

United States Senate
Committee on Foreign Relations

JCPOA: Non-Proliferation, Inspections, and Nuclear Constraints

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Chairman Corker, Senator Cardin, other distinguished members present today: thank you for the invitation to testify before the Committee on the nuclear agreement with Iran. It is a privilege for me to provide my views and recommendations.

Five Fatal Flaws

(1) Ineffective Verification

President Obama has stated that the Joint Comprehensive Plan of Action (JCPOA) is not based on trust but on rigorous monitoring and verification. Iran has repeatedly proven itself a master of denial and deception in cheating on every nuclear agreement it has signed to date. The expectation, based on over twenty years of experience, is that Iran will cheat again if it can get away with it.

Unfortunately, the terms of the agreement do not provide for an effective means to detect or deter cheating, unless Iran decides to violate its commitments openly at declared facilities under IAEA monitoring. Here, the added access and information that Iran must provide under the Additional Protocol and other relevant provisions of the JCPOA would be beneficial. The problem is that Teheran is less likely to cheat in front of the international inspectors than at undeclared sites such as military bases where it has cheated in the past and where Iran's Supreme Leader has ruled out any inspections.

In fact, the suspect site provisions contained in the JCPOA – the managed access and the dispute resolution procedures – are significantly weaker than the measures contained in the standard Additional Protocol. Twenty-four hour notice is replaced by a 24 day notice. And if Iran continues to object, the procedures could result in additional delays of days or weeks before Iran is actually confronted with the choice of permitting access or having the case referred to the Security Council – something Iran has never seemed all that concerned about in the first instance. In short, instead of anywhere, anytime, unfettered access to places, people and documentation – all essential for effective verification – implementation of the JCPOA is dependent on Iran's cooperation.

(2) Providing a Pathway to Nuclear Weapons

Despite assertions to the contrary, the JCPOA does not cut off Iran's path to produce fissile material for nuclear weapons. It does not deny Iran a nuclear weapons capability – the longstanding U.S. goal in the negotiations. While it is preferable that Iran spin fewer rather than more centrifuges at Natanz and that its stockpile of low enriched uranium be limited for the period that these restriction apply, the basic premise of the agreement remains

fundamentally flawed. Despite multiple UN Security Council resolutions demanding the complete suspension of all enrichment and reprocessing activities, the JCPOA leaves in place a large-scale enrichment infrastructure. Even during the period that the constraints are imposed on Iran, this infrastructure could be used to achieve breakout or, more likely, “sneak-out.” When the constraints do expire, Iran’s enrichment program can expand qualitatively and quantitatively so that the breakout time will be “virtually zero.” Teheran can also decide to reprocess plutonium in the future. Thus, the JCPOA recognizes and accepts Iran as a nuclear weapons threshold state. It gives what was – and almost certainly still is -- an illicit nuclear weapons program an international seal of approval.

As for weaponization, actually fabricating a warhead, the November 2011 IAEA report identified 12 activities with potential military application – some, including a missile warhead design, that are only associated with producing a weapon. In the intervening years, Iran has consistently stonewalled the IAEA, denying it access to facilities, documentation and people to investigate these past and perhaps still ongoing programs. While the JCPOA requires Iran to implement yet another IAEA roadmap for resolution of these issues, there is little reason to think the result will be any different than on multiple previous occasions when Teheran made similar commitments that were then ignored.

(3) Busting the Sanctions Regime

A third flaw is the early relief of sanctions and the JCPOA “snap-back” provisions -- a clear triumph of hope over experience. It took over ten years for sanctions to have a substantial effect on Iran’s economy. Once sanctions are further loosened and most ended, it will be extraordinarily difficult to restore them. We will have given up our leverage and will be dependent on Russia, China and others, including friends, with commercial interests in continuing to do business with Iran. There are procedures that suggest sanctions will be reconstituted if violations occur, although perhaps as long as 85 days after the fact. But there are many detours that could delay imposition and, once the restrictions are lifted in 10-15 years, the option of restoring effective sanctions is for all practical purposes removed altogether.

(4) Failure to Prevent Breakout

Also deeply flawed is the notion of extending the breakout time from two or three months to twelve. Following the end of restrictions on Iran’s enrichment program, we will be in a worse situation with an even more capable Iran, operating thousands of advanced centrifuges. If a 2-3 month breakout time is unacceptable today, why is it acceptable in 10-15 years?

Moreover, unless Iran begins breakout at a declared facility under IAEA monitoring, how will we know when the clock begins? Despite assertions that we will know when Iran decides to go nuclear, our track record suggests the opposite, especially in a covert “sneak-out” scenario. In the past, we were caught off guard at the timing of the first Soviet nuclear test, the first Chinese nuclear test, and the Indian and Pakistan nuclear tests. More recently, and more directly related, we debated for years whether North Korea was operating a uranium enrichment facility – a debate that ended only when Pyongyang announced that it had begun production of highly enriched uranium for weapons and invited an American nuclear scientist to visit the site.

Finally, even if we did know when breakout began, what response can we realistically expect to occur? The likelihood, based on previous experience, is that months will go by until there is an internal U.S. consensus that a violation has taken place. More months will go by as the international community deliberates about how to respond. Consider two recent examples of how long these matters take: it took nearly four years for the IAEA Board of Governors to refer the Iran nuclear issue to the UN Security Council and it took years for the U.S. government to conclude that Russia had violated the INF Treaty, despite clear-cut evidence in both cases.

(5) Failure to Limit Ballistic Missiles

One line of argument used to justify the shift in the U.S. position from including ballistic missiles to excluding them in the negotiations was that, if Iran’s nuclear weapons capability is precluded by the terms of the agreement, the threat of a nuclear-tipped ballistic missile also goes away. However, in light of Iran’s continuing efforts to develop longer-range ballistic missiles, including an ICBM capability, one might turn the argument around: if the agreement effectively blocks Iran’s path to nuclear weapons, why would Tehran continue to work on a costly weapons system that could never be effectively armed?

Indeed, in February of this year, in the middle of the high stakes negotiations, the Iranians successfully orbited their fourth satellite. The technology that enables a space launch vehicle to launch a satellite is directly transferable to a long-range ballistic missile. Iran’s willingness to move forward with the launch, given the timing, demonstrates its commitment to advancing its ICBM program, and its continued willingness to violate U.N. resolutions -- in this case, U.N. Security Council resolution 1929, which prohibits Iran from undertaking “any activity related to ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missile technology.”

In fact, there are a number of interrelated assumptions on which this argument – or, more accurately, this assertion – is based. It assumes that permitting Iran a large-scale enrichment capability is compatible with the goal of denying Iran the ability to produce weapons-grade fissile material; it assumes that the twelve month breakout time is meaningful; it assumes that

the agreement will be effectively verifiable; and it assumes that the United States and the international community will respond to evidence of cheating before Iran can mate a nuclear weapon to a ballistic missile. None of these assumptions holds up under scrutiny. As a result, the threat to the U.S. homeland and to our NATO allies of an Iran armed with nuclear tipped ballistic missiles will increase not decrease under the anticipated agreement. The threat will also increase to the Gulf Arabs leading to more proliferation in the broader Middle East and a greater risk of war.

Four Strategic Consequences

(1) Increased Prospect for Nuclear and Ballistic Missile Proliferation

For me personally, because I approach these issues from a nonproliferation perspective, one of the most significant negative consequences of the JCPOA is the increased likelihood of nuclear proliferation. As a result of Iran's greater capabilities and influence – reinforced by a growing skepticism among our allies about the U.S. resolve to defend their interests – other Gulf states may decide to acquire a nuclear threshold capability similar to Iran's. Saudi Arabia has already made clear that it will want what Iran is permitted. My sense is that these states, which may also include Turkey and Egypt and perhaps others, will want to ensure that they are not a step behind Iran – and the proliferation dynamic will be unleashed.

Moreover, because the United States and other P5+1 members have agreed to exclude ballistic missiles in the negotiations, the message to other rogue states will be that we are not serious about imposing costs for missile proliferation. This could be a further incentive for states seeking weapons of mass destruction to acquire ballistic missiles as a means of delivery. For Iran, it could encourage even closer cooperation with North Korea on the transfer of missile technology and perhaps in nuclear weapons field.

(2) Weakening of the International Nonproliferation Regime

Despite having been negotiated in the name of nonproliferation, the JCPOA undermines the international nonproliferation regime. The provisions relating to the timelines for suspect site inspections (permitting an initial delay of 24 days in place of a 24 hour notice) and the failure to firmly back the IAEA investigation of Iran's possible military activities undercut the authority of the Agency. Both may well be used by future proliferators as precedents to hide their activities and avoid penalties. American leadership of the international regime will also be weakened because of the abandonment of decades of U.S. policy discouraging the spread of enrichment and reprocessing activities. How can the United States credibly argue that Iran can have a

large-scale enrichment capability but Saudi Arabia and other states, including allies such as South Korea, should not?

(3) A More Aggressive and Repressive Iran

With tens of billions of dollars in immediate sanctions relief, and massive more amounts to follow, Iran's military and Revolutionary Guards will have access to more resources for more missiles, for more weapons across the spectrum, for continued support to the Assad regime in Syria, and for more terrorist activities. The end of the arms and ballistic missile embargoes in five and eight years respectively, will only add to Iran's capabilities to intimidate its neighbors, enflame the Sunni-Shiite divisions, and support instability throughout the region.

The notion that Iran's leaders will become more moderate as a result of the nuclear agreement has no basis in fact. Following the conclusion of the negotiations, Iran's Supreme Leader again denounced the United States to cheers of Death to America. In his speech, he made clear that Iran would continue to support its allies in Syria, Iraq, Yemen, and Lebanon, and reaffirmed his support to terrorists groups dedicated to the destruction of Israel.

Iran's economy will benefit from the end of sanctions, with the likely result that the regime will be strengthened. This will enable it to continue, if not intensify, its brutal repression of all domestic opposition in the struggle for a free and democratic Iran. And with a nuclear weapons capability in waiting, Iran's leaders will be even more secure in persecuting their domestic opponents without fear of external intervention.

(4) Increased Prospect for Conflict

The nuclear agreement will likely lead to a greater chance of conflict and war. With increased military capabilities, and a nuclear weapons option that it can exercise when necessary, Iran may become even more aggressive in the region in promoting its theocratic and national goals – undermining long term American allies in a region of vital U.S. interests. With the U.S. pull out of Afghanistan and drawdown in Iraq, Iran is the prime candidate to become the preeminent power in the Gulf and beyond. And given the lifting of the embargoes on conventional arms and ballistic missiles, Iran's military capabilities will grow all the more, creating even greater incentive for Iran's Arab neighbors to increase their arms. Media reports indicate that the Obama Administration has already signaled that it will increase arms transfers to the region.

A bad agreement – one that does not end Iran's nuclear weapons capability -- may also compel Israel to do what it has sought to avoid for years – respond with force to eliminate an existential threat to its existence. Everyone wants a diplomatic resolution of the Iran nuclear

threat, especially Israeli leaders. But an agreement that paves the way to a nuclear weapon – as Israel’s Prime Minister characterized the JCPOA – may force Israel’s hand.

Four Recommendations

- (1) Congress should vote on the agreement, and reject it if it is a bad agreement. As President Obama has stated, a bad agreement is worse than no agreement. The metrics to judge good from bad are straight forward:
 - Is the agreement verifiable?
 - Does the agreement deny Iran a nuclear weapons capability – the longstanding declared goal of the United States and the international community?
 - Does the agreement, following the expiration of the constraints placed on Iran, prevent Teheran from building a nuclear weapon in a short period of time?
 - Does the agreement prevent or extend the breakout time in a meaningful way?
 - Is there a meaningful phased relief of sanctions and are there guaranteed snap-back provisions?

Because the answer in my assessment to each of these questions is “no,” it is important for the Congress to reject the agreement. In its place, Congress should insist on a return to the negotiating table to seek an outcome that meets long standing U.S. goals. This would send an important message that the Congress will not be boxed in by Security Council resolutions that circumvent the constitutional process and congressional oversight. It will also send an important message to Iran’s leaders that their self-declared victory in the negotiations will not stand in the future.

- (2) Congress should, to the extent that it can with congressionally imposed sanctions, tie incremental relief to the fulfillment of Iran’s commitments. The burden should rest on Iran to prove its compliance, not on the U.N. to prove its failure to comply.
- (3) Congress should make clear that any cheating – any failure by Iran to meet all of its obligations – will result in the immediate termination of the agreement. We know Iran will cheat. Unfortunately, it appears that the Obama Administration may seek to explain away noncompliant behavior as it has reportedly done with Iran’s failure to meet its obligations under the initial Joint Plan of Action. Here, the Congress should establish a “Team B” of outside nonpartisan experts with access to the highest levels of intelligence to assess Iran’s compliance with all provisions of the agreement. Team B efforts have been welcomed in the past, for example in evaluating the Soviet nuclear threat and Soviet arms control

compliance, and have been found to be of value by the Intelligence Community in providing different perspectives and approaches.

- (4) Congress should move forward with funding to expand missile defenses in the region and against the emerging Iranian nuclear armed ICBM-class missile threat. The latter might include reinstating Phase Four of the European Phased Adaptive Approach that was cancelled as a concession to Moscow. At a minimum, it should include moving ahead with a third interceptor site on the U.S. East Coast. The threat is real and the first priority is protecting the American people from attack.

Thank you for your consideration.