Iran and the May 12th Deadline: Finding Winning Compromises

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It is not always easy to guess at President Trump's decisions, but he currently seems to have two options in dealing with the Iran nuclear agreement or Joint Comprehensive Plan of Action (JCPOA). The first is to put the U.S. into material breach of the Iran nuclear deal by failing to renew the waivers of nuclear sanctions on Iran by a deadline of May 12, 2018. The second is to delay such action, but use the threat of renewing sanctions to pressure Iran, America's European allies and other powers to agree to additional arms control agreements on missiles, de facto or de jure expansion of the JCPOA, and/or limits on Iran's influence outside Iran.

The President has already demonstrated that he can find ways to partially waive the agreement and step up the pressure on Iran, as well as nations that travel with it. There are limits, however, to how far the President can go and still semi-comply with the JCPOA. The U.S. has not opened its financial markets fully under the terms of the agreement, and Iran can already make a case that the U.S. is failing to comply. There are also limits to how long he can delay action and keep up credible pressure on other powers. At some point this year the President will almost have to either restore sanctions and end U.S. participation in the agreement or succeed in forging some kind of acceptable compromise that will place additional limits on Iran.

Option One: If the President Does Seek to End U.S. Participation in the JCPOA

Much of the media and think tank reporting on the President's options for ending U.S. participation in the JCPOA has focused on President Trump's most immediate option, which is to end the waiver to many of the nuclear weapons related sanctions that the U.S. placed on Iran before the JCPOA. These options are complex, involve different levels of Congressional action, and are likely to be opposed by many allies and other members of the 5+1, and provoke action by Iran.

The May 12th Deadline

The President can approach the May 12 deadline in a number of ways. President Trump has already failed to certify full Iranian compliance with the terms of the JCPOA on October 15, 2017, and again in January 2018, but done so in a form that did not reimpose sanctions and effectively end U.S. participation in the JCPOA.

If the President does decide to end the waiver to sanctions on May 12th, he will trigger a complex process. An analysis by Ryan Costello for the National Iranian American Council argues that if the President ends the waiver, the nuclear sanctions on the Central Bank of Iran that are part of the Section 1245 of the FY2012 National Defense Authorization Act (NDAA) immediately snap back into place and the U.S. will effectively have committed a material breach of the agreement. This renewal of U.S. sanctions will have an immediate impact on all of the countries purchasing oil from Iran, and particularly on countries with financial institutions that have transactions with Iranian banks, since they will be cut off from doing business with the American economy.

Costello’s analysis argues that any form of the failure to waive will result in a material breach of the agreement. The text of the JCPOA states that the U.S. is obligated to “cease the application” of nuclear-related sanctions including the Central Bank sanctions contained in Section 1245 of the FY12 NDAA. Moreover, the U.S. has committed to “refrain from re-introducing or re-imposing
the sanctions” lifted under the deal, while the JCPOA indicates Iran will treat such re-imposition “as grounds to cease performing its commitments under this JCPOA in whole or in part.”

Such Presidential action will not re-impose all of the sanctions that the U.S. is obligated to waive under the JCPOA. However, the next sanctions waiver deadline will come 60 days later and re-impose the vast majority of U.S. nuclear-related sanctions. Moreover, targeting Iranian oil sales and Iranian and related foreign banking from May 12th onwards will drive many companies away from the Iranian market and eliminate the core incentives Iran has to comply with the JCPOA.

A CRS study of the options for ceasing to implement the JCPOA addresses action on May 12th as follows:1

The JCPOA does not specifically provide for any party to the agreement to “withdraw.”5 Although European and other diplomats argue that Resolution 2231 makes the agreement binding on all parties under the U.N. Charter, officials in the Obama Administration asserted that the JCPOA is a nonbinding political commitment, and Trump Administration officials continue to make that assertion.

...The...law whose waiver expires is the FY2012 NDAA (120-day waiver period), on May 12, 2018. The waivers of the other three laws that were waived expire in mid-July 2018 (180-day/six-month waiver periods) ...Separately from INARA, the President has the option to reimpose sanctions by refusing to renew waivers of the various sanctions laws, reissuing Executive Orders that were revoked, or imposing new sanctions by executive order. A refusal to certify Iranian compliance under INARA does not automatically cause the reimposition of any Iran sanctions.

Should congressional or allied action fail to satisfy the President, and should he decide to cease implementing the JCPOA, there are several mechanisms he might use. One mechanism—a reimposition of U.S. sanctions—could be employed as early as May 12, 2018, when the existing waiver of a key U.S. sanctions law expires.2

To date, the President has renewed the waivers when they have come up for renewal. The waivers were last renewed on January 12, 2018...the President stated on January 12, 2018, that he would not renew any waivers subsequently unless his demands for correcting the deficiencies in the JCPOA are met. The next law whose waiver expires is the FY2012 NDAA (120-day waiver period), on May 12, 2018. The waivers of the other three laws that were waived expire in mid-July 2018 (180-day/six-month waiver periods).

Another analysis by the Congressional Research Service notes that such Presidential action would occur at a time other U.S. sanctions remain in place, and that any "snap back" of the sanctions waived as part of the JCPIA could have a major impact on Iran's economy.3

Remaining in place are relatively less effective sanctions, not targeting Iran’s core economic sectors, including: a general ban on U.S. trade with and investment in Iran; U.S. sanctions imposed because of Iran’s support for terrorism, its human rights abuses, its interference in specified countries in the region, and its missile and advanced conventional weapons programs; and sanctions on the Islamic Revolutionary Guard Corps (IRGC) and affiliates. Some additional sanctions on these entities and activities were made mandatory by the Countering America’s Adversaries through Sanctions Act (CAATSA, P.L. 115-44), which also increases sanctions on Russia and North Korea.
The reimposition of U.S. secondary sanctions could harm Iran’s economy depending on the degree to which foreign governments and companies cooperate with the sanctions reimposition. During 2012-2015, Iran’s economy shrank by 9% per year, crude oil exports fell from about 2.5 million barrels per day (mbd) to about 1.1 mbd, and more than $120 billion in Iranian reserves held in banks abroad were inaccessible. JCPOA sanctions relief has enabled Iran to: increase its oil exports to nearly pre-sanctions levels, to regain access to funds held abroad and reintegrate into the international financial system, achieve about 7% overall economic growth in each of 2016 and 2017, attract new foreign investments in the energy sector, and buy new passenger aircraft. The relief from sanctions on Iran’s most vital sectors contributed to Iranian President Hassan Rouhani’s reelection in the May 19, 2017, vote.

Yet, perceived economic inequities and grievances constituted a key component of the widespread unrest in December 2017-January 2018. And, there are some indications that Iran’s economy is being adversely affected by uncertainty about whether all U.S. sanctions will be reimposed by the Trump Administration.

**Other Options for Ending U.S. Participation**

It is important to note, however, that the May 12th deadline is only one of the options open to the President, and that he can take action when other deadlines occur or at any time he defines Iranian non-compliance as being unacceptable. These options not only give the President other ways to withdraw, but other ways to keep pressure up on Iran to modify the agreement and U.S. allies to support such efforts.

Once again, the CRS provides important insights into the full range of other options open to the President for ending U.S. participation in the JCPOA. It is important to note that they offer a range of approaches other than decertification, several involve action by Congress, and some can be implemented in ways to fall short of fully breaking with the JCPOA. All would present problems in dealing with U.S. allies, Russia, and China, and would be likely to provide a major reaction from Iran:

INARA requires the Administration to certify, every 90 days, that all of four main conditions of Iranian compliance have been met. The four points are that (1) Iran is verifiably and fully implementing the JCPOA; (2) Iran has not committed an uncured material breach; (3) Iran has not taken any action that could advance a nuclear weapons program; and (4) continued suspension of sanctions (including issuance of waivers of applicable sanctions laws) is (a) appropriate and proportionate to the specific and verifiable measures taken by Iran with respect to terminating its illicit nuclear program and (b) vital to the national security interests of the United States.

... INARA authorizes the President to provide Congress with “credible and accurate information relating to a potentially significant breach or compliance incident by Iran ...” and, within 30 days of submitting such information, to determine whether the Iranian breach “constitutes a material breach” and whether Iran has “cured such material breach.” Under INARA, an Administration confirmation of an uncured material breach of the JCPOA by Iran would trigger expedited procedures for congressional consideration of legislation that would reimpose those U.S. sanctions that have been waived to implement the JCPOA—and prevent further such waivers.
A decision on INARA certification is separate from a presidential decision whether to reimpose sanctions. INARA gives Congress the option to reimpose sanctions on Iran under expedited privileges, but does not require such action. INARA contains a provision under which sanctions reimposed by the INARA process cannot be waived or otherwise not implemented by the President.

As President Trump noted in his October 2017 and January 2018 statements, he has the authority to cease U.S. implementation of the accord and he could reimpose all or some of the U.S. sanctions that were revoked or suspended to implement the deal. He could reinstate those sanctions imposed by Executive Order, decline to continue waiving provisions of sanctions laws, or redesignate for sanctions entities that were “de-listed” from sanctions to implement the JCPOA. It is unlikely that the President would require the approval of Congress for these courses of action.

... The Trump Administration could conceivably use provisions of the JCPOA itself to cease implementation of U.S. commitments under the agreement. Paragraph 36 of the JCPOA outlines a complex “Dispute Resolution Mechanism” under which any party to the agreement can assert that another party is violating the accord and seek to resolve the issue. The JCPOA mechanism outlines a process by which Iran can resolve such a dispute but provides that, “if the complaining participant deems the issue to constitute significant nonperformance, then that participant could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA.... ”17 The dispute resolution mechanism also provides for the United States to be able to “snap back” all U.N. sanctions that were in place prior to Implementation Day of the JCPOA (January 16, 2016).

The United States is a veto-wielding permanent member of the U.N. Security Council, and the dispute resolution mechanism enables any veto-wielding member to block a U.N. Security Council resolution that would continue the lifting of U.N. sanctions... A U.S. accusation of Iranian noncompliance—in the absence of supporting evidence from the IAEA—would undoubtedly raise questions about the use of this mechanism to leave the agreement. IAEA reports have consistently cited Iran as fully complying with the agreement. The text of the JCPOA dispute resolution mechanism does not address the ability of any JCPOA party to accuse another of violating non-nuclear aspects of the accord.

...An alternative to reimposing sanctions laws or Executive Orders is for the Administration to instead restore the “Specially Designated National” (SDN) designation to some or all of the many entities that were “de-listed” to implement the JCPOA. The entities that were de-listed are those that involve Iran’s civilian economy, such as banks, shipping firms, insurance entities, civilian manufacturers, and energy-related entities. Redesignating such entities would resume the application of some U.S. secondary sanctions to those entities, including provisions of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA, P.L. 111-195) or the Iran Freedom and Counter-proliferation Act (IFCA, P.L. 112-239) that largely close the U.S. economy to third-country entities that conduct transactions with Iran-related SDNs.

The Congress can also take expedited action under some conditions: 5

In the absence of the required certification, or after a presidential determination of noncompliance or an uncured breach, a House or Senate party floor leader may introduce,
within 60 calendar days, a bill (with stipulated text) to reinstate sanctions. The bill is subject to expedited congressional procedures (though each chamber could choose to use its existing procedures instead). Committees that are referred the bill are automatically discharged if it has not been reported after 10 legislative days (House) or session days (Senate).

In the House, on or after the third legislative day after reporting/discharge, a majority could agree to a nondebatable motion to bring up the bill. In the Senate, after reporting/discharge, a majority could agree to a nondebatable motion to bring up the bill; no cloture process, with its associated three-fifths vote threshold, is necessary for the Senate to do so.

House floor consideration is limited to two hours. The Senate limit on floor consideration is 10 hours; thus, a numerical majority could pass the bill without the need for three-fifths to first invoke cloture. (A majority could also agree to a nondebatable motion to spend less time on the bill.) Floor amendments are precluded in both chambers. Other procedures would expedite second-chamber consideration of a bill received from the other house.

A bill agreed to by both chambers is subject to presidential veto, which can be overridden by two-thirds vote in both chambers. (Senate consideration of the veto message is limited to 10 hours; no cloture process would be required to reach the override vote.)

**Iran’s Options for Restoring its Nuclear Programs**

The threat of any such US action has led the Iranian foreign minister, Javad Zarif, to threaten that Iran would immediately act to restore its nuclear programs. The National Iranian American Council (NIAC) and other Iranian officials have stated that Iran could act relatively quickly to resume activities like,

- Bringing advanced centrifuges online or resuming enrichment at the deeply-buried Fordow nuclear site;
- Enriching uranium beyond 3.67%, potentially up to 20% or higher;
- Expanding its holdings of enriched uranium beyond 300kg to lay the ground work for further enrichment of enough uranium for a number of nuclear weapons;
- Limiting the access of International Atomic Energy Agency (IAEA) inspectors, including access to suspect undeclared sites, uranium mines and mills and centrifuge production facilities.

There also is no way to know whether Iran also maintained some form of covert nuclear weapons and warhead design activities after signing and implementing the JCPOA. There are many aspects of weapons design and manufacture that do not require major facilities and that are easy to conceal, including conducting instrumented tests of weapons designs using non-fissile materials.

At the same time, no one has argued that Iran has violated the terms of the JCPOA. Iran is in the middle of a major economic crisis even with sanctions waived, and it has already given up key aspects of its nuclear efforts that have made the JCPOIA a largely successful effort in ending Iran’s nuclear weapons program.

**The Key Limits the JCPOA Already Imposes**

No official in the U.S. or elsewhere has argued that Iran failed to take the following actions by the day the agreement was implemented on January 1, 2016:
• Implement the ban on uranium enrichment beyond 3.67% and plutonium reprocessing.
• Eliminate its stockpile of medium-enriched uranium, and place limits on Iran's holdings of low enriched uranium (for 15 years).
• Reduce stockpiles of enriched uranium to agreed levels (cut of 98% from 10,000 kg to 300 kg) for 15 years, including the shipment of 11 tons (25,000 pounds) of low-enriched uranium materials from Iran to Russia.
• Remove numerous centrifuges (roughly two-thirds) and related infrastructure from its uranium enrichment plants at Natanz and Fordow, and place them in storage for 10 years. Cut from 19,000 centrifuges (of which 10,000 were operational) to no more than 6,104 operational centrifuges, with only 5,060 IR-1 centrifuges allowed to enrich uranium.
• Limit enrichment capacity to the Natanz plant, and centrifuges to IR-1 type centrifuges, the oldest and least efficient. Give up advanced IR-2M centrifuges for 10 years. The non-operating centrifuges will be stored in Natanz and monitored by IAEA, but may be used to replace failed centrifuges.
• Agree to not build any additional heavy-water reactors for 15 years.
• Limit nuclear R&D activity to the Natanz facility and accept certain limitations for the first eight years in order to limit Iran a breakout time to one year.
• Remove the core from the Arak heavy water reactor and fill the openings into the reactor core tank or calandria with concrete in ways that make it permanently inoperable.
• Modernize and rebuild the heavy-water research reactor in Arak to become an agreed design for peaceful nuclear research and production needs and purposes. Minimize the production of plutonium and not produce weapons grade plutonium. Limit power to 20 MWth (Megawatt thermal) and send all spent fuel out of country.
• Agree to not build new Heavy Water facilities for 15 years, and move towards implementation of a 130-metric-ton cap on Heavy Water. All excess Heavy Water will be sold internationally outside of country.
• Enhance access to uranium mines and mills, and continuous surveillance of centrifuge manufacturing and storage locations.
• Provisionally implement the Additional Protocol to its IAEA safeguards agreement. Along with other verification measures – including the deployment of online inspection monitors – this significantly increase some aspects of the IAEA's ability to monitor nuclear activities.

The Strengths and Weaknesses of the Existing Agreement

These steps and the fact that there are no time limits on Iran's overall agreement not to acquire nuclear weapons and comply with IAEA inspections help explain why many arms control experts argue that the JCPOA agreement may be far from perfect, but is far better than no agreement at all. It is also why they argue that fixing the existing inspection procedures, and taking strong steps to enforce the procurement controls in the agreement will correct several of its other limitations.

Views of the time limits on the controls over Iran's actions in the agreement –the so-called "sunset provisions"-- are more controversial, although Iran's agreement not to proliferate never expires, nor does the unrestricted access of the IAEA. Even the 10-year restriction on new centrifuges will
not expire until 2025. The 15-year limit on the 98% reduction in enriched Uranium only expires in 2030. The 20-year limit on IAEA centrifuge monitoring expires in 2035, and the 25-year limit on Uranium ore monitoring expires in 2040.

There seems to be little real-world chance that today's problems with Iran's nuclear efforts are really going to be static 10 years in the future, much less 25. In the real world, the agreement will eventually cease to be relevant or have to be renegotiated. No meaningful arms control agreement lasts forever.

Moreover, other arms control experts argue that the agreement has a wide range of additional limitations:

- Limits on frequency, depth, and coverage of key inspection activities.
- The level of depth and transparency in UN reporting.
- The fact (as Israel has now proved) that Iran reached something close to breakout capability before the agreement and many of its nuclear activities can continue as part of its nuclear power program, including the development of far more advanced centrifuges and reactor design.
- Iran's potential ability to conceal ongoing nuclear weapons development and research activities – some of which can be extremely difficult to detect and verify.
- The fact it did not limit Iran's missile and delivery system development activity, and only put relatively short limits on its capabilities to import new weapons and delivery system components.
- The fact it did not affect any of Iran's activities to increase its strategic influence in the region – particularly in Lebanon, Syria, Iraq, and Yemen.

President Trump and others have used these latter two limitations to argue that Iran is in material breach of the agreement because Iran has violated the JCPOA's "spirit" by not halting its military activities, its expansion of its regional military influence, and the development of its missile programs. This argument is valid to the extent that it is clear that Iran has not moved to "moderate" any of its other activities or to convincingly reach out to negotiate with its neighbors or focus on peaceful economic development.

This mix of threats does pose a critical mix of threats to U.S. strategic interests. The U.S. Energy Information Administration estimates that the "Strait of Hormuz is the world's most important chokepoint, with an oil flow of 17 million b/d in 2015, about 30% of all seaborne-traded crude oil and other liquids during the year. In 2016, total flows through the Strait of Hormuz increased to a record high of 18.5 million b/d... EIA estimates that about 80% of the crude oil that moved through this chokepoint went to Asian markets, based on data from Lloyd’s List Intelligence tanker tracking service. China, Japan, India, South Korea, and Singapore are the largest destinations for oil moving through the Strait of Hormuz." Moreover, "Qatar exported about 3.7 trillion cubic feet per year of liquefied natural gas (LNG)...more than 30% of global LNG trade. Kuwait imports LNG volumes that travel northward through the Strait of Hormuz."6

The U.S. has sharply reduced its imports of crude oil and now increasingly exports petroleum products. However, the global flow of oil out of the Gulf to other importing states is now far more critical to the operation of the global and U.S. economy than U.S. imports of crude ever were. It is
critical to the flow of imports to the U.S., for which the U.S. has no domestic substitutes, that world (and U.S. domestic) oil and gas prices stay low.

At the same time, any argument based on the spirit of the agreement and Iran's other activities is questionable, given the fact that the U.S., has not fully complied in removing all of the other relevant sanctions and limits on transactions with Iran. All of the negotiators also knew that Iran had not agreed to limit its development of ballistic and cruise missiles, and particularly ICBMs. They knew it did nothing to limit its creation of a major mix of naval-missile-air forces that threaten naval and maritime traffic, and other targets in the Gulf and nearby waters in the Indian Ocean. They also knew it did nothing to limit the steady expansion of its military presence, training efforts, and arms transfers in other states like Iraq, Lebanon, Syria, Yemen and threats to other Arab states like Bahrain.

**The Impact of the Israeli Disclosure that Iran has Been Proven to Have a Nuclear Weapons Program**

Prime Minister Netanyahu's disclosure that Israeli intelligence has acquired a large number of documents from Iran that prove it has long had a major nuclear weapons program that continued at least some activity well beyond 2003, and into the early phases of the JCPOA negotiations may create an argument that Iran has been in violation of the agreement from the start. Secretary Pompeo has indicated that these documents are valid, and they prove that Iran lied throughout the negotiating process for the JCPOA by denying that it had such a program.

He states that,

Well, tonight, I’m here to tell you one thing: Iran lied. Big time...After signing the nuclear deal in 2015, Iran intensified its efforts to hide its secret nuclear files. In 2017, Iran moved its nuclear weapons files to a highly secret location in Tehran. This is the Shorabad District in southern Tehran. This is where they kept the atomic archives. Right here. Few Iranians knew where it was, very few, and also a few Israelis.

…But here’s what happened next. Iran was faced with mounting pressure in 2003. You remember that, that was following the Gulf War, so it was forced to shelve Project Amad. But it didn’t shelve its nuclear ambitions. So Iran devised a plan to do two things. First, to preserve the nuclear know-how from Project Amad, and second, to further develop its nuclear weapons related capabilities. That plan came directly from Iran’s top leadership.

There’s another document from the archive. This is following the new directive of Iran’s Minister of Defense, Mr. Shamkhani, today he’s the director of the National Security Council. Following the new directive of Iran’s Minister of Defense, the work would be split into two parts, covert and overt. A key part of the plan was to form new organizations to continue the work. This is how Dr. Mohsen Fakhrizadeh, head of Project Amad, put it. Remember that name, Farhizadeh. So here’s his directive, right here. And he says: “The general aim is to announce the closure of Project Amad,” but then he adds, “Special activities”—you know what that is—“Special activities will be carried out under the title of scientific know-how developments.” And in fact, this is exactly what Iran proceeded to do. It continued this work in a series of organizations over the years, and today, in 2018, this work is carried out by SPND, that’s an organization inside Iran’s Defense Ministry. And you will not be surprised to hear that SPND is led by the same person that led Project
Amad, Dr. Farhizadeh, and also, not coincidentally, many of SPND’s key personnel worked under Farhizadeh on Project Amad.

So this atomic archive clearly shows that Iran planned, at the highest levels, to continue work related to nuclear weapons under different guises and using the same personnel... Iran was required by the nuclear deal, to come clean to the International Atomic Energy Agency about its nuclear program. This was an explicit condition for implementing the nuclear deal. Iran has to come clean. So in December 2015, the IAEA published its final assessment of what it called the military aspects of Iran’s nuclear program. This is the report. This was Iran’s chance to fully come clean to the IAEA. They could tell the truth, they could say, we had this program, this secret program, it’s over, we shelved it, it doesn’t exist, we destroyed the material. Here’s what Iran actually told the IAEA. It said, Iran denied the existence of a coordinated program aimed at the development of a nuclear explosive device, and specifically denied, get this, specifically denied the existence of the Amad plan. The material proves otherwise, that Iran authorized, initiated and funded Project Amad, a coordinated program aimed at the development of a nuclear explosive device.

…Iran lied again in 2015, when it didn’t come clean to the IAEA, as required by the nuclear deal. And finally, the Iran deal, the nuclear deal, is based on lies. It’s based on Iranian lies and Iranian deception. 100,000 files right here prove that they lied...So here’s the bottom line. Iran continues to lie. Just last week, Zarif said this: “We never wanted to produce a bomb.” Again: “We never wanted to produce a bomb... Yes, you did. Yes, you do. And the atomic archive proves it.

The nuclear deal gives Iran a clear pass to an atomic arsenal. It does so because it gives them the three components that are necessary to produce this arsenal. First, unlimited enrichment in a few years. And they plan to do that. They plan to have several hundred thousand advanced centrifuges with which they can enrich mountains of uranium for that core that I showed you before. For many, many such cores. Second, it completely fails to address Iran’s continued development of ballistic missiles. And third, and this is new, it completely fails to address Iran’s secret nuclear bomb program and its advanced work on weaponization. We just did.

So this is a terrible deal. It should never have been concluded. And in a few days’ time, President Trump will decide, will make a decision on what to do with the nuclear deal. I’m sure he’ll do the right thing. The right thing for the United States, the right thing for Israel and the right thing for the peace of the world.

The argument that Iran’s lies constitute a material breach of the JCPOA is still somewhat tenuous. None of the 5+1 powers involved in the negotiation had any doubt that Iran was lying about not having a nuclear weapons program at any point in the negotiation. They never publically revealed their full intelligence holdings, but they helped provide the IAEA with information that it used in report after report. These weapons related sections made it clear that there were convincing indications that Iran had a nuclear weapons program, and that key parts of its nuclear facilities and investment in nuclear programs were weapons related.

Even though the JCPOA may have been negotiated in a climate where they tolerated Iran’s denial as a necessary fiction, the U.S. might still argue that Iran’s continued denials are a material breach on Iran’s part. More seriously, neither the fact Iran lied or the fact it preserved a record of its weapons development efforts means that the JCPOA is without value as long as Iran complies with
the terms of the agreement and does not carry out actual weapons development and production efforts. So far (as of May 1, 2018), none of the material Prime Minister Netanyahu describes has clearly shown that Iran was actively violating the JCPOA after implementation day.

**Option Two: Continuing to Press for Change Without Taking Steps that Would Re-impose Sanctions and End the Agreement**

President Trump still does have the option of effectively doing nothing, and complaining about the agreement, and pressuring for full enforcement and future change. He can wait to see if Iran does actively violate the JCPOA in ways he can use to negotiate broad support from the rest of the 5+1, and then focus on the other threats Iran poses to the region and U.S. strategic interests. It seems clear from his statements during President Macron and Chancellor Merkel's visits, however, that he will at least insist on expanding some aspects of the agreement and seeking a parallel agreement -- or new sanctions -- on Iran's missiles and stronger common action to deal with the threat Iran poses in the Gulf and to the MENA region.

*A Current Lack of Key Allies*

U.S. officials and press reports have mentioned efforts to work with France, Germany, and the United Kingdom -- American's European partners in the 5+1 -- to remove or change the sunset provisions in the agreement, expand inspections to cover military bases with fewer constraints, and cooperate in limiting the expansion of Iran's military influence. As of now, however, there has been no public disclosure of the nature and scope of such negotiations, or indication that the U.S. has been able to persuade its European allies to reach any agreement with the U.S., much less Russia and China.

Part of this seems to be the result of the fact that governments like France and Germany feel the U.S. is rejecting an agreement that is far better than none, that it is seeking too much too soon from Iran without any practical economic compensation, and that it is focusing on issues like the time limits in the agreement and minor problems in verification and compliance for reasons that are far more ideological than practical. Regardless of the merits of each side's arguments, the timing and almost preemptive character of U.S. policy has put the U.S. on the defensive – while waiting for some tangible serious Iranian violation might get far broader support.

It seems clear that Russia has no interest in taking steps that would aid the U.S. and that China chooses to stand aside. Israel and part of the Arab world -- particularly Saudi Arabia and the UAE -- do support a hardline approach to forcing the early modification of the agreement or rejecting it, but there is little indication of other strong support for effectively rejecting the JCPOA. The end result is that the U.S. is likely to be alone in rejecting the agreement among the 5+1, lack broad international support outside the 5+1. Additionally the U.S. may find some European powers willing to challenge U.S. sanctions and successfully block any return to EU sanctions -- sanctions that played a key role in pushing Iran into negotiating the JCPOA in the first place. It is also easily foreseeable that Iran could create far more problems for the U.S. in Syria, Iraq, and Afghanistan and sharply raise the level of tension in the Gulf area.

*The Case for Not Ending the Waiver on Sanctions*

Put simply, the JCPOA is not flawed enough -- or being implemented under conditions that impose sufficient urgency -- to re-impose sanctions and destroy the agreement. The U.S. strategy should not take any near term action to end the agreement unless Iran actually commits a serious violation. Instead, the U.S. should seek to find ways to make the agreement better over time, concentrate on
finding options that address other and more urgent regional security issues, and avoid any actions that end in making the current situation worse. Iran's nuclear, missile, and other threats are far too real for the U.S. to simply terminate its support for the JCPOA without focusing on the costs and benefits of such an action, and the extent to which it may alienate key allies in the process.

The U.S. must consider its other real-world priorities in dealing with the Iranian threat. It must deal with more than the nuclear dimension, and do everything possible to create an effective mix of containment, deterrent, and warfighting forces to deal with three other aspects of Iran’s military capabilities:

- Iran’s growing conventional armed ballistic, cruise, and long-range anti-ship missile capabilities.
- Iran’s growing mix of asymmetric naval-missile-air forces tailored to threaten shipping, petroleum, and naval traffic through the Gulf and nearby waters in the Indian Ocean and Red Sea.
- Iran’s growing regional influence in Lebanon, Syria, Iraq, Yemen, and threat to Bahrain.

Provoking an avoidable near-term crisis over a nuclear threat that has largely been defused for at least several years will do nothing to unify support in dealing with these threats from counties like Britain, France, and Italy – or persuade them to build up their power projection capabilities. It will do nothing to unite America’s deeply divided Arab security partners – which now have virtually destroyed the Gulf Cooperation Council. Saudi Arabia, the UAE, and Bahrain have openly split with Qatar, Oman increasingly stands aside, and a deeply divided Kuwait seeks to mediate. Jordan is under growing economic and refugee pressure and was never integrated into Gulf defense, and Iraq seems to be tilting towards Iran and not the Arab states and the U.S.

Seeking regime change in Iran is not a meaningful option. Any such effort ignores the fact that the Iranian government quickly suppressed the most recent demonstrations which were far more limited than those during the "green" uprisings in 2009-2010. The idea also ignores the fact that Iran has steadily been improving its internal security capabilities. Overt U.S.-led threats to Iran seem far more likely to increase popular support for the regime and its hardline elements than catalyze any meaningful resistance.

Seeking regime change also ignores the fact that Iran's outside opposition groups clearly have marginal support, that there is no demand for the Shah's son, and the leading opposition movement was supported by Saddam Hussein during the Iran-Iraq War, and has a cult-like character that makes the Iraq exiles the U.S. tried to rely on in 2003 seem almost pragmatic and balanced by comparison.

Longer term regime modification, however, may be possible. There clearly are elements in the current government that do want to focus on Iran's internal development and stability. A major U.S. effort to build-up an effective mix of U.S. and security partner deterrent and containment capabilities – coupled with conditional economic incentives that clearly tie improved trade and financial ties to an Iranian focus on civil development – may accomplish far more in practical terms.

Iran faces massive population pressure and economic challenges. Showing Iranians that they have a real alternative to confrontation and a massive arms race – rather than open-ended U.S. military
action and Arab hostility – is far more likely to change the behavior and nature of the government in ways that bring moderation and stability than U.S.-led military action.

Creating an Effective Compromise

The real question is what compromise President Trump can reach America's key allies that will both address the problems in the JCPOA and the higher priority aspects of the Iranian threat. President Macron would create a compromise which could unify U.S. and European action, and act as powerful leverage on Russia and China. French officials have already indicated that some elements of such a compromise may be possible, and President Trump has a real opportunity to create a longer-term approach to the JCPOA that not only can compensate for its defects, but help address the other three threats that Iran poses to the U.S. and its strategic partners in the Middle East.

Such a compromise could have the following elements:

- A firm U.S.-British-French-German agreement, without any time limits, that any major Iranian violation of the agreement, or denial of key inspection activity, would lead to the collective "snap back" of sanctions – not only on Iran but other nations trading with Iran. This would focus on Iranian compliance, and real world Iranian actions, rather than theoretical arguments over arms control. The focus would shift from U.S. unilateral action without Iranian provocation to action based on clear justification.

- A similar agreement with our key European allies to create tightly focused sanctions on foreign and Iranian suppliers to Iran's longer range missile programs that apply to both Iranian actions and suppliers of missile parts and technology. This would create a separate track for missile arms control, and one the U.S. and its allies could pursue without directly affecting the JCPOA.

- Creating a dialogue on collective U.S. and allied efforts to share the burden of power projection into the Gulf and Middle East, cooperate in dealing with both the threats posed by Iran and violent extremists, and halt the erosion of the power projection forces of key allies like Britain and France. It would lay the groundwork for a collective effort to strengthen Arab strategic partners in deterring and containing Iran and the extremist threat – measures which would also improve the security of Israel.

- Help lay the groundwork for improved post-Brexit cooperation in dealing with Russia, and ensuring the unity and effectiveness of NATO. It would also strengthen confidence in President Trump's endorsement of Article 5 in the NATO treaty and in the U.S. as a leader of the free world.

- Leave open the option of quietly making Iran's access to world markets conditional on its behavior not only in terms of the JCPOA, but a focus on its development and economy rather than expanding its strategic influence.

Playing the "Long Game"

The U.S. needs to adopt a longer term strategy for dealing with both the JCPOA and Iran. The U.S. needs to play a long game in dealing with the JCPOA, the Iranian missile threat, the Iranian naval-missile-air threat in the Gulf, and Iran's effort to expand its strategic influence in the region.

Play a Long Game to Deal with the JCPOA and Iranian Nuclear Threat
First, the U.S. should pursue a long-term strategy to make the JCPOA a lasting agreement and make it more effective. It should lay the groundwork for demanding Iranian compliance and changes in the agreements – and ensure that its European allies and the 5+1 will actually "snap back" to impose sanctions if and when Iran actually violates the agreement or deadlines approach where Iran shows any indication that it will exploit them to resume nuclear weapons activity. this means that the U.S. should

• Avoid open confrontation with European states, Russia, and China over the JCPOA, but make it that the United States will continue to seek specific and well-defined improvements in the JCPOA – fully explaining what these changes are and justifying them in-depth – educating allies, Iran, and other states as to the nature and justification for its position.

• Push the IAEA for full enforcement of every inspection provision and reporting publicly in full-depth on inspections, activities in the procurement channel, and any other suspect activities rather than in partial and outline form.

• Issue its own semi-annual, and in-depth report on Iran's compliance and nuclear-biological-chemical (NBC) activities and missile development – again educating its allies, challenging Iran, and laying the ground work for snap back and enforcement.

• Wait for actual Iranian violations or suspect activities to push for allied and 5+1 action call for joint action to put pressure on Iran.

• Build a case over time to extend and/or modify each area where the treaty now puts time limits on its restraints on Iran. These limits, however, represent a far less important aspect of the JCPOA than many critics imply. Iran's agreement not to proliferate never expires, nor does the unrestricted access of the IAEA.

• Even the 10-year restriction on new centrifuges will not expire until 2025. The 15-year limit on the 98% reduction in enriched Uranium only expires in 2030. The 20-year limit on IAEA centrifuge monitoring expires in 2035, and the 25-year limit on Uranium ore monitoring expires in 2040.

• Consider using the threat of, or actually making, a formal commitment to provide its regional allies with extended deterrence if Iran should violate the JCPOA or move towards proliferation.

• Signal that U.S. opposition to Arab use of nuclear power plants to proliferate might weaken if Iran proliferates. Quietly work with Israel to make it clear how dangerous Iranian efforts could be.

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**Play a Long Game to Deal with Iran’s Missile Threats**

Second, the U.S. should play a separate and reinforcing game to deal with Iran’s ballistic missile and cruise missile threat. The U.S. should not try to link Iran's ballistic and cruise missile developments to the JCPOA as long as these do not have nuclear-biological-chemical warheads. It should not, however, ignore the threat. It should play a separate long game on missiles by working with its allies to push for arms control, create targeted sanctions on key aspects of Iran's missile programs, and confront Iran with improvements in allied deterrent and defense capabilities if it continues to build up its missile threat:
Build upon Resolution 2231, was a key to the JCPOA. This resolution requires that, for a maximum period ending in October 2020, any exportation of arms from Iran is banned. For a maximum period ending in October 2023, the Resolution calls on (but does not require) Iran to refrain from developing, including testing, ballistic missiles “designed to be capable of delivering nuclear weapons.” These restrictions will earlier than the maximum deadlines upon a “Broader Conclusion” by the International Atomic Energy Agency (IAEA) that all nuclear material in Iran remains in peaceful activities.

Create separate tracks for arms control negotiations on Iran's missile testing, development, and modernization – fully publicizing the growing Iranian missile threat, particularly Iran's efforts to acquire precision guided systems and its transfers of missiles to third parties like the Hezbollah and the Houthis.

Provide a detailed semi-annual report on Iran's missile forces, developments, and actions.

Continue full support of Israeli missile defense programs.

Develop an integrated theater missile defense plan for its Arab strategic partners in the Gulf, offering U.S. weapons and technology and support from U.S. ships with AEGIS/Standard missile defenses.

Consider transfer of tailored long-range land/air conventionally-armed cruise missile systems designed for deterrent use against Iran to Arab strategic partners in the Gulf.

Consider sanctions and denial of aid to any country that accepts transfer of Iranian missiles or that allows third parties like the Hezbollah to deploy them on its soil.

Sustain a strong CENTCOM presence to support Arab strategic partners in containing Iran’s presence in other countries, and conventional and asymmetric forces.

*Play a Long Game in to Deal with Iran’s Asymmetric and Influence Threats*

Third, the U.S. should act to fully implement the parts of its new National Security Strategy and National Defense Strategy that focus on the need to deal with the broader range of Iranian threats. The U.S. already plans to take many elements of such action, although it has not published them in any detail in unclassified form. Some key options include:

- Provide more formal security guarantees to Arab security partners in the region – a guarantee of lasting U.S. security presence in the Gulf – with the quid pro quo that they put an end to the split between Saudi Arabia/UAE/Bahrain and Qatar, and create more effective plans for regional defense cooperation.
- Explain in detail the level of force improvement it is making to its force projection capabilities and presence in the region, showing its partners and their people the level of improvement it is making in the readiness, weapons, and technology of its deployed and deployable forces and reinforcing deterrence of Iran.
- Expand on its existing advisory and exercise programs to seek more direct cooperation in force planning, mission-oriented and interoperable procurement, training and readiness, and integrated air and maritime defense C4/BM and IS&R. Focus on effective deterrence and defense, not arms sales.
Make it clear that the U.S. will provide lasting security assistance to Iraq if it limits its ties to Iran, and is encouraging other Arab states to help and support Iraq.

- Bring Jordan as a full partner into the U.S. effort to develop forces to deter Iran.
- Reinforce cooperation with France, Italy, and the United Kingdom in power projection and regional security planning.
- Expand efforts to find some viable end to the war in Yemen that offers some hole of building lasting stability and development.
- Work with Arab partners and Israel to deter and contain Assad in Syria and secure Syria's northeast east and borders.

**Play a Long Regime Modification Game that Offers Carrots as Well as Sticks**

Finally, the U.S. should not support regime change, particularly the efforts of erratic outside opposition groups that border on being cults, have a terrorist background, and once served as the tools of Saddam Hussein. The current regime has proved all too capable to dealing within its current internal opposition, although it is sufficiently divided and has enough remaining democratic elements to hope it may evolve in a more positive direction.

It is far from clear that the present Iranian regime has real moderates, or that they can prevail over Iran's hardliners, and Revolutionary Guards. Playing a long game, however, means being careful never to confuse the Iranian people with its hardliners and the Guards, or that the U.S. should not assume it cannot deal with parts of its current power structure that want to focus on Iran's economic development, internal stability, and the needs of its people.

The U.S. should make it clear that it wants to improve relations with Iran, does not confuse Iran's hardline elements with its people, and will deal with any elements in its power struggle that make it clear that eliminating/reducing sanctions and barriers to banking/investment/trade can be tied to peaceful development and not any form of military build-up.

The U.S. should offer Iran incentives for moderation, focusing on development and its people's needs, and negotiating with other regional states. It should not simply impose sanctions, build up its forces, and issue threats. It should firmly establish kinds of conditionality that improvements in relations, trade, and the ease of financial transactions for real world Iranian movements towards moderation. It should be clear at all times that the U.S. is seeking better relations on terms that will help the Iranian people, that it will work with Iran if it eases its tensions with its neighbors, and would be willing to work with Iran in a serious effort to reduce the arms race in the Gulf and the region.

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2 The CRS report notes that certification of compliance under the Iran Nuclear Agreement Review Act (INARA, P.L. 114-17)—which amended Section 135(d)(6) of the Atomic Energy Act of 1954 (42 U.S.C. 2160(e)—are being met. The certification requirement is not a specific provision of the
July 14, 2015, multilateral nuclear agreement (Joint Comprehensive Plan of Action, JCPOA). The JCPOA was between Iran and the “P5+1” group of countries (United States, Russia, China, Britain, France, and Germany).


