

## Update on IR-5 Centrifuge Issue: Taking Stock

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About a month ago, we raised the question of whether Iran had violated its commitments under the Joint Plan of Action (JPA) when it fed for the first time uranium hexafluoride (UF<sub>6</sub>) into the IR-5 centrifuge at the pilot enrichment plant at Natanz. We have welcomed the ensuing debate and sought to learn from it. Overall, no definitive answer has emerged, with positions on this question varying. Most viewed the feeding of the IR-5 as problematic.

One issue is clear, however: the Joint Plan of Action does not expressly *allow* Iran to feed the IR-5 centrifuge. In a reading of the JPA and U.S. government talking points on the extension agreement, the U.S. administration position appears to be the most compatible with the intention of the JPA, namely that the feeding into the IR-5 centrifuge was inconsistent with its understanding of the agreement and Iran should not do it.

The Joint Plan of Action has the following sentence concerning centrifuge R&D:

"Iran will continue its safeguarded R&D practices, including its current enrichment R&D practices, which are not designed for accumulation of the enriched uranium."

This provision of the JPA is sometimes misunderstood. The United States, at least one party of the P5+1, interprets this commitment as indicating that Iran has agreed that it would effectively freeze centrifuge R&D efforts at November 2013 levels. The allowed activities include those activities which are not designed for the accumulation of enriched uranium, but these activities are not the only ones affected by this provision. The word "continue" refers to anything occurring at the time of the signing of the JPA on November 24, 2013: thus, the interpretation that Iran's decision to begin feeding the IR-5 was, if not a violation, against the intention of this provision.

A recent set of U.S. government talking points on the November 2014 extension agreement states that Iran has agreed among other limitations on centrifuge R&D not to feed the IR-5 centrifuge with uranium hexafluoride. The talking points section on centrifuge R&D also makes clear that the U.S. government view is that limits on centrifuge R&D predate the November 2014 extension agreement. Two sentences in the section discussing limits on centrifuge R&D are relevant:

- “For the next seven months, thanks to the terms of this extension and **previous commitments**, Iran is effectively prevented from moving to the next level of development of each of its advanced centrifuges.” (emphasis added)
- “While most of this [the listed limitations on centrifuge R&D] **pre-existed the extension** - the extension helps plug the gaps and ensure that all models of Iran's advanced centrifuges cannot move to the next phase of testing.” (emphasis added)

Clearly, it was the view of the US government, as reflected in a statement by a senior U.S. official to ISIS in November that the feeding of the IR-5 was inconsistent with their understanding of the deal. Upon learning of the feeding from the November 2014 IAEA Iran safeguards report, they asked Iran to "knock it off." Iran did.

Even so, the question remains whether “inconsistent with one’s understanding” means that there has been a legal violation. ISIS consulted a prominent lawyer, who responded:

“One might use the word ‘inconsistent’ in cases where (a) it is clear that an act is a violation, but the use of the word ‘violation’ is too incendiary; or (b) it is not absolutely clear on the face of the text that it is a violation - that it was inconsistent with the intent, but perhaps the language agreed on was a bit less clear.”

But one conclusion stands out, it is not correct to assert that the JPA *allows* Iran to feed the IR-5 centrifuge, as a few commentators have tried to do. This mistaken view appears to result from misinterpreting the JPA. This argument also ignores the fact that much of the enforcement of a diplomatic agreement is left to the interpretation of the parties; at the very least, the U.S. interpretation of the IR-5 feeding as being inconsistent with their understanding of the deal was then met with a good will act by the Iranians to halt the activity, even if Iran did not view it as a legal violation.

Some of those who would claim that feeding the IR-5 was legitimate are, as a basis for their argument, pushing an agenda: they are trying to protect an agenda of preventing Congress from passing sanctions legislation or a breakdown of efforts to reach peace with Iran, and thus view any threat to that agenda as an attack that must be put down. But these commentators are ignoring the technical basis for the agreements reached with Iran to date and the long term agreement sought. And the technical details matter. The reporting of possible issues with technical implementation is necessary to maintaining an agreement over the short and long term.