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**Bar-Ilan
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The Logic of the JCPOA— Then and Now

Oded Brosh



Mideast Security and Policy Studies No. 191

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Cover image: Foreign Ministers/Secretaries of State Wang Yi (China), Laurent Fabius (France), Frank-Walter Steinmeier (Germany), Federica Mogherini (EU), Muhammad Javad Zarif (Iran), Philip Hammond (UK), and John Kerry (US) in Vienna following agreement on the JCPOA, July 14, 2015; image via Wikipedia

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EXECUTIVE SUMMARY

The Biden administration must stop the Iranian regime's rush toward nuclear weapons threshold capability.

Only about one-fifth of the original JCPOA of 2015 addresses nuclear issues, with the remaining four-fifths detailing payments to Iran designed to compensate it handsomely for its nuclear concessions. The original deal was endorsed by UNSC Resolution 2231, which granted further incentives to Iran.

The document is rapidly becoming irrelevant, as the limitations it places on Iran are gradually expiring. Six years on, the arms embargo has already expired, and Iran can acquire state-of-the-art defensive weapons systems from Russia to establish strategic immunity to attack. The “call” to Iran to desist from developing and testing ballistic missiles designed to deliver nuclear weapons will lapse in two years' time, as will sanctions regarding ballistic and cruise missiles and BMD (ballistic missile defense), which will facilitate the regime's acquisition of unprecedented offensive missile capabilities.

Sanctions on IRGC entities like the Quds Force, its commander, the IRGC commander, IRGC Air Force Missile Command, and the bonyads (para-governmental organizations that manage the IRGC's economic empire) will also end. The nuclear clauses, which allowed the continued development of advanced centrifuges and which can expedite

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the rate of enrichment 10- to 20-fold, endorse their production as of the end of year eight and their use to enrich uranium as of the end of year 10. Iran recently renewed enrichment to the 20% level, so this matter is urgent. This is all occurring as the Rouhani government is about to end its term and a radical government is likely to take its place.

A new agreement, which many governments and observers in the West advocate (but not Iran), must address the weaknesses of the previous agreement, which worked to the advantage of the Iranian regime. The Biden administration faces an immense challenge in devising formulas for a workable new deal.

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BACKGROUND

In July 2015, at a time when halting Iran’s nuclear progress seemed unstoppable by diplomatic means, the Obama administration dramatically unveiled the Joint Comprehensive Plan of Action (JCPOA), which had the express object of halting and rolling back that progress. To achieve this remarkable feat, the administration, which was the primary force behind the architecture of the deal, needed to make it attractive, beneficial, and generally advantageous to the Iranian regime, or there would have been no deal.

Sure enough, the JCPOA, accompanied by UNSC Resolution 2231, offered the regime benefits that were substantial enough to coax it to agree to make nuclear concessions. While these concessions were momentous at the time, they were temporary and easily reversible, as is evident today.

The deal gave Iran carte blanche to first acquire wealth and then, with the expiration of the arms embargo in October 2020, to use that wealth to purchase advanced weapons systems (probably air defense assets, for the most part) from Russia, and perhaps China and France. Eight years at the latest into the agreement; i.e., in 2023 if not sooner, all restrictions and sanctions are to be lifted. Iran interprets that transition to mean all its missile activities, be they ballistic or cruise, will be legitimized by the “Broader Conclusion” certification of the IAEA. This milestone would also lift sanctions from the successors of Qassem Soleimani, the IRGC Quds Force, IRGC Air Force Missile Command, senior IRGC commanders, and the bonyads that direct the IRGC economic empire. (All the missile and IRGC elements mentioned are listed in Attachment 2 of the JCPOA.)

Without the prospect of this clean slate, the consent of the Supreme Leader, and through him the IRGC, to the JCPOA would not have been possible.

The Biden administration must now address the extremely complex situation created by his two predecessors. It is easy to say a return to “the nuclear agreement” is required when only about 20% of the JCPOA—the portion written by the Americans—refers to nuclear issues. The remaining 80%, which was written by the Iranians, lists the lucrative and advantageous payoffs the regime demanded in exchange for its signature. Additional benefits were added by UNSC 2231, including the lifting of the arms embargo in October 2020 and expiration of the call to desist from developing and producing ballistic missiles capable of delivering nuclear weapons in 2023 (or in the wake of the “Broader Conclusion,” whichever comes first).

Although obviously prioritizing the prevention of an Iranian nuclear weapon is paramount if regional chaos is to be averted, or perhaps even chaos beyond the region, it remains to be seen how this is to be accomplished. In the background is the ticking clock of the Iranian elections in June, with the most likely result the ascent of a radical government unlike that of Rouhani. This lends even more urgency to the need to craft a solution.

BACK TO THE FUTURE

In mid-2012, the Iranian nuclear snowball appeared to be rolling out of control toward nuclear weapons threshold capability, and nothing other than military action seemed able to stop it. Many believed there was no way to convince the regime’s leadership to put the brakes on what was happening—the construction and imminent operation of a large heavy water reactor; an ever-growing number of uranium enrichment centrifuges of progressively more advanced types, capable of an ever speedier rate of enrichment; and a gradually rising level of enrichment with the accumulation of more and more uranium enriched to the 20% level, ready to be fed into a Highly Enriched Uranium (HEU) production process for the manufacture of weapons-grade material.

In his address to the UN General Assembly in September 2012, Israeli PM Benjamin Netanyahu attempted to explain the significance of Iran’s

accumulation of uranium enriched to the 20% level, which Tehran had begun in February 2010. As he stated, the Iranians were only months away from being able to use their 20% enriched uranium (which he called “medium enriched uranium”) as feed to produce HEU—in other words, they were almost 90% of the way toward the bomb. He reiterated in his speech that this was not classified intelligence information, but rather information readily available in the IAEA’s highly detailed quarterly inspection reports on Iran. Holding up a drawing of a bomb, he used a red marker to draw a line across the 90% line, stressing that the Iranians had to be stopped.

At that stage, an Israeli military strike appeared—indeed probably was—imminent to take out critical components of the Iranian nuclear program. The expected scope of Iranian retaliation appeared to be a point of contention between Israel and its American allies. Israel seemed to believe the Iranian response would likely be limited and was therefore manageable, albeit not without some difficulties. Washington signaled that its view was quite different: it was much more concerned about an Iranian response on a scale that would draw the US into a conflict it did not want. The American assessment seemed to be in the 50-50 range, and the Obama administration was not willing to risk a wider regional conflagration with possibly global impact (in light of the economic recovery that the Obama administration marked after inheriting the 2008 downturn).

In August and September of 2012, both Israeli Minister of Defense Ehud Barak and PM Netanyahu, following respective visits to Washington, appeared to step back from the brink of military action, with Barak publicly stating that the most important element of Israel’s defense was its alliance with the US. The inescapable conclusion was that the Obama administration had made it plain to both Netanyahu and Barak that Washington would not support unilateral Israeli action.

At about that time, the Obama administration began to seek a back channel to the Iranians, even as the government of President Mahmoud Ahmadinejad was still in office. These contacts got more serious in March 2013 and gained momentum after the election of Hassan Rouhani to the presidency in June 2013. In October 2013, the parties

concerned—Iran, the Security Council permanent five (P5), Germany, and the rest of the EU—reached an interim agreement called the Joint Plan of Action (JPA), at the center of which was Iran’s agreement to halt, and ultimately completely roll back, the production of uranium enriched to the 20% level in return for a limited easing of sanctions.

Indeed, within several months, Iran complied and took steps to reduce its stockpile of 20%-enriched uranium to virtually zero. It accomplished this by using about half of the stockpile to produce fuel plates for the Tehran Research Reactor and by downblending the remaining half into uranium oxides. This dangerous element of the program was thus eliminated.

Unfortunately, the Iranians perceived their agreement to halt, roll back, and freeze their nuclear program to be both advantageous in the short term—that is, on terms highly beneficial to the regime—and temporary. To put it another way, the Obama administration prioritized the nuclear freeze to the point that it should be gained at almost any cost. This meant pouring an untold financial windfall into the hands of the mullahs of Tehran; allowing Iran to acquire advanced conventional weaponry to help it gain strategic immunity to attack, preemption, and retaliation; legitimizing all Tehran’s missile activities and its acquisition of state-of-the-art offensive missile technologies; legitimizing IRGC elements and activities; and permitting the development and testing of ballistic missiles capable of carrying nuclear warheads. In addition, the nuclear clauses allowed Iran to continue developing and testing advanced centrifuges that it claimed could enrich uranium at a pace 20 times beyond that of the IR-1, and at the end of year eight to begin manufacturing them (without rotors) and to fully manufacture and use them to enrich uranium at the end of year 10.

The intervention of the Trump administration, first by abandoning the JCPOA and then by imposing progressively more stiff sanctions, gradually undermined Iran’s reasons for agreeing to the JCPOA in the first place. A severely restricted cash flow would mean it would be difficult to channel resources into acquiring Russian advanced air defense assets—against not only aircraft, but also possibly stealth aircraft, cruise missiles, and ballistic missiles—so as to gain strategic

immunity to attack, or at least to re-order the cost-benefit calculations of a potential preemptive strike so it doesn't occur to begin with. Russia, for its part, would be unlikely to offer such expensive equipment to Iran on a credit basis. The Biden administration has said it will press the other JCPOA partners to continue to abide by the arms embargo, though it expired in October 2020 as set down in UNSC 2231—but Russia and China are unlikely to do so if Iran comes up with the cash to buy what it wants from them. The Biden administration's pleas might be heard in Paris, but not in Moscow or Beijing.

WHY THE IRANIANS AGREED TO THE JCPOA

Many in the West believe Iran's main reason for agreeing to the JCPOA's nuclear concessions was to relieve the dire economic distress of the Iranian people. The economic stranglehold was exacerbated by the unprecedented scope of the international sanctions regime orchestrated by the Obama administration, including its intervention with allies to replace Iranian oil supplies (China, Iran's leading oil customer, continued to purchase Iranian oil, but at a reduced price; many other regular customers of Iranian oil either suspended purchases of Iranian oil entirely or significantly reduced them).

The election of Hassan Rouhani to the presidency in 2013, and his reelection in 2017, gave rise to the hope that Iran would, during the years of the nuclear freeze instituted by the JCPOA, concentrate on economic prosperity, which would fuel a new dynamic in Iran. It was hoped that the regime might become less of a threat and perhaps abandon its nuclear weapons ambitions entirely. From 2013 to 2015, there were indeed encouraging signs that this was plausible.

Experts on the internal Iranian situation suggested that Rouhani might explain to the Supreme Leader that the dire economic situation was a threat to the survival of the Islamic Revolution and therefore had to be mitigated. However, it is unlikely that this alone convinced the Supreme Leader, and through him the hawks and the IRGC, to accept the JCPOA and abide by it. More likely they understood, through arguments set forth by Rouhani and especially by his right-hand man, FM Muhammad Zarif, that the agreement would be advantageous to

Iran overall in many non-nuclear areas, some nuclear activities were allowed by the JCPOA and would continue, and the nuclear weapons program could in any case be picked up again after a temporary halt. It is possible that additional forbidden activities may have been planned to continue in contravention of the agreement, provided they would not derail the implementation of the JCPOA and UNSC 2231.

There is not one word in the JCPOA about the economic plight of the Iranian people, the need for economic relief, or the goal of achieving economic prosperity. This is no accident, as these matters were not uppermost in the minds of the Iranian architects of the JCPOA. They were concerned, rather, with gaining strategic advantage and securing benefits to the regime that would ensure both its survival and its enrichment. Only such prospects had a chance of being accepted by the IRGC, other radical elements, and the Supreme Leader.

As to the issue of ballistic missiles, the following can be said.

First, no limitations were placed on either Iran's indigenous activities in the ballistic and cruise missiles industries or on the indigenous development, testing, production, and operational deployment of these missiles.

Second, the JCPOA (in Attachment 2), endorsed by UNSC 2231, specifies the lifting of sanctions on "Transition Day" from the following defense, WMD, and missile-related industries (among others):

- IRGC AIR FORCE GHADR MISSILE COMMAND
- SHAHID BAGHERI INDUSTRIAL GROUP (SBIG) – producers of Iran's solid-fuel propelled ballistic missiles
- SHAHID HEMMAT INDUSTRIAL GROUP (SHIG) – producers of Iran's liquid-fueled ballistic missiles
- CRUISE MISSILE INDUSTRY GROUP

Both the JCPOA and UNSC 2231 specify that all sanctions will be lifted eight years into the agreement; i.e., in 2023, at the very latest—or, if the IAEA issues the "Broader Conclusion" certifying Iran's compliance with its nuclear commitments to the JCPOA, at an earlier

date. The latter part has become irrelevant, so long as the IAEA states that Iran is in non-compliance with its nuclear commitments in the JCPOA (although it largely was until some time after the Trump administration's departure from the agreement), so even if the "Broader Conclusion" is issued before 2023, it will no longer shorten the eight-year time frame by much.

Third, UNSC 2231, while rescinding all prior UNSC resolutions of the preceding years (especially UNSC 1929) expressly prohibiting Iran from developing, testing, producing, and deploying ballistic missiles, included, in Article 3 of Annex B, a non-binding "call" on Iran (rather than a binding prohibition) as follows:

Iran is called upon not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology, until the date eight years after the JCPOA Adoption Day or until the date on which the IAEA submits a report confirming the Broader Conclusion, whichever is earlier.

The combined acquisition of state-of-the-art defensive capabilities, contributing to strategic immunity to attack and retaliation, with state-of-the-art accurate and reliable offensive missile technologies raises the specter of first strike capability, or at least of its projection and hence impact on the region and the world.

As to the lifting of sanctions on the IRGC, Attachment 2 of the JCPOA specifies that sanctions will be lifted on "Transition Day," meaning eight years into the agreement, or earlier subject to the IAEA's "Broader Conclusion," from, among others:

- QASSEM SOLEIMANI (presumably this applies to his successors)
- IRGC QUDS FORCE
- GENERAL HASAN SALAMI – now IRGC commander
- BONYAD TAAVON SEPAH – the coordinating organization of the IRGC economic empire. The bonyads are ostensibly charity organizations originally established to aid families of IRGC fighters who fell in the Iran-Iraq War of the 1980s, but are in reality fronts for IRGC economic empire entities, including those believed to covertly channel resources to WMD and missile activities

BIDEN'S DILEMMA

The 2015 JCPOA was an excellent agreement and it was a terrible agreement, and there is no contradiction between these assertions. It was an excellent agreement because it successfully halted, rolled back, and froze Iran's out-of-control rush toward nuclear weapons capability in an environment in which there was no other way of achieving this without recourse to war. It was a terrible agreement because it failed to block the return, at breakneck speed, to the *status quo ante* of 2015, even of 2012—before the interim agreement, the JPA of October 2013, rolled back enrichment to the 20% level that we are witnessing today. This is what critics of the JCPOA warned about all along.

Furthermore, the scale of the bribes offered to the Iranian regime, at Obama's personal instigation, to achieve the nuclear halt, rollback, and freeze was exorbitant. Critics would say they amounted to extortion and capitulation—appeasement on a grand scale to postpone the day of reckoning in the hope that things would change for the better in Iran. The deal's supporters believed this hope was legitimate, reasonable, and supportable by facts on the ground. Opponents claimed it was absurdly naïve and a dangerous gamble. The opposing viewpoints are the products of the liberal versus the conservative *weltanschauungs*, and it is therefore futile to try to reconcile them.

Regardless, it is now crucial above all else to once again stop, roll back, and freeze Iran's headlong rush toward the nuclear weapons threshold. How this can be accomplished in a manner that will prevent the astonishingly easy and rapid reversal evident over the past few months is a mystery at this point. In the brief interim since Biden's election, the Tehran regime has not missed a beat. It has organized to reverse some of the actions of Biden's predecessor by appealing to sympathetic Democrats, who face a cruel choice between grand capitulation and acceptance of a nuclear Iran in the not too distant future. Interim and graduated solutions like "less for less" are theoretically possible, but it is not clear how they are to be accomplished or how such steps would be beneficial in the longer term.

Some maintain that if only President Biden would reverse all his predecessor's actions immediately, the Supreme Leader would

correspondingly order a reversal of all of Iran's actions taken since 2018 and re-deposit his trust in US commitments. Those commitments can, after all, help Iran get rich, buy weapons from Russia, acquire state-of-the-art missile technologies, and endorse the IRGC's strategic, regional, political, and economic ambitions, which are the pillars of the regime.

There is no way to prove or disprove this hypothesis, but it appears simplistic and improbable. A simple return to the JCPOA six years on, when the sanctions are to be lifted in only two years, the arms embargo has already expired, advanced centrifuges capable of 20-fold enrichment will become legal in three years, nuclear warhead delivery-capable ballistic missiles will be allowed in two years, and a radical government will likely replace the Rouhani administration in a few months, would represent a snapback, to borrow a relevant term, to both the upsides and the downsides of the JCPOA but within a much more hectic timeframe. The cost of gaining the Iranian regime's acquiescence to a "better" agreement, advocated by governments and observers in the West but not by Tehran, would be additional concessions on a mind-boggling scale.

The idea that economic relief to Iran will improve the condition of the Iranian people is a Western liberal fantasy. The Iranian regime wants Western cash so it can invest in strategic infrastructures and acquire weapons systems to make it immune to external attack, pre-emption, and retaliation. It wants missile sanctions lifted so it can acquire state-of-the-art missile technologies that will provide it with unprecedented offensive capabilities. The IRGC's aggressive regional activity remains integral to the revolution's ideological and practical *raison d'être*, and Western concessions are to be used to upgrade the IRGC's economic empire insofar as this is viewed as essential to the regime's long-term survival.

The need to stop Iran's rapid nuclear progression goes hand in hand with the need to foil the Iranian regime's original intentions in the JCPOA, which led it to accept it in the first place. This is an immense challenge, and the Biden administration will have to devise complex solutions. It remains to be seen whether it has this capability.

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