

# TRUMP'S IRANIAN DIKTAT

*Ibrahim Warde*

Donald Trump built his businesses on the principle that everything can be renegotiated. As a property developer, Trump would claim when a building project was complete that the work was shoddy, or some similar accusation, to void his contracts. He would then impose new financial terms on contractors, saying: "I'm going to pay you, but I'm going to pay you 75% of what we agreed to." Those who rejected his offer had to begin costly litigation, facing tough, wily lawyers and an uncertain outcome. In the ghostwritten book *Trump: Think Like a Billionaire* (2004) he said its readers should always challenge invoices. His reputation as a bad payer was so well known that many suppliers and banks refused to do business with him.<sup>1</sup>

In *Think Big and Kick Ass in Business and Life* (2007), Trump claimed he loved "to crush the other side and take the benefits" and to laugh at bankers who lost money they loaned to him. "I figured it's the bank's problem, not mine. I actually told one bank 'I told you [that] you shouldn't have loaned me that money.'" Deutsche Bank, the only large institution that still does business with the Trump Organization, had a salutary experience at the height of the financial crisis in 2008. It took legal action against Trump over a \$40 million debt. He counter-attacked, demanding \$3 billion from the bank by claiming that his cash flow problems had been caused by the financial crisis, for which Deutsche Bank was partly responsible. The bank extended his loan for five years. Trump has always known that threats of legal action are powerfully dissuasive, and he is estimated to have been involved in over 3,500 legal actions as plaintiff or defendant.

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The political novice Trump promised to use his talents as “the greatest negotiator in history” in his country’s service, and said that as soon as he became president he would take steps to tear up the “horrible” Iran nuclear deal and the Paris climate accord. He did not care that he was flouting international law or was opposed by other signatories. His boss-by-divine-right methods and ignorance of history and diplomacy combined with his desire to undo the legacy of Barack Obama. Intent on breaking convention, Trump trusted his instincts and applied the methods he had perfected as a real estate developer and reality television star to international relations.

### **Iran Respected the Terms of the Deal**

The Iran deal, officially the Joint Comprehensive Plan of Action (JCPOA), was signed in Vienna on July 14, 2015, by Iran, Germany and the five permanent members of the UN Security Council (the United States, United Kingdom, Russia, China, and France), after several years of tough negotiations. Sanctions imposed on Iran by the Security Council in 1995 would be progressively lifted in return for halting the military nuclear research program and allowing international monitoring until 2025. The deal was unanimously endorsed on July 20, 2015, by Security Council resolution 2231.

Anticipated economic benefits were essential to the deal. While Iran’s foreign trade has increased, the expected boom has not happened, mostly because earlier sanctions approved by Congress after the Islamic Revolution in 1979 are still in place. To many Iranians, this is bad faith on the part of the United States: its authorities have deliberately maintained ambiguity over dollar-denominated transactions to discourage potential investors and exporters. Yet for exporting countries, progress has been significant; the value of France’s exports to Iran has tripled from \$500 million in 2015 to \$1.5 billion in 2017.

Iran, though often regarded as a rogue state, has respected the terms of the deal, as confirmed by the International Atomic Energy Agency (IAEA) and regular certification from the U.S. government. This explains why Trump, who took office in January 2017, waited till May 2018 to pull out of the agreement. Both former Secretary of State Rex Tillerson and former National Security Advisor General H. R. McMaster recognized the merits of the agreement and opposed withdrawal. It was only after Trump replaced them with hawks Mike Pompeo and John Bolton that he had freedom to maneuver. Even though no other country has followed the U.S. lead and withdrawn, Trump’s decision has serious consequences for Iran’s relations with Europe because of the re-imposition of sanctions against U.S. and foreign companies that trade with Iran.

The issue of extraterritorial applicability of U.S. laws dates back to the cold war. After Poland imposed martial law in December 1981, Ronald Reagan stopped U.S. companies from taking part in a pipeline construction project intended to supply European countries with gas from Siberia. In June 1982 this embargo was extended to

their subsidiaries and to foreign companies working under U.S. licenses, on the grounds that the Soviet Union might take advantage of national technologies.

This decision provoked uproar, and retaliatory measures from Europe forced a U.S. retraction. Europe replied to the U.S. weapon of extraterritoriality with legislation that prohibited European companies from submitting to foreign jurisdictions. British Prime Minister Margaret Thatcher, despite being Reagan's great ally, was adamant that the United Kingdom had to honor its trading commitments as a matter of principle. She invoked the Protection of Trading Interests Act (1980), which prohibited submitting to U.S. demands when national interest was at stake. In France, Jean-Pierre Chevènement, then minister for research and industry, resorted to a 1959 rule introduced by General de Gaulle, and ordered the Dresser-France company, a subsidiary of a U.S. engineering group, to disregard instructions from its parent company. Ultimately, the United States gave in and sanctions were lifted in November 1982.

After the cold war there was another intensification of extraterritorial claims on the grounds that globalization necessitated common rules. In 1996 the United States passed legislation based on this principle: the Helms-Burton Act targeted foreign companies that invested in Cuba and the D'Amato-Kennedy Act applied to Iran and Libya. The EU responded with a blocking measure preventing any European person, physical or legal, being subject to administrative, legislative or judicial actions by a foreign power. It also initiated a claim before the World Trade Organization's Dispute Settlement Body to challenge the extraterritorial applicability of these U.S. laws. The European Commission even drew up a list of U.S. companies that might be affected by tit-for-tat sanctions. Its resolve paid off and the United States agreed to suspend its sanctions against the EU, which then withdrew its WTO complaint.

### **“Needless Friction”**

The issue was affected by 9/11, as the global nature of terrorism seemed to justify the global surveillance of capital flows. The 2001 Patriot Act gave the executive branch more powers. It made all dollar-denominated transactions subject to U.S. law, initiating the globalization of “U.S.-style compliance” measures. The act applied even when transactions did not take place in the United States, another example of what De Gaulle called the dollar's “exorbitant privilege.”

Through compulsion and imitation, U.S. laws and practices spread internationally. Legislation enacted throughout the world to tackle money laundering, the funding of terrorism or corruption is modelled on that of the United States. Often the U.S. Department of Justice initiates proceedings and sanctions foreign entities for infractions committed beyond its borders. In June 2014 BNP Paribas bank was ordered to pay the U.S. Treasury \$8.9 billion for contravening the U.S. embargo on Cuba, Iran and Sudan through its Swiss subsidiary.<sup>2</sup>

European multinationals have also fallen foul of the Foreign Corrupt Practices Act (FCPA), a law dating from 1977 that prohibits bribing the leaders of a third country to secure contracts. Several companies have paid significant fines, including France's Alstom (\$772 million in 2014) and Germany's Siemens (\$800 million in 2008). Even a tenuous link is enough to make the U.S. justice system assert its jurisdiction; in the BNP Paribas case, the illicit transactions were denominated in dollars. Holding an account in the United States, or even sending and receiving emails that use a U.S.-located server, can be enough for prosecution.

The Iran sanctions are a new development. The day that Trump pulled out of the deal, the new U.S. ambassador in Berlin, Richard Grenell, tweeted what sounded like an order: "German companies doing business in Iran should wind down operations immediately." (He later explained that "the word 'should' is at a moral level.") The new secretary of state, Mike Pompeo, has vowed to bring states that come to Iran's aid to their knees unless Iran agrees to 12 conditions tantamount to capitulation. In a 10-page guidance memo, the U.S. Treasury's Office of Foreign Assets Control (OFAC) published rules that will govern the new sanctions regime. Those classified as "secondary," which were lifted under the Vienna agreement, will be re-imposed: on the automobile industry on August 6, 2018, after a 90-day wind-down, and on the oil sector on November 4, after a 180-day wind-down. Companies failing to comply could, at Trump's discretion, be placed on a Specially Designated Nationals List. Their assets could then be frozen and U.S. companies and individuals would not be allowed to do business with them.

At the Sofia Summit (May 16-17, 2018), European leaders were unanimous in their intent to stick to the Iran deal, a pious hope, but did not mention any appeal to the WTO. The only concrete announcement was the implementation of a 1996 block that aims to neutralize the extraterritorial effects of U.S. sanctions. France's economy minister Bruno Lemaire proposed independent funding mechanisms to enable investment in Iran, and EU-funded compensation for companies affected by the U.S. secondary sanctions. But there is no guarantee that he will convince his European counterparts, and these measures are insignificant compared to the threat of being shut out of the U.S. market.

Since his election, Trump has moved steadily further from Europe. His affinity with authoritarian regimes and his alignment with Israel and the majority of Gulf states on Iran presage a major confrontation with his transatlantic allies. But history clearly shows the threat unilateralism poses to U.S. interests. In 1997 Zbigniew Brzezinski, Brent Scowcroft and Richard Murphy (close diplomatic advisers of Presidents Carter, Bush and Clinton) warned: "The policy of unilateral U.S. sanctions against Iran has been ineffectual, and the attempt to coerce others into following America's lead has been a mistake. Extraterritorial bullying has generated needless friction between the United States and its chief allies and threatened the international free trade order that America has promoted for so many decades."<sup>3</sup>

## NOTES

<sup>1</sup> The present article originally appeared in *Le Monde diplomatique*, June 3, 2018. We at JPRI and the Asia Pacific Peace Studies Institute are grateful to Dr. Warde for reprint permission. For more on Trump's track record prior to entering the White House, see Alexandra Berzon, "Donald Trump's Business Plan Left a Trail of Unpaid Bills," *The Wall Street Journal*, June 9, 2016; Ibrahim Warde, "45th President of the United States," *Le Monde diplomatique*, English edition, December 3, 2016.

<sup>2</sup> Ibrahim Warde, "BNP Paribas's Sins," *Le Monde diplomatique*, English edition, July 7, 2014; Jean-Michel Quatrepoint, "If It's in Dollars, It's Ours," *Le Monde diplomatique*, English edition, February 9, 2017.

<sup>3</sup> Zbigniew Brzezinski, Brent Scowcroft, and Richard Murphy, "Differentiated Containment," in *Foreign Affairs* 76 no. 3 (May-June 1997): 20-30.

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