

## **Introduction**

Pursuant to the Iran Nuclear Agreement Review Act (INARA) of 2015 (Public Law 114-17), President Trump must determine every 90 days whether he can certify that Iran is complying with the Joint Comprehensive Plan of Action (JCPOA) and that suspension of U.S. sanctions remains both proportionate to Iranian actions and vital to U.S. national security.

U.S. Ambassador to the United Nations Nikki Haley laid out a robust case for why the President should determine next month that he can no longer make such a certification. Indeed, the body of evidence supporting Ambassador Haley's position continues to grow.

Iran's refusal to allow inspections at key military sites makes it impossible to fully verify Iranian compliance with the JCPOA. The regime's accelerating ballistic missile program violates the JCPOA's related agreements and, given the proliferation nexus between Iran and North Korea, poses a clear and present danger to U.S. national security. Meanwhile, Iran's exploitation of sanctions relief to build up its military presence in Syria and Lebanon undermines U.S. security interests and puts our closest Middle East ally in grave danger.

If President Trump opts to "recertify" Iran under INARA, the Iranians will feel emboldened to double down on their illicit activities, viewing the President as weak and full of empty bluster. Rogue leaders around the world, including in Pyongyang, will take note – something for which no amount of symbolic sanctions imposed on a few companies or individuals can compensate.

On the other hand, if the President merely "decertifies" Iran under INARA and punts to Congress without any plan for additional executive action, the President could look impotent on one of the most important national security threats facing the nation and America would be sending a signal of weakness.

This memo presents a viable path for the President to "decertify" Iran under INARA without punting to Congress – a strategy that holds Iran publicly accountable for its illicit activities, preempts congressional action and strengthens U.S. diplomatic and economic leverage to curb Iranian behavior without resorting to immediate military action.

### **Step 1: Decertification**

The President should determine that he cannot certify Iran's compliance with the JCPOA and/or that sanctions relief is vital to U.S. national security – and he should base this determination on a specific list of Iranian behavior that the United States will observe and reevaluate during the following 90-day period. This may include the impossibility of verifying compliance without access to certain sites, testing or development of ballistic missiles, or military activities in Syria and Lebanon.

The legal case in defense of decertification is straightforward. The language of INARA is intentionally broad and subjective to allow the President to make the determination he deems is in the best interest of U.S. national security. The President could easily argue he cannot

determine whether Iran is “verifiably” implementing the JCPOA due to the regime’s refusal to allow inspectors in key military sites. He could also legally argue that the indefinite suspension of the most powerful financial sanctions in history (e.g. sanctions on the Central Bank of Iran, SWIFT messaging services, oil exports and more) is neither “appropriate” nor “vital to the national security interests” given the strong perception that the United States is handcuffed by the JCPOA in the face of growing Iranian illicit behavior.

Finally, from the international legal perspective, a presidential certification to Congress by itself is not a prohibited action under the JCPOA. Nothing in the agreement precludes the President from making determinations and submitting reports to Congress. Enacting the Iran Nuclear Agreement Review Act – and establishing its presidential review procedure – did not constitute a violation of the JCPOA, which is presumably why President Obama signed it into law. Therefore, presidential compliance with the Act should not constitute a violation of the JCPOA either.

## **Step 2: Put Iran on Notice – Total Sanctions Coming Back at Any Moment**

Since the act of “decertifying” under INARA is itself not a violation of the JCPOA, the moment the President makes his determination, the United States will still remain a party to the P5+1 agreement. A decision by Iran to abandon its JCPOA nuclear commitments would be unwarranted. However, this is the key moment when Iran either views “decertification” as meaningless symbolism or as a credible threat.

To influence Iranian behavior after “decertification,” Iran’s leaders must credibly believe two things: 1) an immediate U.S.-led economic embargo is possible, and 2) the regime would not win a race to the bomb if it chose to break away from its remaining JCPOA commitments.

First, Iran must believe President Trump has the ability and political will to impose a de-facto global economic embargo within hours by re-imposing all sanctions lifted under the JCPOA (particularly CBI, SWIFT, ITRA and CISADA sanctions but also sector-based, insurance and precious metal sanctions) *and* issuing by executive order all other potential sanctions left on the table, including sanctions on Iranian oil exports and transactions conducted in currencies other than dollars. There would not be a delayed implementation period under this scenario or handholding time to reassure allies. This would be a 21<sup>st</sup> century financial version of Kennedy’s Cuba quarantine. Upon “decertification,” the President and his senior advisers must highlight his ability and political will to do this if Iran does not curb its illicit behavior over the 90 days ahead.

Second, Iran must believe that if the U.S. pursues an immediate global sanctions embargo, the timeline of regime instability and economic collapse could be faster than nuclear “breakout.” While Iran’s economy has stabilized somewhat due to the sanctions relief provided under the JCPOA, the regime’s underlying economic stability remains fragile. A sudden termination of access to its foreign accounts, suspension of insurance across all industries, cutoff from SWIFT and all foreign financial institutions and a dramatic drop in expected oil exports would trigger an immediate currency crisis inside Iran. The bazaars of Iran would be overcome with chaos and fear. A period of regime instability would quickly follow, posing an existential threat to the Supreme Leader far sooner than the 7-12 month timeline needed for Iran to “break

out” (based on where the Iranian nuclear program paused under the JCPOA). At the very least, the period of instability triggered by the U.S. sanctions embargo would buy valuable time to explore more creative and effective military options as a last resort.

In the end, we must keep in mind the fundamental rule of dictatorship: the regime’s top priority is staying in control. A credible threat to regime stability – a sanctions Sword of Damocles hanging over the Supreme Leader – could incentivize Iranian behavioral change.

### **Step 3: Make it clear to Europe and Asia that re-imposed sanctions will be enforced**

So far, this memo has addressed two of the three most likely criticisms that opponents of “decertification” will make. First, they will claim President Trump is violating the JCPOA. As discussed, “decertification” by itself is not a violation. Second, they will ask rhetorically, “Now what?” – suggesting that “decertification” closes the door for diplomacy and condemns us to war. Again, this memo demonstrates that the credible threat of total U.S. secondary sanctions that could be leveled at any moment is the best chance of supporting aggressive diplomacy and avoiding military conflict.

The third criticism will be that the United States would be unsuccessful in re-imposing secondary sanctions against Iran because we will no longer have the cooperation of the European Union, China, India, Japan, South Korea and other key Iranian trading partners. According to these critics, the only reason sanctions worked before was because of this diplomatic cooperation. In reality, however, this is a myth invented in 2012 to give President Obama a talking point in his reelection after repeatedly opposing most major sanctions enacted by Congress.

The notion that European and Asian banks would simply ignore the threat of U.S. sanctions is unrealistic and contradicted by history. In practical terms, international corporations have a few things in common – investors, lawyers and an aversion to risk. No general counsels in their right minds would advise a corporate headquarters to play chicken with access to the U.S. financial system. There may be some public relations maneuvering to save face with their domestic constituents and/or the Iranians themselves, but in the end companies that do business in U.S. dollars will halt all activities that could lead to serious jeopardy.

We saw this happen from 2009-2012 whenever Congress considered powerful sanctions. Each time, allies in Europe and Asia put up a fight only to fall in line once Congress prevailed.

However, the Trump administration should take nothing for granted. The White House, State Department and Treasury Department should send clear messages to European and Asian capitals that if the President decides to impose a total sanctions regime, it will happen swiftly and it will be enforced. The threat alone should create a chilling effect on currently legal commerce operating under the JCPOA sanctions relief, which will provide additional leverage for diplomacy over the following 90 days.

## **Conclusion**

The President is looking for a path to “decertification” that can build consensus among his national security advisers, especially those who fear the question: what next? Establishing a credible threat of a total U.S. financial embargo in-waiting would enhance U.S. diplomatic leverage to curb Iranian illicit behavior and allow for a period of further evaluation at the end of the next 90-day period.