

Clarifying a 'No' Vote on the Iran Nuclear Agreement

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Brief Analysis

A congressional vote of disapproval would not necessarily be a deal breaker; in fact, it could give the administration time to improve the agreement or implement other policy measures that more effectively secure U.S. interests.

What are the implications of voting against the Iran nuclear agreement? Considerable hyperbole clouds the issue. Here is a guide for the perplexed.

What is the congressional review of the Iran accord all about?

The Iran nuclear accord -- formally known as the Joint Comprehensive Plan of Action (JCPOA) -- sounds a lot like a treaty but isn't one. Technically, it's not even an "executive agreement." It has no signatories. It is, rather, a voluntary set of understandings entered into by eight parties: Iran, Britain, France, Germany, Russia, China, the United States, and the European Union.

Although such an agreement itself has no status in law, Congress decided it wanted to exert review authority over it, similar (though not identical) to the authority the Senate has to "advise and consent" on treaties. The Iran Nuclear Agreement Review Act of 2015 -- known informally as the Corker-Cardin legislation -- is the statute governing this situation. This compromise bill, signed into law by President Obama, provides for both houses of Congress to vote for resolutions either approving or disapproving the agreement. The president can veto these resolutions, however, and overriding the veto would require a two-thirds vote in both houses.

For comparison purposes, it is important to note that the standard for congressional support of the Iran agreement is much lower than would be the case for a treaty. For the agreement to be considered approved, only one-third of one house of Congress need vote against a resolution of disapproval; by contrast, treaties require the support of two-thirds of the Senate.

What are the implications of a resolution of disapproval?

A resolution to disapprove the Iran agreement may have substantial political reverberations but limited practical impact. It would not override President Obama's authority to enter into the agreement. Nor would it restrict his authority to participate in most aspects of enforcing the agreement. Indeed, the sole practical implication would be to restrict his authority under law to waive nuclear-related sanctions on Iran. And a resolution of disapproval would have no authority to force him to vigorously enforce such sanctions. Were the president to exercise the same "prosecutorial discretion" he has on some other controversial issues where he disagreed with the law, the sanctions could become dramatically less effective.

What would that mean in practice?

Here, it is important to remember the timetable of JCPOA implementation. The first set of responsibilities under the deal are Iran's. Before anything else happens, Iran needs to implement its "core requirements" under the deal. These include satisfying the International Atomic Energy Agency (IAEA) on the question of "possible military dimensions," mothballing thousands of centrifuges, shrinking its massive stockpile of low-enriched uranium to 300 kilograms, and gutting the core of its Arak plutonium reactor. Most experts believe this process will take between six to nine months. Only once the IAEA certifies that Iran has fulfilled those requirements does U.S. and international sanctions relief become an operative issue.

So a vote of disapproval would have no practical impact until early-to-mid-2016?

Technically, that is correct.

What could happen in the meantime?

This is where analysis meets conjecture and hyperbole. Advocates of the agreement have suggested that a successful congressional resolution of disapproval would kill the deal. They have argued that Iran would lose faith in America's commitment to the agreement, pull out, and ramp up its enrichment program to new levels, and that the Europeans would cry foul at America's lack of fair play and end sanctions of their own accord. Advocates of the accord also suggest that without agreed limits on its nuclear program, Iran would sooner or later trigger either American or Israeli military action, which would unleash regional war.

There are strong arguments why each of these predictions is misplaced. First, Iran is unlikely to respond to congressional disapproval by enriching uranium with reckless abandon and thereby validating the skeptics who never trusted its commitment to a solely peaceful nuclear program. After Tehran has painstakingly worked for two decades both to advance a program that is on the verge of attaining breathtaking international legitimacy and to end nuclear-related sanctions, it would make little sense to chuck those achievements in a state of pique. To the contrary, Iran is far more likely to fulfill its core requirements so as to earn the termination of UN and EU sanctions that would come with IAEA certification. Along the way, Tehran would note that America, not the Islamic Republic, was isolated because of its intransigence.

For its part, Europe is unlikely to respond to a vote of disapproval by unilaterally terminating its sanctions. More likely, it would want to see its negotiating position validated by following the agreement's terms -- that is, waiting until Iran fulfills its core requirements before rewarding it with sanctions relief.

European leaders -- and certainly European businesses -- would chafe under the continued application of U.S. nuclear-related sanctions. In the 1990s, faced with Iran sanctions that affected European business, EU governments complained about extraterritorial application of U.S. law and successfully pressured the Clinton administration to suspend the application of such sanctions. Soon after President Clinton signed the Iran and Libya Sanctions Act (ILSA) into law, his administration reached a formal agreement with the EU not to enforce it against European

companies. Over the next decade, much to Congress's frustration, neither the Clinton nor the Bush administration determined that a single EU firm violated ILSA, claiming they had to investigate further on matters openly proclaimed by the companies involved. Despite increasingly tough congressional requirements about reporting on the progress of those investigations, including provisions adopted 100-0 by the Senate, both administrations simply stalled.

Today, the Europeans are likely to pursue a similar approach, so the outcome will rest on the Obama administration's response. If the administration maintains effective enforcement of its nuclear-related sanctions, along with enforcement of the primary and secondary aspects of the nonnuclear sanctions that will be unaffected by the Iran deal, European business leaders are ultimately unlikely to value the Iranian market more than the U.S. market, and much of the existing sanctions regime would stay in place.

In that scenario, the outcome would probably be murky -- the global sanctions regime would be less effective than it is today but would still have significant bite. It would collapse only if the United States failed to enforce its own sanctions. Yet it is difficult to see a scenario in which the threat of war would be substantially higher than it is today.

Is "murky" really the best outcome?

No -- and it isn't necessarily the most likely. There is no reason why a successful vote of disapproval has to end the internal U.S. debate over the Iran deal. There are numerous ways in which the president could improve the deal -- either directly by reopening negotiations with the other parties, or indirectly through unilateral or multilateral action with U.S. allies. (For details, [see the extended list of suggestions](http://www.washingtoninstitute.org/policy-analysis/view/assessing-the-iran-nuclear-agreement-and-the-institutes-iran-study-group-ju)

[\(<http://www.washingtoninstitute.org/policy-analysis/view/assessing-the-iran-nuclear-agreement-and-the-institutes-iran-study-group-ju>\)](http://www.washingtoninstitute.org/policy-analysis/view/assessing-the-iran-nuclear-agreement-and-the-institutes-iran-study-group-ju) proposed by members of The Washington Institute's Iran Study Group.) At any point, the president could return to Congress, work out a new formula for review, and seek congressional approval.

There is considerable incentive for the president to complete this process before Iran fulfills its core requirements under the deal. Should that happen, the United States would be on schedule to waive its sanctions, as called for under the agreement, at the same time as the EU and UN terminate theirs.

Could members of Congress condition a "yes" vote on changes in U.S. policy?

Should the administration fear that it may lose an override vote, it may try to turn some nays to yeas with offers to improve the agreement. Its antipathy to reopening the deal to renegotiation means these improvements would likely take the form of either unilateral U.S. policy moves (e.g., declarations of U.S. commitment to use "all necessary means" to prevent Iran's accumulation of high-enriched uranium after limitations on enrichment are lifted fifteen years into the agreement) or U.S.-European coordination on Iran (e.g., defining a matrix of agreed penalties for Iranian infractions of the agreement now so as to limit the potential for allied tensions on the reimposition of sanctions later). Such changes could improve the agreement in many ways.

Most important, the administration could articulate and implement a strategy for deterring the aggressive Iranian behavior that so disturbs Washington's Middle East allies and creates the impression that the United States is retreating from the region. Concrete actions to check Iran would have much greater impact than any declaratory statements, since this administration -- justly or not -- faces a serious credibility deficit in the eyes of its critics at home and in the region.

Yet the Nuclear Review Act itself does not accommodate "conditional yes" votes, only approval or disapproval. Barring new legislation, then, conditionality would be a matter of trust between the administration and Congress.

Does the president have other options?

If Congress disapproved the deal and overrode the president's veto, he could still try to circumvent the legislature.

For example, he could reject the disapproval as an unwarranted intrusion into executive authority, proceed with the sanctions waiver, and wait for Congress to bring the question to the Supreme Court. Alternatively, as cited earlier, he could waive sanctions in effect if not in name by invoking his discretion about how much effort to devote to enforcing them.

How does the UN Security Council resolution endorsing the deal change the situation?

This too is murky. The administration's decision to seek Security Council endorsement before Congress completed its review did not violate the letter of the Nuclear Review Act because Resolution 2231 does not come into effect until after the congressional review period concludes. However, there is a strong argument -- made by both Democrats and Republicans -- that it violated the spirit of the legislation. In any case, a vote of disapproval by Congress would neither negate UNSCR 2231 nor compel the president to rescind his support for the resolution. Again, the only operative aspect of congressional disapproval would be to restrict the president's authority to waive unilateral nuclear-related sanctions.

If the United States does not waive those sanctions once the IAEA certifies Iran's completion of its core requirements, the agreement does not automatically collapse. The agreement contains its own mechanism to adjudicate violations -- the eight-member Joint Commission -- and Iran would likely bring the United States before that body to press its case. This, however, would be a political dispute, not a technical matter. At that point, all of the parties would have to weigh their interests -- are they better off or worse off sticking to the agreement? There are simply too many variables at play to make a definitive judgment on what happens next. War, however, is a low probability.

So what's the bottom line?

A vote of disapproval is both more and less than meets the eye. It is, on the one hand, the only way the American system allows for elected representatives to express opposition to the agreement and compel the administration to take those views into account. On the other hand, it would not kill the Iran deal unless the other parties to the agreement wanted it dead.

While a vote of disapproval would restrict the president's authority to fulfill one U.S. obligation under the accord -- waiving sanctions -- this most likely would not become a live issue until early-to-mid-2016. Until then, much could happen to change the situation, ranging from improvements in the deal that merit subsequent congressional support to new revelations of secret Iranian nuclear activity that would validate congressional skepticism.

In other words, a vote of disapproval would not necessarily be a "deal breaker." In fact, under certain circumstances it could pave the way for an improved agreement that more effectively achieves U.S. goals than the current one.

Robert Satloff is executive director of The Washington Institute. ❖

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