



# Improving the Joint Comprehensive Plan of Action

**Mark Dubowitz  
Annie Fixler**

*Foreword by Sen. Evan Bayh, Gen. Michael V. Hayden, and Sen. Joseph Lieberman*



**Center on Sanctions  
& Illicit Finance**

FOUNDATION FOR DEFENSE OF DEMOCRACIES



**August 2015**



# Improving the Joint Comprehensive Plan of Action

---

**Mark Dubowitz  
Annie Fixler**

*Foreword by Sen. Evan Bayh,  
Gen. Michael V. Hayden, and Sen. Joseph Lieberman*

August 2015



---

FDD PRESS

A division of the  
FOUNDATION FOR DEFENSE OF DEMOCRACIES  
Washington, DC



## Table of Contents

Foreword.....	3
Executive Summary.....	5
Introduction.....	6
Alternatives.....	7
Congressional Precedents.....	8
Likely Scenarios if Congress Rejects the Current JCPOA.....	10
Continue Economic and Diplomatic Pressure on Iran.....	15
Amendments to Improve the JCPOA.....	18
Conclusion.....	27



## Foreword

The nuclear deal with Iran is arguably the most important arms control agreement since the end of the Cold War. The congressional debate and the public discussion of the deal are critical foreign policy conversations. Between the three of us, we have served in government for more than 75 years, and during that time, we have each made difficult national security decisions. We appreciate the seriousness with which each member of Congress is reviewing the deal and coming to his or her own conclusion about its merits.

Unfortunately, some of the political rhetoric surrounding the deal has presented the situation as a binary choice between this deal and war with Iran. We have never faced a black-and-white national security decision, nor do we believe this case is an exception. It is the responsibility of every policymaker to evaluate all options, and we know that members of Congress—many of them our former colleagues—take this responsibility very seriously.

We have opposed this deal, and Congress has every reason to reject it. But we understand that if Congress votes in disapproval of the agreement, there are risks. Will Iran retaliate by escalating its nuclear program? Will private companies continue to abide by U.S. sanctions? Will the P5+1 fracture? But also, because of the agreement's shortcomings, what are the risks inherent in approving of it? These are serious questions that must be considered thoughtfully. Too much of the political rhetoric surrounding the debate about the deal has taken for granted the answers to these questions.

Instead, in this report, Mark Dubowitz and Annie Fixler of the Foundation for Defense of Democracies analyze the nuances of these scenarios.

One of the many choices before Congress is a decision to condition its approval on the amendment of certain terms of the agreement. As Congress has done many times in the past, including when we served in government, it could require modifications to this non-binding, international agreement prior to approval. While there were risks in the past that Congress' conditions could “blow up” an agreement, far more often than not, these conditions ultimately enabled negotiators to reach a stronger accord. It is possible that rather than a vote of approval or disapproval, Congress could first require that the administration renegotiate specific components of the deal.

The following report provides concrete examples of changes that could be negotiated between the P5+1 and Iran. We believe that if Congress were to require these amendments, the U.S. government could convince its allies to re-open specific terms of the deal to renegotiation.

For example, Iran is currently required to resolve the international community's outstanding concerns about the possible military dimensions (PMDs) of its nuclear program. However, the agreements between the International Atomic Energy Agency (IAEA) and Iran about how these issues will be resolved and whether or not the IAEA will have physical access to sites, documents, and personnel are particularly concerning given recent news reports.

There is also a lack of clarity about what happens if Iran does not cooperate with the IAEA. Will sanctions relief be withheld until the IAEA has fully resolved all of its outstanding questions? It would be far better and less risky to clarify questions regarding resolution of PMDs prior to sanctions relief and to fully answer

questions regarding physical access now rather than leave ambiguity in the agreement.

The authors also suggest amendments to address concerns about Iran's ability to withdraw from the agreement if the United States uses economic tools to address non-nuclear related illicit activity by Iran. Other amendments could resolve questions about the duration of the agreement and the maintenance of restrictions on Iran's nuclear program if it continues to be a threat to global security in a decade or more.

This report makes the case that the amendments it suggests will go a long way to rectifying some of the most concerning parts of the current nuclear agreement. Certainly there are many other suggestions for additional amendments and clarifications that are worth discussing. Thoughtful analysis of the nuclear agreement reveals both its strengths and weaknesses. A robust debate on the merits and feasibility of every term of the current agreement and every possible adjustment will serve our national security. This report and the recommendations it includes contribute to this conversation and are worthy of serious consideration.

As important as the decisions we make about the nuclear agreement with Iran is how we come to our conclusions. Did we read and re-review every line and every word of the agreement? Did we listen to every argument and counter-argument? Did we seriously evaluate every option before us? We owe it to future generations to engage in a robust discussion devoid of political rhetoric. Our decisions today carry weight, and we must view them with the gravity they require.

***Former Senator Evan Bayh (D-IN)***

***Gen. Michael V. Hayden, former CIA  
and NSA director***

***Former Senator Joseph Lieberman (I-CT)***

## Executive Summary

The current nuclear deal with Iran has a structural flaw. Rather than permanently blocking Iran's nuclear weapons pathways, it opens a patient path. Tehran simply has to abide by the terms of the deal to emerge in 10 to 15 years with a massive nuclear program, a short path to a bomb, intercontinental ballistic missiles, and an economy immunized against future sanctions. In short, the deal in its current form fails to achieve its strategic objective: permanently preventing the Islamic Republic from acquiring a nuclear weapons capability. Therefore, the deal must be amended.

With a critical vote looming, Congress is now in a position to demand that the administration renegotiate and amend specific components of the agreement—especially the “sunset” clauses that will permit critical nuclear, arms, and ballistic missile restrictions to disappear in five to 15 years. Congress should require these restrictions to remain until the United Nations Security Council—where America retains its veto—determines that Iran's nuclear program is no longer a threat to global security.

Ample precedent exists for Congress to demand amendments to an international agreement. Throughout American history, Congress rejected or required amendments to more than 300 bilateral and multilateral international agreements, including significant Cold War arms control agreements with the Soviet Union.<sup>1</sup>

.....  
1. Orde Kittrie, “Congress Can Rewrite the Iran Deal,” *The Wall Street Journal*, August 12, 2015. (<http://www.wsj.com/articles/congress-can-rewrite-the-iran-deal-1439419154>)

If Congress votes to disapprove this Iran deal and requires changes, there are three likely scenarios. Each is problematic but manageable and preferable to the current, flawed agreement.

First, Iran could abandon its commitments and move slowly to escalate its nuclear activities. If past is prologue, Iran will be deterred by the threat of crippling sanctions and military force, and will not escalate rapidly. Second, Iran could decide to implement its nuclear commitments, triggering U.N. and European Union sanctions relief. Third, Iran could try to divide the United States from its partners.

Under all of these scenarios, China and Russia might re-open business ties with Iran but will likely continue to remain at the negotiating table with the rest of the P5+1 to prevent Iran from acquiring a nuclear weapons capability. Europe's markets, however, are Iran's big economic prize. It will, therefore, be critical for the United States to use diplomatic persuasion and American financial sanctions to keep European firms out of Iran. If these sanctions remain in place, few European banks will risk penalties or their ability to transact in dollars by re-entering the Iranian market. European energy companies will find few financial entries into Iran.

The power of U.S. financial sanctions always depended on the private sector's appetite for risk. In the event of a congressional disapproval, or a vote in which a simple majority of senators rejects the deal, major European companies will likely hold off investment until a new president comes into office in 2017. They will also be concerned about the legal and reputational risk of doing business with Iran's Islamic Revolutionary Guard Corps (IRGC) (who dominate strategic sectors of Iran's economy like finance, energy, construction, and automotive and will still be designated a proliferation sponsor by the United States).

Keeping major European businesses out of Iran is critical to allow for the time and diplomatic space for this president or his successor to negotiate an amended

deal that addresses the fundamental defects of the Joint Comprehensive Plan of Action (JCPOA).

This leverage can be used to get a better deal, which would include the requirement that nuclear, arms, and ballistic missile restrictions don't sunset until the U.N. Security Council (where America retains its veto) votes to lift them. It would remove the Iranian "nuclear snapback" language and include Tehran's explicit acknowledgement that sanctions can be re-imposed for terrorism, human rights abuses, ICBM development, and on other non-nuclear grounds. It also would mandate a full and comprehensive resolution of past and possibly continuing Iranian weaponization activities—*before* any sanctions relief is provided—including the requirement that International Atomic Energy Agency (IAEA) weapons inspectors can *physically* enter and thoroughly investigate any suspect military or non-military site. (This report outlines other recommended amendments.)

It won't be easy getting changes to the deal as it now stands. It will require additional leverage. But the United States will never again have the kind of powerful secondary sanctions leverage that it does today. Congress now has an opportunity to ensure that the United States maintains and uses that power. The aim should not be to torpedo diplomacy. Rather, it is to defuse the ticking time bomb of an expanding Iranian nuclear program by making critical amendments to the JCPOA that lower the risk of a future war against a more powerful, dangerous, and nuclear weapons-threshold Iran.

## Introduction

The Joint Comprehensive Plan of Action (JCPOA) negotiated between the P5+1 and Iran places term-limited constraints on Iran's nuclear activities in exchange for the lifting of many of the most impactful global sanctions. However, the deal contains structural flaws that enable Iran to:

1. Expand the pathways to a nuclear weapon, access to heavy weaponry, and ballistic missile technology during the duration of the agreement as a result of a series of sunset clauses;
2. Build economic resiliency against sanctions pressure, diminishing Western leverage to address non-compliance and enforcement; and,
3. Walk away from the agreement if members of the P5+1 attempt either to re-impose sanctions in a so-called "snapback" sanctions scenario or to impose non-nuclear related sanctions in response to Iran's other illicit activities.

The sunset clauses—the fatal flaw of the JCPOA—permit critical nuclear, arms, and ballistic missile restrictions to disappear over a five- to 15-year period. Tehran must simply abide by the agreement to soon emerge as a threshold nuclear power with an industrial-size enrichment program. Similarly, it must only hang tight to reach near-zero breakout time; find a clandestine sneak-out pathway powered by easier-to-hide advanced centrifuges; build an arsenal of intercontinental ballistic missiles; gain access to heavy weaponry like more sophisticated combat aircraft, attack helicopters, and battle tanks after the lifting of the U.N. conventional arms embargo after five years; and develop an economy increasingly immunized against future sanctions pressure. Iran can achieve all this without violating the agreement by simply waiting for the sunset dates to be reached. By cheating Tehran will only get there faster, for example, if it refuses to grant the IAEA physical access to suspicious sites and Washington can't get European support to punish Iranian stonewalling.

The JCPOA also explicitly contemplates that Iran will walk away from the deal if sanctions are re-imposed in response to an Iranian violation.<sup>2</sup> It also contains

.....  
2. "Joint Comprehensive Plan of Action," Vienna, July 14, 2014, paragraph 37. (<http://eeas.europa.eu/statements-eeas/>)

an explicit requirement for the United States and the EU to do nothing to interfere with the “normalization of trade and economic relations with Iran.”<sup>3</sup> These are Iran’s “nuclear snapbacks,” wherein Tehran will threaten nuclear escalation if the world powers try to force it back into compliance with the agreement.

In addition, the JCPOA provides significant sanctions relief prior to a demonstrable change in the conduct that first prompted the sanctions and relies on an economic snapback sanctions mechanism to enforce the deal against Iranian non-compliance, a mechanism that will become increasingly ineffective over time.

These and several other defects undermine the effectiveness of the JCPOA in preventing Iran from acquiring nuclear weapons. This report provides recommendations for concrete amendments to the deal that are both reasonable and achievable. It also examines the potential fallout from a congressional vote of disapproval. A better agreement that addresses these defects can decrease the likelihood of a nuclear-armed Iran and diminish the possibility of a nuclear arms race in the Middle East.

## Alternatives

Some supporters of the JCPOA have presented the choices as binary. They say that the choices are between this agreement and war. They further assert that those who question the terms of the agreement have no proposed alternative. As the liberal public intellectual Leon Wieseltier eloquently explains:

“But what is the alternative? This is the question that is supposed to silence all objections. It is, for a start, a demagogic question. This agreement was designed to prevent Iran from acquiring nuclear weapons. If it does not

.....  
[docs/iran\\_agreement/iran\\_joint-comprehensive-plan-of-action\\_en.pdf](#)

3. Ibid., paragraph 29.

prevent Iran from acquiring nuclear weapons—and it seems uncontroversial to suggest that it does not guarantee such an outcome—then it does not solve the problem that it was designed to solve. And if it does not solve the problem that it was designed to solve, then it is itself not an alternative, is it? The status is still quo. Or should we prefer the sweetness of illusion to the nastiness of reality? For as long as Iran does not agree to retire its infrastructure so that the manufacture of a nuclear weapon becomes not improbable but impossible, the United States will not have transformed the reality that worries it. We will only have mitigated it and prettified it. We will have found relief from the crisis, but not a resolution of it.”<sup>4</sup>

There is, however, an alternative to the JCPOA. It is an amended JCPOA. Congress can require the administration to renegotiate certain terms of the proposed JCPOA and resubmit the amended agreement for congressional approval. The amended JCPOA could much more effectively “cut off every single one of Iran’s pathways”<sup>5</sup> to a nuclear bomb and retain tools of effective sanctions enforcement against future Iranian illicit behavior on multiple fronts.

President Obama and his top officials have repeatedly said, “No deal is better than a bad deal.”<sup>6</sup> In making

.....  
4. Leon Wieseltier, “The Iran Deal and the Rut of History,” *The Atlantic*, July 27, 2015. (<http://www.theatlantic.com/international/archive/2015/07/iran-deal-history/399644/>)

5. Barack Obama, “Press Conference by the President,” *The White House, Washington, D.C.*, July 15, 2015. (<https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president>)

6. For example, Barack Obama, “Remarks by the President in a Conversation with the Saban Forum,” *Saban Forum*, December 7, 2013. (<https://www.whitehouse.gov/the-press-office/2013/12/07/remarks-president-conversation-saban-forum>); John Kerry, “Interview with Martha Raddatz of ABC This Week,” *ABC This Week*, March 1, 2015. (<http://www.state.gov/secretary/remarks/2015/03/238051.htm>); Susan Rice, “Remarks As Prepared,” *Speech before the AIPAC Annual Meeting*, March 2, 2015. (<https://www.whitehouse.gov/the-press->

this pronouncement, the president clearly had an acceptable alternative path in mind, or he would not have indicated that he was willing to walk away from the table.<sup>7</sup> Indeed, it is reasonable to assume that no president would enter into negotiations, especially over something as fundamental to American national security as Iran’s nuclear weapons program, without a well-developed Plan B. Logically, if there were alternatives to a negotiated agreement prior to July 14, there continue to be alternatives.

It is not unprecedented for Congress and the White House to work together to renegotiate the terms of a treaty or non-binding agreement. It is the mandate of Congress to insist that the administration renegotiate the most problematic components of the current deal.

There are ample reasons for Congress to demand these changes. The current agreement undermines America’s ability to use economic leverage. As that leverage diminishes over time, military force may become the only effective option for a future president to stop Iran’s nuclear weapons development.

Moreover, the current JCPOA legitimizes Iran’s nuclear program over time, provides significant sanctions relief prior to a demonstrable change in the conduct that prompted the sanctions, and risks spurring nuclear proliferation in the Middle East. As such, no deal is better than the current JCPOA, and a better alternative is achievable.

.....  
[office/2015/03/02/remarks-prepared-delivery-aipac-annual-meeting-national-security-advisor](https://www.whitehouse.gov/the-press-office/2015/03/02/remarks-prepared-delivery-aipac-annual-meeting-national-security-advisor)

7. For example, June 30, 2015, President Obama said that he “will walk away from the negotiations if, in fact, it’s a bad deal.” The White House, Office of the Press Secretary, “Remarks by President Obama and President Rousseff of Brazil in Joint Press Conference,” June 30, 2015. (<https://www.whitehouse.gov/the-press-office/2015/06/30/remarks-president-obama-and-president-rousseff-brazil-joint-press>)

## Congressional Precedents

There is significant precedent in American history for Congress and the White House to work together to renegotiate the terms of an international treaty or a non-binding agreement. Throughout American history, Congress has rejected or required amendments to more than 300 treaties and international agreements (of which about 80 were multilateral).<sup>8</sup> This includes major bilateral and multilateral arms control and nuclear agreements during and after the Cold War. Our colleague at the Foundation for Defense of Democracies, Orde Kittrie, professor of law at Arizona State University and former lead attorney for nuclear affairs at the State Department, has studied the issue of congressional review of international agreements. His research found that presidents may argue that “the slightest change [to an agreement] ... would unbalance the package and kill the treaty,” but that this has not been true in a vast majority of cases.<sup>9</sup>

During the Cold War, Congress played an active role in the negotiation and renegotiation of critical arms control agreements. For example, Democratic Senator Henry “Scoop” Jackson (WA), following the Strategic Arms Limitation Talks (SALT I), authored an amendment to the resolution of approval that required future strategic arms control negotiations to set American strategic arms at parity with those of the Soviet Union. The Jackson amendment, which directly challenged the Nixon

.....  
8. Orde Kittrie, “Congress Can Rewrite the Iran Deal,” *The Wall Street Journal*, August 12, 2015. (<http://www.wsj.com/articles/congress-can-rewrite-the-iran-deal-1439419154>) For an analysis of the period prior to 1900, see R. Earl McClendon, “The Two-Thirds Rule in Senate Action Upon Treaties, 1789-1901,” *The American Journal of International Law*, January 1932, pages 37-56.  
9. Orde Kittrie, “Congress Can Rewrite the Iran Deal,” *The Wall Street Journal*, August 12, 2015. (<http://www.wsj.com/articles/congress-can-rewrite-the-iran-deal-1439419154>); “Treaties and Other International Agreements: The Role of the United States Senate,” *Congressional Research Service*, January 2001, page 15. (<http://www.gpo.gov/fdsys/pkg/CPRT-106SPRT66922/pdf/CPRT-106SPRT66922.pdf>)

administration, provided criteria for future agreements and “emphasize[d] the disquiet of many members of Congress ... concerning the terms” of the agreement.<sup>10</sup> It expressed Sense of Congress language urging the President to “seek a future treaty that, inter alia, would not limit the United States to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union.”<sup>11</sup> On September 11, 1972, the Senate passed the Jackson amendment by a vote of 56 to 35.

This amendment laid the predicate for Senator Jackson to challenge the Carter Administration for failing to meet this standard in the SALT II Treaty in 1979.<sup>12</sup> Additionally, 19 Senators led by Sen. Sam Nunn (D-GA) wrote a letter to President Carter expressing concerns about the treaty.<sup>13</sup> These 19 Senators represented “a potentially decisive voting bloc,” according to a *Washington Post* article from the time.<sup>14</sup> Their letter noted the “slippage of America’s comparative military position” and raised concerns about “trends in the military balance adverse to the United States.”<sup>15</sup> President Carter responded with a willingness to negotiate with these Senators.<sup>16</sup> The

Jackson amendment, in short, set the standard for strategic forces parity and also provided a vehicle for Congress to weigh in on other arms control agreements.

As further examples, the Senate initially blocked the Threshold Test Ban Treaty (TTBT) of 1974 because of concerns over Soviet compliance. TTBT was not submitted to the Senate for approval for two years after signing because the parties were negotiating a companion treaty to address underground explosions.<sup>17</sup> The treaty was not ratified until after the United States and Soviet Union reached an agreement 14 years later that “would make it possible for the United States to ratify the treaty,” according to the U.S. State Department.<sup>18</sup> The additional agreement included provisions to enhance America’s ability to verify Soviet compliance.<sup>19</sup>

During the presidency of Bill Clinton, Congress and the administration engaged in a four-year long discussion over the ratification of the Chemical Weapons Convention. Congress only approved it in April 1997 after the inclusion of 28 conditions.<sup>20</sup> It’s also worth noting that, at the time, this treaty included 87 participating countries, including Iran.<sup>21</sup> Similarly, the 1997 resolution of ratification of the Conventional Forces in Europe Flank Agreement also contained 14 conditions.<sup>22</sup> Congressional demands for amendments derailed neither treaty.

10. Michael Krepon, “The Jackson Amendment,” *Arms Control Wonk*, August 6, 2009. (<http://krepon.armscontrolwonk.com/archive/2414/the-jackson-amendment>); “Congress Approves SALT Offensive Arms Agreement,” *Congressional Quarterly*, 1973. (<http://library.cqpress.com/cqalmanac/document.php?id=cqal72-1251467>)

11. Ibid.

12. Ibid.

13. “Milestones: 1969–1976: Strategic Arms Limitations Talks/Treaty (SALT) I and II,” *U.S. Department of State Website*, accessed July 27, 2015. (<https://history.state.gov/milestones/1969-1976/salt>)

14. George C. Wilson & Edward Walsh, “Carter to Meet 19 Senators ‘Concerned’ About SALT,” *The Washington Post*, December 17, 1979. (<http://www.washingtonpost.com/archive/politics/1979/12/17/carter-to-meet-19-senators-concerned-about-salt/0539145d-0b0d-4ace-8e88-1ffd25cd9b1a/>)

15. “Letter From Nineteen Senators to President Carter,” *U.S. Department of State Website*, December 17, 1979. (<https://history.state.gov/historicaldocuments/frus1969-76v33/d244>)

16. George C. Wilson & Edward Walsh, “Carter to Meet 19 Senators ‘Concerned’ About SALT,” *The Washington Post*,

December 17, 1979. (<http://www.washingtonpost.com/archive/politics/1979/12/17/carter-to-meet-19-senators-concerned-about-salt/0539145d-0b0d-4ace-8e88-1ffd25cd9b1a/>)

17. “The Treaty on the Limitation of Underground Nuclear Weapon Tests (TTBT),” *U.S. Department of State Website*, Moscow, July 3, 1974. (<http://www.state.gov/t/isn/5204.htm>)

18. Ibid.

19. Ibid.

20. Jonathan B. Tucker, “U.S. Ratification of the Chemical Weapons Convention,” National Defense University Press, December 2011. ([http://ndupress.ndu.edu/Portals/68/Documents/casestudies/CSWMD\\_CaseStudy-4.pdf](http://ndupress.ndu.edu/Portals/68/Documents/casestudies/CSWMD_CaseStudy-4.pdf))

21. Ibid.

22. Senate Committee on Foreign Relations, “Flank Document Agreement to the CFE Treaty,” May 9, 1997. (<http://www.gpo.gov/fdsys/pkg/CRPT-105erpt1/pdf/CRPT-105erpt1.pdf>)

At the end of the George W. Bush Administration, the United States and United Arab Emirates negotiated a civil nuclear cooperation agreement (called a 123 agreement). However, some members of Congress objected that the agreement did not ensure that the UAE would not engage in enrichment and reprocessing.<sup>23</sup> In speaking with the UAE ambassador, then-Chairman of the House Foreign Affairs Committee Howard Berman (D-CA) determined that the UAE was prepared to accept those terms but the Bush administration had not wanted to include them.<sup>24</sup> The treaty was not submitted for approval, but instead, the incoming Obama Administration re-opened the negotiations, agreeing with the Chairman.<sup>25</sup> Instead of a statement in the preamble acknowledging the UAE's stated policy not to engage in domestic enrichment, the new amended agreement "transform[ed] this UAE policy into a legally binding obligation," according to President Obama's statement transmitting the agreement to Congress.<sup>26</sup> The amended agreement included a binding commitment from the UAE not to engage in domestic enrichment or reprocessing. In short, Congress expressed concerns about specific components of an agreement, a new administration agreed with Congress rather than the prior administration, and a stronger agreement was the result.

In these examples, Congress played a significant role in modifying important national security treaties or agreements. Congress can refer to this history as its mandate for the strengthening of the current nuclear deal with Iran on its technical and conceptual merits.

.....  
23. Interview with a former U.S. State Department arms control expert, *Washington, D.C.*, July 23, 2015.

24. Interview with former Chairman Howard Berman, *Los Angeles, CA*, August 13, 2015.

25. Daniel Horner, "U.S., UAE Sign New Nuclear Cooperation Pact," *Arms Control Today*, June 4, 2009. ([http://www.armscontrol.org/act/2009\\_6/UAE](http://www.armscontrol.org/act/2009_6/UAE))

26. The White House, Office of the Press Secretary, "Message from the President on the US-UAE Peaceful Uses of Nuclear Energy Agreement," May 21, 2009. (<https://www.whitehouse.gov/the-press-office/message-president-us-uae-peaceful-uses-nuclear-energy-agreement>)

## Likely Scenarios if Congress Rejects the Current JCPOA

If Congress chooses to exercise its constitutional powers and passes a Joint Resolution of Disapproval of the JCPOA and overrides a presidential veto, there are three likely scenarios that could result. While each presents challenges, these can be managed with robust U.S. leadership, active engagement with U.S. allies, and close coordination with the international business community.

### *Scenario 1: Iran Walks Away*

If Congress disapproves of the JCPOA, Iran could decide to abandon its commitments and walk away from the JCPOA. The deal would fall apart before the so-called Implementation Day, the day when the International Atomic Energy Agency (IAEA) confirms that Iran has implemented its nuclear commitments, and the day that U.S., EU, and U.N. sanctions relief begins to take effect. While a diplomatic crisis would ensue, the existing multilateral sanctions and the U.N. arms embargo and ballistic missile restrictions would remain in place.

If past is prologue, even under the scenario in which Iran walks away from the JCPOA, Iran will likely escalate its nuclear program only incrementally not aggressively so as to avoid crippling economic sanctions or military strikes. Despite Iranian President Hassan Rouhani's statement that if the West does not provide Iran with the nuclear deal it wants, Iran "will go back to the old path, stronger than what they [the West] can imagine,"<sup>27</sup> Iran has historically moved cautiously.

.....  
27. Parisa Hafezi, "Iran's Rouhani Says the West Should Remain Committed to a Final Nuclear Deal: IRNA," *Reuters*, June 30, 2015. (<http://www.reuters.com/article/2015/06/30/us-iran-nuclear-rouhani-idUSKCN0PA2DI20150630>)

	November 2008	November 2013	Average yearly increase
Operational IR-1 Centrifuges at Natanz	3,936	9,146	1,042
Installed IR-1 Centrifuges at Natanz	5,412	15,748	2,067
Operational IR-1 Centrifuges at Fordow	0	696	309*
Installed IR-1 Centrifuges at Fordow	0	2,710	1,204*
Installed IR-2 Centrifuges at Natanz	0	1,008	828**
3.5% LEU stockpile (in kg)	630	10,357	1,945
19.75% LEU stockpile (in kg)	0	410	109***
<p>* Iran did not begin installing centrifuges in Fordow until August 2011. Annualized growth rates therefore reflect the August 2011 – November 2013 period. The average increase is calculated over 2.25 years rather than 5 years.</p> <p>** Iran began installing IR-2 centrifuges at Natanz between November 2012 and February 2013. By February 2013, Iran had 180 installed IR-2 centrifuges at Natanz, and 1,008 by November. Therefore the increase listed is not the annual increase but rather the increase over those nine months.</p> <p>*** In February 2010, Iran announced that it would begin producing 20% enriched uranium. The average annualized growth rate is calculated over 3.75 years rather than 5 years.</p>			

For example, between 2008 and 2013, Iran only increased its operating centrifuges by an average of about 1,000 per year at the Natanz facility.<sup>28</sup> During this five-year period, during which sanctions on Iran escalated significantly, Iran’s nuclear program expanded incrementally, as demonstrated in the chart above.<sup>29</sup>

While the increases over the five year period were concerning, Tehran was careful not to engage in massive nuclear escalation that could trigger more crippling economic sanctions or military strikes. Based on this history, it is reasonable to expect Iran to maintain this careful policy even if it walks away

28. David Albright, Christina Walrond, & Andrea Stricker, “ISIS Analysis of IAEA Safeguards Report,” *Institute for Science and International Security*, November 14, 2013. ([http://isis-online.org/uploads/isis-reports/documents/ISIS\\_Analysis\\_IAEA\\_Safeguards\\_Report\\_14November2013-final.pdf](http://isis-online.org/uploads/isis-reports/documents/ISIS_Analysis_IAEA_Safeguards_Report_14November2013-final.pdf))

29. The data in this chart is drawn from the IAEA’s reports from November 2008 and November 2013 and based on analysis and calculations of the Institute for Science and International Security. International Atomic Energy Agency, “Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions 1737 (2006), 1747 (2007),

1803 (2008) and 1835 (2008) in the Islamic Republic of Iran,” November 19, 2008. (<https://www.iaea.org/sites/default/files/gov2008-59.pdf>); International Atomic Energy Agency, “Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions in the Islamic Republic of Iran,” November 14, 2013. (<https://www.iaea.org/sites/default/files/gov2013-56.pdf>); David Albright, Christina Walrond, & Andrea Stricker, “ISIS Analysis of IAEA Safeguards Report,” *Institute for Science and International Security*, November 14, 2013. ([http://isis-online.org/uploads/isis-reports/documents/ISIS\\_Analysis\\_IAEA\\_Safeguards\\_Report\\_14November2013-final.pdf](http://isis-online.org/uploads/isis-reports/documents/ISIS_Analysis_IAEA_Safeguards_Report_14November2013-final.pdf))

from the current deal and refuses to renegotiate based on Congress' required amendments. Indeed, the risks are the same. A rapid breakout by Iran would likely lead to a military response, as presidents from both parties have repeatedly pledged to use military force if necessary to prevent an Iranian nuclear weapon. Iran knows that it would ultimately lose such a war.

Iran also knows that a rapid breakout would also likely unify Europe and the United States and perhaps even Russia and China. All the P5+1 countries have been committed to stopping an Iranian nuclear weapon. This unity of purpose is likely to hold, even if Congress rejects the deal.

In fact, even without a rapid breakout, an Iranian decision to walk away from the agreement could unite the P5+1, or at least the United States and Europe, on the need to maintain current economic pressure on Iran. The president could also use the power of secondary sanctions to persuade the Europeans to join a U.S.-led effort to maintain the isolation of Iran and return to pre-interim agreement sanctions levels, at a minimum. The United States could also impose additional economic sanctions (like a full financial embargo on Iran), especially if Iran moves beyond pre-interim agreement nuclear activities by, for example, operationalizing cascades of advanced centrifuges or stockpiling higher qualities of 20% enriched uranium.

EU sanctions would likely hold or, at the very least, European companies and banks would be reluctant to re-enter Iran. China, India, Japan, South Korea, and Turkey would be unlikely to release all of the funds held in oil escrow accounts, both due to a concern about violating U.S. sanctions and for reasons of self-interest—the current terms of the escrow accounts require Iran to spend the funds on goods from those countries, which is a boon for their exporters. Why would they release these funds to

Iran so that it could spend the money buying goods from other countries?

In short, without a clear green light from the United States, global enthusiasm about Iranian business opportunities would be significantly tempered. All transactions would continue to carry significant counter-party and reputational risks.

### ***Scenario 2: Iran Implements JCPOA Commitments in Full***

Despite the rejection of the JCPOA by Congress, Iran could decide to implement its commitments in good faith. The implementation of Iran's nuclear commitments would trigger U.N. and EU sanctions relief under the terms of the JCPOA, serving to fill Iran's coffers even without congressional approval.

In this case, the president would have two options:

- (a) The president's first option is to rebuff Congress and wield executive authority to neutralize the Iran Nuclear Agreement Review Act of 2015. The legislation only prohibits the lifting of statutory sanctions, so the president could provide most of the sanctions relief he has committed to under the JCPOA. He could vitiate the legislation's statutory sanctions block by de-designating Iranian entities from Treasury's Specially Designated Nationals list,<sup>30</sup> working with the Europeans to permit most Iranian financial institutions back onto the SWIFT financial messaging system, de-designating the Central Bank of Iran (CBI), and permitting Iranian oil exports to increase, among other steps. The president could also provide significant relief by using his prerogative not to make presidential determinations about sanctions violations that

.....  
30. "Specially Designated National List," *U.S. Department of the Treasury Website*, July 23, 2015. (<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>)

are the precondition of any statutory sanctions enforcement action.<sup>31</sup> He can also circumvent the most important statutory sanction: When President Obama signed the National Defense Authorization Act of 2012, he stated that Section 1245 of the bill, which included the legislative designation of the CBI and requirement that countries buying Iranian oil significantly reduced these purchases, is “non-binding” if it “conflict[s] with [his] constitutional authorities” to “conduct foreign relations.”<sup>32</sup>

(b) The president’s second option is to leverage congressional disapproval to persuade U.S. partners to jointly demand that key parts of the agreement be renegotiated on better terms. Even as Iran is implementing its immediate commitments, the P5+1 could re-open negotiations on longer-terms concerns such as the sunset clauses. The benefit of this scenario is that it ensures continued U.S. economic leverage and may also lead to a renegotiation of the most troubling elements of the agreement. This scenario would also be preferable from the perspective of long-term U.S. foreign policy and constitutional separation of powers.

Scenario 2 (a) above could prove politically problematic for the president. While the JCPOA is not a treaty, proceeding with a significant international agreement after explicit rejection by Congress sets a troubling precedent. However, from the narrow perspective of the current deal with Iran, it may still be preferable

to a congressional approval of the deal. Congressional disapproval would act as a powerful deterrent to the rapid return of international business to Iran. A slower return of international companies to Iran, especially European banks and energy companies, would enhance Washington’s ability to persuade key P5+1 partners such as France, Britain, and Germany to join the United States in re-negotiating key amendments to the JCPOA. It would also make the re-imposition of sanctions easier in the event of Iranian non-compliance; Washington would not have to persuade European companies to give up their lucrative investments in Iran. Sanctions leverage will unquestionably be much stronger before European companies enter the Iranian market, not after.

As it stands now, Western companies and banks are hesitant about re-entering the Iranian market because of market and counter-party risks, particularly given the dominance of the IRGC in strategic sectors of Iran’s economy.<sup>33</sup> Even after the deal was reached, Treasury warned international companies about this risk.<sup>34</sup> As a result, even if a vote of disapproval fails, these companies will likely remain cautious as they

.....  
 31. For more explanation of this “prosecutorial discretion,” see Robert Satloff, “Clarifying a ‘No’ Vote on the Iran Nuclear Agreement,” *The Washington Institute for Near East Policy*, August 10, 2015. (<http://www.washingtoninstitute.org/policy-analysis/view/clarifying-a-no-vote-on-the-iran-nuclear-agreement>)

32. The White House, Office of the Press Secretary, “Statement by the President on H.R.1540,” December 31, 2011. (<https://www.whitehouse.gov/the-press-office/2011/12/31/statement-president-hr-1540>)

.....  
 33. Erin Banco, “As Iranian Sanctions Lift, Western Companies Eye Tehran with Caution,” *International Business Times*, July 14, 2015. (<http://www.ibtimes.com/iranian-sanctions-lift-western-companies-eye-tehran-caution-2007465>) Indira Lakshmanan, “Iran Risks Will Curb Investor Enthusiasm Even as Sanctions Ease,” *Bloomberg*, July 17, 2015. (<http://www.bloomberg.com/news/articles/2015-07-17/iran-risks-will-curb-investor-enthusiasm-even-as-sanctions-ease>); Alissa J. Rubin, “After Deal, Europeans Are Eager to Do Business in Iran,” *The New York Times*, August 1, 2015. (<http://www.nytimes.com/2015/08/02/world/europe/after-deal-europeans-are-eager-to-do-business-in-iran.html?smid=tw-share&r=0>); Martin Arnold, Simeon Kerr, & Ben McLannahan, “Post-Deal Iran an Opportunity but Legal Minefield Too,” *Financial Times* (U.K.), July 19, 2015. (<http://www.ft.com/intl/cms/s/0/dc76399e-2aff-11e5-8613-e7aedbb7bdb7.html#axzz3hroOdRvL>)

34. Jay Solomon, “Treasury Prepares to Teach Foreign Investors the Rules for Investing in Iran,” *The Wall Street Journal*, August 10, 2015. (<http://blogs.wsj.com/washwire/2015/08/10/treasury-prepares-to-teach-foreign-investors-the-rules-for-investing-in-iran/>)

assess the policies of the next U.S. president; a vote of disapproval that doesn't attract the full 67 Senate votes to withstand a presidential veto likely will still create political and market risks for companies with a strong U.S. connection. These companies are still likely to refrain from making any near-term business transactions with Iran. Based on our discussions, major international banks have indicated that they will take a wait-and-see approach before doing business with Iran—especially given the market and counter-party risks. Over time, however, unless a new U.S. administration moves to renegotiate amendments to the deal or returns to vigorous sanctions enforcement, these risks will diminish. Banks will grow more confident about the counter-party risks, and political pressure combined with the cover of export financing from their governments may encourage them to provide financing for energy and industrial investment and trade.

### **Scenario 3: Iran Implements Some Commitments and Tries to Divide the P5+1**

In this most likely scenario, after a congressional vote of disapproval, Iran could decide to implement certain nuclear commitments but choose not to implement others, thus creating diplomatic ambiguity among the P5+1. During the interim negotiations, Iran failed to implement certain commitments,<sup>35</sup> possibly violated others,<sup>36</sup> continued attempts to illicitly procure nuclear

goods,<sup>37</sup> and evade sanctions<sup>38</sup> (including 10 days after the JCPOA signing, when Quds Force Commander Qassem Soleimani traveled to Russia in defiance of a U.N. Security Council travel ban<sup>39</sup>).

Should Iran implement certain nuclear commitments but choose not to implement others, especially commitments to cooperate with IAEA inspections and the resolution of concerns regarding the possible military dimensions (PMDs) of Iran's program, diplomatic pressure on the United States would intensify. Iran's compliance with certain commitments might still trigger U.N. and EU sanctions relief, which could sow confusion about P5+1 policy. Iran would also likely try to exploit this uncertainty to divide Russia and China from the West, and Europe from the United States.

.....  
37. Colum Lynch, "U.S. Accuses Iran of Secretly Breaching U.N. Nuclear Sanctions," *Foreign Policy*, December 8, 2014. (<http://foreignpolicy.com/2014/12/08/us-accuses-iran-of-secretly-breaking-un-nuclear-sanctions-exclusive/>); Ian J. Stewart & Andrea Stricker, "US Should Stop Iran Buying Material for Arak Nuclear Plant," *The Telegraph* (U.K.), December 12, 2014. (<http://www.telegraph.co.uk/news/worldnews/middleeast/iran/11288503/US-should-stop-Iran-buying-material-for-Arak-nuclear-plant.html>); Benjamin Weinthal & Emanuele Ottolenghi, "Iran Made Illegal Purchases of Nuclear Weapons Technology Last Month," *The Weekly Standard*, July 10, 2015. ([http://www.weeklystandard.com/blogs/iran-made-illegal-purchases-nuclear-weapons-technology-last-month\\_988067.html](http://www.weeklystandard.com/blogs/iran-made-illegal-purchases-nuclear-weapons-technology-last-month_988067.html))  
38. U.S. Department of the Treasury, Press Release, "Treasury Targets Network Linked to Iran," February 6, 2014. (<http://www.treasury.gov/press-center/press-releases/Pages/jl2287.aspx>); U.S. Department of the Treasury, Press Release, "Treasury Targets Network for Facilitating Iran's Ballistic Missile Procurement and Supporting Oil Sanctions Evasion," April 29, 2014. (<http://www.treasury.gov/press-center/press-releases/Pages/jl2372.aspx>); Emanuele Ottolenghi, "Snap-Back: A Journey Through Iranian Sanctions Evasion in Georgia," *Tablet*, July 1, 2015. (<http://www.tabletmag.com/jewish-news-and-politics/191903/iranian-sanctions-evasion>)  
39. Jennifer Griffing & Lucas Tomlinson, "Exclusive: Quds Force Commander Soleimani Visited Moscow, Met Russian Leaders in Defiance of Sanctions," *Fox News*, August 6, 2015. (<http://www.foxnews.com/politics/2015/08/06/exclusive-quds-force-commander-soleimani-visited-moscow-met-russian-leaders-in/>)

.....  
35. David Albright & Andrea Stricker, "On-Going Debate Over Iran's Newly Produced LEU Hexafluoride," *Institute for Science and International Security*, July 3, 2015. (<http://isis-online.org/isis-reports/detail/on-going-debate-over-irans-newly-produced-leu-hexafluoride/8>)

36. David Albright & Andrea Stricker, "A Note on Iran's IR-5 Centrifuge Feeding," *Institute for Science and International Security*, November 20, 2014. (<http://isis-online.org/isis-reports/detail/a-note-on-irans-ir-5-centrifuge-feeding/8>)

Ultimately, if all of the members of the P5+1 are united in preventing an Iranian nuclear weapon, the United States can prevent the situation from reaching a point of crisis—either in tensions between the United States and its partners, or in Iranian nuclear escalation. Using the threat of secondary sanctions and engaging in a diplomatic offensive with U.S. allies, the president could persuade countries and companies not to normalize trade relations with Iran until the IAEA can fully verify the implementation of Iran’s commitments. The United States could also use this period of ambiguity to persuade the Europeans to join in demanding that key parts of the agreement be renegotiated on better terms.

If President Obama and Secretary Kerry do not believe they have credibility to negotiate amendments to the JCPOA after a vote of disapproval, they could leave the issue of negotiations to the next administration. It will likely take Iran between six and twelve months to implement its nuclear commitments and many months after that before major companies and financial institutions consummate significant business deals with Iran. This would give the next president time to develop and begin implementing a comprehensive strategy to amend the JCPOA.

## Continue Economic and Diplomatic Pressure on Iran

None of the above scenarios is ideal but they are not likely to be disasters, either. The outcome ultimately depends on the power of American coercive diplomacy, economic sanctions, and the credibility of the American military option.

Much of this hinges on the credible threat of military power, either directly or through the support of allies, against Iranian regime interests in Syria, Iraq, and Yemen, as well as the credible threat of conventional

and cyber-enabled strikes against Iran’s nuclear program. Iran currently questions the credibility of U.S. military threats, as reflected in Supreme Leader Khamenei’s statement that the United States “can’t do a damn thing” against Iran’s nuclear program.<sup>40</sup> It is key that Washington makes it clear to Khamenei that all options are still on the table through explicit and unambiguous presidential declarations of the use of U.S. military force if Iran were to attempt a breakout or sneak-out to a nuclear weapon.

But another key instrument of coercive power is the use of U.S. secondary sanctions, which present companies with a straightforward choice between doing business in the United States or with the sanctioned Iranian entity. In the case of Iran sanctions, when companies are presented with the choice between America’s \$17 trillion economy and Iran’s approximately \$400 billion economy,<sup>41</sup> the overwhelming majority of companies will do what they have done for the past decade: Choose the U.S. market.

The president has stated that international sanctions are now unsustainable. But, if the president believes that the United States has an effective economic snapback a decade or more in the future after companies have invested billions of dollars in the Iranian economy, then U.S. sanctions must remain strong today. The international sanctions architecture is not yet crumbling, and Iran’s economy is still fragile. But if the president believes that the multilateral sanctions regime cannot

.....  
40. Stuart Winer, “Khamenei to US: Your Military ‘Can’t Do a Damn Thing’ to Us,” *Times of Israel*, May 6, 2015. (<http://www.timesofisrael.com/iran-leader-puts-kibosh-on-talks-under-us-threat-of-attack/>); Bill Hutchinson, “Ayatollah Ali Khamenei, Iran’s Supreme Leader, Says ‘Military Attack is Not a Priority for Americans Now,’” *New York Daily News*, June 5, 2014. (<http://www.nydailynews.com/news/world/iran-supreme-leader-military-attack-not-priority-americans-article-1.1817573>)

41. The World Bank estimates Iran’s GDP in 2014 at \$406.3 billion. “Country Overview: Iran,” *The World Bank Website*, last updated March 1, 2015. (<http://www.worldbank.org/en/country/iran/overview>)

withstand the fallout of the above scenarios, how will the United States have economic leverage in the future?

Furthermore, if the P5+1 unity and the international sanctions architecture would have held when the United States was prepared to walk away from the table during the negotiations, it can hold now. It is better to test the strength of international sanctions and U.S. secondary sanctions now rather than in a future nuclear breakout or sneak-out scenario when Iran's nuclear program and economy are greatly expanded.

Former Treasury official and our colleague at FDD's Center on Sanctions and Illicit Finance, Juan Zarate has noted the contradiction in the Obama administration's arguments about the limits of U.S. financial power in keeping pressure on Iran—even if Congress requires amendments to the JCPOA:

“Importantly, we should stop undermining the perception of our financial and economic power. We can't argue in the same breath that 'snapback' sanctions as constructed offer a real Sword of Damocles to be wielded over the heads of the Iranians for years while arguing that there is no way now for the U.S. to maintain the crippling financial and economic isolation which helped bring the Iranians to the table. We can still wield our financial and economic power. Others will follow our lead.”<sup>42</sup>

This is not to say that holding the coalition together will be easy after a congressional disapproval. China and Russia might re-open business ties with Iran.

.....  
42. The World Bank estimates Iran's GDP in 2014 at \$406.3 billion. “Country Overview: Iran,” *The World Bank Website*, last updated March 1, 2015. (<http://www.worldbank.org/en/country/iran/overview>); Juan Zarate, “Sanctions and the JCPOA,” *Testimony before the Senate Committee on Foreign Relations*, July 30, 2015, page 21. (<http://www.foreign.senate.gov/imo/media/doc/07-30-15%20ZarateTestimony.pdf>)

Throughout the period of sanctions escalation, and the most rigorous enforcement of these sanctions, China and Russia engaged in major sanctions busting; it is likely under a congressional disapproval that both countries will engage in licit and illicit trade with Iran.<sup>43</sup> However, they will likely continue to remain at the negotiating table with the rest of the P5+1 to prevent Iran from acquiring a nuclear weapons capability. Beijing doesn't want a nuclear-armed Iran wreaking

.....  
43. Chinese brokers, likely supported by the government, have played a central role in Iran's illicit procurement of nuclear-related materials. For a detailed analysis of this, see Orde Kittrie, “The China-Iran Nuclear Pipeline,” *Foreign Affairs*, July 13, 2015. (<https://www.foreignaffairs.com/articles/china/2015-07-13/china-iran-nuclear-pipeline>); For a detailed analysis of current and possible future Iran-China economic and security cooperation, see Michael Singh, “The Sino-Iranian Tango,” *Foreign Affairs*, July 21, 2015. (<https://www.foreignaffairs.com/articles/china/2015-07-21/sino-iranian-tango>); In January 2014, Russia and Iran signed an \$18 billion oil-for-goods deal which, had it been implemented, would have violated U.S. sanctions. See, Jonathan Saul & Parisa Hafezi, “Exclusive: Iran, Russia Negotiating Big Oil-For-Goods Deal,” *Reuters*, January 10, 2014. (<http://uk.reuters.com/article/2014/01/10/iran-russia-oil-idUKL6N0KK12220140110>); Joao Peixe, “Possible Iran-Russia Oil Deal Ruffles Feathers in Washington,” *Christian Science Monitor*, January 15, 2014. (<http://www.csmonitor.com/Environment/Energy-Voices/2014/0115/Possible-Iran-Russia-oil-deal-ruffles-feathers-in-Washington>); The U.S. State Department has sanctioned numerous Russian entities for violations of nonproliferation sanctions. See, “Nonproliferation Sanctions,” *U.S. Department of State Website*, July 22, 2015. (<http://www.state.gov/t/isn/226423.htm>) In September 2014, Tehran and Moscow signed a trade agreement valued at \$87.6 billion and pledged to increase financial ties. See, “Tahrimha-Ye Gharb Tehran Va Mosco Ra Be Ham Nazdik Mikonad” [The West's Sanctions Bring Tehran And Moscow Closer Together], *Islamic Republic News Agency*, September 10, 2014. (<http://www.irna.ir/fa/News/81307225/>); After the designation of Mir Bank, a Bank Melli subsidiary in Russia, U.S. Treasury officials warned that the bank posed risks for Russian financial institutions. The bank continues to operate and facilitate Iranian-Russian trade. See, Beniot Faucon, “U.S. Warns Russia on Iranian Bank,” *The Wall Street Journal*, December 11, 2012. (<http://www.wsj.com/articles/SB1000142412788732330604578145071930969966>); “Moscow-Based Bank Facilitates Iran-Russia Trade,” *Press TV* (Iran), February 3, 2015. (<http://www.presstv.ir/Detail/2015/02/03/395983/Moscow-bank-facilitates-IranRussia-trade>)

havoc with global energy prices; Moscow wouldn't mind high energy prices but not a revolutionary Islamist regime with nuclear weapons stirring up trouble in its neighborhood, including with Russia's large Muslim population.

The key to keeping the pressure on Iran is Europe. Prior to the passage of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, trade between Iran and Europe totaled \$27 billion. By 2013, it had dropped to about \$8 billion.<sup>44</sup> Iran wants this market back.

Europe also controls SWIFT, the financial messaging system that, under U.S. congressional pressure, expelled major Iranian financial institutions in 2012. This action cut off one of Iran's last access point to the global financial system. Iran needs to get back onto SWIFT in order to engage in international trade and finance and to repatriate its funds.

Europe was also a major customer for Iranian oil and natural gas. EU sanctions and corresponding U.S. energy measures cut off this access after 2010, but Iran seems eager to reopen this trade. The 2012 EU oil embargo—imposed in part due to congressional pressure—had a severe impact on Iranian oil exports, cutting off 600,000 barrels per day in pre-sanctions European purchases.<sup>45</sup> Oil purchases were the largest component of European imports from Iran, and thus, as a result of oil sanctions, total EU imports from Iran decreased by 86 percent between 2012 and 2013.<sup>46</sup>

.....  
44. In 2009, EU imports from Iran totaled \$13.1 billion, and EU exports to Iran totaled \$14 billion. In 2013, the volumes were \$1.1 billion and \$7.2 billion respectively. This data was gathered from the UN Comtrade. (<http://comtrade.un.org/>)

45. Kenneth Katzman, "Iran Sanctions," *Congressional Research Service*, August 21, 2015, page 23. (<http://www.fas.org/sgp/crs/mideast/RS20871.pdf>); U.S. Energy Information Administration, "Under Sanctions, Iran's Crude Oil Exports Have Nearly Halved in Three Years," *Today in Energy*, June 24, 2015. (<http://www.eia.gov/todayinenergy/detail.cfm?id=21792>)

46. "Countries and Regions: Iran," *European Commission*

President Rouhani has stated that the "transfer of capital and technology" and the "reinforcing economic relations with the European countries" are priorities for Iran.<sup>47</sup> Europe continues to be Iran's preferred supplier of energy and industrial technology.<sup>48</sup>

Washington can use diplomatic persuasion and U.S. financial sanctions to keep European businesses out of Iran. If U.S. sanctions remain in place, few European banks will risk penalties or their ability to transact in dollars by re-entering the Iranian market. Even if Europe and other countries lift all their sanctions, Washington could revert to a pre-2010 dynamic in which Washington imposed unilateral sanctions and presented foreign companies with a choice of doing business in the United States or Iran. That was still a period of intense sanctions pressure on Iran as Treasury used designations of key Iranian economy actors and sustained outreach to the international business community to persuade financial institutions and major companies to cut their business ties with Iran. Washington would have difficult conversations with its allies about sanctions

.....  
Website, last updated April 22, 2015. (<http://ec.europa.eu/trade/policy/countries-and-regions/countries/iran/>)

47. The Official Site of the President of the Islamic Republic of Iran, "President in a Meeting with Italian Economic Development and Foreign Ministers," August 5, 2015. (<http://www.president.ir/en/88602>)

48. For statistics on the make-up of EU-Iran trade, see European Commission, "European Union, Trade in Goods with Iran," April 10, 2015. ([http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_113392.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113392.pdf)); an academic study of foreign direct investment (FDI) in Iran found that technology transfers were "undeniable." See, Saeedeh Ghoochkanloo, "FDI, Efficient Technology Transfer Strategy in Developing Countries (Iran Case Study)," *International Association for Management of Technology*, 2015 Conference Proceedings. (<http://iamot2015.com/2015proceedings/documents/P163.pdf>); Iran has also attempted to purchase companies in Europe in order to access dual-use technology. See, Emanuele Ottolenghi & Saeed Ghasseminejad, "The Iranian 'Deep State' is Trying to Buy an Oil Refinery in Switzerland Before Sanctions Have Even Been Lifted," *Business Insider*, April 29, 2015. (<http://www.businessinsider.com/iranian-deep-state-trying-to-buy-swiss-oil-refinery-2015-4>)

enforcement. Given the power of U.S. markets and the dominance of the U.S. dollar, however, which continue to demonstrate their global attractiveness as Chinese growth de-accelerates and international investors seek American market opportunities and dollar-denominated safe havens, most important foreign companies are likely to keep Iran at arm's length.

## Amendments to Improve the JCPOA

With a P5+1 crisis contained after a congressional disapproval, the JCPOA can be improved by returning to the four core principles contained in six U.N. Security Council Resolutions concerning Iran's nuclear program. These include:

1. Sufficient dismantlement to ensure Iran cannot build a nuclear weapon;
2. Gradual sanctions relief and an agreement of sufficient duration tied to Iranian performance;
3. Inspection regime that combines short-notice, surprise inspections of undeclared facilities with extensive monitoring of declared sites; and,
4. Maintenance of sufficient economic leverage to peacefully enforce the agreement.

The following section provides a few examples of the specific changes that should be considered. This is not an exhaustive list but illustrates how Congress could require reasonable modifications.

### ***1. Require limitations to remain in place until the U.N. Security Council votes that they should sunset.***

Obama Administration officials have argued that the JCPOA blocks Iran's ability to develop nuclear weapons for the duration of the agreement. The sunset clauses,

however, remove long-term roadblocks to an Iranian nuclear weapon:

- After 8.5 years, Iran can commence R&D and testing with uranium in up to 30 IR-6 and IR-8 advanced centrifuges.<sup>49</sup>
- After ten years, Iran can install an unlimited number of centrifuges including advanced models at the Natanz enrichment facility. Breakout time drops after year 10 from one-year—the Obama Administration's stated benchmark for an adequate time to mount a diplomatic, economic, and military response—to about six months by year 13 and three months by year 15.<sup>50</sup>
- After year 15, Iranian breakout time will fall to near zero (two weeks by the end of year 16 and a few days by years 18-20),<sup>51</sup> given the end of restrictions on the type and quantity of centrifuge deployment, the accumulation of low-enriched uranium, and the enrichment of uranium above 3.67% to 20% and even 60%.<sup>52</sup>

Additionally, after fifteen years, Iran can build an unlimited number of advanced centrifuge-powered enrichment facilities.<sup>53</sup> Iran will also be permitted to enrich uranium at its underground facility at

.....  
49. "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex I, paragraphs 32, 37, & 38. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/annex\\_1\\_nuclear\\_related\\_commitments\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_nuclear_related_commitments_en.pdf))

50. David Albright, Houston Wood & Andrea Stricker, "Breakout Times Under the Joint Comprehensive Plan of Action," *Institute for Science and International Security*, August 18, 2015. ([http://www.isisnucleariran.org/assets/pdf/Iranian\\_Breakout\\_Timelines\\_and\\_Issues\\_18Aug2015\\_final.pdf](http://www.isisnucleariran.org/assets/pdf/Iranian_Breakout_Timelines_and_Issues_18Aug2015_final.pdf))

51. Ibid.

52. "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex I, paragraphs 28 and 52. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/annex\\_1\\_nuclear\\_related\\_commitments\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_nuclear_related_commitments_en.pdf))

53. Ibid., paragraph 31.

Fordow<sup>54</sup>—a facility that may be impenetrable to U.S. military strikes. Indeed, under the current deal, Iran will be permitted to build multiple underground facilities.

In a decade to a decade and a half, Iran will likely be on a path to an industrial-size, widely dispersed nuclear program, and it will be permitted to have the capability to enrich uranium very quickly to weapons-grade at hardened enrichment facilities. In five years, the JCPOA also lifts international bans on Tehran's access to heavy weaponry, including advanced combat aircraft, attack helicopters, and battle tanks, which will enhance the military capabilities of the IRGC and its surrogates like Hezbollah. Iran will also have an easier pathway to develop intercontinental ballistic missiles after the expiration of the U.N. embargo in eight years as it can procure parts and technologies for this program from vendors who will no longer have to worry about U.N. prohibitions.

Instead of lapsing between five and 15 years, these nuclear, arms, and ballistic missile restrictions should remain in place until the United Nations Security Council votes to lift them. Limitations on Iran's nuclear program would then only sunset upon an affirmative vote of the United Nations Security Council where America retains its veto.

## ***2. Permanently require excess uranium to be shipped out of Iran.***

In the current JCPOA, Iran is required to ship out spent fuel from the Arak reactor for the lifetime of this facility and for any other reactors that the agreement permits to be constructed. The JCPOA should be amended to include a similar requirement relating to the export of enriched uranium. The JCPOA allows Iran to continue to engage in enrichment up to 3.67% and requires that Tehran cap its stockpile of low enriched uranium (LEU) at 300 kg. All excess LEU above 300 kg must

.....  
54. Ibid., paragraph 45.

be down blended or sold on the international market.<sup>55</sup> These current restrictions are only for the first fifteen years of the agreement. Thereafter, Iran can accumulate unlimited amounts of enriched uranium.

During the Joint Plan of Action (JPOA) interim agreement, Iran was permitted to continue to enrich uranium to 3.5% provided it converted all excess LEU above a specific limit to uranium dioxide. Iran, however, failed to abide by this commitment either due to technical challenges or as a result of a political decision not to strictly implement its JPOA commitments.<sup>56</sup> The JCPOA current retains this problematic configuration, allowing Iran to continue to enrich uranium but capping its stockpile at 300 kg. Of more concern, after 15 years, the key restrictions on Iran's ability to stockpile enriched uranium disappear. Rather than leave open the possibility that Iran may be unable to fulfill its commitments regarding conversion of excess uranium, the JCPOA should be amended with a more proliferation-resistant requirement that would obligate Iran to ship out all of the enriched uranium over 300 kg on a permanent basis.

In addition, there should be a permanent ban on Iran's ability to produce enriched uranium above 3.67%. The JCPOA notes that Iran will only enrich to 3.67% for 15 years but does not specify the restrictions after that. Iran's enrichment levels after 15 years will be governed by its "voluntary commitments."<sup>57</sup> There are non-military uses for 20% and 60% enriched uranium that could provide Iran with a pretext to accumulate large quantities of enriched uranium at these levels. If

.....  
55. Ibid., paragraphs 56-57.

56. David Albright, Serena Kelleher-Vergantini, & Andrea Stricker, "Iran's Newly Produced Low Enriched Uranium Hexafluoride: Definitely not Converted into Uranium Dioxide," *Institute for Science and International Security*, July 1, 2015. ([http://isis-online.org/uploads/isis-reports/documents/ISIS\\_Comments\\_on\\_JPA\\_Report\\_July\\_1\\_2015\\_Final.pdf](http://isis-online.org/uploads/isis-reports/documents/ISIS_Comments_on_JPA_Report_July_1_2015_Final.pdf))

57. "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex I. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/annex\\_1\\_nuclear\\_related\\_commitments\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_nuclear_related_commitments_en.pdf))

permitted, Iran will be even closer to weapons-grade uranium and have significantly lower breakout times. The verification and inspection challenges will increase as the IAEA tries to monitor these large stockpiles in a large country, especially because after year 15, Iran can build a massive, widely-dispersed, nuclear program.

### **3. *Limit Iran's enrichment to IR-1 centrifuges and prohibit advanced centrifuge R&D.***

Iran has no practical need for advanced centrifuges for a civilian energy program. These advanced, more efficient models, once operational, reduce Iranian breakout time and provide a much easier clandestine sneak-out option because fewer machines (and less physical space) are needed to enrich uranium. The JCPOA permits Iran to begin using advanced centrifuge models beginning in year 8.5, accelerates their deployment after year 10, and permits unlimited and industrial-scale deployment after year 15. Respected nuclear physicist David Albright and his colleagues assess that the installation and operation of advanced centrifuges after year 15 would allow Iran to lower its break-out times down to two weeks or even a few days.<sup>58</sup>

Once restrictions disappear at year 15 on full-scale deployment of advanced centrifuges, with enrichment above 3.67%, and the accumulation of stockpiles of LEU above 300 kg, Iran will be able to move to near-zero breakout. To prevent this, an amended agreement should ban the use and research and development of these advanced centrifuges.

### **4. *Amend the JCPOA to eliminate the Iranian nuclear snapback.***

The nuclear agreement explicitly contemplates in paragraphs 26 and 37 of the main text that Iran will walk away from the deal if sanctions are re-imposed in response to an Iranian nuclear violation.<sup>59</sup> It also contains an explicit requirement in paragraph 29 of the main text for the United States and the EU to do nothing to interfere with the “normalization of trade and economic relations with Iran.”<sup>60</sup> We call these Iran’s “nuclear snapbacks,” because a straightforward reading of this text indicates that Tehran will threaten nuclear escalation if the world powers try to force it back into compliance with the agreement.

But even without this arrow in its quiver, Iran over time will be immunized against economic shocks. Once European companies are sufficiently invested in Iran’s lucrative markets, any Iranian violations of the deal are likely to provoke disagreements between Washington and its European allies. Indeed, why would European countries agree to new sanctions when they have big money on the line? Their arguments against new nuclear sanctions will include questions about the credibility of evidence, the seriousness of the nuclear infractions, the appropriate level of response, and likely Iranian retaliation.

This dynamic undeniably threatens the effectiveness of the agreement’s Joint Commission: an eight-member body comprised of the United States, France, Britain, Germany, a representative from the EU, as well as Russia, China, and Iran established to monitor the implementation of the deal. While an even more difficult-to-achieve unanimous decision is required for

.....  
58. David Albright, Houston Wood, & Andrea Stricker, “Breakout Times Under the Joint Comprehensive Plan of Action,” *Institute for Science and International Security*, August 18, 2015. ([http://www.isisnucleariran.org/assets/pdf/Iranian\\_Breakout\\_Timelines\\_and\\_Issues\\_18Aug2015\\_final.pdf](http://www.isisnucleariran.org/assets/pdf/Iranian_Breakout_Timelines_and_Issues_18Aug2015_final.pdf))

.....  
59. “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, Preface, paragraphs 26 and 37. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/iran\\_joint-comprehensive-plan-of-action\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf))

60. Ibid., paragraph 29.

most decisions, a simple 5-to-3 majority is needed to get approval should Iran object to all-important IAEA access to suspect Iranian sites.<sup>61</sup> The administration designed this scheme to bypass Russia and China if they take Iran's side in a dispute. Washington assumes it can always count on European votes. But this is a mistake. Europe will have strong economic incentives to demur, particularly as pressure from European business lobbies grows, and good reason to buck the United States if Iran threatens a nuclear snapback. While Washington can unilaterally re-impose U.N. sanctions if the issue does not get resolved and it "deems the issue to constitute significant non-performance,"<sup>62</sup> it is unlikely to do this in the face of European resistance.

The same dynamics apply to the imposition of non-nuclear sanctions, such as terrorism or human rights sanctions. On July 20, Iran informed the U.N. Security Council that it may "reconsider its commitments" under the agreement if "new sanctions" are imposed "irrespective of whether such new sanctions are introduced on nuclear related or other grounds."<sup>63</sup> Would Europe agree to a U.S. plan to re-impose terrorism sanctions on the Central Bank of Iran if it was found—once again—to be financing terrorism? This is doubtful given that Tehran would likely threaten

61. Ibid., Annex IV, paragraph 4.1 and 4.4. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/annex\\_4\\_joint\\_commission\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_4_joint_commission_en.pdf))

62. United Nations Security Council, "Resolution 2231 (2015)," July 20, 2015, paragraph 11, page 4. (<http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>); "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex V, paragraph 18.1. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/annex\\_5\\_implementation\\_plan\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_5_implementation_plan_en.pdf))

63. "Iran Statement Following UNSC Resolution 2231 Endorsing JCPOA," *Islamic Republic News Agency* (Iran), July 20, 2015. (<http://www.irna.ir/en/News/81688987/>); Column Lynch, "Iran to United Nations; New Sanctions Could Kill Nuclear Deal," *Foreign Policy*, July 28, 2015. (<https://foreignpolicy.com/2015/07/28/john-kerry-obama-administration-terrorism-human-rights-iran-to-united-nations-new-sanctions-could-kill-nuclear-deal/>); The PDF of the original statement is also available at <http://www.scribd.com/doc/272838364/Iran-Letter>.

to escalate to its nuclear activities including large-scale uranium enrichment, putting not just European investments but the entire nuclear deal in jeopardy.

In other words, Europe's fear of a collapsed deal and the loss of billions of dollars would erode American leverage and diminish Washington's ability to reapply economic sanctions in both a snapback scenario and to address other Iranian illicit activities. And as Washington's influence steadily weakens, its options become increasingly limited. Over time, with sanctions off the table, military force could become the only option to stop an Iranian nuclear weapon. If and when that war comes, Iran will be far stronger—economically and militarily—than it is today.

To address this very problematic dynamic, the JCPOA should be amended to remove the above mentioned language allowing Iran to void the deal if sanctions are re-imposed. Instead, language should be inserted that explicitly states that the re-imposition of nuclear sanctions in the event of Iranian violations does not release Iran of its commitments under the agreement and that sanctions may be imposed for terrorism, human rights abuses, ICBM development, and on other non-nuclear grounds without affecting the nuclear deal.

### ***5. Tie sanctions relief to changes in the Iranian conduct that prompted sanctions.***

The sanctions relief in the amended JCPOA should link the lifting of sanctions with concrete changes in the conduct that prompted sanctions in the first place. International sanctions, and especially U.S. unilateral sanctions, were imposed to address a range of illicit conduct by Iran and Iranian entities. The current JCPOA lifts sanctions on entities designated for non-nuclear illicit conduct like terror finance (for example, Iran's entire financial sector including its central bank were blacklisted by the U.S. Treasury Department

for a range of illicit financial activities<sup>64</sup>) and de-links the provision of sanctions relief from a change in the specific conduct that prompted the sanctions.

The JCPOA should be amended so that those entities designated for non-nuclear illicit finance and other illegal conduct should not be de-listed or receive sanctions relief until the behavior that prompted the sanctions has ceased. The JCPOA should account for the United States and European Union developing mechanisms to de-list entities after they meet specific, conduct-based benchmarks. For example, Congress could legislate the terms of a rehabilitation program for designated Iranian banks by laying out specific benchmarks that must be met prior to the suspension of financial sanctions. Congress could require that Treasury submit a financial sanctions rehabilitation program plan that includes specific benchmarks that institutions must meet before Treasury suspends or terminates key designations. Such a rehabilitation program should focus on industry standards of financial integrity. Congress could also require Treasury to include a certification, subject to periodic reviews, that will be published in the Federal Register prior to de-designation.

**6. *Require an invasive inspections regime that allows anywhere, anytime access to places, personnel, and paperwork including IAEA physical access to all suspicious sites including military facilities.***

President Obama has repeatedly stated that if Iran “cheats, we can catch them and we will.”<sup>65</sup> To ensure that

64. U.S. Department of the Treasury, Press Release, “Finding That the Islamic Republic of Iran is a Jurisdiction of Primary Money Laundering Concern,” November 18, 2011. (<http://www.treasury.gov/press-center/press-releases/Documents/Iran311Finding.pdf>)

65. Juliet Eilperin, “Obama Announces Outline of a Nuclear Deal: ‘If Iran Cheats, the World Will Know,’” *The Washington Post*, April 2, 2015. (<http://www.washingtonpost.com/news/post-politics/wp/2015/04/02/u-s-iranian-officials-expected-to-speak->

the United States and the international community can promptly detect and address Iranian non-compliance, the JCPOA should contain a robust verification, monitoring, and inspections regime.

The current inspections regime falls short of what is needed to verify Iran’s nuclear activities. When asked to evaluate the verification and inspection regime in the JCPOA on a scale of 1 to 10, former IAEA Deputy Director General for Safeguards Dr. Olli Heinonen explained the difference between verification at declared facilities, inspection of undeclared but suspicious sites, and detection of weaponization activities:

“A rating of seven to eight for declared facilities, the way I see it. And why it is not higher is because there is this dispute settlement process. ... But then if you ask me to give the rating for this access to suspected sites, undeclared sites, I don’t think that I would give more than five, if we use this rating. And then if you ask my opinion with other possibilities to find these computer codes and someone using them, and there is actually even not really an inspection procedure for that, I think it’s a zero. It’s not even one.”<sup>66</sup>

One major problem is the 24 days, stipulated in the dispute resolution mechanism, between the time the IAEA requests access to the suspected site of violation,

.....  
[on-nuclear-deal/](http://www.usatoday.com/story/news/politics/2015/08/05/supporting-iran-deal-obama-evokes-kennedy/31162117/)); Gregory Korte, “Obama: ‘If Iran Cheats, We Can Catch Them and We Will,’” *USA Today*, August 5, 2015. (<http://www.usatoday.com/story/news/politics/2015/08/05/supporting-iran-deal-obama-evokes-kennedy/31162117/>)

66. Olli Heinonen, “Hearing before the House Financial Services Task Force to Investigate Terrorism Financing,” *CQ Financial Transcripts*, July 22, 2015. (<http://www.cq.com/doc/financialtranscripts-4731279?8&search=xm0VAdal>)

For additional details, see Olli Heinonen, “The Iran Nuclear Deal and its Impact on Terrorism Financing,” *Testimony before the House Committee on Financial Services Task Force to Investigate Terrorism Financing*, July 22, 2015. (<http://financialservices.house.gov/uploadedfiles/hhrg-114-ba00-wstate-ohinonen-20150722.pdf>)

and when Iran must provide access. This is enough time for Iran to “sanitize” small, suspected sites including, for example, where Iran may be engaged in weaponization activities.<sup>67</sup> Iran is also likely to have developed contingency plans to respond to IAEA demands to visit these sites. According to Dr. Heinonen, Tehran may only need two days to remove nuclear equipment from a small facility<sup>68</sup> and remove any traces of uranium, which even environmental sampling may be unable to detect. He notes:

“Time for ‘scrubbing’ takes on special salience in nuclear-related developments without nuclear material present. Some of the past concealment events carried out by Iran in 2003 left no traces to be detected through environmental sampling.”<sup>69</sup>

Nuclear physicist and former weapons inspector David Albright similarly explains that in 24 days, Iran could “relocate undeclared activities ... [and engage in] sanitization activities that would not necessarily leave a trace in environmental sampling.”<sup>70</sup>

The inspections regime in an amended JCPOA should be modeled after the South Africa experience. The verification regime should go beyond the Additional Protocol (AP), which does not itself provide unfettered access for the IAEA.<sup>71</sup> As Albright explains, “The Additional Protocol recognizes the need for its access provisions to approach anytime inspections by its 24-hour rule. However, it fails to contain a means to impose immediate consequences on a state for allowing prompt access.”<sup>72</sup>

In the 1990s, Dr. Heinonen explains, South Africa adopted an “open, completely transparent policy of IAEA inspections ‘any time—any place, with a reason.’”<sup>73</sup> Practically, “within reason,” only meant that the IAEA could not request access to a facility in the middle of the night.<sup>74</sup>

Iran and the IAEA should keep this “AP-plus” verification, inspection, and monitoring in place until the IAEA reaches a broader conclusion about Iran’s program. Dr. Heinonen provides an explanation of the rationale in the case of South Africa:

“Although South Africa ratified the AP in 2002, the IAEA continued to conduct such additional transparency measures parallel to

.....  
67. Bill Gertz, “Ex-IAEA Leader: 24-Day Inspection Delay Will Boost Iranian Nuclear Cheating,” *The Washington Free Beacon*, July 21, 2015. (<http://freebeacon.com/national-security/ex-iaea-leader-24-day-inspection-delay-will-boost-iranian-nuclear-cheating/>)

68. Michael R. Gordon, “Provision in Iran Accord Is Challenged by Some Nuclear Experts,” *The New York Times*, July 22, 2015. (<http://www.nytimes.com/2015/07/23/world/middleeast/provision-in-iran-accord-is-challenged-by-some-nuclear-experts.html>)

69. Olli Heinonen, “The Iran Nuclear Deal and its Impact on Terrorism Financing,” *Testimony Before the House Financial Services Committee, Task Force to Investigate Terrorism Financing*, July 22, 2015. (<http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=399373>)

70. David Albright, “Joint Comprehensive Plan of Action (JCPOA): Non-Proliferation, Inspections, and Nuclear Constraint,” *Testimony before the Senate Committee on Foreign Relations*, August 4, 2015. ([http://www.foreign.senate.gov/imo/media/doc/080415\\_Albright\\_Testimony.pdf](http://www.foreign.senate.gov/imo/media/doc/080415_Albright_Testimony.pdf))

.....  
71. Olli Heinonen, “Verifying Iran for the Long Term,” *Iran Task Force Memo*, March 2015. ([http://taskforceoniran.org/pdf/Verifying\\_Iran.pdf](http://taskforceoniran.org/pdf/Verifying_Iran.pdf))

72. David Albright, “Joint Comprehensive Plan of Action (JCPOA): Non-Proliferation, Inspections, and Nuclear Constraint,” *Testimony before the Senate Committee on Foreign Relations*, August 4, 2015. ([http://www.foreign.senate.gov/imo/media/doc/080415\\_Albright\\_Testimony.pdf](http://www.foreign.senate.gov/imo/media/doc/080415_Albright_Testimony.pdf))

73. Olli Heinonen, “Verifying Iran for the Long Term,” *Iran Task Force Memo*, March 2015. ([http://taskforceoniran.org/pdf/Verifying\\_Iran.pdf](http://taskforceoniran.org/pdf/Verifying_Iran.pdf))

74. David Albright, “Joint Comprehensive Plan of Action (JCPOA): Non-Proliferation, Inspections, and Nuclear Constraint,” *Testimony before the Senate Committee on Foreign Relations*, August 4, 2015. ([http://www.foreign.senate.gov/imo/media/doc/080415\\_Albright\\_Testimony.pdf](http://www.foreign.senate.gov/imo/media/doc/080415_Albright_Testimony.pdf))

its implementation of the AP until South Africa was given a clean bill of health in 2010. The rationale for the approach and extended monitoring was that enrichment and weapons-related know-how remained after the dismantlement of the actual infrastructure.”<sup>75</sup>

The IAEA issues so-called broader conclusions<sup>76</sup> for states whose nuclear programs pose no proliferation concern because there is “no indication of diversion of declared nuclear materials from peaceful nuclear activities” and “no indication of undeclared nuclear material or activities.” As of June 2015, the IAEA has issued broader conclusions for 65 countries.<sup>77</sup> As in the case of South Africa, the amended JCPOA should require the maintenance of anywhere-anytime inspections until the IAEA reaches a broader conclusion that Iran’s nuclear program is entirely peaceful and contains no undeclared activities.

### ***7. Require up-front ratification of the Additional Protocol.***

Under the JCPOA, Iran is not required to ratify the Additional Protocol until eight years into the agreement. Iran is only required to provisionally and voluntarily implement it. Iran signed the Additional Protocol in 2003 and provisionally implemented it while negotiating with the EU3.<sup>78</sup> But after the IAEA

referred Iran to the U.N. Security Council for non-compliance with the NPT Safeguards Agreement, Iran suspended its voluntary implementation.<sup>79</sup> Iran has in the past used these “voluntary” measures to avoid complete and consistent implementation. Since the Additional Protocol plays a role in the verification regime, Iran should be required as part of the final deal to ratify the Additional Protocol up front, prior to the provision of any sanctions relief.

### ***8. Require complete resolution of PMD issues prior to the provision of sanctions relief.***

In its latest annual safeguards report from June 2015, the IAEA concluded that Iran had not resolved the IAEA’s concerns regarding the possible military dimensions (PMDs) of Iran’s nuclear program. The IAEA noted, “This resolution is necessary in order to establish international confidence in the exclusively peaceful nature of that program.”<sup>80</sup>

Under the current JCPOA, Iran is required to work with the IAEA to resolve PMDs issues.<sup>81</sup> The exact terms of how Iran will cooperate with the IAEA is contained in a confidential, bilateral “Road-Map for the Clarification of Past and Present Outstanding

75. Olli Heinonen, “Verifying Iran for the Long Term,” *Iran Task Force Memo*, March 2015. ([http://taskforceoniran.org/pdf/Verifying\\_Iran.pdf](http://taskforceoniran.org/pdf/Verifying_Iran.pdf))

76. International Atomic Energy Agency, “Safeguards Statement for 2014,” June 2015, page 5. ([https://www.iaea.org/sites/default/files/sir\\_2014\\_statement.pdf](https://www.iaea.org/sites/default/files/sir_2014_statement.pdf))

77. Sasha Henriques, “Safeguards Implementation Report 2014 Presented to Board of Governors,” *IAEA Office of Public Information and Communication*, June 10, 2015. (<https://www.iaea.org/newscenter/news/safeguards-implementation-report-2014-presented-board-governors>)

78. International Atomic Energy Agency, Press Release, “Iran Signs Additional Protocol on Nuclear Safeguards,” December 18, 2003. (<https://www.iaea.org/newscenter/news/iran-signs-additional-protocol-nuclear-safeguards>)

79. Semira N. Nikou, “Timeline of Iran’s Nuclear Activities,” *United States Institute of Peace*, accessed July 27, 2015. (<http://iranprimer.usip.org/resource/timeline-irans-nuclear-activities>)

80. International Atomic Energy Agency, “Safeguards Statement for 2014,” June 2015, page 7, ([https://www.iaea.org/sites/default/files/sir\\_2014\\_statement.pdf](https://www.iaea.org/sites/default/files/sir_2014_statement.pdf))

81. “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, Annex I, paragraph 66. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/annex\\_1\\_nuclear\\_related\\_commitments\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_nuclear_related_commitments_en.pdf)); International Atomic Energy Agency, Press Release, “IAEA Director General’s Statement and Road-Map for the Clarification of Past & Present Outstanding Issues Regarding Iran’s Nuclear Program,” July 14, 2015. (<https://www.iaea.org/newscenter/pressreleases/iaea-director-generals-statement-and-road-map-clarification-past-present-outstanding-issues-regarding-irans-nuclear-program>)

Issues Regarding Iran’s Nuclear Program.”<sup>82</sup> There remain concerns that because of the expedited time frame contained in the Roadmap, the process may not address sufficiently the many outstanding questions that the IAEA has about the possible military dimensions of Iran’s nuclear program.

William Tobey, the former deputy administrator for defense nuclear nonproliferation at the National Nuclear Security Administration, provides a useful metric for how his agency resolves PMD issues:

- “It has a complete and correct understanding of the full extent of Iran’s nuclear activities, including any military dimensions;
- It has found no indication that Iran is engaged in any military dimensions;
- It has found no indication of the diversion of declared nuclear material from peaceful activities nor any indication of undeclared nuclear material or activities; and,
- It can monitor the people, facilities, sites, equipment, and materials involved in any military dimensions to ensure timely detection of any resumption of this work.”<sup>83</sup>

Following the announcement of the JCPOA, however, Iran has reportedly already refused to allow certain scientists and facilities to be interviewed.<sup>84</sup> U.S.

82. International Atomic Energy Agency, Press Release, “IAEA Director General’s Statement and Road-Map for the Clarification of Past & Present Outstanding Issues Regarding Iran’s Nuclear Program,” July 14, 2015. (<https://www.iaea.org/newscenter/pressreleases/iaea-director-general-statement-and-road-map-clarification-past-present-outstanding-issues-regarding-irans-nuclear-program>)

83. William Tobey, “The Hollow Core of the Iran Nuclear Deal,” *Iran Task Force*, June 2015. (<http://taskforceoniran.org/pdf/PMD.PDF>)

84. Louis Charbonneau & Arshad Mohammed, “Exclusive: Draft Deal Calls for UN Access to All Iran Sites – Source,” *Reuters*, July 13, 2015. (<http://www.reuters>.

intelligence and public sources revealed that Iran may be engaged in clean-up efforts at the Parchin military facility where weaponization activities are suspected to have taken place.<sup>85</sup> Iran’s activities may result in the IAEA being unable to collect any useful information about a site which Iran has refused to allow the IAEA to access for more than a decade.

Of grave concern, Under Secretary of State Wendy Sherman admitted during a Senate Banking Committee hearing that the IAEA may not get *physical* access into Parchin to ensure that Iran is not hiding covert activities.<sup>86</sup> News reports confirm that Iran has refused to allow IAEA investigators to collect environmental samples with Iran providing its own samples to the IAEA.<sup>87</sup> The Associated Press journalist George Jahn reviewed a draft of a confidential agreement between Iran and the IAEA and reported that Iranian inspectors will investigate the Parchin site themselves and provide environmental samples to the IAEA.<sup>88</sup> According to

.....  
[com/article/2015/07/14/us-iran-nuclear-deal-exclusive-idUSKCN0PN2NY20150714](http://www.usia.gov/article/2015/07/14/us-iran-nuclear-deal-exclusive-idUSKCN0PN2NY20150714)

85. Josh Rogin & Eli Lake, “Iran Already Sanitizing Nuclear Site, Intel Warns,” *Bloomberg View*, August 5, 2015. (<http://www.bloombergvew.com/articles/2015-08-05/iran-already-sanitizing-parchin-nuclear-site-intel-warns>); David Albright, Serena Kelleher-Vergantini, & Andrea Stricker, “Satellite Imagery Does Not Support Iranian Road Work Claim at Parchin,” *Institute for Science and International Security*, August 7, 2015. ([http://isis-online.org/uploads/isis-reports/documents/Satellite\\_Imagery\\_Does\\_Not\\_Support\\_Iranian\\_Road\\_Work\\_Claim\\_at\\_Parchin\\_Final.pdf](http://isis-online.org/uploads/isis-reports/documents/Satellite_Imagery_Does_Not_Support_Iranian_Road_Work_Claim_at_Parchin_Final.pdf))

86. Jay Solomon & Kristina Peterson, “Inspectors So Far Denied Access to Iran’s Scientists,” *The Wall Street Journal*, August 5, 2015. (<http://www.wsj.com/articles/iran-refuses-u-n-inspectors-access-to-scientists-and-military-officers-complicating-nuclear-deal-1438813826>); Michael Mathes, “IAEA Chief Fails to Reassure US Senators on Iran Deal,” *Agence France Presse*, August 5, 2015. (<http://news.yahoo.com/iaea-chief-fails-reassure-us-senators-iran-deal-223150057.html>)

87. George Jahn, “Officials: Iran May Take Own Samples at Alleged Nuclear Site,” *Associated Press*, July 28, 2015. (<http://bigstory.ap.org/article/e1ccf648e18a4788ac94861a3bc1b966/officials-iran-may-take-own-samples-alleged-nuclear-site>)

88. George Jahn, “AP Exclusive: UN to Let Iran Inspect Alleged Nuke Work Site,” *Associated Press*, August 19, 2015. (<http://bigstory.ap.org/article/a9f4e40803924a8ab4c61cb65b2b2bb3/>)

this report, the IAEA itself will not collect the evidence and will not get physical access to Parchin; instead, inspectors will get video and photo information and only from areas that Iran deems are not off-limits because they don't have military significance.<sup>89</sup>

This is "very unusual," according to Dr. Olli Heinonen, who also served as a weapons inspector for the IAEA. "I find it really hard to understand why you would let someone else take the samples and only see through the camera."<sup>90</sup> He noted that "he could think of no similar concession with any other country."<sup>91</sup>

Nuclear physicist and former weapons inspector David Albright assessed that "it really is not normal, and you have to worry that this would set a bad precedent in the Iran context and in the context of other countries ... I don't know why they accepted it. I think the IAEA is getting a little desperate to settle this."<sup>92</sup> He warned, "I think how this is settled could very well determine if the deal is ever implemented. This deal can only work if it can be verified, and it can only be verified if the inspectors have access to the suspect nuclear sites."<sup>93</sup>

As these experts warn, if this press report accurately reflects the agreement between Iran and the IAEA, it may establish a troubling precedent whereby Iran could deny physical access to IAEA inspectors to other suspicious facilities including military sites. Since

.....  
[ap-exclusive-un-let-iran-inspect-alleged-nuke-work-site](#)

89. Ibid.

90. Tal Kopan, "Iranian Role In Inspections Fuels Critics Of Deal," *CNN*, August 21, 2015. (<http://edition.cnn.com/2015/08/20/politics/iran-inspections-report-nuclear-deal-experts/index.html>)

91. George Jahn, "AP Exclusive: UN to Let Iran Inspect Alleged Nuke Work Site," *Associated Press*, August 19, 2015. (<http://bigstory.ap.org/article/a9f4e40803924a8ab4c61cb65b2b2bb3/ap-exclusive-un-let-iran-inspect-alleged-nuke-work-site>)

92. Tal Kopan, "Iranian Role In Inspections Fuels Critics Of Deal," *CNN*, August 21, 2015. (<http://edition.cnn.com/2015/08/20/politics/iran-inspections-report-nuclear-deal-experts/index.html>)

93. Ibid.

the announcement of the JCPOA, Iranian officials have insisted that IAEA will not get access to military sites.<sup>94</sup> Iran has also reportedly denied access to key figures associated with Iran's military-nuclear program including Mohsen Fakhri-zadeh,<sup>95</sup> the U.N., EU, and U.S.-sanctioned head of Iran's weaponization activities.<sup>96</sup> Given these developments, it is important that an amended JCPOA provide clarification on Iran's obligations regarding PMDs. Iran should be required to provide a full and complete declaration of all past nuclear activities. The purpose of this declaration is to provide a baseline against which the IAEA can measure Iran's current activities and detect any discrepancies.

There may be an assumption among the parties that PMDs will be resolved prior to Implementation Day because Iran is supposed to clarify issues prior to December 15, 2015 and the implementation of other nuclear requirements will likely take at least six months. However, the JCPOA does not outline the consequences if Iran engages in only pro forma cooperation. The nonpartisan Institute for Science and International Security explains the challenge:

"There are no explicit requirements that Iran must cooperate sufficiently so that the IAEA can

.....  
94. Mohammed Javad Zarif, "Interview with Christiane Amanpour," *CNN*, July 14, 2015. (<http://www.cnn.com/TRANSCRIPTS/1507/14/ampr.01.html>); Paul Richter & Ramin Mostaghim, "Iran Can Deny Access to Military Sites, Foreign Minister Says," *Los Angeles Times*, August 12, 2015. (<http://www.latimes.com/world/middleeast/la-fg-iran-deal-zarif-20150722-story.html>)

95. Jay Solomon & Kristina Peterson, "Inspectors So Far Denied Access to Iran's Scientists," *The Wall Street Journal*, August 5, 2015. (<http://www.wsj.com/articles/iran-refuses-u-n-inspectors-access-to-scientists-and-military-officers-complicating-nuclear-deal-1438813826>)

96. U.S. Department of State, Media Note, "Additional Sanctions Imposed by the Department of State Targeting Iranian Proliferators," August 29, 2014. (<http://www.state.gov/r/pa/prs/ps/2014/231159.htm>); "Mohsen Fakhri-zadeh-Mahabadi," *Iran Watch Website*, accessed August 12, 2015. (<http://www.iranwatch.org/iranian-entities/mohsen-fakhri-zadeh-mahabadi>)

report that its concerns are addressed. If Iran provides by August 15 unsatisfactory answers about its past nuclear work related to nuclear weaponization and the development of a missile payload for a nuclear weapon, what happens? If then it does not adequately clarify the issues before December 15, can Iran get away with what amounts to a simple box checking exercise in which Iran provides false civilian rationales for its various experiments and work? So far Iran has fully denied ever working on nuclear weapons and claims evidence to the contrary is based on forged and falsified information. If this exercise provides real, sound answers and information from Iran, this would be a positive development. But a box-checking exercise by Iran should not be acceptable; deadlines should be extended and Implementation Day delayed until the PMD matter is resolved.”<sup>97</sup>

The JCPOA should therefore be amended to explicitly permit IAEA inspectors to get physical access into all suspicious sites and to deny any sanctions relief until all PMD issues can be fully resolved.

## Conclusion

The JCPOA does not effectively and permanently block Iran’s multiple pathways to a nuclear weapons capability. Rather, it offers Iran a patient path. If Iran abides by the terms of the agreement, it can emerge in 10 to 15 years with a massive nuclear program, a short path to a nuclear bomb, intercontinental ballistic missiles, and a strong economy immunized against sanctions pressure. Specific terms of the current JCPOA, therefore, should be renegotiated such that the final agreement prevents Iran from acquiring a nuclear weapons capability.

.....  
97. “Possible Military Dimension,” *Institute for Science and International Security*, July 21, 2015. ([http://isis-online.org/uploads/isis-reports/documents/Possible\\_Military\\_Dimensions\\_Final.pdf](http://isis-online.org/uploads/isis-reports/documents/Possible_Military_Dimensions_Final.pdf))

Through a joint resolution of disapproval of the JCPOA, Congress can help the Obama administration and its successor negotiate and enforce a stronger nuclear agreement. In doing so, this Congress would be following a proud tradition of legislators who have rejected or insisted on amendments to more than 300 bilateral and multilateral treaties and international agreements, including major arms-control agreements reached with the Soviet Union at the height of the Cold War—at a far more dangerous time against a more menacing enemy who had thousands of nuclear-tipped missiles aimed at American cities.

The alternative to this deal does not have to be war. It can be a stronger deal that makes a future war against a more powerful Iran less likely. It is our hope that the suggested amendments and alternative scenarios provided here can help inform the current Washington and public debate and produce a stronger nuclear agreement that more effectively blocks Iran from acquiring nuclear weapons.

## About The Authors

**Mark Dubowitz** is executive director of the Foundation for Defense of Democracies, a Washington, D.C.-based nonpartisan policy institute, where he leads projects on Iran, sanctions, and nonproliferation.

Mark is an expert on sanctions and has testified before Congress and advised the U.S. administration, Congress, and numerous foreign governments on Iran and sanctions issues.

Mark heads FDD's Center on Sanctions and Illicit Finance and is the co-author of twenty studies on Iran and the use of economic sanctions. He also is co-chair of the Project on U.S. Middle East Nonproliferation Strategy.

Mark is a lecturer and senior research fellow at the Munk School of Global Affairs at the University of Toronto where he teaches and conducts research on international negotiations, sanctions, and Iran's nuclear program.



**Annie Fixler** is a policy analyst at the Foundation for Defense of Democracies' Center on Sanctions and Illicit Finance (CSIF).

She contributes to CSIF's work on offensive and defensive tools of economic coercion and the application of financial sanctions. She also works closely with FDD's government relations team and executive leadership on a range of issues including Iran sanctions.



## About the Foundation for Defense of Democracies

The Foundation for Defense of Democracies is a non-profit, non-partisan policy institute dedicated exclusively to promoting pluralism, defending democratic values, and fighting the ideologies that drive terrorism. Founded shortly after the attacks of 9/11, FDD combines policy research, democracy and counterterrorism education, strategic communications, and investigative journalism in support of its mission.

FDD focuses its efforts where opinions are formed and decisions are made, providing cutting-edge research, investigative journalism and public education - transforming ideas into action and policy.

FDD holds events throughout the year, including the Leading Thinkers series, briefings on Capitol Hill, expert roundtables for public officials, diplomats and military officers, book releases, and panel discussions and debates within the policy community.

## About FDD's Center on Sanctions and Illicit Finance (CSIF)

The Foundation for Defense of Democracies' (FDD) Center on Sanctions and Illicit Finance (CSIF) expands upon FDD's success as a leading think tank on the use of financial and economic measures in national security. The Center's purpose is to provide policy and subject matter expertise in areas of illicit finance, financial power, and economic pressure to the global policy community.

CSIF seeks to illuminate the critical intersection between the full range of illicit finance and national security, including money laundering, terrorist financing, sanctions evasion, proliferation financing, cyber crime and economic espionage, and corruption and kleptocracy. This includes understanding how America can best use and preserve its financial and economic power to promote its interests and the integrity of the financial system. The Center also examines how America's adversaries may be leveraging economic tools and power.

CSIF focuses on global illicit finance, including the financing of terrorism, weapons and nuclear proliferation, corruption, and environmental crime. It has a particular emphasis on Iran, Saudi Arabia, Kuwait, Qatar, Turkey, Russia, and other autocratic states as well as drug cartels and terrorist groups including Hamas, Hezbollah, al-Qaeda, and the Islamic State.



For more information, please visit [www.defenddemocracy.org](http://www.defenddemocracy.org).

---



P.O. Box 33249  
Washington, DC 20033-3249  
(202) 207-0190  
[www.defenddemocracy.org](http://www.defenddemocracy.org)