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The Biden Administration and JCPOA

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1. Restoring the Nuclear Deal with Iran

The 2015 multilateral nuclear deal with Iran, known as the Joint Comprehensive Plan of Action (JCPOA), resolved a decades-long crisis over Tehran's nuclear program and strengthened the international nonproliferation regime. More than two years of full implementation of the deal from January 2016 to May 2018 demonstrated its effectiveness and verifiability.

Despite its proven successes, the nuclear deal is now on the verge of collapse. Former U.S. President Donald Trump's decision to withdraw from the deal in May 2018—despite acknowledging Iran's compliance—and his maximalist sanctions campaign drove Iran to take a series of steps beginning in May 2019 to violate the nuclear restrictions mandated by the accord.

These increasingly serious violations and the upcoming Iranian presidential election in June have narrowed the window for U.S. President Joe Biden to coordinate a return to compliance with the JCPOA alongside Iran. While both Biden and Iranian President Hassan Rouhani express support for restoring full implementation of the JCPOA, they must act swiftly or risk losing the diplomatic moment and igniting a new nuclear crisis.

2. Confidence Building Steps

In order to signal good-faith U.S. efforts to return to the JCPOA, head off further violations by Iran, and create the space to coordinate a joint return to compliance, there are several confidence building steps that Biden could consider immediately upon taking office. These include:

* 본 글의 내용은 모두 개인의 의견으로, 소속기관이나 학회의 공식 의견이 아님

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- **Issue waivers for nonproliferation projects.** The Biden team should quickly voice reinstate waivers allowing JCPOA-required projects to move forward, like conversation of the Arak reactor, and removing obstacles that could impede Iran's return to compliance, such as the sanctions that prevent Iran from shipping out excess enriched uranium and heavy water.

- **Signal support legitimate transactions, particularly for humanitarian goods.** The Biden administration should signal support for using INSTEX, the trade mechanism set up by the European parties to the JCPOA, to facilitate trade with Iran, and SHTA, the Swiss led channel, to funnel critical medicines and humanitarian goods to Iran, until the JCPOA can be restored.

- **Immediately affirm U.S. support for UN Security Council Resolution 2231 and reject the Trump administration's position on UN sanctions.** In August 2020, the Trump administration attempted to snap back all UN sanctions on Iran waived by Resolution 2231, which endorses the JCPOA. While the Security Council did not recognize the U.S. attempt to as legitimate because of the U.S. withdrawal, Trump administration officials continued to reiterate that UN sanctions were reimposed and threatened to sanction any state that did not implement them. Signaling support for Resolution 2231 would help restore confidence in the U.S. intent to rejoin the JCPOA.

In addition to demonstrated U.S. good faith, these steps might allow Rouhani to delay further implementation of Iran's December 2020 nuclear

law, which mandates a series of JCPOA violations throughout 2021. Most importantly, it could allow Rouhani to delay the reduction of IAEA inspections, currently scheduled to happen in late-February.

Reducing inspections would break the record of monitoring and verification, creating gaps of knowledge about Iran's nuclear program that could be difficult, if not impossible, to reconstruct. The more irreversible steps Iran takes, the higher the risk that the JCPOA will collapse before a U.S. and Iranian return can be completed and the deal stabilized.

3. Returning to Compliance

From a technical perspective, a return to compliance by both Iran and the United States is relatively straightforward and could likely be accomplished fairly quickly.

For Iran, returning to compliance will entail shipping out or blending down enriched uranium in excess of the 300 kilograms of uranium-235 gas enriched to 3.67 percent, halting uranium enrichment above 3.67 percent, removing and storing centrifuges in excess of the JCPOA's limits, halting uranium enrichment at Fordow, and shipping out or using any heavy water in excess of 130 metric tons. It is estimated that Tehran could take these steps in 2-4 months.

On the U.S. side, a return to compliance could be accomplished even more quickly. Biden has the executive authority to waive the necessary sanctions without any Congressional action.

Preparing the paperwork could easily be accomplished in the time it takes for Iran to return to compliance.

There are, however, issues that are not directly covered by the JCPOA that will need to be addressed that could create obstacles or delay a return to full compliance by all parties.

Since September 2019, Iran has installed new advanced centrifuge machines not covered by the JCPOA and produced enriched uranium using cascades of advanced centrifuges in excess of the limited number of machines allowed by the deal. The parties to the JCPOA will need to address these issues to provide guidance on how Iran can return to compliance.

The JCPOA's oversight body, the Joint Commission, can approve of new centrifuge models. That body could issue guidance to the IAEA on when Iran can reintroduce the new machines for testing and in what quantities.

More challenging to address is the knowledge Iran gained by operating the more advanced centrifuges over the past year. It is highly unlikely that Iran would negotiate changes to the JCPOA that delay future advanced centrifuge testing to take into account the past year of research. Furthermore, instituting that they do so is unnecessary, as what Tehran learned will not significantly alter the risk posed by Iran's nuclear activities. Given these factors, it may be best to take the knowledge gained into account when crafting an approach to follow-up negotiations.

On the U.S. side, a likely complicating factor will be new sanctions imposed by the Trump administration since the U.S. withdrawal in May 2018. Iran has demanded that all of these measures be lifted, even those outside of the JCPOA's parameters.

Although the JCPOA does not prohibit any party from pursuing sanctions in areas not covered by the deal, many of the Trump-imposed sanctions appeared designed to make it more difficult for a future U.S. president to return to compliance with the accord. The Biden administration will need to assess those new sanctions to determine what, if any, are legitimate and should be kept in place and what should be lifted. Even if some of these new sanctions designations were not made in good faith, Biden will undoubtedly face pushback domestically from JCPOA critics if he lift designations for terrorism-related activities.

Given the history of mutual distrust, it is unlikely that either Iran or the United States will want to be perceived as returning to compliance first, underscoring the importance of sequencing. The most straightforward option that minimizes opportunities for spoilers would be to adopt a similar process to implementation of the JCPOA, whereby the United States would lift sanctions at the same time that the IAEA confirms that Iran is abiding by the JCPOA's conditions.

Another option would be for the United States and Iran to agree on a sequence of steps. That process, however, would involve more drawn out negotiations to determine substance and



timing of the steps, which increases the risk of spoilers. If the process is not completed by the Iranian presidential election in June, the incoming president could complicate or reverse Rouhani's decision. Rejecting the deal or demanding more from the United States would be more difficult for a new president after both sides have returned to compliance. Once the JCPOA is restored, blame would rest more squarely on Iran if Tehran takes steps to disrupt the deal, as opposed to now, when the United States is viewed as responsible for the deal's crisis.

Furthermore, negotiating a step-by-step approach could result in critics of the JCPOA arguing that the United States and Iran reached a "new" deal, which would be subject to Congressional review under the 2015 Iran Nuclear Agreement Review Act. Even if critics were successful in arguing for Congressional review, it is highly unlikely that such an arrangement would be rejected, given that Democrats control both houses of Congress. The process, however, would still increase the risk of the U.S. and Iran return not being completed prior to the Iranian election.

4. Building on the JCPOA

A common argument against Biden's plan to return to the JCPOA alleges that the United States will lose the leverage gained by Trump's sanctions to push Iran to negotiate a longer-term framework for its nuclear program.

The United States, however, has far more leverage to negotiate additional limits on Iran's nuclear activities as a JCPOA member. For sanctions leverage to be effective, it has to be credible. Returning to compliance with the JCPOA will begin to restore confidence in the United States as a negotiating partner, giving Biden credibility to use U.S. primary sanctions on Iran that were not affected by the JCPOA as leverage in future negotiations.

Putting the U.S. embargo on Iran on the table in return for longer-term nuclear restrictions would likely be attractive for Tehran. Even when the JCPOA was fully implemented by all parties, the Iran's economic growth remained limited, in large part because of the U.S. sanctions that were not covered by the JCPOA.



Biden has expressed his intention to pursue such talks and Iranian officials have indicated a willingness to participate in negotiations on a longer-term nuclear framework, once confidence in the JCPOA is restored. Securing a commitment to begin those negotiations, perhaps after a new Iranian president takes offices, could help silence JCPOA critics that continue to raise concerns about the future of Iran's nuclear program after certain limits expire. A number of factors should be taken into account when devising a strategy for building on the JCPOA, including:

- **Regional nuclear activities.** The nuclear landscape in the Middle East has shifted since the JCPOA was negotiated. Most notably, Saudi Arabia has threatened to match Iran's nuclear capabilities and is proceeding with an ambitious plan for

civil nuclear power without more intrusive IAEA monitoring mechanisms. Riyadh has also been reluctant to permanently forswear enrichment and reprocessing. Follow-on negotiations that build on the JCPOA could consider regional prohibitions, such as banning reprocessing and requiring the more intrusive IAEA additional protocol. Iran may be more likely to accept longer-term restrictions on its nuclear activities if other regional states agree to the same limitations.

- **Realistic expectations for future limits.** When Trump withdrew from the JCPOA, his administration outlined 12 demands that Iran would need to meet to earn sanctions relief as part of new deal. Those demands included a permanent ban on enrichment and reprocessing. Prohibiting uranium enrichment in a future deal is

highly unlikely—negotiations on the JCPOA only gained momentum after the U.S. indicated support for a limited uranium enrichment program in a final agreement. But an effective, longer-term deal is possible, even with an expanded Iranian uranium-enrichment program. The key will be negotiating the right combination of limits, such as restrictions on the level of enrichment, the stockpile kept in gas form, that create a long-enough breakout time that the international community could react if Iran decides to pursue nuclear weapons. Of particular importance in any follow-on negotiations will be the monitoring measures. Intrusive monitoring and verification will build confidence that Iran is adhering to the deal and not diverting nuclear material for illicit purposes.

- **Expand nuclear cooperation.** Annex III of the JCPOA includes a list of collaborative nuclear projects. Largely voluntary, there was little progress on implementing these measures as part of the JCPOA. Prioritizing cooperative nuclear projects as negotiations on a longer-term nuclear framework commence and outlining possible projects in a follow-on deal provides benefits for Iran, creates ties between Iranian and international nuclear scientists, and provides insight into the trajectory of Iran's nuclear program. It also raises the cost of what Tehran stands to lose if decides to pursue nuclear weapons again in the future.

- **Parallel regional security talks.** The U.S. intelligence community has long assessed that Iran has the capabilities necessary to build a nuclear weapon, but has not made the political decision to do so. Addressing security dynamics in the region

would reduce the likelihood that Iran would feel compelled to pursue nuclear weapons down the road. While regional security talks should not be explicitly tied to follow-on negotiations to build on the JCPOA, it could compliment future nuclear negotiations.

- **Ballistic missiles.** Critics and supporters of the JCPOA alike have raised concerns about Iran's ballistic missile program, which was not addressed by the deal. With UN restrictions on Iran's import and export of missile-related materials and technologies set to expire in October 2022, the Biden administration will face pressure to include restrictions on Iran's ballistic missile program as part of any talks. Iran views its missiles as a critical component of its conventional deterrent against better-armed regional adversaries. Agreeing on ballistic and cruise missile limits, such as range limitations, is more likely to succeed as part of a regional security dialogue, as opposed to tying it to future nuclear talks.

Pursing these long-term diplomatic options to build on the JCPOA's nuclear restrictions and advance regional security discussions would have significant benefits for the region, the nonproliferation regime, and international security. The pathway to these options runs through the JCPOA, underscoring the critical importance of swift action from Biden and Rouhani to coordinate a return to full implementation of the deal before it collapses.