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Dealing with a De-Certified Iran Deal

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President Donald Trump has ample reason, according to the provisions of the Iran Nuclear Agreement Review Act (INARA) of 2015, to withhold certification of the Iran nuclear deal, or Joint Comprehensive Plan of Action (JCPOA). The legislation set out four criteria, all of which have to be met for the president to certify the agreement: full implementation of the deal; lack of a material breach of the deal; no attempt by Iran to advance its nuclear weapons program; and that the deal remains vital to U.S. national security interests.

On at least one of these criteria, and potentially all four, there are legitimate concerns. Most critically, the JCPOA does not prevent a nuclear Iran, it merely delays it and then helps create conditions conducive to the emergence of an Iranian nuclear weapons-capability. Moreover, Iran has attempted to cheat on the deal, and it has not allowed for full and robust inspections of all facilities. Taken together, all of this means that President Trump is justified in withholding certification.

However, just refusing to certify the JCPOA accomplishes little by itself. It does not mean that the United States is pulling out of JCPOA, it does not mean that previously lifted sanctions will be re-imposed on Iran, and it does not provide an answer to several



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enduring problems with JCPOA. The president's decision not to certify the deal is, more than anything, an announcement that the current administration will not be tied to or limited by previous decisions made on Iran policy.

To protect the significant interests that the United States continues to have in the Middle East—in ensuring a reliable supply of oil from the Middle East to global markets, in countering terrorism, in opposing proliferation of weapons of mass destruction, and in supporting the security and prosperity of its allies—any successful Iran policy should pursue some basic objectives and embrace certain fundamental principles:

Objectives

1. Tamp Down on Low-Level Cheating

In multiple areas, Iran has attempted to exploit or create loopholes in the deal, transgressions that do not rise to the level of a “material breach” or warrant the snap-back of all previous sanctions. It is critical that policymakers devise an alternative to this all-or-nothing approach to punishing Iranian limit-pushing.

2. Ensure Full Implementation

Shortcomings in implementation and oversight undermine the effectiveness of JCPOA and limit the ability to judge whether or not Iran is in compliance with the deal. The IAEA needs to be encouraged to take on a more aggressive inspections mission.

3. Address Shortcomings of the Deal

For the JCPOA to fulfill the U.S. objective of preventing a nuclear Iran, it will have to be substantially expanded at some point. At the very least, current restrictions on Iran's enrichment of uranium will have to be extended before they begin to sunset in 2026.

4. Counter Iran's Destabilizing Activities in the Region

Iran is an aggressive state actor. Tehran's pursuit of influence and territory across the Middle East represents a near-term threat to U.S. interests, allies, and credibility. Addressing concerns about Iran's nuclear program and the shortcomings of the JCPOA cannot be done to the exclusion of dealing with these broader regional issues.

Principles

1. Put the Onus on Iran

Iran has draped itself in a veil of benevolence and compliance; President Trump needs to pierce that veil. Americans, U.S. allies, and Iranians must all understand that any action taken by the president is the direct result of Iranian wrongdoings.

2. Maintain Credibility

Just decertifying the deal by itself could unnecessarily alienate U.S. partners. It might convince Europeans that Washington has no intention of honoring the JCPOA. And without a broader regional strategy, Middle Eastern leaders could conclude that the United States is not serious about protecting them. Such a scenario must be avoided at any cost. President Trump must convince U.S. allies and adversaries alike that the United States is a credible actor that stands by its commitments.

3. Prioritize Regional Stability

One way to convince U.S. partners to get on board with a new Iran policy is to focus that policy on Iran's destabilizing and dangerous policies at home and abroad. By presenting Iran as the source of Middle Eastern upheaval and as an oppressive and dictatorial regime, Washington can more easily secure European cooperation and reassure Middle Eastern allies. More important, however, is that this approach gives the United States more flexibility for dealing with Iran's nuclear program as well.

4. Lead, Together

If the president were to withhold certification but then leave it up to Congress to decide whether to reapply sanctions, this would represent a counterproductive and unbalanced approach, one that abdicates too much executive power to the legislature. What is needed instead is a joint and cooperative approach between the president and Congress.

Understanding INARA and JCPOA Certification

The Iran Nuclear Agreement Review Act (INARA) of 2015 requires the president to keep Congress informed of Iran's compliance with the JCPOA and for the president to certify every 90 days that:

- 1. Iran is transparently, verifiably, and fully implementing the agreement, including all related technical or additional agreements.**
- 2. 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.**
- 3. Iran has not taken any action, including covert activities, that could significantly advance its nuclear weapons program.**
- 4. Suspension of sanctions related to Iran pursuant to the agreement is appropriate and proportionate to the specific and verifiable measures taken by Iran with respect to terminating its illicit nuclear program and vital to the national security interests of the United States.**

Under the terms of INARA, the president must certify that all four of these criteria are being satisfied. Should the president determine that the JCPOA does not meet even one of these conditions, that would be grounds for withholding certification. Thus, even though the presidential certification is often described as indicating Iran's compliance with the JCPOA, that is not the sole question at issue. Regardless of Iran's compliance, the president is obliged by INARA to withhold certification if he believes that the JCPOA is not "vital to the national security interests of the United States." On this point, and potentially all four of the criteria created by INARA, President Trump has justification for refusing to certify the deal.

1. Iran is transparently, verifiably, and fully implementing the agreement

The latest report by the International Atomic Energy Agency (IAEA), published on August 31, found that Iran had not violated the JCPOA during the reporting period. On September 20, after a meeting of the nations in charge of overseeing the deal, High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission Federica Mogherini reported agreement from all parties that "all sides are implementing—so far—fully the agreement."¹ However, concerns remain regarding implementation—and regarding the P5+1 countries' abilities to assert that the deal is being fully implemented.

The largest concern in the implementation of the JCPOA is an overall lack of IAEA transparency. While President Barack Obama announced in 2015 that the deal would offer "unprecedented, around-the-clock monitoring of Iran's key nuclear facilities and the most comprehensive and intrusive inspection and verification regime ever negotiated," the IAEA reports filed post-JCPOA regularly omit information that the agency had provided prior to Implementation Day—information that

member states require to verify Iran's compliance with the JCPOA.² The IAEA has routinely omitted information or provided vague information on:

- Exact size of Iran's stock of 3.67 percent enriched uranium.
- Number and types of centrifuges that Iran is operating.
- Extent of centrifuge R&D activities and centrifuge manufacturing.
- Inventory of near 20 percent enriched uranium.
- IAEA access to potential weaponization 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.

The Institute for Science and International Security said of the IAEA's September report: "this report provides so little information that it barely warrants our own analysis and increasingly looks to be a politically motivated document to deflect discussion of problems in the JCPOA, possibly resulting from Iranian intimidation or a misplaced fear about the deal's survival."³

IAEA inspectors have spent fewer days on the ground in Iran since Implementation Day than they did prior to the deal. Data gathered by the Foundation for Defense of Democracies shows that inspectors spent 689 workdays conducting inspections in 2013, 1,692 in 2014, and 2,170 in 2015—but following Implementation Day, that number fell to 1,042 days in 2016. Additionally, the IAEA only carried out 25 complementary accesses—sometimes referred to as "snap inspections"—in 2016.⁴ Comparatively, the Foundation for Defense of Democracies argued, the IAEA conducted a similar number of complementary accesses in Japan—a country that the IAEA had already reached what is known as a "broader conclusion," that they are in full compliance with IAEA safeguards and that all remaining nuclear material is used for peaceful activities.⁵

Finally, there are certain sites that the IAEA has not inspected at all, despite such inspections being permitted under the JCPOA. Reuters reported in August 2017 that inspectors had not visited any of Iran's military sites since Implementation Day.⁶ Regular access to military sites, in addition to declared civilian nuclear facilities, is an essential part of the IAEA's monitoring program—especially under Section T in the JCPOA, which prohibits key nuclear weapons development activities and control dual-use equipment in service of those activities.

These shortcomings in implementation and oversight undermine the effectiveness of the JCPOA. While the IAEA is responsible for monitoring Iran's implementation of the deal and providing public reports, it is the P5+1 countries that are responsible for judging whether or not Iran is in compliance with the deal—a task they cannot dispatch effectively without comprehensive access by the IAEA and a full accounting of Iran's evasive and limit-testing behavior.

2. Iran has not committed a material breach with respect to the agreement

INARA defines “material breaches” of the JCPOA as any breach of the agreement, or failure to adhere to the commitments of other nonbinding technical agreements, that substantially:

- Benefits Iran’s nuclear program.
- Decreases the amount of time required by Iran to achieve a nuclear weapon.
- Deviates from or undermines the purposes of such agreement.

A material breach is a higher standard than “noncompliance,” which INARA defines as “any departure from the terms of an agreement . . . that is not a material breach.” Whether any violation of the agreement is merely “noncompliance” or rises to the level of “material breach,” a term created in INARA that does not exist in the JCPOA, seems to be at the president’s discretion.

In multiple areas, such as Iran’s heavy-water and low enriched uranium (LEU) stockpiles, the IAEA has appeared to give Iran leeway to exploit or create loopholes in the deal while continuing to assert Iran’s compliance. These loopholes could be allowing Iran to possess more heavy water than international powers agreed acceptable, stockpile natural uranium for when enrichment restrictions begin to lapse, and potentially further its development of advanced centrifuges beyond what the deal allows.

The JCPOA still allows Iran to produce and possess heavy water—one of the substances used in a plutonium-producing nuclear reactor like Iran’s Arak reactor—but it 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, since the deal has entered into effect, Iran’s stockpile has exceeded the limits placed on it multiple times, reportedly because Iran has had difficulty finding buyers for its heavy water.

The IAEA has allowed Iran to exceed the 130-ton cap, with the excess heavy water being held outside of Iran. It is currently believed that Iran has 19.1 tons of heavy water outside of Iran, likely in Oman.⁷

The IAEA has given Iran similar leeway on its LEU stockpile. Per the terms of the JCPOA, Iran’s stockpile of 3.67 percent enriched uranium is not to exceed 300 kg. Iran has stayed within those limits: the IAEA’s September report listed Iran’s stockpile at 88.4 kg.⁸ However, that number does not reflect the total LEU present in Iran. The Joint Commission—a body created by the JCPOA to oversee the deal’s implementation—has decided to exempt some LEU from the IAEA’s total. The IAEA does not provide information on the amount of exempted LEU, further muddying the picture of Iran’s nuclear program under JCPOA.

Additionally, Iran has been producing far less LEU under the deal than it could, leading experts to believe that Iran is exploiting a loophole in the JCPOA to enrich depleted uranium to natural uranium.⁹ This, in addition to imports of natural

uranium that have been allowed under the JCPOA, are allowing Iran to greatly increase its stockpile of natural uranium, which is not subject to caps. Allowing Iran to grow its stockpile of natural uranium would mean that, as time passes and restrictions on Iran's enrichment activities begin to sunset, Iran will be poised to greatly accelerate its rate of enrichment, which in turn will accelerate its breakout timeline.

The IAEA reports, however, do not provide any account of the scale of Iran's enrichment of depleted uranium. Enrichment of depleted uranium would also explain another inconsistency in Iran's enrichment activities: a much higher than normal rate of failure in its IR-1 centrifuges.

There has also been some disagreement over the number of advanced centrifuges that Iran is allowed to operate. The JCPOA allows Iran to test "roughly ten" IR-6 centrifuges, with "roughly ten" being commonly interpreted as allowing plus or minus one, but not beyond that. Iran has, however, insisted that it should be allowed to operate a maximum of 15 IR-6 centrifuges and has previously had as many as 13 IR-6 centrifuges in operation—although, the IAEA's most recent report showed Iran had come into compliance on the number of IR-6 centrifuges.¹⁰

Taken separately, these minor infractions may not constitute a "material breach"; however, taken together, they establish a worrisome pattern of noncompliance that should be addressed.

3. Iran has not taken any action, including covert activities, that could significantly advance its nuclear weapons program

Verifying the absence in Iran of a nuclear weapons program—that is activities aimed at designing and building the actual explosive device, not producing the fissile material that goes into it—is especially important because the IAEA has evidence that Iran has in the past attempted to develop a nuclear weapon. Yet, due to the lack of inspections of military sites, as permitted under Section T of the deal, discussed above, it is impossible to make a determination on this issue.

Evidence of Iran's nuclear weapons program is detailed in a 2011 IAEA report, including credible information the agency received about Iran's procurement and research activities that have little justification beyond developing a nuclear weapon. Yet, Iran has continually stonewalled the IAEA's attempts to obtain a full understanding of the possible military dimensions (PMD) of Iran's nuclear program.

Despite the serious nature of these concerns, the PMD were largely sidelined in the JCPOA. The deal 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 has not 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. 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."¹¹ The presence of these two particles appears to confirm Parchin's involvement in Iran's nuclear weapons program and should be cause for concern and further investigations by the IAEA—only that hasn't happened, and Iran has been able to avoid resolving the PMD issue and meeting its Section T requirements.

Officials from the IAEA have stated that "the IAEA has not visited an Iranian military facility since the agreement was implemented because it has had 'no reason to ask' for access."¹² Furthermore, Iran has stated that it will never allow access to such sites: "Iran's military sites are off limits. . . . All information about these sites are classified. Iran will never allow such visits. Don't pay attention to such remarks that are only a dream."¹³

Section T is not just critically important for providing answers about Iran's past weaponization work, but also for verifying Iran's current compliance with the deal. Beyond the PMD, the Institute for Science and International Security wrote: "the verification of Section T conditions is similar to routine inspections of declared nuclear facilities, such as the Natanz enrichment plant. Like those routine inspections at enrichment plants, Section T verification should not be based on alleging violations but instead on ensuring compliance by regular IAEA monitoring."¹⁴

Without access to military sites—and with no more answers on the PMD forthcoming—it seems difficult for the IAEA and other parties to assert with full confidence that Iran is not engaging in any activities that may further a nuclear weapons program.




4. Suspension of sanctions is appropriate and proportionate and vital to the national security interests of the United States

The final requirement for certification, that "suspension of sanctions is appropriate and proportionate to the measures taken by Iran and vital to U.S. national security interests," differs from the rest, as it is primarily a subjective judgment—it is less about Iran's actions, and more about America's perception of the costs and benefits of the deal.

The primary criticism that can be made of the JCPOA is that it does not prevent a nuclear Iran; it only postpones a nuclear Iran, since its restrictions on Iran's nuclear program lapse over time. Other major areas of concern include: leaving Iran's ballistic-missile program out of the JCPOA and promising to lift the arms embargo on Iran.

Major JCPOA provisions will begin to sunset as soon as 2026. Eight years after Implementation Day, Iran will be able to expand its testing and manufacturing of advanced centrifuges; after 10 years, Iran will be allowed to install more advanced centrifuges, and limits on the number of operating centrifuges will expire; after 15 years, limits on the size of Iran's enriched uranium stockpile and its allowed level of enrichment will lapse.

Enrichment Capacity

	NATANZ 	FORDOW 	ARAK 
PRIOR TO FRAMEWORK DEAL (JPOA)	3.5 %	20 %	Under construction
UNDER FRAMEWORK DEAL	3.5 %	3.5 %	Activation and testing not allowed
UPON FINAL DEAL (JCPOA)	Up to 3.67 % may sell to IAEA bank in Kazakhstan	Research & Development <ul style="list-style-type: none"> Fordow converted into a tech center, with 1044 IR-1 in six cascades remaining in one wing, two spinning without uranium, the other four idle All other infrastructure removed 	Reactor redesigned to not produce plutonium.
AFTER 15 YEARS	No Limit	No Limit	Operates under safeguards

JPOA: JOINT PLAN OF ACTION
 JCPOA: JOINT COMPREHENSIVE PLAN OF ACTION

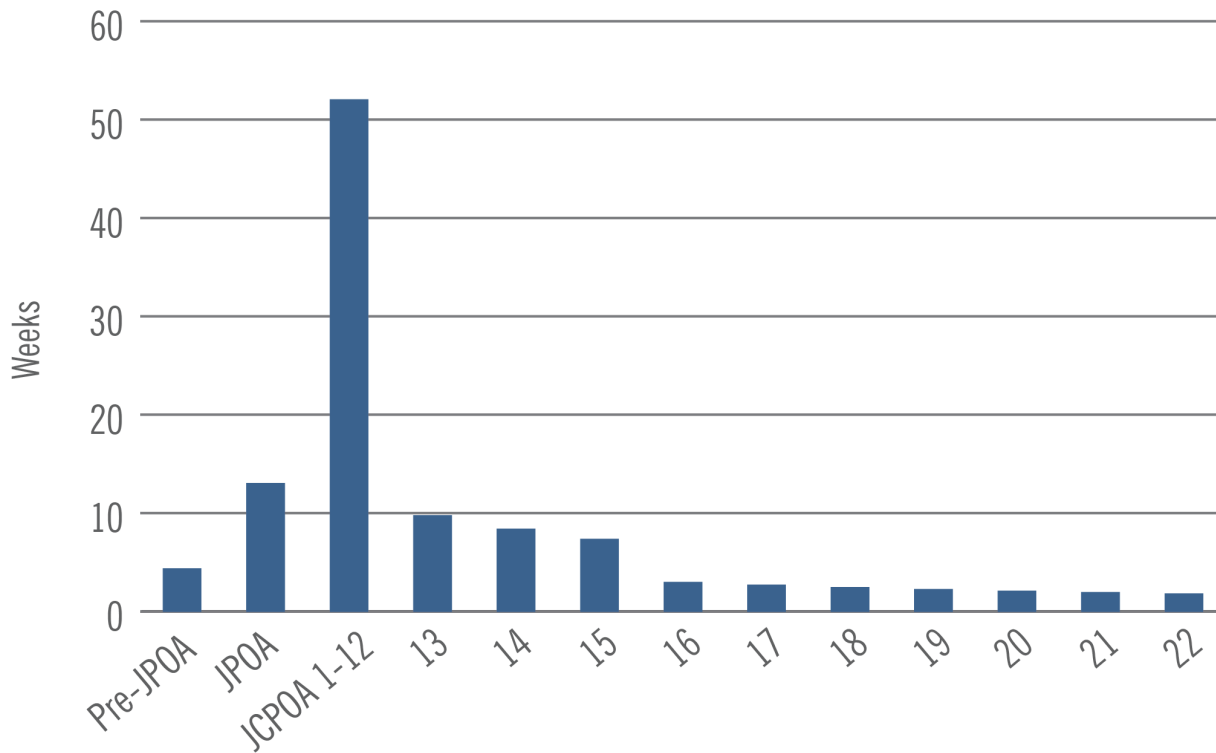
Centrifuges

	PRIOR TO FRAMEWORK DEAL (JPOA)	UNDER FRAMEWORK DEAL	UPON FINAL DEAL (JCPOA)	AFTER 8 YEARS	AFTER 10 YEARS	AFTER 15 YEARS
OPERATING	9,536 IR-1	9,166 IR-1	5,060 IR-1 at Natanz; 348 IR-1 at Fordow (producing stable)	N/A	Limits on operating centrifuges expire	Limits on Natanz and Fordow expire
INSTALLED	Approximately 19,000 IR-1 & IR-2m	Approximately 19,000 IR-1 & IR-2m	5,060 IR-1 at Natanz; 1044 IR-1 at Fordow	N/A	IR-1s phased out; Install IR-8s at Natanz Hall B	Limits on Natanz and Fordow expire
IN STORAGE	N/A	N/A	Nearly 14,000 IR-1 & IR-2m placed into storage	Advanced centrifuges manufacturing can begin 200 IR6 & IR-8 per year without rotors	Iran can begin producing complete R-6 and R-8 at the same rate (the equivalent enrichment capacity of 4,400 IR-1s per year)	By year 15 Iran will have as many as 1,400 IR-6 and IR-8; Centrifuges may be removed from storage

JPOA: JOINT PLAN OF ACTION
 JCPOA: JOINT COMPREHENSIVE PLAN OF ACTION

This means that, even if Iran were to honor all of its obligations and fully comply with all the restrictions in the JCPOA, the deal would not prevent a nuclear Iran indefinitely. The Bipartisan Policy Center's analysis has estimated that, starting in year 13, Iran will be able to break out (produce enough fissile material for a nuclear weapon) in about 10 weeks, down from one year. By year 16, Iran would attain nuclear weapons capability and a break-out time of less than three weeks.¹⁵

Figure 1. Breakout Time: Before, During, and After JCPOA



Proponents of the deal point out that the inspections and monitoring regime will remain intact, some of it indefinitely. But should Iran's ability to produce fissile material ever exceed the detection capacity of the inspections, it will have effectively achieved nuclear weapons capability.

Already Iran appears to be positioning itself to acquire a nuclear weapons capability under the guise of legitimate and lawful nuclear activities. For example, it recently announced it would proceed with construction of a nuclear submarine.¹⁶ This is allowed under both the Nuclear Non-Proliferation Treaty and JCPOA, which is the point. Iran could decide to fuel its naval nuclear reactors with highly enriched uranium, as the United States does, giving it a legally permissible reason for producing, once JCPOA sunsets, fissile material that could easily be diverted from legitimate uses to nuclear weapons development.

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 the JCPOA. U.N. Security Council Resolution 2231, which endorsed the JCPOA, 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 “called 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.”¹⁷

Iran, however, has continued to expand its ballistic-missile program, including by launching a rocket intended to carry satellites into space in July 2017. The United States declared the launch a violation of Resolution 2231 and placed new sanctions on Iran, targeting its ballistic-missile program. A joint statement made by Britain, France, and Germany—other P5+1 powers involved in the deal—agreed that Iran’s ballistic-missile development was inconsistent with Resolution 2231. Iranian Foreign Minister Javad Zarif, however, argued that it was the United States that was in violation of its obligations, saying: “Rhetoric and actions from the U.S. show bad faith,” and adding, “Iran is not and will not be developing nuclear weapons; so by definition cannot develop anything designed to be capable of delivering them.”¹⁸ Iran also filed a complaint with the Joint Commission in charge of overseeing the deal and resolving disputes.

The chief difficulty in determining whether or not Iranian missile tests are in violation of Resolution 2231 is the ambiguous language of the resolution itself. The late Russian Ambassador to the United Nations Vitaly Churkin stated in 2016 that the U.N.’s language was not legally binding: “A call is different from a ban, so legally you can’t violate a call.”¹⁹ Furthermore, the dispute over Iran’s ballistic-missile activity demonstrates the difficulty in holding Iran accountable for worrisome and destabilizing activities that fall outside of the purview of the JCPOA, where any attempt is used to threaten the continued existence of the deal itself.

While the JCPOA did not address ballistic missiles, despite their potential role in a nuclear weapon, the JCPOA did address another not wholly nuclear issue: conventional weapons. Successive U.N. Security Council Resolutions put in place an arms embargo, preventing Iran from exporting or importing major conventional weapons, including battle tanks, armored combat vehicles, large-caliber artillery, combat aircraft, attack helicopters, warships, and certain missiles and missile launchers, among other restrictions.

However, Resolution 2231 altered the embargo to allow the Security Council to decide on a case-by-case basis whether or not to allow the transfer of major conventional weapons to or from Iran. However, five years after Adoption Day (October 18, 2020), this provision will sunset, allowing Iran to acquire major conventional weapons—and distribute them to their regional proxies—with no restrictions.

Any evaluation of whether sanctions relief under the JCPOA—and the continuation of the JCPOA itself—is vital to the national security interests of the United States must consider what Iran’s nuclear program will look like under the deal 10 to 15 years from today.

Effects of Non-Certification

The certification process was created by Congress through INARA and is entirely separate from the JCPOA, as Iran itself acknowledges.²⁰ There is no condition in the JCPOA that requires the U.S. president to certify, or even like, the deal in order for it to remain in place. Indeed, there is no provision that prevents the president from harshly criticizing the deal. The obligations imposed on the United States by the JCPOA deal primarily with sanctions relief. So long as the sanctions that the deal requires to be lifted remain lifted, the United States is complying with the JCPOA. By itself, therefore, the president's decision to not certify the deal will change nothing.

However, there are additional steps to the certification process that could impact U.S. participation in the JCPOA. Under the terms of the INARA certification provision, if the president does not provide certification, or determines that Iran has “materially breached” the agreement, Congress has a 60-day window to introduce legislation, and consider it under special, expedited rules, that would re-impose on Iran sanctions that had been lifted under the JCPOA. This legislation would only need a simple majority to pass. Reinstating sanctions in this manner would amount to a violation of the JCPOA. However, that outcome is not preordained. Congress can decide not to introduce such legislation, or, if it does, it might not pass.

Beyond Non-Certification: Objectives and Principles for U.S. Iran Policy

Trump's decision to withhold certification of the Iran deal does not by itself make any dramatic changes to U.S. Iran policy: it does not mean that the United States is pulling out of the JCPOA, it does not mean that previously lifted sanctions will be re-imposed on Iran, and it does not provide an answer to several enduring problems with the JCPOA.

The president's decision not to certify the deal is, more than anything, an announcement that the current administration will not be tied to or limited by previous decisions made on Iran policy. It amounts to a “new look,” just as President Eisenhower reevaluated U.S. policy toward the Soviet Union upon taking office.²¹ What will be most significant about this announcement will be what follows it in terms of new policies.

Any new approach to Iran must be judged according to whether it protects the significant interests that the United States continues to have in the Middle East and addresses the multiple ways in which Iran threatens or undermines all of them. These interests include ensuring a reliable supply of oil from the Middle East to global markets, countering terrorism, opposing proliferation of weapons of mass destruction, and supporting the security and prosperity of its allies.

Proceeding from this basis suggests some basic objectives that U.S. policy toward Iran must encompass and certain fundamental principles it should embrace in pursuing those objectives.

Necessary Objectives of Any U.S. Iran Policy

To secure vital U.S. national security interests in the Middle East, it must remain an objective of U.S. policy to ensure that Iran does not restart its nuclear program, whether covertly under the JCPOA, by withdrawing from the JCPOA, or by waiting until the enrichment provisions contained in the JCPOA begin to lapse.

However, this cannot also remain the sole objective of U.S. Iran policy. Its nuclear ambition is but one of many concerns that the United States rightfully has about Iranian behavior—including supporting terrorism, stoking sectarian violence, arming insurgent proxies around the Middle East, and abusing human rights at home. A policy that would prevent a nuclear Iran and address the shortcoming of the JCPOA must be fitted into a comprehensive strategy for countering all of these Iranian challenges.

1. Tamp Down on Low-Level Cheating

The lack of mechanisms within the JCPOA for addressing minor infractions that may not constitute a “material breach” of the agreement—exploiting loopholes and ambiguities in the deal to exceed heavy water caps, enrich depleted uranium, and develop and operate advanced centrifuges—is yet another of its shortcomings. Under the terms of the deal, and of INARA, the United States can “snap back” all of the sanctions that were in place prior to the JCPOA, but this would effectively end the agreement.

It is critical that policymakers devise an alternative to this all-or-nothing approach to punishing Iran’s transgressions. This will require first an announcement by the United States that it will not tolerate such cheating, no matter how low-level, any further. Second, the United States must engage in a campaign of naming and shaming Iran for its limit-pushing behavior, one that alerts the international community to the fact that Iran is misbehaving and gives it a chance to stop. Third, the United States must develop carefully calibrated measures that are commensurate to the level of Iran’s infractions. This might include the re-imposition of a limited number of smaller sanctions that had been lifted under the JCPOA. If Iran wants to push the boundaries of the deal, the United States should not be afraid to do the same.

2. Ensure Full Implementation

Shortcomings in implementation and oversight undermine the effectiveness of the JCPOA—especially the IAEA’s ability to detect whether Iran has resumed covert weaponization activities—as well as P5+1 countries’ ability to judge whether or not Iran is in compliance with the deal. Pushing for more robust implementation of the monitoring and verification measures in the JCPOA is fundamentally a political exercise that requires exerting pressure on both the IAEA and Iran. But this should not mean that the types of pressure exerted on each should be similar.

The IAEA needs to be encouraged to take on a more aggressive inspections mission. This can be accomplished by building a coalition of other IAEA member countries, sharing with it any U.S. intelligence on Iranian nuclear activities, and perhaps even offering an inducement in the form of greater U.S. funding.

Iran, however, needs to be subject to the same sort of pressure campaign on inspections as described above for its

cheating. Instances of its failure to allow inspections need to be made public, and Iran needs to be made aware of the United States' intention to find submaximal responses to its failure to implement the deal fully.

3. Address Shortcomings of the Deal

For the JCPOA to fulfill the U.S. objective of preventing a nuclear Iran, it will have to be substantially expanded at some point. At the very least, current restrictions on Iran's enrichment of uranium will have to be extended before they begin to sunset in 2026.

The effectiveness of any attempt to improve upon the JCPOA is dependent on two things. First, can the United States exert enough pressure on Iran in order to convince it to make additional concessions on its nuclear program? When negotiating the JCPOA, that leverage came in the form of a multilateral sanctions regime put in place over the course of nearly a decade. This raises the second requirement for successfully putting in place greater restrictions on Iran's nuclear program: international cooperation.

The amount of pressure that the United States can exert on Iran by itself—especially if that pressure is limited to economic sanctions alone—is limited. Working with other countries to isolate and pressure Iran is going to be important, particularly because Iran is today in a much stronger position, both economically and geopolitically, than it was in 2013. The question for American policymakers is how to convince their European partners and others to go along with an attempt to improve on the JCPOA. Some measure of inducing and cajoling is likely to be needed, but getting the exact proportions of that mix right is going to be critical.

4. Counter Iran's Destabilizing Activities in the Region

Iran is an aggressive state actor that, in addition to pursuing nuclear weapons capability, is bent on expanding its regional influence at the expense of traditional U.S. partners. Already Iran has established itself as the primary power in Lebanon, Iraq, and Syria. It has also secured a foothold in Yemen. And Tehran has a history of fomenting unrest in Bahrain, Kuwait, and Saudi Arabia. This positions Iran to threaten every significant interest the United States has in the region.

Sitting astride the Strait of Hormuz and with missile-armed proxies near the Bab el-Mandeb, it can threaten shipping in critical energy corridors. It is capable of disrupting vital energy producing areas in Saudi Arabia and Iraq. With a land corridor stretching from Tehran to Beirut, it could have unfettered ability to proliferate advanced weapons to its terrorist partners. And with some 20 million Sunnis in that territory under oppressive Shiite rule, Iranian dominance of the Middle East's heartland will ensure the continued cycle of Sunni jihadist radicalization. Finally, Iran's expansion over the last five years has resulted in it sharing de facto borders with almost all U.S. partners in the region, putting them directly at risk. The further Iran's reach expands, the more nervous U.S. allies in the region become, the more deeply their confidence in U.S. security guarantees is rattled, and the more likely they become to seek out other sources of security.

In short, Tehran's pursuit of influence and territory across the Middle East represents a near-term threat to U.S. interests, allies, and credibility. Moreover, the stronger Iran grows, the more difficult it will become to address the above nuclear

issues. Iran's increasing ability to threaten the global energy supply, to unleash terror against Middle Eastern, European, or even U.S. targets, and to target U.S. allies directly, might well prove a more powerful tool against Washington than economic sanctions can ever be against Tehran.

Addressing concerns about Iran's nuclear program and the shortcomings of the JCPOA cannot be done to the exclusion of dealing with these broader regional issues; both must be part of a comprehensive strategy. This must include policies focused at the very least on arresting Iran's expansion in Syria, Iraq, and Yemen, reassuring allies, and, potentially, pushing back on Iran's regional gains.

Perhaps the most immediate tool the United States can deploy in pursuit of this goal is designation of the Iranian Revolutionary Guard Corps—which is involved in every illicit and destabilizing Iranian activity—as a foreign terrorist organization. Such a designation would not be related to Iran's nuclear program, and therefore permitted under the JCPOA, and could lead to sanctions that would have a significant impact on Iran's economy. The Bipartisan Policy Center's Task Force on Managing Disorder in the Middle East will shortly be releasing a more robust assessment of policy options available to the United States for countering Iranian power in the region.

Principles for Successful Iran Policy

Any policy that seeks to accomplish these goals—as a sound U.S. Iran policy must—will have to be guided by several core principles.

1. Put the Onus on Iran

Even though non-certification itself has little effect, Iran will still certainly react. Already Tehran has signaled that it will attempt to portray it as a violation of the spirit of the agreement. This assertion has no grounding in the terms of the JCPOA; instead, it represents part of a broader Iranian strategy to prejudice the other signatories of the deal and the broader international community against the United States. According to the worldview promulgated by Tehran and its mouthpieces, Iran is a responsible international actor, devoted to defeating terrorism and upholding the stability of the Middle East, while the United States is a capricious, untrustworthy, and dangerous force seeking to upend the international order.

Iran has draped itself in a veil of benevolence since the announcement of the JCPOA; President Trump needs to pierce that veil. It is critical that the United States deny Iran such a rhetorical victory and preserve its own international standing. The president cannot allow his decision to be dismissed as capriciousness or treachery. Americans, U.S. allies, and Iranians must all understand that any action taken by the president is the direct result of Iranian wrongdoings. Indeed, under the terms of INARA, there are good reasons for which certification of the deal should be withheld: Iran has attempted to cheat on the deal; Iran has not allowed for full and robust inspections of all facilities permitted under the deal; and Iran has taken actions which suggest it intends to pursue a nuclear weapons capability once the deal sunsets. Moreover, the regime in Tehran has pursued nothing but chaos abroad and oppression at home. It is a danger to its own people and those of the Middle East.

The president strongly condemned the Iranian regime in his speech to the United Nations in September 2017.²² That same moral clarity is needed now. The coordinated international campaign of international pressure that led to the JCPOA in the first place was the result of a concerted effort to convince other nations of the danger of Iran's nuclear program. To achieve U.S. policy objectives now, whether it is countering Iran in the Middle East or improving on the JCPOA, the president will need to construct a similar coalition. And he can only do that if he can clearly demonstrate why the United States is in the right and Iran is in the wrong.

2. Maintain Credibility

Beyond Iranian attempts to delegitimize the United States, President Trump faces the challenge of managing two sets of partners with differing priorities. Washington's European partners are interested in preserving the JCPOA, and the economic benefits they accrue from doing business with Iran. Middle Eastern nations aligned with the United States, on the other hand, are concerned with what they perceive as the absence of American leadership in the region, leaving a vacuum that Iran has gladly filled. To implement any meaningful Iran policy, the United States will require the cooperation of both sets of allies. It is imperative, therefore, that it maintain its credibility with both European and Middle Eastern partners.

Just decertifying the deal by itself, with no additional policies, could unnecessarily alienate both camps. It might convince Europeans that Washington has no intention of honoring the JCPOA, even though decertification does not directly impact the deal. And the lack of any follow on or broader regional strategy could lead Middle Eastern leaders to conclude that the United States is not serious about protecting them. Such a scenario must be avoided at any cost.

President Trump must convince U.S. allies and adversaries alike that the United States is a credible actor that stands by its commitments. This includes both standing by international agreements until such a time as they are violated by others and standing by security guarantees made to partners. Pulling this off will require ensuring that decertification is more than just a rhetorical flourish. It must be backed up with sound argument for why the deal is not working; it must be accompanied by new policies designed to secure U.S. objectives; and it should be followed by vigorous outreach to U.S. partners to explain to them the new policy.

3. Prioritize Regional Stability

One way to convince U.S. partners to get on board with a new Iran policy is to focus that policy on Iran's destabilizing and dangerous policies at home and abroad. Rather than a singular focus of U.S. policy, the JCPOA should be treated as an aggravating factor in a more comprehensive regional strategy.

European nations are primarily concerned about the social, political, and economic impact that another wave of Middle Eastern refugees might have. They also tend to focus much more heavily on issues of human rights in their foreign policies. Similarly, U.S. partners in the Middle East worry that Iran is upsetting the regional order. Preventing Iran from dominating Iraq, Syria, and Yemen is, for them, an urgent priority, one that they have been waiting for the Trump administration to embrace for the last nine months.

By presenting Iran as the source of Middle Eastern upheaval and as an oppressive and dictatorial regime, Washington can more easily secure European cooperation and reassure Middle Eastern allies. More important, however, is that this approach gives the United States more flexibility for dealing with Iran's nuclear program as well.

First, under the JCPOA the United States is still permitted to sanction Iran, so long as it is for "non-nuclear" reasons. And there is no shortage of sanctionable Iranian offenses and entities. Foremost among these is the Iranian Revolutionary Guard Corps, the branch of Iran's military that both directly arms groups like Hezbollah and owns a significant stake in major Iranian companies, and that Congress has mandated the administration designate as a terrorist organization.

Sanctioning the IRGC would not run afoul of the JCPOA, but would nevertheless have significant economic impact on Iran. Additional non-nuclear avenues of pressure on Iran—confronting its proxies throughout the region, interdicting its arms shipments, weakening its political influence in Iraq and other foreign capitals—would all build leverage that could ultimately be used for the purpose of further constraining Iran's nuclear program.

4. Lead, Together

Challenges as significant as those posed by Iran, its regional activities and its nuclear program, are often said to require the use of all elements of American power. What is less often noted is that they are also best approached with coordinated approach between all elements of the U.S. national security apparatus. This goes beyond just having bipartisan consensus, which is critical, but also extends to cooperation between the executive and legislative branches of government.

A significant concern during the lead-up to and negotiation of the JCPOA was the misalignment of the White House and Congress. While legislators were eager and willing to increase pressure on Tehran through ever more stringent sanctions passed with near unanimity, the previous administration remained strongly opposed to such additional measures. And once the deal was announced, the White House was similarly opposed to Congressional review of the agreement. This squandered an opportunity for tough negotiating tactics, i.e. "good cop, bad cop," and showed internal divisions that adversaries and allies could try to exploit.

Now, it is important to avoid swinging to the other extreme. If the president were to withhold certification but then leave it up to Congress to decide whether to reapply sanctions, this would represent a counterproductive and unbalanced approach, one that abdicates too much executive power to the legislature. What is needed instead is a joint and cooperative approach in which the president and Congress together agree on a strategy for changing Iran's nuclear and non-nuclear behavior, and the role each branch will play in that strategy. A first step could include publicly stated expectations for Iranian behavior and a list of possible legislative and executive responses if Iran fails to meet those expectations. This could include non-nuclear related sanctions tied to Iranian behavior in the region, punishments for further low-level Iranian cheating on the JCPOA, or both. Additionally, Congress could act to eliminate the 90-day certification requirement in INARA, while leaving in place provisions that require the president to notify Congress of any incidents of noncompliance.

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Notes



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