

CERTIFYING IRAN'S COMPLIANCE WITH THE JOINT COMPREHENSIVE PLAN OF ACTION

UNDERSTANDING THE ROLES OF THE IAEA, THE JOINT COMMISSION, AND THE UNITED STATES

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SEPTEMBER 2017

INTRODUCTION

On August 31, major Western media outlets reported that the International Atomic Energy Agency (IAEA) had once again certified Iran's compliance with the 2015 nuclear deal.² This assertion, which purported to reflect the IAEA's seventh and latest post-implementation report on Tehran's nuclear activities, mirrors statements by the Iranian government and key world leaders in response to the agency's previous reports. The IAEA has repeatedly affirmed "that Iran has implemented the deal faithfully, fully, and completely," said Iranian Foreign Minister Mohammad Javad Zarif on July 16.³ Federica Mogherini, the high representative of the European Union for foreign affairs and security policy, said on July 20 that the UN watchdog "has certified six times – not once, six times – the full implementation of the deal's provisions."⁴

These accounts are false. In fact, the IAEA has never certified Iran's compliance with the Joint Comprehensive Plan of Action (JCPOA).

Rather, the IAEA's mandate with respect to the JCPOA primarily entails monitoring and reporting on Tehran's nuclear-related actions (or lack thereof) pursuant to the JCPOA's provisions. The determination of whether Iranian conduct constitutes compliance with the JCPOA remains the prerogative of the individual parties to the agreement: China, France, Germany, Russia, the United Kingdom, the United States, and Iran, with the high representative of the European Union for foreign affairs and security policy.

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1. The author wishes to thank Mark Dubowitz, Toby Dershowitz, Olli Heinonen, Orde Kittrie, David Albright, Andrea Stricker, David Adesnik, Behnam Ben Taleblu, Annie Fixler, and Nicole Salter for their feedback on this publication. Any errors are the author's alone.

2. See, e.g., David E. Sanger and Rick Gladstone, "Contradicting Trump, U.N. Monitor Says Iran Complies With Nuclear Deal," *The New York Times*, August 31, 2017. (<https://www.nytimes.com/2017/08/31/world/middleeast/un-nuclear-iran-trump.html>); Felicia Schwartz, Laurence Norman, and Farnaz Fassihi, "U.N. Nuclear Watchdog Certifies Iran's Compliance With Nuclear Deal," *The Wall Street Journal*, August 31, 2017. (<https://www.wsj.com/articles/u-n-nuclear-watchdog-certifies-irans-compliance-with-nuclear-deal-1504193625>)

3. "Zarif: U.S. is violating Iran nuclear deal," *CNN*, July 16, 2017. (<http://www.cnn.com/videos/tv/2017/07/16/exp-gps-0716-zarif-on-iran-nuclear-deal-compliance.cnn>)

4. High Representative/Vice President Federica Mogherini, *Speech at Hessian Peace Prize Award Ceremony*, July 20, 2017. (https://eeas.europa.eu/headquarters/headquarters-homepage/30201/speech-high-representativevice-president-federica-mogherini-hessian-peace-prize-award-ceremony_en)

In this context, the JCPOA stipulates that if any party believes Iran has violated its obligations, it may refer the issue to the Joint Commission, the body established by the JCPOA to monitor its implementation, for adjudication. Should the Joint Commission fail to resolve the dispute within a specified timeframe, the complainant may refer the matter to the UN Security Council. The Joint Commission, coordinated by High Representative Mogherini, consists of representatives of each JCPOA participant state.

The distinction between the roles of the IAEA and of the Joint Commission harbors significant policy implications. Misleading claims of IAEA certification of Iranian compliance implicitly bestow an authoritative legal imprimatur on Tehran's nuclear activities where none exists. In so doing, they obscure not only key omissions in the IAEA's reporting of Iranian behavior, but also evidence that Iran has violated the deal's letter and spirit – problems that should have elicited a response by members of the Joint Commission.

THE ROLES OF THE IAEA AND THE JOINT COMMISSION

The JCPOA articulates separate roles for the IAEA and the Joint Commission. Essentially, the accord envisions the IAEA as an objective monitor of Iran's nuclear activities. Members of the Joint Commission, by contrast, assess whether such activities constitute JCPOA compliance.

According to the JCPOA, the IAEA will “monitor and verify the voluntary nuclear-related measures as detailed in this JCPOA,” and will “provide regular updates to the Board of Governors, and as provided for in this JCPOA, to the UN Security Council.”⁵ Such tasks will entail “a long-term IAEA presence in Iran,” including regular access to known nuclear sites such as Fordow and Natanz.⁶ The agency may request access to undeclared sites “if the IAEA has concerns regarding undeclared nuclear materials or activities, or activities inconsistent with the JCPOA.”⁷

Similarly, the IAEA bears responsibility for reaching – or declining to reach – a “Broader Conclusion that all nuclear material in Iran remains in peaceful activities,”⁸ which would trigger the lifting of additional UN, U.S., and EU sanctions. The timeframe for such a determination hinges on Iranian behavior.⁹ As IAEA Director General Yukiya Amano said in March 2017, “Eight years is mentioned, but it is not as a timeline for drawing the conclusion; I cannot tell how many years it will take, it will take a long time. But it depends very much on the level of cooperation from Iran.”¹⁰

Amano noted that the Broader Conclusion “is drawn in light of” the Comprehensive Safeguards Agreement (CSA) and the Additional Protocol (AP), independent agreements between Iran and the IAEA that long precede the JCPOA. Under the CSA, which entered into force in 1974, Tehran agreed to accept IAEA safeguards aimed

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5. Joint Comprehensive Plan of Action, Vienna, July 14, 2015, Preamble and General Provisions, paragraph x. (http://www.eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

6. Joint Comprehensive Plan of Action, Vienna, July 14, 2015, paragraph 15. (http://www.eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

7. Joint Comprehensive Plan of Action, Vienna, July 14, 2015, Annex I – Nuclear-related measures, paragraph 75. (https://eeas.europa.eu/sites/eeas/files/annex_1_nuclear_related_commitments_en.pdf)

8. Joint Comprehensive Plan of Action, Vienna, July 14, 2015, paragraph 20. (http://www.eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

9. Olli Heinonen, “Drawing a ‘Broader Conclusion’ on Iran’s Nuclear Program,” *Foundation for Defense of Democracies*, June 2017. (http://www.defenddemocracy.org/content/uploads/documents/MEMO_BroaderConclusionIran_v04.pdf)

10. “The Iran Deal: International Perspectives,” *Panel Discussion at the Carnegie Endowment for International Peace*, March 20, 2017. (<http://carnegieendowment.org/2017/03/20/plenary-iran-deal-international-perspectives-pub-67681>)

at preventing the diversion to nuclear weapons of all fissionable material under Iran's control.¹¹ In 2003, Iran voluntarily agreed to implement the AP, an addendum to the CSA that provides further measures to bolster the IAEA's safeguards, including strengthened tools to inspect undeclared sites. In 2006, however, two days after the IAEA Board of Governors declared Iran in non-compliance with the CSA, Tehran announced that it would no longer adhere to the AP.¹² Notably, the IAEA – both then and now – harbors the sole authority to determine whether Iran has complied with the CSA and the AP.

Under the JCPOA, Iran agreed to apply the AP provisionally beginning on the JCPOA's Adoption Day (October 18, 2015). Likewise, Tehran agreed to seek the AP's parliamentary ratification either eight years after Adoption Day or when the IAEA has reached its Broader Conclusion, whichever comes first. However, while many provisions of the CSA and the AP overlap with the JCPOA, the JCPOA constitutes a distinct set of obligations that differ in key respects from the CSA and the AP. Consequently, Iran's compliance with these earlier agreements is not tantamount to compliance with the JCPOA itself.

Whereas the IAEA monitors and compiles data regarding Tehran's broader obligations under the JCPOA, members of the Joint Commission, as Amano put it, decide individually whether Iran's reported actions constitute JCPOA compliance:

We are serving as eyes and ears of the international community, we are on the ground 24/7, and we can state that the JCPOA is being implemented. That said, I would like to make it clear that this JCPOA is an agreement among E3, EU+3, and Iran, eight parties, and therefore in the end it is the responsibility of such a party or parties to provide the implementation, interpretation, or enforcement, and the same rule applies, the same principle applies, to the judgment whether or not in compliance.¹³

Notably, however, though the IAEA issues quarterly reports on Tehran's nuclear program, Iran's continued receipt of sanctions relief following Implementation Day does not require active compliance certifications by the Joint Commission, the IAEA, or any other organization. Instead, Iran remains entitled to sanctions relief unless and until a JCPOA participant state completes the dispute resolution process delineated in the accord, which entails adjudication by the Joint Commission and the UN Security Council. In other words, rather than place the onus on Iran to demonstrate compliance, the JCPOA places the onus on individual members of the Joint Commission to assert *noncompliance*.

THE COMPLIANCE CATCH-22

The JCPOA delineates a dispute resolution process aimed at resolving objections of noncompliance by a member of the Joint Commission. However, the terms of the procedure suffer from flaws and ambiguities that not only undermine its efficacy, but also may serve to deter Joint Commission members from initiating a complaint in the first place.

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11. Agreement between Iran and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, Vienna, June 19, 1973. (<https://www.iaea.org/sites/default/files/publications/documents/infcircs/1974/infcirc214.pdf>)

12. Paul K. Kerr, "Iran's Nuclear Program: Tehran's Compliance with International Obligations," *Congressional Research Service*, April 4, 2017. (<https://fas.org/sgp/crs/nuke/R40094.pdf>)

13. "The Iran Deal: International Perspectives," *Panel Discussion at the Carnegie Endowment for International Peace*, March 20, 2017. (<http://carnegieendowment.org/2017/03/20/plenary-iran-deal-international-perspectives-pub-67681>)

According to the JCPOA, the dispute resolution process begins when a member of the Joint Commission issues a complaint before the body. If the Joint Commission fails to resolve the disagreement within 35 days, and “if the complaining participant deems the issue to constitute significant nonperformance, then that participant could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part.” The complainant may then “notify the UN Security Council that it believes the issue constitutes significant non-performance.”¹⁴

Should the complainant opt to raise the issue before the UN Security Council, the global body shall then “vote on a resolution to continue the sanctions lifting. If the resolution described above has not been adopted within 30 days of the notification, then the provisions of the old UN Security Council resolutions would be re-imposed, unless the UN Security Council decides otherwise.” (The reimposition of such sanctions is colloquially known as a “snapback” mechanism.) Notably, however, the JCPOA adds that Tehran “has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part.”¹⁵

Put differently, if a Joint Commission member issues a complaint at the UN Security Council, the reinstatement of sanctions would proceed automatically unless the UN Security Council passes a new resolution preserving the sanctions relief. Such a resolution, though, would be subject to a U.S. veto. Therefore, even if a single country, such as Russia or China, opposes the reinstatement of sanctions, Washington could unilaterally ensure its enactment by exercising the veto.¹⁶

Several key problems emerge from this process. First, the JCPOA fails to define what constitutes “significant” non-performance as opposed to less significant non-performance. This omission seems to imply that Iran can commit minor violations of the agreement without being subject to a reimposition of sanctions.¹⁷

Second, the UN Security Council’s role in the dispute resolution mechanism expires in 2025. The JCPOA states that on the Termination Day of the UN Security Council resolution endorsing the JCPOA, which occurs 10 years after Adoption Day, the UN Security Council will “no longer be seized of the Iran nuclear issue.”¹⁸ Hence, Joint Commission members would then lack a key JCPOA-instituted method to enforce compliance with its obligations, and the United States would lose the unilateral ability to force the reinstatement of UN sanctions through its veto power.

Third, as the JCPOA later notes, “decisions by the Joint Commission are to be made by consensus.”¹⁹ Since Iran is a member of the Joint Commission, it could easily veto any complaint issued by another member, effectively nullifying the Joint Commission adjudication process. At that point, the complainant’s only recourse would entail raising the matter before the UN Security Council, thereby risking a snapback scenario that abrogates the deal.

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14. Joint Comprehensive Plan of Action, Vienna, July 14, 2015, paragraph 37. (http://www.eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

15. Ibid.

16. Michele Kelemen, “A Look At How Sanctions Would ‘Snap Back’ If Iran Violates Nuke Deal,” *NPR*, July 20, 2015. (<http://www.npr.org/2015/07/20/424571368/if-iran-violates-nuke-deal-a-look-at-how-sanctions-would-snap-back>)

17. Mark Dubowitz, “The Iran Nuclear Agreement: One Year Later,” *Testimony before the Senate Committee on Foreign Relations*, July 14, 2016. (https://www.foreign.senate.gov/imo/media/doc/071416_Dubowitz_Testimony_Summary.pdf)

18. Joint Comprehensive Plan of Action, Vienna, July 14, 2015, Annex V - Implementation Plan, paragraph 24. (http://eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/annex_5_implementation_plan_en.pdf)

19. Joint Comprehensive Plan of Action, Vienna, July 14, 2015, Annex IV – Joint Commission, paragraph 4.1. (http://eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/annex_4_joint_commission_en.pdf) The JCPOA articulates one exception to this rule: “Matters before the Joint Commission pursuant to Section Q of Annex I are to be decided by consensus or by affirmative vote of five JCPOA participants. There is no quorum requirement.” Annex IV – Joint Commission, paragraph 4.4.

Fourth, over the past two years, Tehran has habitually repeated the JCPOA's statement that Iran would regard the reinstatement of sanctions in whole or in part "as grounds to cease performing its commitments under this JCPOA in whole or in part." Moreover, the regime has explicitly stressed that it would treat the imposition of any sanctions – even for non-nuclear misbehavior such as supporting terrorism or abusing human rights – as noncompliance by the sanctioning party.²⁰ In effect, then, an attempt to enforce the JCPOA, or to punish Tehran for illicit conduct unrelated to the JCPOA, could actually lead to the deal's termination by spurring an Iranian withdrawal.

Accordingly, Iran could argue that it retains the right to respond to any imposition of sanctions for noncompliance by resuming its nuclear activities – that is, by conducting a "nuclear snapback" in whole or part²¹ – and thereby deterring members of the Joint Commission from fully enforcing the accord. As a result, the dispute resolution process could actually *facilitate* Iranian noncompliance by transforming the JCPOA itself into a tool of leverage for Tehran.

THE DERELICTION OF THE IAEA AND THE JOINT COMMISSION

Since 2015, Iran has incrementally violated numerous provisions of the JCPOA without eliciting meaningful responses by Joint Commission members, while the Joint Commission has granted Iran exemptions from multiple JCPOA requirements. Moreover, the IAEA has omitted key data on Iran's nuclear activities in its quarterly reports, raising concern that the agency is concealing compliance disputes that may jeopardize the deal.

Pre-Implementation Day JCPOA Exemptions

- The IAEA's investigation, in the fall of 2015, of the possible military dimensions (PMD) of Iran's nuclear program marked the first major failure of Joint Commission members to enforce Iran's commitments.

On the day of the JCPOA's finalization, President Barack Obama pledged that the IAEA would "get access that it needs" to complete the PMD inquiry.²² However, according to the IAEA's final PMD report, released on December 2, 2015, Tehran provided only partial access to the Parchin military complex and continued to deny full access to other key sites.²³ Pursuant to a confidential side deal between Iran and the IAEA, the agency also allowed Tehran to collect its own environmental samples at Parchin – an unprecedented concession in the history of the verification of contentious arms control arrangements.²⁴ Still, as the IAEA noted, "The results identified two particles that appear to be chemically man-modified particles of natural uranium."²⁵

Nevertheless, on December 15, 2015, the United States joined the other Joint Commission members on the 35-nation IAEA Board of Governors in a unanimous vote to remove the PMD investigation from its

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20. Ayatollah Seyyed Ali Khamenei, "Sanctions snapback means JCPOA violation: Leader," *Islamic Republic News Agency* (Iran), October 21, 2015. (<http://www.irna.ir/en/News/81808974>); "Iran to Refuse Nuclear Deal Fulfillment if US Imposes New Sanctions," *Fars News Agency* (Iran), November 12, 2015. (<http://en.farsnews.com/newstext.aspx?nn=13940821000942>)

21. "A Look At How Sanctions Would 'Snap Back' If Iran Violates Nuke Deal," *NPR*, July 20, 2015. (<http://www.npr.org/templates/transcript/transcript.php?storyId=424571368>)

22. The White House, Press Release, "Statement by the President on Iran," July 14, 2015. (<https://obamawhitehouse.archives.gov/the-press-office/2015/07/14/statement-president-iran>)

23. International Atomic Energy Agency, "Final Assessment on Past and Present Outstanding Issues regarding Iran's Nuclear Programme," December 2, 2015. (<https://www.iaea.org/sites/default/files/gov-2015-68.pdf>)

24. "Olli Heinonen, who was in charge of the Iran probe as deputy IAEA director general from 2005 to 2010, said he could think of no similar concession with any other country." George Jahn, "AP Exclusive: UN to let Iran inspect alleged nuke work site," *Associated Press*, August 19, 2015. (<https://www.usnews.com/news/world/articles/2015/08/19/ap-exclusive-un-to-let-iran-inspect-alleged-nuke-work-site>)

25. International Atomic Energy Agency, "Final Assessment on Past and Present Outstanding Issues regarding Iran's Nuclear Programme," December 2, 2015. (<https://www.iaea.org/sites/default/files/gov-2015-68.pdf>)

agenda.²⁶ In June 2016, *The Wall Street Journal* reported that the Obama administration had concluded that uranium particles found by inspectors during its earlier visit to Parchin were likely connected to its covert nuclear weapons program.²⁷

The arrangement between Iran and the IAEA also contained no mechanism for follow-up visits to resolve disputes such as the uranium particles. As of today, the IAEA has not returned to Parchin to conduct additional sampling and inspection to resolve this discrepancy, a lapse the IAEA would not have tolerated in the cases of other states subject to IAEA safeguards.

- The Joint Commission exempted Iran from key JCPOA limits in order to hasten the arrival of Implementation Day and its accompanying sanctions relief. The exemptions enabled Iran to retain three components of its nuclear program: more than 300 kilograms of low-enriched uranium (LEU) hexafluoride; near 20-percent LEU in “lab contaminant” judged as unrecoverable; and 19 large hot cells.²⁸ The allowances, notes the Institute for Science and International Security, raise “the question of whether Iran is exploiting the exemption mechanism, outside of any public oversight, to systematically weaken as many JCPOA limitations as possible.”²⁹
- The Procurement Working Group – a Joint Commission panel established by the JCPOA to review proposals by individual states to transfer nuclear-related technology to Iran – exempted items transferred to the Fordow enrichment plant and the Arak heavy water reactor from its purview. This decision came in response to a request by Russia and China, which retain responsibility for Iran’s JCPOA requirement to refurbish both sites. Fordow and Arak lie at the heart of the regime’s decades-long efforts to develop fissile material for a uranium bomb and a plutonium bomb, respectively.³⁰
- The Joint Commission allowed Tehran to store excess heavy water outside the country until an international buyer would purchase it.³¹ With Joint Commission approval, the regime then stockpiled about 50 metric tons of heavy water in Oman that, if left in Iran, would have delayed Implementation Day.³² By granting this concession, the Joint Commission let Tehran retain ownership of the material in continued violation of the JCPOA’s 130-ton cap.

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26. Francois Murphy and Shadia Nasralla, “U.N. watchdog decides to close nuclear weapons probe of Iran,” *Reuters*, December 15, 2015. (<http://www.reuters.com/article/us-nuclear-iran-resolution-idUSKBN0TY1YF20151215>)

27. Jay Solomon, “Uranium Provides New Clue on Iran’s Past Nuclear Arms Work,” *The Wall Street Journal*, June 19, 2016. (<https://www.wsj.com/articles/uranium-provides-new-clue-on-irans-past-nuclear-arms-work-1466380760>)

28. International Atomic Energy Agency, “Communication dated 21 December 2016 to the Agency sent on behalf of High Representative Mogherini in her capacity as Coordinator of the Joint Commission established under the Joint Comprehensive Plan of Action,” December 21, 2016. (<https://www.iaea.org/sites/default/files/publications/documents/infcircs/2016/infcirc907.pdf>)

29. David Albright and Andrea Stricker, “JCPOA Exemptions Revealed,” *Institute for Science and International Security*, September 1, 2016. (http://isis-online.org/uploads/isis-reports/documents/JCPOA_Exemptions_Revealed_1Sept2016_Final1.pdf); See also: David Albright and Andrea Stricker, “In Response to Reactions over our JCPOA Exemptions Paper,” *Institute for Science and International Security*, September 6, 2016. (http://isis-online.org/uploads/isis-reports/documents/In_Reaction_to_Responses_JCPOA_Exemptions_6Sept2016_Final.pdf)

30. David Albright and Andrea Stricker, “Status of the Iran Nuclear Deal’s Procurement Channel,” *Institute for Science and International Security*, August 16, 2017. (http://isis-online.org/uploads/isis-reports/documents/JCPOA_Procurement_Channel_Post_Implementation_Day_16Aug2017update.pdf)

31. International Atomic Energy Agency, “Communication dated 21 December 2016 to the Agency sent on behalf of High Representative Mogherini in her capacity as Coordinator of the Joint Commission established under the Joint Comprehensive Plan of Action,” December 21, 2016. (<https://www.iaea.org/sites/default/files/publications/documents/infcircs/2016/infcirc907.pdf>)

32. David Albright and Andrea Stricker, “Heavy Water Loophole in the Iran Deal,” *Institute for Science and International Security*, December 21, 2016. (http://isis-online.org/uploads/isis-reports/documents/Closing_Heavy_Water_Loophole_21Dec2016_Final.pdf)

Although the Joint Commission has not explicitly permitted further heavy water transfers to Oman, Tehran has continued to send smaller amounts of heavy water to Oman for storage so that it would not possess more than 130 metric tons of heavy water in Iran. Effective immediately, the Joint Commission should insist that Tehran blend down any excess heavy water under its control, whether in Iran or in Oman, into normal water. “Heavy water,” notes the Institute for Science and International Security, “is not radioactive and it can be simply thrown into a river.”³³

Iranian Violations of the JCPOA’s Letter and Spirit

To date, the IAEA has acknowledged only two Iranian violations of one provision of the JCPOA. In its February 2016 and November 2016 reports, the agency indicated that Tehran had briefly stockpiled more than 130 tons of heavy water in Iran.³⁴ Nevertheless, the Obama administration dismissed Iran’s behavior as insignificant.³⁵ In fact, rather than insist upon Iran’s independent disposal of the excess heavy water, the United States and Russia purchased quantities of the material even though neither country needed it, effectively paying Iran to ensure its compliance.³⁶

The IAEA and members of the Joint Commission have failed to investigate or otherwise address evidence of incremental Iranian infringements of the JCPOA’s letter and spirit in other arenas:

- Iran assembled more than a half dozen IR-8 rotor assemblies at the Kalaye Electric facility in north Tehran. “A strict interpretation of the JCPOA,” notes the Institute for Science and International Security, “is that Iran should not only stop making more advanced centrifuges or their components but also destroy its excess advanced rotor assemblies and components beyond a relatively small number of extra ones that can be used if a centrifuge fails during operation.”³⁷ The IR-8, Iran’s most advanced centrifuge, would enable the regime to enrich uranium at a rapid pace for the development of a nuclear weapon.

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33. David Albright, “Assessing the Iran Deal: Examining Iranian Non-Compliance with the Joint Comprehensive Plan of Action and United Nations Security Council Resolution 2231,” *Testimony before the House Committee of Oversight and Government Reform, Subcommittee on National Security*, April 5, 2017. (<https://oversight.house.gov/wp-content/uploads/2017/04/Albright-Statement-Iran-Violations-4-5.pdf>)

34. International Atomic Energy Agency, “Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015),” February 26, 2016. (<https://www.iaea.org/sites/default/files/gov-2016-8-derestricted.pdf>); International Atomic Energy Agency, “Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015),” November 9, 2016. (<https://www.iaea.org/sites/default/files/16/11/gov2016-55.pdf>)

35. Mark C. Toner, “Daily Press Briefing - November 9, 2016,” *U.S. Department of State*, November 9, 2016. (<https://2009-2017.state.gov/r/pa/prs/dpb/2016/11/264198.htm>)

36. Matthew Lee, “The United States is buying 32 metric tons of Iranian heavy water, a key component for one kind of nuclear reactor, under the terms of last year’s landmark nuclear deal,” *Associated Press*, April 22, 2016. (<https://www.usnews.com/news/us/articles/2016-04-22/us-buys-iranian-heavy-water-as-part-of-nuke-deal>); “Russia Confirms Purchase of 38 Tons of Iran’s Heavy Water,” *Tasnim News Agency* (Iran), September 26, 2016. (<https://www.tasnimnews.com/en/news/2016/09/26/1196908/russia-confirms-purchase-of-38-tons-of-iran-s-heavy-water>); “Iran Delivers 38 Tonnes of Heavy Water to Russia in September,” *Fars News Agency* (Iran), September 26, 2016. (<http://en.farsnews.com/newstext.aspx?nn=13950705000969>); David Albright and Andrea Stricker, “Heavy Water Loophole in the Iran Deal,” *Institute for Science and International Security*, December 21, 2016. (http://isis-online.org/uploads/isis-reports/documents/Closing_Heavy_Water_Loophole_21Dec2016_Final.pdf)

37. David Albright and Olli Heinonen, “Is Iran Mass Producing Advanced Gas Centrifuge Components?,” *Institute for Science and International Security*, May 30, 2017. (http://isis-online.org/uploads/isis-reports/documents/Mass_Production_of_Centrifuges_30May2017_Final.pdf)

- Iran operated 13-15 IR-6 centrifuges in a single cascade.³⁸ This quantity exceeded the limit of “roughly 10” permitted by the enrichment and the enrichment research and development plan negotiated as part of the JCPOA.³⁹ The United States and European members of the Joint Commission have stated that 11 centrifuges may be acceptable, but not more than that. The IR-6 is one of Iran’s more advanced centrifuges.
- Tehran illicitly attempted to acquire carbon fiber, a key component of centrifuge production, though a supplier and its government denied the request. Subsequently, a spokesman for the Atomic Energy Agency of Iran falsely claimed that the JCPOA does not require approval from the Procurement Working Group for raw materials such as carbon fiber.⁴⁰
- Tehran rejected the Trump administration’s calls in July and August of 2017 for IAEA access to Iran’s military sites.⁴¹ A spokesman for Iran’s Foreign Ministry, Bahram Ghasemi, called the U.S. demand a “ridiculous dream that will never come true” and “possibly something that a satirist wrote up.”⁴² “The Americans,” said Ali Akbar Velayati, a top adviser to Supreme Leader Ayatollah Ali Khamenei, “will take their dream of visiting our military and sensitive sites to their graves.”⁴³

Meanwhile, though IAEA Director General Amano acknowledged that the agency retains the right to inspect any location “without making distinctions between military and civilian locations,”⁴⁴ an IAEA official stated the agency will not request such access because it fears that Washington will use an Iranian refusal as an excuse to abandon the JCPOA. “If they want to bring down the deal, they will,” said the IAEA official, referring to the Trump administration. “We just don’t want to give them an excuse to.”⁴⁵

Technically, an Iranian refusal to grant access to suspicious locations constitutes a violation of the JCPOA only if the IAEA formally requests such access. In this case, the IAEA’s refusal to issue such a request suggests that it has shirked its role as an independent, objective monitor, and instead has succumbed to Iranian pressure in order to preserve the JCPOA.

- Tehran rejected an IAEA request last fall and winter to visit Sharif University, where the regime may have pursued undeclared military nuclear activities. The IAEA accepted an Iranian explanation of its

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 38. David Albright, “Assessing the Iran Deal: Examining Iranian Non-Compliance with the Joint Comprehensive Plan of Action and United Nations Security Council Resolution 2231,” *Testimony before the House Committee of Oversight and Government Reform, Subcommittee on National Security*, April 5, 2017. (<https://oversight.house.gov/wp-content/uploads/2017/04/Albright-Statement-Iran-Violations-4-5.pdf>)

39. “Iran’s Long-Term Centrifuge Enrichment Plan: Providing Needed Transparency,” *Institute for Science and International Security*, August 2, 2016. (http://isis-online.org/uploads/isis-reports/documents/ISIS_Report_2Aug2016.pdf)

40. David Albright and Andrea Stricker, “Iranian Atomic Energy Organization Attempted Carbon Fiber Procurement,” *Institute for Science and International Security*, July 7, 2016. (http://isis-online.org/uploads/isis-reports/documents/AEOI_Attempted_Carbon_Fiber_Procurement_7Jul2016.pdf); “AEOI Spokesman: Iran Not to Bow to US Pressures for Extra JCPOA Undertakings,” *Fars News Agency* (Iran), June 15, 2016. (<http://en.farsnews.com/newstext.aspx?nn=13950326001031>)

41. “U.S. seeks to test Iran deal with more inspections,” *Associated Press*, July 27, 2017. (<http://www.latimes.com/politics/la-na-pol-iran-inspections-20170727-story.html>)

42. “Iran ridicules US push for inspecting its military sites,” *Associated Press*, August 7, 2017. (<http://abcnews.go.com/International/wireStory/iran-ridicules-us-push-inspecting-military-sites-49073160>)

43. Parisa Hafezi, “Iran rejects U.S. demand for U.N. visit to military sites,” *Reuters*, August 29, 2017. (<https://www.reuters.com/article/us-iran-nuclear-usa/iran-rejects-u-s-demand-for-u-n-visit-to-military-sites-idUSKCN1B918E>)

44. George Jahn, “UN nuclear agency rejects Iran’s stance on military sites,” *Associated Press*, August 31, 2017. (<http://www.sfgate.com/news/world/article/UN-agency-notes-no-Iranian-violations-of-nuclear-12164048.php>)

45. Francois Murphy, “U.S. pressure or not, U.N. nuclear watchdog sees no need to check Iran military sites,” *Reuters*, August 31, 2017. (<https://www.reuters.com/article/us-iran-nuclear-inspections/u-s-pressure-or-not-u-n-nuclear-watchdog-sees-no-need-to-check-iran-military-sites-idUSKCN1BB1JC>)

activities instead. In so doing, the IAEA appeared to shirk its duty in order to avoid a confrontation with Iran over access.⁴⁶

- Iran has consistently exploited conditions governing the quality assurance of advanced centrifuge manufacturing to conduct mechanical testing of advanced centrifuges, an activity tightly controlled by the JCPOA.⁴⁷
- German intelligence reported that Iran has continued to pursue illicit procurement of missile technology,⁴⁸ thereby possibly violating the JCPOA by bypassing the Procurement Working Group's requirement that key dual-use goods be subject to approvals prior to export to Iran. This revelation suggests that the Procurement Working Group needs to strengthen its oversight role of Iran's potentially illicit acquisitions.
- Tehran has yet to apply, per the JCPOA, "nuclear export policies and practices in line with the internationally established standards for the export of nuclear material, equipment and technology." The accord states, however, that Iran only "intends" to adopt such policies and practices.⁴⁹ The regime may therefore have opted to interpret this ambiguous phrasing as nonbinding, thereby violating, at the very least, the JCPOA's spirit if not its letter.⁵⁰

Iran may have violated the JCPOA in other ways that require further investigation:

- In April 2017, Ali Akbar Salehi, the head of the Atomic Energy Organization of Iran, claimed that Tehran harbors the capability to mass produce IR2-M, IR-4, and IR-6 centrifuges "at will" should "the other side violate its commitment." If true, Tehran may have violated the JCPOA's restrictions on the production of components for advanced centrifuges, and would therefore harbor the ability to achieve a nuclear weapon breakout more rapidly when the deal's key provisions expire or if Iran withdraws from the deal.⁵¹
- The Joint Commission may not have approved testing and dual-use equipment related to banned nuclear weapons development activities as required in Section T, Annex I of the JCPOA. Iran's utilization of such

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46. David Albright, "Assessing the Iran Deal: Examining Iranian Non-Compliance with the Joint Comprehensive Plan of Action and United Nations Security Council Resolution 2231," *Testimony before the House Committee of Oversight and Government Reform, Subcommittee on National Security*, April 5, 2017. (<https://oversight.house.gov/wp-content/uploads/2017/04/Albright-Statement-Iran-Violations-4-5.pdf>)

47. Ibid.

48. Benjamin Weinthal, "Iran Seeking Nuclear Weapons Technology, German Intel Says," *The Jerusalem Post* (Israel), July 8, 2017. (<http://www.jpost.com/Arab-Israeli-Conflict/German-intel-says-Iran-seeks-nuclear-weapons-technology-499113>); Anton Troianovski and Jay Solomon, "Germany Says Iran Kept Trying to Get Nuclear Equipment After Deal," *The Wall Street Journal*, July 8, 2016. (<https://www.wsj.com/articles/germany-says-iran-kept-trying-to-get-nuclear-equipment-after-deal-1468006075>)

49. Joint Comprehensive Plan of Action, Vienna, July 14, 2015, Annex I – Nuclear-related measures, paragraph 73. (https://eeas.europa.eu/sites/eeas/files/annex_1_nuclear_related_commitments_en.pdf)

50. David Albright, "Assessing the Iran Deal: Examining Iranian Non-Compliance with the Joint Comprehensive Plan of Action and United Nations Security Council Resolution 2231," *Testimony before the House Committee of Oversight and Government Reform, Subcommittee on National Security*, April 5, 2017. (<https://oversight.house.gov/wp-content/uploads/2017/04/Albright-Statement-Iran-Violations-4-5.pdf>)

51. David Albright and Olli Heinonen, "Is Iran Mass Producing Advanced Gas Centrifuge Components?" *Institute for Science and International Security*, May 30, 2017. (http://isis-online.org/uploads/isis-reports/documents/Mass_Production_of_Centrifuges_30May2017_Final.pdf); "AEOI Chief Underscores Nuclear Progress," *Financial Tribune* (Iran), April 10, 2017. (<https://financialtribune.com/articles/national/62153/aeoi-chief-underscores-nuclear-progress>)

dual-use equipment without Joint Commission approval would constitute a violation of Section T. The lack of Joint Commission actions to enforce Section T belies the claim that the JCPOA is adequately verified.⁵²

- Circumstantial evidence suggests that Iranian and North Korean entities, which have routinely cooperated on ballistic missile development, may be collaborating on nuclear weapons technology.⁵³ Then-Secretary of State John Kerry stated in July 2015 that Pyongyang’s provision of nuclear weapons to Tehran “would be in violation” of the JCPOA.⁵⁴

Lack of Transparency

Each of the seven quarterly IAEA reports issued since the JCPOA’s implementation has lacked key information that would enable members of the Joint Commission to reach independent and fully informed compliance determinations.⁵⁵ According to the Institute for Science and International Security, the latest IAEA report, released on August 31, 2017,⁵⁶ “looks to be a politically motivated document to deflect discussion of problems in the JCPOA, possibly resulting from Iranian intimidation or a misplaced fear about the deal’s survival.”⁵⁷

The new IAEA report omitted data on centrifuge production, controversies over Iranian compliance with centrifuge R&D restrictions, the exact quantity of heavy water stored in Oman, nuclear weaponization issues, illicit

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52. David Albright and Olli Heinonen, “Verifying Section T of the Iran Nuclear Deal: Iranian Military Site Access Essential to JCPOA Section T Verification,” *Institute for Science and International Security*, August 31, 2017. (http://isis-online.org/uploads/isis-reports/documents/Section_T_31Aug2017_Final.pdf)

53. Raphael Ofek and Dany Shoham, “Iran Is Progressing Towards Nuclear Weapons Via North Korea,” *The Begin-Sadat Center for Strategic Studies*, February 28, 2017. (<https://besacenter.org/perspectives-papers/iran-progressing-nuclear-weapons-via-north-korea/>); Anthony Ruggiero and Behnam Ben Taleblu, “The danger of North Korea and Iran — and how Trump should tackle it,” *The Hill*, July 6, 2017. (<http://thehill.com/blogs/pundits-blog/foreign-policy/340832-the-great-danger-of-north-korea-and-iran-and-what-trump-can>); Ali Alfoneh and Scott Modell, “The Iran-North Korea Nuclear Nexus: Unanswered Questions,” *Foundation for Defense of Democracies*, January 2016. (<http://www.defenddemocracy.org/content/uploads/documents/Iran DPRK.pdf>)

54. John Kerry, “Iran Nuclear Agreement: The Administration’s Case,” *Testimony before the House Committee on Foreign Affairs*, July 28, 2015. (<http://docs.house.gov/meetings/FA/FA00/20150728/103823/HHRG-114-FA00-Transcript-20150728.pdf>)

55. David Albright, Serena Kelleher-Vergantini, and Andrea Stricker, “IAEA’s First Post-Implementation Day Report: Key Information Missing,” *Institute for Science and International Security*, February 26, 2016. (http://isis-online.org/uploads/isis-reports/documents/First_JCPOA_Post-Implementation_Day_Report_26Feb2016_Final.pdf); David Albright, Serena Kelleher-Vergantini, and Andrea Stricker, “IAEA’s Second JCPOA Report: Key Information Still Missing,” *Institute for Science and International Security*, May 31, 2016. (http://isis-online.org/uploads/isis-reports/documents/Second_JCPOA_Post-Implementation_Day_Report_May_31_2016_Final-1.pdf); David Albright and Andrea Stricker, “Analysis of the IAEA’s Third Iran Deal Report: Filling in Missing Details,” *Institute for Science and International Security*, September 9, 2016. (<http://isis-online.org/isis-reports/detail/analysis-of-the-iaeas-third-iran-deal-report-filling-in-missing-details/>); David Albright and Andrea Stricker, “Analysis of the IAEA’s Fourth Iran Deal Report: Time of Change,” *Institute for Science and International Security*, November 15, 2016. (http://isis-online.org/uploads/isis-reports/documents/Analysis_of_IAEA_Fourth_JCPOA_Report_15Nov2016_Final.pdf); David Albright and Andrea Stricker, “Analysis of the IAEA’s Fifth Iran Nuclear Deal Report: Greater Transparency But Key Information Still Lacking,” *Institute for Science and International Security*, March 3, 2017. (http://isis-online.org/uploads/isis-reports/documents/Analysis_of_IAEA_Fifth_JCPOA_Report_3Mar2017_Final.pdf); David Albright and Andrea Stricker, “Analysis of the IAEA’s Sixth Iran Nuclear Deal Report: A Return to More Limited Data,” *Institute for Science and International Security*, June 5, 2017. (<http://isis-online.org/isis-reports/detail/analysis-of-the-iaeas-sixth-iran-nuclear-deal-report-a-return-to-more-limit>); David Albright and Andrea Stricker, “Analysis of the IAEA’s Seventh Iran Nuclear Deal Report: Still Little Detail and Potential Verification Problems,” *Institute for Science and International Security*, August 31, 2017. (http://isis-online.org/uploads/isis-reports/documents/Analysis_of_IAEA_Seventh_JCPOA_Report_1Sept2017_Final.pdf)

56. International Atomic Energy Agency, “Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015),” August 31, 2017. (<https://www.iaea.org/sites/default/files/gov2017-35.pdf>)

57. David Albright and Andrea Stricker, “Analysis of the IAEA’s Seventh Iran Nuclear Deal Report: Still Little Detail and Potential Verification Problems,” *Institute for Science and International Security*, August 31, 2017. (http://isis-online.org/uploads/isis-reports/documents/Analysis_of_IAEA_Seventh_JCPOA_Report_1Sept2017_Final.pdf)

procurement activities or controversies, and the status of IAEA visits to a large group of Iranian sites of concern and interest to the IAEA in verifying the JCPOA and reaching a Broader Conclusion.⁵⁸ Moreover, on the same day as the report's publication, Reuters reported a statement by an IAEA official acknowledging that the agency has not inspected any Iranian military sites since Implementation Day.⁵⁹

By contrast, pre-JCPOA reports have included, among other data, details on enrichment R&D activities, weaponization efforts, the amount of enriched uranium Iran has produced, and the IAEA's ability, or lack thereof, to access suspicious sites.⁶⁰ Olli Heinonen, a former deputy director general of the IAEA, noted that the agency's post-JCPOA omissions inhibit "the kind of open confidence necessary over an extended period of time to justify a 'broader conclusion' that Iran's nuclear program is exclusively for peaceful purposes."⁶¹

The IAEA has defended similar omissions in earlier post-JCPOA reports by arguing that the JCPOA altered the agency's reporting requirements. "In the previous reports, the bases were the previous UN Security Council Resolutions and Board of Governors [resolutions]," said IAEA Director General Yukiya Amano in March 2016. "But now they are terminated. They are gone. The bases of our report is the resolution of the United Nations Security Council 2231 and the Board of Governors resolution adopted on the 15th of December [of 2015]."⁶² This argument is misleading. As then-U.S. Ambassador to the IAEA Henry S. Ensher said in response, the JCPOA's transparency and verification measures "supplement, but do not supersede, the Agency's existing authorities under Iran's Comprehensive Safeguards Agreement and Additional Protocol."⁶³

The lack of transparency retains particular significance in light of the Obama administration's repeated pledges that the JCPOA would provide unparalleled insight into Iran's nuclear program. On the day after the accord's finalization, President Obama said it would offer "unprecedented, around-the-clock monitoring of Iran's key nuclear facilities and the most comprehensive and intrusive inspection and verification regime ever negotiated."⁶⁴ Ten days later, then-Director of National Intelligence James Clapper claimed, "We will have far better insight on the – certainly the industrial aspects of the Iranian nuclear program with this deal than what we have today."⁶⁵

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58. David Albright and Andrea Stricker, "Analysis of the IAEA's Seventh Iran Nuclear Deal Report: Still Little Detail and Potential Verification Problems," *Institute for Science and International Security*, August 31, 2017. (http://isis-online.org/uploads/isis-reports/documents/Analysis_of_IAEA_Seventh_JCPOA_Report_1Sept2017_Final.pdf); Interview with David Albright, September 7, 2017.

59. Francois Murphy, "U.S. pressure or not, U.N. nuclear watchdog sees no need to check Iran military sites," *Reuters*, August 31, 2017. (<http://www.reuters.com/article/us-iran-nuclear-inspections/u-s-pressure-or-not-u-n-nuclear-watchdog-sees-no-need-to-check-iran-military-sites-idUSKCN1BB1JC>)

60. Valerie Lincy and Gary Milhollin, "Iran's Nuclear Veil: How to increase transparency under the Joint Comprehensive Plan of Action," *Wisconsin Project on Nuclear Arms Control*, February 1, 2017. (<http://www.wisconsinproject.org/irans-nuclear-veil/>)

61. Olli Heinonen, "Concerns about a Reduction of Transparency in IAEA Reporting on Iran's Nuclear Program," *Foundation for Defense of Democracies*, November 28, 2016. (http://www.defenddemocracy.org/content/uploads/documents/112816_IAEA_Memo_Olli_.pdf)

62. "IAEA Director-General Yukiya Amano Comments on IAEA's Reporting Requirements on Iran under the JCPOA (Excerpt)," *Iran Watch*, March 7, 2016. (<http://www.iranwatch.org/library/multilateral-organizations/international-atomic-energy-agency/iaea-director-general-yukiya-amano-comments-iaeas-reporting-requirements-iran>)

63. Ambassador Henry S. Ensher, "Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)," *U.S. Mission to International Organizations in Vienna*, March 9, 2016. (<https://vienna.usmission.gov/verification-monitoring-islamic-republic-iran-light-united-nations-security-council-resolution-2231-2015/>)

64. The White House, Press Release, "Press Conference by the President," July 15, 2017. (<https://obamawhitehouse.archives.gov/the-press-office/2015/07/15/press-conference-president>)

65. Director of National Intelligence James Clapper, "Herding Cats: Synthesizing the Intelligence Community," *Interview at the Aspen Security Forum*, July 24, 2015. (<http://aspensecurityforum.org/wp-content/uploads/2015/07/Herding-Cats-Synthesizing-the-Intelligence-Community.pdf>)

In reality, notes the Institute for Science and International Security, the IAEA's "sparse and overly generalized reporting borders on deception by omission and is contradicted by independent reporting pointing to problems in the implementation of the JCPOA."⁶⁶ According to the Wisconsin Project on Nuclear Arms Control, "a sort of diplomatic veil has been drawn around Iran's nuclear status, obscuring important parts of it from public view. As a result, it is difficult to know whether the limits on Iran's nuclear progress are being maintained and the verification procedures established by the deal are functioning properly."⁶⁷

IRAN'S DEFIANCE OF UN SECURITY COUNCIL RESOLUTION 2231

Tehran has repeatedly defied the provisions of UN Security Council Resolution (UNSCR) 2231, which passed six days after the JCPOA's finalization and endorses the JCPOA. In the measure, Iran is "called upon not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons" until eight years after the JCPOA's Adoption Day. Likewise, the resolution bans, until five years after the JCPOA's Adoption Day, the travel of key Iranian individuals and entities from Iran and the transfer into and out of Iran of specified types of conventional arms.⁶⁸ If the IAEA, however, reaches a Broader Conclusion regarding the peaceful nature of Iran's nuclear activities before these timeframes expire, all three restrictions terminate then.

Technically, the regime's infringement of these provisions does not violate the JCPOA. However, it remains inconsistent with the JCPOA's nonproliferation goals. As the current North Korea crisis demonstrates, a nuclear weapon consists of both the warhead and ballistic missile delivery system. Iran's behavior reflects the failure of Joint Commission members to hold Iran accountable for behavior that violates the JCPOA's spirit and original intent, thereby encouraging the regime to believe that it can continue its illicit conduct with impunity.

Perhaps more troublingly, Tehran has responded to critics of its transgressions by attempting to draw an accurate, if irrelevant, legal distinction between the JCPOA and UNSCR 2231. In this sense, the JCPOA has become an Iranian shield aimed at deflecting international attention and consequences from its defiance of the UN Security Council.

The Trump administration has recognized the duplicity of this gambit. As U.S. Ambassador to the UN Nikki Haley said in a September 5 speech, "You can call it 'non-nuclear' all you want – missile technology cannot be separated from pursuit of a nuclear weapon." At the same time, she noted, the statutory separation between Iran's nuclear and non-nuclear behavior has given the international community "powerful incentives to go out of its way to assert that the Iranian regime is in 'compliance' on the nuclear side" – even as the UN fails to hold Iran accountable for its ballistic missile development. "The result," Haley concluded, "is that Iran's military continues its march toward the missile technology to deliver a nuclear warhead. And the world becomes a more dangerous place."⁶⁹

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⁶⁶. David Albright and Andrea Stricker, "Analysis of the IAEA's Fourth Iran Deal Report: Time of Change," *Institute for Science and International Security*, November 15, 2016. (http://isis-online.org/uploads/isis-reports/documents/Analysis_of_IAEA_Fourth_JCPOA_Report_15Nov2016_Final.pdf)

⁶⁷. Valerie Lincy and Gary Milhollin, "Iran's Nuclear Veil: How to increase transparency under the Joint Comprehensive Plan of Action," *Wisconsin Project on Nuclear Arms Control*, February 1, 2017. (<http://www.wisconsinproject.org/irans-nuclear-veil/>)

⁶⁸. United Nations Security Council, Resolution 2231, July 20, 2015. ([http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231(2015))); For the list of the 23 Iranian individuals and 61 Iranian entities banned from leaving Iran, see: United Nations Security Council, "Resolution 2231 (2015): 2231 List," accessed on September 13, 2017. (<http://www.un.org/en/sc/2231/list.shtml>)

⁶⁹. "Nikki Haley Address on Iran and the JCPOA," *American Enterprise Institute*, September 5, 2017. (<https://www.aei.org/publication/nikki-haley-address-on-iran-and-the-jcpoa/>)

U.S. law implicitly recognizes that any judgment of Iran's compliance with the JCPOA must take into account its ballistic missile development. Under the terms of the Iran Nuclear Agreement Review Act (INARA) of 2015 (Pub. L. 114-17), the president must certify every 90 days that Tehran "is transparently, verifiably, and fully implementing the agreement, including all related technical or additional agreements."⁷⁰ Since the Obama administration included a copy of UNSCR 2231 as part of the package of documents it submitted to Congress comprising the deal, INARA's reference to all "related technical or additional agreements" would include UNSCR 2231. As such, the law erases the distinction between nuclear and ballistic missile activities pursuant to U.S. compliance determinations.⁷¹

Ballistic Missile Testing

Since UNSCR 2231's adoption, Iran has launched ballistic missiles more than a dozen times⁷² – including, most recently, the July 2017 launch of a satellite vehicle known as the Simorgh rocket, which could "serve as a test bed for developing [intercontinental ballistic missile] technologies," according to a Pentagon report.⁷³ The latest test came despite a June 2017 appeal by the UN secretary-general to "avoid such ballistic missile launches, which have the potential to increase tensions."⁷⁴

In this context, Tehran has repeatedly made the case that the JCPOA does not address Iran's production or testing of ballistic missiles. As Foreign Minister Zarif said following a January 2017 missile launch, "The missile issue is not part of the nuclear deal."⁷⁵ Similarly, Defense Minister Hossein Dehghan argued that the regime's conduct "did not violate the nuclear deal."⁷⁶ These beside-the-point assertions seek to obscure a troubling reality: Tehran's continued development of delivery vehicles for nuclear warheads indicates that it has not abandoned its objective of acquiring a nuclear weapon.⁷⁷

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70. Iran Nuclear Agreement Review Act of 2015, Pub. L. 114-17, 129 Stat. 201, codified as amended at 114 U.S.C. §2011. (<https://www.congress.gov/114/plaws/publ17/PLAW-114publ17.pdf>)

71. A former Obama administration official reportedly responded to this argument. "The [former Obama administration] source said the administration's lawyers were careful to separate out the UN Resolution in a section titled 'other' rather than under the section specifically related to the Corker-Cardin law. The official said the lawyers did that to avoid this very scenario, where opponents would frame the UN Resolution as part of the law." Jonathan Swan, "Iran deal opponents pave new path for Trump to de-certify," *Axios*, September 7, 2017. (<https://www.axios.com/iran-deal-opponents-pave-new-path-for-trump-to-de-certify-2482598016.html>); see also: Jonathan Swan, "Nikki Haley sounds ominous notes on Iran deal," *Axios*, September 5, 2017. (<https://www.axios.com/nikki-haley-sounds-ominous-notes-on-iran-deal-2481895282.html>)

72. Behnam Ben Taleblu, "Iranian Ballistic Missile Tests Since the Nuclear Deal," *Foundation for Defense of Democracies*, February 9, 2017. (http://www.defenddemocracy.org/content/uploads/documents/20917_Behnam_Ballistic_Missile.pdf)

73. National Air and Space Intelligence Center and the Defense Intelligence Ballistic Missile Analysis Committee, "Ballistic and Cruise Missile Threat," June 30, 2017. (http://www.nasic.af.mil/Portals/19/images/Fact%20Sheet%20Images/2017%20Ballistic%20and%20Cruise%20Missile%20Threat_Final_small.pdf?ver=2017-07-21-083234-343); see also: Behnam Ben Taleblu, "Making Sense of Iran's Latest Satellite-Launch Vehicle Test," *Foundation for Defense of Democracies*, July 31, 2017. (<http://www.defenddemocracy.org/media-hit/behnam-ben-taleblu-making-sense-of-irans-latest-satellite-launch-vehicle-test/>)

74. United Nations Security Council, "Third report of the Secretary-General on the implementation of Security Council resolution 2231 (2015)," June 20, 2017. (http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2017/515)

75. "Iran: Missile tests not in violation of nuclear deal," *Al-Jazeera* (Qatar), January 31, 2017. (<http://www.aljazeera.com/news/2017/01/iran-missile-tests-violation-nuclear-deal-170131103418904.html>)

76. Bozorgmehr Sharafedin, "Iran confirms missile test, drawing tough response from Trump aide," *Reuters*, February 1, 2017. (<http://www.reuters.com/article/us-usa-iran-missiles-idUSKBN15G3ZO>)

77. See: David Cooper, "Nebulous Language Enables Tehran's Missile Ambitions," *The Cipher Brief*, September 1, 2017. (<https://www.thecipherbrief.com/article/middle-east/nebulous-language-enables-tehrans-missile-ambitions>)

Arms Shipments and the Travel Ban

Since UNSCR 2231's adoption, U.S. and international naval forces have intercepted multiple Iranian arms shipments bound for Houthi rebels in Yemen. In January 2017, the State Border Guard Service of Ukraine interdicted military equipment, including parts of an anti-tank missile system, in a cargo plane bound for Iran. In April 2017, Turkish authorities interdicted similar equipment on a truck en route from Ukraine to Iran. The Israeli government has warned that Iran continues to supply arms to Hezbollah.⁷⁸ And in August 2017, a German newspaper reported, citing Western intelligence services, that Tehran shipped "offensive weapons systems" to Russia for "service maintenance" via an air base in Syria.⁷⁹

Tehran has also repeatedly violated the travel ban. Iranian media have reported that Islamic Revolutionary Guard Corps Quds Force commander Qassem Soleimani visited Syria, Iraq, and Russia in 2016 and 2017.⁸⁰ Iranian press outlets also reported that Brigadier General Mohammad Reza Naqdi, former deputy chief of armed forces general staff for logistics and industrial research, visited Syria in 2016.⁸¹

CONCLUSION

Over the past two years, Tehran has exploited the JCPOA's noncompliance mechanism to shirk its obligations. The failure of individual Joint Commission members to enforce the JCPOA and to ensure transparency has eroded both the organization's credibility and the accord's integrity.

On the day of the JCPOA's finalization, Iran's Foreign Minister Zarif and the EU's High Representative Mogherini issued a joint statement declaring that the accord "will ensure that Iran's nuclear programme will be exclusively peaceful, and mark a fundamental shift" in its participants' "approach to this issue."⁸² The approach certainly has changed – but it has not ensured the exclusively peaceful nature of Iran's nuclear activities. The task now facing the Trump administration lies in advancing the twin goals of transparency and verification that the JCPOA's proponents once described as its defining qualities.

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78. United Nations Security Council, "Third report of the Secretary-General on the implementation of Security Council resolution 2231 (2015)," June 20, 2017. (http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2017/515); Valerie Lincy and Behnam Ben Taleblu, "Iran's Compliance with UNSCR 2231: Alleged Violations Must Be Addressed," *Wisconsin Project on Nuclear Arms Control and the Foundation for Defense of Democracies*, August 2017. (http://www.iranwatch.org/sites/default/files/irans_compliance_with_unscr_2231_-_alleged_violations_must_be_addressed.pdf)

79. Christina Brause, Julia Smirnova, and Walter Wolowelsk, "Neue Schmuggelroute zwischen Russland und dem Iran (New Smuggling Route between Russia and Iran)," *Welt* (Germany), August 13, 2017. (<https://www.welt.de/politik/ausland/article167624550/Neue-Schmuggelroute-zwischen-Russland-und-dem-Iran.html>); Benjamin Weinthal, "Report: Iran and Russia Violated UN Weapons Sanctions," *The Jerusalem Post* (Israel), August 15, 2017. (<http://www.jpost.com/Arab-Israeli-Conflict/Report-Iran-and-Russia-violate-UN-weapons-sanctions-502475>)

80. United Nations Security Council, "Third report of the Secretary-General on the implementation of Security Council resolution 2231 (2015)," June 20, 2017. (http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2017/515); United Nations Security Council, "Second report of the Secretary-General on the implementation of Security Council resolution 2231 (2015)," December 30, 2016. (http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/1136); Lidia Kelly and Parisa Hafezi, "Iran's Soleimani in Russia for talks on Syria, missiles: sources," *Reuters*, April 15, 2016. (<http://www.reuters.com/article/us-russia-iran-soleimani/irans-soleimani-in-russia-for-talks-on-syria-missiles-sources-idUSKCN0XC0TR>)

81. United Nations Security Council, "Second report of the Secretary-General on the implementation of Security Council resolution 2231 (2015)," December 30, 2016. (http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/1136)

82. "Joint statement by EU High Representative Federica Mogherini and Iranian Foreign Minister Javad Zarif," *European Union Action Service*, July 14, 2015. (http://collections.internetmemory.org/haeu/content/20160313172652/http://eeas.europa.eu/statements-eeas/2015/150714_01_en.htm)