



EDITORIAL

THE IRAN NUCLEAR DEAL AND THE FUTURE OF THE EUROPEAN FOREIGN POLICY

Among the reactions to the decision of the US Presidency to withdraw from the Joint and Comprehensive Plan of Action (JCPOA) – a conventional scheme agreed upon in 2015 by the Islamic Republic of Iran and the E3/EU+3 group, namely (China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy) – a declaration by the High Representative released on 8 May 2018 stands out for its legal and political relevance.

After regretting the US decision and reaffirming the EU commitment “[a]s long as Iran continues to implement its nuclear related commitments”, the High Representative went on by saying: “the nuclear deal is not a bilateral agreement and it is not in the hands of any single country to terminate it unilaterally”.

In these sentences, the High Representative distilled some basic assumptions on the nature and effect of the Deal. First, this document has the nature of an agreement governed by international law; second, it is a multilateral agreement designed to pursue collective objectives; third, the EU has a legal interest in its implementation and is entitled to claim compliance with it.

These assumptions shape the direction of EU foreign policy *vis-à-vis* the divergent course of the US administration. More generally, they unveil the determination of the EU to play an active role in the troubled context of the Middle East, in accordance with the principles and values that inspire its external action under the founding treaties.

Although sometimes presented as a mere political understanding, the Nuclear Deal appears rather to be a legal document. It is based on the common consent of its parties and formulates reciprocal commitments aimed at settling a long dispute on the peaceful nature of the Iranian nuclear program. As pointed out by the High Representative, only a breach of its commitments by Iran may justify a corresponding breach by the other parties.

The contrary view, of the non-binding political nature of the Deal, was put forward by the Obama administration at a time when it appeared to be highly unlikely that it would have garnered the “advise and consent” of two thirds of the members of the Senate, or even the less onerous alternative procedure of the consent of the two houses of the US Parliament expressed by simple majority (see *Contemporary Practice of the*

US: Agreement on Iran Nuclear Program Goes into Effect, in *American Journal of International Law*, 2015, p. 874 *et seq.*). Precisely this conception, strenuously fought in 2015 by the G.O.P. (the Republican Party), has been revived by the Trump administration to justify the unilateral repudiation of the Deal.

Beyond this political paradox, the idea that the legal nature of an agreement in international law depends upon the domestic procedure followed for its conclusion appears to be misplaced. The binding view of the Deal not only emerges from its commitments – that include the commitment by its parties, which are members to the UN Security Council, to lift the sanctions imposed by that organ on Iran – but also from its special system of implementation, the snapback procedure, that empowers the other parties to re-install these sanctions, in case of breach by Iran, without the need for a new resolution. Consequently, the implementation of the Deal required the endorsement by the Security Council, occurred with Resolution 2231 of 20 July 2015, UN Doc. 2231 (2015).

The multilateral character of the Deal makes it difficult for the US to justify its unilateral repudiation. A material breach of a bilateral treaty entitles the other party to terminate the treaty; but the termination of a multilateral treaty in consequence of a breach by one of its parties requires a concerted response by all the other parties. This principle is enshrined in Art. 60 of the 1969 Vienna Convention on the Law of Treaties and, at least with regard to agreements protecting collective interests, it is a logical corollary of their multilateral character.

The application of this principle would inexorably lead toward the conclusion that every party is entitled to claim that the unilateral repudiation of the Nuclear Deal by the US has no effect under international law. Unilateral measures taken by the US in pursuance thereof, in particular the adoption of sanctions, would amount to wrongful conduct and would justify protective countermeasures by the other parties to the JCPOA

By pointing out the illegality of the repudiation of the Nuclear Deal by the US, the declaration of the High Representative seems to announce a confrontation with the Trump administration to be held on the legal terrain. For a number of reasons, this appears to be a felicitous decision.

First, the EU appears to be entitled to claim compliance with the Deal and to take protective measures. In a joint declaration of 14 July 2015, the High Representative and the Foreign Minister of Iran announced that “we have reached an agreement on the Iran Nuclear issue”, thus conveying the impression that the EU was regarded as a full-fledged party to that agreement. In a more cautious perspective, the EU can be deemed to have participated to the agreement through the High Representative as a honest broker and a guarantor of the Deal, as emerges from the Council Conclusions *on the Iran’s nuclear programme*, of 20 July 2015, that endorse the JCPOA and commit to abide

by its terms and to implement it. Possibly by virtue of this limited involvement, the participation to the Deal could have been based on the prerogative conferred to the High Representative by Art. 18, para. 1, TEU to conduct the Union's common foreign and security policy, as mandated by the Council.

From a more general perspective, this EU stance could mark a new course of its foreign policy, departing from the unilateral approach, followed in the last decades even by some of its Member States, that failed to achieve its declared ends to stabilize the Middle East and, rather, has worked as a permanent source of instability, whose long-term effect have been largely experimented in Europe. The adoption of an alternative approach, based on confidence building and on a multilateral system of control, matches the interest of Iran to present itself as a responsive conventional partner; it may secure the implementation of the JCPOA even without the contribution of the US and, along this way, could considerably contribute to defuse the countless spots of tension in this troubled area.

In an even more general perspective, this course of action appears fully consistent with principles and values of the Union, enshrined in Arts 3, para. 5, and 21, paras 1 and 2, TEU, and can be regarded as their faithful implementation.

The normative and practical importance of these provisions can be hardly overshadowed. The founding treaties identify the objectives of the EU external action and determine the tools and means of action to attain them. External action must be used to promote the development of the system of international relations towards an ideal model based on the principles of peace and security, democracy and fundamental human right, inclusiveness and solidarity. This model must be realized using the instruments of action of international law, the multilateral cooperation and the institutional and normative system set up by the UN Charter.

If the EU did not deflect from this line, a chain of consequences could potentially ensue: although amputated of one of its main parties, the JCPOA would remain in force and could be brought to implementation; in spite of the sanctioning measures unilaterally taken by the US, whose effect could be reduced by protective measures taken by the other parties, the Deal could reveal to be a momentous driver of stability and prosperity in the region; in turn, this achievement could prevent further escalations of the multiple on-going crises in the region, first of all in the Syrian powder keg.

Ultimately, the EU would have experimented a new model of crises management, in application of its founding principles and values, that may open a new phase in the never-ending conflict in the Middle East.

