SCRAPS OF PAPER

By John R. Haines

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“No violations of a treaty can be considered to be a minor matter, nor can there be confidence in agreements if a country can pick and choose which provisions of an agreement it will comply with.”

President Ronald Reagan (1987)

Trust and mistrust can make the difference between war and peace. So writes international security scholar Andrew Kydd, for whom trust as is a belief that the other side prefers mutual cooperation to exploiting one's own cooperation, while mistrust is a belief that the other side prefers exploiting one's cooperation to returning it. Thus to trust someone is to believe it relatively likely that they would prefer to reciprocate cooperation.

So the question is: should we trust—or mistrust—Iran? Will Iran reciprocate—or exploit—our willingness to suspend international sanctions, enable its domestic nuclear energy infrastructure, and to welcome it back to the community of nations?

If we accept the recent assessment by Kenneth Pollack of the Brookings Institute, then we should not trust Iran. Pollack's testimony before the Senate Foreign Relations Committee included this observation:

"Ayatollah Khamenei’s various statements in recent weeks continue to lead me to conclude that he views the JCPOA [the Joint Comprehensive Plan of Action] in purely transactional terms. It is a straightforward deal for him: sanctions relief for constraints on his nuclear program. Nothing more and nothing less. It seems unlikely he will countenance a wider rapprochement with the United States, although we can all hope that Foreign Minister Javad Zarif and President Hassan Rouhani will be able to convince him otherwise."


3 Ibid., 6.
4 Ibid., 9.
5 Pollack’s full 4 August 2015 statement before the Senate Foreign Relations Committee is available here: http://www.brookings.edu/research/testimony/2015/08/05-us-policy-iran-nuclear-deal-
It is worth considering whether the inference about Ayatollah Khamene'i has merit. By any reasonable assessment, the JCPOA is an odd document. Words like "promise" and "agree"—typical cornerstones of any enforceable agreement—appear nowhere in the text. It is usual and customary to structure international agreements as an exchange of promises. The performance of one party is conditioned on the performance of the other. That exchange is nowhere to be found, however: the agreed-to document is not even an agreement but a Joint Comprehensive Plan of Action (JCPOA). The role of a plan of action is to implement promises each party made in some agreement. The JCPOA does no such thing. It is simple tit for tat—Iran postpones certain aspects of its nuclear program, in exchange for broad sanctions relief.

Lest anyone doubt whether this characterization is fair, go immediately to the JCPOA text in which all the subsequently detailed commitments are called “voluntary measures.” The balance of the terms—the so-called "provisional application" (allowing Iran to withdraw during the first eight years and no longer be bound), the flaccid "snapback" (requiring UN Security Council approval and failing to apply with retroactive effect on earlier contracts), and its effective termination in ten years (by which all sanctions on Iran formally terminate along with the limits on its nuclear fuel cycle)—are fully consistent with this reading.

This raises a broader question of verification and assurance. Verification is where one party—say, the United States or the International Atomic Energy Agency (IAEA)—by its own efforts produces information about the other party’s—say, Iran’s—fulfillment of its promises. Assurance is where a party provides information about itself to the other to demonstrate in a positive way that it is fulfilling its promises, by for example providing confidential documents or physical evidence of compliance. In this sense verification and assurance are complementary. Iran, however, seems intent on perverting assurance to frustrate verification—demanding, for example, that it alone produce environmental samples as the basis of IAEA physical verification.

When President George H.W. Bush submitted the START treaty for ratification by the United States Senate in 1991, he declared it created "the most extensive and intrusive inspection regime ever included in an arms control agreement." START provided for twelve different types of inspection, including baseline inspections to confirm data provided on signing the agreement, and snap "suspect-site" inspections. The JCPOA does no such thing. It requires little more of Iran than compliance with its existing treaty obligations. START and its contemporary arms control agreements were remarkable for their level of detail, both as to substantive obligations and provisions for verification. The JCPOA, while laboriously prescriptive in some aspects, provides little in the way of positive assurances or confidence-building measures.

The international law scholar Kenneth Abbott wrote that nations understandably are "reluctant to enter into agreements without clearly defined mechanisms for the ongoing production of reasonably timely and reliable information...Such mechanisms (contained either within the agreements themselves or parallel to them) may determine the success of an agreement in practice." Here again, the JCPOA verification procedures are spelled out in confidential annexes, including the secret "roadmap" agreement on the possible military dimensions of Iran's nuclear program—the much-discussed agreement between the IAEA and Iran, to which the United States and the other E3/EU+3 states are not privy. It is true the United States has indicated it will undertake, at some level, steps to verify Iranian compliance unilaterally, on the assumption that Iran will, consistent with past practice, engage in purposeful concealment and misdirection. Iran makes no promise not to do so, or to refrain from actively interfering with the United States’ efforts.
This makes likely an effective continuation of the current stalemate, now more than a decade old. "The United States remains convinced that Tehran has been pursuing a clandestine nuclear weapons program, in contradiction to its obligations as a party to the Nuclear Non-proliferation Treaty (NPT)."12 So concluded the Director of Central Intelligence in a 2003 unclassified "721 Report" to Congress—mandated under a section of the 1997 intelligence authorization law that gave the report its name13—summarizing findings by CIA’s Weapons Intelligence, Nonproliferation and Arms Control Center (WINPAC).

Exactly ten years ago this month, the United States State Department reached a similar conclusion:

"The breadth of Iran’s nuclear development efforts, the secrecy and deceptions with which they have been conducted for nearly 20 years, its redundant and surreptitious procurement channels, Iran’s persistent failure to comply with its obligations to report to the IAEA and to apply safeguards to such activities, and the lack of a reasonable economic justification for this program leads us to conclude that Iran is pursuing an effort to manufacture nuclear weapons, and has sought and received assistance in this effort in violation of Article II of the NPT [Nuclear Nonproliferation Treaty]."14

The following month, in September 2005, the IAEA "found that Iran's many failures and breaches of its obligations to comply with its NPT Safeguards Agreement...constitute noncompliance" with the IAEA Statute, an international treaty that Iran ratified in 1958.15 This includes Iran's obligations under the aforementioned Article II, which prohibits efforts to manufacture or acquire nuclear weapons16; and Article III, which requires states (like Iran) that have ratified the NPT to accept IAEA safeguards. The authoritative International Institute for Strategic Studies concluded in 2006:

"Iran claims it pursued its enrichment programme in secret for 18 years because, under the terms of its safeguards agreement with the IAEA, Iran was not required to declare facilities until six months before nuclear material is introduced, and it buried the Natanz enrichment plant underground for fear of attack. Iran claims the 14 different ways in which it violated its safeguards agreement were all minor, technical reporting failures. In answer to why it has refused to cooperate fully with the IAEA to resolve the many unanswered questions about the programme, Iran claims the questions intrude on its rights, commercial secrets and military security requirements...Some of the explanations make a prima facie case. Together, however, the series of justifications do not hold up to scrutiny. The most logical and straightforward explanation is that the programme has a military connection."17

Little seems to have changed over the succeeding decade, save E3/EU+3 inanition with the sanctions regime.

Where does this leave us? The lesson of history is not encouraging. Asking "Will we allow it to happen again?" Harlow Hyde

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12 Director of Central Intelligence (2003). "Unclassified Report to Congress on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions, 1 July Through 31 December 2003." https://www.cia.gov/library/reports/archived-reports/1/July_dec2003.htm#iran. Last accessed 6 August 2015. In addition to Iran's suspected violation of its NPT obligations, the DCI concluded that Iran was likely in violation of its commitments under the Chemical Weapons Convention and the Biological Weapons Convention, respectively.


14 United States State Department (2005). "Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments," 80. http://www.state.gov/documents/organization/52113.pdf . Last accessed 6 August 2015. The shorthand "NPT" stands for the 1958 "Treaty on the Non-Proliferation of Nuclear Weapons". Its Article II states that non-nuclear weapon states shall neither “manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices” nor “seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.”

15 In the case of Iran, UN Security Council resolutions have been used to make mandatory certain IAEA demands regarding Iran's nuclear program. The legal basis for these resolutions is Chapter VII, Article 39 of the United Nations Charter. It states that the Security Council "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken...to maintain or restore international peace and security."

16 This would include the construction of an experimental or prototype nuclear explosive device as well as the production of components which could only have relevance to a nuclear explosive device.

writes:

"A peace...marked by the thinly masked existence of aggressive ideologies or militaristic and expansionist desires, which behind the diplomatic niceties and paper promises are straining at the leash only waiting for moments of opportunity to strike. Under these conditions, peace through disarmament is doomed to failure. Indeed, if the events of the period between the wars give any lesson at all, it is that disarmament under conditions which are lacking in 'true peace' will only serve to make war more probable and it will come more quickly."\(^{18}\)

JCPOA defenders are fond of the Russian proverb Ronald Reagan adopted as his signature phrase during the December 1987 summit with Mikhail Gorbachev: doveryai no proveryai, the usual idiomatic translation of which is "trust but verify".\(^{19}\) That phrase, Kydd writes, "nicely captured the mistrust that plagued the superpower relationship while at the same time suggesting that trust could be rebuilt if words were accompanied by deeds that could be verified."

The Obama Administration's enchantment with the JCPOA's presumptively-transformative effects (on Iran) makes it determined to move the Iran relationship (by force of will, if no other way) from the dictum "Doverai no proveryai to the Prussian maxim during the reform years of the Napoleonic defeat: Vertrauen adelt ('Trust ennobles')."\(^{20}\) However, Kydd writes, "As if inspired by the proverb, the INF treaty signed at the summit contained verification provisions that were unprecedented in U.S.-Soviet arms control."\(^{21}\) The JCPOA does no such thing.

Instead, it opts for the delphic. There is no way—apart from the privileged few (from whose ranks the United States Congress is excluded)—to assess its verification procedures, which for the most part are spelled out in the secret "roadmap" agreement (on Iran disclosing past nuclear weapons activities) and the JCPOA's "confidential" annexes. If assurance provisions serve as a litmus test—and the JCPOA does not even require Iran to affirm that it possesses no nuclear weapons—then verifying Iranian compliance will be burdensome and difficult game of interpreting shadows on the wall.

Trust may indeed ennoble, as the maxim promises. Then again, it may not. Neville Chamberlain's biographer David Dilks wrote that Chamberlain believed he could trust and manage Hitler and Mussolini, neither of whom, however, were ennobled in the least by it. That is "trust" of a sort born out of vanity and an overestimation of one's capacity to read a situation.\(^{22}\) Simply put, it is self-deception.

That the United States cannot—nor should it—avoid interactions with Iran and like rogue states is axiomatic. The Obama Administration is right to seek accord with such states that further peace and stability. That being said, it would be well advised to heed a warning from the always-quotable Godfather trilogy. To paraphrase, we may do business with the Iranian government; we may respect the Iranian government; but we should never trust the Iranian government.\(^{23}\)

\(^{18}\) Hyde (1988), *op cit.*, 337-340. Hyde preceded this paragraph with a reflection on the interregnum of the 1920s and 1930s: "[I]f the history of treaties between the World Wars teaches anything, it is that totalitarian systems uniformly violate treaties. Japan, Germany, Italy, and the Soviet Union all signed treaties both to limit arms, to refrain from the use of force, and to recognize the territorial integrity of other nations...In contrast to the uniform record of treaty violations by the dictatorships, the democracies were uniform in their strict and scrupulous observance of the treaties...Compliance with the treaties by the United States was absolute to a fault."

\(^{19}\) Russian: Доверяй, но проверяй. Lenin's reputed variation on the proverb is the dictum "Trust is good, but control is better".


\(^{21}\) *Ibid.*

\(^{22}\) The author credits these categories to Harmonie Toros' unpublished 2015 paper "Chamberlain, Hitler and the 'Illusion of Knowledge': Deceptive Quicksands on the Long Road to Trust".

\(^{23}\) In *The Godfather II*, the character Frank Pentangeli says to Michael Corleone, "Your father did business with Hyman Roth, your father respected Hyman Roth, but your father never trusted Hyman Roth!"