



Possible Military Dimensions

Institute for Science and International Security

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We are releasing a series of reports containing our analysis of specific key issues in the Joint Comprehensive Plan of Action. We are neutral on whether the deal should be implemented. We are using our role as a technical nonproliferation organization to highlight strengths as well as potential problems and remediation steps.

The Joint Comprehensive Plan of Action (JCPOA) appears to require Iran to resolve the International Atomic Energy Agency's (IAEA's) concerns about the possible military dimensions (PMD) to Iran's nuclear programs. The JCPOA explicitly requires Iran to complete a set of agreed upon steps with the IAEA prior to Adoption Day, which falls in October 2015, and well before Implementation Day. By mid-December, the IAEA will issue a final assessment on the resolution of all past and present outstanding PMD issues. The public portion of the agreement is not specific regarding what constitutes Iran satisfactorily addressing the IAEA's PMD concerns. For example, what if the IAEA reports that its concerns remain unaddressed in whole or in part? As a consequence, some of the provisions may be left to an interpretation by the parties that is not yet clear to publics. However, the conditions in the agreement allow any member of the E3+3 to not lift sanctions on Implementation Day, if Iran has not met its obligations. Whether Iran is addressing the IAEA concerns should be apparent well before that day.

The stated policy of the United States and the other E3+3 members should be that unless Iran addresses the IAEA's concerns, each will not lift its respective sanctions on Implementation Day. Allowing Iran to stonewall or deceive the IAEA and the E3+3 on the PMD issue would significantly weaken the credibility of verification and increase suspicions that Iran is making time-bound concessions to defuse intense international pressure as part of a strategy to maintain its ability to acquire nuclear weapons later.

Main Provisions Relevant to PMD Issues

IAEA/Iran Roadmap

The JCPOA's sections relevant to the IAEA's PMD issues are related to a recent agreement reached between the IAEA and Iran, "Roadmap for Clarification of Past and Present Outstanding Issues." The IAEA/Iran Roadmap is a separate document from the JCPOA with yet additional, separate and non-public arrangements associated with it. It was signed by Director General Amano and Vice President of Iran Ali Akbar Salehi on July 14, 2015. The full public text of the Roadmap is included here with paragraph numbers from the text itself added to help in linking various provisions to language in the JCPOA (with bolding of key points added):

- Paragraph 1: **The IAEA and Iran agreed on a separate arrangement that would allow them to address the remaining outstanding issues, as set out in the annex of the 2011 Director's General report**

(GOV/2011/65). Activities undertaken and the outcomes achieved to date by Iran and the IAEA regarding some of the issues will be reflected in the process.

- Paragraph 2: **Iran will provide, by 15 August 2015, its explanations in writing and related documents to the IAEA, on issues contained in the separate arrangement mentioned in paragraph 1.**
- Paragraph 3: After receiving Iran's written explanations and related documents, **the IAEA will review this information by 15 September 2015, and will submit to Iran questions on any possible ambiguities regarding such information.**
- Paragraph 4: After the IAEA has submitted to Iran questions on any possible ambiguities regarding such information, **technical-expert meetings, technical measures, as agreed in a separate arrangement, and discussions will be organized in Tehran to remove such ambiguities.**
- Paragraph 5: **Iran and the IAEA agreed on another separate arrangement regarding the issue of Parchin.**
- Paragraph 6: All activities, as set out above, will be completed by 15 October 2015, **aimed at resolving all past and present outstanding issues**, as set out in the annex of the 2011 Director General's report (GOV/2011/65).
- Paragraph 7: The Director General will provide regular updates to the Board of Governors on the implementation of this Road-map.
- Paragraph 8: **By 15 December 2015, the Director General will provide, for action by the Board of Governors, the final assessment on the resolution of all past and present outstanding issues, as set out in the annex of the 2011 Director General's report (GOV/2011/65). A wrap up technical meeting between Iran and the Agency will be organized before the issuance of the report.**
- Paragraph 9: Iran stated that it will present, in writing, its comprehensive assessment to the IAEA on the report by the Director General.
- Paragraph 10: In accordance with the Framework for Cooperation, the Agency will continue to take into account Iran's security concerns.

Conditions in JCPOA and Brief Commentary in Italics

The JCPOA does not contain a major PMD section of its own. Rather, it refers to the PMD issue through three conditions linked to the Roadmap. Bolding of important language and italicized comments by ISIS are included.

1. The first is in the main agreement under "Transparency and Confidence Building Measures:"

Iran will fully implement the "Roadmap for Clarification of Past and Present Outstanding Issues" agreed with the IAEA, containing arrangements to address past and present issues of concern relating to its nuclear programme as raised in the annex to the IAEA report of 8 November 2011 (GOV/2011/65). **Full implementation of activities undertaken under the Roadmap by Iran will be completed by 15 October 2015, and subsequently the Director General will provide by 15 December**

2015 the final assessment on the resolution of all past and present outstanding issues to the Board of Governors, and the E3+3, in their capacity as members of the Board of Governors, will submit a resolution to the Board of Governors for taking necessary action, with a view to closing the issue, without prejudice to the competence of the Board of Governors.

This condition requires full implementation of the Roadmap and includes both a critical IAEA report and a Board of Governors resolution that will be submitted by the E3+3.

2. The second is paragraph 66 in annex 1 and again refers to the Roadmap: “Iran will complete all activities as set out in paragraphs 2, 4, 5, and 6 of the “Roadmap for Clarification of Past and Present Outstanding Issues,” as verified by the IAEA in its regular updates by the Director General of the IAEA on the implementation of this Roadmap.” This condition must be implemented by Adoption Day, which is three months after the United Nations Security Council endorsed the JCPOA.

It is not known the substance of the IAEA’s investigation and what has been agreed on by Iran and the IAEA in separate arrangements to the Roadmap. .

3. The third is a general provision in Annex 5 on implementation and included in a list of nuclear-related obligations to be implemented prior to Implementation Day, namely: “Complete the modalities and facilities-specific arrangements to allow the IAEA to implement all transparency measures provided for in Annex 1.”

This provision may imply that Implementation Day does not require Iran to fully address the IAEA’s PMD concerns. On the other hand, one could argue that if Iran does not address the IAEA’s concerns, such as by denying access to key sites or individuals, the IAEA cannot implement all transparency measures called for in Annex 1. For example, if Iran denies the IAEA access to sites prior to Implementation Day, can it reasonably expect access afterwards to these same sites? If not, then one could expect Iran to violate the access requirement after Implementation Day and thus block the IAEA’s ability to implement required transparency measures.

Assessment of Key Provisions

A straightforward reading of the key provisions affecting the PMD issue would allow the conclusion that by agreeing to “fully implement” the roadmap, Iran has agreed to fully resolve the IAEA’s PMD concerns prior to Implementation Day. However, this latter criteria is not stated in the JCPOA or its annexes.

Moreover, there are no explicit requirements that Iran must cooperate sufficiently so that the IAEA can report that its concerns are addressed. If Iran provides by August 15 unsatisfactory answers about its past nuclear work related to nuclear weaponization and the development of a missile payload for a nuclear weapon, what happens? If then it does not adequately clarify the issues before December 15, can Iran get away with what amounts to a simple box checking exercise in which Iran provides false civilian rationales for its various experiments and work? So far Iran has fully denied ever working on nuclear weapons and claims evidence to the contrary is based on forged and falsified information. If this exercise provides real, sound answers and information from Iran, this would be a positive development. But a box-checking exercise by Iran should not be acceptable; deadlines should be extended and Implementation Day delayed until the PMD matter is resolved.

According to the roadmap, the IAEA will provide a “final assessment on the resolution of all outstanding issues of past and present concern.” Is this a written assessment with the fundamental purpose of stating whether Iran has addressed all of the IAEA’s concerns? Paragraph one states that Iran and the IAEA agreed to “address the remaining outstanding issues.” It is reasonable to conclude that the IAEA should report whether Iran has addressed all of them by December 2015. In order to reduce doubt about this issue, the United States should insist that the IAEA be clear about whether all concerns have been addressed.

Due to the secretive nature of some of the arrangements under the Roadmap and the short time schedule, it is not known whether the IAEA’s investigation will be a full-scope, rigorous investigation. The IAEA will need to work quickly to meet the four-month timeframe. However, it is unknown whether the secret work plan includes access to PMD-relevant sites other than Parchin, sample taking, the ability to interview key scientists and engineers in a non-iterative manner, review documents at request, view computer programs associated with experimentation, or visit companies and manufacturing centers reportedly involved in past military nuclear work. These provisions have been part of past IAEA investigations in South Africa and Iraq, for example, allowing it to determine the nature and status of undeclared activities, and would provide an important understanding and baseline for the future about how far Iran has come in nuclear weapons development and the knowledge and capabilities that remain.

The IAEA’s December report should be made public. It should not be a leap of faith on the part of publics that the matter will be fully and adequately resolved when December 15 comes and the Board of Governors must adopt a resolution about the report.

The EU3+3 resolution could be critical in certifying that Iran has addressed all of the IAEA’s PMD concerns. However, if Iran does not do so, the resolution should make note of this failure and lack of compliance with its obligations under the JCPOA to fully implement the Roadmap.

Broader Conclusion and Revisiting PMD Concerns

The JCPOA makes clear that after Implementation Day and the lifting of the major sanctions, Iran and the IAEA may revisit the PMD issues, even if they have been fully resolved under the roadmap. Several JCPOA provisions refer to the IAEA reaching a “broader conclusion” under the Additional Protocol, which is an IAEA term that signifies a multi-year investigation, which would likely include the PMD issues, in order to draw a conclusion that all of Iran’s nuclear materials remain in peaceful activities.¹ In countries such as Canada and South Africa, this determination required years of work and involved detailed examinations of past activities.

However, the linkage of sanctions relief to reaching a broader conclusion, and by implication a more comprehensive resolution of the PMD issues, is weak. For example, the lifting of the international arms or ballistic missile embargo can be accelerated if the IAEA reaches a broader conclusion. However, the deal does not appear to *require* reaching a broader conclusion before the lifting of conventional or missile embargoes; they expire after five and eight years, respectively in any case. A broader conclusion remedy appears to be mainly an incentive to Iran, but a weak one, since the embargoes will expire regardless of whether the provision is met. Certainly, the effectiveness of this provision to encourage Iranian cooperation with the IAEA

¹ In practical terms the IAEA’s ability to draw a broader conclusion depends on the state having an Additional Protocol. It involves the IAEA reaching two conclusions: that no indication of diversion of declared nuclear material exists and that no indication of undeclared nuclear material and activities exists. Combined, the IAEA can draw a broader conclusion for the State and for the year in question, that all nuclear material remained in peaceful activities.

can be questioned. It is another reason to insist that the IAEA's PMD concerns be fully addressed prior to Implementation Day.

If under the Additional Protocol, the IAEA revisits the PMD issue as part of forming a broader conclusion, it can be expected to seek access to the key sites it has identified as part of Iran's past nuclear weapons effort. As part of that effort, the IAEA can usefully use the Access condition in Annex 1 to visit sites developed as part of its PMD investigation. If Iran has denied the IAEA access to these sites before Implementation Day, a confrontation over access may occur if Iran continues to deny access. Although the excessive delay in access enshrined in JCPOA is a general verification problem (see ISIS's JCPOA analysis on Verification (to be published), with regards to already identified PMD-related sites, this delay is unlikely to matter. The IAEA has been waiting in some cases for years to gain access to these sites, so a several week delay in access is unlikely to matter.

However, it should be noted that if in the course of its on-going work on forming a broader conclusion, the IAEA learns of activities or sites unknown to it previously, then prompt access may matter. The current, relatively long access time could provide adequate time for Iran to hide or destroy evidence. As a result, even though the access condition is clear, the EU3+3 must engage in a discussion with Iran to expedite access to avoid undermining the central provision of the JCPOA to ensure that Iran's nuclear programs are strictly peaceful.

Remediation Recommendations

In sum, the JCPOA does not state explicitly the consequences for Iran not addressing all of the IAEA's PMD's concerns, in particular, whether Iran must do so as one of the requirements for Implementation Day to occur. Moreover, after Implementation Day, the consequence for continuing to not address the PMD issue does not appear substantial. The broader conclusion criterion appears to be more of an incentive than a requirement for sanctions relief. However, if the IAEA asks for access to PMD-related sites, as expected, the whole agreement may be in jeopardy, if Iran continues to refuse access. So, one of the first crises after implementation of the JCPOA could involve the PMD issue, assuming that Iran does not resolve the IAEA's concerns prior to Implementation Day.

A substantial test of the adequacy and worth of the JCPOA will be in how the PMD issue is resolved this fall, in particular as expressed in Iran's activities through Adoption Day and findings of the IAEA's December assessment. Much will depend on the will of the EU3+3 and the IAEA to hold Iran accountable and demand credible answers about its past military related nuclear activities.

Iran's activities through Adoption Day and the IAEA's December 2015 report should be decisive considerations in whether sanctions are lifted. If all of the IAEA's PMD concerns are not addressed, then it should be concluded that Iran has not met the key provision of fully implementing the Roadmap.

Although the standing or significance of the EU3+3 Board of Governors resolution in terms of sanctions relief is hard to determine from the JCPOA, the resolution certainly can record officially whether or not Iran has complied with its obligations under the Roadmap.

There may be a temptation, if Iran once again stonewalls the IAEA this summer and fall, to create another Roadmap or otherwise allow Iran to escape the consequences of its actions. The substance and fate of the EU3+3 resolution may also be uncertain, if one member seeks to excuse Iran's violations of its commitments or determines it should allow Implementation Day to proceed, even if IAEA concerns have not been addressed.

These scenarios should be anticipated and prevented. U.S. policy should be firm that the date of Implementation Day depends on Iran first living up to its obligations to fully address all of the IAEA's PMD concerns. If this is not the policy of the administration, it should clearly state so.

Because of uncertainties in the situation, the entire process needs to be scrutinized carefully and clarified by the United States and its E3+3 allies. This evaluation should include specific evaluation criteria.

One can envision two positive cases where Iran should be judged as having met its requirements under the Roadmap and the JCPOA prior to Implementation Day. They are:

- Iran admits to having had a nuclear weapons program and cooperates with the IAEA this fall, including laying out a plan to more fully resolve these issues in the context of the IAEA reaching a broader conclusion.
- The IAEA assesses in its December 2015 report that Iran has likely had nuclear weapons-related programs and details its next steps in ensuring that those programs, or off-shoots of them, do not continue; and Iran, while it may not explicitly agree with that determination, cooperates with the IAEA effort, including on access.

On the other hand, there are cases which would signal that Iran has not met its obligations and the United States should state that sanctions would not be lifted until Iran has done so:

- The December 2015 IAEA report states that Iran has not cooperated with its investigations.
- The December report demonstrates, as interpreted by the United States, that Iran has not addressed the IAEA PMD concerns in a concrete manner.

The United States appears to be fully within its commitments and obligations under the JCPOA to refuse to end sanctions on Implementation Day if Iran does not address the IAEA PMD's concerns. This position should be stated clearly, often, and publicly, and it should encourage similar policies by its European partners.