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AFTER THE DEAL

Unfinished Business from the Iran Nuclear Debate

ROBERT SATLOFF

As the clock counts down to implementation, the U.S. needs to move quickly to correct the flaws and close the loopholes of the JCPOA.

Remember the Iran nuclear agreement? Two months ago, it was the talk of the town. Then, like the national obsession with the Chandra Levy murder that faded away the moment al-Qaeda crashed airplanes into the Twin Towers, it vanished virtually overnight—no more headlines, no more op-eds, no more talk shows. The big difference is that the open questions surrounding the Iran deal remain matters of strategic importance.

Indeed, as the clock ticks toward implementation of the nuclear agreement, the task of clarifying issues of enforcement, deterrence, and U.S. regional policy is more urgent than ever. This is not least because Iran's actions since the deal's approval suggest Tehran views the accord not as the pathway to responsible regional behavior but as a license to expand influence, fuel instability, and make trouble for America and its local allies.

While next week's visit to Washington by Israeli Prime Minister Benjamin Netanyahu may be an opportunity to bring to a close an especially bitter chapter in U.S.-Israel relations, it might also herald—if only briefly—a return to center stage of policy debate on aspects of the Iran nuclear agreement (formally known as the Joint Comprehensive Plan of Action, or JCPOA). One way to organize these issues is to take a closer look at the President's little-examined correspondence with key legislators on the Iran deal.

Saying No, Politely

During the course of the Iran debate, President Obama met with dozens of Senators and Representatives, often in one-on-one meetings. Few details of these or other White House meetings with concerned legislators have emerged,

though stories circulate about the hardball politics that kept all but four Democrats in the Senate and 25 in the House from flouting party discipline and voting to disapprove the Iran agreement. (Technically, no actual Senate vote was taken on the deal itself; the closest was a cloture vote that failed.) Along the way, the President deemed it necessary (or at least politically expedient) to respond to at least three Democratic legislators—New York Congressman Jerrold Nadler (August 20); Delaware Senator Chris Coons (September 1); and Oregon Senator Ron Wyden (September 7)—with detailed written responses to questions and concerns.

The most noteworthy aspect of these three letters is what they do not include—namely, any specific commitments beyond the letter of the Iran deal text. While virtually every substantive critique of, or proposed improvement to, the Iran deal is addressed in these letters, each one was summarily dismissed or sidestepped through language that has the whiff of resolve without actually making any specific commitments beyond the narrow wording of the JCPOA text.

This, by itself, is not surprising; the goal of the correspondence was to secure legislators' support without paying for it in the coin of policy concession. But the arguments the President chose to make—or, in some cases, not to make—and the differences among the letters offer some revealing insight into the Administration's approach on key issues.

On Deterrence and the “Sunset” Provisions

Throughout the Iran debate, numerous legislators cited the “sunset” problem: what happens when various limitations on Iran's nuclear activities expire. They called on President Obama to bolster U.S. deterrence by declaring as U.S. policy the intent to use military force in response to clear and verifiable effort by Iran to break out toward a nuclear weapon. In his various letters, the President addressed the issue but only in descriptive terms; he specifically did not adopt the definitive declaratory language legislators sought.

To Nadler and Wyden, he used exactly the same formulation: “Should Iran seek to dash toward a nuclear weapon, all of the options available to the United States—including the military option—will remain available through the life of the deal and beyond.” This sentence may be analytically accurate but it falls far short of making any commitment to act even in event of an Iranian “dash” toward a bomb, begging the question “if not then, when?”

If the President's minimalist formulation—no stronger after the deal than in the years before—was designed to bolster U.S. deterrence, it is difficult to see how it achieved its goal. In that sense, the formulation is of a piece with certain U.S. actions taken since the deal's approval, such as the removal of the lone U.S.

aircraft carrier from the Gulf and the deployment of fewer than fifty U.S. Special Forces troops to the anti-ISIS fight in Syria, which—in regional eyes—doesn't begin to match up against the arrival in that country of thousands of Russian and Iranian personnel. While actions speak louder than words, the combination of words and actions speaks loudest of all.

On Pushing Back Against Iran Throughout the Middle East

An issue that dominated legislative debate on the JCPOA was the fear that the strategic environment fostered by the deal—and sanctions relief, in particular—would fuel Iran's nefarious regional behavior and that the United States needed to adopt a more aggressive and robust regional policy to push back against Iranian advances. Here, too, the President's letters reflect a pattern of acknowledging the congressional concern but deflecting it with general promises to "do more." As he wrote Coons: "We must always strive to be more effective in countering Iran's asymmetric threat to the region, particularly as Iran does gain access to more resources over time." That is an echo of what he wrote Nadler: "It is imperative that ... we take steps to ensure we and our allies and partners are more capable than ever to deal with Iran's destabilizing activities and support for terrorism."

Interestingly, in the Nadler letter, the President went on to emphasize the continued enforcement of non-nuclear sanctions as a way to counter Iran's regional activities. However, the formulation the President employed was particularly weak and offered no commitment to act: "I made sure the United States reserved its right to maintain and enforce existing sanctions...." By the Coons letter 11 days later, the President had a much more robust response, citing efforts to interdict Iranian weapons transfers, countering cyberattacks, and training the special forces of local partners. And instead of just reserving the right to enforce sanctions, the President stated to Coons, "I have made clear we will maintain and enforce existing sanctions." But it is important to place this rhetorical shift in a broader perspective; moving from tepid support for maintaining the status quo to enthusiastic support of the status quo, welcome as it is, adds nothing new to the effort to push back against Iran's negative behavior.

On Penalties and Consequences

Throughout the Iran debate, the JCPOA's lack of specific discussion of penalties for Iranian violations—other than "snapback"—was frequently cited by legislators as a source of concern. In none of his letters does President Obama state that the United States has already worked out detailed arrangements with our European allies to impose calibrated punishments for small- and medium-sized violations. Instead, as he wrote to Wyden and Coons, the Europeans have

“conveyed to us that they stand ready to re-impose European Union sanctions in a calibrated manner as appropriate.” Standing ready, of course, is not the same of committing to take specific action. The fact that President Obama had to add his own assurance that “I have no doubt that our European allies will stand with us if Iran fails to meet its JCPOA commitments” only had the effect of confirming such doubts.

In the Nadler and Wyden letters, the President added a tactical rationale for why it doesn’t even make sense to work out a matrix of specific penalties for specific violations: “Ultimately it is essential that we retain the flexibility to decide what responsive measures we and our allies deem appropriate for any non-compliance.” (In the Nadler letter, the President even suggested that such detailed advance planning may be “counterproductive” in that it may “lessen the deterrent effect” of penalties by “telegraphing” them in advance. That line of argument—which makes an asset out of what may be a lack of consensus among the Euro-allies on the issue—was not repeated in the later Coons or Wyden letters.)

To be sure, should the Administration want to pursue a solution to the “telegraphing” problem, there are numerous ways to address the President’s concern for “tactical flexibility” while still correcting the JCPOA’s silence on the issue of calibrated penalties for less-than-massive violations. For example, Washington and its Euro-allies could issue a public statement outlining the broad categories of potential violations and the broad categories of potential penalties, so that there is greater clarity but a more manageable risk of Iran’s “gaming the system.” At the same time, the Administration could provide the chairmen/ranking members of the relevant congressional committees with the details of the U.S.-European agreement on incremental penalties for purposes of oversight. Of course, such a solution requires the existence of a detailed, written U.S.-European agreement on the issue, evidence of which is not apparent.

On Israel’s Deterrence and the MOP

A related issue concerned Israel—specifically, the importance of ensuring that Israel has at its disposal the most effective independent conventional deterrent capability to forestall Iranian nuclear weapons ambitions. To some legislators, that translated into the idea that the United States should offer to transfer to Israel the massive ordnance penetrator (MOP) and appropriate delivery aircraft (or the use of such aircraft). The point here is that offering Israel the MOP is not compensation to Israel for having to swallow the JCPOA but that it is important to America’s overall deterrence posture that Israel has its own independent deterrent capability.

Here, too, President Obama addressed the issue, if obliquely, in each of his letters. In the Nadler letter, the President began a recitation of “state-of-the-art” munitions to be delivered to Israel with the “BLU-113 super penetrator,” which—along with other items—he said would give Israel “access to the most sophisticated arsenal for years to come.” This was a bit of legerdemain, given that the bunker-busting “super penetrator” is, by a factor of ten, less “super” than the mountain-busting “massive penetrator.” By its absence of from the list of items being provided to Israel, Obama was implicitly responding “no” to the MOP proposal. In the subsequent Coons letter, the President makes passing reference to “penetrating munitions,” but there is no special emphasis on the variety or the quality. Perhaps this reflected recognition that focusing too heavily on what was being provided only invited scrutiny of what was *not* being provided.

While there are admittedly technical issues concerning the MOP proposal, to a certain extent the issue reflects a larger concern—whether it is possible to rebuild strategic confidence between the United States and Israel (or, to put it more narrowly and probably more accurately, between the Obama Administration and the Netanyahu-led government) after the bruising experience of the Iran deal debate. This goes beyond the dollars and cents issue of negotiating a new Memorandum of Understanding on long-term U.S. military assistance to Israel, which the President noted in his letters he was prepared to do. Obama hinted at the truly important business he and Netanyahu have to address together when, in the Coons letter, he noted that he hoped “the Israeli government will soon be ready to ... engag[e] in discussions to bolster the effectiveness of Israel’s conventional deterrent.” If the two leaders can launch a post-Iran deal discussion on regional deterrence against common threats—a very big “if,” given the scars of the past year and the lack of confidence the two sides still have in the other’s bona fides—that would be a major step in the right direction.

Reading Between the Lines

Taken together, the Obama letters were essentially feel-good exercises that gave the relevant legislator the benefit of saying he elicited a serious response from the President on critical issues without actually getting much in the way of substance. But there may be more to these letters than just this. A close look is revealing in other respects.

Unilateral action in response to Iranian violation? In the Wyden letter, President Obama raised an intriguing, if somewhat convoluted, proposition: that the United States could respond to “non-compliance issues by Iran” with “a range of more incremental options,” such as re-imposing certain U.S. sanctions or withholding approval of sensitive nuclear-related transfers under JCPOA’s

procurement channel.

While this formulation sounds muscular, it begs the question: If the United States invested so much effort to create a Joint Commission of JCPOA endorsers that would ensure collective enforcement of the Iran deal, to develop what the President claims to be deep U.S.-European partnership toward that end and to secure a UN Security Council resolution endowing the agreement with international legality, then under what circumstances would the United States act unilaterally? It is unclear whether the President raised the specter of unilateral re-imposition of certain sanctions as an alternative to collective action or in the event the Joint Commission fails to decide in support of a U.S. accusation of Iranian violation. Both of these scenarios are deeply problematic.

The possibility of new sanctions? As noted above, the general thrust of the Obama correspondence with legislators was to avoid any commitments to specific action that might bind this or any future administration. At the most, the President promised doing more of the same; sometimes even the President's promise to maintain existing policy was grudging and hesitant.

But there is an exception. Given the discipline with which the President maintained this restrained approach, one sentence in the Coons letter stands out: After promising continued enforcement of existing sanctions for terrorism, human rights, and Iran's destabilizing activities, the President added: "We are also prepared to deploy *new sanctions* to address these continuing concerns if and when circumstances warrant." (Emphasis added)

That is the only sentence in any of the letters that specifically notes the possibility of new sanctions. This too begs a question: Precisely what circumstances would warrant new sanctions? What "bad behavior" would Iran have to commit to trigger new sanctions?

In just the past few weeks, Iran has committed at least two brazen acts in direct violation of UN Security Council resolutions that should merit consideration for new sanctions: the test-firing of a ballistic missile and the deployment of its armed troops to Syria fight alongside Bashar al-Assad's forces. Neither, however, has sparked much debate in Washington on potential countering measures. (However destabilizing and problematic Russia's military deployment in Syria may be, it does not appear to violate a UNSC prohibition, while Iran's actions in Syria are a direct violation of UNSCR 2231.)

While it is difficult to imagine the Obama Administration adding new sanctions to Iran at a time when it is inviting Iran to Syrian peace talks and encouraging its implementation of the JCPOA obligations, the President's statement provides an opening for a useful debate: If these blatant acts don't merit additional sanctions, what would? Given how advantageous the Iran agreement

is to Tehran—including the early and total relief from nuclear-related sanctions—the commonly accepted argument that Iran would use the imposition of new targeted sanctions to void the accord is, to say the least, open to debate.

The Need for Clarity, Now

In sum, all these issues—from those the President directly discussed to those he mentioned obliquely or only in passing—have potentially huge implication for the implementation of the JCPOA and, more broadly, for how the Administration addresses Middle East security, both in the balance of the President’s term and beyond. Getting clarity on these issues now—in the months before Iran completes its “core requirements” and the JCPOA endorsers terminate or waive nuclear-related sanctions—is essential.

So far, Senators and Representatives who expressed skepticism about the deal—both those who opposed it and, especially, those who ultimately supported it—have by and large chosen not to press these issues. Instead, they are focusing on long-term oversight and Administration reporting requirements. While important, those “process” issues don’t touch on the big picture: Key policies and precedents about JCPOA implementation and its impact on U.S. strategic posture in the broader Middle East are being set now. Addressing the unfinished business of the Iran deal—correcting the flaws, filling the holes, and solving the problems it raised—is urgent if the United States is to avoid shackling itself to problematic policies and troubling precedents for years to come.

Robert Satloff is executive director of The Washington Institute.