



The Vienna Agreement After Trump

The agreement on the Iranian nuclear issue reached in Austria between the government of Tehran and the international community in July 2015 represents an effort of governments towards world stability and peace, but the main problems arise during the implementation of this international treaty. The changes of governments and divergent ideological settings, especially in Washington, could change the balance of a fragile compromise between different countries and international and regional actors.

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Introduction

The hot summer of 2015 marked an important turning point in international relations, especially between countries that until then had decided to replace the weapon of diplomacy and dialogue with the weapon of confrontation and conflict. In 2015 a part of the international community decided to put an end to the problem of Iran's nuclear program with the so-called Vienna Agreement, by which the 5 + 1 (US, UK, France, Russia, China and Germany) put black on white, and signed a historic legal text with the Islamic Republic of Iran. That agreement would put an end, gradually, to the sanctions against the Islamic Republic, economic restrictions due to the nuclear program of the Ayatollah, accused of trying to design a nuclear weapon. On the other hand, the Islamic Republic through his signature and his consent promised to drastically downsize its atomic project, but restated that the project had and has only civilian purposes. Without wanting to reduce the role of the other actors and the other contracting parties, in the Vienna Agreement of 2015, the multilateral international treaty then ratified by their respective parliaments, confirming what is the classic process for the signing of international treaties¹, the main roles has been occupied by the US government and the Iranian government. From the day in which the Vienna Agreement entry into force, the two main parties have accused each other repeatedly of having betrayed the pact, but that has never had the effect of damaging the main points of this agreement: though the change of government in Washington and the rise to power of the charismatic Republican leader, Donald Trump, with his statements contrary to any kind of agreement with the Iranians, we may have several problems for the implementation of the Joint Comprehensive Plan of Action (JCPOA), the official name of the Vienna Agreement of July 2015².

Keyword: Law of treaties. Nuclear issue. Sanctions. Iran-Us relations. Donald Trump.

¹ See the Vienna Convention of 1969 on international treaties between states. The doctrine holds that there is not a specific form to conclude legal agreements between states, on the other hand the classic form is the one that ends with the signing of the representatives of the governments and then by ratification of their parliaments; only after ratification the international treaty is legally binding. And yet in recent years the role of the executive powers of the various countries about the conclusion and entry into force of international treaties is more important than ever. Arabella Throp, Parliament's new statutory role in ratifying treaties, in "Library of House of Commons-International Affairs and Defence Section", 2011, www.researchbriefings.files.parliament.uk.

² The text of the Agreement is available on the following site: https://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf.



The Vienna Agreement at the time of Obama

After signing the Agreement in July 2015, the first major problem for the governments of the US and Iran was the parliamentary ratification, as within the legislatures of Washington and Tehran there were critical voices and contrary parties to the work of respective governments in foreign policy. Both the US and Iran legislative powers was influenced consistently by factions and parties adverse to the executive powers, with the risk that the Vienna Agreement could be censored in the delicate and decisive phase of the ratification, for the question of the validity of legal text signed by the governments. In September 2015, two months after the US government's signature on the text of JCPOA, the US legislature, after debate and strong controversy, gave the green light to the ratification of the legal text, thus marking a historic moment in the relations between Washington and Tehran, from the Islamic Revolution of 1979. On the other hand the Iranians, led by Hassan Rohani, had the same problem of Obama, because they wanted to keep a positive vote from the Iranian Parliament, monopolized by conservatives, hostile to a moderate approach towards the West. In the fateful hours of the parliamentary vote about the fate of the agreement on the nuclear issue, there was talks of potential reserves from Iranian members of parliament about some articles of JCPOA, such as the possibility to request a reservation on the rights given to international inspectors to visit Iranian nuclear sites³. On October 2015 an Iranian conservative MP Hamid Rasaei, before an audience of opponents of the Vienna Agreement, explicitly stated that this agreement would not be ratified by the Parliament, because of the opposition in the Iranian legislative power than the controversial issues, such as the drastic downsizing of the civil nuclear program of Tehran, the freedom given to international inspectors access to sensitive sites, and removing the sanctions, which will not happen immediately, but only after certain steps that might take a long time, for example different years. After that, the removal, if available, are essentially about those sanctions concerning the nuclear program, and the international community will have the right to re-sanctioning Iran for issues related to support for terrorism and the injury of human rights⁴. Even, at first, the government of Iran, for the internal pressures, had proposed the hypothesis, very problematic, not to vote for ratification in Parliament, but to provide through an act of the government, an issue that has suffered heavy criticism, primarily from the Supreme Leader himself, who insisted that to happen the parliamentary vote. Despite all of this, in the same month of October, the Iranian Parliament ratified the Vienna Agreement; of 250 deputies present in the courtroom they were the abstentions of 13 MPs, while had voted against the ratification only 59 deputies, with 161 favorable. Thanks to ratifications which took place in Washington and Tehran - without forgetting that the ratification of Washington had taken place only because Obama had placed its veto to Republican vote - the Vienna Agreement has become a multilateral legally binding international treaty. However, this has not prevented the beginning of

³ Reservation is a concept of international treaties indicates "a unilateral statement made by a State when signing, ratifying, accepting, approving or acceding to a treaty, by which seeks to exclude or modify the legal effect of certain provisions of the treaty in their application": see the Vienna Convention of 1969, art. 2, paragraph 1, letter d. See too Christopher Joyner, *International Law in the 21st Century: Rules for Global Governance*, Rowman & Littlefield, US, 2005, p. 111.

⁴ "Mihane Rooz", October 2015, <http://mihanemrooz.ir/>.



controversy between Iran and the United States concerning the proper application of the regulatory text and the parties have repeatedly accused each other of breaking the pacts and have contradicted items of JCPOA.

Mutual accusations between the US and Iran

The government of Obama and the Iranian government, by the date of signature of Vienna Agreement in the summer of 2015, are sometimes accused each other of having contradicted the spirit of the treaty, and it would be for this reason that the practical actions about the implementation of the treaty going on slowly. The main complaints come from Iran; Ayatollahs would have the opinion that Iran has implemented the promises made in the Vienna Agreement, in particular about the downsizing of the atomic program. On the other hand the other parts, especially the US, would not promote even partial and gradual removal of the sanctions, unless the question of the return on the international markets of Iranian oil; this issue, for produce a genuine benefit for the government of Iran must be accompanied by the removal of restrictions on international banking transactions. This matter can take place only if the banks in the various countries of the world have the certainty of not being subject of new penalties for cooperation with Iran. A recent decision of the American government about a monetary penalty imposed on the Intesa San Paolo Bank certainly does not help in the sense of international stability and the certainty of cross-border banking partnerships with the government in Tehran⁵. According to the Iranian side, another demonstration of the lack of seriousness of the US government in the implementation of the promises made, especially concerning the implementation of new sanctions, it would be the recent initiative of the Congress, monopolized by the Republicans, that is the confirmation for another ten years of so-called D'Amato Law, rule dating back to the '90s that does not directly concern the Iranian nuclear program, but that in the Vienna Agreement, thanks to the combined provisions of art. 26 and Appendix II, it is explicitly cited as a rule not to implement for the future⁶. Both the Supreme Leader and the members of the government have claimed that the confirmation of the D'Amato Law is equivalent to the end of the Vienna Agreement legal validity. If the Iranians complain about the non-removal of sanctions in fact, on the other hand, the US read the story differently. According to the government of Obama in fact the main obstacle to the full realization of the Austrian agreements would be the negative behavior of Tehran on two fronts: Iran's regional role and the issue of ballistic missiles. For the first point we must note that the United States have in fact unofficially taken into the execution prediction of the international agreements of the summer 2015 an event not covered in official points of JCPOA. In no Vienna Agreement article mentions Iran's regional role, despite that the American criticism to Iran concerning the proper application of the Treaty signed between the 5 + 1 and

⁵ <http://en.news-original.ru/the-americans-punished-the-intesa.html>: "The Americans punished the «Intesa»", December 2016.

⁶ The text of the Agreement (Appendix II) is talking about Iran Sanctions Act (ISA), the official name of the D'Amato Law, while Article 26 provides that "The US Administration, acting consistent with the Respective roles of the President and the Congress, will refrain from re-introducing or re-imposing the sanctions specified in Annex II That it has Ceased applying under this JCPOA, without prejudice to the dispute resolution process provided for under this JCPOA." Certainly the text of the provision is not very clear, because you do not understand what is the meaning with precision when it says that "it has Ceased applying under this JCPOA", or if there are any particular sanctions are mentioned and if only they are the subject of sanctions removal, or whether, as is explicitly stated elsewhere in the text, the removal does not concern matters relating to human rights and support for terrorism; if it were so, the D'Amato Law, could also be renewable, since it does not concern the nuclear issue, but the two aforementioned materials.



the Persian government derived from the will to want to prevent the support of Tehran from some Middle Eastern realities, particularly with regard to Iran's role in Syria and Yemen, the contexts in which there appears to be a confrontation between Washington and the Ayatollahs, since the US support directly or indirectly the (moderate) opponents of Bashar Assad and opponents to Shiite faction of Yemen, the Houthis. On the other hand, despite the moderate government of Hassan Rohani, the Islamic Republic has decided along these years not only did not reduce support to Assad, but has implemented such collaboration in Syria by sending some of its best generals (including the elements of the Revolutionary Guard), as the General Qassem Soleimani, head of the “Jerusalem Guards Brigade”. And the same applies to the complex Yemeni affairs, where a strange coalition between former President Saleh and his former opponents Shiites, the Ansarullah militias (Houthi), is supported by Tehran. Iran is now in fact in power, while the group close to President de facto deposed, Mansour Hadi, has the support, that is implicitly or explicitly, of Washington and Saudi Arabia. Indeed, the Iranian role in the Middle East in recent years has grown a lot, and this worries the US, historically surrounded by some regional rivals Iran, as the Saudi regime, but the central point is that the US demands are that Iran must seek a drastic reduction of not only the nuclear program, but its ambitions in the Middle East, does not have a legal basis, that is not covered in the questions signed in Vienna in July 2015. The Americans have repeatedly criticized the Iranians about the lack of full implementation of the promises made, saying that sanctions against the Islamic Republic will be softened in fact only if Tehran will reduce its commitment to support Assad and the Houthis, which is not provided by the JCPOA⁷. Beyond that, the second controversial point about American criticism on Iran, regards the thorny issue of ballistic missiles. In the latter case, the American point of view⁸, have a firmer legal basis, since there are sources of international law that explicitly raise the question of the ban on testing ballistic missiles by the Iranian government, and only in case of compliance this point the international community, and therefore also the US, will proceed with the gradual removal of sanctions against the Islamic Republic. But even here the regulatory footing is not the Vienna Agreement, since it does not mention the issues regarding the ballistic missiles, but the UN Security Council Resolution of July 2015; this resolution, voted on a few days after Vienna Agreement, not only included the JCPOA, but added some important issues, just as the ban on testing missiles that have the ability to carry nuclear warheads, such as ballistic missiles supplied to the Iranian armed forces⁹. In particular, we can see expressly in the text of the UNSC Resolution: “Iran is called upon not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology, until the date eight years after the JCPOA Adoption Day or until the date on which the IAEA submits a report

⁷ Regarding American criticisms about the regional role of the Islamic Republic after the Vienna Agreement, we can read on the pages of Italian newspaper “Corriere della Sera”, thanks to the presentations of Ellie Geranmayeh (European Council on Foreign Relations) and Dennis Ross, (former ambassador, then advisor to Barack Obama and cofounder of Uani (United Against nuclear Iran): “the nuclear deal did not limit Iran's support for terrorist groups, but rather broadened the economic resources available to assist allies in Lebanon, Syria, Iraq, Bahrain, Gaza, Yemen. Iran has not changed its foreign policy: the latest report of the US State Department about terrorism accuses Iran of using the Quds force, the Revolutionary Guards elite group, for its goals in the Middle East.” See “Corriere della Sera”, July 2016, <http://www.corriere.it/extra-per-voi/2016/07/13/sanzioni-regime-usa-l-accordo-sull-iran-anno-dopo-c464b0ca-492f-11e6-ae06-0cc76a275352.shtml>.

⁸ U.S. says considering response to Iran ballistic missile test, “Reuters”, December 2015, <http://www.reuters.com/article/us-iran-nuclear-congress-idUSKBN0U02CH20151217>.

⁹ UNSC Resolution 2231 (2015).



confirming the Broader Conclusion, whichever is earlier.”¹⁰ But in the Vienna Agreement, signed by Iran, there is no mention of anything that, indeed, part of the UN resolution which includes this provision in the JCPOA of the agreement is concluded some page before, always in the final part, called Appendix V, but without the addition of Appendix B (about ballistic missiles); but this part exists only in the Resolution of the UNSC, and not in the Vienna Agreement text approved by the Iranians¹¹. Based on these points, we can say that on a legal point of view the Iranians have violated the agreement on nuclear issue, because they have violated the resolution of the Security Council of the United Nations in July 2015, and not the Vienna Agreement¹². If until now so the implementation of agreements on nuclear power (Vienna Agreement and UNSC Resolution 2231) has had its ups and downs, with concessions made in half by both sides, we must see if the change of government in Washington between Obama and Trump will have negative repercussions on the rest of the way forward by the international community or if the new American leader will remain, beyond the election slogans, on the same line of the Democrats.

The Iranian nuclear agreement after the election of Trump

The list of anti-Iranian statements of the new President of US, Donald Trump, is quite long; on the occasion of a public meeting in the United States Trump said that the agreement on Iran's nuclear issue is a catastrophe¹³. In April 2016, after Obama had spoken favorably about compliance of Iran about the spirit of the Vienna Agreement, Trump said that Obama is a fool¹⁴. And the examples could go on. But beyond the rhetoric, what will be the Trump policy about Iran and with about nuclear agreement? Answer is not a simple matter, because today in international relations we can see a period of instability with several

¹⁰ UNSC Resolution 2231 (2015), page 99, Appendix B, point 3, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231%282015%29.

¹¹ For a comparison between Appendix V of Vienna Agreement and Appendix V of UNSC Resolution 2231 (about ballistic missiles), you can see the two legal texts, respectively <https://www.state.gov/documents/organization/245324.pdf> (Appendix V here ends at page 5, and there is no mention of ballistic missiles) and http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231%282015%29 (here Appendix V continues and at page 99, in the end of the page there is the point 3 that mentions Iranian ballistic missiles).

¹² For example, Iran tested ballistic missiles, which on paper may be used to carry nuclear weapons, on these three dates: in October 2015, November 2015, March 2016. See http://www.huffingtonpost.com/majid-rafizadeh/iran-breached-the-nuclear_b_9977768.html. Although this practice is prohibited by the UNSC resolution, the main allies of Iran within the Security Council, expressed the legally point that the Iranians test does not violate the resolution. According to Russian diplomats, "We do not think these launches violated Resolution 2231, because the resolution does not ban the tests". In addition, for the close link between nuclear weapon and ballistic missile see Jacob Neufeld, *The development of ballistic missiles in the United States Air Force 1945-1960*, CreateSpace Independent Publishing Platform, 2013, p. 37.

¹³ A new Donald Trump emerges at AIPAC, "The Washington Post", March 2016, https://www.washingtonpost.com/news/post-politics/wp/2016/03/21/a-new-donald-trump-emerges-at-aipac-flanked-by-teleprompters/?utm_term=.8da507eeecdd: "Trump again called for dismantling the nuclear deal with Iran, calling it "catastrophic" for the United States, Israel and the Middle East."

¹⁴ Trump slams Iran nuclear deal; calls Obama 'baby', "The Nation", April 2016, <http://nation.com.pk/international/04-Apr-2016/trump-slams-iran-nuclear-deal-calls-obama-baby>: "Republican presidential candidate Donald Trump has criticized President Barack Obama and the Iran nuclear agreement at a rally in the US state of Wisconsin, saying he was "like a baby" after expressing that Tehran has yet to follow the "spirit" of the deal."



changes in the alliances between governments. Here, we can only guess and it will be the time to judge our statements. There are primarily two extremes to be considered, id est the total acceptance by Trump of the Vienna Agreement and the continuation of Obama's policies, and on the other hand the exact execution of the election promises, id est the complete end of all dialogue with Tehran and consequently the US output by the nuclear agreement. But a realistic point of view in international relations recommends us to discard these extreme assumptions, at least in the short term. Of course, we must also see Iranian reactions; for example in Tehran did not celebrate the news of the extension for another ten years of the D'Amato Law, but beyond the words of the Supreme Leader and a feeble attempt to raise the voice by Iranian President Rohani¹⁵, for now in practical terms, Iranians have not said it would consider ended the parable of the Vienna Agreement, indeed, after the election news of Trump, the Supreme Leader of Iran, Khamenei, has specifically said that judgments about the new American government will cover not the words of the electoral campaign, but the facts of the Republican administration. In practice, the option that seems to more credible today, is that Trump will try to reach a kind of renegotiation of Vienna Agreement on a new basis, despite some players in international politics could not agree, as the European Union, which seems particularly liking the current text, judged favorable to implement the economic relations between Tehran and Brussels. The hypothesis of the renegotiation, as well as what could be Iran's reaction, is not a remote idea, as even many former members of the Democratic Party in the United States support this initiative. For example, on December 2016, Mark Wallace and Joseph Lieberman, the first a conservative, and the second a former Democrat, wrote an article in the Washington Post about the future of the agreement on the Iranian nuclear issue¹⁶. In the article the two authors express the desire that trump see to renegotiate the Vienna Agreement; they said that "like President-elect Donald Trump, we vigorously opposed the Iran nuclear agreement, so we sympathize with his promise to "dismantle" it. But we hope that he and his administration will first try to aggressively enforce and then renegotiate the deal beyond the confines of the nuclear issue to make it better for us and the world."¹⁷ In the opinion of Lieberman and Wallace "before such renegotiations begin, the Trump administration could strengthen its hand by closely consulting with our (American) allies in Iran's neighborhood — Israel and the Arab states. They were missing from the group that developed and consented to the Joint Comprehensive Plan of Action (JCPOA) [...]. That was wrong, for two main reasons: because the Arab states and Israel are our allies and the Iranians are not, and because the countries in the region have the greatest equities at stake and should have a significant voice in the outcome."¹⁸ In the opinion of Lieberman and Wallace the only result of JCPOA was that Iran has become a stronger country in the Middle East and its anti-American, anti-Israel and anti-Arab rhetoric has grown stronger. According to the two authors, in the month of November 2016 eleven Arab countries would have said that Iran is a regional threat and in June 2016 In June, the United States State Department again

¹⁵ "The Iranian president has ordered the country's scientists to start planning the development of nuclear marine propulsion in response to what he called the United States' violation of last year's nuclear agreement between Tehran and world powers." See Iranian President Orders Work On Nuclear Marine Propulsion, December 13, 2016, <http://www.rferl.org/a/iran-rohani-nuclear-marine-propulsion/28174031.html>.

¹⁶ Joseph Lieberman, Mark Wallace, How Trump should renegotiate the Iran deal, "The Washington Post", December 2016, https://www.washingtonpost.com/opinions/global-opinions/how-trump-should-renegotiate-the-iran-deal/2016/12/06/b78ddf3e-bb0d-11e6-91ee-1adddf36cbe_story.html?utm_term=.c10210885415. Lieberman and Wallace are both member of the United Against Nuclear Iran association.

¹⁷ Ibidem.

¹⁸ Ibidem.



designated Iran the world's leading state sponsor of terrorism. Lieberman and Wallace said that according to a recent survey by United Against Nuclear Iran, a large majority of American registered voters view Iran as the greatest state threat facing the United States, ahead of North Korea, Russia and China. As expressing the two authors, the government of Donald Trump should increase the pressure on Iran, demanding a reduction Iranian interference in the affairs of Arab countries and by including in the list of terrorist organizations, all entities linked to the Revolutionary Guard. "Trump can also support legislation in Congress punishing sectors of the Iranian economy that support Iran's ballistic missile program, and he can propose measures to curb Iranian access to U.S. dollars."¹⁹ If Iran does not change course, Trump should make clear he is prepared to impose a new round of comprehensive secondary sanctions against Iran, and then to walk away, with cause, from the JCPOA. "Then it will be time, as Donald Trump has said, to tear up this agreement. Such a step-by-step strategy will make clear that the United States is willing to work with Iran, but that there will be consequences for the Iranians if no diplomatic solution is reached. At its best, such an approach can be transformational. At the least, it will rewrite the current nuclear deal, relegating to history a period in which the great powers legitimized Iran's rogue nuclear program without asking the regime to change its radical, terrorist, repressive and expansionist ways."²⁰

Conclusion

Before the agreement on the Iranian nuclear issue, according to many, could there be a direct conflict between Iran and the US and the Vienna Agreement of July 2015 would have averted this option. Leaving aside the veracity of such opinion, which has as a weak point the understatement of the defense potential of Tehran, the fact remains that at least on paper, and at least from an aesthetic point of view the nuclear deal has for the first time since 1979 laid the foundation for lasting and official contacts between the US government and the Iranian government, which has not happened since the time of the Shah Mohammad Reza Pahlavi. This was the concrete result of the Iranian presidential elections of 2013, which paved the way to a pragmatic and moderate government in Tehran, which has strongly wanted the agreement with the Americans, to somehow revive the Iran's economy after several years of stalemate. Of course, the will of Obama has had a positive effect on each other, but Obama was in power at least since 2009, yet during the period 2009-2013 had not seen on the horizon relaxing moments between Washington and Tehran. And this because of the presence in Iran of an ideologically hostile government towards the US, which is the executive of Mahmoud Ahmadinejad. The change of government in Tehran has opened the way for the resumption of a stable dialogue between Iran and the United States; only the change of government in Iran gave an opportunity to the international community to pursue and eventually sign the Vienna Agreement in July 2015. As well as a change of government has given the green light to an agreement between the West and Iran, so a change of government, this time in Washington, could put an end to that agreement, although presumably, as well as the agreement is not reached in a day, also its end will not be sanctioned in one night, but it will take some time for all the international actors take note that Trump has no intention to follow Obama's policies in the Middle East. If the Vienna Agreement, as we said in the previous pages, brings with it many questions from the legal point of view and actually gives the opportunity to the parties to exchange various charges, from a political point of view, the Austrian agreement had ruled without

¹⁹ Ibidem.

²⁰ Ibidem.



appeal: Iran returned to play an official role in its foreign relations, especially with regard to the US and Europe. The rise to power of Trump is likely to create difficulties not so much from a legal point of view, as from a politic perspective, about the role of Iran in regard to the United States and the European Union. From a legal point of view to apply the Vienna agreement it is very difficult because many of its main points are unclear or contradictory²¹; from the political point of view, however, Iran had obtained an important result, which is to be recognized as a credible partner for the West in the Middle East²². The election of Trump could gradually bring back Iran into the circle of rogue States, not only from the point of view of Israel and Washington, but also for Europe, since sooner or later the conflicting interests in the relationship with Iran between Brussels and Washington will re-emerge, and as often, the Europeans will be forced to comply, despite themselves, to the orders arriving from overseas.

²¹ After the Vienna Agreement many European politicians have gone to Iran for talks with the Iranians, but during the years of Ahmadinejad this is not often seen.

²² Today Iran is recognized as a country at the forefront of the fight against ISIS in the Middle East, this fact was recognized even by Trump during the election campaign. See Trump: Assad, Iran And Russia Are The Only Partners I See In Syria, "The Huffington Post", October 10, 2016, "I don't like Assad at all, but Assad is killing ISIS, Russia is killing ISIS and Iran is killing ISIS, Trump said".



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