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The Role of the European Union in the Iran Nuclear Crisis

By Paula Notivoli Cabezas

Academic Tutor: Prof. Dr Juan Santos Vara

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**El papel de la Unión Europea en la Crisis
Nuclear de Irán**

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ABSTRACT

The Iranian nuclear programme has been of great relevance and importance in the International Community over the past two decades due to the risk it poses to international stability, security and peace, and the nuclear crisis that ensued. The efforts of European diplomacy since the early 2000s have had major consequences for global security, Middle East stability, International Law and non-proliferation. This dissertation seeks to provide some clarity on the European Union's role in the Iran nuclear crisis. To this end, emphasis will be placed on the 2015 Joint Comprehensive Plan of Action, the steps that led to its conclusion and how the United States withdrawal from it undermined European efforts thus far. Finally, the possible re-joining of the United States will be addressed.

KEYWORDS: diplomacy, European Union, IAEA, Iran, JCPOA, multilateralism.

RESUMEN

El programa nuclear iraní ha tenido gran relevancia e importancia en la Comunidad Internacional durante las últimas dos décadas debido al riesgo que supone para la estabilidad, la seguridad y la paz internacionales, y a la crisis nuclear en la que derivó. Los esfuerzos de la diplomacia europea desde principios de los 2000 han tenido grandes consecuencias para la seguridad mundial, la estabilidad de Oriente Medio, el Derecho Internacional y la no proliferación. En el presente trabajo se busca ofrecer un poco de claridad respecto al papel de la Unión Europea en la crisis nuclear de Irán. Para ello, se hará hincapié en el Plan de Acción Integral Conjunto del año 2015, los pasos que llevaron a su consecución y cómo la retirada de Estados Unidos de este derribó los esfuerzos europeos hasta el momento. Por último, se abordará la posible reincorporación de Estados Unidos.

PALABRAS CLAVE: diplomacia, Unión Europea, OIAE, Irán, PAIC, multilateralismo.

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Abbreviations

AP	Additional Protocol
CBI	Central Bank of Iran
CFSP	Common Foreign and Security Policy
DRM	Dispute Resolution Mechanism
E3	Germany, the United Kingdom and France
E3/EU	Germany, the United Kingdom, France and the European Union
E3/EU+2	Germany, the United Kingdom, France, the European Union, Russia and China
E3/EU+3	Germany, the United Kingdom, France, the European Union, Russia, China and the United States
E3+3	Germany, the United Kingdom, France, Russia, China and the United States
EEAS	European External Action Service
EIB	European Investment Bank
ELM	External Lending Mandate
EP	European Parliament
EU	European Union
FEP	Fuel Enrichment Plant
HR	High Representative of the Union for Foreign Affairs and Security Policy
IAEA	International Atomic Energy Association
INSC	Instrument for Nuclear Safety Cooperation
INSTEX	Instrument in Support of Trade Exchanges
JCPOA	Joint Comprehensive Plan of Action
JPA	Joint Plan of Action
NPT	Non-Proliferation Treaty
P5	Five Permanent Members of the United Nations Security Council, which are Russia, China, the United States, the United Kingdom and France

R&D	Research and Development
SG	Secretary-General
SPV	Special Purpose Vehicle
SWIFT	The Society for Worldwide Interbank Financial Telecommunications
UN	United Nations
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
US	United States
WTO	World Trade Organization

1. Introduction

This dissertation focuses on a topical issue: the Iran nuclear crisis, and more specifically the role of the European Union in it. Since the Second World War, during the Cold War and up to the present day, nuclear weapons have conditioned security and peace, in other words, they have endangered global stability. Thus, the Iranian nuclear programme has been conceived as one of the greatest global destabilisers because of its questionable peaceful nature and because of its geopolitical location, the Middle East, an unstable and conflictive region.

In an attempt to ensure that Iran's nuclear programme does not lead to a nuclear bomb, the European Union has, since the end of the twentieth century, devoted significant efforts of its foreign policy to this end. Relations between the Islamic Republic of Iran and the European Union and its Member States have undergone numerous changes in recent decades due to the former's activities and the latter's policies. Yet the influence of the other side of the Atlantic, expressly the United States, cannot be neglected or disregarded.

The aim of this dissertation is therefore to shed light on a complex and relevant issue in the international context to better understand the developments of the recent years and those taking place now. To this end, events will be presented chronologically to ultimately arrive at the present time. Firstly, the early years of the nuclear crisis will be addressed together with the different solutions provided by the International Community through the United Nations Security Council in general, and the European Union in particular. This will be followed by an appraisal of the Joint Comprehensive Plan of Action and the changes it brought about for the International Community and the European Union. It will then take stock of the first years of its existence and, in specific terms, for the European Union-Iran relations and how these were bounced by the United States withdrawal. The consequences of this action will be assessed together with the response given by the Union and the Islamic Republic. Subsequently, the current state of play on the possible re-join of the United States into the agreement will be presented. Finally, some final conclusions are drawn based on the facts presented. For this dissertation, the most up-to-date doctrinal sources on the subject have been used, it could not have been done in any other way due to the novelty of the events.

2. A first approach to the Iran Nuclear Crisis

Iran's foreign relations have always been complicated both by its eagerness to develop nuclear capabilities and by its position in a highly unstable region. The Iranian Revolution (1979) and the Iran-Iraq War (1980-1988) changed relations with Europe and more dramatically with the United States (US). While it is true that after the Iranian Revolution Europe-Iran relations suffered in the political and economic areas, diplomatic relations never quite faded away as they did with the US;¹ with the end of the Iran-Iraq war, economic and political relations between the Islamic Republic and Europe resumed. The European Union's concern with Iran's behaviour regarding human rights, the assassination of regime dissidents and terrorism, as well as its arms purchases, and the risk they pose to stability in the Middle East, motivated the European Council to call the Iranian Government for a Critical Dialogue in 1992. Through this Dialogue, the European Council² also expected Iran to take "a constructive approach" in the Middle East Peace Process. As Torbat³ presents, it can be argued that this call for a dialogue from the European Union (EU) was intended to justify diplomatic and trade relations between Brussels and Tehran, despite the actions committed by Iran, contrary to the values and principles on which the EU is based and which it advocates in its external relations. The approach to EU-Iran relations shifted towards a Comprehensive Dialogue from 1998 on, this Dialogue was framed as an open and global policy.⁴ The Commission⁵ suggested encompassing the dialogue in three different areas: global and regional issues likewise cooperation. For this, technical working groups were established between the Commission and Iran. EU's interests in the region were both economic and political, Iran's petroleum and gas reserves were and still are crucial for the Union just as stability in the region, Iran's military capacity can be a source of instability in the Middle East and a trigger for other countries in the region to develop their capabilities; the EU believes that Tehran is a key player in achieving stability in the Middle East hence the Union has

¹ D. R. JALILVAND, "EU-Iran Relations: Iranian Perceptions and European Policy", in AYBARS GÖRGÜLÜ; GÜLSAH DARK KAHYAĞLU (eds.), *The Remaking of the Euro-Mediterranean Vision: Challenging Eurocentrism with Local Perceptions in the Middle East and North Africa*, Peter Lang Publishing Group: Bern, Berlin, Brussels, New York, Oxford, Warszawa, Vienna, 2019 (Global Politics and Security), pp. 117–145, at 123–124.

² EUROPEAN COUNCIL, *European Council in Edinburgh. Conclusions of the Presidency*.

³ A. E. TORBAT, "The Economic Sanctions Against Iran", in A. E. TORBAT (ed.), *Politics of Oil and Nuclear Technology in Iran*, Springer International Publishing: Cham, 2020, pp. 201–224, at 211.

⁴ *Ibid.*

⁵ COMMISSION, Communication from the Commission to the European Parliament and the Council - EU relations with the Islamic Republic of Iran, COM/2001/0071, 2001.

always expressed its concern about the country's fragile democracy and lack of respect for human rights.⁶

In 1997, the International Atomic Energy Agency (IAEA) introduced the Additional Protocol (hereinafter referred to as AP) to its Safeguards Agreement intending to have greater knowledge and control over the practices and status of the activities carried out by the States. Accession to this protocol is voluntary but once signed, it creates obligations and grants rights for both the State and the IAEA. On the one hand, States commit themselves to provide the IAEA with information on their nuclear and nuclear-related activities, waste, equipment and material as well as grant the IAEA access for short-notice inspections. On the other hand, it allows the IAEA to collect samples, use international communications systems and request information with short notice.⁷ Iran decided not to sign this AP after several States urged it to do so, some EU Member States among them. Moreover, in Summer 2002 there were rumours –coming from the National Council of Resistance of Iran– that the Islamic Republic was working on a nuclear programme and had secret nuclear facilities. Rumours were confirmed in February 2003 when the IAEA Director-General visited Iran. He certified that the nuclear facility consisted of a 100-centrifuge cascade at Natanz and a “heavy water production facility at Arak”. Further, he discovered “evidence of past enrichment activity”⁸ though it was not until summer when Tehran admitted this last activity.⁹ With this inspection, it came to light that Iran had not been declaring all the activities it owed to the IAEA as part of the Non-Proliferation Treaty,¹⁰ though this failure to report did not constitute a violation of the NPT nor of the IAEA Statute as the IAEA stated.¹¹ In the light of these events, in June 2003, the EU suspended the trade and association agreement negotiations that had started in December 2002. Some months later, in October, given the gravity of the situation, Germany, the United Kingdom

⁶ C. ADEBAHR; R. ALCARO, “The EU and Iran: how a critical relationship became a troubled one”, in D. BOURIS; D. HUBER; M. PACE (eds.), *The Routledge Handbook on EU-Middle East Relations*, Routledge: Oxford, forthcoming.

⁷ IAEA, *Factsheet on the Additional Protocol: verifying that all nuclear material remains in peaceful activities*, International Atomic Energy Agency, 2021.

⁸ R. J. REARDON, “Iran’s Nuclear Program: Past, Present, and Future”, in *Containing Iran*, RAND Corporation, 2012 (Strategies for Addressing the Iranian Nuclear Challenge), pp. 9–64, at 15.

⁹ T. SAUER, “Coercive Diplomacy by the EU: The Iranian Nuclear Weapons Crisis”, (2007) 28(3), *Third World Quarterly*, pp. 613–633, at 617.

¹⁰ Iran signed the Non-Proliferation Treaty (NPT) in 1968, the same year that it opened for signature, and ratified in 1970, from this year is then bound to the treaty. In practice, this means that it cannot buy nuclear weapons, it has to declare its nuclear activities to the IAEA and can develop a nuclear programme only for civilian purposes, i.e., to generate electricity. *Ibid.*

¹¹ IAEA, *Implementation of NPT safeguards agreement in the Islamic Republic of Iran*, 2003; T. SAUER, *supra* note 9, p. 617.

and France (the E3) advocated for a negotiating strategy and continued negotiations with Iran, this time in Tehran. The result of this diplomatic move by the E3, supported by other EU Member States, was Tehran's signature of the AP, the suspension of its enrichment programme¹² and its willingness to cooperate.¹³ Nonetheless, Iran has never ratified the AP, yet it notified the IAEA that it would provisionally apply it from the 16th of January 2016.¹⁴ Further, Iran challenged the definition of suspension¹⁵ and anyhow it recognised that the suspension was temporary.¹⁶ At the end of 2003, the High Representative of the Union for Common Foreign and Security Policy (CFSP), Javier Solana, joined the E3 on their negotiations with Iran;¹⁷ together they now constitute the E3/EU team.

The 2003 E3 meeting in Tehran culminated in the signing of the Paris Agreement on 14 November 2004, bringing to an end the nuclear activities that Iran had been conducting for the past year, more precisely the construction of a heavy water plant and uranium conversion.¹⁸ Iran accordingly agreed to stop its enrichment program with nuclear purposes and committed to "IAEA inspections and safeguards regime".¹⁹ The EU, on her part, offered positive inducements appreciably "the lifting of economic sanctions". Both parties reaffirmed their commitment to the NPT and recognised Iran's right to exercise the rights acquired under this treaty.²⁰

In 2005, the Paris Agreement of 2004, which was believed to be successful, came to an end after the Iranian presidential election. The new president, Mahmoud Ahmadinejad, announced that he would resume Iran's enrichment activities, thus ending voluntary compliance with the AP and IAEA inspections and refused the EU's new proposal. Both actions made the EU terminate negotiations,

¹² T. SAUER, *supra* note 9, p. 618.

¹³ ISLAMIC REPUBLIC OF IRAN; BRITAIN; *et al.*, *Tehran Joint Statement*.

¹⁴ Which, as will be seen below, is the date of the Joint Comprehensive Plan of Action's Implementation Day. Therefore, it is not a coincidence that the Islamic Republic agreed to implement the AP, but rather the result of its obligations under the Joint Comprehensive Plan of Action. IAEA, *Status List Conclusion of Additional Protocols*, International Atomic Energy Agency, 2020.

¹⁵ R. J. REARDON, *supra* note 8, p. 15.

¹⁶ R. BERMEJO GARCÍA; C. GUTIÉRREZ ESPADA, "Del programa nuclear de la República Islámica de Irán y de su evolución (política y derecho)", (2015) (31), *Anuario español de derecho internacional*, pp. 7–63, at 20.

¹⁷ *Ibid.*

¹⁸ T. SAUER, *supra* note 9, p. 619.

¹⁹ R. J. REARDON, *supra* note 8, p. 16.

²⁰ N. GNESOTTO, "Statement by Javier Solana on the agreement on Iran's nuclear programme", (2005), *EU Security and defence: core documents 2004*, pp. 275-277.

which would only resume once Iran suspended its enrichment programme.²¹ The E3, in line with its intention to resolve the conflict through diplomatic dialogue, proposed Iran a new negotiating table for December, which, as expected, was rejected.²² After enrichment activities were restarted, the E3 succeeded in getting the US to negotiate with Iran, on the condition that the Islamic Republic had suspended enrichment to start negotiations. Solana, for his part, convinced the US, Russia and China to agree on a joint package of measures along the lines of sanctions in the next United Nations Security Council Resolution (hereunder UNSCR).²³ From this point on, the Iranian counterpart will be E3/EU+3.

Before referring the issue to the Security Council, the IAEA wished to verify that Iran had resumed enriching activities and that it was no longer complying with the AP or other voluntary agreements; this was confirmed in its 2006 visit.²⁴ The matter was therefore referred to the United Nations Security Council (UNSC). Sanctions were initially blocked in the face of Russian and Chinese refusals and instead, positive inducements were introduced. The P5²⁵ and Germany (or E3+3) with the support of the High Representative of the Union for CFSP, agreed to ask Iran to suspend its enrichment activities to start negotiations.²⁶ Resolution 1696²⁷ was passed in July and set August as the deadline for the IAEA Director-General to verify if Iran had suspended all its enrichment-related, reprocessing, and research and development (R&D) activities. On their behalf, the E3/EU+3 agreed to not take additional measures if Iran complied with the Resolution. In August, UNSCR 1737²⁸ was passed as Iran had “not established full and sustained suspension of all enrichment-related activities and reprocessing activities” as required by the previous Resolution. This last Resolution had called Iran to halt its nuclear programme and imposed, for the first time, sanctions on Iran by way of “a travel ban, a freeze of assets, a ban on weapons, and a ban on goods

²¹ R. J. REARDON, *supra* note 8, p. 17; T. SAUER, *supra* note 9, p. 620.

²² T. SAUER, *supra* note 9, p. 620.

²³ *Ibid.*, p. 621.

²⁴ IAEA, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, International Atomic Energy Agency, 2006.

²⁵ The five permanent members of the UNSC or P5 are the Russian Federation, the French Republic, the United States, the United Kingdom and the People’s Republic of China.

²⁶ R. J. REARDON, *supra* note 8, p. 17.

²⁷ UNSC, Resolution 1696 - Acting under Article 40 of Chapter VII of the Charter, 2006.

²⁸ UNSC, Resolution 1737 - Acting under Article 41 of Chapter VII of the Charter, 2006.

related to the nuclear and ballistic missile programs²⁹ and set a new deadline: February 2007. Predictably, Iran's response to the imposition of sanctions and the new due date was nothing else than no compliance. This time by "installing centrifuges at the FEP,³⁰ and a ban on 28 IAEA inspectors from Natanz"³¹ and continuing to enrich uranium.³² And so, in 2007, the UNSC approved Resolution 1747³³ to widen the scope of the already imposed sanctions. The Resolution called Iran to immediately cease its enrichment-related, reprocessing, R&D activities and gave the IAEA 60-days to issue a report on the suspension of the activities. Further, it also banned "the country's arms exports and froze the assets and restricted the travel of additional individuals engaged in the country's proliferation-sensitive nuclear activities".³⁴ In September, the E3 got Iran's chief negotiator to agree to a meeting in New York with the E3 representatives, to suspend its enrichment activities in exchange for removing Iran's nuclear dossier from the UNSC.³⁵ Iran's failure to suspend fully and sustainably enrichment-related and reprocessing activities and heavy water-related projects led the UNSC to pass a new Resolution³⁶ (1803 in 2008); the aim of which was to increase pressure on Iran and to advocate for diplomacy as a means to find a solution.³⁷ Resolution 1803 froze individual and entities' assets and banned travel and dual-use goods –those that may have an illicit application as they serve both military and civilian purposes–.

UNSC members realised that the Iranian conflict required further sanctions to the ones imposed in its various Resolutions (1737, 1747, 1803) as, despite this, Iran had failed to halt its nuclear-related activities during this period (2006-2010), which prompted the UNSC to adopt a new Resolution³⁸ (1929) to widen the scope of the previous Resolutions. Resolution 1929 strengthens the active arms embargo as well as the travel ban to those individuals involved in the nuclear programme, it especially prohibits conducting ballistic missile activities and, therefore, also ballistic technologies. In

²⁹ F. GIUMELLI, "Implementation of Sanctions: European Union", in M. ASADA (ed.), *Economic Sanctions in International Law and Practice*, Routledge: Oxford and New York, 2020, pp. 116–135, at 127.

³⁰ Fuel Enrichment Plant

³¹ R. J. REARDON, *supra* note 8, p. 18.

³² A. E. TORBAT, *supra* note 3, p. 202.

³³ UNSC, Resolution 1747 - Acting under Article 41 of Chapter VII of the Charter, 2007.

³⁴ UN DEPARTMENT OF PUBLIC INFORMATION, *Security Council toughens sanctions against Iran, adds arms embargo, with Unanimous Adoption of Resolution 1747*.

³⁵ R. J. REARDON, *supra* note 8, p. 17.

³⁶ UNSC, Resolution 1803 - Acting under Article 41 of Chapter VII of the Charter, 2008.

³⁷ K. SUZUKI, "Iran: The role and effectiveness of UN sanctions", in M. ASADA (ed.), *Economic Sanctions and International Law and Practice*, Routledge: New York, 2020, pp. 178-199, at 183.

³⁸ UNSC, Resolution 1929 - Acting under Article 41 of Chapter VII of the Charter, 2010.

addition, Iranian assets were frozen in an attempt to prevent economic transactions related to nuclear work³⁹ and urged the Member States to control their financial transactions so that they were not indirectly contributing to Iran's prohibited activities.⁴⁰ These economic sanctions imposed on financial resources or services "caused substantial harm to the Iranian economy".⁴¹

2010 marked a turning point as the EU for the first time decided that the multilateral United Nations (UN) sanctions it had been supporting for the past few years were not enough and that the situation required additional sanctions. EU sanctions were never envisaged as substitutes of UN sanctions, but rather as complementary; although it must be noted that EU sanctions have sometimes been implemented in absence of UN action.⁴² In this point, the Council⁴³ introduces restrictive measures, these include but were not limited to a ban on the import of crude oil, on the provision of insurance and re-insurance services to the Tehran government by the Member States, and on new investments, technical assistance and transfers of technology to Iranian oil and gas companies by European energy corporations.⁴⁴ Not only is the first time that the EU decided to go one step further than the UN, but it is also the first time that does so by imposing sanctions on activities that are not directly related to Iran's nuclear programme.⁴⁵

In 2012, the Council introduces new sanctions against Iran, the most notable restrictive measure is the oil embargo. Essential energy transactions for the EU could still take place, not uncoincidentally since Greece, Italy and Spain were the Member States suffering the most from the crisis and, in turn, the largest EU importers of Iranian oil. The EU was firm in its stance against Iran even if that heightened the ongoing crisis or the imposition of Iranian sanctions on any of its Member States. After the 2011 EU boycott on Iran's oil, Member States buying Iranian oil had to pay for their imports in dollars, which contributed to the depreciation of the Euro.⁴⁶ Further,

³⁹ N. HASSIBI; T. SAUER, "Easing sanctions on Iran might someday be necessary—but it won't be easy", (2013) 69(5), *Bulletin of the Atomic Scientists*, pp. 46–55, at 48.

⁴⁰ K. SUZUKI, *supra* note 37, p. 185.

⁴¹ D. R. JALILVAND, *supra* note 1, p. 129; K. SUZUKI, *supra* note 37.

⁴² L. S. BORLINI; S. SILIGARDI, "Defining Elements and Emerging Legal Issues of EU 'Sanctions'", (2018) 27(1), *The Italian Yearbook of International Law Online*, pp. 33-52, at 34.

⁴³ COUNCIL, Council Regulation of 25 October 2010 on restrictive measures against Iran and repealing Regulation No 432/2007, 961/2010, 2010.

⁴⁴ N. HASSIBI; T. SAUER, *supra* note 39, p. 49; A. E. TORBAT, *supra* note 3, p. 214.

⁴⁵ A. B. TABRIZI, "The EU's sanctions regime against Iran in the aftermath of the JPA", (2013) (818), *Policy Memo*, p 2.

⁴⁶ A. E. TORBAT, *supra* note 3, pp. 214–215.

restrictive measures also included freezing the assets of the Central Bank of Iran (CBI);⁴⁷ nineteen Iranian banks⁴⁸ were disconnected from SWIFT,⁴⁹ which in practice meant that their transactions were no longer processed⁵⁰ and thus the financial isolation of Iran;⁵¹ the prohibition of importing precious and industrial metals; the prohibition of transactions with Iranian natural gas and with Iranian banks and financial institutions; and many more measures on the energy, transport and financial sectors.⁵²

The election of Hassan Rouhani in the 2013 Iranian presidential elections was favourable towards a return to dialogue between the E3/EU+3⁵³ and Iran. Thus, the Joint Plan of Action (JPA) was born out of dialogue and negotiations through diplomacy. This political agreement was signed in Geneva on 24 November 2013 and implemented on 20 January 2014; it provides a road map intending to reach a genuine negotiation that will lead to the solution of the crisis⁵⁴ and is therefore presented as the first step. This joint plan has a duration of six months and may be renewed if mutual consent by the parties. This agreement was beneficial for both parties. On the one hand, sanctions on associated insurance and transportation services, on Iran's petrochemical exports and associated services, on gold and precious metals and associated services placed by the EU and the US were suspended as well as those imposed by the US on Iran's auto industry and associated services. It was also agreed that there would be no new nuclear-related UNSC, US or EU sanctions and that those in place by the UNSC would be comprehensively lifted. Nonetheless, it is important to note that the suspension of sanctions is conditional to Iran's compliance which, if absent, would trigger sanctions again. Further, Iran could continue to access civilian nuclear activities. On the other hand,

⁴⁷ Up until then, the CBI had been exempted from EU sanctions, still not from the US. The EU's restrictive measures imposed on this entity meant an alignment of policies on both sides of the Atlantic. N. HASSIBI; T. SAUER, *supra* note 39, p. 49.

⁴⁸ F. GIUMELLI; P. IVAN, "The effectiveness of EU sanctions: An analysis of Iran, Belarus, Syria and Myanmar (Burma)", (2013), *EPC Issue Paper*, p. 16.

⁴⁹ The Society for Worldwide Interbank Financial Telecommunication, based in Belgium, is the world's most widely used electronic banking system. A. E. TORBAT, *supra* note 3, p. 215.

⁵⁰ As, for being based in Belgium, SWIFT is bound to the law of this State.

⁵¹ F. GIUMELLI; P. IVAN, *supra* note 48, p. 16.

⁵² N. HASSIBI; T. SAUER, *supra* note 39, p. 49.

⁵³ The EU is now represented by Catherine Ashton, who is the High Representative of the Union for Foreign Affairs and Security Policy from 2009 to 2014. EEAS, "High Representative/Vice President", *European External Action Service - European Commission*.

⁵⁴ R. BERMEJO GARCÍA; C. GUTIÉRREZ ESPADA, *supra* note 16, p. 36.

the IAEA-controlled block on Iran's nuclear weapons procurement was a relief for the E3+3.⁵⁵ Following the signature of the Joint Plan of Action and its entry into force, the EU suspended the sanctions in force⁵⁶ against Iran under the JPA for the duration of the agreement, six months. In June 2014, the parties agreed on extending the measures in place and negotiations until November, when they extended them again until March. June 2015 was the new deadline for ending negotiations. However, due to excessive focus on the nuclear programme and not so much on the arms embargo and missile development, negotiations were extended two weeks⁵⁷ and culminated in the Joint Comprehensive Plan of Action.

3. The Joint Comprehensive Plan of Action

3.1. The Union's interests under the JCPOA

As has been advanced and as it is to be expected in concluding such agreements, the EU was motivated by a variety of concrete interests stemming from the threats⁵⁸ posed by the crisis and which can be divided into four categories:⁵⁹ normative, security, strategic and economic. These interests were pursued by the Union throughout the negotiations and, eventually, incorporated into the JCPOA. This was not easy as the interests among the parties diverged not so much on the idea but on the priority they gave them. The most intricate challenge was to adapt the Union's interests with those of the Islamic Republic, as Iran's primary interests were secondary for the EU by the different impact they had on both economies;⁶⁰ these divergences were on trade and energy. Not surprisingly, Iran sought to ease the oil sanctions and a renewed European and trade investment deal. Contrariwise, the principal incentive for the Union was security as it believes Iran to be key for achieving stability in the Middle East and the first step towards starting a dialogue with other actors

⁵⁵ As can be guessed, the countries that constitute the E3+3 are Germany, the United Kingdom, France, Russia, China and the United States.

⁵⁶ Sanctions that are not part of the Joint Plan of Action, such as those relating to terrorism or human rights, were not suspended.

⁵⁷ K. SUZUKI, *supra* note 37, p. 189.

⁵⁸ These threats are terrorism, proliferation of weapons of mass destruction, illicit trafficking, threats against European nationals in the region, migration flows and energy security. R. ALCARO; A. DESSI, "A Last Line of Defence: A Strategy for Europe to Preserve the Iran Nuclear Deal", (2019) 19(14), *LAI Papers*, p. 6.

⁵⁹ R. ALCARO, "Europe's Defence of the Iran Nuclear Deal: Less than a Success, More than a Failure", (2021) 56(1), *The International Spectator*, pp. 55–72; R. ALCARO; A. DESSI, *supra* note 58.

⁶⁰ The negative impact EU and US sanctions were having on Iran's economy was the main motive that drove Tehran to negotiate. As it realised that no negotiation would only increase the sanctions and, therefore, worsen and isolate its economy.

in the region. And, further, the EU suspected that the US and Israel would be willing to use their military capabilities to tear down Iran's nuclear programme.⁶¹ Linked to this is the Union's normative interest in the non-proliferation regime, as in the EU's eyes the Iranian nuclear programme triggers security in the region; by enhancing non-proliferation the risk of conflict is reduced. Moreover, the Union believed it was essential that the role of the UNSC and the IAEA were strengthened in monitoring Iran's compliance. In strategic terms, this agreement was a victory for the EU's foreign policy by showing how disputes can be peacefully solved through diplomacy. Additionally, the Union saw the Deal as an opportunity to start a political dialogue with Tehran on different questions, notably on human rights. Finally, economic interests were directed towards re-accessing Iran's market, particularly the energy one.

3.2. Content of the agreement and how it changes the *statu quo*

The Joint Comprehensive Plan of Action was the culmination of twelve years of negotiations and of the diplomatic effort by the EU and, more especially, the E3 to achieve a peaceful resolution of the crisis through dialogue; and, not least, the demonstration that diplomacy is a great means of solving international conflicts.⁶² The Joint Comprehensive Plan of Action (hereinafter referred to as JCPOA) –also known as the Iran Nuclear Deal– was signed on 14 July 2015 as a political agreement and, therefore, it did not have binding force. The JCPOA was concluded with the aim of preparing the UNSCR that would endorse it and make it binding, as such and somewhat peculiarly, the negotiations took place in Vienna rather than in New York, where UNSCR negotiations are usually held. The role of the EU in the JCPOA negotiations should not be underestimated as it appeared as a mediator between the E3 and the 3 (US, Russia and China). The technical knowledge of the negotiations rested on the Union and, more specifically, on the European External Action Service (EEAS). This last service drew up the text of the agreement⁶³ and structured it in seven parts: Preface, Preamble and general provisions, and five annexes (annex I regarding Nuclear-Related measures, annex II about Sanctions-related commitments, annex III concerning Civil Nuclear Cooperation, annex IV on the Joint Commission and annex V with reference to Implementation Day). The second part (preamble and general provisions) was, at the same time, divided into four

⁶¹ C. ADEBAHR; R. ALCARO, *supra* note 6; R. ALCARO, *supra* note 59, p. 56.

⁶² R. BERMEJO GARCÍA; C. GUTIÉRREZ ESPADA, *supra* note 16, p. 51.

⁶³ E3/EU+3, *Joint Comprehensive Plan of Action*.

different categories: Nuclear, Sanctions, Implementation Plan and Dispute Resolution Mechanism (DRM).

UNSCR 2231 came a few days after the political agreement –on 20 July– and was adopted by unanimity. The Resolution is structured in three parts: the main body, Annex A (JCPOA signed in Vienna and its five annexes) and Annex B (Statement). It establishes the obligation to comply with the provisions therein by endorsing the JCPOA and by underscoring that UN Member States are bound to accept and carry out the UNSC decisions under Article 25 of the UN Charter.⁶⁴ It does seem clear that the endorsement of the JCPOA through a UNSCR gives it binding force, notwithstanding the fact that the heading of the main body indicates that they are “voluntary measures”.⁶⁵ This has not been exempt from controversies and is one of the justifications the US found for withdrawing, as will be seen below. In any case, the Resolution requires full implementation.

Annex V of the JCPOA details the adoption, implementation, transition and termination days. Adoption day was established to be ninety days after the endorsement of the UNSCR 2231 –18 October 2015, hence– and was meant to prepare the parties to enforce their obligations on Implementation Day. Iran for its part had to ratify and apply the AP and accordingly inform the IAEA; and the EU and the US had to adapt their legislation for the lifting of sanctions as set out in the Resolution, which would be effective on Implementation Day if Iran fulfilled its obligations. Once the IAEA verified that Iran had complied with the nuclear-related measures⁶⁶, and the EU and the US had taken the appropriate actions to satisfy paragraphs 16 and 17, respectively, from Annex V, the Resolution endorsing the JCPOA entered into force. Implementation Day was 16 January 2016. Transition Day was set to be eight years after –from Adoption Day–, a date that has not yet arrived as less than five years have passed since then. In July 2026 will be Termination Day –ten years after Adoption Day– as set out in the Resolution; and will be the date on which Resolution 2231 will cease to apply and “the UN Security Council would no longer be seized of the Iran nuclear issue”⁶⁷ unless provisions from previous resolutions were reinstated.

⁶⁴ UNSC, Resolution 2231 - Endorsing the Joint Comprehensive Plan of Action, 2015.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.* Annex V, para. 15.

⁶⁷ UNSC, *supra* note 64. Annex V, para. 24.

The JCPOA includes three elements that are worth highlighting. The first one,⁶⁸ the Dispute Resolution Mechanism or the so-called ‘snap back’ mechanism, refers to the obligation of the parties to comply with the agreement, although it can only be applied to Iran, hence part of its particularity. As enshrined in operative clauses 12 and 13 of Resolution 2231, in the event of a violation by any party, the others can refer the matter to the UNSC; where, within 30 days, a draft resolution ratifying the sanctions imposed in the previous UNSCRs⁶⁹ will be voted on. If no resolution is adopted, the sanction regime in place prior to the endorsement of the JCPOA would apply. Here the second peculiarity, if any of the permanent members of the UNSC were to use their veto power⁷⁰ when voting the draft resolution, sanctions would still be imposed.

The second refers to the ballistic missile restrictions specified in Annex B of Resolution 2231 under the heading ‘statement’. As Suzuki⁷¹ points out, it is striking that the term ‘statement’ is used instead of ‘restrictive measures’ –or even ‘sanctions’– thus making use of a softer term. This idea is certainly reinforced by including them in Annex B and not in the main body of the Resolution, thence implying that these are measures taken voluntarily by the E3/EU+3 and the Islamic Republic and not under Chapter VII of the UN Charter; and further captured by expressing that “Iran is called upon” rather than pointing that Iran ‘shall’ or ‘is urged to’. What is more, by referring only “to ballistic missiles designed to be capable of delivering nuclear weapons”, those that end up serving this purpose despite not being designed to do so are excluded.⁷²

The third and last remarkable element is the ‘sunset clauses’, whose name refers to the limited duration of some provisions. For instance,⁷³ the ‘snap back’ mechanism can only be enforced for 10 years; the UNSC will seize the Iran nuclear issue in 10 years, though as noted above with some nuances; the arms embargo is in place for 5 years and the ballistic missile restrictions for 8; nuclear

⁶⁸ K. SUZUKI, *supra* note 37, p. 190.

⁶⁹ Resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010), discussed earlier in this document, to which Resolution 1835 (2008) should be added.

⁷⁰ Article 27 of the UN Charter establishes the voting mechanism in the Security Council, under this article, decisions must be taken with nine votes in favour, including those of the permanent members. UN, *United Nations Charter*.

⁷¹ K. SUZUKI, *supra* note 37, pp. 190–191.

⁷² This already seemed clear, but when in March 2016 Iran launched two ballistic missiles that had not being designed to be capable of delivering nuclear weapons, it was reaffirmed. It is not necessary to clarify that this launch therefore did not constitute a violation of Resolution 2231. K. DAVENPORT, “Iran’s Missile Tests Raise Concerns”, (2016) 46(3), *Arms Control Today*, p. 25; K. SUZUKI, *supra* note 37, p. 191.

⁷³ The deadlines set out here are to be counted from Adoption Day. K. DAVENPORT, *The Joint Comprehensive Plan of Action (JCPOA) at a Glance*, Arms Control Association, 2021; K. SUZUKI, *supra* note 37, p. 191.

activities expire in 15 years; and the IAEA inspections under the JCPOA last 20-25 years. Nevertheless, the sunset clause on the AP was put in place for Iran to come into compliance with it since, as highlighted above, despite having signed it, it has never entered to force in the Islamic Republic. The ultimate aim of this clause, moreover, was for Iran to normalise its status in the NPT and the IAEA.⁷⁴

The different and sometimes also divergent interests of the parties were brought together with some concessions –as was to be expected– and are now contained in the final document. On the one hand, Iran commits to reduce its nuclear programme –only developing it for peaceful purposes– and to allow inspections to verify and monitor that is the case. The reduction of Iran’s nuclear programme is directed to uranium and plutonium enrichment, allowing the former with many limits⁷⁵ and highly restricting the latter to create a bomb; banning further construction of heavy-water reactors and reprocessing; limiting “the number and quality of active centrifuges”;⁷⁶ prohibiting reinstall and re-operationalise its centrifuges and enrichment infrastructures⁷⁷ while ensuring transparency of these processes both of declared and undeclared structures and facilities. Tehran must also inform the IAEA and allow it to carry out inspections to verify that its reports correspond to its actual practices, these inspections can take place at every stage of the fuel cycle⁷⁸ and are meant to monitor Tehran’s commitment to the JCPOA. Further, the Deal limits Iran’s capacity to acquire weapons with which it could incur in a violation of the AP and thus avoid any inducement. On the other hand, the E3/EU+3 commit to gradually lift sanctions until finally eliminating them. This progressive easing follows the logic of incentives⁷⁹ so that Iran finds benefits by sticking to the Deal and is aggrieved by failing to do so. It is noteworthy that the sanctions covered by the agreement are only nuclear-related and that, as foreseen in the agreement, can be restored in the event of Iranian non-compliance through the DRM. Some of the sanctions that are object of the JCPOA were the

⁷⁴ K. SUZUKI, *supra* note 37, p. 191.

⁷⁵ A. TABATABAI, “Preserving the Iran Nuclear Deal: Perils and Prospects”, (2017) (818), *Policy Analysis*, pp. 2–3.

⁷⁶ A. DESSI; R. ALCARO, “A last line of Defence: EU-Iran Relations and the Future of the JCPOA”, in V. NTOUSAS (ed.), *Europe and Iran in a fast-changing Middle East*, Edizioni Nuova Cultura: Rome, 2019, pp. 111-138, at 114.

⁷⁷ P. BILLERBECK, *The Iran Deal: Understanding the Ambiguities*, Third Way, 2015, p. 2.

⁷⁸ A. TABATABAI, *supra* note 75, p. 3.

⁷⁹ R. ALCARO; A. DESSI, *supra* note 58, p. 5.

ones imposed on Iranian individuals and institutions related to the nuclear programme or the US secondary sanctions.⁸⁰

4. Initial years of the JCPOA with a focus on EU-Iran relations

On 16 January 2016 (Implementation Day), once the IAEA had verified that Iran had fulfilled its part of the Deal, the EU and the US lifted the sanctions they had committed to in the JCPOA. The Union, on her behalf, lifted all economic and financial sanctions related to nuclear energy; and, the US, only secondary sanctions. Easing sanctions resulted in the resumption of financial and banking activities between entities and individuals in the Islamic Republic and the Union. Importantly, these certainly included Iran's "reconnection to the SWIFT global payments system".⁸¹ Activities related to the oil, gas and petrochemical sectors were reinstated as well as those related to shipping, shipbuilding and transport, metals, gold, other precious metals, money and software sectors.⁸² For Europe, it meant, among other things, that investors and exporters could now accede to Iran's market.⁸³

Relations between Iran and the EU boosted after the conclusion of the JCPOA, especially on economy and trade with an increase in trade of 43%⁸⁴ in comparison to the same period of the previous year when sanctions were still in place and "with EU countries accounting for more than one fifth of Iran's crude oil exports".⁸⁵ Nonetheless, Iran's expectations were higher as in 2018 "the overall volume remained below pre-2010 sanctions levels",⁸⁶ which was also not so low because despite EU's support for UNSC sanctions, between 2008 and 2010 EU's imports from Iranian oil almost doubled.⁸⁷ Iran is not a member of the World Trade Organization (WTO)⁸⁸ and trade with the

⁸⁰ K. SUZUKI, *supra* note 37, p. 189.

⁸¹ S. SHINE; A. CATRAN, "Europe-Iran Relations One Year after the Sanctions were Lifted", (2017) (888), *INSS Insight*, p. 1.

⁸² For a more detailed information on the impact of the lifting of EU sanctions and the now permitted activities, see EEAS, *Information Note on EU sanctions to be lifted under the Joint Comprehensive Plan of Action (JCPOA)*.

⁸³ C. ADEBAHR; R. ALCARO, *supra* note 6.

⁸⁴ S. SHINE; A. CATRAN, *supra* note 81, p. 1.

⁸⁵ R. ALCARO; A. DESSI, *supra* note 58, p. 5.

⁸⁶ D. R. JALILVAND, *supra* note 1, p. 125.

⁸⁷ A. E. TORBAT, *supra* note 3, p. 213.

⁸⁸ Today Iran still is the largest economy outside this Organization and remains a Working Party to this. WORLD TRADE ORGANIZATION, "Iran", *Accession status*.

Union is therefore subject to the EU general import regime.⁸⁹ The conclusion of the JCPOA opened a new chapter between the EU and Iran, the talks between political representatives of both actors – promoted by the Union– were welcomed by Tehran and served to expand on previous dialogues.⁹⁰ In 2015, the EEAS established the Iran Task Force to coordinate and develop relations between the EU and the Islamic Republic⁹¹ and to support the High Representative of the Union for Foreign Affairs and Security Policy (HR henceforth), who is the coordinator of the Joint Commission;⁹² the EEAS has been working on establishing an EU Delegation in Tehran, which has not yet materialised.⁹³

During the 2016 US election campaign, the now-former president Donald Trump already declared his intention to withdraw from the JCPOA. This announcement albeit took a while to materialise, the US unilaterally and violating UNSCR 2231 began to re-impose sanctions on Iran, which led Tehran to report in a questionable transparent manner on its practices as well as to prevent the IAEA from inspecting all its nuclear facilities.⁹⁴ Iran’s provision of information was not entirely transparent and thus the IAEA requested it to submit additional information. In 2016, Tehran’s practices in accordance with the JCPOA did not correspond to what it was reporting to the IAEA; this in its visits was able to confirm that Iran was producing more heavy water than it had acknowledged in its information; in addition to carrying out some of the prohibited activities laid down in Annex I to the JCPOA.⁹⁵

The Union continued to pursue its interests and safeguard the JCPOA. In light of the events and complementary to the JCPOA, the EU enhanced its role under the agreement and elaborated a parallel cooperation realm with Iran in different sectors.⁹⁶ High-level political visits have been crucial for this cooperation as through political consultation both parties have managed to find common

⁸⁹ B. IMMENKAMP, *EU-Iran: The way forward Can the JCPOA survive the Trump presidency?*, European Parliamentary Research Service, 2020, p. 6.

⁹⁰ D. R. JALILVAND, *supra* note 1, p. 125.

⁹¹ EEAS, *Iran Task Force*.

⁹² The Joint Commission’s main responsibility is to ensure the implementation of the JCPOA, all information concerning the Joint Commission is detailed in Annex IV of the JCPOA. B. IMMENKAMP, *supra* note 89, p. 5; UNSC, *supra* note 64.

⁹³ EEAS, *supra* note 91.

⁹⁴ R. OFEK, “The Fragility of the Iranian Nuclear Agreement”, (2017) (589), *BESA Center Perspectives*.

⁹⁵ K. DAVENPORT, “EU Bolsters Iran Nuclear Deal”, (2017) 47(6), *Arms Control Today*, pp. 33–34.

⁹⁶ COMMISSION, *EU visit to Iran: cooperation envisaged in various sectors*, AC/16/2143; *Joint statement by the High Representative/Vice-President of the European Union, Federica Mogherini and the Minister of Foreign Affairs of the Islamic Republic of Iran, Javad Zarif*, 16/1441.

ground. Not only has the EU tried to cooperate in areas such as human rights, agriculture, trade and investment, but also in 2016 the Instrument for Nuclear Safety Cooperation⁹⁷ allocated €5 billion to Iran, which was the step towards materialising the first project for nuclear cooperation with Iran in 2017.⁹⁸

In October 2016, the European Parliament (EP) passed a resolution⁹⁹ on the EU strategy towards Iran after the nuclear agreement. The EU expressed its intentions of continuing the next steps as a “‘dialogue of the four C’s’: a dialogue that is comprehensive in scope; cooperative (...); critical, open and frank (...); and, overall, constructive in tone and practice”.¹⁰⁰ This Resolution expresses the importance of the agreement reached and “welcomes openness in the relations with Iran” by encouraging the development of relations between the EU and Iran in different areas and cooperation with other actors (civil society, NGOs and human rights defenders). The EP welcomes the JCPOA as a big step towards stability in the Middle East and the Gulf region because of Iran’s key position, which it should use towards stabilization. The Resolution also emphasises how beneficial for EU-Iran relations would be to establish an EU delegation in Tehran, in which the EEAS is still working. Notwithstanding, the EP does not dismiss the human rights situation in Iran and reiterates its opposition to the death penalty calling for its abolition. The Union maintains its commitment to not impose further sanctions on Iran if it complies with the JCPOA and to not prevent companies, institutions or firms from doing business with Iran as long as it follows the applicable law and is transparent in the processes. The EP calls transactions to be conducted in euros to encourage European firms to invest in Iran and to ensure that US sanctions cannot disrupt EU operations in the Islamic Republic.¹⁰¹

⁹⁷ The Instrument for Nuclear Safety Cooperation (INSC) was an external policy instrument for the EU that promoted nuclear safety as part of the neighbourhood policy of the Union and, among many other things, funded the IAEA. The INSC was established through Council Regulation (Euratom) No 237/2014 of 13 December 2013 and from the 31st of December 2020 is no longer in force. COUNCIL, Council Regulation (Euratom) of 13 December 2013 establishing an Instrument for Nuclear Safety Cooperation, 237/2014, 2014; COMMISSION, “Nuclear safety”, *International Partnerships*, 2019; IAEA, “European Union co-funded projects”, *Partnerships: European Union*, 2018, IAEA.

⁹⁸ B. IMMENKAMP, *supra* note 89, p. 5.

⁹⁹ EUROPEAN PARLIAMENT, European Parliament Resolution of 25 October 2016 on the EU strategy towards Iran after the nuclear agreement (2015/2274(INI)), P8_TA(2016)0402, 2016.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, para. 18.

Just a month later, the Council adopted conclusions on Iran¹⁰² where it reiterated the EU's commitment to the JCPOA and support to the areas of common interest that had been agreed in 2016,¹⁰³ stating that both the Union and its Member States are open to provide technical assistance and export credits. The Council also expressed support for Iran's accession to the WTO; and concern on the Human Rights situation in the country and on the growing tensions in the region, urging all countries in the Middle East to work towards a more constructive regional environment and, especially Iran, to refrain from its military build-up understanding it as a source of instability and inconsistent with UNSCR 2231.

What might appear as EU's concessions to Iran are not so much because, in line with its strategic interests, human rights violations in general, and violations of freedom of expression, continued internet surveillance, death penalty sentences and executions in particular,¹⁰⁴ constitute an impediment for the EU towards expanding trade with Iran and so has the Union expressed and reiterated on several occasions. These last actions were not part of the JCPOA as the US wanted to only focus on the non-proliferation dimension. Furthermore, while Iran believes to need to engage in the region to gain power and ensure its stability, the EU understands that this move would only increase instability in the Middle East;¹⁰⁵ these opposing postures sometimes constitute problems for developing relations between Brussels and Tehran.

In January 2017, the IAEA Director-General confirmed that Iran had “removed excess centrifuges and infrastructure from the Fordow FEP”¹⁰⁶ in compliance with the JCPOA. The report issued by the IAEA Board of Governors in February 2017 confirmed Iran's activities fully met its obligations under the JCPOA and that it was continuing to provisionally apply the AP; and in August, that Iran had “fully implemented” the JCPOA. The US, on its part, announced sanctions waivers in May, thus fulfilling its part of the Deal.¹⁰⁷ The biannual reports issued by the UN Secretary-General (SG) in June and December 2017 confirmed Iran's compliance with the JCPOA.

¹⁰² COUNCIL, *Council conclusions on Iran*.

¹⁰³ COMMISSION, *supra* note 96.

¹⁰⁴ S. SHINE; A. CATRAN, *supra* note 81, p. 2.

¹⁰⁵ D. R. JALILVAND, *supra* note 1, pp. 125–126.

¹⁰⁶ Y. AMANO, *Statement by IAEA Director General on Iran*.

¹⁰⁷ K. DAVENPORT, “Sanctions Waivers Show U.S. Support for Iran Nuclear Deal”, *Arms Control Now*, 2017, Arms Control Association.

The June report¹⁰⁸ reflected the concerns of some parties about Iran’s ballistic missile programme, the UN SG noted that he did not have sufficient information to clarify the situation. Again, in the December report,¹⁰⁹ he stressed that some of the tests conducted by Iran could constitute a violation of Resolution 2231 as claimed by some parties, but that he would continue to investigate them as the material he had was incomplete to declare a breach of the Deal.

5. US withdrawal from the JCPOA

Trump announced the US was withdrawing from the JCPOA¹¹⁰ on 8 May 2018, in his speech he stated that if he “allowed this deal to stand, there would soon be a nuclear arms race in the Middle East”.¹¹¹ In January, it had already warned the E3 that if no solution was found for the flaws of the Deal, it would withdraw.¹¹² The retirement came along with the restitution of some of the sanctions that were in place before the JCPOA, such as those imposed on petroleum-related transactions, on foreign bank transactions with the CBI or foreign companies and financial institutions engaging with Iran.¹¹³ The withdrawal was not effective until November since deadlines of 90 and 180 days were set for the reimposition of sanctions.¹¹⁴ Although this notice was not a surprise as it had been part of Trump’s electoral campaign, it was believed to not be accurate by the International Community and notably by the other parties to the agreement. Trump had repeatedly accused Iran of not complying with the Deal¹¹⁵, yet the UN SG had to find evidence to back up these accusations. And even after announcing US withdrawal, Iran declared that it would continue to comply with its obligations under the JCPOA.¹¹⁶

¹⁰⁸ UN SG, *Third report of the Secretary-General on the implementation of Security Council resolution 2231 (2015)*, United Nations Security Council, 2017.

¹⁰⁹ UN SG, *Fourth report of the Secretary-General on the implementation of Security Council resolution 2231 (2015)*, United Nations Security Council, 2017.

¹¹⁰ From this point on, the parties to the JCPOA will be the E3/EU+2 and Iran.

¹¹¹ K. DAVENPORT, “EU Moves to Block U.S. Iran Sanctions”, (2018) 48(5), *Arms Control Today*, pp. 24–26.

¹¹² *Ibid.*

¹¹³ C. D. CIMINO-ISAACS; K. KATZMAN; D. E. MIX, *Efforts to Preserve Economic Benefits of the Iran Nuclear Deal*, Congressional Research Service: Washington D.C., 2019; M. PARRY, *Extending the European Investment Bank’s External Lending Mandate to Iran*, European Parliamentary Research Service, 2018.

¹¹⁴ K. DAVENPORT, *supra* note 111; M. PARRY, *supra* note 113.

¹¹⁵ P. POZO SERRANO, “La retirada de Estados Unidos del Plan de Acción Integral Conjunto y la reimposición de sanciones a Irán: aspectos jurídicos y políticos”, (2019) 35, *Anuario Español de Derecho Internacional*, pp. 219–259, at 237.

¹¹⁶ R. ALCARO; A. DESSÌ, *supra* note 58.

The binding nature of the agreement has been disputed –mainly because of its terminology, as explained above– yet it is in any case multilateral, implying common consent and reciprocal commitments. Therefore, withdrawal from one of the parties should have been agreed upon.¹¹⁷ The US is the only party to the agreement that recognises its unilateral repudiation as lawful,¹¹⁸ as it understands the JCPOA as a non-binding agreement –because of the wording ‘voluntary measures’ in the main body headline– and, consequently, under this premise, in International Law, there would be no impediment to reintroduce sanctions against Iran.¹¹⁹ This being said, it is questionable why the US did not activate the ‘snap back’ mechanism and, by using its veto power in the UNSCR vote, ensure the reimposition of sanctions.¹²⁰ This procedure would probably have been better welcomed by the International Community even though there had been no “significant non-performance of commitments under the JCPOA”¹²¹ as required by UNSCR 2231.

The Union’s HR at the time, Federica Mogherini,¹²² issued a statement¹²³ regretting the US position and calling for its reconsideration. Mogherini remarked that the EU would continue to implement its commitments if Iran did so and expressed her concern on the newly announced sanctions by the US, notably remarking that lifting sanctions is an important part of the Deal. Furthermore, the HR stated that she would continue to protect the EU’s security interests and economic investments. On the 21st of May, US Secretary of State, Mike Pompeo, announced¹²⁴ new sanctions on Iran as a penalty for its “nuclear threats, the terrorism, the missile proliferation, and the brutality”. The US sanctions were meant to squeeze Iran’s economy¹²⁵ as Pompeo announced in May: “after our sanctions come in force, it will be battling to keep its economy alive”. Mogherini, after Pompeo’s speech, issued a statement¹²⁶ emphasising the importance of the Deal for the International Community and the hard path for its achievement in 2015 as well as reiterated Iran’s

¹¹⁷ E. CANNIZZARO, “The Iran Nuclear Deal and the Future of the European Foreign Policy”, (2018) 3(1), *European Papers*, pp. 3–5.

¹¹⁸ *Ibid.*

¹¹⁹ P. POZO SERRANO, *supra* note 115, p. 230.

¹²⁰ *Ibid.*, p. 247.

¹²¹ UNSC, *supra* note 64, para. 11.

¹²² Federica Mogherini was High Representative of the Union for Foreign Affairs and Security Policy during the 2014-19 period. EEAS, *supra* note 53.

¹²³ EEAS, *Remarks by HR/VP Mogherini on the statement by US President Trump regarding the Iran nuclear deal (JCPOA)*.

¹²⁴ US DEPARTMENT OF STATE, *Secretary Pompeo Delivers a Speech on a New Iran Strategy*: Heritage Foundation, Washington DC, 2018.

¹²⁵ R. ALCARO; A. DESSI, *supra* note 58, p. 7.

¹²⁶ EEAS, *Statement by HR/VP Mogherini following today’s speech by US Secretary of State Pompeo on Iran*.

compliance with the JCPOA and the Union's continued commitment to it. The Joint Commission met in Vienna on May 25th convened by the EU at Iran's request¹²⁷ to discuss moving forward.

Ever since the US withdrawal was effective, the country implemented a 'maximum pressure' policy, whose only aim is to bring Iran to the table to negotiate a new deal. This is because Washington understands that the JCPOA does not prevent Tehran from acquiring the bomb since it does not directly address Iran's ballistic missile programme, which it considers essential in a deal. Further, the 'maximum pressure' policy seeks to stop Iran from supporting military groups in the region and from curbing its foreign policy ambitions in western Asia.¹²⁸ With this strategy, the US aims to bring the Iranian economy to the brink of collapse so that Iran is forced to sit down and negotiate.¹²⁹ Iran had never considered Europe a significant ally,¹³⁰ but since the E3 diplomatic efforts in the 2000s had ensuing results, its esteem for the EU reached its highest level following the US exit from the JCPOA. Moreover, the harm EU sanctions made to the Iranian economy made Tehran start to perceive the Union as an important player.¹³¹

Consequences for the Union and its response

After the US withdrawal, the EU expressed its firm conviction to continue with its commitments under the Deal –as has already been underlined above–. However, once the US re-imposed sanctions, the EU did not have the capacity to enforce what it had agreed on the JCPOA or to maintain its relations with Iran, as some of the sanctions directly affected the Union. Those sanctions are the so-called US secondary sanctions, which target individuals or companies outside the US jurisdiction –hence extraterritorial sanctions–; these individuals or companies are sanctioned by the US when they engage in transactions with Iran, even if they do not directly impact US activities.¹³² Consequently, EU companies were not willing to do business with Iran at the expense of having their assets frozen by possible US sanctions. This possibility prompted SWIFT to disconnect Iranian

¹²⁷ C. D. CIMINO-ISAACS *et al.*, *supra* note 113.

¹²⁸ B. IMMENKAMP, *supra* note 89, p. 1.

¹²⁹ M. NURUZZAMAN, "President Trump's 'Maximum Pressure' Campaign and Iran's Endgame", (2020) 44(6), *Strategic Analysis*, pp. 570–582.

¹³⁰ D. R. JALILVAND, *supra* note 1, p. 128.

¹³¹ *Ibid.*, p. 129.

¹³² R. ALCARO; A. DESSI, *supra* note 58; E. GERANMAYEH; M. LAFONT RAPNOUIL, "Meeting the challenge of secondary sanctions", (2019) (289), *Policy Brief*, p. 7.

banks and thus leading the Islamic Republic to lose access to international financial markets.¹³³ The European Commission’s spokesperson for Foreign Affairs and Security Policy, Maja Kocijancic, found SWIFT’s decision “rather... regrettable”¹³⁴ though the company had based it on “the interest of the stability and integrity of the wider global financial system”.¹³⁵

In addition to the already explained INSC, in 2018 the European Commission, in an attempt to support Iran’s sustainable and social development, extended bilateral cooperation through the Development Cooperation Instrument.¹³⁶ Further, the Commission also adopted a support package for Iran for the amount of €50 million.¹³⁷ In trying to escape US secondary sanctions, the Union has taken some more steps, among which three are worth highlighting.

Update the “blocking regulation”

In November 1996, the Council adopted Regulation No 2271/96 intending to waive the US extraterritorial sanctions –both in their application and actions based on or resulting from them– that had been imposed against Cuba, Libya and Iran,¹³⁸ thus protecting EU companies.¹³⁹ To this effect, articles 4, 5 and 6 of the Regulation¹⁴⁰ respectively establish non-recognition or enforceability of US court or tribunal decision on European legal or natural persons; authorise non-compliance with US secondary sanctions; and recognise the entitlement to recover the damages suffered (including legal costs) in litigation against US companies in the EU Member States’ courts.

This Regulation was updated in June 2018 through the adoption of a delegated regulation¹⁴¹ by the European Commission to include in the annex the US laws to be blocked –namely the ones enforcing secondary sanctions–. This prohibited EU companies and banks from complying with US secondary sanctions and thus maintaining relations with Iran. In case of non-compliance with the

¹³³ R. ALCARO; A. DESSI, *supra* note 58, p. 8.

¹³⁴ J. STRUPCZEWSKI, “EU says SWIFT decision on Iran banks regrettable”, *Reuters*, 2018.

¹³⁵ SWIFT, “SWIFT and sanctions: Compliance”, *SWIFT - The global provider of secure financial messaging services*.

¹³⁶ B. IMMENKAMP, *supra* note 89, p. 5.

¹³⁷ COMMISSION, “European Commission adopts support package for Iran, with a focus on the private sector”, *European Commission*, 2018, Online Press Release: Brussels.

¹³⁸ B. IMMENKAMP, *Updating the Blocking Regulation: The EU’s answer to US extraterritorial sanctions*, European Parliamentary Research Service, 2018, p. 5.

¹³⁹ COUNCIL, Council Regulation of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions thereon or resulting therefrom, 2271/96, 1996.

¹⁴⁰ *Ibid.*

¹⁴¹ EUROPEAN COMMISSION, Commission Delegated Regulation of 6 June 2018 amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, 2018/1100, 2018.

prohibition, the EU person –natural or legal– “can be sanctioned by the competent authority of the Member States with jurisdiction over it”.¹⁴² Nonetheless, even if companies are compensated for the costs that may arise from US sanctions, companies should avoid using dollars in their transactions with Iran, which in case they do not, the Regulation cannot stop them from asset seizures, criminal charges from the US or losing access to the US financial system, among other things. In practice this may mean having to choose between doing business with the US or with Iran and given the size and importance of the US market, it is not surprising that companies opt for the former. This, moreover, can also lead to legal problems¹⁴³ in complying with European law –and, thus, incurring on US secondary sanctions– or with US law –and potentially being subject to European fines–. That is why, the E3/EU asked the US for exemptions on sanctions against European companies and banks doing business with Iran.¹⁴⁴

European Investment Bank

The European Investment Bank (EIB) through its External Lending Mandate (ELM) supports small and medium enterprises, develops social and economic infrastructures and supports the development of the local private sector, inter alia.¹⁴⁵ It was thought that by extending the EIB’s mandate to Iran, Tehran would come in compliance with the JCPOA.

The European Parliament and Council Decision No 466/2014/EU¹⁴⁶ grants the EIB with an EU budgetary guarantee on external lending. The European Commission on its Delegated Decision 2018/1102¹⁴⁷ incorporates Iran into the list of “potentially eligible regions and countries” for the EIB’s ELM. Nonetheless, no Framework Agreement has ever been in place¹⁴⁸ as the EIB could be banned from accessing the US market.¹⁴⁹

¹⁴² B. IMMENKAMP, *supra* note 138.

¹⁴³ *Ibid.*

¹⁴⁴ C. D. CIMINO-ISAACS *et al.*, *supra* note 112; B. IMMENKAMP, *supra* note 138, p. 7.

¹⁴⁵ M. PARRY, *supra* note 113.

¹⁴⁶ EUROPEAN PARLIAMENT; COUNCIL, Decision of the European Parliament and of the Council of 16 April 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union, 2014.

¹⁴⁷ COMMISSION, Commission Delegated Decision of 6 June 2018 amending Annex III to Decision No 466/2014/EU of the European Parliament and of the Council granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union, as regards Iran, 2018/1102, 2018.

¹⁴⁸ COMMISSION, Report from the Commission to the European Parliament and the Council on the evaluation of the application of Decision No 466/2014/EU of the European Parliament and of the Council of 16 April 2014 granting an

Instrument in Support of Trade Exchanges

In January 2019, the E3 established the Instrument in Support of Trade Exchanges (INSTEX) as a Special Purpose Vehicle (SPV) to allow trade with Iran; in December six¹⁵⁰ other European States joined as stakeholders. INSTEX is a payment system that acts as an intermediary between Europe and Iran when carrying out financial transactions in humanitarian goods (medicines, medical devices and food),¹⁵¹ whether public or private, national or international¹⁵² and with full support from the Member States. This SPV operates with a “twin financial mechanism set up in Iran”¹⁵³ that ensures transparency throughout the process.¹⁵⁴ The money never crosses borders as there are no direct transfers; transactions between European countries and Iran are netted between their exports and imports. For example,¹⁵⁵ a European company sells medical goods to an Iranian firm for €500.000 and, at the same time, an Iranian exporter sends nuts to Europe for the same amount. Provided that INSTEX has approved the transaction, the European exporter of medical goods will receive the money from the European importer of nuts, and, in turn, the Iranian importer of medical goods will pay to the Iranian exporter of nuts.

INSTEX was meant to serve as a bypass or insulated trade channel for European Institutions to escape US sanctions¹⁵⁶ while maintaining trade with Iran and, not least, preserve the JCPOA. In February 2019, Iran welcomed this initiative by the E3 and, at the same time, the US in the international ministerial submit that took place in the Middle East dismissed and condemned the creation of INSTEX as it believed that was contrary to its sanctions against Iran and “urged Europe to withdraw from the Iran nuclear deal”.¹⁵⁷

EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union, COM(2020) 96 final.

¹⁴⁹ E. GERANMAYEH; M. LAFONT RAPNOUIL, *supra* note 132.

¹⁵⁰ Belgium, Denmark, Finland, the Netherlands, Norway and Sweden. B. IMMENKAMP, *supra* note 89.

¹⁵¹ R. ALCARO; A. DESSÌ, *supra* note 58, p. 9.

¹⁵² N. VERÓN, “INSTEX: Gateway to EU strategic autonomy?”, 2019.

¹⁵³ R. ALCARO; A. DESSÌ, *supra* note 58, p. 9; B. IMMENKAMP, *supra* note 89, pp. 10–11.

¹⁵⁴ E. BATMANGHELIDJ; E. GERANMAYEH, “Trading with Iran via the special purpose vehicle: How it can work – European Council on Foreign Relations”, 2019, *European Council on Foreign Relations*, retrieved 6 May 2021 at https://ecfr.eu/article/commentary_trading_with_iran_special_purpose_vehicle_how_it_can_work/.

¹⁵⁵ *Ibid.*; B. IMMENKAMP, *supra* note 89.

¹⁵⁶ As humanitarian goods are not subject to US sanctions, INSTEX was put in place to trade with such goods. E. BATMANGHELIDJ; E. GERANMAYEH, *supra* note 154.

¹⁵⁷ K. DAVENPORT, “EU Trade Tool Seeks to Save Iran Nuclear Deal”, (2019) 49(2), *Arms Control Today*, pp. 33–34.

That fear of interacting with Iran that European companies have is one of the reasons why INSTEX has not been successful as well as Tehran's lack of liquidity and other technical problems.¹⁵⁸ There were high hopes on this instrument that were never met, it took longer than expected to start working and only one transaction has ever been made (March 2020¹⁵⁹); which leads to believe that it will never play a significant role. It is still unclear whether INSTEX would have been more successful if it had been designed for all EU Member States instead of only for the E3 besides some other countries joining in later.

6. Iran's consecutive breaches of the JCPOA and EU's responses

Following the US withdrawal, Iran decided to continue to comply with its obligations under the JCPOA as it expected the other parties to do so as well. However, due to US secondary sanctions, none of the parties was able to fully comply with their obligations. And, further, in April 2019, the US announced that it would not extend the sanctions waivers for the countries importing Iranian oil or for non-proliferation projects in the JCPOA framework.¹⁶⁰ This action was intended to pressure Iran to stop its provocations,¹⁶¹ but it had the opposite effect. On 8 May, the Iranian president announced they would be exceeding the limits of low-enriched uranium production set up in the JCPOA and heavy water,¹⁶² which means a reduction of its commitments under the Deal¹⁶³ and that it would only return to them when there was a solution to its oil¹⁶⁴ and metal exports and banking transactions were facilitated.¹⁶⁵ The E3/EU issued a joint statement¹⁶⁶ expressing its great concern on the declaration made by Iran urging it to comply with its commitments under the JCPOA and expressing its preservation and implementation. They also called the other parties to not take actions that could force the other parties to not comply with the Deal. A role reversal can thus be seen, with

¹⁵⁸ R. ALCARO; A. DESSÌ, *supra* note 58, p. 12; B. IMMENKAMP, *supra* note 89, pp. 10–11.

¹⁵⁹ B. IMMENKAMP, *supra* note 89.

¹⁶⁰ UN SG, *Eighth report of the Secretary-General on the implementation of Security Council resolution 2231 (2015)*, United Nations Security Council, 2019.

¹⁶¹ J. MASTERSON, "Iran Announces Third Nuclear Breach", (2019) 49(8), *Arms Control Today*, pp. 17–18.

¹⁶² R. ALCARO; A. DESSÌ, *supra* note 58, p. 9.

¹⁶³ B. IMMENKAMP, *supra* note 89, p. 2; E. B. LANDAU, "Iran's Nuclear Violations: JCPOA and Beyond", (2019) (1231), *INSS Insight*.

¹⁶⁴ Iranian oil exports were paused after the re-imposition of US sanctions. R. ALCARO; A. DESSÌ, *supra* note 58, p. 8.

¹⁶⁵ K. DAVENPORT, "Iran Newly Breaches Nuclear Deal", (2019) 49(10), *Arms Control Today*, pp. 24–25.

¹⁶⁶ E3/EU, *Joint statement by High Representative of the European Union and the Foreign Ministers of France, Germany and the United Kingdom on the JCPOA*, 190509_2.

Iran now threatening not to comply with the Deal if there are sanctions against it,¹⁶⁷ rather than the other parties pressuring Tehran on imposing sanctions if it does not adhere to the JCPOA.¹⁶⁸ Furthermore, it is unclear whether Iran is complying with the NPT.¹⁶⁹

Iran's non-compliance with the JCPOA starts on the 1st of July 2019, and although it was announced, its actions constitute in any case violations of the Deal. In the first breach, Iran exceeds the limits on enriched uranium stockpile set out in the JCPOA and so is verified and reported by the IAEA.¹⁷⁰ Just seven days later, the second violation occurred, of which the IAEA was informed of and reported on the following day,¹⁷¹ this time Iran went beyond the uranium enrichment levels. In September, Tehran surpassed the restrictions on R&D with advanced centrifuges and cascades being this its third breach of the Deal¹⁷² confirmed by the IAEA in one of its reports.¹⁷³ The resumption of uranium enrichment at the Fordow FEP¹⁷⁴ and the exceeding of the heavy water stockpile limit¹⁷⁵ established in the JCPOA in November constitute the fourth violation. Davenport and Kimball¹⁷⁶ argue that even if these actions constitute violations of the JCPOA, at no point could they pose an immediate proliferation risk or significantly reduce the time to acquire a bomb. Such actions are therefore intended to strain the other parties to deliver their promises and alleviate the pressure put on the Iranian economy. The UN SG, on its 2019 second report on the Implementation of Security Council Resolution 2231, stated that the US sanctions are contrary to the JCPOA goals

¹⁶⁷ Iran has stressed that all steps it takes are reversible, demonstrating the new strategy of making its compliance with the agreement conditional on the lifting of sanctions.

¹⁶⁸ E. B. LANDAU, *supra* note 163.

¹⁶⁹ B. IMMENKAMP, *supra* note 89, p. 4.

¹⁷⁰ IAEA BOARD OF GOVERNORS, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, GOV/INF/2019/8.

¹⁷¹ IAEA BOARD OF GOVERNORS, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, GOV/INF/2019/9.

¹⁷² E. B. LANDAU, *supra* note 161; J. MASTERSON, *supra* note 159.

¹⁷³ IAEA BOARD OF GOVERNORS, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015)*, GOV/INF/2019/10.

¹⁷⁴ IAEA BOARD OF GOVERNORS, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, GOV/INF/2019/16; E. B. LANDAU, *supra* note 161.

¹⁷⁵ IAEA BOARD OF GOVERNORS, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, GOV/INF/2019/17.

¹⁷⁶ K. DAVENPORT; D. KIMBALL, "With Further Nuclear Moves, Iran Seeks to Leverage Promised Sanctions Relief", 2019, *Arms Control Association*, retrieved 10 May 2021 at <https://www.armscontrol.org/blog/2019-07-09/p4-plus-1-iran-nuclear-deal-alert>.

and that they could impede Iran's ability to implement it.¹⁷⁷ Likewise, he regretted Tehran's reduced commitment to the provisions of the agreement.¹⁷⁸

The next turning point is the assassination of Qasem Soleimani in early January 2020, who was the head of the Revolutionary Guards' Quds Force. The killing was claimed by the US and justified to protect its "people and interests around the world".¹⁷⁹ Consequently, Iran's response was to further reduce its commitments under the Deal by not sticking to the limitations on the number of centrifuges nor on uranium enrichment (fifth breach). Although it stressed that it would continue to cooperate with the IAEA and that it would only return to the restrictions under the JCPOA when there were no sanctions against it and it achieved the benefits thereupon agreed.¹⁸⁰ The E3 in a joint statement called Iran to refrain from proliferation and urged it "to reverse all measures inconsistent with the JCPOA".¹⁸¹ Some days later, they issued a new statement explaining they had referred Iran's violations of the JCPOA to the Joint Commission under the DRM in good faith, making clear that their commitment to the Deal and its preservation would continue and that at no time were they "joining a campaign to implement maximum pressure".¹⁸² This movement though supported by the EU was rejected by China and Russia, the other parties to the Deal.¹⁸³ Josep Borrell,¹⁸⁴ as Coordinator of the Joint Commission, stated that the DRM was triggered to achieve "full and comprehensive implementation of the JCPOA" and in no case intended to re-impose sanctions on Iran.¹⁸⁵ However, the Islamic Republic further announced that it had exceeded the limits on enriching uranium¹⁸⁶ and that it would withdraw from the NPT if it was referred to the UNSC under

¹⁷⁷ UN SG, *supra* note 160, para. 3.

¹⁷⁸ *Ibid.*, para.4.

¹⁷⁹ US DEPARTMENT OF DEFENSE, *Statement by the Department of Defense*.

¹⁸⁰ JOURNALIST 1843, "Iran takes final step by abandoning JCPOA restrictions", *IRNA English*, 2020, online: Tehran.

¹⁸¹ E3, *Joint statement from President Macron, Chancellor Merkel and Prime minister Johnson*.

¹⁸² E3, *E3 foreign ministers' statement on the JCPOA*; B. IMMENKAMP, *supra* note 88, p. 3.

¹⁸³ CHINA, "Foreign Ministry Spokesperson Geng Shuang's Regular Press Conference", *Ministry of Foreign Affairs of the People's Republic of China*, 2020; RUSSIAN FEDERATION, "Comment by the Information and Press Department on the decision of the United Kingdom, Germany and France to formalize the dispute resolution mechanism under the Joint Comprehensive Plan of Action on the Iranian nuclear programme", *The Ministry of Foreign Affairs of the Russian Federation*, 2020.

¹⁸⁴ Josep Borrell Fontelles is the High Representative of the Union for Foreign Affairs and Security Policy from the 1st of December 2019. EEAS, *supra* note 53.

¹⁸⁵ J. BORRELL FONTELLES, "Statement by EU HR Borrell on the Dispute Resolution Mechanism", 2020.

¹⁸⁶ M. STRAUSS; R. EMMOTT, "EU's Borrell extends timeline for dispute mechanism on Iran deal", *Reuters*, 2020, online: Brussels.

the DRM.¹⁸⁷ The European parties reiterated that, for the moment, they would not go under the time frame expressed in the agreement that would finally impose sanctions on Iran; so was demonstrated when Borrell extended the timeline.¹⁸⁸

The Joint Commission met in Vienna on the 26th of February 2020 to address Iran's reduced commitments under the JCPOA. While acknowledging that this was partly due to the re-imposition of sanctions by the US after its withdrawal, the parties recognised that preservation of the agreement is essential for non-proliferation and expressed concern about Iranian activities.¹⁸⁹ In March, the IAEA Director-General during the Board of Governors meeting addressed that they had identified "possible undeclared nuclear material and nuclear-related activities" in Iran and that it had "not provided access to the locations". The Director-General called Iran to cooperate with the Agency and noted that there had been no changes on "Iran's implementation of its nuclear-related commitments under the JCPOA".¹⁹⁰ Such is the lack of change in Iran's compliance that in April it "launched its first military satellite"¹⁹¹ and refuelled its Bushehr nuclear power plant.¹⁹²

To commemorate the 5th Anniversary of the JCPOA, in July 2020, as coordinator of the Deal, Borrell published an article¹⁹³ where he stressed the importance of the agreement and the costly diplomatic negotiations for its conclusion. He highlighted that it is not a symbolic agreement as it meant the end of Iranian isolation in the International Community with the lifting of sanctions; and called for full implementation and compliance as the US secondary sanctions that followed this country's withdrawal made it impossible for the other parties of the agreement to deliver on their promises, which led Iran to stop its commitments as it believed it had not received the expected economic benefits arising from the Deal.

In 2006 the UN started to impose an embargo on conventional arms sales to Iran, UNSCR 2231 provided for an extension of this until October 2020. Pompeo already in April 2020 during a press availability expressed the US intention not to let the embargo expire in October and to work for so

¹⁸⁷ K. DAVENPORT; D. KIMBALL, *supra* note 176.

¹⁸⁸ M. STRAUSS; R. EMMOTT, *supra* note 186.

¹⁸⁹ EEAS PRESS TEAM, *JCPOA: Chair's Statement following the meeting of the Joint Commission*.

¹⁹⁰ IAEA DIRECTOR GENERAL'S INTRODUCTORY STATEMENT TO THE BOARD OF GOVERNORS.

¹⁹¹ B. IMMENKAMP, *supra* note 89, p. 7.

¹⁹² IFP EDITORIAL STAFF, "Iran's Bushehr Nuclear Power Plant Gets Refueled", *Iran Front Page*, 2020.

¹⁹³ J. BORRELL FONTELLES, "Saving the Iran Nuclear Deal", *Project Syndicate*, 2020.

in the UNSC.¹⁹⁴ At the US request and after it drafted a Resolution, a vote was held in the UNSC in August, which did not result in any extension of the embargo as only the US and the Dominican Republic voted in favour.¹⁹⁵ In this situation, the US had threatened to activate the DRM and so it did while claiming to be a legal party to the JCPOA, despite its withdrawal in May 2018.¹⁹⁶ In the already mentioned press availability, the US Secretary of State expressed that they “don’t have to declare [them]selves a participant” of UNSCR 2231 as they believe that as members of the UNSC, it is clear that the rights resulting from its resolution also apply to them. The other parties to the Deal do not consider the US to be a party to JCPOA, or even a participant. The arms embargo eventually elapsed and the US imposed sanctions by way of blocking the property of US entities that sell, broker or facilitate arms transactions to Iran.¹⁹⁷ Further, some months earlier, at the end of May, the US had already announced¹⁹⁸ the end of the sanctions waiver that covered nuclear projects in Iran under the JCPOA; an announcement that the E3/EU deeply regretted.¹⁹⁹ In July 2020, the HR of the Union as coordinator of the Joint Commission of the JCPOA announced that he had received a letter from Iran triggering the DRM because of concerns of the E3 in implementing the agreement.²⁰⁰

During this year, different IAEA reports in March,²⁰¹ June,²⁰² September,²⁰³ and November²⁰⁴ revealed that Iran had exceeded the limits of enriched uranium and heavy water stockpile. Moreover,

¹⁹⁴ M. R. POMPEO, *Secretary Michael R. Pompeo At a Press Availability*, 2020.

¹⁹⁵ Permanent members China and Russia voted against, and the rest of the Council members abstained. As already presented, a resolution to be passed in the UNSC requires nine votes in favour including those of the P5 as laid down in article 27 of the UN Charter. K. KATZMAN, *U.N. Ban on Iran Arms Transfers and Sanctions Snapback*, Congressional Research Service, 2020; UN, *supra* note 70.

¹⁹⁶ B. IMMENKAMP, *supra* note 89, p. 3.

¹⁹⁷ K. KATZMAN, *supra* note 195.

¹⁹⁸ M. R. POMPEO, “Keeping the World Safe from Iran’s Nuclear Program (May 27)”, *U.S. Embassy in Georgia*, 2020.

¹⁹⁹ E3/EU, *JCPOA: Joint statement by spokespersons of the High Representative of the EU and the Foreign Ministries of France, Germany and the United Kingdom*.

²⁰⁰ J. BORRELL FONTELLES, *JCPOA: Statement by the High Representative Josep Borrell as coordinator of the Joint Commission of the Joint Comprehensive Plan of Action on the Dispute Resolution Mechanism*, 200703_8.

²⁰¹ IAEA BOARD OF GOVERNORS, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, GOV/2020/5.

²⁰² IAEA BOARD OF GOVERNORS, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, GOV/2020/26.

²⁰³ IAEA BOARD OF GOVERNORS, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, GOV/2020/41.

²⁰⁴ IAEA BOARD OF GOVERNORS, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, GOV/2020/51.

another report in November²⁰⁵ declared that Iran had installed a new cascade in the Natanz FEP. In December, the E3 released a joint statement²⁰⁶ expressing their worry over the installation of three cascades of advanced centrifuges at the FEP in Natanz, following an announcement by the IAEA. After the JCPOA ministerial meeting of December, the parties “agreed to continue dialogue to ensure full JCPOA implementation” and welcomed the possibility of the US joining in again.²⁰⁷

2021 begins as a turbulent year, the IAEA reports from early January that Iran has resumed uranium enrichment and wants to pursue R&D activities on uranium metal production.²⁰⁸ The E3 responded with a joint statement expressing concern about Iran’s announcement because “Iran has no credible civilian use for uranium metal”.²⁰⁹ The Islamic Republic announced that it had tested a new satellite launcher at the beginning of February and two months later launched its first military satellite.²¹⁰ Further, it also started non-compliance with the Safeguards Agreement and reiterated that all steps are reversible and conditional on the lifting of sanctions. Notably, the most important reduction of compliance under the JCPOA is monitoring. Because of Iran’s conditionality, the IAEA offered to negotiate a temporary bilateral agreement so that verification and monitoring by the Agency could continue even under Iran’s non-compliance with the Deal.²¹¹ The Islamic Republic remained consistent on continuing failure to meet its obligations and communicated to the IAEA in April that it would enrich uranium to over sixty per cent in its advanced centrifuges. To which the E3 responded with a new joint statement declaring that such action is a major step in the acquisition of a nuclear weapon as it has no credible civilian need for enrichment at that level. They also expressed concern about the Natanz centrifuges and qualified the whole development as

²⁰⁵ IAEA BOARD OF GOVERNORS, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, GOV/INF/2020/16.

²⁰⁶ E3, *Statement on the JCPOA*.

²⁰⁷ E3/EU+2; ISLAMIC REPUBLIC OF IRAN, *Joint ministerial statement on the JCPOA*.

²⁰⁸ IAEA BOARD OF GOVERNORS, *Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)*, GOV/INF/2021/2; F. MURPHY, “Iran works on uranium metal for reactor fuel in new breach of nuclear deal”, *Reuters*, 2021: Vienna.

²⁰⁹ E3, *Statement on the JCPOA*.

²¹⁰ P. HAFEZI; A. WILLIAMS, “Iran tests new satellite launcher - state media”, *Reuters*, 2021: Dubai.

²¹¹ J. MASTERSON, “E3 Put JCPOA at Risk, Luckily Cooler Heads in Vienna Prevailed”, 2021, *Arms Control Now*, retrieved 19 June 2021 at <https://www.armscontrol.org/blog/2021-03-08/e3-put-jcpoa-risk-luckily-cooler-heads-vienna-prevailed>.

regrettable at a time when the US membership to the Deal is being negotiated after Trump's withdrawal.²¹²

7. Possible re-joining of the US

Relations between Iran and the US in recent years, and more specifically after the latter's exit from the JCPOA, have been marked by distance and sanctions. Albeit in recent months, both sides have declared their intention to get closer, but not without conditions. The US said it was willing to lift sanctions against Iran if it complied with the JCPOA and the Iranian president in June 2020 declared they have no problem on resuming talks with the US, but only if it apologised for withdrawing, compensated Tehran for the damage caused²¹³ and returned to the agreement, which entails the lifting of sanctions. In any case, what has been seen is the intention to come closer and to reach a possible solution even if no one wants to take the first step.

Biden's victory in the November 2020 US presidential election was seen as an opportunity for a US return to the JCPOA. Yet the goal of the current and previous US administration is the same: to prevent Iran from acquiring nuclear weapons. The way to do so is different, with Trump advocating for sanctions and even military action, and Biden defending lifting sanctions and returning to the JCPOA.²¹⁴ US foreign policy took a turn following Biden's appointment as from his first moment in office he conceived diplomacy as the way to conduct and not only to prevent Iran from getting nuclear weapons. So has been reflected both in its relationship with the EU and with the parties to the JCPOA. In February 2021, the US and the E3 held a ministerial meeting during which they recognised the key relevance of the JCPOA for the nuclear non-proliferation regime and to ensure that Iran does not develop a nuclear weapon. For so, they affirmed their objective is for Iran to return to full compliance with the Deal –which would lead the US to do the same– and to strengthen the JCPOA. Further, the E3 welcomed the US intention to return to diplomacy with Iran.²¹⁵ In early May, during the G7 Ministerial, Borrell and the Secretary of State of the US discussed some

²¹² E3, *Iran to start uranium enrichment up to 60%: E3 statement*.

²¹³ P. HAFEZI; A. HEAVENS; W. MACLEAN, "Iran says it's ready for talks if U.S. apologises over nuclear pact", *Reuters*, 2020: Dubai.

²¹⁴ S. STEIN; S. BROM, "Israeli Policy on Iran vis-à-vis the Biden Administration", (2021) 1422, *INSS Insight*.

²¹⁵ E3; US, *Joint Statement by the Secretary of State of the United States of America and the Foreign Ministers of France, Germany, and the United Kingdom*.

important bilateral issues, addressed the possible return of the US to the Deal and “how to ensure an effective implementation of the JCPOA”.²¹⁶

Since the beginning of April, meetings in Vienna between the parties to the JCPOA to discuss the possible re-joining of the US have been ongoing, with up to six rounds of negotiations.²¹⁷ The current parties to the JCPOA are discussing at the same table while the US delegation is in another hotel over Iran’s refusal to negotiate face-to-face. To this end, Enrique Mora²¹⁸ is acting as a diplomatic intermediary between the US and Iran.²¹⁹ Although talks are currently on standby pending the election of Iran’s president following its presidential election on 18 June²²⁰ and many issues remain unresolved, many have already been addressed and it seems that a final agreement is closer. On the same day as the elections in Iran, the Union’s High Representative and Iran’s foreign ministry met during the Antalya diplomatic forum. Borrell stressed the flexibility needed to reach an agreement due to the difficulty and importance of the decisions and called for Iran’s continued commitment under the JCPOA regardless of the outcome of the election.²²¹

The eventual agreement reached will only be the first step for the US but the last for Iran. The US recognises the negotiations under the JCPOA as essential to impede Iran to acquire nuclear weapons but understands that Iran’s ballistic program should be included in a Deal and that its role in the regional proxy wars needs to be tackled as well, though separately from the Deal. Conversely, for Tehran, the US re-joining the Deal is the last step as it seeks the lifting of sanctions and the consequent revitalization of its economy. The US return to the JCPOA will not mean that all sanctions in place against Iran are waived; there is no agreement in the US Congress on non-nuclear-related sanctions, especially those relating to human rights and terrorism, so it seems quite unlikely that sanctions outside the scope of the Deal will eventually be lifted.

²¹⁶ EEAS PRESS TEAM, *United States: High Representative/Vice-President Josep Borrell meets with Secretary of State Antony Blinken*, 210504_4.

²¹⁷ EEAS PRESS TEAM, *JCPOA: Joint Commission to meet virtually*, 210401_30.

²¹⁸ Enrique Mora is Deputy Secretary-General within the European External Action Service Secretariat-General.

²¹⁹ F. MURPHY, “‘Intense’ Iran nuclear talks resume as Germany calls for rapid progress”, *Reuters*, 2021: Vienna.

²²⁰ Ebrahim Raisi was elected as president on the Election and though he said that it would not make the JCPOA the central issue of Iran’s foreign policy, he stated that would preserve it. M. CHMAYTELLI; DUBAI NEWSROOM, “Iran says nuclear talks closer to deal, Russia says much work remains”, *Reuters*, 2021: Dubai; A. SHAHLA; G. MONTEVALLI, “Conservative hardliner Ebrahim Raisi records landslide win in Iran’s Presidential election”, *The Print*, 2021: Tehran.

²²¹ EEAS PRESS TEAM, *Iran: High Representative Josep Borrell met with Foreign Minister Javad Zarif in the margins of the Antalya Diplomatic Forum*, 210618_20.

8. Conclusions

The Iran nuclear crisis can be said to begin in 2003 following the IAEA's discovery that Iran was working on its nuclear programme through secret facilities. Yet, EU-Iran relations predate this and before the crisis began, they developed through two EU-promoted dialogues, the first critical (1992) and the second comprehensive (1998).

During the early years of the crisis, the negotiating team advocating for diplomacy as the solution to the crisis was led by the E3, who were joined by Javier Solana as the Union's High Representative for CFSP. That the High Representative of the Union joined the E3 was remarkable, to say the least, as it was a very new figure in the EU institutional structure, little known outside it. Moreover, the EU emerged on the most sensitive question in international relations when the broader international context was incredibly contested. The achievements of these first years can be therefore attributed to the diplomacy of the E3, which led to the signing of the Paris Agreement in 2004. The 2005 Iranian election ended this agreement and began Iran's non-compliance with the AP to the Safeguards Agreement; this prompted the IAEA to refer the issue to the UNSC.

From 2006 onwards, the UNSC will be responsible for passing several resolutions²²² imposing sanctions on Iran for its nuclear activities, such as the continued enrichment and reprocessing of uranium and nuclear R&D. Despite the best efforts of the E3 and the sanctions imposed, Iran did not cease its activities and the UNSC, therefore, chose to extend sanctions in its successive resolutions. These sanctions –which included but were not limited to an asset freeze, a ban on arms sales to and purchases from Iran and a ban on dual-use goods– had no effect on Iran's nuclear programme as it continued its course. This led the EU in 2010 to impose unilateral sanctions on the Islamic Republic in parallel to the multilateral sanctions it had supported through the UNSC and continued to support. As pointed out, this marked a turning point because the EU recognised that UN sanctions were not enough to halt Iran's nuclear programme for military purposes and because the sanctions it imposes encompass activities not directly linked to this. Thus, during the period 2010-2013, the EU established unilateral restrictive measures such as the boycott or the embargo on Iranian crude oil, despite its substantial harm on the Union's economy –which was still suffering the consequences of the 2007 economic crisis– and its significant impact on the depreciation of the euro.

²²² These resolutions are 1969 (2006), 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010).

Rouhani's election as Iran's president in 2013 opened the door to diplomacy between the E3/EU+3 and Iran; this allowed for the conclusion of the Joint Plan of Action in 2013, a remarkable development since it was the predecessor to the Joint Comprehensive Plan of Action. This last is the greatest success of the EEAS technical capabilities and of European diplomacy. On the one hand, it is thanks to the E3 and its negotiating strategy since 2003 that this agreement was concluded. On the other hand, without EU's mediation between the E3 and the 3 in negotiations, it could not have been closed either. The JCPOA allowed the Union to partly secure its interests in Iran and the Middle East, as for a short period of time it seemed that security of the region would not be subjected by Iran's nuclear weapons or by factors that were conditioned by them. Furthermore, it ended with Iran's isolation in the International Community as the sanctions related to its nuclear programme were lifted; this was Tehran's main driver to signing the JCPOA as not doing so would have only meant more sanctions and, thus, further isolation and collapse of its economy.

US withdrawal from the JCPOA was a tragedy as this Deal was –and still is– a key issue in many areas: proliferation, security in the Middle East, International Law and the value of multilateral diplomacy. Above all, it was a catastrophe for the Union, as the JCPOA has been considered one of the EU's greatest foreign policy successes. The Iran nuclear crisis has not been the only conflict in which the EU has advocated for diplomacy rather than military action as the solution; for example, it has also done so in Libya and Syria. The US withdrawal compromised this hard-won European position. Further, it could be said that the secondary sanctions that followed the US withdrawal prevented the Union from delivering on its own will and even on its promises, as it impeded the EU from fulfilling the commitments made under the JCPOA. This frustrated Iran and was highlighted on numerous occasions, such as in Rouhani's January 2021 televised speech, when he said that “the Europeans have failed to fulfil their promises”²²³ as he believes the Union “failed to act as an independent bloc” from the US. It is this lack of compliance that led Tehran to trigger the DRM in July 2020 against the E3 and to stop perceiving the EU as an important player on the international scene. Alcaro and Dessì even argue that US secondary sanctions have had more impact on “EU's foreign policy than the stated intentions of EU governments”.²²⁴ All this, of course, has done great damage to Europe's credibility. While it is true that the EU took steps outside the JCPOA to

²²³ P. HAFEZI *et al.*, *supra* note 213.

²²⁴ R. ALCARO; A. DESSÌ, *supra* note 58, p. 20.

improve and continue its relationship with Iran. First, by developing a broad bilateral agenda towards Iran complementary to the JCPOA, and then some steps to preserve the JCPOA after the US withdrawal –namely updating the 1996 blocking regulation, extending EIB’s mandate and INSTEX–. These have not had a real impact on the continuation of the JCPOA and, in particular, on Iran’s compliance with it.²²⁵

With Biden at the helm of the US administration, hope for a deal has returned. The role of the current HR of the Union, besides its position as coordinator of the JCPOA Joint Commission, is not prominent; it could be argued that this is the main consequence that the Trump era has revealed: the limits of what the EU can and cannot do. Even if a new agreement is reached in the coming months, the EU’s credibility will not be fully restored. This agreement that is now on the table and to which the US might re-join has an expiry date: 2026. There are only five years left and many issues to deal with since, like the US, European countries would like to address many more, mainly Iran’s role in the region, something Tehran is reluctant to do. Even if the US joins the JCPOA and the steps taken by Iran in the last years are reversible, the Islamic Republic is closer to having a nuclear bomb as the actions taken during the last years have led it to acquire technological knowledge and capabilities that it did not have before; once it knows, it cannot unlearn. There is a need for Europeans to play the role of facilitators and connectors, which could somehow bring back the credibility of the Union.

²²⁵ *Ibid.*, p. 12.

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