Questions for a Final Deal with Iran

JINSA's Gemunder Center Iran Task Force

Co-Chairs Ambassador Eric Edelman and Ambassador Dennis Ross

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Task Force and Staff

Co-Chairs

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Former Under Secretary of Defense for Policy

Ambassador Dennis Ross
Former special assistant to President Obama and NSC Senior Director for the Central Region

Members

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Former U.S. Representative from Pennsylvania

Professor Eliot Cohen
Director of Strategic Studies Program at Johns Hopkins School of Advanced International Studies

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Founder and Director of Energy Policy Research Foundation, Inc.

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Alan Makovsky
Former Senior Professional Staff Member, House Foreign Affairs Committee

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Former Assistant Secretary of State for Arms Control and Nonproliferation

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Gemunder Center Staff

Dr. Michael Makovsky
Chief Executive Officer

Ashton Kunkle
Research Assistant

Jonathan Ruhe
Associate Director

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Questions About a Prospective Final Deal

After two renewed negotiating deadlines and more than a year of talks, momentum appears to be building for a comprehensive agreement on Iran's nuclear program. Specific parameters may remain unresolved, but the emerging contours of a prospective deal raise several fundamental concerns that must be addressed by Congress and the Obama Administration before there could be any assurance it would further U.S. national security interests.

As this Task Force laid out in multiple reports surrounding the implementation of the Joint Plan of Action (JPA) interim agreement, an acceptable final deal would have to conform to several fundamental principles. To prevent Iran from attaining nuclear weapons capability, it must impose the most stringent possible limits on Iran's ability to produce fissile material. Optimally, this would permit Iran only a civilian nuclear power program without enrichment facilities or capabilities. To understand the true extent and progress of Iran's nuclear weapons program, it must resolve outstanding international concerns over Iran's past violations of its nonproliferation obligations. To ensure Iranian transparency and adherence to these restrictions, it must include a strict and comprehensive inspections regime. To deter, and if necessary prevent, Iran from breaking the agreement, it must be underpinned by credible and concrete promises to punish non-compliance. Lastly, any final deal must last as long as the United States and its partners believe Iran retains its nuclear weapons ambitions and remains a driving force for international instability.[1]

Given the information currently available, a comprehensive agreement building on the JPA clearly would fail to meet these parameters. The JPA already conceded Iran's ability to enrich uranium under a comprehensive agreement, thereby abandoning the most stringent possible limit on producing fissile material. U.S. negotiating strategy has focused instead on how long Iran would need to produce enough material for a nuclear weapon. Repeated statements by Obama Administration officials indicate their primary benchmark for an acceptable deal would be to roll back Iran's breakout time from the current three months to one year.[2]

Presumably, stronger inspections would dissuade Iran from breaching these restrictions, even as the existing sanctions regime would be dismantled steadily over the duration of an agreement.[3] Yet the deal currently being hammered out apparently would not compel Iran to resolve crucial outstanding nonproliferation concerns about possible military dimensions (PMD) of its nuclear program and its ballistic missile program. Finally, and perhaps most troubling, any deal – even with much greater restrictions – would not be permanent, but instead contain one or more sunset clauses whereby all limits would ultimately be lifted.

Anything like these parameters would fall significantly short of this Task Force's baselines for an acceptable comprehensive agreement. Multiple issues must still be clarified, resolved and strengthened before the basic tenability of the prospective agreement could be assessed properly. Therefore the Obama Administration must explain how it envisions imposing restrictions on Iran's nuclear program to prevent it from obtaining an undetectable nuclear weapons capability. Before considering taking any agreement to the United Nations, the Administration must address very real and legitimate concerns from Congress about an agreement over which it has had no substantive input, and which it justifiably fears would be implemented without its consent. Indeed, Congress's voice and vote is vital to the credibility and durability of a final deal. The two branches must work together in advance of a final agreement to set the terms that would be acceptable to the United States, not just to the Administration. They must also define every class of potential Iranian violation and the specific responses to each.

Guaranteeing an Acceptable Breakout Timeframe

The Obama Administration has made clear its demand for at least a one-year breakout window under a final deal, yet it has not articulated publicly many of the specific limits on Iran's enrichment program it would demand to achieve that rollback. Moreover, at first glance a one-year breakout may seem like a long period of time, but multiple factors could seriously vitiate the United States' and its partners' ability to detect and respond to any possible violations in this timeframe. These concerns make it incumbent upon the Administration to demonstrate how it would actually prevent Iran from reaching nuclear weapons capability, were Iran to violate an agreement.

Production of Fissile Material

The first unresolved issue is Iran's ability to produce fissile material. To paraphrase a senior U.S. State Department official, estimating breakout time is like solving a Rubik's cube: no single metric for enrichment can be used to evaluate how far back a final deal could set Iran's nuclear program.[4] Beginning from low-enriched uranium (LEU), breakout time is a function of multiple factors: centrifuge numbers, centrifuge types, stockpiles, and research and development (R&D) activities. Reports suggest Iran has been offered to keep 6,000-6,500 operating first-generation (IR-1) centrifuges – it currently operates over 9,000 – and to enrich LEU only up to 3.5 percent (a level suitable for use in nuclear power plants). They also indicate Iran could keep its roughly 10,000 installed (but not operating) centrifuges. Iran would also have to ship out its existing LEU stockpiles for conversion to nuclear fuel rods, which would be highly unsuitable for further enrichment to fissile material.

On paper, these limits could extend Iran's breakout time, but additional restrictions would be needed to ensure it remained rolled back under a final deal. The largest increases in breakout time come from reducing stockpile size. Two major unresolved issues are how much of its existing stockpiles Iran would be required to ship out, and whether it would have to ship out on a continuous basis all its additional LEU produced under a deal. If it were permitted to keep or rebuild its stockpiles, Iran's breakout window could shrink to well below one year, even with other restrictions firmly in place.[5]

Clarity is also required on the scope of permitted R&D activities. Iran could reduce breakout time even further if allowed to continue efforts to increase the efficiency of its operating centrifuges, as under the JPA. A comprehensive agreement would need explicit and precise prohibitions on such activities (language that is absent from the interim deal). This would necessarily include, at the very least: bans on any and all work on centrifuges other than those currently operating or installed, as well as clear restrictions on when, where, why and how Iran could replace installed centrifuges. Such limits would be crucial, both to restrict breakout time during an agreement, and to prevent Iran from developing far more efficient centrifuges for use immediately after an agreement expires. The Administration should also stand by its original demand that Iran close its illegal Fordow enrichment facility altogether.

A related concern is that Iran could retain latent enrichment capability if it agreed not to operate it, as under the JPA. Any comprehensive agreement that seeks merely to limit the total output

of Iran's enrichment facilities – measured in Separative Work Units (SWU) – would leave its latent capability untouched, thus allowing it to cut breakout time with a flip of a switch if it chose to renege on a deal. Similarly, any agreement that merely disconnects the tubing in installed but non-operating centrifuge cascades would be unlikely to increase breakout time. These constraints are easily reversible, so their inclusion in a prospective final deal would be insufficient to guarantee a one-year breakout window – all the more so if Iran is required to dismantle only the roughly 10,000 non-operating installed centrifuges, but not the roughly 3,000 currently operating IR-1 centrifuges that would no longer enrich under a 6,000-6,500-centrifuge limit.

For these reasons, the Administration should insist on irreversible dismantlement of every non-operating centrifuge. An agreement should mandate the destruction of the cascades interconnecting them, and preferably the destruction of the non-operating centrifuges – including next-generation machines currently used for R&D. It should also require disassembly and removal of all remaining components to remote sites under IAEA control. Recent reports indicating Iran might not have to disassemble or destroy cascade tubing or advanced centrifuges could therefore be a major cause for concern.[6]

No less crucially, the Administration's plan for closing the door to Iran's plutonium path to nuclear weapons capability also remains to be seen. This Task Force maintains Iran should be required to permanently halt all activities relating to its heavy-water reactor at Arak, including shutting down the reactor and ending all fuel production. As the Administration has proposed, the facility might instead be converted to a light-water reactor under IAEA safeguards – similar to Iran's existing Bushehr nuclear power plant – which would produce a small fraction of the plutonium of a heavy-water reactor, and which could be difficult to divert for reprocessing into fissile material. Iran's persistent counteroffer is merely to modify the existing heavy-water reactor to produce less plutonium. This would be much more easily reversible than converting the entire reactor, and could leave Iran with a plutonium breakout window of significantly less than a year, were it ever to decide to renege on a deal.

Verifying Iranian Compliance

The second unresolved issue is the verification regime for ensuring Iran abides by a final deal. Even if Iran agrees to wide-ranging curtailment of its capacity to produce fissile material – e.g., dismantling its latent uranium enrichment infrastructure, drastically scaling back R&D activities, shipping out all LEU stockpiles for conversion, closing Fordow and changing Arak to a light-water reactor – a comprehensive agreement premised on a one-year breakout timeframe would require unprecedentedly intrusive inspections to provide even a basic assurance that the United States and its allies could respond effectively to any potential Iranian violations.

Indeed, verification and monitoring measures must compensate for any shortcomings in restrictions on Iran's enrichment capability. The shorter the breakout time – not only if it adhered to a deal, but more importantly if it tried to break it – the more regularly the International Atomic Energy Agency (IAEA) would need to monitor Iranian activity at any and all suspected (not just declared) facilities. This would be a prerequisite for detecting potential breakout and "sneakout" scenarios (producing fissile material at an undeclared facility). Furthermore, the less any final deal rolls back Iran's breakout time, the more extensive the IAEA inspections would have to be at any given point. Additionally, many potential Iranian actions – e.g., reconnecting cascade tubes or diverting LEU stockpiles – may be difficult to detect, or may not

be perceived immediately as clear infringements. The fewer and less stringent the restrictions on Iran's enrichment activities, the more challenging it would be to discern unequivocally any violations.

Assuming a potential violation was detected, the process for devising a coherent response would likely be time-consuming. Even if inspectors detected a possible violation immediately, their findings would make their way up the IAEA chain of command and subsequently to the P5+1, who would then likely deliberate over the severity of the breach (and whether it constituted a breach in the first place), before beginning to consider appropriate next steps. Throughout these processes, Iran might insist on adjudicating the matter and call on all sides to sustain the spirit of cooperation enshrined in the arms control agreement. More time would then be consumed implementing any collective response decided by the P5+1 or some of its members, particularly if they opted to reinstitute sanctions rather than consider a military option. Any sufficiently forceful response could be further complicated by the general reluctance of the United States and its partners to vigorously enforce arms control agreements with rogue regimes, especially given China's and Russia's reluctance to sanction U.S.-led uses of force. The more opaque or equivocal the potential violation, the longer each step would likely take, and the less forceful and immediate the response likely would be.

Given that such a process could well take many months, and perhaps far longer, the credibility of a one-year breakout window would rest on inspectors' ability to detect any and all possible violations promptly and indisputably – an incredibly tall order. This would entail unprecedented access across the breadth of Iran's nuclear program, especially in light of its long history of clandestine activities in direct contravention of its IAEA obligations. Though Iran has agreed to expand the authorities for inspectors by adhering to the IAEA Additional Protocol as part of a final deal, this could still be insufficient to monitor a nuclear program whose breakout time likely would not have been increased significantly. While the Additional Protocol would require more extensive declarations of enrichment-related activities and more intrusive inspections, it would not permit surprise inspections anytime and anywhere, nor would it allow for frequent access to all parts of enrichment facilities, for instance the tubing within cascades.

Moreover, there is no indication Iran would have to implement or conform to the modified Code 3.1 of the subsidiary arrangements to its IAEA Safeguards Agreement under a final deal. This code requires Iran, like other NPT signatories, to provide information in advance to the IAEA on any new or updated designs for its nuclear facilities. Any deal that allows Iran to continue withholding this information illegally – it is the only to country to ever unilaterally suspend the modified code – could deny inspectors the ability to verify that an agreement would actually cut off uranium and plutonium paths to a bomb. This could also seriously complicate or delay efforts to monitor many of the design changes Iran might make to its facilities in violation of a final deal, such as progress on heavy-water reactor construction or reconfigurations of cascades in uranium-enrichment facilities.

Because the Administration has set such a tight breakout timeframe as its baseline, it therefore needs to demonstrate how even these expanded safeguards would guarantee the IAEA's ability to reliably detect any number of a wide range of potential violations, and to report them in a timely and definitive manner. The burden of proof is on the Administration to explain how the prospective final deal it is negotiating does not warrant even stricter safeguards, including: real-time video monitoring of nuclear facilities, unannounced inspections at declared and undeclared sites, including military and IRGC sites suspected of involvement in nuclear

activities, and mandatory access to any facilities, documentation and personnel requested by the IAEA.

PMD and Ballistic Missiles

When laying out the negotiating parameters for a final deal, the JPA focused on only one of three components of nuclear weapons capability: fissile material. This is the most time-consuming and resource-intensive obstacle to producing a nuclear device. Yet, estimates of Iran's breakout timeframe would remain incomplete without a full accounting of its progress on the other two components: weaponization and a delivery vehicle. Iran's ability to weaponize fissile material – building a warhead capable of starting a nuclear chain reaction – falls under the PMD portfolio being covered separately with the IAEA. Of the twelve issues where the IAEA is seeking resolution, only one is currently under discussion.[7] Meanwhile, there appears to be no discussion of delivery vehicles, which would concentrate on Iran's existing short- and medium-range ballistic missiles, and its ongoing efforts to expand and upgrade what is already the largest such arsenal in the Middle East (including development of intermediate-range and intercontinental ballistic missiles capable of targeting Western Europe and the U.S. homeland).

In seeking to justify a one-year breakout, U.S. and other P5+1 negotiators must address whether they would predicate a comprehensive agreement on Iran resolving all current PMD issues to the IAEA's satisfaction, as it is legally obligated to do under multiple U.N. Security Council (UNSC) resolutions. Talks for a final deal and PMD are occurring in parallel, even though the JPA calls on all parties to "work with the IAEA to facilitate resolution" of the IAEA's concerns as part of a comprehensive agreement. Furthermore, the Administration should make a final deal contingent on Iran halting its work on delivery vehicles, including its nuclear-capable ballistic and cruise missile programs.

A final deal that is worked out and implemented before Iran addresses these concerns would limit inspectors' ability to detect and report the full array of steps Iran could take toward nuclear weapons capability. They would be in the dark about what and where weaponization efforts could take place, not least because some of these efforts – e.g., testing explosives for a warhead – might not even count as violations.

Sanctions Relief

Very little is known about proposed sanctions relief. The short breakout time pursued by the Administration would affect how quickly and effectively any violations could be addressed. The fact that existing sanctions are tied to Iran's enrichment activities, weaponization research and ballistic missile programs would make the scope of sanctions relief an equally critical factor in the tenability of any comprehensive agreement.

A one-year breakout capability would severely constrain the amount of time available for sanctions to take effect after being re-instituted or snapped back into place, were Iran ever caught cheating on a deal. The United States' and European Union's most impactful economic sanctions – targeting Iran's central bank and oil exports – took at least 16 months in 2012-13 to build the necessary momentum for Tehran to make the minimal concessions contained in the JPA. The ability of the P5+1 to deter and punish Iranian violations would decrease in proportion to how quickly these sanctions would be peeled away under a final deal.

The range of sanctions relief would be just as important as the timing. The Administration could repeal all sanctions issued under executive orders whenever it chooses, and could continue issuing waivers to importers of Iranian oil. However, action by Congress would be required to remove the bedrock of the U.S. sanctions regime against Iran, including measures targeting its energy sector, central bank and access to much-needed oil export revenues abroad. These measures, as well as legally-binding UNSC sanctions prohibiting Iran's access to nuclear materials and technology (plus much conventional weaponry), were enacted in response to Iran's violations of its Non-Proliferation Treaty (NPT) obligations – enrichment, PMD and ballistic missile programs – and continue to constrict its nuclear progress.[8]

Congress has made clear its intent to review any final deal before considering sanctions relief. However, the P5+1 – which includes every permanent UNSC member – has yet to spell out the fate of UNSC sanctions in a comprehensive agreement. As per the JPA, any final deal would innately contravene UNSC sanctions by acknowledging an Iranian enrichment program, and likely by requiring neither a resolution of PMD nor concerns over its ballistic missile program.

The question is therefore whether UNSC sanctions would remain in place, as they have under the JPA, or would be removed as part of a final deal (and if so, how quickly). Iranian negotiators have demanded a UNSC resolution revoking these sanctions as part of an agreement, and China and Russia reportedly agreed to ease some restrictions within weeks of a deal coming into force.[9] Anything to this effect would: circumvent Congress's role in reviewing or upholding a final deal; undermine the legitimacy and efficacy of many U.S., E.U. and other countries' sanctions enacted in support of steps taken by the UNSC; and make it incredibly difficult to reapply pressure in response to any future Iranian violations, given potential vetoes by China or Russia.

Sunset Clause

The JPA stipulates any final deal would not be permanent. Rather, all restrictions on Iran's nuclear program contained in a comprehensive agreement would eventually expire. Reportedly negotiators have agreed to the removal of all substantive measures over ten years, with the deal's final "sunset" after 15-20 years. It remains to be seen what the Administration believes would justify a sunset, let alone such a rapid one, especially in the absence of significant rollback and monitoring of Iran's nuclear program, and given the enormous risks of lifting all such measures on a regime whose behavior consistently threatens vital U.S. national security interests.

Preparing for a Final Deal

These questions, among others, can inform Congress's assessment whether a prospective final deal would be acceptable, and what additional restrictions and assurances would be required to ensure an agreement would advance U.S. national security interests. Congress has authority to both expand and revoke many of the sanctions Tehran wants removed as quickly as possible, thus creating a significant opportunity for leverage that could increase the prospects for an acceptable final deal – by passing legislation to review an agreement reached by the Administration, and to ramp up sanctions against Iran in the absence of one.

For its part, the Administration should engage Congress, rather than promising to veto any legislation for Congressional oversight or suggesting that only UNSC approval could make provisions of a final deal legally binding. Iranian negotiators have gained significant concessions by arguing for a deal they can sell back home. The Administration should do likewise by seeking Congressional approval and review of its own policy.[10]

Before a deal would even be struck, the Administration must also work with Congress to develop more credible guarantees of verification and enforcement mechanisms. Given the presumably short breakout timeframe, and the uncertainties surrounding verification, PMD, ballistic missiles, sanctions relief and sunset, the Administration and Congress need to develop a clear and firm plan to address any conceivable violations.

The Administration and Congress would need to lay out a spectrum of penalties, from travel bans and asset freezes on individuals (something the Administration has already done repeatedly), to stiffer economic sanctions on Iranian energy exports and revenues in escrow accounts abroad, with limited or no waiver authority or grace period before entering into force. As it did for Syria and more recently for Islamic State, the Administration should also seek an Authorization for Use of Military Force (AUMF) to spell out the conditions under which the United States would act militarily to prevent a potential Iranian breakout attempt. The United States would also need to boost the credibility of Israel's military options to deter or prevent an Iranian breakout or sneakout, including transferring Massive Ordnance Penetrator (MOP) bunker busters and an appropriate delivery capability.

This begs the question of what categories of violations the United States would need to address, and the relative urgency and severity with which it would have to respond to each category. In general, limited or weak restrictions on each aspect of Iran's nuclear program – first and foremost verification and monitoring – will make it all the more important the United States codify explicit and robust responses to any violations that could occur.

In terms of enrichment infrastructure, a prospective deal that merely places a ceiling on total output – without requiring any dismantlement – will create opportunities for discreet but significant violations by modulating SWU output and/or reconnecting centrifuge cascades. Other potential infringements could include: using existing centrifuges to enrich LEU above an agreed level; diverting LEU stockpiles from declared facilities; conducting R&D to improve existing centrifuges and/or develop new models; and building or operating undeclared facilities for each and every stage in the production of fissile material from natural uranium. For Iran's plutonium track, potential violations could include the pace of construction or conversion of the reactor at Arak, modulating the reactor's output (if it is not converted to a light water reactor), producing fuel for the reactor (either out of natural uranium or 3.5 percent LEU) and reprocessing the spent fuel to recover fissile material.

The United States must also prepare to deal with PMD and ballistic missiles, whether or not they are covered by a final deal. If these issues remain separate from a final deal, U.S. policymakers will need to consider penalties if Iran still refuses transparency on a range of discrete concerns, or if it is caught conducting activities contrary to its statements to the IAEA, regarding possible work on: converting fissile material into a form suitable for use in a nuclear warhead; modeling and testing explosives to trigger a chain reaction in a warhead; and developing a reentry vehicle to place a nuclear warhead atop a ballistic missile. Additional measures would need to be articulated as responses to development

of more advanced Iranian nuclear-capable ballistic and cruise missiles. If these issues are actually resolved as part of a deal, the focus for ensuring an acceptable deal shifts to IAEA monitoring and verification.

Though Iran would receive staggered relief from U.S. sanctions under a final deal, a short breakout timeframe reinforces the need to lay out responses to any potential violations in advance, including but not limited to provisions for quickly reinstituting existing sanctions. This would be doubly important if UNSC sanctions would be lifted – despite Iran still being in violation of the UNSC resolutions that triggered those sanctions in the first place – since these multilateral measures have helped choke off Iran's access to sensitive nuclear technology and materials.

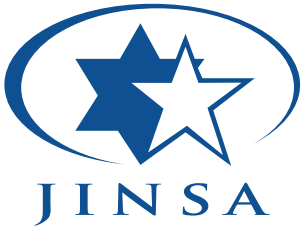
There is also the crucial matter of the sunset clause. After the expiration of a comprehensive agreement, Iran would remain under obligations attendant to its status as a non-nuclear weapons state according to the NPT. Therefore any and all U.S. measures to deter or prevent an Iranian breakout or sneakout – including the capability to impose new sanctions or carry out a military option – should likewise remain after the sunset.

Finally, Iranian negotiators have premised many of their demands for P5+1 concessions on their supposed willingness to make their nuclear program more transparent. While this is highly debatable at best, the United States must hold Iran's negotiators to their own words, and make crystal clear its categorical intolerance for anything that hinders the effective verification of Iran's claims that it is not pursuing – nor has it ever pursued – nuclear weapons capability.

The automaticity of specific penalties for specific violations would simplify and shorten responses to potential cheating and communicate the consequences to Iran in advance, thereby helping deter cheating in the first place. Thus it should be a prerequisite for consideration of any deal that offers such limited roll back of Iran's nuclear program.

Endnotes

1. JINSA Gemunder Center Iran Task Force, "Principles for Diplomacy with Iran," October 14, 2013; JINSA Gemunder Center Iran Task Force, "Assessment of Interim Deal with Iran," January 27, 2014.
2. U.S. Secretary of State John Kerry (October 2014): "Our goal is to shut off each pathway sufficient that we know we have a breakout time of a minimum of a year," in Michael R. Gordon, "U.S. Lays Out Limits It Seeks in Iran Nuclear Talks," *New York Times*, November 20, 2014; see also: "Written Statement by Deputy Secretary of State Anthony Blinken before the Senate Foreign Relations Committee," January 21, 2015.
3. As per the JPA, Iran agreed to ratify and implement the Additional Protocol to its existing IAEA Safeguards Agreement (which it signed in 2003) as part of a comprehensive agreement.
4. In April 2014 a senior U.S. State Department official said reaching a final deal on Iran's nuclear program "will really be like solving a Rubik's cube. We can't look at any one issue in isolation, but rather will have to consider what package we can all agree to that will meet the objectives we have." See: "Background Briefing on the Upcoming P5+1 Talks on Iran's Nuclear Program," U.S. State Department, April 4, 2014.
5. The effect of stockpiles on breakout timing is a function of stockpile amount, stockpile enrichment level and chemical form of the stockpile (uranium hexafluoride, suitable for further enrichment, or uranium oxide, which must first be reconverted to uranium hexafluoride). To slow Iran's breakout time, the JPA requires it to convert all 20 percent LEU stockpiles, and all 3.5 percent LEU stockpiles created during the interim deal, to uranium oxide. It also prohibits Iran from enriching any additional 20 percent LEU.
6. Michael R. Gordon and David E. Sanger, "Iran Nuclear Talks Lag, With Status of New Centrifuges Another Hurdle," *New York Times*, March 19, 2015.
7. William J. Broad and David E. Sanger, "What Iran Won't Say About the Bomb," *New York Times*, March 7, 2015.
8. Many Congressional sanctions also include a verifiable termination of Iran's support for terrorism among the sunset provisions.
9. "AP Exclusive: Draft agreement cuts Iran's nuclear hardware," Associated Press, March 19, 2015.
10. Michael R. Gordon and David E. Sanger, "Senator Corker Pushes Obama for Congressional Vote on Iran Deal," *New York Times*, March 12, 2015.



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