



## BRIEFING PAPER

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# The Iran nuclear deal and 'decertification'

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photo : Mohammad Hassanzadeh

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## Summary

The future of the 2015 deal between the permanent five members of the UN Security Council and Iran over the Iranian nuclear programme, the Joint Comprehensive Plan of Action (JCPOA), was called into question by the election of Donald Trump to the US presidency. He had denounced it several times during the campaign and maintained hostility towards it after inauguration.

The US Congress passed [legislation](#) to require the President to report back to Congress every 90 days to 'certify' both that Iran was complying with its terms and that the deal continued to be in US interests. Twice the President reluctantly certified the deal to Congress, partly under pressure from other senior ministers. At the third opportunity, in October 2017, President Trump declined to certify the deal, on the grounds that Iran's actions were not proportionate to the sanctions relief granted under the deal.

Decertification does not end the deal, nor does it even mean that the US is walking away from it. It does give Congress a 60-day opportunity to re-impose sanctions on Iran using an expedited procedure. The initiative is now with Congress to decide how to act.

Many supporters of the deal accept that it has not changed Iran's foreign policy, which continues to be disruptive. Many opponents accept that it is not clear how to replace the deal, which is succeeding in imposing limits on Iranian uranium enrichment, if not on the Iranian ballistic missile programme (something which it was never intended to do).

Some have suggested re-negotiating the deal (the 'sunset clauses', by which limitations on the programme expire after a certain time, are particularly controversial). Iran has explicitly rejected renegotiation, and other signatories do not support it.

Reacting to the decision not to certify the deal, European leaders sent a [unified message of support](#). The reaction of the EU could be the key to the survival or otherwise of the agreement. The US, through presidential or congressional action, could walk away from the deal, but some in both the EU and in Iran have argued that the deal could survive if the other signatories continue to support it. For the EU to confront the US in this way would be legally complicated and politically difficult, however. Some have suggested reviving a [1996 EU Directive](#) protecting EU companies from the extraterritorial effects of US sanctions legislation, which could help EU-Iran trade to continue even after the re-imposition of US sanctions.

Several analysts have argued for a new, separate negotiations that would address concerns about the ballistic missile programme and regional policy, leaving the nuclear deal in place.

# 1. Background

Tensions over Iran's nuclear programme had been in mounting since 1987, when Iran obtained information on how to enrich uranium from the A Q Khan network, giving it the ability to produce the raw materials for a nuclear weapon. Iran is a signatory to the 1968 Nuclear Non-Proliferation Treaty (NPT) and has the right to a civil nuclear programme. Under the treaty, however, Iran must desist from developing nuclear weapons and submit to inspections by the International Atomic Energy Agency (IAEA) to confirm that that is the case.

Iran's lack of candour with international inspectors over several years raised doubts about its compliance with its treaty obligations. International inspectors called on Iran to rebuild international confidence by providing full transparency and allowing full access to its nuclear facilities, declaring Iran to be in breach of some of its obligations, and passed the matter to the United Nations Security Council for consideration.

Several years of struggle and negotiation ensued, with talks initially led by France, Germany and the UK.<sup>1</sup> The three powers won a freeze in Iranian enrichment in 2003 but this broke down. The talks later broadened to include the other members of the UN Security Council and the EU.

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<sup>1</sup> For more on the early stages of the nuclear issue see the Commons Briefing Paper [The Islamic Republic of Iran: An introduction](#), December 2009. A useful chronology is available from the Arms Control Association: [Timeline of Nuclear Diplomacy With Iran](#)

## 2. The 2015 deal

On 2 April 2015, the P5+1 (China, France, Germany, Russia, the US and the UK, plus the EU) negotiating group announced a Joint Comprehensive Plan of Action (JCPOA), with the deadline of 30 June 2015 for final agreement.

The plan involved Iran limiting its uranium enrichment and reducing its enrichment infrastructure for a period of several years and accepting intrusive International Atomic Energy Agency (IAEA) inspections, with a view to making it impossible for Iran to divert its nuclear programme to military uses.

The West agreed to lift some but not all sanctions in exchange, and to pass a United Nations Security Council resolution backing the deal and setting out a framework for Iran's nuclear materials procurement and ballistic missile use.

Several aspects remained to be worked out in continued negotiations after the April announcement of a framework deal. These included an agreement on 'possible military dimensions' (evidence that Iran may have been working on a nuclear weapon) and the timing of the lifting of sanctions.

On 14 July, final agreement was reached and on 20 July the deal was endorsed by the UN Security Council. The deal was adopted on 18 October 2015, and Implementation Day took place on 16 January 2016, when the IAEA conformed that Iran had fulfilled most of its undertakings and the EU, US and UN simultaneously suspended their nuclear-related sanctions against Iran.<sup>2</sup>

The deal required Iran to sign the Additional Protocol of the Nuclear Non-Proliferation Treaty (NPT) allowing extra inspections. (Iran was already a signatory to the NPT and, as such, had committed not to use its nuclear programme for military purposes.)

The deal is viewed as one of the chief foreign policy achievements of the Obama Administration.

### Sanctions relief

The main effect of the suspension of sanctions was to return Iranian assets frozen in Western institutions to Iran and to lift restrictions on trading in Iranian oil. Tens of billions of dollars of frozen assets were returned, while Iranian oil exports reached three million barrels per day in March 2017, almost recovering to pre-sanctions levels.<sup>3</sup> The resumption of European purchases of Iranian oil was the single biggest change for Iran's economy; Trade between the EU and Iran increased by 94% in the first year of JCPOA implementation.<sup>4</sup>

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<sup>2</sup> For more on the details of the deal and reaction at the time, see the Commons Briefing Paper [The Lausanne Accord with Iran](#), 16 October 2016

<sup>3</sup> ['Iran's Crude-Oil Exports Increase to Level Last Seen in 1970s'](#), *Bloomberg*, 7 March 2017

<sup>4</sup> EU External Action Service: [Iran and the EU](#)

## Remaining sanctions

### EU sanctions

Other sanctions remain in place, however. The EU imposes restrictions, including an arms embargo, sanctions related to missile technology, restrictions on certain nuclear-related transfers and activities, and provisions concerning certain metals and software which are subject to an authorisation regime.<sup>5</sup> There are also restrictions in connection with alleged support for terrorism and human rights abuses. These are not connected with the nuclear deal. Restrictions related to human rights include travel bans and asset freezes on 82 individuals and one entity.

### US sanctions

There is a general US ban on trade with and investment in Iran, relating to human rights issues, Iran's alleged support for terrorism and ballistic missiles. Secondary sanctions, which target non-US persons (often financial institutions) that do business in Iran, also remain in place in relation to human rights violations and the Islamic Revolutionary Guards Corps, for example. The secondary sanctions on non-US persons simply trading with Iran were waived by the President on signature of the JCPOA. Designation under secondary sanctions means that US persons would be prohibited from doing business with that non-US person.<sup>6</sup>

The interdependence of international financial markets and international spread of large companies mean that the remaining US sanctions have a significant chilling effect even on non-US subjects. Banks, particularly, remain cautious about dealing with Iran, for fear of incurring US fines or being excluded from US financial markets.<sup>7</sup>

This uncertainty about the effect of remaining US sanctions, plus the possibility of re-imposition of more, has resulted in slower than expected foreign investment in the Iranian economy by Western companies. Iran achieved 12.5% GDP growth in 2016 on the back of strong growth in the oil sector. This acceleration is likely to tail off, however, as oil production reaches pre-sanctions levels.<sup>8</sup>

## IAEA monitoring

The IAEA is responsible for quarterly inspections under the JCPOA and its reports to date have confirmed that Iran is complying with the deal.

In the latest of its quarterly [verification reports](#), the IAEA said on 31 August 2017 that Iran's stockpile of low-enriched uranium was 88.4 kg, well below a 202.8 kg limit set out in the JCPOA, and the level of enrichment did not exceed the cap. Iran's stock of heavy water was also below the limit set out in the JCPOA.

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<sup>5</sup> *Ibid.*

<sup>6</sup> US Treasury, [Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions](#), December 2016

Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day  
<sup>7</sup> For detail on the US sanctions regime, see the Congressional Research Service briefing [Iran Sanctions](#), 13 October 2017

<sup>8</sup> White House, [Remarks by President Trump and His Majesty King Abdullah II of Jordan in Joint Press Conference](#), 5 April 2017

## Joint Commission

According to the JCPOA, neither the IAEA nor any one of the signatories has the last word on compliance; that decision is for the JCPOA Joint Commission, consisting of representatives of Iran and the six powers mentioned above, plus the EU High Representative for Foreign Affairs. If the IAEA finds that Iran may be in breach of its obligations, the organisation and Iran have an opportunity to reach agreement on the concerns. Failing such an agreement, the matter is referred to the Joint Commission. A majority (at least five of the eight members) on the Joint Commission can then inform Iran of action required to remedy the concerns, and if Iran does not comply with those actions, sanctions can 'snap back' into place.

A majority decision on the Joint Commission, which is chaired by the EU High Representative for Foreign Affairs, can also require access to sites that the Commission considers suspicious.

The Joint Commission also oversees the transfer of nuclear-related or dual-use materials.

## Ballistic missile programme

The JCPOA does not mention ballistic missiles. Negotiations for the nuclear deal were restricted to enrichment and the possible creation of warheads, while ballistic missiles (the most likely vehicle for a nuclear warhead) were dealt with separately by UN Security Council Resolutions. Under the then existing UN Security Council Resolution 1929 of 2010, Iran was prohibited from undertaking any activity related to ballistic missiles capable of carrying nuclear weapons.<sup>9</sup>

Resolution 1929 of 2010 prohibited Iran from pursuing a ballistic missile programme, saying that the Security Council:

...decides that Iran shall not undertake any activity related to ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missile technology, and that States shall take all necessary measures to prevent the transfer of technology or technical assistance to Iran related to such activities.<sup>10</sup>

Resolution 2231 of 2015, uses different language:

Iran is called upon not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology, until the date eight years after the JCPOA Adoption Day...<sup>11</sup>

The phrase "designed to be capable of carrying" is arguably less restrictive than the earlier "capable of carrying", while "called upon not to undertake any activity" is less binding than resolution 1929's "shall not undertake". According to one analyst, this means that 2231 "does

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<sup>9</sup> ['Security Council Imposes Additional Sanctions on Iran, Voting 12 in Favour to 2 Against, with 1 Abstention'](#), UN Security Council press release, 9 June 2010

<sup>10</sup> [UN Security Council resolution 1929](#), 2010, art. 9

<sup>11</sup> [UN Security Council resolution 2231](#), 2015, annex B3

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not legally require Iran to cease those activities.”<sup>12</sup> This compromise was made during JCPOA negotiations, according to the same source.

Iran has tested several missiles since the inception of the JCPOA and the passage of UNSCR 2231 but on 29 January 2017 the IRGC tested a medium-range missile that the US Administration declared to be in violation of UNSCR 2231, although Iran stated that the test was in compliance. Some sources say that a nuclear-capable cruise missile was tested at the same time (hard information on Iranian missile tests is scarce).<sup>13</sup> UNSCR 2231 makes no mention of cruise missiles.

On 3 February the US imposed sanctions on 25 Iranian individuals and organisations, most notably the IRGC overseas branch, the Qods Force, who were allegedly “involved in procuring technology and/or materials to support Iran’s ballistic missile program.”<sup>14</sup> Further sanctions were imposed in May 2017 on two Iranian defence officials, an Iranian company and members of a China-based network for supporting the ballistic missile programme.<sup>15</sup>

Iran has tested no further nuclear-capable missiles since January, although there have been tests of missiles viewed as defensive.<sup>16</sup> In September 2017, however, Iran showed off its new medium-range ballistic missile tested on 29 January, the Khorramshahr, in a military parade.

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<sup>12</sup> Robert Einhorn, [‘The Iran deal – off to a promising start, but expect challenges’](#), Lawfare, 15 July 2016

<sup>13</sup> [‘Iran tested nuclear-capable cruise missile: German newspaper’](#), Reuters, 2 February 2017

<sup>14</sup> [‘Treasury Sanctions Supporters of Iran’s Ballistic Missile Program and Iran’s Islamic Revolutionary Guard Corps – Qods Force’](#), US Treasury press release, 3 February 2017

<sup>15</sup> [‘Treasury Sanctions Iranian Defense Officials and a China-Based Network for Supporting Iran’s Ballistic Missile Program’](#), US Treasury press release, 17 May 2017

<sup>16</sup> Farhad Razaee, [‘Iran’s Ballistic Missiles Program: Changing Course in the Trump Era?’](#), Harvard Belfer Center, 8 May 2017

### 3. Trump Administration and Iran

In the early days of the Administration, Donald Trump's National Security Adviser said at a press briefing:

The Obama Administration failed to respond adequately to Tehran's malign actions—including weapons transfers, support for terrorism, and other violations of international norms. The Trump Administration condemns such actions by Iran that undermine security, prosperity, and stability throughout and beyond the Middle East and place American lives at risk.

[...]

As of today, we are officially putting Iran on notice.<sup>17</sup>

Michael Flynn lost his job shortly afterwards, but the hostility to the Iran deal remained.

During a visit to the Middle East, setting out to solidify his alliance with traditional allies Israel and Saudi Arabia, Donald Trump criticised the Joint Comprehensive Plan of Action (JCPOA): "The Iran deal made by the previous administration is one of the worst deals I have ever witnessed -- and I've witnessed some beauties."<sup>18</sup> On the other hand, during his January 2017 visit to the Gulf he agreed with King Salman of Saudi Arabia on the importance of "rigorously enforcing the [nuclear deal] with Iran and of addressing Iran's destabilising regional activities."<sup>19</sup>

In April 2017 the Administration signed the statutory letter certifying the deal, despite comments suggesting otherwise from Donald Trump. In May, the Administration renewed sanctions waivers that allowed foreign companies to trade in Iranian oil. At the same time, however, a human rights report critical of Iran was released just before the Iranian election and a further round of sanctions was imposed in relation to the ballistic missile programme (see below).

That could have bolstered the positions of Iran's hardliners, who have traditionally made political capital out of suspicion of the US, and analysts interpreted it as a sign that the Trump Administration does not intend to soften its policy in order to help reformers in Iran, whom many conservatives in the US regard as "faux."<sup>20</sup>

Economically, US Administration hostility to the JCPOA and to Iran in general may add to the uncertainty of foreign investors because of the possibility of new sanctions. The US Congress has introduced seven bills intending to impose new sanctions on Iran since the inauguration of Donald Trump, and some in Congress want the designation of the IRGC as a foreign terrorist organisation, although this idea ran into opposition from the State Department and the Department of Defense, according

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<sup>17</sup> White House, [Statement by the National Security Advisor](#), 1 February 2017

<sup>18</sup> ['Remarks by President Trump and His Majesty King Abdullah II of Jordan in Joint Press Conference'](#), White House press release, 5 April 2017

<sup>19</sup> ["Trump chats with Saudi, Abu Dhabi leaders about 'safe zones'"](#), *Politico*, 29 January 2017

<sup>20</sup> John Hannah, ['Why Trump's Iran Sanctions Waiver Should Worry the Mullahs'](#), *Foreign Policy*, 18 May 2017

to some reports, because IRGC-supported militias are fighting ISIS in Iraq.

In May, however, the Administration gave Boeing clearance to sell planes to Iran, despite the IRGC's heavy involvement in the Iranian aviation sector.

In June 2017, the US Senate passed the [Countering Iran's Destabilizing Activities Act of 2017](#) by one vote. The bill had been amended to remove sections that breached US undertakings in the JCPOA, but would impose sanctions related to the ballistic missile programme, its alleged support for terrorism and human rights violations. The Iranian side still maintained that it violated at least the spirit of the agreement.

In July, the Trump Administration again certified that Iran was complying with the deal but, the next day, issued new sanctions against Iran in connection with Iran's "malign activities across the Middle East."<sup>21</sup>

### 'Decertification' in October 2017

The US [Iran Nuclear Agreement Review Act](#) requires the Administration to certify every 90 days Iran's compliance with the JCPOA. 'Certification' also depends on assessments of criteria that are not in the JCPOA, such as whether continuing to comply with the agreement is in the interests of US national security.<sup>22</sup>

On the previous certification dates, President Trump had bowed to pressure from other members of his Administration such as the Defence Secretary and the Secretary of State and had certified the deal.

On 13 October 2017, Donald Trump announced that he would not certify the deal, saying that, under the *Iran Nuclear Agreement Review Act*, the sanctions relief under the JPOA is "appropriate and proportionate" to the actions taken by Iran.

In itself, the decision not to certify the deal does not destroy the JCPOA, nor does it even mean that the US is walking away from it. It does, however, give the US Congress a 60-day window in which to re-introduce suspended sanctions against Iran using an expedited procedure; in his announcement Trump encouraged Congress to take such action. At the same time the Administration announced new sanctions against the Islamic Revolutionary Guards Corps, but not plans to designate the IRGC as a terrorist organisation, which some had expected.

### **Economic damage strategy?**

With continued Administration uncertainty about how to restrain Iranian nuclear plans in the absence of the JCPOA, the decision not to certify the deal may be an attempt to pile as much pressure on Iran as possible, while maintaining US participation in the JCPOA and avoiding a major confrontation with European allies. The increased threat to the deal coming from Washington will also raise uncertainty among

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<sup>21</sup> ['U.S. Announces New Iran-related Sanctions'](#), *US State Department press release*, 18 July 2017

<sup>22</sup> ['Trump Signals Iran Deal Showdown'](#), *Arms Control Association*, September 2017

businesses and may reduce the economic benefit of the deal to Iran, something that may be one of the Administration's objectives.

### **Legislation to prolong the effect of the limitations?**

One of the legislative changes proposed by Republican senators in response to the decertification is to amend the Iran Nuclear Agreement Review Act to stipulate that nuclear-related sanctions will be re-imposed if Iran comes within a year of making a nuclear weapon. This is intended to deal with one of the main criticisms of the JCPOA: the sunset clauses that make its restrictions on Iranian enrichment temporary.<sup>23</sup> In his announcement that he would not re-certify the deal, President Trump encouraged Congress's efforts to make "all restrictions on Iran's nuclear activity permanent under U.S. law," and said that he would terminate the deal if Congress did not find a way to "address the deal's many serious flaws."<sup>24</sup>

Critics of this approach argue that the legislation would amount to a unilateral change to the JCPOA and therefore a breach, which could justify Iran walking away from it.<sup>25</sup>

### **European reaction**

France, Germany and the UK responded immediately to the announcement. A [joint statement](#) took note of the decision not to certify the agreement and expressed concern about its possible implications. The statement underlined the fact that the International Atomic Energy Agency has stated Iranian compliance, while recalling that Europeans share concerns about the ballistic missile programme and "regional activities that also affect our European security interests." On 20 October 2017 the UK's Middle East Minister said the Government is working to preserve the deal:

The UK is committed to full implementation of the Joint Comprehensive Plan of Action (JCPOA) by all parties. The International Atomic Energy Agency (IAEA) continues to report Iran's compliance with its commitments under the JCPOA, most recently on 31 August. The Prime Minister and Foreign Secretary have spoken to their US counterparts, making clear that the deal is working and is a UK priority. They have also spoken regularly with their French and German counterparts on this issue. Given President Trump's announcement of 13 October that he will not recertify Iran's compliance with the deal, we are looking at the detail of US proposals and engaging with counterparts in the US, Europe and Iran to examine the implications as we work to preserve the JCPOA.<sup>26</sup>

### **US credibility?**

Several observers have been concerned that if the US walked away from the deal, it would undermine US influence by reducing the credibility of

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<sup>23</sup> ['Corker, Cotton to propose bill changing Iran deal oversight'](#), *The Hill*, 13 October 2017

<sup>24</sup> ['Remarks by President Trump on Iran Strategy'](#), White House press release, 13 October 2017

<sup>25</sup> [Saving the Iran Nuclear Deal. Despite Trump's Decertification](#), International Crisis Group Statement, 13 October 2017

<sup>26</sup> [HC Written question – 107632](#), 20 October 2017

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its undertakings. A former Undersecretary of State in the George W Bush Administration said:

As the IAEA has certified Iran to be in compliance with the nuclear deal, we risk a significant decline in our credibility in not meeting our international commitments.<sup>27</sup>

The International Crisis Group, among others, argued that this decline in US credibility in international agreements would make a diplomatic solution to the North Korea crisis significantly more difficult to achieve.<sup>28</sup>

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<sup>27</sup> ['What are the Implications of Decertification of the Iran Nuclear Deal?'](#), Atlantic Council, 10 October 2017

<sup>28</sup> [Saving the Iran Nuclear Deal, Despite Trump's Decertification](#), International Crisis Group Statement, 13 October 2017

## 4. Outlook

### Next steps in Washington

At present it is the responsibility of Congress to decide whether to pass legislation on the perceived flaws of the deal. While President Trump encouraged Congress to act, it is not clear that the Administration expects this to happen. One commentator argues that President Trump does not even want it:

...only the four leaders of the House and Senate can introduce such legislation, and it appears that the Trump administration does not want Congress to act on sanctions.<sup>29</sup>

If Congress does nothing, the Administration must decide in January whether to waive secondary sanctions on Iran. This would amount to a re-imposition of sanctions and to the US walking away from the agreement.

### Consequences

That could leave the way open for Iran to develop a nuclear weapon quickly, although Iranian officials routinely deny that they ever intended to build a warhead and say that they will always abide by the terms of the Non-Proliferation Treaty. If the Iranians developed a nuclear arsenal, many commentators think that Saudi Arabia and other Sunni Middle Eastern powers would be tempted to follow suit.

In the event of the collapse of the JCPOA, the only apparent way to prevent Iran developing a nuclear weapon would be military action against Iranian nuclear installations. That would be difficult and not permanently effective. Strikes against Iran would provoke retaliation and lead to more instability and further Western involvement in the region.<sup>30</sup>

US conservatives are divided on the issue. One commentator usually critical of the deal argues that ending it could leave: "...Iran to have its cake and eat it, too. Tehran would be relieved of future obligations under the deal, after pocketing many of its benefits in terms of front-loaded sanctions relief."<sup>31</sup>

### Renegotiation?

The Iranian Foreign Minister has explicitly rejected a renegotiation of the deal:

It would be extremely dangerous to even contemplate reopening these negotiations, because now we all go into any possible negotiations with even higher expectations. It was complicated enough to reach this deal already, and it would be impossible to reach another deal.<sup>32</sup>

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<sup>29</sup> Stuart E Eizenstat, former Clinton Administration Deputy Treasury Secretary in '[What are the Implications of Decertification of the Iran Nuclear Deal?](#)', Atlantic Council, 10 October 2017

<sup>30</sup> For more discussion of the options, see Ilan Goldenberg and Mara Karlin, '[Ending the Iran deal is an invitation to war](#)', Brookings Institution, 11 October 2017

<sup>31</sup> James Phillips, '[Should Trump Nix the Iran Deal?](#)', Heritage Foundation, 11 October 2017

<sup>32</sup> '[Is the Nuclear Deal with Iran Slipping Away?](#)', *New Yorker*, 19 July 2017

The European position is also that renegotiation is not possible. The German ambassador to the United States said: "We don't think it will be possible to renegotiate it and we believe there is no practical, peaceful alternative to this deal."<sup>33</sup>

### US unilateral withdrawal?

With the IAEA reporting Iranian compliance and a majority of the members of the Joint Commission supporting the deal, it is perhaps more likely that the US alone could decide that Iran is non-compliant, with the other members of the Joint Commission disagreeing.

If the US did walk away from the deal, it could then unilaterally re-impose sanctions, which would undermine the effectiveness of sanctions relief under the deal. It would not undo all the advantages for Iran if other countries maintained sanctions relief, however. In the run-up to the agreement, it was EU economic sanctions that were most effective at putting pressure on Iran, because the US already had a trade embargo in place so there was little or no US/Iranian trade to stop; that general ban on US trade and investment remains in place throughout. So a unilateral re-imposition of sanctions by the US might not be enough to bring the deal down, as long as the other signatories continued to support the JCPOA.

### US/EU clash?

Neither European allies nor the Russians or Chinese are in the mood to re-impose sanctions. The EU High Representative for foreign policy, Federica Mogherini, tweeted the EU's continued support for the JCPOA after Rouhani's election success,<sup>34</sup> and the EU remains united in its support for the deal, as demonstrated in the reaction to the decision not to certify the deal. The Iranian Foreign Minister signalled in September that Iran could stick to the agreement in spite of unilateral US sanctions, as long as the other signatories all remained committed to its terms and defy any subsequent US sanctions.<sup>35</sup> Iran may have decided that it is in its interests to drive a wedge between the US and the EU.

The EU Ambassador to Washington said recently that the EU would take measures to protect the interests of its companies if the US re-imposed sanctions.

There has been some discussion about including the US sanctions in the 1996 [Council Regulation EC 2271/96](#) that shields European companies 'against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom.'<sup>36</sup>

The EU could also consider using non-US international payment systems. This could, however, represent a significant threat to the effectiveness

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<sup>33</sup> ['What are the Implications of Decertification of the Iran Nuclear Deal?'](#), Atlantic Council, 10 October 2017

<sup>34</sup> ['EU vows continued nuclear deal support following Rouhani re-election'](#), *Euroactiv*, 22 May 2017

<sup>35</sup> ['Iran's foreign minister urges Europe to defy US if Trump sinks nuclear deal'](#), *Guardian*, 29 September 2017

<sup>36</sup> ['Will the EU and the USA part ways on the Iran Deal?'](#) Stockholm International Peace Research Institute, 11 October 2017

of future sanctions regimes: exclusion from payment systems has been one of the most effective weapons; strengthening non-US systems by encouraging EU-based companies to use, for example, a Chinese system, would weaken the effectiveness of such sanctions in future.<sup>37</sup>

### **Re-imposition of UN sanctions?**

If the EU did decide to defy the US, it could also mean defying UN Security Council resolutions. One of the provisions of the JCPOA, set out in [UN Security Council resolution 2231 of 2015](#), is that any one of the six negotiating countries, that is, the five permanent members of the Security Council plus Germany, can notify the Security Council of significant non-compliance with the JCPOA. If the Security Council does not pass a resolution preventing it, in the subsequent 30 days, the UN nuclear-related sanctions on Iran automatically 'snap back' into place. A Trump Administration hostile to the deal might make such a notification and then veto any Security Council resolution aimed at preventing automatic re-imposition.<sup>38</sup>

According to Resolution 2231, the notifying country must "believe" that there is significant non-compliance – if Iranian compliance with the JCPOA is clear, supporters of the deal could argue that any such notification was a pretext to scupper the deal, and therefore not valid according to the terms of Resolution 2231.

### **Separate negotiations?**

One of the factors behind the success of the negotiations that led to the JCPOA was that they restricted themselves largely to uranium enrichment, in order to increase the 'breakout time' necessary for Iran to build a nuclear weapon.

Many critics of the deal argued that, far from encouraging a more cooperative foreign policy, by boosting the Iranian economy it empowered Iranian regional 'troublemaking'. Supporters tend to accept that the deal did little to bring about more constructive Iranian policy in the region, but also argue that there is no other way of delivering the admittedly narrow achievement of the deal in halting a potential Iranian nuclear weapons programme.

With broad international concern about Iranian ballistic missiles and regional policies in countries like Iraq and Yemen, some commentators have argued that, rather than bringing down the JCPOA, it would be more productive to set up a new diplomatic initiative to discuss those concerns.

Getting Iran to participate constructively in such discussions would be difficult. Roula Khalaf argues in the *Financial Times* that Russia and China would need to be on board:

Caught between Washington and Tehran, the EU 3 will struggle to find a compromise. Whether they can resist American pressure, or avoid splitting over support for the US, is hard to predict. One

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<sup>37</sup> Gillian Tett, '[The hidden cost of freezing Russia out of finance](#)', *Financial Times*, 2 October 2014

<sup>38</sup> For more discussion of this see '[If President Trump Ends the Iran Deal, Can He Trigger the Security Council Snapback?](#)', *Opinio Juris*, 20 September 2017

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way forward would be to push for separate talks on ballistic missiles and Iran's role in the Middle East, which are of concern to Europe as much as the US. Enlisting Russian and Chinese backing for a new diplomatic track with Iran — Moscow and Beijing are also signatories to the nuclear deal — would encourage Iranian participation in new talks.<sup>39</sup>

Suzanne Maloney for the Brookings Institution argues that such an approach could command cross-party support in Washington.<sup>40</sup>

John Allen and Michael O'Hanlon argue for boosting the US military commitment in the region to deal with Iran's "lethal adventurism" in the Middle East.<sup>41</sup>

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<sup>39</sup> ['How Europe can save the Iran nuclear deal'](#), *Financial Times*, 18 October 2017

<sup>40</sup> Suzanne Maloney, ['To certify or not to certify? That's not the question'](#), Brookings Institution, 10 October 2017

<sup>41</sup> ['A Blueprint for Minimizing Iran's Influence in the Middle East'](#), *National Interest*, 21 October 2017

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