The JCPOA's Critical Flaw Is Its Lack Of Real Inspection By The IAEA; Those Focusing On Iran's Ballistic Missiles And The JCPOA's Sunset Clause Are Evading The Urgent Issue – The Need For Real Inspection Now

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<https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles>

**Introduction**

Recently, Western officials and commentators who support the JCPOA began to address two issues related to the JCPOA that they themselves admit to be problems that must be addressed. However, these issues – Iran's development of long-range ballistic missiles, and the sunset clause, which refers to the removal, in eight to 10 years, of the restrictions on Iran set out in the agreement – are either not part of the JCPOA, i.e. the missiles, or are a long way off, i.e. the sunset clause, and therefore need not necessarily be addressed immediately. Thus, by raising these two issues they are diverting attention from the main, critical problem in the agreement which does require immediate attention: its lack of real inspection. This problem came up again recently when it was reported that the International Atomic Energy Agency (IAEA) had chosen to refrain from inspecting sites in Iranbased on information submitted to it about possible violations.[[1]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_edn1%22%20%5Co%20%22)

It should be clarified that when Iran, the IAEA, and the heads of the parties to the JCPOA reiterate that there is robust, intrusive, and unprecedented inspection, they are perpetuating the false depiction of the section of the JCPOA concerning inspection. This is because the inspection procedure takes place only at sites where Iran has agreed to allow inspection, that is, sites Iran itself has declared as nuclear sites, but not at any other sites in Iran, including military sites. The Obama administration and the countries party to the JCPOA designed the JCPOA in a way that on the one hand they can claim that a robust inspection is being applied while on the other hand they allowed Iran to evade inspection in all other sites.

Carrying out inspections in the other sites can take place only after political negotiations in the Joint Commission of the JCPOA – which comprisesthe U.S., U.K., France, Germany, Russia, China, the IAEA, and Iran – and only after some 30 days have passed from the time of the submission of the intelligence information that prompted the request for inspection, and only after the sources of this intelligence have been fully revealed to Iran, Russia, and China. Under these conditions, there is no possibility of real and effective inspection of Iran's nuclear activity (see MEMRI Inquiry and Analysis No. 1325, [Discussion Of Iranian Violations Of JCPOA Is Futile; The Inspection Procedure Designed By The Obama Administration Precludes Actual Inspection And Proof Of Violations](https://www.memri.org/reports/discussion-iranian-violations-jcpoa-futile-inspection-procedure-designed-obama), August 18, 2017).

Despite the above, IAEA secretary-general Yukiya Amano stated, on August 31 and September 11, 2017, that the IAEA is free to carry out inspections at any site necessary, regardless of whether the site is nuclear or military.[[2]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_edn2%22%20%5Co%20%22) Amano based this statement not on the JCPOA – which does not allow this – but on the Additional Protocol, that allows inspection of military sites. But Iran's agreement to accept the Additional Protocol was voluntary, and it can exit it at any time without this being considered a violation of the JCPOA.

Iranian officials, on their part, argue that Amano "fabricated" this claim of such a right, and reiterated the Iranian regime's position that it does not allow IAEA inspectors at military sites (see MEMRI Special Dispatch No. 7098[, Iranian Regime Officials: We Will Not Allow IAEA To Enter Iranian Military Sites; 'The Claim Of Such A Right Is Fabricated By [IAEA Director] Amano Himself,'](https://www.memri.org/reports/iranian-regime-officials-we-will-not-allow-iaea-enter-iranian-military-sites-claim-such) September 19, 2017).

Therefore, Amano's declaration that the IAEA has the right to inspect military sites in Iran can be tested only if an attempt is made to actualize it. However, when information requiring an IAEA inspection was presented to Amano, he refrained from doing so, in order not to confront Iran and in order not to reveal that he had agreed to a process that ties his hands professionally.

**The Obama Administration Has Transformed The IAEA Into A Non-Professional Body Acting As A Political Organ**

The following list demonstrates how the Obama administration has turned the IAEA into a non-professional political organ:

* The Obama administration and the parties to the JCPOA created an inspection framework unique to Iran that bypasses the Additional Protocol, which allows inspection of military sites, and which was accepted voluntarily and unilaterally by Iran, and from which it can drop out without violating the JCPOA.
* The Obama administration and the parties to the JCPOA created a political forum supreme to the IAEA – the Joint Commission of the JCPOA – whose authority supersedes that of the IAEA. This was done with the consent of IAEA director-general Yukiya Amano, who relinquished his status under pressure from President Obama.
* Director-general Amano agreed to the closure of the file on the PMD (Possible Military Dimensions) of Iran's nuclear program by a predetermined political decision to close it. This was done due to Iran's threat that it would have not accepted the JCPOA; he agreed to a special arrangement for inspection in Iran, the Road Map; and he also agreed to make a token visit to the Parchin military site, which was a totally non-credible inspection procedure. Thus, for example, IAEA inspectors did not themselves visit Parchin, and the samples from these sites were taken by the Iranians themselves and handed over to the IAEA inspectors without any way of ascertaining that the samples taken were the ones handed over to the IAEA. Iran's representative in the IAEA, Reza Najafi, said in a September 21, 2015 interview with the ISNA news agency: "I deny the Reuters report that the samples from Parchin were taken in the presence of IAEA inspectors. We ourselves took the samples. This is the red line for us, and no inspector is authorized to enter a military site and conduct an inspection. The visit of Amano and his deputy was strictly a general protocol visit; they had no equipment, not even a cellphone, their visit did not last more than a few minutes, [and it was] only in order for them to see that there is nothing suspicious and that the claims about [Parchin] were completely wrong."[[3]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_edn3%22%20%5Co%20%22)

Yukiya Amano submitted to Iran's refusal to allow its nuclear scientists to be questioned. He accepted the Iranian demand not to mention the term "PMD" in the IAEA report. It should be mentioned that despite all these obstructions to the investigation of the PMD the IAEA report confirmed that there was indeed suspect nuclear activity in Iran, but refrained from stating that the Iranian regime was responsible for this activity, as agreed in advance by Amano. For broader review and analysis of the IAEA's scandalous investigation of the PMD, see additional MEMRI reports.[[4]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_edn4%22%20%5Co%20%22)
* According to a report by the Obama administration's State Department lead coordinator on Iran, Stephen Mull, the IAEA's authority of oversight over Iran's inventory of 8.5 tons of enriched uranium that was shipped out of Iran in December 2015 in accordance with the JCPOA, was taken away from the IAEA by the U.S. and given to Russia, with the consent of the parties to the JCPOA and the IAEA itself. This was done without even determining where Russia would store this nuclear fuel, and without U.S. verification of this. Indeed, Mull said, at a House Foreign Affairs Committee hearing on February 11, 2016 that "it has not yet been decided where exactly Russia will put this information [sic]."[[5]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_edn5%22%20%5Co%20%22) He went on to say: “We do not have concerns about Russian custody of this material."[[6]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_edn6%22%20%5Co%20%22) Amano himself agreed that the oversight of the enriched Iranian uranium be removed from his responsibility.
* The IAEA agreed to a scandalous procedure for dealing with Iran's heavy water. The parties to the JCPOA, with the consent of the IAEAtransformed Iran into an exporter of heavy water without subjecting it to the export control system to which other exporters, such as Canada and India, are subject. According to standard IAEA verification practices, changes in heavy water inventory are registered not when the heavy water is removed from the territory of the country exporting it, but only when it arrives at the destination country that purchased it. Iran was exempted from this rule. In the decision to store Iran's excess heavy water in Oman and by accepting a limited role of oversight of only the removal of the heavy water from Iranian territory, and subsequently subtracted it from the quota of heavy water permitted to Iran, as if the water had already been sold and arrived at its destination, IAEA violated its own rules applied to all other countries. It should be also emphasized the Amano’s acceptance of Oman – a political satellite of Iran  which Iran would have no problem getting its heavy water back from Oman any time it wanted – to be the place for storing Iran’s heavy water was politically motivated to submit to Iran's demand. The IAEA is not reporting on these ongoing systematic violations.[[7]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_edn7%22%20%5Co%20%22) The Trump administration is also not addressing this issue at all, and states that Iran complies with the JCPOA and violates it only "in spirit."
* The September 2017 Institute for Science and International Security (IISS)report also stated that the IAEA had lost its professional status and that it is operating out of political considerations and refraining from reporting on a wide variety of Iranian violations in recent months.[[8]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_edn8%22%20%5Co%20%22)
* In September 2017, as noted, it was reported that Israel had given the IAEA information about Iranian violations that required an inspection on the ground, and that the IAEA had refrained from conducting any such inspection. An IAEA official informed Reuters anonymously, on August 31, 2017, that the IAEA was "not going to visit a military site like Parchin just to send a political signal."[[9]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_edn9%22%20%5Co%20%22) The refusal to carry out inspections at sites that are not declared by Iran as nuclear constitutes a continuation of political and unprofessional conduct on the part of the IAEA, with the support the JCPOA parties.
* Yukiya Amano refrained from using his professional authority regarding Section T of the JCPOA, which forbids "activities which could contribute to the development of a nuclear explosive device." Instead of enforcing the agreement, or announcing that Iran had violated it by not allowing the implementation of Section T, he accepted the Iranian-Russian interpretation of this section, according to which Amano has no status to enforce it, and instead of calling this an Iranian violation of the JCPOA, he is treating the most important issue in the agreement – the development of models for a nuclear bomb – as "a problem for the Joint Commission" – that is, that the political forum should be the one to decide on it.[[10]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_edn10%22%20%5Co%20%22)

The above examples explicitly show that the problem demanding urgent action is the lack of real inspection of sites in Iran and not Iran's ballistic missiles nor the expiration, in eight or 10 years (i.e. the sunset clause), of the restrictions on Iran.

**Trump's Commitment To Act If The IAEA Does Not Implement Real Inspections – A Test Of Leadership**

On September 18, 2017, President Trump, via U.S. Energy Secretary Rick Perry, notified the IAEA General Conference that "we will not accept a weakly enforced or inadequately monitored deal."[[11]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_edn11%22%20%5Co%20%22)

With this statement, Trump has set an actual condition for the continuation of U.S. support for the JCPOA. This demand for robust oversight is not a demand for a change in the JCPOA, nor does it mean an exit from it, but rather it is based on acceptance of the agreement and on the insistence that it be rigorously enforced as it stands. If the U.S. administration carries out Trump commitment, and if his statement does not become yet another anti-Iran declaration that is ignored by the Department of State, it will constitute real pressure on the IAEA to fulfill its duty in accordance to its mandate.

It should be emphasized that the parties to the JCPOA cannot oppose Trump's demand that IAEA enforce its authority, since it is based on acceptance of the JCPOA and not on leaving it or demanding that it be amended.

Iran, as its top officials have clarified, has a strong interest in not leaving the JCPOA – likely because of its leadership's assessment that when it does it will expose itself to an Israeli attack.

[[1]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_ednref1%22%20%5Co%20%22) *Haaretz* (Israel), September 17, 2017. The newspaper reported that intelligence information about suspect sites in Iran had been transferred to the IAEA but that the agency had not inspected most of the sites. IAEA inspectors, according to Israeli sources quoted in the report, had preferred not to confront the Iranians, who refused to allow them to visit several of the sites.

[[2]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_ednref2%22%20%5Co%20%22) For example, Amano's August 31, 2017 statement to the Associated Press in Vienna: The IAEA "has access to (all) locations without making distinctions between military and civilian locations." Stripes.com, August 31, 2017; and his September 11, 2017 statement to the IAEA Board of Governors: "We will continue to implement the Additional Protocol in Iran, including carrying out complementary accesses to sites and other locations, as we do in other countries with additional protocols." Iaea.org/newscenter/statements/iaea-director-generals-introductory-statement-to-the-board-of-governors-11-september-2017.

[[3]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_ednref3%22%20%5Co%20%22) ISNA (Iran), September 21, 2015. See also MEMRI [Inquiry & Analysis No. 1344 - Iran Follows In North Korea's Footsteps: Nuclearization, Missile Development Alongside Agreements With The Superpowers; EU3, IAEA Director-General Submitted To Obama Administration Pressure, Agreed To JCPOA With No Real Inspection, No Response To Iran's Missile Program; French President: 'Absolutely Necessary' That JCPOA Be 'Supplemented'](https://www.memri.org/reports/iran-follows-north-koreas-footsteps-nuclearization-missile-development-alongside-agreements), September 8, 2017.

[[4]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_ednref4%22%20%5Co%20%22) MEMRI [Special Dispatch No. 6113 - Atomic Energy Organization Of Iran Chief Ali Akbar Salehi: We Have Reached An Understanding With The IAEA On The PMD, Now Political Backing Exists And The Results Will Be Very Positive](https://www.memri.org/reports/atomic-energy-organization-iran-chief-ali-akbar-salehi-we-have-reached-understanding-iaea), July 22, 2017;

MEMRI [Inquiry & Analysis Series No. 1167 - Nuclear Negotiations At An Impasse: Leader Khamenei Rejects Agreement Reached On Token Inspection Of Military Sites And Questioning Of Scientists; U.S. Willing To Close IAEA Dossier On Iranian PMD, To Settle For Inspecting Declared Nuclear Sites Only, And To Rely On Intelligence; EU Objects](https://www.memri.org/reports/nuclear-negotiations-impasse-leader-khamenei-rejects-agreement-reached-token-inspection), June 11, 2015; MEMRI [Special Dispatch No. 6229 – Statements By Iranian Deputy Foreign Minister Abbas Araghchi Indicate: IAEA's PMD Report Is Being Written In Negotiation With Iran, Not Independently](https://www.memri.org/reports/statements-iranian-deputy-foreign-minister-abbas-araghchi-indicate-iaeas-pmd-report-being), November 26, 2015.

[[5]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_ednref5%22%20%5Co%20%22) Menewsline.com, February 16, 2016. The report continued: "But under questioning, Mull acknowledged that Washington did not verify the Iranian shipment, part of Tehran's nuclear agreement with the P5+1 nations. The official said Russia, rather than the International Atomic Energy Agency, was responsible for the Iranian uranium. Instead, IAEA attended the loading of the Iranian uranium on the Russian ship."

[[6]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_ednref6%22%20%5Co%20%22) Associated Press, CBSnews.com, February 16, 2016. The report stated: "Following the hearing, a senior administration official said the Iranian stockpile is in Russia, where it will be stored in a secure place, but did not specify where. The official was not authorized to speak publicly and requested anonymity."

[[7]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_ednref7%22%20%5Co%20%22) See "IAEA Takes A Light Touch On Iran's Heavy Water," Olli Heinonen,defenddemocracy.org, April 28, 2016, and IISS report "Heavy Water Loophole in the Iran Deal," ISIS-online, December 21, 2016.

[[8]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_ednref8%22%20%5Co%20%22) See "Update on Iran’s Compliance with the JCPOA Nuclear Limits – Iran's Centrifuge Breakage Problem: Accidental Compliance,"ISIS-online, September 21, 2017.

[[9]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_ednref9%22%20%5Co%20%22) Reuters, August 31, 2017.

[[10]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_ednref10%22%20%5Co%20%22) Reuters, September 26, 2017.

[[11]](https://www.memri.org/reports/jcpoas-critical-flaw-its-lack-real-inspection-iaea-those-focusing-irans-ballistic-missiles%22%20%5Cl%20%22_ednref11%22%20%5Co%20%22) Reuters, September 18, 2017.