

Chapter 2

The Construction of the Sanctions Regime Against Iran: Political Dimensions of Unilateralism

Hisae Nakanishi

Abstract The objective of this chapter is to examine political dimensions of the sanctions against Iran that originated from and are still strongly characterized by the US unilateralism. The hypothesis is that changing political factors surrounding the US and Iran since 11 September 2001 shaped the sanctions regime but also provided room for compromise among all stakeholders. To examine this hypothesis, this chapter analyzes how the sanctions against Iran emerged and developed over the years and under what political contexts sanctions continue today. A perception of Iran's nuclear ambition ultimately determined the course of events that led to the current multifaceted sanctions regime. The vicious circle of deadlocking nuclear negotiations and the subsequently strengthened sanctions against Iran reached a balance with the Joint Plan of Action in November 2013. The persistent pursuit of Iran's right to enrichment, based on Iran's maintaining the NPT's principles, as well as shared interests between the US and Iran in the wider context of changing security situations in Afghanistan, Iraq, and Syria, define the political dimensions of American unilateralism and of Iran's resistance to it.

Contents

2.1 Introduction.....	24
2.2 The Construction of the Sanctions Regime.....	25
2.2.1 Historical Background	25
2.2.2 Changing Rationales for the Sanctions	27
2.3 Iran's Nuclear Strategy and its Breakthrough	
in Nuclear Negotiations	32
2.3.1 Iran's Discourse on Nuclear Development	32
2.3.2 A Nuclear Breakthrough	33

H. Nakanishi (✉)

Graduate School of Global Studies, Doshisha University, Karasuma Higashi-Iru,
Imadegawa Dori, Kamigyoku, Kyoto 6028580, Japan
e-mail: hinakani@mail.doshisha.ac.jp

2.4 Points of Interest: Where the United States and Iran Met	36
2.4.1 Afghanistan and Iraq	36
2.4.2 Syria	38
2.5 Conclusion	39
References	40

2.1 Introduction

It has been 34 years since Iran was placed under international sanctions. Although the first sanctions were initiated unilaterally by the United States in 1980, subsequently, US-allied States such as EU Member States and Japan followed to comply with them. Thus, the implementation of the three and half decade sanctions should be called international. Since 2006, the framework of the sanctions has been multilateral, as the UNSC has also passed a resolution sanctioning Iran.

Some analysts maintain that both financial sanctions and, particularly, an oil embargo that started in 2011 have significantly impacted Iran's economy.¹ Iran's currency, the Rial, hit one of its lowest points against the dollar—about 40,000 Rial per dollar—in February 2013.² It is estimated that the Rial has lost 80% of its value in the last two years. Helped by Iran's mismanagement of its economy, the rapid devaluation of the Rial has caused a severe increase in inflation. Although different statistical data exist, it is safe to say that there has been 40–50% inflation in the cost of consumer goods over the last few years.³

Other analysts observe that Iran's exports in 2012 fell 39% compared to 2011.⁴ After the EU initiated an embargo on Iran's oil in July 2012, and subsequently issued European Council Decision 2012/365/CFSP in October 2012 institutionalizing additional sanctions against Iran's banking system, oil and petrochemical industry, and shipping industry,⁵ Iran's oil revenue dropped to a third of the previous year's level.⁶

It is certain that the EU sanctions have also contributed to the worsening of Iran's economy. Yet it was the US that started and mobilized the international community against Iran. The present sanctions regime still has a strong unilateral

¹ See e.g., Farzanegan 2013, p. 15.

² Uskowi on Iran, 40,000 Rials for the Dollar Record—Iran, <http://www.uskowioniran.com/2013/01/40000-rialsfor-dollar-record-iran.html#!/2013/01/40000-rials-for-dollar-record-iran.htm> (accessed 9 June 2014).

³ Ladane Nasseri, *Iran Central Bank Can Help Slow Inflation: Official*, Bloomberg, 5 December 2013, <http://www.bloomberg.com/news/2013-12-04/iran-central-bank-can-help-cut-inflation-in-half-official-says.html>.

⁴ David Bird, *Sanctions Cut Iran's Oil Exports to 26-Year Low*, WALL STREET JOURNAL, 29 April 2013.

⁵ EU Council Decision 2012/635/CFSP of 15 October 2012 Amending Decision 210/413/CFSP Concerning Restrictive Measures against Iran.

⁶ U.S. Energy Information Administration, Iran, <http://www.eia.gov/countries/cab.cfm?fips=ir> (accessed 10 June 2014).

character in which the US maintains the decision-making power concerning whether additional sanctions should be imposed or whether some aspects of the sanctions might be lifted.

International law experts have done detailed analysis of legal characteristics of the sanctions. Many have argued that unilateral sanctions are illegal from an international law perspective.⁷ On the other hand, studies also exist that emphasize Iran's nuclear threat as a proper justification for the economic sanctions.⁸ Yet few serious studies have been done regarding the political nature of the sanctions. More acute scrutiny on the processes by which the sanctions regime has been constructed and of the politicization of Iran's threat must be done.

Almost decade-long nuclear negotiations between the P5 plus 1—the multilateral negotiation team on Iran comprised of the five permanent members of the UNSC and Germany—and Iran finally emerged from a deadlock in November 2013. Iran and the P5 plus 1 signed the Joint Plan of Action in 25 November 2013.⁹ This document is the first concrete agreement between Iran and the P5 plus 1 and is considered a basis for confidence building.

The objective of this chapter is to examine the political dimensions of the sanctions that were originated and are still strongly characterized by US unilateralism and to analyze the political implications of the sanctions and the nuclear issue. A hypothesis is that changing political factors surrounding the US and Iran since 11 September 2001 (11 September) shaped the sanctions regime but also provided a room for compromise among all stakeholders. This chapter analyzes how sanctions against Iran emerged and developed over the years and under what political contexts they continue today. The first part of this article deals with historical background that has shaped the US–Iran relationship since the Islamic Revolution in 1979 and analyzes how the logic of the sanctions against Iran has transformed over the past three decades. Then the chapter examines Iran's reaction to the politicization of its nuclear program and where a balancing act has been achieved between Iran and other nuclear negotiation stakeholders. Finally, it addresses how the United States' and Iran's shared interests in Middle East security since 11 September have actually led to cooperation. Finally, it provides prospects for the future of the sanctions regime.

2.2 The Construction of the Sanctions Regime

2.2.1 *Historical Background*

The present complicated dynamic among the US, Israel, and Iran emerged only after the Islamic Revolution of Iran in February 1979. During the Pahlavi era, Iran

⁷ Dupont 2012.

⁸ Fiore 2011.

⁹ Joint Plan of Action, Geneva (24 November 2013) available at http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf.

was one of the most significant US allies. It was the US that initially assisted Iran in developing a nuclear program beginning in the 1950s and continuing until the dawn of the Revolution. The post-Revolution Hostage Crisis at the US Embassy in Tehran between 1979 and 1981 led to diplomatic rupture between the two States.¹⁰

Immediately after the US hostage crisis erupted, the US imposed sanctions against Iran. In November 1979, US President Jimmy Carter issued Executive Order 12170 freezing all Iranian assets.¹¹ Since then, numerous sanctions have been imposed unilaterally by the United States.

The diplomatic breakdown of the US–Iran relationship since the hostage crisis in 1979–1981 has also negatively impacted the Israel–Iran relationship. The United States and Israel consider each other strategic partners in Middle East security. The period of high tensions between Israel and Iran from 2010 to 2013, resulting from Iran’s nuclear development and its hostility to Israel, has repeatedly raised the prospect of military attack against Iran.¹² One of the most alarming events occurred when Iran declared the possibility of closing the Hormuz Strait if Israel were to attack Iran.¹³ Despite Israel’s repeated threats, no military attack has happened. However, the mere possibility of an Israeli attack often causes international anxiety. This is indicative of the magnitude of security sensitivity to Iran’s nuclear problem.

Though the general term ‘sanctions’ is often used, what the sanctions actually mean in practice is complex. The list of US unilateral sanctions against Iran shows that different US government bodies have enacted different types of sanctions.¹⁴ These include the Iran and Libya Sanctions Act of 1996 passed by the Congress; the Comprehensive Iran Sanctions Divestment Act of 2010 issued by the Department of the Treasury; and about a dozen executive orders issued by various Presidents over the last three decades. The diversity of sanctions is the result of general US antagonism toward Iran, particularly in the 1990s during which the United States implemented the so-called Dual Containment Policy toward Iran and Iraq. After 11 September, the United States attempted to prevent Iran from acquiring both nuclear and missile development technologies by issuing numerous diverse sanctions on the ad hoc basis in the last decade. The United States also mobilized the international community to strengthen the sanctions regime.

The UNSC imposed six sets of sanctions on Iran under various UNSC resolutions between 2006 and 2010. The EU also imposed sanctions between 2010 and 2012, which have helped to enforce the UNSC sanctions. Thus, EU Member States joined in the multilateral phase of the sanctions against Iran and cooperated

¹⁰ Scott 2000, p. 178.

¹¹ Executive Order No. 12170, 44 F.R. 65729 (14 November 1979).

¹² Matthew 2012, pp. 76–86.

¹³ *Iran Threatens to Block Strait of Hormuz Oil Route*, BBC News Middle East, 28 December 2011, <http://www.bbc.com/news/world-middle-east-16344102>.

¹⁴ See Bruno 2010.

fundamentally with the United States. One of the most serious sanctions imposed by the EU against Iran was implemented in 2012.

On 25 November 2013, international media reported a nuclear agreement between Iran and the P5 plus 1 as a historical breakthrough. The agreement took the shape of the so-called Joint Plan of Action. There were differing views on the feasibility of Iran's actual implementation of this plan. Yet, on 20 January 2014, Iran started to implement the agreement, with an established time frame of six months. There seems to be no doubt, at the time of writing, that the so-called nuclear impasse has ended. It is likely that Iran will restore its relationship with the United States and Europe in the near future.

2.2.2 Changing Rationales for the Sanctions

A review of the series of the sanctions against Iran imposed by the United States, UNSC, and EU indicates that not all the sanctions are relevant to Iran's nuclear development, or more precisely to Iran's uranium enrichment and processing activities. The very first sanctions issued to freeze Iran's assets, as mentioned earlier, were imposed by the United States to convey a public message against Iran's taking of American hostages.

2.2.2.1 US Sanctions

The 1979 freeze on Iran's assets that still exists today can be considered a symbolic action of the United States cutting its diplomatic relationship with Iran. This was followed by the US Department of State's 1984 designation of Iran as a state sponsor of terror. This designation came into place after it alleged that Iran backed radical Islamic militants who bombed US Marine Barracks in Beirut in 1983. The designation led to bans on US–Iran transactions, including, for example, bans on arms sales and the export of dual-use technologies. Executive Order 12613 of 1987 also banned the import of Iranian commercial goods into the United States.¹⁵ The Iran–Iraq Arms Nonproliferation Act of 1992 strengthened the US trade ban against Iran and prohibited any foreign individual or entity from providing Iran with technology that would assist it or Iraq in possessing weapons of mass destruction.

In 1995, US President Bill Clinton issued Executive Order 12957 entitled “Prohibiting Certain Transactions with Respect to the Development of Iranian Petroleum Resources.” The Order banned “contract[s] that include overall supervision and management responsibility for the development of petroleum resources

¹⁵ Executive Order No. 12613, 52 F.R. 41940 (30 October 1987).

located in Iran” or “contract[s] for the financing of the development of petroleum resources located in Iran.”¹⁶

Thus, the early US sanctions of the 1980s and early 1990s targeted general trade and transactions related to Iran’s oil resources. These sanctions had the vague rationale of sanctioning Iran as a state sponsor of terrorism. In this respect, the United States considered the sanctions precautionary measures against possible implementation of Iran’s developing weapons of mass destruction. The rationale that Iran was a security threat remained vaguely projected.

Even the Iran and Libya Sanctions Act of 1996, which is considered one of the United States’ core sanctions against Iran,¹⁷ is simply aimed at preventing foreign companies and individuals from investing in Iran’s petroleum industry so that Iran could not develop nuclear-related technology. This was passed without any evidence that Iran was actually receiving or developing such for the potential production of weapons of mass destruction. This policy was pursued directly by Executive Order 12599 of 1995 and indirectly through Executive Order 13059 of 1997. In other words, the rationale of US sanctions against Iran was mainly one of arms control and nonproliferation.

Regarding the United States and Europe’s position on nonproliferation, it has been argued:

Since the Cold War’s end ... the United States—along with Britain, France, and Israel—has been determined to constrain the diffusion of fuel cycle capabilities to non-Western states. Their main motive has been to maximize America’s freedom of unilateral military initiative and, in the Middle East, that of Israel.¹⁸

A turning point emerged in 2002 when the so-called Iranian threat emerged. Iran’s anti-regime Mujahidin Khalq Organization leaked that it was possible that Iran was developing nuclear weapons. A series of nuclear negotiations between Iran and the P5 plus 1 began in 2003. Since this time, the threat of Iran developing nuclear weapons has become a principle concern of the nuclear negotiation States.

US propaganda on Iran’s threat should be also considered in the context of the US ‘War on Terror.’ The Bush Administration’s denomination of Iran as a member of the ‘Axis of Evil’ marked US basic policy toward Iran. However, during the Obama Administration, the United States has imposed much harsher sanctions against the State.

A new type of sanctions was initiated in 2006—a financial embargo against Iranian banks and other financial institutions. On 9 August 2006, the US Treasury Department banned business activities between the United States and Iran’s Saderat Bank because that bank transferred money to terrorist organizations such as Lebanon’s Hezbollah, a militant Islamic organization.¹⁹ The United States has

¹⁶ Executive Order 12957 60 F.R. 14615 (15 March 1995).

¹⁷ See Katzman 2006.

¹⁸ Leverett 2013, p. 245.

¹⁹ U.S. Department of the Treasury, Treasury Cuts Iran’s Bank Saderat off from U.S. Financial System, 9 August 2006, <http://www.treasury.gov/press-center/press-releases/Pages/hp87.aspx>.

maintained a pro-Israel policy in the Middle East since the establishment of that State in 1948. Israel and Hezbollah were at war in August 2006. Together with Syria, Iran has financially and militarily assisted Hezbollah, which has historically antagonized Israel. Hezbollah's use of Iran-made missiles was decisive in its victory over Israel in the month-long war.²⁰ The US perception of Iran's threat rose after this event, making it natural for the United States to strengthen its sanctions.

On 22 October 2008, the US Treasury Department's Office of Foreign Assets Control newly identified four entities whose property and interests in property should be blocked to prevent the proliferation of weapons of mass destruction.²¹ Among the four entities was the Export Development Bank of Iran, which the United States alleged was involved with weapons of mass destruction-related payments.²²

US Sanctions against Iran moved into a new phase in 2010. The so-called "Comprehensive Iran Sanctions," together with President Barack Obama's executive orders and other acts, started impacting Iran's financial sector and its oil industry.²³ The banking sanctions that had started in 2006 expanded to cover 16 Iran banks as well as Islamic Revolutionary Guard Corps, which engaged in large-scale business sectors in Iran.

2.2.2.2 UN Sanctions

Another turning point occurred when the UNSC started implementing resolutions to sanction Iran's economy.²⁴ The United States was successful in mobilizing UNSC Members (and the EU) to create an international sanctions regime. Seven UNSC resolutions were issued between 2006 and 2011. The first of these, Resolution 1696(2006), which was issued under the UNSC's Chapter VII authority under the UN Charter,²⁵ was premised on its concern that "the IAEA was still unable to provide assurances about Iran's undeclared nuclear material and activities after more than three years," and thus demanded Iran suspend all uranium enrichment activities in a month.²⁶ It also stated that Iran's failure to do so would

²⁰ Feldman 2006, p. 6.

²¹ U.S. Department of the Treasury, Office of Foreign Assets Control, Additional Designation of Entities pursuant to Executive Order 13382, 73 F.R. 64007 (28 October 2008).

²² U.S. Department of the Treasury, Export Development Bank of Iran Designated as a Proliferator, 22 October 2008, <http://www.treasury.gov/press-center/press-releases/Pages/hp1231.aspx>.

²³ Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, 22 U.S.C. § 8501.

²⁴ Parsi 2012, p. 153.

²⁵ S.C. Res. 1696(2006), preamble, U.N. Doc. S/RES/1696 (31 July 2006) (citing Article 40 of the UN Charter).

²⁶ U.N. Security Council, Department of Public Information, *Security Council Demands Iran Suspend Uranium Enrichment by 31 August or Face Possible Economic, Diplomatic Sanctions*, U.N. Doc. SC/ 8792 (31 July 2006).

lead to economic and diplomatic sanctions. The phrase “assurances about undeclared nuclear material” connotes that nondeclaration would be a sign that Iran was concealing material or technology that could lead to making weapons and that Iran poses danger or threat. In other words, the IAEA’s inability to deny the presence of undeclared nuclear material and activities of Iran became the indication of Iran’s threat to international peace and security.

Ali Larijani, Iran’s Secretary of the Supreme National Security Council at the time, rejected this resolution, stating it was illegal because Iran had not violated the NPT.²⁷ This argument has been maintained by scholars from other States. For example, it was argued that Resolution 1696(2006) carried a presumption (or an assessment) of Tehran’s intent to build nuclear weapons that was repudiated by the US intelligence community in 2007.²⁸

Review of other UNSC resolutions on Iran shows that Resolution 1696(2006) is, in retrospect, the cornerstone of the international sanctions regime against Iran. The six subsequent resolutions—1737(2006), 1747(2007), 1803(2008), 1835(2008), 1929(2010), and 1984(2011)—were all based on the same assumption that Iran has an intention to make nuclear weapons. Furthermore, subsequent sets of sanctions, namely those under UNSC Resolutions 1737(2006) and 1803(2008), intended to prevent Iran from receiving any aid for developing, respectively, nuclear and ballistic missiles and weapons of mass destruction.²⁹ UNSC Resolution 1737(2006) not only banned Member States from buying arms-related equipment from Iran but also prohibited them from dealing with Iran’s financial institutions.³⁰

As mentioned above, Resolution 1696(2006), the first of these measures, ordered Iran to suspend all uranium enrichment and other reprocessing activities. Yet, whether the UNSC has the authority to order such suspension is a question. As the UNSC did not find any specific violation of the NPT but imposed additional obligations beyond what the NPT obliges, the UNSC acted as if it has authority superior to the IAEA, despite the fact that monitoring the NPT is the IAEA’s mandate, not a power within the authority of the UNSC. In short, the UNSC overrode the NPT regime.³¹ Moreover, Chapter VII applies to “breaches of peace.” With Resolution 1696(2006), however, the UNSC merely showed a serious concern about the IAEA’s reference to “topics which could have a military nuclear dimension” but did not specify any immediate threat to international peace nor

²⁷ Robert Tait, *Iran Tries to Split UN as it Rejects Nuclear Demands*, the Guardian, 22 August 2006.

²⁸ Leverett and Leverett 2013, p. 40.

²⁹ S.C. Res. 1737(2006), U.N. Doc. S/RES/1737 (23 December 2006); S.C. Res. 1803(2008), U.N. Doc. S/RES/1803 (3 March 2008).

³⁰ S.C. Res. 1737(2006), paras 7, 12, U.N. Doc. S/RES/1737 (23 December 2006).

³¹ Bâli 2012.

breaches of peace.³² In sum, Resolution 1696(2006)'s foundation in the UNSC's Chapter VII authority is not appropriate.

A precise reading of all seven resolutions reveals another interesting fact: each subsequent resolution was issued due to Iran's failure to comply with the previous resolution(s). This means that Iran's noncompliance with the previous resolutions, which were linked with IAEA's consecutive reports, became fundamental for the legal justification of the resolutions, despite the fact that the very first resolution was implemented while ignoring the validity of NPT. Thus, the international community did not have room to question the legality of the resolutions. This vicious circle of mounting resolutions consequently constructed a self-fulfilling sanctions regime toward Iran in which Iran's ability to justify its enrichment activities under the NPT was highly restricted.³³

With regard to this trend, US legal scholar Daniel Joyner has argued:

[T]he tendency for the Security Council to judge compliance and to act as an enforcer of the NPT needs to be urgently rectified. There is no doubt this inclination has a political motivation, as the Council will not in any way act in a similar manner on non-compliance to Article VI. It has also become a source of concern that the expansion of the Security Council's involvement in this field risks to undermine the author of the IAEA.³⁴

According to Joyner, analysis of UNSC Resolutions 1737(2006) and 1929(2010) proves that the UNSC is becoming a "legal hegemon." He considers that the international legal system needs to develop "effective limits" upon the UNSC's authority.

The seven above-mentioned resolutions were not isolated from the dialogue between IAEA and Iran. It should be noted that despite the IAEA's complaints about Iran's failure to report its nuclear enrichment activities, the 2009 IAEA report stated that no clear evidence had been found that Iran had developed nuclear weapons.³⁵ Yet at the same time, the IAEA Board of Governors passed a new resolution condemning Iran's failure to declare nuclear activities near Qom.³⁶

As indicated earlier, the present sanctions regime began with unilateral sanctions by the United States but further developed into the current multilateral framework. In this framework, both the IAEA and UNSC highlighted the threat

³² S.C. Res. 1696(2006), preamble, U.N. Doc. S/RES/1696 (31 July 2006).

³³ Bâli 2012.

³⁴ Joyner 2012, p. 248.

³⁵ See IAEA Board of Governors, Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions 1737(2006), 1747(2007), 1803(2008), and 1835(2008) in the Islamic Republic of Iran, *Report by the Director General*, Doc. GOV/2009/74 (16 November 2009).

³⁶ IAEA Board of Governors, Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions 1737(2006), 1747(2007), 1803(2008), and 1835(2008) in the Islamic Republic of Iran, Resolution, Doc. GOV/2009/82 (27 November 2009).

posed by Iran using the logic that ambiguity is suspicious and thus dangerous. How has Iran reacted to such a vicious circle of the accumulated sanctions?

2.3 Iran's Nuclear Strategy and its Breakthrough in Nuclear Negotiations

2.3.1 *Iran's Discourse on Nuclear Development*

Iran's discourse on the nuclear question since 1979 has revolved around three concepts—Iran's independence, justice, and resistance.³⁷ Independence has been conceived as the mandate of Iran's securing national sovereignty and seeking political and economic independence without being influenced by Zionism and Western imperialism. The spirit of independence shaped one of the most significant pillars of the 1979 Islamic Revolution that defeated the Western-plagued Shah Mohammad Reza Pahlavi. Justice or social justice is well connected with the notion of independence and means that Iran seeks to struggle against imperialism and Zionist acts of oppression to realize justice through liberalizing socially oppressed people. To achieve this goal, Iran considers it necessary to have intransigent resistance against imperialism and Zionism. Thus, these three concepts are not separable.³⁸

These three values were often manifested in Ayatollah Ruhollah Khomeini's and later President Akbar Rafsanjani's religious and political discourses. Iranian President Mohammad Khatami de-emphasized the concepts as he considered that the so-called Revolutionary spirit represented by these values would not necessarily benefit his domestic and foreign policies. He emphasized "Dialog among Civilizations" to promote more open diplomatic relations with Iran's neighboring States and Europe.³⁹ During President Mahmoud Ahmadinejad's period of rule, the confrontational discourse was revived. Ahmadinejad stated that Israel should disappear.⁴⁰ This statement provoked international enmity toward Iran and was regarded as a military challenge toward both Israel and the United States.

In January 2006, Ayatollah Ali Khamenei stated in his speech at Qom that sanctions imposed by the West would not be effective and that Iran could be politically and economically independent and self-sufficient.⁴¹ He emphasized that Iran would not compromise in nuclear negotiations, pursuing political and economic independence based on the revolutionary values. Thus, the pursuit of Iran's right to

³⁷ Moshirzadeh 2007, p. 523.

³⁸ Moshirzadeh 2007, p. 523.

³⁹ Alam 2000, pp. 1631–1632.

⁴⁰ Richter and Barnea 2009, p. 45.

⁴¹ Sadjadpour 2009, p. 11.

nuclear development has been closely linked with Iran's self-identity, which is deeply rooted in the Revolution.

On the other hand, Iran's discourse on the nuclear issue has shifted over the years and particularly between 2010 and 2013, during which economic sanctions were strengthened severely. This period also witnessed frequent US and Israeli threats of possible military attack against Iran.

Faced with the impasse of the nuclear negotiations and the intensification of the sanctions, Iran maintained a staunch policy of adherence to Article 4 of the NPT, which assures States Parties' "right to enrichment of uranium."⁴² Iran consistently cited this provision when it emphasized that its nuclear program was for peaceful purposes. Contrary to the image of Iran shared in international community, Iran's diplomacy has been remarkably within the framework of international law. Normalization of Iran's method of nuclear negotiations granted the State room for the continuation of the negotiations. As long as Iran adheres to Article 4 of the NPT, it is difficult for the international community to dispute the act of the enrichment alone.

Therefore, the negotiations between Iran and the P5 plus 1 revolved around the lack of transparency and accountability of Iran's nuclear activities rather than the legality of its enrichment. The nuclear dispute became focused on the level of enrichment because the higher level of enrichment generally indicates proximity to the building of nuclear weapons.

2.3.2 *A Nuclear Breakthrough*

A review of the nuclear negotiations between the P5 plus 1 and Iran shows a few significant turning points. One occurred in May in 2010, when Iran, Turkey, and Brazil signed a joint declaration at Tehran by which Iran agreed to send low-enriched uranium to Turkey in return for enriched fuel for a research reactor.⁴³ Almost all the nuclear negotiating parties did not recognize the significance of this Tehran declaration. However, this was the first concrete agreement in which the reduction of highly enriched uranium was pursued.

As stated above, how to reduce the amount of highly enriched uranium in Iran's possession was a major concern of the negotiation team. The agreement of May 2010 stated that Iran would deposit its low-enriched uranium (1,200 kg) with Turkey within a month and would be provided with 120 kg fuel required for the

⁴² See Rouhani Says Nuclear Deal with West Allows Iran to Enrich Uranium, Jerusalem Post, 24 November 2013; NPT, Article 4, 1 July 1968, 29 U.N.T.S. 161 (preserving the right of States "to develop research, production and use of nuclear energy for peaceful purposes.").

⁴³ Ustun 2010, p. 21.

Tehran Research Reactor within one year by the Vienna Group (US, Russia, France, and the IAEA).⁴⁴ The agreement left the future details to be decided by Iran and the Vienna Group. No details were discussed, but this agreement was the first international agreement that made an attempt to reduce the volume of Iran's low enriched uranium and indirectly to discourage Iran from producing higher enriched uranium. However, no concrete method of implementing this agreement was discussed among the stakeholders, and thus the agreement has never been put into practice.

Following the failure to implement this agreement, the UNSC issued Resolution 1929(2010). The Resolution expanded bans on the sale of heavy weapons and missile technology to Iran, prohibited Iran from investing in nuclear and ballistic missile technology, authorized States to inspect all Iranian cargo, and imposed financial sanctions comprehensively.

The IAEA's Report on Iran, published in November 2011, indicated that Iran accumulated massive low-enriched uranium that would lead to the production of weapons grade uranium.⁴⁵ The report also pointed out that Iran increased its capacity of producing nuclear weapons in the future. In response to this report, President Ahmadinejad, in his new year's speech to the nation, said that Iran's right to enrichment is beyond negotiations; that any negotiation should be based on justice and respect; and that "the West [would] have to climb down from [its] ivory towers and put aside [its] arrogance."⁴⁶ He added that Iran had no intention to develop nuclear weapons. Although his reference to justice and respect is within a traditional framework, Iran became more outspoken and straightforward toward international suspicion of its becoming a nuclear State. Thus, Iran started explicitly denying its intention to develop nuclear weapons.

In June 2012, a week before the planned P5 plus 1 nuclear negotiation in Moscow, Khamenei also stated that Iran did not have any intention to develop nuclear weapons. This statement drew much international attention and was regarded as a "nuclear fatwa."⁴⁷

⁴⁴ Joint Declaration by Iran, Turkey and Brazil, Tehran (17 May 2010) available at <http://www.fas.org/nuke/guide/iran/joint-decl.pdf>.

⁴⁵ IAEA Board of Governors, Implementation of the NPT Standards Agreement and Relevant Provisions of Security Council Resolutions in the Islamic, *Report by the Director General*, Doc. GOV/2011/63 (8 November 2011).

⁴⁶ Iran Nuclear Rights Not Negotiable, Ahmadinejad Says, BBC News Middle East, 10 November 2010, <http://www.bbc.co.uk/news/world-middle-east-11724424>.

⁴⁷ It is not clear whether this fatwa really exists as no original source for it has been found. Yet there are many references to the fatwa. See e.g., Arms Control and Regional Security for the Middle East, Do Not Misunderstand Khamenei's Nuclear Fatwa, 28 February 2013, <http://www.middleeast-armscontrol.com/2013/02/28/dont-misunderstand-khameneis-nuclear-fatwa/>; Glenn Kessler, *Fact Checker: Did Iran's Supreme Leader Issue a Fatwa against the Development of Nuclear Weapons?* Washington Post, 27 November 2013, <http://www.washingtonpost.com/blogs/fact-checker/wp/2013/11/27/did-irans-supreme-leader-issue-a-fatwa-against-the-development-of-nuclear-weapons/>.

During the Moscow negotiations in June 2012, Iran modified its demands about enrichment.⁴⁸ Iran still insisted in principle on its right to enrichment yet stated that Iran was ready to suspend 20% uranium enrichment. This was a visible change in Iran's diplomacy.

Review of nuclear negotiations over the last few years shows that a turning point in the negotiations occurred in the Istanbul negotiations in April 2012. Prior to the Istanbul negotiations, there was not much reference to the specific level of uranium enrichment. Weapons-level enrichment is generally considered to be 90%. Consistent with the NPT, Iran has been producing 3.5, 5, and 20% enriched uranium. Starting around the time of Moscow negotiations in 2011, a proposal exchanged among the P5 plus 1 and Iran became more concrete: the 'Step-by-Step Approach' emerged, under which Iran would implement one concession and then the P5 plus 1 would take one step toward reducing sanctions.⁴⁹ In Istanbul in July 2012 the P5 plus 1 started mentioning the concept of a limitation on Iran's enrichment, namely, at the 20% level. The proposal stated that Iran should halt all 20% enrichment activities.⁵⁰

The most current agreement available at the time of writing, the Joint Plan of Action signed by Iran and P5 plus 1, was the most fruitful among proposals made by the negotiating parties. Under this plan, Iran and other parties would simultaneously undertake measures.⁵¹ Despite hesitation concerning the implementation of this plan, implementation began on 20 January 2014 with an expected duration of six months.

One of the remarkable features of the Joint Plan of Action is that "Iran will not enrich uranium over 5% for the duration of the 6 months."⁵² Moreover, it provides that "from the existing uranium enriched to 20%, [Iran may] retain half as working stock of 20% oxide for fabrication of fuel for the Tehran Research Reactor."⁵³ Some American strategic analysts were cautious that there was a possibility of Iran's reaching weapons-grade levels of enrichment by July 2014. They maintain that "Iran is expected to achieve a critical capability in mid-2014" for the production of weapons-grade uranium and thus emphasize that sanctions, frequent negotiations, and international inspections should be enforced.⁵⁴ Thus, a certain group of US policymakers is still concerned about Iran's future capabilities based on its use of safeguarded stocks of low-enriched uranium. This means that even the presence of 20% enriched uranium was interpreted as a threat to the US, its Gulf allies, and Israel.⁵⁵ Objectively, the fact that Iran made a reference to the enrichment

⁴⁸ Arms Control Association, History of Official Proposals on the Iranian Nuclear Issue, January 2014, http://www.armscontrol.org/factsheets/Iran_Nuclear_Proposals (accessed 11 June 2014).

⁴⁹ *Idem.*

⁵⁰ *Idem.*

⁵¹ Joint Plan of Action, Geneva (24 November 2013) available at http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf.

⁵² *Idem.*

⁵³ *Idem.*

⁵⁴ Albright and Walrond 2013, p. 2.

⁵⁵ See Cordesman and Gold 2013; Albright and Walrond 2013.

level demonstrates how seriously it sought to mitigate conflict with the P5 plus 1 and to gain some easing of the economic sanctions. Though it is unclear where this confidence building process will lead, all negotiating parties acknowledged the plan as a landmark deal.

What enabled this breakthrough to happen? Some scholars have argued that the impact of economic sanctions was immense enough for Iran's regime to compromise, and others view that the change of Iran's President from Ahmadinejad to Rouhani was a decisive factor, as the new administration is better equipped with a more competitive nuclear negotiation team. The next section will analyze the wider political context that emerged after 11 September, inevitably involving both the United States and Iran in coping with a new reality of Middle East security.

2.4 Points of Interest: Where the United States and Iran Met

2.4.1 *Afghanistan and Iraq*

The emergence of the Taliban government in Afghanistan was a threat to Iran's national security. The Taliban started expanding its territory of influence around 1994 and entirely controlled Afghanistan by 1998. Indicative of Iran's enmity against the Taliban was military tension in October 1998 when, after Iranian diplomats were taken hostage by the Taliban, Iran opened war games near its Afghan border to be ready for a war against the Taliban. This military tension eventually declined.⁵⁶ Since then, Iran has strongly supported the Northern Alliance against the Taliban in Afghanistan. With the assassination of the General Ahmad Shah Masoud, top commander of the Northern Alliance, just one week before the 11 September attacks, Iran was shocked. It faced a reality in which it was losing influence against the Taliban. In retrospect, this incident served as a historic turning point for Iran, like 11 September was for the United States.⁵⁷ Iranian and US interests in Afghanistan, thus, were somewhat aligned.

It was in this context that Iran closed its border with Afghanistan, containing Taliban troops within the territory of Afghanistan, and thus assisting the US-led attack within that State. This action had a big impact on the US military campaign and partially contributed to the initial quick victory of the multinational troops.⁵⁸

⁵⁶ Alam 2000, p. 1644.

⁵⁷ The author was in Tehran for 6 months from early April to mid-September 2001. One week before 11 September 2001, all Iranian newspapers focused on the news of the assassination of General Masoud. Newspapers reported this incident as the top security problem for Iran. During the week of 11–18 September 2001, there were many news programs about the future of Afghanistan.

⁵⁸ See Milani 2009, "Full Engagement."

The Bush Administration's 2002 declaration that Iran was part of an 'Axis of Evil' obviously worsened Iran's relationship with the US. Yet the US-led defeat of the Taliban force, though temporary, was a welcome event for Iran.

A similar shared interest was observed with regard to Saddam Hussein's Iraq. A US-fabricated suspicion that Iraq possessed weapons of mass destruction enabled international support for war in Iraq in March 2003. Iraq had been a threat both to the United States and Israel since the 1991 Gulf War, during which Iraq launched missile attacks against Israel.

Iran experienced an 8-year long war with Iraq under Hussein from 1980 until 1988, during which Iranian citizens were victimized by an Iraqi chemical weapons attack.⁵⁹ Thus, Iran was not unhappy about the overthrow of Hussein, although the State did continuously criticize the presence of foreign troops in Iraq. The subsequent establishment of a government led by Prime Minister Nouri al-Maliki allowed Iran to expand its influence in Iraq, as Maliki's party, the Islamic Supreme Revolutionary Council of Iraq, is one of the biggest Shia parties.

Iran and the United States also shared an interest in securing political stability in Iraq when the Maliki government was exposed to a threat of sectarian conflicts. For the United States, a stabilized Iraq meant a return of Iraq's oil to the world market, benefitting Western oil companies, including American ones. For Iran, the stabilization of Iraq meant the prevention of the spillover of Iraq's conflicts into Iran.

In this regard, Iran and the United States discussed the stabilization of Iraq in Baghdad: the first meeting was held on 28 May 2007 and the second on 24 June 2007.⁶⁰ One of the vital security issues was for Iraq's security forces to suppress the uprisings of the Muqtada al-Sadr Force, called the Mahdi Army. Iraqi security forces combated the Mahdi's Army from January to early March 2008. This military confrontation ended in a ceasefire on 30 March 2008, in which Iran played the role of intermediary between the Mahdi Army and Iraq's government force. The United States was well aware of this fact.⁶¹

The US battle against the Mahdi Army continued in Baghdad and other areas. Iraq's security force successfully defeated the Mahdi Army in June 2008. On 17 November 2008, the United States and Iraq signed their Status of Forces of Agreement. This agreement allowed about 15,000 US troops to remain in Iraq, who would evacuate by 31 December 2011. Iran criticized the continued presence of the US troops.⁶²

All the same, the above-mentioned dialogue between Iran and the United States in Baghdad and Iran's assistance in the stabilization in southern Iraq certainly contributed to the US exit strategy that was symbolized by the Status of Forces of

⁵⁹ Katzman 2007, p. 5.

⁶⁰ Interview with a policymaker, Director of Middle East Center, Ministry of Foreign Affairs of Iran (6 August 2007); see also Blanchard et al. 2009, pp. 10–11.

⁶¹ Leila Fadel, *Iranian General Played Key Role in Iraq Ceasefire*, McClatchy Newspapers, 30 March 2008, <http://www.mcclatchydc.com/2008/03/30/32055/iranian-general-played-key-role.html>.

⁶² Katzman 2009.

Agreement. In short, one can see a certain level of US–Iran cooperation exhibited in the Iraqi stabilization process.

2.4.2 Syria

After the fall of Hussein in Iraq, Iran and Syria became the only two States in the Middle East with an overt anti-American stance. At the time of writing Iran and Russia are the sole State supporters of Bashar al-Assad's government in Syria. Iran's alliance with Syria is strategic in nature: this political alliance dates from the period of the Iran–Iraq War. Syria, hostile to Hussein at the time, sided with Iran. Syria's intention was that Iraq's Ba'ath Party would be weakened by the conflict, in turn strengthening Syria's Ba'ath Party, which was in regional competition with that of Iraq. The historic roots of the alliance, however, sprang from Syria's loss of the Golan Heights to Israeli military occupation in the 1967 War and Iran's strong anti-Zionist policy and rhetoric since the 1979 Revolution. Iran and Syria also shared a common interest in assisting Hezbollah of southern Lebanon, which is hostile to Israel until today.

The intrastate conflict in Syria that started in March 2011 has changed the power balance in the Middle East. Both Iran and Syria used to support both Hamas in Palestine and Hezbollah in Lebanon, but since 2000, Iran's assistance to Hamas has been more limited, leaving mainly Syria, Saudi Arabia, and Qatar to support Hamas. Hezbollah's victory over Israel in a one month war of August 2006 was indicative of the use of Iran's military supplies such as missiles and rocket launchers. Following the dramatic change of the Arab Spring, both Hamas and Hezbollah lost much of Syria's support as the Assad regime has been instead focused on combating anti-Assad forces and now has a very limited influence over both groups. Yet, Hamas and Hezbollah have remained a perceived threat to Israel.

Iran's political stance toward Syria is complex. On the one hand, Iran has openly expressed its support for Assad's regime. Iran sent al-Qods members to Syria to join in the Assad forces and made the members work with Syrian security force in spring 2012. Iran also encouraged Hezbollah to join the Assad forces in late September 2013.⁶³ On the other hand, Iran expressed its support for the December 2013 peace plan suggested by UN Special Envoy Lakhdar Brahimi.⁶⁴

Iran's relationship with Syria is, thus, multifaceted: Iran fundamentally supports Assad but seeks expedient political solutions. In the context of Iran's further nuclear negotiations, Foreign Minister Javad Zarif noted Iran's ability to contribute to a political solution for Syria.⁶⁵ He also emphasized that a democratic solution, namely the ballot box, would be the only viable solution.

⁶³ Holliday 2012, p. 19.

⁶⁴ Shabaneh 2013.

⁶⁵ *Annan Praises Iran's 'Good Solutions to Syrian Crisis'*, Fars News Agency, 29 January 2014, <http://english.farsnews.com/newstext.aspx?nn=13921109001272>.

A significant occasion of a dialogue between the United States and Iran was at the World Economic Forum at Davos in February 2014. US Secretary of State John Kerry and President Rouhani exchanged views about Syria. While Kerry expressed concern about Iran's sending paramilitary troops to Syria to support the Assad forces, Rouhani reframed the issue as how best to push terrorists out of Syria to another State. Many US intelligence reports proved that Iran had provided logistical support to Assad forces, sent the Revolutionary Guard Corps to join in the force, and assisted Hezbollah's involvement in Syria.⁶⁶ On the other hand, European support in the form of weapons to the Free Syrian Force eventually, instead, reached al-Qaeda. Rouhani's statement is interpreted as Iran's counter-argument to the mistakes that the United States and EU have made in their policy toward Syria.⁶⁷

The dialogue between the two did not result in any specific decisions on Syria, but the fact that the two leaders discussed the issue is highly significant. The exchange means that both parties have acknowledged that both the West and Iran have been playing roles that intensified the civil war in Syria.

2.5 Conclusion

Much literature has examined the nature of US unilateralism as reflected in unilateral and multilateral sanctions against Iran. International legal experts have shown that the legality of these sanctions, including the UNSC resolutions enacted against Iran, is questionable. Yet few have thoroughly considered the political dimension of the sanctions, whether unilaterally or multilaterally imposed.

The amount of emphasis placed by the West as well as the UNSC on the threat of Iran's nuclear program has been a matter of perception, politics, or ambiguity. It is clear that the sanctions regime should be understood in the context of the post-revolutionary breakdown of the US–Iran relations. However, the US unilateralism that emerged after September 11 morphed the regime, mobilizing American allies and even the UNSC to target Iran out of a fear of a nuclear Iran. It is true that Iran's noncompliance with IAEA safeguards was one of the causes for the P5 plus 1's continued suspicion toward Iran. Yet a precise analysis of how the sanctions regime was constructed indicates that the intention of the sanctions changed from trade ban to a regime targeting Iran's oil revenue, and that the justification for the sanctions also transformed from a vague threat of Iran as supporter of terrorism to the perception of Iran's ambiguous nuclear ambition, which ultimately determined the multiple and multifaceted sanctions regime that currently exists.

⁶⁶ Fulton et al. 2013.

⁶⁷ 'Real' US-trained al-Qaeda 'to wage war on US,' Press TV, 11 December 2013, <http://www.presstv.ir/detail/2013/12/11/339353/real-alqaeda-to-wage-war-on-us/>.

How the Joint Plan of Action might be a breakthrough on solving these issues is an open question. The settlement limiting uranium enrichment levels as well as suspending uranium enrichment activities is significant. On the one hand, it can be considered that the plan forced Iran to agree to such a settlement, and thus this was a major concession for Iran. On the other, it can be interpreted as a success for Iran in the sense that the limitation and the suspension do not ultimately deprive Iran of its right to enrichment. The question remains how long suspension will last, and when Iran can reverse the suspension.

The important geopolitical location of Iran makes the US–Iran relationship multifaceted. As discussed above, the United States and Iran have often maintained a cooperative relationship in their strategies toward Afghanistan and Iraq based on mutual interests. It is rather paradoxical that dialogue between the States has been maintained despite the official diplomatic break and the nuclear impasse that lasted until recently. A closer look at the Syrian situation may show that the United States and Iran share some concrete interests that could induce further cooperation.

Given that continued instability is likely in Tunisia, Libya, Egypt, and Turkey as result of the Arab Spring, it is certain that Iran, as a relatively stable State with a strong governance apparatus, holds one key for Middle East security. In this regard, the United States and Iran will continue to have both a conflict-ridden and cooperative relationship in Middle East affairs in future years.

References

- Alam S (2000) The changing paradigm of Iranian Foreign Policy under Khatami. *Strat Anal* 24:1629
- Albright D, Walrond C (2013) Institute for Science and International Security, Iran's Critical Capability in 2014: verifiably stopping Iran from increasing the number and quality of its centrifuges, 17 July 2013. http://isis-online.org/uploads/isis-reports/documents/Iran_critical_capability_17July2013.pdf. Accessed 11 June 2014
- Bâli A (2012) Middle East Research and Information Project. International law and the Iran Impasse, 16 December 2012. <http://www.merip.org/mero/mero121612>. Accessed 10 June 2014
- Blanchard C et al (2009) Congressional Research Service, Iraq: regional perspectives and US Policy. <http://www.fas.org/sgp/crs/mideast/RL33793.pdf>. Accessed 10 June 2014
- Bruno G (2010) Council on Foreign Relations. The lengthening list of Iran sanctions, 8 July 2010. http://www.relooney.info/0_New_7616.pdf. Accessed 10 June 2014
- Cordesman AH, Gold B (2013) Center for Strategic and International Studies, the Gulf military balance, vol. II: The missile and nuclear dimensions and options for deterrence, defense, containment, and preventive strikes, 18 July 2013. http://csis.org/files/publication/120222_Iran_Gulf_Mil_Bal_II_WMD.pdf. Accessed 10 June 2014
- Dupont P (2012) Countermeasures and collective security: the case of the EU sanctions against Iran. *J Confl Secur Law* 17:301
- Farzanegan MR (2013) Effects of international financial and energy sanctions on Iran's informal economy. *SAIS Rev Int Aff* 33:13
- Feldman S (2006) Crown Center for Middle East Studies, Brandeis University, Hezbollah-Israeli war: a preliminary assessment, Middle East Brief 10. <http://www.brandeis.edu/crown/publications/meb/MEB10.pdf>. Accessed 11 June 2014, 11 June 2013

- Fiore M (2011) Istituto Affari Internazionali, Israel and Iran's nuclear weapon programme: roll back or containment? IAI Working Papers 11/18. <http://www.iai.it/pdf/dociai/iaiw1118.pdf>. Accessed 11 June 2014
- Fulton W et al (2013) Institute for the Study of War and American Enterprise Institute, Iranian strategy in Syria, May 2013. <http://www.understandingwar.org/report/iranian-strategy-syria>. Accessed 11 June 2013
- Holliday J (2012) Institute for the Study of War Syria's Armed Opposition, March 2012. http://understandingwar.org/sites/default/files/Syrias_Armed_Opposition.pdf. Accessed 11 June 2014
- Joyner DH (2012) The Security Council as a legal hegemon. *Geo J Int Law* 43:225
- Katzman K (2006) Congressional Research Service, The Iran-Libya Sanctions Act (ILSA), 26 April 2006. <http://fpc.state.gov/documents/organization/66441.pdf>. Accessed 11 June 2014, 11 June 2013
- Katzman K (2007) Congressional Research Service, Iran's influence in Iraq, 26 December 2007. <http://fpc.state.gov/documents/organization/99534.pdf>. Accessed 11 June 2014
- Katzman K (2009) Congressional Research Service, Iran's Activities and Influence in Iraq, 7 April 2009. <http://fpc.state.gov/documents/organization/122884.pdf>. Accessed 11 June 2014
- Leverett F (2013) The Iranian nuclear issue, the end of the American century, and the future of international order. *Penn State J Law Int Aff* 2:240
- Leverett F, Leverett H (2013) America's Iran policy and the undermining of international order. *World Fin Rev*
- Matthew K (2012) Time to attack Iran. *Foreign Aff* 91(1):76
- Milani M (2009) Understanding Iran's US policy. *Foreign Aff* 88(4):46
- Moshirzadeh H (2007) Discursive foundations of Iran's nuclear policy. *Secur Dialogue* 38:521
- Parsi T (2012) A single roll of the dice: Obama's diplomacy in Iran. Yale University Press, New Haven and London
- Richter E, Barnea A (2009) Tehran's genocidal incitement against Israel. *Middle East Q* 15(3):45
- Sadjadpour K (2009) Reading Khamenei: the world view of Iran's most powerful leader. Carnegie Endowment for International Peace. http://carnegieendowment.org/files/sadjadpour_iran_final2.pdf
- Scott C (2000) Bound for glory: the hostage crisis as captivity narrative in Iran. *Int Stud Q* 44:177
- Shabaneh G (2013) Aljazeera Centre for Studies, Geneva II Middle East Peace Conference, 4 December 2013. <http://studies.aljazeera.net/en/reports/2013/12/201312483421501471.htm>. Accessed 11 June 2013
- Ustun K (2010) Turkey or Iran policy: between diplomacy and sanctions. *Insight Turk* 12(3):19

Economic Sanctions under International Law
Unilateralism, Multilateralism, Legitimacy, and
Consequences

Marossi, A.Z.; Bassett, M.R. (Eds.)

2015, XVII, 249 p. 1 illus. in color., Hardcover

ISBN: 978-94-6265-050-3

A product of T.M.C. Asser Press