

ATTACHMENT

Analysis in Support of September 2, 2015 Letter to President Obama from Nuclear Weapon, Arms Control, Nonproliferation and Intelligence Experts

The Joint Comprehensive Plan of Action (JCPOA), agreed on July 14, 2015 between Iran and the E3/EU+3 (the United States, the United Kingdom, France, Germany, the Russian Federation, China and the High Representative of the European Union for Foreign Affairs and Security Policy) contains significant fatal flaws. Among these are: the JCPOA permits Iran to continue and expand troubling activities; it undercuts Iran's obligations under Article II of the NPT; it creates a less effective verification regime than currently exists; it legitimizes Iran's illegal nuclear program; and it makes hundreds of billions of dollars available for Iran's conventional and unconventional military programs and other hostile activities, including support for terrorism.

JCPOA Permitted Activities

The JCPOA permits Iran to continue and expand with the assistance of the other signatories of the JCPOA, activities found by the United States, the International Atomic Energy Agency (IAEA), and the United Nations Security Council to be in violation of Iran's binding legal obligations under the Nuclear Nonproliferation Treaty (NPT).

Former Secretaries Kissinger and Schultz noted that, under the approach taken in the JCPOA, "Iran permanently gives up none of its equipment, facilities or fissile product ... it only places them under temporary restriction and safeguard—amounting in many cases to a seal at the door of a depot or periodic visits by inspectors to declared sites."¹ Two areas of special concern are centrifuges and the undercutting of Iran's existing obligations under Article II of the NPT.

◆ **The JCPOA Permits Iran to Retain, Test, Produce and Operate Existing and Advanced Centrifuges.** Under the terms of the JCPOA, Iran will retain 5060 IR-1 centrifuges in operation at Natanz and 1044 at Fordow, although those at Fordow will be either spun without uranium or remain idle. Until November 30, 2015, Iran is able to retain an additional 328 IR-2m and IR-4 centrifuges. Further, for 10 years "and consistent with its enrichment R&D plan," Iran is permitted to test 11 IR-4 centrifuges.² Iran can—and no doubt will—continue research and development and production of its other advanced centrifuges.³ Gas centrifuges, or enrichment-related infrastructure—including for uranium enrichment—can be installed "exclusively at the locations and for the activities specified under" the JCPOA, which will be at Natanz⁴.

- ❖ While the location and testing of existing centrifuges are addressed in the JCPOA, the limitations are those "consistent with its [Iran's] R&D plan." Should Iran's R&D plan change, it is not clear that this would violate the JCPOA. This is why, when announcing his opposition to the JCPOA, Senator Robert Menendez (D-NJ) said that an acceptable nuclear agreement with Iran must include a moratorium on all centrifuge R&D.⁵
- ❖ There is no prohibition on Iran retaining any existing or producing more of these new centrifuges if it is consistent with Iran's enrichment and enrichment R&D plan to meet the requirements of Annex I to the JCPOA. Indeed, "consistent with its plan," at the end of year 8

Iran will commence manufacturing IR-6 and IR-8 centrifuges without rotors through year 10 at a rate of up to 200 centrifuges per year for each type, and after year 10 it will produce complete centrifuges at the same rate “to meet its enrichment and enrichment R&D needs.”⁶

- ❖ If, as noted above, Iran’s “plan” changes, or Iran suspends its operation of all or part of the JCPOA, or they pursue cover production and operation of centrifuges in violation of the JCPOA, they can acquire sufficient high enriched uranium for a nuclear device in a matter of weeks.⁷
- ❖ As one credible analysis has noted, “In a breakout or cheating scenario, Iran would need far fewer of these advanced centrifuges in a clandestine plant to make weapon-grade uranium than in one using IR-1 centrifuge.” This analysis also observed that Iran would only need 1,125 advanced IR-8 centrifuges to produce enough weapons grade uranium for a nuclear weapon in about two months.⁸ The smaller number of centrifuges needed to produce weapons grade uranium means Iran could build smaller and more difficult-to-detect production facilities.
- ❖ Moreover, new centrifuges are not required to process the uranium for nuclear weapons. Seven years ago, in 2008, IAEA Director General Mohammed ElBaradei warned that Iran could develop a nuclear weapon within six months. On January 20, 2014, former IAEA Deputy Director General Olli Heinonen warned that Iran could build a nuclear weapon in 2-3 weeks. He also acknowledged that this estimate is based only on Iran’s known production— not on what Iran may be capable of doing or may already have done in secret facilities.

◆ **The JCPOA Undercuts Iran’s NPT Article II Obligations.** There are three areas in the JCPOA that raise serious concerns about the future of Iran’s compliance with its obligations in Article II of the Nuclear Nonproliferation Treaty (NPT), to which Iran has been legally bound since 1970.

- ❖ ***The first issue concerns Iran’s failure to reaffirm all of its commitments under Article II of the NPT.*** In the JCPOA, Iran “reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons.” Excluded from Iran’s reaffirmation are its existing Article II obligations not to receive a nuclear weapon or other nuclear explosive device; not to exercise control over such weapons or explosive devices directly or indirectly; and not to receive any assistance in the manufacture of nuclear weapons or nuclear explosive devices.
- ❖ ***Second, the JCPOA permits Iran, with approval, to continue and expand its capabilities for testing a nuclear device.*** Iran commits in the JCPOA⁹ not to engage in a list of activities “which could contribute to the design and development of a nuclear explosive device.” The critical detail is that prohibition only applies if the activities are approved by JCPOA created “Joint Commission.”¹⁰ This Joint Commission, comprised of representatives of Iran and China, France, Germany, Russia, the UK, the U.S. and the EU, or any working groups it may establish, are to “Review and approve in advance, upon request by Iran, the design, development, fabrication, acquisition, or use for non-nuclear purposes of multi-point explosive detonation systems suitable for a nuclear explosive device and explosive diagnostic systems (streak cameras, framing cameras and flash x-ray cameras) suitable for the development of a nuclear explosive device...”¹¹
 - ◆ That the JCPOA permits approval of such nuclear design and test equipment sets a standard of intent in the agreement that will certainly result in Iran’s acquisition of such equipment, and ultimately, in its use of them. In light of Iran’s limited reaffirmation of

the obligations in Article II of the NPT, the JCPOA provisions permitting assistance to and activities by Iran which could contribute to the design and development of a nuclear weapon can only be considered purposeful. In light of this, Annex III of the JCPOA, which provides for Civil Nuclear Cooperation, must be viewed with special concern.¹²

- ❖ ***The third issue concerns past and present possible military dimensions (PMD) of Iran's nuclear program.*** The IAEA has long had serious concerns regarding elements of Iran's nuclear program run by Iran's military, known as possible military dimensions (PMD). The Annex to the November 2011 IAEA Director General's (DG) report is the authoritative statement of these concerns. The Annex provides the IAEA's assessment of 12 indicators of development of a nuclear explosive device. The IAEA identifies the sources of its information, and assesses that the information is credible. While the 2011 report says that some of the activities may have civil as well as military applications, others are specific to nuclear weapons. Among the latter are Iranian preparations for a nuclear test and studies on fuzing, arming and firing a warhead that have no applications in other than a nuclear device.¹³
- ♦ The IAEA Board of Governors and UN Security Council, beginning in 2009, required Iran to cooperate fully with the IAEA to resolve the PMD issues, "including by providing access without delay to all sites, equipment, persons and documents requested by the Agency."¹⁴¹⁵
 - ♦ In his most recent report, the Director General states that: "The Agency has obtained more information since November 2011 that has further corroborated the analysis contained in that Annex. In February 2012, Iran dismissed the Agency's concerns, largely on the grounds that Iran considered them to be based on unfounded allegations, and in August 2014, Iran stated that "most of the issues" in the Annex to GOV/2011/65 were "mere allegations and do not merit consideration".¹⁶
 - ♦ The report also includes the following paragraphs which must be contrasted with the JCPOA outcome:

... since the Director General's previous report, Iranian and Agency officials have held further discussions on the two practical measures agreed in May 2014 in the third step of the Framework for Cooperation that remained to be implemented. Iran shared some information in relation to one of these measures. The Agency and Iran agreed to continue the dialogue on these practical measures and to meet again in the near future.

Since the Director General's previous report, at a particular location at the Parchin site, the Agency has continued to observe, through satellite imagery, the presence of vehicles, equipment and probable construction materials, but no further external changes to the buildings on the site. As previously reported, the activities that have taken place at this location since February 2012 are likely to have undermined the Agency's ability to conduct effective verification. It remains important for Iran to provide answers to the Agency's questions and access to the particular location at the Parchin site. (Emphasis added)

- ♦ The JCPOA ensures that the past and present PMD issues relevant to the development of a nuclear explosive device¹⁷ are closed. It states that Iran will complete its part of the "Roadmap for Clarification of Past and Present Outstanding Issues." This Roadmap was

concluded between Iran and the IAEA on July 14, 2015.¹⁸ According to that Roadmap, Iran has agreed to provide explanations and related documents to the IAEA “on issues contained in a separate arrangement;” participate in technical expert meetings with the IAEA in Tehran to remove ambiguities;” and take technical measures as agreed in another “separate arrangement.” The Roadmap states that one of these separate arrangements concerns the issue of the Parchin military facility. According to the Roadmap and the JCPOA, these activities are to be completed by October 15, 2015. By December 15, the IAEA Director General will provide his final assessment on the resolution of all past and present outstanding issues. At that point, Iran, the U.S., the UK, Russia, China, France and Germany, “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”¹⁹.

- ❖ Under this arrangement, Iran, without providing “access without delay to all sites, equipment, persons and documents requested by the Agency,” based on two “separate arrangements” between Iran and the IAEA, one of which apparently puts Iran in charge of inspecting its own facility and collecting its own samples for the IAEA, the Director General must report by December 15, 2015 whether the nuclear and missile issues are resolved.
 - ◆ Based on his previous positions on the PMD matter, it is clear that he has been pressured by the five permanent members of the UN Security Council to make this issue go away, not by Iran coming clean by allowing the IAEA the access needed to gain a full picture of their program, but by simply closing the IAEA file on this issue. Since at the behest of the United States all UN Security Council resolutions on Iran were eliminated within a week of the completion of the deal, the DG no longer could rely on that support for holding the line.
 - ◆ If the DG reports that all PMD issues are resolved, IAEA credibility will be severely damaged. If he reports that PMD is not resolved, the JCPOA may be weakened but will not be violated since the JCPOA does not require that Iran resolve PMD issues.

Inadequate Verification

Unfortunately we have not been able to review the Verification Assessment of the JCPOA prepared by Secretary Kerry and transmitted to Congress. In a manner unprecedented in arms control, even this unclassified report has not been provided to the American people.

But we do know what your administration has said. Secretary of State Kerry has testified that under the JCPOA “Iran will be subject to the most comprehensive and intrusive verification and transparency measures ever negotiated – so that if Iran cheats, we will know it quickly and be able to respond accordingly.” The evidence, however, indicates Secretary Kerry is wrong. The JCPOA neither represents the most comprehensive and intrusive the verification and transparency measures ever negotiated, nor will we know if Iran cheats, nor will we know it quickly, nor will we be able to respond accordingly. As the late Paul H. Nitze said in his 1988 testimony on the INF Treaty: “poorly verified agreements are in reality far worse than having no agreement at all”.²⁰

- ◆ **The JCPOA is Not as Comprehensive or Intrusive as Other Negotiated Agreements.** There are other negotiated treaties and agreements that might be considered to be more comprehensive and intrusive than the JCPOA. One is South Africa’s arrangement with the IAEA in response to

its 1991 accession the NPT and adoption of an IAEA safeguards agreement which resulted in a transparent “any time –any place, with a reason”²¹ policy for IAEA inspections. The other was the negotiated agreement between Libya and the U.S. and UK on verifiable elimination of Libya’s weapons of mass destruction programs and long-range missiles. This negotiated agreement was more intrusive and comprehensive than the JCPOA, providing not only for Libya’s nuclear program, but also their biological and chemical weapons programs and their longer-range ballistic missile program.

- ❖ Libya agreed to permit U.S. and UK inspectors to visit any site in Libya and even voluntarily identified and took inspectors to sites previously unknown outside Libya.
- ❖ In less than 3 weeks, the U.S. prepared and coordinated a verification agreement with the UK and Libya.
- ❖ Unlike the JCPOA, the terms of the Libya agreement did not permit Libya to retain its programs but provided for their elimination by removal or in-country destruction.
- ❖ In the first month, the U.S. removed from Libya to the U.S. detailed nuclear weapons designs, several containers of uranium hexafluoride (UF₆), centrifuges and additional parts, equipment and documentation, and the guidance sets from Libyan SCUD-C missiles.
- ❖ Within three months, Libya had completed destruction of more than 3,000 chemical bombs and the U.S. removed over 1,000 tons of WMD and missiles to the U.S. by ship, including the rest of the centrifuge components, and all of Libya’s long-range missiles and their launchers. The United States also arranged for the removal of more than 15 kilograms of fresh high-enriched uranium reactor fuel to Russia.
- ❖ This was a far more demanding, comprehensive, and intrusive negotiated regime than the JCPOA.

- ◆ **The JCPOA Fails to Meet Essential Standards for Verification:** The standards for developing a verification regime and evaluating the effectiveness of verification of any agreement should be directly influenced by the compliance record of the party with whom an agreement is reached. Thus, for example, it is to be expected that verification can be far more lax in an agreement with the UK than in one with North Korea. Given Iran’s record of violating its binding obligations under the NPT for over 30 years, we judge that the JCPOA is far too lax. Indeed, far from strengthening verification, the JCPOA, as described below, weakens it.

Effective verification requires the capability to detect possible Iranian noncompliance with the agreement. This means that in spite of Iran’s possible deliberate efforts to conceal its intended violations, the competence to weigh that detected activity against the obligations must be clear enough to determine that a given activity violates the agreement and do in a timely manner so the U.S. can respond to deny the violator the benefits of any violation.

- ◆ **Inadequate Probability of Detection.** The Obama administration’s promised “anytime, anyplace inspections” have been replaced by an inspection regime that reduces IAEA authority to inspect undeclared locations and sure to produce bureaucratic stagnation and inaction that is worse than currently exists.
- ❖ ***No Unfettered Anywhere/Anytime Access to Facilities, Personnel, and Documentation:*** While the Obama administration began denying that it had committed to an agreement that met the standards of anytime, anyplace inspections, shortly after completing the JCPOA, representatives repeatedly did so, particularly in April 2015 after completing the Lausanne

negotiations. Secretary Kerry said “Iran has agreed to allow IAEA to investigate any suspicious site or any allegations of covert activity anywhere.”²² A fact sheet issued by the State Department at that time states (known as the “Parameters for a Joint Comprehensive Plan of Action.”) “Iran will be required to grant access to the IAEA to investigate suspicious sites or allegations of a covert enrichment facility, conversion facility, centrifuge production facility, or yellowcake production facility anywhere in the country.”²³ Energy Secretary Ernest Moniz said: “We expect to have anywhere, anytime access.”²⁴ While Secretary Kerry has said that Moniz’s statement was made before he came into the negotiations, the negotiations Lausanne ended April 2, 2015. Secretary Moniz made this statement on April 20, 2015 in a meeting with editors and reporters at Bloomberg’s Washington office. The President, announcing completion of the JCPOA said the IAEA will have access “where necessary, when necessary.” As highlighted below, the necessity determination is not made by the IAEA.

- ♦ Former IAEA Deputy Director for Safeguards, Olli Heinonen has assessed that “the IAEA verification regime must go further than the Additional Protocol. Contrary to what is commonly understood, the AP does not provide the IAEA with unfettered access.” He went on “the IAEA needs “go anywhere, anytime” access to sites, material, equipment, persons, and documents...”²⁵ Despite this, the U.S. cannot count on having the Additional Protocol.

❖ ***The Additional Protocol Will Not Enter Into Force for At Least 8 Years.*** The model Additional Protocol was developed by the IAEA to try to improve the IAEA’s ability to inspect undeclared locations. Secretary of State Kerry, in testimony before the Senate Foreign Relations Committee on July 23, 2015, said: “Iran has also agreed to accept the Additional Protocol and the Additional Protocol is an outgrowth of the failure of the DPRK experience, which put in additional access requirements precisely so that we do know what Iran is doing. And they have to ratify it before the UN sanctions are lifted at the end of this process. They have to ratify, have to have passed it in their Majles [Iranian Parliament]. They have agreed to live by it from day one.” This is incorrect.

- ♦ Iran signed the Additional Protocol (AP) to its Safeguards Agreement in December 2003 and declared that it would provisionally implement it. In February 2006, Iran notified the IAEA that it would no longer do so.
- ♦ In the JCPOA, while Iran **again** agrees to provisionally implement the AP, Iran does not commit to ratify the AP and bring it into force. Iran only commits to **seek** ratification on “Transition Day,” which is in 8 years or upon a report from the DG of the IAEA in parallel to the UN Security Council stating that “the IAEA has reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities, whichever is earlier.”²⁶ In other words, Iran will not make a binding commitment to the AP until after it is no longer needed.
- ♦ As it has done in the past with the Additional Protocol, Iran may at any point terminate its provisional application of the AP. By not requiring that either Iran bring the AP into force by a date certain or that existing sanctions will continue, the JCPOA permits Iran to cease application of the AP without violating the JCPOA.
- ♦ In the JCPOA, as discussed above, Iran’s commitments are consistently referred to not as binding obligations, but as being voluntary commitments consistent with Iran’s plans. Iran’s “own long-term enrichment and enrichment R&D plan” is “to be submitted as part of the initial declaration for the Additional Protocol to Iran’s Safeguards Agreement.”²⁷

The problem is that declarations under the Additional Protocol (AP) **are only required after it enters into force.**²⁸

- ♦ For the duration of the JCPOA the IAEA is unlikely to have a legally binding Iranian Additional Protocol, and thus will not have a declaration of Iran's plans on enrichment and stockpiles.
- ♦ Since Iran is clearly not going to provide the access without delay to all nuclear sites, equipment, persons and documents that the IAEA wanted access to before the JCPOA, the IAEA is unlikely to have an accurate picture of Iran's past and present military nuclear activities. Therefore, the IAEA is being tasked with verifying what is happening in a house when it is only permitted into the front parlor and does not have a diagram showing the size and layout of the whole building, which may be far greater than estimated.

❖ ***Increased Monitoring at Declared Facilities but Reduced Capability for Undeclared Facilities.*** While IAEA inspection rights should have been strengthened in the JCPOA—and they arguably are strengthened in monitoring declared activities—the JCPOA weakens IAEA authorities regarding undeclared activities and facilities, which are the most critical authorities for verification.

- ♦ For example, under Iran's existing 1974 Safeguards Agreement, the IAEA has had the right to use special inspections.²⁹ Under this arrangement, if Iran did not agree to an IAEA request for a Special Inspection but the Director General and the Board of Governors believed an inspection is necessary and urgent, Iran would be called upon to permit the inspection without delay. No such arrangement exists in the JCPOA.
- ♦ The April 2015 State Department fact sheet states "Iran will be required to grant access to the IAEA to investigate suspicious sites or allegations of a covert enrichment facility, conversion facility, centrifuge production facility, or yellowcake production facility anywhere in the country." This requirement was abandoned in the JCPOA.
- ♦ Prior to the JCPOA, an Iranian denial of IAEA inspection request would have been contrary to Iran's obligations under its safeguards agreement with the IAEA. Under the JCPOA, the dispute resolution process ensures that if Iran does not want to accept an inspection, its proposed alternative to inspection is given equal weight with the IAEA's inspection plan.
- ♦ The JCPOA expressly states that the IAEA "will be requested" to monitor and verify "the voluntary nuclear-related measures" in the JCPOA and Iran "will allow" it to do so. But again, these are voluntary measures, not obligations. The JCPOA process for disputes if Iran does not want to permit an inspection underscores this approach.
- ♦ The JCPOA process for resolving conflicts regarding IAEA access will almost certainly compromise any intelligence provided by the United States to the IAEA. Since the IAEA has never identified a suspect site through its own inspections, it has relied on information from other sources, including the United States. The JCPOA specifically requires the IAEA to provide Iran with the reasons for seeking access in writing and to make available relevant information.³⁰
- ♦ The IAEA will bear the burden of proof to persuade five of the eight members of a new Joint Commission that an inspection should go forward.³¹ The Joint Commission will have representative from Iran, Russia, China, France, Germany, the UK, the U.S., and the European Union (EU), each party getting one vote. However, when the Joint Commission is considering a conflict between the IAEA and Iran, it is expressly stated that "there is no quorum requirement." This leaves great room for manipulation since

based on experience, the only 5 members that would support the IAEA against Iran are France, Germany, the UK, the U.S. and the EU. If only one does not attend, then Iran will not have to permit the IAEA inspection.

- ♦ Under the model Additional Protocol, when the IAEA has a question, it should provide the inspected party with an opportunity to clarify and facilitate resolution of the question, “unless the Agency considers that delay in access would prejudice the purpose for which the access is sought.” There is no such provision in the JCPOA.
 - ♦ Instead, the JCPOA creates an extremely **lengthy dispute resolution process that Iran can use to delay a requested inspection for two months.**³² First, under paragraphs 74-78 of Annex I, consideration by the JCPOA’s Joint Commission of an IAEA request for an inspection with which Iran disagrees can take up to 24 days from when the IAEA makes the request. Second, under the dispute resolution process in paragraphs 36 and 37 of the JCPOA, if Iran asserts that any or all of the JCPOA participants are not meeting their commitments under the JCPOA,³³ it can again refer the issue to the Joint Commission as a compliance question for dispute resolution.³⁴ Iran can thereby gain an additional 35 days.
 - ♦ These two JCPOA provisions could result in a possible delay of at least 59 days, giving Iran time to sanitize the facility the IAEA wants to inspect. The requirement that the IAEA provide Iran with a written statement of the information upon which its request is based ensures that if Iran does eventually permit the inspection, Iran will have not only the time, but also the specific information needed to sanitize its facility so that the IAEA inspection finds no evidence of noncompliance.
 - ♦ Moreover, if Iran is unsatisfied with the outcome of the dispute resolution process, it can treat the unresolved issue as nonperformance by another JCPOA participant as grounds to cease performing its commitments under the JCPOA in whole or in part.³⁵ This would not appear to violate the JCPOA.
 - ♦ The JCPOA states that no U.S. inspectors can participate in any of the IAEA inspections or monitoring in Iran. This is unprecedented.
 - ♦ It has also been credibly reported that the IAEA and JCPOA participants have agreed that the IAEA would not be permitted to inspect the Parchin military facility and that Iran, rather than the IAEA, would collect samples inside and outside the facility.³⁶ In 2005, the IAEA visited Parchin twice.³⁷ Why IAEA inspections are now barred from Parchin is unknown. Moreover, without knowing the contents of at least one other reported “separate arrangement” between Iran and the IAEA, it is anticipated that the Parchin precedent will govern IAEA authority with regard to any other suspect sites.
- ❖ In no other verification regime is the inspected party permitted to:
- ♦ Exclude from declaration the history of its program and activities;
 - ♦ Veto an inspection request that does not constitute a violation of its obligations; or
 - ♦ Collect its own samples from suspected sites to be provided for technical evaluation.³⁸

Far from being the strongest inspection regime in history, the JCPOA should be considered to be the weakest.

- ◆ **Ambiguous Obligations.** Even if inspections were able to detect or confirm Iranian activities presumed to be inconsistent with the JCPOA, JCPOA ambiguities present many “Devils in the details” that undermine verification and compliance assessments. For example, as discussed above, the JCPOA expresses Iranian commitments as being voluntary and based on Iran’s plans.

Iran's plans are only to be declared under the AP and these are not required until entry into force of the AP which won't happen until Iran's program is declared peaceful in 10 years. Iran's plans during that period are likely to remain unknown, uncertain and subject to change. If Iran was verified as undertaking activities inconsistent with activities the JCPOA describes as being consistent with Iran's plans, it would be very unlikely that these activities would violate the JCPOA.

- ◆ **Judging Compliance:** Given the weakness of the inspection regime for undeclared locations and the lack of clarity in many key provisions of the JCPOA, assessing compliance, and particularly reaching a determination that Iran had violated the JCPOA in a significant way, will be unlikely, even for the U.S.

- ❖ While the United States has certainly included inspection information in the totality of information it reviews in making such a compliance judgment, it has always sought to retain for the President the ultimate decision for the United States as to whether another nation has violated its arms control or nonproliferation agreements with the U.S.
- ❖ The IAEA Director General may continue to issue reports on Iran. However, the Joint Commission created by the JCPOA is where all disputes about IAEA access and concerns regarding possible noncompliance are to be considered. The confidentiality provision in the JCPOA³⁹ ensures that no reports of Iranian actions under the agreement can be made public without the consent all of the Parties to the JCPOA, including Iran. If Iran engages in activity that might constitute noncompliance, even if the Department of State reports this to Congress, unless Iran, Russia and China agree that the information can be shared beyond the Joint Commission, it will not be made public. Since Iran has stated, without comment by the other JCPOA members, that if sanctions are reimposed it will justify ceasing Iran's performance under the JCPOA, it is unlikely the Joint Commission will agree to making information about Iranian violations of the JCPOA available to the U.S. Congress.
- ❖ Primarily through the JCPOA's dispute resolution mechanism⁴⁰, the U.S. concedes this authority to a Joint Commission in which Iran gets an equal vote with the U.S.

- ◆ **Lack of Credible Enforcement.** Economic sanctions have been the primary tool used by the U.S., the EU, and the UN to impose a cost on Iran for its violations of its NPT obligations to try to bring it into compliance. Iran has stated in the JCPOA that "if sanctions are reinstated in whole or in part Iran will treat that as grounds to cease performing its commitments" under the JCPOA in whole or in part.

- ❖ Given the ambiguity in terms, the constraints on the IAEA, the dispute resolution mechanism in the JCPOA and Iran's threat to cease compliance with the JCPOA, it is unlikely that the U.S., or the Joint Commission, will find that Iran has engaged in significant violations of the JCPOA which would trigger the requirement for congressional notification.
- ❖ Thus, we do not believe that the promise of "snap back" sanction is realistic or credible.
- ❖ We further believe the JCPOA inadvisably constrains American ability to undertake measures to either bring Iran back into compliance or undertake responses to deny Iran the benefits of any continued violations for the NPT and the JCPOA. For example, if the

UNSC stopped lifting sanctions, any contracts Iran or Iranian individuals or entities had already reached would be unaffected unless they are inconsistent with the JCPOA and “current UN Security Council Resolutions.” It is ambiguous who makes this determination.

Legitimization of Iran’s Illegal Nuclear Program

Iran’s nuclear program has been in violation of the NPT for over 30 years. Iran has impeded IAEA inspections and for over 10 years while at the same time pledging full cooperation with the IAEA and to abide by enhanced verification measures like the Additional Protocol and subsidiary agreements. They broke these promises too. They have denied and dissembled and only after evidence that their denials were false would they admit covert nuclear activities. Iran’s responses to allegations of covert nuclear activities have gone beyond denial to accusing other states of falsifying information.

Despite this, the JCPOA does not require Iran to admit that any of its past or current activities were in violation of the NPT or to eliminate the material, equipment, and facilities acquired or built in violation of its treaty obligations. Iran refers repeatedly to its “peaceful” program, as it has done throughout the past 10 years. Iran is permitted by the terms of the JCPOA to ramp up its “peaceful nuclear program”, including its enrichment activities starting in 8 years to a “commercial” program “for exclusively peaceful purposes, consistent with international nonproliferation norms.” There never has been and is not a credible economic rationale for Iran’s current enrichment program, much less for a tremendously expanded one.

In the preface to the JCPOA, parties to the agreement “envision that the implementation of this JCPOA will progressively allow them to gain confidence in the exclusively peaceful nature of Iran’s program.” But even without having gained that confidence, it goes on to highlight that the JCPOA “will produce the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran’s nuclear program, including steps on access in areas of trade, technology, finance, and energy.

The JCPOA provides for nuclear cooperation with Iran and even provides for approval by the participants of Iranian capabilities for nuclear device testing. Given that the IAEA assessed in 2011 that Iran had conducted hydrodynamic experiments and preparations for an underground nuclear test, provisions to provide approval of more capabilities for doing so can only result in advancement of Iran’s nuclear weapons capability.

This legitimization of Iran’s illegal nuclear program, and especially its nuclear weapons program, is appalling.

We are aware of other examples in the history of arms control of decisions to respond to violations of one agreement by “grandfathering” them and seeking a new agreement in the hopes that this time the violator will comply. One such example was in response to Soviet violation of the 1972 Anti-Ballistic Missile (ABM) Treaty by deploying ABM radars outside either a permitted deployment area or the agreed Soviet ABM test range. The United States offered the Soviet Union a face saving way out of the violation by calling the new and illegal deployment an ABM test range that had not

been permitted. To permit the deployment, a new agreement was reached requiring advanced notification prior to the creation of a new ABM test range. Once the Soviet Union declared the illegal ABM deployment an ABM test range, it became legal. However, no other agreement of which we are aware has gone so far to legitimize such serious violations as the 30 years of Iranian violation of the NPT. In this the JCPOA is indeed unprecedented.

Funding Iran's Military Programs and Hostile Activities

As a result of the JCPOA, Iran will gain hundreds of billions of dollars in sanctions relief. In under one year, the Treasury Department has said that Iran will receive \$100 billion from bank accounts frozen under sanctions. The \$100 billion, however, “pales in comparison to the economic relief Iran can expect to get if and when companies begin to trade and invest with it...”⁴¹

- ❖ The money that will flow into Iran can be expected to be allocated to the same priorities Iran has had for decades. The Obama administration acknowledged this when Susan Rice, President Obama's National Security Advisor, made the following statements during an interview on CNN on July 15, 2015:
 - ◆ “What do we think they'll spend that money on? We think for the most part, they're going to need to spend it on the Iranian nuclear program and their economy, which has tanked.”
 - ◆ “We should expect that some portion of that money [coming from sanctions relief] would go to the Iranian military and could potentially be used for the kinds of bad behavior that we have seen in the region up until now.”
 - ◆ “They may be able to send money” under this deal to Bashar al-Assad in Syria or to Houthi rebels in Yemen.
 - ◆ Moreover, “they're sending money now while they're under sanctions” to those type of activities anyway, and “they will have more money” to do that when sanctions are lifted under this agreement.⁴²
- ❖ Hundreds of billions of dollars will undoubtedly be used for massive additional Iranian investment in its military programs that will be used to threaten and intimidate its neighbors. These military programs will include Iran's weapons of mass destruction programs, its ballistic missile programs, and its conventional military forces, including the navy which seeks to counter U.S. naval forces in the Gulf, and perhaps beyond. Iran will increase its efforts to destabilize its neighbors. Many nations have traded with Iran despite sanctions. Many more are already beginning to do so as sanctions are being lifted. Iran can be expected to go on a shopping spree in the international weapons bazaars. North Korea has had a long relationship with Iran and Syria, and can expect to have its weapons sales increase. Syrian President Assad can also look forward to more assistance from Iran. And, of course, Iran will increase funding for terrorist organizations, including Hezbollah and Hamas. The implications for American and international security are dire. One sanctions expert noted: “We have no ability to constrain Iran if they want to spend all hundred-billion dollars on funding Hezbollah or other terrorist organizations, but when you're getting a hundred-billion-dollar-plus cash windfall, even if you're spending 5 to 10 percent of that only on your support for terrorism, you know, that's an extra \$5 to \$10 billion.”⁴³

- ❖ The effect of this money in Iran's hands will, at a minimum, complicate U.S. policies and programs aimed at ensuring that Iran is deterred from using its weapons against the U.S. and our allies and friends, from destabilizing the already fragile Middle East, and from countering terrorism at home and abroad. More likely, it will cost lives, including American lives. Efforts to defend against Iran's programs will become increasingly insufficient or the U.S. will have to greatly increase spending on programs like missile defense aimed at countering Iranian ballistic missiles.

A better alternative is to reject the JCPOA, retain and strengthen the sanctions, fall back to the NPT and take all possible measures to try to enforce it.

¹ Henry Kissinger and George P. Shultz, "The Iran Deal and Its Consequences," Wall Street Journal, April 7, 2015. <http://www.wsj.com/articles/the-iran-deal-and-its-consequences-1428447582>

² There is no limit on the number of other advanced centrifuges Iran is permitted to build or retain, and we do not know how many they already have produced. Iran is permitted to build all of the **types** of centrifuges specified in the JCPOA, although in Annex I, Section G, there are partial limits on the number centrifuges it can test for 10 years.

Until November 30th, 2015, Iran will continue to operate a 164-machine IR-2m cascade and a 164-machine IR-4 cascade at Fordow. After this, these centrifuges will be stored at Natanz.

³ Under Annex I, Section G, Paragraph 32, Iran is permitted to undertake mechanical testing on up to two single centrifuges of the IR-2m, IR-4, IR-6s, IR-7 and IR-8 types, and is permitted to do R&D with uranium on the IR-4, IR-5, IR-6 and IR-8 machines. Under Annex I, Section G, Paragraph 35: For 10 years Iran can test a single IR-4 and an IR-4 centrifuge cascade of up to 10 machines. In para 36, it will test a single IR-5 machine for 10 years. Pursuant to Section G para 37 and 38, Iran can continue testing single IR-6 and IR-8 centrifuge machines and their intermediate cascades, but in year 8 of the agreement, will commence testing of up to 30 of each. Obviously, if Iran can begin testing up to 30 IR-6 and IR-8 centrifuges in year 8, they would have had to have either retained them from before the JCPOA or to have built them prior to year 8.

Finally, in paragraph 43, Iran intends to continue R&D on new types of centrifuges through computer modeling and simulations, including at universities, but proceeding to a prototype for mechanical testing within 10 years requires the approval of the Joint Commission.

⁴ JCPOA Section P, para 72.

⁵ Senator Robert Menendez speech at Seton Hall University, August 18, 2015.

<http://www.menendez.senate.gov/news-and-events/press/menendez-delivers-remarks-on-iran-nuclear-deal-at-seton-hall-universitys-school-of-diplomacy-and-international-relations>

⁶ JCPOA Annex I, Section K. Iran will use its stock of IR-1 centrifuges in storage and the IR-1 centrifuges at Fordow for the replacement of failed or damaged machines. If the stock of IR-1 machines falls to 500 or below, Iran may resume production of IR-1 machines. "Consistent with its plan," at the end of year 8 Iran will commence manufacturing IR-6 and IR-8 centrifuges without rotors through year 10 at a rate of up to 200 centrifuges per year for each type, and after year 10 it will produce complete centrifuges at the same rate "to meet its enrichment and enrichment R&D needs." They will be stored at Natanz under IAEA monitoring "until they are needed for final assembly according to the enrichment and enrichment R&D plan."

⁷ Ollie Heinonen, "Verifying Iran for the Longer Term," Iran Task Force. [Taskforceoniran.org](http://taskforceoniran.org).

⁸ David Albright, Director, Institute for Science and International Security (ISIS), "Centrifuge Research and Development Limitations in Iran," ISIS Reports, August 29, 2014.

⁹ JCPOA Annex I, Section T.

¹⁰ JCPOA Annex IV.

¹¹ JCPOA Russian version: Annex IV, Section 2, second paragraph 5, State Dept Section 2.1.11.

¹² NOTE: In the Russia/Iran version of the JCPOA, at the end of Annex III, Section A, there are numbers without text. The Department of State version does not show the 1., 2., 2., headings without text. The reason is unclear.

¹³ GOV/2011/65, Annex, Section C.10. and C.12.

¹⁴ GOV/2011/65, paragraph 39.

¹⁵ The Board of Governors, in its resolution of November 2011 (GOV/2011/69), stressed that it was essential for Iran and the Agency to intensify their dialogue aimed at the urgent resolution of all outstanding substantive issues for the purpose of providing clarifications regarding those issues, including access to all relevant information, documentation, sites, material and personnel in Iran. In its resolution of September 2012 (GOV/2012/50), the Board of Governors decided that Iranian cooperation with Agency requests aimed at the resolution of all outstanding issues was essential and urgent in order to restore international confidence in the exclusively peaceful nature of Iran's nuclear programme. <https://www.iaea.org/sites/default/files/gov-2015-34.pdf>

¹⁶ GOV/2015/34, 29 May 2015.

¹⁷ See GOV/2011/65, Nov 8, 2011. Annex on Possible Military Dimensions.

¹⁸ JCPOA, Annex I, Section M.

¹⁹ JCPOA, paragraph 14. The paragraph concludes with the resolution to close the issue will be presented "without prejudice to the competence of the Board of Governors," which presumably means that theoretically the Board could fail to agree with the resolution.

²⁰ Cited in C. Paul Robinson, *Routledge Handbook of Nuclear Proliferation and Policy* (2015): Paul H. Nitze, "The INF Treaty," Statement before U.S. Congress, Senate Foreign Relations Committee, Senate Hearing 100-522, Part I, 100th Congress, Second Session, 1988, page 289.

²¹ Ollie Heinonen, "Verifying Iran for the Longer Term," Iran Task Force. Taskforceoniran.org.

²² www.state.gov/secretary/remarks/2015/04/240196.htm

²³ Parameters for a Joint Comprehensive Plan of Action regarding the Islamic Republic of Iran's Nuclear Program, April 2, 2015. <http://www.state.gov/e/eb/tfs/spi/iran/fs/240539.htm>

²⁴ See www.bloomberg.com/politics/articles/2015-0-20/inspectors-need-full-access-in-any-iran-nuclear-deal-moniz-says.

²⁵ Ollie Heinonen, "Verifying Iran for the Longer Term," Iran Task Force. Taskforceoniran.org.

²⁶ JCPOA Annex V, Section D, paragraphs 19 and 22 and 22.1.

²⁷ JCPOA Section A, paragraph 1.

²⁸ Since the actual AP with Iran approved by the IAEA Board of Governors is not publicly available, the Model Additional Protocol is referred to. It is in INFCIRC/540 (Corrected), done in September 1997. <https://www.iaea.org/sites/default/files/infcirc540.pdf>

²⁹ INFCIRC/214, Articles 18, 73 and 77.

³⁰ JCPOA Annex I, Section Q, paragraph 76.

³¹ JCPOA Annex I, Section Q.

³² JCPOA Annex I, Section Q.

³³ Iran might, for example, assert that one or more of the other parties was, perhaps by providing information to the IAEA about a potential violation, not implementing the JCPOA "in good faith and in a constructive atmosphere based on mutual respect,"³³

³⁴ JCPOA paras 36 and 37.

³⁵ This would be consistent with past Iranian practice. See, for example, INFCIRC/666, Feb 3, 2006, communicating Iran's Note Verbale and letter to DG from Iran. This is where Iran threatened to terminate its implementation of the AP if their case was referred to the UNSC.

³⁶ <http://abcnews.go.com/International/wireStory/text-draft-agreement-iaea-iran-33211884>. Director General of the IAEA Amano has said: "The separate arrangements under the Road-map agreed between the IAEA and Iran in July are confidential and I have a legal obligation not to make them public – the same obligation I have for hundreds of such arrangements made with other IAEA Member States." and that "I can state that the arrangements are technically sound and consistent with our long-established practices. They do not

compromise our safeguards standards in any way.” <http://www.usnews.com/news/articles/2015/08/20/iaea-disputes-report-that-iran-will-inspect-its-military-sites>. He may be basing his statement on Article 5 of the Model Additional Protocol, which states that the inspected party “shall provide the Agency with access to:” “c. Any location specified by the Agency ... to carry out location specific environmental sampling,” provided that if the inspected party is “unable to provide such access,” it “shall make every reasonable effort to satisfy Agency requirements, without delay, at adjacent locations or through other means.”

³⁷ GOV/2011/65, Section C.7.

³⁸ Although in START and INF the Russians could take the photograph of an “ambiguity,” this is very different from collecting environmental samples.

³⁹ Annex IV, Section 3, 4th Paragraph.

⁴⁰ JCPOA paragraphs 36 and 37.

⁴¹ Elisabeth Rosenberg, of the Center for a New American Security, quoted on NPR, “Lifting Sanctions Will Release \$100 Billion To Iran. Then What?” July 16, 2015.

⁴² <http://cnnpressroom.blogs.cnn.com/2015/07/15/does-the-deal-restrict-irans-ability-to-buy-weapons>

⁴³ Mark Dubowitz, quoted on NPR, “Lifting Sanctions Will Release \$100 Billion To Iran. Then What?” July 16, 2015.