

ISSUE BRIEF

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Time to Decertify the Iran Nuclear Agreement

James Phillips

The Trump Administration faces an October 15 deadline under the Iran Nuclear Agreement Review Act of 2015 to certify Iranian compliance and several other aspects of the nuclear agreement, formally known as the Joint Comprehensive Plan of Action (JCPOA). After the State Department twice certified the agreement in order to meet 90-day deadlines earlier this year, President Donald Trump indicated that he was reluctant to do so again—and it is almost impossible to see how he could do so. Iran has proclaimed it will not permit inspections of its military bases, which are permitted—indeed necessary—under the nuclear deal. The Trump Administration should decertify and adopt a strategy to either fix or abrogate the nuclear deal.

The Four Elements of Certification

Every 90 days, the Administration is required by law to certify four conditions related to the JCPOA:

“(i) Iran is transparently, verifiably, and fully implementing the agreement, including all related technical or additional agreements;

“(ii) Iran has not committed a material breach with respect to the agreement or, if Iran has

committed a material breach, Iran has cured the material breach;

“(iii) Iran has not taken any action, including covert activities, that could significantly advance its nuclear weapons program; and

“(iv) suspension of sanctions related to Iran pursuant to the agreement is—

(I) appropriate and proportionate to the specific and verifiable measures taken by Iran with respect to terminating its illicit nuclear program; and

(II) vital to the national security interests of the United States;”

It is increasingly difficult to argue that it is vital to the national security interest of the United States to continue granting billions of dollars of sanctions relief that will strengthen a rogue regime that leads chants of “Death to America”; exports terrorism; threatens U.S. allies; harasses U.S. Navy warships in the Persian Gulf; defies U.N. Security Council Resolutions on ballistic missile tests, arms imports, and arms exports; and arrests innocent American citizens to hold as hostages. All of these actions violate the spirit, if not the letter, of the JCPOA.

JCPOA Violations and Loophole Exploitations

Iran has not “transparently, verifiably and fully” implemented the letter of the JCPOA. It has been caught cheating at the margins on centrifuge devel-

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opment, heavy water restrictions, technology procurement, and export controls. Tehran exceeded the JCPOA's restrictions on research on advanced centrifuges, and last year sought to acquire illicit carbon fiber material, a key component of advanced centrifuges. It twice violated the 130-metric-ton cap on heavy water. It also shipped excess supplies of heavy water to Oman and retained ownership of it, rather than selling or disposing of it, as originally required under the JCPOA, before the Obama Administration secretly and unwisely agreed to exempt Iranian heavy water held overseas.¹

Tehran also sought to acquire illicit materials outside the mandatory procurement channel set up by the JCPOA. It was caught red-handed trying to purchase nuclear technology and restricted ballistic-missile technology from German companies.²

Perhaps the biggest obstacle to certifying that Iran is fully and verifiably implementing the JCPOA and related agreements is that Tehran has publicly rejected inspections of its military bases. This has prevented the International Atomic Energy Agency (IAEA) from verifying Iranian compliance with prohibitions against nuclear-weapons-related work. To make matters worse, the IAEA has refrained from pushing the issue because it does not want to give the Trump Administration an "excuse" for jettisoning the JCPOA.³

IAEA Director General Yukiya Amano dropped a bombshell on September 26 when he was asked if his agency had the means to verify that Iran was not

working on a nuclear explosive device. He replied that "[our] tools are limited" and that "[m]ore clarification would be helpful.... Russia has a different view. [It believes] that is not the mandate of the IAEA."⁴ This prompted Nikki Haley, the U.S. Ambassador to the U.N., to blast Moscow: "It appears that some countries are attempting to shield Iran from even more inspections. Without inspections, the Iran deal is an empty promise."⁵

U.N. Security Council Resolution (UNSCR) 2231, which endorsed the JCPOA and therefore is another "related agreement" that must be accounted for in the certification process, imposes restrictions on ballistic-missile development and arms transfers to and from Iran. Tehran has repeatedly violated these restrictions. It has conducted multiple ballistic-missile tests, including at least one test of a missile with a message inscribed in Hebrew: "Israel must be wiped off the earth."⁶

Iran has been caught at least twice trying to import illicit weapons, and many more times illegally exporting arms to Iraq and Syria, insurgent groups in Afghanistan, Bahrain, Somalia, and Yemen, as well as to terrorist groups, such as Hezbollah, Hamas, and Palestine Islamic Jihad.⁷ The U.S. has responded with targeted sanctions on individuals and entities involved in Iran's ballistic missile program, but the U.N. has failed to punish these violations.

Tehran also has violated the travel ban included in UNSCR 2231 on certain Iranian officials, notably including Major General Qassem Soleimani, the

1. David Albright, "Assessing the Iran Deal: Examining Iranian Non-Compliance with the Joint Comprehensive Plan of Action and United Nations Security Council Resolution 2231," testimony before the Subcommittee on National Security, Committee on Oversight and Government Reform, U.S. House of Representatives, April 5, 2017, http://isis-online.org/uploads/conferences/documents/Albright_House_Oversight_Subcommittee_5Apr2017_Final.pdf (accessed September 29, 2017).
2. Anton Troianovski and Jay Solomon, "Germany Says Iran Kept Trying to Get Nuclear Equipment After Deal," *The Wall Street Journal*, July 8, 2016, <https://www.wsj.com/articles/germany-says-iran-kept-trying-to-get-nuclear-equipment-after-deal-1468006075> (accessed September 29, 2017).
3. Francois Murphy, "U.S. Pressure or Not, U.N. Nuclear Watchdog Sees No Need to Check Iran Military Sites," Reuters, August 31, 2017, <https://www.reuters.com/article/us-iran-nuclear-inspections/u-s-pressure-or-not-u-n-nuclear-watchdog-sees-no-need-to-check-iran-military-sites-idUSKCN1BB1JC> (accessed September 29, 2017).
4. Francois Murphy, "IAEA Chief Calls for Clarity on Disputed Section of Iran Nuclear Deal," Reuters, September 26, 2017, <https://www.reuters.com/article/us-iran-nuclear-iaea/iaea-chief-calls-for-clarity-on-disputed-section-of-iran-nuclear-deal-idUSKCN1C12AN> (accessed September 29, 2017).
5. "U.S. Envoy Slams Russia for Bid to Shield Iran from IAEA Inspections," Reuters, September 28, 2017, <http://www.reuters.com/article/us-iran-nuclear-usa-iaea/u-s-envoy-slams-russia-for-bid-to-shield-iran-from-iaea-inspections-idUSKCN1C32II> (accessed September 29, 2017).
6. Tim Hume and Alireza Hajihosseini, "Iran Fires Ballistic Missiles a Day After Test; U.S. Officials Hint at Violation," CNN, March 9, 2016, <http://www.cnn.com/2016/03/09/middleeast/iran-missile-test/> (accessed September 29, 2017).
7. Kenneth Katzman, "Iran's Foreign and Defense Policies," Congressional Research Service, September 22, 2017, <https://fas.org/sgp/crs/mideast/R44017.pdf> (accessed September 29, 2017).

commander of the elite Quds Force of the Islamic Revolutionary Guard Corps, who has publicly travelled to Iraq, Russia, and Syria.

Even if Tehran halted its cheating and rigorously complied with the text of the JCPOA, the flawed structure of the agreement only postpones the potential threat of an Iranian nuclear breakout by allowing Iran to ramp up its uranium-enrichment capabilities to the point where it could quickly make a final sprint to a nuclear weapon capability. For all of these reasons, the State Department should decertify the JCPOA.

The Key Issue: Try to Fix the JCPOA or Walk Away?

Decertification would not automatically trigger the collapse of the nuclear deal, but would set the stage for reviewing the terms and results of the JCPOA. Congress would have 60 days to debate whether to restore nuclear-related sanctions lifted by the JCPOA. Before that debate begins, the Trump Administration must decide whether to abrogate the deal unilaterally or seek to correct the flaws of the JCPOA through further negotiations.

Walking away from the JCPOA could allow Iran to have its cake and eat it, too. Tehran would be relieved of future obligations under the JCPOA, after pocketing its benefits in terms of front-loaded sanctions relief. Washington could unilaterally re-impose sanctions, but could not count on the U.N. Security Council to re-impose and enforce U.N. sanctions unless Iran was found to be in material breach of the JCPOA.

Alternatively, the Administration could try to correct the flaws of the agreement. It could request that Congress hold off on re-imposing nuclear-related sanctions for a defined period until it became clear whether fixing the nuclear deal is possible. This clearly would be a difficult task. Tehran has refused to consider any renegotiation.

But, once the Administration has decertified the deal and Congress is poised to re-apply sanctions, Tehran may reconsider its refusal to renegotiate. To further enhance its diplomatic bargaining leverage, the Administration could ask Congress to authorize the use of military force as a last resort if necessary to prevent an Iranian nuclear breakout. The Administration should also push for an inspection of the Parchin military base, where Iran was suspected of conducting illicit work to advance a nuclear weap-

ons program. If Iran refused, U.N. sanctions would snap back.

The prospect of new sanctions would give Washington renewed leverage over Iran and over European signatories of the JCPOA. Although they all have opposed renegotiating the agreement, they may drop their objections when it becomes clear that would be tantamount to letting the deal die.

But renegotiating the JCPOA would only be worthwhile if it permanently barred Iran from acquiring nuclear weapons. At a minimum, this would require:

- Banning Iran from uranium-enrichment and plutonium-production activities;
- Dismantling substantial portions of Iran's nuclear infrastructure, particularly the Fordow and Natanz uranium-enrichment facilities and Arak heavy water reactor;
- Performing robust inspections on an "anytime anywhere" basis and real-time monitoring of Iranian nuclear facilities;
- Ensuring that Iran comes clean on its past weaponization efforts; and
- Determining a clear and rapid process for re-imposing all sanctions if Iran is caught cheating.

Decertification Is Necessary to Hold Iran Accountable

The JCPOA is a risky and fundamentally flawed agreement that gave Tehran massive sanctions relief up-front, while only requiring it to make temporary and easily reversible concessions. Contrary to the promises of the Obama Administration, the nuclear deal has not moderated Iran's foreign policy. In fact, Tehran has stepped up its malign activities in the region since 2015, and the nuclear agreement has made a bad situation worse by boosting Iran's dictatorship in the economic, military, and geopolitical spheres. Decertification is the necessary first step in holding Iran accountable for its aggressive foreign policy, and permanently blocking its path to a nuclear weapon. It gives European allies an incentive to seek a better nuclear deal, and signals Iran that it will pay a rising price if it continues its hostile policies and nuclear weapons ambitions.

Five Heritage Foundation Analyses of JCPOA Key Issues

State Department Confirms Iran Compliant with Nuclear Deal, But Warns Tehran Still on Notice

James Phillips
Commentary

April 20, 2017

<http://www.heritage.org/middle-east/commentary/state-department-confirms-iran-compliant-nuclear-deal-warns-tehran-still>.

Secretary of State Rex Tillerson, in a letter to House Speaker Paul Ryan, wrote that Iran remained compliant with the agreement, but that the Administration was concerned about Tehran's support for terrorism and is reviewing whether to continue suspending sanctions, as required under the deal. Congress mandated that the State Department must notify it every 90 days about Iran's compliance with its nuclear obligations.

Trump Administration Slaps Sanctions on Iran for Missile Test and Other Provocations

James Phillips
Commentary

February 7, 2017

<http://www.heritage.org/middle-east/commentary/trump-administration-slaps-sanctions-iran-missile-test-and-other>.

The Trump Administration followed through with a new round of sanctions on Iran, two days after National Security Advisor Michael Flynn announced that it was "officially putting Iran on notice" for a missile test and its hostile regional policies. The sanctions were targeted at 13 individuals and 12 entities for their support for Iran's ballistic-missile program or for the Islamic Revolutionary Guard Corps Quds Force, which has been designated under an executive order for providing material support to various terrorist groups, including Hezbollah and Hamas.

Iran Is Wrong: Trump Can Absolutely Overturn the Nuclear Deal

James Phillips
Commentary

November 9, 2016

<http://www.heritage.org/global-politics/commentary/iran-wrong-trump-can-absolutely-overturn-the-nuclear-deal>.

Iranian President Hassan Rouhani claimed that there is "no possibility" for the Obama Administration's nuclear deal with Iran to be overturned by President Trump, despite Trump's threat to do so. This is an outright lie. President Obama purposely structured the deal as an executive agreement to make an end-run around Congress, which he knew would oppose the flawed and risky deal.

The Nuclear Deal Has Not Changed Iran

James Phillips
Commentary

May 20, 2016

<http://www.heritage.org/middle-east/commentary/the-nuclear-deal-hasnt-changed-iran>.

Under the Iran nuclear agreement, key restrictions on Tehran's nuclear operations will be lifted in 10 to 15 years. This makes no sense. The Obama Administration hinted that the nuclear deal itself makes transformation possible by somehow helping Iranian "moderates" in their power struggle with hard-liners. But the outcome of Iran's opaque internal power struggle is wholly unpredictable. Washington would be wise not to overestimate its ability to shape Iranian politics.

The Dangerous Regional Implications of the Iran Nuclear Agreement

James Phillips

Backgrounder No. 3124

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<http://www.heritage.org/middle-east/report/the-dangerous-regional-implications-the-iran-nuclear-agreement>.

The Obama White House treated Iran's hostile regime with kid gloves. In the process of courting Iran, the White House was perceived to be abandoning traditional Arab allies, without establishing a credible security architecture in the region to contain and roll back Iran. It is now up to the Trump Administration to mitigate the dangerous Middle East legacy bequeathed by the Obama Administration. Congress can play a helpful role by convincing Tehran and U.S. allies that Iran does not have a free

pass to establish regional hegemony. Washington must impose clear and mounting costs on Iran for its hostile policies.

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