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# FRIENDS OF ISRAEL INITIATIVE

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## Walking Away from the Bad Deal with Iran

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**Why and How the US Administration Should Abandon the JCPOA**

Friends of Israel Initiative

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# TABLE OF CONTENTS

FOREWORD by Rafael L. Bardajf	1
<b>PUTTING THE JCPOA IN CONTEXT: GUIDELINES FOR MORE EFFECTIVE US POLICY TOWARD IRAN</b>	3
by Emily B. Landau	3
What's (still) wrong with the JCPOA	
Trump signals a new course on Iran	5
The certification process: liability for the Trump administration	6
New narrative of deal supporters: the deal is "working"	8
Recommended strategy	8
<b>TEARING UP THE JOINT COMPREHENSIVE PLAN OF ACTION</b>	12
by Lee Smith	
Preface: The Case for Tearing Up the Joint Comprehensive Plan of Action	12
Background	13
Dismantling the Joint Comprehensive Plan of Action	17
Conclusion: Preserving the JCPOA ensures another nuclear rogue state like North Korea	20
<b>ABROGATING THE IRAN DEAL: THE WAY FORWARD</b>	22
by Ambassador John Bolton	
I. Background	22
II. Campaign Plan Components	24
III. Execution Concepts and Tactics	24
IV. Conclusion	27

## Foreword

The members of the Friends of Israel Initiative strongly opposed the adoption of the Joint Comprehensive Plan of Action (JCPOA) because we thought the Obama Administration negotiated the terms of the agreement poorly and, in consequence, concession after concession made Iran a clear winner, putting at risk not only American security interests but the entire Middle East's stability as well.

Even without knowing the additional secret clauses signed by Obama administration officials at the time, it was evident that:

- a. Under the JCPOA provisions, Iran would be allowed to retain its nuclear infrastructure intact, to modernize its facilities, to enrich enough uranium to advance nuclear R&D, and consequently, to become a nuclear threshold state.
- b. The JCPOA inspections and verifications regime was weak enough to allow Iran to pursue its nuclear program clandestinely.
- c. The JCPOA left Iran richer, stronger, and better equipped to pursue its drive for regional domination.
- d. The JCPOA would not curb Iran's malign activities, such as the promotion of terrorism and violations of human rights.

Since then, time has unfortunately proven us to be entirely correct: Over the last two years, Iran has not fully complied with its obligations under the JCPOA and under UN Security Council Resolution 2231 —which adopted the nuclear deal—, has not pared down its nuclear ambitions, has extended its influence and dominance across the Middle East, has kept sponsoring terrorism and has carried on with grave human rights violations against its own citizens.

First, Iran's attitude has generated enough doubts about its compliance with the JCPOA. Many important questions about centrifuges, heavy water, R&D and inspection access to military facilities remain unresolved. Besides, Tehran is concealing its real intentions, achieving the status of a nuclear-armed power, arousing abundant suspicion. Moreover, at the expiry of the deal, as former President Obama admitted, Iran's breakout time would have shrunk to almost zero. In short, under the current circumstances, Iran will be able to develop a nuclear weapon within little more than a decade without any restrictions. Hence, it is time to realize that the JCPOA is not fulfilling its main goal: to prevent a nuclear Iran.

Second, the JCPOA has not stopped Iran's evil actions; on the contrary, it has boosted them. Iran's belligerence in the Middle East is a worrisome reality; Tehran is trying to build a Shia crescent, from Iran to the Lebanon, via Iraq and Syria, including Yemen and Bahrain; thus threatening the security of the pro-Western Sunni states and menacing the existence of the U.S.'s most vital ally in the region: Israel. This strategy makes ample use of Iran's terror proxies, such as Hezbollah in Lebanon and Syria. Also, according to the U.S. Department of

State “Country Reports on Terrorism 2016”, once again, Iran is the main sponsor of terrorism in the world. The situation is becoming untenable, and the JCPOA has contributed to it.

Third, the JCPOA has not moderated the Islamic regime’s behaviour, nor prompted any liberalizing policies; instead, Iran has continued the ongoing repression of its citizens and its violations of human rights. The regime is today more belligerent than ever; last January, Tehran arranged an anti-America and anti-Israel parade on the so-called ‘Quds Day’. “Death to America” and “Death to Israel” was chanted in the streets, while Supreme Leader Ayatollah Ali Khamenei encouraged the crowd to show no fear of American “threats”. In the previous year, Khamenei said that Israel will not exist in 25 years.

As if this were not enough, Iranian Revolutionary Guards Corps patrol boats have harassed U.S. Navy ships in the Strait of Hormuz on more than one occasion.

During his election campaign, Donald Trump expressed his concerns with an agreement that he considered was concluded by “terrible negotiators”, and that is “a disaster” and “the worst agreement ever” frequently. And as a candidate he promised either to correct its flaws or to reject it entirely. And he was entirely right when he said that.

As you can see in the following papers by highly reputed experts, Iran’s nuclear program is not yet curtailed, and inspectors are not allowed to visit relevant military facilities in Iran. As a matter of fact, Iranian leaders have pointed out recently that they can reassume the entire project in a matter of days, not months or years. Yet, sanctions have been progressively phased out, Iran’s continued ability to abuse the international financial system accepted, and Iran has felt legitimized in exerting an aggressive foreign policy in the Middle East, now being felt from Yemen to Lebanon, and in the outlook for the future of Iraq and Syria. Iran, under the regime of the Ayatollahs, is not a normal country and the JCPOA is neither moderating nor normalizing their behavior.

The JCPOA was a multilateral agreement because President Obama knew it was highly controversial and one way to preserve it was by internationalizing it. That’s why he sent it to the UN for recognition. But that’s not important. What is important is to assess whether the JCPOA and any resultant effect on Iran’s behavior is in America’s interest. If not, the US can and should walk away easily.

In the following papers the reader will learn why we believe the JCPOA still is a very bad agreement that doesn’t fulfill its aims; how Iran has benefited from it to advance her revolutionary ambitions in the region; why rejecting the agreement is the best option; and how it can be done.

We urge President Trump and his administration to thoroughly review the terms of the agreement considering Iran’s limited compliance and aggressive behavior, and start moving in the direction of denouncing this flawed agreement in the coming months. Rejecting “the worst deal ever” is the best way to protect American interest and to strengthen American allies in the region.



Rafael L. Bardaji  
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# Putting the JCPOA in context: Guidelines for more effective US policy toward Iran

**Emily B. Landau**

There is a reason for anniversaries – in international politics as in life. They encourage us to assess where we are and where we are going. The two-year anniversary of the Iran nuclear deal (otherwise known as the Joint Comprehensive Plan of Action, or JCPOA) coincided with the six-month mark of the Trump administration. This provides an opportune moment to take stock and offer advice about how to proceed with regard to the nuclear deal, especially as the administration nears completion of its Iran policy review.

Debate surrounding the nuclear deal initially focused on what it actually achieved and what it did not; its flaws and weaknesses; the prospects for successful implementation; and where Iran is likely to be, and the options that will be available to the international community, when the deal expires. Since the JCPOA was presented two years ago, experts have been debating whether even if upheld for ten years, the fact that the nuclear deal enables Iran to continue work on its nuclear infrastructure will not end up easing its path to a military nuclear capability down the line.

## What's (still) wrong with the JCPOA

The debilitating flaws of the JCPOA have been examined in depth elsewhere,<sup>1</sup> but it is important to briefly review the major weaknesses of the nuclear deal. First, rather than leaving Iran with only a symbolic uranium enrichment program (of about 1500 centrifuges – to enable Iran to save face), which was the original intention of the Obama administration, the JCPOA left Iran with 6000 centrifuges, and the explicit right to work on R&D on a full range of advanced centrifuges. In addition, president Obama stressed that in the future – when the deal expires – Iran will be able to run a large-scale industrial nuclear program. As such, rather than emphasizing the acute dangers of work on the fuel cycle (because centrifuges are dual use technology that can be diverted from civilian to military use), the deal – coupled with Obama's rhetoric – actually *legitimized* Iran's uranium enrichment program.

A second problem is the ambiguity surrounding critical provisions in the deal regarding inspections at Iran's military facilities. Rather than insisting on the "anytime, anyplace" inspection rule – which would have helped closed a major loophole in the NPT – the P5+1 conceded to Iran on this point, and the text ended up with ambiguous provisions that can easily be abused by Iran in order to play for time before allowing an inspection, well beyond

the 24 days that it can gain once the clock begins ticking. As a violator of the NPT – namely, a state that broke its commitment to eschew work on a military nuclear program, and advanced such a program at the military facility Parchin – this concession to Iran is incomprehensible. Moreover, Iran's supreme leader has stated firmly and repeatedly that Iran will never allow inspectors to enter its military facilities. What this means is that, at the very least, an IAEA request to inspect will be strongly challenged by Iran; the regime will do everything in its power to drag its feet, while also taking precautions not to be declared in violation of the deal.

A related issue has to do with the file on Iran's past military work. For years the IAEA denoted this work the "Possible Military Dimensions" (PMD) of Iran's nuclear program, until it came out with its final report on the issue in early December 2015.<sup>ii</sup> In this report, the IAEA determined that Iran worked on a military program until 2003, and in a less coordinated manner until at least 2009. It is significant that the IAEA could not say anything more definitive about the period after 2009 because Iran had not cooperated fully with the investigation, even though it was carried out in the months *after* the JCPOA was announced. Despite the damning conclusion of the IAEA report, Iran continues to insist that it never did anything wrong in the nuclear realm, and rather than contradicting that narrative and reminding everyone that Iran is an NPT violator, the P5+1 have remained silent in the face of Iran's false narrative.

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There are negative consequences to having brushed aside the account of Iran's past military work, one of which is that on this basis Iran demanded confidentiality in the arrangements it concluded with the IAEA. Iran demanded the same rights as other non-nuclear members of the NPT, even though as a *violation* of the NPT, Iran should have lost this privilege. The deliberations and decisions of the Joint Commission set up by the JCPOA for oversight of the deal are also problematically confidential, and the IAEA reports on Iran that have been released since Implementation Day (January 2016) lack the full information that they had included in the past. It was only over the course of 2016 – and due to investigative reporting – that it became known for example that Iran has plans to install thousands of advanced centrifuges from year eleven of the deal.<sup>iii</sup> Transparency and clarity with regard to the workings of the Procurement Working Group (PWG) set up by the nuclear deal are also missing.<sup>iv</sup>

Additional problems with the JCPOA regard the lack of decision-making guidance for dealing with an Iranian violation, beyond the so-called "snapback sanctions" and the laconic statements issued by the Obama administration according to which: 'if there is a violation, we will know, and we will have time to take care of it.' But what are the relevant operational definitions behind this proclamation? What will qualify as a significant violation? How significant does it have to be to warrant a response? Who decides? What can be done in response, and by whom? Is it only sanctions – which of course do not snap back on their own but need to be decided upon? Who has to be on board decisions about what to do? And in what time frame? Can effective counter-action be achieved in time (one year)?

Finally, the deal does not cover possible Iranian nuclear activities outside Iran, in cooperation with North Korea for example. And most problematic of all: the deal has an expiration date, which is currently 8.5 to 13.5 years away. The deal will expire regardless of whether there has been any change in Iran's behavior and interests.

As long as Obama was president, not only did he lack any intent to hold Iran to the letter of its nuclear commitments and work to strengthen the deal, he brushed aside any and all evidence of problematic Iranian behavior. Minor violations of the deal were deemed a mistake or insignificant, and he declared the JCPOA a resounding success that would stop Iran from ever acquiring a nuclear weapon. Obama also ignored German intelligence pointing to Iran's attempts to circumvent the Procurement Working Group set up by the nuclear deal, and illicitly procure components and technologies that could be used in a nuclear-weapons program.

Obama also displayed a distinct reluctance to push back on any of Iran's regional provocations in the year and a half that he remained president. He did not want to arouse Iran's anger, which he believed would risk the continued viability of the deal. Iran for its part abused the Obama administration's lack of response, and took away the message that not only could it continue to push the edges on the nuclear and missile fronts (to test what it could get away with), but it could enhance its regional presence and power, which would ultimately facilitate its future move to a nuclear weapons capability.

Aggressive steps taken by Iran in this period include continued testing of missiles that can carry a nuclear payload, or that were marked with "death to Israel;" harsh rhetoric directed against the United States, and accusations that America was not upholding its commitment according to the JCPOA; and ongoing imprisonment of dual U.S.-Iranian citizens held on bogus charges, after the release in early 2016 of four such prisoners in exchange for \$400 million. Over 2016, Iran significantly stepped up its military campaign in Syria, including war crimes against Syrian civilians and attempts to set up a new military presence near Israel's border, while also transferring prohibited weaponry to Hezbollah. As of 2017, according to reports Iran began setting up weapons-making factories in Lebanon, and possibly in Syria as well. Iran is involved in the civil war in Yemen, is arming and training Shia rebels in Bahrain, and has been harassing U.S. naval vessels in the Gulf on a regular basis.

## Trump signals a new course on Iran

What has changed with the Trump administration? Over the first six months, what we have seen is actually more coherence than confusion with regard to the new approach to Iran that is congealing, although there are clearly issues that continue to be debated as the administration enters the final stage of its Iran policy review: most importantly, whether to take action to terminate the deal, or whether to keep the deal, while altering other aspects of its policy toward Iran.

But if we draw a line from the statement issued in response to Iran's missile test in late January (10 days into the Trump administration) about no longer turning a blind eye to Iran's provocations, through Secretary of State Rex Tillerson's April 19<sup>th</sup> statement clarifying that because the JCPOA did not achieve its goal of a non-nuclear Iran, the Trump administration will be looking at Iran in a comprehensive manner, and finally to Trump's visit to the Middle East, when he placed Iran squarely in the crosshairs – clearly the new administration has been signaling its intent to take a sharp turn away from the approach that had been followed by the

Obama administration.<sup>v</sup> What the administration is saying is that it will not separate the nuclear realm from all of Iran's other bad behavior – indeed, it rejects the artificial distinction that the Obama administration drew in this regard, especially in light of the fact that the nuclear deal did not achieve its sole *raison d'être*: ensuring Iran will remain non-nuclear.

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The administration is on the right path in viewing the JCPOA and Iran's emboldened regional behavior as two components of the same policy (Tillerson's April 19 statement). If the deal itself certainly needs to be strengthened and made much more transparent, responding to Iran's regional provocations is no less important. Much damage was done in terms of US deterrence toward Iran during the year and a half that Obama remained president after July 2015, due to his reluctance to push back on provocations. While Obama believed that a harsh response risked Iran leaving the deal, in practice, refraining from action only served to strengthen and embolden Iran. Non action on the part of the US was regarded by Iran as weakness.

What is complicating the efforts of the Trump administration to carve out a new policy toward Iran, however, is that it has been forced to navigate its course per the poor legacy left by Obama administration. In the final weeks before presenting its Iran policy, the Trump administration is facing a growing campaign against whatever harsher measures might be deemed essential in order to make up for the weaknesses and holes in the deal.

## The certification process: liability for the Trump administration

Ironically, one of the biggest problems has been created by the requirement of the US administration to certify Iran's compliance with the deal every 90 days. The certification process has become not only a distraction, but an actual liability. It has forced the administration to issue a statement that looks positive on Iran, when the administration is actually moving in the direction of devising a policy that will no longer ignore Iran's problematic behavior. This is the reason why after the first certification in April, Trump immediately instructed Secretary of State Tillerson to release his statement the very next day. Trump believed it was imperative to clarify that Iran's compliance with a bad deal does not by any means render that deal "good," which is what deal supporters have been trying to argue.<sup>vi</sup>

Since the second certification, in July, the message of the deal supporters has gotten stronger, and certification has unfortunately become the main axis for debate about the deal. This has

granted JCPOA supporters a convenient platform for claiming that the deal “is working,” while distracting the administration from what should be the focus of its Iran review. It has put the administration on the defensive, and in the awkward position of having to try to agree to certification (while its Iran policy review is underway), without saying that Iran is in compliance with the deal. So the wording for the July certification was that the administration “was certifying that ‘the conditions...are met’ when it comes to a separate, U.S. law put into place to monitor the nuclear deal.”<sup>vii</sup>

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What do the certifications really mean? That Iran is in compliance? While more or less complying with the minimal nuclear concessions that it made, Iran certainly has a less than stellar record on that front. We know that there have been some minor violations (eg. regarding the heavy water production limit), some suspected violations (German intelligence regarding Iran’s attempts to circumvent the Procurement Working Group), and exemptions that Iran was secretly granted in order to meet its requirements according to the deal. Moreover, there is much we do not know about compliance because Iran has been granted confidentiality rights, and there is a severe lack of transparency on key issues.<sup>viii</sup>

But jumping from certification to “deal is working” is problematic in a more fundamental sense, and that is because Iran was never expected to blatantly violate the JCPOA – certainly not in the short term. It is actually in Iran’s interest to comply with the nuclear deal because it is not a bad deal from Iran’s point of view. Why blatantly violate a deal that gives it time to build up its nuclear infrastructure and get stronger economically and in regional terms? All in return for minimal concessions in the nuclear realm, and desperately needed sanctions relief? The nuclear deal will keep Iran’s nuclear program intact and can easily pave the road for Iran to become a nuclear state down the line.

Beyond the fact that Iran ensured that the deal does not undermine its breakout capability – and only lengthens the time to breakout from a couple of months to a year – Iran was never prone to blatant crisis-making behavior in the nuclear realm. In fact, over the years, Iran has followed a practice of determined progress on its nuclear plans on the one hand, but efforts geared to crisis-avoidance on the other. In sharp contrast to North Korea, Iran’s well-known tactic is to move forward very carefully, doing its best to hide its tracks, and not give the international community cause to punish it. While not a fool-proof strategy, Iran did create a steadfast narrative that hides its true goals, and it somehow succeeded in convincing others not to call it out. Iran continues to insist on a (false) narrative of nuclear innocence until today, despite the findings of the IAEA.

## New narrative of deal supporters: the deal is “working”

Iran deal supporters ignore everything that is wrong with the JCPOA, despite the fact that the problems that were raised and discussed two years ago remain just as relevant today. Supporters ignore Iran's tendency to try to avoid confrontation (insisting on a narrative of nuclear innocence) while pushing its program forward, and discount the regime's increasingly aggressive regional profile. They base their claim that “the deal is working” solely on the certification process regarding compliance, mistaking certification for success. For them, if Iran has not blatantly violated the deal, it means that Iran has been effectively stopped from going nuclear.

Since the second certification on July 18th, Iran deal supporters have put their campaign to stop Trump from canceling the JCPOA into high gear, coupling the false narrative about the deal “working” with warnings that Trump is actually preparing for war. The assertion that the Trump administration has been “demonizing Iran” is an essential component of this narrative. The entire campaign is intended to put people to sleep with regard to the dangerous implications of the deal. Their claim that Iran's regional behavior cannot be factored in when assessing the value of the deal – because this dimension of Iran's behavior was purposely left outside the negotiation – conveniently ignores the fact that the prospect of Iranian moderation was a major Obama administration selling point for the deal. According to the Obama administration's talking points, there was a good chance that Iran would understand the benefits of economic and other cooperation with the international community, and would answer in kind. With a more moderate and cooperative foreign policy emerging in Iran, the nuclear issue would take on a less threatening nature.

If that had happened, Iran deal supporters might have had a valid point, because context is important when assessing the dangers associated with nuclear weapons. But it did not happen. In fact, the trend over the 18 months of Obama's presidency after the deal was presented in July 2015 went in the exact opposite direction – “armed” with the deal, Iran began testing what it could get away with. It quickly learned that the Obama administration was so fearful of the prospect that Iran might exit the deal that it was willing to overlook Iran's provocations, and refrained from pushing back. In some instances, the Obama administration found itself arguing Iran's case, such as when it called violations of the limit on heavy water production “technicalities.”

The outcome was that Iran felt stronger and emboldened to challenge America even more.

## Recommended strategy

The strategy of the Trump administration should not be to exit the deal or rip it up. This would most likely be a lose-lose proposition at this very late stage. It rather makes more sense at this point to keep the problematic inheritance, but change most everything else in terms of America's approach to Iran. The US must take Iran's provocations seriously, and respond with determination and pressure, in action and rhetoric. Tillerson's framing of the issue – whereby the Iran deal is but one component of overall US policy toward Iran – reflects the correct approach. Dealing with Iran's regional behavior should be at the center of that policy, not whether Iran is certified as complying with a very problematic nuclear deal.

On the deal itself, the administration should make every effort to convince the other members of the P5+1 to clarify and change some issues with direct relevance to the JCPOA. These include establishing as a fact that Iran violated the NPT (based on the IAEA report of late 2015), and is therefore not entitled to any special confidentiality rights in its dealings with the IAEA; insisting on transparency and greater detail with regard to IAEA reports on Iran, as well as openness regarding deliberations and decisions of the Joint Commission; clearing up ambiguities in deal – specifically on the provisions that set the rules for inspections at military sites; looking into German intelligence on Iran's attempts to circumvent the Procurement Working Group; and placing intelligence gathering regarding Iran-North Korea cooperation in the non-conventional realm very high on the agenda, especially in light of recent developments with ICBM testing in North Korea.

Changing course on Iran will necessitate devoting time and energy to the internal US debate – to change dominant narratives originating in the Obama years. The debate over the JCPOA was highly politicized by the Obama administration, and whether one was “for” or “against” the deal became a partisan issue, sometimes completely detached from the merits of the deal – such as when Democrats released statements highly critical of the nuclear deal, but then cast their vote in favor. Additionally, the famous “echo chamber” created by the Obama administration in support of the deal, and that Ben Rhodes later bragged about in interviews<sup>ix</sup> – has become deeply entrenched, and continues to reverberate among deal supporters. Their narrative will need to be countered, exposing the distortions in their messaging, especially the slogan that the deal “is working.” Instead, it needs to be underscored that for Iran, the JCPOA is a way to put the international community to sleep for a while it continues on its path. And if the United States lets down its guard, it will wake up with another North Korea.

Another fallacy that must be debunked is that there will always be a last resort military option if all else fails. The reality is that options do not remain static, because international politics are dynamic. All the relevant factors are moving targets – the size of Iran’s nuclear infrastructure; the identity of the decision makers in Washington; Iran’s regional presence and strength; and the ability of additional actors to curtail US military options. All of these factors – and others not mentioned – could evolve in a manner that renders the military option too risky, or something the US refuses to entertain down the line. To say that in ten years we will have the same options we have right now is dangerously irresponsible, and Tillerson addressed this in his April 19th statement when he said that the Trump administration does not intend to pass the buck to a future administration.

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There is a need to clearly formulate an opposing narrative and stick to it. To remind people at every turn that Iran is a proven violator of the NPT – a state that has no qualms about cheating on a commitment – and can therefore not be trusted, certainly not at this stage. If Iran continues on an aggressive track, massive pressure and pushback is imperative. The North Korean case is demonstrating precisely what happens with weak diplomacy that produces deals that don't reflect a strategic U-turn on the part of the proliferator. This example must be constantly in view, so that the mistakes made in carving out a strategy toward North Korea are not repeated with Iran.

When devising new Iran policy, it is imperative to take into account lessons learned from 15 years of negotiating with Iran in the nuclear realm. One of the most important of these lessons is that as determined as Iran is to advance its nuclear goals, as noted above, it nevertheless tends to follow a crisis-avoidance approach when it comes to direct interactions over its nuclear capability. Iran wants to convince the world that there is no cause for concern, and that Iran is cooperating. This clears the field for moving forward.

Iran has provided no indication that anything has changed regarding its motivation in the nuclear realm, and remains a dangerous and determined nuclear proliferator. It cheated on the NPT, worked on a military nuclear capability, and only when sanctions became unbearable, did it come to the table looking for a way to lift them. Unfortunately, it found the way – by achieving a deal that requires minimal nuclear concessions and delivers maximum sanctions relief. Iran's negotiations strategy had nothing to do with its desire, or recognition of the need to change course in the nuclear realm.

The focus of a Trump administration policy for Iran must be stopping it from slowly but surely inching toward its nuclear goal, and explaining why the deal can never stop Iran if people are lulled into dismissing its weaknesses, and believing it is working. The most important ingredient in an Iran policy is massive pressure and pushback in response to all expressions of aggressive and/or provocative Iranian behavior – whether in the Middle East or per its nuclear commitments. There needs to be a consistent and hard line message delivered to Iran, as long as it keeps advancing its nuclear and missile capabilities, and strengthening its presence across the region. Iran's professed "innocence of wrongdoing" must be firmly countered, and Iran must know that it has no sympathy in Washington: that the administration understands perfectly well how Iran is cynically playing the international community – giving it a false sense that the deal "is working", and all the while preparing for the day when it can break out.

A final word on the other P5+1 states, who have worked with the US in past efforts to stop Iran. Many caution that the Trump administration must be careful not to go it alone in a manner that ignores these states and alienates European allies. But what about the behavior of these states? Russia and China were always skeptical regarding Iran's nuclear ambitions and advances, always advocating for a softer approach, and minimal sanctions when the issue was deliberated in the UNSC. As for European allies and the EU (represented by foreign minister equivalent Federica Mogherini) – they have clearly demonstrated that their number one priority is getting back to (economic) business with Iran. There has been no serious debate about the JCPOA in Europe – these states immediately accepted the deal lock, stock and barrel, without a word of criticism or any reservations.

But the evidence shows that not all is well. So, when Mogherini counters US intent to review policy on Iran by saying that the "JCPOA belongs to all of us," one has to seriously question what that means. When she travels to Tehran to attend Rohani's inauguration ceremony, with her head covered, what message is she projecting to Iran? Is the EU serious about nuclear nonproliferation, do they understand the risks, and are they willing to confront Iran on its aggressive regional behavior? It does not seem to be the case. As long as Europe is not on the same page about the risks that Iran poses, there will be a limit to how much the Trump administration will be able to coordinate with European states in a new policy for Iran. While the US is normally blamed for ignoring European state interests, the transatlantic partnership goes both ways.

## Notes

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- <sup>i</sup> See for example Emily B. Landau, "What Trump Should Do with the Iran Deal," *Fathom*, Winter, 2016. <http://fathomjournal.org/what-trump-should-do-with-the-iran-deal/>; and Emily B. Landau, "Obama's Legacy, A Nuclear Iran?" *Middle East Quarterly*, Spring 2017. <http://www.meforum.org/6561/obama-legacy-a-nuclear-iran>
- <sup>ii</sup> <https://www.iaea.org/sites/default/files/gov-2015-68.pdf>
- <sup>iii</sup> George Jahn, "AP Exclusive: Document Shows Less Limits on Iran Nuke Work," *AP*, July 18, 2016: <http://www.bigstory.ap.org/article/140ca41aba7a42cda13792f07df4b8d3/ap-exclusive-secret-document-lifts-iran-nuke-constraints>
- <sup>iv</sup> On transparency issues see Valerie Lincy, "Increasing Transparency under the JCPOA," *Wisconsin Project*, May 3, 2017. <http://www.wisconsinproject.org/increasing-transparency-under-the-jcpoa/>; and Valery Lincy and Gary Milhollin, "Iran's Nuclear Veil," *Wisconsin Project*, February 1, 2017. <http://www.wisconsinproject.org/irans-nuclear-veil/>
- <sup>v</sup> For the respective statements (Michael Flynn after the January tests; Rex Tillerson in April; and Trump in May), see: Michael Wilner, "Days of turning a 'blind eye' to Iran's hostility 'are over,' White House says," *Jerusalem Post*, February 3, 2017 <http://www.jpost.com/Middle-East/Iran-News/Days-of-turning-a-blind-eye-to-Irans-hostility-are-over-White-House-says-480507>; Secretary of State Rex Tillerson Press Availability, April 19, 2017 <https://www.state.gov/secretary/remarks/2017/04/270341.htm>; and Raf Sanchez, "Donald Trump says common threat of Iran may bring Israel and its Arab neighbours together," *Telegraph*, May 22, 2017 <http://www.telegraph.co.uk/news/2017/05/22/donald-trump-says-common-threat-iran-may-bring-israel-arab-neighbours/>
- <sup>vi</sup> See Emily B. Landau and Shimon Stein, "Is Tillerson signaling a change in US Iran policy?" *National Interest*, May 11, 2017. <http://nationalinterest.org/feature/tillerson-signaling-change-us-iran-policy-20618>
- <sup>vii</sup> Quote is taken from Josh Lederman, "Trump lets Iran Deal live, but signals he may not for long," *AP*, July 19, 2017. <https://apnews.com/1f62abd00bab46cfadcad72b9af08e64/Trump-lets-iran-deal-live-but-signals-he-may-not-for-long>
- <sup>viii</sup> See David Albright testimony before the House Subcommittee on National Security, Committee of Oversight and Government Reform, "Assessing the Iran Deal: Examining Iranian Non-Compliance with the Joint Comprehensive Plan of Action and United Nations Security Council Resolution 2231," April 5, 2017. [http://isis-online.org/uploads/conferences/documents/Albright\\_House\\_Oversight\\_Subcommittee\\_5Apr2017\\_Final.pdf](http://isis-online.org/uploads/conferences/documents/Albright_House_Oversight_Subcommittee_5Apr2017_Final.pdf)
- <sup>ix</sup> See David Samuels, "The Aspiring Novelist who Became Obama's Foreign-Policy Guru," *New York Times Magazine*, May 5, 2016. <http://www.nytimes.com/2016/05/08/magazine/the-aspiring-novelist-who-became-obamas-foreign-policy-guru.html> See also: David Samuels, "Through the Looking Glass with Ben Rhodes," *New York Times Magazine*, May 13, 2016. [http://www.nytimes.com/2016/05/12/magazine/through-the-looking-glass-with-ben-rhodes.html?\\_r=0](http://www.nytimes.com/2016/05/12/magazine/through-the-looking-glass-with-ben-rhodes.html?_r=0)

# Tearing Up the Joint Comprehensive Plan of Action

**Lee Smith**

## Preface: The Case for Tearing Up the Joint Comprehensive Plan of Action

During his presidential campaign, then-candidate Donald Trump called<sup>i</sup> the Joint Comprehensive Plan of Action the “worst deal ever” negotiated. “It was amateur hour for those charged with striking this deal with Iran,” wrote<sup>ii</sup> Trump and promised at various stages to renegotiate the JCPOA or tear it up outright. All critics of the agreement agree with President Trump: the deal as it stands is not in the interests of the United States. It not only acknowledges Iran’s right to a nuclear weapons program, but virtually guarantees the Islamic Republic will have a bomb within a little more than a decade. The question is, what is to be done?—renegotiate the JCPOA or tear it up?

The problem with the former, as I explain below, is that Iran has been quite clear it has no intention of giving the United States a second chance to secure better terms—terms that necessarily come at Iran’s expense. Accordingly, there is only once choice—tear up the deal, as quickly as possible. Otherwise, Iran will be on its way to joining North Korea—another rogue state with a nuclear arsenal that threatens the security of American citizens, our interests, and allies.

*The most notable flaw is the sunset clause, after which the deal would no longer be in effect and Iran would have a clear pathway to a bomb.*

## Background

### History of the Joint Comprehensive Plan of Action

The Joint Comprehensive Plan of Action was President Barack Obama's signature foreign policy initiative. The product of several years of American diplomacy conducted with US allies in Europe, Asia, and the Middle East, the JCPOA is intended to block Iran's pathways to a nuclear bomb for a period of roughly a decade. From the period leading up to the signing of the deal in July 2015 and through the present, there has been a lively debate concerning the deal's ability to prevent Iran from a nuclear breakout.

Going into the final negotiations, supporters of a deal with Iran argued that for all the deal's faults, the JCPOA was the best that could be gotten. Critics pointed to several holes in the deal, like access terms that greatly limited the IAEA's ability to investigate sites where Iran was suspected to have worked on military dimensions of its nuclear program and could do so in the future. The most notable flaw is the sunset clause, after which the deal would no longer be in effect and Iran would have a clear pathway to a bomb. As President Obama himself explained<sup>iii</sup>, "What is a more relevant fear would be that in Year 13, 14, 15, they have advanced centrifuges that enrich uranium fairly rapidly, and at that point, the breakout times would have shrunk almost down to zero." That is, within a little more than a decade Iran will have the ability to make a nuclear weapon.

The general contours of the debate are the same after the deal, even with a change in administration. Supporters of the JCPOA argue that it is working: Iran, they note, does not have a bomb. Critics contend that Iran is cheating, perhaps not egregiously but measurably, and that anyway the sunset clause will make a nuclear Iran inevitable.

### Renegotiate the Joint Comprehensive Plan of Action or tear it up?

Now there is another debate taking place between JCPOA skeptics: Should the Trump administration renegotiate the deal or tear it up?

Proponents of the former include<sup>iv</sup> former US lawmakers and officials, like Senator Joseph Lieberman. This camp contends that the Obama administration did a bad job in its original negotiations. They argue that the previous administration not only acceded to various Iranian demands regarding the sunset clause and protecting military sites from inspections, but it also failed to negotiate over non-nuclear related issues, like Iranian support for terrorism, its human rights violations, and ballistic missiles.

Proponents of renegotiation are correct that Iran should not be seen solely in light of its nuclear ambitions. American policymakers are right to be worried about Iran's larger regional project, including its military campaigns in Syria, Iraq, and Yemen, its destabilizing activities in the Persian Gulf, and its support for terrorist organizations, most notably Hezbollah. However, the renegotiation camp has incorrectly assessed two key issues: 1) Iran's willingness to renegotiate the JCPOA; and 2) the Obama administration's incompetence in managing the original negotiations.

First, Iran is highly unlikely to give the United States a second chance to secure an improved deal—improvements that would come at the expense of Iran’s own position. Proponents of renegotiation privately acknowledge this fact but argue that Iran’s refusal to renegotiate will put the burden on Tehran—it is Iran that will be seen as intransigent, not the US and its P5+1 partners. However, Washington’s P5+1 partners will be not easily swayed—the Europeans, publicly exhausted by the drama around negotiations between former Secretary of State John Kerry and current Iranian Foreign Minister Javad Zarif, believe, rightly, that a deal is a deal. Hence, if advocates for renegotiation see the final goal as the dismantlement of the JCPOA they should act directly rather than by complicated stratagems that are unlikely to succeed.

The second incorrect assessment is even more fundamental: the Obama administration did not mishandle negotiations. Rather, it secured precisely what it set out to achieve—not simply an arms agreement, but a realignment of American interests in the Middle East as well.

### **The Joint Comprehensive Plan of Action—an arms agreement and instrument for a larger geopolitical maneuver**

The problem with the JCPOA was not that President Obama put together a team of terrible negotiators headed by Secretary of State John Kerry. No, the negotiating team got the deal the president wanted under the circumstances he created: Obama believed there was no way to get the Iranians to negotiate unless he, one, de-escalated with Iran and, two, paid the regime to negotiate.

*The JCPOA served as the hinge for a larger geopolitical maneuver*

To take just one example of de-escalating with Iran: In September 2013, Obama walked back his plan to launch missiles against Bashar al-Assad after he violated Obama’s red line over the use of chemical weapons.

The reason was to keep Iran, heavily invested in the survival of the Assad regime, from leaving the negotiating table. As Jay Solomon, author of the critically acclaimed book *The Iran Wars: Spy Games, Bank Battles, and the Secret Deals that Reshaped the Middle East*, explained<sup>v</sup> in an interview last September:

*Iranian officials told me that even had the diplomats doing the negotiations wanted to stay in talks, the Islamic Revolutionary Guard Corps would have pulled the plug. I don't see how you can make the case that the administration's Syria policy is separate from the nuclear deal. Obama sent a [letter](#) to Khamenei saying he wouldn't target Assad. And Pentagon officials told us they were concerned that operations in Syria risked undermining the nuclear negotiations.*

As for paying Iran to negotiate: Between January 2014 and July 2015, the Obama administration paid<sup>vi</sup> Iran \$700 million a month from funds that had previously been frozen by U.S. sanctions just to ensure the Iranians sat through negotiations. Even after the deal was struck, Obama continued to pay the Iranians, like the \$1.7 billion ransom paid in cash to release Americans that the Iranians were holding hostage. Throughout that period, the Obama administration was deliberately undermining efforts by its own Justice Department to halt Iranian sanctions-busting and proliferation activities, according to a later expose published<sup>vii</sup> in *Politico*. The reason Obama was willing to pay Iran to sit at the table was because the Iran deal was not only, or even primarily, an arms agreement: The JCPOA served as the hinge for a larger geopolitical maneuver.

### **Creating a balance of power in the Persian Gulf**

Like Great Britain in the 1960s, the Obama administration sought to extricate America from the Middle East. The White House plotted a course similar to London's twin-pillar policy in the Persian Gulf, whereby Saudi Arabia and Iran would protect the interests of its patron over the horizon. However, since Great Britain's exit from the Middle East, and America's consequent rise in the region, the Persian Gulf looked different. Iran was no longer ruled by the shah, a US ally, but by an expansionist, revolutionary regime that fed off its animus toward the West, especially the United States. Further, Saudi Arabia had proven incapable of managing its own interests—or else it would not have been necessary, for instance, to station American troops in the kingdom after the US pushed Saddam Hussein out of Kuwait.

The Obama administration re-conceptualized the twin pillars policy. In order to bring some stability to a region where the United States was now minimizing its footprint, the answer was to balance the two regional actors against each other. As Obama said<sup>viii</sup> in a 2014 interview with the *New Yorker*:

*It would be profoundly in the interest of citizens throughout the region if Sunnis and Shias weren't intent on killing each other," he told me. "And although it would not solve the entire problem, if we were able to get Iran to operate in a responsible fashion—not funding terrorist organizations, not trying to stir up sectarian discontent in other countries, and not developing a nuclear weapon—you could see an equilibrium developing between Sunni, or predominantly Sunni, Gulf states and Iran in which there's competition, perhaps suspicion, but not an active or proxy warfare.*

In order to balance the Middle East, Obama's White House re-prioritized its regional interests. As Michael Doran, a Middle East adviser in the George W. Bush administration explained in his important 2015 article, "Obama's Secret Iran Strategy,"<sup>ix</sup> traditional American allies, especially Israel and Saudi Arabia, were downgraded and Tehran was upgraded. There were diplomatic and political initiatives to pressure America's Israeli and Saudi partners, as well as more active initiatives.

For instance, the Obama White House continued to leak Israeli attacks on Iranian arms convoys transiting through Syria headed to Hezbollah. When Iran objected to Saudi Arabia's execution of dissident Shia cleric, and Saudi national, Nimr al-Nimr, the Obama administration sided with Iran's version of events, even after mobs destroyed two Saudi diplomatic facilities in Iran.

### **Realignment came at the expense of American interests**

The problem with the Obama administration's balancing strategy was in its initial conceptualization—the real protagonists in the Middle East were not Iran and the Sunni powers, or Iran and Israel. The regional actors perceived the situation in terms of actual power and thus accurately. All of them, the Iranians, the Saudis, and the Israelis believed that the actual balance of power on the ground pitted Iran against the United States.

The Israelis agreed that they were too small, and too particular, to carry the American load in a region where Sunni Muslims are the majority. For their part, the Saudis never imagined they

were one of the great powers in the Persian Gulf; they were simply American clients. From their perspective, Washington, which has alone ensured the stability of the Persian Gulf for close to half a century, is the region's great power. Iran saw it precisely the same: Saudi Arabia and the Gulf Cooperation Council states, Israel, Jordan, Turkey, and every other US ally were simply tokens of American power in the Middle East. The reality then is that American efforts to strengthen Iran and weaken American allies for the sake of a balance of power must necessarily come at the expense of American interests.

Accordingly, realignment with Iran shaped all of the major foreign policy issues of the Obama presidency, including the fraying of the bilateral relationship with Israel, the withdrawal from Iraq, the relationship with Russia, and the management of the Syrian conflict. Most significantly, it shaped American policy toward Iran—and still is. The Joint Comprehensive Plan of Action was intended to tie the hands of the next administration, and it has.

### **How the JCPOA locks in geopolitical realignment**

Consider Iranian actions since the Trump administration has come to office—In the region, Tehran has consolidated its position in Syria, a key node in what regional analysts describe as a land bridge, linking the Persian Gulf to the Eastern Mediterranean. Further, Iran continues to test ballistic missiles, which Obama officials used to insist would be a violation of UN Security Council Resolution 2231. In response, the Trump administration has further sanctioned Iran—though in a way that has been careful to heed the warning of Iran Deal supporters who counsel<sup>x</sup> that the “White House and the Congress should measure their response to Iran’s missile test and refrain from actions that will provoke escalation or unnecessarily endanger the nuclear deal.” Indeed, it is now clear that significant parts of the Trump administration are protecting the JCPOA from the president himself.

Twice now the Trump administration has certified to Congress that the conditions necessary for certifying the Iran deal had been met. The certifications were against the president’s wishes. In April and then in July, administration deliberately principals failed to provide Trump with any alternatives to certifying Iranian compliance. “If it was up to me, I would have had them noncompliant 180 days ago,” Trump told<sup>xi</sup> the *Wall Street Journal* after the July certification.

### **The US government will not be able to undertake an objective review of US Iran policy outside of the framework created by the JCPOA**

In the meantime, the administration is undertaking a government-wide review of Iran policy. The review theoretically involves numerous government agencies with equities in foreign policy making, including, the Pentagon, the State Department, the intelligence community, the Energy and Treasury Departments, as well law enforcement agencies, like the FBI and DEA. Under the Obama administration, the Iran-related policies and practices of virtually all of these institutions—including the law enforcement agencies which were reportedly compelled to drop charges against major arms smuggling targets, and release criminals with ties to the Revolutionary Guard Corps—were shaped by the Joint Comprehensive Plan of Action.

The Iran policy review was explicitly designed to look past that myopia but in fact the same dynamic, whereby the JCPOA shapes American policy toward Iran, continues to exist today—despite the change in administrations and the current administration’s stated intentions. The

JCPOA was designed by the Obama administration to survive a new administration by creating huge and powerful constituencies with a stake in preserving the deal. The constituencies are both at home, inside and outside government, and abroad, in European and Asian parliaments as well as corporate boardrooms on those continents. This is why actions taken to dismantle the deal have met with strong opposition, even in the administration itself.

Career bureaucrats<sup>xii</sup> throughout the government have pushed back against the president's preference to exit the Iran deal. In some cases, it seems they have captured the president's own appointments in order to oppose him. Thus, the American government has become one constituency among many created by the Joint Comprehensive Plan of Action that is invested in ensuring the survival of the JCPOA. Hence, a comprehensive review of Iran policy is impossible while the JCPOA is still operative—for the simple reason that the Obama administration designed the Iran deal precisely for the purpose of shaping US policy toward Iran. As the Trump administration's ambassador to the United Nations put it<sup>xiii</sup> recently, "for advocates of the deal, everything in our relationship with the Iranian regime must now be subordinated to the preservation of the agreement."

Hence, the US government-wide Iran policy review currently underway will itself be shaped by the apparent necessity of preserving the JCPOA. The very same dynamic would emerge if the Trump administration embarked on a course for renegotiating the deal – the process would be run and hijacked by career bureaucrats invested in preserving the deal, who would use the process to limit pressure on Iran.

The only way to understand Iran's actions in a comprehensive manner is outside of the framework of the Iran deal. The only way for the American government to shape a policy to treat with Iranian actions is by freeing itself of the JCPOA.

## Dismantling the Joint Comprehensive Plan of Action

### **Tearing up the JCPOA is a vital American interest**

The chief problem with the Joint Comprehensive Plan of Action is not the flawed deal itself, a deal that virtually guarantees Iran a bomb within a little more than a decade. Rather, the issue is immediate—the problem is that the JCPOA constrains American policy toward Iran at present—including not only the nuclear file, but other issues as well, including its expansionist regional policies, support for terrorism, and ballistic missile development. Accordingly, the most important rationale for getting out of the Joint Comprehensive Plan of Action is that the deal constrains the entirety of American policy toward Iran.

Thus, the choice for the White House is not between maintaining the JCPOA, or renegotiating it, or tearing it up. The choice rather is this: Either the United States will have the ability to formulate a comprehensive policy, including regarding the nuclear program, that protects American citizens, interests, and allies from Iran. Or the US will be prevented from designing a suitable Iran policy, and thereby leave the United States vulnerable to an adversarial regime that will have a nuclear weapon in a little more than a decade. Either American policymakers will craft a comprehensive policy to deter Iran, or they will be turning a blind eye while another rogue state like North Korea materializes to threaten global stability.

## How to tear up the JCPOA

On the campaign trail, Donald Trump said the nuclear agreement with Iran was the worst deal ever and promised to tear it up if elected. President Trump can take the first step in fulfilling his campaign promise and tearing up the deal by refusing to certify that Iran is in compliance with the JCPOA by the next deadline in mid-October. Once President Trump finds that he cannot certify that Iran has met the conditions, Congress has sixty days to consider whether to re-impose sanctions on Iran.

The next step in undoing the deal is to restore nuclear sanctions—either US sanctions, re-imposed by congress or international, re-imposed by the UN. For the latter, the administration must go to the UN to start the process of snapping back multilateral sanctions.

For domestic purposes, the Iran Nuclear Agreement Review Act of 2015,<sup>xiv</sup> commonly known as Corker-Cardin, stipulates that every 90 days, the President must certify that Iran is fully implementing the nuclear deal and all related agreements; has not committed a material breach of the deal; has not taken any action that could significantly advance its nuclear weapons program; and that suspension of sanctions against Iran is appropriate and proportionate to measures taken by Iran with respect to terminating its illicit nuclear program and vital to U.S. national security interests.

*The Trump administration should prepare all three, providing explanations and plenty of advance warning that it intends to decertify the JCPOA and re-impose sanctions*

President Trump can find that Iran has not met any of those four conditions and he has suggested that he is likely to. In July, he told the *Wall Street Journal*, “I think they’ll be noncompliant” for the next certification.

### **Possible rationale for decertifying JCPOA: Iran is not fulfilling the conditions of related agreements**

The president has more than enough justification for concluding that Iran has failed to meet the Corker-Cardin requirements. For instance, regarding compliance, the Iranians themselves have said they're not fully implementing the Additional Protocol's guidelines on military site inspections and the ballistic missile restrictions in UNSCR 2231.

United Security Council Resolution 2231 is a related agreement, as defined by Corker-Cardin, and Iran is clearly in violation of it. As Ambassador Nikki Haley explained<sup>xv</sup> recently, The Iranians “are clearly acting in defiance of UN Resolution 2231 by developing missile technology capable of deploying nuclear warheads.” If so, this

suggests the president cannot truthfully certify to Congress that Iran is fully implementing the deal and all related agreements.

The key point, however, is not the rationale for de-certifying. There are several reasons the president can use to justify his decision. For instance, as Ambassador Haley argued, “Either the Administration believes Iran is in violation of the deal; or the lifting of sanctions against Iran is not appropriate and proportional to the regime’s behavior; or the lifting of sanctions is not in the U.S. national security interest.” The central point in de-certifying is the initial decision to reject certifying the JCPOA. It is a matter of political will.

### **Laying the groundwork for tearing up the JCPOA**

Before the president decertifies by the mid-October deadline, the Trump administration needs to start messaging immediately that it intends to tear up the Joint Comprehensive Plan of Action. There are three key audiences for this message—the American public, Congress, and our European and Asian allies and partners. The Trump administration should prepare all three, providing explanations and plenty of advance warning that it intends to decertify the JCPOA and re-impose sanctions. The campaign should include a diplomatic component, with administration officials briefing American partners in Washington and the capitals of allies; and a media component, with President Trump and administration officials briefing the press and giving interviews detailing the White House’s intentions.

The most important audiences to reach are the second and third. The American public did not elect Donald Trump president to preserve the JCPOA but rather because he promised to tear up the deal. They are expecting it. The same is true for Congress, which has shown for the last several years that it is overwhelmingly against the JCPOA. However, insofar as Corker-Cardin stipulates that Congress has sixty days to decide to re-impose sanctions once the president fails to certify, the White House should provide lawmakers with clear and ample evidence well before the mid-October deadline.

Regarding Europe and Asia: The common wisdom holds that American allies there will not go along with the Trump White House if it decides to withdraw from the JCPOA. It’s extremely unlikely, however, that no matter how appealing an untapped Iranian market might seem, Europe and Asia would choose to forsake the US economy, or even risk its banks incurring major fines for sanctions violations. Even if European governments are willing to take those risks, their banks will not be.

Europe and Asia will follow, if grudgingly. As a responsible and respectful ally, the United States needs to prepare its valued partners and provide plenty of advance warning that it intends to decertify the JCPOA and re-impose sanctions.

### **Defeating efforts to preserve the JCPOA**

The JCPOA created enormous constituencies at home and abroad that are deeply invested in preserving the deal. These constituencies include substantial parts of foreign governments as well as foreign business interests. Most importantly, the constituencies comprise many American business interests as well as American lawmakers and government agencies. With financial, political, and ideological stakes in the JCPOA they are devising various stratagems to

ensure its survival. In order to tear up the JCPOA, the Trump administration must recognize and defeat the different efforts to preserve the Iran deal.

Most notably, US government agencies and foreign governments will try to entangle the White House in diplomatic processes that prevent the president from decertifying Iran's compliance. One idea is a diplomatic process that would seek to convince European partners to renegotiate certain aspects of the JCPOA, including access to military sites, and the sunset clause. The IAEA, understanding that it was being put in the middle of an internal American fight over Iran policy, recently rejected<sup>xvi</sup> a State Department initiative to have it request access to Iranian military sites, before hastily circling back to reporters to declare they leave the option open in theory. Moreover, there is still talk<sup>xvii</sup> in Washington and foreign capitals about the prospect of re-entering negotiations over the sunset clause, and Iran's ballistic missile program.

The point of these efforts, it must be emphasized, is not to test Iran's willingness to renegotiate certain aspects of the deal—Iran is not so foolish as to give the United States another chance to not strike a bad agreement. Rather, the point is the diplomatic process itself. To wit: if the US is engaged in good faith efforts with Europe to strengthen the JCPOA, President Trump will have no choice but to allow those efforts to continue. The process therefore would be ongoing, likely without an end date. The purpose would be to create an indefinite delay to stop the president from de-certifying. He would be told he must certify, or else he would be crashing the diplomatic process.

Even the US government-wide Iran policy review, which was scheduled to end in August and is now dragging on inexplicably, seems to have become an excuse to postpone alternatives to certifying the JCPOA.

The White House should understand that the purpose of these initiatives is not to strengthen the deal—it cannot be strengthened at this stage—but rather to deter the president from enacting the policies the American public elected him to implement.

## Conclusion—Preserving the JCPOA ensures another nuclear rogue state like North Korea

Until the JCPOA is dismantled, it will continue to shape American policy toward Iran and Iranian ambitions in the region will largely go unchecked. The Islamic Republic has established a land bridge with links through Iraq and Syria that connects Tehran to the eastern Mediterranean, where it is in the process of creating another front to face a key American ally, Israel. Additionally, other American partners, including Jordan, Saudi Arabia, and the rest of the Gulf Cooperation Council states, and NATO member Turkey, have been threatened by Tehran's wars throughout the Middle East. An Iranian regime with a nuclear weapon all but guaranteed by the Joint Comprehensive Plan of Action is a threat to vital American interests—the safety of American citizens at home, the security of our allies and interests.

President Trump rightly called the JCPOA the “worst deal ever” negotiated. All critics of the JCPOA agree with him. The choice then is stark: either preserve a deal that constrains US policy toward Iran and leads to the Islamic Republic's inevitable acquisition of a nuclear weapon. Or tear up the JCPOA. The president can take the first step in mid-October when he finds the Iranians have not met the conditions for the JCPOA and related agreements.

## Notes

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- <sup>i</sup> <https://www.nytimes.com/2017/05/28/world/middleeast/iran-nuclear-deal-hassan-rouhani-donald-trump.html?mcubz=1&r=0>
- <sup>ii</sup> <https://www.usatoday.com/story/opinion/2015/09/08/donald-trump-amateur-hour-iran-nuclear-deal-column/71884090/>
- <sup>iii</sup> <http://www.timesofisrael.com/obama-deal-to-give-iran-zero-breakout-time-in-13-years/>
- <sup>iv</sup> [https://www.washingtonpost.com/opinions/global-opinions/how-trump-should-renegotiate-the-iran-deal/2016/12/06/b78ddf3e-bb0d-11e6-91ee-1addfe36cbe\\_story.html?utm\\_term=.6b080c06794f](https://www.washingtonpost.com/opinions/global-opinions/how-trump-should-renegotiate-the-iran-deal/2016/12/06/b78ddf3e-bb0d-11e6-91ee-1addfe36cbe_story.html?utm_term=.6b080c06794f)
- <sup>v</sup> <http://www.weeklystandard.com/jay-solomon-on-the-run-up-to-the-iran-deal-nixon-and-china-and-more/article/2004149>
- <sup>vi</sup> <http://freebeacon.com/national-security/iran-may-receive-much-33-6-billion-cash-gold-payments-u-s/>
- <sup>vii</sup> <http://www.politico.com/story/2017/04/24/obama-iran-nuclear-deal-prisoner-release-236966>
- <sup>viii</sup> <http://www.newyorker.com/magazine/2014/01/27/going-the-distance-david-remnick>
- <sup>ix</sup> <https://mosaicmagazine.com/essay/2015/02/obamas-secret-iran-strategy/>
- <sup>x</sup> <https://www.armscontrol.org/blog/ArmsControlNow/2017-02-01/Irans-Ballistic-Missile-Test-Troubling-But-Not-Cause-for-Provoking-Confrontation>
- <sup>xi</sup> <http://www.politico.com/story/2017/08/01/trump-wall-street-journal-interview-full-transcript-241214>
- <sup>xii</sup> <http://www.tabletmag.com/jewish-news-and-politics/227526/obamas-foreign-policy-wizards>
- <sup>xiii</sup> <http://www.aei.org/publication/nikki-haley-address-on-iran-and-the-jcpoa/>
- <sup>xiv</sup> <https://www.congress.gov/bill/114th-congress/house-bill/1191/>
- <sup>xv</sup> <http://www.aei.org/publication/nikki-haley-address-on-iran-and-the-jcpoa/>
- <sup>xvi</sup> <https://www.reuters.com/article/us-iran-nuclear-inspections/u-s-pressure-or-not-u-n-nuclear-watchdog-sees-no-need-to-check-iran-military-sites-idUSKCN1BB1JC>
- <sup>xvii</sup> <https://www.reuters.com/article/us-iran-nuclear-france/france-sees-talks-on-post-iran-nuclear-deal-ballistic-missile-use-idUSKCN1BA25Z>

# Abrogating the Iran Deal: The Way Forward

**Ambassador John Bolton**

## I. Background

The Trump Administration is required to certify to Congress every 90 days that Iran is complying with the July 2015 nuclear deal (the Joint Comprehensive Plan of Action — JCPOA), and that this agreement is in the national-security interest of the United States<sup>1</sup>. While a comprehensive Iranian policy review is currently underway, America's Iran policy should not be frozen. The JCPOA is a threat to U.S. national-security interests, growing more serious by the day. If the President decides to abrogate the JCPOA, a comprehensive plan must be developed and executed to build domestic and international support for the new policy.

Under the Iran Nuclear Agreement Review Act of 2015, the President must certify every 90 days that:

- (i) Iran is transparently, verifiably, and fully implementing the agreement, including all related technical or additional agreements;
- (ii) 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;
- (iii) Iran has not taken any action, including covert activities, that could significantly advance its nuclear weapons program; and
- (iv) Suspension of sanctions related to Iran pursuant to the agreement is:
  - I. appropriate and proportionate to the specific and verifiable measures taken by Iran with respect to terminating its illicit nuclear program; and
  - II. vital to the national-security interests of the United States.

U.S. leadership here is critical, especially through a diplomatic and public education effort to explain a decision not to certify and to abrogate the JCPOA. Like any global campaign, it must be persuasive, thorough, and accurate. Opponents, particularly those who participated in drafting and implementing the JCPOA, will argue strongly against such a decision, contending that it is reckless, ill-advised, and will have negative economic and security consequences.

Accordingly, we must explain the grave threat to the U.S. and our allies, particularly Israel. The JCPOA's vague and ambiguous wording; its manifest imbalance in Iran's direction; Iran's significant violations; and its continued, indeed, increasingly, unacceptable conduct at the strategic level internationally demonstrate convincingly that the JCPOA is not in the national-security interests of the United States. We can bolster the case for abrogation by providing new, declassified information on Iran's unacceptable behavior around the world.

But as with prior Presidential decisions, such as withdrawing from the 1972 ABM Treaty, a new "reality" will be created. We will need to assure the international community that the U.S. decision will in fact enhance international peace and security, unlike the JCPOA, the provisions of which shield Iran's ongoing efforts to develop deliverable nuclear weapons. The Administration should announce that it is abrogating the JCPOA due to significant Iranian violations, Iran's unacceptable international conduct more broadly, and because the JCPOA threatens American national-security interests.

The Administration's explanation in a "white paper" should stress the many dangerous concessions made to reach this deal, such as allowing Iran to continue to enrich uranium; allowing Iran to operate a heavy-water reactor; and allowing Iran to operate and develop advanced centrifuges while the JCPOA is in effect. Utterly inadequate verification and enforcement mechanisms and Iran's refusal to allow inspections of military sites also provide important reasons for the Administration's decision.

Even the previous Administration knew the JCPOA was so disadvantageous to the United States that it feared to submit the agreement for Senate ratification. Moreover, key American allies in the Middle East directly affected by this agreement, especially Israel and the Gulf states, did not have their legitimate interests adequately taken into account. The explanation must also demonstrate the linkage between Iran and North Korea.

We must also highlight Iran's unacceptable behavior, such as its role as the world's central banker for international terrorism, including its directions and control over Hezbollah and its actions in Iraq, Syria, and Lebanon. The reasons Ronald Reagan named Iran as a state sponsor of terrorism in 1984 remain fully applicable today.

*The JCPOA's vague and ambiguous wording; its manifest imbalance in Iran's direction; Iran's significant violations; and its continued, indeed, increasingly, unacceptable conduct at the strategic level internationally demonstrate convincingly that the JCPOA is not in the national-security interests of the United States*

## II. Campaign Plan Components

There are four basic elements to the development and implementation of the campaign plan to decertify and abrogate the Iran nuclear deal:

1. Early, quiet consultations with key players such as the U.K., France, Germany, Israel, and Saudi Arabia, to tell them we are going to abrogate the deal based on outright violations and other unacceptable Iranian behavior, and seek their input.
2. Prepare the documented strategic case for withdrawal through a detailed white paper (including declassified intelligence as appropriate) explaining why the deal is harmful to U.S. national interests, how Iran has violated it, and why Iran's behavior more broadly has only worsened since the deal was agreed.
3. A greatly expanded diplomatic campaign should immediately follow the announcement, especially in Europe and the Middle East, and we should ensure continued emphasis on the Iran threat as a top diplomatic and strategic priority.
4. Develop and execute Congressional and public diplomacy efforts to build domestic and foreign support.

## III. Execution Concepts and Tactics

### 1. Early, quiet consultations with key players

It is critical that a worldwide effort be initiated to inform our allies, partners, and others about Iran's unacceptable behavior. While this effort could well leak to the press, it is nonetheless critical that we inform and consult with our allies and partners at the earliest possible moment, and, where appropriate, build into our effort their concerns and suggestions.

This quiet effort will articulate the nature and details of the violations and the type of relationship the U.S. foresees in the future, thereby laying the foundation for imposing new sanctions barring the transfer of nuclear and missile technology or dual use technology to Iran. With Israel and selected others, we will discuss military options. With others in the Gulf region, we can also discuss means to address their concerns from Iran's menacing behavior.

The advance consultations could begin with private calls by the President, followed by more extensive discussions in capitals by senior Administration envoys. Promptly elaborating a comprehensive tactical diplomatic plan should be a high priority.

### 2. Prepare the documented strategic case

The White House, coordinating all other relevant Federal agencies, must forcefully articulate the strong case regarding U.S. national-security interests. The effort should produce a "white paper" that will be the starting point for the diplomatic and domestic discussion of the Administration decision to abrogate the JCPOA, and why Iran must be denied access to nuclear technology indefinitely. The white paper should be an unclassified, written statement of the

Administration's case, prepared faultlessly, with scrupulous attention to accuracy and candor. It should not be limited to the inadequacies of the JCPOA as written, or Iran's violations, but cover the entire range of Iran's continuing unacceptable international behavior.

Although the white paper will not be issued until the announcement of the decision to abrogate the JCPOA, initiating work on drafting the document is the highest priority, and its completion will dictate the timing of the abrogation announcement.

A thorough review and declassification strategy, including both U.S. and foreign intelligence in our possession should be initiated to ensure that the public has as much information as possible about Iranian behavior that is currently classified, consistent with protecting intelligence sources and methods. We should be prepared to "name names" and expose the underbelly of the Iranian Revolutionary Guard business activities and how they are central to the efforts that undermine American and allied national interests. In particular, we should consider declassifying information related to activities such as the Iran-North Korea partnership, and how they undermine fundamental interests of our allies and partners.

*A thorough review and declassification strategy, including both U.S. and foreign intelligence in our possession should be initiated to ensure that the public has as much information as possible about Iranian behavior that is currently classified, consistent with protecting intelligence sources and methods*

### **3. Greatly expanded diplomatic campaign post-announcement**

The Administration, through the NSC process, should develop a tactical plan that uses all available diplomatic tools to build support for our decision, including what actions we recommend other countries to take. But America must provide the leadership. It will take substantial time and effort and will require a "full court press" by U.S. embassies worldwide and officials in Washington to drive the process forward. We should ensure that U.S. officials fully understand the decision, and its finality, to help ensure the most positive impact with their interlocutors.

Our embassies worldwide should demarche their host governments with talking points (tailored as may be necessary) and data to explain and justify abrogating JCPOA. We will need parallel efforts at the United Nations and other appropriate multilateral organizations. Our embassies should not limit themselves to delivering the demarche, however, but should undertake extensive public diplomacy as well.

After explaining and justifying the decision to abrogate the deal, the next objective should be to recreate a new counter-proliferation coalition to replace the one squandered by the previous Administration, including our European allies, Israel, and the Gulf states. In that regard, we should solicit suggestions for imposing new sanctions on Iran and other measures in response to its nuclear and ballistic-missile programs, sponsorship of terrorism, and generally belligerent behavior, including its meddling in Iraq and Syria.

Russia and China obviously warrant careful attention in the post-announcement campaign. They could be informed just prior to the public announcement as a courtesy, but should not be part of the pre-announcement diplomatic effort described above. We should welcome their full engagement to eliminate these threats, but we will move ahead with or without them.

Iran is not likely to seek further negotiations once the JCPOA is abrogated, but the Administration may wish to consider rhetorically leaving that possibility open in order to demonstrate Iran's actual underlying intention to develop deliverable nuclear weapons, an intention that has never flagged.

In preparation for the diplomatic campaign, the NSC interagency process should review U.S. foreign-assistance programs as they might assist our efforts. The DNI should prepare a comprehensive, worldwide list of companies and activities that aid Iran's terrorist activities.

#### **4. Develop and execute Congressional and public diplomacy efforts**

The Administration should have a Capitol Hill plan to inform members of Congress already concerned about Iran, and develop momentum for imposing broad sanctions against Iran, far more comprehensive than the pinprick sanctions favored under prior Administrations. Strong congressional support will be critical. We should be prepared to link Iranian behavior around the world, including its relationship with North Korea, and its terrorist activities. And we should demonstrate the linkage between Iranian behavior and missile proliferation as part of the overall effort that justifies a national-security determination that U.S. interests would not be furthered with the JCPOA.

Unilateral U.S. sanctions should be imposed outside the framework of Security Council Resolution 2231 so that Iran's defenders cannot water them down; multilateral sanctions from others who support us can follow quickly.

The Administration should also encourage discussions in Congress and in public debate for further steps that might be taken to go beyond the abrogation decision.

*We should demonstrate the linkage between Iranian behavior and missile proliferation as part of the overall effort that justifies a national-security determination that U.S. interests would not be furthered with the JCPOA*

These further steps, advanced for discussion purposes and to stimulate debate, should collectively demonstrate our resolve to limit Iran's malicious activities and global adventurism. Some would relate directly to Iran; others would protect our allies and partners more broadly from the nuclear proliferation and terrorist threats, such as providing F-35s to Israel or THAAD resources to Japan. Other actions could include:

- End all landing and docking rights for all Iranian aircraft and ships at key allied ports;
- End all visas for Iranians, including so called "scholarly," student, sports, or other exchanges;
- Demand payment with a set deadline on outstanding U.S. federal-court judgments against Iran for terrorism, including 9/11;

- Announce U.S. support for the democratic Iranian opposition;
- Expedite delivery of bunker-buster bombs;
- Announce U.S. support for Kurdish national aspirations, including Kurds in Iran, Iraq, and Syria;
- Provide assistance to Balochis, Khuzestan Arabs, Kurds, and others — also to internal resistance among labor unions, students, and women’s groups;
- Actively organize opposition to Iranian political objectives in the U.N.

## IV. Conclusion

This effort should be the Administration’s highest diplomatic priority, commanding all necessary time, attention, and resources. We can no longer wait to eliminate the threat posed by Iran. The Administration’s justification of its decision will demonstrate to the world that we understand the threat to our civilization; we must act and encourage others to meet their responsibilities as well.

### Note

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<sup>1</sup> Although this paper will refer to “the JCPOA,” the abrogation decision should also encompass the July 14, 2015, statement by the Security Council’s five permanent members and Germany, attached as Annex B to Security Council Resolution 2231. The JCPOA is attached as Annex A to Resolution 2231.

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