

The Role of the IAEA in the Iran Nuclear Deal: Recommendations for Improving Performance

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The role of the International Atomic Energy Agency (IAEA, or the “Agency”) in the Joint Comprehensive Plan of Action (JCPOA) agreed to by the five permanent Security Council members plus Germany (E3/EU+3) and Iran in July 2015, is “to monitor and verify the voluntary nuclear-related measures as detailed in this JCPOA...All relevant rules and regulations of the IAEA with regard to the protection of information will be fully observed by all parties involved.”¹ The opening statement of the JCPOA declares that the agreement “reflects mutually determined parameters, consistent with practical needs, with agreed limits on the scope of Iran’s nuclear program, including enrichment activities and R&D. The JCPOA addresses the E3/EU+3’s concerns, including through comprehensive measures providing for transparency and verification.” As such, transparency and verification are the two mainstays of the technical provisions entrusted to the IAEA in the agreement. The following discussion will center on these two main topics, while also addressing some other urgent issues.

The IAEA Role

On May 9, 2018, IAEA Director General Yukiya Amano issued the latest in a string of statements regarding verification in Iran: “As of today, the IAEA can confirm that the nuclear-related commitments are being implemented by Iran.”² However, the actual situation regarding IAEA verification in Iran suggests that Amano’s statement contains more than a modicum of wishful thinking. One example of the discrepancy between the aims of the JCPOA

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and realities on the ground is Paragraph 16 of the Preamble and General Provisions of the deal: “Iran will not engage in activities, including at the R&D level, that could contribute to the development of a nuclear explosive device, including uranium or plutonium metallurgy activities, as specified in Annex I.” But while the IAEA has visited declared nuclear facilities, it was consistently prohibited from verifying any activities related to the development of a nuclear explosive device.

Looking back at the years since the implementation of the JCPOA, the discrepancy between the IAEA mandate as specified in the deal and its actual performance necessitates review and analysis so that future verification according to the JCPOA – for as long as it remains in its current format – can fulfill its mandate. The more idealistic wishes of those who gave in to Iran’s strong-headed behavior during the negotiations and following implementation of the deal should not be allowed to determine the breadth and depth of IAEA inspections in a lenient manner. Rather, they must insist on proper implementation.

The issues that must be considered and reassessed include the failure to verify the complete range of Iran’s nuclear-related activities; the failure to search for and identify any undeclared nuclear-related facilities, activities, and materials; and the lack of transparency in the IAEA’s quarterly reports on Iran’s nuclear plans and activities since the deal was implemented (in January 2016), which hide behind vague and self-defined rules and regulations. The less than satisfactory situation regarding inspections was underscored on May 8, 2018, when in his statement explaining the US withdrawal from the JCPOA, President Trump noted: “Making matters worse, the deal’s inspection provisions lack adequate mechanisms to prevent, detect, and punish cheating and don’t even have the unqualified right to inspect many important locations, including military facilities.”³

Furthermore, there are problems related to the lack of transparency regarding Iran’s secret deals with the IAEA. This troubling situation is barely mentioned by officials, although Iran’s partners to the deal should be making the case for ending the confidentiality that Iran currently enjoys in its dealings with the IAEA. Full information regarding Iran’s nuclear activities and plans must be made available to the IAEA member states and to the public at large by means of the IAEA quarterly reports, as was the case before the JCPOA. The absence of this information from the public discourse on the effectiveness of the JCPOA casts serious doubts over any conclusions reported by the Director General.

Verification

The problems regarding IAEA inspections of “non-nuclear” (including military) facilities in Iran are manifest in at least three contexts: as a function of Iran’s expressed adherence to the terms of the Additional Protocol; with regard to possible work on an explosive mechanism; and with regard to the provisions laid out in Annex I of the JCPOA for inspecting a facility if there is a strong suspicion (based on intelligence) that Iran is advancing activities related to a nuclear weapons capability.

The Additional Protocol

Within the terms of the JCPOA, Iran agreed to apply the Additional Protocol (AP) provisionally to the IAEA verification mechanism until it is finally ratified by Iranian authorities. While the IAEA is tasked with the application of the verification mechanism, Iran is obligated to facilitate the inspections fully. The term “provisional,” as defined in the AP, does not diminish Iran’s responsibilities in this respect.

The AP was devised in the mid-1990s in order to address and amend two major shortcomings of the Full Scope safeguards agreement (for verification purposes) that every NPT member state signs with the IAEA. It is meant to ensure the possibility of inspecting *any* facility located at a declared nuclear site (not only the declared facilities), and to provide some means for uncovering *undeclared* facilities, activities, or materials on the inspected state’s territory. The IAEA can request that it perform environmental sampling at any location deemed necessary by the Agency.⁴ A state can only suggest an alternative location if sampling at the requested location is not possible.

As far as is known, the IAEA requested and carried out such environmental sampling in Iran only at the suspected nuclear explosive development site at Parchin, in September 2015, and this episode proved to be entirely unsatisfactory.⁵ Iran has since refused any additional sampling at that site. This clearly contradicts Iran’s obligations according to the AP, and in any event, AP provisions do not constrain the methods of sampling in any way.

The Additional Protocol has another provision for searching and uncovering concealed, undeclared, and illicit activities. Wide Area Environmental Sampling permits the IAEA to install and operate a network of sampling stations over a wide area, which could detect nuclear and nuclear-related activities, and facilitate further investigations clarifying the locations and the characteristics of the activities. However, the IAEA

did not use its authority to seek the Board of Governors' approval for Wide Area Environmental Sampling and the arrangements for use of this option.⁶

Since the AP falls within the provisions of the JCPOA, it is imperative that the IAEA utilize its entire technical means to ascertain compliance with its terms.

Development of the Explosive Mechanism in Iran

As noted, the JCPOA specifically forbids Iran to engage in the development of a nuclear explosive mechanism. This is an integral part of the agreement, and as such is subject to verification activities designated to assure that this activity is not underway in Iran.

The issue of access to sites is general and in no way limited to the explosive mechanism development. The latter, however, is of critical importance, since Iran denies access to sites suspected of hosting such activities, under the pretext that these are military sites. An additional hindrance is that the IAEA is requested to provide proof of allegations of explosives development. If the indicative information was not obtained by what is called "national technical means" (e.g., satellite photography) the only remaining means would be the utilization of the AP provision for environmental sampling. Otherwise, this would be a near impossibility, since intelligence-based information cannot always be made available to adversaries.

If one takes the periodic IAEA reports as representative of its activities in Iran, it appears that the IAEA has intentionally ignored or was compelled by Iran to ignore its duties regarding verification of the absence of activities in the area of the development of the nuclear explosive device. The IAEA has ample evidence that Iran worked on this in the past, and should at least have confirmed that these activities were no longer underway in Iran. Only beginning in August 2017 did the IAEA Director General include in his periodic reports the enigmatic statement: "The Agency's verification and monitoring of Iran's other JCPOA nuclear-related commitments continues, including those set out in Sections D, E, S and T of Annex I of the JCPOA."⁷ Section T deals with the development of nuclear explosive mechanisms. How the IAEA verifies and monitors Iran's activities in this respect remains an unanswered question, leaving in doubt the veracity of the IAEA statement.

This issue takes on added importance in the context of the single inspection of Parchin, which was conducted in a manner that contradicts all IAEA good inspection practices. Parchin is a site where explosive mechanism experiments were carried out – and where some evidence of

this was uncovered. This site could not be revisited, and the IAEA refrained from requesting access according to the procedure outlined in section Q of Annex I to the JCPOA. As such, outstanding uncertainties remain unresolved to this date.

Even if the rather complex procedure for gaining access to undeclared sites is followed, it is still uncertain that Iran would enable access to suspect sites. The non-confrontational IAEA attitude in this matter does not bode well for many other issues that remain obscure because of the IAEA's non-transparent method of reporting.

Dealing with Suspicions according to Annex I of the JCPOA

One of the recognized limitations of the NPT is that it mandates the IAEA to inspect only declared nuclear sites in a member state. But it is also well known that Iran exploited this loophole and advanced its military nuclear program at a military site that was off limits to the IAEA – Parchin. It was this loophole in the NPT provisions and IAEA safeguard agreements that the JCPOA was supposed to close. As such, up until April 2015, US officials were still insisting that they would settle for nothing less than anytime/anyplace inspections in Iran, that is, that wherever a suspicion arose, the IAEA could demand immediate access.

What was later formulated in the JCPOA is a far cry from that goal. The provisions in Annex I are vague and open to interpretation and abuse by Iran. In the best case scenario, Iran can delay an inspection for 24 days, but upon closer scrutiny of paragraphs 75-76 of Annex I,⁸ it is clear that there is room for Iran to play for time in providing its initial response to IAEA suspicions, which could significantly lengthen the time between when a suspicion arises and when the actual inspection is carried out. Meanwhile Iran insists that it will never allow IAEA inspectors entry to its military facilities. Finally, due to lack of transparency, there is confusion in the public domain about whether any inspections have taken place at military facilities; about why there was not a follow-up inspection at Parchin after suspicious particles were found in the September 2015 inspection; and about whether, as has been reported in the media, the IAEA has at times indeed refrained from even requesting access, in anticipation of a negative response from Iran.⁹

All this could change drastically because of the immense cache of intelligence material that was uncovered in the Israeli intelligence coup – the archives of the Iranian nuclear weapons development project. First, it

showed that Iran had lied (and is continuing with its lies) when it denied that it ever had a nuclear weapons development program. Second, it is evidence of Iran's immense knowledge base that is still relevant today. Although very little of the information contained therein has been released to the public, it is certain that it contains data in the following categories: sites where R&D work in all aspects of nuclear weapons development was carried out; personnel involved; facilities and material inventories; and the achievements up to 2003. The IAEA must now utilize this data in order to gain access to all sites and facilities, take inventories, interview personnel, and assess how far Iran was from achieving its aims. Even if Iran had ordered a full stop to further development, which is highly doubtful, this could be the starting point for the project's renewal. It is doubtful because Iran refused to come clean and disclose this information, and since then it has proceeded with its development of the warhead delivery systems – namely, its missile capabilities – despite the relevant Security Council demands to the contrary.

Disregarding this new information by the IAEA would be a major breach of its duties. The IAEA Board of Governors must instruct the Secretariat to take action in this regard, immediately.

Transparency

Although the JCPOA that was presented to the public in 2015 was hailed as the most transparent arms control agreement ever reached, as far as the public domain is concerned, the JCPOA in reality signaled the start of a problematic and puzzling reduction in transparency as to Iran's nuclear activities and plans for the future. This stems from the confidentiality that Iran was granted per the JCPOA in its dealings with the IAEA. The P5+1 agreed to this Iranian demand for confidentiality despite the fact that as a violator of the NPT – as established by the IAEA in its December 2015 report, and as strongly corroborated by the new evidence revealed by Israel – Iran had lost the trust of the international community and should not have been granted this privilege. Indeed, curiously, the P5+1 accepted the Iranian demand to treat it as a “normal” member of the NPT.

In light of this, the first step to be taken is to reaffirm clearly that Iran is a violator of the NPT – that for decades Iran worked on a military program while deceiving the international community, and that the act of agreeing to the JCPOA was probably only a temporary setback. It certainly does not erase the legacy of Iran as a state prone to violations and duplicity. Nor

should it serve as a platform for immediately granting Iran the trust of the international community or the standing of a so-called normal member of the NPT. Indeed, the years since the JCPOA was introduced have demonstrated Iran's ongoing provocations and aggressions, including threats to return immediately to previous nuclear activities if the US or European states do not adhere to its demands.

Following this clarification – which was absent from the JCPOA – the grounds for Iran's confidentiality rights must be reconsidered, and indeed, removed. As such:

- a. The IAEA reports on Iran must return to their previous format, including full information regarding Iran's nuclear activities and plans for the future, and full reports, including results, on all the inspections that were carried out at military facilities. Since January 2016 (Implementation Day), the reports have excluded all of this information.
- b. All the deals that were concluded between the IAEA and Iran must be made public. It is unacceptable, for example, that the public only learned through investigative reporting over the course of 2016 that Iran has plans to install and operate thousands of advanced centrifuges from year 11 of the deal. This kind of information is crucial for informed debate about the value of the JCPOA and for informed assessments of Iran's intentions in the nuclear realm.
- c. Reports on deliberations in the context of the Joint Commission (that oversees the JCPOA) and the Procurement Working Group (that is meant to discuss intelligence regarding Iran's efforts to illicitly procure technologies and components relevant to a weapons program) must be made public.
- d. Key understandings from the secret US-Iran negotiations in Oman (that preceded the P5+1-Iran negotiations in 2013) must also be disclosed to the public. Now that the JCPOA has been achieved, there is no justification for keeping the results of those talks under wraps.

Conclusion

One can only speculate about the reasons for the IAEA's behavior described above. The most obvious rationale is that the Director General wants to adhere to the spirit in which the JCPOA was conceived – the spirit of compromise. Moreover, admitting officially that the IAEA cannot really fulfill all the requirements of the deal would be damaging both to the deal's application and to the IAEA itself. It would affect the ability of some to

insist that the deal is working, and could bring about an early crisis that the remaining partners to the deal have an interest to avoid, or at least to postpone. Thus, the motivation behind the IAEA's vague, partial, and opaque execution and reporting is most likely political.

The IAEA has proven its technical capabilities in many instances in the past, most notably in Iraq following the 1991 Gulf War. But completely fulfilling its mandate in the case of Iran might well lead to findings that would prompt a crisis that could disrupt the delicate status of the JCPOA. Clearly those who want to continue with the present political and economic situation with Iran rely on the vague, amorphous, and at times misleading periodic reports of the IAEA Director General to the Security Council to do the work for them, and declare that the deal "is working." For those who subscribe to this view, there is no need to take any further action to repair the deal or to pressure Iran with a renewed and strengthened sanctions regime. The non-transparent behavior of the IAEA Director General only strengthens the position of those who do not want to acknowledge that something is amiss in the original setup.

But even if we assume that the JCPOA is being fulfilled, it is nevertheless an incomplete deal: it does not cover all aspects of a nuclear weapons development project; it does not facilitate the search for undeclared, concealed facilities, activities, and materials; and as many agree, it is deficient in having ignored the nuclear weapons delivery systems, including ballistic and cruise missiles of all ranges that can carry a nuclear warhead. These problems are compounded by the fact that important provisions of the deal are not being implemented by the IAEA. In short, not only does the deal suffer from weak and inadequate provisions; the IAEA has not fulfilled its duties to the letter.

Following the US withdrawal from the JCPOA in May 2018, the future of the nuclear deal is unclear. However, one of the more important effects of the US decision should be a reassessment by the other partners that the current flaws of the deal and its implementation must be remedied if it is to remain, and thereby become more effective.

The recommendations offered here for improving the situation are directed at the strong powers – and first and foremost at the United States, which is the only power clearly focused on the problems in the JCPOA and on the need to remedy them. These powers must ensure that the IAEA does its job. At the end of the day, as is evident also with regard to the NPT itself, the effectiveness of the IAEA and the nonproliferation agreements

it serves depends on the willingness of states to ensure that the provisions of these agreements are upheld.¹⁰

Notes

- 1 The catch in the first sentence is the word “voluntary,” which was problematic in the past, and is likely to be so in the future.
- 2 “Statement by IAEA Director General Yukiya Amano,” IAEA, May 9, 2018, <https://www.iaea.org/newscenter/statements/statement-by-iaea-director-general-yukiya-amano-9-may-2018>.
- 3 “Remarks by President Trump on the Joint Comprehensive Plan of Action,” The White House, Office of the Press Secretary, May 8, 2018, <https://bit.ly/2IMsZsn>.
- 4 “Additional Protocol” (the full title is “Model Protocol Additional to the Agreement(s) between State(s) and the International Atomic Energy Agency for the Application of Safeguards”), Article 5, <https://www.iaea.org/sites/default/files/infocirc540c.pdf>.
- 5 Contrary to all mandatory procedures, the IAEA Director General permitted the all-important taking of samples to be performed by the Iranians and not by qualified and certified IAEA inspectors. Despite the cleanup activities carried out by the Iranians prior to the visit, there were nevertheless some suspicious findings, but the Iranians refused any further clarification of the issue. See “IAEA Director General’s Remarks to the Press on Visit to Iran,” IAEA, September 21, 2015, <https://www.iaea.org/newscenter/statements/iaea-director-generals-remarks-to-the-press-on-visit-to-iran>.
- 6 Additional Protocol, Article 9.
- 7 See IAEA report on Iran from August 31, 2017, <https://www.iaea.org/sites/default/files/gov2017-35.pdf>.
- 8 See JCPOA, <https://www.state.gov/documents/organization/245318.pdf>.
- 9 See Barak Ravid, “Israel: IAEA Received Info about Suspected Iranian Nuclear Sites but Didn’t Inspect Many of Them,” *Haaretz*, September 17, 2017, <https://bit.ly/2tBSilf>.
- 10 The problems regarding the NPT are underscored by the fact that NPT Review Conferences have not been able to garner consensus among the member states to censure Iran for working on a nuclear weapons program, even after key intelligence was revealed in IAEA reports.