

Obama Team Makes Defensible Actions on Iran Look Suspicious

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Brief Analysis

If administration officials would simply explain their Iran decisions from the start rather than waiting for inevitable media leaks, they could ensure that any new revelations are small news items, not the subject of page one stories or congressional inquiries.

On September 7, media outlets reported that the United States had arranged to pay Iran a full \$1.7 billion in cash this year rather than the \$400 million previously disclosed, adding to the steady drip of controversial news about the Obama administration's dealings with Tehran. By concealing and dissembling about such arrangements, the administration has made its actions on Iran look suspicious at best, forgetting the most basic lesson about Washington politics: that the cover-up tends to become the crime. Having promised that the Joint Comprehensive Plan of Action (JCPOA) would bring unparalleled transparency, the Obama team has instead resorted to a befuddling brand of secrecy since last year's nuclear deal. The irony is that many of its actions are arguably defensible, and in some cases even accomplish longstanding U.S. objectives.

CONVERTING A U.S. GOAL INTO A DEFEAT

For at least twenty-five years, Washington sought to settle the dispute over Iran's pre-revolution advance payments for U.S. arms, but Tehran steadily refused. The Obama team finally managed to achieve this objective, but then hid its actions in such a way that this considerable accomplishment now seems dubious to many observers, with some even characterizing it as an outright ransom payment for U.S. prisoners released when the first payment was made in January.

In 1981, the Algiers Accords ended the embassy hostage crisis and established the Iran-U.S. Claims Tribunal in the Hague to settle the resultant lawsuits and other disputes. Yet that body's massively inefficient track record has been

a scandal for decades. The tribunal's nine judges and staff -- half of whose ample salaries are covered by U.S. taxpayers -- are not exactly overworked: in the past five years they have issued exactly one judgment. A court that takes thirty-five years to settle disputes is no model for international justice, it is an embarrassment.

Moreover, many of the remaining cases are political nonsense. For instance, Case A30 alleges that the United States violated the Algiers Accords by conducting covert CIA operations against Iran. Tehran uses these cases to squeeze out every last drop of propaganda value and bolster its claims that Washington has not lived up to its obligations.

One obvious way to overcome all this red tape would be to repeat on a larger scale the 1990 agreement that allowed for global settlement of all small claims. At the time, Iran transferred \$105 million to the U.S. government for distribution to plaintiffs with valid claims of less than \$250,000. There is also precedent for the two parties agreeing to a settlement in the various cases related to the arms sales dispute, including a partial U.S. payment of \$278 million in 1991.

In this sense, the January agreement was a considerable accomplishment -- one that required hard work by the Obama administration to convert into a fishy transaction. To do so, the administration had to conceal how the payments were made and then deny that payments were held up until U.S. hostages were released. It also had to be sparse in its defense of the deal, issuing a 254-word press release without any details about the tribunal or Iran's long history of stalling.

If the administration had put less effort into obfuscating its actions and taken a more simple and transparent approach, it could have avoided much of the resultant suspicion and controversy. For example, U.S. staff at the tribunal could have been brought to Washington to explain the long, difficult process of getting Iran to agree to a settlement. And officials from the past five administrations who unsuccessfully sought to wrap up the tribunal's proceedings could have been asked to explain the absurd delays and put the accomplishment in perspective.

SOWING SUSPICIONS ABOUT THE NUCLEAR DEAL

The JCPOA created a Joint Commission made up of Iran and the P5+1 countries. The U.S. government has not contested recent reports about what the Joint Commission has allowed Iran to do; it has only disputed the claim that these actions are "exemptions."

Yet every Joint Commission action that has come to light has been favorable to Iran, in some cases allowing it to do things not permitted under the JCPOA. In fact, news reports suggest that whenever Iran has been at the point of violating the agreement, it has requested and received a waiver -- in other words, it is in compliance with the deal only because it has been granted waivers. This raises the concern that the P5+1 may say "yes" to every Iranian request, meaning Tehran could never violate the agreement because every violation will be waived.

Moreover, the Joint Commission has kept its decisions secret -- a disturbing practice that forces observers to take on faith that officials are remaining faithful to the JCPOA's terms. Secrecy suggests that someone does not want the public to know what is going on, feeding suspicions that something is rotten in the implementation process. Since the decisions are secret, no one is sure if they know all that has been decided: there could be other, more disturbing things that have not yet come out. To be sure, the JCPOA specifies that all decisions should be confidential unless the commission decides otherwise. But the agreement also states that the commission operates by consensus, meaning that Washington could unilaterally force it to make the decisions public by threatening to block them (apart from cases where confidentiality is appropriate to preserve commercial secrets).

The secrecy is also puzzling because some of the commission's waivers cover technical issues that do not seem particularly important at first glance. For instance, it is hard to get worked up about the decision allowing Iran to exclude the remnants of uranium left in its enrichment machinery from the JCPOA's cap on low-enriched uranium. Yet the JCPOA explicitly states that those remnants should be included in any tally of Iran's total low-enriched

material. And it is evidently not that difficult for Iran to extract the material from the machinery if it chooses to, so it is not obvious why it should be excluded from the cap. So what the Joint Commission did was make a concession to Iran that went beyond what was in the JCPOA with little apparent justification, thereby creating suspicion about what other concessions might have been made.

Other commission decisions are troubling in and of themselves, such as allowing Iran to operate nineteen large "hot cells" that can be used to extract plutonium, another route to a nuclear weapon. The size of these permitted cells is well above what would be needed to produce medical isotopes -- Iran's presumed justification for the request.

HOW TO RESTORE CONFIDENCE IN U.S. IRAN POLICY

All in all, the administration's actions since last year -- keeping decisions secret, agreeing to everything Tehran requests -- make its relations with Iran look worse and worse. If the Joint Commission's decisions really have been just technical clarifications, then Washington and other P5+1 governments should declare so publicly. And if the use of cash payments for the arms settlement was simply a function of Iran's failure to meet stringent U.S. banking restrictions, then this fact should have been loudly proclaimed, not kept secret, then denied after media revelations and only belatedly acknowledged under questioning.

Going forward, administration officials would be well advised to examine carefully what else has not yet come out and publicly explain it themselves. By doing so, they could ensure that any new revelations are small news items, not page one stories -- and not the subject of congressional hearings.

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