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## Next Steps on the JCPOA

Richard Nephew

*The James Martin Center for Nonproliferation Studies, the National Defense University, and the Institute for National Security Studies held a two-day nonproliferation dialogue in Israel, April 29–30, 2018. The purpose of the dialogue was to exchange views on evolving threat perceptions, perceived gaps in goals, priorities, and policies, and identify further opportunities for deepening US–Israel cooperation in countering the proliferation of WMD and related threats. The following policy memo is based on the author’s presentation delivered during the dialogue.*

On May 8, 2018, the United States withdrew from the Joint Comprehensive Plan of Action (JCPOA) and announced its intention to restart an active sanctions campaign intended to secure more aggressive restrictions on Iran’s nuclear program as well as to address concerns regarding Iran’s missile development and its regional activities. This decision dramatically challenges the viability of the JCPOA and the restrictions on Iran’s nuclear program already enshrined within it, prompting the possibility—if not the inevitability—of an Iranian nuclear program restart.

**A careful, patient, and prudent approach will prevent Iran from acquiring nuclear weapons in a more effective, efficient, and inclusive manner.**

Notwithstanding US and Israeli official positions to the contrary, withdrawing from the deal is not in the best security interests of either government. Presumably, both governments prefer Iran maintain its present restrictions and agree to negotiate a separate agreement without having to deal with the imminent risk of Iranian nuclear breakout. It is manifestly true that an Iranian nuclear program that is at least one year away from being able to produce a nuclear weapon is better than one that is able to do so within two to three months. Moreover, it is in the interest of

both countries that the International Atomic Energy Agency (IAEA) will maintain its additional intrusive rights under the JCPOA, which granted it the mandate to conduct enhanced inspections of Iran’s nuclear facilities and to maintain confidence in the non-diversion of Iran’s declared nuclear materials and the absence of undeclared activities. It may be that US and Israeli leaders believe that it would be in their interest to risk losing restrictions and access in order to obtain a better deal in the future, but on balance, few seek to chase the bird in the bush while holding two in the hand.

Additionally, it is not in the interest of either the United States or Israel to face an international community that blames them for the demise of the old agreement. Such hostility would damage relations with countries that have substantial economic relations with Iran and ordinarily would be prepared to work with the United States to confront Iran and work with it to achieve a better agreement. Only Saudi Arabia has joined Israel in outspoken support of the US decision to withdraw from the deal. Other countries are concerned, not only by the potential loss of their economic opportunities in Iran, but of the instability and threat of war that renewed nuclear confrontation with Iran promises. Likewise, it is not in the economic interest of the United States or Israel for the resulting US sanctions to undermine the international economy, either by threatening the global supply and price of oil or

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by punishing US trading partners in Europe and Asia. Steps that drive up the price of oil would be damaging to economies around the world, and sanctions against US trading partners could damage the overall economic relationship and create instability in markets.

With these various interests established, there are three recommendations the US and Israeli governments should consider with respect to Iran and the JCPOA from this point forward:

1. Let the Europeans seek diplomatic and economic solutions to turmoil created by US withdrawal and avoid damaging their prospects of reaching an understanding with Iran;
2. Maintain a sanctions posture that avoid creating collusion between US trading partners and the Iranians to evade sanctions; and,
3. Maintain open dialogue and engagement between the United States and Iran.

These will be addressed in turn.

### **Don't Undermine US and Israeli Benefits from the Deal**

With the restart of US nuclear sanctions on Iran, there will be an inclination to take a maximalist approach in the near term. This will include a policy to freeze all European economic activity with Iran, particularly in existing sanctioned areas. Though understandable, this may also have some negative impacts on US and Israeli national security interests.

The three European negotiators with Iran—France, Germany, and the United Kingdom—have been outspoken in their intention to remain within the JCPOA. The EU has also rallied member states to support the JCPOA and consider how they can continue to observe their obligations under the deal, including with respect to sanctions relief. And the Europeans have begun to indicate a readiness to challenge US sanctions enforcement through blocking legislation and/or lawsuits at the World Trade Organization. Their willingness to do so may have been deflated by the economic realities of confronting the United States, but they also may

have been bolstered by the U.S. decision to impose tariffs for aluminum and steel against Europe in late May. Altogether, it is unclear how far the Europeans will be prepared to go and what they will be prepared to do.

Russia, China, India, Turkey and other countries have similarly expressed an intention of continuing to do business with Iran.

Iran, for its part, has indicated a readiness to remain within the JCPOA provided that Europe is able to deliver the core economic benefits that it promised as part of the agreement. The Iranians have said that they will give the Europeans a few weeks in order to demonstrate their ability to make good on their commitments in the context of US withdrawal. During this time, it is likely that the Iranians will make preparations for their own withdrawal from the JCPOA, while being careful not to take any actions that would undermine their narrative that the US is responsible for the collapse of the deal. However, they have so far resisted the urge to retaliate immediately against the United States for its withdrawal so that the blame for the deal's demise lies squarely with the United States.

This offers a slight, but real, opportunity to preserve some of the JCPOA's benefits absent US presence in the associated mechanisms. After all, Iranian nuclear restrictions are a benefit that may be linked to European sanctions relief now but redounds to the entire international community. It is in US and Israeli interests for this situation to persist as long as possible.

Ultimately, Iran may conclude that its only option is to eschew the JCPOA. By November, US sanctions will be back in force, and they will have an impact on European and broader economic activity with Iran. Even if Iranian President Hassan Rouhani resists the urge to retaliate in the near term, at some point, he may be forced to do so. But continued European engagement with Iran will possibly help the Iranians identify less provocative ways of responding. For example, the Europeans may convince the Iranians that a sufficient show of goodwill can be delivered by restarting only part of the frozen nuclear program.

Iranian production of heavy water, for example, is a less significant, less risky response than, say, reinstalling 10,000 centrifuges.

Moreover, even a delay in restarting Iran's nuclear program will grant time for the United States and Israel to prepare a comprehensive, harmonized strategy as well as coordinate with others for preventing Iran from acquiring nuclear weapons. Extending the time period in which imminent Iranian nuclear breakout is impossible is in the United States and Israel's best interests, particularly if, in the end, the Iranians restart the entirety of their nuclear program.

It may also be possible to steer the Iranians to limit their nuclear retaliation to restarting activities instead of preventing IAEA inspections or curtailing enhanced transparency. Both the United States and Israel will be more secure if there is greater international visibility of Iran's nuclear program, which only the IAEA is in a position to deliver with regularity and confidence. Indeed, from the perspective of avoiding Iranian provocations or surprise, it is essential that this benefit of the JCPOA not lapse until absolutely necessary (if ever). For this reason, post-JCPOA, the United States and Israel should consider whether and how to respond to a European agreement with Iran that maintains some sanctions relief for increased nuclear program transparency.

Some will argue that the simplicity of full Iranian nuclear restart would be better for the United States and Israel, in that it would present a much more direct, unambiguous threat to manage. However, this is a theoretical abstraction that should be strenuously examined and rejected. Such an argument would suggest that the United States and Israel were in a more advantageous position back when Iran's nuclear program included tens of thousands of centrifuges, no reasonable proximate hope of curtailing Iranian nuclear advances, and open questions as to the size and scope of its fuel cycle. None of the Israeli or U.S. officials with whom I worked during that time were enthusiastic about that situation when it was the status quo. It is also an argument that supports giving up all of the

JCPOA's benefits without a tangible replacement. More careful thought needs to go into the myriad trade-offs that might exist if Europe and the Iranians are able to arrange for a reduced version of the JCPOA, absent the benefits of U.S. sanctions relief. For this reason, US and Israeli policymakers should maintain a flexible posture in relations to demonstrate flexibility and savviness on what European interlocutors are able to achieve.

### **Approach Sanctions with Prudence**

As a general rule, sanctions work best if they are sharply applied, with rigorous efficiency, and against clearly defined prohibitions of acceptable and unacceptable behavior. Sanctions become less effective—especially so as a deterrent—if enforcement is seen as situational, context-dependent, and fungible according to politically or diplomatically defined prohibitions of acceptable and unacceptable behavior.

But just as generals have to deal with insurgencies and asymmetric threats, sanctions enforcers have to contend with a staggering array of international economic linkages and demands that limit their freedom of action. Indeed, the same forces that make sanctions so attractive—particularly to the United States, sitting as it does at the center of the global economy—are the ones that laden sanctions with peril: interdependency of banking relationships, multinational corporate structures, and widespread trading ties. Sanctions that affect foreigners affect sanctioning governments, too, almost by definition, though the effects can differ depending on what and who are targeted.

This is relevant in the Iran context because, though there may be an instinct among US and Israeli policy makers to move aggressively in applying sanctions against Iran, there are good reasons to demonstrate restraint.

The first is the fundamental lack of international support for US withdrawal from the JCPOA. This is important because the United States has very little business activity to cut with Iran. Its target is foreign business activity and curtailing foreign

investment. But, the unpopularity of the US withdrawal decision will complicate the negotiations necessary to make such sanctions effective and to avoid creating loopholes. Countries that reject this move are unlikely to enthusiastically join another a sanctions campaign, and certainly at the outset. If the United States presses too hard too soon, this residual frustration will boil over into actual resistance to implementing the US sanctions campaign that is to follow. This, in turn, can encourage states to take steps that reduce the sanctions' effectiveness. This can start by simply not adopting their own sanctions, letting their companies decide whether and how to cooperate. In such a climate, some companies may cooperate and others may not, but Iran would still get some benefit regardless.

In addition, there is a possibility of fueling de-risking behavior. De-risking behavior in this context means, essentially, to develop business structures and financial mechanisms that avoid interaction with the United States so that those businesses working with Iran can do so without fear of being cut off from the United States. If countries or companies no longer have as much to risk in US business activity, they will feel less compelled to work with the United States in sanctions enforcement. They may even give permission—tacit or explicit—for entities and individuals to evade US sanctions, undermining their effectiveness in the Iran case and in others, now and in the future.

Second, though, it is unwise to make the ensuing conflict about the United States or Israel. If US and Israeli policy makers are convinced that Iran that is in the wrong, they should do everything in their power to make the same case to international partners. That will be aided if Iran appears more unreasonable than the United States or Israel. Bluntly put, the United States and Israel are losing the public relations campaign at present. But, particularly if Iran restarts its nuclear program in provocative ways, this need not be a permanent problem.

Third, the United States should be flexible in accommodating foreign companies as they close

out business in Iran beyond the immediate wind-down periods established in the Treasury Departments' May 8 guidance. Furthermore, the United States should signal—even if only in private—that it will take a reasonable approach to sanctions violations in the short term. This could include offering governments the opportunity to correct violations before enforcement action is undertaken, especially in crucial jurisdictions like Europe, Japan, South Korea, India, and China. In time, a more restrictive approach can be applied. But in its zeal to enforce maximum pressure, the United States should not lose sight of the main objective—preventing Iran from acquiring nuclear weapons—and the reality that the only way to achieve it without resorting to overwhelming military force is by embarking on a multi-year process of getting back to negotiations with Iran. After all, though right now there is some early movement by companies withdrawing from Iran, the economic impact of their exit will take time to develop. Moreover, after the initial blush of withdrawals will come the far more complicated, difficult, and labor-intensive effort of evasion detection, diplomacy, and enforcement. The same sort of thing happened in the 2006-2008 time frame and it still took additional five years of strict international sanctions to reach the JCPOA. Getting more may require more time, effort and patience. It is important to begin this process in a manner that is conducive to achieving our ultimate objective and one that re-establishes the United States as a rational, methodical actor.

Fourth, for Israel, the Israeli government should make clear that it, too, will bear the burden of sanctions enforcement. Beyond advocating US and European actions, Israel should have in place laws that forbid business activity between Israel and any foreign company that does business with Iran. Israeli officials are well aware of how to design such a sanctions system, given their knowledge and understanding of the U.S. secondary sanctions structure. Doing so would ensure a sense of burden sharing, not only between the United States and Israel, but between Israel and other countries that will be asked to discontinue their relationships with Iran. This may come at some political and economic cost, but

should be justified by the security benefits to be gained, as articulated by Israeli PM Netanyahu.

### **Keep the Dual-Track Strategy**

The above-mentioned measures can help ensure that Iran's nuclear program does not get out of control and that the sanctions regime can be maintained. If US and Israeli leaders are to be taken at their words that they do not wish to incite a military confrontation with Iran, they should be prepared to maintain an option for a diplomatic resolution. President Trump signaled as much during his May 8 address, and Israeli Prime Minister Binyamin Netanyahu has argued that Israel does not seek a fight but rather a good agreement. The United States and Israel should go further an outline realistic, concrete demands for an agreement and avoid the all-or-nothing approach taken by Secretary of State Pompeo in his May 21 speech.

Absent a realistic offer of negotiations, statements made by US and Israeli officials will be considered window-dressing for a policy that otherwise implies regime change. After all, if the United States and Israel do not intend to negotiate in good faith with the current Iranian government – even one that still engages in objectionable behavior – then the United States and Israel are essentially arguing in favor of finding an Iranian government with whom they can deal. (It is also worth bearing in mind that it is unclear that a new regime in Iran would be more sympathetic to US or Israel.)

Such a dual-track strategy will be essential for sanctions to be effective. The Bush and Obama administrations were careful to underscore that the 2006-2013 sanctions campaign was not a means of enabling regime change or a precursor to military action. This was particularly important

in the UN context, where many member states had accused the United States of using the Security Council resolutions against Iraq in the 1990s to justify military action in 2003. The dual-track concept will be no less valuable to the United States and Israel now, especially after the willful destruction of an agreement by the United States. It will be hard for the United States to convince its international partners that it did so in pursuit of a better agreement and not the collapse of the Iranian government (especially considering that the present senior advisors around the president have explicitly called for regime change on many occasions). This can be more easily achieved alongside a professed openness to negotiate with Iran directly.

### **Conclusion**

The US decision on May 8 makes it harder to prevent Iran from acquiring a weapon capability. It will also make it harder to get a better, long term agreement from Iran on its nuclear program than would have been possible parallel to full implementation of the JCPOA. The above recommended steps can make such an agreement more likely than its inverse: a rapid, reckless restart of US sanctions devoid of a comprehensive policy to prevent Iran from acquiring nuclear weapons through diplomacy and a negotiated solution. Though a more careful, patient, and prudent approach may lack the verve of an aggressive onslaught against Tehran, it is likely to achieve our ultimate objective—preventing Iran from acquiring nuclear weapons in a more effective, efficient, and inclusive manner.

*Richard Nephew is a senior research scholar at the Center on Global Energy Policy, Columbia University and former deputy sanctions chief at the US Department of State.*