

DEAL OR NO DEAL, THE IAEA MUST MONITOR IRAN'S NUCLEAR PROGRAM

BY DR. OLLI HEINONEN AND BRIG. GEN. (RES.) PROF. JACOB NAGEL

MAY 21, 2018

Although the United States is withdrawing from the nuclear deal formally known as the Joint Comprehensive Plan of Action, or JCPOA,¹ the International Atomic Energy Agency (IAEA) retains both the right and the obligation to ensure the peaceful nature of Iran's nuclear program. The Agency's responsibilities derive from United Nations Security Council Resolution 2231 and from Iran's Comprehensive Safeguards Agreement (CSA).² All parties to the Nuclear Non-Proliferation Treaty (NPT) must have a CSA with the IAEA. In other words, regardless of the results of Washington's decision, Iran has a binding legal obligation to grant the IAEA access to all relevant sites, materials, equipment, documents, and personnel to resolve outstanding questions about the military dimensions of Iran's past nuclear activities.

While the IAEA has long been in possession of evidence that Iran once pursued a nuclear weapons capability, the cache of documents removed from a Tehran warehouse by Israel's Mossad reportedly proves that the scope of Iran's weaponization program was likely far greater than previously suspected. The fact that the regime in Tehran maintained this archive also indicates that Iran sought to preserve its ability to weaponize in the future. Pursuant to its mandate, it is now the IAEA's obligation to investigate fully the personnel, sites, equipment, and activities described by the archival materials, even if this requires inspections at military sites. For its part, Iran must comply fully with the Agency's investigation, lest it breach the NPT safeguards obligations.

THE IAEA ROLE UNDER THE COMPREHENSIVE SAFEGUARDS AGREEMENT

According to paragraph 2 of the CSA, the IAEA has the "right and obligation to ensure that safeguards will be applied ... on all source or special fissionable material." The stated purpose of this is to "verify that such material

.....
1. President Donald Trump, Statement, "Remarks by President Trump on the Joint Comprehensive Plan of Action," May 8, 2018. (<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-joint-comprehensive-plan-action/>)

2. United Nations Security Council, Resolution 2231, July 20, 2015. (https://www.iaea.org/sites/default/files/unsc_resolution2231-2015.pdf)

Dr. Olli Heinonen is a senior advisor on science and nonproliferation at the Foundation for Defense of Democracies. He is the former deputy director general of the International Atomic Energy Agency (IAEA) and head of its Department of Safeguards. BG (Res.) Professor Jacob Nagel is the former Israeli acting National Security Advisor. He is now a Professor at the Aerospace faculty, Technion Haifa and a visiting fellow at the Foundation for Defense of Democracies.

is not diverted to nuclear weapons or other nuclear explosive devices.”³ Under the terms of the JCPOA, Iran also agreed *inter alia* to the provisional application of the Additional Protocol (AP) to the CSA and to seek its full ratification after the Transition Day in 2023, or an earlier date when the IAEA has reached the broader conclusion stating that all nuclear material in Iran remains in peaceful activities. Of course, Iran’s nuclear activities under the JCPOA do not affect the status of the CSA. Still, even if Iran were not to ratify the AP and reject the JCPOA, its obligations under the CSA would remain binding. For that reason, the IAEA’s verification and monitoring regime in Iran must continue regardless of the fate of the AP and JCPOA.

Under the CSA, the IAEA has an obligation to inspect military sites where weapons-related research and experiments may have taken place. This point has triggered a controversy because Iran has declared such sites to be off limits,⁴ and the IAEA has reportedly avoided requesting access for diplomatic and political reasons, even as IAEA Director General Yukiya Amano stated that the Agency does not make “distinctions between military and civilian locations.”⁵ On background, an IAEA official told *Reuters* that there was no reason to request access, while a second official provided a diplomatic rationale for this decision, explaining, “We just don’t want to give [the Trump administration] an excuse” to undermine the nuclear deal.⁶

These latter comments reflect a serious misunderstanding of the IAEA’s responsibilities. Political concerns cannot mitigate the Agency’s obligation to ensure the peaceful nature of the Iranian nuclear program. When requesting access, the IAEA cannot weigh the potential consequences of Iran’s refusal to comply. Moreover, the assertion that there is no reason to request access to military sites in Tehran is at odds with evidence presented in IAEA reports, such as the unexplained man-made uranium particles found at the Parchin military facility in 2015,⁷ and with precedents set by the Agency while conducting investigations in other countries.

In 1991, the IAEA board⁸ and the general conference⁹ requested that Director General Hans Blix verify the “correctness and completeness of the inventory of South Africa’s nuclear installations and material” under its newly approved CSA. After the statement by President F.W. de Klerk in 1993 that South Africa had possessed a nuclear weapons program, the verification process included accessing military sites to ensure that the nuclear weapons program had been irreversibly dismantled. That same year, following a request from the director general to access

.....
3. International Atomic Energy Agency, “The Structure and Content of Agreements Between the Agency and States Required in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons,” INFCIRC/153 (Corrected), June 1972. (<https://www.iaea.org/sites/default/files/publications/documents/infcircs/1972/infcirc153.pdf>); For additional analysis, see also: Olli Heinonen, “The IAEA’s Right and Obligation to Inspect Military Facilities in Iran,” *Foundation for Defense of Democracies*, April 4, 2018. (<http://www.defenddemocracy.org/media-hit/olli-heinonen1-the-iaeas-right-and-obligation-to-inspect-military-facilities-in-iran/>)

4. 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-idUSKCN1B918E>)

5. George Jahn, “UN nuclear agency rejects Iran’s stance on military sites,” *Associated Press*, August 31, 2017. (<https://www.apnews.com/7c78e26462c244e485774b5fe95deab1>)

6. 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>)

7. Olli Heinonen, “Uranium Particles at Parchin Indicate Possible Undeclared Iranian Nuclear Activities,” *Foundation for Defense of Democracies*, July 1, 2016. (<http://www.defenddemocracy.org/media-hit/olli-heinonen1-uranium-particles-at-parchin-indicate-possible-undeclared-iranian-nuclear-a/>)

8. International Atomic Energy Agency, “Safeguards: Draft Resolution Submitted by Egypt, Morocco, Nigeria and Tunisia on Behalf of the Africa Group,” GOV/2547/Rev.1, September 11, 1991.

9. International Atomic Energy Agency, “South Africa’s Nuclear Capabilities,” GC(XXXV)/RES/567, September 1991. The draft resolution, submitted by Zaire on behalf of the African Group, was adopted without a vote.

military installations in North Korea, the board affirmed that such access was “essential and urgent in order to resolve differences and to ensure verification of compliance” by North Korea.¹⁰ These precedents led the IAEA to inspect nuclear facilities at military sites in other countries such as Brazil, where even today the IAEA frequently conducts short notice inspections and takes independent environmental samples at military sites.¹¹

IRAN’S ATOMIC ARCHIVE

When Israeli Prime Minister Benjamin Netanyahu announced on April 30 that his country’s foreign intelligence service, the Mossad, had removed a large cache of documents, blueprints, and CDs from a warehouse in the Shorabad district of Tehran,¹² he tied his announcement to President Donald Trump’s impending decision on whether Washington would withdraw from the JCPOA. Netanyahu’s intentions, however, have no bearing on the IAEA’s responsibility to investigate all current and newly available information.

Netanyahu stated that his government had shared the new information with the United States and would share it with the IAEA and other countries.¹³ He said the cache weighed half a ton and consisted of 55,000 pages of printed material and other files contained on 183 CDs. According to the Israeli government, this material represents only a fraction of the material in the Shorabad district archive. In short, there may be significantly more information that Iran has until now hidden from the IAEA. Faced with this new information, the Agency must now undertake all necessary efforts to secure access to the additional documentation and equipment in Iran, and Iran has an obligation under the CSA to provide unimpeded access.

The contents of the Tehran archive thus far indicate that Iran’s nuclear weapons program may be far more extensive and structured than inspectors previously understood. Iran’s program is now believed to include nuclear material, sites, equipment, activities, and personnel that Iran has not declared to the IAEA. The Agency must account for these and their status following the apparent suspension of Iran’s active pursuit of a nuclear weapon in 2009. For example: Is the equipment still stored in Iran? Are the participants in those activities still working on nuclear-related topics?

While the future of the JCPOA remains uncertain following the U.S. withdrawal, the existence of the atomic archive does suggest that Iran was violating the deal. By retaining detailed documentation related to its nuclear weapons program in a secure and hidden location, Iran’s leadership appears to have been preserving its option to resume weaponization activities once the JCPOA’s restrictions related to uranium enrichment and advanced centrifuges began to lapse, or at another time of Iran’s choosing. The existence of the archive also raises serious concerns about Iran’s commitment under the terms of the deal that “under no circumstances will [it] ever seek, develop or acquire nuclear weapons.” If Iran were serious about that commitment, why did it retain in its archive a design for placing a nuclear payload on a Shahab-3 missile?

.....
10. International Atomic Energy Agency Board of Governors, “Report on the Implementation of the Agreement Between the Agency and the Democratic People’s Republic of Korea for the Application of Safeguards in Connection With the Treaty on the Non-Proliferation of Nuclear Weapons,” GOV/2636, February 26, 1993. The draft resolution was adopted without a vote. The director general’s report and the official records of the board’s discussion, which was held in a closed session, have not been publicly released by the IAEA.

11. See the latest safeguards implementation report: International Atomic Energy Agency, “Safeguards Implementation Report for 2016,” June 14, 2017. (https://www.iaea.org/sites/default/files/statement_sir_2016.pdf)

12. “FULL TEXT: Netanyahu Claims Iran Nuclear Deal Based on Lies,” *Ha’aretz (Israel)*, April 30, 2018. (<https://www.haaretz.com/israel-news/full-text-netanyahu-s-reveals-iran-s-atomic-archive-in-speech-1.6045556>)

13. Ibid.

A more specific issue related to the JCPOA is the IAEA's monitoring of Iranian compliance with Section T,¹⁴ which closes some loopholes in the NPT by addressing items that have both conventional military and civilian applications, as well as other activities related to nuclear weapons development.

UN Security Council Resolution 2231 authorizes the Agency to monitor Section T, yet in its first five quarterly reports on the JCPOA, the Agency did not mention any Section T monitoring efforts. In its sixth quarterly report, the Agency asserted it was monitoring Section T, yet provided no details. The credibility of this statement diminished further when Amano told *Reuters*, "Our tools are limited," in response to an inquiry regarding whether the Agency had the means to verify Section T. Amano also revealed that it would be difficult to proceed since Russia denies the Agency even has a mandate to monitor Section T.¹⁵

UNSCR 2231 provides an unequivocal mandate, and the Agency should not defer to Russian objections, or objections from any other state. After the revelations from the atomic archive, it is even more urgent for the IAEA to monitor the activities mentioned in Section T, particularly since the range of activities to be monitored is far greater than previously understood.

PREVIOUS IAEA ASSESSMENTS OF IRANIAN WEAPONIZATION

While the IAEA has had some knowledge since 2004 of Iranian weaponization activities, the Iran's atomic archive may reveal just how limited the Agency's knowledge was. In 2004, the IAEA raised questions about Iranian nuclear weapons activities and asked to visit Lavizan, the Physics Research Center in Tehran. By the time Iran permitted access, all the buildings had been razed.¹⁶ The IAEA received additional information over the next year – including data about the AMAD project mentioned by Netanyahu – but follow-up became impossible after Iran terminated its cooperation with Britain, France, and Germany (the EU-3) in 2005.

In January 2008, the IAEA secretariat briefed the organization's board of governors with detailed information about Iran's aspiration to develop nuclear weapons, drawing on both IAEA investigations and information shared by IAEA member states. The IAEA revealed some of this in public reports in June 2008¹⁷ and November 2011,¹⁸ with the latter providing more extensive information. Yet despite requests from the IAEA board of governors, as well as UN Security Council resolutions and sanctions requiring Iranian cooperation, Tehran refused to fully address the IAEA's questions about possible military dimensions (PMD) of its nuclear program.

In July 2015, Iran agreed to resolve the IAEA's outstanding concerns as a prerequisite for the implementation of the JCPOA.¹⁹ This led to a December 2015 report from the IAEA director general noting that Iran had conducted

14. Joint Comprehensive Plan of Action, Vienna, July 14, 2015, Annex 1, Section T. (<https://www.state.gov/documents/organization/245318.pdf>)

15. Francois Murphy, "IAEA chief calls for clarity on disputed section of Iran nuclear deal," *Reuters*, September 26, 2017. (<https://www.reuters.com/article/us-iran-nuclear-iaea/iaea-chief-calls-for-clarity-on-disputed-section-of-iran-nuclear-deal-idUSKCNIC12AN>)

16. International Atomic Energy Agency, "Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran," GOV/2004/34, June 1, 2004. (<https://www.iaea.org/sites/default/files/gov2004-34.pdf>)

17. International Atomic Energy Agency, "Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions 1737 (2006), 1747 (2007) and 1803 (2008) in the Islamic Republic of Iran," GOV/2008/15, May 26, 2008. (<https://www.iaea.org/sites/default/files/gov2008-15.pdf>)

18. International Atomic Energy Agency, "Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran," GOV/2011/65, November 8, 2011. (<https://www.iaea.org/sites/default/files/gov2011-65.pdf>)

19. International Atomic Energy Agency, "Road-map for the Clarification of Past and Present Outstanding Issues regarding Iran's Nuclear Program," GOV/INF/2015/14, July 14, 2015. (<https://www.iaea.org/sites/default/files/gov-inf-2015-14.pdf>)

“a range of activities relevant to the development of a nuclear explosive device” until as late as 2009.²⁰ While the IAEA found no credible indications that Iran had diverted nuclear material to its weapons program, the report observed that Iran was not forthcoming in clarifying these issues, did not provide access to all relevant sites and experts involved in PMD, and gave misleading answers.²¹ Nonetheless, the U.S. and the other parties to the JCPOA allowed implementation of the deal to proceed in January 2016.

Since then, the IAEA’s reports have lacked details crucial to resolving outstanding PMD-related concerns. For example, the reports do not indicate whether the IAEA has followed up in response to the Agency’s 2015 discovery of man-made uranium particles at Parchin – or whether the IAEA has clarified why its findings did not match Iran’s statements. The IAEA secretariat also revealed that during the first year and a half the JCPOA was in effect, its inspectors had not visited any military sites in Iran, where proscribed activities are customarily conducted.²² Thus, while it is correct to say that the IAEA knew of the Iranian nuclear weapons program prior to the archive’s exposure (with fewer details), Iran never complied with its obligation to disclose the full extent of such activities, nor did the IAEA fulfill its own obligations under the CSA.

The existence of an undisclosed archive further supports the conclusion that Iran, even after agreeing to the JCPOA, has deceived the IAEA about the scope of its nuclear activities. Its very existence raises concerns about Iranian intentions. If the Islamic Republic had relinquished its desires for nuclear weapons capabilities, why keep the archive in the first place? Moreover, turning the material over to the IAEA would have allowed the Agency to establish a baseline from which to monitor Iranian activities moving forward. If Tehran did not want to cooperate with the IAEA (as it is obligated to do under the CSA) and admit to previous activities but had truly turned away from nuclear weapons, it might have destroyed the material instead.

THE WAY FORWARD

The IAEA’s obligations require a more robust approach to investigate outstanding questions related to the possible military dimensions of Iran’s nuclear program – including new questions raised by the documents seized by the Israelis. And in light of new revelations stemming from the documents, if the Europeans hope to bring the United States back into the agreement or forge a new one, the “fix” will need to be more expansive than previously thought.

A major point of contention between the U.S. and Europe is how to remediate the sunset clauses of the JCPOA, which stipulate the eventual expiration of critical restrictions on the Iranian nuclear program. While this was already cause for concern, the archive has shattered a core assumption that justified sunsets, namely that Iran had quit its pursuit of nuclear weapons.

The matter of intentions is crucial, since the JCPOA allows Iran to build an industrial-size enrichment program and shrink its breakout time from one year to less than a few weeks, on the assumption that Tehran would have neither the intention nor the capability to build a nuclear explosive device or affix a nuclear warhead to a delivery vehicle. Given the new information about the regime’s intentions and capabilities, if a new “fix” to the deal is achieved, it should create performance-based relaxations rather than automatic sunset clauses.

.....
20. International Atomic Energy Agency, “Final Assessment on Past and Present Outstanding Issues regarding Iran’s Nuclear Programme,” GOV/2015/68, December 2, 2015, page 14. (<https://www.iaea.org/sites/default/files/gov-2015-68.pdf>)

21. Jacob Nagel, “Monitoring Iranian Weaponization Activities: Another Crucial Flaw of the Nuclear Deal” *Foundation for Defense of Democracies*, April 2, 2018. (http://www.defenddemocracy.org/content/uploads/documents/MEMO_NagelJCPOA.pdf)

22. Olli Heinonen, “The IAEA’s Right and Obligation to Inspect Military Facilities in Iran,” *Foundation for Defense of Democracies*, April 4, 2018. (<http://www.defenddemocracy.org/media-hit/olli-heinonen1-the-iaeas-right-and-obligation-to-inspect-military-facilities-in-iran/>)

Unquestionably, the U.S. withdrawal from the JCPOA has generated substantial tension between the U.S. and the EU-3, whose partnership is essential to creating a permanent solution to concerns about Iran's nuclear program, not to mention to defending the broader nuclear nonproliferation regime. But rather than viewing the exposure of Tehran's atomic archive as a source of transatlantic discord, the U.S. and its European partners should approach it as a potential basis for building a new consensus. The path toward that consensus goes through the IAEA board of governors, where the U.S. and the EU-3 are all represented. Together, they should ensure that the IAEA secretariat carries out the Agency's obligations under the NPT and CSA, even if there is a risk of discovering Iranian non-compliance.

The U.S. and EU-3 should also require Iran to ratify the Additional Protocol before the IAEA reaches a broader conclusion, as has been the standard IAEA practice until now. In such a manner, the U.S. can show its partners that it still has a sincere commitment to working with multilateral institutions to prevent nuclear proliferation. At the same time, the Europeans can show the U.S. that it is possible to use an existing mechanism to hold Iran accountable and resolve all outstanding questions about Iranian compliance, instead of downplaying such questions to protect the JCPOA.