



Implementing the Iran Nuclear Deal: A Status Report

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Executive Summary

One year since its “implementation day”, 16 January 2016, the July 2015 nuclear agreement between Iran and the five permanent members of the UN Security Council plus Germany (the P5+1) – the Joint Comprehensive Plan of Action (JCPOA) – is both a success and in jeopardy. It has delivered so far on its narrow objective: effectively and verifiably blocking all potential pathways for Iran to race toward nuclear weapons, while opening the door to the country’s international rehabilitation and economic recovery. But in its transactional nature lies the accord’s vulnerability: it has not begun to transform the enmity between Iran and the U.S., leaving it exposed to an unstable political environment. If Iran still deems the deal in its national interest, it should not only adhere to its letter and spirit, but also move away from regional zero-sum pursuits. The Trump administration will face a starker choice. It could scuttle the deal, deliberately or by neglect; it should seek to make it stronger for all by a better-for-better bargain.

Over the past year, internal polarisation in Tehran and Washington about the accord’s merits often overshadowed what really matters: that it is working and delivering concrete results. It has put Iran’s nuclear program under the most stringent inspection mechanism ever implemented, while lengthening the breakout time to produce weapons-grade uranium from a few weeks to more than a year. Since January 2016, the International Atomic Energy Agency (IAEA) has verified six times that Iran has fulfilled its JCPOA obligations. The relaxation of U.S., European Union (EU) and UN nuclear-related sanctions has allowed Iran to regain oil market share, recover billions in frozen assets and attract foreign direct investment, turning its once shrinking economy into the region’s fastest growing.

Yet, implementation, as with any complex technical agreement, has not been flawless. Iran committed several technical violations, none, alone or together, material. Paradoxically, they proved the accord’s efficacy: the IAEA quickly detected each and Iran remedied it. There have been more serious problems with sanctions relief. Iran still lacks normal international banking ties, as major financial institutions remain circumspect, hampering its reintegration into the global economy and dashing inflated public expectations of rapid economic recovery.

Each side accuses the other of dragging its feet or failing to put its house in order, but causes of sanctions relief delays are manifold. One is bewildering red tape, which renders due diligence too costly and cumbersome for risk-averse firms. No less chilling for investment is the real threat of sanctions “snapback” if the agreement collapses. Iran failed to pave the ground for the great economic opening it promised its people. With rampant corruption, opaque ownership structures, poor physical infrastructure and an unwieldy legal and regulatory environment, it remains a difficult place to do business. Political in-fighting in Tehran and volatility in Washington deepen uncertainties. The most consequential political wildcard remains the U.S. Congress, where hostility toward Iran runs deep, and new sanctions are being considered.

This is because of concerns over Iran’s regional resurgence and ballistic-missile tests, but the accord could not have been negotiated successfully if those issues had been on the table. Today they constitute the primary threat to its successful

implementation. This, in turn, is because the JCPOA's transformational potential has not yet materialised in the face of powerful stakeholders who moved to ensure it was a ceiling on, not a foundation for, détente between Iran, its neighbours and the U.S. The conundrum is that without addressing the broader political antagonism that pits Iran against its neighbours and the West, the JCPOA at best will remain fragile and its implementation halting, but without full implementation, resolving the underlying political antagonism may prove impossible.

The most troubling uncertainty is the new U.S. administration's approach. During the campaign, Donald Trump condemned the JCPOA as "the worst deal ever negotiated". As president, he can repudiate it or refrain from the steps necessary to sustain it. But killing the accord or allowing it to die when Iran is in compliance would lead the other signatories – representing a near international consensus – to blame Washington squarely and likely destroy the broad coalition critical for sanctions enforcement that provided leverage for negotiating the accord in the first place.

Alternatively, Trump could rigorously police implementation while pushing back firmly against Iran's regional policies, which have helped further inflame Middle Eastern conflicts, frightened U.S. allies and angered the U.S. political establishment. But scrupulous enforcement cuts both ways: lacklustre U.S. implementation would adversely affect Iran's ability to reap the benefits the U.S. has committed to deliver under the deal. The risk of an overly militarised response to Iran's regional manoeuvres is that the JCPOA could become collateral damage in a destructive tit-for-tat.

Trump could also try renegotiation to strengthen some of the deal's nuclear provisions or add non-nuclear ones. But this, as viewed by many in his entourage, would require new non-nuclear sanctions to augment coercive pressure and/or a military threat to induce Iran to return to the table. Iran would almost certainly demand more relief for more concessions, not accept less for more.

Iran has options for responding to attempts to undermine the deal. It could play victim, blame Washington and hope to erode sanctions by trying to drive a wedge between the U.S. and its partners. But this would require restraint in the face of U.S. JCPOA violations or provocations. Or it could ramp up its nuclear program and reduce IAEA access or target U.S. assets in theatres across Iraq and Syria, any of which risks a U.S. (or Israeli) military response. Even a softer, calibrated response would reignite the nuclear standoff and complicate future negotiations.

All these scenarios are troubling. Yet, there is another way: a good-faith, consensual, mutually beneficial effort to renegotiate aspects of the accord might achieve a better-for-better arrangement and a more stable outcome. A Republican president backed by a Republican-controlled Congress would have more credibility in offering incentives to Iran than President Barack Obama ever did.

Improving the JCPOA while enforcing it would require a quiet dialogue in which both sides recognised one another's security concerns and core interests and communicated their nuclear and regional red lines. One outcome might be an addendum strengthening some JCPOA nuclear provisions or adding non-nuclear ones in return for rolling back the U.S. primary embargo. If that is not attainable, the U.S. might focus on non-Iran-specific arrangements, including regionalising or even universalising some of the JCPOA's restrictions or transparency measures.

On a practical level, Washington should keep communication channels with Tehran open and give its treasury department more resources to unwind sanctions. Iran should strictly adhere to the JCPOA and stop using nuclear or regional brinksmanship as leverage. Other P5+1 members should discourage it from overreacting to a possible change in U.S. tone and approach but also clearly tell Washington that if it unjustifiably walks away from the accord, it will do so alone.

Trump is the first U.S. president in more than two decades who enters office not needing to worry about Iran crossing the threshold to nuclear weaponisation undetected. If he tries to adjust the JCPOA unilaterally through coercion, the accord may not survive, reigniting the nuclear crisis and compounding regional instability. But he also has a chance to succeed on all fronts: a functioning and more stable accord, a framework for managing differences with Iran and perhaps even less bloodshed in the Middle East.

Washington/Brussels, 16 January 2017

Implementing the Iran Nuclear Deal: A Status Report

I. Introduction

The prolonged process that led to the 14 July 2015 Joint Comprehensive Plan of Action (JCPOA) was tortuous. It took more than a decade of diplomatic fits and starts and a perilous sanctions-vs-centrifuges race for Iran and the P5+1/E3+3 (the UN Security Council's five permanent members plus Germany) to agree to a core compromise that Crisis Group had advocated from the outset and contributed to: acceptance of a limited and tightly monitored uranium enrichment program on Iran's soil in return for reintegration into the global economy.¹

More than two years of gruelling multilateral diplomacy culminated in a meticulously parsed 159-page accord that received unanimous Security Council endorsement on 20 July 2015.² The agreement then went through a trial by fire in the U.S. Congress and the Iranian parliament. Once it emerged unscathed, it entered into force on 18 October 2015 – designated as Adoption Day per the JCPOA's calendar. This triggered the start of Iran's rollback of its nuclear program and cooperation in resolving the International Atomic Energy Agency's (IAEA) longstanding questions about its past nuclear activities.

Implementation Day occurred on 16 January 2016, after the IAEA certified that Iran had fulfilled its key commitments under the agreement, prompting sanctions relief. The quick progress surprised most observers and dismayed accord critics. Its Iranian detractors were concerned that President Hassan Rouhani's eagerness for sanctions relief had led him to hasten rolling back the nuclear infrastructure, irreversibly damaging it and depriving Tehran of leverage to ensure that the West delivered its end of the bargain.³ U.S. opponents were deeply dissatisfied with how the

¹ See Crisis Group Middle East Reports N°s 18, *Dealing with Iran's Nuclear Program*, 27 October 2003; 51, *Iran: Is There a Way Out of the Nuclear Impasse?*, 23 February 2006; 116, *In Heavy Waters: Iran's Nuclear Program, the Risk of War and Lessons from Turkey*, 23 February 2012; 152, *Iran and the P5+1: Solving the Nuclear Rubik's Cube*, 9 May 2014; and Briefings N°s 34, *The P5+1, Iran and the Perils of Nuclear Brinkmanship*, 15 June 2012; 40, *Iran and the P5+1: Getting to "Yes"*, 27 August 2014; and 43, *Iran Nuclear Talks: The Fog Recedes*, 10 December 2014.

² UN Security Council Resolution 2231, 20 July 2015.

³ The just under three-month time span between Adoption and Implementation Days was significantly less than the P5+1's six-to-nine month estimates. Crisis Group interviews, U.S. and European officials, New York, September 2015. A letter to Rouhani by parliamentarians charging that the pace of centrifuge deactivation exceeded the supreme leader's directive (which conditioned implementation on the IAEA settling allegations on Iran's past nuclear activities) caused the government to temporarily stop the process. "Iran stops dismantling nuclear centrifuges under pressure from hardliners", Reuters, 10 November 2015. The government justified the rush, implicitly confirming the accusation, by reiterating the \$100 million daily cost of sanctions' continuation for Iran. "ضرر تاخیر اجرای برجام" ["Damage of the JCPOA's delayed implementation"], ISNA.ir, 21 September 2015.

IAEA closed the file on allegations of the program's past military dimensions, saying the JCPOA Joint Commission (the seven negotiating parties, coordinated by the EU) had made exemptions allowing Iran to skirt some obligations.⁴

The criticism missed the bigger picture. Speeding implementation accelerated the core trade-off that motivated the deal: unshackling Iran's economy from sanctions while closing all potential pathways for weaponising its nuclear know-how. The decisions to grant exemptions, known as memorialisations, are standard for implementing a technically complex agreement; none impinged on the constraints that render nuclear weaponisation virtually impossible.⁵ Their confidential nature – likewise hardly exceptional in the non-proliferation field – was the result of the procedural requirement that all eight Joint Commission members approve publication of internal documents. Several refused: some out of concern for a political backlash over details of what critics on both sides viewed as additional concessions, and others not wishing to politicise the IAEA's work.⁶

Events have shown it was naïve to believe the JCPOA was secure and could be sustained routinely from that point. It remained as fragile as forces against it were formidable; implementing its technical requirements was taxing, especially where its language left room for diverging interpretations and disagreement; and restructuring a multi-dimensional sanctions regime that reached deep into global commerce proved a herculean challenge. This report analyses the one-year record of implementation, draws lessons and offers suggestions for improving and sustaining an accord that remains a net positive for non-proliferation.

The February 2016 parliamentary election was also part of the calculus. Crisis Group Middle East Report N°166, *Iran After the Nuclear Deal*, 15 December 2015.

⁴ See "Final Assessment on Past and Present Outstanding Issues regarding Iran's Nuclear Program", IAEA, GOV/2015/68, 2 December 2015, and the related Board of Governors resolution, GOV/2015/72, 15 December 2015. Leaks about the Joint Commission's confidential decisions gave credence to these suspicions. David Albright and Andrea Stricker, "JCPOA Exemptions Revealed", Institute for Science and International Security, 1 September 2016. The decisions exempted liquid, solid and sludge wastes, particularly those in pipes of Isfahan's Enriched UO₂ Powder Plant (EU-PP), and irradiated uranium enriched to below 3.67 per cent, from the 300kg threshold the JCPOA set; near-20 per cent enriched uranium in unrecoverable "lab contaminant"; and nineteen "hot cells" (radiation containment chambers for handling radioactive material) that are larger than the deal permitted. "Decision of the Joint Commission", EU External Action Service, 6 and 16 January, and 18 December 2016.

⁵ For instance, plutonium produced in hot cells is neither sufficient nor usable for nuclear weapons without a reprocessing facility Iran lacks and is banned from constructing. The same applies to weaponising waste contaminated with low-enriched uranium needing further processing to highly-enriched uranium prohibited under the JCPOA. Julian Borger, "Obama administration denies secret loopholes in Iran nuclear agreement", *The Guardian*, 1 September 2016.

⁶ A senior U.S. official said, "the U.S. and the EU are for more transparency, but our hands are tied as Iran, Russia and China oppose publication of memorialisations". Crisis Group interview, Washington, 13 September 2016. The documents are at https://eeas.europa.eu/headquarters/headquarters-homepage/2281/iran-and-eu_en. Tim Mak, "Trump team wants you to see the Iran nuke documents Obama's kept from view", *The Daily Beast*, 5 December 2016.

II. So Far, so Good?

Controversy and concerns over issues outside the nuclear accord, mainly Iran's growing regional posture and ballistic-missile tests, have often overshadowed that the JCPOA's two key components – restricting and rigorously monitoring Iran's nuclear program and sanctions relief – are working and delivering concrete results. The accord could not have been reached if those issues had been on the table, but today they are the primary threat to its successful implementation.

A. Nuclear Commitments

Since January 2016, the IAEA has verified on six separate occasions that Iran is fulfilling its JCPOA obligations.⁷ The agency has had no problem reaching sites to which Iran had previously blocked access; is using live, online enrichment monitoring systems; and is surveilling the nuclear fuel chain in real time. Noting that Iran's is the most monitored nuclear program in the world, an IAEA inspector said, "one thing is indisputable; post-JCPOA we have more rigorous inspection of a program that has become much smaller".⁸ That said, implementation has not been without imperfections, but these are attributable largely to the predictable difficulties such a technically complex effort faces in a highly charged political environment.

There have been numerous objections to the IAEA's positive reports, but none amounts to proof of a violation of the deal.⁹ One has to do not with what they contain but what they omit: details on Iran's low-enriched uranium stockpiles and advanced-centrifuge research. The IAEA, however, has no mandate for publicly reporting on these issues. (The P5+1, however, receive a detailed, confidential report that covers these issues.) An agency official explained: "Before the JCPOA, six UN Security Council resolutions required the agency to provide that much detail, but these have been overridden by a new resolution that has no such requirement, and there is no basis for breaching confidentiality".¹⁰

There were also several technical infringements. Iran's heavy-water production exceeded the JCPOA's 130-metric-ton cap twice – by 0.9 and 0.1 tons in February

⁷ See "Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015)", GOV/INF/2016/1, 16 January 2016; GOV/2016/8, 26 February 2016; GOV/2016/23, 27 May 2016; GOV/2016/46, 8 September 2016; GOV/2016/55, 9 November 2016; and GOV/2017/1, 16 January 2017.

⁸ According to IAEA officials, every month between six and sixteen UN nuclear inspectors are on the ground in Iran. Crisis Group interviews, Vienna, November 2016. The IAEA's human resources dedicated to Iran increased by 120 per cent, while days on the ground grew by 100 per cent and surveillance images received per day increased by 90 per cent. IAEA fact sheet available at www.iaea.org/sites/default/files/jcpoa-iaea-and-iran-infographic.pdf.

⁹ A former U.S. nuclear negotiator referred to these objections as "technical quibbles". Crisis Group interview, New York, 27 September 2016.

¹⁰ Crisis Group interview, IAEA official, Vienna, November 2016. Critics contend that lack of data made it impossible to determine Iran's compliance independently. David Albright, Serena Kelleher-Vergantini, and Andrea Stricker, "IAEA's First Post-Implementation Day Report: Key Information Missing", Institute for Science and International Security, 26 February 2016. Iranians see the generalised format as a stepping stone towards normalising their nuclear program. Crisis Group interview, Iranian official, Vienna, November 2016.

and November 2016 respectively. Iranian officials, trumpeting their country's change of stature from pariah to nuclear materials supplier, contend that overproduction resulted from improved efficiency and did not violate the JCPOA, since it neither sets a rigid threshold – it estimates Iran's needs at around 130 tons – nor a timetable for exporting the excess for sale.¹¹ U.S. officials, however, say they saw it as a signal by Iran that it could retaliate against what it perceived as U.S. Treasury foot dragging on sanctions relief. Europeans agreed, but blamed Washington for encouraging the behaviour by being first to purchase Iran's excess heavy water. In Jerusalem, this and other infringements were seen as attempts to test the deal's boundaries.¹²

Paradoxically, these infringements are a testament to the agreement's efficacy: in each case, excess heavy water was shipped to Oman within days, despite not posing a proliferation threat since Iran no longer has a functional heavy-water reactor. One should expect further episodes of this nature – not necessarily because of nefarious intent in Tehran or spurious accusations from Washington, but because the JCPOA's language is not always clear. There are also ambiguities, for instance, around the definition of recoverable low-enriched uranium and procurement of material for manufacturing rotors used in advanced centrifuges. In the past year, these caused tension and lengthy negotiations among the parties.¹³

Likewise, other aspects of the agreement, for instance foreign cooperation to advance Iran's nuclear technology, have been more drawn out than Tehran had hoped. Yet here, too, there is no violation. Transformation of the bunkered Fordow enrichment plant into an international physics centre with Russian help, where 358 centrifuges will produce stable medical isotopes, has been slow; so has modernisation of the heavy-water reactor in Arak, a project China and the U.S. co-chair.¹⁴ While Iranian scientists have regained access to the IAEA's nuclear safety and security workshops, nuclear cooperation with other countries has lagged, except for

¹¹ An Iranian official boasted of the high quality of Iran's heavy water and its ability to take over 70 per cent of the international market. Crisis Group interview, Vienna, November 2016. The JCPOA's language is quite vague; paragraph 14, Annex I, "estimates" Iran's heavy-water needs to be 130 metric tons and requires all excess material to "be made available for export to the international market ... and delivered to the international buyer for 15 years".

¹² A European official said, "the U.S. committed the original sin by buying 32 tons of Iran's heavy water at the price of \$8.6 million, whetting their appetite". Crisis Group interview, Brussels, November 2016. A senior U.S. official said, "we sought to destigmatise the issue so that others would buy as well". Crisis Group interview, Washington, 13 September 2016. Iran also sold heavy water to Russia. "Iran sold 70 tons of heavy water to Russia, US", Tass, 27 September 2016. An Israeli diplomat said, "the Iranians are testing the boundaries and will continue to do so. It's a decision to defy". Crisis Group interview, 4 January 2017.

¹³ The issue of what should or not be counted toward Iran's 300-kg low-enriched uranium has been contentious because, as an IAEA official put it, "unlike 'inventory' that includes everything, the word 'stockpile' used in the JCPOA needs definition of what is and is not counted". Crisis Group interview, Vienna, November 2016. Iran's demand to procure a large amount of carbon fibre used to manufacture centrifuges was equally contentious. The P5+1 indicated it preferred Iran do so in smaller instalments. Crisis Group interview, European officials, London, December 2016. "EU demands Iran disclose details of nuclear parts making", Associated Press, 16 September 2016. Supreme Leader Ayatollah Ali Khamenei forbade Iranian negotiators from yielding on either issue. Khamenei.ir, 15 June 2016.

¹⁴ Crisis Group interviews, Iranian and European officials, New York, September 2016.

nuclear fusion with France, particle accelerators with Spain and Italy and nuclear safety with the EU.¹⁵

The JCPOA's procurement channel for Iran to access dual-use material and equipment was activated in January 2016. The channel is unprecedented, complementing existing export control arrangements while largely delegating the UN Security Council's authority to the Joint Commission's procurement working group. In its first six months, it received only one application, but in the second half of 2016, after Iran established its internal procedural framework for end-use certification, it received and processed nearly a dozen.¹⁶

The biggest threat to smooth implementation and to the procurement channel in particular is the continuation of Iran's ballistic missile program – a particularly sensitive issue that the JCPOA does not address. Iran deems missile research and development a sovereign right and legitimate form of defence, but the P5+1's Western members do not. Security Council Resolution 2231, which endorsed the JCPOA, "calls upon" Iran not to undertake until 2023 any activity related to ballistic missiles "designed to be capable of delivering nuclear weapons". However, the language is non-binding, and lack of an internationally-agreed definition of nuclear-capable missiles invites diverging views on the Iranian program.¹⁷

B. *Sanctions Relief Commitments*

A vast array of U.S., EU and UN nuclear-related sanctions on Iran were relaxed on Implementation Day. In the ensuing months, the impact on Iran's economic performance become increasingly tangible: oil production and exports returned to pre-sanction levels of 3.85 million barrels per day, of which around two million are exported; the country absorbed more than \$11 billion of foreign direct investment –

¹⁵ Nuclear cooperation, as outlined in JCPOA Annex III, is a key component of the accord. Richard Stone, "Iranian Sun", *Science*, vol. 353, no. 6304 (2016), pp. 1083-1087. Iran has reached agreements with other countries, but they have yet to bear fruit. "Iran, Switzerland sign agreement on nuclear safety", Press TV, 28 September 2016; "Iran, Czech Republic sign nuclear cooperation document", *Tehran Times*, 14 December 2016.

¹⁶ Barbara Slavin, "Channel to monitor Iranian procurement awaits real test", *Al-Monitor*, 14 July 2016. States seeking to export dual-use items to Iran submit proposals to the Security Council, which forwards them to the Joint Commission's procurement working group (all seven negotiating parties, coordinated by the EU) for review; the latter provides recommendations to the Security Council within twenty working days (up to 45 in case of disagreements), which has five days to reject the Commission's verdict or it is deemed approved. An Iranian official noted: "After years of encouraging murkiness to skirt sanctions, it took time to put procedures in place for transparency". Crisis Group interview, Vienna, November 2016. A German intelligence report on Tehran's procurement gave ammunition to critics, though the activities occurred in 2015 and pre-dated JCPOA implementation. "Germany says Iran kept trying to get nuclear equipment after deal", *The Wall Street Journal*, 8 July 2016. U.S. and European officials said they had no information on continued procurement efforts outside permitted channels in 2016. Crisis Group interviews, Washington, Berlin, London, August-December 2016.

¹⁷ See paragraph 3 of Security Council Resolution 2231's Annex B. Louis Charbonneau, "U.S. vows to push for U.N. action on Iran despite Russian opposition", *Reuters*, 14 March 2016. "Iran statement following UNSC Resolution 2231 endorsing JCPOA", foreign ministry, 20 July 2015. According to the Missile Technology Control Regime (MTCR), missiles able to carry a 500kg payload at least 300km could carry weapons of mass destruction.

the highest annual level in nearly two decades; trade with the EU increased by 42 per cent; Iran regained access to \$55 billion of previously frozen assets; inflation dropped from a peak of 45 per cent in 2013 to less than 8 per cent in December 2016; Iranian companies signed contracts worth \$150 billion with major European, Asian and even U.S. firms. The International Monetary Fund (IMF) forecasts that the economy will grow 4.5 per cent during the 2016-2017 fiscal period, up from 0.5 per cent the previous year.¹⁸

Still, sanctions relief has yet to reach its potential. Perhaps most important, Iran still lacks normal international banking relations. While some second and third-tier international banks have resumed providing financial services, first-tier banks have not.¹⁹ This has hampered reintegration into the global economy, which, along with low oil prices, has dashed highly-inflated public expectations of a rapid recovery. Each side has blamed the other. Iranian Foreign Minister Javad Zarif complained:

[The U.S. Treasury] goes out and tells people that “it’s OK to do business with Iran, but”... and then there are five pages of ifs and buts. So at the end of the day, the banks say, “we’ll take the safe road” ... As far as the U.S. government is concerned ... it took [it] seven months to issue licenses for seventeen out of the 118 planes Airbus plans to sell [to Iran].²⁰

This, as another senior Iranian official put it, is not a material breach of the deal, but “at best procrastination, at worst deliberate harassment” and has deepened mistrust. He added: “The JCPOA is moderately healthy, but Iranian confidence in dealing with the U.S. has been bruised and is ailing and failing”.²¹

U.S. officials point to the unprecedented complexity of untangling the sanctions and to their extensive efforts, from publishing hundreds of pages of guidelines, to

¹⁸ Annex II, JCPOA; U.S. Executive Order 13716, 16 January 2016; Council Decision (CFSP) 2015/1863, 18 October 2015; Council Regulation (EU) 2015/1861, 18 October 2015; and UNSC Resolution 2231. “Iran oil exports hit pre-sanctions high on run-up in condensate shipments”, Reuters, 3 October 2016; “میزان سرمایه‌گذاری خارجی اعلام شد” [“Amount of foreign investment was announced”], ISNA.ir, 3 December 2016; “Inflation rate drops to 7.2% in Iran”, *Tehran Times*, 23 December 2016; Crisis Group interviews, Iranian entrepreneurs, Frankfurt, 16 November 2017. “Regional Economic Outlook: Middle East and Central Asia”, IMF, October 2016.

¹⁹ A close associate of Iran’s president said, “what helped Rouhani overcome elite resistance to the deal [ie, popular expectations] has now come back to haunt him”. Crisis Group interview, Istanbul, July 2016. An Iranian Central Bank official said, “we have established 614 correspondents with 230 international banks”. Crisis Group interview, Washington, October 2016. “Europe’s banks begin tentative return to Iran”, *Financial Times*, 3 April 2016. Nevertheless, tellingly, despite best UK government efforts, no London bank opened an account for the Iranian embassy to conduct daily business. Crisis Group interview, Iranian and British officials, New York and London, September-November 2016.

²⁰ “A Conversation with Javad Zarif”, event at Council on Foreign Relations, New York, 23 September 2016. A senior U.S. official explained that preparing the licenses – given the technology’s complexity and legal requirements of ensuring they do not violate lingering UN restrictions on Iran – took a long time, as did Iran’s negotiations with Boeing and Airbus. Crisis Group interview, Washington, September 2016.

²¹ Crisis Group interview, New York, September 2016. “Iran’s Supreme Leader says U.S. lifted sanctions only on paper”, Reuters, 27 April 2016; “Iran’s President Rouhani slams US ‘lack of compliance’ with nuclear deal”, CNN, 22 September 2016.

dozens of multi-agency trips to explain sanctions relief to Iran's trading partners, to U.S. Secretary of State John Kerry's efforts, including personally encouraging European banks to engage Iran.²² A senior U.S. official said:

Never before has the U.S. had to repeal its sanctions and demonstrate results in a short period of time. And, of course, unanticipated complexities abounded. Who would have thought converting billions of Iran's unfrozen oil revenue from an uncommon currency like the Omani rial to euros would be so complicated without disrupting their economy and access to the U.S. dollar?²³

The Europeans blame both sides. An EU official said:

U.S. Treasury officials are often as uncompromising as Iranians are unrealistic. The JCPOA isn't a trade and investment agreement. Our commitment was to repeal sanctions and provide clarity, not to make commercial decisions for private-sector actors.²⁴

Finger-pointing notwithstanding, both sides have tried to resolve the remaining obstacles by frequent communication and consultation.²⁵ Yet, reality is more nuanced than either likes to admit; the causes of sluggish relief are manifold.

The primary U.S. embargo, which since the 1980s has broadly prohibited U.S. persons from engaging in transactions with Iran, is still in force with a few exceptions, such as for civilian aviation, food and humanitarian goods, Iranian caviar, pistachios and carpets; so are secondary U.S. sanctions related to Iran's regional policies, ballistic missiles program and human rights record.²⁶ Moreover, 32 U.S. states and the District of Columbia maintain their own sanctions against Iran that target contracting, public trust and insurance divestment and banking.²⁷ There are also sanctions of individuals and entities: of the 600 sanctioned pre-JCPOA, more than 200, including ones with links to the economically omnipresent Islamic Revolutionary Guard Corps, remain blacklisted by the treasury department's Office of Foreign Assets Control (OFAC).

²² Crisis Group interviews, U.S. officials, Washington, September-December 2016. "Kerry: Businesses using US sanctions as excuse to avoid Iran", Associated Press, 10 May 2016. For a critical take on Kerry's initiative, see Stuart Levy, "Kerry's peculiar message about Iran for European banks", *The Wall Street Journal*, 12 May 2016. A senior Iranian official said, "the reality is that a junior officer at the U.S. Treasury Department could erect more obstacles for legitimate business with Iran than Kerry can remove". Crisis Group interview, New York, 24 September 2016.

²³ Crisis Group interview, Washington, September 2016.

²⁴ Crisis Group interview, EU officials, Brussels, 15 November 2016.

²⁵ Crisis Group interviews, Iranian, European, U.S. officials, New York, September 2016. The Joint Commission has met once at the ministerial level and six times at the deputy level.

²⁶ For more background, see Crisis Group Middle East Report N°138, *Spider Web: The Making and Unmaking of Iran Sanctions*, 25 February 2013. One of the most arduous elements of U.S. primary sanctions has proven to be their requirement that multinational companies wall off their U.S. staff and board members from business with Iran. Crisis Group interviews, European entrepreneurs, Zürich, Frankfurt, London, September-November 2016. "BP ring-fences CEO Dudley from Iran decision-making", Reuters, 21 November 2016.

²⁷ These have not been affected by the JCPOA, since as an executive agreement – unlike a ratified treaty – it is not binding for U.S. states. Eli Lake, "Obama administration urges states to lift sanctions on Iran", Bloomberg, 18 April 2016.

Navigating this complex web of residual sanctions within Iran's opaque economy is difficult. Due diligence is costly and cumbersome, and its standard is ill-defined, adversely affecting businesses' risk-reward calculus of trying to comply while operating within the Iranian economy's opaque ownership structure. The costs are not theoretical: since 2004, the U.S. has levied more than \$15 billion in fines for violations.²⁸

One of the most challenging sanctions bans access to the U.S. financial system. There have been various work-around attempts: OFAC clarifications (as abstruse as the restriction is severe); Iran's efforts to circumvent by denominating its trade in other currencies; symbolically significant deals like Boeing's sale of 80 civilian aircrafts – the largest Iran-U.S. contract in 37 years that both sides hoped would have a snowball effect. None did much to resolve the problem.²⁹

No less chilling for investment – particularly since Donald Trump won the U.S. presidential election – is the threat of reimposition of sanctions suspended under the JCPOA. Unilateral U.S. sanctions can be resumed by executive order; a snapback mechanism embedded in the accord can reinstate UN sanctions if one party contends that Iran has reneged on its commitments. These would not be reapplied retroactively, but the eventuality increases the risk and potential reputational costs of doing business with Iran.³⁰

²⁸ Businesses often find OFAC guidelines legalistic and vague. In October 2016, it issued one noting that business dealing with an entity not blacklisted but “minority owned, or controlled in whole or in part” by a blacklisted Iranian “is not necessarily sanctionable for a non-U.S. person”. See M.10 in “Frequently asked questions relating to the lifting of certain U.S. sanctions under the JCPOA”, U.S. Treasury Department, 12 October 2016. John Smith, OFAC's acting director, said, “we will not be playing ‘gotcha’ for companies that conducted the appropriate due diligence, collected the documentation, but unwittingly found themselves dealing with a Revolutionary Guards front company”. Atlantic Council, Washington, 16 June 2016.

²⁹ A senior U.S. official said, “no one wants to be the first to take a leap of faith, but many are keen to be the second or third big bank to return to Iran”. Crisis Group interview, Washington, September 2016. Both Boeing and Airbus agreements, however, are financed by a consortium of large financial institutions and denominated in euros. Crisis Group interviews, European officials, Berlin, London, November 2016. “Boeing-Iran deal for \$16.6 Billion of jets is first since 1979”, Bloomberg, 11 December 2016. “Total to finance Iran project with euros to avoid U.S. sanctions”, *The Wall Street Journal*, 8 November 2016. Republican opposition prevented the Obama administration from easing this restriction during and after the negotiations. “Rubio, Kirk introduce bill to block Iran's access to US money”, *The Hill*, 6 April 2016. In October, OFAC explained that non-U.S. financial institutions may process dollar transactions provided they “do not involve, directly or indirectly, the U.S. financial system”. This implies banks can only use dollars at hand, ruling out financing for large development and infrastructure projects.

³⁰ Per JCPOA paragraphs 36-37, any agreement participant can complain to the Joint Commission, which has fifteen days to resolve the issue; an unresolved issue is referred to the foreign ministers, who have another fifteen days. The Joint Commission then has another five days to resolve the issue. If, after this 35-day process, the complaining party is still unsatisfied, it can refer the issue as significant non-performance to the Security Council, which within 30 days must vote on a resolution to continue suspension of sanctions – a resolution the complaining party can veto (except Germany, not a permanent Council member), thus snapping back the sanctions. European officials complained OFAC remains inflexible on extending the standard 180-day grace period for foreign firms to wind down business in Iran in case of snapback. A U.S. official said, “whoever needs more time has to explain it to OFAC, and it will consider it”. Crisis Group interviews, Berlin, Washington, November-December 2016.

The Iranian government, for its part, failed to pave the institutional ground adequately for the economic opening, while raising unrealistic expectations about the deal's potential payoff in order to build support for it. With rampant corruption, lack of transparency, poor infrastructure and a cumbersome legal and regulatory environment, Iran remains a difficult place to do business.³¹ The banking sector, saddled with many non-performing loans, is considered high-risk by the international Financial Action Task Force (FATF), which sets anti-money laundering and counter-terrorist financing standards for financial institutions worldwide.³²

Volatile politics in Washington and Tehran add to business unease. The election of Trump, a vocal JCPOA critic, and doubts, given the sluggish economic recovery and death of his mentor, former President Akbar Hashemi Rafsanjani, about Rouhani's ability to obtain a second mandate in Iran's May 2017 presidential poll deepen uncertainties. Infighting in Tehran over economic priorities and vested interests has complicated and slowed economic reform.³³ The most consequential political wildcard remains the U.S. Congress, which continues to try to impose new sanctions.³⁴ Tehran's response has been what a senior Iranian official called a "zero-tolerance policy" toward any new measures.

Tensions reached their height with the ten-year renewal of the Iran Sanctions Act (ISA), the bedrock of U.S. sanctions architecture, in November. Iran deemed it a "gross violation" of the JCPOA; the Obama administration viewed it as unnecessary,

³¹ Iran is 130th of 168 countries in Transparency International's corruption perceptions index, 120th of 190 in the World Bank's 2016 ease of doing business index, and 76th of 138 in the World Economic Forum's Global Competitiveness Report 2016–17. In its first quarterly report to parliament on JCPOA implementation, Iran's foreign ministry admitted to these problems impeding trade. "گزارش وزارت امور خارجه به مجلس درباره اجرای برجام" ["Foreign Ministry's report to the Parliament"], MFA.ir, Fars News, 17 April 2016. A European oil executive said, "many developing countries are plagued with similar problems, but in the case of Iran perception is worse than reality". Crisis Group interview, London, August 2016.

³² FATF has suspended countermeasures against Iran until June 2017 to allow time to update financial regulations, comply with modern banking standards and address strategic deficiencies. FATF Public Statement, 24 June 2016. An Iranian Central Bank official complained that "the West isolated Iranian banks for a decade and now asks why we aren't up to date. If they can't take our hand, they should at least unchain our feet". Crisis Group interview, Washington, October 2016. Cooperation with FATF became highly politicised inside Iran, as JCPOA opponents saw it as yet another concession to the West. Saheb Sadeghi, "Financial watchdog worries Iranian hard-liners", *Al-Monitor*, 28 September 2016.

³³ The quarrel over a new contract for oil-sector investments, the Iran Petroleum Contract (IPC), is a case in point. It was delayed more than two years, until the first was awarded to state-affiliated entrenched interests. Yeganeh Torbati, "Iran signs key oil contract with Khamenei-linked firm", *Reuters*, 4 October 2016; "Shell signs provisional oil and gas deal with Iran", *Financial Times*, 7 December 2016.

³⁴ In 2016, Congress considered more than two dozen bills that could potentially undermine the accord. Among the first bills introduced in the 115th Congress, sworn in on 3 January 2017, were two on Iran: to authorise the president to use military force against it; and to levy sanctions against its missile program. Per JCPOA paragraph 26, "the U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from re-introducing or re-imposing the sanctions specified in Annex II that it has ceased applying under this JCPOA, without prejudice to the dispute resolution process provided for under this JCPOA ... and will refrain from imposing new nuclear-related sanctions".

since re-imposing sanctions in case of violations does not require the ISA to be in force, but Congress acted with an overwhelming majority. President Obama allowed the legislation to take effect without his signature on 15 December, though his rare procedural protest did not win him points in Tehran.³⁵ Rouhani in response ordered planning for design and construction of a nuclear propeller for marine transportation. That was carefully calibrated to satisfy domestic politics and signal discontent to Washington, while remaining within the bounds of the accord, which permits such research if it remains on the drawing board.³⁶

Posturing aside, the ISA extension leaves the status quo unaltered as long as the president continues to waive the provisions the JCPOA suspended. Still, a series of tit-for-tats could lead to mutual escalation that spirals out of control.³⁷

C. *Transactional, not Transformational*

JCPOA ambiguities and technical implementation hitches in both the nuclear and sanctions realms become outsized political storms because the deal has done little to alleviate Iran-U.S. animosity. To ensure success, the parties negotiated it as a narrow arms-control accord not to usher in broader détente or collaboration in areas of shared concern, though some had hoped (or feared) that it would.

In both Tehran and Washington, powerful stakeholders moved to ensure the nuclear deal was a ceiling on, not a foundation for, rapprochement. Iranian provocations have included ballistic-missile tests, harassment of U.S. Navy ships in the Persian Gulf, alleged arms shipments to Huthi rebels in Yemen, arrest of dual Iranian-American nationals and hostile rhetoric toward the U.S. and its allies.³⁸

³⁵ The administration blocked efforts to add poison pills. The renewal passed 99-0 in the Senate and 419-1 in the House of Representatives. This was the first time in 27 years that a bill was enacted without the president's signature. Carole Morello, "Iran sanctions extended, but without Obama's signature", *The Washington Post*, 15 December 2015. As during the 2014-2015 negotiations, when the parties could not agree on the ISA extension, they agreed to mitigate the issue once it arose. Crisis Group interviews, Iranian and U.S. officials, Vienna, June 2015.

³⁶ "Blasting U.S. nuke-deal 'violations', Iran vows new nuclear project", Associated Press, 13 December 2016. An official from Iran's atomic energy organisation said that developing nuclear propellers would take years and is uneconomic. Quoted in "برگزاری کمیسیون برجام 21 دی" ["Joint Commission will meet on 10 January"], ISNA.ir, 20 December 2016.

³⁷ Addressing Zarif's complaint about the ISA's extension, the Joint Commission concluded that it does not affect Iran's ability to benefit from sanctions relief as long as the suspension of relevant provisions continues. "Press release on behalf of the Joint Commission of the JCPOA", EU External Action Service, 10 January 2017.

³⁸ A conservative Iranian parliamentarian explained: "If you were in the shoes of Ayatollah Khomeini and listened to U.S. officials boasting about how sanctions brought Iran to the table, would you move to make more compromises? No. You first demonstrate that you did not compromise from a position of weakness". Crisis Group interview, Tehran, May 2016. "Reports: Iran fires missile marked with 'Israel should be wiped'", *USA Today*, 8 March 2016; "Iran's Khamenei says U.S., 'evil' Britain can't be trusted", Reuters, 3 June 2016; "Americans sentenced to 10 years in Iranian prison", CNN, 18 October 2016; "U.S. Navy says it seized weapons from Iran likely bound for Houthis in Yemen", Reuters, 4 April 2016. Paragraph 5, Annex B, Security Council Resolution 2231, extended the conventional-arms embargo on Iran until 2020. The U.S. Navy contends it had 35 dangerous encounters with Iranian Revolutionary Guards patrol boats in 2016, compared to 23 in 2015. Whether the naval tangles in the Gulf were in Iranian or international waters is disputed. Dan

Congress has evinced its own hostility and seems determined to derail any détente, as well as the JCPOA itself, through its own provocations. It lifted the U.S. visa exemption for citizens of 38 countries who had visited Iran (or Syria, Iraq and Sudan) since 2011, a move Iran deemed contrary to the JCPOA's spirit, as it affected its tourism and business ties with Europe. Congress also manoeuvred the administration into sanctioning eleven Iranians and entities involved in ballistic-missile launches just a day after Implementation Day.³⁹ A Supreme Court decision to compensate U.S. victims of overseas attacks with \$2 billion of the Iranian central bank's impounded assets further enraged the Iranian leadership.⁴⁰

This highlights a significant conundrum: not addressing broader disagreements makes the JCPOA fragile and implementation problematic, but without full implementation, resolving underlying antagonism is impossible. The dilemma is nowhere felt as strongly as in the linkage between nuclear and non-nuclear issues, which already complicates sanctions relief; the accord's U.S. opponents are bound to play on this distinction, penalising Iran's regional and domestic policies, which the JCPOA does not bar, to undermine the JCPOA itself.⁴¹

Without improvements in Iran's relations with the U.S. and its neighbours, the accord could eventually collapse even if it endures in the short term. A danger point could come when in 2023-2024, per the JCPOA calendar, Iran starts expanding its nuclear capacity in parallel to the U.S. permanently winding down its nuclear-related sanctions.⁴² The immediate challenge, however, is the Trump presidency.

Lamothe, "Navy destroyer opens fire after 'harassing' behaviour by Iranian patrol boats", *The Washington Post*, 9 January 2017.

³⁹ "Iran warns Obama over visa waiver restrictions", *The Hill*, 21 December 2015. The provision was attached to the \$1.1 trillion federal spending bill at the last minute, making veto impossible. Crisis Group interview, U.S. official, Washington December 2015. "Treasury sanctions those involved in ballistic missile procurement for Iran", Treasury Department, 17 January 2016.

⁴⁰ Rick Gladstone, "Iran threatens lawsuit in Hague court Over U.S. ruling on \$2 billion", *The New York Times*, 25 April 2016.

⁴¹ Indira Lakshmanan, "Inside the plan to undo the Iran nuclear deal", *Politico*, 15 July 2016.

⁴² In October 2023, per paragraphs 21.1-21.3 of JCPOA Annex V, the U.S. administration will seek appropriate legislative action to terminate statutory nuclear-related sanctions (eg, ISA). Six months later, per paragraph 63, Annex I, and Iran's research and development plan, Iran will be permitted to test up to 30 IR-6s and 30 IR-8s (five to fifteen times more powerful than its existing IR-1 centrifuges) and produce up to 200 machines per year of each type for the next six and a half years. George Jahn, "Iran nuclear constraints to ease in about a decade, secret document reveals", *Associated Press*, 18 July 2016. While caps on the uranium stockpile and enrichment level will continue until 2030, the ramping up of nuclear capability is bound to unsettle sceptics.

III. If it Ain't Broke, Don't Fix it

The most troubling uncertainty about the JCPOA's future is the new U.S. administration's approach. During the campaign, Trump condemned the accord as fundamentally flawed, calling it "horrible". But it is not clear how he will act. His appointees have voiced conflicting views. Though they share antipathy toward Iran and the JCPOA, his national security adviser designate, Lt. General (ret.) Michael Flynn, has said he believes "regime change in Tehran is the best way to stop the Iranian nuclear weapons program"; his CIA director designate, Mike Pompeo, looks forward to "rolling back this disastrous deal"; while his candidate for secretary of state, Rex Tillerson, has promised a "full review", and his defence secretary designate, former four-star General James Mattis, said that "there is no going back" on the accord.⁴³

Washington's P5+1 partners, who are highly satisfied with the agreement's implementation so far, have weighed in forcefully in its support. EU foreign policy chief Federica Mogherini suggested a unilateral U.S. effort to scuttle the deal could put it on the opposite side of the EU, as well as Russia, which has warned that the accord's demise would be "unforgivable". China has said the deal should not be affected by "changes in the domestic situations" of countries involved.⁴⁴

Even some regional critics appear loath to see it scrapped. Saudi Prince Turki al-Faisal, a former senior official, warned that doing so "willy-nilly, as it were, will have ramifications".⁴⁵ Prime Minister Benjamin Netanyahu of Israel, perhaps the deal's most vocal opponent, still appears keen on scuttling it, but Israel's military and security establishment favour its preservation. An Israeli intelligence official said that even in the Trump era, "various parts of the Israeli government deem the JCPOA as a done deal and want to focus on its rigorous implementation".⁴⁶

While it is too soon to judge the next U.S. administration, its opposition to the JCPOA appears to stem less from the implementation record than its narrow focus: it is a non-proliferation deal that temporarily restricts an adversary's nuclear program

⁴³ "Michael Flynn's Testimony on Iran", Joint House Foreign Affairs and Arms Services Subcommittees, U.S. Congress, 10 June 2015; "Mike Pompeo's Iran file", *The Wall Street Journal*, 21 November 2016; Rex Tillerson confirmation hearing, Senate Foreign Relations Committee, 11 January 2017; Ilan Goldenberg, "How James Mattis could stop Trump from ripping up the Iran Nuclear Deal", *Fortune*, 17 December 2016.

⁴⁴ Mogherini said, "case by case, you will find issues where I wouldn't be surprised to see the Europeans and the Russians on the same side — Iran deal, Middle East peace process, possibly the role of the U.N", quoted in Laurence Norman and Julian E. Barnes, "Top EU diplomat, says bloc is prepared for Trump", *The Wall Street Journal*, 14 December 2016; "Council conclusions on Iran", European Council, 14 November 2016; "Russia says loss of Iran nuclear deal would be unforgivable", Interfax, 15 December 2016. "China warns Trump: Iran nuclear deal must stand", Agence France-Presse, 5 December 2016.

⁴⁵ "Senior Saudi prince says Trump shouldn't scrap Iran deal", Reuters, 11 November 2016. The Saudis sent a delegation to advise the Trump team shortly after his election to keep and strictly enforce the JCPOA. Crisis Group interview, European diplomat, Abu Dhabi, December 2016.

⁴⁶ Crisis Group interview, Jerusalem, November 2016. "Netanyahu aims to discuss 'various ways' to undo Iran deal with Trump", *The Guardian*, 12 December 2016; Graham Allison, "Is Iran still Israel's top threat?", *Atlantic*, 8 March 2016; "Israel's Policies After the Iran Deal", The Iran Primer, U.S. Institute of Peace, 19 September 2016. An Israeli diplomat in Europe said its official position is the deal should be kept but rigorously enforced. Crisis Group interview, 5 January 2017.

but has legitimised it and empowered the country to pursue what many view as a push for regional domination. Trump has several options:

- ❑ **Repudiate the deal** or refrain from taking the affirmative steps necessary to sustain it, eg, renewing the waivers every 120 or 180 days that suspend nuclear-related U.S. sanctions.⁴⁷ He could snap back the unilateral U.S. sanctions with a stroke of the pen or even unilaterally re-impose UN sanctions, notwithstanding the JCPOA's dispute resolution mechanism, likely opposition in the P5+1 and absence of a legitimate basis for redesignating Iran a threat to international peace after closure of the dossier on its nuclear program's past military dimensions.

But abrogating the accord when Iran complies with it, even some Republican critics have warned, would lead the international community to squarely blame the U.S., thus eroding, if not completely unravelling, the broad coalition critical for enforcing sanctions that provided leverage for negotiating the accord in the first place.⁴⁸ This would likely put the U.S. in a weaker position to renegotiate the deal or reshape Iran's regional and domestic policies. Brazen unilateralism also could weaken both the centrality of the U.S. financial system to the global economy, if other states organise to work around it, and the effectiveness of sanctions as a tool of its statecraft, if U.S. adversaries conclude Washington habitually shifts the goalposts for their lifting.

- ❑ **Rigorously police the deal** and in parallel push back firmly against Iran's regional policies. This could take two forms. Trump could seek to maintain the deal so long as Iranian compliance remains scrupulous in letter and spirit. If he pursues this path, he would need in parallel to ensure U.S. compliance; the deal's upkeep requires Washington's constant good-faith, pro-active management: granting licenses in a timely fashion to allow legitimate business with Iran, issuing guidelines to clarify sanctions relief ambiguities, providing assistance in modernising Iran's Arak heavy-water reactor and shielding the accord from external pressures, particularly attempts by Congress to obstruct implementation.⁴⁹ Alternatively, the administration could carefully police Iran's compliance while neglecting its own commitments, eg, by giving Congress a free hand to impose more sanctions or delay granting OFAC licenses, in the hope of provoking Iran to abrogate the deal, thereby avoiding some global blame and loss of leverage.

⁴⁷ The Obama administration aimed to issue final waivers on or slightly before inauguration day (20 January 2017), so the incoming Trump administration would have at least around four months for a considered decision. Crisis Group interview, U.S. official, Washington, 9 December 2016. This also postpones the matter until after Iran's 19 May presidential election.

⁴⁸ Republican Senator Bob Corker, chairman of the Senate Foreign Relations Committee and a prominent critic of the deal, said, "we gave up ... all of our leverage on the front end when we gave away the moneys that were stashed in various countries around the world, and so now the leverage is with them. I think the beginning point is for us to cause them to strictly adhere [to the deal] ... we have to keep the Europeans and others with us in this process". Quoted in Nahal Toosi, "Iran deal critics to Trump: Please don't rip it up", Politico, 16 November 2016.

⁴⁹ Congress tried repeatedly, for example, to block the sale of civilian aircraft to Iran contrary to Paragraph 5.1.1 of the JCPOA's Annex II. "U.S. House votes to stop sales of Boeing jetliners to Iran", Bloomberg, 17 November 2016.

Regardless of whether the U.S. implements the pact in good faith or not, the risk of an overly militarised, unilateral approach toward Iran's regional manoeuvres and/or provocations is that the JCPOA could become collateral damage in a tit-for-tat spiral. If the new administration hopes to kill the deal by a thousand cuts, it would need to be sustained long enough for those cuts to be inflicted. However, tactical decisions – such as interdicting illegal arms shipments or targeting Revolutionary Guards commanders and Iranian proxies in Iraq or Syria – could invite Iranian retaliation with rapid consequences. A U.S. official fretted: “Do you think the deal could survive a confrontation between Iranian and U.S. navies or the detention of U.S. sailors in the Persian Gulf? I’m not so sure”.⁵⁰

- ❑ **Renegotiate the deal** to strengthen some of the nuclear-related provisions or add non-nuclear ones. Most sceptics seem to prefer this option, which in their view requires new non-nuclear sanctions to incrementally augment coercive pressure and/or a credible military threat to induce Iran to return to the negotiating table.⁵¹ The challenge of devising new sanctions that are consistent with U.S. commitments under the JCPOA notwithstanding, this approach could harm Iran's economy, as a prominent sanctions advocate put it, if simply “by increasing uncertainty in the marketplace”, prompting Tehran to take retaliatory measures of its own.⁵²

A senior Iranian official said Ayatollah Khamenei may have opened the door to this by criticising his negotiators for overlooking important details related to sanctions relief by negotiating in haste.⁵³ But this criticism does not augur well for securing additional Iranian concessions: even if Iran were to agree to renegotiate, it would almost certainly demand more relief in exchange for more concessions, not accept less for more, especially given its discontent with sanctions relief under the JCPOA. The prospect of an Iranian leader acceding, even under duress, to terms significantly more favourable to the U.S. strains credulity and ignores the lessons of the decade-long nuclear standoff and the realities of Iranian politics.

⁵⁰ Crisis Group interview, Washington, 14 December 2016.

⁵¹ Trump wrote: “A Trump presidency will force the Iranians back to the bargaining table to make a much better deal”. Donald Trump, “Amateur hour with the Iran nuclear deal”, *USA Today*, 8 September 2015. Joseph Lieberman and Mark D. Wallace, “How Trump should renegotiate the Iran deal”, *The Washington Post*, 6 December 2016; Dennis Ross and David Petraeus, “How to put some teeth into the nuclear deal with Iran”, *The Washington Post*, 25 August 2015; Michael Makovsky, “Five ways for Trump to put Tehran on notice”, *The Wall Street Journal*, 3 January 2017.

⁵² “Trump team looks at new non-nuclear sanctions on Iran”, *Financial Times*, 2 December 2016. Identifying non-nuclear sanctions will not be easy, as nuclear-related sanctions targeted all the economy's key sectors, and reimposition under a new guise would violate the JCPOA. The U.S. should, per JCPOA paragraph 29, “refrain from any policy specifically intended to directly and adversely affect the normalisation of trade and economic relations with Iran”, and according to Paragraph 33, “agree on steps to ensure Iran's access in areas of trade, technology, finance and energy”. In his directive approving the JCPOA, Ayatollah Khamenei wrote: “Throughout the [accord's] eight-year term, imposition of any sanctions at any level, under any pretext will be violation of the JCPOA”. Khamenei.ir, 21 October 2015.

⁵³ Crisis Group interview, Berlin, November 2016. “دیدار فرماندهان نیروی دریایی ارتش با رهبر انقلاب” [“Supreme Leader meeting army, navy commanders”], Khamenei.ir, 27 November 2016.

Iran, whose leaders appear highly invested in the JCPOA for now, has several options to respond to an attempt to undermine the agreement:

- ❑ **Play the victim** and shift blame to Washington in the hope of driving a wedge between the U.S. and its partners and eroding, if not neutralising, sanctions.⁵⁴ A U.S. official pointed out: “The Iranians are good at this. They even played victim when the highly controversial [Mahmoud] Ahmadinejad was president, and Iran was a nuclear pariah”.⁵⁵ Isolating Washington would require restraint in reacting to real or perceived U.S. violations of the JCPOA.⁵⁶ If abiding by the deal and playing victim seem to reinforce Iran’s position globally, those who advocate doing so might be strengthened internally.
- ❑ **Resuscitate the nuclear program.** The Iranian parliament has mandated the government to ratchet up uranium enrichment and reduce cooperation with UN inspectors should the U.S. renege on the accord.⁵⁷ The leadership has also put itself in a rhetorical corner by pledging to revive the nuclear program should the other side renege.⁵⁸ If it does so with more advanced centrifuges, it could restore its uranium enrichment capacity rapidly, which might prompt a nuclear-arms race in the region and/or in the extreme provide the rationale some regime-change advocates have been looking for to justify a U.S. or Israeli military strike.⁵⁹ To prevent this, Tehran might escalate gradually, creeping past some limits. This would conform to its previous strategy; but even a softer, calibrated response would reignite the nuclear standoff and complicate future talks.

⁵⁴ Hamid Aboutalebi, Rouhani’s chief foreign policy adviser, tweeted: “If the JCPOA is a multilateral commitment, its breach by one party cannot be retaliated by another party’s breach. Any violation is an act against all signatories ... who should move in unison to isolate the violator”. Tweet by Hamid Aboutalebi, @DrAboutalebi, chief foreign policy adviser, 7:11am, 2 December 2016.

⁵⁵ Crisis Group interview, Washington, 14 December 2016. The same is true regarding Iranian reactions to ramped-up regional pressure: if Tehran reacts aggressively to U.S. provocations and precipitates the deal’s collapse, it likely will sacrifice the victim card.

⁵⁶ An EU official said, “If Iran revives its nuclear activities or even tinkers around the JCPOA’s edges, we will be between a rock and a hard place”. Crisis Group interview, Brussels, 14 November 2016.

⁵⁷ The law instructs the government to halt voluntary cooperation with the IAEA and rapidly expand the nuclear program so that “within two years the country’s uranium enrichment capacity increases to 190,000 SWU [Separation Work Units, amounting to ten times Iran’s pre-JCPOA capacity]”. “Law on the Proportional and Reciprocal Measures of ... Iran in Implementing the JCPOA”, Library of Congress, 15 October 2015. Decisions on Iran’s appropriate response, however, are in practice taken not by parliament but by the Committee for Supervision of the JCPOA’s implementation, headed by Rouhani and including Foreign Minister Zarif, Ali Larijani, speaker of the parliament and former nuclear negotiator, Hossein Dehghan, defence minister, Ali Shamkhani, secretary of the supreme national security council, Ali Akbar Salehi, head of Iran’s atomic energy organisation, Saeed Jalili, former nuclear negotiator, and Ali Akbar Velayati, the supreme leader’s chief foreign policy adviser.

⁵⁸ Ayatollah Khamenei said, “the Islamic Republic won’t be the first to violate the nuclear deal ... But if the threat from the American presidential candidates to tear up the deal becomes operational, then the Islamic Republic will set it on fire”, Khamenei.ir, 14 June 2016.

⁵⁹ An IAEA official said that Iran could reach a “highly problematic” enrichment capacity within six months. Crisis Group interview, Vienna, November 2016.

- ❑ **Retaliate regionally.** Proximity of U.S. to Iranian forces in several theatres across Iraq and Syria could provide another option for retaliation: increasing force protection costs for the U.S.⁶⁰ Rising tensions could also push Iran to double down on means of deterrence it considers essential to its national security: its ballistic missile program and what it calls its “forward defence policy” of empowering regional partners in Baghdad, Damascus and Beirut. This would undoubtedly provide ammunition for those in Washington who seek to bring more pressure to bear against Tehran, triggering escalation.

The above scenarios – individually or in combination – are troubling, especially as the JCPOA is delivering results. Any attempt by the Trump administration to undercut the deal in the hope of “fixing” it is likely to backfire. A senior Obama official said, “the paradox is that if he tries to strengthen the deal to 120 per cent of what it is, he might end up eroding it to 60 per cent”.⁶¹ Moreover, by destabilising the JCPOA, the new administration could usher in what it says it seeks to prevent: greater Iranian assertiveness, more regional instability and lower odds of resolving the conflicts in Syria, Iraq and Yemen – places where Iran is part of the problem and thus ought to be part of the solution.

⁶⁰ Crisis Group interviews, U.S. officials, Washington, December 2016.

⁶¹ Crisis Group interview, Washington, 14 December 2016.

IV. Sustaining and Improving the JCPOA

Like any negotiated outcome, the JCPOA is imperfect. Its implementation, too, has not been immaculate. Yet, the biggest threat to it is not procedural but political: the first major transfer of power in one of the countries that negotiated it has introduced a destabilising level of uncertainty. If the Trump administration decides to preserve the JCPOA while strictly enforcing and rigorously monitoring its implementation, it should do all that is necessary for its upkeep: from abiding by the letter and spirit of U.S. obligations – including ensuring that Iran is able to reap the economic dividends the deal entitles it to – to fencing it off, to the extent possible, from other disagreements with Tehran.⁶²

Preserving the status quo does not exclude good-faith attempts to improve it. Renegotiating aspects, assuming the effort is consensual and mutually beneficial, might achieve a better and more stable outcome. A Republican president backed by a Republican-controlled Congress would have more credibility in offering incentives to Iran than Obama ever did. But if the U.S. seeks Iran's capitulation through either economic pressure – which is unlikely to reach the intensity, scope and breadth of the sanctions that contributed to the existing outcome – or, even more dangerously, threat or use of military force, the result could be an explosive downward spiral.

Improving the JCPOA, even as implementation continues, would require a quiet Tehran-Washington dialogue in which both sides recognise one another's security concerns and core interests, and communicate their red lines concerning both the nuclear and regional files. A possible outcome to such bilateral discussions could be an addendum to the JCPOA either strengthening some nuclear provisions (eg, longer timeframes for restrictions or more intrusive inspections) or adding non-nuclear ones (eg, curtailment of Iran's ballistic missiles program or support for Levant militant groups) in return for rolling back the U.S. primary embargo.

If a better-for-better agreement is not attainable, the Trump administration could focus on non-Iran-specific arrangements, including creating a regional consortium for uranium enrichment or plutonium reprocessing or an international nuclear fuel bank that would remove need for a domestic enrichment program in Iran once the JCPOA sunsets. Alternatively, it could lead efforts to turn some JCPOA restrictions or transparency measures (eg, the ban on enrichment beyond 3.5 per cent and plutonium reprocessing, and continuous live-stream surveillance of key elements of the nuclear fuel chain) into common practice either at regional – as a first step toward a zone free of weapons of mass destruction in the Middle East – or global level.⁶³ Curbing Iran's missile program could also be achieved through international export

⁶² Per JCPOA paragraph 26, the U.S. "will make best efforts in good faith to sustain this JCPOA and to prevent interference with the realisation of the full benefit by Iran of the sanctions lifting specified in Annex II".

⁶³ If the U.S. excludes Israel from such voluntary constraints, it would be a non-starter. Israel has reportedly relied on plutonium for its nuclear weapons capability but might also have a small uranium enrichment program. For more on such creative initiatives, see Alexander Glaser, Zia Mian, Hossein Mousavian, and Frank von Hippel, "Building on the Iran Deal: Steps Toward a Middle Eastern Nuclear-Weapon-Free Zone", *Arms Control Today*, December 2015; Lord Hannay of Chiswick and Thomas Pickering, "Trumping Proliferation: From a one-off deal to a global standard", European Leadership Network, 6 December 2016.

control arrangements or requiring adherence of all states in the region to restrictions on range and payload.

On a more practical level, to avoid misunderstandings, the Trump administration should preserve the communication channels at the State Department, especially at the level of the office of lead coordinator for JCPOA implementation (currently Ambassador Stephen Mull), and also at the Energy Department, which have played an integral role in resolving technical issues in cooperation with the IAEA and the Atomic Energy Organisation of Iran. There is also need to create a new channel between OFAC and Iran's Central Bank and Finance Ministry.⁶⁴ While the Joint Commission's 10 January meeting has clarified most JCPOA ambiguities that had been troubling implementation, especially in areas where the accord's language lacks sufficient specificity, new technical hitches and interpretation differences will surely arise.⁶⁵ Resolving them will require effective communication and familiarity with the accord's complex challenges. The IAEA is bound by its mandate from the Security Council and confidentiality agreements with its member states, but the Joint Commission should be more transparent, especially where its decisions have a significant impact on the accord's implementation.

Iran should strictly adhere to its JCPOA commitments and move away from using brinksmanship as leverage.⁶⁶ Exceeding the limits the accord sets, as an ex-U.S. nuclear negotiator put it, could be "technically insignificant in terms of advancing Iran's nuclear capabilities, but ... create a narrative that JCPOA opponents are all too eager to pounce upon".⁶⁷ Tehran should also avoid deliberately provocative actions, eg, skirmishes with U.S. naval ships in the Gulf, and take other constructive steps, such as signing the Hague Code of Conduct against Ballistic Missile Proliferation (HCOC).⁶⁸ It would be better served by focussing on structural and regulatory economic reforms needed for full realisation of sanction relief's potential. These include continued progress on recapitalising and rendering its banking system more

⁶⁴ OFAC has met several times with Iranian economic officials bilaterally and trilaterally (when a third country faced problems transferring Iranian unfrozen funds), but these meetings have been infrequent. There is also contact between the two sides through the Joint Commission, but at the diplomatic level, not that of experts who grapple daily with the technical and legal problems of normalising Iran's banking relations.

⁶⁵ Crisis Group email correspondence, European officials, 10 January 2017.

⁶⁶ In addition to delaying the transfer of centrifuge infrastructure in Fordow to storage in the Natanz facility until shortly before the 16 January 2017 deadline, Iran kept its heavy-water stockpile close to the 130-ton threshold, and its low-enriched uranium stockpile just under the 300kg cap. Crisis Group interviews, U.S. and European officials, Brussels, London and Vienna, November 2016. Asked about the calculus behind this, an Iranian official retorted: "Because 299kg is under 300kg. We committed to remain under 300kg, not to keep a large distance from it". Crisis Group interview, November 2016. Yet, as an EU official said, "implementing a long-duration agreement is difficult when you are always on the brink of surpassing the threshold, even if inadvertently". Crisis Group interview, Brussels, 15 November 2016.

⁶⁷ Richard Nephew, "The Mirage of Renegotiating the Iran Deal", Center for Global Energy Policy, Columbia University, 18 November 2016.

⁶⁸ By signing the HCOC, Iran would join the treaty's 138 parties. HCOC provisions include commitments to provide pre-launch notifications for ballistic missiles and launch vehicles for satellites, as well as submission of an annual declaration of related policies.

transparent and implementing the action plan to address its anti-money laundering and anti-terror financing deficiencies.

In return for meaningful advances on these issues, the U.S. Treasury should rescind Iran's designation under the USA Patriot Act as a zone of primary money-laundering concern, continue a forward-leaning position to instil confidence in Iran's market and issue licences for facilitating legitimate business. The administration should give OFAC more resources, as its staff has been stretched by a much increased workload.⁶⁹ An OFAC commitment to monthly progress reports and a target for reduced processing times as staff grows could aid efficiency.

But the problem is also institutional inertia: traditionally a source of pressure on the private and public sectors to curb business with target countries, today OFAC is charged with opening the taps.⁷⁰ Creating a sub-division or separate entity to unwind sanctions might be more effective and signal other countries, such as North Korea with whom similar negotiations might soon be necessary, that the dividends of relief in return for policy shifts are real.

Ultimately, the nuclear agreement – even if ostensibly firewalled from surrounding conflicts – will be sustainable only if accompanied by détente in U.S.-Iran ties and progress on de-escalating and resolving the region's conflicts. If either side opts for escalation in the region, the other inevitably would sooner or later do the same, eventually imperilling the JCPOA. By contrast, mutual efforts to ease regional tensions, such as helping to preserve the Syria ceasefire and using influence to help bring the Yemen war under control, would be a constructive approach that could help strengthen the nuclear deal.

Other P5+1 members should go beyond expressing strong support for the JCPOA and discourage Iran from overreacting to a possible change in U.S. tone and approach.⁷¹ The EU could revive its "Blocking Statute" forbidding compliance with U.S. extraterritorial sanctions that lack Joint Commission consent.⁷² Establishing this pre-emptive measure without prejudice to the Trump administration's commitment to the JCPOA would send a strong signal that if Washington walks away from the deal, it will do so alone, while demonstrating to Iran that the 28 EU member states will defend the agreement. The EU also could do more to help reduce tensions in the

⁶⁹ According to a report by the U.S. treasury department, the average time for processing licenses in 2015 increased from 71 to 88 business days, a statistic that significantly understates the problems, since half of the submissions remained unprocessed. See, "2nd, 3rd and 4th Quarter FY2015 Reports for Licensing Activities Undertaken Pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000", Treasury Department, 15 September 2016.

⁷⁰ A senior U.S. official said, "we definitely implemented the letter of the JCPOA, but OFAC is not in the spirit business". Crisis Group interview, Washington, December 2016.

⁷¹ See Crisis Group Statement, "President Trump and the Art of the Iran Deal", 23 November 2016; "EU warns Trump not to destroy Iran nuclear deal", *Financial Times*, 21 December 2016.

⁷² Such legislation would provide political reassurance to European companies interested in re-entering the Iranian market by extending non-recognition of U.S. judgments and administrative determinations that give effect to U.S. sanctions, and by establishing a "clawback" clause for recovery of damages incurred for alleged sanctions violations. Council Regulation (EC), no. 2271/96, "Protecting against the effects of the extra-territorial application of legislation adopted by a third country ...", 22 November 1996. The legislation was designed to resist U.S. extraterritorial sanctions against Iran and Cuba. It effectively deterred Washington from enforcing those sanctions for more than a decade.

region, serving as an interlocutor between the U.S. and Iran and sounding out ideas with all sides in the various regional conflicts in which Iran is involved.

China, France, Germany, Russia and the UK should formally announce that new unilateral U.S. sanctions deemed unjustified by the majority of the Joint Commission and that interfere with Iran's full realisation of the benefits of sanctions relief under the JCPOA would be cause to initiate disputes against the U.S. at the World Trade Organisation (WTO) and other international courts and institutions.⁷³ Simultaneously, they should continue to support Iran's WTO candidacy.

More countries could provide export credit lines to reassure companies interested in trade with Iran.⁷⁴ Eventually, and if banking problems continue, there might be need for a public body to do due diligence, akin to the role of the European Bank for Reconstruction and Development (EBRD) in Eastern Europe after dissolution of the Soviet Union and elsewhere today. More nuclear cooperation is also necessary to strengthen the connective tissue between Iran's nuclear program and those of other countries, providing an insurance policy that it will remain solely civilian.

⁷³ In the late 1990s, the EU successfully challenged U.S. sanctions with a similar approach. Quentin Genard, "European Union responses to extraterritorial claims by the United States", EU Non-Proliferation Consortium, Non-proliferation Paper no. 36, January 2014.

⁷⁴ "Italy extends \$5bn credit line and export guarantees to Iran", *Financial Times*, 12 April 2016; "Norway offers €1bn in credit to Iran", Press TV, 17 August 2016.

V. Conclusion

A year in, the JCPOA is working but fragile, mostly because the political environment that created the nuclear standoff has not changed. Segregating nuclear negotiations from other regional disagreements was logical – as complex as the nuclear issue was, regional politics are even more so, and there are many more stakeholders than the P5+1 – given Iran's imminent achievement of breakout capacity. Still, the accord's fate depends on making progress on other fronts, which in itself is contingent on preventing the JCPOA's demise under a new, highly sceptical U.S. administration.

The same calculus that brought Iran and the P5+1 to compromise after thirteen years of standoff and two years of negotiations still holds: the alternatives to this accord – a sanctions-vs.-centrifuges race that could culminate in Iran obtaining the bomb or being bombed – would be much worse. Its unravelling now would have unfathomable consequences for the region, non-proliferation and multilateral diplomacy. To imagine a stronger pact can be built on its ruins is a chimera, as destroying it – even if gradually – would also destroy the hint of trust that led the parties to compromise, but if preserved, it is possible to build on it.

Trump is the first U.S. president in more than two decades who does not need to worry, on his first day in office, about Iran crossing the nuclear threshold to weaponisation without detection. If he tries to adjust the JCPOA by coercive pressure, he could, deliberately or inadvertently, deeply erode it, which could reignite the nuclear crisis and compound regional instability. But if, drawing on his business acumen, he opts to offer Iran a better-for-better deal, he has a unique chance to strengthen the accord for all, while helping reduce U.S.-Iran tensions. The consequences of a wrong choice could come to dominate his presidency.

Washington/Brussels, 16 January 2017

Appendix A: Map of Iran



Appendix B: About the International Crisis Group

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Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early warning bulletin, providing a succinct regular update on the state of play in up to 70 situations of conflict or potential conflict around the world.

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The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is chaired by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord Mark Malloch-Brown. Its Vice Chair is Ayo Obe, a Legal Practitioner, Columnist and TV Presenter in Nigeria.

Crisis Group's President & CEO, Jean-Marie Guéhenno, served as the UN Under-Secretary-General for Peacekeeping Operations from 2000-2008, and in 2012, as Deputy Joint Special Envoy of the United Nations and the League of Arab States on Syria. He left his post as Deputy Joint Special Envoy to chair the commission that prepared the white paper on French defence and national security in 2013. Crisis Group's international headquarters is in Brussels, and the organisation has offices in nine other locations: Bishkek, Bogota, Dakar, Islamabad, Istanbul, Nairobi, London, New York, and Washington DC. It also has staff representation in the following locations: Bangkok, Beijing, Beirut, Caracas, Delhi, Dubai, Gaza City, Guatemala City, Jerusalem, Johannesburg, Kabul, Kiev, Mexico City, Rabat, Sydney, Tunis, and Yangon.

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Appendix C: Reports and Briefings on the Middle East and North Africa since 2014

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Exploiting Disorder: al-Qaeda and the Islamic State, Special Report, 14 March 2016 (also available in Arabic).

Seizing the Moment: From Early Warning to Early Action, Special Report N°2, 22 June 2016.

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The Next Round in Gaza, Middle East Report N°149, 25 March 2014 (also available in Arabic).

Gaza and Israel: New Obstacles, New Solutions, Middle East Briefing N°39, 14 July 2014.

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Toward a Lasting Ceasefire in Gaza, Middle East Briefing N°42, 23 October 2014 (also available in Arabic).

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