

Policy Perspectives

Congress and the Iran Agreement: The Basics & The Myths

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By Sharon Squassoni and Chris Coughlin

In the month since the Iran deal was unveiled, critics in Congress have targeted the scope and verification of the agreement as potential soft spots. For some, the agreement did not go far enough in limiting Iran's nuclear capabilities (that is, it did not eliminate Iran's nuclear assets) or in giving inspectors free range in Iran. Leaving aside obvious political maneuvering within Congress, Iran's long history of undeclared nuclear activities, hidden facilities and evasive maneuvers regarding inspections have made critics of the Iran deal understandably nervous about future Iranian compliance under the Joint Comprehensive Plan of Action (JCPOA). After all, wouldn't we all feel safer if Iran had no nuclear program at all? Wouldn't we all feel more confident if inspectors could go anywhere at any hour?

The answers to these questions are not necessarily "Yes." But to understand why, a little arms control and nonproliferation context is necessary.

The Fundamentals

1. The Iran deal is not arms control

The Iran deal is not

- a. a treaty

- b. a treaty between two relatively equal countries
- c. a treaty between two relatively equal countries to reduce, limit or eliminate weapons (e.g., an arms control treaty)
- d. a treaty between multiple parties to reduce, limit or eliminate weapons (e.g., a multilateral arms control treaty)

Iran does not have nuclear weapons, but it does have some of the capabilities to produce them. Iran has existing obligations not to manufacture, develop or otherwise acquire nuclear weapons under the Nuclear Nonproliferation Treaty (NPT). The first level of monitoring, Iran's safeguards agreement with the International Atomic Energy Agency (IAEA), stems from those existing obligations. In fact, most of what we know about Iran's nuclear program comes from IAEA inspections conducted under its NPT safeguards agreement.

Because the Iran agreement is not a treaty, it does not have to be ratified and the U.S. Senate will not provide advice and consent for ratification. However, because Congress must aid the executive branch in lifting relevant sanctions as the agreement moves forward, it has a very important role to play nonetheless. That role is not to approve or disapprove of the deal, but rather, to monitor its implementation.

One of the ways in which the Iran deal mimics arms control treaties is in the inclusion of dispute resolution mechanisms, including the Joint Commission. But it differs significantly from traditional arms control treaties in spelling out repercussions for noncompliance – the snap-back of sanctions. Few, if any, arms control treaties spell out the consequences of cheating.

2. The Iran deal is about nonproliferation

The starting point for this deal is Iran’s obligations under the NPT, and the JCPOA supports that and adds other obligations designed to limit Iran’s sensitive capabilities (e.g., in the number and sophistication of centrifuges, the amount of nuclear material it can stockpile, the level of enrichment of that material, and the ability of the Arak reactor to produce bomb-grade plutonium). It is essential to understand that the NPT itself does not prohibit states from acquiring the most sensitive nuclear capabilities of enrichment and reprocessing. This is why extra restrictions and extra verification were needed for the JCPOA. This is also why some of these restrictions and monitoring will continue far into the future.

Critics quite rightly point out that Iran managed to acquire its sensitive capabilities (uranium enrichment, a reactor (Arak) that could produce plutonium) while a party to an existing multilateral treaty, the NPT. We know of at least one other country to do that – Iraq. Why shouldn’t Iran be treated like Iraq?

Two major differences are that the elimination of Iraq’s nuclear capabilities in 1991 was made possible by its defeat in a war against a broad coalition that was triggered by its invasion of Kuwait, and that the International Atomic Energy Agency (IAEA) safeguards system to help prevent or deter that kind of massive clandestine nuclear weapons program was strengthened

considerably in the aftermath of the first Gulf War. The Additional Protocol, which permits the IAEA to have increased information, access, and monitoring technologies to do its job, is the result of the program to strengthen safeguards. Under the JCPOA, Iran has agreed to implement the Additional Protocol before ultimately ratifying it.

Understanding the goals and context of the deal, as well as the myths surrounding it, may help produce a more sober assessment of its utility, and certainly prepare relevant officials for what may be a long period of watchfulness if the deal is ultimately implemented.

Iran Inspections

By Chris Coughlin

Under the JCPOA, the IAEA will monitor Iran under three separate nonproliferation agreements: the Iran Safeguards Agreement, the Additional Protocol, and the Joint Comprehensive Plan of Action. President Obama called this “the most robust and intrusive inspections and transparency regime ever negotiated for any nuclear program in history.”

The first component of this verification system is Iran’s safeguards agreement with the IAEA (INFCIRC/214), which entered into force in 1974. Such agreements attach to all nuclear material in a country. A comprehensive safeguards agreement requires countries to “provide the Agency with information concerning nuclear material subject to safeguards under this Agreement and the features of facilities relevant to safeguarding such material.” Although the Agency always had the mandate to verify the absence of undeclared activities, materials and sites, its ability to detect undeclared nuclear activities and access to suspicious sites for many years was limited.

The Model Additional Protocol (INFCIRC/540) was negotiated following the first Gulf War to strengthen the Agency’s ability to detect undeclared nuclear activities and sites. A voluntary protocol, it has been almost universally adopted. The Additional Protocol improves the verification/monitoring regime’s abilities by strengthening two critical areas: information and access.

With respect to information, the Additional Protocol requires countries provide the IAEA with information on a broader range of nuclear activities, including research and development, intermediate uses of nuclear material, and activities involving nuclear waste. “Complementary access” provisions in the Additional Protocol grant IAEA inspectors access to all sites necessary to resolve concerns, and the ability to carry out “visual observation; collection of environmental samples; utilization of radiation detection and measurement devices; application of seals and other identifying and other identifying and tamper indicating devices,” as well as “other objective measures.”

The JCPOA requires Iran to provisionally implement the Additional Protocol, something it had previously done from 2003 to 2005. Under the JCPOA, Iran will be required to “seek” ratification of the Additional Protocol on “Transition Day,” or eight years after “Adoption Day” (no later than October 20, 2015), as outlined by the Implementation Plan of the JCPOA.

The JCPOA provides a third tier of monitoring. Because some of the restrictions in the JCPOA go beyond IAEA safeguards agreements and the Additional Protocol, Annex I, Section Q allows the IAEA to request access “if the IAEA has concerns regarding undeclared nuclear materials or activities, *or activities inconsistent with the JCPOA* (emphasis added) at locations that have not been declared under the comprehensive safeguards agreement or Additional Protocol.” The resolution of disputes is not left solely to Iran and the IAEA but can be kicked up to the Joint Commission if necessary.

The Myths

Myth 1: Eliminating all of Iran's nuclear assets was a goal

The most visible and vocal advocate of complete elimination of Iran's nuclear program is Israeli Prime Minister Benjamin Netanyahu, but others have joined him. The fact that UN Security Council resolutions since 2006 have called upon Iran to suspend specific nuclear activities – uranium enrichment, heavy water production, construction of the heavy water reactor, and any reprocessing-related activities – may have led to expectations that suspension would eventually equal termination. In part, earlier insistence that Iran comply with those UNSC resolutions requiring suspension (which Iran did for a few years from 2003) as a prerequisite for talks may also have created a perception that Western negotiators “caved” on their demands. However, there is little public evidence that a “zero option” for Iran's nuclear program was ever a goal for a comprehensive solution. On the other hand, it was certainly the intention of the UN Security Council in its resolutions to halt Iranian activities that were deemed sensitive, at least temporarily.

Myth 2: Eliminating all of Iran's nuclear assets would be beneficial

One of the basic premises of the nonproliferation regime is that it is possible to have peaceful nuclear energy and to be confident that you can detect (if not prevent) its diversion to military uses. Another of the basic premises of

nonproliferation is that nothing can stop a determined proliferator, but a panoply of measures can slow, complicate, and make expensive and painful a clandestine acquisition of nuclear weapons. Fundamentally, nonproliferation is about buying time to find other solutions. If one accepts those basic premises, then complete elimination of Iran's nuclear program is the wrong approach. Trying to eliminate (either through negotiation or militarily) Iran's nuclear assets would be impossible if Iran does not cooperate and unnecessary if it does. In other words, if Iran has bad intentions, it will be impossible to eliminate all capabilities and if it has good intentions, it would be unnecessary. To suggest otherwise is to aver that nuclear energy can have no peaceful uses. Of course, an alternative approach is to restrict nuclear energy to “responsible,” trustworthy states, with predictably bad results.

Myth 3: Anytime, anywhere inspections are possible

Expectations about inspector access have also been unreasonably high. Among others, Sen. Lindsey Graham,¹ Rep. Ed Royce², and Sen. Robert Menendez³ have insisted that the Iran deal include provisions granting IAEA inspectors “anytime, anywhere” access to undeclared and military Iranian sites, along with round-the-clock access to all declared nuclear facilities in the country. In particular, some critics have suggested that the measures for securing access to undeclared sites amount to buying time for

¹ Fitzgerald, Sandy. “Lindsey Graham: Iran Deal Doesn't Have ‘Snowball's Chance’ Without Inspections, Sanctions.” *Newsmax*. 19 Apr. 2015. Web.

<http://www.newsmax.com/Newsfront/lindsey-graham-iran-sanctions-inspections/2015/04/19/id/639401/>

² Royce, Ed. Opening Statement to the House Committee on Foreign Affairs. *Negotiations with Iran: Blocking or Paving Tehran's Path to Nuclear Weapons?* Hearing. 19 Mar. 2015. Web.

<http://docs.house.gov/meetings/FA/FA00/20150319/103186/HHRG-114-FA00-20150319-SD002.pdf>

³ “Menendez Speaks on Iran Nuclear Agreement Review Act as Debate Begins on the Senate Floor.” *U.S. Senator Bob Menendez of New Jersey*. 23 Apr. 2015. Web.

<http://www.menendez.senate.gov/news-and-events/press/menendez-speaks-on-iran-nuclear-agreement-review-act-as-debate-begins-on-the-senate-floor>

Iran to hide its activities. For example, Israeli Prime Minister Benjamin Netanyahu drew a comparison of Iranian JCPOA violations with the prohibited activities of drug dealers: “Can you imagine giving a drug dealer 24 days’ notice before you inspect the premises? That’s a lot of time to flush a lot of meth down the toilet.”⁴

Although Secretary of State Kerry has stated in an interview with CBS’ *Face the Nation* that “There’s no such thing in arms control as anytime, anywhere. There isn’t any nation in the world, none that has an anytime, anywhere,”⁵ critics can be forgiven for believing in the concept, based on two precedents: Iraq following the 1991 Gulf War, and inspections under the Chemical Weapons Convention.

In the 1990s, the UN Security Council set up mandates for the United Nations Special Commission (UNSCOM) and the IAEA Action Team to inspect, respectively, Iraq’s biological, chemical and missile capabilities, and Iraq’s nuclear capabilities.⁶ United Nations Security Council Resolution 707 required Iraq to “allow the Special Commission, the IAEA and their Inspection Teams immediate, unconditional and unrestricted access to any and all areas, facilities, equipment, records and means of transportation which they wish to inspect.”⁷

As noted above, the Iraq case may have been unique because Iraq had no bargaining power

following the loss of the Gulf War. But as observers well know, Iraqi officials nonetheless for years impeded access of UNSCOM and IAEA officials (to their ultimate discredit, creating an excuse for the second Gulf War). Some notable examples of Iraqi authorities’ efforts to disrupt inspection activities, in violation of the UNSC Resolutions 687 and 707, included confiscating documents gathered by the inspection team, interrupting access to sites, and detaining the inspection team, in one instance lasting 96 hours.⁸ However, it isn’t difficult to conjure up mundane ways in which to impede inspections without overtly opposing them, from losing keys to blocked roadways to “sick” employees. Quotidian impediments will be something to watch for in implementation of this Iran deal.

The Chemical Weapons Convention, which entered into force in 1997, touted a challenge inspections regime that has sometimes been described as “anytime, anywhere.” The Organisation for the Prohibition of Chemical Weapons (OPCW), the implementing body for the CWC, describes the treaty as having a “principle of ‘anytime, anywhere’ inspections.”⁹ More accurately, the inspections under the CWC feature what is known in the verification community as “managed access.” Under the CWC, access at undeclared facilities may involve “only those methods necessary to provide sufficient relevant facts to clarify the concern

⁴ Netanyahu, Benjamin. Interview with Lester Holt. 15 Jul. 2015. Television.

<http://www.msnbc.com/jose-diaz-balart/watch/netanyahu--iran-deal--not-good-for-any-of-us--484672067526>

⁵ Kaplin, Rebecca. “Kerry: I never heard ‘anytime, anywhere’ inspections promise in 4 years.” *Face the Nation*. CBS News. 19 Jul. 2015. Web.

<http://www.cbsnews.com/news/kerry-i-never-heard-anytime-anywhere-inspections-promise/>

⁶ United Nations Security Council. *Resolution 687*. 8 Apr. 1991. Web.

<http://www.un.org/Depts/unmovic/documents/687.pdf>

⁷ United Nations Security Council. *Resolution 707*. 15 Aug. 1991. Web.

<http://www.un.org/Depts/unmovic/new/documents/resolutions/s-res-707.pdf>

⁸ United Nations Security Council. *First report on the sixth IAEA on-site inspection in Iraq under Security Council resolution 687 (1991)*. 8 Oct. 1991. Web.

https://www.iaea.org/OurWork/SV/Invo/reports/s_23122.pdf

⁹ “Chemical Weapons Convention.” *Organisation for the Prohibition of Chemical Weapons*. OPCW, n.d. Web. <https://www.opcw.org/chemical-weapons-convention/> 5

about possible non-compliance with the provisions of [the] Convention, and shall refrain from activities not relevant thereto.” In addition, the “inspected State Party shall have the right to take measures to protect sensitive installations and prevent disclosure of confidential information and data not related to chemical weapons.”¹⁰ This is not dissimilar to language in nuclear safeguards agreements and the Additional Protocol. In terms of timing under the CWC, five days can pass from a request from a State Party for an inspection to when an inspection team is granted access within the “requested perimeter.” In addition, the CWC tries to account for instances where an inspection team “has not had full access” to “any object, building, structure, container or vehicle” by allowing the inspected State Party to show that the contested thing “is not used for purposes related to the possible non-compliance concerns raised in the inspection request.” In this scenario, “reasonable effort” to resolve concerns could include environmental sampling of a nearby site. Thus, the State Party is obligated to resolve concerns, but not necessarily grant access to any site.

Myth 4: Anytime, anywhere inspections are necessary

Verification relies on a combination of information, technology and access. In arms control agreements, the use of on-site inspections has grown in the last few decades but has never been the only point of entry for providing assurances. Remote sensing technology, tags, seals, information analysis and continuous monitoring with cameras, all have a role to play and it is the complex interaction of these techniques, approaches and technologies that builds robustness and confidence. In some

cases, access may provide a false sense of security, particularly if the suspected activity does not lend itself to visual inspection or environmental sampling.

The ability to request short-notice inspections in Iran is certainly important and provisions for such are included in the Additional Protocol as related to suspected nuclear activities. Iran’s comprehensive safeguards agreement also allows for special inspections, but the IAEA has rarely flexed those muscles. The JCPOA adds an important mechanism for ensuring that disputes about access are resolved within the outside limit of 24 days. Critics can argue about whether the timeline should be shorter, but as experience with Iraq and Iran thus far have shown, there is a definite need for a dispute resolution procedure. As Secretary of Energy Moniz has suggested, the fact that it is extremely difficult to completely sanitize sites of nuclear activity makes the timeline less important for activities involving nuclear material. Although some kinds of weapons-related activities may be difficult to detect using conventional methods, a shorter timeline may not improve the chances of detecting them anyway. Unlike Iran’s safeguards agreement or the Additional Protocol, the JCPOA spells out a set of activities directly related to nuclear weapons development that Iran has agreed not to engage in, evidence of which will constitute noncompliance.

Ultimately, the robustness of the entire verification regime depends on all the working parts: information, technology and access. The JCPOA usefully extends reporting requirements across Iran’s fuel cycle (including mining and conversion at the front end and spent fuel at the back end) and into Iran’s supply chain (including for production of centrifuge equipment), which

¹⁰ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. *Organization for the Prohibition of Chemical*

Weapons. 31. Aug. 1994. Web. https://www.opcw.org/fileadmin/OPCW/CWC/CWC_en.pdf⁶

should help provide a more complete picture of Iran's activities, giving inspectors far more clues in the event that Iran does try to hide something.

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Looking Ahead

Once the first 60-day period of review ends, Congress will need to put in place a reliable mechanism to review implementation of the Iran deal. The Iran Nuclear Agreement Review Act 2015 contains a host of requirements for the executive branch to report to Congress on implementation of the deal. If the deal passes the current review period, the President must keep the Congress fully and currently informed of all aspects of Iranian compliance. This includes not only special reporting on potential breaches but also semi-annual reports that cover not just the nuclear deal but also ballistic missile developments, assessments on terrorism and human rights. Every 90 days, the President must certify that Iran is fully implementing the agreement.

The Senate or House could choose to form a new task force on Iran Deal Compliance, or the Senate could reconstitute the Arms Control Observer Group or strengthen the National Security Working Group to cover these issues.

It would also be useful to establish mechanisms for assessing the impact of the deal on regional security, Iran's military and economic strength and other relevant topics like human rights and support for terrorism. If Congress truly wants to stay on top of this issue, a task force-like approach may yield more focus and therefore greater impact on the deal as it moves forward.

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