

What should we make of the JCPOA?

By Ariel E. Levite, Carnegie Endowment for International Peace

“The ink has barely dried on the recent “Parameters” for a “Joint Comprehensive Plan of Action” (JCPOA), which itself is merely another interim step en route to a fully-fledged comprehensive agreement that may or may not be reached by the end of June and which, furthermore, even if concluded could (certainly if judged in light of the previous agreements with Iran) significantly deviate from its current composition. Already, predictably conflicting narratives between Iran and the US have emerged on what was agreed upon in Lausanne, raising serious questions whether the parameters of the deal as described will survive the ongoing negotiations. Under these circumstances it is challenging to provide a definitive assessment of the agreement in hand.

Nevertheless, how does it look? In our judgment a great deal depends on one’s vantage point. If one is persuaded that the agreement averted imminent Iranian nuclearization and that such prospect would have inevitably unleashed war with Iran, then almost any deal seems preferable. If on the other hand you believe that Iran was not about to resume its pre-2003 Manhattan -type nuclear weapons program and war was a remote prospect, then time need not have been of the essence for the P-5, which in turn casts the achieved outcome in much less favorable light the outcome achieved.

Who got more out of the announced parameters? If we use the opening positions of the two sides as benchmarks, then Iran emerges the unquestionable winner. While agreeing to pay a price in temporarily restricting some and scaling back other aspects of its nuclear program Iran was able to get out of the P5+1 negotiators virtually all of the demands it has made since day one: sustained enrichment activity on a militarily significant scale in Natanz, scaling it up over time, continuation of the Arak research reactor, retention of the Fordow site as an active nuclear center with many centrifuges installed therein, exclusion of its missile activity from the negotiations, keeping its stocks of enriched uranium in Iran, sustained R&D activity on more advanced centrifuges. It was also able to refrain from committing to ratify the IAEA additional protocol (only to implement it) as well as to hold back from providing regular access to its military sites, or even fully implementing its Agreed Framework with the IAEA especially on Possible Military Dimension of its program. Perhaps most ominously, Iran was able to break the linkage originally insisted upon by the US in the interim agreement (the JPOA) between its enrichment activity and its energy needs. Now, there is no apparent peaceful energy need against which to rationalize and evaluate Iran’s nuclear activities. Iran was also

able to get a firm commitment for early (simultaneous with its implementation or perhaps as Iran now claims far sooner) sanction relief as well as winding down of the UNSC resolutions pertaining to Iran. Clearly the comparison to the opening US positions on all of these issues is not flattering.

Another angle of judgment would be to assess the respective gains made (and losses incurred) by both sides in advancing their strategic objectives. Employing this yardstick naturally runs into some difficulty because the ultimate strategic goals of both sides (and, in fact, there were far more than two sides to these negotiations) are not necessarily what they publicly profess. Still, one can reasonably assume that for Iran the key goals were to gain formal recognition for its status as an advanced nuclear hedger, to legitimately retain (and gradually upgrade) all the indigenous capabilities (in the fuel cycle, and nuclear weapons research and engineering, and long-range delivery domains) necessary to make and use nuclear weapons, to shake loose of the punishing sanctions imposed on it, and to normalize its international standing. For the current US administration the strategic goals seem to have been to codify restraint and constraints on Iran's nuclear activities and more extensively monitor them in an effort to keep Iran for at least the next 10 years more than one year away from being able to make nuclear weapons to facilitate strategic realignment in its relations with Iran with an eye toward opening the way for more positive role for it to play in the Middle East, and perhaps also to enhance the prospect of transition toward a more moderate regime in Iran. Finally, the US administration obviously wanted to get this deal without alienating Congress or seriously alarming its regional allies in the Middle East.

Looked upon through these lenses the picture that emerges is far more nuanced, precisely because formulated this way the goals of the two sides do not seem incompatible. Iran was certainly able to accomplish virtually all of its goals through the JCOPA. In fact, the JCOPA's explicit objective of keeping Iran one year from a breakout capability paradoxically and most dramatically underscores Iran's strategic gain of a formal, legitimate strategic nuclear hedge with indigenous capabilities to back it up. Similarly, sanctions relief and the commitment to normalize Iran's status in the UNSC, re-legitimizes Iran's nuclear position notwithstanding its dismal proliferation track record and longstanding defiance of UNSC resolutions and IAEA probes.

But the United States' also has accomplished its strategic goals, albeit far more tentatively. Iran's obligations in the JCOPA regarding its fuel-cycle activity would severely constraint the country's capacity to quickly produce enough fissile material for a bomb over the coming decade and would make it considerably more difficult for it to do so clandestinely. The impact on the fortunes of domestic forces in Iran is impossible to predict with confidence, though it is true that the more progressive elements in Iran have reacted enthusiastically while others seem at the very least far more reserved. Regarding Iran's regional behavior, a strong case can be made that the deal would empower Iran financially and politically embolden its extremists (especially within the IRGC) to pursue even more aggressively its subversive role in the region. But, conversely, it might also be argued that Iran would now turn inwards to address its domestic woes, tame its regional behavior and operate more cooperatively with the US.

Which brings us to the two more contentious elements of the deal: its intrusive verification provisions and its mechanism for reimposing sanctions (“snap-back”). Verification and sanctions relief have been extremely contentious in the negotiations because both sides profoundly distrust the sincerity of each other’s intentions. The compromise struck here would not be ideal for either, but on balance clearly tends to favor the Iranians. Removing the anchor of both the sanctions and verification mechanism from their current grounding in UNSC resolutions will make re-imposition of sanctions through the UNSC very tough to accomplish. This point is made abundantly clear by the JCPOA’s failure to mention that China and Russia support such provisions. Similarly, the effective application of a rigorous IAEA verification scheme that goes well beyond standard IAEA Comprehensive Safeguards Agreements hinges on many conditions, every one of which would be difficult to meet. To begin with the IAEA (as its Director General has recently made clear) would require a significant budget increase for this purpose, retooling of its inspectors, and also a new mandate for the mission from its Board of Governors. But above all it would also require exemplary collaboration from Iran. Yet, transparency and cooperation with inspections are areas where Iran’s track record both before and after 2003 have been sorely inadequate. Iran consistently defied key aspects of scores of UNSC and IAEA BOG resolutions. So unless explicitly anchored in UNSC and IAEA BOG resolutions, the prospects of an adequate verification arrangement look dim.

A daunting challenge would pertain to benchmarking Iran’s past activities. It is especially important to have an inventory of Iran’s stockpile of centrifuges and components that could be used to make more of them, and also to understand activities Iran has already conducted related to nuclear weaponization (developing the capability to package the fissile material into a nuclear explosive device and miniaturizing it so that it would fit into a missile warhead). Both categories of past activities affect Iran’s future capacity to make nuclear weapons, either by breaking out of an agreement or waiting until it lapses. The more that is known about these activities, the easier it will be to detect their recurrence and to identify them as new, and thereby to deter Iran from seeking nuclear weapons.

Another major concern is the IAEA’s resolve and capacity to pursue over time intelligence-driven leads on dubious Iranian activities, not merely in the fuel cycle domain but also on the weaponization side. If its past behavior is any guide, the IAEA, as its former Director General Elbradei has repeatedly stated, would refrain from providing the US with a smoking gun which it could then use to justify a military attack on Iran. Furthermore, the IAEA, as its current Director General Amano has repeatedly stated, is prudently determined to painstakingly authenticate through its own sources every intelligence lead it gets on Iran before leveraging such information against Iran. Under the best of circumstances, therefore, turning intelligence into inspections and verification actions by the IAEA will be a very challenging and time-consuming process even under the best of circumstances. The process will be even slower and more uncertain when some states within the IAEA Board of Governors resist the IAEA Secretariat’s application of the State Level Concept (a holistic approach for upgrading the implementation of IAEA Safeguards by looking comprehensively at states’ nuclear activities).

This is a sobering analysis when one realizes that the IAEA is the sole legitimate watchdog over Iran's program and Iran retains at a minimum a one-year breakout capacity. It is even more troublesome when one understands the serious legitimacy challenge the US (already haunted by the Iraq precedent) would encounter were it to consider responding unilaterally to Iranian nuclear transgressions before the IAEA has come out corroborating them. Implicitly acknowledging this concern President Obama has recently advanced the concept mentioned in the JCPOA parameters of setting up a dispute resolution process to oversee and presumably arbitrate disagreements over the performance of JCPOA commitments. Yet as the JCPOA makes clear this yet to be fully flashed out mechanism is not Iran focused but rather symmetrical and open to all the JCPOA. Consequently it could end up creating as many problems as it solves, making it dubious that it could remedy rather than aggravate the abovementioned verification concerns.

So where does all this leave us? With an agreement that unless fixed would set back the cause of non-proliferation by setting a precedent where even a state that has systematically cheated on the NPT and IAEA Safeguards, and has had a nuclear weapons program and defied successive UNSC and IAEA BOG resolutions, is then granted formal legitimacy in retaining and even augmenting nuclear capabilities that give it a rather advanced hedge toward nuclear weapons. Worse still, Iran gets this status without even a remote justification for any of its fuel-cycle activities as necessary for an exclusively peaceful nuclear energy program. Iran is not required to fulfill any other attributes of normal civilian nuclear energy programs in the areas of safety, security, or liability. It has not even been asked to commit to transform its program to conform to the patterns of other purely peaceful programs. Little surprise then that such precedent and package, as well as negotiating track record is hardly reassuring to those US allies living in the Middle East.

We now enter the next phase of the negotiations that hopefully will lead, presumably over the next three months, to a true Joint Comprehensive Plan of Action. Obviously many details remain to be worked out. But beyond getting these details right, what is really needed are conceptual changes that would reinforce a comprehensive agreements' chances of credibly and irreversibly defusing the acute challenge presented by the Iranian program. These changes should not stand in the way of operationalizing and finalizing the parameters in the JCOPA. In fact quite the reverse, they could enhance the chances that a JCPOA, once concluded, would actually reassure its open-minded skeptics in Congress as well as among the US allies in the Middle East and beyond.

First, sanctions relief must be tied to actual implementation of Iran's various nuclear obligations under the JCPOA as well as under IAEA Comprehensive Safeguards, the Additional Protocol and the IAEA-Iran Agreed Framework for Cooperation. Even under the best of circumstances these steps would not happen overnight. Yet Iran emboldened by its accomplishments to date and seeing President Obama's credibility already so heavily vested in the deal, might be even more strongly inclined to bring things to a head over the sanctions issue. Iran already claims that sanctions relief should be undertaken by the UNSC in the first phase of the JCPOA implementation rather than after it has met all of its obligations therein.

Iranian officials threaten retaliation if this would not be the case. Budging or even fudging on this issue is a sure recipe for a failed deal.

Just as importantly, Iran, as it has previously done in the decade-long nuclear diplomacy over its program (and practically every other deal it has struck), is bound to test to the limit every other obligation it assumes.

A similar resolve must thus be manifest in the Congressional, UNSC and IAEA BOG resolutions to monitor and uphold Iran to the US understanding of its JCPOA obligations in order to ascertain that Iran's leeway for encroaching on the JCPOA is minimized, thereby enhancing the chances that it actually delivers on its promised benefits.

Additionally, the US and its European allies must not compromise on retaining a “snap back” mechanism for sanctions that the UNSC would be relieving. If Russia and China cannot be brought around to support it, the whole “snap back” mechanism would be in great jeopardy. At a minimum, the P-3 would have to resist any other UNSC resolution that will merely “endorse the JCPOA and urge its full implementation”. Without some clear and rapidly applicable credible mechanism to restore massive pressure on Iran if it does not uphold an agreement, a JCPOA endorsed by the Security Council would tempt those in Iran who want to press on with building up the country's nuclear weapon option.

Third, as alluded to above, Iran's interlocutors should insist that the Iranian nuclear program adopt agreements and practices that all other peaceful nuclear programs have. To be fair this should not be done in a manner that singles out Iran. In order to stem a proliferation cascade that could easily occur as a result of the unhelpful precedent set with Iran, the international community must apply a minimal yardstick for welcoming any state to enjoy access to nuclear technology under Article IV of the NPT. The UNSC should insist that Iran, like any country claiming the benefits of its “inalienable right” under the treaty, must ratify and implement in good faith the cornerstone international conventions in the three areas of safety, security, and liability (CNS, CPPNM, and CSC or, Vienna or Paris conventions).

Fourth, the IAEA must be authorized (both by the UNSC and its own BOG) to inspect the Iranian nuclear program in a manner that would enhance its ability to assess with confidence the orientation of Iran's nuclear program, and do so with far lower dependence on externally supplied intelligence. The IAEA normally takes a “2C” approach to safeguards, focusing on *Completeness* and *Correctness* of declarations. Forthwith in Iran, and in the future elsewhere as well, it must also look for an additional 3Cs: *Compatibility*, *Comprehensiveness*, and *Coherence*. A “5 Cs” model would be necessary to build confidence that Iran's post-deal nuclear program is exclusively peaceful, and as such would be invaluable to apply as standard operating procedure for the IAEA.

Compatibility refers to the degree to which activities undertaken are indeed commensurate with their stated peaceful purposes – including the sequencing and scale of activities, economic rationale underlying them, safety, security, and liabil-

ity provisions governing the nuclear activity etc. Activities or conditions that are not compatible with purely peaceful purposes should be deemed to indicate a possible nuclear-weapons orientation, inviting more rigorous transparency to clarify questions. *Comprehensiveness* refers to the extent that additional activities undertaken by the state that go beyond the scope of safeguards (and certainly beyond those declared to the IAEA) such as in the weaponization and militarization domains fit with the typical features we would expect to see in a purely peaceful nuclear program (in practice an extension of the original IAEA work on the “Physical Model” – an attempt to identify, describe and characterize various components of the nuclear fuel cycle, providing a technical tool to aid enhanced information analysis, now constituting an integral part of the on-going Safeguards’ State evaluation process). Finally, *Coherence* refers to the extent that the activities undertaken fit into an alarming pattern by being both interconnected and realizing many/all the known elements necessary for a nuclear weapons program.

While highly desirable it is neither necessary nor feasible that all of these conceptual changes be reflected in a final JCPOA. But those elements that could not be accommodated within the JCPOA should make their way into US Congressional legislation, the new UNSC resolution, and IAEA BOG decisions endorsing the JCPOA. And even if these additional elements did get eventually incorporated into the JCPOA these institutions would be prudent to reinforce them when they inevitably take up and act on the JCPOA in order to facilitate its implementation.

The US Congress would be well advised to go along with the JCPOA but attach to it provisions (including the abovementioned parameters) that the Congress would look to see satisfied as it oversees implementation of the JCPOA. It would be highly beneficial if the Congress were to go further and authorize relief of US sanctions on Iran if Iran meets these terms, and to volunteer U.S. peaceful nuclear assistance and other non-threatening aid to Iran so long as it truly reorients its nuclear program. By the same token, it would be appropriate for Congress to explicitly affirm President’s Obama commitment to use all the means at the US disposal to prevent Iranian acquisition of nuclear weapons were Iran to move in the opposite direction.

In the final analysis one ought to see in the agreed (?) parameters for the JCPOA recently announced in Lausanne no less but also no more than the first step in a long and arduous way to defuse the Iranian nuclear challenge and redress the acute threat it has been posing to the global nuclear order as well as to regional stability in the Middle East. For the JCPOA to have a chance to live up to its promise and genuinely provide the well sought after turning point it must be both meticulously applied and significantly reinforced by complementary measures. One or the other by itself would not do. Together they might, and if this is indeed the course ultimately chosen its potential benefits would greatly outweigh its risks making it worthy of our full support.

Ariel E. Levite is a senior research associate at [Carnegie Endowment for International Peace](http://www.carnegieendowment.org).