Beyond Compliance: Iran and the JCPOA

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Summary

- Agreed on 14 July 2015, the Joint Comprehensive Plan of Action (JCPOA) is intended to prevent Iran from becoming a threshold nuclear-armed state, by affording the country extensive sanctions relief in exchange for its submission to a range of restrictions upon its nuclear programme. These include limiting the number of its enrichment facilities and holdings of enriched uranium, requiring it to purchase nuclear-related material through a designated procurement channel, and requiring it to submit to international inspections. There is widespread acceptance among the governments of the P5+1 (the five UN Security Council members plus Germany) that Iran is in compliance with the terms of the agreement.

- Many of the restrictions imposed upon Iran are temporary in nature, and will expire at the end of an agreed period. Accordingly, the JCPOA should not be regarded as an agreement which “resolves” the Iranian nuclear issue, but as an accord which buys time for a process of economic and political rapprochement. Success of the JCPOA therefore depends not only upon Iranian compliance, but also on the capacity of the international community to discourage Iran from returning to nuclear enrichment when its submission to restrictions ceases to be mandatory.

- Over the last two years, sanctions relief has not led to Iran’s full reintegration into the global economy. Tehran has taken steps to profit from a relaxation of restrictions, resuming oil sales to international customers. In addition, a number of Iranian airlines have moved to modernise Iran’s civilian aerospace fleet through foreign purchases. However, foreign direct investment has been inhibited by the threat of “snapback” sanctions, and the continued insistence upon a protectionist “Resistance Economy” by the Iranian Supreme Leader.

- In addition, Tehran has used the relaxation of the UN arms embargo to acquire and develop missile defences, which it has used to better defend its enrichment sites from military action. In doing so, it has demonstrated that protecting its nuclear programme remains its primary political priority.

- The first two years of the JCPOA have undermined hopes that the agreement would facilitate Iran’s adoption of a more moderate international posture. Renewed access to oil wealth has enabled the country to adopt a much more assertive approach towards its region. It has used the first two years of the JCPOA era to greatly expand its ballistic missile capability and engage in regular testing. In addition, it has provided extensive support to proxy militant groups in its region, most notably in Iraq and Syria where it has formalised Shi’a militias into Popular Mobilisation Units (PMU). These actions have deepened the hostility that characterises Iran’s relationship with Gulf Arab states.

- A combination of the Trump administration’s election and Iran’s own actions have undermined the likelihood that Tehran and Washington will engage in the kind of
meaningful rapprochement envisioned by supporters of the agreement. Iranian ballistic missile tests have compelled the administration to impose additional sanctions against Iranian entities, and led Congress to consider adopting a range of non-nuclear sanctions. In addition, the White House is currently conducting a review that could result in nuclear-related sanctions being reimposed, something that would be likely to result in the complete collapse of the JCPOA.

- In the coming years, UK decision-makers will need to determine how to balance the desirability of Iran’s continued compliance with the JCPOA with the need to launch initiatives that discourage Iran from returning to nuclear enrichment in the future. This will require adopting an appropriate sanctions policy in readiness for the UK’s departure from the European Union, and working behind the scenes to prevent American and European approaches from diverging.
1. Introduction: Understanding the JCPOA

Throughout the first half of July 2015, the world’s news media descended upon the Palais Coburg Hotel in Vienna, eager to discover the contents of the Joint Comprehensive Plan of Action (JCPOA). The document, agreed after 17 consecutive days of final-round negotiations between representatives of Iran and states comprising the P5+1, resulted in three main outcomes. Firstly, it unveiled the exact nature of the restrictions to be imposed upon Iran’s nuclear programme, and outlined a staggered timeline for their removal. Secondly, it detailed the concessions that the P5+1 states would make to Iran in exchange for its submission to those restrictions, most of which took the form of economic sanctions relief. Finally, it confirmed the sequencing of the steps each party would need to take in order for the agreement to come into effect. At the time, the agreement was heralded as a triumph of diplomacy. The EU’s High Representative for Foreign Affairs and Security Federica Mogherini and Iranian Foreign Minister Javad Zarif issued a joint statement characterising the JCPOA as “a shared commitment to peace”, and paid testament to negotiators for having “resolved a dispute that lasted more than 10 years”.

This notion warrants a serious corrective. To suggest that the JCPOA “resolved” the decade-long stand-off regarding Iran’s nuclear programme is to misunderstand its nature. In addition, a review of the first two years of the JCPOA’s implementation reveals that the agreement is failing to dampen the prospect of Iran ultimately returning to nuclear enrichment and, in time, the pursuit of nuclear arms. To understand why this is the case, it is necessary to distinguish what the JCPOA actually achieved from what it merely made possible.

1.1 What the JCPOA did – and did not – achieve

Prior to the implementation of the JCPOA, Iran’s nuclear programme was characterised by 14 individual components and dimensions. Each of these contributed to its overall ability to generate enough material to construct a rudimentary nuclear device – roughly equivalent to 25kg of weapons-grade uranium. For instance, a greater number of centrifuges empowered Iran to develop a larger stockpile of enriched uranium, and additional enrichment sites such as its Fordow facility allowed it to disperse its nuclear activity around the country, thus making it less vulnerable to military attack. In addition, Iranian moves to block International Atomic Energy Agency (IAEA) inspectors from conducting inspections at key sites made it impossible to determine Iran’s level of enrichment with precision.

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2 The five permanent members of the UN Security Council (the United States, the United Kingdom, France, Russia, China) and Germany.
4 (1) Its stockpile of low-enriched uranium (LEU); (2) its possession of uranium enriched to 20%; (3) its possession of LEU converted into oxide form; (4) its ability to convert this material back into LEU; (5) its various enrichment facilities; (5) its number of dormant centrifuges; (6) its number of actively enriching centrifuges; (7) its holding of IR-2m centrifuges; (8) its level of plutonium production at Arak; (9) its ability to block IAEA inspectors from sites where they would be able to obtain reliable information about five different developments: (10) enrichment at declared sites; (11) production of uranium at domestic mines; (12) importation of uranium from foreign sources; (13) its centrifuge production capacities; and (14) its possible covert enrichment sites.
At the time of the JCPOA agreement, Iran already possessed an extensive ballistic missile arsenal, which formed the basis for constructing a suitable delivery vehicle for nuclear arms. In addition, it was known to have engaged in experimentation with nuclear triggers, needed to perfect detonations. Accordingly, its move to enrich towards the 25kg figure was rightly seen as the final hurdle to its possession of all of the components it would need to become a threshold nuclear state.

The JCPOA was designed to reduce the likelihood of that outcome coming into being, by restricting Iran’s enrichment capacity and activity. For instance, under the terms of the agreement, Iran is barred from possessing more than 300kg of uranium enriched to 3.67%, enriching uranium beyond 3.67%, constructing any new nuclear-enrichment facility, and mandated to use a designated procurement channel for the purchase of any nuclear-related equipment. In addition, it is required to permit inspectors from the IAEA to monitor key sites throughout the country. In exchange for submitting to these restrictions, Iran was afforded extensive sanctions relief, with the UN eliminating sanctions contained within six previous Security Council resolutions, and the US moving to waive financial sanctions. As a consequence, Iran was able to resume oil sales to customers on the international market, and gain access to roughly $115 billion in revenue from past sales, which had been frozen in escrow accounts.

Though the JCPOA was vested within UN Security Council 2231, decisions regarding compliance are national ones, and in keeping with Iran’s adherence to the above restrictions, each P5+1 country – including the UK – currently assesses Iran to be in compliance with the agreement as a whole. However, compliance alone should not be conflated with a determination of whether the JCPOA is achieving its overall goals. Indeed, as the fervent critics of the agreement have made clear, compliance – especially on Iran’s behalf – can be understood in one of two ways. It can be understood as evidence of the country’s willingness to submit to the will of the international community, and forgo nuclear enrichment. However, it can also be understood as a tactical decision, permitting the country to restore its economic health prior to returning to enrichment at a time when the international community is less able to restrict its behaviour. This position is embodied by Israeli Prime Minister Netanyahu, who has stated, “The problem isn’t so much that Iran will break the deal ... but that Iran will keep it because it just can [achieve] within a decade ... [the] industrial-scale enrichment of uranium.”

This view can be more easily understood by examining the exact nature of the restrictions imposed upon Iran by the JCPOA. A crucial aspect of these restrictions is that most are subject to “sunset” clauses, meaning that they expire with the passage of time. For instance, as part of the JCPOA settlement, negotiators agreed that international monitoring of Iranian centrifuge production would expire after 20 years (in 2035), prohibition on the construction of new enrichment facilities and holdings of enriched uranium would expire after 15 years (in 2030). Crucially, the prohibition on enriching beyond 3.67% also expires in 15 years (in 2030) and the cap on the Natanz Fuel

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Enrichment Plant’s capacity - set at 5,060 separate centrifuges - would expire after just ten years (in 2025). In short, simply by complying with the restrictions of the agreement, Iran will be permitted to expand its centrifuge capacity in eight years’ time, and be allowed to enrich an unlimited amount of uranium - to weapons-grade levels if it so chooses - in 13 years.

Accordingly, the JCPOA is best understood not as an agreement that eliminates the threat posed by Iran’s nuclear programme, but as an interim accord. Ultimately, successful prevention of a nuclear-armed Iran will not depend on the country’s compliance with the terms of the JCPOA itself, but on the steps taken to ensure that it is discouraged from returning to pre-2015 levels of enrichment once its compliance with restrictions ceases to be mandatory.

Table 1: Restrictions on Iran’s nuclear programme and years of expiry:

<table>
<thead>
<tr>
<th>Nature of restriction</th>
<th>Year in which restriction is lifted</th>
<th>Number of years until restriction is lifted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limitation on ballistic missile development</td>
<td>2023</td>
<td>6</td>
</tr>
<tr>
<td>Limitation on Natanz enrichment capacity</td>
<td>2025</td>
<td>8</td>
</tr>
<tr>
<td>Procurement channel for nuclear-related purchases</td>
<td>2025</td>
<td>8</td>
</tr>
<tr>
<td>Enriched uranium stockpile limited to 300kg at 3.67%</td>
<td>2030</td>
<td>13</td>
</tr>
<tr>
<td>Restricted testing of advanced centrifuges</td>
<td>2030</td>
<td>13</td>
</tr>
<tr>
<td>No enrichment of uranium beyond 3.67%</td>
<td>2030</td>
<td>13</td>
</tr>
<tr>
<td>No enrichment at Fordow facility</td>
<td>2030</td>
<td>13</td>
</tr>
<tr>
<td>No construction of any new enrichment facility</td>
<td>2030</td>
<td>13</td>
</tr>
<tr>
<td>Daily IAEA access to Natanz facility</td>
<td>2030</td>
<td>13</td>
</tr>
<tr>
<td>IAEA monitoring of centrifuge production</td>
<td>2035</td>
<td>18</td>
</tr>
<tr>
<td>Adherence to IAEA “additional protocol”</td>
<td>N/A Permanent</td>
<td>N/A Permanent</td>
</tr>
</tbody>
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At the time the JCPOA was agreed, advocates expressed three key arguments for why the agreement would negate Iran’s incentives to return to nuclear enrichment at a later date. The first was that the relaxation of economic sanctions would build a more moderate political caucus within Iran itself. By furthering economic engagement, made possible by the elimination of restrictions on Iranian oil exports and foreign direct investment, the benefits of dispensing with nuclear enrichment – and forsaking a return – would become clear. As a result, Iranian hardliners who regard an extensive nuclear programme as a national requirement would become isolated. Addressing the House of Commons on the day after the JCPOA was agreed, then Foreign Secretary Phillip Hammond stated that “by providing the means through sanctions relief for Iran’s economic re-engagement with the

world, it [the JCPOA] will allow the Iranian people to feel the tangible benefits of international co-operation.\textsuperscript{10}

The second argument was that Iran had no inherent desire to seek nuclear arms, and that affording Iran de facto recognition of its “right to enrich” would permit the country’s benign intentions to be tested, if not proven.\textsuperscript{11} By respecting Iran’s desire to enrich, and removing the threat of military action, Iran’s sense of insecurity would be addressed, allowing it to adopt a more moderate approach to world affairs that included dispensing with any consideration of seeking nuclear arms.

Thirdly, advocates of the agreement argued that the JCPOA would facilitate Iran’s reintegration into the wider international community. This was made explicit in a letter sent to the Iranian Supreme Leader by President Obama, which stressed that progress on the nuclear issue could enable US–Iranian cooperation in the fight against Islamic State.\textsuperscript{12} This hope was based on the assumption that sufficient political will existed within both Iran and the West to pursue sustained economic and political engagement, even if each continued to engage in actions which were seen as hostile by the other. Accordingly, the JCPOA was intended to be the start of a gradual process of rapprochement that would lessen tensions, reducing Iran’s sense of insecurity and in turn, its need to maintain the option of seeking a nuclear weapons “breakout” capability.

1.2 Assessing the JCPOA at the two-year mark

As this paper seeks to demonstrate, progress on all three of these fronts has been poor. Firstly, efforts to reintegrate Iran into the global economy have floundered. Where Iran has taken advantage of sanctions relief, it has done so as a means of entrenching its nuclear programme, both by insulating its economy against a return to economic pressure should it opt to restart enrichment and by making the core components of its nuclear programme less vulnerable to military attack. Secondly, rather than resulting in reduced geopolitical tension, Iran has used the last two years to significantly escalate its involvement in aggressive activities throughout the region. Finally, the notion that sufficient political will would exist for meaningful and sustained interaction between Iran and the West has not been vindicated. Within Iran, continued commitment to a “Resistance Economy” at the highest levels of government has thwarted the ability of more pragmatic forces to engage with the West. In addition, not only has the United States elected an administration led by a President who regards the JCPOA as a “disastrous deal”,\textsuperscript{13} but voices across the American political spectrum have supported measures that seek to punish Iran for international transgressions that fall outside the narrow parameters of the nuclear file itself. Implementation of the JCPOA by its signatories therefore represents a tactical success at best. While the agreement is succeeding in discouraging Iran from pursuing a nuclear weapons capability in the near term, its ongoing compliance takes place within the context of trends which are all undermining the JCPOA’s core raison d’être: preventing the country’s long-term trajectory encompassing the acquisition of a nuclear arsenal.

2. Iran’s Economic Reintegration: Strategic and Limited

JCPOA-mandated sanctions relief has had some significant effects on the Iranian economy. Energy has been one of three sectors in which economic engagement with the international community has been most forthcoming. Following the waiving of US financial sanctions, Iran has been able to gain access to funds that were frozen in escrow accounts during the pre-JCPOA period, such as $6.4 billion in oil wealth trapped in Indian accounts. In addition, it has been able to resupply the international energy market with oil, with its exports rising to approximately 3.9 million barrels per day (bpd), the cap to which it consented as part of the OPEC production cut agreed in November of 2016. Demand for Iranian oil has largely been driven by Asian states, namely India, China, South Korea and Japan, each of which more than doubled its imports over the course of 2016. In addition, Iran now exports more than a million barrels of oil to various European countries on a daily basis, as well as a further 100,000 to Russia. Moreover, the National Iranian Oil Company has certified 29 international companies as being eligible to bid for oil and gas projects within Iran. As a consequence, specific agreements have now been reached with Royal Dutch Shell and Total. Iran has also strengthened its domestic infrastructure, agreeing a Memorandum of Understanding (MoU) with Iraq on connecting its pipelines with facilities in Kirkuk, and making progress on a series of contracts with Chinese, Japanese and Korean companies to modernise refining capabilities at locations in Khuzestan and Esfahan.

The second sector in which sanctions relief has had a significant effect is shipping. Owing to Iran’s heavy reliance upon oil exports for foreign currency, strengthening its capacity to export its energy resources has been a priority for Tehran. Iran has been able to re-establish ties with the Danish Maersk Line, and two Iranian “supertankers” now ferry Iranian oil to the European marketplace.

In addition, domestic Iranian media has reported that Lloyds of London has been persuaded to

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open an Iran-based office,7 having previously resumed insurance operations.29 Key to the shipping resurgence has been the concerted effort played by South Korea to engage with Iran. Under the Park administration, Seoul made seeking out new economic opportunities a governmental priority as part of an effort to disrupt Iran’s ties with North Korea.22 That approach smoothed passage for Hyundai Heavy Industries to reach agreement with Iran on the sale of ten commercial vessels as part of a $700 million deal, something that will strengthen Iran’s ability to export oil to the international markets in the years ahead.30

The final sector of Iran’s economy that has benefited greatly from sanctions relief has been aviation. Starved of resources and spare parts for years, Iranian companies have prioritised engagement with international suppliers. Iran Air reached an agreement with Airbus in December of last year to acquire 100 new airliners,31 following a deal with Boeing to acquire 80 aircraft in a deal estimated to be worth $16 billion.32 In addition, Iran Air has signed contracts with the French-based manufacturer ATR to provide further planes.33 Aseman airlines has also sought to purchase international aircraft. In addition to an agreement with Boeing to purchase 30 737 aircraft,34 Aseman has struck a deal with Mitsubishi to acquire 20 jets for domestic routes.35 Iran Airtour and Zagros airlines have also formalised MoUs with Airbus with a view to future acquisitions.36

Collectively, these interactions seem to suggest that the JCPOA is facilitating the kind of economic engagement that was envisaged at the time the agreement was formalised. However, the way in which Iran has taken advantage of sanctions relief in the first two years of the JCPOA regime is cause for concern, largely because it has more been strategic in nature than commercial. Tehran’s move to re-establish its oil exports – together with access to the vessels and insurance upon which they rely – is economically sound. So too is moving to end its reliance on an aging fleet of civilian airliners, something that made air travel in Iran a far riskier prospect than in any other developed country.37 At the same time, the nature of the industries that have been the first to benefit from sanctions relief both inhibit the international community’s capacity to exert pressure upon Iran, and reduce geopolitical tensions. By quickly re-establishing its oil exports, Tehran has insulated itself against any return to sanctions, by creating economic dependencies in many of the countries which are responsible for determining whether it is in compliance with the JCPOA. In addition, while the private-sector purchases of aircraft have been civilian in nature, such airliners should be considered as dual-use items, owing to the manner in which Iran has resupplied proxy groups fighting on behalf

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of the Assad regime in Syria. As such, Iran’s commercial approaches have been in keeping with how it could have been expected to act were its main priorities safeguarding its nuclear programme and playing an aggressive military role in its region.

The true test of the JCPOA’s effectiveness will be whether it can prompt greater commercial interactions in sectors that cannot be described as strategic in nature. Here the prospects are decidedly less promising. Though the Rouhani government has sought to play up the benefits of international commerce, it has been largely thwarted by continual interference from the Supreme Leader’s office. For instance, Ayatollah Khamenei has repeatedly stressed that the continuing economic challenges faced by Iran’s population spring not from the legacy of economic sanctions, but from a failure to construct a “Resistance Economy” that is autarkic in nature. For instance, addressing the Assembly of Experts in March, the Supreme Leader stressed that had “all the necessary steps [regarding the Resistance Economy] been taken, today, we would have observed a tangible difference in the country’s economic conditions and people’s lives”. That same month, Khamenei proclaimed 1396 (equivalent to 20 March 2017 to 20 March 2018 in the Gregorian calendar) to be the year of the Resistance Economy. These views are indicative of a strand of Iranian thinking that continues to inhibit commerce. In May of last year, Khamenei stated, “We [Iran] are engaging [economically] with the world, but importing, selling, and consuming foreign goods in fields with domestic production must be recognized as antithetical to our values.”

International observers have pinned great hopes upon the prospect of greater economic liberalism resulting in an Iranian political posture that is more open and moderate. Indeed, economic improvements, wrought in part by sanctions relief, have been a significant factor in bolstering the fortunes of incumbent President Hassan Rouhani, who was re-elected to a second term in office in March of this year. However, the JCPOA’s prospects for success depend on fulsome economic engagement that enables the West to “purchase leverage” within the Iranian body politic, by building up a prosperous middle class capable of resisting any hard-line effort to return to enrichment once JCPOA restrictions expire. Yet protectionist interventions by Iran’s “principalist” leadership – characterised by the frequent interventions of the Supreme Leader and the veto that he and his ideological associates continue to exert over more pragmatic officials – casts doubt on the likelihood of that prospect being realised.

So too does the hesitancy of Western firms, something that can be discerned from the nature of the commercial transactions that have occurred thus far. The first two years of the JCPOA have seen a heavy emphasis on purchases – of Iranian oil by international customers, and of key assets by the Iranian state and private entities. However, what the JCPOA has yet to prompt is significant and enduring direct foreign investment within the country. While international firms have been keen to engage in individual sales, they have been far less willing to commence enduring commercial

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relationships with Iranian partners. Part of this hesitancy is derived from the manner in which the JCPOA was structured. In order to satisfy concerns about Iranian non-compliance, the agreement included a “snapback” procedure, which allows any one of the P5+1 members to automatically reinstate international sanctions against Iran should it consider the country to be in breach of the agreement’s terms. This procedure is not dependent upon UN Security Council approval, and affords significant power to national capitals to quickly curtail Iran’s economic relations with the outside world. While that clause is a necessity given Iran’s ability to cease compliance with the JCPOA at short notice and its history of misleading international actors, it is having a chilling effect on businesses, which have shunned long-term investments in such a high-risk political environment. The net effect is that economic rapprochement between Iran and the West has been far less significant than many expected. Indeed, some Iranian officials have criticised European governments for not doing enough to reassure banks that their investments will be protected, even though Western officials have made significant efforts to offer such reassurance.

A final cause for concern, which is also commercial in nature, is the way in which the Iranian state has used sanctions relief to invest more heavily in missile defence. Most notably, Iran moved swiftly to acquire S-300 surface-to-air missiles from Russia ahead of the JCPOA being agreed. Agreement on the provision of the anti-aircraft system had been approved in 2007, but suspended owing to international sanctions. Yet so keen was Tehran to acquire the system that it mounted legal action to compel the sale, only to withdraw the lawsuit prior to taking the first delivery in July of last year. The shipment also enabled Iran to further develop its own domestically produced surface-to-air missile, the Bavar 373, which President Rouhani unveiled in August of last year. Iranian media has reported that the first deployment of the S-300 system has been at the Fordow enrichment facility, a fact that further weakens Tehran’s claim that the site is purely civilian in nature. By deploying surface-to-air missiles defences around the enrichment site that is already the least vulnerable to foreign airstrikes, Tehran has sent a powerful signal that safeguarding its nuclear programme remains its primary political priority, and that its approach to greater economic opportunities is strategic rather than commercial.

Though Tehran has permitted private-sector firms to cooperate with Western firms, it has done so where such cooperation will help inoculate the country’s economy from any decision to “snap” sanctions back into place. It has allowed private-sector firms to acquire Western technology and

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assets where this will make a tangible impact on Iran’s wider geopolitical position. It has also acquired military equipment geared towards strengthening its capacity to repel a military attack against its nuclear facilities in the post-JCPOA period. At the same time, it has by and large moved to hinder the kind of far-reaching economic engagement envisioned by the JCPOA’s advocates, something that bodes poorly for broader political outreach. All these approaches are commensurate with the actions Iran might have been expected to take were it laying the groundwork for returning to nuclear enrichment – and by extension a latent nuclear weapons capability – once JCPOA restrictions expire.

3. Iranian military assertiveness under the JCPOA

In his first month as President, Barack Obama stated that “if countries like Iran are willing to unclench their fist, they will find an extended hand from us”. The JCPOA was in large part based upon this logic. Diplomatic outreach was intended to end Iran’s pariah status, lessening its sense of insecurity by binding it into the international community. Indeed, when mounting a public defence of the accord, Obama’s Secretary of State John Kerry made parallels to President Nixon’s diplomatic outreach to China in the 1970s. However, Iran was always likely to become more assertive in its region following the passage of the JCPOA, rather than less. As former Secretary of State Henry Kissinger noted, whereas China was faced by the threat of Soviet invasion at the time of the Sino-American rapprochement, Iran geopolitical position was at its strongest for decades, having seen both of its two neighbours – Iraq and Afghanistan – weakened due to US-led regime change. Indeed, Iran’s actions in the first two years have contravened the notion that diplomatic outreach would moderate its international behaviour. Released from the threat of American military action, Iran has doubled down on two themes that have long been at the heart of its politico-military strategy.

3.1 Iranian ballistic missile development and testing

Primarily, access to oil wealth has dramatically increased Iran’s ability to spend money on conventional military capabilities. For instance, the Iranian Defence Minister stated in May that the country’s domestic weapons manufacturing capability had increased 100-fold under the Rouhani administration. In January, the Iranian Majlis approved legislation to increase the Iranian defence budget to 5% of government spending, even though Iran’s defence budget had already increased by 145% during President Rouhani’s first term in office. Notably, the legislation paved the way for further development of ballistic missiles, to include the acquisition of missiles from abroad. Such purchases have been made possible by the manner in which the JCPOA relaxed the existing arms

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embargo upon defence-based purchases. The agreement brought an end to a blanket ban on the export of armaments to Iran, replacing it with a system in which:

[The UN] Security Council decides on a case-by-case basis whether to permit the transfer of goods and technology that could contribute to the development of nuclear weapon delivery systems based on the inclusion of appropriate end-user guarantees and Iran committing not to use such items for nuclear weapon delivery systems.\(^\text{69}\)

This formula – which is slated to remain in place until 2023 – was one of the final concessions made to the Iranian regime at the time of the agreement’s negotiation,\(^\text{59}\) and has been one of the most controversial aspects of Iran’s relationship with the international community over the last two years. Western officials and commentators tend to take the view that Iranian purchases and tests of ballistic missiles are either prohibited under the terms of the JCPOA and thus appropriate triggers for the imposition of new sanctions, or not covered by the JCPOA, thereby affording states the right to respond to them with the imposition of sanctions whilst remaining in compliance. By contrast, Iranian officials tend to assert that the JCPOA and UN Security Council 2231 provide express permission to Iran to purchase and test ballistic missiles that are not suited to serving as a delivery vehicle for a nuclear device, and that any sanctions-based response to their acquisition or test constitutes a breach of the JCPOA and/or Security Council 2231.

Failure to reconcile these competing understandings has enabled Tehran to significantly strengthen its ballistic missile arsenal. Indeed, Iran’s leadership has elevated further development of ballistic missiles to a central political objective over the last two years. Ayatollah Khamenei has repeatedly stressed the importance of continuing to expand Iran’s missile capabilities irrespective of international concerns,\(^\text{60}\) and President Rouhani has praised the Iranian Revolutionary Guards Corps’ missile development programme.\(^\text{61}\) In addition, the Iranian and South African defence ministers reached agreement on an MoU in December of last year,\(^\text{62}\) which is expected to result in Iranian imports of the Umkhonto, a mobile surface-to-air missile.\(^\text{63}\) This development comes in spite of past efforts by British intelligence services to prevent Iran from improving its ballistic missile capabilities through commercial acquisitions from South Africa.\(^\text{64}\) Access to foreign ballistic missile technology not only allows Iran to enhance the threat it poses to states in the region, but also leaves it better placed to construct a delivery vehicle suited for a nuclear payload when the JCPOA prohibition on doing so expires in six years’ time.


The move to acquire foreign technology comes on top of a greatly enhanced effort to engage in ballistic missile testing. In March of last year, Iran test-fired Ghadr H and F type missiles, which have a range of between 1,400 and 2,000 kilometres. The following month, Iran attempted to place a satellite into orbit through the use of a Simorgh rocket, a system unveiled by former President Ahmadinejad in 2010, which US intelligence officials had previously confirmed could form the basis for an ICBM-class delivery vehicle. In December of last year, Iran followed the Ghadr and Simorgh tests with a no-notification test of its Shahab-3 missile. Since the turn of the year, the drumbeat of Iranian missile tests has quickened, with repeated tests being conducted over the last six months. In January of this year, Iran test-fired one of its Khormamshahr medium-range ballistic missiles, in what later proved to be a failed test of a re-entry vehicle. It followed the move with extensive military exercises in February, which saw test-fires of shorter-range Fajr 3, 4 and 5 rockets, which are designed for conventional use. In March, Iran conducted further tests, this time launching a Hormuz-2 ship-to-ship missile designed to strike foreign naval vessels.

Sustained tests of different systems are designed to perfect proficiency and accuracy, as well as intimidate regional rivals. Commenting on the Ghadr launches, the deputy director of the IRGC Brigadier General Hossein Salami played up Iran’s capacity to target states in the region, stating, “We can target regional targets, including Israel, from any point, at any volume and with any launch system, simultaneously [as well as] consecutively.” At the same time, so confident has Iran become in its rocket capabilities that it recently reverted to their use in a non-peace-time environment. In response to last month’s ISIS attack on the Iranian Parliament in Tehran, Iran responded by launching intermediate-range surface-to-surface missiles, as well as several short-range ballistic missiles against a range of targets within Syria. The action represented a significant escalation of its intervention in the country’s civil war, as well as Iran’s first use of missiles beyond its borders in more than a decade. It also violated past promises that Iran would only maintain ballistic missiles for deterrent purposes, and refrain from attacking targets in foreign countries.

### 3.2 Iranian support for proxy groups in the Middle East

A second key theme has been expanded support for proxy militant groups. Since the revolution of...
1979, Iran’s regard for the sovereignty and borders of its neighbours has been chequered, owing to its sustained support for proxy sub-state groups in other parts of the Middle East. For instance, Iran has long been Lebanese Hezbollah’s primary economic and political sponsor, and was instrumental in funneling support to anti-American militant groups during the Iraq War, such as Moqtada al-Sadr’s Mahdi Army. The prospect that an influx of oil wealth would enable Iran to provide greater support for sub-state actors in neighbouring countries was acknowledged by Western leaders at the time the JCPOA was agreed. Yet its importance was largely downplayed, on the basis that easing concerns about Iran’s nuclear programme, and reducing the likelihood of US-led military action against Iran, would serve to calm regional tensions.

However, over the last two years, Iran’s efforts to bolster proxy militant groups across the broader Middle East, especially in Iraq and Syria, has been dramatic. Beginning in 2014 – when the JCPOA negotiations were still underway – Iran moved to unify anti-ISIS Shi’ia militias under a single command, establishing Population Mobilisation Units (PMU). These forces, deeply sectarian in nature, have since been at the vanguard of the on-the-ground resistance to ISIS in Iraq and Syria. Owing to a combination of Iraq’s domestic political weakness, ongoing coalition air operations against ISIS and Russia’s intervention in the Syrian civil war, these forces have now begun to make extensive gains. For instance, in recent months pro-Iranian forces have captured control of towns and checkpoints along the Iraqi–Syrian border.

3.3 Implications of Iranian assertiveness for the JCPOA

Iran’s regional and conventional assertiveness might be considered acceptable were it the price to be paid for permanent nuclear restraint. However, Tehran’s bold approach to expanding and deploying its capabilities are setting in motion trends which make it much less likely that Iran will engage in restraint once the JCPOA’s key provisions expire. The progress made by PMU in capturing territory in Iraq and Syria and Iran’s unyielding focus on building ballistic missiles capable of striking set back the JCPOA. Yet its importance was largely downplayed, on the basis that easing concerns about Iran’s nuclear programme, and reducing the likelihood of US-led military action against Iran, would serve to calm regional tensions.

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including up to $110 billion in purchases by Saudi Arabia alone.\textsuperscript{43} In return, Iranian entities blamed Saudi Arabia for the recent ISIS attack in Tehran.\textsuperscript{44}

This downward spiral in regional relations is indicative of the fact that Iran’s actions are not only failing to hasten its isolation, but prompting key nations to take steps that make that isolation more pronounced. This provides Iran with further incentives to engage in ballistic missile development. Yet more importantly, the increased level of hostility Iran has prompted among its neighbours, and their efforts to respond through military acquisitions, makes it likely that Tehran’s sense of insecurity will grow rather than diminish in the years ahead. Unless arrested, this state of affairs will incentivise Iran to return to enrichment as a hedge against seeking nuclear arms when JCPOA restrictions are lifted – the exact opposite of the agreement’s intended effect.

4. The US and the JCPOA

Given its extensive use of financial sanctions against Iran, and its capability to employ military force against components of the Iranian nuclear programme itself, any outcome from the JCPOA negotiation process was always subject to an implicit veto by Washington. At the same time, the United States was the driving force behind the JCPOA, initiating secret diplomatic talks with Iran in 2009,\textsuperscript{45} and acting as the de facto lead negotiator within the P5+1. However, over the last two years, the level of US governmental support for the JCPOA has declined significantly. Primarily, this can be attributed to the election of an administration deeply hostile to the terms of the agreement itself. Speaking at a protest in Washington days after the agreement was finalised, Donald Trump stated, “Never, ever, ever in my life, have I seen any transaction so incompetently negotiated as our deal with Iran ... and I mean never.”\textsuperscript{46} Though the new administration has certified that Iran is in compliance with the terms of the JCPOA, as it is required to do under US law, senior officials have made no secret of their lack of faith in the agreement. Addressing the certification, Secretary Tillerson outlined his belief that the agreement “fails to achieve the objective of a non-nuclear Iran.” Yet irrespective of the Trump administration’s innate hostility to the JCPOA, developments over the last two years have significantly lessened the likelihood of the agreement prompting the kind of Iranian–American rapprochement on which of the agreement depends.

A key reason for this is that the Trump administration’s hostility to the JCPOA is reflective of broader political opposition that existed within the United States at the time the agreement was finalised. For instance, while the Obama administration oversaw and consented to the accord, it failed to secure widespread support for it from across the US political spectrum. In the months following the final round of negotiations, the administration was forced to take advantage of Iran-specific legislation that enabled it to implement sanctions relief without the support of the


\textsuperscript{44} Revolutionary Guards blame Saudi Arabia for Tehran attack’, Financial Times, 7 June 2017, available at: https://www.ft.com/content/190e854e-4bc8-11e7-919a-11e143553700, last visited: 7 July 2017.


\textsuperscript{47} Tillerson declares the Iran nuclear deal a failure’, Associated Press, 19 April 2017, available at: https://www.apnews.com/934f5c0d481435406f49c3b64d4ba199, last visited: 7 July 2017.
Republican-led Congress. In addition, even though leading Democratic voices backed the JCPOA, many were deeply sceptical of pursuing any broader US-Iranian interaction. In late 2015 Hillary Clinton – then a candidate for the presidency – told the Brookings Institution that “this is not the start of some larger diplomatic opening and we shouldn’t expect that this deal will lead to broader changes in their behaviour”, even though the logic of the JCPOA’s success largely depends upon greater political and economic cooperation in order to prompt domestic moderation within Iran.

The Trump administration is currently conducting an interagency National Security Council review to “evaluate whether suspension of sanctions related to Iran pursuant to the JCPOA is vital to the national security interests of the United States.” Though no timetable has been given, analysts expect the review to report ahead of the next 90-day certification deadline later this month. Accordingly, it is conceivable that the administration may soon discontinue waivers and reimpose nuclear-related sanctions, something that would contravene the JCPOA, and permit Iran to withdraw on the basis of American non-compliance.

Even if the administration refrains from taking such dramatic action, it may still find alternative ways to adopt a more forceful approach towards Iran’s nuclear programme. One option under consideration is designating the IRGC as a sponsor of terrorism, something that would indirectly target Iran’s nuclear weapons latency by impacting the organisation responsible for the country’s missile forces. Another is to deny Iran the ability to benefit from sanctions relief by blocking purchases it is seeking to make. For instance, the administration has come under pressure from Republican lawmakers to intervene in Boeing’s sale of civilian aircraft, on the basis that Iran has “used commercial aircraft to transport the weapons and troops that have fuelled the conflict in Syria”. Indeed, legislation mandating the administration to do so has already cleared the US House of Representatives. The Trump administration has also made a much more concerted effort to reassure Gulf partners about its commitment to roll back Iranian advances. President Trump made Riyadh his first international trip as President and signed a number of letters of intent regarding defence and security cooperation during his visit.

At the same time, Iran’s military assertiveness has prompted cross-party consensus in favour of supplementing those sanctions which remain in place under the terms of the JCPOA, with additional non-nuclear sanctions. The US response to Iran’s ballistic missile tests is a case in point. Following the spate of Iranian missile tests, the Treasury Department designated a raft of individuals

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connected with the ballistic missile programme on separate occasions in February and May, moves which drew widespread support. In addition, a bipartisan collection of US lawmakers introduced legislation in March that would sanction any individual or organisation with links to Iran’s ballistic missile programme.

Iran’s response to these moves has been predictably hostile. The Iranian Foreign Ministry blacklisted nine American entities in response to the passing of additional sanctions, and the Supreme Leader vowed a “crushing response” to any effort to impose sanctions against the IRGC, or its overseas operations Qods force. Iranian anger does not necessarily suggest that Washington’s desire to curtail Iran in the non-nuclear realm is misplaced. Yet such virulent opposition to the continued willingness of the administration and the Congress to consider sanctions does underscore the extent to which broader US-Iranian relations have deteriorated since the JCPOA was agreed. This highlights a fundamental weakness of the JCPOA itself: namely that its success depends on an extensive degree of US-Iranian diplomacy, for which there isn’t adequate political support, and isn’t likely to be for the foreseeable future.

5. Implications for UK Diplomacy

The UK government played an instrumental role in bringing the JCPOA into effect, with UK officials taking part in the formal negotiations. In addition, then Prime Minister David Cameron and Foreign Secretary Phillip Hammond took the rare step of intervening in domestic US politics to caution against further Congressional sanctions against Iran, out of concern that such a step would undermine ongoing international negotiations. The British government also offered upbeat and optimistic assessments of the JCPOA’s merits once finalised. In an oral statement to the House of Commons the day after the agreement was signed, then Foreign Secretary Philip Hammond stated:

With the conclusion of these negotiations, the world can be reassured that all Iranian routes to a nuclear bomb have been closed off, and the world can have confidence in the exclusively peaceful nature of the Iranian civil nuclear programme going forward.

Hammond reiterated the government’s view in January of last year, stating that “the threat of an Iranian bomb was removed” by the JCPOA, and that ongoing implementation of the agreement “cements this achievement”. Indeed, the government continues to regard the JCPOA as a success. Foreign Secretary Boris Johnson told reporters as recently as January of this year that the JCPOA
“is a deal which we think has great merit and we want to keep going”. The UK has backed this position through a range of substantive measures. One month after the JCPOA was finalised, the Foreign Office reopened its embassy in Tehran, and the month after that appointed a new ambassador. In addition, ministers have made concerted efforts to reassure Iranian authorities that the government is doing all it can to facilitate increased business links with the country. Some progress has already been seen, with British Airways resuming direct flights to Iran in September of last year, and the value of UK exports to Iran rising by 42% in the first six months of 2016 compared to the same period in 2015. Confidence in the JCPOA continues to characterise the government’s position. Addressing the Manama dialogue in Bahrain late last year, Foreign Secretary Boris Johnson referred to the JCPOA as “a genuine achievement of diplomacy that has helped to make the world a safer place”. Such fulsome praise underpins the widely held notion that the JCPOA will successfully prevent Iran from ever being permitted to obtain a nuclear weapon.

At the same time, the government has recognised that Iran’s regional activity poses a major threat to peace and security. For instance, in an interview with al-Riyadh, Prime Minister Theresa May stated, “We have no doubts regarding Iran’s role in destabilising the region,” and added that the UK would “support the Gulf countries against Iranian overreaches in the region”. In addition, UK officials have played an active role in monitoring Iran’s purchases through the procurement channel established by the JCPOA, holding up a purchase of yellowcake from Kazakhstan, something which has frustrated Iranian officials. It has also made strenuous representations on behalf of Nazanin Zaghari-Ratcliffe, a British-Iranian dual national jailed by Iranian authorities on vague charges pertaining to national security. However, the government has thus far failed to conclude that Iranian support for proxy groups and conduct of ballistic missile tests is undermining the JCPOA, by making it more likely that the country will return to nuclear enrichment at a later date. For that reason, the UK has refrained from adding further non-nuclear sanctions to those which remained in place following the finalisation of the JCPOA.

The situation is complicated by the fact that the UK will inherit sole responsibility for setting its sanctions policy after its withdrawal from the European Union. Though shadowing the European position will likely make the most sense in the near term, Washington’s growing willingness to sanction Iran for its role in the Syria conflict and for its ballistic missile tests will place the UK in an

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awkward position. Firstly, it will force the UK to determine which of its former JCPOA negotiating partners is adopting the appropriate approach. In addition, it may confront the UK with the challenge of acting as a moderator, in order to keep the JCPOA negotiating coalition together. For instance, Russia has already shown its willingness to skirt the boundaries of the agreement’s provisions by selling missile defence systems despite a prohibition on arms sales that is due to remain in place until 2020. Likewise, European firms are likely to engage in much more trade and commerce with Iran than the United States in the coming years, especially with respect to oil purchases. Accordingly, the UK is likely to be faced with the prospect of European and American “decoupling” on the Iranian nuclear issue, something that will require it to commit much more in the way of diplomatic resources to the Iranian nuclear file if it wishes to see the JCPOA succeed.

6. Recommendations

At the time the JCPOA was negotiated, Iran’s level of enrichment was continuing to increase, making it much more likely that its nuclear programme would result in a confrontation with external powers. The agreement averted that possibility, by imposing significant restrictions upon Iran’s nuclear programme. However, regarding Iranian compliance with the JCPOA as tantamount to strategic success would be an error. Iran has engaged in more economic interactions with the West over the last two years, but often as a way to enhance its strategic position, not as a means of achieving political rapprochement, or even economic integration. In addition, the sanctions relief afforded to Iran, necessary to secure its compliance with those restrictions, has allowed it to play a destabilising role in its region. This makes it more likely that Tehran will remain locked in confrontation with its neighbours, and will thereby come to regard a substantial nuclear programme as being within its vital interest. Lastly, the low level of support for the JCPOA within US governing circles has made it more likely that the UK could be caught off-guard by a sudden collapse in the JCPOA. As a result, this paper makes the following recommendations:

- **UK decision-makers should reconceptualise the JCPOA and resist the temptation of regarding it as an agreement which “resolves” the Iranian nuclear issue.** Instead, they should consider the document an interim accord which buys time for a sustainable solution to be found.

- **UK policy-maker should keep recognise that Iran may simply be using the “breathing room” afforded by the JCPOA era to consolidate its geopolitical position before returning to enrichment.** Indeed, nothing it has country’s leaders have done in the last two years would betray otherwise. Accordingly, Iranian compliance with the JCPOA should no longer be regarded as the benchmark for success. Instead, much greater emphasis should be placed on the overall nature of relations between Iran and the West.

- **British officials should give thought and consideration to a variety of different approaches towards Iran in the coming years.** This should include the possibility of applying pressure in the non-nuclear realm, by sanctioning Iran for its regional adventurism and unnecessary ballistic missile testing. Alternatively, the UK could make a more concerted effort to enhance Anglo–Iranian trade, as a means of doubling down on efforts to bring about greater political moderation within Iran through greater engagement. Crucially, the UK should
seek to prevent the current situation from drifting along unchallenged. Absent diplomatic attention, Iran is likely to be strengthened by the reduced impact of sanctions, but remain eager to return to nuclear enrichment once JCPOA restrictions on its nuclear programme expire.

- **The UK should make discussions about the JCPOA and the Iranian nuclear programme a major feature of transatlantic relations.** This will require ongoing discussions with current (and in time former) EU partners, as well as close cooperation with both the Trump administration and US Congressional officials. Preventing American and European “decoupling” in the years ahead will become an increasingly important task, especially as the volume of Euro-Iranian trade increases.

- **The UK should begin to formulate its post-Brexit approach towards Iran sanctions in advance, as a matter of priority.** It is vital that UK decision-makers establish benchmarks for what would constitute legitimate grounds for the imposition of non-nuclear sanctions, given that it will no longer be able to revert to a European consensus. In addition, once the UK recovers sole responsibility for its sanctions policy, it is likely to be more frequently called upon to change course, and by states whose preferred approaches are very different. Grounding its approach in a long-term plan, rather than an ad hoc approach, will be vital if the UK is to continue to play a positive role on an issue of immense significance.
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