



## IMPLEMENTATION DAY: WHAT JUST HAPPENED?

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What just happened? Several American citizens unjustly incarcerated in Iran have been released in return for the release of seven Iranians held in U.S. jails for violating the terms of congressionally mandated trade sanctions on Iran, and the revocation of warrants against a dozen or so others not in custody. This occurred in tandem with Implementation Day of the July 2015 nuclear agreement, for the IAEA testified this past week that the Iranian side has met its obligations under that agreement.

It also occurred just days after the Navy sailor arrest-and-quick-release incident, and scant weeks after the Iran missile tests/new sanctions business erupted into political play. How (if at all) are these events connected, and what does it mean?

The answer is *twice* “we don’t know.” The first aspect of “we don’t know” is simple and literal, and it applies to you, typical but still dear reader, and me both. There are aspects of all these puzzle pieces about which we remain in the dark. The second aspect is interpretive and longer range: What does this entanglement mean for the future of Iranian politics and policy, of U.S.-Iranian relations, and the broader security of the Middle East? We don’t know that either.

### Don’t Know, Type I

As to the prisoner exchange, how long have these negotiations been going on in secret? Apparently, about 14 months. Knowing that helps us recreate the sequence of juxtapositions with the other issues, which might help us infer something about their connectedness. But it helps only a little, as it turns out. So what else do we know?

Press reports suggest that it was the Iranians who wanted to accelerate the swap, leaking a few weeks ago that such a deal might be possible. That jives with the statements in the press that the details of the swap were agreed only very recently to coincide with Implementation Day, that the Iranians were pressing for a larger number on their side, something like 19 or 20, but President Obama reportedly refused to include anyone who had been involved in any violent or terroristic behavior—and the Iranian side relented.

Maybe. One U.S. national in Iranian custody was not released, suggesting that the exchange was partial: If we demurred on some names, the Iranians demurred on at least one other. Ah, but maybe they demurred on more than one other, because one of the Americans citizens released had not been previously known to be in Iranian custody. Maybe there are more.

Secretary of State John Kerry said that the prisoner exchange was not part of the nuclear deal, despite the parallel discussions that apparently were going on before July 14, but that they were related in that the nuclear deal talks normalized relations at least enough to allow the other negotiation to get traction. This sounds like typical diplomatic obfuscation: not “part of,” but

“related”? It reminds me of President Clinton’s hilarious and infamous parsing of what “is” is, but this is part of what diplomats actually and sometimes usefully do—deploy ambiguity for good purposes. So the entertainment value here is more limited than it might at first seem.

Now what about the Navy incident, which occurred just hours before the President’s State of the Union address this past Tuesday? Well, the Defense Department has still not explained what happened with those 10 U.S. sailors on those riverine boats that, everyone seems to agree now, were within Iranian territorial waters. What were they doing there anyway? Who were these particular servicemen—in other words, what if any was their special training?—and how did they get caught? We don’t know, leading one to wonder whether they were on some kind of intelligence collection adventure. One sort of hopes so.

That possibility is made more likely by the fact that they were apprehended by the IRGC, not the regular Iranian Navy and, as we all know, they were released very quickly. That might suggest that the Iranian side did not want to mess with the prisoner exchange talks or the optic of Implementation Day. We don’t really know.

Some, including Secretary Kerry but also others, have crowed about this quick release, suggesting that it validates the investment of all those hours Kerry spent talking up Foreign Minister Zarif. What they don’t say is that the whole catch-and-release episode could have been avoided if the IRGC had simply warned the sailors away, as ordinary etiquette in such matters might have called for—but admittedly that depends on the specific circumstances of the encounter, and we don’t know enough about the details to say. Nor do they say that using photos of detained uniformed American military personnel for propaganda purposes—which they did—is a violation of the Geneva Conventions—which it is. Clearly, some key facts are missing here, as far as normal people not privy to the intel are concerned, so we just cannot be sure about the sequence of events and hence their interconnectedness.

Some connections are clear, however. It seems the Iranian side, long before a few weeks ago, wanted to connect more explicitly the prisoner exchange business with the nuclear negotiations and we, for very good reasons, rejected the linkage. In short, we were faced with a prisoner’s dilemma. . . . . When some journalists asked why back in July, the President explained it well: “Think about the logic that creates. Suddenly, Iran realizes, ‘You know what? Maybe we can get additional concessions out of the Americans by holding these individuals.’”

Other American officials at the time rejected the linkage and the very idea of an exchange because of garden-variety moral hazard risks. The Iranians in jail in the United States broke the law and were convicted by real courts, while the American citizens held in Iran had violated no laws, were (supposedly) not involved in any espionage or other illegal activity, and were incarcerated by a judiciary firmly in the hands of hardliners whose respect for any rule of law they do not dominate and cannot manipulate at will is modest, to say the least. To equate the two kinds of prisoners was simply beyond the pale, and do to so would only encourage the IRGC or others to grab other innocent Americans for future leverage.

That was and remains true, which is why the U.S. government went out of its way on Saturday to fend off expectations of moral hazard. One senior official said for public consumption that the exchange was a “one-time arrangement because it was an opportunity to bring Americans home” and should not be considered something that would “encourage this behavior in the future” by Iran, or, presumably, any other actor. But if you have to say it, it means it’s a problem, and it’s not clear that saying it helps or hurts to avoid the problem in future. (Whatever the case, within hours of my writing this paragraph, news broke that Americans have been taken hostage by Shi’a militias in Iraq. Its great to be proven correct so quickly, but for it to happen so fast that I could not even get into print beforehand is a little deflating, truth to tell).

This is not a new issue. Some people (and U.S. officials) who have preferred to wear human rights on their sleeves have been guilty of a similar kind of moral hazard. For example, the more we used to berate the Chinese in public about their egregious human rights violations, the more incentive we gave them to beat and arrest dissidents, so that these poor pawns could be used as leverage—as part of some supposed “humanitarian gesture”—the next time some Sino-American meeting or summit popped onto the diplomatic calendar. It is not good statecraft to encourage the other side’s cynicism, and eventually we learned to be more careful about this sort of thing. The Obama Administration got the essence right here: Don’t link the issues and drag innocent Americans into the middle of a muddle because it does make it harder, all else equal, to walk away from an unequal deal.

So then why did the Administration agree in the end to this exchange? It was a judgment call. “After the Iranians raised the prospect a few weeks ago,” one American official (probably Ben Rhodes) said, according to the press, “it was clear this would be the only way.” A “window opened” and as President “you have to make a decision: Would it be better to leave these

Americans there with sentences that stretched on because we don't want to make a reciprocal humanitarian gesture? . . . Our determination was that it was a better decision to get our people home."

That account is not hard to credit as sincere and accurate, since in the U.S. government the circumstances of what are called "Amcivs" ranks very high in government priorities, as well they should. If one insists on being a moralist in office, then one does not deal with "evil" and one does not equate lawful prisoners in U.S. jails with innocent hostages in Iranian jails, and so on. But if one is a realist about these things, as we generally were when we dealt with Soviet officialdom for decades and as we have been in dealing with the Chinese government for decades too, one takes for granted that the other side will lie, cheat, steal, dissemble and in any way possible seek a unilateral advantage. But we still have our interests and we still have to deal with them as they are, as opposed to how we wish they were. One does what one can and has to do under the circumstances. The world as it is is multi-hued, not two-toned. These are hard choices and no one should pretend otherwise.

In what amounts to very short-term retrospect, then, it seems clear that the Iranians wanted to get rid of this problem of holding Americans for having done nothing wrong except to have dual citizenship, which the Iranian government does not recognize as valid. Why? Hard to say.

Maybe, as with the embassy hostages many years ago, the Iranians figured that these people had exhausted any possible value to them and that it was becoming counterproductive to keep holding them. Perhaps it had something to do with Iranian domestic intrigues that are more or less opaque to us—not just "us" out here in ordinary land but also to our intelligence community. Our releasing seven Iranians and revoking indictments on a dozen or so others was just a sweetener, it appears, to help the Iranians save face and make Rouhani's government look good. Maybe we figured that this was in our interest as well as Rouhani's. It wasn't much of a concession in any case, since the law under which they were arrested goes by the boards anyway with the lifting of nuclear technology-related trade sanctions anyway, thanks to Implementation Day.

Finally on "we don't know" type I is the connection between the prisoner release and sanctions we mooted but then pulled back after two Iranian missile tests violated the July 2015 accord—that according to the UN Security Council. Here there clearly *is* a connection, and the Administration has admitted it: We did not want to screw up the prisoner exchange by spraying lemon juice into the atmosphere until that deal was done and consummated. There were also, it is worth noting, some sensitive exchanges just shy of Implementation Day about the nature of centrifuge research Iranian scientists can and cannot do during the next decade or so. So the Administration did pull that new sanctions punch—but at the time it was hard to know if it would be temporary, or not? That question is a perfect lead-in to the second and grander aspect of the "we don't know" theme.

## **Don't Know, Type II**

Even before all the facts are known about recent incidents and their connections established (if ever), many observers claim to know what it all means in larger strategic terms. The Administration, as may be expected, has been spinning wildly about the value of diplomacy and the wisdom of the nuclear deal in having prevented an Iranian nuclear breakout and hence another war. The President's language on this in this past Tuesday's State of the Union address constitutes the fastest spin of all.

But lots of commentators, not all of them Administration supporters or shills, have claimed that the Iranian meeting of the technical demands of the nuclear deal before we expected them to be done, the "catch-and-release" episode, and now the prisoner exchange are all manifestations of a new era in U.S.-Iranian relations and even of a new Iran, an Iran headed speedily toward Thermidor, to use Crane Brinton's classic terminology—normalcy in the aftermath of the Iranian revolution. Of course, these observations come with the usual self-protective caveats, but the trajectory of the comments is clear enough. The Administration claimed that the transformation of Iranian politics in the aftermath of the deal was not a condition or even a relevant expectation, but the logic of the situation declared otherwise. And now some observers are ratifying these unclaimed expectations, leaping forth to say, as it were, "See, we told you so."

Not everyone is convinced. Critics contend that the Administration is still, as ever, giving away the store. Some Republican candidates for President have said that the exchange makes us look weak and that we should not have negotiated with these jerks in the first place while they were illegally holding innocent U.S. citizens as hostages. Their release, some say, should have been a precondition of the negotiations. That's a great applause line, but what if we tried this and it didn't work?

A negotiation between states that do not like or trust one another is not a favor one does for the other. If there is nothing in a prospective negotiation for the U.S. side, we should not be negotiating, preconditions or no preconditions. So it comes down

to whether any preconditions we might wish to insist upon will fly, and if there is anything we can do on the side to make their fulfillment more likely. If not, then insisting on preconditions is merely a demonstration of petulance without much of a practical purpose—or, as is the case with the almost inevitable Palestinian Authority demand for preconditions for negotiations with Israel, is a sign that there is no interest in an actual agreement to start with. It is easy for someone like Donald Trump to make such statements, and for his supporters to enthusiastically endorse them, because he has never been near any consequential government decision on such matters, and so has no idea what he is talking about.

Other critics, like Marco Rubio, have pointedly raised the moral hazard problem, and rightly so. And it's not just the Iranians who will notice. So we shall see if other U.S. nationals soon get snatched for purposes of collecting leverage. I would not be surprised. (As indicated earlier, that appears to have already happened.)

But all these peregrinations over the prisoner swap, both in support of it and in criticism against it, are mostly overblown. What really are we talking about here? We're talking about a few unlucky people who got caught up in machinations they knew little to nothing about, probably on both sides, who have now been released from their nightmares. This is a human-interest story that is ultimately of very minor strategic importance.

It is highly "spinable," however, and that's why many media mavens are claiming that this swap marks a major Administration triumph. Alas, our celebrity culture has become very outsized and our mainstream press's pandering to it tends to reward optics rather than substance. It tends to reduce all issues to biography, to the who's-up/who's-down metric that obscures the actual news and what it means. It all about "flaps and chaps," Owen Harries used to tell me, all about scandal and personalities and, preferably, some combination of the two that produces high outflows of intrigue, innuendo, and moral umbrage. That's what people like to read about, and it is so much easier for jaded journalists to write that way than to tackle genuinely complex and often abstract issues about which they may understand rather little.

In this case one can forgive the highly personal and parochial nature of the *Washington Post* coverage, since one of the released prisoners is a *Washington Post* employee. But otherwise, we are better served by keeping our eye on the strategic ball. And if we do that, a lot of the suggestions and claims put out there over the past 48 hours start to look a little distended.

To return to the matter of the Iranian missile tests for a moment, is the punch that the Administration pulled to seal the prisoner exchange temporary or not? (When I wrote this sentence a few hours ago, the matter was still not resolved; now it is: New sanctions have been invoked.) Well, Bill Burns, who was Under Secretary of State for Policy when the sanctions regime against Iran got launched during the Bush Administration, defends the nuclear deal in terms that do not entirely pass my credulity test. He claims, as many do, that the deal effectively freezes Iran's nuclear ambitions for ten to fifteen years, that this "is a real advantage to us," and that it was "achieved by tough-minded diplomacy and not war." But I and others have laid out a plausible path for Iranian cheating on the verification scheme and renegeing on the deal well before a decade has passed, having first copped the front-loaded financial gains and the advantages, if any, of the cheating. Hillary Clinton agrees with Burns, who worked closely with her when she was Secretary of State, but even she admits that it is in the Iranian "nature" to try to cheat. She would know, because she read all the intel about that nature and past cheating while she was in office. So in this context it is noteworthy that Burns urged Obama to issue new sanctions against Iran over the missile tests to demonstrate that we will keep up the pressure in what will inevitably be a mixed relationship going forward, with lots more pushing and shoving than "humanitarian gestures" and other niceties. He wants to keep the diplomacy tough-minded, and here he is certainly correct. Happily, the President agreed with him.

But that does not a happy ending necessarily make. Several benchmarks that optimists point to lately as evidence that things are going well with the implementation of the nuclear deal strike me as much more ambiguous.

First, yes it's true—if we believe the IAEA—that to reach Implementation Day the Iranians have shipped 98 percent of their enriched uranium out of the country, in this case to Russia. I'm not sure I *do* trust the IAEA's judgment, seeing as how this is the same underfunded organization that agreed to let Iran supply its own soil samples from Parchin and elsewhere for testing, and passed on the PMD (possible military developments) portfolio in a way that did not make me feel all that warm and cozy. But even putting that aside, who thinks that the Russian government, which has recently contracted to build more Iranian nuclear power plants and which hopes to pierce the Iranian arms market in a serious way, is beyond shipping some or all of that enriched uranium back to Iran during and just after a future verification crisis? Pardon me for buzzing the ointment, but the current Russian government is not our friend, and the fact that Russia is the repository for this material gives them more leverage, and the Iranian government more options, than I would prefer they have. There was no other way to get agreement on this aspect of the deal—that's clear. Still.

Then, second, there is the Arak reactor, the plutonium route to a bomb. The Iranians claim they have disemboweled the core, and the IAEA has testified to same. They did this, and other technical tasks, faster than the CIA and the Energy Department thought they could. They did so supposedly because they have been in a huge hurry to get their hands on their money, and some argue that Rouhani's sensitivity to the calendar turns on an upcoming, late-February parliamentary election. Maybe so.

But what the speedy engineering work also demonstrates is that if Iranian engineers can denature the core of the Arak reactor quickly, they can reconstitute it quickly as well. Same goes for mothballed advanced centrifuges. So what many look to for evidence that all is well with the deal or even better than well, others see as evidence that all may not be so well after all. People tend to see what they expect to see—by dint of what cognitive psychologists refer to as “the evoked set”—and when expectations merge with partisan political alignments, predictably conflicting certainties emerge. That's politics, often enough.

Those of us whose interests, training, and experience are not in partisan politics but in social science analysis tend to be more focused on explaining why what happens happens before we go running off to chase down heroes and villains and, in the process, satisfy our own evoked desires and expectations. But the truth of the matter is that we rarely can know for sure why what happens happens and what the longer-term strategic implications may be. Events rarely provide clean test cases to score who turns out to be right and who turns out to have been wrong even in retrospect. That's because situations get overlaid with new factors that make teasing it all apart in a postmortem very difficult.

So not only do we still not know how the larger, strategic bets will play out, of which this prisoner swap is just a tiny and marginal part, we may *never* know, even if we live long enough for the dust to (mostly) settle. Alas, the question “What just happened?” turns out to be a lot easier to ask than to answer.