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# **Inspections: The Weak Link in a Nuclear Agreement with Iran**

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**IAEA inspectors at the Isfahan uranium conversion facility**



# Inspections: The Weak Link in a Nuclear Agreement with Iran

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## Executive Summary

- One striking feature appearing in the leading commentaries on the Comprehensive Agreement being negotiated between Iran and the P5+1 is the stress they are placing on the role of inspections in assuring the international community that Tehran will not be permitted to obtain nuclear weapons. Rather than cut deeply into Iran's stocks of enriched uranium or drastically limit the number and speed of its gas centrifuge machines, these proposals also suggest that an unusually robust inspection system can play a significant role in assuring that Tehran will have a difficult time breaking out of any of future agreement. Underlying these proposals is an appreciation by the authors that a strategy stressing inspections may have a better chance of being accepted by the Iranian leadership.
- If the uranium component of the comprehensive agreement is thought of as a three-legged table, with a leg for stockpile reduction, another leg for centrifuge quantities, and a third leg involving intrusive inspections, then it appears that the West is hoping that most of the weight of the table will rely on the leg of inspections. The present discourse raises a fundamental question about the advisability of erecting a comprehensive agreement with Iran that is so highly dependent upon the efficacy of its inspection system.
- Ali Asghar Soltanyieh, the former Iranian ambassador to the International Atomic Energy Agency (IAEA), attacked proposals for robust inspections as a "full contravention" of the Nuclear Non-Proliferation Treaty and the Statute of the IAEA. Soltanyieh's legal critique clearly seeks to defend Iranian interests, but it also raises the question of whether a robust inspection system, beyond what exists today, will be as easy to obtain through negotiations as some analysts hope.
- The concern of the Western powers with nuclear breakout is not exaggerated. In December 2002, the North Koreans removed the seals from the Yongbyon reactor's spent fuel rods, expelled international inspectors, and announced that they were withdrawing from the NPT. Four years later in 2006, North Korea conducted its first nuclear test. Two more North Korean nuclear tests followed in 2009 and 2013. Iran observed how North Korea successfully broke out of its international commitments and established a nuclear *fait accompli*.

- It must always be remembered that Iran is not a status quo power. It views itself increasingly as a hegemonial force in the Middle East. Iran has actively intervened in insurgencies and supplied weapons across the region: in Iraq, Bahrain, Yemen, Sudan, the Gaza Strip and Lebanon. Advanced Iranian weaponry flows to the Syrian army. Iranian forces are on the ground and engaged in fighting in the Syrian civil war. Nuclear weapons would significantly bolster its regional standing in the Middle East and serve its aspirations to become a great power.
- Is it reasonable to conclude that any inspection system will be able to detect weaponization developments, the monitoring of which must be a part of any nuclear agreement? The White House Fact Sheet from November 2013 laid out some of the parameters of any Comprehensive Agreement: it included a “verification mechanism” which is supposed to resolve the “possible military dimension” of the Iranian nuclear program. This is a worthy goal, but what is the likelihood that Iran will agree to inspections of weapons facilities that it refuses to admit it possesses?

## Focus on a Robust Inspection System

One striking feature appearing in the leading commentaries on the Comprehensive Agreement being negotiated between Iran and the P5+1 is the stress they are placing on the role of inspections in assuring the international community that Tehran will not be permitted to obtain nuclear weapons. True, all these analyses are agreed that a comprehensive agreement should make more difficult an Iranian “nuclear breakout,” by which Tehran covertly enriches the requisite quantity of uranium for its first atomic weapon. But rather than cut deeply into Iran’s stocks of enriched uranium or drastically limit the number and speed of its gas centrifuge machines, these proposals also suggest that an unusually robust inspection system can play a significant role in assuring that Tehran will have a difficult time breaking out of any of future agreement.

Underlying these proposals is an appreciation by the authors that a strategy stressing inspections may have a better chance of being accepted by the Iranian leadership, facilitating the achievement of a diplomatic breakthrough. As a May 2014 report of the International Crisis Group noted: “In principle, Iran appears much more willing to accept additional transparency measures than to restrict the evolution of its nuclear program.”<sup>1</sup> Joe Cirincione, of the Washington-based Ploughshares Fund, aptly commented this year as well that Iranian officials have long held that “transparency – rather than reduction of capabilities – is the key to assuring the world that its program is peaceful.”<sup>2</sup> The Iranians fed these assumptions with generalized statements like the one recently made by President Hassan Rouhani this May: “What we can offer the world is greater transparency.” But he carefully did not enter into specifics about what kind of transparency he had in mind.<sup>3</sup>

Nonetheless, experts across the political spectrum seeking possible avenues for some diplomatic progress have speculated and in some cases asserted that inspections and verification should play a larger role in the present day U.S. talks with Iran. Thus, Kenneth Pollack, a senior fellow at the Brookings Institution, wrote in *The New York Times* on May 6, 2014, that while Washington appeared to be focused on limiting the number and type of centrifuges that Iran would be allowed to use, the Obama administration should concentrate more on reaching an agreement that would allow the West to conduct intrusive inspections in Iran that would grant “unfettered” access to its nuclear sites.<sup>4</sup>

Some of the most important analysis of the current negotiations with Iran suggests that the West is already focused on the special role of inspections in making any diplomatic initiative work. In March 2014, Robert Einhorn, who served as the State Department’s arms control expert during President Obama’s first term in office, published a 50-page paper for Brookings outlining the requirements for a comprehensive nuclear agreement. Einhorn wrote about the need to create “a robust and specially devised monitoring system.”<sup>5</sup> Given Einhorn’s ties with the administration, his Brookings paper was seen in many quarters as a “trial balloon” for U.S. negotiators engaging in the current talks with Iran.

The Einhorn paper led the former head of Israeli military intelligence, Major General (res.) Amos Yadlin, to conclude: “The United States appears to be formulating its position on the final agreement, *focusing on demands for an unprecedented, tight inspection mechanism for the Iranian nuclear program* and an attempt to persuade the Iranian leadership that any violation of the agreement will lead to tough punitive measures (emphasis added).”<sup>6</sup> If the uranium component of

the comprehensive agreement is thought of as a three-legged table, with a leg for stockpile reduction, another leg for centrifuge quantities, and a third leg involving intrusive inspections, then it appears that the West is hoping that most of the weight of the table will rely on the leg of inspections.

The present discourse raises a fundamental question about the advisability of erecting a comprehensive agreement with Iran that is so highly dependent upon the efficacy of its inspection system and the willingness of Iran to agree to what some analysts call unprecedented levels of transparency. As John Bolton, a former US ambassador to the UN wrote in December 2013, verification is not a panacea for every problem that will arise in an arms control negotiation: “it cannot convert a bad deal into a good deal.”<sup>7</sup>

## **Will Iran Accept a Robust Inspection System?**

Authoritative Iranian commentary also raises some questions over whether Tehran is actually ready to accept unprecedented inspections of its facilities. For example, Ali Asghar Soltanyieh, the former Iranian ambassador to the International Atomic Energy Agency (IAEA), attacked Pollack’s *New York Times* op-ed and its proposal for robust inspections as a “full contravention” of the Nuclear Non-Proliferation Treaty and the Statute of the IAEA. In an article entitled “How Intrusive Can IAEA Inspections Be?” he accused Pollack of adopting a doctrine of “anywhere, anytime” inspections that was used in the case of Iraq after 1991 and wrongly applying it to Iran.<sup>8</sup>

Soltanyieh’s legal critique of Pollack clearly seeks to defend Iranian interests, but it also raises the question of whether a robust inspection system, beyond what exists today, will be as easy to obtain through negotiations as some analysts hope. Iranian Foreign Minister Mohammad Javad Zarif has introduced other considerations into the formation of Iranian positions that have nothing to do with legal obligations or international security.<sup>9</sup> Thus, in an interview with *The New Yorker*, he asserted that “Nuclear talks are not about nuclear capability; he then added: “they are about Iranian integrity and dignity.”<sup>10</sup>

## **Iran Eyes a Nuclear Breakout**

The concern of the Western powers with nuclear breakout is not exaggerated. Iran’s closest security partner, North Korea, was a signatory to the Nuclear Non-Proliferation Treaty (NPT). As a result, international safeguards were put in place in its Yongbyon reactor to prevent North Korea from reprocessing the reactor’s spent fuel rods for the production of weapons-grade plutonium. In December 2002, the North Koreans removed the seals from the Yongbyon reactor’s spent fuel rods, expelled international inspectors, and announced that they were withdrawing from the NPT. Four years later in 2006, North Korea conducted its first nuclear test. Two more North Korean nuclear tests followed in 2009 and 2013. Iran observed how North Korea successfully broke out of its international commitments and established a nuclear *fait accompli*. If North Korea could get away with it, why couldn’t Iran?

Iran has strong motivation to follow a similar course. It must always be remembered that Iran is not a status quo power. Its constitution calls for the export of the Islamic Revolution. In 1991, its Supreme Leader, Ayatollah Ali Khamenei, was quoted in the Iranian daily *Ressalat* asking whether Iran seeks *hefez* (preservation) or *bast* (expansion), and he answered that it seeks the latter. It views itself increasingly as a hegemonial force in the Middle East. Iran has actively intervened in insurgencies and supplied weapons across the region: in Iraq, Bahrain, Yemen, Sudan, the Gaza Strip and Lebanon. Its forces are on the ground and engaged in fighting in the Syrian civil war. Advanced Iranian weapons are provided to the Syrian army. Nuclear weapons would significantly bolster its regional standing in the Middle East and serve its aspirations to become a great power.<sup>11</sup>

Given this background, is it prudent for the West to rely heavily on inspections in the case of Iran? If the Iranian regime was mainly concerned with the per capita GDP of its population, that would be one thing. But given the regime's priorities and determination to make its strategic weight felt in the countries around it, serious questions arise about Iran living up to any commitments it undertakes in the nuclear field. It is essential to learn from the history of past inspections of Iran's nuclear program.

## **The Record from Past International Inspections of Iran**

Iran has been dealing with the challenge of international inspections of its nuclear facilities for many years. Iran signed the 1968 Nuclear Non-Proliferation Treaty (NPT) on February 2, 1970. It undertook not to “manufacture or otherwise acquire nuclear weapons or explosive devices.” Iran also committed itself to agree to “safeguards” for the purpose of “preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other explosive devices.”

Iran signed a Comprehensive Safeguards Agreement with the International Atomic Energy Agency (IAEA) in Vienna on June 19, 1973, that entered into force a year later. While the IAEA is an international organization, Iran's commitments under the Comprehensive Safeguards Agreement are legally binding. Articles 71 through 82 of the Comprehensive Safeguards Agreement establish that the IAEA may conduct inspections to verify Iran's compliance with its NPT obligations. The IAEA was supposed to verify that none of the nuclear material declared by Iran was diverted; it was also supposed to provide assurances to the international community that there were no undeclared nuclear materials and activities in Iran as well.

To meet this latter goal, more robust inspections were needed. So the IAEA signed “Additional Protocols” with countries in order to improve its access to their nuclear infrastructure beyond what is required by the Safeguards Agreements it has reached. For example, with this improved access, the IAEA can give 24-hours notice that it seeks to inspect a new facility and only 2 hours notice for an inspection of a site that is presently under inspection. Iran signed an Additional Protocol in December 2003 but did not ratify the agreement; it then declared in February 2006 that it would no longer adhere to the Additional Protocol, in response to its growing tensions with the IAEA. Iran's abandonment of the Additional Protocol raises questions about how ready Tehran really is to accept more invasive inspections.

Did Iran implement these past agreements covering the inspection of its nuclear facilities? Did it comply with the obligations it undertook? Looking back, Tehran proved to be a totally unreliable partner for the West. In fact, in November 2004, the IAEA officially determined that Iran had been in breach of its Safeguards Agreement: “Many aspects of Iran’s nuclear fuel cycle activities and experiments, particularly in the areas of uranium enrichment, uranium conversion and plutonium separation, were not declared to the Agency in accordance with Iran’s obligations under its Safeguards Agreement. Iran’s policy of concealment continued until October 2003, and resulted in many breaches of its obligation to comply with that Agreement.”<sup>12</sup>

Iran’s policy of concealment was perhaps most apparent in its troubling treatment of IAEA inspections. The need to seriously monitor Iranian nuclear activities more thoroughly than before became apparent in August 2002 when the Iranian opposition held a press conference in Washington to expose key aspects of Iran’s clandestine nuclear program, including the Natanz enrichment plant, the Isfahan conversion facility, and the plans to build a heavy-water complex at Arak.

Iran’s declared nuclear facilities had been under inspection for years. Nevertheless, these undeclared facilities were constructed under the noses of the IAEA and the West, inspections notwithstanding (in 2009, another enrichment facility was disclosed at Fordow that had been kept secret as well). Iran managed to postpone any IAEA inspections of the sites revealed in August 2002 until February 2003.

Further delays of inspections were common at other suspected sites. At Kalaye, which was suspected of having a building for a pilot uranium enrichment program, inspectors were denied access from February until August 2003. In the meantime, the Iranians cleansed the suspected building and repainted it, making environmental swipes of the walls no longer relevant. The Iranians delayed inspections of the Lavizan-Shian complex from March until April 2004; in the meantime the IAEA discovered that the Iranians razed six buildings at Lavizan-Shian and even the earth around them was dug out to a depth of one to two meters so that soil samples could not be taken that could reveal what had been going on there.<sup>13</sup>

Finally, even after the IAEA’s determination that Iran had violated its Safeguards Agreement, there were delays in the inspections of the high explosives testing site at Parchin, which still interests inspectors to this day. Parchin was suspected of being a site where Iran conducted development work on its weaponization program rather than uranium enrichment alone. Indeed, the White House Fact Sheet on the P5+1 Talks with Iran, dated November 23, 2013, specifically related to Parchin as one of the questions that Iran would have to address in a Comprehensive Agreement.<sup>14</sup>

Historically, a limited inspection of Parchin was actually permitted in January 2005, in which the IAEA was only allowed to investigate one of four areas at the site that it wanted to visit. Its access was also restricted to a few buildings in that area which were opened to its inspectors. Despite these clearcut violations of its legal obligations, the IAEA only referred Iran to the UN Security Council in September 2005, demonstrating how slow international mechanisms can be in responding to the reports from international inspections. By 2013, in what could not be explained as anything but a cover-up, the Iranians had asphalted large parts of the Parchin complex, making it far more difficult in the future to obtain environmental samples.<sup>15</sup>

Several problems emerged in this period with Iranian behavior in response to the efforts of the IAEA specifically and the international community, more generally, to conduct adequate inspections of Tehran's nuclear program. Besides denying or delaying access to international inspectors, Iran has adopted a number of techniques to evade its commitments to greater transparency. In many cases, Iran undertook more stringent commitments in 2003, when the U.S. Army entered Baghdad and the regime in Tehran feared that it was next. By 2007, with the U.S. bogged down in the Iraqi insurgency, Iran systematically sought to alter its commitments, reducing the access of inspectors. In short, changes in the balance of power in the Middle East influenced the efficacy of inspections.

Thus after undertaking new commitments that would facilitate improved inspections, Iran chose to withdraw from them. The most famous example was the Additional Protocol described above. There was also another case as well. In 2003 Tehran signed a "Subsidiary Arrangement" known as Code 3.1 that required it to notify the IAEA of any new nuclear facility the moment a decision was made to construct it. Previously, Iran could wait until a point in time six months before the introduction of nuclear material into the facility before it had to give notice that it had been built. But in 2007, Iran suspended this modification. What this meant was that if Iran erected a new enrichment plant and hid its existence from IAEA inspectors, then it was not violating its Safeguards Agreement as long as it was not planning to put any nuclear material into the facility for the next six months.

The Iranians recognized that they had made the lives of IAEA inspectors difficult. After he served as head nuclear negotiator, Hassan Rouhani, gave a speech in April 2006 in which he presented Iran's diplomatic strategy with the West. Rouhani denied in the speech that Iranian officials lied to the IAEA, but then he admits that in some cases "we may not have disclosed information in a timely manner." What Rouhani's approach to international inspections will be now that he is president of Iran remains to be seen, but the past record should make Western powers highly skeptical in this regard.

A key assistant to Rouhani during the talks with the EU in 2003-5 was Hossein Mousavian. In his 2012 book *The Iranian Nuclear Crisis: A Memoir*, he articulates the Iranian view that the current demands for inspections go beyond the legal requirements of the NPT, the Safeguards Agreement, and the Additional Protocol. In short, reaching a dependable inspections agreement with Iran will be a far more difficult task than is usually thought for the P5+1 negotiators.<sup>16</sup>

## **Inspections and Nuclear Breakout**

Since the present negotiation with Iran does not seek to eliminate Iran's nuclear infrastructure completely, the apparent goal of the West is to reduce it and thereby make an Iranian nuclear "breakout" more difficult, partly by lengthening the timeline of an action of this sort. An Iranian breakout would be an effort by Tehran to escape all the restrictions placed on its nuclear program by the international community so that it could rapidly assemble an atomic bomb. The longer the breakout time, it might be assumed, the greater the chances that Iran's move would be detected by the West.

True, there are a number of breakout scenarios: there is an enrichment breakout for producing enough weapons-grade uranium for Iran's first bomb; there is plutonium breakout should Iran use its heavy-water facilities at Arak to produce fissile material; finally, there is a weapons breakout during which Iran completes production of an operational nuclear weapon, like a nuclear warhead, that it prepares for its ballistic missile forces.

At the present stage, U.S. officials are focusing on a fissile material breakout using enriched uranium. Secretary of State John Kerry revealed to the Senate Foreign Relations Committee in early April 2014 that today Iran can produce enough fissile material for its first atomic bomb in two months. According to Kerry, this "breakout" window did not mean that Iran would have a warhead: "it's just having one bomb's worth of material" but without being able to put it into a delivery system. In response to a question about the goal of his nuclear negotiators, Kerry mentioned a breakout window of six to twelve months, without committing himself to that timeline.<sup>17</sup>

## **Can Any Inspection System Detect Weaponization?**

The problematic nature of inspecting Iran's uranium enrichment program has been demonstrated through its past behavior with the IAEA. But is it reasonable to conclude that any inspection system will be able to detect weaponization developments, the monitoring of which must be a part of any nuclear agreement. The White House Fact Sheet from November 2013 laid out some of the parameters of any Comprehensive Agreement: it included a "verification mechanism" that establishes a joint commission which is supposed to resolve the "possible military dimension" of the Iranian nuclear program. This is a worthy goal, but what is the likelihood that Iran will agree to inspections of weapons facilities that it refuses to admit it possesses? As of mid-June 2014, Iran still has not allowed the IAEA to freely enter Parchin.

Iranian negotiators have resisted putting their military facilities under inspections. In February 2014, Iranian Foreign Minister Zarif stated: "As Iran's nuclear program has nothing to do with the military issues, the military issues have nothing to do with the nuclear program either." Some Iranian spokesmen speak about dealing with this element at a later stage, without being specific.<sup>18</sup>

But there is a more fundamental problem for the Iranian leadership in admitting to the existence of nuclear military activities that need to be inspected: the Iranian establishment has insisted that there is no nuclear weapons program because Ayatollah Khamenei issued a *fatwa* stating that nuclear weapons were forbidden under Islamic law. How could the same officials who said that nuclear weapons were un-Islamic now admit to nuclear weapons facilities in the present negotiation?

In short, the picture the West has of Iranian weaponization activities is much less clear than the picture it has of uranium enrichment. Appearing on NBC's "Meet the Press" on April 11, 2010, then-Secretary of Defense Robert Gates spoke about the dangers of Iran reaching a threshold capacity: "If their policy is to go to the threshold but not assemble a nuclear weapon, how do you tell that they have not assembled? I don't actually know how you would verify that."<sup>19</sup> What former Secretary Gates was essentially saying was that intelligence agencies might not be able to discern what was happening

in the last stages of Iran's assembly of an atomic bomb. His warning was especially significant given his past position in the 1990s as Director of the CIA.

Gates' caution was warranted, given the failure of Western intelligence agencies to get a complete picture of sensitive nuclear programs elsewhere in places like Pakistan, Iraq, and Syria. But in the context of Iranian nuclear negotiations, his comment was also significant. It serves as a reminder that it is extremely hard to guarantee that the West will be able to detect a nuclear weapons breakout attempt in the aftermath of a nuclear agreement. Any inspection system that will be proposed will likely have limited effectiveness when it comes to the last phases of readying an Iranian bomb. Clearly, the U.S. and its allies would be better served by a diplomatic strategy that did not allow Iran to get to this point, for there are reasons to doubt whether it may be possible to rely on adequate early warning about Iran's last moves before crossing the nuclear threshold.

Writing on the present negotiations for a Comprehensive Agreement, two former U.S. secretaries of state, Henry Kissinger and George Shultz, warned that the danger of the present dynamic in the negotiations with Iran is that it threatens to leave Iran "as a threshold nuclear weapons state." They lament that the Joint Plan of Action that was reached in November 2013 did not cut back Iran's ability to eventually manufacture nuclear weapons. They insist that the Comprehensive Agreement "must assure the world's ability to detect a move toward nuclear breakout." But while detection is important, it is also not enough; so Kissinger and Shultz call for dismantling "a strategically significant portion" of Iran's nuclear infrastructure.<sup>20</sup>

Given the recognition that Western prescriptions for a reduction in enriched uranium stockpiles and centrifuges will be difficult to achieve in Geneva, there has been a tendency, as described earlier, to rely more heavily on inspections and verification to produce a strategically sound agreement with Tehran. But given Iranian behavior in the past, the only agreement that can have lasting value is one that eliminates Iran's stockpiles of enriched uranium and their means of production. To let the Iranians continue to enrich and rely on inspections for thwarting a sudden drive for a bomb is too dangerous and will leave the U.S. and its allies in a far more precarious position with respect to their security than in previous years.

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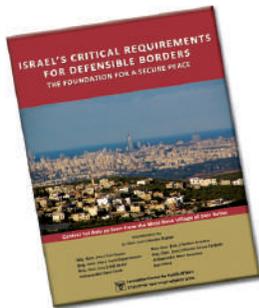
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## Israel's Critical Requirements for Defensible Borders: The Foundation for a Secure Peace — Updated Edition

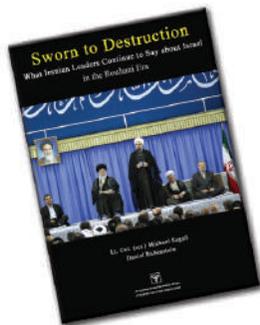
President Obama has declared that "the borders of Israel and Palestine should be based on the 1967 lines with mutually agreed swaps, so that secure and recognized borders are established for both states." But what are Israeli requirements for "secure" borders? This study, which has been updated to 2014, presents a comprehensive assessment of Israel's critical requirements for defensible borders.

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## Palestinian Manipulation of the International Community

This comprehensive study exposes the extent to which the Palestinian leadership manipulates international institutions with the aim of influencing them by forcing a selective, partisan, misleading, and patently false narrative. This book is intended to serve as a vital tool for all those involved in attempting to find a solution to the Israeli-Palestinian dispute, in the hope that they will face such manipulation head-on.

*Amb. Alan Baker*



## Sworn to Destruction: What Iranian Leaders Continue to Say about Israel in the Rouhani Era

Iranian leaders are consistent in their anti-Israel rhetoric, clear about their hostile intentions, and certain of their apocalyptic beliefs. This monograph presents Iranian leaders' top anti-Israel statements from this past year, with references to the original Farsi sources. These are the people who are pursuing a nuclear weapons capability and stockpiling a long-range missile arsenal.

*Lt. Col. (ret.) Michael Segall and Daniel Rubenstein*

## Draft International Convention for the Prevention of Incitement to Terror

The draft international convention proposed here represents an effort to move forward from domestic legislation, UN resolutions, and regional treaties, with a view to placing before the international community a draft comprehensive instrument that attempts to address the issue of incitement and to criminalize it in international law.

*Amb. Alan Baker*





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