

Written Evidence submitted by Behnam Ben Taleblu and Andrea Stricker (UKI0010)

Executive Summary:

- While Washington remains committed to negotiating a new, comprehensive agreement with the Islamic Republic of Iran, continued efforts by the United Kingdom and Europe to resuscitate the Joint Comprehensive Plan of Action (JCPOA) undermine the prospect for such negotiations, exposing the UK to increasing threats posed by Tehran.
- The combination of several factors leaves little utility in pursuing the continuation of the JCPOA: the temporary duration of the accord; the approaching termination of various nuclear, missile, and conventional military-related restrictions; Iran's breach of JCPOA commitments; Iran's potential violations of the Nuclear Non-Proliferation Treaty (NPT); and Iran's expanded malign behavior regionally. This diminished usefulness will persist no matter who wins the American presidential election.
- Although the UK government and its European partners have stood with Washington in international fora to condemn Iranian nuclear violations, as well as other transgressions like missile tests, they have not embraced the U.S. economic pressure policy, instead prioritizing the survival of the JCPOA.
- The United Nations military embargo on Iran is scheduled to end this October, setting up a choice for the UK: Either allow the embargo to expire or invoke the snapback provision in the JCPOA, which would reimpose international sanctions on Iran and thereby end the deal. Rather than devoting effort to resurrecting or saving the JCPOA, the UK should join the United States and invoke the snapback of multilateral sanctions on Iran. The two nations should then work toward an enhanced deal addressing the full scope of Iran's malign conduct. The JCPOA, in its current form, is unlikely to produce stability in the short or long term.

Introduction:

The evidence submitted herein comes from two experts: Behnam Ben Taleblu, a senior fellow focusing on Iran, and Andrea Stricker, a research fellow focusing on nonproliferation, both at the Foundation for Defense of Democracies (FDD). FDD is a non-partisan think-tank that conducts open-source research and analysis on national security and foreign policy. It is based in Washington, D.C.

Behnam has been with FDD for more than seven years, tracking the breadth and depth of Iranian political, security, economic, and domestic issues. He has been widely quoted and published in the American and international press, and has testified before the U.S. Congress and Canadian Parliament on Iran. He is a native Persian speaker and of Iranian heritage. Andrea has been with FDD for just under one year, coming from the Institute for Science and International Security, where she spent more than 12 years focusing on nuclear nonproliferation issues, with a special focus on Iran and illicit networks. She is the co-author of four books on nuclear nonproliferation

and is currently working on a new book with David Albright of the Institute on Iran’s “Atomic Archive” – a covert trove of documents, seized by Israel from Iran in 2018, cataloging Tehran’s past efforts to develop a nuclear weapon.

Behnam and Andrea have previously collaborated on several essays merging their regional, functional, and subject matter expertise.¹ Over the years, both have had the privilege of speaking with several national governments about the Iranian nuclear challenge. Both were also supportive of a U.S.-E3 (UK, France, and Germany) effort to create supplementary terms for a new Iran deal prior to America’s withdrawal almost two years ago. The information presented below, however, reflects solely their views as policy experts at FDD, and responds to a call for evidence by the UK Parliament’s Foreign Affairs Committee on the JCPOA and its future.

Submission:

1. On May 8, 2018, U.S. President Donald Trump terminated America’s adherence to the JCPOA.² That termination was the end-result of the administration’s quest for a more comprehensive Iran policy that neither narrowly focused only on the nuclear issue, nor prevented the deployment of the most powerful American sanctions.
2. For instance, on October 13, 2017, the administration “decertified” the JCPOA.³ Shortly thereafter, as it waived sanctions to continue remaining a part of the nuclear deal, Washington embarked on a process to bridge the gap on Iran in the trans-Atlantic community, starting first with the E3.⁴ The effort aimed at fixing several JCPOA problem areas, including: 1) the ending of the accord’s key limits on Iran’s nuclear program, 2) functionally reduced inspections by the IAEA, and 3) a failure to address Tehran’s ongoing ballistic missile development and testing. When the process failed to yield success before a key sanctions waiver deadline, President Trump decided to leave the deal.
3. In the two years since Washington’s departure from the JCPOA, European and UK policy has focused on finding ways to keep Iran in the nuclear accord while aiming for an American return to the deal. A prominent example of this is the E3’s establishment of a Special Purpose Vehicle (SPV) called INSTEX,⁵ which bypasses U.S. sanctions in a bid to continue trade with Iran.⁶ The E3’s SPV has recently processed its first transaction.⁷
4. Another example has been the E3’s support for U.S.-issued civil nuclear waivers – which render international firms working on JCPOA-related nuclear projects in Iran immune from

¹ For example, see: <https://foreignpolicy.com/2019/10/28/maximum-pressure-cancel-iran-nuclear-waivers-fordow-arak/> and <https://en.radiofarda.com/a/more-evidence-suggests-iran-s-nuclear-shopping-sprees-persist/30525577.html>

² <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-ending-united-states-participation-unacceptable-iran-deal/>

³ <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-iran-strategy/>

⁴ <https://www.reuters.com/article/us-iran-usa-nuclear-exclusive/exclusive-for-now-u-s-wants-europeans-just-to-commit-to-improve-iran-deal-idUSKCN1G20LE> and <https://www.wsj.com/articles/u-s-european-division-clouds-effort-to-salvage-iran-nuclear-deal-1521726179>

⁵ <https://www.gov.uk/government/news/joint-statement-on-the-new-mechanism-to-facilitate-trade-with-iran>

⁶ <https://www.fdd.org/analysis/2019/02/12/europe-takes-steps-to-bypass-u-s-sanctions-on-iran/>

⁷ <https://www.dw.com/en/europe-and-iran-complete-first-instex-deal-dodging-us-sanctions/a-52966842>

sanctions.⁸ Despite the Trump administration's JCPOA walkout, it continues to grant select waivers,⁹ which some in Washington believe amounts to additional time added to the lifespan of the JCPOA.

5. The British government and its European partners have become increasingly vocal about Iran's JCPOA violations, as well as transgressions of missile testing and arms transfer prohibitions found in UNSCR 2231 and other non-nuclear related UN resolutions.¹⁰ But the inability to translate this rhetoric into a coherent pressure policy stems directly from the fact that UK – and indeed European¹¹ – Iran policy remains centered around preserving the JCPOA.¹²
6. The failure of both sides of the Atlantic to agree to a baseline for an improved agreement in 2018 sets the contours for the crisis in 2020. Iran has thus far refused to negotiate a new accord, escalating its nuclear program and regional aggression. In the face of this escalation, Washington has worked overtime to enforce the penalties it restored by leaving the JCPOA, and continued ratcheting up economic and diplomatic pressure where possible.¹³ This has left the E3 in a compromised position, given their continued adherence to the JCPOA as the Iranians and the Americans have incrementally phased out or altogether terminated their JCPOA compliance.
7. One of the greatest sources of uncertainty in the debate over the future of the JCPOA pertains to Iranian strategy. Iran appears to have waited at least one year before overtly violating the JCPOA. This makes it possible to infer that Tehran thought that new unilateral American pressure would pale in comparison to years of multilateral pressure. This period can be called the era of Iranian “strategic patience,” wherein the regime hoped to cleave apart the trans-Atlantic community (as it did in previously¹⁴), while potentially hoping to “wait out” the current U.S. administration.
8. As sanctions pressure compounded, Iran terminated this policy on the one-year anniversary of the U.S. withdrawal, inaugurating a new policy of graduated escalation, in which it highlighted a new nuclear violation every two months. When integrated into the rest of Iranian cross-domain escalation, be it missile, military, or even cyber, Iran's new nuclear violations appear to be an attempt to force Washington into prematurely terminating its

⁸ <https://www.mcclatchydc.com/news/politics-government/white-house/article229117794.html>

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https://www.realcleardefense.com/articles/2020/03/27/if_europe_wont_snapback_end_the_waiver_for_arak_115151.html

¹⁰ <https://www.iranwatch.org/library/governments/united-kingdom/foreign-commonwealth-office/upholding-jcpoa-preventing-attacks-escalating-tension>

¹¹ <https://www.consilium.europa.eu/en/press/press-releases/2019/02/04/iran-council-adopts-conclusions/> and https://www.europarl.europa.eu/doceo/document/TA-8-2016-0402_EN.pdf?redirect

¹² Prior to more egregious Iranian nuclear violations, scholars in 2018 suggested that Europe may at some point consider pressure against Iran's non-nuclear activities but would not take actions that could hurt the JCPOA: <https://www.chathamhouse.org/sites/default/files/publications/research/2018-04-11-future-united-states-europe-irreplaceable-partnership.pdf>

¹³ For a description, see summary in: <https://thehill.com/opinion/international/488779-washington-set-to-magnify-maximum-pressure-on-tehran>

¹⁴ For example: <https://web.archive.org/web/20111027174833/http://www.etemaad.ir/Released/90-08-02/150.htm>

maximum pressure campaign by growing the risks posed by continued Iranian malign behavior, rather than first curtailing that behavior to earn relief.¹⁵

9. These new moves also indicate that Tehran is putting less stock in European efforts to bail the regime out. In September 2019, Iran's foreign minister, Mohammad-Javad Zarif, chastised the E3 for allegedly not living up to their JCPOA commitments and for their decision to join Washington in pointing a finger at Tehran for the cruise missile and drone attacks that same month against Saudi oil installations.¹⁶
10. In addition, on at least three separate occasions in a one-year period, Iran's supreme leader, Ayatollah Ali Khamenei, similarly warned the Iranian government against trusting European diplomats.¹⁷ Coupled with a new hardline parliament, Iran's nuclear violations can be expected to grow in severity throughout 2020.
11. Understanding the direction of Iran's JCPOA violations, as well as how the international community is handling that crisis, can provide insight for the UK government in its reassessment of policy toward Iran.
12. In July 2019, Tehran surpassed both the deal's cap on the amount of low-enriched uranium (LEU) it was permitted to stockpile and the level to which it was allowed to enrich uranium. In September, it deployed and tested more centrifuges than allowed, and in November, the regime accumulated more heavy water than permitted and resumed enrichment at the underground Fordow enrichment facility.¹⁸
13. In January 2020, Iran announced that it would no longer adhere to any operational limits in the JCPOA. In response, later that month, the E3 invoked the JCPOA's "dispute resolution mechanism" (DRM), a provision in the accord designed to address malfeasance or failure to adhere to commitments by any of the parties.¹⁹ However, the E3 appear to prefer to extend the DRM in the hope that a new U.S. president, elected in November 2020, might re-join the JCPOA. In several joint statements, the E3 have reiterated their commitment to the JCPOA and to Iran's receipt of the economic incentives promised under the agreement.²⁰
14. During this crisis, the IAEA, under the leadership of a new director-general, has pursued new information obtained from the government of Israel regarding Iran's nuclear program. This information was provided to the agency shortly after Israel's reported January 2018 seizure of a trove of nuclear files from a Tehran warehouse.²¹

¹⁵ For more on Iranian escalation: <https://thehill.com/opinion/international/464601-making-sense-of-irans-nuclear-moves> and <https://www.longwarjournal.org/archives/2019/05/making-sense-of-iranian-escalation.php>

¹⁶ <https://www.tasnimnews.com/en/news/2019/09/24/2103230/iran-s-fm-slams-e3-for-parroting-absurd-us-claims>

¹⁷ <https://en.radiofarda.com/a/khamenei-urges-iranian-officials-not-to-trust-europeans/29776481.html>, <http://english.khamenei.ir/news/7066/Vicious-European-countries-should-not-be-trusted-Imam-Khamenei>, and <https://www.reuters.com/article/us-iran-khamenei-nuclear/irans-khamenei-says-europeans-cannot-be-trusted-in-nuclear-row-idUSKBN1ZG0XI>

¹⁸ This information from the IAEA's safeguards reports on Iran can be found at: <https://www.iaea.org/newscenter/focus/iran/iaea-and-iran-iaea-reports>

¹⁹ <https://financialtribune.com/articles/national/101716/europeans-trigger-jcpoa-dispute-resolution-mechanism>

²⁰ <https://www.gov.uk/government/news/e3-foreign-ministers-statement-on-the-jcpoa-14-january-2020>

15. This so-called “Atomic Archive,” as reviewed by outside non-governmental experts, contains several tons worth of documents, CDs, electronic files, photographs, and other data that detail Iran’s pre-2004 nuclear weapons program. It provides new information about various activities, people, progress, and sites related to the regime’s development of an atomic bomb.²² The archive documents show that Iran sought to conceal and disperse the program in 2003, just when its military nuclear activities became subject to international scrutiny.²³
16. In April 2019, under the previous director-general’s tenure, the IAEA reportedly took environmental samples from another site revealed by the Israeli government. It detected the presence of man-made, refined uranium at an open-air warehouse in Turqez-Abad (in Tehran province), a site the Israelis claimed held nuclear-related equipment and material from the past nuclear weapons program.²⁴
17. Israel claimed Iran moved the equipment and material from the Turqez-Abad site once the Jewish state publicized that it seized the separate Atomic Archive. The IAEA did not inspect the site until after Iran moved the contents and attempted to sanitize it.²⁵
18. In March 2020, the IAEA reported that Iran was failing to comply with its basic non-proliferation obligations commitments, reportedly related to the two warehouses. The IAEA stated in its first safeguards report, which was separate from its reporting on Iran’s compliance with UNSCR 2231 and the JCPOA, that Iran had denied its requests for access to two sites and refused to answer questions about another matter.²⁶
19. The agency stated that these requests related to “possible undeclared nuclear material and nuclear-related activities” that the IAEA is obligated to investigate, according to Iran’s legally binding Comprehensive Safeguards Agreement (CSA). Concealing undeclared nuclear material and denying inspection access to the IAEA could also constitute a breach of Iran’s NPT obligations.
20. Iran continues to allow IAEA access and monitoring of its declared nuclear sites as agreed under the JCPOA and under the CSA as a member state to the NPT. In March 2020, the IAEA reported in its JCPOA/UNSCR 2231 safeguards report that Iran had produced an amount of LEU that experts assess would allow it to produce one nuclear weapon, should it choose to do so.²⁷ Prior to the JCPOA, Iran possessed enough LEU for around 14 nuclear weapons.²⁸ Iran is slowly re-establishing the status quo ante regarding its nuclear program.

²¹ <https://www.haaretz.com/israel-news/full-text-netanyahu-s-reveals-iran-s-atomic-archive-in-speech-1.6045556>

²² For example, see technical reports on the archive’s contents produced by the Institute in collaboration with FDD: <https://isis-online.org/countries/category/iran>

²³ <https://isis-online.org/isis-reports/detail/breaking-up-and-reorienting-irans-nuclear-weapons-program/8>

²⁴ <https://www.reuters.com/article/us-iran-nuclear-iaea-exclusive/exclusive-iaea-found-uranium-traces-at-iran-atomic-warehouse-diplomats-idUSKCN1VT0L8>

²⁵ <https://www.reuters.com/article/us-un-assembly-israel-iran/netanyahu-in-un-speech-claims-secret-iranian-nuclear-site-idUSKCN1M72FZ> and <https://isis-online.org/isis-reports/detail/revealed-emptying-of-the-iranian-atomic-warehouse-at-turqez-abad/8#fn4>

²⁶ https://isis-online.org/uploads/iaea-reports/documents/IAEA_Iran_NPT_March_2020_report.pdf

21. The JCPOA stipulates the lifting of Iran’s nuclear-related commitments over a period of several years, beginning with the graduated removal of restrictions on Iran’s ability to deploy and develop advanced generation centrifuges.
22. At around year 13 of the deal, due to the faster speed of these advanced centrifuges and increasing numbers permitted, the regime’s timeline to produce adequate enriched uranium for a nuclear weapon, or its “breakout time,” would drop to a few weeks.²⁹ It is with that timeline and the implications in mind that many analysts have criticized the JCPOA.
23. Under the accord, Iran would also receive the de facto blessing of the international community in legally pursuing industrial-level enrichment, if it so chose, where the previous sets of UN resolutions (2006-2010) called for a cessation of enrichment.³⁰ Moreover, the regime would have the flexibility to reduce its breakout time in such a way that would practically inhibit any international intervention should the regime decide to pursue nuclear weapons.
24. The JCPOA’s implementing resolution, UNSCR 2231, added the removal of two key embargoes to an overall package agreed to between Iran and the UK, U.S., France, Russia, China, and Germany (P5+1). They included an embargo on military and conventional arms-related imports and exports and an embargo on missile-related imports and exports. Those embargoes would lift at year 5 and year 8 of the JCPOA, respectively.³¹ The restrictions were originally placed on the regime during an international effort to deal with its nuclear program.
25. The first expiration date, for the military embargo, looms in October 2020, weeks before the U.S. presidential election. This introduces a new series of questions about the JCPOA’s longevity and utility if a new U.S. president returns to it to absent any modifications.³²
26. The lifting of the military embargo automatically sets up a choice for the UK, France, Russia, China, and Germany, or P4+1, and one which necessarily draws the interest of Washington given its timing and implications. The dilemma is whether to allow the military embargo to expire or to invoke the snapback provision in the JCPOA and end the deal.
27. In order to terminate the nuclear deal, one of the JCPOA participants with a seat on the UN Security Council (the UK, France, Russia, or China) would need to submit a UN resolution

²⁷ <https://www.iaea.org/sites/default/files/20/03/gov2020-5.pdf>

²⁸ <https://www.nytimes.com/2020/03/03/world/middleeast/iran-nuclear-weapon-trump.html>

²⁹ <https://www.nytimes.com/2020/03/03/world/middleeast/iran-nuclear-weapon-trump.html>

³⁰ <https://www.armscontrol.org/factsheets/Security-Council-Resolutions-on-Iran>

³¹ [https://undocs.org/S/RES/2231\(2015\)](https://undocs.org/S/RES/2231(2015))

³² For sources on Democrats, the JCPOA, and Iran sanctions relief, see:

<https://www.washingtonpost.com/graphics/politics/policy-2020/foreign-policy/iran-nuclear-deal/>,

<https://www.politico.com/story/2019/07/20/iran-nuclear-deal-democrats-1424113>,

<https://medium.com/@JoeBiden/statement-from-vice-president-joe-biden-on-sanctions-relief-during-covid-19-f7c2447416f0> and

<https://thebulletin.org/2020/04/how-joe-bidens-letter-falls-short-on-calling-for-iran-sanctions-relief>

to continue the lifting of sanctions under UNSCR 2231, and then exercise its unilateral veto. This would effectively end the deal and “snap back” – or re-instate – all prior resolutions and sanctions against Iran.

28. The United States reportedly assesses that as an original JCPOA participant, it may invoke the snapback provision even though it withdrew from the deal.³³ Following that interpretation, the Trump administration believes that it may exercise its UN Security Council right to table a resolution on the sanctions lifting and then veto it. The Trump administration will likely face this decision in the months ahead.
29. The implications of unilateral snapback by Washington may be far-reaching and damaging for trans-Atlantic relations, which is why the administration is seeking a UN Security Council extension of the military embargo. That effort is expected to fail due to lack of support by Russia and China.
30. It remains unclear whether the Trump administration will allow the military embargo to expire. It likely hopes the UK will lead the snapback effort to avoid the likely diplomatic controversy that would come from a U.S. unilateral snapback. As an insurance policy on a unilateral snapback, the administration will likely prepare to deploy new sanctions against Russia, China, or any other state that engaged in military trade with Iran despite the procedural re-institution of international sanctions.
31. In light of the politically untenable nature of the JCPOA and its reduced utility over both the short and long term, as well as its troubling concessions to Tehran, there is a need for a coordinated UK/U.S. approach to replace the accord with a more comprehensive agreement. Such an accord should address the full spectrum of Tehran’s threats to international peace and stability.
32. A new accord could draw on and expand the initial understandings reached between the U.S. and E3 in 2018. It should then tackle Iran’s missile program through range and payload limitations, end its space program, and roll back regional military activities and material support for terror.³⁴
33. To help work towards this admittedly high bar, economic pressure will need to be marshaled, and an international consensus restored. The UK should invoke the JCPOA’s snapback mechanism by the late summer or early fall of 2020, thereby reinstating all prior UN sanctions against Iran, including the original baseline prohibitions on its nuclear, missile, and military activities.³⁵ Following that, UK/U.S. collaboration on sanctions enforcement and implementation could help bridge the trans-Atlantic gap that exists on sanctions.³⁶

³³ <https://www.timesofisrael.com/us-to-release-legal-opinion-it-can-demand-resumption-of-un-sanctions-on-iran/>

³⁴ <https://www.fdd.org/wp-content/uploads/2019/06/fdd-report-what-yes-with-iran-looks-like.pdf>

³⁵ <https://thehill.com/opinion/international/482165-could-trump-convince-boris-johnson-to-kill-the-iran-nuclear-deal>

³⁶ https://www.iranwatch.org/sites/default/files/the_missile_sanctions_gap_-_re-aligning_u.s._and_eu_iran_designations.pdf

34. The UK should also join and support Washington's calls for the IAEA to undertake a full investigation to determine whether all of Iran's nuclear material and activities are today in peaceful uses. Doing so would add more certitude to the next deal the international community inks with Iran.

35. Thank you for your time and attention.

April 2020