



The Clause That Could Scupper the Iran Nuclear Accord

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EXECUTIVE SUMMARY: A little-acknowledged provision of the 2015 international agreement that curbed Iran's nuclear program explains jockeying by the US and the Islamic Republic over the modalities of a US return to the deal from which President Donald Trump withdrew.

A little-noted provision in the 2015 JCPOA nuclear deal with Iran could scupper the deal's resuscitation. The provision's magic date is 2023. If the Biden administration chooses to return the US to the agreement in that year, it would have to seek Congressional approval for the lifting or modification of all US nuclear-related sanctions against Iran.

Both the administration and Iran recognize that Congressional approval is likely to be a tall order if not impossible, given bipartisan US animosity and suspicion toward the Islamic Republic.

As a result, the US and Iran have different objectives in negotiating a US return to the accord.

The Biden administration is attempting to engineer a process that would allow it to sidestep the 2023 hurdle as well as ensure a negotiation that will update the six-year-old deal, limit Iran's controversial ballistic missiles program, and halt Iranian support for non-state actors in Lebanon, Iraq, and Yemen.

A prolonged negotiation would allow President Biden to focus Congressional attention on his domestic legislative agenda and limit Iran's ability to become a disruptive distraction.

Biden “needs something to get beyond 2023. So he wants a process that would take a number of steps that could take...a number of years to accomplish. During that time, the United States could ease some sanctions... These small things along the way could happen in a process but the key is going to be to have a process that allows the Biden administration to draw this out for some time,” said former State Department and National Security Council official Hillary Mann Leverett.

An extended process would, moreover, make it easier for Biden to convince America’s skeptical Middle Eastern partners—Israel, Saudi Arabia, and the UAE—that a return to the deal is the right thing to do.

By approving a US [missile attack](#) on an Iranian-backed Shiite militia base in Syria on February 25, Biden sought to reassure his partners that unlike former President Trump, he would stand by the US commitment to their defense. The strike was in response to Iranian-backed militia attacks on US targets in Iraq as well as the firing of projectiles against Saudi Arabia reportedly from Iraqi territory.

The US attack also served notice to Iran that it is dealing with a new administration that is more committed to its international commitments and multilateralism—and that while it wants to revive the nuclear agreement, it will not do so at any price.

The administration reinforced its message by asking other countries to support a formal censure of Iran over its accelerating nuclear activities at the meeting in Vienna of the International Atomic Energy Agency’s (IAEA) board of governors.

The US wants the IAEA to take Iran to task for stepping up production of nuclear fuel in violation of the nuclear accord and stalling the agency’s inquiries into the presence of uranium particles at undeclared sites.

While risking a perilous military tit-for-tat with Iran, the US moves are likely to reinforce Iranian domestic and economic pressure to seek an immediate and unconditional US return to the accord and lifting of sanctions. This would be partly in anticipation of the 2023 milestone.

Pressure on the Iranian government to secure immediate tangible results is compounded by a public that is clamoring for economic and public health relief and largely blames government mismanagement and corruption rather than harsh US sanctions for the country’s economic misery and inability to get the pandemic under control.

The sanctions were imposed after Trump withdrew from the nuclear accord in 2018.

The pressure is further bolstered by the fact that recent public opinion polls show that the public, like the government, has little faith that the US will live up to its commitments under a potentially revived nuclear deal.

The results suggest that neither the government nor the Iranian public would have confidence in a process that produces only a partial lifting of sanctions. They also indicated a drop in support for the deal from more than 75% in 2015 to about 50% today.

Two-thirds of those polled opposed negotiating restrictions on Iran's ballistic missile program and support for regional proxies even if submitting to such restrictions would lead to a lifting of all sanctions.

Public opinion makes an Iranian agreement to negotiate non-nuclear issues, in the absence of a broader effort to restructure the Middle East's security architecture that would introduce arms controls for all as well as some kind of non-aggression agreement and conflict management mechanism, a long shot at best.

Among Middle Eastern opponents of the nuclear agreement, Israel is the country that has come out swinging.

The country's chief of staff, Lt. Gen. Aviv Kochavi, said in January that Israel rejects a return to the deal and signaled that Israel would keep its military options on the table. Kochavi said he had ordered the Israeli armed forces to "prepare a number of operational plans in addition to those already in place."

Israel's ambassador to the US, Gilad Erdan, suggested a couple of weeks later that his country may not engage with the Biden administration regarding Iran if it returns to the nuclear agreement.

"We will not be able to be part of such a process if the new administration returns to that deal," Erdan said.

By taking the heat, Israel's posturing shields the Gulf States that have demanded to be part of any negotiation from exposing themselves to further US criticism by expressing explicit rejection of Biden's policy.

To manage likely differences with Israel, the Biden administration has reportedly agreed to reconvene a strategic US-Israeli working group on Iran created in 2009 during the presidency of Barack Obama. The secret group is to be chaired by the two countries' national security advisors. It was not

immediately clear whether the Biden administration was initiating similar consultations with Saudi Arabia and the UAE.

In a confusing twist, Israel has attracted attention to its own officially unacknowledged nuclear weapons capacity by embarking on major construction at its Dimona reactor that was captured by satellite photos obtained by the Associated Press.

Some analysts suggested that Israel's hard-line rejection of the Biden administration's approach may be designed to distract attention from upgrades and alterations it may be undertaking at the Dimona facility.

"If you're Israel and you are going to have to undertake a major construction project at Dimona that will draw attention, that's probably the time that you would scream the most about the Iranians," said non-proliferation expert Jeffrey Lewis.

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