The next U.S. president confronts a tough decision on whether and how to play out the unfinished hand that she or he will inherit in the high stakes arena of nuclear proliferation. A key question is what to do about the Joint Comprehensive Plan of Action (JCPOA), the controversial nuclear deal that the United States and five other world powers struck with Iran in the summer of 2015. For better or worse, the JCPOA now stands as the precarious linchpin of U.S. efforts to avert a dangerous nuclear proliferation spiral in the Middle East that would have global reverberations. This negotiated settlement with the Islamic Republic represents an audacious gamble by President Obama, not least because its durability relies on his successor’s willingness to carry forward a fragile political bargain in the face of persistent doubts about its fundamental merits, both at home and among the United States’ closest partners in the region. In other words, the stage is set for a new president to reassess the wisdom of continuing U.S. support for the JCPOA.

While I have argued against the deal on its demerits and harbor serious concerns about its ultimate efficacy, this essay explores why it is not smart for Washington to walk away now, despite the very real risk, or even likelihood, that the JCPOA will fail to prevent Iran from going nuclear sooner or later. In this context, the essay argues for a hedging strategy that includes a reemphasis on...
on supply-side efforts to impede Iran from improving its nuclear and missile capabilities from within the JCPOA framework.

Prospects for a Contentious Deal

Whether U.S. support for the Iran deal can be sustained through the transition to a new administration would seem to be on somewhat shaky ground. Skillful legislative maneuvering allowed President Obama to avoid the stigma of enacting the JCPOA through a veto over the opposition of majorities in both houses of Congress. But the deal was and remains strenuously opposed by congressional Republicans and also more than a few prominent Democrats, with even many of its backers voicing reservations. In this fraught political context, the JCPOA faces a presidential transition with only the tenuous legal standing of an executive agreement, one that a new president can summarily renounce. As it stands now, the only durable enactment of the JCPOA comes from its endorsement in UN Security Council Resolution 2231 (UNSCR 2231). While in theory, this remains binding on the United States and other UN members until and unless it is superseded, it is doubtful that this would offer much of a hurdle should a new U.S. president decide that it is in Washington’s interests to seek to renegotiate or renounce the deal.

Given the strenuous doubts that most prominent Republicans continue to voice over what many see as a naïve and reckless gamble by President Obama, it seems reasonable to suppose that the fate of the JCPOA hangs almost entirely on November’s presidential election. After all, Republican nominee Donald Trump has witheringly attacked what he derides as a “horrible” and “disastrous” agreement. By contrast, Democratic nominee Hillary Clinton has endorsed and steadfastly defended the deal. Counterintuitive as it may seem, however, it is more than likely that the election outcome will not make all that much of a difference. How is that possible? As explored below, there are good reasons for a President Trump to stop far short of renouncing the Iran nuclear deal, just as there are countervailing reasons for a President Clinton to edge away from fully embracing President Obama’s unbridled enthusiasm and custodial protectiveness. In fact, the candidates are already sending discernable signals along these lines that telegraph converging positions down the middle.

In the heat of the Republican primaries, Senator Ted Cruz vowed immediately to “rip
to shreds” the Iran deal if elected president without waiting to see if Iran complies with its terms; by contrast, Donald Trump as a rule neatly sidestepped making any such promise with scornful mockery of President Obama’s poor negotiating prowess focusing instead on the need for tougher enforcement. Moreover, while he made headlines in a speech to a pro-Israel audience by vowing to “dismantle” the Iran nuclear deal, he walked this position back later in the very same speech with this telling caveat: “At the very least, we must enforce the terms of the previous deal to hold Iran accountable. And we will enforce it like you’ve never seen a contract enforced before …”5

As for Hillary Clinton, she has subtly been tempering her support for the JCPOA by likewise taking a strong line on the need for tough (and by inference tougher) enforcement, while also stressing deep misgivings about Iran’s trustworthiness. In fact, Trump and Clinton seem to be staking out a more or less similar approach that entails reaffirming U.S. support for the JCPOA while taking a tougher stance on holding Iran to its side of the bargain. The discussion that follows explores and acknowledges the logic of this approach, but at the same time posits that it entails serious perils—arising from the inherent flaws and limitations of the JCPOA framework—that suggest the need for a hedging strategy that goes beyond merely taking a tougher approach to enforcing Iranian compliance.

**For the Next President, Balancing Bad Choices**

Something of a cottage industry has grown up around debating the strengths and weaknesses of the Iran deal since its broad outlines came into view more than a year ago. On the negative side of this ledger are concerns about the interlinked compromises and concessions that encompass the JCPOA bargain. Skeptics worry that its verification and enforcement mechanisms are too weak to guard effectively against cheating, no matter how vigilantly they are enforced. Worse still, many argue that its early “sunset” provision (meaning that key parts of the deal last for only ten years) could allow a strategically patient Iran to chart a path over the next decade that ultimately will let it attain a far more robust arsenal of nuclear-armed missiles than it could otherwise have hoped to achieve, all while enjoying a veneer of international legitimacy for adhering to the agreement, and without any need to cheat. How? The deal concedes Iran’s right to enrich uranium and allows it to retain a robust residual infrastructure to do so in the future, as well as to continue research and development on advanced centrifuge technology; at the same time, the deal does not halt the development of ballistic missiles that can deliver nuclear weapons. Within the enabling context of an economic windfall from
Iran could emerge from the JCPOA rapidly able to field a formidable nuclear arsenal. Therefore, it is vastly better than the perceived alternatives of either allowing Iran to cross the nuclear finish line or going to war to prevent it from doing so. At the very least, supporters note that the deal delays any Iranian nuclear ambitions for at least a decade, meanwhile stretching out Iran’s “breakout” (the time it would take Iran to build nuclear weapons) from only a couple of months up to now a year or more. Whatever shortcomings it may have from the ideal, supporters note that the JCPOA imposes restrictions that go well beyond those in the Nuclear Nonproliferation Treaty (NPT), which governs the nuclear programs of most other countries.

For his part, President Obama and his top aides have expressed unwavering confidence that the JCPOA has blocked Iran’s path to nuclear weapons and, more broadly, perhaps opened a door to rethinking its hostile relationship with Washington. A challenge for the next president is that Inauguration Day is probably too soon to know whether the naysayers or cheerleaders will be proven correct. As a prominent French analyst observes, the Iran deal amounts to an unprecedented experiment in strategic risk-taking with a denouement that lies years away.

For now, the indications remain decidedly mixed. On one hand, Iran has fulfilled key JCPOA requirements by transferring the entirety of its acknowledged stockpile of low-enriched uranium to Russia and allowing the International Atomic Energy Agency (IAEA) to resume monitoring its declared nuclear facilities under provisional application of enhanced safeguards, known as an Additional Protocol. At the same time, it is early days: even the most optimistic observers should be willing to concede that there are mounting reasons to question Iran’s long-term intentions.

The problem specifically for Donald Trump—even assuming that he agrees with those who harbor grave doubts about the JCPOA—is that it is already too late to prevent the deal’s most damaging effects. The economic and political benefits of the JCPOA for Iran were frontloaded in ways that will be difficult to reverse. Absent flagrant and persistent Iranian violations of core JCPOA
provisions (and perhaps not even then), the chances that the UN Security Council (UNSC) will enact so-called “snap back” sanctions or any other truly punishing measures are slim to vanishing. This has already been shown by the anemic responses of China and Russia (both parties to the JCPOA and permanent UNSC members) in the wake of two separate Iranian ballistic missile tests since the JCPOA went into effect in January 2016, tests that openly defy the explicit missile restrictions in UNSCR 2231. Indeed, it is telling that these missile restrictions are now being characterized by Russia and others more as guidelines than as clear-cut and enforceable rules.

Put bluntly, the ante for this bet has already been paid out, so there is little upside for the United States to walk away now in defiance of UNSCR 2231. By staying in the game, either the Iranians can be made to uphold their side of the bargain over the next decade—and thereafter be held to the indefinite nuclear weapons prohibitions of the Nuclear Nonproliferation Treaty (NPT)—or they can be revealed as not holding up their end, and only then can the slow and painful work of multilateral diplomacy begin to reinstate the Islamic Republic to its pariah status as a nuclear nonproliferation scofflaw. NPT provisions—including the core prohibition against possessing nuclear weapons—are of indefinite duration, meaning that unlike the JCPOA, there is no sunset provision. This means that Iran will continue to be bound by this core NPT restriction even after the JCPOA expires, until and unless it formally withdraws from the NPT (as happened with North Korea when it acknowledged and embraced its previously covert nuclear weapons program).

The bottom line for skeptics is that, whether by accident, negligence, or design, President Obama has put his successor in a box by agreeing to a structure and sequencing for the JCPOA that all but ensures that, if the new president were to walk away precipitously from the deal, Iran would retain most of its gain and the United States would get most of the blame.

The problem specifically for Hillary Clinton, even assuming that she agrees with those who remain optimistic that the JCPOA can deliver as promised, is the steady drumbeat of Iranian provocations that keep raising troubling new doubts. From the very moment that the JCPOA was finalized, Iran began engaging in a familiar cat-and-mouse game with the IAEA—for example, banning Americans from participating on inspection teams, imposing limitations on inspections at certain military sites, denying access to nuclear scientists involved in its programs, and failing fully to cooperate to disclose past military dimensions of its nuclear program.11

Moreover, concerns raised by these Iranian actions have been reinforced by a damaging drip of revelations about secret side-deals that seemingly were concluded during and after the JCPOA negotiations, including allegations that Iran is being allowed to conduct “self-inspections” on behalf of the IAEA at least at one military site, and most recently that Iran has been allowed to exceed limits on enriched uranium, and also that key restrictions on Iran’s nuclear program will end
several years earlier than had been previously disclosed. Nor have these poor optics been improved by gleeful confirmations about Iran’s ambitious nuclear plans from Iranian leaders such as Foreign Minister Mohammed Zarif, nor by lurid media accounts of sanctions relief tied to leveraging the release of American prisoners in the form of cash transfers of hundreds of millions of dollars in frozen assets sent to Iran in unmarked planes. Suffice it to say that when fifteen Democratic senators publicly call out President Obama on the need to improve the transparency of JCPOA implementation, any newly elected Democratic president should think about the need to provide reassurance.

In terms of the bigger picture, any hopes that nuclear diplomacy might pave the way for a wider rapprochement with Iran have remained profoundly unrealized. Instead, Iranian leaders, up to and including Supreme Leader Khamenei, have been at pains by word and deed across a range of issues to dispel any notion that the nuclear deal heralds a thawing in relations with the United States. Backing up hostile words with concrete deeds, Iran has passed a massive increase in military spending—by an eye-popping 90 percent—since the nuclear deal’s package of sanctions relief began taking effect.

Finally, Iran’s defiant missile tests stretch the credulity of any benign interpretation of its ultimate nuclear intentions. Although nuclear missile systems are not explicitly covered within the actual JCPOA agreement, the United States and its negotiating partners explicitly sought to address this critical part of Iran’s nuclear weapons program by codifying parallel restrictions in a provision of UNSCR 2231, the authorizing resolution for the JCPOA. But now that Iran has blown through this piece of UNSCR 2231 without suffering serious consequences, even as it abides by the core provisions of the JCPOA, it has effectively decoupled what were supposed to be mutually reinforcing arrangements. These developments have led even President Obama to concede that Iran is living by the letter but not the spirit of the agreement. Hillary Clinton has gone even further, taking the stance that Washington must now “distrust and verify” when it comes to Iran’s nuclear intentions, even as she has repeatedly reaffirmed her support for the JCPOA.

**A Wider Hedging Strategy**

The Obama administration thus finds itself in the awkward position of seeking to preserve the JCPOA, seemingly at all costs, while at the same time condemning...
and trying to impede Iran’s ballistic missile programs, all while coping with a plethora of Iranian actions inimical to U.S. interests outside of the nuclear realm. This is a tricky balancing act, and President Obama has come in for increasingly bipartisan criticism that he has been tilting too far toward placating Iran. As one deeply skeptical Democratic senator lamented, the Obama administration seems to be “walking on eggshells” when it comes to enforcing strict compliance with the JCPOA or taking Iran to task in other areas, all for fear of giving Iran a pretext to renounce the deal that stands as the outgoing administration’s signature foreign policy legacy. Indiscreet revelations by a key White House aide about manipulating public perceptions of the Iran deal by spinning it to inexperienced reporters have only reinforced these perceptions, which have fueled questions about the veracity of the Obama administration’s narrative on the JCPOA.

To the extent that critics are correct that the Obama administration has been downplaying Iranian violations or reinterpretations of the JCPOA for fear of giving Iran an excuse to walk away from the nuclear deal, it should be seen as good news that either a president Clinton or Trump is likely to bring a more vigorous approach to holding Iran to account. If Iran’s fealty to the bargain is so fragile, or if Tehran is merely using it as leverage to cow Washington in other areas, then for all intents the nuclear deal is illusory, and the sooner we figure this out, the better.

Yet, while tougher compliance enforcement is a good start, it is not in itself anything like a sufficient safeguard against covert cheating, given the limitations of the JCPOA’s verification mechanisms and Iran’s proven skill at spoofing international oversight of its nuclear programs. Nor can even the strictest enforcement of the JCPOA address worries that Iran will continue to improve its latent nuclear capabilities within the ample scope that the JCPOA permits. Nor will enforcement thwart Iran’s open flaunting of parallel ballistic missile restrictions that technically fall outside the explicit scope of the JCPOA. In sum, stricter JCPOA enforcement is necessary but insufficient; a parallel hedging strategy is needed, one that does not violate any specific U.S. commitments within the JCPOA framework, but that goes beyond merely enforcing its provisions with greater diligence.

Of course, there is nothing especially new or original about the idea of trying to hedge against the risks of the JCPOA. However, there has been surprisingly little focus on doing so by impeding Iran’s nuclear weapons capabilities beyond what the deal provides. Instead, foreign policy experts have focused on the immediate need to discourage Iranian regional adventurism in places like Syria and Yemen, while preparing for the longer-term possibility of containing a nuclear-armed Iran through nuclear deterrence and missile defenses. But I would argue that a deliberate additional hedging element should also focus on further forestalling the likelihood of an Iranian nuclear breakout for the duration of the JCPOA and beyond.
This is where reinvigorating the so-called “supply side” of nuclear nonproliferation efforts should take center stage, in tandem with strict enforcement of Iranian compliance with the terms of the nuclear deal.

What is supply-side nuclear nonproliferation? This obscure term encompasses a variety of ways to prevent potential proliferators from obtaining the wherewithal to produce nuclear weapons and associated missile delivery systems by impeding the transfer of equipment, technology, and know-how for use in programs of proliferation concern. In contrast to the “demand-side” approach of negotiating consensual agreements that ban or restrict such weapons, such as the NPT and JCPOA, this approach does not rely on the consent and cooperation of Iran. Nor is it something new, or especially provocative, or even something that always specifically targets Iran. Supply-side nonproliferation mechanisms—including unilateral and multilateral sanctions, national export licensing, and multilateral export control and interdiction regimes—are longstanding elements of the global nonproliferation structure, and part and parcel of the U.S. nonproliferation toolkit that are intended to complement demand-side arrangements.

These supply-side efforts have been languishing in recent years, as the Obama administration has focused its energies overwhelmingly on demand-side initiatives including negotiating the JCPOA itself. This affords the next president a golden opportunity to bolster the supply side of the equation, even while continuing to test the efficacy and durability of the Iran nuclear deal’s demand-side proposition.

At the same time, a note of caution is in order: the next president will need to overcome the major obstacle of rallying international support to bolster supply-side efforts against Iran that has been created by the cloak of legitimacy that the JCPOA has given to Iran’s latent nuclear capabilities. As countries around the world are rushing to capitalize on lucrative new trade prospects in the wake of lifting UN sanctions against Iran—including some of our closest European and Asian allies such as France, Germany, Japan, and South Korea—there will be ever stronger economic incentives to treat the JCPOA as a clean nonproliferation bill of health as long as Iran is broadly abiding by its terms. This dynamic will be strengthened by the fact that the JCPOA itself already includes a supply-side mechanism in the form of a Special Procurement Channel, which is intended to oversee transfers to Iran of dual-use equipment and technology with potential nuclear and missile applications.

Administered by a Procurement Working Group under the JCPOA Joint Commission, this mechanism in effect replaces the supply-side enforcement role of the UN Iran Sanctions Committee. Thus, Iran and others will have a compelling
argument that the need for supply-side measures has already been met, making further or even existing initiatives outside of the JCPOA unnecessary, if not outright illegitimate. The problem is that the JCPOA mechanism will almost certainly prove too weak to be relied upon as a lone safeguard. For example, we can expect political differences to bedevil a process in which Russia and China play key roles, and whose involvement will also limit the scope for sharing sensitive intelligence to inform decisions. There are also various technical limitations baked into this mechanism, such as short decision timelines that will curtail the thoroughness of the review process for each individual transaction. But these weaknesses are unlikely to prevent many countries from using the JCPOA mechanism as a justification for not doing more to ensure against covert Iranian nuclear-and missile-related procurements.

This lulling effect instilled by the JCPOA necessarily constrains the scope for revving up supply-side hedging options. That said, some options present themselves.

Reinvigorating Supply-Side Nonproliferation

There are several easy ways to reinvigorate supply-side nonproliferation consistent with where we stand with the JCPOA. One is to focus on strictly unilateral measures that do not require international cooperation. Another is to focus on measures involving coalitions of willing countries that recognize the urgent need to guard against the JCPOA’s risks. Another is to focus on broad international measures that do not explicitly target Iran’s nuclear program. Finally, another is to focus on measures that apply specifically to Iranian missile programs, since these are in flagrant violation of UNSCR 2231 strictures. What follows are a few readily achievable proposals that incorporate one or more of these workarounds that together could be easily packaged into an initiative by the next president to reinvigorate supply-side nonproliferation as part of a broader hedging strategy.

Give Presidential Oomph Back to the Proliferation Security Initiative (PSI)

The Proliferation Security Initiative (PSI) is a loose network of like-minded partner countries, launched by President George W. Bush in 2003, in order to facilitate better multinational cooperation to interdict intransit shipments of illicit and dual-use items destined for any and all programs of proliferation concern. In many ways, it is seen as a paradigm of muscular supply-side proliferation prevention.

Although initially greeted with some domestic and international wariness in the face of a maelstrom of protests by potential targets
like Iran and North Korea, the PSI has come to enjoy widespread bipartisan support at home and has grown to more than a hundred partner countries from every region of the world. Indeed when President Bush left office, it was seen as one of his signature foreign policy achievements, and one that President Obama came to office vowing to enhance and strengthen. But instead, the PSI has largely lost its vitality. During the Bush administration, claims of frequent operational successes were attributed to the PSI. At that time, the PSI featured an intense annual schedule of operational planning meetings and exercises, periodic high-level political meetings, and frequent presidential shout-outs. By contrast, President Obama himself scarcely mentions the PSI, claims of operational successes have fallen by the wayside, the pace of operational meetings and exercises has slowed dramatically, and formerly high-level political meetings have recently been downgraded to mid-level affairs.

This proposal is first on the list to reinvigorate because it is so easy and obvious. Indeed, it is difficult to understand why it has not yet occurred; everything is already in place, and all the next president needs to do is revive it. As a bonus, Iran need never be cited as an explicit justification. North Korea is already subject to the gamut of international prohibitions on its nuclear and missile programs and associated trade. The escalating sense of crisis that is arising from its ongoing nuclear and missile tests more than justifies a renewed emphasis on the PSI. Given North Korea’s long history of covert proliferation cooperation with Iran, along with the latter’s use of a far-flung global procurement network, reenergizing this global interdiction network because of North Korea would also serve to complicate any covert Iranian missile or nuclear transfers in violation of JCPOA rules. If President Obama persists in ignoring this low-hanging fruit, then it should be on his successor’s plate for Inauguration Day.

**Intensify and Multinationalize Post-Shipment Verification (PSV) Inspections**

Lifting nonproliferation sanctions against Iran puts greater reliance on the effectiveness of national export licensing processes. These are designed to ensure that sensitive equipment and technologies, approved for sale to Iranian commercial or governmental entities for legitimate purposes, do not find their way to Iran’s overt missile programs or any covert elements of its nuclear programs. Pre-licensing checks are at the heart of this process, not only in individual national decisions, but also for the extra layer of oversight established by the JCPOA through its Special Procurement Channel. But especially for high-risk situations like Iran, more diligence is needed than this traditional ‘fire-and-forget’ approach.

One ready remedy is to make more and better use of post-shipment verification (PSV) inspections. Washington has longstanding PSV programs run by the Commerce and State Departments that provide the opportunity for ongoing
monitoring through on-site overseas visits. This is done through the simple expedient of requiring the importer to grant the United States the right to conduct future on-site end-use checks as a condition for approving an export license allowing the sale to go through. This system permits extended compliance oversight by allowing responsible U.S. enforcement agencies to confirm at any time that any given item is being used where and for what it was licensed. The United States conducts hundreds of these overseas verification inspections each year. Needless to say, if the United States and others were to conduct intensive PSV efforts focusing on Iran, it could offer a potent tool to guard against Iran spoofing national export controls and JCPOA procurement safeguards, especially given Tehran’s hitherto successful track record with covert procurement networks.

Unfortunately, the United States woefully underutilizes this potentially potent nonproliferation tool, and most other countries do not utilize it at all. The problem in Washington boils down to resources. High-level awareness or appreciation of this tool has just not been there consistently over the years, making funding a relatively low priority at very senior policy levels. This dynamic is compounded by the fact that the heavy lifting for dual-use PSV falls to the Commerce Department, where national security missions remain a sideline for top officials.

The Sentinel program within Commerce’s export enforcement arm operates a limited number of two-person “flying teams” that can be sent anywhere in the world. Law enforcement agents who have received specialized training lead them, but they lack extensive technical expertise. These Sentinel teams are supplemented by eight export control officers assigned to key U.S. embassies in places like Russia, China, India, and Singapore. These are not law enforcement agents, but still have some specialized training. Otherwise, the Commerce and State departments rely on local embassy staff with little or no specialized training to conduct on-site visits. Expanding the numbers, training, and technical reachback for Sentinel teams and embassy export control officers could allow the United States to expand significantly the volume and effectiveness of PSV inspections. This offers a tremendous nonproliferation payoff for what in the greater budgetary scheme of things is a pittance.

Good as it would be to improve U.S. post-shipment monitoring, however, the real opportunity lies in encouraging and supporting other responsible governments to institute or improve PSV inspections, especially since so much of the post-sanctions trade openings with Iran are coming from Europe and Asia. Only a few countries, such as Canada, France, and Japan, now perform any type of post-shipment monitoring, and even these few do not regularly conduct rigorous on-site inspections.
Moreover, although the United States nominally encourages other countries to institute PSV as a nonproliferation best practice, it has not pushed very hard. This can and should change. Both bilaterally and in multilateral venues like PSI, the Nuclear Suppliers Group (NSG), and the Missile Technology Control Regime (MTCR), Washington should launch a full-court press at senior policy levels for our closest nonproliferation partners to put in place full-scope PSV programs within their export licensing systems. In doing so, Washington should offer a robust assistance program of training, technical support, and cooperative implementation (perhaps even offering up U.S. “flying teams” and local embassy export control officers to serve as advisors on other countries’ inspections).

At a minimum, PSV inspections should be used extensively for sensitive transfers to new business partners in or affiliated with Iran. But given Iran’s unsavory history with covert procurement networks using a myriad of illicit front companies spread around the world, including in major transshipment destinations, the wider a PSV net that can be cast, the better.

**Upgrade and Flex the Missile Technology Control Regime (MTCR)**

Acquiring and operationalizing a force of intermediate- and long-range missiles that can reliably and accurately deliver nuclear warheads to distant targets is a key unfulfilled requirement in order for Iran to join the ranks of recently risen nuclear powers like India and Pakistan. Moreover, as the case of North Korea demonstrates, this can pose an equal or greater challenge than building the actual nuclear explosives. Since Iran is aggressively pursuing a muscular array of such nuclear missile programs, unrestrained by the JCPOA and in blatant disregard of UNSC prohibitions, this should be a key priority for bolstering supply-side impediments. Unfortunately, the longtime centerpiece of U.S. and international efforts to curtail missile nonproliferation, the venerable Missile Technology Control Regime (MTCR), has grown a bit rusty with age.

The MTCR is a voluntary multilateral arrangement launched in 1987 by the Group of Seven (G7) industrialized countries to set common rules for, and coordinate implementation of, their national export controls on goods and technology that could contribute to long-range ballistic and cruise missile programs associated with nuclear weapons. Despite many laudable successes over the decades, the MTCR has been increasingly stymied by inconsistent adherence by some...
members and a general inability to update its rules in the face of emergent threats (such as the proliferation of long-range cruise missiles equipped with stealth and other penetration-aiding technologies).

One reason for this is that the alignment of the MTCR with U.S. nonproliferation priorities has attenuated as its membership has expanded from the like-minded G7 partners, who are all close allies, to its current roster of 34 diverse countries, including some with which Washington has complicated relations such as Brazil, Russia, and South Africa. Because the MTCR operates by strict consensus, meaning that every member has a veto over rule changes, outliers are empowered to block any proposal to expand or strengthen those rules. Moreover, since the regime is premised on voluntary cooperation, it lacks any meaningful enforcement mechanisms to deal with instances of lax interpretation or enforcement. Finally over the years, oversight and diplomatic representation in the MTCR by the United States and other countries has devolved from senior policy levels to lower levels of technocratic bureaucracy, removing any hands-on involvement at senior political levels to understand and fix these problems.

Here, too, the remedies are straightforward. As an immediate first step, Washington should upgrade oversight and representation for the MTCR (and the NSG) to the ambassadorial or assistant secretary level and encourage at least the other founding G7 partners to do likewise. This would pave the way for convening a “Friends of the MTCR” founder’s caucus at senior political levels to steer innovation and improve diplomatic coordination. This would amount to a back-to-basics initiative, creating a sidebar venue where these key founding partners could propose additional rules among themselves and then encourage other members to consider adopting them.

This informal steering group would not (and could not) change the regime’s existing rules or processes, since this can only be done by consensus among the entire membership. What it could do though is sidestep the persistent misuse of the consensus rule—meant to ensure that no country has decisions imposed on it—by those using the veto of one or a few from preventing the majority of those who are willing to go further and do more. Such a new mechanism would also allow this core group of MTCR countries to better coordinate enforcement of existing MTCR rules (among themselves and as a unified front with others), for instance ensuring that there is no waning vigilance when it comes to Iran.

Preserve Flexibility to Impose New Unilateral Sanctions (Especially on Missiles)

Although the JCPOA provides Iran with a broad package of sanctions relief, the president still retains a formidable array of sanctions options that allow for targeting new sanctions against Iran including to target its missile programs. For example, since the JCPOA took effect, the Obama administration has used
extant executive orders to impose new sanctions in March 2016 against more than a dozen Iranian and foreign entities found to be involved in supporting Iranian missile programs. For its part, the Obama administration has resisted new legislative proposals aimed at bolstering Iran missile sanctions, arguing that residual sanctions offer sufficient flexibility. Nonetheless, it is simply indisputable that the sanctions toolkit that will be available to the next president has been significantly curtailed by the JCPOA, including for the very missile programs that Iran adamantly insists are not covered by the JCPOA’s constraints. This erosion in the sanctions regime is most pronounced in the waiver of virtually all provisions of the Iran Sanctions Act (ISA) of 1996, which absent legislative action will expire completely at the end of 2016.

Notwithstanding the Obama administration’s reservations, there is an overwhelming case for preserving the flexibility of the next president to impose sanctions for problematic Iranian behavior that falls outside the explicit scope of the JCPOA including for acts of terrorism, cyberattacks, arms trafficking, human rights violations, and of course missile proliferation. Happily, this a is rare area where there seems to be significant bipartisan convergence, with the debate in Congress focusing on whether merely to extend the ISA or to do so while also bolstering sanctions for ballistic missiles and other areas. Ideally, a bipartisan agreement can be reached to strengthen missile sanctions in the face of Iranian defiance of this element of UNSCR 2231, but even if all that can be managed is to extend ISA and continue to use it vigorously as a tool to deter assistance for Iran’s unabated missile ambitions, it would still be helpful.

Conclusion

As we have seen in cases like India, a tipping point exists after which a country, in this case Iran, can acquire enough indigenous nuclear and missile capability that supply-side curbs on external assistance will have a rapidly diminishing marginal impact. We have probably passed that point on the nuclear side of the equation, as demonstrated by U.S. estimates that the JCPOA leaves Iran with the capacity to produce nuclear weapons in about a year.

That said, mindful that covert development could shorten this window, and knowing that the Iranians will be taking full advantage of the JCPOA’s permissiveness regarding advanced nuclear research, it behooves us to make things as transparent and difficult for them as possible within the scope permitted by the JCPOA through both tough enforcement of its provisions and vigilance to detect and prevent any cheating.

When it comes to missiles, however, the JCPOA poses no constraints, but UNSCR 2231 affords ample justification and authority for applying stringent
supply-side vigilance while there is still time to do something. Iran has not yet succeeded at achieving intercontinental ballistic missile capabilities, as some had anticipated it would have by now. Expert observers believe that Iran continues to grapple with guidance and control challenges to ensure the accuracy of its longest-range missiles, especially the Sejjil, its most militarily useful solid-fueled system. Iran also is still working to improve its ability to incorporate stealth technology and other advanced penetration-aids that will allow its ballistic and cruise missiles to defeat missile defenses. In all of these areas though, Iran is showing rapid progress.

Given these realities, the United States needs to show more alacrity in shoring up some of the weaknesses of the JCPOA. While the Obama administration sees the Iran nuclear deal as its crowning foreign policy achievement, even its most ardent supporters would concede that it leaves open a number of loopholes that Iran will almost certainly try to exploit. President Obama and whoever succeeds him have options to strengthen the nonproliferation regime, but time is running out.

Notes


6. A good example of this balancing act can be seen in Clinton’s foreign policy speech of June 2, 2016 in San Diego, CA. Here, Clinton argues that JCPOA effectively blocks Iran’s path to nuclear weapons, but also reiterates her repeated statements of distrust about Iranian intentions. See: Katie Reilly, “Read Hillary Clinton’s Speech on Donald Trump and National Security,” Time, June 2, 2016, http://time.com/4355797/hillary-clinton-donald-trump-foreign-policy-speech-transcript/.


12. Although the Obama administration has balked at the characterization of a leaked IAEA document (revealing early expiration of restrictions on Iran acquiring new centrifuges) as representing a secret side deal, it has nonetheless in effect conceded the substance of its content as reported on July 18, 2016 by the Associated Press, as well as that these details had not previously been publicly disclosed. As for the prior allegation of a secret “self-inspection” deal, while both the Obama Administration and the IAEA have disputed press reports that Iran is being allowed literally to conduct “self-inspections” as such, it has been acknowledged that Iranians are involved in some manner in some inspections, although details have not been revealed. For further insight on the early-sunset arrangement see for example: George Jahn, “AP Exclusive: Document shows less limits on Iran nuke work,” Associated Press, July 18, 2016, http://bigstory.ap.org/article/140ca41aba7a42cda13792f07df4b8d3/ap-exclusive-secret-document-lifts-iran-nuke-constraints; “US denies secret document that would allow 2027 Iranian nuclear breakout,” Jerusalem Post, July 19, 2016, http://www.jpost.com/Middle-East/Iran-News/US-denies-secret-document-that-would-allow-2017-Iranian-nuclear-breakout-460804. For more information on allegations about self-inspection arrangements see for example: David E. Sanger, “Prospect of Self-Inspections by Iran Feeds Opposition to Nuclear Deal,” New York Times, August 21, 2015, http://www.nytimes.com/2015/08/22/world/middleeast/prospect-of-self-inspections-by-iran-feeds-opposition-to-nuclear-deal.html?_r=0; Frederick Pleitgen and Brian Walker, “IAEA inspects Iran’s Parchin military site for first time,” CNN, September 21, 2015, http://www.cnn.com/2015/09/21/middleeast/iran-nuclear-inspection/index.html; Carol Morello, “Think tank says Iran given ‘secret’ exemptions to nuclear deal,” The Washington Post, September 1, 2016.


24. This discussion draws on background interviews with officials from the Commerce, Defense, and State departments conducted from January through March 2014.


