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Writing Requirement

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The United States' Attempt to Curtail a State Civilian Nuclear Program Used in

Furtherance of Nuclear Weapons Proliferation: A Study of the Legal Issues

Presented by the 2015 Iran Nuclear Agreement that Ultimately Led to its Failure

The Joint Comprehensive Plan of Action (JCPOA) was signed on July 14, 2015 in Vienna by the United States, Great Britain, France, Germany, China, Russia,¹ and The European Union High Representative for Foreign Affairs and Security Policy. Executed with an unprecedented level of detail, the Agreement allows Iran to move forward with a peaceful nuclear program and looks to provide a sense of security to the United States and its allies, with such assurances stemming from the terms of the Agreement that will prevent Iran from obtaining enough fissile material to possess a nuclear weapon within the next two decades or so.² The JCPOA produces the lifting of United Nations Security Council sanctions, which at the time were crippling Iran's economy.³ The parties agree to refrain from imposing any discriminatory requirements in lieu of the sanctions, and to avoid policies intended to negatively affect Iran's attempt to normalize economic relations with said states.⁴ In return, Iran agrees to neither seek, develop, nor acquire

¹ U.N. Security Council, Security Council Resolution 2231 (2015) [on Joint Comprehensive Plan of Action (JCPOA) on the Islamic Republic of Iran's Nuclear Programme], 20 July 2015, available at: <https://www.refworld.org/docid/55b9e2084.html>. These six states are collectively known as the P5+1.

² See Id. at Annex I, Nuclear-Related Measures.

³ See Id. at Annex II, Sanctions-Related Commitments.

⁴ Id.

any nuclear weapons for a period of ten to fifteen years,⁵ along with allowing the International Atomic Energy Agency (IAEA) to monitor and inspect the state's nuclear sites, not limited to but including centrifuge production facilities⁶ and uranium mines and mills.⁷ Iran is allowed to continue enriching uranium with a cap of 3.67 percent on uranium-235, so long as the purpose is non-military related.⁸ While the Agreement is to be implemented in good faith by all parties and is said to be based on a policy of mutual respect, President Trump withdrew the United States from the JCPOA on May 8, 2018.⁹

Since the implementation¹⁰ of the Iran Nuclear Deal on January 16, 2016, there have been concerns that Iran has violated the JCPOA numerous times, evidenced by the statements of certain United States Senators.¹¹ Whether or not this is true requires a review of the history of Iran's

⁵ Kelsey Davenport, *The Joint Comprehensive Plan of Action at a Glance*, ARMS CONTROL ASSOCIATION (October 2020), <https://www.armscontrol.org/factsheets/JCPOA-at-a-glance>. Any research on the JCPOA will lead to mention of a sunset, however, there is no singular sunset clause in the agreement. Time limits are present throughout, and in the years to come Iran's limits on uranium enrichment and centrifuges will expire. In October of 2025, the agreement calls for the termination of United Nations Security Council Resolution 2231. Certain provisions will not expire, such as the requirement that Iran notify the IAEA of any new nuclear facilities in construction.

⁶ *Id.* The continuous monitoring of centrifuge production facilities will cease in the year 2035.

⁷ *Id.* The continuous monitoring of uranium mines and mills will continue to the year 2040. The Joint Commission's oversight of IAEA access requests to inspect undeclared sites is to cease after fifteen years, and during the period of time between the implementation of the Agreement and the ending of frequent inspections, the IAEA must be granted permission to visit non-declared sites.

⁸ *Id.*

⁹ Paul K. Kerr & Kenneth Katzman, *Congressional Research Service: Iran Nuclear Agreement*, CONGRESSIONAL RESEARCH SERVICE R43333, 25 (May 25, 2018), <https://crsreports.congress.gov/product/pdf/R/R43333/94>

¹⁰ *Supra* n.5. As of January 16, 2016, known as Implementation Day, Iran had taken the steps to restrict its nuclear program to comply with the provisions set forth in the JCPOA, as well as allowing the required IAEA monitoring.

¹¹ Fred Fleitz, *Iran is Not Complying with the Nuclear Deal*, NATIONAL REVIEW (July 14, 2017), <https://www.nationalreview.com/2017/07/iran-nuclear-deal-noncompliance/>

nuclear activities, along with an intimate look at its behavior over the past five years. This paper will analyze the information available to come to the conclusion that Iran has been in violation of the Agreement more than once since implementing the limitations and inspection requirements called for by the JCPOA. While violations after the United States' withdrawal from the JCPOA are certain and have been confirmed by the IAEA,¹² whether or not Iran violated the Agreement in the period before President Trump's decision to withdraw is more difficult to conclude. Assumptions as to violations can certainly be made but given IAEA certifications and the lack of other information, this discussion hesitantly comes to the conclusion that from January of 2016 to May of 2018, Iran was in compliance with the provisions of the Deal.

With regard to the United States, there is much disagreement as to whether the Deal truly protects the country's allies and is in the best interest of national security. This disagreement is illustrated by a review of the congressional hearings on the Deal.¹³ Both the Obama Administration, the implementing administration, and the Trump Administration have been heavily criticized for their actions surrounding the 2015 Iran Nuclear Deal. While Obama's signing of the Deal is said to have possibly impinged on the separation of powers doctrine, Trump's removal of the United States from the Deal has brought to light what Congress warned of: The Deal likely does not come with the force of law.¹⁴ Whether the JCPOA is in fact binding under either domestic or international law will be discussed. Much could change with the Biden

¹² *Supra* n.5

¹³ *Iran's Noncompliance with its International Atomic Energy Obligations*: Hearing on H.R. 114-23 Before the Subcomm. on the Middle East and North Africa of the Comm. on Foreign Affairs, 114th Cong. (2015)

¹⁴ Adam B. Korn, *Expanding Executive Branch's Foreign Relations Power*, 50 *Suffolk L. Rev.* 157 (2017); Jamil N. Jaffer, *Elements of its Own Demise: Key Flaws in the Obama Administration's Domestic Approach to the Iran Nuclear Agreement*, 51 *Case W. Res. J. Int'l. L.* 77, 82 (2019). Political commitments are typically not binding under domestic law.

Administration, and the United States' right to re-enter the Deal is uncertain. In keeping all of this in mind, a review of the Agreement will highlight the United States' failures surrounding the JCPOA. A discussion of the pitfalls of the 2015 Iran Nuclear Deal will ultimately reiterate the law: while state civilian nuclear programs are legal, programs used in the furtherance of nuclear weapons are illegal under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) for those states having signed the document.¹⁵

To provide a brief overview of the working parts of this discussion, this paper will first inform the reader of the history behind the 2015 Iran Nuclear Deal, including, but not limited to, both the reasons for the Deal according to the Obama Administration and an overview of Congress' legislative hearings on the subject. This study will engage in a review of the Obama and Trump Administrations' treatment of the Deal, highlighting their procedural failures and analyzing whether or not the Deal was in the best interest of the United States. The repercussions of Trump's withdrawal will be looked at in depth. The paper will then shift to a review of news articles discussing compliance: has Iran in fact complied with all provisions of The Joint Comprehensive Plan of Action, both before and after the United States' withdrawal? The discussion will provide opinions from well-informed experts and authorities, such as the IAEA, on both sides of the issue and will argue that Iran has not complied with all of the conditions set forth in the Agreement to date. Violations are certain after President Trump withdrew the United States from the Deal and possible before the United States' withdrawal, although with the information available at this point it has to be stated that Iran was in full compliance during that period.¹⁶ Included in this paper will

¹⁵ See Treaty on the Non-Proliferation of Nuclear Weapons art. 5, July 1, 1968, 729 U.N.T.S. 161.

¹⁶ IAEA Board of Governors, *Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)*, IAEA (Feb. 22, 2018), <https://www.iaea.org/sites/default/files/18/03/gov-2018-7-derestricted.pdf>. It is important to

be a discussion of the United States' rights and options going forward: Can the parties to the JCPOA simply agree to allow the United States to reenter the Agreement, and is there law in place that either allows or prevents this? The paper will discuss what has become quite clear from the early failures of the Agreement: It is important that agreements of such magnitude are formed with a solid foundation under both domestic and especially international law.

I. Important Background Information

Before engaging in any type of analysis regarding the JCPOA, it is first important to understand the history, specifically, to grasp the meaning of Iran's longstanding relationship with nuclear weapons. The United States' legislative hearings provide a foundation for discerning the political climate surrounding the Deal at the time of its inception, aiding in the explanation of why the JCPOA was entered into by the Obama Administration as a political agreement rather than a legally binding treaty approved by Congress. A discussion of these two subjects will lead to an understanding of why President Obama believed the Agreement was necessary in the first place.

A. Iran's History with Nuclear Weapons

Iran signed the NPT in 1968 and ratified it in 1970.¹⁷ While setting forth a variety of specific objectives, one of the main goals and purposes of the Treaty was to stop the spread of nuclear weapons and work towards total disarmament.¹⁸ Although a signatory to the NPT, Iran

remember that there is still not a one hundred percent clear answer to this question, hence the variety of arguments to be made on either side. Iran had skirted the lines set forth by the JCPOA before Trump's withdrawal, however, whether or not these are to be considered breaches is a subject for discussion; the IAEA did not think so, and the United States government certified Iran's compliance even after these incidences.

¹⁷ Semira N. Nikou, *Timeline of Iran's Nuclear Activities*, THE IRAN PRIMER (October 11, 2020), <https://iranprimer.usip.org/resource/timeline-irans-nuclear-activities>

¹⁸ *Supra* n.15

seems to have disregarded the concept of possessing nuclear technology solely for peaceful purposes and rather appears to have been working towards the creation of a nuclear weapon since it first came into contact with nuclear technology in the 1950s and 60s.¹⁹ The state's nuclear technological developments started when the United States' Atoms for Peace program began providing it assistance.²⁰ Its nuclear program stopped in 1979 when the Iranian Revolution began but was soon revived in the late 1980s with assistance from Pakistan, China, and Russia.²¹ Given that the United States has had a longstanding concern that Iran uses its civilian nuclear weapons program "as a cover for clandestine weapons development," United States' officials took an interest in the abovementioned states' assistance to Iran.²² Bill Clinton urged Russian President Boris Yeltsin to drastically scale back Russia's cooperation with Iran.²³ After discussions with the United States' government, China agreed to change its planned course of action and ultimately did not provide Iran with a research reactor, which it had agreed to do in 1990.²⁴

While the United States had previously been skeptical of Iran's intentions surrounding nuclear technology, the real concern of the international community began in 2002 when an Iranian dissident group revealed the Arak heavy water production facility²⁵ and the Natanz

¹⁹ *Supra* n.17

²⁰ Milena Sterio, *President Obama's Legacy: The Iran Nuclear Agreement?*, 48 Case W. Res. J. Int'l L. 69, 70 (2016). President Eisenhower's program aided in the administration of education on nuclear power. Through the program, the United States provided training and certain nuclear research technologies to countries desiring nuclear power for peaceful purposes.

²¹ *Id.* at 71

²² The Nuclear Threat Initiative, *Iran's Nuclear Program Timeline and History* (June 2020), <https://www.nti.org/learn/countries/iran/nuclear/>

²³ *Id.*

²⁴ *Id.*

²⁵ Islamic Republic News Agency, *A Tour in Iran's Natanz, Arak Nuclear Facilities*, IRNA (September 5, 2017), <https://en.irna.ir/news/82656048/A-tour-in-Iran-s-Natanz-Arak-nuclear->

enrichment facility;²⁶ neither had been declared to the IAEA.²⁷ In 2003, the IAEA visited the sites and found multiple violations of prior nuclear agreements.²⁸ In the same year, Iran, along with France, Germany, and the United Kingdom signed the Tehran Declaration, stating that Iran would both suspend uranium enrichment and cooperate with the IAEA.²⁹ When the year 2004 rolled around, so did the Paris Agreement, in which Iran agreed to suspend enrichment, along with conversion activities.³⁰ In 2005, Iran made the decision to once again begin uranium conversion and enrichment for civilian energy purposes, notifying the IAEA of its choice to do so.³¹ Shortly thereafter, President George W. Bush entered an executive order blocking the assets of Iranian companies and individuals supporting the proliferation of nuclear weapons.³² From the years of 2006 to 2010, the United Nations Security Council adopted six resolutions,³³ imposed sanctions, froze the assets of certain Iranian companies and individuals, and demanded that Iran stop enriching uranium, as Iran had violated in place agreements, contributing to the growing concern that the state was only steps away from possessing a nuclear weapon.³⁴

During Obama's first term as President of the United States, he revealed the existence of an underground enrichment facility that Iran had once again not notified the IAEA of.³⁵ After the passage of four years from this incident, an interim agreement, known as the Joint Plan of Action

facilities. The Arak Nuclear Complex contains a heavy water experimental reactor and heavy water production plant, both of which are needed to produce a nuclear weapon.

²⁶ Id. Natanz is Iran's largest enrichment facility, designed to assemble and house centrifuges. Scientists also continue to research and develop centrifuges at the facility.

²⁷ Supra n.20 at 71

²⁸ Id.

²⁹ Id. at 71-72

³⁰ Id. at 72

³¹ Id.

³² Supra n.22

³³ U.N.S.C. Resolutions 1696, 1737, 1747, 1803, 1835, 1929

³⁴ Supra n.20 at 72

³⁵ Id. at 72

(JPOA), was signed in Geneva, providing for a short-term suspension of certain parts of Iran's nuclear program in exchange for decreased economic sanctions.³⁶ Iran also agreed to more intrusive IAEA inspections.³⁷

B. Congressional Hearings

Reviewing congressional hearings is an incredibly useful tool in both determining and understanding the political climate surrounding the Deal. It has been argued that President Obama went against the will of the nation³⁸ in signing the Deal, and the available congressional hearings seem to point towards that conclusion. Overall, there were many concerns surrounding the passage of a deal, the largest of which was Iran's previous noncompliance and continuing misbehavior.

The congressional reports paint a picture of concern and apprehension regarding the Deal. Senators commented that Iran continuously stiff-armed the IAEA regarding nuclear facility access, such as when it tried to hide the existence of Arak and Natanz.³⁹ Statements in the hearings expressed worries that Iran had been within weeks⁴⁰ of possessing enough fissile material to develop a nuclear weapon through its deception of the international community and

³⁶ Id. at 73

³⁷ Id.

³⁸ Ballotpedia, *Iran Nuclear Agreement: Public Opinion*, BP (September 2015), https://ballotpedia.org/Iran_nuclear_agreement:_Public_opinion. According to a survey, 49% of Americans disapproved of the deal while 21% approved. 42% of Americans had no faith in Iranian leaders, believing that Iran would not adhere to the requirements of the deal.

³⁹ *Iran Nuclear Negotiations: Status of Talks and the Role of Congress*: S. HRG. 114-121 Before the Comm. on Foreign Relations, 114th Cong. 2 (2015)

⁴⁰ Reports on how close Iran had been before the JCPOA to possessing enough material to create a nuclear weapon differ. Some experts believe that Iran was three to four months away <https://www.businessinsider.com/heres-how-quickly-iran-could-build-a-nuclear-weapon-2018-5>, while others, such as former United Nations watchdog, believe the state was only two to three weeks away from being able to create a nuclear weapon <https://www.haaretz.com/.premium-iran-2-3-weeks-from-bomb-says-ex-nuke-official-1.5313540>.

violation of Security Council Resolutions.⁴¹ Senators noted that Iran was attempting to leverage JCPOA negotiations, announcing new nuclear reactors and other technology that could aid in the creation of a nuclear weapon.⁴² Also discussed was the issue that Iran had used negotiations in the past to buy itself time to continue developing its nuclear program.⁴³

The goal of increasing national and international security by ensuring that Iran could not possess enough materials to develop a nuclear weapon was a common one.⁴⁴ However, how to do so was in dispute. While some suggested increasing sanctions, others felt that increased sanctions would jeopardize any chance of reaching a final agreement.⁴⁵ What senators could agree on, however, was that Iran should never be able to obtain enough fissile material to create a nuclear weapon.⁴⁶ They also agreed that the final deal must call for the strictest monitoring and transparency measures.⁴⁷

In the House of Representatives, there were particular concerns that Iran's nuclear infrastructure was still in place and would be able to produce a nuclear weapon, despite various treaties that had attempted to put an end to Iran's military nuclear capabilities.⁴⁸ Representatives expressed concerns that while the proposed plan would be temporary, the lifting of sanctions that the United Nations and United States had imposed on Iran in an effort to halt its enrichment of uranium for military purposes would be permanent.⁴⁹ Mention of separating Iran's support of

⁴¹ *Supra* n.39 at 4 (statement of Hon. Robert Menendez, U.S. Senator from New Jersey)

⁴² *Id.* at 5 (statement of Hon. Robert Menendez, U.S. Senator from New Jersey)

⁴³ *Id.* at 9 (statement of Hon. Antony J. Blinken, Deputy Secretary of State)

⁴⁴ *Id.* at 8 (statement of Hon. Antony J. Blinken, Deputy Secretary of State)

⁴⁵ *Id.* at 6 (statement of Hon. Barbara Boxer, U.S. Senator from California)

⁴⁶ *Id.* at 8 (statement of Hon. Antony J. Blinken, Deputy Secretary of State)

⁴⁷ *Id.*

⁴⁸ *Supra* n.13

⁴⁹ *Iran Nuclear Agreement: The Administration's Case*: Hearing on H.R. 114-93 Before the Comm. on Foreign Affairs, 114th Cong. 1 (2015)

terrorism from the nuclear issue was commonplace, along with the idea that Iranian officials would continue to hide whatever developments in nuclear research they were working towards until it is beneficial for them to reveal them.⁵⁰ Representatives noted that the Defense Department made statements regarding its inability to detect covert sites across Iran, and that Iran could avoid detection altogether by outsourcing its nuclear program to North Korea.⁵¹ They also expressed concerns about the thirty IAEA reports between the years of 2005 and 2010 detailing issues with Iran's nuclear activities, which eventually led to successive sanctions from the United Nations.⁵² In fact, representatives noted that Iran's leadership had already begun declaring sites off limits to IAEA inspections.⁵³

On the other side of the issue was Secretary of State Kerry who defended the Deal vigorously, arguing that there would be no sunset agreement, that Iran will be permanently barred from ever creating a nuclear weapon, and that intel would be able to quickly detect and reply to noncompliance.⁵⁴ His argument in favor of the Agreement was broad, and was framed in terms of national security: the Deal will make both the United States and its allies safer by closing off Iran's pathways to obtaining a nuclear weapon.⁵⁵

Despite the abovementioned concerns of Congress, President Obama signed the Agreement into force.⁵⁶

⁵⁰ *Nuclear Agreement With Iran: Can't Trust, Can We Verify?*: H.R. 114-28 Before the Comm. on Foreign Affairs, 114th Cong. 4 (2015) (statement of Hon. Edward Royce, Chairman of the Comm.)

⁵¹ *Id.* at 6 (statement of Hon. Ted Poe, U.S. Senator from Texas)

⁵² *Supra* n.13 at 3 (statement of Hon. Theodore E. Deutch, U.S. Senator from Florida)

⁵³ *Supra* n.49 at 3 (statement of Hon. Eliot T. Engel, U.S. Senator from New York)

⁵⁴ *Id.* at 5 (statement of Hon. John Kerry, Secretary of State)

⁵⁵ *Id.*

⁵⁶ Obama White House Archives, *Implementation Day*, <https://obamawhitehouse.archives.gov/issues/foreign-policy/iran-deal>.

II. Executive Treatment of the Deal

The natural progression of a discussion of the JCPOA next calls for an examination of the ways in which the Obama and Trump Administrations have handled the Deal. While Obama signed the Agreement into force, Trump, with the stroke of a pen, removed the United States from the Deal's obligations.⁵⁷ The Iran Nuclear Deal is the only agreement of its significance, meaning both its size and importance, in modern day history to have been put into effect without the force of law;⁵⁸ President Obama negotiated the deal as a non-binding political commitment.⁵⁹

A. President Obama Possibly Violated the Separation of Powers Doctrine of Constitutional Law.

In order for a treaty to be approved, two thirds of the Senate must vote in favor of it.⁶⁰ The Iran Nuclear Deal was implemented with the support of only forty two senators⁶¹ and without any direct affirmation from Congress.⁶² To put it simply, this is cause for concern to any supporter of democracy, as it is a possible showing of the executive branch assuming the Senate's constitutional power, not to mention that the Deal made more than one hundred billion

⁵⁷ Jamil N. Jaffer, *Elements of its Own Demise: Key Flaws in the Obama Administration's Domestic Approach to the Iran Nuclear Agreement*, 51 Case W. Res. J. Int'l. L. 77, 82 (2019)

⁵⁸ Adam B. Korn, *Expanding Executive Branch's Foreign Relations Power*, 50 Suffolk L. Rev. 157 (2017). Whether or not the agreement is binding under domestic and/or international law is a later topic, but its status as a political commitment is evidence that it is nonbinding.

⁵⁹ Supra n.57 at 87

⁶⁰ U.S. CONST. art. II, § 2

⁶¹ See supra n.58. Forty two senators declared their support for the JCPOA before the vote, however, the JCPOA's time in Congress ended in a stalemate.

⁶² Ballotpedia, *Iran Nuclear Agreement: Congressional Review*, https://ballotpedia.org/Iran_nuclear_agreement:_Congressional_review. On September 10, 2015, the Senate was to cast the first vote on the issue and moved to end debate on the Deal in disapproval but did not have the sixty votes to do so. Democrats used a filibuster to prevent the disapproval, even though the vote would have been 58-42. On September 15 they voted a second time, this time coming to 56-42. On September 17, the legislation failed to pass again. In the House, a September 11 vote concluded in disapproval of the JCPOA. Congress attempted many times to pass legislation on the Deal but was ultimately unable to do so.

dollars available to Iran.⁶³ Taking into account the lack of a vote in either support or disapproval of the JCPOA, it appears that Obama acted without the direct authorization of Congress, raising a serious legal question in light of the *Youngstown*⁶⁴ case.⁶⁵ The President did not submit the JCPOA for ratification as a treaty.⁶⁶ Rather, the Administration ignored the long-standing formalities *associated with a deal of this type* and entered into a political commitment because Congress would not have approved a treaty.⁶⁷

The question arises as to whether Obama did in fact violate Constitutional Law and the answer is: possibly. While political agreements are legal on their face, political agreements made to skirt Congressional approval are a less-researched issue. A logical conclusion would be that if a treaty is sent to Congress for approval and approval cannot be granted, one should be skeptical of the use of a political commitment to avoid Congressional disapproval altogether.

B. The Obama Administration Crossed the Lines that it had Set Out for Itself

During Early Negotiations, Contributing to a Flawed Deal that was Ultimately Revoked.

Upon entering negotiations with Iran, the Obama Administration had specific lines that it vowed not to cross.⁶⁸ These so called “red lines” included that Iran would never have a nuclear weapon, that sanctions would not be lifted until Iran complied with the requirements of the

⁶³ Supra n.58

⁶⁴ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). This case, fundamental to a basic understanding of United States’ constitutional law, confirmed that a President may not make law without either constitutional authorization, coming from the text of the document, or an authorization from Congress.

⁶⁵ Supra n.58

⁶⁶ Supra n.57 at 78

⁶⁷ *Id.* at 79-80

⁶⁸ David S. Jonas, *The Iran Nuclear Deal: Ethics of Negotiations with a State that Routinely Violates its Legal Obligations*, 47 Hofstra L. Rev. 641 (2018)

JCPOA, and that the Arak heavy water reactor would be closed.⁶⁹ These lines were important, as Iran is known to push boundaries, especially those regarding its nuclear program.⁷⁰ Unfortunately, by the time the Deal was passed, many of the lines were crossed, which David S. Jonas⁷¹ feels “set[s] a dangerous precedent almost guaranteed to result in further nuclear weapons proliferation.”⁷² Iran, in theory, will be able to develop a nuclear weapon as the restrictions put in place by the JCPOA begin to end. The Arak facility was not required to close, but rather, Iran was allowed to rebuild the heavy water reactor.⁷³ President Obama very obviously crossed the red lines that he had set forth to protect the United States and ensure that the Agreement addressed the concerns surrounding Iran’s ability to develop a nuclear weapon, evidenced by the very terms of the Agreement itself.

It seems that the decisions made by the Obama Administration in the implementation of the JCPOA eventually led to the demise of the Deal in the United States, and ultimately, President Trump’s withdrawal from the JCPOA.⁷⁴ As mentioned, Obama ignored political opposition to the Deal and moved forward as he saw fit.⁷⁵ The JCPOA is a political commitment and hence on its own does not have the force of law, which is why it was so simple for President Trump to withdraw from the Agreement. When Obama made the decision to move forward with

⁶⁹ Teresa Welsh, *Did the U.S. and Iran Get What They Want Out of the Iran Deal?*, U.S. NEWS (July 15, 2015), <https://www.usnews.com/news/articles/2015/07/15/how-do-the-red-lines-in-the-final-iran-nuclear-deal-compare>

⁷⁰ *Supra* n.68

⁷¹ *Id.* Jonas served as General Counsel of the National Nuclear Security Administration and of the Defense Nuclear Facilities Safety Board. During his time as a Marine Corps officer, he served as a nuclear proliferation planner for the Joint Chiefs of Staff. He now teaches Nuclear Nonproliferation Law & Policy at Georgetown and George Washington University Law Schools.

⁷² *Id.*

⁷³ *Supra* n.69

⁷⁴ *Supra* n.57 at 78

⁷⁵ *Id.*

the JCPOA, Senators sent a letter to Iran’s President stating that the Deal could be revoked by the next President “with the stroke of a pen,” given that Congress had not approved it.⁷⁶ Sure enough, their predictions proved correct.

While Iran is a non-nuclear weapons state party to the NPT, it has continued to violate the spirit of the NPT, which is the ultimate goal of nonproliferation and the use of nuclear technology for solely peaceful purposes, failing to cooperate with the IAEA.⁷⁷ There is a strong argument that the Deal is flawed, so much so that it cannot stop Iran’s production of a nuclear weapon.⁷⁸ This argument stems from the fact that what President Obama arguably failed to do is implement the most important goal in the JCPOA, which, according to the President himself, was to ensure that Iran could never acquire a nuclear weapon.⁷⁹ The Deal itself did address the concern of Iran’s acquisition of such a weapon, but only for a limited period of time. Secretary of State Mike Pompeo referred to the Obama Administration’s model of response as “appeasement.”⁸⁰ A week after signing the Deal, Iran’s Supreme Leader, Ayatullah Ali Khamenei, stated “Our policy toward the arrogant U.S. government won’t change at all.”⁸¹

C. President Trump’s Withdrawal from the JCPOA is Cause for Concern.

On May 8, 2018 President Trump withdrew the United States from the JCPOA and announced that it would reimpose sanctions on Iran. Trump’s withdrawal from the JCPOA is most certainly a breach of Treaty obligations, the Treaty being referred to being Article 25 of the

⁷⁶ *Id.* at 82

⁷⁷ *Supra* n.68 at 643

⁷⁸ *Id.*

⁷⁹ Jeffrey F. Addicott, *Prosecuting the War on Terror in the Trump Administration*, 11 *Alb. Gov’t L. Rev.* 209, 241 (2019)

⁸⁰ Willem Marx, *U.S. Iran Relations at a Crucial Crossroad as Nuclear Deal Hangs on Election Outcome*, NBC (September 19, 2020), <https://www.nbcnews.com/news/world/iran-nuclear-deal-future-n1240457>

⁸¹ *Supra* n. 79 at 242

United Nations Charter, rather than the JCPOA itself.⁸² While the Deal can be viewed as a way to reset over forty years of failed policy,⁸³ that success, if it is to be called such, is gone.⁸⁴ Trump officials, in support of the withdrawal, argued that the Agreement failed to address the “malign” activities across the region.⁸⁵ The JCPOA did not address the metaphorical elephants in the room, including Iran’s sponsoring of terrorism. While the failure to do so is understandable, as a deal mitigating all of the present issues would have little to no likelihood of being agreed to, it is also notable that they were wholly ignored. A counterargument, however, is that Iran’s uranium enrichment program “was the boulder in the doorway that had to be moved before [the United States] could walk through and solve the rest” of the issues the region.⁸⁶ Trump officials also supported the President’s decision by contending that the JCPOA is not legally binding, given the fact that it is a political commitment and was never approved by Congress.⁸⁷

While the Agreement may in fact have been flawed, evidenced initially by the crossing of the red lines set out by the Obama Administration and the ultimate failure of the JCPOA (Trump’s withdrawal and Iran’s subsequent breaches), it did mitigate the threat of a nuclear-armed Iran within the years it was to apply, at least delaying Iran’s capability of becoming a nuclear weapons state.⁸⁸ President Trump has urged Congress to draft new legislation regarding

⁸² Thomas L. Knapp, *Trump Dumps the Iran Nuclear Deal*: WASHINGTON REPORT ON MIDDLE EAST AFFAIRS (June/July 2018), <https://www.wrmea.org/2018-june-july/trump-dumps-the-iran-nuclear-deal.html>. Under Article 25, “The members of the United Nations agree to accept and carry out the decisions of the Security Council.”

⁸³ *Id.* The United States and Iran have nothing short of a complicated relationship. In the 1960s the United States had supplied Iran with its first nuclear reactor (query whether in light of the current situation if this was a smart idea).

⁸⁴ *Supra* n.57 at 82

⁸⁵ *Supra* n.9

⁸⁶ Catherine Ashton, *I helped Negotiate the Iran Nuclear Deal. Here’s How Joe Biden Could Revive It*, TIME (November 23, 2020), <https://time.com/5914237/joe-biden-iran-nuclear-deal/>

⁸⁷ *Supra* n.9 at 25

⁸⁸ *Id.* at 22

the Deal, amending it in a way that calls for Iran's allowance of immediate inspections and giving the United States the power to reimpose sanctions if Iran fails to comply with all criteria.⁸⁹ While the issue may certainly be submitted to Congress to parse through, any type of revived/renewed agreement with Iran would need to be approved by Iranian officials along with the other states that are signatories to the JCPOA. Whether or not the United States will have the right to alter or reenter the treaty is a subject for further discussion. At the moment, there does not appear to be any laws specifically addressing this; it seems to be more of a diplomatic/international relations issue. In the meantime, President Trump has severely damaged relations with Iran and arguably with the other countries who had signed the Deal.⁹⁰ The damaged relations with Iran are signified by the breaches themselves. Iran has also not taken lightly the killings of its top military leader, Qassim Suleimani, by a United States drone strike in January of 2020 and top nuclear scientist Mohsen Fakhrizadeh, in November of 2020, stating that it will even further transgress the limits of the JCPOA following the events.⁹¹

European signatories to the JCPOA have expressed that they believe that the Deal is legally binding through Security Council Resolution 2231⁹² and that they will fight to keep the

⁸⁹ *Id.* at 23

⁹⁰ *Id.* at 25-26

⁹¹ Amanda Macias, *Iran will no Longer Abide by Uranium Enrichment*, CNBC (January 5, 2020), <https://www.cnbc.com/2020/01/05/iran-will-no-longer-abide-by-any-limits-on-uranium-enrichment-under-2015-nuclear-deal-state-tv.html>; David E. Sanger, Eric Schmitt, Farnaz Fassihi, & Roger Bergman, *Gunmen Assassinate Iran's Top Nuclear Scientist in Ambush, Provoking New Crisis*, N.Y. TIMES (November 28, 2020), <https://www.nytimes.com/2020/11/27/world/middleeast/iran-nuclear-scientist-killed.html?action=click&module=Top%20Stories&pgtype=Homepage&login=email&auth=login-email&login=email&auth=login-email>.

⁹² U.N. Security Council, Security Council Resolution 2231 (2015) [on Joint Comprehensive Plan of Action (JCPOA) on the Islamic Republic of Iran's Nuclear Programme], 20 July 2015, available at: <https://www.refworld.org/docid/55b9e2084.html>. On July 20, 2015, the Security Council adopted this resolution to endorse the JCPOA. The Resolution calls for the termination

JCPOA in place, pushing back against President Trump's decisions.⁹³ Due to Trump's withdrawal, Iran is threatening to withdraw from the NPT, which is a cause for concern for all nations, especially given that Iran is unlikely to renegotiate any type of deal, evidenced by the fact that Iranian officials rejected any new negotiations after Trump announced the United States' withdrawal on May 8, 2018.⁹⁴

It is challenging to contain a discussion of President Trump's treatment of the JCPOA within one section, as it has so heavily affected not only the Deal itself, but also the status of the United States' international relations. Thus, a review of President Trump's handling of the JCPOA will be intertwined throughout the remainder of this discussion, given the impact of his actions. The treatment of the JCPOA during the Trump Administration is especially important to look at when discussing compliance, as Iran's adherence, or nonadherence to the JCPOA may help evidence why President Trump ultimately made the decision to withdraw from the Agreement.⁹⁵

III. Compliance

The question of whether Iran has complied with the JCPOA upon signing it has been hotly contested. While there are indeed arguments to be made on both sides of the issue, the facts, including statements by Iranian high public officials,⁹⁶ point towards noncompliance. However, the time frame is important. Noncompliance following the United States' withdrawal

of the previous resolutions on the Iranian nuclear issue and places specific restrictions on the P5+1.

⁹³ *Supra* n.9 at 25

⁹⁴ *Id.* at 26

⁹⁵ This paper does not claim that President Trump had any type of reasonable basis for withdrawing from the Deal and reimposing sanctions; rather, it merely examines the possibilities.

⁹⁶ *Supra* n.91. Public officials are on record specifically describing how they will scale back compliance.

from the Deal has been confirmed by the IAEA. The real question is whether Iran's actions between Implementation Day and President Trump's withdrawal amount to noncompliance. This section of the paper works to parse through these issues and examine the idea that IAEA reports may have stated compliance in order to appease the international community and ensure that the JCPOA remained in place. However, given a lack of information, the discussion ultimately resolves in the assertion of the fact that for the time-being, there is no available information to state that Iran was not in compliance during the years of 2016 – 2018 before the United States' withdrawal.

United States' National Security Advisor H.R. McMaster commented, "We know Iran has already violated parts of the agreement."⁹⁷ While having made that statement, it appears that McMaster did not agree with President Trump's decision to remove the United States from the Deal, but rather would have preferred to develop legislation removing the requirement of ninety day certifications and urge the President to remain in the Deal.⁹⁸ Up until the time that President Trump withdrew from the Deal, the Trump and Obama Administrations had certified to Congress, in increments of ninety days,⁹⁹ that Iran was in compliance and that the Deal was in the best interests of the nation's security.¹⁰⁰

⁹⁷ Tzvi Kahn, *Iran is not in 'Technical Compliance' with the JCPOA*, FOUNDATION FOR DEFENSE OF DEMOCRACIES (Sept. 20, 2017), <https://www.fdd.org/analysis/2017/09/20/iran-is-not-in-technical-compliance-with-the-jcpoa/>

⁹⁸ Betsy Swan, *McMaster Rushes to Save the Iran Deal That Trump Promised to Kill*, DAILY BEAST (January 10, 2018), <https://www.thedailybeast.com/mcmaster-rushes-to-save-the-iran-nuke-deal>

⁹⁹ Iran Nuclear Agreement Review Act of 2015, PL 114-17, May 22, 2015. Congress passed the Iran Nuclear Agreement Review Act (INARA) requiring that the President certify, every ninety days, that Iran is in compliance with the JCPOA. If certification cannot be granted due to noncompliance, Congress has the option to reimpose sanctions on Iran.

¹⁰⁰ *Supra* n.11

A. Compliance as Evidenced by Official Reports

Before the confirmed IAEA violations,¹⁰¹ the United Nations had certified that despite President Trump's removal of the United States from the Deal, Iran had remained in compliance.¹⁰² IAEA certifications pointed to compliance as well until recent violations, and the Agency has stated that it has had access to all necessary locations, although noting that increased cooperation would certainly enhance confidence in the state.¹⁰³ Sources available written in favor of compliance all make the same argument that because of these certifications, Iran must in fact have been in compliance with the JCPOA, until the first noncompliance incident following the United States' withdrawal from the Deal. There is little to nothing else to be said or argued on the side that Iran was in compliance, as it seems that the IAEA, a vital agency for determining compliance, and the United States' government, for the period of time before withdrawal, all certified that Iran was allowing access to nuclear sites for mandatory inspections and had not exceeded any of the limits placed on it by the myriad of provisions found in the Agreement.¹⁰⁴

B. Noncompliance

Regarding the above-referenced ninety day certifications, although they had been continuously made, Senators in opposition of the JCPOA felt that Iran was not in fact in compliance with all provisions of the Deal.¹⁰⁵ In July of 2017, Republican Senators Tom Cotton, Ted Cruz, David Perdue, and Marco Rubio sent a letter to Secretary Tillerson, who completed

¹⁰¹ *Supra* n.16.

¹⁰² Radio Free Europe/Radio Liberty, *IAEA Says Iran Still in Compliance with 2015 Nuclear Deal* RADIO FREE EUROPE/RADIO LIBERTY (August 30, 2018), <https://www.rferl.org/a/iaea-iran-compliance-2015-nuclear-deal/29461841.html>

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Supra* n.11

the certifications, describing Iran’s noncompliance.¹⁰⁶ Their letter noted that Iran had refused to allow inspections of their research facilities, that it had exceeded the limits on the production and storage of heavy water as well as those placed on its uranium-enrichment centrifuges, and that it was acquiring unapproved technology, per German intelligence reports.¹⁰⁷ These ninety day certifications are claimed¹⁰⁸ to overlook the fact that there is little transparency in the IAEA’s reporting system and that the IAEA has not been granted access to various sites across Iran where nuclear weapons might be in development.¹⁰⁹ The potential lack of access to the referred to sites is worth noting, as it leads to the suggestion that Iran may be engaging in unreported nuclear research. However, in September of 2020, the IAEA was granted first-time access to an undeclared site, which shows that Iran is indeed granting access to IAEA inspectors.¹¹⁰ With that being said, news reports have claimed that IAEA reports appear to rarely be complete, lacking important data on weapons statistics, heavy water quantities, and centrifuge production, all of which add to the complexity of trying to decipher whether or not Iran had committed violations between the years of 2016 and 2018.¹¹¹

The above-mentioned issues with regard to inspections, or lack thereof, that possibly violate the provisions of the JCPOA may soon be baseless with regard to United States’ officials,

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ *Supra* n.97. There is a lack of research on the effectiveness of the IAEA’s reporting system and whether or not failures to detect nuclear sites, such as those in Iran, are commonplace. The referenced statement is the opinion of one analyst and is simply noted by the author.

¹⁰⁹ Id. Do note that an IAEA violation would only occur if officials request access to a suspicious site and are denied; however, officials may have refused to do so, believing that a denial of access would encourage an abandonment of the Deal.

¹¹⁰ Kelsey Davenport & Julia Masterson, *IAEA Report Notes Progress on Investigation*, ARMS CONTROL ASSOCIATION (September 10, 2020), <https://www.armscontrol.org/blog/2020-09-10/iaea-report-notes-progress-investigation>

¹¹¹ *Supra* n.97. Again, this proposition is not claimed by the author, but rather is noted as it has the potential of being valid.

as Iran is now arguing that it is under no obligation to uphold the deal, given that President Trump has withdrawn the United States from the Agreement.¹¹² The same cannot be said for European officials, as they have vowed to uphold the Deal.¹¹³ Violations may have occurred within the period before the United States' withdrawal and are confirmed to have occurred thereafter.¹¹⁴ In 2016, Iran attempted to illegally obtain carbon fiber to possibly produce centrifuges beyond the limits placed in the JCPOA.¹¹⁵ Also before the United States' withdrawal, Iran exceeded the cap placed on heavy water and although the state shipped the excess materials outside the country,¹¹⁶ it retained ownership in them.¹¹⁷ Following the United States' withdrawal, in July of 2019 Iran breached the limits on the amount of uranium it may possess and later in the year exceeded the limits on heavy water.¹¹⁸ In September of the same year, Iran began going beyond the limits placed on centrifuge research and development.¹¹⁹ The abovementioned violations have been confirmed by the IAEA.¹²⁰ The Iranian government even stated over a television broadcast that limits on centrifuge production will be disregarded, meaning that its

¹¹² David Sanger, *Iran Breaches Critical Limit on Nuclear Fuel Set by 2015 Deal*, N.Y. TIMES (July 1, 2019), <https://www.nytimes.com/2019/07/01/us/politics/iran-nuclear-limit-compliance.html>

¹¹³ *Supra* n.9 at 25

¹¹⁴ *Supra* n.16

¹¹⁵ David Albright & Andrea Stricker, *Iranian Atomic Energy Organization Attempted Carbon Fiber Procurement*, INSTITUTE FOR SCIENCE AND INTERNATIONAL SECURITY (July 7, 2016), https://isis-online.org/uploads/isis-reports/documents/AEOI_Attempted_Carbon_Fiber_Procurement_7Jul2016.pdf

¹¹⁶ Laurence Norman, *Iran to Ship Heavy Water Out of Country to Ease Nuclear Conflict*, WSJ (November 19, 2016), <https://www.wsj.com/articles/iran-to-ship-heavy-water-out-of-country-to-ease-nuclear-conflict-sources-say-1479561091>. Iran shipped these materials to Oman.

¹¹⁷ *Supra* n.11

¹¹⁸ *Supra* n.5

¹¹⁹ *Id.*

¹²⁰ *Id.*

enrichment capacity will have no cap.¹²¹ Limits on the amount of nuclear fuel Iran may have are being ignored.¹²² While Iran had technically complied with the JCPOA before the United States withdrew (although it skirted the lines drawn by the Agreement, as previously mentioned) according to IAEA reports and United States' certifications, Iranian officials now note that they will continue to breach important provisions, seemingly seeking more leverage for future negotiations and hoping to encourage European nations to compensate for American sanctions.¹²³ Foreign Minister Mohammad Javad Zarif outright stated, "Our next step will be enriching uranium beyond the 3.67 percent allowed under the deal," and Iran has in fact done so.¹²⁴

Iran's violations are certainly significant in two respects. The other states in the P5+1 will need to decide how they will move forward, meaning whether they will abandon the Agreement or work with Iran towards its return to the limits placed by the JCPOA. As for the United States, the breaches make the possibility of reentering the Agreement more complicated. President Trump reimposed sanctions as a reaction to Iran's breaches, however, these breaches likely would not have occurred, at least not in such material ways, if the President had not made the decision to withdraw from the Deal. Simply stated, the remains of the JCPOA are in limbo and President Elect Biden faces quite the quandary.

¹²¹ Amanda Macias, *Iran will no Longer Abide by Uranium Enrichment*, CNBC (January 5, 2020), <https://www.cnbc.com/2020/01/05/iran-will-no-longer-abide-by-any-limits-on-uranium-enrichment-under-2015-nuclear-deal-state-tv.html>

¹²² *Supra* n.112

¹²³ *Id.*

¹²⁴ *Id.*

IV. The Current Status of United States – Iran Relations

The United States and Iran are at a very rocky point in their relationship. President Trump’s reimposition of sanctions has left Iran falling short on insulin and flu vaccinations along with cooking oil and butter, to name a few simple things.¹²⁵ Unfortunately, Iranians with serious medical conditions now have very few options, as the United States’ signing of the JCPOA had simplified the process of getting medicine; the United States’ withdrawal and the reimposition of sanctions are both contributing to the lack of medicine now available in Iran.¹²⁶ Joe Biden is a strong supporter of the Deal and had tried to get Congress to approve the JCPOA before Obama ultimately bypassed the legislative process.¹²⁷ Biden spearheaded the lobbying effort surrounding the Deal, speaking with Senators in an attempt to gain approval of the JCPOA.¹²⁸ It is almost certain that Biden “will be more flexible towards Iran,” a sentiment expressed by former Egyptian senator and parliamentarian Mona Makram Ebeid.¹²⁹ The Trump Administration’s “maximum pressure” campaign is sure to make it difficult for Biden to reverse the United States’ policy towards Iran.¹³⁰ When Biden does try to unwind the sanctions that President Trump so quickly put in place, Republicans are certain to frame his doing so in a way that makes it seem as if the United States is giving up much more than Iran, and thus that Iran has “won.”¹³¹ At this moment in history, the future of United States’ policy towards Iran is unclear.

¹²⁵ Pranshu Verma & Farnaz Fassihi, *U.S. Imposes Sanctions on Iran’s Oil Sector*, N.Y. TIMES (October 26, 2020), <https://www.nytimes.com/2020/10/26/world/middleeast/trump-sanctions-iran-oil.html>

¹²⁶ *Supra* n.82

¹²⁷ *Supra* n.80

¹²⁸ Sarah Mimms & National Journal, *Joe Biden’s New Mission: Selling the Iran Deal*, THE ATLANTIC (July 15, 2015), <https://www.theatlantic.com/politics/archive/2015/07/joe-bidens-new-mission-selling-the-iran-deal/449295/>

¹²⁹ *Supra* n.80

¹³⁰ *Supra* n.125

¹³¹ *Id.*

A. Trump's Reimposition of Sanctions

In September of 2020, President Trump reimposed United Nations' sanctions against Iran; other world powers have refused to cooperate with these thus far.¹³² Mike Pompeo has stated that the United States "is prepared to use [its] domestic authorities to impose consequences" for countries not enforcing the sanctions.¹³³ Elliott Abrams, the State Department's special envoy for Iran policy, believes the sanctions should compel European nations to "cooperate closely with [the United States,] [especially] when they see any effort by Russia, China, or anybody else to sell arms to Iran."¹³⁴ State Department spokesperson Morgan Ortagus has declared that Trump's policies towards Iran have curbed its "provocative maritime behavior in the Persian Gulf," lessened Tehran's revenue by billions of dollars, and constrained the abilities of Iran's state broadcasting networks.¹³⁵ Leaning towards the feelings of the European nations who are parties to the Deal and have vowed to preserve the JCPOA, such as Britain, France, and Germany, is the Iranian Ambassador to the United States, Majid Takht Ravanci, who has called the sanctions "null and void."¹³⁶ Interestingly, the Congressional Research Service mentions an email from a State Department Official in July of 2019 reading, "under the terms of the JCPOA, Iran may cease performing commitments in whole or in part following the U.S. reimposition of sanctions."¹³⁷ This makes it appear that the United States is

¹³² Lara Jakes & David E. Sanger, *U.S. Reimposes U.N. Sanctions on Iran Over Objections of World Powers*, N.Y. TIMES (September 19, 2020), <https://www.nytimes.com/2020/09/19/us/politics/us-iran-un-sanctions.html>

¹³³ Id.

¹³⁴ Id.

¹³⁵ *Supra* n.80

¹³⁶ *Supra* n.132

¹³⁷ Paul K. Kerr, *Iran's Nuclear Program: Tehran's Compliance with International Obligations*, CONGRESSIONAL RESEARCH SERVICE R40094, p.5 (September 23, 2020), <https://fas.org/sgp/crs/nuke/R40094.pdf>

well aware that its withdrawal voids the Deal, leaving the other P5+1 countries in limbo regarding their agreements with Iran.

Trump’s sanctions will make it very difficult for any future president to join the JCPOA once again.¹³⁸ As of now, the sanctions specifically targeting the nuclear program will ban enrichment and reprocessing of spent fuel, ban the state’s ballistic missile program, allow for the inspection of both airplanes and ships believed to be carrying banned cargo, and call for the freezing of assets of businesses and individuals associated with these programs.¹³⁹ The sanctions are a reimposition of sanctions imposed by the United Nations, and thus “extend[] the U.N. conventional arms embargo and obligate[] Iran’s regime to refrain from testing ballistic missiles and suspend enrichment-related activities, which could support development of a nuclear weapon.”¹⁴⁰ There is now a concern that China and Russia will resume selling weapons to Iran, due to the implications of these sanctions.¹⁴¹

In early October, the Trump Administration imposed sanctions on eighteen Iranian banks, and later in the month, imposed sanctions on the oil sector, sanctioning Iran’s Ministry of Petroleum and the National Iranian Oil Company and its tanker subsidiary for supporting the Islamic Revolutionary Guards Corp (IRGC),¹⁴² which the United States has designated as a terrorist group.¹⁴³ Treasury Secretary Steven T. Mnuchin stated the Iranian government “used the

¹³⁸ Supra n.132

¹³⁹ Id.

¹⁴⁰ U.S. Embassy Tbilisi, *New U.S. Sanctions Seek to Block Iranian Regime’s Weapons*, U.S. EMBASSY IN GEORGIA (September 23, 2020), <https://ge.usembassy.gov/new-u-s-sanctions-seek-to-block-iranian-regimes-weapons-programs/>

¹⁴¹ Supra n.132

¹⁴² BBC, *Profile: Iran’s Revolutionary Guards* (January 3, 2020), <https://www.bbc.com/news/world-middle-east-47852262>. The IRGC was founded in 1979 and is said to be tasked with protecting Iran’s Islamic system. The IRGC has a large impact on the social, political, economic, and military happenings of the state.

¹⁴³ Supra n.125

petroleum sector to fund the destabilizing activities” of the Revolutionary Guards Corps.¹⁴⁴ Dr. Mustafa Barghouti, the leader of the Palestinian National Initiative political party, believes that these policies will lead to an even more volatile region, equating Trump’s actions to “a line of escalation.”¹⁴⁵

V. Legal Analysis: The Issues Presented by the JCPOA

Ilan Goldenberg, a senior fellow focused on Middle East security at the Center for a New American Security, summed up what seems to be the United States’ dilemma when he commented, “You can’t make an arms control deal contingent on solving all the problems in the Middle East. But you also can’t ignore all the problems in the Middle East to try and reach an arms control deal.”¹⁴⁶ Whether or not the United States had the right to withdraw from the JCPOA while it figures out how to handle the above-mentioned issue is dependent on whether one frames the issue domestically or internationally. Domestically, the Agreement is likely not enforceable due to its form as a political commitment.¹⁴⁷ Internationally, the JCPOA is possibly enforceable given the United Nation’s Security Council Resolution 2231.¹⁴⁸ Once the issue of enforceability is worked through, mention of the legality of state nuclear programs in both a civilian and military capacity will wrap up the discussion. Perhaps the United States can learn from the mistake that it made by implementing a time-limited agreement that was put in place as a political commitment but in form was nothing short of a treaty. Then, it can work towards the adoption of a comprehensive nuclear agreement with Iran and the remainder of the P5+1 states, whether that be an updated version of JCPOA or a new deal all-together.

¹⁴⁴ Id.

¹⁴⁵ Supra n.80

¹⁴⁶ Id.

¹⁴⁷ Supra n.58

¹⁴⁸ Supra n.1

A. The United States' Rights Surrounding Withdrawal from the JCPOA

The Congressional Research service refers to the NPT and Security Council Resolution 2231¹⁴⁹ as “compos[ing] the current legal framework governing Iran’s nuclear program.”¹⁵⁰ Official reports from the United Nations and the IAEA certified compliance with JCPOA requirements until July of 2019 when the IAEA reported that Iran had exceeded mandated limits on its nuclear program.¹⁵¹ In March of 2020, the IAEA reported that it had identified possible undeclared nuclear activities/material at three undeclared locations; in July, the Agency adopted a resolution requesting that Iran cooperate with investigations.¹⁵² In August, IAEA Director General Grossi and Ali Akbar Salehi, the Atomic Energy Organization of Iran’s President, stated that Iran began providing access to the requested specific locations, which is a step in the right direction regarding Iran’s compliance with inspections.¹⁵³ However, this does not solve any of the problems discussed thus far, as the United States had already withdrawn from the JCPOA at this point, and Iran, according to the State Department, could thus begin ignoring its commitments set forth in the Deal.¹⁵⁴

The Constitution does not speak to the ability of a president to withdraw from a treaty, only to enter one, and as for political commitments, they are typically not binding; political commitments are “not intended to be binding under domestic or international law,” however,

¹⁴⁹ Supra n.1. When the JCPOA was implemented on January 16, 2016, all of the United Nations’ prior Security Council resolutions regarding Iran’s nuclear program were terminated.

¹⁵⁰ Supra n.137

¹⁵¹ Id. at 4

¹⁵² Id. at 11

¹⁵³ Id.

¹⁵⁴ Id. at 5

they are often given significant moral and/or political weight.¹⁵⁵ As for the United Nations Security Council, its actions are given binding legal authority through the United Nations Charter. Under Article 24, the Security Council is responsible for maintaining “international peace and security,” and may do so using the provisions expressed in Chapter VII.¹⁵⁶ Article 25 requires member states “to accept and carry out the decisions of the Security Council.”¹⁵⁷ With regard to the JCPOA, it is possible that under Security Council Resolution 2231, parts of the Agreement are binding under international law.¹⁵⁸ If this is the case, then the United States was in a clear violation of international law. However, it is unclear as to whether the Resolution is a binding decision or a nonbinding recommendation, as it contains language that is common to both forms.¹⁵⁹ The provisions requiring the lifting of sanctions appear to be binding, as the term “decides,” in conjunction with Article 41,¹⁶⁰ is used.¹⁶¹ However, the fact that the Security Council “calls upon” signatories of the JCPOA to implement the Deal may mean that it is not binding at all.¹⁶²

Under domestic law, Trump’s reimposition of sanctions is perfectly legal, even if doing so violates international law.¹⁶³ Treaties are not binding under domestic law unless Congress has

¹⁵⁵ Stephen P. Mulligan, *Withdrawal from International Agreements: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement*, CONGRESSIONAL RESEARCH SERVICE R44761 (May 4, 2018), <https://fas.org/sgp/crs/row/R44761.pdf>

¹⁵⁶ *Supra* n.137 at 14

¹⁵⁷ *Id.* at 15

¹⁵⁸ *Supra* n.155

¹⁵⁹ *Id.* at 23-24

¹⁶⁰ U.N. Charter art. 41. Article 41 reads, “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures.”

¹⁶¹ *Supra* n.155 at 24

¹⁶² *Id.*

¹⁶³ *Id.*

drafted legislation implementing the treaty or the treaty is self-executing.¹⁶⁴ Chief Justice Marshall stated that a treaty is “equivalent to an act of the legislature,” meaning, self-executing, when it “operates of itself without the aid of any legislative provision.”¹⁶⁵ Non-self-executing treaties are characterized by only being enforceable when legislation is required to carry them out.¹⁶⁶ Security Council Resolutions are viewed as non-self-executing,¹⁶⁷ and thus the binding effect of such Resolutions in a domestic sense depends on whether or not Congress has implemented legislation.¹⁶⁸ In the case of Resolution 2231, given that it is not self-executing and that there has not been legislation passed to carry out its requirements, it appears to be nonbinding in the domestic sense.¹⁶⁹ It is also unlikely that congressional approval was needed for withdrawal, given the Obama administration’s treatment of the Agreement as a political commitment.¹⁷⁰ It is accepted that the President has the independent right to withdraw from a political commitment, given that he has that same right to enter into it.¹⁷¹

For binding agreements, there are a variety of ways a nation may withdraw, one of which is of particular interest here: a material breach by one party may give rise to a right to withdraw.¹⁷² So, even if the argument can be made that the JCPOA was binding in a domestic sense due to Congress’ passing of the Iran Nuclear Agreement Review Act, the President may have been able to withdraw without any violation of law. If this argument were to be made, more information would be needed with regard to Iran’s behavior before President Trump withdrew

¹⁶⁴ *Supra* n.155 at 15-16

¹⁶⁵ *Foster v. Neilson*, 27 U.S. 253, 314 (1829)

¹⁶⁶ *Whitney v. Robertson*, 124 U.S. 190, 194 (1888)

¹⁶⁷ *Diggs v. Richardson*, 555 F.2d 848, 861 (D.C. Cir. 1976)

¹⁶⁸ *Supra* n.155 at 15-16

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 6

¹⁷² *Id.* at 4-5

the United States to determine if any of Iran’s actions constituted a material breach; at this time it does not appear that such information is publicly available.

Another method for “legal” withdrawal is as follows: Within the JCPOA is Article 36, which sets forth a dispute resolution procedure that can be used by any member of the P5+1 who feels Iran has not met its commitments.¹⁷³ If there is an ongoing breach of the Agreement that has not been fixed, a state is allowed to stop adhering to its commitments.¹⁷⁴ If the dispute resolution procedure was set in motion, the Security Council would likely have the opportunity to vote on a resolution determining whether it should continue withholding sanctions or reimpose them. This process is often known as the “snapback” procedure, as it leaves the Security Council with the responsibility of voting to continue the lifting of sanctions.¹⁷⁵ However, no matter the result of the Security Council vote, the United States could use its veto power as a permanent member of the Security Council which would “effectively force ... reinstatement” of sanctions.¹⁷⁶ While the United States may have been able to legitimize its position by reporting its findings of noncompliance to the Security Council, it can no longer do so because the provision is only available to states participating in the JCPOA.¹⁷⁷ Query why President Trump did not take this route to avoid the argument that his withdrawal from the Deal was illegal. Perhaps the

¹⁷³ Id. at 27. This mechanism allows any of the parties to the Deal to refer the issue to the Joint Commission for resolution. After the Commission considers the issue, any party can refer the issue to the Ministers of Foreign Affairs if the problem is not resolved. Following this, either the complaining party or the party in violation can request that the issue be considered by an Advisory Board consisting of three members. The Advisory Board would provide a non-binding opinion, and if still not resolved, the Joint Commission would consider the opinion of the Advisory Board for no more than five days. If there is still an issue, it is at this point that the participant could cease performing its commitments under the JCPOA and/or notify the Security Council of the non-performance.

¹⁷⁴ Id.

¹⁷⁵ Id. at 28

¹⁷⁶ Id.

¹⁷⁷ Supra n.137 at 13

President's legal counsel analyzed the Resolution as being nonbinding, as argued above, and thus did not recommend employing this procedure. Another alternative is difficult to imagine. It seems unlikely that the President's counsel would encourage him to breach international law, given the possible repercussions.

B. The Legality of State Nuclear Programs Used in Furtherance of Nuclear Weapons

Unsurprisingly, both the United States and Iran are parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). While Iran is simply one of many states that have ratified the NPT, the United States is a depository state as well as being recognized as a nuclear-weapon state.¹⁷⁸ Article V of the Treaty calls for the benefits of nuclear energy to be made available to non-nuclear weapon states.¹⁷⁹ Article IV clarifies that while states may not pursue nuclear weapons, they absolutely can research, develop, and produce nuclear energy for peaceful purposes.¹⁸⁰ As with the JCPOA, the IAEA is heavily involved in the requirements of the NPT, with each non-nuclear weapons state agreeing to accept various safeguards and to allow the IAEA to verify¹⁸¹ its compliance with the Treaty. With regards to Iran, under Article II, Iranian leaders agreed “not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices.”¹⁸² In fact, one of the main missions of the Treaty is to ensure that states

¹⁷⁸ Treaty on the Non-Proliferation of Nuclear Weapons art. 5, July 1, 1968, 729 U.N.T.S. 161. “For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967.”

¹⁷⁹ Id.

¹⁸⁰ Id. at art. 4

¹⁸¹ The Statute of the IAEA, Article XII C. The IAEA Statute gives its actions legal authority. Article XII C. calls on inspectors to report noncompliance to the Director General, who will then report to the Board of Governors. The Board is to then take further action, requiring the State at issue to fix their noncompliance.

¹⁸² *Supra* n.178 at art. 2

“undertake effective measures in the direction of nuclear disarmament,” however, Iran has been moving in the opposite direction.¹⁸³

Under the NPT, the research and development of nuclear power for peaceful purposes is clearly within the confines of international law. The more complicated question is whether nuclear weapons are legal. There is currently no law or treaty specifically referring to the illegality of nuclear weapons. States are divided on the issue, with some firmly believing in illegality and others, such as the United States, arguing for the legality of the weapons. In reality, the legality of nuclear weapons is governed by the law of war, divided between *jus ad bellum* and *jus in bello*. The requirements of necessity, distinction, and proportionality must be met in order to justify the legal use of a nuclear weapon. Query whether a nuclear weapon could ever fit these requirements, given its destructive capacity and long-lasting effects, including but not limited to radiation and a nuclear winter.

This leaves the United States and Iran in a bit of a strange place, as while the United States possesses nuclear weapons, it firmly believes that under no circumstance may Iran ever develop a nuclear weapon. Given its signature to the NPT, Iran is bound by international law to never acquire such a weapon.

C. What we can Learn from a Time Limited Agreement such as the JCPOA

Deals covering the broad topic of nuclear proliferation are of the utmost importance in modern day history. Without treaties, executive agreements, and political commitments limiting the ability of states to both develop and possess nuclear power, most of the world would arguably be in an even more unstable position than certain parts of it are now. With that being said, whether an agreement is in the form of a treaty, and thus has binding legal authority on all

¹⁸³ *Supra* n.178

states who have ratified it, or in the form of a political commitment, it should be given the highest level of consideration and respect by its signatories for the time that it is in place. This proposition stems from the fact that treaties are binding under international law and the JCPOA, a political commitment, was supposed to be implemented with a policy of mutual respect by all parties.

Iran has a longstanding history of violating these types of agreements, as exemplified throughout this paper. Its violation of the principles that helped form the NPT are evidence of the state's disregard for the importance of these agreements. It would not be unreasonable to argue that Iran only signed the JCPOA in order to prevent its economy from falling to an unrecoverable level. Before the implementation of JCPOA requirements, Iran was within two to three months of possessing enough fissile material to create a nuclear weapon.¹⁸⁴ Upon complete withdrawal from the JCPOA, it would take Iran at least a year to possess enough fissile material to create a nuclear weapon.¹⁸⁵ Whatever its reason(s) for signing the Agreement, its recent behavior elucidates its disrespect for the JCPOA. While the question of whether Iran materially violated the JCPOA before United States' withdrawal is still open, it clearly violated the Agreement after President Trump's withdrawal. If the United States and Iran were the only two parties to the Agreement, this would be the logical response, however, they are not. Iran's disrespect of the provisions of the JCPOA cannot be claimed, however, without also noting President Trump's flippancy towards the Agreement. It is challenging to legitimately ask a state to adhere to an Agreement that can be signed away at any moment. Perhaps a takeaway is that if a president uses a political commitment to achieve a goal, as did President Obama, the Administration should try

¹⁸⁴ Obama White House Archives, *Implementation Day*, <https://obamawhitehouse.archives.gov/issues/foreign-policy/iran-deal>

¹⁸⁵ Id.

to ensure that the commitment is made binding under domestic and international law, through one of the methods discussed.

Taking into consideration the above-mentioned and moving to a discussion of time limited agreements, perhaps in instances like these a time limit does not particularly matter. The provisions within the JCPOA were not given the opportunity by the United States to run their full course. Rather, President Trump is looking to stifle Iran's economy in such a way that obtaining enough fissile material is impossible, and is doing so through the imposition of a plethora of sanctions on various Iranian industries and individuals. While this behavior may have some immediate desired effects, the relationship between the United States and Iran is not sustainable in its current state. What is sustainable is an agreement that all parties feel comfortable with, and in practice, adhere to. Moving forward it is necessary to ensure that whatever comes of the situation with Iran, whether it be a reentering of the JCPOA or a new agreement altogether, that it is legally binding in the domestic sphere of United States' law. As for the international realm, a provision such as that of the snapback currently in place should remain, but something needs to change in order to require states to use it, rather than simply being able to withdraw from the Agreement on the premise that it is not binding under international law. Perhaps the United Nations needs more clarification surrounding the requirements of its Charter and the legal force of Security Council Resolutions.

VI. Conclusion

An in-depth study of the Iran Nuclear Agreement brings to light the myriad of issues surrounding the Deal. The future of the JCPOA is up in the air, and while it is nearly certain that President Elect Biden has every intention of reentering the JCPOA, it is not clear that he will be able to do so. President Trump's maximum pressure campaign against Iran certainly had its

desired effect of making it very difficult to renew United States – Iran relations. While the JCPOA was entered in the hopes that stability in the Middle East would increase, the United States' recent withdrawal from the Deal and reimposition of sanctions will likely result in an increasingly volatile region. Iran's attempt to reintegrate itself into the international economy has been halted by President Trump's imposition of sanctions.

Arising from the study of the 2015 Iran Nuclear Deal comes a plethora of complicated legal issues, the most specific of which regarding whether the Deal itself is binding under international and domestic law. The argument in favor of the Deal being binding is far stronger under international law than domestic law, given the force of Article 25 of the United Nation's Charter and Resolution 2231 implementing the JCPOA. However, even under international law it seems that the JCPOA was not binding on the United States, and the Trump Administration certainly did not view it as such. Under domestic law, the argument for the Agreement being binding hangs on whether Resolution 2231 is self-implementing, which is highly unlikely, and whether Congress has enacted legislation giving the Agreement the force of law, which unless one considers the INARA to do so, it has not. Taking into account the typical treatment of United Nations Resolutions, it is unlikely that the JCPOA was binding under international or domestic law, hence President Trump's actions violated neither international nor domestic law.

More broadly, a study of the JCPOA raises the question as to the legality of nuclear weapons. The fact that there is no written law stating the outright illegality of nuclear weapons leads to the presumption that they are not in fact illegal. However, Iran's procurement of a nuclear weapon would be illegal under the NPT which is a binding treaty under international law. With regard to violations, Iran skirted the boundaries of the JCPOA from the years of 2016 to 2018, and clearly violated the terms following President Trump's withdrawal from the Deal. It

is unclear as to whether Iran had committed any material violations within the time period from the implementation of the Agreement to the United States' withdrawal; it appears that more information is necessary to reach this conclusion with one hundred percent certainty. However, given IAEA reports certifying compliance, it can be stated that Iran seems to have been in compliance during that time period. Conceivably, this is difficult to come to terms with given Iran's history of treaty violations, its lack of transparency in giving the IAEA access to and reporting nuclear sites, and its attempt to obtain massive amounts of carbon fiber while flying under the radar of the international community. However, again, it is only fair to make the assumption of compliance given official reports.

Regarding the future of Iran's nuclear program, it will be important that any agreement going forward has the certainty that comes with implementation through the force of law. If Iran is willing to renegotiate, which seems unlikely at this time, given the statements of Iranian officials referenced previously in this discussion, Congressional support and approval of any new agreement, deal, or treaty is vital. The concerns that Congress expressed during the Obama Administration are likely to still be at issue, and thus will need to be addressed in order to receive approval for the treaty. A new agreement, or a revival of the one already in place will be nothing short of a balancing act, attempting to appease all parties without the appearance that the United States is giving up more than it is gaining.

Both the United States and Iran have a lot of work to do concerning the reestablishing of their relationship. Trust and mutual respect have been whittled down over time on both ends. The volatility in the region, along with Iran's sponsoring of terrorism and oppression of its people are roadblocks to the rekindling of any type of positive international relations between the two

states. All that one can do right now, short of making predictions, is to wait and see how President Elect Biden's policy towards Iran unfolds.