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## EUROPE AND IRAN: UNINTENTIONAL CONFRONTATION?

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*The conclusion of the nuclear agreement between the international community and the Islamic Republic of Iran in July 2015 proved that the EU is in a position to set its own foreign policy and geostrategic priorities. The termination of the nuclear agreement by the USA and the resulting increased tensions in the Persian Gulf, however, threaten to drag the EU and its member states onto an unsought collision course with the Islamic Republic of Iran.*

The 2015 'Vienna Nuclear Agreement' (JCPOA - *Joint Comprehensive Plan of Action*) encompasses two elements: the most stringent inspections of its nuclear programme ever agreed to by a sovereign nation. In return, the international sanctions, which had devastated the Iranian economy, were scaled down. A precise protocol defines the procedure to be followed in verification and sanctions relief.

Critics denounced the agreement for failing to address either Tehran's ballistic missile programme or its regional policy. Supporters countered by stressing the value of the inspections, which prevent Iran becoming an unpredictable nuclear power overnight. And given the rise of the 'Islamic State' as a common enemy, it would be expedient to reflect in how far the objectively substantial convergence of interests could be translated into real politics.

With President Trump terminating the nuclear agreement, the European (France, Great Britain, Germany) and global (Russia, China) powers observing the agreement found themselves faced with the dilemma of how to convince Iran to continue

complying with the agreement. Whereas Russia and China would continue business as usual, for Europe, as Iran's preferred economic partner, things turned out to be more complicated.

### Sanctions with Side Effects

The economic sanctions imposed during the nuclear negotiations were agreed at UN level and, at the time, their purpose was to bring Teheran to the negotiating table. Irrespective of the generally applicable sanctions, the US has, for decades, maintained its own national list of sanctions against Iran, with serious and detrimental side effects for the EU.

European companies which wanted to do business in Iran from 2015 to 2019 could do this legally, pursuant to international, European, and national law, as the strict-

er American regulations do not apply to them. Nevertheless, the US insisted on the international community complying with US sanctions; put another way, on the extraterritoriality of American law. Companies which had business relations with the US and wanted to be active in Iran were threatened with penalties if they did not reduce or completely abandon their economic relations with the Islamic Republic.

Enforcing the American sanctions regime is the responsibility of the Office of Foreign Assets Control (OFAC), which is located in the US Department of the Treasury. With reference to American and international anti-terrorism and money laundering laws, OFAC interprets its mandate in an extremely aggrandized manner and, not only according to European business people, in a way that is both unfair and distorts competition. At the same time, European companies could apply for exemptions (*waivers*) for their business with Iran, which were, if American interests were met, granted in many cases. In both events, American regulations and institutions are strengthened instead of European ones. From 2018 on, fear of secondary sanctions led European companies to over-comply with American sanction regulations. A particularly dramatic case of “over-compliance” in the face of American pressure was the decision of the Belgian-based SWIFT Code company to exclude Iranian banks from international payment transactions, contrary to the recommendation of the European finance ministers.

On 22 November 1996, Council Regulation (EC) No 2271/96 was passed, “protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom” (Blocking Statute), which was amended by the Commission on 6 June 2018 (EU 2018/1100) in the “Updated Blocking Statute in support of the Iran nuclear deal”.

The importance of this measure is explicitly justified with “protecting EU operators

[and] reinforcing Europe’s strategic autonomy”. The implementation of the Blocking Regulation is the responsibility of the EU member states and therefore depends on their political will. This seems to be badly lacking, as this is the only way to explain why heads of state never mention this important regulation in connection with the Iran sanctions.

Instead of vigorously enforcing the Blocking Regulation, the E3 heads of state and government (Germany, France, Great Britain) announced the establishment of a special purpose vehicle called *Instrument in Support of Trade Exchanges – INSTEX*, a barter mechanism, through which legitimate transactions with Iran are to be conducted in future. This concerns first of all those transactions which are not settled in US dollars and are not subject to the SWIFT code. Money does not flow to Iran but to European entrepreneurs who sell their products there.

INSTEX is not yet the hoped-for solution to preserve Europe’s economic autonomy. If no improvements are made, INSTEX threatens to degenerate into a mere vehicle for the implementation of the American sanctions regime. So far, ‘legitimate’ trade with Iran only concerns those goods which were exempt from the American sanctions, i.e. above all medical and medical-technological goods, as well as agricultural products. This explains why Iran is the largest buyer of wheat and soy from the USA.

In the field of European energy security, the loss of strategic autonomy is already noticeable. The USA insist that European natural gas demands are met by neither Russia nor Iran, but that Europe instead prefer American gas. The same applies to Israel, which wants to develop the financially strong European gas market through its own production in the eastern Mediterranean. Strategic autonomy in the energy sector would mean, however, that Europeans are able to choose *independently* from a large number of suppliers, including such an important gas producer as Iran.

## Regional Aspects

Some American supporters of the renewed sanctions regime argue that Iran only responds to pressure and that, through this, was prepared to negotiate once before. Others, however, see the sanctions as a welcome means of forcing the regime to surrender and thereby preparing the ground for a regime change from within.

Both positions are contrary to the European position and are, moreover, wrong. So far, the USA has failed to show which points of the nuclear agreement should be renegotiated and whether it would be prepared to lift the sanctions this time. The hope for regime change through mass poverty will also remain unfulfilled. Experience to date has shown that Western economic sanctions generally contribute to the stabilization of problematic regimes, as the mass of the population becomes completely dependent on the regime, and the middle class, which is interested in democracy, simply emigrates.

This was countered by the reforms envisaged and partially introduced by the Ruhani government, which were intended to strengthen the rule of law as well as gradually transform Iran's role in the region away from confrontation toward cautious cooperation. This process could only be successful if sanctions were lifted in combination with comprehensive economic reforms. European expertise – and thus long-term economic influence on Iran – should have played a central role in this transformation, especially in the banking sector. With the end of the reform process brought about by the United States, the prospect of a moderate foreign policy for Tehran is also dwindling.

The Islamic Republic of Iran has always seen itself as a counterweight to American hegemony in the region, but at the same time it has been the biggest beneficiary of American military involvement, which has ousted the Taliban from power in Afghanistan (2001) and Saddam Hussein in Iraq

(2003). Since then, Iran has been in confrontation with the Western bloc (USA, Israel and Saudi Arabia) as well as with radical Sunni organisations (Al-Qaida, Islamic State). Europe, on the other hand, played a lesser role.

## Fighting the IS or Confrontation with Iran?

With the advent of the IS, most EU states took part in the US-led operation *Inherent Resolve*, which, together with the Iraqi Shiite militias (Popular Mobilisation Forces, PMF), managed to defeat its conventional military power by the end of 2018. In order to further contain the IS in the region, many European states are participating in security sector reform in Iraq (EUAM-IRAQ and NMI) within the framework of the EU and NATO. The aim is to suppress alleged Iranian influence within the PMF.

The American side accuses the PMF of being nothing more than Iranian puppets and thus a potential threat to Israel. In reality, however, these militias fought against Al-Qaida-affiliated groups as well as against the IS, and neither Iran nor Lebanon's Hizbullah want to risk hostilities with Israel.

As the USA and Israel are mainly concerned with pushing back Iranian influence, the threat from the IS has come to play only a minor role for both states. On the contrary, the fact that IS terrorists have carried out bloody attacks in Iran in recent years, thus weakening Tehran, can be read as an anti-Iranian convergence of interests. In contrast, the IS remains a vital threat to Iran and Europe because its ideological attractiveness and its ability to establish itself in other regions and carry out attacks remain unbroken.

## Escalation?

There is, however, currently no question of common European-Iranian interests being evaluated. Tehran, for example, is angry at the EU's unwillingness to stand up to

the Americans on the issue of sanctions. A series of intransparent incidents in the Persian Gulf in the summer of 2019 were attributed to Iran by the US, Saudi Arabia and Israel, but public opinion in Europe was hard to convince of this.

A new dynamic emerged when the English Navy captured an Iranian tanker destined for Syria. The legal basis for this is surprising: at first, doubts arose as to whether the tanker had been in Gibraltar waters, then the corresponding law to implement EU sanctions against Syria was adapted only one day before the action was taken. However, the application of EU sanction provisions is certainly not binding for a non-member (Iran) and not for very much longer for a soon-non-member (UK).

A few days later, when the Iranians seized two ships flying the British flag, London demanded a maritime intervention force for the Strait of Hormuz, where the territorial waters of Iran and Oman meet. As far as can be made out, it is only clear that such a European task force would operate outside the PESCO framework. If this task force were actually to be set up, it would have to be read as a logical complement to the now reinterpreted operation *Inherent Resolve* – i.e. anti-Iranian.

## Recommendations

- The EU is a normative power built on the economy, not the military, which will only be taken seriously at the global level if it can maintain its strategic autonomy alongside the US. This, however, founders if it gives in to the extraterritoriality of American laws. Therefore, the existing elements such as INSTEX must be expanded and the blocking statute must be filled with political life at the nation-state level.
- The fight against the IS must remain a priority for Europe. This means above all cooperation with all states affected by IS-terror, of course with the US but also with other states Iran and Iraq.
- Security comes at a price therefore a maritime military mission to the Gulf region makes sense in principle. Security, however, is not exclusive, it is inclusive. It is therefore absurd to ignore Iran, the largest country on the Persian Gulf. Especially as there are no high seas there but only national waters.
- Even a modest EU-led mission could make an efficient contribution to de-escalation in cooperation with all Gulf states and with the involvement of the United Nations. The fact that the need for this is understood by important actors is demonstrated by the efficient diplomacy of the United Arab Emirates, which only recently have re-established contacts with Tehran.
- Finally, the EU member states must be aware that, to a large extent, Europe's strategic autonomy depends on themselves. This applies both to the implementation of the Blocking Statute and to the willingness to make a military contribution in Iraq or the Persian Gulf.

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