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**THE HOSTILE RELATION BETWEEN IRAN AND USA
IN THE CONTEXT OF JCPOA.**

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PREFACE

Myself being an LLM student who specializes in international trade law doing my postgraduate studies in the National University of Advanced Legal Studies, it has been always a directional path of thought process in international law for me. I was always fascinated by the knowledge of international affairs and how countries operate in the international sphere. But one subject which grabbed my heart entirely was the US and Iran conflict particularly in respect to economic sanctions. I tries to view countries like individuals in the society living under a common roof of universality. When a conflict all of a sudden happens, it is not merely enough to understand the outer aspect of a legal or political problem. There needs to be a comprehensive study before we can arrive at a judgement. But it is to be understood that there has been hegemonies that fell and there has been uprisings of the oppressed in the individual and national level. Beyond a political issue between two nations, the Iran -US issues are deeply rooted in the complicated aspects of law and philosophy. Beyond the outer legal aspect, we should have the insight to understand the deeper meanings these issues with a humanistic approach.

In the US- Iran issue, from the beginning itself of the study, what drove me was a constant search for justice. Not just with regard to finding the truth of the issue, it has been a purpose oriented study to suggest a solution to the problem of hegemony. Not many understand how severe it will be the consequences of the US-Iran issue if it keeps on gaining momentum. The possibility of a great war can never be ignored. The consequences of another world war is unimaginable. Even though with the advent of the covid-19 outbreak, things seem to have calmed down, there underlies great concern for the whole of the world if this tension escalates. Hence this thesis is my humble study on the US- Iran issues in the legal context and through this work, I tries to arrive at a practical solution to mitigate the problems of the Joint Comprehensive Plan of Action.

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LIST OF ABBREVIATIONS.

SL.NO.	ABBREVIATIONS.	FULL FORM.
1.	USIE	United States Information and Educational Exchange Program (USIE)
2.	ICAO	International Civil Aviation Organization
3.	NPT	Non-Proliferation Treaty
4.	IAEA	International Atomic Energy Agency
5.	FTO	Foreign Terrorist Organizations
6.	JCPOA	Joint Comprehensive Plan Of Action
7.	VCLT	Vienna Convention on the Law of the Treaties
8.	NSPM	National Security Presidential Memorandum
10.	GATT	General Tariff and Trade Agreement
11.	OFAC	Office of Foreign Assets Control
12.	SDN	Specially Designated Nationals and Restricted Individuals
13.	NIOC	National Iranian Oil Company ,
14.	NITC	National Iranian Tanker Company
15.	INARA	Iran Nuclear Agreement Review Act

16.	NDAА	National Defense Authorization Act
17.	UNSC	. United Nations Security Council
18.	CNPC	. Chinese oil and gas corporation
19.	OPEC	Organization of Petroleum Exporting Countries
20.	CISADA	Comprehensive Iran Sanctions, Accountability, and Divestment Act
21.	CAATSA	passed Countering America's Adversaries Through Sanctions Act
22.	IRGC	Iran's Revolutionary Guard Corps
23.	MEIDW	Middle East to India Deep Water pipeline
24.	IPGPL	Indian Ports Global Private Limited
25.	STFI	Special Trade and Finance Instrument
26	INSTEX	Instrument for Supporting Trade Exchanges
27	FATF	Financial Action Task Force
28	DRM	Dispute Resolution Mechanism

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CHAPTER I

INTRODUCTION

1.1 INTRODUCTION

The international legal framework is based on a simple principle: *pacta sunt servanda* — treaties must be observed.. But buried under most contemporary international conventions, and frequently ignored by scholars, are clauses that call into question the unambiguous rule of international law that states must either follow treaties or participate in repealing or revising them. Such provisions, known as denunciation or withdrawal clauses, allow a State to "exit" a treaty previously ratified by the State and that is otherwise legitimate and in force. Clauses authorizing exit from the Treaties are pervasive. They are included in a broad variety of multilateral and bilateral agreements that regulate key transborder regulatory issues, including human rights, commerce, environmental protection, arms control, and intellectual property. More intriguingly, withdrawal clauses place various forms and degrees of limitations on the right of a State to legally withdraw from a treaty and its obligations. And sometimes, exit clauses are completely absent, which increases the risk that exit can potentially be precluded as an international law matter. In the mid-20th century, the U.S. was a close ally and friend to Iran. The U.S. support for Iran was part of its strategy to monopolize Iranian oil production.. U.S. - Iran relations have remained very tense and hostile. The U.S. is concerned by the potential negative influence Iran could exercise as a regional power. There are several key issues. They include energy security (oil) which has been main focus for the U.S. in the Middle East.. The U.S. is concerned by the potential negative influence a radical Iran could exercise as a regional power. These factors and major issues have resulted in hostility between the two nations, even though they started off as friends in the twentieth century.

Multilateral negotiations regarding Iran's nuclear program date back to 2003 after the International Atomic Energy Agency (IAEA) reported on the existence of clandestine nuclear facilities at Natanz. In October of that year, Iran concluded an agreement with France, Germany, and the United Kingdom under which Iran temporarily suspended aspects of its nuclear program, including enrichment of uranium, and signed an Additional Protocol to its IAEA safeguards agreement, but also asserted its right to develop nuclear technology. After that time, Iran held multiple rounds of talks with China, France, Germany, Russia, the United Kingdom, and the United States (collectively known as the P5+1).¹

¹ Vakil, S. and Quilliam, N., 2020. Getting to a New Iran Deal A Guide for Trump, Washington, Tehran, Europe and the Middle East. [online] 1, pp.2-5. Available at: <<https://www.chathamhouse.org/publication/getting-new-iran-deal-guide-trump-washington-tehran-europe-and-middle-east>> [Accessed 27 March 2020].

Diplomacy bore fruit after the June 2013 election of Iranian President Hassan Rouhani with the achievement, on November 24, 2013, of an interim nuclear accord—the Joint Plan of Action (JPA; referred to in international documents as JPOA). The JPA set out an approach toward reaching a long-term comprehensive solution to international concerns regarding Iran’s nuclear program. The P5+1 and Iran reached a framework of a Joint Comprehensive Plan of Action (JCPOA) on April 2, 2015, and the JCPOA was finalized on July 14, 2015.

The Joint Comprehensive Plan of Action (JCPOA), concluded on 14 July 2015 and endorsed six days later by unanimous resolution of the UN Security Council (2231), entered into force that October. By this arrangement, known colloquially as the Iran nuclear deal, Iran agreed to limit and partially dismantle its nuclear program in certain areas in exchange for relief from international economic sanctions. The deal was enforced on 16 January 2016 after the International Atomic Energy Agency (IAEA) certified Iran's fulfillment of its initial obligations, which prompted the lifting of sanctions.. The United States, the U.N., and the EU ceased application of most sanctions that day. Since Implementation Day, the agency has “verified and monitored Iran’s implementation of its [JCPOA] nuclear-related commitments.

On May 8, 2018, President Trump announced that the United States would no longer participate in the JCPOA and would reimpose sanctions that had been suspended pursuant to the agreement. The other powers that negotiated the accord with Iran—Russia, China, France, Britain, and Germany—opposed the U.S. decision and have been meeting with Iranian officials to continue implementing the JCPOA. Iran’s President Hassan Rouhani has pledged to continue implementing the accord, provided Iran continues to receive the economic benefits of the agreement. In the 114th and 115th Congresses, legislation has been introduced with the stated purpose of redressing asserted weaknesses of the deal or preventing any U.S. sanctions relief beyond that explicitly promised in the JCPOA. The Countering America’s Adversaries through Sanctions Act 2017 (P.L. 115-44) mandates sanctions on Iranian proliferation, human rights abuses, and support for terrorist activities. This thesis aims to investigate the legal framework of unilateral exit from international treaties and to bring about a solution to the fallen JCPOA agreement so as to maintain peaceful nuclear trade transactions.

1.2 STATEMENT OF THE PROBLEM

This thesis explores the under-explored trend of departing unilaterally from treaties. Nevertheless, once a state has consented to a treaty and effectively shepherded it through its international approval process, it must in good conscience fulfill its treaty commitments.

International law takes a dim view of the complexities of treaty conformity to this meta standard. Claims of invalidity, altered conditions, and certain exculpatory doctrines are narrowly defined, resulting in most unilateral violations being treated as infringements of a treaty. True, a state can legally suspend adherence to a treaty, or even reject it entirely where another party has violated the treaty substantially. But such mutual acts of non-compliance, suspension, and abrogation are regulated by an elaborate set of restricting doctrines designed to avoid the vicious cycles of infringement and counter-infringement that would easily disrupt interstate cooperation. Exit clauses, distilled to their essence, provide a legal, transparent process for a state to terminate or withdraw from membership in an intergovernmental body. Denunciation and removal are basically unilateral acts, too.

These may not need other states' permission or approval, and can also be effected simply by notifying the other parties. In fact, a state that invokes such provisions to leave a treaty holds a somewhat different position from a state that infringes its treaty obligations. An exiting state faces different burdens and advantages, different possibilities of sanctions, different reputational consequences and different reactions from a state that violates an international agreement. The JCPOA provided for some modest sanctions relief for Iran. Its provisions, which remained in force until "Implementation Day" (January 16, 2016), Under the JCPOA, the overwhelming bulk of sanctions relief occurred at Implementation Day. The Trump Administration in 2018 seeks to amend the Iran Nuclear Review Act 2015 to a raised degree of sanctions on Iran as the US alleges that Iran fails to comply by the provisions of JCPOA. Subsequently the US exited from the JCPOA on 2018 and imposed sanctions on Iran without adhering to the Dispute resolution mechanism of JCPOA and violation of the resolution of the UN security council. UNSC Resolution 2231 (2015). Supreme Leader Khamene'i stated on May 23 that Iran will only continue to participate in the JCPOA if Europe provides "concrete guarantees" that it maintains Iran's existing revenue stream from oil sales to the EU countries. He also demanded that Europe not to raise the issues of Iran's missiles programs or regional influence, and added that "Iran has the right to resume its nuclear activities."

1.3 RESEARCH PROBLEM

1. What are the legal frameworks for unilateral exit from international treaties ?
2. What are the external and internal implication of the Non Proliferation Treaty of 1970 for Iran ?
3. What is legality of enforcement of the JCPOA under international law?
4. What are solutions for reinstating the JCPOA and to ensure compliance from the parties?

1.4 AIMS AND OBJECTIVES

1. To study the legal framework of unilateral exit from international treaties.
2. To suggest solutions for prevention of illegal unilateral exits from international treaties.
3. To study the legality of JCPOA as a treaty under international law.
4. To study the impact of JCPOA withdrawal on international trade.
5. To examine the efficiency of JCPOA verification and dispute settlement mechanism.
6. To suggest solutions for reinstating the JCPOA.

1.5 RESEARCH HYPOTHESIS

US must be willing to resort back to the provisions of JCPOA and lifting of sanctions on Iran
The negotiations will require that both governments establish issue-specific institutions or forums of regional/global scope and importance and also the reinstatement of JCPOA privileges under the supervision of the remaining parties to the agreement.

1.6 RESEARCH METHODOLOGY

The Research methodology for this paper is based on a doctrinal study of the Iran- US relations. This research aims to collect information from literature and knowledge in the area

of economic and security , especially the JCPOA . The Research aims to take information from UN Commission reports, Treaties and JCPOA itself, journals, magazines, books, e-journals, Web pages and reports of various Governmental and Non Governmental Agencies especially with regard to the JCPOA.

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1.8 CHAPTER SCHEME

THIS STUDY HAS BEEN PRESENTED IN SEVEN CHAPTERS.

- I. The introduction, statement of the problem, research hypothesis, research problems, objectives of the study, methodology, and chapter schemes are presented in the first chapter.
- II. Second chapter deals with the historical overview of the Iranian nuclear programme and the implications and sanctions related to the Non proliferation Treaty.
- III. Third chapter deals with the study of legal framework for unilateral exit from international treaties.
- IV. Fourth chapter deals with legality of the US withdrawal from JCPOA and the recognition of JCPOA as a treaty under international law.
- V. Fifth chapter deals with the implication of JCPOA collapse and imposition of US sanction on international trade especially regarding oil trade.
- VI. Sixth chapter deals with finding a solution for reinstating JCPOA on reliance to its verification mechanisms
- VII. Seventh chapter deals with recommendations for reviving JCPOA and ensuring compliance by the parties back to JCPOA and removal of sanctions.

CHAPTER 2

A HISTORICAL OVERVIEW OF IRAN'S

NUCLEAR PROGRAM

2.1 INTRODUCTION

Despite good relations between Iran and the U.S. before the 1979 Iranian revolution, after that turning point, things changed and the relationship between two countries became strained. The U.S. policy against Iran could be viewed as a strategy to stop this nation from becoming a Middle East center of influence. From the 1979 period of Iran's revolution and the hostage crisis till 2006, the U.S. imposed unilateral sanctions on Iran but did not change the political behavior of Iran. Nevertheless United States was successful to accompany UN and EU to impose sanctions on Iran; multilateral sanctions were intensified during the time. This chapter will discuss in detail the context of the U.S. unilateral sanctions, the history of Iran's nuclear program, the steps taken by the West to stop Iran from pursuing its nuclear program.

After the revolution in 1979, Iran's history has entered a new phase of evolution. The concept of the Islamic republic and the Islamic government was a new notion which had an anti western policy orientation. Discrepancies between Iran and the U.S. had been expanded with time and clashed together with political discords. The stance of the Islamic Republic of Iran was / is counter to the regional and national interests of the United States. The height of the two-country conflict coincided with the hostage crisis of Iran that led to the starting point of the U.S. sanctions against Iran and the tragic events of September 11, 2001. At present, the most important obstacle facing Iran and the west is related to Iran's nuclear program. The U.S. in particular highly distrusts Iran's pursuance of a nuclear program due to suspicion about nuclear weapon development.²

Moreover, Iran is one of the Middle East region's powerful countries that avoids obeying U.S. policies and acting in the same direction with US policies. Many Iranian officials believe the nuclear program is an excuse for putting pressure on Iran, and the roots of animosity are linked to Iran's post-revolution history. Mr. Ali Larijani, chairman of the Iranian parliament, said that the U.S. changed its policy toward Iran after the 1979 Iranian revolution and even

² Jahangir Amuzegar, "Iran's Economy and the U.S. Sanctions," Middle East Journal 51, No. 2 (1997): pp .186-187.

increased its hostility to Iran by supporting Iraq during the war with Iran (September 1980 to August 1988).³

Iran has been under sanctions for many years, for reasons that are transparent and secret. Immediately after the Islamic Revolution and the hostage crisis, the U.S. imposed sanctions on Iran. Nevertheless, a new chapter in Iran's history of sanctions had begun when Iran's nuclear cover program was discovered and the International Atomic Energy Agency (IAEA) ordered Iran's nuclear sites to be inspected in 2003, resulting in sanctions being imposed by the European Union and the United Nations in addition to the United States. Also the United States had successfully assembled the western countries to produce effective multilateral sanctions on Iran. Consequently, the first Resolution against Iran was adopted in 2006 by the UN Security Council because of the west's distrust of Iran's nuclear activities. This was the beginning of the severe sanctions which were later adopted by the United States, the United Nations and the European Union.

2.2 EARLY HISTORY OF IRAN'S NUCLEAR PROGRAMME

Because of its strategic importance, over the course of modern history, Iran has been the subject of the policies of great power. The conflict between Russia and Britain over Iran which began in the mid-1800s lasted a century. With the end of World War II, the role of Britain in the region declined, and the United States filled the vacuum. In 1947, Iran gained full sovereignty over its territory. Two major factors dominated the post-war U.S. strategy on Iran. First, the geopolitical importance of Iran made it even more important for the U.S. to contain the U.S.S.R. on its southern flank. Secondly Iran possesses rich oil and gas resources.⁴ In order to control the flow of this strategic commodity to Western economies and military forces, the United States determined to maintain "friendly" regimes in Iran. Prime Minister Mohammed Mossaddeq, who nationalized the country's petroleum reserves in the year 1951 was toppled down by CIA and subsequently Shah Reza Pahlavi returning to power in Iran in the year 1953. Under Shah Iran became the No 1 ally of USA in the Middle East

³ "Eight solution of Larijani for resistive economy: Nuclear program is just an excuse." Mehr News, October 22, 2012, <http://www.mehrnews.com/fa/newsdetail.aspx?NewsID=1725924>.

⁴ David G.Haglund, "Oil as a Factor in U.S. Policy toward the Middle East," in Paul Marantz and Blema S.Steinberg, eds., *Superpower Involvement in The Middle East: Dynamics of Foreign Policy* (London, 1985), pp. 175-197.

under American protectionism. Iran became a regional power hub of the middle east in the subsequent years , but what changed the direction of US- Iran relationship was the Islamic Revolution of 1979. With the Islamic Revolution, the US lost its biggest ally in the Middle East. What made this more intense was the Soviet invasion of Afghanistan in the same year.

Suddenly, the United States lost its two most important intelligence areas against the USSR, faced the significant risk of disruption of the oil supply from the region, and faced the serious strategic threat of a destabilization in the region. Iraq saw this as an opportunity to regain access to its territories ceded to Iran in 1974. With the US support, Iraq attacked Iran in 1980 and ultimately resulting in both Iraq and Iran ruining each other in 1988. In the following period , two important invasions shaped the circumstances in Middle East. One Iraq's invasion of Kuwait in 1990s and the gulf war that followed and two the fall of USSR the next year.

The new situation offered both risks and opportunities for Iran. On the one hand, Iran aimed to increase its control of the newly independent republics in Central Asia by using religion as a tool of influence. On the other hand, Washington supported Turkey's greater role in the region and excluded Iran from oil and gas projects. In return, Iran approached Russia and Armenia for their support on regional matters during post Cold War period. In this context, Washington continued to enact policies, such as "dual containment" to contain Iran and restrict the military and political influence of both Iran and Iraq.

The September 11, 2001, attacks and subsequent alterations in American foreign policy and brought another dimension to U.S.- Iranian relations. Although the overthrow of the Taliban regime in 2002 and Saddam Hussein in 2003 eliminated the two major regional rivals of Iran, Afghanistan and Iraq, respectively. It also caused the country to be encompassed by U.S. forces on the east, west and north. Furthermore, energy and military agreements between the United States and the Central Asian republics made Iran feel even more restricted. With the exposure of Iran's secret nuclear program in 2002, relations between the two countries deteriorated greatly. Some experts believe the threat posed by the United States caused Tehran to secretly accelerate its nuclear program.⁵

⁵ Barbara Conry, "America's Misguided Policy of Dual Containment in the Persian Gulf," November 10, 1994. Cato Foreign Policy Briefing No. 3,

2.3 THE JOURNEY OF IRAN NUCLEAR ENRICHMENT

Iran's Nuclear Enrichment programme dates back to the 1960s. Ironically, it was the US who helped Iran to develop their Nuclear Technology. US supplied a five Megawatt research reactor to Iran and it started its operation in the year 1967. Iran signed Non Proliferation Treaty (NPT) in the year 1968 and Iran ratified the treaty in 1970⁶.

Iranian Nuclear Programme was ambitious from the beginning itself as the oil prices soared especially after the end of the Arab-Israeli war which allowed the Iranian Government to invest more on nuclear energy. Under Shah Administration, the Iranian Government made deals with German and French contractors. Germany's Kraftwerk Union which is a subsidiary of Siemens agreed to build two 1200 megawatt nuclear reactors at Bushehr. Also a French company agreed to supply two 900 megawatt reactors. The Massachusetts Institute Of Technology also signed a contract with the Atomic Energy Organization of Iran (AEOI) to give training to the first cadre of Iranian Nuclear Scientists in the year 1975. Iran's domestic nuclear cycle included an advanced nuclear research centre and uranium mining and processing of ore. The U.S. also sponsored Iran's plans to build a potential for nuclear energy. The shah's government planned to buy eight nuclear reactors from the United States for electricity generation purposes, according to declassified secret U.S. government records. The final draft of the U.S.-Iranian Nuclear Energy Agreement was signed in July 1978, just seven months before the Islamic Revolution. This agreement was intended to facilitate Iranian-American nuclear cooperation, including the purchase of U.S. equipment and material and help in the search for deposits of uranium. By 1979, one Bushehr 1 nuclear reactor was complete by 90 percent, with 60 percent of its equipment installed; Bushehr 2 was complete

<https://www.cato.org/sites/cato.org/files/pubs/pdf/fpb033.pdf>

⁶IAEA Website, "In Focus: IAEA and Iran,"

<http://www.iaea.org/NewsCenter/Focus/IaeaIran/index.shtml>

by 50 percent. After the revolution, the first prime minister, Mehdi Bazargan, decided that Iran did not need nuclear power, and the program was discontinued.⁷

The second factor that stopped Iran from establishing a nuclear capacity was the 1980-88 Iran-Iraq War. Iraq bombed Iran's nuclear reactors and research centres, six times hitting the two reactors being constructed in Bushehr. With the end of the war, Iran's energy needs have increased significantly. This led the government of President Hashemi Rafsanjani to review its policy and decide to continue the quest for nuclear-energy projects, according to the official Iranian line. The Government of Iran has pursued foreign technical assistance and collaboration to complete nuclear facilities from Germany, Argentina, Spain, the Czech Republic, Italy and Poland. However, as part of the dual-containment policy, the United States prevented these attempts.

An Iranian-Russian deal on Iran's nuclear program was concluded in 1995, after lengthy negotiations. This called for completing the construction of the reactors at Bushehr, which would have been able to produce a maximum of 180 kg of plutonium per year under the oversight of the International Atomic Energy Agency (IAEA). According to Reuters, (November 27, 2008). Russia announced the completion of the Bushehr power plant in 2009. The agreement also provided for Russia to provide additional technical assistance and training for Iranian nuclear scientists.⁸ The construction of the Bushehr reactor by Russia is an enormously complex project. The Kraftwerk Union did not provide any technical documents for the reactor construction back in the 1970s. Furthermore, the technical differences between Russian and German reactors are important. Iran's nuclear program is highly dependent on the transfer of international technologies, and it seems it will continue to be. The rapid advances in Iranian missile delivery capabilities were another factor that raised concern about Iranian intentions. Iran's ballistic missile capabilities in the middle-range could reach all of Middle East and Eastern Europe. In general, Israeli and American analysts say that developing these capabilities poses a threat to the region's security. Iran's efforts to develop missile capability in conjunction with its nuclear program have led many observers

⁷ Mohammed Sahimi, "Iran's Nuclear Program: Part 1: Its History," Payvand, 2003, <http://www.payvand.com/news/03/oct/1015.html>.

⁸ Anthony H. Cordesman, *Iran's Developing Military Capabilities* (Washington, D.C.: CSIS Press, 2005), p. 78-81

to conclude that the latter is intended for military purposes rather than energy generation purposes.

2.4 THE BACKGROUND OF THE IRAN'S NUCLEAR PROGRAM AND INDICATION OF NUCLEAR SANCTIONS

In July 1968, Iran signed the Nuclear Non-Proliferation Treaty (NPT), subjecting Iran's nuclear program to the verification of the International Atomic Energy Agency (IAEA), including the use of peaceful nuclear technology. The NPT has three main pillars: nuclear non-proliferation, disarmament, and peaceful use of nuclear energy. The Shah had signed several contracts to build the nuclear program, but after the Iran revolution all attempts stopped; Foreign investors abandoned Iran and unfinished ventures worth billions of dollars.

Moreover, the relationship between Iran and the U.S. has changed after the revolution, at this time the U.S. and its allies have changed their status against Iran, which could no longer expect help to develop the nuclear programme. Because of the Iranian government's aggressive way of dealing with the U.S., it is not shocking that when the U.S. and Israel learned about Iran's nuclear program activity, they became worried that Iran is planning to achieve a nuclear military capacity.

Alireza Jafarzadeh, a spokesperson for an Iranian opposition political group, Mujahedin of Iran (MEK), announced on 14 August 2002 that two nuclear sites were being constructed, a plant for the enrichment of uranium in Natanz and a heavy water facility in Arak. In response to MEK's statement, Mr. Reza Aghazadeh, Iran's Vice-President and President of Iran's Atomic Energy Organization, stated in his address to the International Atomic Energy Agency (IAEA) on 16 September 2002 that Iran has always opposed the production of weapons of mass destruction on the basis of its Islamic values.⁹

Following this claim, from 21 to 22 February 2003, the Director General of the IAEA visited Iran. After this session, IAEA reports concluded that ' Iran has failed to fulfill its obligations under its Safeguards Agreement with regard to the disclosure of nuclear material, the

⁹ "Speech of Reza Aghazadeh, Vice-President of Iran and President of the Atomic Energy Organization of Iran" in the 46th General Conference of the IAEA in Vienna, September 16, 2002.

subsequent storage and use of nuclear material and the disclosure of facilities where the material has been stored and handled” . The report of the IAEA did not state that Iran had or was trying to have a nuclear weapons program, but it posed some questions to the international community: is Iran pursuing the production of nuclear weapons? Iran welcomed EU 3 countries composed of Britain, France and Germany to Tehran to avoid raising further questions about Iran's nuclear program. In this meeting, which took place on 21 October 2003, the Iranian government announced it had decided to interact with the IAEA in full cooperation to clarify any uncertainties.

To foster trust, Iran has voluntarily agreed to temporarily suspend all enrichment of uranium. This agreement, which took place on 14 November 2004, was dubbed the Paris Agreement; on the other hand, three EU countries—France, Germany and the United Kingdom—voted to "recognize Iran's right to enjoy the peaceful use of nuclear power in compliance with the Non-Proliferation Treaty."¹⁰ Nevertheless, the IAEA Board of Governors addressed the document issued by the agency's Director General at the meetings in Vienna in November 2005. It had stated in this document that Iran, in cooperation with the organization, was more forthcoming, but that problems still remain to be resolved. It was also noted in the report that "to explain some of the outstanding issues relating to Iran's enrichment programme, full transparency of Iran is necessary and overdue.

Despite all the efforts of the Iranian government to cooperate with the IAEA, the outcome was unsuccessful. The reason is that West distrusted Iran with its nuclear program because of concern about Iran's possibility of pursuing nuclear-military goals. After the Iranian revolution, Iran's anti-western policy orientation and its global power-seeking nature fuelled the perception that Iran was targeting nuclear weapons despite the fact that Ayatollah Ali Khameneyi, Iran's supreme leader, issued a religious edict—a fatwa—prohibiting the production, storage and use of nuclear weapons¹¹. Nevertheless, Iran was unable to persuade the West that its nuclear program had only peaceful goals; and on February 4, 2006, the IAEA's 35-

¹⁰ “Statement by the Iranian Government and Visiting EU Foreign Ministers,” International Atomic Energy Agency (IAEA), Last Modified October 21, 2003, http://www.iaea.org/newscenter/focus/iaearan/statement_iran21102003.shtml.

¹¹ Ali Akbar Salehi, “Iran: We do not want nuclear weapons,” the Washington Post, April 12, 2012, http://www.washingtonpost.com/opinions/iran-we-do-not-want-nuclear-weapons/2012/04/12/gIQAjMNnDT_story.html.

member board adopted the resolution requiring the IAEA Director-General to refer all IAEA reports and resolution on Iran to the UN Security Council. Soon after The Washington Post wrote that "Iran was reported to the UN by the United Nations nuclear agency. Security Council signalled growing concern around the world about the nature and intent of Iran's nuclear program and the concern that it could be military.¹² Iran replied by announcing its intention to terminate voluntary uranium enrichment suspension and end voluntary cooperation with the IAEA beyond the basic requirements of the Nuclear Non-Proliferation Treaty. President Ahmadinejad said, "All of Iran's peaceful nuclear activities will continue under the IAEA and on the basis of the NPT and the safeguards of the agency. Such claims by the Iranian government and the report by the IAEA to the UN resulted in the first round of sanctions against Iran,

2.5 IRAN'S NUCLEAR PROGRAM RELATED SANCTIONS

Iran is one of the few nations against which the international community has established a consensus to enforce multilateral sanctions. The multilateral existence of Iran's embargoes is the main reason at the moment for so much pressure on the Iranian government and the ordinary people. Earlier, the steps taken by the West to enter into an international agreement to impose sanctions on Iran were explained due to the lack of confidence in the country's nuclear program. The specifics of the sanctions will be covered in the following pages of this chapter Iran's nuclear-energy sanctions can be divided into two sections: U.N. sanctions, U.S. sanctions, All these embargoes will be discussed and explained in this section:

2.5.1 The United Nations Sanctions

The IAEA referred Iran to the United Nation Security Council on the grounds of Iran's refusal to allow full access to its nuclear sites to the IAEA; accordingly, UN Security Council adopted Resolution 1696 on July 31, 2006. It was noted in the resolution that a gap of information remains a matter of concern about the transparency of Iran's nuclear program and that the IAEA was unable to provide guarantees about the lack of undeclared nuclear

¹² John Ward Anderson and Glenn Kessler, "U.N. Nuclear Agency Reports Iran to Security Council," The Washington Post, February 04, 2006. <http://www.washingtonpost.com/wpdyn/content/article/2006/02/04/AR2006020400470.html>.

material and activities in Iran. According to the resolution, if Iran wants to be verified by the IAEA, all enrichment operations, including research and development of the nuclear programme, should be suspended¹³

Iran's immediate response was to announce that the country is strongly opposed to the production storage, development and proliferation of nuclear weapons, stressing that Iran's nuclear program has never turned its back on its peaceful path and that Iran has no interest in restricting or suspending its nuclear facilities and activities. It was stated in the statements made by Iran that, under the NPT stipulation, Iran believes it has the right to make substantial progress in peaceful nuclear technology.

Nevertheless, the negotiations were unsuccessful, and on December 23, 2006, the UNSC carried out the first round of sanctions against Iran, outlining Resolution 1737. The resolution stated that it was decided for all States to take the necessary measures to prevent the provision of any technical assistance or training, financial assistance, investment, brokering or other services to Iran and the transfer of financial resources or services relating to the provision, sale, transfer, manufacture or use of prohibited items, materials, equipment, goods and technology which would be relevant to Iran's enrichment programme or heavy water related activities.¹⁴

Meanwhile, the second round of UNSC sanctions against Iran was Resolution 1747 adopted on March 24, 2007. The resolution made an embargo on the arm calling on all States to prohibit the entry or transit through their territories of individuals engaged in, directly associated with or promoting Iran's nuclear proliferation activities or the development of nuclear weapons delivery systems. It is also decided that "Iran shall not supply, sell or transfer any arms or related material directly or indirectly from its territory or nationals, using its flag vessels or aircraft."¹⁵

¹³ United Nations Security Council, Resolution Number 1696: Security Council demands Iran suspend Uranium enrichment or face possible economic, diplomatic sanctions (Security Council SC/8792, 2006).

¹⁴ United Nations Security Council, Resolution Number 1737: Adopted by the Security Council at its 5612th meeting (Security Council S/RES/1737: 2006): 03.

¹⁵ United Nations Security Council, Resolution Number 1747: Adopted by the Security Council at its 5647th meeting (Security Council S/RES/1747: 2007): 02.

Soon afterwards, Iran responded to Resolution 1747 by naming the day of 8 April 2007 in Iran's calendar as the National Day of Nuclear Technology, meaning that not only would Iran not stop its nuclear program, but it is also decided to pursue it continuously. President Ahmadinejad said on the first National Nuclear Technology Day ceremony at the Natanz nuclear site, "Many world powers are using their strength to impede Iranian development. They should know that they won't be allowed to stop the great Iranian country. Soon afterwards, Iran responded to Resolution 1747 by naming the day of 8 April 2007 in Iran's calendar as the National Day of Nuclear Technology, meaning that not only would Iran not stop its nuclear program, but it is also decided to pursue it continuously. President Ahmadinejad said on the first National Nuclear Technology Day ceremony at the Natanz nuclear site, "Many world powers are using their strength to impede Iranian development. They should know that they won't be allowed to stop the great Iranian country."¹⁶

As of 2008, inspectors had found no evidence of Iran's nuclear weapons development, but there remained international concern. In 2008, UNSC adopted two resolutions. The first, adopted on March 3, 2008, was Resolution 1803, which extended and expanded the list of banned individuals and organizations listed in previous resolutions. It also called on all States to monitor the activities of financial institutions in their territories with all banks in Iran, especially Bank Melli and Bank Saderat, and their branches and subsidiaries abroad, in order to avoid any activity involving the proliferation of nuclear activities¹⁷

In addition to monitoring bank operation, Resolution 1803 called on all States to track and inspect Iranian ships and aircraft, noting that ' inspect cargo from and to Iran, aircraft and vessels at their airports and seaports owned or controlled by Iran Air Cargo and Islamic Republic of Iran Shipping Line, provided that there is fair grounds to believe that the aircraft

¹⁶ Shah Alam, "Nuclear and foreign policy calculations of Iran." *India Quarterly: A Journal of International Affairs*, No: 64 (2008): 120

¹⁷ United Nations Security Council, Resolution Number 1803: Adopted by the Security Council at its 5848th meeting (Security Council S/RES/1803: 2008): 04.

or vessel is transporting goods prohibited under this resolution or resolution 1737 (2006) or resolution 1747 (2007).”¹⁸

The last UNSC resolution passed on June 9, 2010, with the aim of tightening the sanctions. Before the resolution, the IAEA published a report on 31 May 2010, stating that Iran did not have the necessary cooperation with the agency to verify the non-diversion of declared nuclear material in Iran, and that not only did Iran not suspend uranium enrichment, but it also continued to enrich up to 20% and implement new enrichment plants at Fordow. This study was at a time when President Ahmadinejad declared that Iran produced 20% enriched uranium and was able to further enrich the fuel. The UNSC has therefore decided to impose additional sanctions on Iran. It was written in Resolution 1929 that "With serious concern that Iran has enriched uranium to 20 percent, it did so without allowing the IAEA enough time to adjust the current safeguard procedures. Resolution 1929 tightened the weapon embargoes, banning Iran from engaging in any Ballistic missile-related activity. Restrictions are also imposed on individuals connected to the nuclear program by placing travel restrictions on them and by closely monitoring Iranian individuals and entities while dealing with them.

Furthermore, Resolution 1929 includes financial sanctions, such as preventing the provision of any financial services or business from or through the territory of all states or persons or financial institutions in their territory, if they have information that such services or businesses will contribute to the proliferation-sensitive nuclear activities of Iran or the development of nuclear power. Resolution 1929 also called on all States to prohibit the opening of new branches of Iranian banks or joint ventures of such banks in their territories and to prohibit the opening of any new financial institutions or banking¹⁹

2.5.2 The United States Sanctions

The U.S. sanctions that began in the early days of the Iranian revolution were extended and strengthened when the first signs of Iran's decision to follow the nuclear program were found.

¹⁸ United Nations Security Council, Resolution Number 1803: Adopted by the Security Council at its 5848th meeting (Security Council S/RES/1803: 2008): 04.

¹⁹ United Nations Security Council, Resolution Number 1929: Adopted by the Security Council at its 6335th meeting (Security Council S/RES/1929: 2010): 7-8.

According to the United States Report of the Government Accountability Office (GAO) on December 2007, the U.S. sanctions against Iran include three categories: 1-Implementing a comprehensive trade and investment ban on Iran 2-Sanctions on foreign parties involved in proliferation or terrorism with Iran 3-Imposing financial sanctions, including freezing Iran's assets and prohibiting its access to the U.S. financial system ²⁰

The U.S. Treasury Office of Foreign Asset Control (OFAC) agency implements Iran's trade and investment prohibition. It is defined in OFAC's executive order number 13382 that the order was passed with the intention of preventing the proliferation of weapons of mass destruction (WMD) and freezing the property and financial isolation of proliferators and their supporters of weapons of mass destruction. Executive order 13382 sanction systems were drawn up on 28 June 2005. Such restrictions include blocking the properties of individuals and their associates involved in proliferation activities, imposing a prohibition on imports into the United States (direct or indirect imports of goods and services from foreign persons determined) and banning American participation in any transactions.

Furthermore, the U.S. ended Iran's ability to indirectly access its financial system through non-Iranian foreign banks to Iranians. However, if the payment was not allowed before, a U.S. bank would only have to deny a transaction between itself and the Iranian government, but they were required to block and freeze the funds after the new order and disclose it to the OFAC.²¹

According to Rachel L. Loeffler, "some European banks responded to these events and began to scale back business in Iran. The major Swiss banks UBS and Credit Suisse were the first banks to do so, soon after several large German banks, including Deutsche Bank, Dresdner Bank and Commerz Bank, and some French banks, including Societe Generale and Le Credit

²⁰ Government Accountability Office (GAO), Impact in Furthering U.S. Objectives Is Unclear and Should Be Reviewed: Report to the Ranking Member, Subcommittee on National Security and Foreign Affairs, House Committee on Oversight and Government Reform, GAO-08-58, (United States: December 2007): 7-9.

²¹ "U.S. Dollar Transactions with Iran are Subject to New Restrictions - Tough Policy Decisions Face International Financial Institutions," Wiley Rein LLP, Last Modified November 28, 2007, <http://www.wileyrein.com/publications.cfm?sp=articles&id=4491>.

Lyonnais, and the British banks HSBC and Barclays and Fujairah of Dubai also terminated Iranian Transactions.²²

On June 24, 2010; the 2010 Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA) was passed by the U.S. Congress Regarding Iran's admission of the existence of a secret uranium plant in a city named Qom disclosed by U.S. officials on September 2009, the U.S. decided to impose additional sanctions to prevent Iran from continuing its "illegal nuclear efforts." The CISADA states that the implementation of the act is not only to deter Iran's nuclear program operations, but also to encourage the Iranian government to respect human rights and religious freedom in Iran²³

The CISADA amends the Iran Sanctions Act (ISA), which included sanctions against individuals or companies making certain investments in the energy sector of Iran; these sanctions are expanded by the new CISADA authorities. According to CISADA, new sanctions would be imposed on people promoting 1-Iran's petroleum resource development 2-Iran's output of refined petroleum products 3-Iran's export of refined petroleum products. In addition, according to CISADA's OFAC guidance issue, all imports of goods of Iranian origin such as rugs, pistachios and caviar have been prohibited²⁴

Nonetheless, the ISA and then the CISADA could have major negative impacts on Iran's energy sector investment and consequently on Iran's oil production. The U.S. sanctions were carried out on various fronts; President Barak Obama signed four new executive orders (Executive Order 13553, 13574, 13590 and 13599) as a result of forcing Iran's government to stop nuclear proliferation. Executive order 13590 in November 2011 included a ban on the importation, directly or indirectly, into the United States of goods, equipment or services by a prohibited person; or executive order 13599 in February 2012 included a blockade of all the

²² Rachel L. Loeffler, "Bank Shots," *The Foreign Affairs* 88, No. 2 (2009): 03.

"some European banks responded to these events and they started to scale back business in Iran. The big Swiss banks UBS and Credit Suisse were the first banks that did so, soon after several large German banks, including Deutsche Bank, Dresdner Bank, and Commerz bank, and some French banks, including Societe Generale and Le Credit Lyonnais, and the British banks HSBC and Barclays, and then the Dubai-based National Bank of Fujairah also terminated their transactions with Iran."

²³ The Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA), (July 01, 2010), *See in general*.

²⁴ "No More Rugs, Pistachios, or Caviar; All Iranian Origin Imports Banned," *Sanction Law*. Last Modified August 21, 2010. <http://www.sanctionlaw.com/2010/08/21/no-more-rugs-pistachios-or-caviar-all-iranian-origin-imports-banned/>.

property and resources of the Government of Iran or of any Iranian entity. Including Iran's central bank in the U.S. or will be in the U.S. after the embargo date.

2.6 SUMMARY AND CONCLUSIONS

This chapter narrowed the reason for the sanctions against Iran as being unable to address the concerns of the UNSC about its nuclear activities; refers to the doubts of the international community about the peacefulness of Iranian nuclear activities and thus suspects a breach of the NPT. Looking at the sanctions released by the UNSC between 2006 and today, it drew the picture of a network of obstacles put on Iran that is coming together tighter and tighter. The mainly negative impacts of the sanctions on the Iranian economy in general are evident from crash of Iranian GDP and the IRR's currency devaluation to less than half its first half-year price.

A wide range of Iranian leaders, including Ayatollah Khamenei, have recognized the the difficulties resulting from the restrictions.²⁵ The goal of the UN was to put Iran in coercive detention and pressure it to comply with the NPT, which fulfills the conditions of the embargo placed including cooperation with the IAEA. Second, arbitrary detention tends to limit the detainee's ability to move. Sanctions are likely to achieve this goal, even if high-ranking Iranian officials understand growing hardship.

Some scientists and Iranian officials believe that the main motives for U.S. sanctions against Iran are simply the U.S. goal of manipulating Iran because of U.S. interests in the Persian Gulf in order to manipulate the region's energy resources and thus control the supply of oil and oil prices. However, the new wave of sanctions started after Iran appeared to have embarked on a long-term plan to build nuclear power plants and programs for nuclear proliferation. Iran said it is seeking a peaceful nuclear program but this statement is not respected by the U.S. and Western countries, and they suspect Iran is trying to build nuclear weapons. As a result, the U.S. and Western countries agreed to choose the economic sanctions against Iran to stop the country from pursuing its nuclear program and possibly its

²⁵ Ray Takeyh and Suzanne Maloney, "*The Self-limiting Success of Iran Sanctions*," *International Affairs* 87, no. 6, p. 9.

nuclear weapons; the intense multilateral economic sanctions that had or will eventually have an impact on the economy and politics of Iran.

CHAPTER 3
FRAMEWORK FOR UNILATERAL
EXIT FROM INTERNATIONAL TREATIES

3.1 INTRODUCTION

The international legal framework is based on a simple principle: *pacta sunt servanda* — treaties must be observed.²⁶ States, or more specifically government officials representing their interests at international negotiation conferences, are guardians of their responsibilities under the Treaty. No state can be coerced into signing a treaty without its consent, nor can it be compelled against its will to join an intergovernmental organization. Nevertheless, once a state has consented to a treaty and effectively shepherded it through its national approval process, it must in good conscience honor its treaty commitments. International law takes a dim view of the complexities of treaty conformity to this meta standard. Claims of invalidity, altered conditions, and certain exculpatory doctrines are narrowly defined, resulting in most unilateral violations being treated as infringements of a treaty. True, a state can legally suspend adherence to a treaty, or even reject it entirely where another party has violated the treaty substantially. Nevertheless, these reciprocal acts of non-compliance, suspension and revocation are regulated by an intricate collection of restrictive doctrines designed to prevent the vicious loops of infringement and counter-infringement that would easily cause interstate cooperation to unravel²⁷.

Of course, neither treaties nor the geostrategic sense within which they are embedded are static. When changes in the political climate or domestic attitudes weaken the goals of a treaty or make its terms unduly burdensome or obsolete, international law requires states to avoid unilateral negotiation with their treaty partners. The possible outcomes of these joint activities are constrained only by ingenuity on the part of the parties. These vary from a temporary termination of the treaty to a change of its terms and conditions, to a complete revocation of the treaty with or without a fresh collection of treaty commitments.²⁸

²⁶ Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331, 339 (“Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”).

²⁷ Shabtai Rosenne, *Breach of Treaty* 117–25 (1985) [hereinafter Rosenne, *Breach of Treaty*]; Ian Sinclair, *The Vienna Convention on the Law of Treaties* 188–90 (2d ed. 1984);

²⁸ Arie E. David, *The Strategy of Treaty Termination: Lawful Breaches and Retaliations* 159–202 (1975) (discussing alternatives to unilateral termination and the legal procedures used to achieve them).

But buried under most contemporary international conventions, and frequently ignored by scholars, are clauses that call into question the unambiguous rule of international law that states must either follow treaties or participate in repealing or revising them. Such provisions, known as denunciation or withdrawal clauses, allow a State to "exit" a treaty previously ratified by the State and that is otherwise legitimate and in force.²⁹ Exit clauses, distilled to their essence, provide a legal, public process for a state to terminate or withdraw from membership in an intergovernmental body. Denunciation and removal are basically unilateral acts, too. They may not need other states' consent or permission, and can often be effected simply by notifying the other parties. In fact, a state that invokes such provisions to leave a treaty holds a somewhat different position from a state that violates its treaty obligations.³⁰

Clauses authorizing exit from the Treaties are pervasive. They are included in a broad variety of multilateral and bilateral agreements that regulate key transborder regulatory issues, including human rights, commerce, environmental protection, arms control, and intellectual property. More intriguingly, withdrawal clauses place various forms and degrees of limitations on the right of a State to legally withdraw from a treaty and its obligations. And sometimes, exit clauses are completely absent, which increases the risk that exit can potentially be precluded as an international law matter. States which invoke denunciation clauses do so to achieve various goals. For example, states have exercised their right to withdraw from a treaty as a result of shifts in the desires of domestic interest groups, adjustments in treaty obligations, or expansion of the roles of intergovernmental organizations. Such developments may establish a discrepancy between national interests and international commitments, leading a state to adopt a disengagement policy. For example, when North Korea withdrew from the Nuclear Non-Proliferation Treaty, and when the United States withdrew from the International Court of Justice's compulsory jurisdiction³¹

²⁹ U.N. Office of Legal Affairs, *Final Clauses of Multilateral Treaties Handbook*, at 109, U.N. Sales No. E.04.V.3 (2003)

³⁰ Laurence R. Helfer, *Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes*, 102 *Colum. L. Rev.* 1832, 1851–58 (2002)

³¹ Masahiko Asada, *Arms Control Law in Crisis? A Study of the North Korean Nuclear Issue*, 9 *J. Conflict & Sec. L.* 331, 41 (2004)

States are seeking exit (and exit threats) not to dissociate themselves from potential cooperation with other nations but, as Albert Hirschman has well-knownly explained in the domestic sense, “as a tactic to increase their presence within an intergovernmental body or negotiating platform based on the Treaty”.³² The denunciation of the International Labor Organization (“ILO”) and the United Nations Economic, Social and Cultural Organization (“UNESCO”) by the United States in the 1970s and 1980s follows this trend. In each case, the U.S. used exit and exit threats and the lack of corporate support and funding these entailed to force the organizations to change their actions, after which they renewed their membership. In the 1950s, the Soviet Union and its allies followed a similar policy, initially withdrawing from the World Health Organization (“WHO”), UNESCO, and the ILO but later joining them. More recently, an exit strategy has been used by the United States and the European Communities to close the Uruguay Round of trade talks that created the World Trade Organization (WTO). They withdrew from the old General Agreement on Tariffs and Trade (“GATT”), a treaty that brought unique benefits to developing countries, and then accepted the new WTO Agreement as a “single undertaking,” pressuring developing nations to embrace a wide range of obligations in favor of the United States and European interests³³

Given the extensive use and complex nature of denunciation and withdrawal clauses, it is concerning that so little attention has been paid to the issue of exiting treaties in the scholarship for international law and international relations (“IR”). A few legal scholars deplore passing denunciation as “a cover for chaos, a practice that weakens the entire system of treaty-created international obligations.” This negative view may reflect the fact that the history of exiting the treaty involves one of the darkest episodes of international law — the League of Nations failure. By comparison, most legal analysts believe that denunciation and withdrawal clauses are mere boilerplate provisions that states seldom discuss and much less frequently invoke.³⁴

³² Albert O. Hirschman, *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations, and States* 3–5, 15–20 (1970).

³³ Richard H. Steinberg, *In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO*, 56 *Int’l Org.* 339, 359–60 (2002).

³⁴ Stephen C. Schlesinger, *Act of Creation: The Founding of the United Nations: A Story of Superpowers, Secret Agents, Wartime Allies and Enemies, and Their Quest for a Peaceful World* 26–27 (2003).

The analysis of when and why states leave a treaty has also been largely overlooked by IR theorists, too. Rather, these scholars have presented either cooperation or defection as the two alternatives open to the parties to the Treaty. Yet the willingness of states to leave international agreements and their costs and benefits, their channels of persuasion and control, and their mechanisms for exchanging information, monitoring, and sanctioning complies with the presumption that states face only a dichotomous option between, on the one hand, complying with or breaching treaties, on the other. More broadly considered, leaving the treaty greatly complicates current understandings of mutual cooperation and compliance with international law, irrespective of their disciplinary provenance.³⁵

If the possibility of exit is factored into international law doctrinal rules and IR theory paradigms, it brings into question the assumptions and theories that each discipline has taken for granted. Conversely, knowing when and why states are leaving treaties or merely retaining their right to do so helps address certain theoretical and doctrinal questions that have long puzzled international relations scholars. The pervasiveness of treaty exit clauses and their mostly unexamined theoretical and empirical ramifications underlines the need for a thorough interdisciplinary analysis of why governments are negotiating clauses authorizing denunciation and withdrawal, the forms these clauses take, the roles they represent and the circumstances under which states are actually invoking clauses to abandon them

3.2 SIX DISTINGUISHING CHARACTERISTICS OF TREATY EXIT

While several analysts conflate the exit with the inability of a state to meet its obligations under the treaty, the act of leaving a treaty is distinctive in at least six respects from unsanctioned breaches of international law.

First, exit is a formal, public act, as I have described it, requiring the denouncing state to inform its treaty partners or an intergovernmental body of its intention to withdraw. The fundamentally public nature of such an act contrasts with other violations of the treaty (to use the language of international law practitioners and scholars) or treaty defections (the term preferred by political scientists and economists), where states steer away from a negotiated course of action while shielding the fact from other participating countries. Given the

³⁵ Aleksander Witold Rudzinski, Book Review, 71 *Am. J. Int'l L.* 805, 806 (1977) (reviewing Maria Frankowska, *Denunciation of International Treaties* (1976))

comparatively poor monitoring and sanctioning structures of the international legal system, one would reasonably wonder why a government should ever opt for a public exit if private cheating is both possible and unlikely to be detected.³⁶

A second distinctive characteristic of exit stems from its public nature — the willingness of states to use it to question or amend vulnerable legal norms or structures, or to appease groups of domestic interest. Withdrawal from an agreement (or threat of withdrawal) may give an additional voice to a denouncing state, either by raising its power to reshape the treaty to represent its interests or those of its domestic constituents more accurately, or by creating a competing legal standard or institution with other like-minded States.³⁷

Third, exit, unlike violation, is an internationally lawful act. To reject a treaty, all that a state has to do is meet the sometimes very minimal (usually procedural) requirements defined by the treaty. This legitimacy has major implications for the enforcement of restrictions and for the distribution of the burdens and benefits of the Treaty. In particular, exiting allows a state to terminate cooperation with other parties to the treaty while preventing or at least limiting incentives for non-compliance to be penalised. A state that follows the procedures for withdrawal from a treaty properly can not be called upon to justify its non-compliance before a tribunal formed by that treaty nor can it be targeted for treaty-authorized sanctions. In addition, as there has been no violation of the treaty, the remaining States are unable to exercise their right under international law to participate in reciprocal acts of non-compliance. Of course, they will try to exempt the withdrawing state from the benefits of treaty membership. However, their ability to do so depends on the essence of the activities governed by the treaty, and whether they establish externalities that impact non-parties.³⁸

Fourthly, exit includes problems of domestic international policy, rather than those posed by violations of the treaty. Failure by a country to fulfill its treaty obligations can arise from a variety of causes, ranging from pure inattention or inadvertence, delays or resource

³⁶ Andrew T. Guzman, *The Cost of Credibility: Explaining Resistance to Interstate Dispute Resolution Mechanisms*, 31 *J. Legal Stud.* 303, 325–26 (2002)

³⁷ Richard A. Melanson, *Human Rights and the American Withdrawal from the ILO*, 1 *Universal Hum. Rts.* 43, 52–54 (1979)

³⁸ Vienna Convention, *supra* note 1, art. 60, 1155 U.N.T.S. at 346 (specifying conditions for termination or suspension of the operation of a treaty as a consequence of its breach).

limitations, to deliberate national policy decisions. These noncompliance can be attributed to lawmakers, executive branch officials, judges, private parties or any variation thereof, depending on the reason. However, another group of participants may be interested in the formal and public denunciation of a treaty or withdrawal from an intergovernmental organisation. Where national legal structures establish these faultlines, the distinction between exit violations may involve the balance of power between government actors, raising important domestic policy issues.³⁹

Fifth, the public, formal, and lawful exit qualities have distinct implications for a state's credibility for compliance with international law, which is a key factor in understanding foreign cooperation. At the one hand, the legal, public, and usually uncommon essence of exit indicates that a denouncing state would experience relatively little harm to its status as a law-abiding country at least where it participates regularly in multilateral agreements. Exit clauses require treaty parties to freely discuss the consequences of evolving domestic priorities or changing circumstances. A state that takes these issues seriously, follows the defined procedures, and explains the basis for its actions projects a real (if somewhat backhanded) respect for international laws, particularly where it is possible to claim adherence in principle but in fact fail to adhere. On the other hand, if exit includes a politically significant act such as leaving a large package of foreign obligations or becoming a member of an intergovernmental body, it may harm the credibility of a state more deeply and lastingly than breaching a single treaty commitment⁴⁰

3.3 RETHINKING INTERNATIONAL LAW PERSPECTIVES ON TREATY EXIT

The exit clauses generate confusion for international law academics and practitioners. For a profession that is keen to show that nations are obeying international legal obligations, the ability of a state to abrogate its treaty obligations unilaterally often without substantial constraint or real sanction is not something that should be marketed. Nonetheless, major

³⁹Derek Jinks & David Sloss, *Is the President Bound by the Geneva Conventions?*, 90 Cornell L. Rev. 97, 154–57 (2004)

⁴⁰ George W. Downs & Michael A. Jones, *Reputation, Compliance, and International Law*, 31 J. Legal Stud. S95, S97 (2002);

international public law treaties (and even most advanced studies of treaty law and practice) all but neglect exit or pay attention to the question. This short shrift to exit glosses over several important issues of treaty design and practice⁴¹

A. Closing Exit

The one topic of exit from the Treaty that has drawn tremendous attention from scholars of international law is closing the exit. Scholars have been discussing for a long time whether a state can legally reject an international agreement or withdraw from an intergovernmental body without expressly authorizing denunciation or withdrawal. Adopting a rule barring exit unless expressly allowed is highly consequential, transforming the act of ratification into an irrevocable promise of cooperation (infringement or renegotiation being the only other alternatives) However, these studies on whether "silent" treaties implicitly close exit suffer from many flaws. The second group argues against withdrawal, stressing the supposed permanent nature of certain intergovernmental organisations (such as the United Nations and the European Union) or of other treaties whose need for permanence is especially acute (notably, peace agreements and treaties establishing contested boundaries). Some scholars also argue that, despite their conflict with the concept of *pacta sunt servanda*, all implied withdrawals should be disadvantaged.⁴²

The drafters of the Vienna Convention on the Law of the Treaties tried to overcome such doctrinal rifts by establishing a rebuttable assumption that states could not exit unilaterally from a treaty without a clause for denunciation or withdrawal. Nevertheless, scholars who wrote after the adoption of the Vienna Convention in 1969 continue to challenge such basic issues as whether the presumption adequately represents customary law, the types of treaties whose existence means the right to withdraw, and the textual and extra-textual proof to be marshaled in order to resolve the presumption and accept a unilateral right to leave.⁴³ The

⁴¹ L. Oppenheim, *International Law: A Treatise* § 538, at 938 (H. Lauterpacht ed., 8th ed. 1955)

⁴² Thomas M. Franck, *Is the U.N. Charter a Constitution?*, in *Negotiating for Peace* 95, 96 (Jochen Abr.Frowein et. al. eds., 2003) (United Nations);

⁴³ Article 56 of the Convention provides that an agreement: "which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless: (a) It is established that the parties intended to admit the possibility of denunciation or withdrawal; or (b) A right of denunciation or withdrawal may be implied by the nature of the treaty."

constructive interpretation of these studies provide of how states behave when faced with a law barring unilateral withdrawal from an intergovernmental organization, is much more valuable than those still unresolved doctrinal debates. The studies show that certain states will leave the organization despite any international law to the contrary when the incentives to exit are strong enough. Relevant examples are the withdrawal of North Korea from the International Covenant on Civil and Political Rights ("ICCPR") in 1997; Indonesia from the United Nations in 1965; Czechoslovakia, Hungary and Poland from UNESCO in the 1950s; and the Soviet Union and eight of its Eastern European allies from the WHO at the same time. However, a more surprising finding is how withdrawing states react after dissipation of the pressures to exit. In a few years, the withdrawing states rejoined the organisations in all the cases above. And when they did so, they participated in re-characterizing their actions by the association as a temporary suspension of participation, rather than a unilateral (and unlawful) exclusion from membership. Indeed, states also support this rewriting of history by paying a portion of the duties appraised against them during their former absence.⁴⁴

B. Identifying Variation in Treaty Exit Clauses

What forms do clauses convey denunciation and withdrawal take? If such clauses are a matter of contention among treaty makers, we would expect diversity in their arrangement to be observed. By contrast, if these provisions are pure boilerplate, as most scholars of international law have presumed, they should be equivalent or extremely similar, at least among treaties in the same area of issue. There are statements which are empirically testable. Reports released on "final clauses" by intergovernmental organisations provide a context through which such empirical research may be organized. The following analysis of such previously unexamined sources of treaty experience shows a large degree of variance between treaty exit clauses.⁴⁵

⁴⁴ Egon Schwelb, *Withdrawal from the United Nations: The Indonesian Intermezzo*, 61 *Am. J. Int'l L.* 661, 661 (1967), Joseph H. H. Weiler, *Alternatives to Withdrawal from an International Organization: The Case of the European Economic Community*, 20 *Israel L.Rev.* 282, 282–88 (1985), Elizabeth Evatt, *Democratic People's Republic of Korea and the ICCPR: Denunciation as an Exercise of the Right of Self-Defence?*, 5 *Austl. J. Hum. Rts.* 215, 215–17 (1999)

⁴⁵ Palitha T.B. Kohona, *Current Developments, The United Nations Treaty Collection on the Internet*, 92 *Am. J. Int'l L.* 140, 141 (1998).

The U.N. Office of Legal Affairs published a Handbook of Final Clauses in 1951, 1957, and 2003. The Handbook is a reference guide for versions of current treaties intended to help government officials draft multilateral treaties. The Council of Europe adopted a similar approach, introducing "model final clauses" to be used in treaties signed by its member states. Final clauses followed a pattern set out in the first ILO convention concluded in 1919 and updated in 1929 at the ILO.⁴⁶

A study of these Treaty Guides shows that denunciation and withdrawal clauses cluster around six ideal types: (1) treaties which can be denounced at any time; (2) treaties which prohibit denunciation for a fixed number of years, calculated either from the date of entry into force of the Agreement or from the date of ratification by the State; (3) treaties which allow denunciation only at fixed intervals; (4) treaties which may be denounced only on one occasion, specified either by time limit or at the time of the occurrence of a particular event; (5) treaties whose denunciation occurs automatically upon the ratification by the State of a subsequently concluded agreement; and (6) treaties which are silent as regards denunciation or withdrawal.⁴⁷

There are also variations in the procedures for notification of denunciation, including the time-limit that must elapse before a denunciation takes effect, to whom notice must be given and whether notice may be withdrawn. For some treaties, such as humanitarian law agreements, the effective date of withdrawal is made dependent on international events such as the termination of armed conflict. Of the many variations in the notification, the most common denunciation clause allows withdrawal only if the State gives advance notice of its withdrawal decision, often with the additional condition that the treaty. Nonetheless, a withdrawing State must justify its behavior in a limited number of agreements. These reasons are particularly common in the arms control treaties. Many weapons control agreements often limit withdrawal to clear factual circumstances, but they leave it to the denouncing state to

⁴⁶ Possible Improvements in the Standard-setting Activities of the ILO, at 2, 7– 10, ILO Doc. GB.286/LILS/1/2 (Mar. 2003), available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb286/pdf/lils-1-2.pdf>

⁴⁷ U.N. Div. of Immunities and Treaties, Legal Dep't, Handbook of Final Clauses, at v, U.N. Doc. ST/LEG/1 (1951), Palitha T.B. Kohona, The United Nations Treaty Collection on the Internet—Developments and Challenges, 30 Int'l J. Legal Info. 397, 400 (2002); Palitha T.B. Kohona, Current Developments, The United Nations Treaty Collection on the Internet, 92 Am. J. Int'l L. 140, 141 (1998).

decide if there are such evidence.⁴⁸The broad range of denunciation and withdrawal provisions suggest that governments are taking advantage of tailoring exit rules to different forms of treaties. In particular, the high degree of textual variation suggests that exit clauses may act as risk management tools that allow governments to balance membership stability and continuity with flexibility in tailoring treaties to a evolving and unpredictable environment⁴⁹

C. Facilitating Agreement Ex Ante While Deterring Opportunism Ex Post

Uncertainty is a common characteristic in foreign relations. Denunciation provisions minimize confusion by offering a low-cost exit mechanism for states if a contract works out badly. All other things being equal, these provisions allow a greater number of States to ratify a treaty than they would be prepared to ratify if such a clause were not in effect. They can also allow States to negotiate commitments that are deeper or broader than would be possible for treaties without unilateral exit. Taken together, these ex ante advantages of exit counsel negotiators include large and permissive withdrawal provisions in the treaties they draft. While the ex ante advantages of exit may be substantial, treaties enabling easy denunciation do generate ex post costs that may impede potential cooperation. One such cost is that states can overuse and invoke escape clauses (or threaten them with credibility) if economic, political or other constraints make enforcement costly or inconvenient. But the threats go beyond such opportunistic behaviours. In fear of their treaty partners today being able to leave a treaty tomorrow, states that choose to negotiate have a diminished incentive to spend the resources required to comply with the treaty. These incentives indicate that governments seeking to make treaties more viable will remove or limit exit opportunities, a stance which is directly opposed to the ex ante viewpoint that favors broad exit rights.⁵⁰

⁴⁸ Abram Chayes, *An Inquiry into the Workings of Arms Control Agreements*, 85 Harv. L. Rev. 905, 957–58 (1972)

⁴⁹ Richard B. Bilder, *Managing the Risks of International Agreement* 20–21 (1981) at 605–09. Bilder notes, however, that states “may include risk-management techniques in their agreements for reasons unrelated to any concern with risk,” such as routine, habit, a desire for “completeness[,] and conformity with other agreements”

⁵⁰ Alan O. Sykes, *Protectionism as a “Safeguard”*: A Positive Analysis of the GATT “Escape Clause” with Normative Speculations, 58 U. Chi. L. Rev. 255, 279 (1991) (analyzing how escape clauses enable negotiators to overcome fear of future economic and political shocks and include more reciprocal concessions in trade treaties).

Such contrasting views on the costs and benefits of exit show that a major challenge facing treaty negotiators is to set optimum conditions for exit ex ante in order to prevent opportunistic use of exit clauses ex post after treaty entry into force. Restrictions on the Treaty that are too easy to fulfill will promote self-serving denunciations and lead to a collaborative breakdown. Restrictions that are too burdensome may deter such behaviour, but can prevent the parties from reaching agreement in the first place or, if agreement is reached, can lead to widespread violations of the treaty if the costs of enforcement rise unexpectedly. If the capacity of the negotiators to precisely calibrate appropriate exit restrictions is uncertain, it is further complicated by the fact seen that few treaties, at least outside the trade context, can credibly threaten to impose monetary penalties or other sanctions. As a result, optimal exit rules must prevent opportunistic invocations of exit clauses by harnessing compliance-inducing mechanisms such as the reputational ramifications of withdrawal, exclusion from benefits available to treaty members, and extra treaty sanctions or incentives. However, what counts as an acceptable constraint or condition is likely to vary with the number of parties to the agreement, their relative strength, the problems that the treaty aims to address and the area of concern in which it is situated.⁵¹

3.4 INTRA AND EXTRA TREATY SANCTIONS

According to the Vienna Convention on the Law of Treaties and the customary rules of international law on state liability, violation of its treaty obligations by a state authorizes a number of responses by other States adversely affected by that violation. The responses permitted are based on the extent of the violation. An aggrieved state can engage in reciprocal acts of non-compliance or, in severe cases, abrogate the treaty in whole or in part in relation to the violating state for more serious breaches of the treaty.⁵² Less comprehensive retaliations are permitted for minor deviations from enforcement, including actions that would not infringe international law except for the earlier unlawful act. Neither the Vienna

⁵¹ Paul Stephan has pointedly framed the question: “[H]ow can we distinguish a nation’s principled assertion of a right to withdraw from a relationship that has turned out badly from an opportunistic attempt to appropriate benefits that were created for a collective good?” Paul B. Stephan, *The New International Law—Legitimacy, Accountability, Authority, and Freedom in the New Global Order*, 70 *U. Colo. L. Rev.* 1555, 1583 (1999)

⁵² Vienna Convention, *supra* note 1, art. 70, 1155 U.N.T.S. at 349 (“[A] State [that] denounces or withdraws from a multilateral treaty” is released “from any obligation further to perform the treaty . . . from the date when such denunciation or withdrawal takes effect.”)

Convention nor the rules of state responsibility allow such acts against a state which has rejected a treaty in compliance with its terms of reference. On the contrary, a state that imposes these sanctions or penalties that itself violate the agreement, triggering a fresh round of reciprocal non-compliance by other disputed parties to the Treaty.⁵³

Nor are the remaining treaty members or intergovernmental officials likely to misperceive an act of exit as an act of violation, or vice versa. Most exit regulations are written unambiguously and require little or no justification from the State of withdrawal. Except for the comparatively limited number of agreements that do not contain express exit clauses, it would be extraordinarily difficult for treaty parties to challenge the legitimacy of a unilateral withdrawal, thereby creating a reasonable dispute about enforcement that would enable them to authorize the withdrawing state.⁵⁴ More specifically, the remaining parties to the Treaty do have a self-esteemed excuse not to sanction the denouncing power. Refraining from penalizing the exiting nations ensures a strong distinction between exit and violation that other parties may seek to manipulate in the future. Exit clauses shall be inserted for the express purpose of approving conduct which in the absence of withdrawal would constitute a violation of the Treaty. The existence of such provisions and their permissive nature indicate that governments enjoy the protection of a fairly unburdened right to walk away from treaties. However, if states treated the effects of denunciation as equivalent to those of violation, there would be no point in drafting rules to clarify the processes and conditions under which denunciation may or may not occur.⁵⁵

Extra-Treaty Sanctions

Skeptics of international rules and institutions can object to any distinction between exit and breach on the basis of responses allowed by international law. According to these skeptics, even a state that "plays by the rules" and denounces a treaty according to its terms may be subjected to intimidation, violence, or other unfriendly actions by states that reject it. These

⁵³ Elisabeth Zoller, *Peacetime Unilateral Remedies: An Analysis of Countermeasures* 89–93 (1984);

⁵⁴ Egon Schwelb, *Some Aspects of International Jus Cogens as Formulated by the International Law Commission*, 61 *Am. J. Int'l L.* 946, 957 (1967).

⁵⁵ First Geneva Convention art. 63, 6 U.S.T. at 3152, 75 U.N.T.S. at 68 (providing that denunciation of humanitarian law treaties does not "impair the obligations which the Parties to the conflict shall remain bound to fulfil [sic] by virtue of the principles of the law of nations").

states may use a variety of methods such as trade sanctions, withdrawing military aid or financial assistance, or threats to terminate other cooperative relationships to prevent the denouncing state from leaving or compel it to reconsider its withdrawal decision. Both of these methods are greatly external to the compact from which the state has arisen.⁵⁶

It is obviously insufficient to distinguish exit from violation only on the basis of intra treaty sanctions. But it can not be concluded that extra treaty sanctions and intimidation techniques are being used. Coordinating measures against a withdrawing power, for example, poses important problems of collective action. Not all parties to the treaty will agree on the legitimacy or wisdom of enforcing such sanctions. And even if many states agree that sanctions are necessary, each party would prefer that some other state bear the costs of enforcing the penalty if more than one state has legitimate claim to sanction the exiting government. In the absence of treaty rules for resolving such disputes, sanctions may not be implemented or may be too low to influence the actions of the target State.⁵⁷

In view of these limitations, we might expect extra-treaty sanctions to be implemented mainly by powerful countries such as the United States, either directly or through entities over which they have considerable influence. Hegemons often have greater resources or other advantages that lower the cost of imposing sanctions and help overcome problems of collective action. Yet even for powerful countries, the ability to regulate as well as the opportunity can vary from issue to issue and from state to state. Exiting is unlikely to prevent the imposition of extra-treaty sanctions for particularly high-stakes problems or treaties that are deeply rooted within other foreign regimes and institutions. This is because the act of leaving the treaty does not disengage the process of withdrawal from the legal and political settings in which the treaty is implemented.⁵⁸ An apt example is given in the Nuclear Non-Proliferation Treaty ("NPT"). In 1993, North Korea threatened to withdraw from the NPT, and eventually withdrew 10 years later. Comparing the country's policies with "nuclear coercion," the

⁵⁶ Bram Chayes & Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* 63–67 (1995);

⁵⁷ Brett Frischmann, *A Dynamic Institutional Theory of International Law*, 51 *Buff. L. Rev.* 679, at 735 (2003)

⁵⁸ Scott Barrett, *Environment and Statecraft: The Strategy of Environmental Treaty-making* at 73 (2003)

International Atomic Energy Agency's Director-General recently stated that North Korea's denunciation of the NPT has not excluded it from international scrutiny.⁵⁹

A telling example is the sanctions program that the United States has implemented against whale-hunting nations. Pro-whaling states have, on more than a dozen occasions, withdrawn or threatened to withdraw from the International Convention for the Whaling Regulation ("ICRW") to oppose moratoria or limits on commercial whaling imposed by an ICRW Committee. In opposition to whaling, the United States has adopted domestic laws that allow unilateral trade restrictions or limit fishing rights in American waters against any state that refuses to comply with Commission regulations. Such laws refer notably to countries which have never ratified the ICRW or officially withdrawn from the treaty. Latest studies of the whaling regime however suggest that the United States has never prosecuted any whaling state for failing to comply with ICRW regulations. Scholars attribute this fact to the adverse sanctions that would affect American interests, and to the more important diplomatic and economic relations that the US maintains with pro-whaling nations like Russia and Japan. Nonetheless, the more important theoretical conclusion is that extra-treaty sanctions can be difficult to enforce, even for powerful countries like the US⁶⁰

3.5 CONCLUSION

The exit from the Treaty is a fact of life in the international legal system, while international legal scholars and IR theorists have sometimes shunned or ignored it. Deciding how much or how little to limit exit is a challenge for treaty negotiators, who use denunciation and withdrawal clauses to facilitate adoption and reduce future ambiguity. And when changing circumstances, shifting domestic priorities, or frustration with treaty-based structures

⁵⁹ Interview by Emma Belcher with Dr. Mohamed El Baradei, Director General, Int'l Atomic Energy Agency (Dec. 2, 2003), *in* 28 Fletcher F. World Aff. 29, 37, 39 (2004).

⁶⁰ Elizabeth R. DeSombre, Domestic Sources of International Environmental Policy: Industry, Environmentalists, and U.S. Power 208–13 (2000); see also Ronald B. Mitchell & Patricia M. Keilbach, Situation Structure and Institutional Design: Reciprocity, Coercion, and Exchange, 55 Int'l Org. 891, 908 (2001) (noting that threats by the United States to reduce fishing rights or restrict fish imports initially deterred commercial whaling by non-member states, but that such threats have become less effective over time, and that "Iceland has withdrawn [from the ICRW], Norway has recommenced commercial whaling, and Japan and Russia have threatened to do both").

generate contradictions between national interests and international commitments, determining when and when to invoke such clauses is a concern of government officials. A willingness to promote cooperation may clarify why clauses authorizing exit from the treaty are widespread. As one of a range of risk management tools available to treaty negotiators, exit clauses can provide security states with the need to discuss wider international commitments or facilitate adoption by a larger number of nations outcomes that are often key to solving truly global transborder issues. Many denunciation and withdrawal clauses often enforce exit conditions that help to foster cooperation between the parties.

These provisions preclude denunciation in the early years of the life of a treaty or after the accession of a State to membership, and require notification from the other parties. Those restrictions help to maintain treaties. They provide an initial window of cooperation, force governments to think twice before going through the formal and public withdrawal process and provide a time of cooling off during which the parties can renegotiate the agreement or otherwise address the concerns of the withdrawing State. Yet formal legal rules provide only a partial explanation of why governments tend to adhere to their treaty obligations even when there is a valid and essentially unfettered exit option. The institutional, political, and reputational costs and benefits of exit relative to alternatives, including compliance, non-compliance, and any of the other flexibility devices or safety valves that a treaty contains, are what keeps nations cooperating and what drives them to leave or threaten treaties. Understanding these complexities and their relationship to the structures and functions of law will improve the accuracy of the theories of social science about how nations interact and will allow international lawyers harness exit to better serve the ends of world order.

CHAPTER 4

LEGAL IMPLICATIONS OF THE JCPOA, 2015 UNDER INTERNATIONAL LAW

4.1 INTRODUCTION

The Charter of the United Nations acknowledges in its Chapter VI the peaceful settlement of conflicts and stipulates that the parties to any conflict which is likely to jeopardize the preservation of international peace and security shall seek, first of all, a solution by negotiation. The JCPOA is the result of two decades of negotiations on its nuclear program between Iran and the world powers. It is a comprehensive, 159-page agreement with five annexes signed on 14 July 2015 by Iran, the P5 + 1 (China, France, Germany, Russia, the United Kingdom, and the United States) and the European Union (EU) to ensure that Iran's nuclear power is solely peaceful. The diplomatic background and complexity of the issues covered by the agreement indicate that the parties have intended to reach an agreement aimed at achieving a peaceful solution. On 20 July 2015, UN Security Council Resolution 2231 endorsed the JCPOA. The International Atomic Energy Agency (IAEA) has confirmed Iran's compliance with the JCPOA's nuclear-related provisions in accordance with certain requirements set out in the agreement.⁶¹ As a result of Iran's verifiable compliance with its nuclear commitments, as described in the JCPOA, the United States and the EU lifted nuclear-related sanctions on Iran. On May 8, 2018, however, President Trump declared that the US would withdraw from the JCPOA and reinstate U.S. nuclear sanctions against the Iranian regime. By November 2018, all of the U.S. sanctions lifted earlier were restored. As per the U.S. The JCPOA, among other reasons, has simply allowed Iran to continue enriching Uranium rather than protecting the US and its allies⁶²

In this chapter, the researcher sets out to explore the legal status of JCPOA under international law and the consequent legal implications of U.S. unilateral withdrawal on the basis of doctrinal legal research method. In carrying out the paper's task, after the introduction, the researcher examine whether JCPOA is a treaty or not using the theoretical basis of the Vienna Convention on the Law of the Treaties (VCLT). The result of such

⁶¹ Article 33 'Charter of the United Nations' accessed (07/03/2020), as mere passivity does not meet the requirements of this article, the parties are explicitly enjoined to deploy active efforts with a view to settling the dispute, see Simma, Bruno et al ed. (2002) *The Charter of the United Nations: A Commentary Volume I*, Oxford University Press, p. 587

⁶² The New York Times, 'Read the Full Transcript of Trump's Speech on the Iran Nuclear Deal' *The New York Times* (9 June, 2018) accessed (07/03/2020)

investigation will show whether the unilateral withdrawal from JCPOA by the U.S. leads to violation of Articles 56 VCLT and Articles 25 of the UN Charter. The paper concludes that US unilateral withdrawal can result in a violation of international law as a whole.

4.2 IS JCPOA A TREATY ACCORDING TO INTERNATIONAL LAW?

Whether JCPOA is a treaty or another international instrument i.e. a Gentlemen's Agreement, is subject to debates and disagreements among international lawyers and scholars. In examining whether it is a treaty, prior to the adoption of Vienna Convention, Lord McNair defined a treaty as "a written agreement by which two or more States or international organizations create or intend to create a relation between themselves operating within the sphere of international law".⁶³ The Vienna Convention offers a more comprehensive definition: Article 2(1)(a) of the Vienna Convention, the main instruments of treaty law, lays down a 'treaty' as

*"an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."*⁶⁴

The wording 'whatever its particular designation' differentiates this concept from the conventional one which supports the researcher's claim in the sections below. In order to determine if JCPOA is a 'treaty,' all elements of the above definition should be examined.

(a) An international agreement concluded between States

Although the VCLT has not specifically referred to 'international organizations' as parties to treaties, a treaty may be concluded between one state and another subject of international law using the traditional definition of a treaty. McNair argues *"If fully sovereign States possess a treaty-making power, when acting alone, it is not surprising to find the same power*

⁶³ McNair, Lord (1961) *The Law of Treaties*, Oxford University Press, p.4

⁶⁴ Article 2 (1) (a) United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <http://www.refworld.org/docid/3ae6b3a10.html>, accessed (06 February, 2019)

attributed to an international organization which they have created, and the members of which are usually sovereign States.”⁶⁵

With regard to the nature of the international organization's personality, noteworthy is the International Court of Justice's Advisory Opinion on Reparation for Injuries Suffered in the service of the United Nations. The court affirmed that:

“In the opinion of the Court, the Organization was intended to exercise and enjoy, and in fact exercising and enjoying, functions and rights which can only be explained on the basis of possession of a large measure of international personality and capacity to operate upon an international plane. ... It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged. Accordingly, the Court has come to conclusion that the Organization is an international person...”⁶⁶

Thus an international organization might become a party to a treaty. JCPOA is international in character. Iran, the P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States) and the European Union (EU) agreed that. It is therefore a multilateral international agreement between States and an international organization

(b) Form of the Document

The Vienna Convention does not extend to oral agreements and states ' concluded between States in written form. ' This is one of the main characteristics of treaties that differentiate them from domestic contracts due to more flexibility and the need in international law for more concrete evidence. The JCPOA is a written agreement between the parties. While not ratified by the parties; however, in general, a signing of a treaty is not a condition of the Vienna Convention.⁶⁷ Signature is just one way in which parties can show their consent. A State's consent to be bound by a treaty may be conveyed by means other than signature; that is, the exchange of instruments constituting a treaty⁶⁸

In treaty law, even minutes of negotiations, depending on the circumstances, can be considered as a treaty as established by the In treaty law, even minutes of negotiations,

⁶⁵ 5 Id. Supra note 3, at 50

⁶⁶ I.C.J. Reports, 1949, p. 179.

⁶⁷ Aust, Anthony (2013) Modern Treaty Law and Practice, Cambridge University Press, p.21

⁶⁸ VCLT, Art 11

depending on the circumstances, can be considered as a treaty, as stated by the International Court of Justice (ICJ or the Court) in the 1994 case of Maritime Delimitation and Territorial Issues (Qatar v Bahrain). The Court concluded: ' And thus they establish rights and obligations for the Parties under international law.'⁶⁹

(c) Governed by international law

The phrase 'governed by international law', according to ILC's Commentary, embraces an "intention to create obligations under international law". To decide if the JCPOA is endorsed by the participants ' intention to create obligations under international law, we need to refer to its literature and context. The JCPOA, resulting from two decades of negotiations as mentioned in the previous chapter, is divided into three sections: preface, preamble and general provisions and voluntary measures Such sections need to be reviewed in order to determine whether the parties intend to create obligations under international law, as this purpose is not explicitly stated in the JCPOA; however, intention can also be gathered from the circumstances of its conclusion⁷⁰

As the intention of the Parties, except Iran, has not been expressed, it is important to analyse the circumstantial facts surrounding the JCPOA before referring to the terms of the treaty,. As outlined in the third section, JCPOA is the culmination of nearly twelve years of negotiations under various governments in several countries. The question is why many states and an international organization should have negotiated so long and end up concluding their agreement in a non-binding instrument that does not impose obligations? This does not automatically mean that a treaty must be any arrangement that is the result of a long-term negotiation. However, the parties ' motive must be decided by a ' case-to-case background review' which can give weight to circumstantial evidence.⁷¹ The ICJ shall make all provisions relating to the taking of evidence in compliance with Article 48 of its Statute; and may recourse to circumstantial evidence where direct evidence would otherwise be preferred. Many Court rulings have laid ground for circumstantial evidence, such as the case of the Corfu Channel the diplomatic and consular staff in Tehran⁷²

⁶⁹ ICJ Reports, 1994, p.121.

⁷⁰ Michael Goodyear (2018) 'Pulling the Iran Deal: Treading On Treaties and Trade' 39 (The Michigan Journal of International Law, (07/1/2020)

⁷¹ Kolb, Robert (2016) The Law of Treaties: An Introduction, Edward Elgar Publishing , p. 27

⁷² United States Diplomatic and Consular Staff in Tehran (US v Iran), 1980 ICJ 3, 9-10

Below, are the evidences that show the intention of the Parties to create obligations under the JCPOA:

(a) JCPOA Preface

The Preface lays down the purpose of the JCPOA, i.e. to “*ensure that Iran’s nuclear programme will be exclusively peaceful*” and to “*anticipate that full implementation of this JCPOA will positively contribute to regional and international peace and security*”.⁷³

These aims which are closely linked to the maintenance of international peace and security can not logically be met without the intention of creating a duty under international law. It can not be appropriate that such essential aims, whose absence can jeopardize the peace and security of the world, may be expressed in a non-binding instrument. Therefore, we find the preface which contains binding provisions.

(b) JCPOA Preamble and General Provisions

In Preamble and General Provisions, the participants have decided upon ‘*this long-term*’ JCPOA. ⁷⁴Again, it reads that the full implementation of the JCPOA guarantees that Iran's nuclear program is of an exclusively peaceful nature; and, Iran reaffirms that under no circumstances will it attempt to produce or acquire nuclear weapons and the successful implementation of the JCPOA allow Iran to fully enjoy its rights to nuclear energy for peaceful purposes under the NPT and, most importantly, under the NPT⁷⁵. According to some foreign lawyers, the wording used in the above general provisions is not intended to enforce obligations on participants as it uses 'will' instead of 'shall' and the general provisions are found in paragraphs rather than articles. Despite the fact that an instrument's language can be a factor in determining whether it is a treaty, the law of treaties does not require that a treaty be in any particular form or that it use special wording.⁷⁶ Rather, the words used in the general provisions, which have already been included in the Preface, such as ensuring that

⁷³ JCPOA, Preface, Para 1,2

⁷⁴ JCPOA, Preamble and General Provisions, Para (ii).

⁷⁵ JCPOA, Preamble and General Provisions, Para (iii)

⁷⁶ Mardani, Nader and Mehdi Hooshmand (2016) ‘JCPOA, A Dialectical Paradigm of Treaty and other International Instruments’, Journal of Politics and Law, Vol. 9, No. 3

Iran does not attempt to develop or acquire nuclear weapons, are more likely to result in obligations under international law.

(c) JCPOA and Resolution 2231 (2015)

As stated, the preamble and general provisions of the JCPOA created a comprehensive lifting of all sanctions of the UN Security Council, as well as multilateral and national sanctions related to Iran's nuclear programme. Accordingly, it was contained in the JCPOA that the E3 + 3 will send to the UN Security Council a draft resolution endorsing this JCPOA; affirming that the conclusion of this JCPOA marks a fundamental shift in its consideration of this issue; and expressing its wish to build a new relationship with Iran and also providing for the termination of the provisions placed on the day of implementation.⁷⁷ Resolution 2231 (2015), specifies that Member States are bound to adopt and enforce the decisions of the Security Council pursuant to Article 25 of the Charter of the United Nations, endorses the JCPOA and encourages its 'full implementation' on the timetable set out in the JCPOA. It also called on all Member States, regional organizations and international organizations to take any action that might be necessary to support the implementation of the JCPOA, including actions in line with the implementation plan set out in the JCPOA and the resolution itself, and to refrain from acts that hinder the implementation of JCPOA commitments. Furthermore, the resolution provides for the role of the IAEA Director General to undertake the necessary verification and monitoring of Iran's nuclear-related commitments for the full duration of those JCPOA commitments, and reaffirmed that Iran will cooperate fully as the IAEA requests to be able to resolve all outstanding issues, as described in IAEA reports.

Although the Security Council was not meant to be a legislative body, it does have a legislative role, and its decisions are binding under international law, and likely have as much or greater meaning as the *jus cogens* principle. Considering that the UN Member States are obligated to enforce UN Security Council resolutions, it can be understood that the JCPOA participants intended to establish obligations under international law; and therefore, JCPOA is governed by international law for all intent and purposes.⁷⁸

⁷⁷ JCPOA, Preamble and General Provisions, Para (xiv).

⁷⁸ Chesterman, Simon *et al* (2016) *Law and Practice of the United Nations: Documents and Commentary*, Oxford University Press, p. 144

As shown in this section, the JCPOA is an international agreement signed in written form between States and regulated by international law; therefore, it is a treaty governed by the VCLT. Although the United States is not a member of the VCLT, it is a signatory and therefore obligated to refrain from actions that would negate the object and intent of a treaty.⁷⁹ Most notably, the United States has officially announced its recognition of the VCLT provisions as constituting customary international law to the whole world.⁸⁰

(d) Its Particular Designation

Generally, the VCLT does not require the parties to choose a particular title for their agreed document. It could be convention, treaty, declaration, plan of action, communique, agreed minute, memorandum of understanding, accord, exchange of notes or letters etc.⁸¹ As the ICJ held in *Aegean Sea Continental Shelf (Greece v Turkey)*:

*“On the question of form, the Court need only observe that it knows of no rule of international law which might preclude a joint communiqué from constituting an international agreement to submit a dispute to arbitration or judicial settlement (cf. Arts. 2, 3 and 11 of the Vienna Convention on the Law of Treaties). Accordingly, whether the Brussels Communiqué of 31 May 1975 does or does not constitute such an agreement essentially depends on the nature of the act or transaction to which the Communiqué gives expression; and it does not settle the question simply to refer to the form—a communiqué—in which that act or transaction is embodied. On the contrary, in determining what was indeed the nature of the act or transaction embodied in the Brussels Communiqué, the Court must have regard above all to its actual terms and to the particular circumstances in which it was drawn up.”*⁸²

⁷⁹ VCLT, Art. 18.

⁸⁰ ‘Vienna Convention on the Law of Treaties’ (U.S. Department of State) <<http://www.state.gov/s/l/treaty/faqs/70139.htm>> accessed 6 March 2020

⁸¹ Dörr, Oliver and Kirsten Schmalenbach, ed. (2012) *Vienna Convention on the Law of Treaties: A Commentary*, 2012 edition, Springer, 29–30

⁸² ‘*Aegean Sea Continental Shelf (Greece v Turkey)* 1978 ICJ Rep 3’, para 96 <<https://www.icj-cij.org/files/casereLATED/62/062-19781219-JUD-01-00-EN.pdf>> accessed 08/03/2020

It can therefore be deduced that, since the substance of the JCPOA requires the voluntary assumption of liability by sovereign states after lengthy negotiations, the result of which imposes a duty on sovereign states to act in a particular manner and to refrain from acting in a particular manner, such a curtailment of sovereign liberty will undoubtedly have a legal effect and force of law.

4.3 THE LEGAL PROVISIONS OF THE JOINT COMPREHENSIVE PLAN OF ACTION: A GENERAL OVERVIEW

Preamble and General Provisions

The JCPOA Preamble sets out the context and goals of the contract. Next, full enforcement of the JCPOA must guarantee that Iran's nuclear program is solely peaceful (JCPOA preamble, paragraph ii). In other words, Iran reaffirms that Iran will never again try, produce, or acquire nuclear weapons under any circumstances. (Preamble to JCPOA, paragraph iii). Finally, under the related articles of the NPT, the Preamble reaffirms Iran's right to nuclear energy for peaceful purposes.

The JCPOA specifically notes that this is a special arrangement, an exception to the NPT which is the law and the goal that the JCPOA will seek to achieve: the E3/EU+3 and Iran accept that the NPT remains the cornerstone of the nuclear non-proliferation system and the underlying basis for the promotion of nuclear disarmament and the peaceful use of nuclear energy. The significance is clarified by the agreement: all the provisions and measures contained in this JCPOA are for the sole purpose of their enforcement between the EU+3. In addition, the Preamble reaffirms the actors' commitment to enforce the JCPOA in good faith, in a cooperative environment,(...) centered on mutual respect, and to refrain from any behavior inconsistent with the JCPOA's text, spirit and purpose.

High-Level Meetings Every Two Years : One of the JCPOA's first and most relevant clause is that the EU+3 must meet at ministerial level every two years. It is a very critical provision: discussion will begin, teams will meet to discuss and analyse progress and consensus-based

decision-making. In this way, at a high-level, there would be a constant exchange of views and positions which is a key to the success of the deal execution.

Establishment of a Joint Commission: The JCPOA creates a Joint Commission consisting of the EU+3 and Iran, whose role is to track the implementation of this JCPOA and (to) execute the functions provided for in this JCPOA. This Joint Commission will have a role to play in the settlement of conflicts, which will allow for a more lasting dialog at the expert level to ensure that the agreement is enforced properly.

IAEA's position with respect to outstanding issues: After the JCPOA took action, Iran had to fully enforce the Roadmap for Past and Current Outstanding Issues, agreed with the IAEA, by 15 October 2015. Consequently, on 15 December 2015, the Director-General of the IAEA provided the Board of Governors with a final assessment of the resolution of all past and current unresolved problems, and the E3+ 3, as members of the Board of Governors, submitted the Joint Comprehensive Plan of Action in the Islamic Republic of Iran in light of its resolution.⁸³

IAEA's position in monitoring the implementation of the JCPOA: Iran will allow the IAEA to track the implementation of voluntary measures or their respective durations and introduce transparency measures including long-term IAEA presence in Iran; IAEA monitoring of uranium ore concentrate produced by Iran from all concentrated uranium ore plants for 25 years; including containment and control of centrifuge rotors and bellows for 20 years; use of IAEA-approved and accredited modern technology including on-line enrichment calculation and electronic seals; and a robust 15-year process to ensure timely resolution of IAEA access concerns

Enrichment, enrichment R&D, stockpiles

Enrichment: Iran's total uranium reserve is allowed to retain is set at 300 kilograms, enriched at 3.67 percent or the equivalent in other chemical forms. Any amounts in excess shall be allocated to foreign partners. As John Kerry said on 24 July 2015 before the Council of Foreign Affairs

⁸³ available at: <https://www.iaea.org/sites/default/files/gov-2015-72-derestricted.pdf>

“We will have a limitation for 15 years for that, and for their enrichment at 3.67 percent. Folks, you cannot make a nuclear weapon with 300 kilograms and 3.67 percent—physically impossible”

Uranium enrichment and related activities would have some restrictions for the first eight years, followed by steady progress at a fair pace to the next level of its enrichment activities for purely peaceful purposes. Willingly, the language is left ambiguous, leaving space for understanding and change.

Centrifuges: Iran does not produce or assemble any centrifuges for the first eight years, and will replace centrifuges with identical style centrifuges. After eight years, Iran will begin manufacturing accepted numbers of IR-6 and IR-8 centrifuges without rotors, and will store all of Natanz's manufactured machines under continuous IAEA supervision until they are required under Iran's long-term R&D enrichment and enrichment.

In particular, Iran will start phasing out IR-1 centrifuges in ten years' time. A maximum of 5060 IR-1 centrifuges will remain operational at Natanz during those ten years. Continuous tracking of excess centrifuges and enrichment related equipment will be maintained under the IAEA. Within ten years, Iran's uranium enrichment R&D will include just the centrifuges IR-4, IR-5, IR-6 and IR-8. More specifically, Iran would have to reduce its centrifugal stock, use its less advanced centrifuges and put all unused centrifuges under IAEA supervision. These measures severely restrict Iran's ability for uranium enrichment.

Research & Development: All enrichment-related operations, including R&D, will be carried out at Natanz Enrichment facility over a period of fifteen years. The average degree of enrichment of uranium would be 3.67%.

Fordow: With respect to Fordow, Iran must refrain from any uranium enrichment or R&D relevant to enrichment, and from holding any nuclear material. Fordow will be turned into a center of nuclear, physics, and technology. 1044 IR-1 centrifuges shall remain in one Fordow section, in six cascades. Two will be transitioned on those six cascades for stable development of isotopes, and four will remain idle. Under IAEA continuous supervision all other centrifuges or associated material must be removed and processed.⁸⁴

⁸⁴ Ex Advisors Warns Obama that Iran Nuclear Deal ‘may fall short’ of Standards , the New York Times, David E. Sanger, June 24, 2015 available at:

The Arak reactor: the problem of heavy water: the Arak heavy water research reactor will be rebuilt and updated under the JCPOA, based on an agreed conceptual design, which will enable the development of peaceful nuclear research which radioisotopes for medical and industrial purposes. Up to 3.67 percent of the fuel used would be enriched, so the Arak reactor won't contain weapons-grade plutonium. In fact, all spent fuel must be transported outside of Iran for the reactor's lifetime.

4.4 JCPOA DISPUTE SETTLEMENT MECHANISM AND WITHDRAWAL CLAUSE

JCPOA has no withdrawal clause; but a dispute settlement process has been established.

Paragraph 36 provides that either party may refer the dispute to the Joint Commission if the other party fails to fulfill its obligations under the JCPOA. The United States has not referred the dispute to the Joint Commission as required by paragraph 36 of the JCPOA. Instead, US President Trump unilaterally withdrew from the JCPOA on May 9, 2018. The obligation imposed by the VCLT pursuant to Article 42 is engaged in this regard. Pursuant to Article 42, a party to the Treaty may terminate, suspend or withdraw from the Treaty by applying the provisions of the Treaty or, in the lack of such provisions, by applying the provisions of the VCLT. In other words, the failure to comply with the dispute settlement provisions set out in Paragraph 36 of the JCPOA is a breach of both the JCPOA and Article 42 of the VCLT. In addition, since the JCPOA lacks an explicit withdrawal clause, recourse may be made to Article 56 of the VCLT, which provides as follows:

1. *A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless*
 - (a) *it is established that the parties intended to admit the possibility of denunciation or withdrawal; or*
 - (b) *a right of denunciation or withdrawal may be implied by the nature of the treaty.*
2. *A party shall give not less than twelve months' notice of its intention to denounce or*

http://www.nytimes.com/2015/06/25/world/middleeast/former-adviserscaution-obama-on-iran-nuclear-talks.html?_r=0

withdraw from a treaty under paragraph 1.

The withdrawal of the United States from the JCPOA is not protected by either clauses (a) or (b) of Article 56 VCLT, because there is no indication of the parties' intention to admit the possibility of denunciation or withdrawal; and, as the nature of this treaty deals with global security and non-proliferation, it seems that the existence of the treaty can not mean a right of denunciation or withdrawal. And if there was a chance to invoke Article 56(1), the twelve month notice would have been followed by the United States. The United States is not a party to the VCLT, but has given its consent to the text of the treaty and is obliged to refrain from actions that would undermine the intent and object of the treaty.⁸⁵

4.5. U.S. WITHDRAWAL AND EFFECTS ON INTERNATIONAL TRADE

Following the declaration of JCPOA's removal, President Trump released a National Security Presidential Memorandum ("NSPM") ordering the State Department and the Treasury Department to re-impose sanctions on Iran, with a subset of sanctions coming into effect on 6 August 2018 and the remainder coming into force on 4 November 2018. Such 90-day and 180-day adjustment periods are meant to allow individuals who have joined the transactions to adapt to the economic sanctions imposed again.⁸⁶

The U.S. sanctions, however, do not only concern U.S. people and their businesses, After 6th August 2018 people will also face secondary sanctions from the U.S. government if they participate in such prohibited actions, including the Iranian government's procurement of U.S. banknotes, transactions involving the Iranian automobile industry, and the transfer of other metals and software to or from Iran. The sanctions would also have a negative effect on Iranian trade even though other countries apart from US do not withdraw from JCPOA.

⁸⁵ VCLT, Art. 19. Shaw, M. N., International Law, Cambridge University Press (2014), p. 660

⁸⁶ Presidential Memorandum 11: Ceasing U.S. Participation in the JCPOA and Taking Additional Action to Counter Iran's Malign Influence and Deny Iran All Paths to a Nuclear Weapon (May 8, 2018), <https://www.whitehouse.gov/presidential-actions/ceasing-u-s-participation-jcpoa-taking-additional-action-counter-irans-malign-influence-deny-iran-paths-nuclear-weapon/>.

Re-imposing U.S. sanctions on Iran may also breach international trade law. The other signatories may lodge a lawsuit with the World Trade Organization ("WTO") arguing that, under the General Tariff and Trade Agreement ("GATT"), the U.S. has violated its international free trade obligations. This will not be the first time the Trump Administration has crossed the line on GATT, or at the very least toed it. President Trump, for example, has essentially begun a trade war with China over the last few months.

Nonetheless, a major drawback for this claim is that, for reasons of national security, Article XXI of the GATT requires an exception. The security exemption has far-reaching powers, and therefore, if it was used by the Trump Administration, it would probably stand. GATT drafters, however, understood the risks of such a wide-ranging protection exemption and it has largely persevered by nations' good faith behaviour. If it was used by the Trump Administration, almost certainly in bad faith given that Iran complied with JCPOA, it would step into uncharted territory and potentially allow the WTO to act.

Particularly with the rise of anti-global governments in countries like Italy and Poland, and common anti-globalization sentiments around the globe, there is no question that the number of governments that want to sever trade agreements has increased. Pulling out of these agreements, however, breaches GATT and governments must be much more vigilant when it comes to trade than their common rhetoric would lead us to believe.

4.6 CONCLUSION

The JCPOA is the result of more than a decade and over several stages of negotiations, concluded on 14 July 2015 by Iran, the P5 + 1 (China, France, Germany, Russia, the United Kingdom and the United States) and the European Union (EU), which include critical issues relating to nuclear non-proliferation and international peace and stability. It guarantees that Iran will not develop or obtain nuclear weapons; Iran fully enjoys its nuclear energy rights under the NPT for peaceful purposes; and, most notably, the JCPOA has achieved a thorough lifting of all UN Security Council sanctions, as well as multilateral and national sanctions relevant to Iran's nuclear programme. The United States refrained from pursuing the amicably required UN Charter settlement of the conflict and withdrew unilaterally. JCPOA fulfills all the characteristics of a treaty stipulated in VCLT: it is an international treaty signed by States

in written form and regulated by international law; as drawn up, there is much evidence in the JCPOA that shows the intention of the Parties to establish obligations under the JCPOA; and finally, it is adopted by UN Resolution 2231, which is binding under international law.

Therefore, this chapter's stance is that the unilateral withdrawal of the United States from JCPOA was in direct violation of the JCPOA itself, Article 56 VCLT, UNSC Resolution 2231 and, more specifically, in violation of Article 25 of the UN Charter. The researcher assume that recourse to Article 33 of the UN Charter and the quest for political solutions will contribute significantly to the resolution of conflicts, as political factors are often used for an International legal claim.⁸⁷

⁸⁷ Orakhelashvili, Alexander (2011) 'International Law, International Politics and Ideology' in Orakhelashvili, Alexander, ed. (2011) *Research Handbook on the Theory and History of International Law*, Edward Elgar, pp. 328-375.

CHAPTER 5

CONSEQUENCES OF THE U.S.

WITHDRAWAL FROM THE JCPOA IN

INTERNATIONAL TRADE

5.1 INTRODUCTION

On 8 May 2018, Donald Trump made his decision to pull the United States out of the Joint Comprehensive Action Plan (JCPOA), also known as the Iran Nuclear Deal, available to the public. The Deal's lack of comprehensiveness, shown by its alleged inability to curb Iran's ability to develop ballistic missiles or control its acts of aggression and attempts to support terrorism and destabilize the Middle East region through proxy wars, has been cited as one of the primary reasons for the withdrawal of the United States. President Trump has also questioned the unqualified lifting of economic sanctions against Iran in exchange for insufficient limits on its nuclear programme. The final straw for the US was the suspected efforts Iran made to pursue its program while shielding it from the relevant monitoring agencies. With the withdrawal of the US from the Agreement, Iran's nuclear program is stripped of its right to be handled on a par with other non-nuclear arms states' nuclear programs, and the capacity of the United States to enforce nuclear and economic sanctions on Iran has been restored.

After years of negotiations between Iran and group P5 + 1 the deal was a final agreement. The talks began after Iran attempted to develop a nuclear weapon, while Iran insisted that its nuclear program was completely peaceful. After three years of mixed reactions from U.S. officials, U.S. policy reform culminated in the withdrawal of the U.S. from JCPOA. Once the Joint Comprehensive Plan of Action was signed in Geneva, Switzerland, it did not provide guarantees on any of the main security concerns surrounding the U.S. and its closest allies. Iran, for example, has a long-range ballistic missile system, and has been developing it for quite for a long time. A recent article by the newspaper "The New York Times" accused Iran of plans to develop a long-range ballistic missile program that could extend beyond the Middle East.⁸⁸

In addition to Iran's long-range missile program, JCPOA has limited Iran's uranium enrichment for a limited period of time, which will ultimately expire which allow Iran to resume its ambitious nuclear program. For JCPOA's opponents, this topic is considered one of the key weak points in the contract that will eventually trigger problems even if Iran fully complies with the agreement's requirements. Though Iran is looking to engage in political

⁸⁸ Fisher, M. (2018). Deep in the Desert, Iran Quietly Advances Missile Technology. The New York TimesNewspaper

dialog with China and the European parties to the agreement. This chapter tries to examine the legal validity of such a unilateral action by the United States in the light of the fact that the JCPOA was adopted by the United Nations Security Council (UNSC) and that the resolution itself imposes such responsibilities on the United States regardless of its right to withdraw under the JCPOA.⁸⁹

5.2 THE JCPOA AND U.S. COMMITMENTS

The JCPOA was signed on 14 July 2015 to enter into effect on 16 January 2016. Iran agreed under the JCPOA to significantly curb its nuclear programme. In addition, all terms of previous resolutions on the Iranian nuclear question (1696 and 1737 (2006), 1747 (2007), 1803 and 1835 (2008), 1929 (2010)) will be terminated at once by UNSC. The JCPOA is an complex and detailed 104-page text. It would be beneficial to clarify the technical specifics of the nuclear deal and the U.S. sanctions regime to recognize the extent of the implications of U.S. President Donald Trump's decision to withdraw from the agreement.

The Office of Foreign Assets Control (OFAC) is the federal agency responsible for economic sanctions programs in the US Department of the Treasury. While the creation of the OFAC dates back to the 1800s, its operation within the US state system began in the 1940s and in 1950 it attained its current official status. The mission of the OFAC is to administer diplomatic, political, and trade sanctions focused on US foreign policy and national security goals; conduct sanctions investigations; and ensure successful enforcement of the sanctions. In addition to foreign countries, the OFAC is targeting particular individuals and organizations that are considered threats to US national security, foreign policy or economy. As part of its compliance efforts, therefore, the OFAC publishes a list of persons and corporations charged by the US government for activities that endanger US national security. OFAC has regularly updated its list of Specially Designated Nationals and Restricted Individuals (SDN), globally known as the "Black List." This list had included thousands of Iranian individuals and organizations before the JCPOA. The lists listed mainly under the

⁸⁹ Jain, R., 2020. *The United States' Withdrawal From The Iran Nuclear Deal: Understanding The Legality Of The Move And Obligations Under UNSC Resolution 2231*. [online] Groningen Journal of International Law. Available at: <<https://grojil.org/2018/06/11/the-united-states-withdrawal-from-the-iran-nuclear-deal-understanding-the-legality-of-the-move-and-obligations-under-unsc-resolution-2231/>> [Accessed 15 March 2020].

legislative authority of executive orders and related legislation can be divided into three major categories:

- i. Engaging in or promoting nuclear armaments operations,
- ii. Involving or assisting the international terrorist or terrorist acts,
- iii. Committing human rights violations or promoting them.

The US Sanctions Legislation provides provisions for both residents and non-citizens. Whereas citizenship determines the main and secondary restrictions. Primary sanctions regulations refer to US residents (or applicants for citizenship) and institutions organized under U.S. laws. Sanctions affecting non-US citizens and legal entities (foreign) are classified as secondary sanctions. Prior to the JCPOA, sanctions were imposed on non-US persons and entities engaged in commercial / investment activities with Iranian residents, companies and other legal entities (resident in Iran) listed on the SDN list. The second group has to do with the sort of undesired behaviours targeted by the sanctions of the US. Therefore, the sanctions may be split into two categories as "primary" and "secondary" according to the principle of "nationality." The US sanctions against Iran can be categorized as "nuclear activities" and "other objectionable behaviors" according to "targeting activities." The U.S. sanctions program was then divided into four categories prior to the nuclear deal: A, B, C and D (see Table)⁹⁰

Table 1: The US Iran-Related Sanctions System

Target Activities		Nationality Principle	
		Primary Sanctions	Secondary Sanctions
Nuclear Activities ⁽⁹⁾		A	B
Other Objectionable Activities ⁽⁹⁾		C	D

the United States commits to terminate all sanctions related to nuclear power"

⁹⁰ Aslan, M., 2018. The Economic Consequences of the US Withdrawal from the Nuclear Dea. 1(1), pp.8-9.

The JCPOA came into effect on January 16, 2016 with President Obama's Executive Order 13716, and was not introduced as a treaty for ratification by the Senate. In addition, almost all economic sanctions aimed at curbing Iran's nuclear activities have been released in the same manner. Under the JCPOA, the United States has explicitly committed to revoking such executive orders. In addition, in compliance with JCPOA, Executive Order 13716, previous Executive Orders 13574, 13590, 13622 and 13645 were repealed and Executive Order 13628 significantly amended⁹¹. Thus, with executive order 13716, almost all the executive orders released from 2006-2010 have been repealed.⁹²

Table shows that the US has only lifted type-B or secondary sanctions linked to the JCPOA. In fact, the US has committed to lifting a small range of key sanctions. The export of commercial passenger aircraft and related parts and services to Iran (including the US firm, Boeing), as set out in Section 5 of Annex II of the agreement, one among the most important things that the US has committed to softening its position on primary sanctions.

In addition, the United States has agreed to lift all secondary sanctions covering:

- a) . Financial and banking measures: sanctions against the Central Bank of Iran (CBI), certain defined Iranian financial institutions (for example, the National Iranian Oil Company (NIOC), the Naftiran Intertrade Company (NICO), the National Iranian Tanker Company (NITC)) and other other persons and entities on the SDN list;
- b) . Insurance measures: Sanctions on offering underwriting, insurance or reinsurance services;
- c) . Sectors of shipping, shipbuilding and port: Restrictions on transactions with Iran's shipping and shipbuilding sectors and port operators, including IRISL, South Shipping Line and NITC, and Bandar Abbas ' portoperator(s);
- d) Energy and petrochemical sectors: Sanctions on import, production, selling, transportation or distribution of Iranian energy, petrochemical and natural gas products and sanctions on investment in Iran's oil, gas and petrochemical sectors;

⁹¹ Revocation of Executive Orders 13574, 13590, 13622, and 13645 With Respect to Iran, Amendment of Executive Order 13628 With Respect to Iran, and Provision of Implementation Authorities for Aspects of Certain Statutory Sanctions Outside the Scope of U.S. Commitments Under the Joint Comprehensive Plan of Action of July 14, 2015

⁹² Aizhu, C. (2018). Exclusive: Iran asks Chinese oil buyers to maintain imports after U.S. sanctions – sources. [Accessed on 16/03/2020] <https://www.reuters.com/article/us-iran-nuclear-china-oil-exclusive/exclusive-iran-asks-chinese-oil-buyers-to-maintain-imports-after-u-s-sanctions-sources-idUSKCN1IH0VL>

- e). Gold and other precious metals: Restrictions on the gold and other precious metals trade in Iran;
- f) Software and commodities: Trade sanctions with Iran in graphite, raw or semi-finished commodities such as aluminum and steel, coal, and industrial process integration applications;
- g) Automotive sector: Restrictions on the selling, supply or transfer of products and services used in the Iranian automotive industry⁹³

Another US commitment under the JCPOA is the elimination of all persons and organizations from the SDN register. As mentioned above, direct or indirect trade is prohibited under U.S. jurisdiction as regards economic and financial transactions with individuals and entities on the SDN list. In compliance with the US commitment defined in section 4.8.1 of Annex II of the JCPOA, the US has approved the withdrawal of individuals and organizations from the SDN list set out in Attachment 3 and Annex 4 of the JCPOA. More than 600 people and organizations linked to sanctions on Iran had been on the SDN list prior to the JCPOA. The names of those individuals and organizations are mentioned in Annex 3 and Annex 4. OFAC excluded more than 400 people and organizations from the SDN register. On 16 January 2016, the Treasury Department released a notice on the names of individuals and organizations excluded from the SDN list to ensure cooperation between US domestic legislation and the JCPOA.

5.3 THE IMPLICATION OF THE US WITHDRAWAL FROM THE JCPOA

Criticizing the exclusion of the legislative branch from the JCPOA, the Congress passed the Iran Nuclear Agreement Review Act (INARA) and participated in a political strategy by establishing a congressional control process over the Obama administration. One of the main provisions of INARA is that the law allows the president to send to Congress the agreement(s) and all associated documents. Under INARA, the president will give two

⁹³ Aslan, M., 2018. The Economic Consequences of the US Withdrawal from the Nuclear Dea. 1(1), pp.8-9.

certificates to Congress every 90 days regarding the nuclear agreement. In addition, he will testify to whether:

1. Iran is meeting its treaty obligations and commitments;
2. The suspension of sanctions in respect of Iran pursuant to the agreement is essential to the United States ' national security interests

In the event that the President has not issued certifications within each 90-day period, INARA offers a 60-day period for Congress to review and eventually pass "qualifying legislation" to reinstate US sanctions on an expedited basis.⁹⁴

During his presidential campaign in 2016, Donald Trump called the JCPOA a "disaster" and proposed renegotiating the deal. Trump claimed in his campaign speeches that if elected he would be open to renegotiation but would withdraw from the agreement and restore sanctions unless its "faults" were fixed. In addition, Trump pointed out two major flaws with the JCPOA both in his campaign and in his presidential addresses. The first question pertained to the sunset clause. Under the JCPOA's sunset terms, limits on Iran's nuclear activities will be lifted after 10 to 15 years (for a limited period) without any clause in the agreement after it expires. The second problem was that there were no restrictions to Iran's missile programs within the contract. Iran will never possess nuclear weapons, states Trump.

In addition, Iran's attempts to pursue production of long-range ballistic missiles are a sign of its hostile intent. Although the EU is also expressing its concerns about these issues, it is reiterating the need to resolve them by retaining the JCPOA. It is also clear that Trump has tried to renegotiate these two "flaws" and amend the nuclear deal, or a new deal that retains the JCPOA but adds additional steps. Moreover, as tensions with Russia and China were growing, Trump is only addressing the EU with these remarks. Brian Hook, the State Department's director of policy planning, led the US discussions and asked diplomats from the E3 (England, France and Germany) to formulate a strategy or supplementary agreement that addresses Trump's concerns. At a two-day meeting in Berlin, he said the US would stay in the deal if Trump supports the supplementary agreement. And after this conference the other signatories embarked on a diplomatic marathon. The 28 EU diplomats held a closed-

⁹⁴ Qualifying legislation means "A bill reinstating statutory sanctions imposed with respect to Iran". Moreover, congress could decide to re-impose sanctions suspended or waived pursuant to the JCPOA or do nothing, under INARA. From a legal standpoint, the expiry of deadline (90 days) for the president and 60 days for Congress) means that the JCPOA remain intact (Chacko, 2018)

door meeting with Iran's Revolutionary Guard Corps (IRGC) officials in Brussels on March 21 and told IRGC officials about the negotiations on alternative sanction scenarios and introduced a new sanctions package with help from other members. EU countries have been attempting to develop a package that resolved perceived problems in the contract. At the meeting of EU foreign ministers in Luxembourg on 16 April 2018, the focal points of this preliminary meeting were addressed once again. However, there wasn't enough common ground at any of the meetings

. Referring to UNSC Resolution 2231, with the executive order of January 16, 2016, the US obligations are embedded in the US legal framework. Following Trump's exit from the nuclear agreement, all of the executive orders that the Obama administration has withdrawn will be restored. However, commercial and investment activities initiated and/or conducted during the 26 months between 16 January 2016 and 8 May 2018 cannot be automatically terminated with Iranians by US citizens and others alike. Under the National Security Presidential Memorandum (NSPM) released by President Trump on 8 May 2018, 90-day and 180 day wind down period was established for terminating these activities according to the form of operation. In other terms, the US Treasury has granted individuals and companies an allotted time for canceling, terminating or completing a contract, depending on the form of operation. Individuals and companies who proceed to enter into business after the wind-down period expires may be in violation of the U.S. Sanctions Act and may therefore be subject to compliance action. The US sanctions against Iran will be reinstated after the wind-down periods of 90 days and 180 days, depending on the type of activities mentioned below.

Activities with the 90 day wind-down period ⁽¹⁾	Activities with the 180 day wind-down period ⁽²⁾
• The purchase or acquisition of US dollar banknotes by the Government of Iran	• Iran's port operators, and shipping and shipbuilding sectors (3)
• Iran's trade in gold or precious metals	• Petroleum, petroleum products, or petrochemical products
• Direct or indirect sale, supply, or transfer to or from Iran of graphite, raw, or semi-finished metals aluminum, steel, coal	• Transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions(4)
• Software for integrating industrial processes	• The provision of specialized financial messaging services described in CISADA (5)
• The purchase of, subscription to, or facilitation of the issuance of Iranian sovereign debt	• The provision of underwriting services, insurance, or reinsurance including activities with individuals and entities
• Iran's automotive sector	• Iran's energy sector
• Significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial	
• Activities undertaken pursuant to specific licenses (Iranian-origin carpets, foodstuffs, commercial passenger aircraft and related parts)	

The wind-down period for automobile, jewelry, and metal (precious or raw / semi-finished industrial) and software related activities is 90 days. The same applies to the Iranian government's purchase or acquisition of US dollar banknotes, and the procurement, subscription, or facilitation of Iranian sovereign debt issuance. The wind-down period is also 90 days for terminating contracts with Boeing and Airbus, which is essential for Iran's aviation industry. The wind-down period is set at 180 days for shipping, shipbuilding and port, coal, oil and gas, and other energy related sectors. Finally, the wind-down period for foreign financial institutions' transactions with Iran's central bank and approved Iranian financial institutions is also 180 days.

On January 16, 2016, the Treasury Department released a notice in line with JCPOA and removed more than 400 individuals and organizations from the SDN list. The Treasury released a statement on May 8, 2018 stating that these persons and organizations would be re-designated within the 180-day period (as of November 4, 2018 at the latest). Hence, putting aside technical issues, all U.S. sanctions suspended or revoked in accordance with the JCPOA should be restored by 4 November 2018 at the latest. The Category B restrictions and the key fines for passenger aircraft export pursuant to different licenses will re-enter into effect. It is also clear that, with the re-designation of persons and entities removed from the JCPOA SDN list, third-country individuals and entities will be more careful and diligent when doing business in / with Iran.⁹⁵

5.4 THE POSITIONS OF THE OTHER MAJOR POWERS

Since the US withdrawal from the JCPOA, there has been a concern how other signatory countries should respond. Although China and Russia's attitudes towards the withdrawal are critical, the international community has turned its focus to France, Germany, and Britain, known collectively as the E3. China and Russia have historically clashed in various fields with the US. Consequently, the secondary sanctions against Iran can be assessed as an additional contentious area among these global powers, and it is anticipated that each player will be able to use this as a bargaining chip against the other, particularly against the US. China's position as a leading US trade partner is notable while Russia's attitude is unattractive

95 Chachko E. (2018). Trump Withdraws from the Iran Nuclear Agreement: What Comes Next. Lawfare: [Accessed on 16/03/2020] <https://lawfareblog.com/trump-withdraws-iran-nuclear-agreement-what-comes-next>

due to the relatively low level of trade between Russia and the US. The U.S. nuclear sanctions against Iran and drug exemptions / exclusions will be restored after the US withdrawal by the end of the respective winddown periods (by August 2018 or November 2018). The popular topic of exceptions relates to oil transactions.

The U.S. oil sanctions on Iran was given largely under the 2012 NDAA-National Defense Authorization Act. In addition, it should be noted that the data for the current year, 2012, was used when drafting the legislation. The NDAA gives limited exemptions to certain countries from sanctions for importing Iranian energy and chemical products. Countries will continue to import under the related NDAA provision if they reduced their purchases of crude oil from Iran by 18 per cent (based on total price / volume). Many countries, including Japan, China, India, Turkey, South Korea and Taiwan, have retained exemptions for reductions.⁹⁶

However, the situation in the EU varies slightly. The EU Council adopted 2012 Regulation No 267 relating to restrictive measures against Iran. This legislation is contextually consistent with U.S. sanctions, and contains very strict provisions. In addition, approved individuals and entities are included on the SDN list of OFAC under Decision No 2012/829 adopted by the Council of the EU, and EU companies are forbidden from making transactions with such individuals and entities. The US found the EU regulations council adequate, so no specific agreement was made on Iran's purchasing of petroleum from the EU. Under the NDAA only one transitional provision is made for EU countries to purchase petroleum and petroleum products. Under the JCPOA, provisions of Council regulations and decisions imposing sanctions or restrictive measures relating to Iran have been terminated. Consequently, the EU's import of petroleum and petroleum products from Iran and the extent of this exception to imports remain uncertain. This region is to be controlled by November 2018. However, a meeting is planned between the US and Italy, Greece and France about their importation of crude oil from Iran and its export to Europe after refining.

Position Of China, Russia, and other Asian Countries

All Chinese and Russian representatives have expressed their unwavering support for JCPOA implementation. There are serious disputes between the US and Russia over various issues such as Russian intervention in the presidential election, the Syrian civil war, and Crimea's annexation. At the other hand, Russia maintains strong relations with Saudi Arabia and with

⁹⁶ Katzman, K. (2018). Iran Sanctions. Congressional Research Service 7-5700. [16/03/2020] <https://fas.org/sgp/crs/mideast/RS20871.pdf>

Israel, two of America's major partners in the Middle East. It should also be remembered that the US and the EU have for various reasons imposed sanctions on Russia. Russia has multidimensional relations with the United States, with Iran and with the EU. And the present JCPOA situation and the impact of secondary sanctions on Russia would also be multidimensional. In addition, despite this context, Russia's response to secondary sanctions on Iran can be evaluated on the basis of this interconnected and dynamic framework. From an interest perspective, Russia's best approach may be to take advantage of the current circumstances as an opportunity to improve its hand in resolving other issues. It's also an option to keep a low profile on the Iranian issue though.⁹⁷

The rate of trade between Russia and Iran went up sharply in 2007 and reached \$3 billion in 2011. Trade volume had marginally contracted in 2012 and subsequently with tightening of sanctions. In 2017, Russia-Iran trade volumes stood at about \$2.4 billion. Russia's exports were about \$2bn; imports were around \$400 m. Iran primarily imports capital goods from Russia, while Iran exports steel to Russia. However, if an evaluation is made on the basis of the amount of trade between the US-Russia and Iran-Russia, the weak trade relations may be interpreted as a indication that the secondary sanctions do not significantly upset Russia. Russian exports to the US were \$9.5 billion for the year 2016, while imports were \$3.5 billion. Hence, the risk of exposure to secondary sanctions in the US is small. Within this area, the assumption is that Iran and Russia will enjoy a small and secure trade relationship as before. The US's key concern is to avoid other countries making large-scale investments in Iran. As large-scale investments by third countries in technology-intensive industries can be recognized as the red line for the US. So Russia will continue its economic relations with Iran unless Russia crosses this red line.

China is emerging as a global superpower but it will be a big obstacle down the road to its reliance on foreign resources. With China's entry into the world economy, the outlook for global industrial development shifted dramatically, and China became a center of value-added manufacturing. Nevertheless, this raised new problems for the Chinese economy the most critical of which was the need to find new markets for large amounts of goods and to supply these goods to old and new markets quickly and cost-effectively. The third vulnerability is tied to the domestic market in China. In addition, the existing supply chain in

⁹⁷ Askeroğlu, S. (2018). Trump'ın Kararı İran'ın Suriye'deki Varlığını ve Tahran-Moskova İlişkilerini Nasıl Etkiler? IRAM: [Accessed on 19-03-2020] <https://www.iramcenter.org/trumpin-karari-iranin-suriyedeki-varligini-ve-tahran-moskova-iliskilerini-nasil-etkiler/>

China can become potentially inadequate in the immediate future. Long-term growth in China, and the expansion of the middle-income stratum, caused consumption to increase and diversify. At the other hand, growing the supply of intermediate and capital goods should be cost-effective and smooth to support the output growth. In other words, growing and diversified domestic demand is leading China to import more merchandise from global markets. Access to alternative sources and routes is important for maintaining economic development in the global supply chains. Accordingly, the Belt and Road Initiative (BRI) was introduced to remove these shortcomings and enable China to become a superpower in its pursuit.

Iran plays a key role in China's energy security strategy as the latter is one of Iran's largest oil importers. In 2011, China bought an average of 555,000 bpd of Iranian crude oil, but in 2012, with the sanctions tightened, China's crude oil imports from Iran plummeted by nearly 26 percent and fell to 440,000 bpd. Chinese oil imports from Iran had remained relatively weak in 2013 (430,000 bpd). However, China's crude oil imports from Iran had exceeded the rate prior to 2012, when the sanctions were fully enforced. Changes in China's imports from Iran during the periods of sanctions are very important. China did not follow the 18 per cent reduction exemption under the NDAA in 2014 and 2015. In addition, China's crude oil imports from Iran increased to a record of more than 600,000 bpd after the JCPOA. Chinese imports from Iran reached around 650,000 bpd in the first quarter of 2018, although it remains to be seen after the 180-day wind-down period whether China's crude oil imports from Iran continue to be 600,000-650,000 bpd. Imports of oil from Iran will be a sanctionable operation at the end of 180 days and this issue should be dealt with.⁹⁸

Iranian Foreign Minister Mohammed Javad Zarif has visited China on May 13, 2018, accompanied by a large delegation from Iran. NIOC representatives have had meetings with their Chinese counterparts. Throughout the meeting, Iranian officials urged their counterparts to retain imports at the end of the 180-day wind-down phase but failed to obtain China's assurances. Chinese officials made frequent comments in the media in July and early August regarding their plans to go ahead with buying Iranian oil. Remember also that since the beginning of 2018, trade tensions between China and the US have expanded. China retaliated

⁹⁸ Aizhu, C. (2018). Exclusive: Iran asks Chinese oil buyers to maintain imports after U.S. sanctions – sources. [Accessed on 19-03-2020] <https://www.reuters.com/article/us-iran-nuclear-china-oil-exclusive/exclusive-iran-asks-chinese-oil-buyers-to-maintain-imports-after-u-s-sanctions-sources-idUSKCN1IH0VL>

against the tariff policy of the Trump administration (imposing a tariff of 10-25 per cent or rising the tariff rate) on various Chinese goods. It appears, however, that so far each side has sought to avoid a full-blown trade war.⁹⁹

Table 4: Crude Oil Importing Countries from Iran (bpd, thousands)

IMPORTS								
No	Country	Years						
		2011	2012	2013	2014	2015	2016	2017
1	China	555	440	430	550	530	625	625
2	India	300	265	225	280	220	460	470
3	Japan	315	200	180	170	170	225	170
4	S. Korea	250	155	135	125	115	280	360
5	Turkey	185	150	105	105	110	140	245
6	EU(1)	450	50	35	-	-	245	470
	TOTAL	2540	2100	1215	1110	1080	1920	2100

Obviously, China will come to the negotiating table and ask the US for an exemption from oil-related sanctions on Iran, because in the first quarter of 2018 China imported an average of about 600,000-650,000 bpd from Iran. Nevertheless, trade mitigation measures recently implemented by the US and China make the issue of sanctions difficult to determine. It is believed that China will marginally reduce Iran's purchasing of oil to avert further rifts with the US and China will presumably plan to show "goodwill" by reducing oil purchases. The NDAA could allow countries to reduce Iranian oil imports by 18%. Moreover, crude oil imports from Iran from China dropped by 25 per cent between 2011 and 2013. Nevertheless, the statistics in 2012 and 2018 are different under the secondary sanctions. Another issue is whether the reduction exemption should be described for China according to the figures for 2012 or 2018. While not being completely explained this point should be emphasized.¹⁰⁰

In 2012, the UNSC established an international sanctions regime that is binding on all member states. Whereas China's existing issue is secondary unilateral sanctions levied by the US. Chinese officials confirmed that the withdrawal of the US from the nuclear agreement and the re-imposition of sanctions would not impact the imports of China and that China will not withdraw from the Iranian oil market. Furthermore, China will seek to retain the exception for a critical degree of reduction rather than conflict. Using a straightforward

⁹⁹ Slav I. (2018). Iran Sanctions Threaten The Petrodollar. [Accessed on 19-03-2020] <https://oilprice.com/Energy/General/Iran-Sanctions-Threaten-The-Petrodollar.html>

¹⁰⁰ ibid

approximation, if the reference value of the 650,000 bpd is taken, China would obtain an exemption around the range of 500,000-550,000 bpd (or a decrease of about 100,000-150,000 bpd). However, it seems that China's bold move as a means of sustaining Iranian purchasing of oil would entail some form of "additional discount" on Iranian oil prices.

Another china-based issue is linked to payments for business deals with Iran. The effectiveness of the sanctions during 2012-2016 was attributed to the inability to move business payments from and to Iran, rather than trade in goods and services. The average payment for 600,000 barrels per day is nearly \$45 million, with the spot price of crude oil about \$75 per barrel (August 2018). Two significant steps have been taken recently on the payment methods. Usage of national currencies for trade and a key China-led initiative. Over the last two years, Russia and Iran have moved to use their national currencies to do bilateral trade. Given a range of implementation issues, this method can be triggered in case pressure on Iran is tightened. Because crude oil was considered a valuable commodity, the dollar became a major currency for trading oil. In addition, financial instruments are basically exchanged in the dollar, both in futures and spot markets. Nevertheless, on April 8, 2018, China focussed on this topic and released its first ever yuan-denominated oil futures contracts. The launch, at a fixed price on a future delivery date, of the yuan-denominated crude oil futures that minimize the impact of the US sanctions. One can expect the consequences of this move to be completely reported in the future. In 2017 "Total", a state-owned Chinese oil and gas corporation (CNPC) and the National Iranian Oil Company (NIOC) signed a \$5 billion deal to develop and produce South Pars phase 11. Total retained a stake of 50.1 percent while the CNPC retained a comparatively small stake (30 percent). After the US exit from the nuclear deal, Total announced that if it can not secure a waiver from the US government, it might pull out of the South Pars construction project in the face of possible secondary sanctions. Total reported that its total expenditure on the South Pars project to date has been \$90 million. The CNPC has said it is ready to take over Total's share in the project and retain the project's leading share (more than 50 per cent). In this region it is obvious that China will deal with the secondary sanctions of the US. Even so, it's debatable if China's technical expertise is enough.¹⁰¹

¹⁰¹ Emmott, R., and Irish J. (2018). European powers press for Iran sanctions to buttress nuclear deal. [Accessed on 19-0.-2020] <https://www.reuters.com/article/us-usa-trump-iran-eu/european-powers-press-for-iran-sanctions-to-buttress-nuclear-deal-idUSKBN1H4253>

In 2016 Iran-China trade turnover stood at \$31bn. China's exports to Iran stood at \$16.4 billion and Iran's imports (primarily oil) at \$14.8 billion. In the same year US-China trade turnover stood at \$520 billion. China's US imports stood at \$135 billion; its US exports were \$385 billion. In 2016, China's trade surplus for products with the US stood at \$250 billion. Through the viewpoint of China, the scale of the US and Iranian markets is equally asymmetrical. While China has major problems with the US in many ways, and even though Iran is an significant option in terms of energy security, China is not going to risk being on the wrong side of the US because of Iran. Therefore, talks between China and the US are likely to take place as they do in other conflict areas, and China will pursue the least negative outcome to maintain trade ties with Iran. ¹⁰²

Why can secondary sanctions relating to Iran be resolved with limited harm in the interests of China? Because of secondary sanctions, a new one has been added to the "basket of conflicts" of the already current multitude of differences between the US and China. Nevertheless, talks between China and the US must continue to pursue precise and substantive solutions to those disputes. In addition, both countries are expected to follow the national interests in negotiations and find a agreement. It should be recalled that China is a strong rival to the US in the fight for global supremacy. The diplomatic and economic power struggle between China and the US is likely to continue over the next 20 years, and both countries do not hesitate to use instruments that wear each other out in this fight. ¹⁰³

Before sanctions, Iran's crude oil exports averaged 2.5 million bpd in 2011, and its top importers were China (554,000 bpd), Japan (315,000 bpd), India (300,000 bpd), South Korea (250,000 bpd) and Turkey (185,000bpd) respectively. India, Japan, and South Korea substantially reduced their sales with the tightening of the sanctions (2012 and later). Therefore, the traditional US allies, India, Japan and South Korea, are expected to significantly reduce their oil imports from Iran. Several oil firms and refineries in Japan, South Korea and India have already announced that they will stop buying oil from Iran. Nonetheless, a zero oil purchase goal is likely to be impractical even for these countries, due to energy security and long-term contracts. The US is pressuring these three countries to

¹⁰² ibid

¹⁰³ Mees (2018). Iranian Oil Exports Hit Pre-Sanctions Levels As European Share Grows. [Accessed 19-03-2020]<https://www.mees.com/2018/2/9/transportation/iranian-oil-exports-hit-pre-sanctionslevels-as-european-share-grows/0fecc010-0dbc-11e8-9c19-95e019b95c5e>

make a choice between two security choices, "energy security" versus "geopolitical security," and it seems they are moving towards the second option.¹⁰⁴

5.5 PRE AND POST JCPOA SANCTIONS AND U.S LEGAL INSTRUMENTS

After the U.S. decision in May 2018 to withdraw from the JCPOA, it re-imposed comprehensive sanctions to control the lucrative energy market in Iran. Some of these measures are key sanctions, including freezing on assets, trade embargoes, and a ban on engaging with Iran on U.S. citizens and companies. Some of these measures, however, impose "extra territorial" or "secondary" sanctions, that is to say, penalize third-country companies involved in Iran's energy sector. It could theoretically penalize Indian companies with exposure to US financial institutions, and bar loans from US financial institutions. There are two mechanisms that could impact Indian institutions through these secondary sanctions.

First, corporate (US and foreign) investments in Iran's energy sector of at least US\$ 20 million in one year will cause sanctions under the Iran and Libya Sanctions Act (ILSA, P.L. 104-172) and the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA, P.L. 112-158);¹⁰⁵ The term "investment" is broadly defined and includes responsibility for the production of petroleum resources, equity and royalty agreements, improvements to existing assets, pipelines and construction, upgrading and expansion of energy projects. India is involved in developing two Iranian gas fields, namely the gas field Farzad-B (located in Tehran) and the gas field South Pars (shared by Iran and Qatar). It is estimated that the planned investment for these ventures may amount to billions of dollars, with estimates set at around US\$ 6.2 billion for the Farzad-B gas field that clearly crosses the

¹⁰⁴ *ibid*

¹⁰⁵ Initially, the ISA sanctions applied to U.S. companies only. However, the CISADA extended the application of these sanctions to non-U.S. based companies. See, "Frequently Asked Questions (FAQs) regarding Enforcement against Foreign Persons of U.S. Trade Sanctions against Iran", Notice No. 10 2013/2014, West of England, last modified May, 2013, <https://www.westpandi.com/globalassets/notices/2013-2014/us-sanctions-faqs—rev-1-2013-05-30.pdf>

investment threshold of US\$ 20 million. Likewise, Indian investments in the Iran-Pakistan-India pipeline (IPI) and the Middle East to India Deep Water pipeline (MEIDW) are being impacted by the re-imposition of sanctions¹⁰⁶

Second, U.S. sanctions threaten Iranian crude oil purchases, too. While no clear restrictions were imposed on these imports, the US requires controls on processes used by importers to pay for Iranian oil. Executive Order 13622 and Section 1245 of the National Defence Authorization Act (NDAA, P.L. 112-81) place restrictions on international banks that have handled crude oil transactions, restricting operations on their current US accounts and banning the opening of new accounts. The key method by which the US aims to accomplish this aim is by stopping international banks from engaging with Iran's central bank (CBI) when it comes to making oil payments¹⁰⁷

A number of Indian private and public-sector firms are currently buying crude oil from Iran. The payment route Indian refiners are using to pay for Iranian crude is as follows. Indian businesses pay the State Bank of India (SBI), which then transfers the funds in euros to the Europaisch-Iransische Handelsbank (EIH) in Germany, which in turn transfers the funds to the Iranian National Oil Company. Although the EIH is on the blacklist of the Office of Foreign Assets Control (OFAC), it has been excluded from the secondary list of sanctions following the JCPOA, which allowed non-US entities (such as the SBI) to use it as a conduit for dealing with Iran. Following the US pull-out from the JCPOA, the EIH would be put back on it, thus stopping the SBI from using EIH to move Indian funds to Iran. Certain established banking systems to pay for Iranian oil, it goes without saying, would also face similar difficulties. For instance, an Iranian account in Indian rupees with, say, the SBI exposing the bank to direct secondary sanctions from the US.¹⁰⁸

¹⁰⁶ “ONGC Videsh offers to invest \$6.2 bn in Iran’s giant Farzad-B gas field”, *Business Standard*, 15/03/2020, https://www.business-standard.com/article/companies/ongc-videshoffers-to-invest-6-2-bn-in-iran-s-giant-farzad-b-gas-field-118021400523_1.html.

¹⁰⁷ Kenneth Katzman, *Iran Sanctions*, (Washington D.C.: Congressional Research Service, 2018), 11, <https://fas.org/sgp/crs/mideast/RS20871.pdf>

¹⁰⁸ “German bank to process payments for India,” January 5, 2011, [rediff.com](http://www.rediff.com/money/report/german-bank-to-process-payments-for-india/) <http://www.rediff.com/money/report/german-bank-to-process-payments-for-india/> 20110105.htm; Nidhi Verma, “SBI to stop handling Iran oil payments, imports may be hit,” *Reuters*, June 15, 2018, <https://in.reuters.com/article/india-iran-oil/sbi-to-stop-handlingiran-oil-payments-imports-may-be-hit-idINKBN1JB0BJ>.

In addition to these re-impositions related to JCPOA, the newly passed Countering America's Adversaries Through Sanctions Act (CAATSA) introduces sanctions through Title I expressly targeting Iran's support for terrorism-related activities, WMD and ballistic missile program. (It is important to remember that CAATSA was implemented before the U.S. decision to withdraw from JCPOA.) Under Section 105 of CAATSA, the key goal for U.S. sanctions is the Islamic Revolutionary Guard Corps (IRGC) The IRGC was previously subject to sanctions pursuant to six Executive Orders, but three major discrepancies exist between the previous IRGC sanctions and the newly implemented ones. The most important of these is the fact that CAATSA also empowers the administration to apply such sanctions to any "foreigners" considered to be IRGC "officials, agents, or associates."¹⁰⁹

Extending the penalties to these "foreign persons," especially companies or organizations, may lead to secondary sanctions. While the criteria for identifying "international persons" were not laid down in any law or executive order, designated individuals and organizations were usually considered to work for or on behalf of the IRGC, or to provide assistance. Nonetheless, the lack of a description of what constitutes an IRGC foreign officer, agent or organization gives the US administration considerable flexibility in making such determinations.¹¹⁰

The Indian Ports Global Private Limited (IPGPL)-a state-owned joint venture of the Jawaharlal Nehru Port Trust and the Kandla Port Trust-is one possible Indian company that may come under the crosshairs of Section 105 of CAATSA. In May 2016, IPGPL and Arya Banader, an Iranian firm, signed a bilateral contract to build and operate the Chabahar port. Arya Banader is not listed in the OFAC database, and IPGPL does not appear to have run away from any U.S. regulations. Nevertheless, news reports appeared in December 2017 indicating that the project was contracted with Khatam al-Anbia (KaA), an IRGC-affiliated company subject to severe penalties. OFAC states especially that doing business with KaA would result in secondary sanctions.¹¹¹ Such news reports have noted that one of KaA's

¹⁰⁹ "OFAC FAQs: Iran Sanctions", U.S. Department of the Treasury, accessed 20 June, 2018, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#caatsa.

¹¹⁰ Countering America's Adversaries through Sanctions Act of 2017, Pub. L. No. 115-44, 84 Stat. 1114 (2017).

¹¹¹ "OFAC Sanctions List Search: Khatam al-Anbia," Office of Foreign Assets Control, US Department of Treasury, accessed 15/03/2020, <https://sanctionssearch.ofac.treas.gov/>

subcontractors was an (unnamed) "state-run Indian firm." One assumes — because IPGPL was explicitly tasked with Chabahar port development— that this unnamed firm is either IPGPL or a special-purpose vehicle produced by it. It remains unclear how this Indian firm has evaded secondary sanctions as a subcontractor of KaA. Whatever the case may be, with the new provisions of CAATSA Section 105 and its unspecified definition of "international affiliates"— Indian firms involved in the construction of the Chabahar port (which appears to be operated in significant parts by IRGC-controlled entities) will have to walk carefully so as not to be identified as such.¹¹²

5.6 **CONCLUSION**

Several countries are trying to reduce their losses resulting from the US withdrawal from the JCPOA, primarily the EU countries. Hence the behaviour of the EU will decide the future of the nuclear agreement. Following the US withdrawal from the JCPOA the leaders of the E3 have criticized the US attitude and announced their commitment to continue the agreement. Given the political significance of this argument, practical actions will be the main determinant, rather than declarations. In addition, Iran has been waiting for action from the E3 and other signatories, and has requested a definite guarantee for them. Although Iran's demand for a guarantee is intelligible, it is still not possible to predict exactly to what degree other countries, especially the E3, will meet that demand. Turkey's statements suggested that trade ties with Iran are likely to continue, but it can be expected that Turkey may await the EU's actions and shape its agenda accordingly.

The full termination of the US secondary sanctions is very complicated, so the countries must try to reduce their losses. In that sense, on the one hand, these measures will ensure the enforcement of the JCPOA, on the other hand, should not be completely at odds with the US. In addition, EU countries have varying degrees of government relations with the US and Iran. The practical steps taken by the EU will have to consider the US reaction, while they should aim for a middle ground that will satisfy the member states. For this reason, small and medium-sized enterprises (SMEs) can be encouraged to trade with Iran through Euro-based

Details.aspx?id=1795.

¹¹²“Iran inaugurates new extension to its main Arabian Sea port,” *LiveMint*, December 3, 2017, <https://www.livemint.com/Politics/81M9TEDrje3XnMG1jPpVuI/Iran-inaugurates-newextension-to-its-main-Arabian-Sea-port.html>

sovereign lines of credit and incentive structures as a reasonable solution. Nevertheless, advising and cautioning small and medium-sized businesses about the actors on the SDN list is important.

In the short run (2019-2020), Iran's oil exports, which are close to 2.3 million bpd in 2018, are forecast to fall to around 1.5-1.7 million bpd, reflecting a decline of 300,000-500,000 bpd. However, as oil prices are projected to trade about \$70 to \$80 per barrel, in the near future a fall in Iran's oil-export revenues will be minimal. Iran's GDP did not hit 2010 levels in 2018. Subsequently, in the coming years, Iran's oil sales are predicted to decline lower. In addition, the existence of secondary problems such as unemployment and inflation should also be recognized due to falling oil revenues. The long-needed foreign direct investment will not happen in Iran, marking Iran's socio-economic and political problems. The U.S. secondary sanctions inevitably leave the hands of tied companies, multinational firms, and large-scale firms. The through revenues from oil and foreign direct investment would thus intensify the worsening socio-economic problems in Iran.

CHAPTER 6

FUTURE OF JCPOA FROM THE POINT **OF VIEW OF THE VERIFICATION** **MECHANISMS**

6.1 INTRODUCTION

The Joint Comprehensive Plan of Action (JCPOA) was signed on 14 July 2015 by the EU3 + 3—the United Kingdom, France, Germany, the United States, Russia and China. The deal seeks to ensure that Iran's civilian nuclear program can be used only for peaceful purposes, not for military purposes. In addition, Iran will receive a wide-ranging relaxation of U.S., European Union and United Nations sanctions, including the unfreezing of nearly \$100 billion in Iranian assets kept primarily in Western financial institutions.¹¹³ More than 70 nuclear non-proliferation specialists have released a joint declaration arguing that the agreement "is a solid, long-term and verifiable agreement that will be a net plus for international nuclear non-proliferation efforts." o A group of 29 nuclear scientists and engineers also demonstrated their support for the deal through a letter to President Barack Obama stating that they believe that the deal "meets key non-proliferation and security goals and sees no realistic prospect of a better nuclear deal." Moreover, three dozen retired generals and admirals and more than 100 former US ambassadors support the deal.¹¹⁴

On the other hand, JCPOA opponents argue that the deal could give Iran the potential to develop a nuclear weapon indigenously within 15 years, and that tougher sanctions should be imposed. They believe that the sanction snapback mechanism of the deal will not prevent ongoing and minor violations that would allow Iran to gradually undermine the agreement.¹¹⁵ This chapter is not intended to expressly endorse or refute any claims made by either the deal's supporters or critics, nor is it intended to determine the terms of each contract. It should be noted, however, that given its debatable perfection and imperfection, the agreement provides an unparalleled and multi-layered monitoring and verification process. This chapter therefore aims to address the verification process of the JCPOA, in particular its advanced

¹¹³ A. Baabood, "Iran and the Arab World after the Nuclear Deal - Rivalry and Engagement in a New Era," *The Iran Project* (Harvard Kennedy School Belfer Center for Science and International Affairs, Cambridge, MA, 2015), (available at <http://www.belfercenter.org/sites/default/files/legacy/files/Impact%20on%20Arab%20World%20-%20Web.pdf>).

¹¹⁴ The Iran Primer, *Open Letters in Support of Deal: Scientists, Generals & Ambassadors* (2015), (available at <http://iranprimer.usip.org/blog/2015/aug/12/open-letters-support-deal-scientistsgenerals-ambassadors>).

¹¹⁵ G. Samore, "The Iran Nuclear Deal A Definitive Guide" (Harvard Kennedy School Belfer Center for Science and International Affairs, Cambridge, MA, 2015), (available at <http://belfercenter.ksg.harvard.edu/files/IranDealDefinitiveGuide.pdf>).

safeguard measures. It considers the potential consequences of such safeguards measures for the future of the deal and the non-proliferation regime.¹¹⁶

6.2 ADVANCED SAFEGUARDS MEASURES

Under the JCPOA the verification process is advanced in nature. This contains not only the Comprehensive Safeguard Agreement between Iran and the International Atomic Energy Agency (IAEA) and the Additional Protocol, but also several advanced safeguard measures. Iran is officially implementing its Comprehensive Safeguards Agreement and Additional Protocol with the IAEA, as it did voluntarily between 2003 and 2006. The JCPOA requires Iran ultimately to ratify the Transition Day Additional Protocol (18 October 2023), which is eight years after the Day of Adoption (18 October 2015), or the date on which the IAEA reaches the broader conclusion that all of Iran's nuclear material is being used in a peaceful manner, whichever comes first. Iran's adherence to the IAEA Comprehensive Safeguards Agreement is permanent. When ratified, the Additional Protocol to Iran is also binding, provided that it does not withdraw from the Non-Proliferation Treaty. The advanced protections under the agreement to be discussed below are not binding, but will remain in effect for 10 to 25 years.¹¹⁷

6.3 BROADER MONITORING OF IRAN'S NUCLEAR PROGRAM

Under the IAEA Comprehensive Safeguards Agreement, Iran is expected to report to the IAEA the entire inventory of its nuclear material— the capability and location of the material in Iran — and all activities that include nuclear material. Under the Subsidiary Arrangements resulting from Article 39 of Iran's Comprehensive Safeguards Agreement with the IAEA,

¹¹⁶ B. Obama, Statement by the President on the Framework to Prevent Iran from Obtaining a Nuclear Weapon. *whitehouse.gov* (2015), (available at <https://obamawhitehouse.archives.gov/the-pressoffice/2015/04/02/statement-president-framework-prevent-iran-obtaining-nuclear-weapon>)

¹¹⁷ Joint Comprehensive Plan of Action (2015), (available at <https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/>).

Iran has also decided to implement the revised version of Code 3.1, which specifies that the country inform the IAEA of a new nuclear facility as soon as it wants to build it. The modified Code 3.1 is a more improved regulation than the initial Code 3.1 of 1976 requiring Iran to provide a notification "normally no later than 180 days before the facility is expected to accept nuclear material for the first time." It ensures that the modified Code 3.1 provides a greater explanation of Iran's nuclear ambitions and simplifies the preparation process for safeguard measures.

The Additional Protocol is enhanced more than the Comprehensive Safeguards Agreement with the IAEA concluded by Iran, and requires Iran to provide additional information on its nuclear program and additional access to the IAEA nuclear facilities. The Additional Protocol requires Iran to provide the agency with additional information on nuclear sites and other sites normally related to nuclear material, nuclear material not otherwise inspected regularly by the agency under the IAEA Comprehensive Safeguards Agreement with Iran, major activities related to the nuclear fuel cycle, and exports and imports of certain nuclear fuel cycle-related material and equipment. The Additional Protocol also offers nuclear material knowledge and access (e.g., uranium mines, uranium ore processing, and yellow cake production) faster than conventional safeguards. Under the Additional Protocol, the IAEA may request access to any position at the established nuclear facilities in Iran, and the Additional Protocol extended the declaration with only short notice through the supplementary access clause. The notification time for such access is two hours if, in all other situations, the agency already performs an inspection at the location or design information verification, and 24 hours in all other situations. The Additional Protocol also provides access to undeclared nuclear facilities or related facilities (e.g., factories for enrichment components) to the IAEA where such access is required to complete the verification work of the agency.¹¹⁸

The JCPOA is much stronger and more invasive than Iran's Comprehensive Safeguards Agreement with the IAEA and the Additional Protocol, which would allow the IAEA even broader access to Iran's nuclear material, equipment, which facilities. For 25 years, the agency will have access to monitoring Iran's entire nuclear fuel cycle, including its uranium

¹¹⁸ IAEA, "INFCIRC/540 - Model Protocol Additional to the Agreement(s) Between State(s) and the International Atomic Energy Agency for the Application of Safeguards" (INFCIRC/540, International Atomic Energy Association, Vienna, Austria, 1997), (available at <https://www.iaea.org/sites/default/files/infcirc540.pdf>).

mining at Gniche and Saghand, Ardakan milling, and all its concentrated uranium ore stocks that could be converted to uranium hexafluoride for enrichment at Isfahan. The agency will also have 20 years of continuous monitoring of Iran's centrifuge fabrication and research and development. This includes exposure to Iran's stocks of centrifugal rotors and bellows that could be used to build new centrifuges, including large centrifugal equipment such as low-forming machines, filament-winding machines and mandrels.¹¹⁹

In addition, the IAEA will track Iran's stored centrifuges and associated facilities for 15 years. At that time, Iran must provide the IAEA with regular access to all applicable Natanz buildings, the only location where Iran can enrich uranium 235 to 3.67%. These stringent safeguard steps would greatly minimize the possibility of covert operation because Iran will need to find another source of uranium for enrichment if it were to secretly produce a nuclear weapon along a route to uranium. These innovative protection steps tend to be the major breakthrough of the JCPOA monitoring process at the front-end of the nuclear fuel cycle.

Another advanced JCPOA safeguards plan would also substantially block the use of plutonium to build a nuclear weapon by Iran. Iran has agreed to move its spent fuel for the reactor's lifespan and has also agreed to refurbish the Arak Heavy Water Research Reactor so that it can not produce significant amounts of plutonium. Iran will sell to the foreign market for 15 years all of its heavy water that Arak does not need. Iran is also not allowed to construct additional heavy water reactors or a reprocessing plant to extract plutonium from spent fuel for at least 15 years. The IAEA will easily detect any attempt to covertly manufacture or redirect plutonium from Bushehr. To order to check its compliance indefinitely, the organization must have access to real-time monitoring of Iran's heavy water production and stocks with better and more appropriate security mechanisms than those under the Additional Protocol. As some nuclear scientists have suggested, these physical limitations on the development of plutonium would effectively shut down Iran's ability to use plutonium to produce a nuclear weapon.¹²⁰

¹¹⁹ Joint Comprehensive Plan of Action (2015), (available at <https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/>).

¹²⁰ Restrictions on Iran's Nuclear Program: Beyond 15 Years. Arms Control Assoc. 7 (2015) (available at <https://www.armscontrol.org/Issue-Briefs/2015-08-25/Restrictions-on-Irans-Nuclear-ProgramBeyond-15-Years>).

6.4 ACCESS WITH A DEADLINE & DISPUTE RESOLUTION MECHANISM

Under Iran's Comprehensive Safeguards Agreement with the IAEA, the IAEA may request access to undeclared nuclear facilities of Iran (and any other NPT States that have the Comprehensive Safeguards Agreement with the IAEA) through a special inspection if the IAEA Director-considers that such access is necessary to verify the accuracy and completeness of the information submitted by Iran. If faced with circumstances or conditions that can lead to a special examination, the department is obligated to consult with Iran. There is no time limit in Iran's Comprehensive Safeguards Agreement with the IAEA to settle special inspection disputes between Iran and the organization, but the Director-General will usually report the issue to the IAEA Board of Governors ¹²¹

The Additional Protocol is more extensive than Iran's Extensive Safeguards Agreement with the IAEA and provides broader access to the IAEA foothold. In such a case the agency would allow Iran the opportunity to address the questions and clarify the contradictions before granting access, unless it assumes that any delay will harm the reason for which access is sought. If Iran is unable to provide the necessary entry, then the country is obligated to make every effort to fulfill the requirements of the agency through other means, and without further delay. The organization will then send a notification to Iran at least 24 hours before access occurs to give the country an opportunity to address the problem by other means. Unlike Iran's Comprehensive Safeguards Agreement with the IAEA, the Additional Protocol has no deadline for resolving complementary access conflicts unless Iran can provide access to the location demanded by the agency¹²²

¹²¹ G. Samore, "The Iran Nuclear Deal A Definitive Guide" (Harvard Kennedy School Belfer Center for Science and International Affairs, Cambridge, MA, 2015), (available at <http://belfercenter.ksg.harvard.edu/files/IranDealDefinitiveGuide.pdf>).

¹²² IAEA, "INFCIRC/540 - Model Protocol Additional to the Agreement(s) Between State(s) and the International Atomic Energy Agency for the Application of Safeguards" (INFCIRC/540, International

Another advanced feature of the JCPOA is that it provides an access with a system for scheduling and dispute settlement which will last for 15 years. This framework strengthens the ability of the IAEA to gain access to any undeclared facilities (including military facilities) within a given time period if the agency has questions regarding certain materials or activities that are incompatible with the JCPOA. After a request is made for access to the suspected facility, the agency and Iran have 14 days to arrange access or agree on other ways to resolve the problem. If these measures are unsuccessful, the question will be referred to the Joint Commission, comprising eight members: the United States, the United Kingdom, France, Germany, the European Union, Russia, China and Iran. The Joint Commission has seven days to find a compromise by either a consensus or a vote of five or more of its eight members, which means the West can make any decision. Iran then has three days in order to enforce the resolution of the Joint Committee. If Iran is found to be in non-compliance, the EU3 + 3 may decide to re-impose sanctions

Such access with a mechanism for timing and dispute resolution would be useful as it could considerably mitigate concerns about covert activities in Iran. The cap of 24 days on any delay in access is unprecedented. The limit will allow inspections to cover enrichment, reprocessing or conversion facilities construction and uranium-based implosion tests. Inspections and intelligence should cooperate under the JCPOA. Information obtained by IAEA inspectors will strengthen the assessment of intelligence services, and intelligence data will help direct IAEA inspections. The 24-day period, a timetable and provisions for automatic re-imposition of sanctions strengthen the special inspection provisions of the agency under Iran's Detailed Protection Agreement with the IAEA and the Additional Protocol that do not have a deadline for action or punishment for non-compliance of Iran.¹²³

Atomic Energy Association, Vienna, Austria, 1997), (available at <https://www.iaea.org/sites/default/files/infcirc540.pdf>).

¹²³ G. Samore, "The Iran Nuclear Deal A Definitive Guide" (Harvard Kennedy School Belfer Center for Science and International Affairs, Cambridge, MA, 2015), (available at <http://belfercenter.ksg.harvard.edu/files/IranDealDefinitiveGuide.pdf>).

6.5 PROCUREMENT CHANNEL

One advanced form of protections under the JCPOA is a process called the Procurement Network, which is intended to monitor and control Iran's supply of nuclear products. Under this process, three groups of materials will be referred to the Joint Commission Procurement Working Group on a regular basis: Trigger List goods for the Nuclear Suppliers Group, non-listed goods with a nuclear utility, and dual-use goods for the Nuclear Suppliers Group. Despite various annexes issued by the IAEA, dual-use components remain debatable however. The range and strength of the missile is still interpretable differently on both sides. Membership of the Procurement Working Group is comprised of one voting member each from Iran and EU3+ 3, whereby the High Representative of the European Union will serve as the coordinator. If Iran wants to buy any goods or materials that are identified on established IAEA dual-use lists that could be used for its nuclear program, the Procurement Working Group would need to review the request and authorize the purchases.¹²⁴

The suppliers must seek approval from their own governments within the Procurement Channel mechanism, and the governments must forward the application to the Procurement Working Group and the United Nations Security Council. The Procurement Working Group has 20 working days (and an additional 10 working days upon request) to determine whether to approve or reject the selling of direct use, dual-use nuclear goods, or certain dual-use goods to Iran. The authorisation of exports to Iran requires consensus. If no party objects, then approval is given for the proposal. If a disagreement arises within the Procurement Working Group, two members may request that the case be referred for consensus vote to the Joint Commission. The Joint Commission then has 10 days to decide and within 45 days of receiving the proposal the United Nations Security Council must be notified of the recommendation.¹²⁵

The Procurement Working Group will also be allowed under the JCPOA to carry out end-user tests to ensure that the supplies ended up in the appropriate locations. In addition, the

¹²⁴ Joint Comprehensive Plan of Action (2015), (available at <https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/>).

¹²⁵ *ibid*

IAEA would have access to inspect the end-use of direct-nuclear products. Dual-use goods should be reviewed by the agency during safeguarding and in extreme cases potentially even invoke access clause. Combined with the full inventory of the products Iran uses for its nuclear programme, this end-user verification mechanism would help ensure a comprehensive accounting of dual-use products to prevent diversion for a clandestine nuclear program. In other words, the Procurement Process would help ensure that any clandestine nuclear program in Iran can not be diverted to single-or dual-use nuclear-related products.¹²⁶ The country has committed to ensuring that all procurement of nuclear-relevant products, for both civil and military purposes, will be procured through this 10-year-long process, and that all restrictions will end on Termination Day (18 October 2025).¹²⁷

6.6. PROHIBITION OF WEAPONIZATION ACTIVITIES

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Another development under the JCPOA is the explicit prohibition of Iran's research and development on nuclear weapons, as opposed to mere manufacture of nuclear weapons, as expressed in Article II of the Non-Proliferation Treaty. Iran also settled on permanent prohibitions banning activities related to the production of an explosive nuclear weapon. While Iran, when it joined the Non-Proliferation Treaty, committed not to pursue nuclear weapons, the JCPOA requires Iran to adhere to restrictions beyond its NPT obligations. The Non-Proliferation Treaty does not explicitly prohibit the research or use for non-nuclear purposes of explosives suited to nuclear weapons. Iran has never acknowledged such a nuclear military program and denied all accusations. In its Final Report on Past and Current Unresolved Concerns on Iran's Nuclear Program of 2 December 2015, the IAEA Board of Governors officially states that the organization has not found any credible evidence of

¹²⁶ Arms Control Association, *Solving the Iranian Nuclear Puzzle: The Joint Comprehensive Plan of Action* (2015), (available at https://www.armscontrol.org/files/ACA_Iran_Briefing_Book_2013.pdf).

¹²⁷ I. J. Stewart, "The Iranian Nuclear Procurement Channel: The Most Complex Part of the JCPOA?," *WorldECR* (London, 2015), (available at https://www.worldecr.com/wp-content/uploads/IranianNuclear-Procurement-Channel_WorldECR1.pdf).

nuclear diversion in connection with the potential military aspects of Iran's nuclear program Under the JCPOA.¹²⁸

Iran has also decided to abandon computer modeling. While some of these activities are relevant for the development of conventional explosives and for activities such as drilling, Iran will not be able to claim to undertake any such activities for non-nuclear purposes in the future if it is caught conducting research in those areas. As Squassoni notes, the JCPOA specifies prohibited nuclear weapons-related activities unlike most safeguards agreements relating to the peaceful use of nuclear energy. The word "related" is not well established, however, which has led to multiple interpretations, especially in relation to the missile program of Iran. Adding the ban on weaponry activities is important to give the IAEA access to military sites, considering that access must be "exclusively for resolving concerns about fulfilling JCPOA commitments".¹²⁹

Moreover, if any dual-use technology falls under the meanings laid down in Annex 1, it is for the most part not permitted for Iran to use it for any reason, except for civilian, non-nuclear research that other states would be allowed to perform. As Acton argues, a disagreement on the definition of Annex 1 could arise, for example in determining if a particular "multi-point explosive detonation system" was actually "fit for a nuclear explosive device." If such a disagreement existed, a conflict resolution process might be used by the Joint Commission, even though the JCPOA does not explicitly define that.¹³⁰

6.7 DRAWBACKS OF THE VERIFICATION MECHANISMS

Overall, the JCPOA verification system provides the IAEA with considerably more resources to verify declared facilities with great confidence that Iran meets the nuclear limits, as well as

¹²⁸ IAEA, "Final Assessment on Past and Present Outstanding Issues regarding Iran's Nuclear Programme" (GOV/2015/68, 2015), (available at <https://www.iaea.org/sites/default/files/gov-2015-68.pdf>).

¹²⁹ S. Squassoni, "Building a Nuclear Security Framework From the Ground Up: Encouraging Coordination Among Centers of Excellence in Northeast Asia" (Policy Analysis Brief, 2013), (available at <http://www.stanleyfoundation.org/resources.cfm?id=514>).

¹³⁰ J. Acton, Iran Ain't Gonna Sneak Out Under This Deal. Foreign Policy July. 16 (2015)

to detect and monitor any significant diversion of nuclear material or the use of undeclared material in a timely manner. The advanced sanctions are preventing Iran from secretly obtaining large quantities of nuclear material from its announced secret nuclear activity facilities without a high detection risk. In other words, in order to secretly create nuclear weapons using highly enriched uranium, Iran would need to procure or develop a separate and secret fuel cycle, including a secret source of natural uranium, a secret processing facility for the production of uranium hexafluoride, and a secret enrichment plant for the production of highly enriched uranium, plus secret facilities for the development of uranium metal and the manufacture of nuclear energy. Such production is not impossible but it seems highly doubtful if the IAEA and the EU3 + 3 intelligence agencies fail to track Iran's nuclear program effectively.

Within the JCPOA the verification process is not perfect though. The JCPOA requires Iran to announce its entire stock of centrifuges, as many nuclear experts note, but the IAEA may not be able to verify that Iran has declared all of its centrifuges and other critical uranium enrichment equipment. Many main equipment and materials are also used for Iran's military program, particularly its ballistic missile program. So Iran may secretly use key dual-use fabrication equipment and materials in the future for its clandestine centrifuge production.¹³¹

Another problem, as Rockwood noted, is that Iran may have undeclared equipment and materials that could be used for undeclared uranium enrichment, and not just the diversion of equipment and materials already reported to the IAEA. Therefore, confirming and checking that Iran does not hold additional centrifuges beyond those reported or checked on a small scale at an undeclared facility remains difficult. Such verification is not impossible although it is difficult. Although there are also disputes about whether such verification falls within the scope of Iran's Extensive Safeguards Agreement with the IAEA, it is definitely not outside the legislative authority of the agency to carry out such verification if it is demanded by the

¹³¹ G. Samore, "The Iran Nuclear Deal A Definitive Guide" (Harvard Kennedy School Belfer Center for Science and International Affairs, Cambridge, MA, 2015), (available at <http://belfercenter.ksg.harvard.edu/files/IranDealDefinitiveGuide.pdf>).

United Nations Security Council to. In addition, the IAEA has in the past performed such arms-related verification work as in Iraq, Libya and South Africa.¹³²

In addition, there is also the risk that Iran will secretly build or procure equipment or supplies on the black market. That is, Iran could seek to bypass the Procurement Channel. This concern seems to be fair considering that its nuclear program was primarily dependent on smuggled material, equipment and technology from other countries illegally. Iran also openly praised its ability to bypass sanctions aimed at restricting its ability to enrich uranium 235, and publicly declared its intention to procure it illegally for missiles and other military programs. For starters, President Rouhani said during a televised address to the nation on August 30, 2014, "Of course we are bypassing the sanctions. We are proud to circumvent sanctions as the sanctions are illegal. In addition, the Iranian Special Commission responsible for authorizing the nuclear deal on 4 October 2015 also announced that "the Government of the Islamic Republic of Iran has stated that it does not plan to enforce parts of UN Security Council Resolution 2231 which compromise defense and national security" Unless Iran wants to continue its illicit trade it would breach the JCPOA. Such non-compliance may also contribute to the reimposition of sanctions linked to its nuclear programme.¹³³

6.8 A MODEST RECOMMENDATION

Having looked at the advanced safeguards mechanisms and how they complement Iran's Comprehensive Safeguards Agreement with the IAEA and the Additional Protocol, as well as addressing the appropriate concerns, there are two steps to be taken to ensure the JCPOA's progress. First, in addition to relying on the IAEA's own sources of knowledge, the IAEA will collaborate with private intelligence agencies to identify the false intelligence information provided to the IAEA about the nuclear military program of other states that have proven to be incorrect as in Iraq, North Korea and Syria. The IAEA is also successful in

¹³² L. Rockwood, The IAEA's State-Level Concept and the Law of Unintended Consequences | Arms Control Association. Arms Control Assoc. (2014), (available at https://www.armscontrol.org/act/2014_09/Features/The-IAEAs-State-Level-Concept-and-the-Lawof-Unintended-Consequences).

¹³³ C. Lynch, U.S. Accuses Iran of Secretly Breaching U.N. Nuclear Sanctions. Foreign Policy, (available at <https://foreignpolicy.com/2014/12/08/us-accuses-iran-of-secretly-breaking-un-nuclearsanctions-exclusive/>).

checking enforcement at declared facilities, but intelligence agencies are more competent and skilled in detecting clandestine operations. Secondly, the EU3 + 3 will take the lead in ensuring that the IAEA has all the additional equipment, human resources, finance and other resources required to complete its additional JCPOA tasks. Also, the EU3 + 3 would actively urge other States to share the burden of capital. Such a distribution is necessary because the deal would place a significant additional workload on the agency, particularly its already stretched-thin safeguards directorate. Unfortunately, as Persbo reports, several member states were hesitant to accept the Agency's budget increase plan. On 25 August 2015, Director-General Yukiya Amano asked the board of governors of the organization for additional funding.¹³⁴

It was estimated that the agency will require around \$10.6 million or € 9.2 million per annum: € 3 million for the provisional implementation of the New Protocol; and € 6.2 million for compliance and monitoring work under the agreement. On the same day, the Board of Governors approved Amano "to conduct the verification and monitoring" of Iran's nuclear-related JCPOA commitments "subject to funding availability and consistent with our normal safeguard practices" The IAEA provides the full support it needs to allow for enhanced safeguard measures in Iran. If the agency gains experience in Iran with a more stringent and intrusive monitoring process, it will be able to extend the information to future protections in other nations. A robust and effective monitoring and verification process will strengthen the global non-proliferation regime, as it enhances confidence in the capacity and integrity of the regime to detect and respond to non-compliance.¹³⁵

6.9 CONCLUSION

The JCPOA monitoring process is advanced as it consists not only of the Comprehensive Safeguards Agreement between Iran and the IAEA and the Additional Protocol, but also of four advanced safeguards steps. The four advanced security mechanisms include much wider oversight of Iran's nuclear program, access through a system for scheduling and dispute

¹³⁴ A. Persbo, A Reflection on the Current State of Nuclear Non-Proliferation and Safeguards. EU Nonprolif. Consort. (2012) (available at <https://www.sipri.org/sites/default/files/Nonproliferation8.pdf>).

¹³⁵ Y. Amano, Introductory Statement to Board of Governors: Safeguards in Middle East (2011), (available at <https://www.iaea.org/newscenter/multimedia/videos/introductory-statement-boardgovernors-safeguards-middle-east-0>)

resolution, the Procurement Channel, and a ban on weaponry activities. When applied with Iran's Comprehensive Safeguards Agreement with the IAEA and the Additional Protocol, these advanced safeguards measures would improve the efficacy of the monitoring and verification mechanisms under the agreement. In short, they'll make a huge difference to the deal's success. The effectiveness of the agreement can be measured by its enforcement mechanism that prohibits Iran from producing weapons-grade uranium and weapons-grade plutonium at its announced nuclear facilities for 10-15 years, and dissuades the country from constructing covert facilities to secretly produce arms-grade uranium and weapons-grade plutonium.

If Iran cheats, as it were, as many are concerned, the IAEA will immediately become aware of this under the agreement through such a comprehensive monitoring process and sanctions could snap back. The IAEA should operate carefully without any political interference with private intelligence agencies in conducting such an extensive, intrusive, and multi-layered surveillance and verification process under the contract, and should be provided with all required tools. If the work of the agency to verify the execution of the agreement is successful, it would increase the level of trust in the global non-proliferation system and considerably strengthen the regime's own credibility. Instead, the organization can also be able to apply lessons found in future ties with Iran to safeguards in other countries.

CHAPTER 7

RECOMMENDATIONS FOR

RECONCILING JCPOA- SUMMARY

AND CONCLUSIONS

7.1 INTRODUCTION

If the tale of the first year of enforcement of the agreement was about resolving the logistical complexities of scaling back a complex nuclear program and an even more complicated sanctions regime, the second year's story was about keeping one of the main players of the agreement, the U.S., in line after President Donald Trump took office. In year three (8 May 2018), he terminated U.S. membership in the JCPOA, forcing the remaining signatories into a scramble to keep Iran on board. Yet their efforts proved to be of little impact in the face of the "maximum pressure" campaign by the Trump administration aimed at extracting more Iranian concessions over its nuclear program, as well as hindering its program of ballistic missiles and regional control. Therefore, Iran began a phased cycle of loosening adherence to its nuclear obligations in year four (8 May 2019), slowly weakening the JCPOA. Absence of a break in the escalation process between Tehran and Washington, which left both sides on the brink of open war by January 2020, the chances for survival of the agreement are dwindling.

This chapter examines and outlines what needs to be done to both save the deal and avoid a regional escalation in 2020. It suggests that a de-escalation agreement negotiated by a mediator that would provide Iran with some economic relief in exchange for stopping or reversing its JCPOA violations is the best. if ever more remote—option to buy time and, if coupled with steps to contain Iran and US fallout arisen out of the killing of Iranian General Qassim Soleimani and to avoid a large scale escalation.¹³⁶

7.2 IMPLEMENTATION RECORD OF IRANIAN COMMITMENTS AFTER US WITHDRAWAL

The U.S. withdrawal from the JCPOA in May 2018 and re-imposition of its nuclear-related sanctions, complemented by new ones, led Iran to take its own retaliatory measures one year later, in breach of some of its core nuclear commitments.

¹³⁶ Crisis Group Middle East Reports N°173, *Implementing the Iran Nuclear Deal: A Status Report*, 16 January 2017; N°181, *The Iran Nuclear Deal at Two: A Status Report*, 16 January 2018; and N°195, *On Thin Ice: The Iran Nuclear Deal at Three*, 16 January 2019.

Nuclear Commitments

After meeting all of its JCPOA obligations for almost a year after the U.S. withdrawal, Iran triggered a 60-day rolling ultimatum on 8 May 2019, threatening to curtail its compliance with its JCPOA commitments, bit by bit, if it was not given a guaranteed dividend by the remaining parties to the agreement. Since then, Tehran has carried out five incremental violations, signaling at each point that its moves are reversible if the signatories of the deal meet the economic normalization pledge made by the agreement. As the first move, Tehran declared that its enriched uranium and heavy water stockpiles would no longer be subject to JCPOA restrictions. It followed with a violation of the JCPOA's 300 kg limit on low-enriched uranium on 1 July, gradually broadening its stockpile, which has since reached 372,3 kg in November. A senior IAEA official noted: "Iran will add nearly 180 kg to the stockpile per month at this pace and with more advanced machines, and will soon hit a critical level [of accumulating enough material for one nuclear weapon]." Iran also crossed the mark of 130 metric tonnes on its heavy-water reservoir on 17 November¹³⁷

Iran took its second step on 7 July by dropping the limit on the amount of uranium enrichment, which the deal would reduce to below 3.67 per cent by 2031. The IAEA confirmed that the next day Iran had begun to enrich to a point of about 4.5 per cent. The third step came on 6 September, when Iran began removing all research and development restrictions, including by enabling its advanced centrifuges, adding new models and using them to build up its enriched uranium stockpile. All Iranian and IAEA officials agree this move has been Tehran's most important escalation to date, as it has given indelible know-how to Iranian scientists on a more sophisticated centrifugal generation. An official of the IAEA noted that "no other country is wasting so much money on developing so many models of centrifuges, as it makes no economic sense. This is yet another evidence that this project is solely political."¹³⁸

¹³⁷ Crisis Group interview, Vienna, 11 November 2018. "Significant quantity" of highly enriched uranium (28kg UF₆ or 25kg of pure uranium enriched to 90 per cent) equates 1,050kg of low-enriched uranium (under 5 per cent uranium-235) that if further enriched would be sufficient for manufacturing a single nuclear weapon. "IAEA Safeguards Glossary: 2001 Edition", IAEA, International Nuclear Verification Series no. 3, June 2002, p. 23.

¹³⁸ Iran begins injecting uranium gas into advanced centrifuges", *Tehran Times*, 7 September 2019. The JCPOA restricts Iran's centrifuge research and development on a specified number of IR-4, IR-5, IR-6 and IR-8 machines until 2026 so long as such activities do not contribute to an accumulation of enriched uranium. Cascades of up to 30 IR-6 and IR-8 centrifuges are only permitted 8.5 years after the deal's implementation. Introduction of new models requires permission from the JCPOA's Joint

The fourth move was one which was symbolically important. President Hassan Rouhani declared on 5 November that Iran would restart enrichment at its bunker facility in Fordow, which under the agreement it was expected to turn from an enrichment site into a nuclear, physics and development hub for the production of stable isotopes with Russian assistance, and where uranium enrichment would not be permitted until 2031. The US ended a sanctions waiver on 18 November allowing Russia to operate at Fordow, while Russia's state-owned nuclear power corporation, Rosatom, announced on 5 December that it would suspend its work on the site ¹³⁹

The most recent move came on 5 January when Iran declared that it would cease to follow JCPOA restrictions on quantities of centrifuges. Yet in claiming to have abandoned "the last main component of its operating limits" under the agreement, Tehran stopped straight away from leaving the deal, and did not say what, if any, additional steps it might take to speed up its nuclear programme. Nonetheless, it is unlikely that Iran will reinstall thousands of the first-generation centrifuges that it dismantled during implementation of the JCPOA in the short term, as those devices are unreliable and vulnerable to failure.

Until now, following repeated threats, Iran has not taken any action to restore the heavy water reactor in Arak to its pre-JCPOA configuration that would allow it to produce enough plutonium until one nuclear weapon per year. The modernized post-deal upgrade-a 20-megawatt reactor fuelled with low-enriched uranium-emits much less plutonium and is thus prone to proliferation. A senior Iranian official noted that scientists in the country prefer the latest, more effective design but Iran keeps its options open. For example, when destroying the old reactor's calandria tubes with cement as part of their implementation of the JCPOA, it retained a spare set that could allow Iran to replicate the original design of the reactor

Commission. The Commission was never asked for permission for the new IR-9 model that Iran introduced in October 2019.

¹³⁹ Daphne Psaledakis, "U.S. to no longer waive sanctions on Iranian nuclear site", Reuters, 18 November 2019; Michael Lipin, "Russia upsets effort to save 2015 Iran nuclear deal", Voice of America, 6 December 2019. In mid-2019, Russia converted eleven IR-1 centrifuges in Iran to enrich xenon and tellurium. Russian officials attributed the decision to halt its work to risks of contamination from uranium enrichment in the same hall at Fordow where Iran has been producing stable isotopes. Crisis Group interviews, Vienna, 11 November 2019. But a Russian atomic energy expert claimed that Rosatom did not want to risk exposing its other international projects to U.S. sanctions. See "Росатом отдалается от Ирана", *Kommersant*, 5 December 2019.

quickly. The IAEA inspection process, which is the most stringent of its kind in nature, is another significant JCPOA pledge that Iran has avoided tinkering with. Yet tensions are brewing between the agency and Iran. The IAEA reported in November that anthropogenic or man-made uranium particles were discovered in a warehouse in the village of Turkeyzabad south of Tehran, where Israeli Prime Minister Benjamin Netanyahu believed Iran had stored 15 kg of radioactive material in September 2018.¹⁴⁰ Although the samples were not enriched uranium, failure to disclose any such material to the IAEA constitutes a breach of the safeguards. As of mid-January 2020, talks on clarifying the source of the particles continued with Iran and the IAEA.

As outlined in JCPOA Annex III, civil nuclear cooperation is one of the main, but voluntary, components of the Agreement. In March, the EU held a workshop with Iran on radioactive waste management, building momentum that led the Iranian parliament in July to ratify the Joint Convention on the Protection of Spent Fuel Management and the Protection of Radioactive Waste Management (which awaits approval by the Guardian Council, one of the unselected tutelary bodies of the Islamic Republic)—a remarkable achievement given Tehran's Aversion to join international instruments while sanctions are in place. The EU has also helped create a nuclear law school in Tehran; held a workshop in Luxembourg in October on nuclear emergency preparedness and response; and continues to work to improve the nuclear safety and regulatory processes in the region. On its part, Russia is constructing a new nuclear reactor in Bushehr, which is expected to become operational by 2025.¹⁴¹

The procurement process for the JCPOA, which Iran used to obtain access to dual-use products and equipment, seems to have come to a halt. The Joint Commission, the EU-coordinated body comprising the signatories of the agreement, operates a procurement working group of the same parties but without the US following its withdrawal from the JCPOA –supervised by the UN Security Council, by which Iran can apply for access to dual-use equipment and materials. Although the working group received two proposals in the first

¹⁴⁰ Crisis Group interview, New York, July 2019. In January 2019, Ali Akbar Salehi, head of the Atomic Energy Organization of Iran, admitted that Iran had imported a second set of tubes for the Arak calandria, allowing it to revert to the original design. His interview is available at: www.youtube.com/watch?v=gj9mSd0DvXA.

¹⁴¹ Crisis Group interview, EU official, Vienna, December 2019. “مديریت سوخت ” الحاق دولت ایران به کنوانسیون مشترک ایمنی . “ [“Iran ratifies the Joint Convention on Nuclear Waste Management”], Islamic Consultative Assembly News Agency, 15 July 2019

six months of 2019 concerning the sale of dual-use technology to Iran, they received none in the second half of the year.

Sanctions Relief Commitments

As the U.S. re-imposed sanctions following its exit from the JCPOA, its scope was gradually extended and intensified, especially in relation to Iran's oil exports. The remaining signatories of the deal failed to find a way around these unilateral measures, which contributed to a major deterioration in Iran's economic situation and led Tehran to accuse them of falling short of their undertaking under the JCPOA, especially the E3. When the US reinstated its sanctions on Iran's oil exports in November 2018, eight Iranian oil customers were also given exemptions as long as they agreed to substantially reduce the volume of their crude imports. Washington withdrew those exceptions in April 2019. Iranian officials dismissed the Trump administration's ability to achieve its zero export goal, but the plan proved successful in precipitating a dramatic decline in Iran's crude oil sales from about 2.5 million barrels per day (mbd) in April 2018 to below 0.5 million barrels per day in December 2019.¹⁴²

The US continued to extend and implement its sanctions designations throughout the year, with Pompeo reporting that its scope reached 80 per cent of Iran's economy. Among the most notable were: the classification of the Islamic Revolutionary Guards Corps (IRGC) as a Foreign Terrorist Group (April); sectoral sanctions against Iran's metal factories and major petrochemical firms (May-June); the targeting of Supreme Leader Ali Khamenei and his office (June); and Foreign Minister Javad Zarif (July); the blacklisting of the Central Bank of Iran,. Following Iranian missile attacks on Iraqi bases hosting U.S. forces, the U.S. declared sectoral sanctions on Iran's construction, mining, manufacturing and textile industries on 10 January, named eight additional senior Iranian officials, and blacklisted more than two dozen companies and ships linked to Iran's metal trade.¹⁴³

¹⁴² Crisis Group interviews, UN officials, New York, December 2019. Since Implementation Day, the procurement channel working group received a total of 44 proposals, 30 of which were approved, five disapproved and nine withdrawn. "Secretary-General report on the implementation of Security Council resolution 2231 (2015)", S/2019/934, 25/03/2020.

¹⁴³ On the IRGC: "Statement from the President on the Designation of the Islamic Revolutionary Guards Corps as a Foreign Terrorist Organization", White House, 8 April 2019; on industries: "Imposing Sanctions with Respect to the Iron, Steel, Aluminium and Copper Sectors of Iran", White House, 8 May 2019;

A handful of non-nuclear U.S. sanctions relating to Iran remain in place, including for Iraqi imports of Iranian oil, currently exempted until February 2020, despite the importance of post-2003 Iraq to U.S. control in the region. Iraq depends on Iranian natural gas and electricity for about a third of its electricity supply, and Iraqi officials say the production of alternative sources will take three years. Given humanitarian trade exemptions, human rights groups and international aid organizations working in Iran report the adverse effect of sanctions in areas such as medical supplies, emergency relief services and programs for refugee assistance.

Fields as diverse as education, climate, sport and the arts have felt the chilling impact of the sanctions. The combined effect of U.S. sanctions was significant, led by the dramatic downturn in oil exports, whose revenue accounts for 30 per cent of the budget for 2019-2020. Non-oil exports didn't get the slack. Before oil sanctions kicked into high gear in April 2019, the International Monetary Fund (IMF) expected Iran's 2019 GDP to contract by 6 per cent; that figure was 9.5 per cent by the time of its October 2019 update. (Trump later bragged that Iran's GDP "declined" by 25% in 2019. "No one has ever heard of it") However, by the end of 2019 Iranian officials reported that the nation had overcome the initial financial blow from the fall in oil revenues. Rouhani maintained that inflation, measured at the top 38 per cent in the current Iranian year (March 2019 to March 2020), decreased along with unemployment. The unpredictable situation in the area could send the rial, whose value fell from the mid-40,000 mark to as low as 190,000 to dollars before partially recovering, to a tailspin in 2018.¹⁴⁴

The large domestic market in Iran, greater economic stability outside the oil sector, comprehensive experience in circumventing sanctions, relations with neighbouring states that are impervious to U.S. sanctions, and substantial reserves of hard currency together have contributed to the resilience of the economy. Projections of Iran's economic performance in 2020 indicate that if not reversed, 2019's nosedive could bottom out to near-zero growth. And the economy remains in dire straits, driving millions below the poverty line. The government had two politically unattractive options with sanctions cutting off oil revenues: raising prices and curbing discounts on the basic goods. The government settled on the second option on

¹⁴⁴ Timothy Gardner, U.S. RENEWS WAIVER ON COSCO'S DALIAN TANKER UNIT HIT BY IRAN SANCTIONS REUTERS (2019), <https://www.reuters.com/article/us-iran-nuclear-usa-cosco/u-s-renews-waiver-on-coscos-dalian-tanker-unit-hit-by-iran-sanctions-idUSKBN1YN2RG> (last visited Mar 25, 2020).

November 15, boosting fuel prices but it failed to brace the public for the shock. The overnight decision triggered widespread protests which underscored the challenges faced not only by the Islamic Republic's economy but also by its political stability. According to Iranian officials and analysts, both Rouhani and his tougher rivals realized that the long-overdue cut in subsidies was likely to create opposition, but both sides assumed it could be contained.¹⁴⁵

The scale of demonstrations has taken the government by surprise, uniting it despite the intervention of Ayatollah Khamenei—behind the decision to suppress them at all costs. Security forces have killed more than 300 protesters and arrested thousands in the midst of an internet blackout, Amnesty International reports. Hearing Washington's support for the protesters, Iranian leaders blamed foreign rivals for encouraging the unrest, but unhappiness over the country's economic malaise and political stagnation has exploded episodically in recent years. Fuel price hikes plays into a wider internal debate on how Iran can adapt to the possibility of a prolonged period of drastically reduced oil revenues. Besides cutting subsidies, budget officials have identified a variety of revenue sources that the government could tap. The 2020 budget bill assumes a rise in tax revenues of 27 per cent, while avoidance and exemptions may make achieving this aim a high order. Around 20 per cent of the spending would be funded by bond sales and privatization.¹⁴⁶

If successful, these steps would halve reliance on oil revenue to nearly 16 per cent of total revenue. It remains to be seen if those estimates, along with Russia's \$5 billion loan, are true. The government has made countering corruption a priority, but any such attempt might be compromised by political rivalries. Meanwhile, trade between Iran and Europe has fallen significantly, with Iranian exports hit particularly hard in the absence of oil sales. In an effort to offset the impact of U.S. sanctions, on 31 January 2019, the E3 (France, Germany and the UK) jointly unveiled a special-vehicle, the Instrument for Supporting Trade Exchanges (INSTEX), to encourage businesses with Iran, emphasizing "the sectors that are most important to the Iranian people—such as pharmaceuticals, medical devices, and agri-goods" Iran subsequently registered its Special Trade and Finance Instrument (STFI) counterpart

¹⁴⁵ Salehi-Isfahani, D., 2020. *The Poor And The Gasoline Price Hike*. [online] Tyranny of numbers. Available at: <<https://djavadsalehi.com/2019/11/23/the-poor-and-the-gasoline-price-hike/>> [Accessed 25 March 2020].

¹⁴⁶ Dehghanpisheh, B., 2020. *Iran Says 200,000 Took To Streets In Anti-Government Protests*. [online] Reuters. Available at: <<https://www.reuters.com/article/us-iran-protests/iran-says-200000-took-to-streets-in-anti-government-protests-idUSKBN1Y11PE>> [Accessed 25 March 2020].

institution in Teheran. By collecting and allocating funds for imports and exports within each entity, INSTEX and STFI are structured to prevent banking transactions that could be subject to U.S. penalties. However, stopping the process, at least in part due to divergences between its stakeholders as well as shortcomings on the Iranian side, has been an exercise. Six more countries signed up as partners to the INSTEX process on 29 November, stressing that it was "crucial for the Islamic Republic of Iran to return to full conformity without delay." Today, the first round of transactions has yet to come in, to Tehran's annoyance. On its part, Iran has not implemented money laundering and terrorism funding reforms along the lines negotiated with the Financial Action Task Force (FATF) in 2016; the E3 has consistently urged Iran to meet its Action Plan commitments. Notwithstanding the support of the government, bills committing Iran to the UN Conventions on Transnational Crime and Terrorist Financing stalled in the Expediency Council, another of the state's non-elected tutelary bodies, with opponents claiming that they "can help the U.S. find ways we can escape sanctions." The Rouhani administration blames private economic interests for opposing the passage of the bills.¹⁴⁷

7.3 MAXIMIZING PRESSURE FROM US ON IRAN

Last year's status report described the fate of the JCPOA as hanging on a three-race against time: how quickly and deeply U.S. sanctions would devastate Iran's economy; how long Tehran could stick to its JCPOA commitments before retaliating in the nuclear arena, on the regional front, or both; and how successful European efforts could prove in postponing a crisis over the deal by mitigating it. But the doubling of Washington's "maximum pressure" drive and the inability of the deal's remaining signatories to offer a financial lifeline over the past year have led Iran to move from a "strategic stability" posture toward opening confrontation on both the nuclear and regional fronts. This move has left the nuclear agreement on an accelerated road to unravelling, while at the same time taking the US and Iran to the precipice of war.

For a year after the Trump administration ended, in its own words, U.S. participation in the JCPOA essentially violating it by withdrawing from it—Tehran opted for a "strategic patience" policy, expecting the remaining signatories of the deal to step up their efforts to

¹⁴⁷ Rome, H., 2020. *The Debate Over Iran'S Financial Reform Laws*. [online] Iranprimer.usip.org. Available at: <<https://iranprimer.usip.org/blog/2019/may/03/debate-over-iran%E2%80%99s-financial-reform-laws>> [Accessed 25 March 2020].

offset the impact of sanctions while possibly waiting for the Trump administration. But the effectiveness of sanctions in pummeling Iran's economy in 2019, in particular the severe blow inflicted by oil sales restrictions, prompted it to shift from restraint to retaliation in both the nuclear realm and the region. "The JCPOA will either be win - win or lose-lose" Rouhani threatened on the first anniversary of the U.S. withdrawal. "We're not going to let the U.S. make it a win-lose situation." A Iranian official, resorting to more graphic imagery, said: "The U.S. can not strangle us and expect us to do nothing" On the nuclear file, Iran began pursuing a strategy of increasingly curbing its compliance with JCPOA. Adopted for a more serious response to internal calls, this approach targets three audiences. The first is the remaining signatories to the agreement, especially the E3, to add a sense of urgency to produce economic dividends without triggering a major non-proliferation crisis. The second is the United States, to underline that Iran will not withstand "complete pressure" without demanding a price. The third is domestic constituencies, demonstrating that Iran will not passively endure U.S. sanctions while remaining committed unilaterally to the multilateral agreement.¹⁴⁸

As a senior Iranian national security official put it, "what propels Iran's pushback strategy is mainly the ability to drive up sanctions ' "opportunity cost": we can withstand sanctions, but because of them we can't thrive. We are going to lose our share of the energy market and it's going to be hard to recover. We're not going to become another Cuba to let the US isolate us at no cost for decades".¹⁴⁹

Parallel to this, a series of events, based in but not limited to the Gulf, increased regional tensions between Iran, the U.S., and their allies. This included unclaimed attacks on commercial vessels outside Fujaira's Emirati port on 12 May and the Gulf of Oman on 13 June; attacks on the main east-west oil pipeline in Saudi Arabia on 14 May and most notably the Abqaiq-Khurais facilities in Saudi Arabia on 14 September (claimed by the Huthis in Yemen but convinced by the U.S., Saudi Arabia and the E3). U.S. Defense Secretary Mark Esper said on January 2 that "if we get word of attacks or some kind of indication, we're going to take preventive action... the game has changed." That evening, the Pentagon declared it had killed Abu Mahdi al-Muhandis, leader of Kataib Hizbollah, and Qasim

¹⁴⁸ Crisis Group interviews, senior Iranian officials, New York, September 2019. A senior Iranian official said: "Why do we do this? To address public opinion, not just to agitate". Crisis Group interview, New York, July 2019.

¹⁴⁹ *ibid*

Soleimani at Baghdad airport. The death of Soleimani in Tehran triggered outrage, with Ayatollah Khamenei vowing "tough revenge." Iran's Supreme National Security Council soon convened to discuss strategies for retribution, characterizing the killing as the region's "greatest strategic mistake for the US." Although warning Iran of a harsh response in the event of reprisal, the U.S. reportedly told intermediaries to encourage Iranian restraint. An Iranian reprisal came on January 7 in the form of missile strikes on U.S. forces at bases in Ain al-Assad and Erbil, Iraq. The attack did not cause any casualties, leading some to speculate that it was a carefully planned response crafted as an essentially symbolic force projection that would not activate US retaliation. Indeed, Iraqi officials say Tehran gave them advance warning which would almost certainly have been passed on to Washington; that said, U.S. officials believe the strike was simply meant to kill Americans.¹⁵⁰

Such tit-for-tat attacks took place against the backdrop of regularly confirmed or suspected Israeli airstrikes against alleged Iranian and Iran-linked targets in Syria and an assault on an Iranian tanker in the Red Sea in October that Iranian officials attributed to Israel and said was the third such incident in 2019, all of which held Iran and Israel at the edge of a knife. U.S. attempts to use Iran-sponsored attacks to marshal a large international coalition against Tehran have hitherto had minimal success.¹⁵¹

The downing of a U.S. drone, the Saudi Aramco attack and the assassination of Soleimani took Tehran and Washington to the verge of military conflict. Such developments underline that "maximum pressure" has led to none of the declared objectives of Washington—"to deprive the Iranian regime of the money it requires to finance its destabilizing activities... [and] to compel Ayatollah Ali Khamenei to negotiate." Instead it has weakened Iran's commitment to the nuclear restrictions of the JCPOA and made it more hostile in the region. Iran has also demonstrated its ability to use brute force to put a lid on domestic unrest. Too the standoff forced the Trump administration to send additional troops and military equipment, saying it wants to reduce its footprint in the region. It took steps, for example, to reinforce its military presence at the Gulf to restore deterrence in the aftermath of the Aramco

¹⁵⁰ Pamela Brown and Paul LeBlanc, C., 2020. *Iran Sent 'Multiple Messages' To US That Its Attacks Were Done*. [online] MSN. Available at: <<https://www.msn.com/en-us/news/world/iran-sent-multiple-messages-to-us-that-its-attacks-were-done/ar-BBYKMrm>> [Accessed 25 March 2020].

¹⁵¹ Kaplan, F., 2020. *The Trump Administration Looks More Isolated And Incompetent Than Ever At This Week'S Anti-Iran Conference*. [online] Slate Magazine. Available at: <<https://slate.com/news-and-politics/2019/02/trump-warsaw-conference-iran-pence-giuliani-pompeo.html>> [Accessed 25 March 2020].

attack, in addition to reassuring its jittery allies. After the incidents in Iraq in December 2019 and early January 2020, it sent more forces, carrying more than 17,000 additional deployments since May 2019.¹⁵²

Although Iran's economy may be sorely strained, Tehran seems to find the gain of its regional presence and support for local allies to outweigh any financial costs associated with it. The place belies the belief that bottom-line pressure will influence front-line behaviour. Asked about the apparent incongruity between optimistic U.S. assessments of its "maximum pressure" strategy and increased Iranian provocations in the region, a senior U.S. diplomat replied: "It often gets worse before it gets better."¹⁵³

7.4 A VIABLE SOLUTION TO THE JCPOA CRISIS

The turbulent events of 2019 and the risky changes that greeted the new year illustrate the dangers that are inherent in the duelling strategies of Iran and the USA. Which include a one thousand-cut nuclear agreement and a complex global context prone to more accidental or deliberate escalation, as well as rising economic instability and political unrest in Iran. But efforts over the past year have also helped outline the fundamental principles by which Washington and Tehran can still negotiate a path away from descent into war and towards constructive engagement, assisted by mediation by third parties in the absence of direct contacts. If anything, the magnitude of the current crisis will increase the importance of finding a way to de-escalate that is based on the fact that Washington and Tehran both have everything to lose from a direct military conflict.

¹⁵² Crisis Group. 2020. *The Illogic Of The U.S. Sanctions Snapback On Iran*. [online] Available at: <<https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iran/b64-illogic-us-sanctions-snapback-iran>> [Accessed 25 March 2020].

¹⁵³ United States Department of State. 2019. *Assistant Secretary For Near Eastern Affairs David Schenker On Iraqi Global Magnitsky Designations - United States Department Of State*. [online] Available at: <<https://www.state.gov/assistant-secretary-for-near-eastern-affairs-david-schenker-on-iraqi-global-magnitsky-designations/>> [Accessed 25 March 2020].

In this sense, if Soleimani's killing raised the barrier dramatically in front of a diplomatic settlement—the prospect of a strategic reset and presidential summit having become all but unlikely as Tehran recovers from the shock of losing one of its most respected figures—the manner in which both sides have treated its aftermath could pose a narrow opportunity for an off-ramp.

In the aftermath of Soleimani's killing, the immediate goal was to avert a greater conflict between Iran and the US. The bold and reserved response from Tehran in equal measure, as well as the decision by Washington not to respond, make it a more likely outcome. The escape from immediate escalation probably reflected Iran's determination that it was easier to try to optimize political and diplomatic gains without risking a direct U.S. response that could have proven incredibly dangerous and expensive, as well as Trump's willingness not to get involved in another war in the Middle East. But the chapter does not actually close. As noted, Shiite militias have vowed revenge for the killing of Muhandis and, should sanctions remain in place and Iran reap little gain from the JCPOA, the U.S.-Iranian standoff could well proceed along the direction that it has already taken—nuclear and regional brinkmanship. Finally, Iran's leadership has indicated its intention to pull U.S. forces out of the area, and Iraq in particular, which may make the nation a frontline between the U.S. and Iran. The parties will take multiple measures so that none of these risks causes further escalation

First is the need for a U.S.-Iranian ceasefire equivalent on the JCPOA / sanctions front, which lies at the center of current tensions. Such a ceasefire could be done in different ways, including the following three:

1. Under a specific version of Macron's plan, the U.S. will reissue restricted oil exemptions for key Iranian importers and restore civil nuclear exemptions in exchange for full cooperation by Iran with the JCPOA, de-escalation in the region, and likely initiate talks with the U.S. and other JCPOA parties on a wide scale (regional and ballistic missiles)..¹⁵⁴

¹⁵⁴ A senior Gulf official said: “Iran is already exporting more than 0.5 million barrels of oil every day, but it is mostly done in the black market. If the U.S. would countenance this to happen in the official market, it can get Tehran to de-escalate at no cost to Washington”. Crisis Group interview, Muscat, January 2020.

2. For an even narrower version, the U.S. may lift key non-oil sanctions (e.g. on Iran's metals and petrochemical sectors) and restore civil nuclear exemptions, for return for Iran promising not to extend its nuclear program beyond its current status, and potentially undo one or more of its violations, as well as avoid hostile actions in Iraq or the Gulf.

3. Europe will try to save the contract even in the absence of U.S. cooperation. In this sense, and for the reasons mentioned above, the recourse of the E3 to the DRM is a double-edged sword at best. European officials say that the aim is to save the deal, not ruin it, and that they are going to use the time ahead to try to convince Iran to restore compliance. Yet it's risky: the DRM was intended to address the deal's technical flaws, not a political crisis caused by the agreement's abrogation from the US. It is difficult to see how this mechanism has a greater chance of settling the shared concerns of the parties than the previous political talks. European officials say invoking the DRM will build the sense of urgency to tackle this issue. This may also backfire: In a time of heightened tensions, Iranian hardliners would almost certainly use these developments to argue that Europe is a lost cause, that Iran will exit the agreement and even take more drastic action. If there is no progress towards a resolution in the coming weeks, the Europeans would also be under greater pressure from the US to reinstate UN sanctions which will exhaust whatever leverage Europe maintains without making substantial gains; as a senior French official puts it: 'Re-imposing UN sanctions would not damage Iran any more than it has already been harmed, and would take us out of it.'¹⁵⁵

In short, the E3 could embark on a path by disabling the DRM that is escalating the crisis that the Europeans are trying to avoid. Their goal at this point should be to expand the timeline

¹⁵⁵ Iran also contends that E3 invocation of the mechanism would have no legal justification. Foreign Minister Zarif has argued that Iran triggered the dispute resolution mechanism in May 2018 “and exhausted” it. See tweet by Javad Zarif, @JZarif, 12:33am, 12 November 2019. A senior Iranian argued: “The Europeans say we didn’t invoke article 36, as there was no arbitration stage [by the advisory board]. Yet that is not compulsory”. Crisis Group interview, New York, July 2019. The E3 rejected this argument: “Contrary to its statements, Iran has never triggered the JCPoA Dispute Resolution Mechanism and has no legal grounds to cease implementing the provisions of the agreement”. E3 foreign ministers’ statement on the JCPoA: 14 January 2020”, press release, 14 January 2020.

given by the agreement to seek to convince Iran to restore compliance with the JCPOA in return for substantial economic relief.

Second, both the US and Europe should ensure that humanitarian goods are available to the Iranian people. For nearly two years, Washington will formalize the Swiss channel already in the works. Congress, which introduced humanitarian exemptions into U.S. sanctions law, will keep accountable to the administration and monitor the effectiveness of the sanctions. In this context, Europe has a significant role to play, both as parties to the JCPOA and as originators of the INSTEX process intended to minimize the effects of U.S. sanctions. The E3 would at least immediately bring INSTEX into action to maintain humanitarian trade with Iran, and allow more European stakeholders to join the process. Furthermore, improving trade with Iran could help to provide greater leverage for European negotiations.¹⁵⁶

Third, Iran, the United States and others will try to reduce the possibility of a regional flare-up. Despite Iran's denials, there are sufficient grounds for suspecting its deep involvement in incidents over the past year in Iraq and the Gulf; closing calls in 2019 and early 2020 are no guarantee that a potential incident could also be controlled. Tehran's caution, often expressed to its local partners, and positive dialogue proposals, when accepted by Iran's critics, could help prevent a confrontation that all sides claim they're not keen to ignite. The US regional allies, in particular Saudi Arabia and the United Arab Emirates (UAE), will continue to explore opportunities for interaction with Tehran, either bilaterally or via other Gulf countries, such as Kuwait and Oman. While their hopes may have been focused on success in undermining Iran by "maximum pressure"—and maybe still rest there—their vulnerability to further Iranian military action has already prompted a renewed turn to talks. It would be a starting point to formally respond to Iran's regional security initiative, which Rouhani launched at the United Nations in September 2019, even though it consisted only of a counter-offer.¹⁵⁷

¹⁵⁶ Ulmer-Nebahay, S., 2020. *Exclusive: Swiss Humanitarian Channel To Iran Seen Within Months - Swiss, U.S. Officials*. [online] U.S. Available at: <<https://www.reuters.com/article/us-swiss-iran-usa-exclusive/exclusive-swiss-humanitarian-channel-to-iran-seen-within-months-swiss-us-officials-dUSKBN1YF23E>> [Accessed 26 March 2020].

¹⁵⁷ In October, Kuwait's foreign minister passed Rouhani's letter describing Iran's regional security initiative (the Hormuz Peace Endeavour, HOPE) to its Gulf Cooperation Council allies. As of mid-January, Kuwait, Qatar and Oman had either responded positively to the overture or provided

European states, for their part, should consider setting up a core group of states ready to promote and assist the Gulf states in putting in motion a joint global security dialog on dispute issues. Via confidence-building measures, the very presence of such a mechanism may reduce the danger of blundering accidentally into war by opening new lines of communication and establishing optimally a measure of trust between such governments.

An additional idea would be to consider creating a deconfliction channel for Washington and Tehran, especially to deal with possible conflicts in and around the Hormuz Strait. Instead of ad hoc naval bridge to bridge communications, skilled contact points may help avoid accidental escalation. Because each side has classified the military of the other as a terrorist group, such a system will almost certainly have to go through a mutually appropriate third party like Oman, which could carry messages between the United States. Central Command (CENTCOM), and the General Staff of Iran.¹⁵⁸

Fourth, in response to strong feelings in Baghdad and to minimize another possible source of conflict with Iran or its associated militias, the U.S. should consider reducing its troop presence in Iraq and transfer some of the burden to other countries there. The move could be a win - win for Tehran and Washington: Iran essentially wants U.S. forces out of the Middle East, but in practice it has accepted the International Coalition's presence to combat ISIS as long as it is both constrained and concentrated exclusively on that target. Trump has advocated reducing the global military presence of the U.S., criticizing the needless actions of his country; leaving behind a small force in Iraq and Syria to help other coalition members root out what remains of ISIS might be a reasonable option, allowing him to say that he had fulfilled a campaign pledge. Such a move will allow U.S. forces to pass primary military responsibilities to other members of the International Coalition to combat ISIS; provide logistical support to those coalition forces; draw down excess U.S. troops; and publicly

feedback, while Saudi Arabia, the UAE and Bahrain had not replied. Crisis Group interviews, senior Iranian officials, December 2019.

¹⁵⁸ Staff, T., 2020. *Trump Says US 'Foolishly Spent \$7 Trillion In The Middle East'*. [online] <https://www.timesofisrael.com/>. Available at: <<https://www.timesofisrael.com/trump-says-us-foolishly-spent-7-trillion-in-the-middle-east/>> [Accessed 26 March 2020].

reaffirm that the only target of the remaining international military presence is the lasting defeat of the jihadists.¹⁵⁹

While the U.S. and Iran will seek to separate Iraq from their standoff. Neither Washington nor Tehran profits from an Iraq that is an arena for the confrontation of outsiders, particularly if the result is to open up room for an ISIS revival or weaken the Iraqi government, which can find itself at once pulled against both outside patrons. On 10 January, Ayatollah Ali al-Sistani cautioned against this latter phenomenon by saying through an intermediary: "The use of over-the-top methods by various sides holding power and control... It would only worsen the situation [in Iraqi politics] and avoid a solution. "Other steps could be taken by both Iran and the US, even though they could seem unlikely in today's raw environment. For example, both sides should continue indirect talks to release additional prisoners without interconnecting such humanitarian negotiations with talks about the future of the JCPOA and the relief from sanctions. However, if Trump is sincere about his proclaimed interest in seeking talks with Iran, he might nominate a special presidential envoy who is not closely connected with the "maximum pressure" movement and is empowered to pave the groundwork for an agreement on behalf of the president.

Ahead of the next FATF plenary in February, Tehran will move quickly to implement the remaining items in its 2016 action plan. Reimposing suspended FATF countermeasures would further isolate the financial sector of Iran as long as the banking system of the country lags behind agreed international standards. The Iranian government should also tackle the structural pressures of corruption and mismanagement as part of comprehensive reforms and not as a tool for settling political scores. While Tehran may have assumed it came out of recent protests secure in its iron fist strategy, the events of the past couple of days show that sticking to business as normal ensures more and probably deeper chaos.¹⁶⁰

¹⁵⁹ Davison, J. and Yaakoubi, A., 2020. *Iraq's Top Cleric Condemns U.S., Iran Confrontation On Iraqi Soil*. [online] U.S. Available at: <<https://www.reuters.com/article/us-iraq-security-sistani/iraqs-top-cleric-condemns-u-s-iran-confrontation-on-iraqi-soil-idUSKBN1Z90YQ>> [Accessed 26 March 2020].

¹⁶⁰ The Iranian government's spokesman admitted to the need for serious reforms: "We need to mobilise the nation, which requires organising a fair parliamentary election, engaging the people and giving voice to the diversity of views, socio-political openness, non-interference in people's personal lives, creating a sense of participation in all state affairs, and fighting money laundering and isolation of Iran's financial system". Ali Rabei, "تحریم واقعییت تحریم" ["Sanctioning sanctions' reality"], *Iran Daily*, 14 December 2019.

However, the sobering truth remains that even as it was being carried out, none of the parties to the JCPOA was entirely pleased with the contract. Iran wants the exemption from sanctions to be much more substantial. All the US and Europe oppose the quickly approaching sunset clauses on all nuclear operations, and would like to add safeguards covering Tehran's ballistic missile program and regional operations. In this context it would make sense for both parties to start discussing what a better-for-better deal would look like, resolving some of the U.S. (and Europe's) concerns regarding Iran's regional and missile activities, in exchange for potential relief from both primary and secondary U.S. sanctions.

7.5 POLICY RECOMMENDATIONS

Based on the results of this chapter it is clear that, considering the complexity of the obstacles, a grand bargain is highly unlikely. Indeed, trying to resolve all the problems as part of a negotiated settlement would likely frustrate progress in particular areas where the possibility of achieving new agreements remains greater. Although Iran's nuclear programme, ballistic missiles and regional complexities are all problems that need to be resolved in order to meet the national interests of various countries and promote regional stability, the majority of interviewees agreed that the most likely way to achieve results is either a JCPOA+ model or individual deals on each of the problems.

JCPOA+

The JCPOA's goal was to reduce Iran's breakout time from an estimated few months to a year to develop a nuclear weapon. An equally significant and little-discussed feature of the JCPOA is its procurement system, which provides Iran with a legal and regulated route to acquire required nuclear-related products while regulating procurement for dual use. All US interviewees pointed to nuclear problems as the highest priority for the US, with 36 per cent seeing the JCPOA+ model as the most realistic solution to secure American interests. Strengthening the nuclear clauses of a follow-up deal would also be a priority for Trump's administration. The US goal is to ensure Iran never gets nuclear weapons. Hence, the primary goal of a JCPOA+ deal would be to prolong the departure period for Iran. Seventy-one per cent of respondents in the United States saw an extension of the sunset clause as the most viable way to accomplish this goal.

Based on the observations and suggestions of the interviewees, the basic contours of an improved agreement may include the following points:

1. The clauses on sunset should be extended for at least 15 years, as that will provide a foundation for building trust.
2. The IAEA would have expanded access to military and non-military sites, such as those identified in the atomic archive. It would offer assurance and clarity about the activities of Iran. During the past, the IAEA has inspected Iran's military sites and allowing further inspections could allay fears of nuclear activity at military sites.
3. Iran will ensure early implementation of Khamenei's 2005 fatwa Additional Protocol and law codification supporting Iran's commitment to nuclear weapons development, accumulation and usage.
4. It is worth codifying Iran's unilateral decision to restrict the range of its missiles to 2000 km. It would be a concession to the United States and Europe that would not change Iran's policy of defence..
5. Agreement should be reached on limitations of the regional range.
6. The UNSCR 2231 validity period should be extended beyond 2023, and Iran's compliance with it should be assured.
7. The proliferation issue would be dealt with in a different national agreement.¹⁶¹

Sanctions

- Iran should be granted gradual relief from sanctions and eligible access to the US financial system. At the beginning of such an agreement, it would be extremely unlikely for the US to unwind current sanctions to achieve a smaller contract. A specified trade mechanism may, however, facilitate permitted foreign transactions. Over time, gradual sanctions relief may be given based on enforcement, verification, and confidence.

¹⁶¹ Vakil, S. and Quilliam, N., 2019. Getting to a New Iran Deal A Guide for Trump, Washington, Tehran, Europe and the Middle East. *Chatham House, the Royal Institute of International Affairs*, [online] pp.49-55. Available at: <<https://reader.chathamhouse.org/getting-new-iran-deal-guide-trump-washington-tehran-europe-and-middle-east#>> [Accessed 26 March 2020].

- Penalties for failure to comply with the contract will be levied. Iran will look for long-term assured promises to honor the agreement either through US Congressional approval or through penalties for non-compliance.
- The US and Iran would agree on a straightforward, definable and verifiable course that would guarantee, institutionalize and separate the process from political intervention. Although this would be hard to enforce, it would be necessary to start offering forward-looking options for all parties. Requests for licenses from EU companies for the Office of Foreign Assets Control (OFAC) should be quick-tracked.
- Iran should enact legislation to comply with international anti-money laundering and anti-terrorism financing requirements for the Financial Action Task Force (FATF).
- Sanctions relief implementation will be accompanied by a funding mechanism such as 'INSTEX 2.0' and approved by the EU with the US as the primary guarantor. INSTEX 2.0 would guarantee purchases of oil, and restore energy alliances and trade. The US Government will need to embark on a diplomatic roadshow to regain market trust

Region

- The JCPOA+ model would prioritize more realistic compromises with a view to safeguarding the JCPOA, avoiding a wider crisis vis-à-vis Iran and creating a forum for confidence-building measures between Iran, the US and others. Nonetheless, an EU-led commitment to launch regional discussions should be formed as part of a JCPOA+ deal..
- The EU will lead and maintain a plan to establish a broader regional security structure that could include commitments to regional actors for non-aggression and non-interference. It could be achieved by setting up a multilateral mechanism which closely resembles the Madrid Conference and the peace process.

In order to achieve successful outcomes, negotiators to Washington, Tehran and Europe will accept the following recommendations as they work towards new, realistic agreements:

- Negotiations should be, above all, focused multilaterally. Trump's unilateral approach to resolving the problems has done little but frustrate and hinder future change. In the sense of a 'carrots and sticks' approach, transatlantic collaboration is more likely to produce results than the existing unilateral direction in Washington. In addition, Europe holds unrivalled knowledge, skills and specific negotiating and engaging experience with Iran.

- Because of the dynamics of US and Iranian politics and domestic problems in European capitals, both sides should consider naming a special non-partisan envoy to identify, organize and handle the negotiations.
- The JCPOA remains the strongest basis and structure for a new contract to build on. Thus, instead of beginning new talks, the JCPOA framework will form the basis for a new agreement. In addition, the JCPOA Joint Commission also allows for multilateral negotiations with an institutional framework. The Joint Commission's mandate should be changed to allow wider discussion and negotiations.
- Washington and Tehran will start building an internal consensus on a new agreement. Acquiring credibility from both countries ' political institutions, and building non-partisan support, will be important for the progress and outcome of negotiations.
- Any new agreement should include a pledge and timetable for the start of a European-led regional dialogue. Conditions for such a dialogue are ripe, given existing tensions.
- Washington will train regional partners for new talks and commit to engaging them in regional discussions. This will include providing reassurance as to the US's commitment to the welfare of these partners.
- Europe will take the lead in identifying and maintaining the terms of a regional dialog with Iran and key Middle East actors. Proliferation of weapons, acquisition restrictions and international intervention will form the base pillars of discussion. Talks would include broader national cooperation, ballistic missile agreements, and adoption of the Hague Ballistic Missile Proliferation Code of Conduct (HCOC) and the Comprehensive Nuclear-Test-Ban Treaty.¹⁶²

7.6 CONCLUSION

His stumbling blocks lie in the perceived success of U.S. "maximum pressure" strategy: while it has caused considerable harm on Iran's economy, it has not created a stronger nuclear agreement nor changed Iran's regional policies. Instead, it has created the reverse, in addition to taking both sides to the verge of war: an Iran that is more hostile in the region, more assertive in extending its nuclear activities and as determined as ever to curb opposition at

¹⁶² Ibid.

home. "Maximum pressure" advocates also argue that sanctions should be ramped up even more and allowed more time to change Iran's dynamics (or its political system). Such standards have more in common with magical thinking than with rational assessments focused on Iran's conduct background to date.

Little time remains to take off ramp suggested in this chapter. Even considering a diplomatic ceasefire following the early January events, the JCPOA could well be the next American-Iran standoff casualty. Nonetheless, it is hard to imagine how Iran could withstand more measures to downgrade its enforcement between now and the U.S. elections in November, in the face of increasing tensions between the remaining JCPOA parties and in the region. The failure could cause an international proliferation crisis and make it all the more difficult to restore the status quo ante. Today's goal should be to strike a diplomatic de-escalation bargain that will save the agreement, reduce the chances of a regional conflict, and maybe open the door to broader negotiations.

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