Kicking the Hornet’s Nest: Consequences of Trump’s May 12 Iran Deal Decision

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President Trump has threatened to put the U.S. into material breach of the Iran nuclear deal, also known as the Joint Comprehensive Plan of Action (JCPOA), by failing to renew nuclear sanctions waivers by the May 12 deadline. As a result, it is necessary for policymakers to think clearly regarding the consequences of a U.S. material breach of the accord, including the collapse of the JCPOA, Iranian nuclear expansion, diminished U.S. influence with its allies, and a growing threat of war under Trump and his hawkish advisors.

Immediate Breach of the Accord

If the President refuses to waive sanctions on May 12, nuclear-related sanctions on the Central Bank of Iran passed via Section 1245 of the FY2012 National Defense Authorization Act (NDAA) would snap back into place, resulting in an immediate material breach of the JCPOA. Under this provision, countries must reduce their oil purchases from Iran or the U.S. will cut off that country’s financial institutions that transact with Iranian banks from the American economy. This would not re-impose all of the sanctions that the U.S. is obligated to waive - the next sanctions waiver deadline is 60 days later and pertains to the vast majority of nuclear-related sanctions. But by targeting both oil sales and banking, driving down oil sales and forcing companies to withdraw from the Iranian market, the U.S. would not just violate the agreement but would be unravelling the core of Iran’s incentives to remain compliant with the terms of the JCPOA.

Even if the administration seeks to dull the initial impact by delaying enforcement, as some have suggested may be its plan, the failure to waive will result in a material breach of the agreement. The text of the JCPOA also makes clear that a failure to waive sanctions on May 12 would result in an immediate breach. The U.S. is obligated to “cease the application” of nuclear-related sanctions including the Central Bank sanctions contained in Section 1245 of the FY12 NDAA. Moreover, the U.S. has committed to “refrain from re-introducing or re-imposing the sanctions” lifted under the deal, while the JCPOA indicates Iran will treat such re-imposition “as grounds to cease performing its commitments under this JCPOA in whole or in part.” As former administration officials Rob Malley and Colin Kahl recently wrote, “in the absence of Iranian violations of the deal, the United States would be in material breach of the agreement the moment Trump refuses to waive U.S. sanctions, even as the deal’s other signatories remain party to it.”

The Trump administration has already violated the JCPOA repeatedly by any objective measure, including by actively warning foreign companies against doing any business in Iran, refusing to issue licenses for the sale of aircraft to Iran and holding U.S. implementation of the accord in doubt. While these violations have been serious, they have not struck directly at the core of the bargain. Reinstating oil sanctions would be a direct attack on the core benefit and put the U.S. in material breach.

Death of the Deal
Iranian Foreign Minister Javad Zarif has indicated that if the U.S. withdraws from the accord, Iran will do the same. The JCPOA includes a dispute resolution mechanism wherein Iran would be able to file an official complaint regarding U.S. failure to meet its sanctions-lifting obligations, a forum where the U.S. would be isolated following a U.S. breach. If Trump refused to correct the breach, Iran “could treat the unresolved issue as grounds to cease performing its commitments, in whole or in part, and/or notify the UN Security Council that it believes the issue constitutes significant non-performance,” according to the text of the agreement. In other words, Iran would have sufficient grounds to orchestrate a withdrawal from its JCPOA obligations while pinning the blame on the United States.

Other Iranian officials have suggested that Iran will resume many of its nuclear activities that deeply concerned the international community prior to the JCPOA. While it is unclear precisely how far Iran would go, Iran could:

- Bring advanced centrifuges online or resume enrichment at the deeply-buried Fordow nuclear site;
- Begin enriching uranium beyond 3.67%, potentially up to 20% or higher;
- Expand beyond 300 kg of enriched uranium to sufficient quantities for multiple nuclear weapons with further enrichment;
- Limit International Atomic Energy Agency (IAEA) inspector access, including access to suspect undeclared sites, uranium mines and mills and centrifuge production facilities.

Iranian officials have also suggested that their commitment to the Non-Proliferation Treaty – the foundation of the non-proliferation regime – could be jeopardized by a JCPOA withdrawal. While that would be an extreme measure that could ratchet up tensions significantly, the possibility cannot be ruled out in the event of a shocking unilateral U.S. rupture of a carefully-crafted diplomatic agreement that was narrowly secured against the opposition of many hardline interests in Tehran.

**Isolated from Allies**

It is no coincidence that both French President Emmanuel Macron and German Chancellor Angela Merkel traveled to Washington the same week, shortly before the May 12 deadline, to speak with Trump about the JCPOA. America’s European allies are extremely concerned that Trump will follow through and terminate a deal that is in the best interests of the transatlantic relationship, global security and the nonproliferation regime, with devastating results.

Macron has made clear that he is willing to work with Trump to address issues outside the scope of the JCPOA, including Iran’s missile program and regional security issues such as Syria, as part of a “grand bargain.” There are numerous uncertainties regarding Macron’s approach – after all, Iran would likely be unwilling to engage on a new deal when the U.S. has failed to implement the JCPOA. However, it is also clear that the U.S. would forfeit such coordination with its allies if the foundation of the JCPOA is terminated by a unilateral U.S. withdrawal, as Macron warned is still the most likely outcome.

As more than 500 members of the United Kingdom, French and German parliaments recently warned in an unprecedented letter to the U.S. Congress, “if the deal breaks down, it will well-nigh be impossible to assemble another grand coalition built around sanctions against Iran. We must preserve what took us a decade to achieve and has proven to be effective.” Absent the leverage provided by close cooperation with
our allies, there is no chance for a “better deal,” and serious risks that there would be no deal after the JCPOA whatsoever.

If Trump follows through and terminates the JCPOA, the U.S. will be put in the difficult position of threatening sanctions on the foremost companies of many friendly countries – including those in Europe, South Korea, India and beyond. This could result in a trade war if those countries take actions to protect their companies from U.S. sanctions enforcement. Moreover, as former Treasury Secretary Jacob Lew warned in 2016, “if foreign jurisdictions and companies feel that we will deploy sanctions without sufficient justification or for inappropriate reasons—secondary sanctions in particular—we should not be surprised if they look for ways to avoid doing business in the United States or in U.S. dollars.”

Another War of Choice

The elevation of John Bolton to National Security Advisor and Mike Pompeo to Secretary of State ensures that at least two individuals who prefer an Iran war to Iran diplomacy will be advising Trump on the JCPOA and broader Iran policy. Moreover, Trump himself has previewed his hawkish inclinations, warning that if Iran restarts their nuclear program “they will have bigger problems than they ever had before” and “if Iran threatens us in any way, they will pay a price like few countries have ever paid.” In unraveling the nuclear accord and freeing Iran to resume their nuclear activities, Trump would be triggering the very situation where he strongly hinted that he would use military force.

Amid an already ruinous regional proxy war in the Middle East, a war against Iran could be even more disastrous for global security than the 2003 invasion of Iraq. Iran is nearly four times the size of Iraq, with influence in military conflicts from Syria to Yemen and with missiles capable of striking U.S. ships and bases in the region. Bombing cannot erase Iran’s nuclear know-how and would only empower those in Iran eager to obtain a nuclear deterrent. Moreover, it would set the region aflame and draw the U.S. into a prolonged quagmire that would cost American blood and treasure and set U.S. security back decades.

Congress can intervene to check Trump, including by clarifying that the administration does not have authorization to launch a war against Iran. Yet, the clock is quickly running out to save the JCPOA and prevent an escalation to war.