

The President's Iran Decision: Next Steps

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Madam Chairman, Mr. Ranking Member, and distinguished members of the Committee: Thank you for inviting me to appear before you today to discuss the President’s decision to “decertify” the Iran nuclear deal (Joint Comprehensive Plan of Action or JCPOA) and the steps the United States and Congress should take to ensure Iran never acquires a nuclear weapon and to prevent it from threatening the United States and its allies in the region and around the world. There are few more important or urgent issues facing the United States today and I appreciate your inviting me to appear along with two other distinguished experts for a discussion of these critical issues.

The Iranian regime remains implacably hostile to the United States and continues to foment instability in the Middle East through its sponsorship of terrorism and use of proxies to expand its regional influence. It remains a vital U.S. national interest to ensure it never acquires a nuclear weapon while countering its destabilizing activities in the region at the same time.

To help think about how best to achieve these goals and the next steps the United States should take, I will make three main points: 1) the JCPOA is doing what it was designed to do—prevent Iran from advancing toward a nuclear weapons capability; 2) terminating the JCPOA—as the President has threatened to do if it is not amended—would isolate the United States, allow Iran to resume its full range of nuclear activities, and badly undermine U.S. credibility around the world; and 3) the United States can do more to prevent Iran

from threatening U.S. interests in the region and around the world, but we will be better placed to do so if we remain in the deal, with the support of our allies, than if we walk away from it.

1) The JCPOA is doing what it was designed to do.

As Congress considers “next steps”—and certainly before it takes any legislative measures that could lead to the deal’s termination—it is important to recall where we were before we had the deal and what it has accomplished.¹ By the time negotiations started in 2012, Iran had mastered the full nuclear fuel cycle. It had installed some 19,000 centrifuges, was doing unconstrained centrifuge research and development, and was about to complete the construction of a heavy water reactor that if completed could have produced enough weapons-grade plutonium for up to two bombs per year. It had a stockpile of around 30,000 pounds of low (below 5 percent) enriched uranium, was expanding its stockpile of 20 percent enriched uranium that would have made developing nuclear weapons faster and easier, and there were many open and outstanding questions about its compliance and cooperation with International Atomic Energy Agency inspections.

Today, as a result of the JCPOA (as we know from the additional inspectors and 24/7 cameras that were deployed as part of the deal), Iran operates only some 5,000 older-model centrifuges, maintains a much-reduced stockpile of enriched uranium, limits its centrifuge research and development programs, and has dismantled the core of its heavy water nuclear reactor, which is now filled with concrete. I vividly remember discussions with Israeli national security officials in 2013 about our mutual concerns if that reactor was ever completed—now it never will be. Contrary to what is often alleged by critics, including President Trump last week, Iran had to take all of these steps before it got any sanctions relief. Whereas experts assess that, at the time of the deal, Iran was only months from being able to produce enough nuclear material for a bomb, under these new terms it is now at least a year away, sufficient time for the international community to observe any danger and act accordingly.

I know some Members are concerned about the deal’s “sunset” provisions. But remember that even after some of the deal’s restrictions expire—in 2025 or 2030—Iran is permanently obliged never to “seek, develop, or acquire” a nuclear weapon, prohibited from doing weaponization work, and will continue to adhere to the IAEA’s “Additional Protocol,” its most comprehensive and intrusive inspections regime. No country has ever acquired a nuclear weapon while operating under the Additional Protocol, and Iran’s obligation to adhere to it never expires. In short, as a result of the JCPOA, we are significantly less vulnerable to Iranian nuclear “breakout” than we would be in its absence, and we will remain so indefinitely—with an improved ability to see any attempted breakout coming and deal with it if it does. Ten, twenty, or thirty years from now, Iran will still be prohibited from undertaking weaponization activities and obliged to provide the IAEA access to its nuclear facilities; without the deal Iran could quickly have a weapons-making capability with none of these restrictions or verification measures in place. The irony of leaving the current deal out of concern about such sunset provisions, of course, is that all the restrictions on Iran would sunset immediately.

¹ Some of what follows draws on an article I wrote with Richard Nephew, lead sanctions expert for the U.S. team negotiating with Iran, see Philip Gordon and Richard Nephew, “The ‘Worst Deal Ever’ that Actually Wasn’t,” *The Atlantic*, July 14, 2017.

I know many fair-minded critics who point out that their preferred alternative to the JCPOA was not “no deal” but simply a “better deal.” I certainly understand and respect that line of thinking and would not argue that the JCPOA is perfect. No arms control agreement—or any international agreement for that matter—ever has been. It is of course possible that the Obama administration and its partners—if they had dragged the negotiations out for even longer than two years or walked away in July 2015—could have gotten more in certain areas from Iran. It is also possible, however, that holding out for more—especially on the questions that critics consider the JCPOA’s “fundamental flaws”—could have scuttled any deal entirely. I certainly know of no evidence to support the President’s assertion in his decertification speech that Iran was given sanctions relief “just before what would have been the total collapse of the Iranian regime.”

Some critics also claim that the threat of force could have forced Iran to make more concessions, but that is also far from guaranteed. There are plenty of cases in recent history—Serbia in 1999, Iraq in 2003, Libya in 2011 just to name a few—where even the credible threat of military force did not lead a dictator to make the concessions we demanded, but instead lead to large, costly, and risky military operations with unintended consequences. This is not to say military force should be ruled out to deal with any Iranian attempt to seek a nuclear weapon today or in the future. On the contrary, the administration should maintain and Congress should fund the necessary military capabilities to keep that threat credible. But we should not imagine that the threat of force alone will get Iran to give us everything we want; threatening force to achieve a perfect agreement could lead to having to use it, with unpredictable consequences.

2) Decertification risks collapsing the deal, undermining American credibility, and freeing Iran from its nuclear constraints.

Understanding the benefits of the deal—and the lack of realistic alternatives—helps to understand why the President’s decertification decision puts the United States on such a perilous and unnecessary course. Whereas the U.S. intelligence community, the IAEA, the Europeans, and numerous Israeli security officials all concluded that Iran is complying with the agreement—and the President’s own Defense Secretary, General James Mattis, testified that it was in the U.S. interest—President Trump announced on October 13 that he would not certify the deal according to the terms of the Iran Nuclear Agreement Review Act. In so doing, he passed near-term responsibility for the issue to Congress, threatening to “terminate” the JCPOA if Congress and our allies do not take measures to “address the deal’s many serious flaws.” The administration’s game plan seems to be to use the threat of walking away from the deal to get Congress and the allies to agree on changes and force Iran back to the table to accept a “better deal.” Legislative ideas are currently circulating to amend the deal to include further restrictions on ballistic missiles, expand weapons inspectors’ access to Iranian military sites, and extend the limits on Iran’s uranium enrichment and centrifuge research and development capacity indefinitely.

Needless to say, these are all desirable goals. The problem is that it is impossible for the United States to unilaterally alter fundamental terms of the deal or to imagine that our allies and other parties will agree to try to do so. The JCPOA resulted from more than two years of difficult, multilateral negotiations, has been endorsed by the UN Security Council, and is supported by virtually the entire international community—including countries like Japan, India, South Korea whose cooperation with sanctions and cuts in oil purchases were essential to getting the deal in the first place. Unilaterally amending the provisions of that

deal under these circumstances—whether by including new issues or attempting to extend some of its provisions indefinitely—would be considered by all our allies and Iran as violations of the deal, just as we would consider it impermissible for Iran to unilaterally alter its terms.

Britain, France, Germany and the EU have all already made clear they are concerned about the potential implications of President’s decertification decision and stand committed to full implementation of the deal. Indeed, the EU is already considering activating “blocking statues”—adopted in the 1990s to resist U.S. extra-territorial legislation—that would forbid its companies from cooperating with U.S. secondary sanctions and compensate them for possible penalties. But even if our allies, along with Russia and China, were somehow persuaded to try to seek changes, it is hard to see how Iran would ever agree to give up now what it would not give up when the international pressure campaign was at its peak. Instead, Iran would likely respond to any attempt on our part to alter the deal with its own unilateral amendments, eventually leading to the deal’s ultimate erosion.

Of course, if our allies and Iran refuse to amend the deal, the United States can always pull out unilaterally—as the President has threatened to do. Indeed “decertification” gives Congress authority to use expedited procedures to re-impose nuclear sanctions for sixty days from the date of the President’s announcement, and even if it chooses not to do so, the President can effectively re-impose sanctions himself at any time. Either of those steps, however, would almost certainly lead to the collapse of the deal.

All of these scenarios—triggered by the decertification decision, the failure of an unrealistic renegotiation plan, and the ultimate termination of the deal—would have serious consequences. They would isolate the United States, leaving it alone to explain why it killed a deal they believed was working and making it difficult to re-assemble an effective global sanctions coalition. They would badly damage the United States’ reputation as a reliable partner and diminish the U.S. ability to persuade other potential proliferators—including North Korea—that the United States will respect a deal with them even if they make painful concessions. And most importantly, they would free Iran from all the restrictions of the JCPOA, including its extensive inspection provisions. Iran would likely resume its frozen nuclear activities, potentially leaving us with the terrible alternatives of allowing those activities to advance even in the face of sanctions, or using military force to temporarily set them back.

Some critics of the Iran nuclear deal often point to North Korea as the case against “flawed” agreements. But the North Korea precedent actually carries a different message. Not long after the Clinton administration had negotiated an agreement in 1994 to stop Pyongyang’s nuclear program, Congress withdrew support for that agreement, rejecting what it considered the “appeasement” of a rogue state and insisting that the Clinton administration negotiate a “better deal.” In part as a result, we ended up not with a better deal but with no deal at all — and the paranoid, nuclear-armed North Korea that we are dealing with today. We will never know if it would have been possible to effectively implement an agreement with a North Korean regime that we know tried to cheat and may have been determined to seek nuclear weapons, but we do know the result of not trying to do so. Congress and the administration should keep that precedent in mind as they consider whether to risk killing a deal that is working and rolling the dice that they can produce an even better one.

3) We can enforce the JCPOA and counter Iran at the same time.

Even while fully complying with the JCPOA, the United States can do more to vigorously confront Iran's many other threats to U.S. interests and partners. Indeed, the deal's negotiators were very clear with Congress, our allies, and the Iranians, that we would not hesitate to stand up to Iran in the region and penalize its continued support for terrorism, use of proxies to interfere in neighboring states, development of ballistic missiles that could threaten us or Iran's neighbors, and persistent human rights violations (which includes the unjustified and appalling detention of American citizens). We should do just that, while understanding there is a far better chance of achieving our goals if the United States pursues them while maintaining the support of our allies and making Iran's behavior—rather than American trustworthiness—the focus of international attention. Iran's leaders like nothing more than seeing Americans divided among themselves and separated from their key international partners.

Looking ahead, there are several things the United States can do both to counter the spread of Iranian influence in the region and to ensure that the JCPOA works effectively not just now but even after some of its restrictions are lifted.

The first step is to fully enforce the current deal in all its aspects. Contrary to what some critics allege, the deal includes effective enforcement provisions including the ability for the United States to force the re-imposition of UN sanctions in case Iran violates key provisions and fails to remedy the violation according to the processes provided for in the deal. The main Iranian "violation" of the deal cited on October 13 by President Trump—its temporary possession of slightly more than its limit of 130 metric tons of heavy water—was actually an excellent example of the effective functioning of the deal. The excess was quickly observed by inspectors and Iran quickly remedied the situation (which in any case was not threatening because the JCPOA had already required Iran to dismantle its only heavy water reactor and has no reprocessing capacity). Nor is it accurate that the JCPOA does not provide access to Iranian military sites. If there is a basis for such access Iran must provide it; our chances of reaching agreement with our partners and the IAEA on that basis will be greater if we abide by the deal ourselves rather than convey the impression that we are looking for a pretext to blow it up.

Second, we should use all the tools at our disposal—including the full range of sanctions consistent with the JCPOA—to increase the costs for Iranian support for terrorism, ballistic missile activity, and human rights violations. Congress took a useful step in this direction last summer with the sanctions authorized in the Countering America's Adversaries Through Sanctions Act, which the administration has for some reason been slow in implementing. We should also do more to empower local actors in Iraq, Syria, Yemen, and elsewhere who are attempting to resist Iran's efforts to exercise control. We should pursue discussions with our European allies about complementary steps they could take, including designating the entirety of Hezbollah as a terrorist group, sanctioning entities for ballistic missile work, and cutting off money flowing to Iranian front companies and logistics pipelines involved in proliferation or terrorism. At the same time we should understand that efforts to pressure them into some of these steps by threatening to terminate the JCPOA or with secondary sanctions could backfire; some European officials have already said such steps have become more difficult now that the President has made European support a prerequisite for remaining in the nuclear deal.

Third, the United States can counter Iran by continuing to provide vigorous support to our allies and partners in the region most vulnerable to Iranian meddling. This support should include implementation of the 2016 ten-year Memorandum of Understanding to provide an unprecedented \$38 billion over 10 years to Israel—including \$5 billion for missile defense assistance and resources for additional F-35 aircraft—as well as continued defense sales and missile defense cooperation with our Gulf partners. Congressional approval of the sale of the Terminal High-Altitude Area Defense system to Saudi Arabia will send a strong message that the United States will act to counter the expansion of Iran’s ballistic missile program. Iran’s regional neighbors collectively already spend many times more on defense and security than Tehran; we should ensure that they continue to have the means necessary to defend themselves and deter further Iranian encroachment.

I know many Members of Congress have legitimate concerns that the sanctions relief provided to Iran as part of the JCPOA has fueled Iran’s expansion throughout the region, the reality is that Tehran’s interference in the domestic affairs of regional states is relatively cheap, and relatively insensitive to Iran’s overall budgetary picture. While a boost in revenues from unfrozen assets and increased oil sales obviously provides some scope for military interventionism, the director of the Defense Intelligence Agency has testified that the “preponderance” of those assets have gone to economic development and infrastructure, as one would expect given Iran’s enormous domestic needs. And the idea that a windfall from sanctions relief has turned Iran into an economic powerhouse fails to take into account the degree to the collapse in oil prices have undercut much of the financial benefit Iran has received.

Fourth, the United States should do more to reenergize diplomacy in the region, to contain the conflicts—in Syria, Yemen, Iraq and elsewhere—that Iran exacerbates and exploits to expand its influence. An underfunded and demoralized State Department—where key positions remain unfilled—doesn’t help. Nine months into the administration we still have no ambassador in Qatar or Saudi Arabia and not even a nominee for the critical position of Assistant Secretary of State for Near Eastern Affairs.

Finally, looking even further ahead, the administration could start discussions now with our allies about potential supplementary or follow-on agreements to the JCPOA. Such discussions might explore the possibility of extending the duration of certain nuclear restrictions, or arrangements by which Iran would rely on an international consortium for enriched uranium rather than developing an industrial-scale national program. Like the JCPOA itself, these outcomes could only result from give-and-take among the parties and the United States would have to put something on the table, but the potential trade-offs are worth exploring. By staying in the JCPOA and demonstrating that we uphold our end of an agreement when we reach one, we will be better placed to hold our adversaries to this and potentially other such agreements in the future.

Madam Chairman and Members of the Committee, the JCPOA has certainly not solved all of our problems with Iran, which will require constant focused attention and resources going forward. If we confront these challenges on a strong, bipartisan basis, and with the support of our key allies abroad, I am confident they can be met.

Thank you for inviting me and I look forward to responding to your questions.
