



Restoring U.S. Credibility

Returning to the Iran Nuclear Agreement

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INTRODUCTION

By withdrawing from the Joint Comprehensive Plan of Action (“JCPOA”) -- the nuclear accord between the United States, other major world powers, and Iran and endorsed by the United Nations Security Council -- the Donald J. Trump administration caused substantial damage to U.S. national security interests, the repercussions of which currently may only be faintly understood. Already, Trump’s decision has led to substantial reputational damage to the country, shaken the transatlantic alliance, and engendered international efforts to undo the U.S.’s effective domination of the global financial system. These consequences will far outlast the Trump administration if decisive efforts are not undertaken now to mitigate the damage and to ensure Trump and his team do not make good on their disastrous efforts to fully terminate the JCPOA and instigate a war with Iran.

There is still time to salvage the JCPOA and prevent further disastrous consequences. Much of the world, including America’s closest allies and supporters of the JCPOA inside Iran, are looking for a signal that Trump’s assault on the JCPOA and those who continue to uphold the agreement can be reined in. Indeed, with the 2018 midterm elections in the rearview mirror, the Trump administration may now be entering a lame-duck period. Seeking to return the United States into the JCPOA should be a significant foreign policy priority for the incoming Congress and central to the foreign policy platform of those seeking to challenge Trump in 2020. That, however, will require efforts in the interim period to signal that Congress and any successor administration will seek to realign the U.S. with long-standing international norms. Failing this, the damage done to U.S. interests might be irreparable and the U.S.’s position as global leader substantially weakened as the JCPOA collapses and the U.S. and Iran speed toward a military confrontation.

SUSTAINED DAMAGE TO U.S. NATIONAL INTERESTS

On May 8, 2018, President Trump announced his decision to withdraw the United States from the JCPOA and to re-impose all nuclear-related sanctions lifted under the nuclear accord following 90- and 180-day wind-down periods. The Trump administration also promised to utilize existing U.S. sanctions authorities to aggressively target Iran and companies engaged in sanctionable conduct therewith.

President Trump’s decision was met with dismay. The Joint Commission for the JCPOA -- comprised of remaining participants in the nuclear accord -- signaled their “regret” over the U.S.’s action and redoubled their commitments to upholding the accord.¹ UN Secretary-General Antonio Guterres urged all UN member-states to support the JCPOA and for the JCPOA’s remaining

1. The Joint Commission stated that the JCPOA “is a key element of the global non-proliferation architecture and a significant diplomatic achievement endorsed by the UN Security Council in its Resolution 2231,” and reiterated “their commitment to the continued, full, and effective implementation of the JCPOA, in good faith and in a constructive atmosphere,” while “recogniz[ing] that the lifting of nuclear-related sanctions allowing for the normalization of trade and economic relations with Iran constitute essential parts of the JCPOA.”

The Joint Commission’s remarks were echoed by the UN Secretary-General Antonio Guterres, who lamented President Trump’s announcement that the U.S. would withdraw from the JCPOA, arguing that the JCPOA “represents a major achievement in nuclear non-proliferation and diplomacy and has contributed to regional and international peace and security.”

Similarly, the Director General of the International Atomic Energy Agency (“IAEA”)-- Yukiya Amano -- added that “[i]f the JCPOA were to fail [as a result of the U.S.’s withdrawal], it would be a great loss for nuclear verification and multilateralism.”

participants to abide by its terms.

Even America's closest allies refused to fall in line, with the European Union (EU) most significantly announcing its development of alternative payment mechanisms by which legitimate trade with Iran could be facilitated.² The French foreign ministry stated that these measures may go beyond Iran and be used to circumvent extraterritorial U.S. sanctions in the future.³

Europe also took steps to amend an EU blocking regulation that prohibits European companies from complying with re-imposed U.S. sanctions targeting Iran, absent prior authorization from the relevant EU authorities. Under this amended regulation, if European companies sustain pecuniary damages from U.S. authorities for engaging in legitimate trade with Iran, such European companies can seek to recover damages from the United States, including -- most dramatically -- through the seizure of U.S. property held in Europe. More symbolically, Europe's reinvigoration of the blocking regulation signaled the end of more than two decades of fervent cooperation between the U.S. and Europe on sanctions enforcement related to Iran and brought forth a new era where Europe will no longer accede to U.S. whims.

Beyond the consequences for U.S. leadership and influence with the international community, these damages to U.S. interests may pale in comparison if the U.S.-Iran conflict escalates into military action. While Trump himself routinely pillories the 2003 decision to invade Iraq, he has surrounded himself with hawks who seek the same fate for Iran. National Security Advisor John Bolton and Secretary of State Mike Pompeo have in the past openly called for regime change and bombing Iran. Secretary of Defense Jim Mattis, a relative moderate within this administration who has cautioned against withdrawing from the JCPOA and may soon be headed for the exits, has even listed his three top threats in the region as "Iran, Iran and Iran." Moreover, as former Secretary of State John Kerry has warned, Iran's rivals in the region urged the Obama administration vociferously to bomb Iran. "Every leader I met with in the region..." warned Kerry, "said, 'You have to bomb Iran, that is the only thing they understand and that is the only way you will stop them having a nuclear weapon.'" Those leaders hoping to "fight the Iranians to the last American" - in the words of former Defense Secretary Robert Gates - have since gained influence with the Trump administration by leaps and bounds.

Even if Trump himself wants to avoid further military entanglements, it is his advisors in Pompeo and Bolton who maneuvered Trump out of the JCPOA and appear to be working closely with hawkish advisors outside the administration to edge the U.S. toward military confrontation. If they

2. On September 28, 2018, the Joint Commission to the JCPOA took note of "the initiative to develop a Special Purpose Vehicle [SPV] to facilitate payments related to Iran's exports (including oil) and imports, which will assist and reassure economic operators pursuing legitimate business with Iran." According to the EU High Representative for Foreign Affairs and Security Policy Federica Mogherini, the SPV "will allow European companies to continue trade with Iran, in accordance with [EU] law, and could be opened to other partners in the world."

3. France's Foreign Ministry Spokeswoman Agnes Von der Muhll stated: "It [the SPV] aims to create an economic sovereignty tool for the European Union beyond this one case. It is therefore a long-term plan that will protect European companies in the future from the effect of illegal extraterritorial sanctions."

The Joint Commission has also stated its intention to continue to devise practical solutions to ensure Iran receives the expected dividend from its adherence to the restrictions contained in the JCPOA, including, for instance, by "pursu[ing] concrete and effective measures to secure payment channels with Iran and the continuation of Iran's export of oil and gas condensate, petroleum products, and petrochemicals." Such payment channels--if effective--could spell the beginning of the end for U.S. domination of the global financial system, an event that would fundamentally undermine the U.S.'s ability to extract concessions from foreign adversaries through the use of economic sanctions.

succeed in goading Iran to leave the constraints of the JCPOA, Bolton and Pompeo would have all the ammunition they need to replicate the Iraq war playbook and tee up a preventive war to stop Iran's alleged nuclear ambitions. Even if they fail, the spark for a massive military conflagration with Iran could come from multiple directions in the absence of deconfliction channels. A clash in the tight waterways of the Persian Gulf, U.S. maneuvers to push Iran out of Syria, or Iranian retaliation for perceived foreign support for terror within Iranian borders could be all war-hawks in Washington and Riyadh would need to push headlong into a disastrous war.

RECOMMENDATIONS TO SALVAGE THE JCPOA AND REHABILITATE THE UNITED STATES ON THE GLOBAL STAGE

Given the risks of President Trump and his administration fully collapsing the JCPOA and instigating war with Iran, the work needs to begin now in order to rein in the White House and prevent a disastrous war.

In this context, a top priority must be to signal that there is political will in Washington to reenter the JCPOA.

RECOMMENDATION #1: LEGISLATION TO SUSPEND NUCLEAR-RELATED SANCTIONS AND RETURN THE U.S. INTO COMPLIANCE WITH THE JCPOA

Lawmakers in the U.S. Congress should introduce legislation that would seek to return the U.S. to the JCPOA. Such legislation could indefinitely suspend all nuclear-related sanctions and additional sanctions contrary to U.S. JCPOA obligations. While such legislation may face an uncertain pathway to becoming law, it would send an important signal that there is significant political will in the United States to salvage the agreement.

RECOMMENDATION #2: 2020 CONTENDERS SHOULD ANNOUNCE INTENTION OF NEXT ADMINISTRATION TO RETURN THE U.S. INTO COMPLIANCE WITH THE JCPOA

Contenders for the 2020 Presidential elections should similarly make crystal clear that their intent is to return to the JCPOA if elected and build on it as the floor, rather than the ceiling. Wide support among 2020 contenders and key legislators in Congress would send a clear signal to all parties seeking to sustain the JCPOA that there is light at the end of the Trump tunnel. This would increase the likelihood that Europe and others can maintain the agreement and that Iran remains within the constraints of the JCPOA, reducing the threat of an Iranian exit instigating a crisis that leads to war.

RECOMMENDATION #3: LEGISLATION TO CONSTRAIN THE PRESIDENT'S ABILITY TO START A WAR OF CHOICE

Signals on reentry to the JCPOA should be coupled with strong steps to constrain the present administration's ability to start a war. In the 115th Congress, legislation has been introduced by Sen. Tom Udall that would prohibit the administration from using funds to launch an unauthorized war against Iran. This builds on earlier efforts, including an acknowledgment in the conference report

for the FY2019 National Defense Authorization Act, which clarified that Congress is not aware of any legislative authorization for Trump to use force against Iran. Such efforts must be redoubled, with anyone concerned about the prospect of war with Iran demanding that any defense authorization include explicit prohibitions against Trump triggering war with Iran.

RECOMMENDATION #4: HOLD ADMINISTRATION ACCOUNTABLE TO HUMANITARIAN EXEMPTIONS UNDER SANCTIONS

Additional steps could push back on the Trump administration's bankrupt pressure campaign. The administration's Oct. 16 and Nov. 5 announcements of new sanctions designations signal a clear intent to escalate financial war against Iran, with banks that were far removed from sanctionable activity and crucial to enabling some degree of humanitarian trade under previous administrations now subjected to sanctions under terrorism authorities. The intent appears to be to complicate future efforts to relieve sanctions in exchange for Iranian concessions, while starving the Iranian people of all basic goods, including humanitarian goods, in a dangerous move to destabilize the country and provoke an uprising. Not only is such a move immoral and likely illegal under international law, it is almost certain to backfire and empower hardline forces like the Islamic Revolutionary Guard Corps that thrive under sanctions. As a result, a strong effort should be made to effectuate humanitarian exemptions under Iran sanctions. Congress should seek accountability from the administration regarding the measures it is taking to ensure that trade in food, medicine, and other humanitarian goods for Iranians can continue.

REPAIRING THE DAMAGE: THE U.S. RETURN TO THE JCPOA

The incoming Congress and a successor administration can respectively halt and repair much of the damage from Trump's JCPOA exit by signaling the political will and intent for the U.S. to re-enter the JCPOA's fold and resume obligations thereto, including via the lifting of nuclear-related sanctions.

Resuming commitments under the JCPOA would deliver profound benefits for the U.S. national interest. First, it would signal to the world that the U.S. is a responsible actor in the international arena; the U.S. intends to live up to the political agreements that it makes with other countries; and the Trump administration was nothing more than an unfortunate aberration in the American political system. Nothing has caused more serious damage to U.S. interests than the growing trust deficit towards the United States. If states are unable to trust the United States, then not only is U.S. global leadership severely undermined but the international system that has been predominate since the end of the Second World War risks unraveling. By clearly showing the world that the U.S. intends to fully observe the commitments that it makes, a successor administration can begin to repair the damage wrought by President Trump.

Second, the U.S.'s re-entrance into the JCPOA would have important non-proliferation benefits by effectively disincentivizing Iran from exiting the JCPOA itself and thus undoing the risk of a burgeoning nuclear crisis in the Middle East. In so doing, the U.S. would ensure the survivability of the tough and far-reaching constraints on Iran's nuclear program that will be imposed by the

JCPOA through 2030 and beyond.⁴ Iran's nuclear program does not pose the risks it did in the pre-2015 era, and that is fully thanks to the JCPOA and the restrictions it imposes. Any policy-maker should be eager to return to the JCPOA and, in so doing, re-secure hard-fought concessions that take an Iranian nuclear weapon and war with Iran over its nuclear program off the table for the foreseeable future.⁵

Third, reentry to the JCPOA would signal to the kingdom of Saudi Arabia that Donald Trump's blank check for their increasingly brazen behavior is at an end, and that the U.S. has alternatives to outsourcing American policy in the region to an erratic kingdom that - in the words of Sen. Lindsey Graham - has double dealt on terror. Perversely, both the Trump administration and numerous Washington pressure groups have warned that the administration's pressure campaign against Iran would be jeopardized if the U.S. dared to impose consequences on the kingdom over the brutal murder of Saudi journalist and U.S. resident Jamal Khashoggi. Such warnings expose the current administration's approach to the region as so hopelessly unbalanced that is susceptible to extortion by one morally bankrupt regime against another. The U.S. needs to move to a transactional relationship with both Saudi Arabia and Iran where we can impose consequences on each for such brazen misbehavior. In Iran, the U.S. has sanctioned itself out of influence, whereas with Saudi Arabia the U.S. is too afraid to use its substantial leverage to rein in the kingdom's destructive course - whether on the disastrous war in Yemen or on the kingdom's mounting human rights abuses. An alternative is available, and it should start with re-entry to the JCPOA.

Finally, U.S. participation in the JCPOA Joint Commission would guarantee diplomacy with Iran that does not presently exist amid the administration's pressure campaign, and could lead to follow-on negotiations addressing the full spectrum of America's concerns with Iran - including regional security and human rights. The present Trump administration approach of exiting the JCPOA and seeking its destruction prohibits the U.S. from affecting Iran's calculations on issues beyond the nuclear file. Any policymaker with justifiable concerns with Iranian behavior or who seeks political solutions to the proxy conflicts that have gripped the region should be urging a return to the JCPOA.

Returning to the JCPOA and restoring U.S. credibility and influence with Iran is unlikely to be without cost, but will not be nearly as costly as the alternative. The U.S. reneged on its commitments and, barring Congressional intervention or a change of heart from President Trump himself, will have materially breached the accord by snapping back nuclear-related sanctions for a period of at least 32 months if there is a change in administration after the 2020 elections. Judging by recent sanctions designations, as well, the Trump administration does not appear intent to sit idly in the months ahead, but will proceed with a dramatic expansion of sanctions designations

4. More than 90 top nuclear scientists in the United States praised the nonproliferation benefits of the accord in an October letter last year that emphasized "severe restrictions on Iran's stockpile of low-enriched uranium remain in place through 2030," with additional restrictions continuing through 2040. When these restrictions expire, even if no follow-on agreement is negotiated, Iran would still be subject to the IAEA's Additional Protocol, which the scientists described as "the strongest set of generally applicable safeguards implemented by the IAEA."

5. Quite contrary to Donald Trump's assertions, the JCPOA is widely recognized as a nonproliferation success, and its destruction as an extreme risk. As IAEA Director Amano made clear, the JCPOA ensures the IAEA "has the world's most robust verification regime in place in Iran." Such sentiments are widely shared amongst the international community, as was on display at the UN Security Council session chaired by President Trump focused on Iran this past September. Despite the President's entreaties to punish Iran, nation after nation voiced support for the JCPOA. According to UK Prime Minister Theresa May, the accord "remains the best means of preventing Iran developing a nuclear weapon, and we are committed to preserving the JCPOA as long as Iran continues to abide by its obligations in full." Similarly, French President Emmanuel Macron rebuked Trump's unilateral push on sanctions, warning that Iran was on the path to a nuclear weapon prior to the JCPOA.



that may go well beyond previous sanctions campaigns. These will have a tremendous negative effect on the Iranian economy and the Iranian people's aspirations, in addition to the economies of our allies in Europe seeking to comply with the UNSC-endorsed JCPOA.

As a result, the next administration should seek to reenter the JCPOA by providing assurances that sanctions relief will flow as intended under the accord. For example, this could include immediately licensing the sale of commercial aircraft to Iran that was delayed and ultimately reneged on by the Trump administration. Moreover, the next administration should address the credible challenges that arose in effectuating sanctions relief while the U.S. was party to the deal.

Time will be of the essence to demonstrate good faith and restore American credibility. While the U.S. should refrain from seeking to influence Iran's domestic political balance in any direction, Iran will hold pivotal parliamentary elections in May 2020 and Presidential elections in 2021. The current Supreme Leader, Ayatollah Khamenei, is also 79 years old and Iran's various factions are already jockeying over his potential successor. The political dynamics inside Iran may well determine how forward leaning the next administration can be in seeking to resolve remaining sources of conflict with Iran and it is critical that the U.S. act before it is too late to salvage the JCPOA and with it the political space to pursue diplomatic solutions.

CONCLUSION

The stakes of salvaging the JCPOA are incredibly high for American and regional security. At risk are the dual threats of a nuclear-armed Iran and a disastrous war that could make the Iraq war pale in comparison. The American people do not want to repeat the mistakes that led to the war in Iraq with Iran, and policymakers who clearly affirm their opposition to Donald Trump's march to war are likely to be rewarded for their stand. Bold leadership is needed for the U.S. to navigate the treacherous waters ahead under Trump and re-enter and reinvigorate the key opening with Iran represented by the JCPOA.