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Debates will be moderated by BESA non-resident senior associate George N. Tzogopoulos.

Decertification of the Iran Deal – What Happens Next?

Moderated by George N. Tzogopoulos

BESA Center Online Debate No. 1, November 24, 2017

Q: Will the decertification of the Joint Comprehensive Plan of Action (JCPOA) Iran nuclear agreement by US President Donald Trump pave the way to fixing it?

Respondents: Michael Rubin, Emily B. Landau, Barbara Slavin, Behnam Ben Taleblu, Paulina Izewicz, Raphael Ofek

Michael Rubin, Resident Scholar, American Enterprise Institute (AEI), Washington DC

The Joint Comprehensive Plan of Action (JCPOA) was a flawed agreement. It shredded non-proliferation precedent: the International Atomic Energy Agency (IAEA) held South Africa to a far greater standard in 1991 when it
came in from the cold and, in 2003, the international community required the physical dismantling of Libya’s covert program. In contrast, Iran maintains an industrial-scale enrichment infrastructure upon which controls will sunset. Beyond the sunset clauses, limits on inspection, ambiguity with regard to nuclear-capable ballistic missiles, and a structure that rewarded Iran upfront instead of calibrating sanctions relief to compliance, the JCPOA ignores the possibility that Iranian engineers might work on military aspects of a nuclear program abroad in North Korea.

But is decertification the way to fix the deal? Proponents of decertification are foolish to ignore reputational damage to the US. Simultaneously, however, diplomats rewrite history if they downplay unilateralism’s potency. Clinton, Bush, and Obama-era unilateral sanctions were more effective than UN resolutions. Despite complaints, European and Asian firms complied with them. The issue isn’t simply fixing the agreement. The sunset clauses mandate planning for a post-JCPOA future. The decertification debate isn’t just about rewriting the past, but also planning for the future.

Emily B. Landau, Senior Research Fellow, Head of the Arms Control and Regional Security Program, Institute for National Security Studies (INSS), Tel Aviv

Trump’s decision to decertify the JCPOA was most likely due to his sense that previous certification had had the unfortunate effect of undermining his strong message on the JCPOA; namely, that it is a seriously flawed deal. After twice certifying, he was attacked by deal supporters for giving a confused message on Iran – “admitting” that Iran was complying with the deal (or, as supporters would say, that “the deal is working”), while at the same time taking a harsh stance against it. So Trump clarified that this was not the case, and he decertified on the basis of the clause relating to US national security interests.

But the very act of decertification could indeed have the result of jumpstarting a process to strengthen the deal, which is the administration’s stated aim. This is because the P5+1 states that negotiated together with the US during the
Obama administration fear that Trump’s real objective with decertification is to pave the way towards leaving the deal. To prevent that, some of these states are showing signs of an initial willingness to address some of the problems in and surrounding the deal. Whether the administration succeeds in strengthening the deal will ultimately depend on the cooperation it enjoys both from Congress and US allies.

Barbara Slavin, Director, Future of Iran Initiative, The Atlantic Council, Washington DC

The JCPOA cannot be “fixed” in the sense of being renegotiated. Iran and the other signatories have made it clear that they would oppose such an effort. The deal could be augmented by a follow-on agreement, but that would require the sort of diplomatic bandwidth that the Trump administration currently lacks. It would also require a willingness to offer Iran new concessions.

The US Congress could make it easier for Trump to live with the JCPOA by removing the domestic requirement that he must pronounce on Iranian compliance every 90 days – a provision that really seems to irritate him. Given the general level of dysfunction in Congress these days and apparently solid Democratic support for preserving the nuclear deal, however, it is hard to envision any amendment of the Iran Nuclear Agreement Review Act receiving the requisite 60 votes in the Senate.

Trump’s decertification of the JCPOA has created even more uncertainty about US policy towards Iran, strengthened hardline forces in Tehran, and undermined the transatlantic cooperation that was so crucial in bringing about the deal. While I would like to see some sort of silver lining, it is hard to perceive at this juncture.
In short, yes. Decertification is a policy tool that aims to accomplish two objectives. Taken together, these objectives “pave the way to fix” the JCPOA nuclear deal. The impetus to improve the JCPOA is grounded in an understanding that if left alone, the accord will facilitate a dramatic expansion of Tehran’s nuclear program over time. This could easily obscure any weapons dimensions/aspirations.

First, as a highly public move, decertification signals to the international community a willingness to run risks to attain a deal that provides the necessary level of transparency into Iran’s nuclear program.

Second, decertification means that Washington will no longer turn a blind eye to Tehran’s poor record of deal implementation. So long as Iran believes the US will not enforce the deal, it will have no incentive to curb its incremental cheating. Iran has already transgressed heavy water restrictions, refused inspections of military sites, pushed the envelope on centrifuge research, and flight-tested multiple nuclear-capable ballistic missiles.

Coupled with increased non-nuclear economic pressure, decertification is intended to make Tehran realize that Washington is serious about denying it all pathways to a nuclear weapon, and the only off-ramp is adherence to a more comprehensive accord.

I am skeptical. Iran has no interest in renegotiating the deal, and the Trump administration does not seem ready to offer it any incentives to do so. Russia
and China certainly have no desire to reopen the file, and neither do the European partners. This latter divergence in particular risks divisions in the transatlantic alliance, which could have consequences reaching beyond the nuclear deal.

One bill currently floated in the US Congress proposes unilateral restrictions on Iran which, if violated, would lead to an automatic snap-back of sanctions. To say that this unilateral approach is not appreciated in Europe would be an understatement. The small consolation is that this bill is not really designed to be passed – its main purpose is rather to send a message. But combined with Trump’s rhetoric, it contributes to the atmosphere of uncertainty surrounding the deal, which increasingly looks like the official US policy.

Iran’s continued implementation of the JCPOA will depend primarily on whether it can continue to derive economic benefits from it. That, in turn, will be largely determined by business decisions of economic operators who, in an uncertain environment, are likely to err on the side of caution. At the end of the day, then, decertification may not lead to a better deal but rather hand Iran an excuse to pursue an unconstrained nuclear program without taking the blame for it. Time will tell.

Raphael Ofek, Senior Analyst, Begin-Sadat Center for Strategic Studies (BESA), Bar-Ilan University

The question “what happens next?” has arisen following Trump's decision to decline to recertify that Iran is complying with the terms of JCPOA nuclear deal. It is commonly expressed as "it takes two (at least) to tango," with the main dancers the US and Iran. However, there are other active players in that theater: Israel, which opposes the JCPOA; and the EU, Russia, and China, which want to preserve it. The EU’s position stems primarily from economic motivations: the opening of the Iranian market to European industries.

But the US is not pulling out of the deal yet. Instead, Trump has instructed lawmakers to fix the deal by imposing new conditions on Iran, including stopping her ballistic missiles program. As for Israel, Netanyahu’s attitude
about the deal seems to be identical to Trump’s, as expressed at the recent UN conference: “fix it or nix it.” It is quite difficult to assess if the European US allies will support her to reopen the deal. Nonetheless, Iran, which is repeatedly vowing to continue building up her "defensive" missiles force, remains the main obstacle. In conclusion: the JCPOA’s fate is obscure, particularly if the US withdraws from it.

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