

ISSUE BRIEF

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Time to End or Mend the Iran Nuclear Agreement

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President Donald Trump set the stage for ending or mending the flawed 2015 Iran nuclear agreement when he announced on October 13 that he would not certify the agreement. Under the terms of the Iran Nuclear Agreement Review Act (INARA), which requires a certification statement every 90 days, the President found that the sanctions relief granted by the nuclear deal was not “appropriate and proportionate” to the specific and verifiable measures taken by Iran with respect to terminating its illicit nuclear program. President Trump also asked Congress to amend current law to strengthen the enforcement of the agreement, take actions to prevent Iran from developing long-range ballistic missiles, and make permanent the restrictions that are set to expire under the nuclear deal.

Under INARA, Congress had 60 days to vote on an expedited basis whether to re-impose sanctions on Iran that were suspended under the nuclear deal. But Congress, busy with other issues, punted the issue back to the President. The President faces deadlines this week about certification once again, as well as whether to renew waivers suspending various nuclear sanctions. President Trump should keep his options open, renew the waivers, and work with Congress to address the problems inherent in the botched nuclear deal.

U.S. foreign policy is strongest when the President acts with clear congressional backing. But if Congress is unable to reach a consensus in the coming weeks on supporting the President’s efforts to remedy problems with the nuclear agreement, then President Trump should unilaterally terminate the agreement.

A Misconceived Nuclear Deal

The nuclear agreement, known as the Joint Comprehensive Plan of Action (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 on its nuclear program. It did not block Iran’s nuclear ambitions but only postponed them. Key restrictions on Tehran’s nuclear activities expire after 10 years. Under the JCPOA, Iran is given a green light to operate its covertly built, formerly illicit nuclear facilities and gradually expand its uranium enrichment program to an industrial scale. This legitimized Iran’s past nuclear cheating and paved the way for a patient path to nuclear weapons.

It is difficult to argue that the JCPOA effectively advances U.S. goals when Tehran publicly refuses to allow inspections of its military bases in violation of the terms of the deal, develops ballistic missiles capable of delivering nuclear warheads, and eagerly anticipates the expiration of key restrictions on its uranium-enrichment activities.

The JCPOA made a bad situation worse by boosting Iran’s dictatorship in the economic, military, and geopolitical spheres. Contrary to the promises of the Obama Administration, the nuclear deal has not moderated Iran’s foreign policy. In fact, since the nuclear deal was sealed in 2015, Tehran has cashed

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in on the sanctions relief provided under the JCPOA, invested heavily in terrorist proxies, and stepped up its hostile activities in the region.

Iran has harassed U.S. Navy ships in international waters, held American sailors hostage at gunpoint, aggressively intervened to shore up Syrian President Bashar Assad's Syrian dictatorship, remained the world's foremost sponsor of terrorism, and illegally smuggled increasingly sophisticated arms to Hezbollah, Hamas, Palestine Islamic Jihad, and the Houthi rebels in Yemen.

Given clear Iranian violations of the bans on exporting arms and the travel of designated Iranian officials that were restated under United Nations Security Council Resolution 2231, which endorsed the nuclear agreement, it would be foolhardy to presume that Iran would not violate its nuclear restrictions if and when it suits its interests.

As President Trump said in his September 19, 2017, speech to the U.N. General Assembly: "We cannot let a murderous regime continue these destabilizing activities while building dangerous missiles[,] and we cannot abide by an agreement if it provides cover for the eventual construction of a nuclear program."¹

Time to Nix or Fix the JCPOA

The Obama Administration, knowing that the nuclear agreement would be rejected by the Senate if it was submitted as a treaty, crafted the deal as a non-binding political agreement. The JCPOA, which was implemented through executive orders, can therefore be dismantled by executive orders. President Trump could terminate the JCPOA through an executive order restoring sanctions on Iran. Or he could simply decide not to renew the waivers on nuclear-related sanctions suspended under the JCPOA when they expire (between January 10 and 17, 2018) for the Iran Sanctions Act, Iran Threat Reduction and Syria Human Rights Act, Iran Freedom and Counter-Proliferation Act, and Section 1245 of the Fiscal Year 2012 National Defense Authorization Act.

The Trump Administration should:

- **Exercise prudence in the timing of policy announcements.** The White House must be careful about the timing of its decisions on the JCPOA. It would be prudent to focus first on the simmer-

ing crisis with North Korea, which already has nuclear weapons and long-range ballistic missiles. Not only is it the wolf closest to the sled, but buying time on the Iran nuclear issue could minimize the risks of fighting a two-front war.

The Administration also should avoid diverting attention from the current anti-regime protests in Iran, which are eroding the regime's increasingly narrow base of support. Triggering a crisis with Iran now would allow Tehran to mobilize popular support, exploit a nationalist issue, and allow the regime to blame Iran's economic problems on foreign sanctions. The Administration always can walk away from the nuclear deal at a later date, so the sanctions waiver deadlines need not be a determining factor in forging U.S. policy.

Even if the Administration renews waivers on sanctions in January, its decertification statement and announced intention to bolster or leave the JCPOA will put the nuclear deal in limbo and diminish Tehran's economic benefits by discouraging foreign investment in Iran. And after its next decertification statement, Congress again will have a 60-day window to approve legislation on a fast-track basis.

- **Work with Congress to tighten nuclear restrictions on Iran.** The Trump Administration should work with Congress to enact legislation to address the weaknesses of the agreement. The White House reportedly has met with Members of the Senate Foreign Relations Committee to discuss legislation that would impose additional constraints on Iran's nuclear activities. By mandating the restoration of nuclear sanctions if Tehran crossed designated red lines on enriched-uranium stockpiles, centrifuge development, or other benchmarks, Washington could unilaterally extend key restrictions on Iran's accumulation of fissile material beyond the sunset provisions that expire within 15 years under the JCPOA. This would deprive Tehran of the option of ramping up to industrial-scale uranium enrichment to shorten the time required to stage a nuclear breakout. Tehran would need

¹ White House, Office of the Press Secretary, Remarks by President Trump to the 72nd Session of the United Nations General Assembly, September 19, 2017, <https://blogs.state.gov/stories/2017/09/19/en/president-trump-addresses-united-nations-general-assembly> (accessed January 8, 2018).

much more time to make the final sprint to a nuclear weapons capability, giving Washington more opportunity to fashion diplomatic, sanctions, and possible military responses.

- **Pressure Iran to accept stronger restrictions on its nuclear and ballistic missile programs.** Although Tehran has ruled out renegotiating the JCPOA, it may see reason to negotiate a more acceptable follow-on agreement, once it becomes clear that the JCPOA is doomed and it needs to compromise to avoid the return of crippling sanctions. If Iran ignores the red lines set out by the Trump Administration, it will bear the onus for triggering the termination of the JCPOA. A firm U.S. policy backed by a united front of the White House and Congress also could give European allies an incentive to pressure Tehran to accept a renegotiated nuclear deal. President Emmanuel Macron has indicated France could support negotiations for a new accord that addresses U.S. concerns. Other allies could fall into line once they realize that their plans to expand trade with Iran will be blocked by U.S. sanctions unless the weaknesses of the JCPOA are corrected.

If Congress Balks, the President Must Act Unilaterally

The Obama Administration settled for deferring, not preventing, an Iranian nuclear capability. President Trump has rejected this course and adopted a hardline policy that will include renewed sanctions if the JCPOA is not adequately reinforced or renegotiated. To strengthen the deterrent effect of the “sanctions sword of Damocles” suspended over Tehran, it would be preferable if the Administration worked closely with Congress to address the flaws of the JCPOA. Bipartisan congressional support is an important pillar for sustaining long-term U.S. foreign policy. But if Congress is not willing or able to present a united front against Tehran on the nuclear issue, then President Trump must go it alone to prevent Iran from becoming the next North Korea.

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