

**Testimony of David Albright,
President of the
Institute for Science and International Security,
before the House Foreign Affairs Committee**

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The Iran nuclear deal, or the Joint Comprehensive Plan of Action (JCPOA), does not exist in a vacuum. It must be considered in association with United Nations Security Council resolution 2231 and U.S. national security more broadly. The deal’s potential for success cannot be separated from Iran’s aggressive regional behavior, as detailed for example in Secretary of State Rex Tillerson’s July 2017 Iran Nuclear Agreement Review Act of 2015 (INARA) certification letter to Congress.

We are one week away from the two-year anniversary of Adoption Day, the day when the JCPOA came into effect and its implementation started. It is clear now that Iran is no South Africa, which gave up its nuclear weapons program, accepted robust inspections of both civil and military sites far beyond what Iran allows, fully cooperated with the International Atomic Energy Agency (IAEA) inspectors in a manner that Iran has not, and truly sought to rejoin the international community and build a new peaceful relationship with its neighbors.

Iran has merely temporarily frozen its most threatening nuclear weapons capabilities. It has stated as a matter of policy that it will not allow inspections of its military sites, even though some are known to have been the site of secret gas centrifuge manufacturing and nuclear weapons development work. Other military sites that are off-limits require routine IAEA inspections of JCPOA bans on nuclear weapons development efforts and controls on equipment and activities associated with such efforts. Finally, Iran has continued its threats against U.S. national interests and has conducted a range of malign behaviors.

The JCPOA, unless fixed, is a prelude to a Middle Eastern version of the North Korean mess. Few believe anymore that Iran, the region, or both will change so much over the next several years that Iran will no longer seek nuclear weapons. Given Iran’s current trajectory, the risk is great that Iran will seek nuclear weapons once the nuclear limitations start to end, or these JCPOA limitations begin to sunset. The first nuclear sunset of note is eight years after Adoption Day, or six years from now, when Iran can scale up advanced centrifuge manufacturing.

One could argue that six years is a long time from now. Why worry today? One answer is that fixing a deal as complicated as the JCPOA takes time. But there are more urgent reasons to start now, namely the fact that there are looming sunsets of the conventional military and missile embargoes embodied in UNSC resolution 2231, which bear directly on the prospects of fixing the nuclear deal.

The first sunset in resolution 2231 occurs in three years, with the end of UN Security Council restrictions on arms-related transfers to and from Iran. It could happen earlier if the IAEA submits a report confirming it has reached a Broader Conclusion for Iran under the Comprehensive Safeguards agreement and Additional Protocol. At this point, Iran would be free of this embargo and can import heavy armaments for its own use and can also export them to adversaries of the United States and its allies. Although Iran is violating this part of resolution 2231 by providing major arms to its allies in the Middle East and perhaps receiving banned arms or services from North Korea, major arms suppliers in Russia, China, and elsewhere are not exporting banned heavy armaments to Iran. But in anticipation of the end of this embargo, Iran is reportedly lining up arms contracts with Russia and likely others.

Six years from now, or earlier if the IAEA reaches a Broader Conclusion, the UN Security Council restrictions end on any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology. At that point, Iran can be expected to accelerate its work to develop and deploy nuclear capable intermediate and intercontinental range ballistic missiles.

Those who argue that somehow the JCPOA deals only with nuclear matters and should be judged separate from the restrictions in resolution 2231 fail to explain that a nuclear weapon is a warhead and a delivery system. Today, the delivery vehicle of choice is a ballistic missile. The North Korean case makes crystal clear that it is both together—a warhead and ballistic missile—that creates a nuclear weapon that is the most threatening to the United States and its allies.

By the time nuclear sunsets start to occur at year 8, Iran is expected to be conventionally armed to the teeth and poised to develop nuclear capable missiles able to strike Europe and eventually the United States. By that time, it will have a powerful economy immunized against sanctions pressure. So, waiting to undo these sunsets, as some have proposed, means waiting until the United States would face a well-armed, well-funded Iranian military on the cusp of putting nuclear weapons on long range missiles.

This future is not what the United States should have signed up for, and it would be irresponsible for any president to continue to accept it. And this dire future occurs by Iran simply following the letter of the JCPOA and resolution 2231.

However, Iran has neither fully complied with the JCPOA and resolution 2231 nor fully implemented the JCPOA. With regards to the JCPOA, Iran has violated the deal on many occasions, exploited loopholes, pushed the envelope of allowed behavior, and avoided critical verification requirements.¹ It has twice exceeded limits on heavy water and benefited from a misguided interpretation of the JCPOA to store its heavy water excess of the cap overseas.² Iran has continued to refuse the testing of carbon fiber acquired before Implementation Day. It has

¹ David Albright, “Update on Iran’s Compliance with the JCPOA Nuclear Limits- Iran’s Centrifuge Breakage Problem: Accidental Compliance,” Institute for Science and International Security, September 21, 2017. <http://isis-online.org/isis-reports/detail/update-on-irans-compliance-with-the-jcpoa-nuclear-limits#fn4>

² More information about the heavy water issue can be found in, “Heavy Water Loophole in the Iran Deal,” by David Albright and Andrea Stricker, Institute for Science and International Security, December 21, 2016. <http://isis-online.org/isis-reports/detail/heavy-water-loophole-in-the-iran-deal>

operated more than “roughly 10” IR-6 centrifuges in a cascade. It has also built and operated more advanced centrifuges than it is allowed, and it has misused quality assurance limitations to conduct banned mechanical testing of advanced centrifuges.

The Trump administration is committed to robust enforcement of the JCPOA. So far, this approach has reduced the number of violations, although not eliminated all of them. In addition, Iran’s overreach on developing advanced centrifuges has led to the bulk of its excess centrifuges breaking. But inadvertent compliance is not enough, and Iranian centrifuge manufacturing needs careful on-going scrutiny. Iran could be building excessive numbers of centrifuges as we speak.³

Then of course, there are the problems of the IAEA gaining access to military sites. The Parchin issue, where inspectors found particles of enriched uranium at a former nuclear weapons-related high explosive test site, remains unresolved.⁴ The arrangement made with Iran did not permit them to return for additional investigation. The issues involving Iran’s past nuclear weapons work were never resolved, merely swept under the rug in the rush to implement the JCPOA.

A new development, pointed out by my Institute, involves the non-implementation of Section T, Annex 1 of the JCPOA.⁵ The IAEA Director General recently asked for clarification on implementing Section T, particularly in light of reported Russian opposition to the IAEA accessing Iranian military sites.⁶

Moreover, Iran is likely violating some of the conditions of Section T with regards to certain dual-use equipment suitable for the development of a nuclear explosive device and multi-point high explosive testing activities suitable for a nuclear explosive. The nature of the Section T conditions is analogous to verifying that allowed activities and equipment are not misused in a manner similar to verifying declared nuclear activities, such as uranium enrichment. Moreover, certain activities and equipment are subject to Joint Commission approval. Verification of Section T will undoubtedly require IAEA access to military sites.

Overall, Iran has shown a willingness to cooperate with the IAEA at declared sites, even allowing unprecedented monitoring, but it has demonstrated an unwillingness to cooperate with regards to military sites. This type of behavior is all too familiar to those of us who have followed the agreements with North Korea closely.⁷

³ David Albright and Olli Heinonen, “Is Iran Mass Producing Advanced Gas Centrifuge Components? Can we even know with the way the Iran deal has been structured and implemented so far?” Institute for Science and International Security, May 30, 2017. <http://isis-online.org/isis-reports/detail/is-iran-mass-producing-advanced-centrifuges/8>

⁴ David Albright, Sarah Burkhard, Olli Heinonen, Allison Lach, and Frank Pabian, “Revisiting Parchin: With plenty of evidence of past Iranian nuclear weapons activity at Parchin, the IAEA needs to revisit the site,” Institute for Science and International Security, August 21, 2017. <http://isis-online.org/isis-reports/detail/revisiting-parchin/8>

⁵ 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/isis-reports/detail/verifying-section-t-of-the-iran-nuclear-deal/8>

⁶ 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-idUSKCN1C12AN>

⁷ See for example David Albright and Kevin O’Neill, eds., *Solving the North Korean Nuclear Puzzle* (Washington, D.C.: Institute for Science and International Security Press, 2000).

My Institute has cataloged violations of the JCPOA. We use that term because our intent is to obtain robust enforcement where no violation is too small to challenge and correct and limitations are strictly interpreted. However, the Iran Nuclear Agreement Review Act of 2015 uses a somewhat more complicated definition of a violation. It does so principally because this act is focused on determining a basis for Congress to re-impose nuclear sanctions under an expedited procedure. Under INARA, there are material breaches and noncompliance, where a material breach is defined as any failure on the part of Iran to perform its commitments that substantially benefits Iran's nuclear programs, decreases the amount of time required by Iran to achieve a nuclear weapon, or deviates from or undermines the purposes of the JCPOA. Noncompliance is anything that departs from the terms of the JCPOA that is not a material breach. Under the 90-day certification requirement in INARA, the President must certify that Iran has not committed a material breach, or if it has, that it has "cured" such a breach. Noncompliance cases are required to be submitted to Congress every 120 days in a report. These reports have never been made public.

The violations above, including the ones involving heavy water overage, more than ten centrifuges operating in a IR-6 cascade, and carbon fiber, appear to be examples of noncompliance. The one involving excess numbers of centrifuges would be a material breach that has been inadvertently cured as of several weeks ago. The potential violations of Section T, namely the unauthorized utilization of dual-use equipment suitable for the development of a nuclear explosive device and multi-point high explosive testing activities suitable for a nuclear explosive, could be material breaches under the INARA definition. Thus, resolving the Section T issues should be a priority.

The justification and need to better enforce and fix the JCPOA and associated agreements is clear. But what to do? We are all awaiting President Donald Trump's decision regarding the 90-day certification under INARA and the administration's rollout of its Iran policy more generally. If the administration decertifies, it would be fully justified under the INARA criteria. Even setting aside uncured material breach issues, which I agree are debatable, the President has a solid case to decertify based on another criterion, namely whether the suspension of sanctions remains vital to U.S. national security interests and proportionate to Iran's efforts to terminate its illicit nuclear programs. By decertifying, the President would send a powerful signal that the nuclear deal has a fundamentally flawed architecture, which cannot be fixed by better enforcement alone.

My colleague Mark Dubowitz and I have recommended a middle course of decertifying but not re-imposing nuclear sanctions.⁸ Instead, the number of non-nuclear sanctions should be increased and INARA and the JCPOA fixed in Congressional legislation. The outline of this approach includes lengthening the certification period beyond 90 days, and rewriting U.S. policy to eliminate the sunsets in the JCPOA and UNSC resolution 2231, tighten inspections, and implement fully Section T. Congress has already done significant legislative work on repairing the five-year arms and eight-year ballistic missile sunsets in resolution 2231 but the president has not announced that this is U.S. policy or how this policy affects sunsets in resolution 2231 and will be enforced. In cooperation with the administration, Congress should fix the nuclear deal

⁸ David Albright and Mark Dubowitz, How Trump Can Improve the Iran Deal," *The Wall Street Journal*, September 25, 2017. <https://www.wsj.com/articles/how-trump-can-improve-the-iran-deal-1506381353>

legislatively, focusing on the nuclear sunsets and inspections. The president needs to announce and explain his Iran policies.

It should be pointed out that this approach does not violate the JCPOA. Nuclear sanctions would not be re-imposed.

This approach has an advantage of allowing the administration to focus on implementing its new Iran policy. Under this policy, the JCPOA is but one aspect of many aimed at confronting Iran's malign behaviors.

The Trump administration should continue seeking consensus with European allies on ways to fix the nuclear deal. A goal should be to outline conditions under which transatlantic sanctions would be re-imposed if Iran is unwilling to accept new conditions on sunsets and inspections.

Under this approach, it is unlikely that Iran would walk away from the deal and restart its sensitive nuclear activities. It would not want to be blamed for collapsing the JCPOA and to risk the full reinstatement of U.S. and European nuclear-related sanctions. I believe it is more likely Iran will seek negotiations rather than a confrontation. It makes sense at some point to re-engage with Iran on negotiating fixes to the deals, including establishing permanent limitations on Iran's arms, ballistic missile, and nuclear programs.

However, if it does renege on the nuclear deal, the United States can focus on repairing and strengthening its relationship with its European allies and pushing back against Iranian behavior and activities with a free hand.