

# The advantages and risks in keeping, fixing or terminating the Nuclear Deal with Iran

The Joint Comprehensive Plan of Action (JCPOA), the agreement between Iran and the international community regarding its nuclear program, is a case study that has supplied us with an interesting opportunity to assess more broadly two fundamentally opposite viewpoints on foreign policy and the international system. Facing the commonly-accepted narrative, according to which the JCPOA has been a step in the right direction, a much-sought-for agreement that dismantles a nuclear program “without firing a single shot”, some perceive it as a risky strategy on the part of the EU/E3<sup>1</sup>. This article reviews and engages with the main arguments of both the “remain” and “terminate or fix” sides of the debate, confronts them with one another and attempts to disprove the agreement’s credibility as a so-called effective international achievement. It does so while mainly focusing on the European viewpoint and interests, and points at the missing components in the EU/E3’s current strategy in securing regional and global interests, such as fully relying on limited IAEA inspections, and the lack of pro-active intelligence effort to uncover Iranian violations. Rather, the EU/E3 aim the diplomatic fire at allies such as the United States and Israel, avoid assertively demanding Iran for explanations on violations and provocative activity, and have demonstrated one strategy: adhering to the JCPOA at all costs.

## Introduction

The underlying principle that guided the governments that signed the JCPOA with the Islamic Republic of Iran, as well as the UN Security Council that ratified it, was not mere good faith, blind belief, or even the willingness to tackle all the problematic issues concerning Iran such as militaristic behavior, regional expansionism and human rights violations, to name a few. It was a sober attempt to secure a narrow goal: blocking Iran’s path to a nuclear weapon, based on verification mechanisms, on the

one hand, and sanction relief on the other. Europe, the US, Russia and China presented the variable of economic strength as means to force Iran’s hand to make concessions, not necessarily utopian peace. At the time, it seemed like a good bargain.

Seemingly though, since the US decided to pull out of the agreement, things have started to go wrong; but in fact, **the JCPOA has never had the potential to ensure the goals it had set to achieve.**

The broad debate surrounding the possibility to secure this goal through diplomatic means included the United States under the Trump administration, Israel, and in an unprecedented way in history, the Sunni Arab Gulf states – presenting a hawkish, and more skeptical approach towards the international system on the one side. On the other side, Iran and the EU/E3, the first is the beneficiary of the agreement, the latter is fiercely defending it as a milestone foreign policy achievement – as well as a self-proclaimed chief guardian of the international rules-based post-WWII order. Russia and China, the other parties to the agreement, also largely represent the “remain” stance.

## The JCPOA advocates

The advocates’ mainstream position and reasoning, as echoed by EU officials as well as proponents in conferences, Op-Eds and articles, and as fully revealed upon the withdrawal of the US from the deal, is based on the assumption that **the Trump administration has inexplicably and unilaterally withdrawn from a deal that was working.** Iran also sticks to this narrative, as uttered by President Hassan Rouhani: “We had an agreement. Mr. Trump exited it without a valid justification and illegally.”<sup>2</sup> Numerous publications blamed this move personally on President Trump, “determined to fulfill a campaign promise” and presenting “excessive demands” that are

“not achievable”<sup>3</sup>. One critic even went as far as suggesting this step was impulsive and caused by “psychological reasons”.

Their main arguments in favor of the JCPOA may be presented as follows:

1. The JCPOA was known to be an imperfect and non-wholistic deal at its signing. It is solely focused on preventing Iran from acquiring nuclear weapons through diplomacy, which is the best viable option to deal with it. It was never intended to deal with all of Iran’s controversial activity. Its presence is preferable than its absence, precisely because it has proven to be a gold-standard diplomatic achievement on a historic scale. The international community seized an opportunity to do so under the contemporary Iranian leadership, what would have been unthinkable under the previous Iranian President Ahmadinejad. Now, it is a key element of the global nuclear non-proliferation architecture and is crucial for global and regional security.<sup>4</sup> <sup>5</sup> High Representative Federica Mogherini herself described it as no less than “one of the biggest achievements diplomacy has ever delivered”. She added, outlining her vision for global diplomacy, “it is the demonstration that win-win solutions are possible through dialogue... That respect can be a universal language.”<sup>6</sup>

2. Accordingly, Iran has been fully compliant with its obligations under the JCPOA, as confirmed ten times by the IAEA reports.<sup>7,8</sup> Hence, the deal has proven itself effective and kept Iran further away from nuclear breakout capabilities. In January 2016, the IAEA certified that Iran had met the nuclear agreement’s preliminary requirements, including taking thousands of centrifuges offline, rendering the core of the Arak heavy-water reactor (with its plutonium byproduct) inoperable, and selling excess low-enriched uranium to Russia,<sup>9</sup> which paved the way to sanction relief as committed. In fact, the Trump

administration itself reported to Congress on April 18, 2017 and on July 17, 2017 that Iran was complying with the JCPOA; next, on October 13, 2017 and on January 12, 2018, the President refused to certify their compliance but kept the agreement in place.<sup>10</sup>

3. Importantly, the JCPOA has not been based on unconditional and unlimited trust, but rather on verification mechanisms. In the words of President Obama, it “permanently prohibits Iran from obtaining a nuclear weapon. It cuts off all of Iran’s pathways to a bomb. It contains the most comprehensive inspection and verification regime ever negotiated to monitor a nuclear program. [...] [It] doesn’t bet on Iran changing, it doesn’t require trust; it verifies and requires Iran to forsake a nuclear weapon.”<sup>11</sup> This verification instrument is based on the Joint Commission that keeps track of its implementation through the IAEA’s inspections and reports; effectively, the numerous technical details in the agreement that were negotiated to the letter and the comma should be sufficiently stringent.

4. The JCPOA is not a bilateral agreement, therefore it is not in the hands of any single country, like the United States, to unilaterally terminate it. Internationally recognized, it has been unanimously endorsed through the UN Security Council Resolution 2231.<sup>12 13</sup> Notably, withdrawing from it has the potential to undermine the status of virtually any internationally signed agreement and call the multilateral international system itself into question. If the validity of international agreements proves to be as “liquid”, no party would want to resolve disagreements through diplomacy and negotiations ever again.

5. Regarding the time frame, all international agreements terminate at a certain point. The Treaty on the Non-Proliferation of Nuclear Weapons (NPT), for example, is particularly relevant in this regard: it became effective in 1970 for 25 years; and in 1995, it was extended indefinitely by all member parties.<sup>14</sup> For this reasons, even the sunset clauses and surely the expiration date of the deal (15 years) are custo-

mary rather than irregular in International Law.

6. Finally, as to the many limitations of this mechanism, such as those banning inspection of military sites, one expert claimed, “it was never going to be achieved. Fundamentally, the idea that the Iranians were going to agree to give instantaneous access to any military site in the country with having been defeated on a field of battle first is thoroughly implausible.” This viewpoint stresses the idea of fairness and reciprocity, demanded by Iran just as much as by any other nation.

For the aforementioned reasons, the EU has been showing determination to keep the deal *by hook or by crook*. From a critical standpoint, though, it is fair to say that at the end of the day, the European External Action Service (EEAS) also feels an urgency to present foreign policy achievements to prove its efficiency and justify the currently promoted vision, a unified pan-European foreign service to replace the national ones. Since it was almost entirely left out of the Syria peace talks, the North Korea nuclear talks and others, it is, understandably, disheartening for them to see twelve years of tireless diplomatic and bureaucratic work squandered.

#### The JCPOA critics

On the other side of the aisle, President Trump has been long known for his skeptical or even hostile approach towards the JCPOA; he went as far as calling it “one of the worst and most one-sided transactions the United States has ever entered into” and “an embarrassment” on the UN podium.<sup>15</sup> However, the President had no rush to withdraw from it, and left an alternative open path for re-negotiations. In January 2018, four months prior to the withdrawal, and while using the leverage pulled by the threat to leave the agreement at the back of the world’s mind, the President laid out four key demands to keep the United States committed to the JCPOA: 1). allowing immediate inspections; 2). ensuring that Iran never acquires a nuclear weapon; 3). no expiration date to the deal; and 4). stating clearly in US legislation that the

long-range missile and nuclear weapons programs are inseparable in terms of sanctions. Otherwise, he threatened, sanctions would automatically resume.<sup>16</sup>

Since that failed to happen, the President, already bound by his own promises and rhetoric, terminated the US participation in the JCPOA. Israeli Prime Minister Benjamin Netanyahu considered it, at least in part, a fruit of his own labor. The critics’ arguments, voiced by the US, Israel and the Arab countries in the Gulf, are based on the assumption **that keeping the deal would be riskier and more dangerous than terminating it**, and that the JCPOA should have never been concluded in the first place. The President’s arguments revolved around the downsides he found in the agreement: “It is clear to me that we cannot prevent an Iranian nuclear bomb under the decaying and rotten structure of the current agreement.”<sup>17</sup> They go largely as follows:

1. Iran cannot be trusted as a negotiations partner, and in fact it had violated the JCPOA even prior to the May 2018 US withdrawal, not just as a response to it, even with the verification mechanisms in place – which undermines the advocates’ fundamental argument that the deal had been working. It may be stated that wisely, Iran “killed two birds at a time”: first, it created a façade of compliance, giving the EU a ladder off the ledge that it gladly took. It allowed the EU to allegedly reassure the international community that the deal was working, and at the same time, allowed Iran to enjoy the financial benefits sanction lifting entailed. Simultaneously, however, Iran continued uninterruptedly with its undercover nuclear weapons program, encouraged by those benefits, with the purpose of “bursting” to a nuclear bomb “at a time of its choosing” before the international community could “detect it, much less prevent it”.<sup>18</sup>

Several examples for Iranian violations prior to May 2018 can be named. First, preamble article iii states, “Iran reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons.”<sup>19</sup> The expression “exclusively

peaceful purposes” is repeated time and again in the text. Article 14 specifies it should fully implement the “Roadmap for Clarification of Past and Present Outstanding Issues”, that is, fully disclose all past nuclear activity.<sup>20</sup> However, the JCPOA is based on a falsehood, because Iran has never disclosed its secret nuclear weapons program, Project Amad headed by Mohsein Fahri-Zadeh that ran at least until 2003, as disclosed by Israeli Mossad’s operation to steal the Iranian Nuclear Archive,<sup>21</sup> and there is no reason to believe it stopped there. In fact, in the December 2015 disclosure to the IAEA as part of the aforementioned Roadmap, right before the implementation stage of the JCPOA, Iran denied its existence.<sup>21</sup> Given the now-known information, this is factually false. Additionally, the current location of the equipment used for experiments and activity as documented in Archive findings remains undisclosed. Importantly, the very storage of this vast amount of scientific know-how in an Archive is an indication to Iran’s refusal to neglect a future or a current plan to develop nuclear weapons, their willingness to preserve the knowledge for a rainy day, and a violation of the core premise of the agreement.

Furthermore, the JCPOA’s Section A, article 7 pegs the uranium stockpile that Iran is allowed to keep at 300kg in total.<sup>23</sup> It enumerates the dismantling of centrifuges in its nuclear facilities, including in Natanz, Fordow and Arak, and about the selling, shipping and diluting of the rest of its uranium. Section O, article 68 clearly states that “all uranium ore concentrate produced in Iran or obtained from any other source” should be concentrated in one place and reported on.<sup>24</sup> However, in September 2018 Prime Minister Netanyahu exposed the discovery of the Israeli Intelligence Corps regarding a secret Nuclear Warehouse in Tehran, containing “at least 15 ship containers... [that] can hold 20 tons of material,” meaning the site “contains as much as 300 tons of nuclear-related equipment and material.”<sup>25</sup> These claims, as well as evidence for clean-up, were confirmed by independent research groups.<sup>26</sup> The IAEA confirmed traces of uranium around that site in February 2019,

to which Iran has yet to supply explanations.<sup>27</sup> There is a reason to believe it was stored there at least a few months prior to the September speech, thus before the US withdrawal, because had the IAEA’s confirmation on Iran’s compliance with the deal been true, it would not have been possible for Iran to hold so much material any time after January 2016.

In addition, Iran made 141 attempts to procure illicit proliferation equipment and technology that can be used for its nuclear and missile weapons programs in the German state of North Rhine-Westphalia in 2015, and 32 attempts in 2016.<sup>28</sup> Despite the German Federal Office for the Protection of the Constitution’s correct observation that this constitutes a “significant decline”,<sup>29</sup> a year into the implementation of the JCOPA it is still far from zero, only represents what is intercepted or declassified, and perhaps reflective of a rift in Iranian leadership, between aggressiveness and temporary posture of compliance.

Lastly, the UN Security Council resolution 2231 – the same resolution that gave an official international stamp to the JCPOA – underscores in Annex B Article 3: “Iran is called upon not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology.”<sup>30</sup> However, Iran indeed committed numerous ballistic missile tests ever since, including the long-range Emad missile that has the capacity to be mounted with a nuclear warhead. One of the missiles Iran launched carried the Hebrew words “Israel should be wiped off the face of the earth”. Iran claimed it displayed “deterrence powers” against its enemies,<sup>31</sup> and some suggested the non-binding and vague language of the Resolution did allow Iran to carry out these tests. Nonetheless, in a letter by the US, the UK, France and Germany to the UN Secretary General in March 2016, they claimed those ballistic tests were “inconsistent with” and “in defiance of” Council Resolution 2231.<sup>32</sup>

2. Importantly, the verification mechanisms put in place to confirm Iran’s abidance by the JCPOA regardless of its

trustworthiness are not perceived to be nearly as stringent as they are claimed to be. The EU’s complete reliance on them suggests their impeccability, but the IAEA reports that confirmed Iran’s compliance only proved it so far as they are allowed to inspect – in other words, *only as far as we know*. It would be as if an inspector entering a building is only allowed to look in the ground floor, but not granted permission to check the top 10 floors or the basement, nor elsewhere in the neighborhood. It is far from President Obama’s claim that the agreement “cuts off all of Iran’s pathways to a bomb.”

Israel, for example, conducts independent efforts to uncover illicit Iranian activity, and the US intelligence assessments do the same in parallel to the IAEA work – which gave the Trump administration enough information to conclude Iran has not been abiding by the agreement, therefore not ratifying Iranian compliance twice as mentioned above. As opposed to them, however, the EU does not engage in such pro-active efforts at all, outside of the IAEA authority zone. The EEAS keeps referring inquiries to IAEA reports, without making their own assessments. No narrow expert panel is ever perfect; for this reason, countries keep several parallel mechanisms to provide several viewpoints, as well as supervise each other. As proven by the 1973 Yom Kippur War, smug and detached conceptions and singular assessments can prove deadly.

The agreement limits the access of IAEA inspectors to military sites that can easily hide wide-range nuclear activity. In addition, the inspection mechanism is soft and inconclusive as to facilitating easy and timely inspections. Section Q mentions “good faith” as basis for inspection requests, and as to undeclared sites, Iran can deny access or “propose alternative means of resolving the IAEA’s concerns” rather than inspections, and delay them for 14 long days, enough time to clean up its activity.<sup>33</sup> Nuclear activity outside those limitations is more than possible: for example, on September 9, 2019, Prime Minister Netanyahu publicly disclosed yet another undeclared nuclear weapons development

site, in Abadeh, Iran, existing at least since March 2019, that Iran later covered up without providing explanations.<sup>34</sup>

According to Israeli security expert Yossi Kuperwasser, “the authority to determine Iranian violations was [former IAEA Secretary General] Amano and the IAEA, and under pressure from [President] Obama and the Europeans he avoided stating clearly the Iranians have been lying all the way; they preferred accepting the lie, because it was so-called impossible to prove it was a lie; and by revealing the Nuclear Archive, Israel has proved it.”<sup>35</sup> Given this lack of credibility, the prestige of the JCPOA’s inspection mechanisms has somewhat dimmed.

3. The credibility of Iran’s signature on a paper has been the subject of concern, despite the common narrative it is irrelevant. In September 2019, acting IAEA Secretary General Cornel Feruta worriedly reported, “I emphasized the importance of full and timely cooperation by Iran ... [and] stressed the need for Iran to respond promptly to Agency questions.”<sup>36</sup> While some advocates tend to refer to Iran’s commitments as *enshrined* in UN Security Council Resolution 2231, from a critical standpoint it is risky to regard decisions in international forums as “phrasing the laws of nature” and to keep in mind the cultural differences between Iran and the West that lead to different perceptions of written commitments.

4. Iran has been overtly violating the deal since May 2019. Following announcements by Behruz Kamalvandi, spokesperson of the Atomic Energy Organization of Iran (AEOI), AEOI Chief Ali Akbar Salehi, and President Rouhani himself on the Majles floor, **it is indisputable that Iran is now in violation of the JCPOA.** Those violations came in four steps and according to nerve-wrecking deadline tactics for the Europeans while leaving room for diplomacy, and include surpassing the allowed uranium enrichment level from 3.67% to 5%; surpassing the 130 ton limit on heavy water; reaching 360-370kg of enriched uranium rather than the allowed 300kg; expanding R&D in the field of

centrifuges and uranium enrichment; and re-installing or displaying IR-6 centrifuges and re-injecting gas into centrifuges in Fordow.<sup>37 38 39 40 41</sup>

5. **Ironically, the EU/E3 are now also violating the agreement by ignoring Iran’s violations,** sticking to the JCPOA at all costs, and not implementing their commitment to snap-back sanctions in case of violation, or at least summoning the Joint Commission to call Iran’s behavior into question. The snap-back card (article 37), though, has been exactly the one used to reject critics’ arguments. Now, it seems increasingly like a dismissal. The EEAS’s sole response to the disclosure of the Nuclear Archive, for example, was, “we have mechanisms in place to address eventual concerns”;<sup>42</sup> to the renewed uranium enrichment in November 2019 – merely a call to reverse this decision and expressing “concern.”<sup>43</sup> Importantly, to this day no dispute mechanism as detailed in the JCPOA has ever been invoked, and there has never been a single meeting of the UN Security Council nor the Joint Commission in that regard, precisely because the parties *chose* not to invoke it.

Iranian officials such as Head of the National Security Council Kivan Khorsavi<sup>44</sup> and Foreign Minister Javad Zarif<sup>45</sup> keep referring to paragraph 26 and especially 36 of the JCPOA, that cites “non-performance” by a participant, that is the US, as legal justification to their actions. “We just want to be able to sell oil and get our money,” then Iran will “fully implement the nuclear agreement within hours” again, stated Zarif.<sup>46</sup> However, the Europeans did not raise the Iranian non-performance as outlined above in any of their meetings so far, fearing to risk an obsolete agreement. As stated by Mogherini herself, “for the time being, none of the parties to the Agreement have signaled their intention to invoke this article [number 36], which means that none of them is – [...] with the data we had in particular from the IAEA – considering the non-compliance a **‘significant’ non-compliance.** We have also noticed that all the steps that have been taken by Iran are **technically reversible.**”<sup>47</sup>

Incredibly, Mogherini is correct, as she uses the same language as in the JCPOA: article 36 indeed mentions “significant non-compliance” as basis for taking steps.<sup>48</sup> Thus, the JCPOA draws a very vague so-called “stringent” mechanism, apparently deliberately phrased this way to give the parties enough maneuvering space to look the other way: it contains no legal definition of what “significant” means. It could be 5kg more enriched uranium than permitted, or 200kg. To use a colloquial expression, is the EU making the case that Iran should only “sort of” abide by the agreement? Given the EU’s unwillingness to act even when Iran openly admits blatant non-compliance, what message does it send about their own abidance by written and enshrined commitments?

Finally, the JCPOA’s core aspiration, that Iran would “fully rejoin the community of nations,”<sup>49 50</sup> has failed to happen. According to President Trump, “In the years since the deal was reached, Iran’s military budget has grown by almost 40 percent, while its economy is doing very badly,” and it used the new funds it gained from the sanctions’ lifting to “build nuclear-capable missiles, support terrorism, and cause havoc throughout the Middle East and beyond.”<sup>51</sup> The US State Department also designated Iran as “the world’s leading state sponsor of terrorism.”<sup>52</sup> Even today, Iran continues to funnel billions of USD yearly to designated terror organizations: \$700 million/year to Hezbollah, \$100 million to Palestinian terror groups and since 2012, over \$16 billion in supporting Iranian proxies in Iraq, Yemen and the Assad regime in Syria.<sup>53</sup>

Iran has also been increasingly daring in its militaristic activities as signal for the other parties to keep the agreement in place: sabotaging oil tankers in the Straits of Hormuz and openly attacking Saudi oil facilities and Israeli territory are just a few examples. That was used by critics to reject the notion that the JCPOA’s presence is preferable to its absence, because it would “avert another war in the Middle East”, since in their words, “Iran used the money to fuel its vast war machine [...] Despite the best of hope, [...] this deal did not

push war further away. It brought war ever closer.”<sup>54</sup>

In light of the above, critics are concerned not only about the Iranian behavior, but also about Europe’s unwillingness to face hard truths and act accordingly. In other words, the initial concern upon the conclusion of the deal was not only that Iran may violate it but be granted with a 15-year period to economically prepare for a nuclear breakout by keeping it.

### Conclusion

This article attempted to present the main arguments made by both JCPOA advocates and critics. It also provided arguments that question the widely accepted case that the JCPOA was the only mean to prevent a nuclear Iran, and that the US decision to pull out of it has been the game changer that undermined this goal. Importantly, even if it was not 100% proven in public that Iran had violated the JCPOA, keeping an obsolete agreement in place has been judged riskier than terminating or fixing it. Now, when the US is no longer party to the agreement, making the other parties have trouble adhering to it, the JCPOA vision is collapsing, and the reality on the ground can no longer be treated the same way as it was in 2016. Given the failure to impose conditions on Iran through the current structure of the agreement, strategy rethinking is imperative.

Recommendations and specifics about the EU/E3’s possible strategy towards the JCPOA and Iran’s nuclear program are a subject to another article. Surely, they include *inter alia* much more stringent inspections, more pro-active intelligence efforts to uncover violations, and rephrasing vague language in some parts of the deal. Above all, however, the EU must decide on a strategy, since the current one – preserving a collapsing agreement, come what may – is not delivering and has not provided the EU with any advantages so far. In the author’s personal view, the current version of the JCPOA has proven to be insufficient, and the EU/E3 should lead the effort started by the United States to re-negotiate or terminate it altogether

and seek other paths than diplomacy. In effect, since other options are also on the table, such as a limited US-regional military operation or regional coalition to halt Iran’s military expansionism, the EU would be in a stronger position during negotiations if it avoided presenting war as the JCPOA’s only alternative. Former UK Prime Minister Margaret Thatcher, known for her toughness and uncompromising principles, would surely say, “it is no time to go wobbly.”

Perhaps the latter part of the aforementioned article 37 could partially explain the EU/E3’s deterrence from taking a more assertive line: “Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part.”<sup>55</sup> Since they are unprepared for this scenario, the EU/E3 have chosen appeasement and accommodation by attempting to circumvent US sanctions, avoiding to strongly condemn Iranian violations and ignoring its aggressive behavior and the crush of recent peaceful protests in the country. However, this path will not serve the EU’s long-term interests, but will only summon more defiant steps on Iran’s part.

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### Endnotes

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Layout: Medienbüro Meyer