

Beyond Partisan Infighting: The Role Congress Should Play in Reacting to the Nuclear Agreement with Iran: Mark II

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American partisan ideological extremism is in full swing and on a bipartisan basis. It has been a little over a month since the signing of the P5+1 nuclear agreement with Iran on July 14th, and a month since the vote of the UN Security Council to accept it. As was all too predictable, it has become a partisan fight along party lines that owes as much to the coming Presidential election as the merits of the agreement.

Caught Between Iran and a Hard Place

It still seems likely that the end result will be an agreement where the Republican majority and swing Democrats lack the votes to override the President's veto. At the same time, they have the votes to pass both constructive and spoiler legislation. It is also clear that the agreement is complex, imperfect, almost certain to require negotiating efforts to fully define and clarify, and is likely to be a source of ongoing contention between Iran and the U.S. for years to come.

It is also clear that if the Congress does get enough votes to override the President's veto, the results are at best uncertain. Renegotiation seems dubious. Iran will probably vote on the agreement after the Congress votes, and the Supreme Leader already seems to have prepared Iran to claim the existing agreement went too far, that it is Iran that is rejecting an unfair agreement, and then reject a follow-on effort.

At the same time, Iran has the option of accepting the agreement, turning to all the other nations that have already endorsed it, and leaving the U.S. isolated.

In both cases, it is unclear that the U.S. can get EU support in maintaining EU sanctions and calling for another round of negotiations and Chinese and Russian support seems even more doubtful.

Calling for a separate, unilateral U.S. effort to sanction Iran – backed by Draconian new sanctions – is good election posturing for opponents of the agreement, but ignores the real world nature of U.S. economic and trade dependence on other states. Anything less is likely to be ineffective and could do as much or more to irritate our allies and trading partners than it does Iran.

Talking about war is less good election posturing, and any real world action would mean a major new conflict in the Gulf region. The U.S. military is rightly committed to a level of attack that will ensure that Iran cannot retaliate, or easily recover, and would not support

some form of limited surgical strike that would allow Iran to act out in Iraq, the Gulf, Yemen, Syria, and Lebanon.

This means a real air and cruise missile war with hundreds to thousands of sorties. U.S. planners are not interested in a small surgical attack using a few weapons like the new 30,000-pound massive ordnance penetrators. They realize this would have far less lasting effect than enforcing the full terms of the agreement. They also feel the same would be true if the U.S. offered the massive ordnance penetrator to Israel—a weapon whose payload would present the IAF with massive range-payload problems.

Containment is not a better answer. If Iran rejects the agreement after the U.S. rejects it, it is unclear what is left. If Iran accepts the agreement, and works with other states to leave sanctions, it seems doubtful that the resulting enforcement would be anywhere as effective as if the U.S. had stayed as part of the agreement.

As for deterrence, Iran seems unlikely to ever use a small number of fission weapons against either Israel or any ally supported by the U.S., but this has probably never been its objective. Any bomb in the basement or Iranian nuclear capability raises the ante and risks inherent in any form of military engagement with Iran. It would vastly increase Iran's prestige even if it was never formally declared like Israel's weapons, and was never tested.

There is a case, however, for taking military steps to strengthen our regional security partnerships and to reassure our allies.

- Tensions with Israel or not, a new 10-year security MOU would send the right kind of signal.
- Providing more formal security guarantees to our Arab allies, and clarifying Secretary Clinton's offer of extended deterrence if Iran should ever acquire a nuclear weapon, would be another stabilizing step.
- Creating a theater approach to missile defense that did not try to formally integrate Israel Arab allies, and Turkey, but established common warning systems, and the ability to tie in U.S. wide area theater missile defenses and allied purchase of THAAD and standard would be another.

Living with an Uncertain Agreement

The Joint Comprehensive Plan of Agreement (JCPOA) is not a perfect document, but no negotiable document could be. It is complex and some portions are unclear and will have to be clarified and debated. It is also a limited agreement between still hostile states with conflicting strategic goals and priorities, and this inevitably means challenges, debates, and confrontations.

Much of the current partisan debate also focuses on the wrong priorities and does not address the agreement's key strengths and weaknesses:

- The enforcement of arms control agreements between largely hostile states is inevitably an extension of war by other means. Everything ultimately depends on how well and how diligently the U.S. and its allies enforce it, and the credibility that a combination of all the JCPOA's provisions, U.S. and other friendly intelligence efforts, and work by the International Atomic Energy Agency (IAEA)

- can make it work over time. From now through implementation day to some unknowable point in the future, enforcing the JCPOA will sometimes be an adversarial operation where its value must be judged in terms of all the assets the U.S. can bring to bear – and its willingness to do so – rather than simply the words of the agreement.
- Iran is already the equivalent of a break out state in terms of the ability to build a basic gun device. The race to one crude bomb, however, should not be the test, in the face of an Israel with thermonuclear weapons and a U.S. with massive nuclear forces. The test should be the ability to block Iran from creating anything like an effective nuclear force with effective delivery systems and small enough implosion and boosted weapons to be delivered on a missile. If agreement is judged by these standards, it appears to be much stronger, but only if it is clear that the UN, U.S., and other members of the P5+1 will act.
 - No arms control agreement can really bind the future for 10 to 15 years, much less forever. This is particularly true in an area as unstable as the Middle East. The U.S. debate should focus on how verifiable, enforceable, and adaptable the agreement is, and not about the JCPOA as if change can be avoided regardless of shifts in the regional balance, alignments and security interests, and technology.
 - The value of the agreement depends in large part on how its key provisions interact, and understandings reached during the talks that are not fully clarified in the text. Focusing on one provision without examining how it interacts with others makes the partisan debate more strident than it should be.
 - At the same time, the JCPOA leaves several key related activities to be defined in practice. These include (a) the way in which Iran's future nuclear procurement is controlled, which in turn is critical to any ability to create new covert facilities; (b) the outcome of IAEA efforts to resolve the possible Military Dimensions or PMD which must be addressed IAEA Director General to the IAEA Board of Governors by December 15, 2015, and (c) the real world operation of the dispute resolution process which enables any JCPOA participant, to seek to resolve disagreements about the performance of JCPOA commitments.

Once again, it would be hopelessly naïve to assume that ongoing lobbying efforts by the Congress, the Administration, and outside groups over the JCPOA can be altered to focus on the U.S. national interest rather than on partisan politics, the Agreement's impact on the 2016 presidential campaign, and efforts to secure pro-Israel votes. These are the realities of American political life, and involves functional and far broader set of party-line and ideological divisions in U.S. politics that seem likely to endure well beyond November 2016.

You Have to Play the Only Game in Town

If there is an opportunity, it lies in what happens outside the debate over Congressional support or opposition and any follow on veto debate. The strengths and weaknesses of agreement do deserve detailed review and challenge, some forms of criticism can be both

partisan and constructive, and both Republicans as well as concerned Democrats can secure political gains while serving the national interest.

The issue is not simply seeking 67 votes to override a veto. It is taking actions that ensure any violations or problems are fully public and become an immediate issue (as well as an exercise in strategic communication). Doing so can put the agreement in a legislative context that will ensure it is properly enforced, and that helps ensure that meaningful action is taken if it is violated or the inevitable gaps in its provisions are exploited by Iran in ways that have a serious strategic impact.

Congressional Options

So what can Congress do other than focus its efforts on blocking the agreement and trying to override a veto? Both Congressional opponents and supporters of the JCPOA have a wide range of options, some of which can be legislated quickly and others over time.

Here are a few examples:

- ***First, Congress can continue to use the 60 days to give Iran's obligations and options for cheating and violation full visibility.***

The agreement is complex. It is sometimes nearly opaque or uses words that seem to have far more real world impact than they really have. All the proper caveats and cautions need to be surfaced. Iran also needs to be put on notice that every portion, and Iranian compliance will be under constant review, that the JCPOA's options are fully understood and that they will be monitored by the U.S. as well as the IAEA.

- ***Second, Congress can legislate fully scoped and truly demanding reporting requirements that publically expose any hint of Iranian violations, and support such reporting with a full range of sensitive intelligence data and classified technical analysis to the intelligence committees and a special select committee***

The Congress can legislate a semi-annual reporting requirement for the life of the agreement that requires reporting on every key aspect of compliance as well as Iran's other key activities: Conventional arms imports and build-up, missile programs and developments, and Iran's activities to expand its influence and role in the region.

It can confront Iran with a legal requirement for formal U.S. government public notice within a fixed time period of any suspected violation, as well as regular classified briefings by the intelligence committees, armed service committees, and foreign relations committees.

The U.S. Congress can use reporting on Iran's compliance and the effectiveness of the dispute resolution process to force verification without trust, and in ways that are unclassified and public enough so that Iran has no hope of sheltering behind the politics of diplomacy.

It can also set up a joint committee and/or special subcommittees to focus entirely on these issues.

- ***Third, it can pass some form of “Snap Back” legislation to reestablish sanctions***
The Congress can legislate that the United States will not only resume sanctions if Iran is caught in violation, but also adapt and modify existing sanctions in ways that will both pressure and incentivize other nations to join the United States in enforcing them. A carrot and stick approach that offers supporting states trade and tax incentives and non-compliant states penalties would be more effective than relying on penalties alone.

This will require careful wording, waiver provisions to avoid a needless crisis, and possibly talks with the EU and our European allies. But it will be clear to Iran that it cannot simply wait out the agreement or hope the United States will not react to a violation. This will also reassure Israel and our Arab allies.

At the same time, The Congress should avoid an all or nothing approach to both the JCPOA and a modified version of U.S. sanctions. The punishment should fit the size, nature, and certainty of the violation. The JCPOA already permits this, although it is not fully explicit in making this clear. All U.S. legislation and regulation should do the same. The goal should be to change the behavior of Iran, other states, and non-state actors, not punish.

- ***Fourth, the Congress can legislate new sanctions on firms or state entities that sell critical conventional arms and missile technology. And/or, it can set reporting requirements that publically identify the seller and cover not only whole weapons but critical components and technologies.*** It may be enough to simply embarrass sellers – who will have to deal with the Arab reaction – but the United States can certainly reinforce the five-year limits to arms sales and eight-year limits to missile sales with a permanent ban on exports and investment by foreign companies and entities that sell such components, or fines and tariff equivalents.

The Congress could also build on its failed effort to require a meaningful annual report on the Military Power of Iran, and demand the same kind of substantive report on all the aspect of Iran’s military efforts it receives in the annual assessment of Chinese military power. The Congress sometimes set requirements it fails to meaningfully define, fails to demand reports with any real content, or focuses on the cost of reporting to the exclusion of content. This, however, is an area where strategic communications are vital, where the full range of Iranian actions affect a wide range of key allies, and where any positive shifts in Iran’s behavior needed to be recognized if there is to be more substantive progress in U.S, and Iranian relations.

- ***Fifth, as noted earlier, the Congress can call for the United States to offer Israel and its Arab allies more formal security guarantees, and it can offer its Arab allies “extended deterrence” in some form.*** The United States needs to build trust on the part of its regional allies for many reasons and this is an ideal opportunity.

The U.S. did not offer the Gulf states or Gulf Cooperation Council (GCC) new formal security agreements at Camp David, but it can do so now. The US can state that if Iran violates the agreement, it will provide extended deterrence of the kind it once provided to Europe to meet the Warsaw Pact theater nuclear threat. It also can establish a formal agreement to provide advanced theater missile defenses to

the GCC states, and possibly include Turkey in both the extended deterrence and missile defense offers.

The United States does not need to provide such assurances to a nuclear-armed Israel, but it can assure Israel that it will continue to help it maintain a decisive edge in weapons and missile defenses. It can offer anew 10-year MOU on security, and can establish an extended long-term missile defense cooperation agreement with Israel to continue the programs already underway.

- ***Sixth, the Congress can hold regular hearings on IAEA and U.S. intelligence verification, and require both open source and classified reports.***

The Congress can make sure that all the necessary resources and technologies are provided, that all the proper reporting and analysis is done, that the effort is properly funded, and that Iran and other allies both see just how serious we really are. The day may come when trust is an option. The day has already come when verification is vital.

It can also require quarterly or semi-annual independent Administration reporting on the effectiveness of the IAEA efforts, and of the broader mix of NPT, Protocol, and JCPOA limits. This might take the form of a requirement that this reporting be in the form of both a classified and unclassified NIE.

- ***Seventh, the Congress can legislate special reporting on any case where delays take place in inspection, and the provisions that can delay it up to 24 day or more are involved.***

Such a requirement could require a daily report to Congress in unclassified and classified form, make sure no issue ever was dropped or lost visibility, and require the naming of states, entities, and individuals involved. It can require that all of the other tools in the JCPOA, particularly the provision and technology controls be fully reviewed for each delay, and that independent intelligence briefings be provided to Congress within fixed periods of time.

- ***Eighth, the Congress can legislate that the Administration provide regular updates on both Iran's compliance with the arms sales, missile, 10 limits and 15 years limits, and an assessment of the impact of the end of these requirements at least two years in advance.***

This would provide an ongoing special review of the key aspects of the agreement and ensure full review of the impact of the end of key restrictions long in advance.

- ***Ninth, the Congress can legislate that the Administration provide an ongoing assessment of Iran's specific actions in terms of the support of outside state actors, non-state actors, and terrorists with money, arms, advisors, and security personnel and of the impact of the JCPOA in freeing funds that allow Iran to make such efforts,***

A mix of unclassified and classified reporting would both confront Iran with a constant public and media attention to such actions, and provide a basis for focused action in the future – rather than expressions of broad fears and possible worst cases.

- ***Tenth, require regular reporting on the critical procurement channel.***

This aspect of the agreement is more critical to limiting Iran's future ability to create new covert facilities than the timing and nature of challenge inspections since it limits future capability rather than focuses on what Iran has already done. As an analysis by Harvard's Belfer Center notes,

“The JCPOA establishes a Procurement Working Group under the auspices of the Joint Commission with responsibility for reviewing and approving proposed sales of certain nuclear-specific and nuclear-related dual use items, equipment, materials, and technology (specified on Nuclear Supplier Group control lists) from any state to Iran. The Working Group decides by consensus (meaning any state could block a sale) and remains in operation for 10 years. The agreement sets out procedures and a time table for reviewing requests and provisions for verifying end-use of approved transfers. The procurement channel is intended to track Iranian acquisition of nuclear-related items for use in undeclared activities, but the procurement channel has several limitations that could weaken its effectiveness and lead to disputes. For example, Iranian purchases of nuclear-related dual use items for its ballistic missile and conventional military programs do not have to be approved by the Procurement Working Group.”

Giving this process maximum transparency, focusing on every indicator of a dual use of nuclear weapons related effort, and adding a requirement that the U.S. add an assessment on possible impacts on Iran's missile and other military capabilities could have a major impact in reducing any risk that Iran tried to manipulate the time windows and conditions for IAEA of new suspect facilities.

A “Win-Win” Approach to Partisan Politics

It will take some tolerance on the part of both the White House and Republican leadership to work out such legislation, and make sure it takes a practical form without hair triggers or constitutional challenges. Inevitably, it will mean both some gains for the Congressional Republicans, and compromise with the Administration and Congressional Democrats.

It does, however, seem far better to focus on making the agreement work than focusing on a veto fight or partisan divisions that accomplish nothing in the U.S. interest. From a practical political viewpoint, both sides in this partisan debate should also ask just how much damage they will do to the credibility they have and the public support they win by dividing so clearly on self-seeking partisan lines at the expense of the national interest. One does not win an election by shooting oneself in the mouth.

Most importantly, as long as the agreement is in force, the key issue will be for the U.S. to show Iran there are no good alternatives, there will be no time at which the agreement's goals will be forgotten, and that the United States will stand by its allies.

Not every form of partisanship has to be destructive. There are some games where both sides can win.

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