



July 2016

JCPOA at One

One year since its announcement and six months since its implementation, the nuclear deal between Iran and the P5+1 nations, known as the Joint Comprehensive Plan of Action (JCPOA), has yet to live up to its proponents' highest hopes or give rise to its critics' gravest fears. Without the emergence of a more moderate and cooperative Iranian regime as supporters dared imagine and without the egregious Iranian cheating as opponents dreaded, JCPOA faces what could be the most difficult challenge to overcome: bureaucratic banality. But, with both Washington and Tehran dissatisfied with how the deal has turned out, there may be opportunities to strengthen the agreement around the edges.

Potential avenues for strengthening the deal include:

- Addressing remaining ambiguities in JCPOA by announcing clearer lines for what actions would constitute cheating on the deal.
- Creating a special joint congressional committee, or using the existing committee structure, to oversee implementation of the Iran deal and ensure that its potential is being fulfilled.
- Building a long-term policy in anticipation of Iran's future nuclear development, recognizing that the deal will not prevent Iran from achieving nuclear weapons capability forever and that the character of the Iranian regime is unlikely to fundamentally change.
- Identifying areas where Iran is dissatisfied with the deal, such as the scope of sanctions relief and the lack of foreign investment in its economy, and leverage them to gain further concessions on critical issues not covered by the deal, such as Iran's ballistic-missile program.

Overall, with the deal in effect and tensions in the region continuing to rise, Democrats and Republicans, the White House and Congress, all need to rebuild consensus and cooperate on finding ways to limit Iranian aggression and protect U.S. interests and allies.



BIPARTISAN POLICY CENTER

Introduction

The goal of preventing a nuclear Iran has always been a bipartisan one. However, the fight over JCPOA was contentious, eroding that consensus within Congress, as well as trust between the legislative and executive branches.

The deal's supporters heralded JCPOA as a landmark agreement that would turn back the clock on Iran's nuclear program: imposing tough restrictions on Iran's enrichment activities that will prevent it from producing a nuclear weapon and putting in place the most robust nuclear inspections regime in history. Additionally, supporters of the deal hoped, but did not necessarily expect, that welcoming Iran back into the international community and building a relationship with the former rogue state might help change Iranian behavior in areas such as support for terrorism and domestic human rights abuses.

Opponents of JCPOA asserted that the deal does not do enough to prevent Iran from acquiring a nuclear weapon, imposing only time-limited restrictions that will expire within 15 years, leaving Iran free to pursue as robust a nuclear program as it desires. This arrangement, according to opponents of the JCPOA, dismantles the underpinnings of the non-proliferation regime, and gives Iran legal permission to become a nuclear-capable power. Moreover, with the deal in place, Iranian aggression would be emboldened, and Tehran would have billions more dollars at its disposal to fund destabilizing activities across the region.

Neither sides' most drastic arguments have been borne out yet, but both have been proven right to a certain degree: Iran's nuclear program has been restricted, thus far, but it has also been an intransigent and subversive power intent on wreaking havoc in the Middle East.

Implementation Status

Almost six months after it was first announced, JCPOA went into full effect on January 16, 2016. On what, in the vernacular of the deal, is called "Implementation Day," the International Atomic Energy Agency (IAEA) declared that its inspectors had "verified that Iran has taken the actions specified" by the JCPOA in order for Implementation Day to proceed, namely: implementing restrictions on enrichment and the number of centrifuges it has operating, reducing its stockpile to agreed-upon limits, restricting its ability to produce plutonium, and cooperating with the IAEA to implement monitoring and verification measures.¹ In return, the United States upheld its end of the deal by lifting agreed-upon sanctions.

Thus far, both sides appear to be largely living up to their commitments. However, there remain several areas of concern that must be addressed, either related to ambiguities in the deal itself or emerging loopholes around certain requirements.

U.S. Concerns

PARCHIN AND THE POSSIBLE MILITARY DIMENSION

One of the major ambiguities of the deal is a requirement placed on Iran to disclose its past efforts toward achieving nuclear weapons capability, referred to as the "possible military dimensions" of Iran's nuclear program, or PMD. The agreement directed the IAEA and Iran to work together to address outstanding questions about just what sorts of nuclear weapons research Iran had engaged in, but it did not condition implementation of the deal on Iran providing a complete and accurate accounting.

Without a strong requirement in the text of the JCPOA, the IAEA does not appear to have taken a particularly muscular approach to prying answers out of Iran. For example, it allowed Iran to self-inspect the Parchin Military Complex, the once-secret facility where Iran is believed to have carried out its research into nuclear weapons technology. Unsurprisingly, the IAEA's final assessment,

issued in December 2015, left the PMD issue largely unresolved.² Continued obfuscation and denial by Iran led to little new information in the IAEA's report, which, while lacking in substance, satisfied the JCPOA's minimal requirements.

Nevertheless, the IAEA turned up enough to cause concern. Despite documented efforts by Iran to sanitize the site at Parchin before inspections, inspectors were able to identify two “chemically man-modified particles of natural uranium.”³ The presence of these two particles appears to confirm Parchin's involvement in Iran's nuclear weapons program and should trigger further investigations.

HEAVY-WATER ISSUES

In addition to shutting down Iran's centrifuges for uranium enrichment, the JCPOA also focused on a potential plutonium pathway to a nuclear weapon at the Arak heavy-water reactor. As per the terms of the deal, the Arak reactor is being reconfigured so that it would be incapable of producing enough plutonium for a nuclear weapon, and the core of the reactor was filled with concrete in January 2016.

Despite these restrictions on the Arak reactor itself, JCPOA still allows Iran to produce and possess heavy water—one of the substances used in a plutonium-producing nuclear reactor like Arak—but requires that Iran keep its stockpile of heavy water below 130 tons for the first 15 years of the deal. Any additional heavy water produced by Iran must be sold on the international market.

However, as the deal entered into effect, Iran's stockpile exceeded the limits placed on it, reportedly because Iran was having difficulty finding buyers for its heavy water. The United States stepped in, purchasing \$8.6 million worth of Iran's excess heavy water. This move, according to Secretary of Energy Ernest Moniz, was meant to send a message to the international community: “You want to buy heavy water from Iran, you can buy heavy water from Iran. It's been done. Even the United States did it.”⁴

This move has been heavily criticized as “subsidizing Iran's nuclear program,” potentially sending a different message to Iran: that it can continue to produce heavy water beyond the limits imposed by JCPOA without repercussion, and that the United States will then spend millions of dollars in order to keep Iran in compliance with the deal.⁵

IAEA TRANSPARENCY

One of the biggest selling points of the JCPOA was that it established an unprecedented monitoring and inspections regime that would shine a light on a hitherto secretive and opaque nuclear program. The IAEA and its inspectors are a critical part of this attempt to provide transparency. Since Implementation Day, the IAEA has released two reports, asserting that Iran is abiding by the terms of the deal and that its nuclear program is operating within agreed limits. However, the IAEA reports lack the technical details necessary for independent verification of Iranian compliance—details that were present in IAEA reports on Iran's nuclear program prior to JCPOA.

The IAEA reports lack information on:

- Exact size of Iran's stock of 3.67 percent enriched uranium.
- Number and types of centrifuges that Iran is operating.
- Progress Iran has made in converting its Fordow enrichment plant into a research center.
- Inventory of near 20 percent enriched uranium and progress in diluting that stock.
- IAEA access to nuclear sites such as Parchin.
- Other technical details related to Iran's compliance with the deal and the IAEA's ability to monitor and verify that compliance.

This lack of transparency by the IAEA, a departure from its previous thorough accounting of Iran's nuclear program, risks eroding public confidence in JCPOA as well as trust in the IAEA. If the IAEA is not transparent about Iran's nuclear program when Iran is in compliance with JCPOA, it runs the risk that the agency will be less than forthcoming about any potential violations of the agreement.

Iran's Concerns

The Obama administration has given credit to the international sanctions regime against Iran as one of the main factors that drove Iran to the negotiating table, making JCPOA possible. Now, it is the source of Iran's main gripe about the deal.

Foreign investment following sanctions relief has proven more modest and less immediate than Iranian leadership was likely hoping. This is not due to the United States failing to deliver on the relief it promised, however, but to the complicated and lengthy process of reintegrating a pariah state into the world economy, and to the decisions of individual firms as to whether or not they want to do business with Iran. While nuclear-related sanctions prohibiting businesses from engaging with Iran have been lifted, other types of sanctions still limit U.S. banks from doing business with Iran, and international firms still have other reasons for being wary, such as Iran's support for terrorism and its poor regulation of its own banking sector.

The United States has responded to Iranian dissatisfaction with sanctions relief by offering even more relief: pulling back regulations in order to make it easier for Iran to do business in U.S. dollars and traveling the globe to encourage foreign banks to do business with Tehran. Such steps appear to extend well beyond any requirements the United States has under the terms of the JCPOA. As noted by Stuart Levey, former Treasury undersecretary for terrorism and financial intelligence, who built much of the sanctions regime against Iran: "Washington is pushing non-U.S. banks to do what it is still illegal for American banks to do. This is a very odd position for the U.S. government to be taking."⁶

Beyond JCPOA

While preventing Iran from acquiring nuclear weapons has been the primary objective of U.S. policy, the United States has many concerns about Iran that are not related to its nuclear program and fall outside of the scope of JCPOA. How the United States addresses these concerns, such as Iran's role as a state sponsor of terrorism and exporter of regional instability, without risking Iranian noncompliance with JCPOA is likely to be one of the chief difficulties of America's Iran policy over the duration of the deal.

Sailors

In January 2016, ten U.S. Navy sailors were taken captive by Iran after straying into Iranian territorial waters en route to Bahrain from Kuwait. Following negotiations between Secretary of State John Kerry and his Iranian counterpart, Javad Zarif, the soldiers were released. Kerry described it as a diplomatic victory, whose swift resolution was owed to the channels of communication that had been opened between Iran and the United States through negotiations for the nuclear deal. This release did not come before Iran broadcast images of the sailors, on their knees, being held at gunpoint.

Chief of Naval Operations Admiral John Richardson described the act of taking the sailors captive in the first place as a violation of international law, saying: "Those boats and crewmembers had every right to be where they were that day. The investigation concluded that Iran violated international law by impeding the boats' innocent passage transit, and they violated our sovereign immunity by boarding, searching, and seizing the boats, and by photographing and video recording the crew."⁷

Ballistic Missiles

Despite the potential role that ballistic missiles can play as a delivery vehicle for a nuclear weapon, Iran's ballistic-missile program was not addressed by JCPOA. U.N. Security Council Resolution 2231 did address ballistic missiles, but the resolution lacked strong language, removing explicit prohibitions against ballistic-missile development that had been in previous resolutions and replacing them with much weaker language. The resolution only "calls upon Iran not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology."⁸

Iran did not find the U.N.'s call compelling and undertook a series of ballistic-missile tests, first in late 2015 and then again in March 2016, as part of a large-scale military drill intended to demonstrate Iran's "full readiness to confront all kinds of threats against the Revolution, establishment and territorial integrity."⁹ The Obama administration, the United Nations, and the IAEA failed to respond decisively to Iran's posturing, raising the question of what leverage world powers have to constrain Iran's ballistic-missile program, and whether the political will is present to hold Iran to account for worrisome and destabilizing activities that fall outside of the purview of JCPOA.

Exporting Conflict and Terror

Iran's Islamic Revolutionary Guard Corps (IRGC), and its international arm, known as the Quds Force, act as supporters of regional terrorism and conflict—from Hezbollah, to Hamas, to Bashir al-Assad's embattled regime, to Shia militias in Iraq and Yemen—and have thus been the targets of heavy international sanctions.

Part of the concern over the extensive sanctions relief given to Iran as part of JCPOA was that Iran would not use its newly available funds solely to bolster its failing economy but would also expand its role as a state sponsor of terrorism, with dire consequences for the region—and that, in the process of broad sanctions relief, certain bad actors such as the IRGC would receive direct relief. The Obama administration was particularly insistent that sanctions would remain in place against Qasem Soleimani, commander of the IRGC Quds Force. However, in spite of a travel ban against him, Soleimani was able to travel to Moscow in April 2016, allegedly to discuss shipments of missiles from Russia to Iran, and how Russia and Iran could help the Assad regime in Syria. Additionally, in March 2016, the Australian Navy intercepted and seized a cache of arms that originated from Iran and was likely en route to support Shia Houthi rebels in Yemen.

These two incidents suggest that, in the JCPOA era, Iran sees no reason to halt its support for regional conflicts and, despite the remaining sanctions in place against it, the IRGC is still able to acquire and smuggle weapons to its chosen proxies.

What Lies Ahead?

With implementation of the JCPOA proceeding largely as required by the text of the deal, the specter of a nuclear weapons-capable Iran seems much further off and, therefore, much less pressing than it did a year ago. Policymakers might be tempted to focus on more urgent challenges and relegate implementation and monitoring of the deal to a routine bureaucratic task. For an agreement with such critical importance to both U.S. national security and regional stability, that would be a mistake both in the short- and long-term.

First of all, while Iran is abiding by the most important elements of the deal—restrictions on centrifuges and enrichment—JCPOA's implementation has not lived up to all of its expectations. Iran's self-inspection of the Parchin facility, the finding of unexplained uranium particles as a result of that inspection, Iran's breaching of JCPOA limits on heavy-water production, and the IAEA reporting that contains less information than its pre-JCPOA inspections all indicate that the JCPOA's implementation is yielding less than the full transparency, thorough verification, and complete compliance that the deal promises and that the United States should demand.

Despite the JCPOA's voluminous text, it turns out that gray areas remain in the deal. Iran thinks it is entitled to more sanctions relief. The United States has not treated Iran exceeding its heavy-water production caps as a violation of the deal. **The next administration, working with Congress, should address these ambiguities by drawing clearer lines on what it would consider cheating on the deal and what infractions would rise to the level of calling for the re-imposition of sanctions.**

Moreover, continued high-level oversight of JCPOA implementation by Congress—through, for example, a special joint committee or the existing committee structure—is necessary to ensure that the deal's potential is being fulfilled.

Congressional committee action could provide an independent evaluation of the deal's implementation and assessment on whether its provisions are being enforced as stringently as they could and should be. Committee action, through reports and hearings, would also contribute to public understanding of the deal and Iran's behavior.

Equally important is making sure that the JCPOA is not mistaken as a long-term solution to Iran's nuclear program or a panacea for all U.S. concerns about Iran. To the contrary, the deal is, at best, a stopgap measure. As BPC analysis has shown, even though Iran's breakout window—the time it would take it to sprint for a nuclear weapons capability—might now border on a year, in the next 15 years, as the terms of the JCPOA begin to lapse, it will dwindle down to just months.¹⁰ American policymakers cannot ignore that they will once again, in a decade and a half, be faced with the prospect of a nuclear weapons-capable Iran. Nor can they rely on hope that the nature and intent of the Iranian regime will have changed by then.

As Iran continues to sow conflict throughout the region, expands its ballistic-missile arsenal, and continues its hard-line policies at home, all while the clock on the JCPOA is already ticking down, the United States, together with its partners and allies, needs a plan for addressing Iranian subversion today and its nuclear development tomorrow. **This will require some difficult and bold strategic choices—for example, containing, co-opting, or changing Iran—and a long-term policy that views the Middle East and U.S. interests there through a more comprehensive prism than just the immediate goal of defeating the so-called Islamic State terrorist group.** The groundwork for any such approach must begin by the early days of the next administration. This is no time for resting on diplomatic laurels.

One opportunity for American policymakers to consider is the dissatisfaction of both sides with aspects of the JCPOA. Specifically, Tehran's belief that sanctions relief should have brought it more economic benefit already—in the form of greater foreign investment—and Washington's concern that the deal has legalized Iran's ballistic-missile program. BPC analysis suggests—and experts like former Treasury Undersecretary Stuart Levey confirm—that the JCPOA in no way requires American officials to keep

encouraging banks to do business with Iran, as Iran has requested and Secretary Kerry has done. However, if there are concessions that the United States would still like to wring from Iran—on ballistic missiles, for example—Tehran’s desire for more foreign investment could provide that leverage.

Even as JCPOA is being implemented, the final impact of the deal is not yet certain. If left untended, allowing ambiguities to go unclarified, potential non-compliance to go unchallenged, and the deal’s restrictions to simply lapse, the JCPOA will ultimately give rise to its critics’ worst fears. However, with the oversight and continued involvement of American policymakers, alongside a comprehensive plan that addresses Iranian aggressions today and JCPOA’s expiration in the future, the goal of preventing a nuclear Iran might still be attained. Achieving this, however, will require Democrats and Republicans, the White House and Congress, working together to rebuild the bipartisan consensus that once marked U.S. Iran policy.

Endnotes

1. The International Atomic Energy Agency. *Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015)*. January 16, 2016.
2. Blaise Misztal. "IAEA Report Reveals Iran Obeys Letter of Deal, Not Spirit." *Bipartisan Policy Center*. December 4, 2015.
3. International Atomic Energy Agency. *Final Assessment on Past and Present Outstanding Issues regarding Iran's Nuclear Programme*. December 2, 2015.
4. Jay Solomon. "U.S. to Buy Material Used in Iran Nuclear Program." *The Wall Street Journal*. April 22, 2016.
5. Ibid.
6. Dominic Dudley. "HSBC Hits Out At US Advice To Engage With Iran." *Forbes*. May 13, 2016.
7. United States Navy. *Riverine Command Boat Investigation Press Remarks*. Available at: http://www.navy.mil/navydata/people/cno/Richardson/Speech/RiverineCommandBoat_Investigation_PressConference_CNORemarks.pdf.
8. United Nations Security Council. *Resolution 2231 (2015)*. July 20, 2015.
9. Greg Botelho and Jim Sciutto. "Iran Tests Missiles to Show 'Deterrence Power'; U.S. Alarmed." *CNN*. March 8, 2016.
10. Blaise Misztal. "Can Iran Gain Nuclear Weapons Capability While Complying with the Deal?" *Bipartisan Policy Center*. August 3, 2015.

Notes





Notes



BIPARTISAN POLICY CENTER

The Bipartisan Policy Center is a non-profit organization that combines the best ideas from both parties to promote health, security, and opportunity for all Americans. BPC drives principled and politically viable policy solutions through the power of rigorous analysis, painstaking negotiation, and aggressive advocacy.

bipartisanpolicy.org | 202-204-2400
1225 Eye Street NW, Suite 1000 | Washington, DC 20005

-  [@BPC_Bipartisan](https://twitter.com/BPC_Bipartisan)
-  facebook.com/BipartisanPolicyCenter
-  instagram.com/BPC_Bipartisan
-  flickr.com/BPC_Bipartisan

BPC Policy Areas

- Economy
- Energy
- Finance
- Governance
- Health
- Housing
- Immigration
- National Security



BIPARTISAN POLICY CENTER

**1225 Eye Street NW, Suite 1000
Washington, DC 20005**

202-204-2400
bipartisanpolicy.org