draft resolution with members of the Security Council under Chapter VII to extend the arms embargo on Iran, but this may face a Russian or Chinese veto, or both, and perhaps a European refusal as well. To galvanize support among Security Council members to extend the arms embargo on Iran, the United States submitted a draft resolution to the Security Council on June 22 to condemn Iran and hold it responsible for the missile attacks that targeted the oil facilities at Abqaiq and Khurais in Saudi Arabia. This resolution was based on a new UN report that confirmed Iran's involvement in the missile attacks. The draft resolution submitted by the United States highlighted "Serious concern about the threat these attacks pose to global energy supplies, freedom of navigation in the region, and the safety of people working in the energy, maritime and environmental sectors." Accordingly, it is necessary not to permit Iran to increase its armament capabilities.

If the United States fails to pass a resolution to extend the arms embargo on Iran, Washington says it will invoke a provision allowing any of the seven signatories to the nuclear agreement to restore all sanctions on Iran. The activation of the dispute resolution mechanism (DRM) based on Security Council Resolution 2231 involves six gradual steps which will take 65 days. These steps may culminate in the Security Council re-imposing UN sanctions on Iran. However, this path is full of obstacles. To begin with, China and Russia believe that the nuclear agreement and Resolution 2231 go hand-in-hand and cannot be separated, and that Washington after it announced its withdrawal from the nuclear agreement has no right to invoke the DRM. In addition, although the European Troika voted on June 18, 2020 on the IAEA board of governors' decision that condemned Iran, they still want to work with Iran under the nuclear agreement, and do not seek to invoke the DRM. However, the report issued by the IAEA on June 5 is based on a draft resolution submitted by the three European countries that signed the nuclear agreement and could be the beginning of European moves to activate the DRM and reimpose UN sanctions, or at least a round of negotiations that would end with the arms embargo on Iran being extended.

The invocation of the DRM, conditioned by the United States proving that it has the right to do so as a member of the nuclear agreement, needs time. Moreover, the Trump administration is preparing for the upcoming elections in November 2020. Not to mention, the complications involved in invoking the DRM; the process involves time-bound stages beginning with dialogue between the parties if there is a complaint against Iran for not complying with its commitments to the nuclear deal, ending with a decision to activate the DRM. The European move remains the most appropriate legal solution to reach this goal; triggering the DRM.

The United States exploring alternative options would either result in extending the arms embargo on Iran or re-imposing a wide range of sanctions that were in effect before the 2015 nuclear agreement, or re-imposing the six resolutions: 1835, 1803, 1929, 1747, 1737 and 1669, including the arms embargo on Iran. Theoretically, a majority of UNSC members need to approve the implementation of the pre-2015 sanctions.

American efforts did not stop here, as the US administration took a preventive and unilateral step to confront the expected arms deals between Iran and both China and Russia if the arms embargo extension failed. The United States added Iran to the list of countries that are not cooperating with its counter-terrorism efforts pursuant to Article 40 of the Arms Export Control Law.

To block any cooperation with Iran, if the arms embargo expires and is not renewed, Congress would play a key role in initiating new embargoes on the sale of weapons between Iran and China and Russia. In addition, it would play a key role in imposing more sanctions on foreign assistance provided to Tehran to develop its ballistic missile program.

The UN report issued on June 13, 2020 clearly indicated that the cruise missiles used in the attacks against two Aramco oil installations and an international airport in Saudi Arabia last year were of Iranian origin. More recently, the IAEA board of governors issued a resolution calling on Iran to cooperate fully with the agency and meet its requests without delay, including providing immediate access to the sites specified by the agency. This is the first IAEA decision against Iran since 2015. Both the UN report and the recent decision of the IAEA board of governors support the ongoing

United States' efforts to prepare the groundwork to extend the arms embargo on Iran through the Security Council in one way or another, or to impose unilateral sanctions against those who sell arms to Iran.

II- The Russian and Chinese Positions

Both China and Russia condemned the US withdrawal from the nuclear agreement and the return of sanctions against Iran in 2018. They considered it a unilateral withdrawal and a violation of the provisions of the agreement due to the IAEA's confirmation of Iran's commitment to the terms of the nuclear agreement signed in 2015. Therefore, they rejected US demands to renew the arms embargo on Iran or to buy weapons openly and formally. They threatened to use their veto against any resolution proposed by the United States to extend the arms embargo on Iran.

The two countries have also adopted a unified legal position to contest the United States' right to activate the DRM because Washington withdrew from the nuclear agreement by imposing sanctions on Iran and the IAEA confirmed Iran's commitment to the terms of the nuclear agreement. The Russians cite the International Court of Justice's (ICJ) advisory opinion in 1971, which has become one of the fundamental principles governing international relations. The ICJ advisory opinion stated that "a party who disowns or does not fulfill its own obligations cannot be recognized as retaining the rights which it claims to derive from this relationship. "

The position of the two countries is influenced by several factors, most notably that they oppose the unilateral undermining of the nuclear agreement by the United States since Iran has stayed committed to it, while the United States has violated it. In addition, Iran has become part of the conflicting issues between the three countries, especially the trade war led by the Trump administration against China since 2018, and similar sanctions on Russia. Not to mention, Beijing and Moscow concluded arms deals with Iran that will be implemented once the arms embargo on Iran expires.

The United States may succeed in pressuring the Europeans to activate the DRM. As a result, Russia and China will not be able to use their veto, and sanctions will be reimposed after passing through the stages to activate the DRM.

If all US attempts fail, even after adding Iran to the countries that do not fully cooperate in counter-terrorism efforts, Washington can use the Republican bill to impose sanctions on any entity or country, including Russia and China that sells weapons to Iran. Highly lucrative Iranian armaments contracts could prompt a number of countries to take the risk of bearing US sanctions to win these huge contracts. This would render US sanctions on countries exporting armaments to Iran ineffective and the only way to completely prevent the sale of arms to Iran would be through a binding UN resolution.

III- The Position of the European Parties

As for the European parties, they have openly declared their opposition to the United States' initiative which undermines the nuclear agreement with Iran. Through the representative of the European Union for Foreign Affairs, Josep Borrell, they denounced the statements of American officials about the US administration resorting to activating the DRM under Resolution 2231 provided in the nuclear agreement. The European parties stressed that the United States withdrew from the agreement and has no right to claim otherwise.

The European parties continue to comply with the agreement as they believe it is an effective instrument to deal with the Iran nuclear issue. Earlier this year, in January 2020, Britain, France and Germany halted the activation of the DRM after Iran announced its fifth breach in a series of violations of its nuclear commitments. The parties resorted to diplomatic negotiations rather than deepening the conflict.

On the other hand, the European position is not completely in opposition to the US position, but rather the Europeans employ a carrot and stick approach in dealing with Iran generally and during the current period particularly, which witnessed several Iranian violations in respect of the nuclear agreement and its missile program.

With regard to the decision to extend the UN arms embargo on Iran, the foreign ministers of the European Troika have expressed their concern about lifting the arms embargo on Iran. The European parties aim to increase pressure on Iran through diplomatic channels and to dissuade the United States from activating the DRM in light of the time factor and to keep the door open for the possible return of the United States to the agreement if

there is a change of administration after the upcoming November elections. They also noted that the European Union embargo on conventional arms exports and missile technology to Iran will continue until 2023.

Recent developments indicate that the European parties will not stand idle, but they will use their diplomatic clout to reach a settlement to satisfy all parties disputing whether to extend the arms embargo on Iran or not. Among the available options is to create a dual understanding to facilitate US consent to lifting the arms embargo on Iran in exchange for other major powers, namely Russia and China, giving up the idea of selling or transferring weapons to Iran in the meantime. Such an understanding is extremely complicated and would be hard to implement considering the details such as the duration of the agreement, verification, and control methods, and how to relate it to the terms of the nuclear agreement.

Another option on the table for the European parties to achieve a settlement is to reach a compromise that will lead to a temporary extension of the arms embargo on Iran on less severe terms than the previous one, ensuring that US concerns are addressed. However, Iran is betting on time and a positive outcome after the upcoming US elections. Such diplomatic efforts would face American intransigence, since the current administration is exhausting all diplomatic means to undermine the nuclear deal before the upcoming November elections.

The European settlement efforts will take into consideration the position of Russia and China regarding arms sales to Iran. The Russians delayed the delivery of the S-300 military defense system to Iran for a long period of time. The Chinese favor the Arab Gulf markets over Iran because of the remarkable China-Gulf rapprochement and its increasing financial and economic value.

IV- Iranian Options

The US administration's announcement to extend the arms embargo provoked violent reactions from the Iranian side which believes that any step in this direction is a violation of Security Council Resolution 2231. Iran believes that lifting of the arms embargo is an integral part of the

nuclear agreement, and that the United States has no right to interfere in the terms and conditions of the nuclear agreement. Iran warned of “serious consequences” and a “devastating response” if the Security Council agreed “under any title, and by any mechanism and method” on the US plan to extend the arms embargo on Iran. Iran’s most important options can be outlined as follows:

1-The diplomatic path: Iran has started its diplomatic efforts to thwart American goals because the United States withdrew from the nuclear agreement and thus cannot benefit from its provisions. At the same time, Iran does not trust the European parties as a result of previous and current experiences regarding European promises to comply with the agreement and Europe may pursue an independent policy away from the Americans. In addition, Russia and China may compromise on the Iran issue over other common interests with their American rivals. Therefore, diplomacy is insufficient as the US administration is determined to extend the arms embargo on Iran.

2-Escalation and the creation of a complex security environment: The failure of diplomacy may push Iran to continue to create tension and chaos in the region and to use its tools to threaten regional stability and security, so as to create a complex security environment for international powers so that they do not respond to the American objective to extend the arms embargo, similar to what Iran did after the US oil sanctions exemptions were ended. However, this bet may pose a risk to Iran itself, especially after the assassination of the of the Quds Force commander Qassem Soleimani by the United States to deter Iran from further acts of aggression, and Trump’s recent threats and orders to the US Navy to target any IRGC gun boats that harass American ships in the Gulf.

3. Nuclear escalation: Iran will increase its level of uranium enrichment by more than what was agreed upon, and restart some reactors that it pledged to freeze during the nuclear agreement. Prior to the nuclear agreement, the level of uranium enrichment was 20 percent and Iran believes that a return to this level will grant it more pressure cards against the United States and the European countries. It may have already started enriching more uranium after the IAEA announced in its latest report that Tehran’s stockpile of enriched uranium exceeds by eight times the limit set out in

the 2015 nuclear deal.

4. Withdrawal from the NPT: Withdrawing from this treaty is one of most salient options which Iran has always threatened to use.

5. Iran also has another option, which is to accept the extension of the arms embargo in exchange for keeping the agreement, betting that Trump will not succeed in the elections in November 2020, which may change the equation to its advantage according to what it believes in. This option also includes the possibility of entering direct negotiations with the United States. This may be understood from the supreme leader's statements about heroic flexibility, especially as Iran is going through its worst crisis since the revolution. The coronavirus crisis has weakened the government's ability to meet and face the challenges.

V- Conclusion

Undoubtedly, the attempt to extend the arms embargo on Iran before October 2020 will test the United States' ability to continue with its strategy toward Iran. This will depend on the European position which keeps fluctuating. The Europeans do not seem inclined to invoke the snapback provision. In addition, the Russian and Chinese positions oppose the US policy, which could push them to use their veto against any US decision targeting Iran. This could be a major setback for the American strategy. However, if the United States succeeds in extending the embargo, the gains that Iran has counted on from the nuclear agreement would completely disappear. Iran would then have no choice but to announce the death of the nuclear agreement and thus withdraw from it, as it has repeatedly threatened to do. In this case, it will face the return of UN or European sanctions against it, or accept the extension of the arms embargo reluctantly fearing the repercussions of canceling the nuclear agreement or the escalation in its nuclear file. However, Tehran's acceptance of such a step will affect the government's image internally and externally, and it will appear further weakened. If the diplomatic efforts by the parties to the nuclear agreement are successful, this will probably result in an agreement which limits weapons sales to Iran and imposes restrictions on the type of arms, the number, and delivery dates. However, it gives Russia and China the opportunity to benefit from lucrative arms deals. At

the same time, it will prevent the collapse of the nuclear deal completely without Iran entering into comprehensive and public negotiations with the United States.



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