

December 13 Is an Iranian Nuclear Trifecta

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Brief Analysis

As more congressional deadlines and international meetings pass with no robust efforts to address the JCPOA's flaws, the chances of the Trump administration terminating the deal grow.

Three important developments related to the Iran nuclear deal converge on December 13: the sixty-day window expires for congressional leaders to introduce fast-tracked legislation under the Iran Nuclear Agreement Review Act (INARA), the Joint Commission set up by the deal convenes for its regular quarterly meeting, and the UN secretary-general's next report on implementation of Security Council Resolution 2231 is due. Although none of these events is likely to generate much news, now is the time to lay the groundwork for continued U.S. participation in the increasingly threatened Joint Comprehensive Plan of Action (JCPOA).

INARA DEADLINE

INARA provided that in the sixty calendar days following **a presidential "decertification."** (<http://www.washingtoninstitute.org/policy-analysis/view/infographic-iran-deal-decertification>) the majority or minority leader in each house of Congress could introduce legislation under a strict fast-track authority, meaning it could not be delayed by committee deliberations or extended debate. If passed, such legislation would have reimposed statutory sanctions on Iran and prohibited "any further waiver, suspension, reduction, or other relief" pursuant to the nuclear agreement. Some read INARA as allowing reimposition of some but not all statutory sanctions; others disagreed.

President Trump's announcement that he would not recertify the nuclear deal came during his October 13 Iran policy speech, so the fast-track window is now closing. Given that Congress has had more than a few things on its plate in recent weeks, it is hardly surprising that no legislation has been proposed. Furthermore, at least some in the

Republican majority would rather have a bill that enjoys overwhelming congressional support, similar to the Countering America's Adversaries Through Sanctions Act, which passed the House (419 to 3) and Senate (98 to 2) this July. Shortly before Trump's announcement, Senate Foreign Relations Committee chair Bob Corker (R-TN) and Sen. Tom Cotton (R-AR) mentioned a bill that would not be eligible for INARA fast-track consideration but would in their view be more appropriate if the deal was decertified. Little has been heard recently about their proposal, and forging bipartisan consensus on any such legislation will be tough—Democrats do not want to imply that Obama's signature foreign policy achievement has flaws, while Republicans do not want to validate the JCPOA. Still, no one in the Senate seems willing to blow the deal up, and the July sanctions law shows that bipartisanship on Iran is still possible, so those who wish to preserve the agreement in one form or another need to kick the process into a higher gear.

RESOLUTION 2231 AND IRANIAN VIOLATIONS

The UN secretary-general's report will cover not only the nuclear deal, but also other aspects of Resolution 2231. In addition to calling for the suspension of Iran's ballistic missile program, the resolution contains various orders to Tehran issued under the UN Charter's Article 41 (part of Chapter VII, the section of the charter that authorizes the Security Council to impose requirements on states). The previous report, issued in June, noted that Iran had been accused of violating several of those orders:

- The ban on arms-related transfers to Iran. In January 2017, for example, Ukrainian authorities discovered a cache of arms on a plane bound for Iran.
- The ban on arms-related transfers from Iran, such as the various weapons caches intercepted on dhows off the coast of Yemen.
- The ban on foreign travel by designated Iranians, including Qods Force commander Qasem Soleimani.

Under international law, Iran is not free to pick and choose which aspects of Resolution 2231 it likes and dislikes. Tehran's continued violations should be directly and forthrightly condemned by U.S. and allied officials.

THE JOINT COMMISSION'S GRAY AREAS

The Joint Commission was established as a forum for Iranian and P5+1 officials to resolve disputes regarding implementation of the nuclear deal. Tehran wants the commission to focus on international banks' fear of doing business with Iran because of U.S. actions, a demand reiterated on December 4 by Behrouz Kamalvandi, spokesman for the Atomic Energy Organization of Iran. In reality, the regime's most pressing financial issue is the looming January expiration of its Action Plan with the Financial Action Task Force. The thirty-seven-member intergovernmental body suspended its recommended countermeasures against Iran's money laundering and terrorist financing activities in June 2016 but may soon ask banks and governments to re-implement them. In November, FATF urged Iran "to proceed swiftly in the reform path to ensure full and accurate implementation of the Action Plan" before the organization's next meeting in February.

More important than any banking issue, the Joint Commission needs to clarify the rules governing the International Atomic Energy Agency's role in monitoring the nuclear deal. IAEA director-general Yukiya Amano has stated there are gray areas regarding its authority to verify Iran's compliance, especially on matters that do not involve nuclear material. Under JCPOA Section T, Tehran pledged that it will not engage in a variety of activities that could contribute to the development of a nuclear weapon, such as "designing, developing, acquiring, or using computer models to simulate nuclear explosive devices." In a November 7 interview with the *Financial Times*, Amano noted that "greater clarity" on Section T would be "helpful" and expressed hopes that Iran would provide a baseline declaration on the issue.

Regarding the agency's ability to inspect Iranian military sites, Amano stated, "We have access to all the locations we need to visit," adding that concerns about this issue have been "overly exaggerated." In his October 13 speech, however, President Trump noted that "Iranian officials and military leaders have repeatedly claimed they will not allow inspectors onto military sites." If Amano is calling for clarity and Iranian officials are denying that the IAEA has the power he says it has, then these are in fact matters of concern. It is the Joint Commission's responsibility to clarify ambiguities in the JCPOA so that the parties can have a common understanding of their obligations. To dismiss these concerns is to reinforce Trump's point that the deal needs better monitoring.

NOW IS THE TIME TO SHORE UP THE JCPOA

Through moves such as the Iran decertification, the withdrawal from the Paris climate change accord, and the recognition of Jerusalem as Israel's capital, President Trump has shown that he is willing to fulfill campaign pledges even if it angers many at home and abroad. In that light, it bears remembering that his October 13 speech included the following statement: "I am directing my administration to work closely with Congress and our allies to address the deal's many serious flaws...In the event we are not able to reach a solution working with Congress and our allies, then the agreement will be terminated...Our participation can be cancelled by me, as President, at any time." Indeed, most of the existing sanctions waivers will expire unless Trump renews them on January 12, which would in effect mean that the United States is terminating its role under the JCPOA.

The JCPOA is not particularly popular with the American public. In an October Harvard-Harris survey, 70 percent of respondents said the deal should be renegotiated, including 57 percent of Democrats, while two-thirds said Iran has not held up its side of the bargain. Yet this does not mean they want to walk away from the deal entirely—another October poll from the Chicago Council on Global Affairs found that a majority of Americans (60 percent) favor participation in an agreement "that lifts some international economic sanctions against Iran in exchange for strict limits on its nuclear program for at least the next decade." Whatever the public's true sentiments may be, the White House should follow through on the president's October pledge: to work closely with Congress and foreign partners to see what can be fixed before throwing the baby out with the bathwater. So far there is little public evidence of official outreach on the matter, particularly with Europe.

More important, the JCPOA should continue in some form so that Washington can reap the crucial benefit of maintaining a broad international coalition against Iran. Going it alone is not a feasible option when it comes to checking the regime's destabilizing activities in the realm of missiles, nuclear proliferation, terrorism, and subversion.

Yet preserving the coalition cannot be assured unless a concrete process is set in motion to address the JCPOA flaws that Trump highlighted in his October 13 address: namely, the deal's sunset clauses, its "insufficient" enforcement mechanisms, and its "near total silence" on Iran's missile programs. Many Democrats and European officials already agree that more action is needed on the first and last items, and Amano's comments on clarifying Section T and visiting military sites offer a way to forge broad consensus about a key enforcement issue. Addressing the concerns Trump raised will take time, but the process needs to start now—at the Joint Commission, in European capitals, and in Congress. Even if the president renews the sanctions waiver in January, it is by no means clear if he will do so again when the next waiver deadline arrives in May unless measurable progress has been made. In the meantime, the clock will be ticking more loudly each day.

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