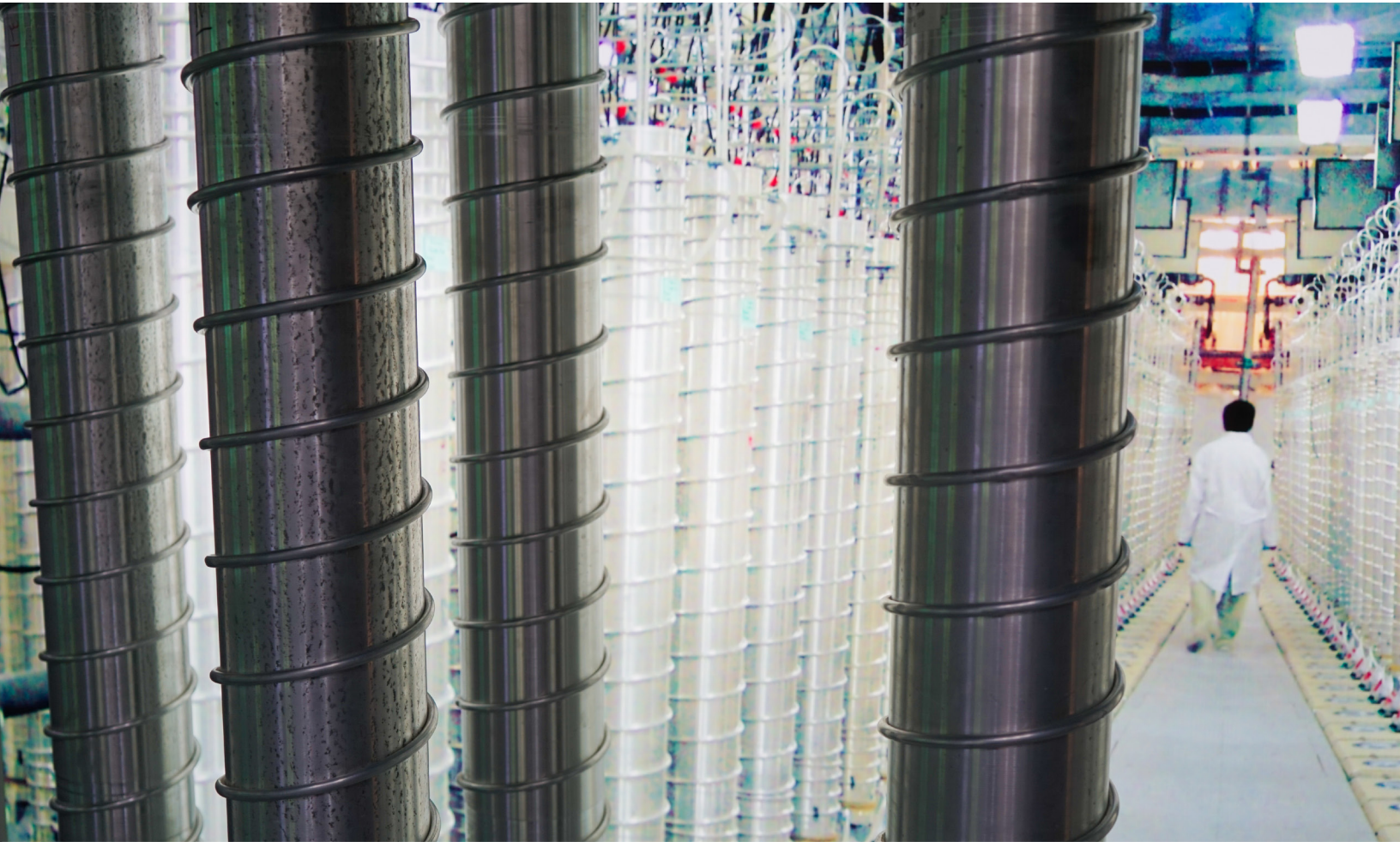


No Going Back Now: The Case Against Returning to the JCPOA



JINSA's Gemunder Center Iran Policy Project - March 2021

Co-Chairs: Ambassador Eric Edelman and General Charles Wald, USAF (ret.)



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I. Executive Summary

Beginning well before the 2020 election, Joe Biden and key advisors made clear their intent to rejoin the 2015 nuclear agreement with Iran, known as the Joint Comprehensive Plan of Action (JCPOA), and to use this as “the beginning, not the end,” of diplomacy that would seek a more comprehensive deal with Tehran.¹ Biden’s description last September of his planned Iran policy – “If Iran returns to strict compliance with the nuclear deal, the United States would rejoin the agreement...”² – suggested that the most complicated aspect of returning to the JCPOA would be the issue of who goes first. Iranian statements, arguing that President Biden only needs to sign several executive orders, have exuded a similar confidence. But neither side has actually made the first move, as Tehran rejects the Biden Administration’s invitation to renew talks without any guarantee of sanctions relief. This is a microcosm of how returning to the deal, at least in a way that is beneficial to U.S. interests, is by no means straightforward.

Indeed, since the agreement was first announced in 2015, our JINSA policy group has highlighted its key flaws and spelled out a better agreement that actually blocks Iran’s pathways to a bomb and provides full transparency about past and present nuclear activities. And though the Biden Administration emphasizes its goal of securing a more comprehensive follow-on deal, its stated plan to first reenter the JCPOA will confront myriad technical and political hurdles that make any such policy self-defeating, and perhaps outright impossible, for the United States. Iran has violated the agreement not just by exceeding the deal’s limits on its nuclear program but by expanding that program in ways unforeseen by the agreement, such as constructing new facilities. It has also become clear, thanks to new information about extensive previous efforts to build a nuclear weapon, that Tehran never fully complied with the JCPOA’s terms in the first place and has been acting in bad faith ever since. At the same time, the United States has cast a much more comprehensive sanctions net over Iran than in 2015.

Thus, simply abiding by the letter of the JCPOA would leave Iran with too advanced a nuclear program for the United States to accept and too many economic constraints for Tehran to abide. This creates the possibility of an untenable “more for less” interim outcome in which the United States tries to get back to the original nuclear agreement by giving up too many sanctions, in exchange for too few nuclear concessions from Tehran. Thus, the first step in realizing the Biden’s Administration’s oft-stated desire to pursue a more comprehensive agreement should be to recognize there is no returning to the JCPOA.

A. Technical Hurdles

The United States officially left the JCPOA in May 2018 and re-imposed unilateral sanctions that had been suspended under the agreement. Exactly one year later, Tehran began steadily re-expanding its nuclear program beyond the bounds of the deal, promising that it could easily walk back every step in return for sanctions relief. Some of these violations are indeed reversible, but Iran likely would need at least as much time and effort to undo them now as it did in 2015-16, when the Obama Administration expected Iran would need 6-12 months to approach initial compliance.

But even that is the relatively easy part. Since the United States departed the deal, Washington and Tehran also have taken other technical steps that go beyond the four corners of the original deal and are not so easily walked back – if they can be reversed at all. Iran’s nuclear

infrastructure now contains key elements that were not accounted for by the JCPOA, and which it will claim should, therefore, fall outside the parameters of a “return” to the original deal. Perhaps most concerning, while Iran can remove the hundreds of advanced centrifuges it now operates in contravention of the agreement, the invaluable know-how it is gaining from testing and running these machines cannot be uninstalled. Iran’s ongoing experience of learning how to produce uranium metal, which could be used in a nuclear weapon core, poses similarly irreversible challenges. Nor will Tehran want to reverse its progress on a new facility at Natanz to mass-produce these centrifuges, or its expansion of the deeply-buried Fordo complex – both of which it has undertaken since the JCPOA was finalized and which the deal did not address. Consequently, any Iranian resumption of supposed compliance would in fact allow it to retain recent critical nuclear advances.

Similar hurdles loom on the U.S. side. Its sanctions regime on Iran has been transformed and expanded since the Trump Administration left the agreement. Tehran has already made clear it will be wholly unsatisfied with any U.S. efforts to resume adherence with the letter of the deal simply by removing the same exact sanctions as in 2015-16. This is because the Trump Administration not only revived the slew of pre-JCPOA sanctions on Iran’s economy – the same penalties that were lifted to implement the deal – but also imposed a new, separate layer of terrorism-related sanctions on these same entities. The net result will be far less economic relief than Iran has made clear it expects from a U.S. return to the deal, since Washington technically could comply with the JCPOA by removing the earlier sanctions layer while retaining the latter layer.

Separately, just as Iran cannot unlearn its experiences with better centrifuges or uranium metal production, the United States and other parties to the deal cannot unlearn the post-2015 revelations about Tehran’s efforts to build a nuclear weapon – including the trove of Iranian archives seized by Israel in 2018. This new information shows that the possible military dimensions (PMD) of Iran’s purportedly “civilian” nuclear program were more extensive than, and continued well beyond when, inspectors had previously suspected in the run-up to the JCPOA. It also shows that Iran did not meet its obligations, as part of implementing the nuclear agreement, to provide a full and accurate accounting of these past efforts. Accordingly, a return to “strict compliance,” as Biden put it, would require Tehran to open its nuclear and related military facilities to thorough scrutiny by international inspectors – a move it is certain to resist.

B. Political Hurdles

Complex political and strategic considerations further complicate the picture. Though the Biden and Rouhani administrations ostensibly agree on a mutual return to the deal, there is the sticking point of how to coordinate or sequence these moves – no small question, given that each side risks sacrificing its leverage over the other by rushing back into JCPOA compliance. Biden officials, including the president himself, have consistently said Iran must come back into compliance first, and vice-versa, resulting in an ongoing standoff similar to the one that helped forestall any nuclear diplomacy between Iran and the Trump Administration. Any sequencing also would have to account for divergent U.S. and Iranian timeframes to undertake their respective moves, and the concomitant loss of U.S. leverage, since many sanctions could be reversed much more quickly than Iran’s nuclear violations.

This issue of leverage highlights another complicating factor, namely Iran's consistent efforts to try to extract concessions from the United States. Tehran variously demands the United States provide compensation for leaving the JCPOA or negotiate its way back into the deal, rather than the two sides mutually resuming compliance. Tehran also assiduously tries to pressure Washington into concessions through risky escalations – both in its nuclear program and on the ground in the Middle East. In this context, and especially if it hopes to negotiate a “longer and stronger” follow-on agreement, the Biden Administration needs to accumulate its own counterpressure, not sacrifice bargaining power upfront by relieving sanctions in the hopes of returning to the JCPOA. Fortunately, its predecessor's rigorous sanctions pressure on Iran provides a more solid foundation of U.S. leverage than in the run-up to the existing agreement.³

Finally, both the Biden and Rouhani administrations must factor in domestic politics. The executive and legislative branches appear to agree on the need to better coordinate U.S. diplomacy toward Iran than in 2015-16. Key members of Congress, including the new Democratic chair of the Senate Foreign Relations Committee, already have stated their opposition to a straightforward return to the JCPOA. Meanwhile the Rouhani administration will be gone by summer, likely replaced by even more hawkish leadership drawn from the camp of hardliners that already is opposing efforts to renew engagement with Washington. The Biden Administration also must consider its regional allies' salient concerns and skepticisms about the JCPOA, with whom it has vowed to consult as part of its outreach to Tehran.

Taken altogether, these technical and political hurdles raise the potential added difficulty of needing interim talks and agreements simply to get both sides back to the JCPOA. Iranian diplomats already have been posturing against such a possibility, saying off the record they are not interested in temporary freezes and pledging to continue accumulating enriched uranium.⁴ As it did with the interim Joint Plan of Action (JPA) preceding the JCPOA, Iran very likely would develop additional leverage for any prospective negotiations about negotiations, as well as drag its feet implementing any interim deal.⁵ The result could be an untenable “more for less” arrangement for the United States that betrays the Obama-Biden Administration's mantra that “no deal is better than a bad deal.”

In exchange for Iran's technical compliance with the JCPOA – which still would allow it to retain recent research and development breakthroughs and new facilities – this lopsided outcome would entail the United States offering much further-reaching sanctions relief than the agreement formally requires or than Washington gave up to reach the existing agreement in the first place. In essence, such a deal would conform entirely to Iran's position that it need adhere only to the narrow letter of the JCPOA while the United States must comply with the much broader spirit of the agreement. The only way to preclude such an unacceptable outcome for the United States would be for the Biden administration to recognize the impossibility of its goal of a return to the JCPOA and to embrace instead greater pressure to truly, as Biden has pledged, prevent a nuclear Iran.

II. Technical Hurdles

A. “Reversible” Doesn’t Mean Quick or Easy

In key respects, Iran’s progress toward enriching a nuclear weapon’s worth of fissile material is at least as worrisome today as before the JCPOA. Current estimates of this “breakout” time are approximately 3-4 months, perhaps slightly longer than before the nuclear agreement was finalized.⁶ While several steps that have brought Iran to this point are indeed reversible – as Iranian officials are quick to argue more generally – returning to compliance with the deal in these respects will entail more than a flip of the switch by Tehran. When the JCPOA was announced, and before either side began implementation, the Obama White House estimated Iran would need 6-12 months to come into initial compliance.⁷ When given a half-year window to undertake such steps in 2015-16, Iran still had not brought its nuclear program into full compliance by the agreed JCPOA start date.

The following chart depicts the current status of Iran’s declared nuclear program in comparison with both its JCPOA obligations and its status prior to the deal. It suggests at least a similar amount of effort would be needed to return these activities to JCPOA compliance now versus before the agreement.

Iran’s Nuclear Program: Pre-JCPOA vs. March 2021 ⁸					
Parameter	Pre-JPA/ JCPOA Status	Current JCPOA Limit/ Requirement	Current Status	Iranian Steps to Return to JCPOA Compliance	Greater Effort to Return to Compliance Now vs. Pre- JCPOA?
IR-1 Centrifuges Enriching at Natanz	9,166	5,060	≤ 5,060	None.	NO
IR-1 Centrifuges Enriching at Fordo	696	0	1,044	Remove all UF6 from Fordo and repurpose site as described in JCPOA.	YES
Total IR-2m Centrifuges Installed at Natanz	1,008	0	~500-700*	Uninstall all IR-2m centrifuges.	NO
IR-2m Centrifuges Enriching at Natanz	0	0	348	Remove all UF6 and uninstall all operating IR- 2m machines.	YES

Iran's Nuclear Program: Pre-JCPOA vs. March 2021 (cont.)					
Total Advanced Centrifuges Operating (IR-4/5/6/8 and variants)	0	~25	~325	Remove UF6 from vast majority of centrifuges and uninstall even greater number of centrifuges.	YES
Stockpile < 5% LEU (kg UF6)	5,188	300	4,364	Downblend and/or ship out all excess LEU at this level.	NO
Stockpile 5% < 20% LEU (kg UF6)	133	0	26	Downblend and/or ship out all LEU at this level.	NO
Uranium Metal Production Infrastructure at Isfahan	Did not exist.	Prohibited until at least 2026.	Operational.	Dismantle all relevant infrastructure.	YES
Uranium Metal Stockpile (kg)	0	0	0.0036	End all U metal production and R&D, and eliminate stockpile.	YES
Natanz Centrifuge Assembly Center 2.0	Did not exist.	N/A	Under construction.	Possible JCPOA violation if Iran did not notify IAEA prior to construction.	YES
Fordo Facility Expansion	Did not exist.	N/A	Under construction.	Possible JCPOA violation if Iran did not notify IAEA prior to construction.	YES
IAEA Additional Protocol (AP)	Iran signed but did not ratify or implement its AP agreement with IAEA.	Iran must implement AP.	Suspended since February 23, 2021.	Resume AP implementation.	SIMILAR

*As of publication of this report, Iran was in the process of installing additional IR-2m centrifuges.

B. Iranian Steps Not Covered By JCPOA

Though the abovementioned steps are reversible as in 2015-16, Tehran's claim that it can simply undo all its nuclear expansions to date is problematic at best. It has undertaken several steps that are either irreversible or grow its nuclear infrastructure beyond what was ever considered in the JCPOA. This in turn raises the related problem of differing expectations between the two sides regarding the extent to which Tehran must roll back some of these advances. Secretary Blinken's comment in late February, demanding Tehran "come back into strict compliance," suggests a more expansive understanding of the Iranian efforts needed to return to the deal.⁹

One key issue is Iran's real progress on research and development (R&D) and operation of more advanced centrifuges – including the IR-2m, IR-4, IR-5 and IR-6 which are estimated to be anywhere from 4-7 times as efficient as the IR-1 that currently constitutes the vast majority of Iran's operational centrifuges.¹⁰ While Iran technically can uninstall these machines and their associated infrastructure, it will be impossible to uninstall the invaluable learning experience its scientists have gained from manufacturing these newer models, testing them, assembling them in cascades and feeding them with uranium. Similarly, while Tehran can feasibly reverse its production of uranium metal, which could be used in a nuclear weapon, it will retain the know-how it is garnering from related R&D activities.

Iran also has gone beyond the four corners of the JCPOA by initiating construction of new underground nuclear facilities in 2020. After an aboveground facility for mass-producing advanced centrifuges at Natanz was significantly damaged in a July 2020 explosion – suspected to be sabotage – Iran has begun building a nearby underground site for the same purpose. Once operational, perhaps as soon as 1-2 years from now, it could enable major advances in enrichment capacity and breakout time.¹¹ It also began a separate, apparently undeclared expansion of its deeply buried Fordo enrichment facility in September 2020.¹²

Several salient factors – the speed with which Iran began building the new Natanz site, the underground nature of both sites, the sunk costs of their construction, their long-term roles in advancing Iran's nuclear program and the fact the JCPOA did not explicitly prohibit such construction – underscore how Tehran is extremely unlikely even to consider reversing its progress on these facilities. Iran is likely to claim that, because these facilities are not explicitly prohibited by the JCPOA, a return to the deal should not implicate these sites in any way. As with its advances in centrifuge R&D know-how, these sites will help Iran expand enrichment capacity and cut breakout time, even if it otherwise ostensibly returns to JCPOA compliance. Yet, because the facilities would expand Iran's nuclear abilities beyond the limits set by the deal, so long as construction continues the United States cannot consider Iran to be in compliance with the JCPOA.

C. U.S. Steps Not Covered By JCPOA

Just as several of Iran's steps are irreversibly transforming its nuclear program in key respects beyond the scope of the JCPOA, the United States has further complicated a return to the agreement by transforming how it applies sanctions on Tehran.

The JCPOA specifically lists a set of what it calls "nuclear-related" sanctions to be lifted by the United States and European Union to implement the deal. In the years preceding the interim

JPA, these were the sanctions that sought to build negotiating leverage by targeting energy, banking, financial and other sectors vital to Iran's regime and economy. These measures, which the Obama Administration waived or lifted to bring the United States into initial compliance with the JCPOA in 2015-16, were reimposed by the Trump Administration when it exited the agreement in 2018.

Yet even when the United States was a formal JCPOA participant, the deal did not prevent Washington from imposing what are broadly referred to as "non-nuclear" sanctions on Iran's missile programs, human rights abuses, regional aggression and support for terrorism. As the Obama White House stated in its factsheet at the outset of the deal, "we will be keeping in place other unilateral sanctions that relate to non-nuclear issues, such as support for terrorism and human rights abuses. [...] U.S. sanctions imposed for non-nuclear reasons will remain in effect and will continue to be vigorously enforced."¹³ These non-nuclear measures remained on the books after Obama left office, and the Trump Administration issued multiple additional rounds of non-nuclear measures both before and after it left the agreement in 2018 – all in accord with the JCPOA.

However, after leaving the deal, the Trump Administration also created a new, third sanctions category that will complicate the Biden Administration's ability or willingness to lift sanctions as straightforwardly as in 2015-16. Effectively, the Trump Administration applied a layer of non-nuclear sanctions to key sectors of Iran's economy and regime that were subject only to nuclear-related sanctions prior to the JCPOA – including by issuing terrorism sanctions on Iran's Islamic Revolutionary Guard Corps (IRGC), which is deeply interwoven into the sinews of Iran's economy, as well as the country's central bank, leading officials and national oil and shipping companies. The Trump Administration imposed additional non-nuclear sanctions on some of these same entities for human rights abuses, U.S. election interference and abduction of American citizens.¹⁴

Thus, Iran will not receive anywhere near the level of economic relief of 2015-16 if the United States removes only the JCPOA-specified nuclear-related sanctions it lifted in 2015 and reimposed in 2018. Even though such limited moves by Washington would bring it back into compliance with the letter of the deal, Tehran seems to have a much broader understanding of what sanctions relief entails, defining it not in terms of the specific sanctions removed but rather in terms of economic effect. This effectively means Tehran will demand the United States lift non-nuclear sanctions on Iranian entities that previously only had been targeted by nuclear-related sanctions.

Indeed, regime officials already are framing their expectations in terms of economic effect, including a very expansive view of sanctions relief that extends beyond anything stipulated in the JCPOA. Shortly after Biden's election, Rouhani's office issued a statement that Iran was preparing to resume oil production and exports to the same levels as before the United States left the JCPOA, similar to how it ramped up output right after the agreement initially took effect in 2015-16.¹⁵ In January 2021, Iran's oil minister suggested a similarly ambitious reading of Tehran's expectations, proclaiming "if the sanctions are lifted, we will return to the market stronger than before, and faster than expected," while its U.N. ambassador suggested the United States "cannot return to the nuclear accord with one signature in the way that they left with one," and that instead Iran is "waiting for U.S. action to effectively undo sanctions, give us access to our own funds, permit easy oil exports and allow the transfer of oil revenue, shipping and insurance."¹⁶ In February, Supreme Leader Khamenei more explicitly articulated this liberal

interpretation of sanctions relief, saying “if they want Iran to return to its JCPOA commitments, America should lift the sanctions *entirely*” (italics added).¹⁷ Later that month Minister Zarif reinforced Iran’s demands by tweeting that in order for both sides to return to the JCPOA, “U.S. unconditionally & effectively lift all sanctions imposed, re-imposed or re-labeled by Trump.”¹⁸

D. The JCPOA Isn’t Comprehensive

Just as Iran cannot unlearn its advances in centrifuge R&D, the United States and other parties to the deal cannot unlearn revelations since 2015 about the true extent of Tehran’s efforts to build a nuclear weapon. The JCPOA took effect despite Iran shunning its obligations to answer inspectors’ questions about these “possible military dimensions” (PMD) of its nuclear program, meaning any return to the original agreement would effectively sweep Tehran’s weaponization efforts back under the rug, even as new information has come to light in recent years. By preventing a full accounting of these past activities, returning to the nuclear agreement would also severely complicate any monitoring of similar activities in the present and future – and with it, any accurate understanding of just how close Iran could be to nuclear weapons capability.

As far back as 2011, the IAEA publicly reported a list of “serious concerns” to resolve before Tehran’s program could ever be declared peaceful and civilian in nature. These centered around the “possible existence in Iran of undisclosed nuclear related activities involving military related organizations, including activities related to the development of a nuclear payload for a missile.” Subsequently, over the course of negotiations that ultimately produced the JCPOA, this list formed the basis for an IAEA-Iran “roadmap” to resolve these outstanding concerns.¹⁹

Through the roadmap process, inspectors determined Tehran had until at least 2003 developed a management structure, worked on technologies and conducted computer modeling and other testing “relevant to the development of a nuclear explosive device,” even as Iran provided incomplete or inaccurate responses to many IAEA inquiries. During the same process, inspectors also discovered man-made uranium particles at Iran’s Parchin military base where they suspect past undeclared weaponization activities occurred – despite Iran unprecedentedly being allowed to self-inspect the site, and despite evidence of Iranian efforts to sanitize the area beforehand.²⁰ Yet the IAEA’s final report in December 2015, one month before the JCPOA’s official start, officially closed the PMD file while acknowledging inspectors’ inability to resolve some of their outstanding concerns.²¹

Possible Military Dimensions (PMD) of Iran’s Nuclear Program²²				
<i>Specific IAEA PMD Concern (2011)</i>	<i>Iranian Response via Roadmap (2015)</i>	<i>IAEA Assessment of Iranian PMD/ Response (2015)</i>	<i>Iran Resolved IAEA Concern? (2015)</i>	<i>New Info from Archives? (2018-)</i>
Organizational Structure for Developing Nuclear Explosive Device (NED)	Denied existence of any such organizational structure.	Structure did in fact exist pre-2003.	NO	By 2003, Iran had “AMAD” plan, including infrastructure, for comprehensive nuclear weapons program. Post-2003, Iran maintained a dedicated project by breaking it into overt and covert elements.
Procurement of Items for NED	Procurement intended for conventional purposes, and anyway did not ultimately occur.	Agency had indications of instances of procurements and attempted procurements of items with relevance, <i>inter alia</i> , to developing NED.	NO	Iran allocated funding for purchasing high enriched uranium (HEU) abroad.
Possible Nuclear Material Acquisition	Previously declared existence of relevant sites, and allowed inspector access in 2015.	Activities are consistent with Iran’s declarations, and no indication of undeclared nuclear fuel cycle in Iran.	PARTIAL (based on 2015 pre-archival info)	In 2004, Iran razed an undeclared site that had been used for R&D, storage and production of nuclear material. Iran also had plans for larger such site.
Preparatory Work on Components for NED	Did not conduct any such work, and declined to discuss any similar activities.	No indication of activities related to design information for NED.	PARTIAL (based on 2015 pre-archival info)	Iran built pilot R&D site for uranium metallurgy related to producing NED.
Detonator Development	Preliminary work on detonators, but for civilian uses.	Iran’s detonator work is relevant to NED, and its explanations are inconsistent with its activities.	NO	Iran had detonator development project during at least 2000-03.

Possible Military Dimensions (PMD) of Iran's Nuclear Program (cont.)				
High Explosives and Associated Experiments	Iran conducted such experiments, for civilian uses.	Iran developed technology relevant to NED.	NO	Iran conducted several experiments/ tests previously unknown to IAEA.
Hydrodynamic Testing	Iran did not clarify IAEA requests, and was observed to cover up evidence of past activities at relevant sites.	Evidence available to IAEA does not support Iran's statements, and cover-up activities seriously undermined IAEA attempt at verification.	NO	Iran assembled an apparatus for hydrodynamic testing.
Computer Modelling and Calculations	Such studies never took place and/or were for conventional military purposes.	Iran conducted computer modelling of NED before 2004, and during 2005-09.	NO	Iran had finalized a design for NED.
Neutron Initiator	No such activity was carried out, and Iran provided only general information related to such measures.	Iran conducted relevant experiments with materials and configurations.	NO	Iran planned to use a neutron initiator for nuclear weapons development.
Testing a NED	Provided no relevant information.	Iran may have planned and undertaken preparatory experimentation relevant to testing a NED, and was in possession of relevant documentation.	NO	Until 2003, Iran had dedicated "Midan" project to survey and build an underground nuclear test site.
Delivery Vehicle Integration	Iran arranged videos and visits to suspected sites, but provided no other information.	In 2002-03, Iran conducted detailed engineering studies on nuclear-capable missile payload.	NO	Post-2003, Iran disguised relevant activities as civilian by shifting them to research institutes and universities.
Fusing, Arming and Firing System	Iran did not provide any information.	Indications that Iran considered a number of technical options for nuclear-capable reentry vehicle.	NO	Iran developed plans for R&D and manufacturing deliverable nuclear weapon.

The P5+1, including the United States, therefore entered the JCPOA without a complete picture of the Iranian nuclear program they were attempting to contain, including accurate estimates of how much remaining time and effort Iran might need to complete a functional nuclear device. Israel's covert seizure of secret Iranian nuclear archives in 2018 offered greater clarity about the actual breadth and progress of Tehran's weaponization program, including revelations that it was more advanced than the IAEA or Western intelligence agencies believed, and that such work continued after 2003. Information from the archives also illuminated Iran's efforts to deceive inspectors into concluding that suspected weaponization efforts did indeed halt by 2003.²³ In 2019, traces of radioactive material were discovered by inspectors at one of these newly revealed sites, even after Iran sanitized it in the wake of the archives seizure. Tehran then stonewalled inspectors' requests for clarifying information and follow-on visits, leading the IAEA to label Iran's responses to inquiries "not technically credible." After Iran agreed to allow additional inspections in late summer 2020, the IAEA discovered further evidence of undeclared activities – including more traces of radioactive material, likely uranium – to which Tehran responded by sidestepping inspectors' latest inquiries to explain the undeclared nuclear material.²⁴

In this context, the United States would be trying to rejoin the JCPOA despite Iran showing a clear lack of good faith since 2015 with either the IAEA or the other parties to the deal. Furthermore, returning to the agreement would do nothing to resolve the growing list of inspectors' concerns about the full extent of Iran's weaponization work. Instead, it would give Tehran fresh ammunition for its abiding claim that it already addressed IAEA concerns in the 2015 roadmap, and that therefore keeping the PMD file closed is inherently part and parcel of the nuclear deal itself. In effect, the United States would be reentering an agreement whose already-weak transparency provisions had been shown to be even more glaringly insufficient since the Trump Administration departed the deal.

Iran's latest JCPOA breach, which suspended its implementation of the IAEA Additional Protocol for enhanced inspections in late February 2021, threatens to further obscure Tehran's actual progress toward nuclear weapons capability.²⁵ This move will hinder any resolution of inspectors' unanswered questions related to recent discoveries of radioactive material at suspected undeclared nuclear sites in Iran. It also will effectively leave the United States and the remaining JCPOA parties in the dark about any additional such Iranian activities going forward.

III. Political and Strategic Hurdles

Any mutual return to the JCPOA also would be complicated by an array of complex political and strategic considerations in both Washington and Tehran.

A. Sequencing Each Side's Return

Though the Biden and Rouhani administrations ostensibly agree on a mutual return to the deal, there remains the thorny issue of how to coordinate or sequence these moves – no small question, given that each side risks sacrificing its leverage over the other by coming back into JCPOA compliance. The Biden team has stated repeatedly how any lifting of U.S. sanctions would be conditional on Iran reversing its nuclear violations, for instance then candidate Biden's September 2020 op-ed stating "if Iran returns to compliance with the nuclear deal, the United States would rejoin the agreement...."²⁶ More recently, National Security Adviser Jake Sullivan said it was "really up to Iran" whether the United States would rejoin the agreement; Secretary of State Antony Blinken emphasized at his confirmation hearing how the administration would "have to evaluate whether they were actually making good if they say they are coming back into compliance with their obligations, and then we would take it from there."²⁷

Meanwhile President Rouhani said in December 2020 that "just as soon as the 5+1 or 4+1 [other parties to the JCPOA] resume all of their commitments, we will resume all of ours."²⁸ On Biden's inauguration day, Rouhani reiterated "if Washington returns to Iran's 2015 nuclear deal, we will also fully respect our commitments under the pact. [The ball is] in the U.S. court now."²⁹ In January 2021, Foreign Minister Zarif reinforced this position when he said the United States "can begin by removing all sanctions imposed since Trump assumed office.... In turn, Iran would reverse all the remedial measures it has taken in the wake of Trump's withdrawal from the nuclear deal; [the] initiative squarely rests with Washington."³⁰ That same month Zarif tweeted "Why on earth should Iran ... show goodwill gesture first? It was the U.S. that broke the deal – for no reason. It must remedy its wrong; then Iran will respond."³¹ His U.N. ambassador echoed this position, saying "nothing is going to happen before the U.S. returns to the full compliance of the JCPOA," and "as soon as the U.S. starts to take effective measures, Iran will respond proportionately."³² Most recently, Supreme Leader Khamenei issued a statement saying "if they want Iran to return to its JCPOA commitments, the U.S. should lift all sanctions in action. Once this is done, we will resume our JCPOA commitments."³³ A similar standoff over which side would make the first move helped forestall any nuclear diplomacy between Iran and the Trump Administration.

Further muddying the waters, any sequencing would have to account for divergent U.S. and Iranian timeframes to undertake their respective moves. Certain U.S. sanctions could be reversed at several strokes of a pen, while Iran would need much longer – at least four months, according to former Energy Secretary and JCPOA negotiator Ernest Moniz.³⁴ International inspectors then would need additional time to verify Iran had taken the requisite steps.³⁵

B. Iranian Counterpressure

This points to another complicating factor, namely Iran's reliable tendency to build its own negotiating leverage against the United States in an attempt to increase U.S. concessions

while reducing its own. In this context, the price of upfront U.S. sanctions relief for rejoining the agreement would be prohibitively costly, representing a near-total abandonment of U.S. leverage against Iran – especially considering that the White House now has at its disposal more bargaining power than in the run-up to the JCPOA, thanks to its predecessor’s rigorous sanctions pressure.

Tehran already has been engaged in a concerted counterpressure campaign. It demands the United States negotiate its way back into the agreement rather than the two sides mutually rejoin it – as Rouhani said in November 2020, by “compensating for its previous mistakes” of leaving the deal and re-imposing sanctions.³⁶ As Zarif said that same month, “if the U.S. wants to rejoin the JCPOA then we will be ready to negotiate how the U.S. can re-enter the deal.”³⁷ More recently, he has argued that only after U.S. sanctions relief would “the remaining signatories to the deal then decide whether the United States should be allowed to reclaim the seat at the table that it abandoned in 2018.”³⁸ Seeking to leverage Iranian legislation that would restrict nuclear inspectors’ access and ramp up enrichment if U.S. sanctions relief was not forthcoming by February 21, Zarif tried to strong-arm Washington with a ticking clock, saying “the nuclear agreement is not unlimited. The United States has a limited window of opportunity.”³⁹ That same week, his U.N. ambassador warned “the window is closing.”⁴⁰

At other times, Iranian leadership has undergirded its negotiating position by demanding sanctions relief without conveying corresponding assurances of Tehran’s return to the agreement – for instance, Supreme Leader Khamenei’s statement last month that “we are not insisting nor in a hurry for the U.S. to return to the deal. But what is logical is our demand, is the lifting of the sanctions. These brutal sanctions must be lifted immediately.”⁴¹ Furthermore, after the United States attempted to “snap back” a U.N. arms embargo on Iran last fall in accordance with the JCPOA, Rouhani rejected the move by declaring “we can buy or sell weapons to and from anyone we like. We fought with America over this matter for four years and the United States tried for four years to extend the deadline, but it failed to do so.”⁴² Tehran also has stated that the Biden Administration’s demand to discuss Iran’s missile and regional activities is “non-negotiable.”⁴³

Iran has also been busy attempting to build new leverage, including the aforementioned parliament bill and more traditional pressure tactics by adding new enrichment capacity, threatening to enrich uranium to 60 percent, seizing a South Korean cargo ship, taking an American citizen hostage, conspicuously conducting military exercises and launching proxy attacks on U.S. bases and personnel in Iraq.⁴⁴

Tellingly, even after confirmation of Biden’s election victory, Tehran committed two of its most escalatory nuclear violations to date by announcing it would resume 20 percent enrichment and begin producing uranium metal that could be used for weaponization.⁴⁵ Given that the United States might forfeit significant leverage through sanctions relief, and given the haggling that may be needed to determine the extent and sequencing of each side’s return to the JCPOA, any Iranian diplomatic outreach could be expected to feature more rather than less pressure on the United States – including through nuclear and/or regional escalation, as well as by slow-rolling its return to JCPOA compliance. Moreover, Iran has an incentive to keep ratcheting up pressure, as the further it moves away from the JCPOA and develops other points of leverage against the United States, the more it will demand from Washington to return to the agreement – and the more the Biden Administration could feel compelled to accede.

C. Domestic Political Considerations

Broader political factors in both the United States and Iran could further stymie any return to the JCPOA.

1. U.S. Political Hurdles

With the Biden Administration possibly needing help from Congress to remove or waive certain “non-nuclear” sanctions, and given its pledge to work through Congress rather than via executive order on several of its major policy priorities, the White House would have to weigh carefully the potential tradeoffs of an overly unilateral diplomatic approach to Iran. This is especially true given both prevalent wariness among legislators that they could be cut out of nuclear diplomacy – like in the run-up to the JCPOA – and the broad political unpalatability among many Democrats and Republicans of removing non-nuclear sanctions on Iran’s human rights abuses and support for terrorism. Tellingly, in February 2021 Senate Armed Services Committee Ranking Member Jim Inhofe (R-OK) published an op-ed opposing sanctions relief without a much-improved follow-on agreement to the JCPOA.⁴⁶

2. Iranian Political Hurdles

Iran’s interlocutors likewise face political constraints. President Rouhani and Foreign Minister Zarif, both ostensible “moderates” willing to resume some form of compliance with the agreement, must contend with an increasingly powerful coterie of hardliners atop Iran’s relevant decision-making bodies – centering around the Supreme Leader – that are highly wary of the JCPOA and engagement with the United States more generally. Moreover, these hardline factions will want to avoid handing Rouhani’s pragmatist camp any political victories in the run-up to presidential elections this summer.⁴⁷ These factors could pose real obstacles to Iran returning to the JCPOA or conducting follow-on talks. They also could preemptively rule out certain issues for Iranian diplomats to even discuss, such as missiles or regional activities, and push Rouhani to increase Iran’s own counter-demands.⁴⁸ Iran’s parliament also has pressed Rouhani on his hardline flank through the aforementioned bill to ramp up nuclear violations. The looming presidential election, which a hardline candidate is expected to win, also shortens the shadow of the future.⁴⁹ This might tempt American diplomats to seek compromise while Rouhani’s government remains in office, which would raise the risk of repeating a key mistake from the JCPOA – namely, the Obama Administration contravening its own mantra that “a bad deal is worse than no deal.”⁵⁰

IV. Endnotes

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