

Returning to and Building On the Iran Nuclear Deal:

A “Maximum Pressure” Exit Strategy

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Introduction

In November 2018, we warned that President Trump’s decision to abandon the Iran nuclear agreement had substantially damaged U.S. national security interests, credibility with allies, and global leadership.¹ To mitigate the long-term damage to the U.S. and salvage the nuclear accord, our previous report urged lawmakers and Presidential contenders to announce their commitment to returning the United States to compliance with its obligations under the Joint Comprehensive Plan of Action (JCPOA)—the nuclear agreement between the U.S., Iran, and other major world powers.

Over a year later, the recklessness of President Trump’s abrogation of the multilateral accord and implementation of a go-it-alone ‘maximum pressure’ strategy toward Iran has only become clearer. However, rather than shift its approach, the administration appears poised to engage in further diplomatic sabotage as it enters what may be its final stretch in office. The administration has threatened that if the UN Security Council does not approve the extension of a UN arms embargo on Iran that is scheduled to lapse in October 2020 — which would violate the JCPOA — the U.S. will seek to “snap back” all previous UN sanctions on Iran. That the United States is completely isolated among the permanent members of the Security Council in charting this course, and will likely be blocked from executing this gambit, is representative of just how far America has fallen since it led global efforts on Iran under the previous administration that produced the JCPOA. Even if the Trump administration fails to deliver a fatal blow to the JCPOA, a failed push for snapback is likely to further diminish U.S. global leadership and diplomatic efforts to resolve challenges with Iran.

¹ Ryan Costello and Tyler Cullis, “Restoring U.S. Credibility: Returning to the Iran Nuclear Agreement”, 19 Nov. 2018, <https://www.niacouncil.org/resources/jcpoa-report/>



Source: Sergey Ponomarev for The New York Times

Destroyed structures after Iranian missile strikes on Al-Asad Air base in Iraq following the killing of Iranian General Qassem Soleimani.

The Trump administration’s approach has already led the U.S. right to the edge of a disastrous regional war with Iran on two separate occasions. In June 2019, President Trump reportedly ordered U.S. forces to strike Iran following Iran’s downing of a U.S. drone operating near or in Iranian airspace. Fortunately, President Trump pulled back ten minutes before the strike was to proceed, according to his account. Had the strike proceeded, the U.S. could well be in the middle of a major regional war right now, as Iran indicated it would have responded to an attack on Iranian soil by seeking to inflict “significant harm” on the U.S. and supporting countries to deter a future attack.²

On January 2, 2020, the shadow of war loomed darker still. Amid a tit-for-tat spiral with Iraqi Shia militias backed by Iran, President Trump ordered the assassination of one of Iran’s most prominent officials, Quds Force General Qassem Soleimani, near Baghdad International Airport. That decision, undertaken without any clear

² International Crisis Group, “Averting the Middle East’s 1914 Moment,” August 1, 2019, <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iran/205-averting-middle-east-1914-moment>

evidence that Soleimani was planning imminent attacks on U.S. forces and raising serious questions regarding the strike’s domestic and international legality, ratcheted tensions up to a fever pitch. The Iranian government vowed revenge for what it deemed an act of war and used Soleimani’s “martyrdom” to drum up national support, marking three days of public mourning with widely-attended events across the country.

On January 8th, Iran fired more than a dozen missiles at bases housing U.S. forces in Iraq after reportedly warning the Iraqi prime minister. The strikes did not kill any U.S. service members, therefore not crossing President Trump’s publicly-stated “red line” despite Iran’s willingness to risk such an outcome. President Trump chose not to directly escalate any further and had relented in prior days on his threat to bomb fifty-two sites inside Iran, including sites of cultural significance - a war crime. Full-blown war, on the eve of pandemic, was only narrowly avoided.

While President Trump treated the lack of fatalities from the airstrikes as an opportunity to de-escalate, many analysts predict that Iran will play the long game in seeking revenge for Soleimani. Moreover, there have already been victims of this mindless military escalation. Over a hundred U.S. service members have been treated for concussions and traumatic brain injuries stemming from the Iranian airstrikes. And, tragically, in the tense aftermath following the airstrikes, the Islamic Revolutionary Guard Corps mistakenly shot down a civilian airliner and killed 176 innocent people and sought to cover it up.

While the January crisis may have been contained, the shadow of war continues to loom over the region – even as the U.S., Iran and broader world contend with the devastating impact of the COVID-19 pandemic. The situation in Iraq and the Persian Gulf remains tense, and the status quo is unsustainable. Any escalatory incident - instigated by Iran, the U.S., Saudi Arabia, Israel, or non-state actors - risks sparking a messy war across multiple theaters and involving numerous actors at a time of great global uncertainty. Such risks would be remote had President Trump not made the decision to violate the JCPOA and pursue “maximum pressure.”

Yet even if the worst case of war continues to be avoided, there have been other damaging consequences to the Trump administration’s pressure campaign.

Even before the COVID-19 pandemic that has exacerbated the cruelty of U.S. sanctions and the vast shortcomings of Iran’s government, the Iranian people were caught between their own government’s repression and corruption and crushing U.S. economic sanctions with no respite in sight. Trump’s withdrawal from the JCPOA and his escalation of economic pressure empowered Iran’s hardliners and the Iranian state’s own security apparatus, undermined Iranian moderates’ ability to push for internal reform, and intensified popular discontent from increasingly impoverished quarters. This manifested itself in the Iranian government’s brutal suppression of protests in November 2019 following the government’s termination of gas subsidies, which was coupled with a widespread Internet shutdown.

While elements of the U.S. government touted the protests as a sign of the success of maximum pressure, the massacre was not a sign of a sound U.S. strategy. If the Trump administration truly seeks a “change of behavior” by Iran’s government toward greater accommodation and compromise both internally and externally, the current strategy is an abject failure. ‘Maximum pressure’ has helped facilitate a further radicalizing of Iran’s internal policies and is ushering in a near-total consolidation of power by the most hardline and repressive forces inside Iran. Sanctions and military threats have damaged Iran’s middle class and undermined opportunities for organic and grassroots-led civil society movements to push for sustainable internal change. Moving forward on the present course will not benefit the Iranian people and puts a government that truly reflects their aspirations further out of reach, all while undermining U.S. security interests across the region.



Source: ATTA KENARE/AFP/Getty Images

Iranians celebrating on the streets of Tehran the night the JCPOA was signed.

In a further indictment of the current U.S. policy, Iran began halting compliance with aspects of its own commitments under the JCPOA beginning in May 2019 on the one-year anniversary of the U.S. breach of the accord. This decision had been preceded by two additional significant escalations by the United States: the Trump administration’s designation of Iran’s Islamic Revolutionary Guard Corps as a foreign terrorist organization (FTO), and its termination of waivers to remaining foreign importers of Iranian oil. At the time of publication, Iran has halted compliance with limits on the accumulation of heavy water, its level of enrichment and enriched uranium stockpile, its research and development of more advanced centrifuges and its proliferation-sensitive work at the Fordow facility. The tight restrictions provided by the JCPOA have thus predictably begun to fray, as Iran credibly argues it is no longer bound to fully abide by its commitments under the accord given that reciprocal commitments on sanctions relief have not been implemented.

In theory, Trump could still recognize the danger of the Iran strategy he has adopted and chart a new course on Iran policy that stabilizes or builds on the original bargain of the JCPOA. Iran has continued to indicate that if the U.S. suspends sanctions imposed following Trump’s abandonment of the nuclear accord, Iran would return to compliance with its obligations under the JCPOA and agree to further negotiations.³ The two sides came close to such an agreement during the 2019 UN General Assembly, according to Iranian President Hassan Rouhani, with the key stumbling block reportedly being the sequencing of sanctions removal.⁴

³ Jamal Abdi, et al. “Expert Letter on Deescalating with Iran.” 30 Jul. 2019, <https://www.niacouncil.org/expertletterdeescalation/>

⁴ Farnaz Fassihi and Rick Gladstone, New York Times, “Who’s the Obstacle to Talks: Iran and U.S. Point at Each Other.” September 27, 2019, <https://www.nytimes.com/2019/09/27/world/middleeast/iran-rouhani-trump-meeting.html>.

However, this has become far more difficult in 2020 given the events outlined above. As the U.S. Presidential election grows closer and the Trump administration continues to tout its failing approach toward Iran, the likelihood that both Washington and Tehran see the mutual benefit in new negotiations before November grows more remote.

Fortunately, there is growing consensus outside of the White House that the current Iran policy is sabotaging U.S. interests and threatening to push the U.S. toward war. All the top contenders for the Democratic nomination for President publicly voiced their support for returning to compliance with the JCPOA.⁵ The presumptive Democratic nominee, former Vice President Joe Biden, has committed to restore U.S. compliance with its JCPOA commitments provided that Iran does the same.⁶

Returning to compliance is a wise position for Biden. A JCPOA return would ensure a new administration would not inherit a major, pressing crisis regarding Iran's nuclear program. Lifting re-imposed U.S. sanctions would also shore up America's badly diminished credibility with allies in Europe, who have sought to hold the line on the agreement in the face of fierce U.S. pressure. It would offer hope to the Iranian people, who celebrated the deal in 2015 but are now suffering directly as a result of Trump's abandonment. A JCPOA return would begin to restore U.S. leverage with Iran, which has been completely diminished by President Trump's ever-escalating and disjointed use of sanctions, threats of military force, and global isolation.

⁵ Bryant Harris, Al-Monitor, "2020 Democrats Vow to Re-enter Iran Nuclear Deal." March 19, 2019, <https://www.al-monitor.com/pulse/originals/2019/03/2020-democrats-vow-reenter-iran-nuclear-deal-jcpoa.html#ixzz6PYXG735H>

⁶ Joe Biden, Foreign Affairs, "Why America Must Lead Again." March/April 2020: <https://www.foreignaffairs.com/articles/united-states/2020-01-23/why-america-must-lead-again>

And, a JCPOA return would serve as a strong opening position to resolve the myriad conflicts in the region and reduce the heavy American military footprint there.

A Biden administration would not be able to punt on this issue. Within the opening months of 2021, a new administration would either have to facilitate a mutual JCPOA return or accept an Iranian nuclear program that crosses the threshold of "undetectable breakout capability." Furthermore, the current Rouhani government will only have months left in office before Iran's presidential elections in May or June. Given Iran's political trajectory since Trump's nuclear deal abrogation, that election may usher in a hardline administration that is uninterested in negotiations and repeating the humiliating path of its predecessor if the nuclear accord is dead. Given the enormous amount of diplomatic energy and creativity expended by the Obama administration on the nuclear issue over the course of two terms, it would be profoundly unwise to complicate or re-open the crisis when a ready solution exists. If a new administration continues the Trump administration's approach to Iran or seeks to place conditions on a return to the JCPOA, it would risk a complete – and more rapid – nuclear breakdown in its first months in office. The far superior alternative is to relieve sanctions in line with U.S. commitments and ensure that Iran restores compliance with its nuclear commitments. That is a process that should begin on Day 1 of a new administration.

Opponents of the JCPOA have failed to articulate a coherent argument against returning to compliance with the deal, nor have they offered any plausible alternative to achieve a better deal so long as the U.S. violates the original bargain. While critics have and will continue to point to 'sunsets' in the JCPOA when some of its restrictions expire, Trump has had ample time to seek to address them from outside the deal and appears poised to come up catastrophically empty.

Our first report detailed the case for returning to the JCPOA, which is now not only a politically viable possibility but is a probability should Biden win the Presidency. This second report seeks to answer the question of how the United States can do so, while putting forward an affirmative vision so that the JCPOA becomes the baseline for a more durable and impactful policy toward Iran and the Middle East.

Recommendations

- The U.S. must chart a new course on Iran policy that stabilizes or builds on the original bargain of the JCPOA. Doing so would require the U.S. to first suspend recent sanctions in exchange for Iran returning to compliance with its obligations under the JCPOA.
- A new administration could quickly deliver a major win for U.S. interests, securing Iran’s full-scale resumption of stringent restrictions on its nuclear program within weeks of a new President assuming office.
- For a potential Trump successor, returning to compliance with the JCPOA should begin on Day 1 of a new administration and encompass all sanctions imposed on Iran during the Trump administration, including those imposed explicitly to tie the hands of a successor administration.
- There is no legal “sanctions wall” that would prevent Trump’s successor from returning the United States to compliance with the nuclear accord, only a political wall. Sanctions-lifting could be accomplished by the same mix of statutory waivers, Executive order revocations, and U.S. sanctions list removals as performed by President Obama when implementing the initial U.S. commitments under the nuclear accord.

- Trump’s successor should also initiate an immediate Iran policy review encompassing a range of issues--including the use of U.S. sanctions. This internal policy review should be clear that sanctions must be solely used to achieve clear policy objectives that are realizable and that can be lifted in case of a negotiated resolution.
- Once the nuclear crisis is stabilized, the U.S. should pursue a joint communique with Iran that outlines a roadmap for simultaneous engagement on issues of mutual concern. This communique should sketch out what both sides desire to be their endstate on this set of issues by 2024 and identify separate negotiation tracks towards achieving these goals in a timely fashion. Importantly, the two sides will not be agreeing on how to achieve these goals in the communique, but on the diplomatic processes to reach them.
- The goal of the joint communique would be to develop a realistic but ambitious path for addressing pressing bilateral and regional issues leading to an eventual normalization of relations. Such an approach would enable each side to verify each other's intentions and develop trust, while also establishing appropriate diplomatic avenues that can succeed irrespective of progress on other fronts.

Part 1:

Dismantling the "Sanctions Wall" and Restoring Credibility



Source: State Department photo/Public Domain

Foreign Ministers gather for negotiations on Iran's nuclear program.

For more than a decade, the United States imposed targeted economic sanctions against Iran with the express purpose of seeking long-term constraints on Iran's nuclear program. In 2015, the Obama administration successfully negotiated a nuclear accord under which such constraints would be placed on Iran's nuclear program in return for the lifting of U.S., UN, and European nuclear-related sanctions. Until the end of its tenure, the Obama administration took steps to ensure that the quid pro quo that underlined the JCPOA remained in place, aware that any perceived failure by the U.S. to live up to its sanctions-lifting obligations under the JCPOA could lead to the undoing of the nuclear constraints on Iran. Accordingly, Iran was long viewed as a test case for whether the U.S. could successfully deploy economic sanctions to achieve discrete policy objectives rather

than to simply impose punishment on the target state. As then-Acting Under-Secretary for Terrorism and Financial Intelligence Adam Szubin noted following the conclusion of JCPOA negotiations, “Sanctions were a means to an end, and [sanctions] relief was a necessary part of any deal.”⁷ Failing to lift sanctions when Iran agreed to negotiated constraints on its nuclear program would “undermine our own credibility and damage our ability to use sanctions to drive policy change,” as former Secretary of the Treasury Jacob Lew noted.⁸

The Trump administration upended this promise when it withdrew from the JCPOA and re-imposed those sanctions lifted under the nuclear accord. Instead of showing that the United States was a good-faith actor that could be trusted to stick to its sanctions-lifting obligations, the Trump administration made clear to Iran and other targets of U.S. sanctions that the U.S. could not be trusted to remove sanctions even if the targeted state took steps to remediate its behavior and act consistent with long-standing U.S. policy objectives.

But as damaging as this is to the U.S.’s international credibility, the Trump administration has also used economic sanctions against Iran as an effective tool of war — a dangerous escalation that threatens the viability of sanctions in the future and the international reputation of the United States. As one U.S. official stated, “the ultimate goal of the yearlong economic sanctions campaign by the Trump administration [is] to draw Iran into an armed conflict with the United States.”⁹ While Trump himself may prefer a deal to war, the maximum pressure approach he has adopted has already brought the U.S., Iran and the broader region to the brink of conflict multiple times.

⁷ Adam J. Szubin, “Written Testimony of Adam J. Szubin, Acting Under Secretary of Treasury for Terrorism and Financial Intelligence United States Senate Committee on Banking, Housing, And Urban Affairs.” 5 Aug. 2015, <https://www.treasury.gov/press-center/press-releases/Pages/jl0144.aspx?version=meter+at+null&module=meter-Links&pgtype=article&contentId=&mediaId=&referrer=&priority=true&action=click&contentCollection=meter-links-click>

⁸ Deb Reichmann, AP, “Treasury Secretary Says Sanctions Must Be Used Judiciously.” March 30, 2016, <https://apnews.com/328551369cd74bf09935fdb444819ce2>

⁹ Helene Cooper and Edward Wong, New York Times, “Skeptical U.S. Allies Resist Trump’s New Claims of Threats From Iran.” May 14, 2019, <https://www.nytimes.com/2019/05/14/world/middleeast/trump-iran-threats.html>.

Setting a Sanctions Trap

The Trump administration has sought to impose sanctions in such a way as to limit the political viability of relieving sanctions in the future, including by designating Iranian entities under multiple sanctions authorities relating not just to WMD proliferation but also to counter-terrorism and human rights abuses. In doing so, the Trump administration has sought to set a sanctions trap from which any future administration will be unable to extricate itself if and when it seeks a diplomatic off-ramp to resolve tensions with Iran.

Indeed, as one influential outside advisor to the Trump administration urged, the Trump administration should “build a wall of additional sanctions that a [] successor could not easily dismantle,” and that such sanctions should be directed not at Iran’s nuclear program but its “role as the leading state sponsor of terrorism . . . , its missile program . . . , and its human rights-abuses and corruption.”¹⁰



Source: Andrew Harrer/BLOOMBERG

The U.S. Department of the Treasury seal displayed outside of the headquarters in Washington, D.C.

¹⁰ Mark Dubowitz, Wall Street Journal, “Build an Iranian Sanctions Wall.” 2 Apr. 2019, <https://www.wsj.com/articles/build-an-iranian-sanctions-wall-11554246565>

When the Trump administration re-imposed sanctions on Iran pursuant to the U.S. reneging on the JCPOA, it did not simply revert to the pre-JCPOA status quo. Instead, the Trump administration both reimposed nuclear-related sanctions that had been suspended under the agreement and added additional non-nuclear sanctions designations to create multiple layers of sanctions that would need to be lifted to comply with the nuclear accord. For instance, OFAC designated a number of Iranian financial institutions as Specially Designated Global Terrorists (SDGTs): Bank Mellat; Bank Melli; Bank Parsian; Bank Tejarat; Parsian Bank; Sina Bank; Export Development Bank of Iran; Future Bank; and Arian Bank. Bank Mellat, Bank Melli, Bank Tejarat, and Bank Saderat represent four out of the five largest Iranian financial institutions. Any U.S. effort to rejoin the nuclear accord will require the removal of all original nuclear-related sanctions, including new non-nuclear designations issued in bad faith by architects of the Trump Administration's sanctions.

By taking such action, the Trump administration and its allies believe that a successor administration will be unable to rejoin the JCPOA and lift these sanctions consistent with U.S. commitments thereunder — at least not without incurring significant political cost. According to this line of thought, Iran will not agree to negotiations while the U.S. violates the nuclear accord, while a future administration will also be deterred from offering relief that touches “non-nuclear” issues in seeking a return to compliance. Yet, in being so transparent with the political nature of their sanctions, U.S. hawks also lay a breadcrumb trail for a future administration intent on unraveling them and charting their own course on Iran policy.

Sanctions Recommendations

If Trump is serious about improving on the original bargain of the JCPOA, he needs to reverse course by pausing or reversing sanctions pressure in order to jumpstart the possibility of new negotiations. However, if he fails to do so, a potential successor administration would retain broad flexibility to reverse course, undo all Trump-imposed sanctions targeting Iran that have undermined the basis for negotiations, and restore and build on the JCPOA.

Doing so would be in line with other moves necessary to restore U.S. credibility on the world stage, like returning the U.S. to full participation in the Paris Climate Accord.

None of the sanctions imposed by Trump are irreversible, and none doom Trump's successor to necessarily inherit Trump's policies towards Iran. There is no “sanctions wall” that would prevent Trump's successor from returning the U.S. to compliance with the nuclear accord and holding in abeyance Trump's sanctions until they conducted their own internal policy review with respect to Iran.

U.S. law permits the President to take immediate steps to lift all those sanctions imposed since the U.S. reneged on the JCPOA. This sanctions-lifting could be accomplished by the same mix of statutory waivers, Executive order revocations, and U.S. sanctions list removals as performed by President Obama when implementing initial U.S. commitments under the nuclear accord. The sanctions-lifting could also take immediate effect and would not be subject to any Congressional review procedures.

Considering the freedom of action granted to the President under current U.S. law, any successor to Trump should take immediate action to rejoin the accord in good standing, along with Iran. This would entail steps to:

- Waive the application of those statutory sanctions targeting Iran, as identified in the JCPOA and as previously performed by the Obama administration;
- Revoke all Executive Orders imposing sanctions on Iran that have been issued by Trump, including E.O. 13846; E.O. 13871; and E.O. 13876;
- Reissue a new Executive Order that integrates those sanctions authorities that were formerly promulgated under E.O. 13716;
- Delist all Iranian persons or entities first identified on U.S. sanctions lists since May 8, 2018, pursuant to Iran-related sanctions authorities, excepting legitimate human rights designations.

Trump’s successor should also re-issue guidance to the public regarding its action and the scope of those sanctions authorities that remain in effect, and the next administration should also take any further necessary regulatory action—including amendments to the Iranian Transactions Sanctions Regulations, 31 C.F.R. Part 560, and the Iranian Financial Sanctions Regulations, 31 C.F.R. Part 561—that may be required to ensure conformity with the proposed sanctions-lifting. Such guidance should be complemented by extensive outreach to the public—including U.S. and foreign commercial parties—regarding the effect of the sanctions-lifting on their proposed dealings with Iranian parties.

In tandem with these steps to restore the JCPOA baseline, Trump’s successor should also initiate an immediate Iran policy review encompassing a range of issues — including the use of U.S. sanctions. This internal policy review, which could lead to the re-imposition of certain sanctions imposed by Trump if determined to be warranted, should be clear that sanctions must be solely used to achieve clear policy objectives that are realizable and that can be lifted in case of a negotiated resolution with Iran.

Further, as part of this policy review, a successor administration should also signal its willingness to lift further sanctions if determined to be within the U.S.’s interest or as part of a negotiated outcome with Iran. For instance, the exclusion of Iranian banks from the U.S. financial system has complicated transactions involving Iran that are otherwise permissible or non-sanctionable, including for U.S. parties engaged in legitimate, lawful trade with Iran. The next administration should give serious consideration to re-issuing the general license for U-Turn transactions that was revoked in November 2008 or promulgating a new license authorization that would allow for certain Iranian parties to have limited access to the U.S. financial system in support of lawful, non-sanctionable trade.



Source: Reuters

President Trump in a speech on May 8th, 2018 formally withdrawing from the JCPOA.

Sequencing

The JCPOA does not contain a clause for parties seeking to re-enter the deal following their withdrawal. As a result, the ultimate sequencing of how a future administration could return to compliance and participate in the fora created thereunder — such as the Joint Commission — is open-ended. For instance, Iran could seek ‘consideration,’ including through the immediate lifting of those sanctions frustrating U.S. compliance with the nuclear accord, or request a ‘premium’ from the United States before committing to permit the U.S. entrance back into the accord.



Source: Saul Loeb/AFP/Getty Images

President Trump holds the proclamation declaring his intention to withdraw from the JCPOA after signing it in the Diplomatic Room at the White House.

Recent remarks from Iranian President Hassan Rouhani appear to indicate that Iran will seek some form of compensation from the United States. According to Rouhani, the U.S. could only rejoin the JCPOA if “they ask, all the other members of the deal accept, all the violations are compensated for, and all the sanctions are removed.”¹¹ While such a position on compensation cannot be dismissed as Iran retains leverage of its own, it is unlikely that the parties who have kept the deal alive amid U.S. abrogation would agree that new conditions must be placed on a U.S. return to compliance, particularly compensation that might make a U.S. return more difficult to sell in Washington.

¹¹ Sina Toossi “Rouhani Discusses Arms Embargo, Potential UN Sanctions Snapback.” May 8, 2020, <https://www.niacouncil.org/news/health-ministry-says-covid-19-cases-increasing/#anchor2>

It is our view that the simplest path forward — and the one that best restores U.S. credibility — is for a successor administration to immediately lift those sanctions required to restore compliance with the JCPOA. This should be accomplished at the earliest possible date, with the next President issuing an Executive order waiving statutory sanctions; terminating any Executive orders required for compliance with the JCPOA; and delisting Iranian parties from U.S. sanctions lists. This could be accompanied by a declaration that Iran will have a certain number of days to restore full compliance with the accord. If Iran does not initiate steps to restore compliance in that window, the U.S. could make clear that it reserves the right to reevaluate its decision and reimpose sanctions in part or in full.

Doing so provides a clear advantage. By restoring its sanctions-lifting obligations, the U.S. would likely be invited back to participate in the Joint Commission and then be able to use its newfound unity with allies in Europe to press Iran to return to compliance. It also offers little cost, as Iran would derive few benefits from a time-bound waiving of sanctions unless it moved to restore its own compliance with the JCPOA. Immediately restoring compliance would also create a strong incentive for Iran to satisfy its people's desire for effective sanctions relief, guarding against any excessive Iranian counter-demands for compensation as a result of prior U.S. noncompliance.

However, there are alternatives. Such alternatives could include, for instance, predating the lifting of sanctions on the IAEA confirming that Iran is in compliance with its nuclear-related commitments under the JCPOA, as happened on Implementation Day in 2016. Or, the U.S. could request a presence at a Joint Commission meeting at which its compliance failures are addressed by the remaining JCPOA participants. As contemplated

by the JCPOA, the U.S. would make effective use of the dispute resolution mechanism to resolve its own failures to comply with the sanctions-lifting commitments under the deal. Because Iran has predicated its own “breach” of the JCPOA as a necessary ‘counter-measure’ undertaken pursuant to the JCPOA, remediating U.S. compliance failures — including through the lifting of sanctions — would ensure that Iran itself returns to full compliance with the nuclear accord.

The Trump administration will likely seek to kill the nuclear deal for good by seeking a resumption of all UN sanctions through snapback, though the likelihood of success appears slim. While it would certainly complicate efforts, the return of UN sanctions would not necessarily obstruct a reconstitution of the JCPOA. The administration would simply have to secure the restitution of UNSCR 2231, or a similar resolution. Current JCPOA participants have proven remarkably resilient in sustaining the framework of the accord absent perhaps its most vital participant, signaling a strong multilateral desire to stave off a full breakdown of the nuclear file.

Ultimately, there is broad flexibility to sequence a U.S. and Iranian joint return to compliance with the JCPOA, which can be adapted to present political and geopolitical circumstances in concert with America’s former negotiating partners. However, the window to return will not stay open indefinitely, necessitating political urgency.

Part 2:

Transforming the U.S.-Iran Relationship



Source: US Navy

A U.S. aircraft carrier, the U.S.S. Abraham Lincoln, transits the Strait of Hormuz on November 29, 2019, as tensions between the U.S. and Iran increase.

Once the nuclear crisis is stabilized, the overarching challenge will be overcoming the decades of hostility that have characterized the U.S.-Iran relationship. This would require a broad strategy for dialogue and engagement to be implemented in the aftermath of a JCPOA return. The underlying reality driving the need for such a U.S.-Iran détente is the many common security, political, and economic interests between the two countries, which their heated differences have long disguised. To this end, a diplomatic breakthrough with Iran could bring about lasting U.S.-Iran peace, empower the Iranian people by removing sanctions pressure and outside threats of war that they have been victimized by, and help restore stability to a region ravaged by conflict and sectarian violence.

After returning to the JCPOA, it would be easy for the U.S. and Iran to fail to capitalize on momentum to resolve other seemingly intractable issues. Iran’s presidential elections in May or June 2021 could deliver a hardliner opposed to accommodation with the West. Likewise, a Biden administration could lose interest, return to a pressure track or focus too narrowly on a single intractable issue. Biden’s campaign rhetoric indicating that he will push back on Iran’s “destabilizing activities” after rejoining the nuclear deal suggests his administration could pursue a strategy that muddles the diplomatic path rather than maximizing a potential opening for further negotiated solutions. What is needed, instead, is a road-map to resolve sources of conflict in a mutually beneficial fashion.

In the past, an incremental approach for overhauling the U.S.-Iran relationship has been attempted, including in the 1990s with former Iranian President Hashemi Rafsanjani, in the 2000s with reformist Iranian President Mohammad Khatami, during the tenure of conservative Mahmoud Ahmadinejad, and most recently with President Hassan Rouhani. Parties on both sides envisioned that a phased quid pro quo would generate trust and eventually lead to an overhaul in the relationship. However, the major downside of the incremental approach has been that progress can be easily reversed by changing political winds in Tehran and Washington, as experienced thus far under the JCPOA.

In both Tehran and Washington, many believed (and some feared) that the JCPOA would be a base for U.S.-Iran diplomatic engagement, not the ceiling. However, the deal was met with unfriendly domestic politics in both capitals. Opposition to the deal in the U.S. was spearheaded by Congressional rivals of the Obama administration and hawkish special interest groups. In Iran,



Iranian President Hassan Rouhani delivers a speech before the heads of banks, in Tehran, Iran, January 16, 2020.

moderate President Hassan Rouhani staked much of his political capital on the negotiations in the face of strong opposition from hardliners. With Donald Trump's election and his subsequent abrogation of the deal, Rouhani has been left discredited in the face of his detractors and politically debilitated. A return to the incremental approach without a broader roadmap for change risks falling victim to the same forces.

Another often-discussed alternative is seeking a comprehensive, "grand bargain" deal that addresses all major U.S.-Iran differences in one go. This approach has major constraints, chief among which is the chasm of trust between the two sides, particularly after the U.S. violation of an agreement that was largely seen as a test of America's ability to abide by its sanctions-lifting commitments. Furthermore, the existing disputes between the U.S. and Iran, which overlap through multiple regional theaters, are arguably too complex to resolve as part of a single negotiation that includes different and sometimes conflicting interests and parties.

To untangle this sticky web and provide direction and momentum to address the sources of tension in the relationship, the U.S. should pursue a joint communique with Iran that outlines a roadmap for simultaneous engagement on certain issues. This communique should sketch out what both sides desire to be their endstate by 2024 and identify separate negotiation tracks towards achieving these goals in a timely fashion. Importantly, the two sides will not be agreeing on how to achieve these goals in the communique, but on the diplomatic processes to reach them.

The goal of the joint communique would be to develop a realistic but ambitious path for addressing pressing bilateral and regional issues leading to an eventual normalization of relations. Such an approach would enable each side to verify each other's intentions and develop trust, while also establishing appropriate diplomatic avenues that can succeed irrespective of progress on other fronts.

The joint communique and simultaneous engagement option will allow both sides to more rapidly build trust and move in the direction of a more fully-fledged relationship. Some of the issues addressed in the communique could be more tractable, such as removing barriers to people-to-people exchanges or laying the basis for cooperation on areas of mutual interest, such as combating climate change or the drug trade. Other issues charted out would seek to build on pre-established diplomatic efforts, such as the JCPOA or backchannel negotiations to secure the release of Americans imprisoned in Iran. Critically, a communique would also establish a diplomatic roadmap to end the conflicts in Yemen and Syria and institutionalize cooperation between Iran, Saudi Arabia, and other Persian Gulf states. Particularly thorny issues, such as the nature of Iran's relations with Israel and proxy groups that threaten Israel's security, would

likely need more time to address but are critical to transforming the U.S.-Iran relationship and moving firmly off a path that risks war.

Such a communique could be initiated under a lame-duck Rouhani administration with a view toward implementing whichever aspects are most feasible and desirable under the new Iranian president, who is slated to take office in August 2021.¹² Such an approach would allow necessary flexibility, as it is far from clear which goals will be achievable or which necessary negotiating parties around the region would be open to shifting from maximum pressure to serious diplomacy. Moreover, by siloing out separate negotiating tracks from one another, the communique would allow for simultaneous progress on resolvable issues at the same time others remain intractable. As a result, a future communique would offer structure and guidance to the U.S., Iran and other interested parties so that the goals of a grand bargain become achievable, while avoiding many of the risks that would accompany seeking to solve all tensions at once.

The joint communique would create the framework for jumpstarting negotiations on multiple tracks. These negotiations will build trust and move the two countries towards establishing diplomatic relations based on mutual respect and interests.

¹² Backchannel U.S.-Iran discussions on the nuclear issue preceded the June 2013 election of Hassan Rouhani, helping lead to the rapid conclusion of the Joint Plan of Action (JPOA) later that year.

The following are a set of negotiation tracks that could be included in the joint communique:

Establishing Arrangements for “Civilian Diplomacy”

The U.S. and Iran can facilitate religious, environmental, scientific, and academic exchanges. These non-political exchanges could serve as a positive basis on which to engage American and Iranian technocrats. To enable this process, the U.S. must end the travel ban against Iranians and both countries should establish a visa process in each other’s capital. Both sides can also encourage tourism and the development of direct flights between Tehran and one or more U.S. cities.

Fortifying the JCPOA

After the U.S. returns to compliance with the JCPOA, both sides can explore options for a more sustainable successor deal that meets the interests of both sides. A Biden administration would have to adhere to a “more-for-more” principle, and thus be prepared to offer more sanctions relief to extend or strengthen nonproliferation safeguards. Both sides can also work on regionalizing and globalizing the JCPOA’s principles.

Negotiations on a Prisoner Exchange

The U.S. should continue to press Iran to release any dual nationals or other American citizens who remain unjustly imprisoned in Iran, likely in exchange for the release of Iranian nationals imprisoned in the U.S. on sanctions violations. Such negotiations have succeeded in securing freedom for Americans in the past, including under the Trump administration, and Iran has publicly and privately signaled its interest in future exchanges. Over the long-term, the U.S. should partner with allied nations whose citizens have similarly been targeted by IRGC Intelligence to effectively disincentivize future political arrests.

Fostering Human Rights Dialogue

The U.S. should seek to establish bilateral and multilateral dialogues between diplomats and judicial authorities aimed at pressing Iran to adhere to its international human rights obligations, including the release of human rights defenders and prisoners of conscience. Such dialogue will be informed by the principle, as famously declared by President John F. Kennedy, that peace, too, is a “matter of human rights” and that peace, economic development, and human rights are intricately connected, while the pressure-only track is antithetical to human rights. In line with this, the U.S. should press the Iranian government to permit the United Nations Special Rapporteur on the human rights situation in Iran to enter the country for monitoring visits and to implement the envoy's recommendations.



Source: Ali Mohammadi/ Bloomberg via Getty Images

Demonstrators chant while gathering during a vigil for the victims of the Ukraine International Airlines flight that was unintentionally shot down by Iranian forces on January 11, 2019.

Iran could use such channels to underscore the humanitarian impact of sanctions on the Iranian people and push the U.S. to adhere to the 1948 UN Declaration of Human Rights, which holds that everyone has a right to a standard of living adequate for his health and well-being, and Article 12 of the UN-approved International Covenant on Economic, Social, and Cultural Rights, which asserts the right to “the highest attainable standard of physical and mental health” for everyone around the globe.

Pursue an Agreement to Avoid Confrontations in Border Regions

The U.S. and Iran can pursue cooperation to avoid accidental conflicts through confrontations of military forces in border areas, the sea, and air spaces, in accordance with prevailing international law. Using such approaches as a basis, the two sides can negotiate an “Incidents at Sea” agreement to avoid conflicts and tensions between naval and air forces operating in close proximity to each other.

Cooperate on Confronting Mutual Threats

The U.S. and Iran can engage in joint efforts to combat terrorism, organized crime, and drug trafficking. Collaboration on fighting groups like ISIS and al Qaeda can be institutionalized through talks between CENTCOM and relevant Iranian military institutions. Meetings between American and Iranian experts on countering drug trafficking and organized crime, including at conferences in Iran and the U.S., can lay the basis for increased cooperation in this area.



Source: Mandel Ngan/AFP/Getty Images

U.S. Secretary of State Michael Pompeo talks with reporters concerning the Trump administration's "Maximum Pressure" policies on Iran.

Work Towards a Framework to Resolve Regional Conflicts

The U.S. and Iran can work towards the peaceful settlement of conflicts in the region. The U.S., Iran and America’s regional partners should seek agreements on a set of general principles for the resolution of regional conflicts, including safeguarding national borders and resisting the territorial disintegration of any states, will of the majority and minority rights, power-sharing, free elections supervised by the United Nations, and cooperation in delivering humanitarian and economic aid to rebuild war-ridden areas. Negotiations over the conflicts in Syria and Yemen must include all the major indigenous, regional, and global actors that carry influence in each country. In Syria, this includes the U.S., Iran, Russia, Turkey, and the Syrian government and moderate opposition. In Yemen, this includes the Yemeni government of Abdrabbuh Mansur Hadi, the Houthi movement, Saudi Arabia, the UAE, Iran and the U.S. Negotiations on each conflict should be centered on the aforementioned principles as well as facilitating a power-sharing arrangement between the warring domestic parties.

Agree on a Security Architecture for the Persian Gulf

The U.S. and Iran should support establishing a security and cooperation system in the Persian Gulf modelled after the Organization for Security and Cooperation in Europe (OSCE). The OSCE, established in 1994, had its origins in the 1975 Helsinki Accords that led to institutionalized channels of dialogue and deconfliction between NATO countries in Europe and the Warsaw pact states. Over the course of two decades, meetings held within this framework resulted in critical transparency measures, arms limits, and information exchanges that palpably lowered tensions across the European continent. Such an arrangement between regional powers would serve all parties and reduce the need for a strong U.S. military footprint in the region.

Address International Concerns on Iran's Missile Program

Given the centrality of Iran's missile program to Iran's defense doctrine amid sanctions that bar Iran from securing modern military weaponry available to its regional rivals, Iran is unlikely to accede to far-reaching U.S. demands on its missile program. At the same time, there are valid international concerns regarding Iran's supply of missiles to regional proxies and that certain of Iran's ballistic missiles were apparently developed with the aim of serving as delivery vehicles for nuclear warheads that Iran never produced. The U.S. and Iran should explore, as part of the communique, opportunities to mitigate these latter concerns via regional negotiations and confidence-building measures, such as notifications of test launches and range limits.

Move Towards Establishing Economic Ties

The U.S. and Iran can move towards greater economic cooperation. This can include a gradual lifting of U.S. primary sanctions and the U.S. supporting Iran's access to multilateral economic institutions, such as the WTO and World Bank loans. The U.S. should also take practical steps to release frozen Iranian assets held in the United States.

Conclusion

Despite nearly four years of diplomatic sabotage and "maximum pressure", the JCPOA remains very much alive. There is still time to revitalize the historic agreement and for the U.S. to chart out a restored diplomatic undertaking to resolve challenges with Iran and begin to untangle the seemingly intractable conflicts the U.S. continues to be ensnared in throughout the Middle East. The course ahead is not as complex as those interested in conflict with Iran would have policymakers believe; it simply requires the political will to terminate the failed maximum pressure strategy and return to the only strategy that has actually delivered results in changing Iran's behavior: the diplomatic path. By taking diplomacy off the table, the current administration has undermined U.S. interests and global leadership, encouraged dangerous proxy conflicts and regional chaos, and forced America to confront challenges throughout the Middle East without the most important tool in its arsenal. If diplomatic efforts are not restored, it will be America's military that is inevitably called on once again to attempt to resolve a challenge that has no military solution. In order to advance U.S. and global security interests and promote stability and political solutions throughout the Middle East, the U.S. must return to the JCPOA and reestablish its role as a credible actor and global leader at the negotiating table.