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IMPLEMENTATION OF THE JCPOA: ONE YEAR ON

Emily B. Landau

Observers of the Iran deal will note that since the Joint Comprehensive Plan of Action (JCPOA) 'Implementation Day' in mid-January 2016, two International Atomic Energy Agency (IAEA) reports have been released that appear to offer a somewhat rosy view of Iran's behaviour, concluding that Iran has so far complied with the terms of the nuclear deal. Iran shipped out most of its stockpile of low enriched uranium (LEU), removed about two thirds of its centrifuges, placing them in IAEA-monitored storage, and poured concrete into the core of the heavy-water reactor at Arak. Yet, as ever with the current regime in Tehran, all is not as it seems. Several crucial problems can be observed over the past year that might call into question that simple conclusion of compliance.

First, the IAEA reports purportedly offering a clean bill of health so far were themselves concerning. The level of detail contained in the two reports released since 'Implementation Day' is a far cry from what had been the norm for the reports on Iran's nuclear program that were released every three months in the years preceding conclusion of the deal. The information and data that are missing in these new reports undermine any ability to independently assess the degree to which Iran is complying with the terms of the deal. The Institute for Science and International Security (ISIS) published an important article in late May in which they analysed the second IAEA report on Iran, and listed some key questions that remain unanswered.[1] These include the specific size of the LEU stockpile that remains in Iran as well as its forms and locations; the number of centrifuges that are enriching uranium at Natanz; whether all the required centrifuges have been removed from Fordow; the status of turning Fordow into a research centre; the inventory of uranium enriched to 20 percent; and the status of the heavy water that is being temporarily stored in Oman – such as related questions of ownership, for example. There is also no information provided on Iran's Research and Development (R&D) activities regarding advanced centrifuges.

One concern regarding the lack of detail in these reports is that issues are possibly being discussed in private, and perhaps small violations by Iran are being cleared up quietly or brushed aside by the P5+1. One violation that has already come to light concerns the fact that Iran had produced heavy water in excess of the limit set by the JCPOA, and subsequent media reports indicated U.S. intent to purchase 32 tons of this excess heavy water, to the tune of $8.6 million. There are dual problematic messages to Iran here: not only are the P5+1 not raising a red flag in the face of this violation, but the U.S. will actually enable Iran to profit from the violation by buying this excess heavy water. Moreover, there is an implicit message that the U.S. might be willing to continue with this arrangement in the future, creating a serious hazard in the future dynamics of implementation of the deal.

An even more significant violation may have occurred with regard to the procurement channel set forth in the JCPOA. A disturbing report by Germany's domestic intelligence agency revealed in late June that the agency detected 141 attempts by Iran in 2015 to illegally obtain missile and nuclear technology in Germany (as compared to 83 attempts in 2014). Ninety of the incidents in 2015 are described as illegal attempts to acquire technology that could be used for the development of nuclear weapons or their delivery systems.[2] This indicates that Iran continues, and is in fact increasing its attempts to illicitly acquire materials to further enhance its nuclear program. Whether and how the P5+1 react to this information will be a crucial test of their political will to hold Iran to its JCPOA commitments.

[1] See Albright, D., Kelleher-Vergantini, S., and Stricker, A., 'IAEA's Second JCPOA Report: Key Information Still Missing', *ISIS Report*, 31 May 2016, available at: http://www.isisnucleariran.org/assets/pdf/Second_JCPOA_Post-Implementation_Day_Report_May_31_2016_Final.pdf, last visited: 12 July 2016.

[2] Garaev, P., 'Iran still trying to acquire materials for nuclear program, Germany warns', *i24 News*, 7 July 2016, available at: http://www.i24news.tv/en/news/international/119127-160707-iran-still-trying-to-acquire-materials-for-nuclear-program-germany-warns, last visited: 12 July 2016.

Beyond these specific concerns, a thorough assessment of the implementation of the Iran nuclear deal should not only focus on how well Iran has met the different nuclear provisions; rather, it must assess Iranian compliance in a broader context. Thus, the degree to which Iran has upheld the provisions of the JCPOA must be evaluated against the backdrop of what the deal actually requires of Iran, as well as what Iran's goals were vis-à-vis the deal. With regard to the former, it is essential to keep in mind that Iran agreed to only minimal nuclear concessions -- steps that will no doubt delay somewhat its ability to rush towards nuclear weapons development, but that - crucially - at the same time have enabled Iran to maintain its breakout capability. Thus, having made sure in advance not to agree to dismantlement measures that would have seriously crippled its nuclear program, Iran has less of a problem with compliance. Moreover, what brought Iran to the table in 2013 was its need to secure relief from biting sanctions, and Iran was well aware that the minimal nuclear concessions it did agree to were a necessary prerequisite for lifting these sanctions. Hence, 'minimal nuclear concessions in exchange for maximum sanctions relief' was the formula that guided Iran in its negotiations with the P5+1 over a comprehensive nuclear deal.

Worse, not only did Iran ensure that the concessions it agreed to would not undermine its breakout capability, it actually made some important gains with the deal, the significance of which will become more pronounced in the long term. The first of these gains is the legitimisation accorded by the deal to Iran's uranium enrichment activities. While a temporary cap of 300 kg was placed on Iran's stockpile of LEU, Iran continues to enrich uranium. A major concession that the P5+1 made to Iran from the start was to drop the demand for the dismantlement of Iran's nuclear infrastructure, settling instead for the much more limited goal of lengthening Iran's breakout time from 2-3 months to a year. The long-term implications of this legitimisation of Iran's threshold status – which includes allowing Iran to work on R&D on an entire range of advanced generations of centrifuges – are critical. In 10-15 years when all significant restrictions on Iran's nuclear program are lifted, Iran will be well positioned to significantly enhance its nuclear program, and breakout time will be reduced to a matter of weeks. President Obama admitted as much in his interview with NPR in April 2015,[3] after which the U.S. State Department – apparently realising the implications of this admission – made a clumsy attempt to blur the effect of the interview by claiming that what the President had said had been misunderstood.

An additional grave concern is that the deal also enabled Iran to escape any consequences for the conclusions of the final IAEA report of December 2015 on the possible military dimensions (PMD) of its program – namely, its past work on a military nuclear capability. That report determined that Iran worked in a coordinated manner on a military nuclear program until 2003 and in a less coordinated manner until at least 2009. The curious decision to simply close the PMD file following that damning report will have adverse implications in a number of respects, including for conducting inspections at suspicious facilities in Iran down the road. By setting aside the report, the P5+1 have inadvertently enabled Iran to continue to cling to its narrative of nuclear innocence, according to which it never worked on a military nuclear program at all.

In June, the *Wall Street Journal* noted that U.S. officials concluded that man-made uranium particles found at Parchin last summer were connected to a nuclear weapons program,[4] corroborating suspicions that have for years focused on the military-related nuclear activities that were carried out at that facility. But the terms of the side deal between the IAEA and Iran that accompanied the JCPOA are such that the IAEA was allowed only the one chance to collect soil samples from Parchin, and is now barred from

[3] President Obama said that in year 13, 14, 15, Iran's breakout time (using advanced centrifuges) will go down to zero. 'Transcript: President Obama's Full NPR Interview On Iran Nuclear Deal', *NPR,* 7 April 2015, available at: http://www.npr.org/2015/04/07/397933577/transcript-president-obamas-full-npr-interview-on-iran-nuclear-deal, last visited: 12 July 2016.

[4] Solomon, J. 'Uranium Provides New Clue on Iran's Past Nuclear Arms Work', *The Wall Street Journal,* 19 June 2016, available at: http://www.wsj.com/articles/uranium-provides-new-clue-on-irans-past-nuclear-arms-work-1466380760, last visited: 12 July 2016.

conducting additional inspections. Former Deputy Director of the IAEA Olli Heinonen argues that in light of the findings, the IAEA has an obligation to do a follow-up investigation, but he has found no evidence in any of the IAEA reports since last summer that the agency has sought clarification of possible undeclared nuclear activities in Iran.[5]

In this context it is worth recalling that the text of the JCPOA contains lengthy explanations setting forth the procedure for the IAEA to request and carry out an inspection at a non-nuclear site where Iran is suspected of carrying out weapons-related activities. But for all the detailed provisions, it lacks the specifics for the IAEA to gain timely access to a suspect military site. Moreover, Iran's leaders have made it very clear that they will never allow entry into a military site, and an Iranian threat to leave the deal in the face of such a demand will most likely deter the P5+1 from trying to force Iran's hand.

Finally, Iran also ensured that its work on a delivery mechanism for a future nuclear warhead continues unhindered. Iran was adamant from the start about not discussing its ballistic missile program, insisting that ballistic missiles are 'non nuclear'. The P5+1 unwisely conceded to this dangerous demand, and ballistic missiles were left outside the purview of the nuclear negotiation. Alas, since the deal was announced last July, Iran has conducted several tests of long-range precision-guided ballistic missiles that can carry a nuclear payload, with the initial tests (October and November 2015) constituting a clear violation of UN Security Council Resolution 1929, still in force at the time. Some of these missiles had written on them – in Hebrew – the intent to destroy Israel. The fact that Iran continues this work on a delivery mechanism unhindered is another indication that its breakout capability remains intact.

In conclusion, while Iran has on the surface appeared to comply with the terms of the JCPOA, significant questions have arisen with regard to some of its activities, both within the framework of the deal and with regard to possible undeclared nuclear activities and its missile program. The evidence contained in the German report is certainly cause for concern and continued follow-up. Moreover, even if there has so far been fairly good compliance on Iran's part, it is important to remember the broader context – both the fact that its concessions were minimal from the start, and that it had to comply in order to get the sanctions relief it was after. But evidence of Iran testing the waters and 'pushing the envelop' as it were, do not bode well for the long term. Iran's broader regional profile only helps to drive home that Iran's goal is not to turn over a new leaf and begin cooperating with the international community. As such, extreme vigilance coupled with the necessary political will to confront Iran on its violations and misbehaviour is essential in the coming years.

[5] Heinonen, O., 'Uranium Particles at Parchin Indicate Possible Undeclared Iranian Nuclear Activities', *Foundation for Defense of Democracies,* 1 July 2016, available at: http://www.defenddemocracy.org/media-hit/olli-heinonen1-uranium-particles-at-parchin-indicate-possible-undeclared-iranian-nuclear-a/, last visited: 12 July 2016.