



# Is Restoring the Iran Nuclear Deal Still Possible?

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**What's new?** Prospects of reviving the Iran nuclear deal have swung dramatically, from near certain in March to almost nil in July, then back in the direction of an agreement in August to yet another stalemate in September. Exchanges on a compromise text are still falling short of satisfying all the parties.

**Why does it matter?** Though the parties remain nominally committed to continuing diplomacy to restore the 2015 deal, an escalatory cycle looms should the talks meander aimlessly or end in failure. Contingency planning for a protracted stalemate or a no-deal scenario could help defuse tensions and manage the risk of a dangerous confrontation.

**What should be done?** A narrow pathway to a deal still exists. But if talks drag on or collapse, the best way forward may be for the sides to consider single-measure commitments, while respecting red lines to avert nuclear and regional escalation. Thus, they could buy themselves time to envision a more durable accord.

## I. Overview

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Since April 2021, parties to the 2015 Joint Comprehensive Plan of Action (JCPOA), or Iran nuclear deal, have sought to revive the agreement abandoned by U.S. President Donald Trump. Negotiations between Iran and its interlocutors – the U.S., France, the UK, Russia, China and Germany, coordinated by the EU – made progress over eight rounds in Vienna. By March 2022, they had yielded a close to final text. Since then, things have backslid: Russia's Ukraine war has shifted world powers' focus and hampered cooperation; disagreements between Tehran and Washington on key issues are deadlocked. The EU is trying to find a compromise, but its top diplomat believes that the parties are diverging, making a quick deal seem unlikely. The U.S. midterm elections narrow space for progress. If the parties take no escalatory measures, they may be able to cross the finish line prior to or after the November vote. But the negotiations might drag on, or the gaps prove unbridgeable. If so, the parties will need to pivot to a stopgap combination of single-measure agreements and respect for red lines to manage the risk of armed confrontation.

The text hammered out as of March addressed almost all the substantive issues separating the parties. It laid out how Iran would roll back its nuclear program consistent with the JCPOA's limits, gave an approximation of what sanctions relief the

U.S. would provide and sketched out how to sequence the two sides' commitments. In parallel, Iran and the International Atomic Energy Agency (IAEA) agreed on a framework for settling outstanding questions concerning Iran's past activities at undeclared sites. But the IAEA investigation stalled and the sides have become mired in disputes over issues that they had thought resolved or close to it.

At the stalemate's core stand Iran's bottom-line demands that the others cannot or will not satisfy. To guard against a future U.S. administration renegeing on the deal like Trump's did, Iran seeks guarantees that the economic dividends afforded by the restored JCPOA will endure. The Biden White House has indicated it cannot meet such a demand, because the administration cannot legally bind successor presidents in the way that Iran wishes. Iran also wants the IAEA investigation into its past work terminated, insisting that it could become a never-ending, politically motivated inquest. But calling it off would run contrary to the agency's mandate for nuclear accountability, and the U.S. and the three European parties (France, Germany and the UK, or the E3) oppose the idea of doing so.

Recent moves offered a glimmer of hope that the deal might be revived, but that now appears to be flickering. In early August, the EU tabled a compromise text after several days of deliberations with all sides. Since then, Iran and the U.S. have exchanged a series of counter-proposals, but prospects for reaching a consensus document are uncertain. With little sign of Iranian flexibility and growing reluctance among Democrats to engage in a polarising Iran debate in Congress ahead of mid-term elections, an imminent breakthrough appears unlikely. What is certain, however, is that escalatory measures or unexpected events could scotch what may prove to be the last chance at salvaging the JCPOA.

While compromise and seeing the Vienna talks through to a successful conclusion remains in all parties' best interest, the goal of restoring mutual compliance with the original deal may remain beyond reach, in which case an inexorable drift toward a post-JCPOA reality looms. In Tehran, sentiment is bullish about the country's ability to weather the impact of sanctions and bearish about the value of U.S. commitments to sanctions relief, which many think will end up delivering ephemeral returns, even if they are significant in the near term. In Washington, the political liability of pursuing a contentious deal increases with growing pushback from the agreement's opponents and Iran's irreversible nuclear advancements, while the no-deal status quo has yet to become a top-tier foreign policy priority amid other crises. But with Iran's program closer to weaponisation capability than it has ever been, and operating with increasing opacity, the situation could well escalate into a nuclear proliferation crisis unless the parties move on to a more stable course.

If efforts to restore the JCPOA drag on or, worse, fall apart, the default positions of both the U.S. and Iran are easy to imagine. It is likely that Washington will increasingly emphasise sanctions enforcement and expansion, perhaps with growing buy-in from European allies and buttressed by the threat of force, especially if there are signs – absent for the moment – of Iranian moves toward building a nuclear weapon. For its part, Tehran will almost certainly step up nuclear advances, as well as provocations aimed at the U.S. and its allies in the Middle East, either directly or through its own regional partners. As a result, what has been a tenuous equilibrium of “no deal, no crisis” could prove unsustainable.

If the Vienna talks do fail to produce agreement on restoring the JCPOA, it will thus be vital to keep diplomatic space open by considering alternative ways forward. Contingency planning should start now. Some options that may have been possible at an earlier stage now look moribund. It once seemed that the U.S. and Iran might set aside the JCPOA in pursuit of a more ambitious deal, a “more-for-more” arrangement, but prospects are hardly propitious now, given the mistrust and mismatched expectations on display in efforts to revive an agreement the sides had accepted as a baseline understanding. Nor does a “less-for-less” interim agreement that trades limited nuclear rollback for a discrete set of economic incentives seem particularly promising, because the maximum the U.S. is willing to concede in sanctions relief is likely to fall short of Iran’s minimum requirements.

Against this backdrop, modesty could well be key to the feasibility of any approach. One possibility is to focus on single-step reciprocal gestures (eg, a step on the nuclear front in exchange for lifting one sanction), though even that could prove a bridge too far. Another possibility is that progress on humanitarian issues, including an exchange of imprisoned U.S. and Iranian nationals, desirable in any case, might help create a better atmosphere for resuming nuclear discussions. Finally, whether or not the parties can reach agreement on any of the foregoing, they need to determine red lines and tripwires to prevent mounting tensions on the nuclear and regional fronts from building into an escalatory spiral. The sides can communicate these through European and regional intermediaries. While perhaps not sustainable over the long run, this course may at least buy time for the parties to engage in a fundamental rethinking of the extent to which the paradigms that informed two decades of nuclear diplomacy still hold true, and how they can be constructively revised to avoid a show-down that spells peril for all.

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## II. **One Step Forward, One Step Back**

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### A. *The Making of an Impasse*

To understand how the JCPOA talks regressed from near success to the point of impasse in a matter of months, it is useful to review their short history. The negotiations aimed to return the U.S. to the deal and bring Iran back into full compliance with its provisions. They began in April 2021, continuing for six rounds until the Iranian presidential election that June. The talks paused during the post-election transition from the Hassan Rouhani to the Ebrahim Raisi government. Then, in the course of marathon eighth round of discussions in Vienna starting in December, they came within touching distance of the finish line in early March 2022.<sup>1</sup>

At that point, the global diplomatic crisis engendered by Russia’s invasion of Ukraine intruded. Whether the parties could have resolved their remaining disagreements if the invasion had not happened can only be a matter of conjecture. On 5 March, however, Moscow injected a demand for sweeping sanctions exemptions for its trade with Iran. It withdrew its objections to the draft text shortly afterward, but by then

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<sup>1</sup> On progress in the talks up to mid-January, see Crisis Group Middle East Reports N°224, *Iran: The Riddle of Raisi*, 5 August 2021; and N°230, *The Iran Nuclear Deal at Six: Now or Never*, 17 January 2022.

the European coordinators had already halted the discussions, citing “external factors”. The interruption stole the momentum: in-person negotiations involving all parties stopped for months, and in the interim, exchanges of proposals between the U.S. and Iran, and a brief round of EU-mediated indirect but face-to-face talks in Qatar at the end of June, made little progress. By the time negotiators reconvened in Vienna in early August, some of the gaps that the two sides had narrowed or thought they had closed had reappeared or even widened.<sup>2</sup> While their exchanges then and since have been substantive, lending the talks renewed impetus, they have as of yet failed to deliver a final understanding.

At the heart of the present stalemate in negotiations are three main contentious issues. The first is the IAEA investigation into past Iranian activities involving nuclear material at three undeclared sites.<sup>3</sup> During the Vienna talks, Iran has sought to have the long-running probe unconditionally closed by a predetermined deadline as part

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<sup>2</sup> E3 diplomats had left Vienna on 4 March with, in the words of the lead French negotiator, “our job done”. See tweet by Phillipe Errera, @PhilippeErrera, political director at the French foreign ministry, 7:54pm, 17 March 2022. But the next day, Russian Foreign Minister Sergey Lavrov, citing Western sanctions in response to Russia’s 24 February invasion of Ukraine, called for guarantees that these measures would “by no means affect our right to free and full-fledged trading, economic, investment, military and technical cooperation with Iran”. Quoted in “Russia demands U.S. guarantees sanctions will not harm Moscow-Tehran ties – Lavrov”, TASS, 5 March 2022. The U.S. called the exemptions request “irrelevant” to the JCPOA discussions, and five days later, the EU coordinator called a halt to the Vienna talks. U.S. Secretary of State Antony Blinken quoted in “Secretary Blinken with Margaret Brennan of CBS News”, U.S. State Department, 6 March 2022; and tweet by Josep Borrell, @JosepBorrellF, EU high representative for foreign affairs and security policy, 5:30am, 11 March 2022. Meeting Iranian Foreign Minister Hossein Amir-Abdollahian in Moscow on 15 March, Lavrov referenced U.S. “written guarantees” addressing “all projects and areas of activity envisaged by the JCPOA”, while the U.S. State Department confirmed that the U.S. “would not sanction Russia’s participation in nuclear projects that are part of a full return to the JCPOA”. Quoted in Liz Sly and Karen DeYoung, “Russia raises hopes for a return to the stalled Iran nuclear talks”, *Washington Post*, 15 March 2022. In June, Borrell asserted, “At a certain moment, Russia was very much against the deal ... but after the contacts that the Iranians themselves had with the Russians, Russia has withdrawn any objection to the deal”. “Remarks by High Representative Josep Borrell after talks in Tehran”, European External Action Service, 25 June 2022.

<sup>3</sup> The first site is a warehouse in the Turqzabad district near Tehran, where, in 2018, the agency, by using satellite imaging, found evidence of sanitisation efforts and removal of containers. In 2019, environmental sampling yielded evidence of “natural uranium particles of anthropogenic origin, the composition of which indicated that they might have been produced through uranium conversion activities”, and later, “isotopically altered particles of low-enriched uranium”. The agency assessed Iran’s explanations to be “not technically credible”. The second location, Varamin, is a plant on Tehran’s outskirts that may have been used as a facility for storage and/or the processing and conversion of uranium ore, including fluorination, in 2003. Environmental samples taken in August 2020 found uranium particles of anthropogenic origin, resembling the ones found in Turqzabad. At the third site, named in IAEA reports as Marivan, near the city of Abadeh, “outdoor, conventional explosive testing” and tests related to “neutron detectors” may have taken place. The agency took environmental samples in August 2020, which revealed the presence of uranium particles. Among the three locations, Turqzabad is where questions are most pressing, as some of the particles detected there are of much more recent vintage than at the others. Crisis Group interviews, IAEA inspectors, Vienna, December 2021. See also GOV/2022/26, IAEA, 30 May 2022. For background on the IAEA investigation, see Crisis Group Report, *The Iran Nuclear Deal at Six*, op. cit.

of a final agreement – a demand that the U.S. and E3 opposed.<sup>4</sup> Tehran’s concern seems to be that, by shedding light on outstanding questions about the past, the enquiry would validate the information’s primary source, namely its own archival material, which Israeli intelligence operatives smuggled out of Iran in 2018 and shared with the IAEA.<sup>5</sup> A senior Iranian official said, “This probe is a bottomless pit. If we don’t put an end to it at some point, 50 years from now they will still hold our feet to the fire over what happened before 2003”.<sup>6</sup>

Tehran thus has continued to make halting the investigation a precondition for returning to full JCPOA compliance.<sup>7</sup> But Western powers neither can nor wish to dictate how an independent UN agency should conduct its mandate of nuclear accountancy. Nor will they make a political commitment to press the agency to shelve a technical probe in advance of its outcome, which is dependent on the level of Iran’s cooperation with the agency.<sup>8</sup>

On 5 March, IAEA Director General Rafael Grossi said he had agreed to a timetable with the Atomic Energy Organization of Iran to address the IAEA’s concerns.<sup>9</sup> Yet further talks between the two agencies in April and May made little headway.<sup>10</sup> In June, Grossi told the IAEA Board of Governors that Iran had provided no “technically credible” explanations for its past activities, prompting the board to pass a cen-

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<sup>4</sup> Crisis Group interviews, European and U.S. negotiators, Vienna, February–March 2022. Tweet by Stephanie Al-Qaq, @salqaq, director for Middle East and North Africa at UK Foreign, Commonwealth and Development Office, 10:12am, 1 March 2022.

<sup>5</sup> David Sanger and Ronen Bergman, “How Israel, in dark of night, torched its way to Iran’s nuclear secrets”, *The New York Times*, 15 July 2018; and Aaron Arnold et al., “The Iran Nuclear Archive: Impressions and Implications”, Belfer Center for Science and International Affairs, Harvard University, April 2019.

<sup>6</sup> Crisis Group interview, Tehran, March 2022.

<sup>7</sup> Crisis Group interviews, European and IAEA officials, Vienna, December 2021. As an adviser to Iran’s nuclear negotiating team put it, “The U.S./EU can’t have a deal [and] simultaneously keep a wrecking ball ready at hand. The IAEA can no longer be used as the sword of Damocles”. Tweet by Mohammad Marandi, @s\_m\_marandi, Tehran University professor, 5:08am, 4 August 2022. A senior Iranian official said, “We managed to close the outstanding questions about Iran’s nuclear program’s so-called possible military dimension [PMD], which was a precondition for the JCPOA coming into force. If the West had told us in 2015 ‘PMD is your problem, resolve it with the IAEA on your own’, there would have been no JCPOA. They helped determine a process with an end date and encouraged the agency to show flexibility, which resulted in closing the outstanding questions then, and with political will we can do it again”. Crisis Group telephone interview, August 2022. A senior U.S. official noted that “this is harder than PMD, because of undeclared nuclear materials. There is no way the IAEA can look the other way without undermining its own *raison d’être*”. Crisis Group interview, Washington, July 2022. The agency closed the PMD file in December 2015, almost a month before the JCPOA entered into force on 16 January 2016, but before the documents in the nuclear archive came to light. See GOV/2015/68, IAEA, 2 December 2015.

<sup>8</sup> A Western official noted that, during the August talks, Russia had been “helpful” on safeguards “but did not put any pressure on Iran to resolve the issue”. Crisis Group interview, 9 August 2022.

<sup>9</sup> “Joint statement by HE Mr Mohammad Eslami, Vice-President and President of the Atomic Energy Organization of Iran, and HE Mr Rafael Grossi, Director General of the International Atomic Energy Agency”, IAEA, 5 March 2022.

<sup>10</sup> Instead of shedding light on its past nuclear activities, Tehran accused Israel of planting uranium particles in Iran, an explanation that the IAEA dismisses as technically not credible. See “Communication dated 3 June 2022 received from the Permanent Mission of the Islamic Republic of Iran to the Agency”, INFCIRC/996, IAEA, 7 June 2022.

sure resolution, put forward by the U.S. and E3, expressing “profound concern”.<sup>11</sup> Meanwhile, Tehran has pressed for ending the probe during both the indirect contacts with the U.S. in Qatar and the later negotiations. In August, the EU offered another compromise.<sup>12</sup> Its proposal would see the JCPOA stakeholders submit a resolution to the IAEA Board of Governors to close Iran’s safeguards file should Tehran adequately answer the agency’s queries. Iran would keep a veto over the deal’s implementation in case it dislikes the probe’s outcome.<sup>13</sup> Still, Tehran wants the world powers to commit that, no matter the IAEA’s findings, the inquiry will stop.<sup>14</sup>

The second area of divergence is the scope of U.S. sanctions relief, centring around the Trump administration’s 2019 designation of Iran’s Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization (FTO) – a decision the U.S. acknowledged at the time was “unprecedented” because it involved the listing of a state entity.<sup>15</sup> The Biden administration twice proposed to delist the IRGC on certain conditions: once in May 2021, in return for Iran agreeing to negotiate a follow-on “longer and stronger” agreement after the JCPOA’s restoration; and again in March 2022, in

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<sup>11</sup> “IAEA Director General’s introductory statement to the Board of Governors”, IAEA, 6 June 2022. The Board passed the resolution by a vote of 30 to two (with Russia and China in opposition), with three abstentions. GOV/2022/34, IAEA, 8 June 2022.

<sup>12</sup> According to Western officials, Iran’s chief negotiator focused nearly three quarters of the discussions in Doha on the IAEA probe. Crisis Group interviews, U.S. and European officials, July 2022. See also Laurence Norman, “Iran, U.S. nuclear deal talks end without progress”, *The Wall Street Journal*, 29 June 2022. France’s lead JCPOA negotiator said, “[The] E3 and U.S. were crystal clear on their position in Vienna, where this issue had been resolved after intense and tough late-night sessions between E3 and Iran, with a solution supported by [the] U.S., Russia and China”. Tweet by Philippe Errera, @PhilippeErrera, 6:42am, 30 June 2022. An Iranian official maintained that, “Yes, the JCPOA and safeguards are not linked, and we have a process with the IAEA, but if the probe is unresolved, the deal won’t be done”. Crisis Group telephone interview, 7 July 2022. See also, “No deal without safeguards”, *Tehran Times*, 29 August 2022.

<sup>13</sup> According to the calendar for the implementation of the Vienna agreement, after concluding the deal (Conclusion Day), the parties enter a 60-day period dedicated to the deal’s review by U.S. and Iranian legislatures. Completion of that process (Confirmation Day) would trigger a 45-day verification period during which Iran would cap its proliferation-sensitive activities and the U.S. would allow Iran to legally export a certain volume of oil. At the end of this step is Reimplementation Day, when both sides start rolling back their JCPOA breaches during a 60-day period that ends in Completion Day. If Iran is unsatisfied with the IAEA’s probe, which will be conducted between Conclusion Day and Reimplementation Day, it can refrain from rolling back its nuclear program. Crisis Group interviews, U.S., European and Iranian officials, March-August 2022. See also Laurence Norman, “EU proposes significant concession to Iran to revive nuclear deal”, *The Wall Street Journal*, 11 August 2022; and Arshad Mohamed, “U.S. and Iran finesse issue of IAEA’s nuclear probes, for now”, Reuters, 29 August 2022.

<sup>14</sup> Crisis Group telephone interviews, European officials, 1 September 2022. As an E3 official put it, Iran’s latest demand on safeguards “reopens the coordinator’s text on safeguards, which was at the outer limits of our flexibility already – and which they implicitly accepted in their August 15 response”. Quoted in Laura Rozen, “European official blasts Iran text: ‘Moves us very far back’”, Diplomatic (Substack), 2 September 2022.

<sup>15</sup> “Statement from the President on the Designation of the Islamic Revolutionary Guard Corps as a Foreign Terrorist Organization”, White House, 8 April 2019. Iranian officials constantly ask European intermediaries to remind their U.S. counterparts that, when the Trump administration made the FTO designation in 2019, almost all the people who are now senior Biden administration officials working on the Iran file condemned it as reckless and superfluous. Crisis Group interviews, European officials, Vienna, March 2022.

return for a mutual commitment by Iran and the U.S. not to target current or former officials amid Iranian efforts to avenge the U.S. killing of a senior Qods Force commander, General Qassem Soleimani, under the Trump administration.<sup>16</sup> Iran rejected the first offer out of hand, and although it appeared ready to accept the second, it backed out once talks halted in March.<sup>17</sup>

The terrorist designation issue then turned into a lightning rod in both Tehran and Washington, limiting both sides' room for manoeuvre.<sup>18</sup> The U.S. and Iran appear to have moved on from clashing over the designation itself by agreeing to discuss it after restoring the JCPOA, when direct bilateral talks would be possible. Nevertheless, the U.S. has rejected Iranian counter-proposals that would not require full rescission of the designation, such as delisting IRGC-linked economic entities that are named as FTOs under separate U.S. sanctions authorities.<sup>19</sup>

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<sup>16</sup> Crisis Group interviews, U.S. and EU officials, Vienna, Brussels and Washington, February–June 2022. U.S. intelligence agencies reportedly have concrete evidence of Iran seeking to assassinate former Trump administration officials involved in killing Soleimani in January 2020. Jana Winter, “U.S. government warns that Iran may try to kill American officials as revenge for killing top general”, Yahoo News, 13 July 2022; and Borzou Daragahi, “Iran’s supreme leader shares animated video depicting assassination of Donald Trump”, *The Independent*, 13 January 2022. On 10 August, the U.S. Justice Department charged an IRGC member in a plot to kill John Bolton, who served as national security advisor in the Trump administration, “likely in retaliation” for Soleimani’s killing. “Member of Iran’s Islamic Revolutionary Guard Corps (IRGC) Charged with Plot to Murder the Former National Security Advisor”, U.S. Department of Justice, 10 August 2022. Iranian officials express concern that if the designation remains in place, it could allow the U.S. to target more IRGC generals. Crisis Group interviews, senior Iranian officials, Tehran, March 2022.

<sup>17</sup> While Iranian negotiators seemingly agreed in early March that Iran would make a tacit commitment not to target U.S. nationals, they walked it back once they returned to Tehran. A senior European official said by way of explanation, “There is a risk that the private commitment could become public, which rendered the reputational cost of giving up on avenging Soleimani’s killing prohibitive for the Iranians”. Crisis Group interview, Washington, March 2022. After Iran’s foreign minister indicated in a speech that senior IRGC officials had told him that the terrorist designation should not hold up the deal, hardliners harshly reprimanded him, and he was forced to downplay his statement publicly. Saeid Jafari, “Why IRGC issue won’t go away”, *Al-Monitor*, 9 July 2022.

<sup>18</sup> Laying the groundwork for justifying the IRGC’s potential delisting, a senior White House official said in March, “Even after [terrorist designation] removal, we retain the authority to sanction any Iranian who has been involved in acts of terrorism”. Crisis Group interview, Washington, 3 March 2022. In June, another senior White House official said, “If we were to delist the IRGC, there will be blood on the ground during the congressional review and there was a real threat of a joint resolution of disapproval against a possible agreement negotiated in Vienna”. Crisis Group interview, Washington, 6 June 2022. In May, the U.S. Senate passed a non-binding resolution against delisting the IRGC by 62 votes to 33. Andrew Desiderio, “Congress fires its first warning shot on Biden’s Iran deal”, *Politico*, 5 May 2022. While having no binding effect, the resolution offers insight into the level of bipartisan congressional opposition.

<sup>19</sup> A European official said, “The only advantage that the diplomatic hiatus in the past three months has had is that it has rendered the [terrorist designation] issue less emotional, and so we can now explore alternatives to it”. Crisis Group interview, Brussels, 15 June 2022. One Iranian suggestion was reportedly that the U.S. delist Khatam al-Anbiya, the IRGC’s powerful business conglomerate. Parisa Hafezi, “Rise of Arab-Israel axis spurs Iran to redouble nuclear talks push”, Reuters, 1 July 2022. A senior White House official said, “It’s the same principle upon which we refused to delist the IRGC itself: IRGC activities are outside of the JCPOA’s scope”. Crisis Group interview, Washington, June 2022. A European official said, “The fact that the U.S. is the only country in the world that has sanctioned Mahan Air, an airline allegedly involved in transferring weapons to Syria, is in-

The third and perhaps the most difficult issue relates to Iran's concerns, which it has aired throughout the negotiations, about the longevity and reliability of U.S. sanctions relief. Reaching an agreement would facilitate for Tehran billions of dollars in additional oil revenue and access to tens of billions more in assets held abroad, but the possibility of a future U.S. withdrawal from the deal could render the benefits short-lived.<sup>20</sup> As an Iranian negotiator put it, "Without economic guarantees that outlast Biden's presidency, no one will invest in Iran. So, we won't get the majority of the deal's dividends, compounded by the political risk of another U.S. withdrawal in 2025".<sup>21</sup> Some in Iran also worry that the spectre of reimposed sanctions creates short-term uncertainty that is more harmful to the Iranian economy than the long-term predictability of living under U.S. sanctions to which the economy has adjusted. They fear that each time sanctions snap back, the economy experiences deeper shocks.<sup>22</sup>

Still, in worrying that the U.S. could again pull the rug out from under it, Iran's anxieties are likely more political rather than financial. The leadership cannot help but note that the Biden administration itself, while underscoring its intention to follow through with sanctions relief agreed in a revived deal, acknowledges that a future president could choose to exit the agreement again.<sup>23</sup> Some in Tehran doubt that Washington will keep its word even for the duration of Biden's presidency, especially if Republicans regain a majority in Congress and use their new leverage to throw a wrench into the deal's implementation.<sup>24</sup> In such a scenario, Iran's leaders

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dicative of U.S. obsessions that are more political than practical". Crisis Group interview, Washington, March 2022.

<sup>20</sup> One assessment by a prominent expert on Iran's economy concludes that even if sanctions relief extends only to 2025, it would be better for GDP growth than a no-deal scenario and also would push down inflation and unemployment rates. Bijan Khajepour, "Two vital scenarios for Iran's economy", *Amwaj Media*, 8 August 2022. For more on the opportunity costs for Iran without an agreement, see Esfandyar Batmanghelidj and Ellie Geranmayeh, "Iran stands to lose the most if the nuclear deal isn't revived", *Foreign Policy*, 25 July 2022.

<sup>21</sup> Crisis Group telephone interview, February 2022. "We do not want to be stung in the same spot", Iran's foreign minister said in July. "In order to enjoy the full economic benefits of the JCPOA, the Americans must accept some commitments and guarantees". Hossein Amir-Abdollahian, quoted in "Iran seeks nuclear deal guarantees to avoid being 'stung twice'", Agence France Presse, 22 July 2022.

<sup>22</sup> Crisis Group telephone interviews, Iranian officials, January-August 2022.

<sup>23</sup> For example, a joint E3-U.S. statement noted "President Biden's clearly demonstrated commitment to return the U.S. to full compliance with the JCPOA and to stay in full compliance, so long as Iran does the same". "E3+U.S. leaders-level statement on Iran", Elysée, 30 October 2021. Acknowledging Iran's "significant reservations ... after the negative experience of recent years", the EU foreign policy chief stressed that "the deal on the table reflects ... the determination of all JCPOA participants to ensure its sustainability, including the commitment of President Joe Biden and U.S. assurances in this regard. As a result, the deal is better protected from potential unilateral moves to undermine it". Josep Borrell, "Now is the time to save the Iran nuclear deal", *Financial Times*, 26 July 2022.

<sup>24</sup> A senior Iranian official said, "Biden has already imposed more than 100 new sanctions, and the fact that he refuses to commit that he will not impose new ones in the next two years is very telling". Crisis Group telephone interview, June 2022. A senior U.S. official said, "Of course, if Iran targets U.S. personnel, among other problems there will be new sanctions. That is not inconsistent with the JCPOA, which never was a grand bargain. But we are not paying a huge political price to lift the sanctions only to undermine the deal". Crisis Group interview, Washington, June 2022. A Tehran University professor with direct knowledge of the talks said, "I am certain that a few months after

could find themselves under fire domestically for having entered an agreement with the U.S., only for it to end in grief again, exposing them to the same charges of naïveté they levied at the deal's architects in the Rouhani administration.<sup>25</sup>

While the August negotiations made substantial progress on updating the technical text, the sides remain sharply divided on the IAEA safeguards investigation, and Iran continues to press the U.S. on the issue of guarantees to increase the cost for Washington of another exit from the deal. For now, the two sides are going back and forth with counter-proposals.<sup>26</sup>

### B. *A Sisyphean Struggle*

The challenges to resuscitating the JCPOA were always stiff, as the sides had disparate endgames in mind. For Iran, which perceived itself as the aggrieved party, an important aim was to teach the U.S. a lesson that Washington cannot abandon agreements with Tehran at will and with no cost.<sup>27</sup> Hence its rejection of direct engagement with the U.S. and its insistence on guarantees to offset the impact, if not close off the possibility, of a future unilateral exit. In the same vein, even before Biden took office, Supreme Leader Ali Khamenei and parliament had put in place stringent – and unrealistic – criteria for the U.S. to return to the JCPOA, such as preconditioning Iran's own restored compliance on the lifting of *all* sanctions and verification of their removal in practice.<sup>28</sup> Tehran considered the JCPOA's full restoration the ceiling of what diplomacy could achieve given Washington's proven unreliability as a negotiating partner; it thus rejected any discussion of a follow-on nucle-

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the JCPOA is restored, the U.S. will ask for a 'longer and stronger' deal, and if Iran says no, it will start imposing sanctions to undermine Iran's ability to benefit from the JCPOA". Crisis Group interview, Nasser Hadian, Brussels, 15 June 2022. The U.S., which has not explicitly pursued a follow-on agreement for months, rejects such contention. It has gone as far as to agree to longer wind-down periods for companies to leave Iran in case of a sanctions snapback from the standard 90-180 days. Crisis Group interviews, U.S. officials, Washington, June 2022. See also Barak Ravid, "U.S. toughened positions in Iran deal response, Israeli officials say", *Axios*, 25 August 2022.

<sup>25</sup> In January, when Foreign Minister Amir-Abdollahian raised the possibility of direct U.S.-Iran talks if need be, the editor-in-chief of the hardline daily *Kayhan*, who was appointed by the Supreme Leader Ali Khamenei, riposted: "The JCPOA was a golden document for the U.S., a result of passive diplomacy – that is to say, begging – by the Rouhani administration and naïveté by the previous administration's negotiating team. ... Our dear brothers are going to the mirage in search of water". Hossein Shariatmadari, "Fraternally with our brothers Amir-Abdollahian and Shamkhani", *Kayhan*, 25 January 2022 (Persian).

<sup>26</sup> Crisis Group interview, Western official, 9 August 2022. Discussing the IAEA investigation, a European official contended that Iran's government "seems to prefer to protect some individuals involved in clandestine activities twenty years ago instead of freeing its economy and opening up the future for its people". Quoted in Stephanie Liechtenstein, "Agreement on nuclear deal within reach but obstacles remain", *Politico*, 8 August 2022. See also Nahal Toosi and Stephanie Liechtenstein, "Nuclear talks in peril as U.S. calls latest Iran missive a move 'backwards'", *Politico*, 1 September 2022.

<sup>27</sup> Crisis Group telephone interviews, Iranian officials, January-March 2021.

<sup>28</sup> Tehran even floated the notion of compensation for sanctions-related financial losses. See "Supreme Leader's televised speech on the occasion of 19<sup>th</sup> of Dey", *Khamenei.ir*, 8 January 2021 (Persian); and "The full text of Iranian parliament's strategic action plan to lift sanctions revealed", Iranian Labour News Agency, 1 December 2020.

an agreement, Iran's missile program or its regional policies, and even ruled out the possibility of more limited *quid pro quos*.<sup>29</sup>

The Biden administration operated from a very different perspective. Overlooking the degree to which Trump's policy had undermined the modicum of U.S.-Iran cooperation that the JCPOA had produced, it put the onus for returning to compliance on Iran; treated the JCPOA as a floor for what the negotiations could achieve by proclaiming a "longer and stronger" deal as its objective; and took precious few practical steps to create distance between its own policy and its predecessor's, leading it to be perceived in Tehran as representing more continuity than change.<sup>30</sup> Moreover, it was, and still is, hesitant to pay the steep political price that a deal with Iran would entail.

Against this backdrop, the negotiations were destined to struggle. When the U.S. put its opening offer on the table, which approached its bottom line on the extent of sanctions relief, Iran's response was to pocket these terms in anticipation of additional concessions, while rarely countering with other concrete ideas.<sup>31</sup> Besides these problems, the negotiations were hobbled by the procedural inefficiency of being, at Iran's insistence, indirect: in Vienna, U.S. negotiators were located in one hotel and the Iranian emissaries in another, with European intermediaries shuttling back and forth carrying messages and conveying positions.<sup>32</sup>

The talks faced similar pathologies on substance. As a senior European official put it, "The debate in Tehran and Washington has been anything but rational".<sup>33</sup> The irrationality has only become more evident as the parties settled into a stalemate after the March suspension of negotiations. In particular, the discussion surrounding Iran's demand that the U.S. rescind the IRGC's FTO designation, for now seemingly sidestepped, and its insistence on long-term guarantees of the deal's viability showcase the disconnect between the perceived and practical significance of the issues on the table.

The political headache posed by lifting the FTO designation far outweighed its real implications. Its lifting would have limited benefits for Iran given the other sets of U.S. sanctions on the IRGC.<sup>34</sup> Although the designation added another layer of

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<sup>29</sup> As a senior Iranian official put it, "We just wanted to cash the JCPOA check [ie, sanctions relief] for which we had already paid with our nuclear concessions". Crisis Group telephone interview, April 2022.

<sup>30</sup> For more background, see Crisis Group Report, *The Iran Nuclear Deal at Six*, op. cit.

<sup>31</sup> Crisis Group interviews, U.S. and European officials, Vienna and Washington, March 2021- June 2022. For more details, see Crisis Group Report, *The Iran Nuclear Deal at Six*, op. cit.

<sup>32</sup> Indirect talks in Vienna were riddled with miscommunications and misunderstandings. After these talks ended in March, messages were relayed back and forth mostly through the EU via messaging apps, aside from three visits to Tehran by EU officials and a brief indirect but in-person session in Qatar. On occasion, it took one party two weeks to respond to the other side's proposals. Crisis Group interviews, EU officials, Brussels, June 2022.

<sup>33</sup> Crisis Group interview, Brussels, 15 June 2022.

<sup>34</sup> Secretary Blinken said, "As a practical matter, the designation does not really gain you much because there are myriad other sanctions on the IRGC. The primary sanction when it comes to the FTO designation actually is a travel ban. And the people affected by that ban when it comes to the IRGC, as you know, the IRGC is a large force that has a lot of conscripts in it, they would not be able to travel. The people who are the real bad guys have no intention of travelling here anyway". See

sanctions and stigma to an already sanctioned and stigmatised group, it proved largely ineffective in taming the IRGC, which according to U.S. officials has posed an even more worrying threat to U.S. interests in the Middle East since being named an FTO.<sup>35</sup> With or without the FTO rescission, the IRGC would remain one of the most sanctioned entities in the world, radioactive for most multinational businesses.<sup>36</sup> Yet notwithstanding its modest practical significance, the FTO designation assumed an outsized role in the U.S. domestic debate, in which it became a political symbol of toughness on Iran. The idea of rescission faced opposition on both sides of the aisle, underscoring the extent to which it could be a political liability for Biden's Democratic party in November's midterm elections.

As for long-term guarantees, these ran up against issues of impracticability. No U.S. administration has the power to bind the hands of a future administration under U.S. law. Nor could U.S. negotiators offer any assurance that Biden or his Democratic party will retain power in the 2024 elections. Given that opposition to the JCPOA is undimmed within the Republican party (and indeed among many Democrats) despite the abject failure of the Trump administration's "maximum pressure" campaign, another U.S. withdrawal remains a distinct possibility.<sup>37</sup> Still, rejecting a deal now turns future uncertainties around the agreement into a self-fulfilling prophecy in the present. "Predicating the future on a could-be [ie, what the next U.S. president will do] is the definition of insanity", observed a senior European official.<sup>38</sup>

The limited diplomatic space to strike a deal shrank further in a political environment that became more polarised, as details of a possible agreement trickled out from sources on both sides.<sup>39</sup> One such leak in March hinted that the U.S. was considering lifting the FTO designation to meet Iran's demand. Israel's Prime Minister Naftali Bennett and Foreign Minister Yair Lapid promptly issued a joint statement, saying they "found it hard to believe that the IRGC's designation will be removed in exchange for a promise not to harm Americans. ... We believe the U.S. will not abandon its

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Blinken's testimony before the Senate Foreign Relations Committee, "State Department Fiscal Year 2023 Budget Request and Biden Administration Foreign Policy", C-Span, 26 April 2022.

<sup>35</sup> As U.S. State Department Spokesperson Ned Price stated, "From 2012 to 2018, there were no attacks against U.S. service members, diplomatic facilities in Iraq. That changed in 2018. And between 2019 and 2020, the number of attacks from Iran-backed groups went up 400 per cent. This was in the aftermath of the decision to abandon the JCPOA. It was in the aftermath of the decision to apply the FTO designation to the Iranian Revolutionary Guard Corps. It was in the aftermath of the killing of Soleimani". "Press Briefing", U.S. State Department, 31 March 2022.

<sup>36</sup> Daniel Benjamin and Jason Blazakis, "On Iran, Biden should reverse Trump's imaginary statecraft", *Washington Post*, 24 May 2022.

<sup>37</sup> For details of the "maximum pressure" campaign and its failures, see Crisis Group Statement, "The Vital but Delicate Task of Reviving the JCPOA", 10 December 2020; and Crisis Group Commentary, "The Failure of U.S. 'Maximum Pressure' against Iran", 8 March 2021.

<sup>38</sup> Crisis Group interview, Brussels, 14 June 2022.

<sup>39</sup> For an example of a leak on the Iranian side, see the response by hardline parliament member Mahmoud Nabavian, "The situation of the Islamic Republic's red lines in the potential Vienna deal", *Fars News*, 1 April 2022. For an example of the response to a leak by a former Trump administration official, see Gabriel Noronha, "This isn't Obama's Iran deal. It's much, much worse", *Tablet*, 7 March 2022.

closest allies in exchange for empty promises from terrorists”.<sup>40</sup> After several weeks of high-level discussions between Israeli and U.S. officials, and fierce criticism from influential members of Congress and others opposed to the JCPOA, Biden ruled out an FTO delisting.<sup>41</sup>

The war in Ukraine also adversely affected the negotiations in two ways. First, the crisis put the Iran issue on the back burner among Western powers, which shifted their focus to shoring up Ukraine’s defences in the face of Russia’s assault.<sup>42</sup> Between March and early August, there were no discussions about the deal involving all parties. Secondly, Russia’s invasion empowered the JCPOA’s opponents in Tehran, who concluded they had room to press for advantage in the talks; they argued that Moscow would now join Iran in sanctions busting and that international buyers facing tight supplies and high prices would want Iranian oil.<sup>43</sup>

As the deadlock continued into mid-year, both sides seemed increasingly resigned to the possibility that they would fail to reach a deal. On the economic front, and notwithstanding acute challenges in terms of inflation and unemployment, Iranian leaders appear to view the status quo as not only tolerable but trending in their favour.<sup>44</sup> Moreover, with tentative steps toward regional de-escalation under way –

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<sup>40</sup> Barak Ravid, “Scoop: U.S. weighs deal to remove Iran’s IRGC from terror blacklist”, *Axios*, 16 March 2022; and “Joint announcement from PM Bennett and Foreign Minister Yair Lapid”, Israel Prime Minister’s Office, 18 March 2022.

<sup>41</sup> Ben Caspit, “In win for Israel, U.S. seems to backtrack on removing IRGC from terror list”, *Al-Monitor*, 29 April 2022; and Alexander Ward and Nahal Toosi, “Biden made final decision to keep Iran’s IRGC on terrorist list”, *Politico*, 24 May 2022.

<sup>42</sup> Crisis Group interviews, U.S. and European officials, March–July 2022.

<sup>43</sup> “How is it that some people naïvely argue that we should turn to the West?”, queried Ali-Akbar Velayati, one of Ayatollah Khamenei’s senior foreign policy advisers, in a recent interview. Instead, he said, Iran should “look in the direction that is rising”, namely Russia and China. Quoted in “Iran, Russia and China: Three important and independent powers against American and Western expansionism”, *Khamenei.ir*, 22 July 2022. See also “Alliance of the world’s energy triangle to defeat U.S. sanctions”, *Islamic Republic News Agency*, 15 June 2022 (Persian). Here, the term “energy triangle” refers to Iran, Russia and Venezuela.

<sup>44</sup> Iran’s Central Bank pegged GDP growth at 5.7 per cent in its most recent quarterly assessment, covering the last three months of the Iranian fiscal year ending in March 2022. “Economic growth at 5.7% in Q4 of fiscal 2021-22: CBI”, *Financial Tribune*, 22 July 2022. Iran avoided an expected contraction of fiscal expenses thanks to high oil prices, as well as a rebound in non-oil sectors due to a currency depreciation that expanded exports, a relaxation of COVID-19 containment measures in the service sector, an accelerated vaccine rollout and higher demand for industrial products. As of August, the World Bank projects Iran’s GDP growth in the current (2022-2023) fiscal year at 3.3 per cent, down from 4.7 per cent in 2021-2022, and forecast to dip to 2.5 per cent in 2023-2024. World Bank, “Iran Economic Monitor: Managing Economic Uncertainties”, Spring 2022. See also “Iran’s annual inflation rate rises 1.1 per cent to 40.5 per cent in July: SCI”, *Press TV*, 23 July 2022. In July, following a meeting between Turkish and Iranian officials touting a \$30 billion target for bilateral trade and the signing of a memorandum of understanding between the National Iranian Oil Company and Russia’s Gazprom purportedly worth \$40 billion, *Kayhan* tellingly headlined its edition: “Aiming for \$70 billion in trade with Russia and Turkey without the JCPOA or FATF”, *Kayhan*, 19 July 2022 (Persian). Iran is blacklisted by the Financial Action Task Force (FATF), an international watchdog monitoring states’ cooperation with efforts to fight terrorism financing and money laundering. The headline indicates the belief that the Iranian economy can weather more years of the resultant penalties. For a less sanguine view, see “Statement of 61 economists regarding the country’s economic situation”, *Aftab News*, 11 June 2022 (Persian). “Europe in critical need of reaching an agreement with Iran”, *Mehr News Agency*, 14 May 2022.

for example, through bilateral Iranian-Saudi talks – they seem to have concluded that discord with the West and détente in the region can go hand in hand.<sup>45</sup>

On the U.S. side, officials view Iran’s posture since March as, most charitably, reflecting a system that has no clear bottom line on its own priorities, divided between those approaching the negotiations as gambit to secure the best terms and those merely seeking to prolong the process and avoid the diplomatic and economic consequences of its collapse. U.S. Special Envoy for Iran Robert Malley described a session of indirect talks with Iran in Doha as “more than a little bit of a wasted occasion”, mainly for that reason.<sup>46</sup> Reflecting the frustration that had built up before the EU reconvened the parties in Vienna, another U.S. official contended, “There’s no proposal on which the Iranians have said yes [since March]. If their system doesn’t have a consensus on returning to the deal, the specifics don’t seem to be the core issue”.<sup>47</sup>

Such doubts as to Iran’s actual endgame in turn harden Washington’s attitude in opposition to offering concessions out of concern that Iran could pocket these, too, while still refusing to close the deal.<sup>48</sup> While the August talks yielded substantial progress, the to-and-fro since, with Iran sending comments on the EU text, the U.S. responding with its own counter-proposals and Tehran in turn dispatching a reply assessed in Washington as “moving backwards”, underscores the challenge of resolving the remaining issues.<sup>49</sup>

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### III. The Escalation Ladder

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Though the diplomatic track remains open for now, the months of deadlock preceding the latest discussions in Vienna have also hinted that a shift to an escalatory approach may have begun, without fanfare, with both sides and other key players – Israel in particular – signalling a willingness to raise the stakes rather than cede the ground needed to conclude a deal.

Tehran’s all-or-nothing approach toward the IAEA of late is one reason to be sober about the prospects of a breakthrough. Despite the agency’s repeated statements of concern about the lack of cooperation with its investigations in the run-up to its June Board of Governors meeting, which made a U.S./E3 decision to introduce a censure vote all but unavoidable, Iran was not fully forthcoming and reacted to the

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<sup>45</sup> “Kuwait names first ambassador to Iran in over six years”, Reuters, 14 August 2022; “United Arab Emirates reinstates ambassador to Iran after six-year absence”, Agence France Presse, 21 August 2022; and “Saudi, Iranian foreign ministers to meet in Baghdad: Iraqi FM”, *Tehran Times*, 23 July 2022.

<sup>46</sup> Quoted in “U.S. and Iranian delegations fail to reach a deal to restore the Iran nuclear deal”, NPR, 5 July 2022. Malley previously served as President and CEO of Crisis Group.

<sup>47</sup> Crisis Group interview, senior U.S. official, Washington, 17 June 2022. A European diplomat asserted, “Nobody in Tehran dares to make an individual decision. It has to be the collective thinking of the Supreme National Security Council, put to the Supreme Leader”. Crisis Group interview, 31 March 2022.

<sup>48</sup> As the UK’s intelligence chief said regarding the uncertainty of Iranian intent, “I don’t think the Supreme Leader of Iran wants to cut a deal. ... The Iranians won’t want to end the talks, either”. Richard Moore quoted in Phil Stewart, “Iran doesn’t want a nuclear deal, British spy chief says”, Reuters, 21 July 2022.

<sup>49</sup> U.S. official quoted in “Nuclear talks in peril as U.S. calls latest Iran missive a move ‘backwards’”, op. cit.

resolution (which merely exhorted Iran to follow through on commitments it had itself made in March) in a disproportionate manner.<sup>50</sup> Tehran promptly increased its nuclear activity and dismantled one third of IAEA's monitoring equipment after the vote. It continues to expand its enrichment capabilities.<sup>51</sup> A comment by Ali Shamkhani, the secretary of Iran's Supreme National Security Council, sums up the dominant line of thinking in the national security establishment: "[T]he only way to defend the country's rights against bullying, whether in #JCPOA or @iaeaorg is reciprocity".<sup>52</sup>

For its part, in the absence of a breakthrough and against the backdrop of Iran's nuclear advancements, the Biden administration has sharpened the coercive tools it has been using in an attempt to get Tehran to compromise. Since March, it has regularly unveiled new sanctions targeting Iran's ballistic missile program, as well as its oil and petrochemical trade.<sup>53</sup> Biden has also stated a U.S. willingness to take military action against Iran's nuclear program as a last resort, and in the meantime to "continue to increase diplomatic and economic pressure until Iran is ready to return to compliance".<sup>54</sup> The U.S. has also stepped up efforts to increase coordination with regional allies to stop missile and drone threats, as well as in maritime security.<sup>55</sup> In response to Iran's provision of Unmanned Aerial Vehicles to Russia, Washington on 8 September announced sanctions against Iranian persons and companies engaged in the development and transfer of drones, and the following day designated Iran's

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<sup>50</sup> See, for example, "IAEA warns that Iran not forthcoming on past nuclear activities", Reuters, 10 May 2022. Yet, even as it failed to move ahead with its own consultations with the IAEA, Iran raised a hue and cry over what it deemed an untimely visit by Grossi to Israel. "Iran nuclear chief blasts IAEA for being exploited by Zionists", Tasnim News Agency, 10 June 2022.

<sup>51</sup> Francois Murphy, "Iran expands advanced centrifuge work underground, IAEA report shows", Reuters, 8 June 2022; "Iran escalates enrichment with adaptable machines at Fordow, IAEA reports", Reuters, 9 July 2022; and Jon Gambrell and Philipp-Moritz Jenne, "Iran pulls UN nuke cameras in possible 'fatal blow' to deal", Associated Press, 9 June 2022. Iran's most recent steps have been the activation of two IR-6 cascades at Natanz, enriching up to 5 per cent, with a third installed but not yet operating. "Iran enriching uranium with more IR-6 centrifuges at Natanz – IAEA", Reuters, 31 August 2022. A European official said, "Half of the Iranian establishment is completely convinced that all the sabotage [against nuclear facilities] has come from the [IAEA's] cameras. It does not matter if it is true or not; it is what they believe". Crisis Group interview, June 2022.

<sup>52</sup> Tweet by Ali Shamkhani, @alishamkhani\_ir, secretary of Iran's Supreme National Security Council, 11:34am, 9 June 2022.

<sup>53</sup> In March, citing an IRGC-claimed missile strike in Erbil and attacks by the Iran-backed Huthi rebels in Yemen on Saudi Arabia and the UAE, the Treasury Department blacklisted one individual and four companies engaged in ballistic missile-related procurement. "Treasury sanctions key actors in Iran's ballistic missile program", U.S. Treasury Department, 30 March 2022. Subsequent designations in May, June and July focused on oil and petrochemical networks. See "Treasury targets oil smuggling network generating hundreds of millions of dollars for Qods Force and Hizbollah", U.S. Treasury Department, 25 May 2022; "Treasury targets international sanctions evasion network supporting Iranian petrochemical sales", U.S. Treasury Department, 16 June 2022; "Treasury targets Iranian oil and petrochemical trade network", U.S. Treasury Department, 6 July 2022; and "Treasury targets companies supporting Iranian petrochemical conglomerate", U.S. Treasury Department, 1 August 2022.

<sup>54</sup> Joe Biden, "Why I'm going to Saudi Arabia", *Washington Post*, 9 July 2022; and "Biden says he would use force as 'last resort' to keep Iran from nuclear weapons", Reuters, 13 July 2022.

<sup>55</sup> "Joint Statement Following the Summit of the Leaders of the United States and the Gulf Cooperation Council (GCC) Countries", White House, 16 July 2022.

intelligence minister, and ministry, citing “cyber-enabled activities against the U.S. and its allies”.<sup>56</sup>

Israel, though not a party to the deal, has strong views about it and its capacity to shape regional dynamics; in recent months, Israel appears to have escalated its campaign of covert operations in Iran and has been calling for a more explicit threat of force as the only way to convince Iran to make diplomatic concessions.<sup>57</sup> Notwithstanding internal disagreements over the merits or demerits of restoring the JCPOA, the Israeli government’s stated view of what would constitute a satisfactory accord remains more sweeping than a mere compliance-for-compliance exchange.<sup>58</sup> As a senior Israel official put it, “We want an acceptable framework of agreement, not the JCPOA, which gave Iran’s nuclear program legitimacy and merely limited its scale. We still think a deal is possible, but the way to reach it is to create a crisis. Deterrence can also quickly produce effects. Iran needs to feel that the regime is in danger”.<sup>59</sup>

Gradual escalation over the past few months has created in both Tehran and Washington the belief that the “no deal, no crisis” status quo is sustainable, but the reality is that both sides are operating on a knife edge.<sup>60</sup> As both have used so much leverage already – with the “maximum pressure” campaign, on Washington’s part, and Tehran’s “maximum resistance” response – there may be little space left for measures that would not provoke a major escalation. Because of advances in Iran’s nuclear program, its breakout time, which is the amount of time needed for Iran to enrich enough fissile material to weapons-grade level for one nuclear weapon, now stands at a mere four days and is shrinking.<sup>61</sup> (When it was being observed, the deal had extended the time from four to over twelve months.)

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<sup>56</sup> Ellen Nakashima and Joby Warrick, “Iran sends first shipment of drones to Russia for use in Ukraine”, *Washington Post*, 29 August 2022; and “Treasury sanctions Iranian persons involved in production of unmanned aerial vehicles and weapon shipment to Russia”, U.S. Treasury Department, 8 September 2022. The Albanian government had on 7 September severed ties with Iran over a July cyberattack that the U.S. condemned as “reckless and irresponsible”; Iran’s foreign ministry maintained that “as one of the countries that have been the target of cyber attacks on its critical infrastructure, the Islamic Republic of Iran rejects and condemns any use of cyberspace as a means to attack the infrastructure of other countries”. “Videomessage of Prime Minister Edi Rama”, Albania Prime Minister’s Office, 7 September 2022; “Statement by NSC Spokesperson Adrienne Watson on Iran’s cyberattack against Albania”, White House, 7 September 2022; Iranian foreign ministry spokesperson quoted in “Iran rejects Albania claims for cutting ties as unfounded”, Mehr News Agency, 7 September 2022; and “Treasury sanctions Iranian Ministry of Intelligence and Minister for malign cyber activities”, U.S. Treasury Department, 9 September 2022.

<sup>57</sup> Prime Minister Yair Lapid said, “Diplomacy will not stop them. ... The only way to stop them is to put a credible military threat on the table”. Quoted in “PM Yair Lapid’s remarks alongside President of the United States Joe Biden”, Prime Minister’s Office, 14 July 2022.

<sup>58</sup> Ronen Bergman, “Israeli security officials are divided over Iran nuclear deal”, *The New York Times*, 14 July 2022.

<sup>59</sup> Crisis Group interview, Jerusalem, July 2022.

<sup>60</sup> One U.S. official said the lack of concern on both sides about the growing peril is akin to a “frog in boiling water”. Crisis Group interview, Washington, May 2022.

<sup>61</sup> Crisis Group calculations, based on the fact that Iran has now installed several hundred IR-6 centrifuges and possesses enough 60 per cent enriched uranium for one nuclear weapon if it were enriched to weapons grade. While Western governments still use the “few weeks” timeline, others have gloomier projections. See Paul Kerr, “Iran and Nuclear Weapons Production”, Congressional Research Service, 25 July 2022; and David Albright and Sarah Burkhard, “Iranian Breakout Time Now at Zero”, Institute for Science and International Security, 1 June 2022. Moreover, Iran’s instal-

In parallel, given limits on its monitoring of Iranian facilities, the IAEA's "continuity of knowledge" about what has and is happening at those sites, which is essential for its ability to account for all nuclear material and equipment in Iran, is increasingly imperilled.<sup>62</sup> "If there is an agreement, it is going to be very difficult for me to reconstruct the puzzle of this whole period of forced blindness", Grossi has indicated. "It is not impossible, but it is going to require a very complex task and perhaps some specific agreements".<sup>63</sup>

The combination of continued nuclear development and limited visibility is such that in theory Iran could, for the first time since the crisis over its nuclear program began in 2003, break out and divert fissile material to an unmonitored facility where it could manufacture a weapon without the IAEA's knowledge. That said, neither the IAEA nor any U.S. or allied intelligence service has publicly said Iran is trying to build a bomb.<sup>64</sup>

Should the U.S. or its European allies conclude that negotiations have run their course, they may avail themselves of the JCPOA's snapback mechanism, under which parties to the agreement may reimpose UN sanctions. It would likely be France or the UK, both of which are permanent members of the UN Security Council who remain party to the deal, that takes this action. The two countries might also jointly snap back pre-2015 UN sanctions enacted under Chapter VII of the UN Charter, which in the eyes of some countries would turn Iran once more into a pariah state.<sup>65</sup> The mechanism is designed to bypass blocking efforts by other JCPOA participants, but it seems fair to assume that Russia and perhaps China, if opposed, would do what they can to make the process contentious and portray it as illegitimate.

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lation of advanced IR-6 centrifuges with modified subheaders allows it to switch the centrifuge cascade's uranium enrichment level much more quickly. "Tehran does not have a legitimate civilian purpose for installing centrifuges in this configuration, which is more suited to rapidly ratcheting up enrichment for weaponisation purposes". Crisis Group correspondence, Kelsey Davenport, director for nonproliferation policy, Arms Control Association, 10 August 2022.

<sup>62</sup> In what was supposed to be a stopgap measure, Iran and the IAEA in February 2021 agreed to instal cameras in facilities to which the agency no longer had regular access, so that the IAEA could reconstruct the timeline of Iran's activities and re-establish a baseline for inspections once the JCPOA was restored. "Joint Statement by the Vice-President of the Islamic Republic of Iran and Head of the AEOI and the Director General of the IAEA", IAEA, 21 February 2021. The IAEA's latest quarterly report on Iran's nuclear activity notes that should the JCPOA be restored, the Agency would have "to apply additional safeguards measures and Iran would need to provide comprehensive and accurate records" to ensure a complete and correct account of activities since Iran restricted its oversight in February 2021. GOV/2022/39, IAEA, 7 September 2022. A parallel report on safeguards noted: "The Director General is increasingly concerned that Iran has not engaged with the Agency on the outstanding safeguards issues during this reporting period, and, therefore, there has been no progress towards resolving them ... The Agency is not in a position to provide assurance that Iran's nuclear programme is exclusively peaceful". GOV/2022/42, IAEA, 7 September 2022.

<sup>63</sup> Grossi, quoted in "Iran's nuclear programme is 'galloping ahead', IAEA chief says – *El Pais*", Reuters, 22 July 2022.

<sup>64</sup> Kelsey Davenport, "The last chance to restore compliance with the 2015 Iran nuclear deal", Arms Control Association, 13 July 2022. In July, CIA Director William Burns indicated that "our best intelligence judgment is that the Iranians have not resumed the [nuclear] weaponisation efforts that they had under way up until 2004". Quoted in "UK spy chief doubts Iran supreme leader will back nuclear deal", Agence France Presse, 21 July 2022.

<sup>65</sup> For background, see Crisis Group Middle East Report N°218, *Iran: The U.S. Brings Maximum Pressure to the UN*, 19 August 2020.

Snapback, in turn, could lead to a worrying response on Iran's part. Tehran has threatened before that such a step might prompt it to withdraw from the Nuclear Non-Proliferation Treaty (NPT), which obligates non-nuclear-weapon state parties not to acquire nuclear weapons.<sup>66</sup> Such action – even in the absence of concrete evidence of steps toward weaponisation – in turn might convince Israel and/or the U.S. to strike Iran's nuclear facilities in order to pre-empt any further move toward building a bomb.<sup>67</sup> That Iranian leaders seem broadly dismissive of the threat of military confrontation is even more troubling as it suggests too high a risk of miscalculation or misjudgement.<sup>68</sup>

Developments beyond the realm of the nuclear negotiations could also quickly lead to escalation. A former senior Iranian official suggested that “it [will only] take another assassination of an Iranian nuclear scientist or sabotage of an Iranian nuclear facility for Iran to enrich to 90 per cent or kick out the UN inspectors”.<sup>69</sup> Frictions between Israel and Iran are growing, with reports of near-misses in Iranian-ordered operations against Israeli nationals abroad an indicator of the escalatory dynamic between the two states.<sup>70</sup> More broadly, in the Middle East, what a senior U.S. commander described in July as a “period of stasis” in the U.S.-Iranian standoff could quickly unravel in places where Washington, Tehran and their respective allies have crossed swords in past years. Recent flare-ups between U.S. and Iran-backed forces in Syria, as well as a spate of naval encounters, offer potent reminders of the fluid and combustible regional picture.<sup>71</sup>

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<sup>66</sup> Crisis Group telephone interviews, Iranian officials, March-July 2022. Iranian hardliners have been advocating for this measure for a long time. See “Shariatmadari: Iran's only solution is to use the NPT's Article X to withdraw from the treaty”, Fars News, 7 June 2022. The only country to withdraw from the NPT is North Korea, which did so in 2003 ahead of its first nuclear weapons test three years later.

<sup>67</sup> The fact that senior Iranian officials are increasingly hinting at the country's capability to develop nuclear weapons, an objective they deemed religiously forbidden and had consistently denied pursuing in the past, adds to these concerns. Jon Gambrell, “Analysis: Iran now speaking openly on nuclear bomb prospects”, Associated Press, 4 August 2022.

<sup>68</sup> An Iranian official insisted, “Israel can't and the U.S. won't strike Iran. They know the consequences are too horrible to fathom”. Crisis Group telephone interview, Tehran, July 2022. Another official in Tehran noted, “The U.S. is trying to diminish its footprint in the region, not to enlarge it. We hear the bark, but we know there is not going to be any bite”. Crisis Group telephone interview, July 2022.

<sup>69</sup> Crisis Group telephone interview, July 2022.

<sup>70</sup> “Iranian plot in Turkey reportedly targeted Israel's ex-consul to Istanbul”, *The Times of Israel*, 1 July 2022; Najmeh Bozorgmehr, “Israeli attacks feed distrust and fear in Iran”, *Financial Times*, 19 July 2022; Suleiman Al-Khalidi, “Israeli attacks squeeze Iranian aerial supplies to Syria, sources say”, Reuters, 2 September 2022.

<sup>71</sup> Lieutenant General Alexis Grynkeiwich, quoted in Isabel Debre, “Air force official expects Iran to resume attacks on U.S.”, Associated Press, 21 July 2022. Following attacks by what the White House described as “Iran-backed militia groups” against two U.S. bases in Syria, the U.S. carried out airstrikes in eastern Syria; further exchanges between U.S. forces and “Iran-affiliated militants” resulted in three U.S. injuries and several militia fatalities. “Letter to the Speaker of the House and President pro tempore of the Senate consistent with the War Powers Resolution (Public Law 93-148)”, White House, 25 August 2022; and “CENTCOM forces engage militants in north east Syria”, U.S. Central Command, 25 August 2022. Iranian naval forces also took a trio of U.S. unmanned surface vessels, again releasing them as U.S. air and sea craft responded. “U.S. Navy foils Iranian attempt to capture unmanned vessel in Arabian Gulf”, U.S. Naval Forces Central Command Public Affairs, 20 August 2022; and Jon Gambrell, “Iran briefly seizes 2 US sea drones in Red Sea amid tensions”,

#### IV. Planning for a Post-JCPOA Reality

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When the EU reconvened the JCPOA stakeholders in early August for deliberations about a compromise, it gave the deal what could be a last lease on life, though neither side came to Vienna burdened by excessive optimism.<sup>72</sup> At the talks' conclusion, High Representative Josep Borrell noted: "What can be negotiated has been negotiated, and it's now in a final text. However, behind every technical issue and every paragraph lies a political decision that needs to be taken in the capitals".<sup>73</sup> Still, whatever glimmer of progress emerged from the days of discussions is tempered by the reality that the political decisions to which Borrell referred, notably as they relate to Iran's willingness to soften its position on the IAEA investigation and U.S. guarantees, remain far from certain to converge on common ground.<sup>74</sup> Any commitment sought by Tehran that subverts the IAEA's technical mandate is unlikely to fly for the reasons noted above. With respect to guarantees, there is little the Biden administration can offer: it simply cannot make commitments that extend beyond its time in office. More negotiations will not change these facts.<sup>75</sup>

Timing is also a consideration. Whatever measure of momentum has been reinjected into the negotiations may prove short-lived if the parties do not seize it quickly. Each passing day makes the technical text crafted in Vienna more challenging to car-

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Associated Press, 2 September 2022. For additional coverage of Iran-U.S. flashpoints, see Crisis Group's "Iran-U.S. Trigger List".

<sup>72</sup> The lead U.S. negotiator asserted, "Our expectations are in check. ... [I]t will shortly be clear if Iran is prepared to negotiate in good faith". Tweet by Robert Malley, @USEnvoyIran, U.S. special envoy for Iran, 10:47am, 3 August 2022. His Iranian opposite number maintained: "The onus is on those who breached the deal". Tweet by Ali Bagheri-Kani, @Bagheri\_Kani, deputy foreign minister of Iran, 12:28pm, 3 August 2022.

<sup>73</sup> Tweet by Josep Borrell, @JosepBorrellF, 11:50am, 8 August 2022. A senior European diplomat said, "We addressed several technical issues based on developments on the ground that required updating the draft that Borrell submitted to the parties on 21 July. For instance, we agreed on how to reinstall IAEA's cameras that Iran removed in June and what to do with small amount of 60 per cent enriched uranium that Iran has turned into metal and irradiated. Overall, we didn't touch more than four to five paragraphs in the nearly 25-page document". Crisis Group telephone interview, 8 August 2022. As for the text, while the EU referred to it as "final", Iran and Russia indicated that it remains negotiable. A senior Iranian official said, "The fact that the EU negotiator publicly announced that the text is final and non-negotiable is seen in Tehran as a tool to pressure Iran into accepting it, which means that we now have to demand additional changes". Crisis Group telephone interview, 10 August 2022. The Russian negotiator wrote, "The Russian #MFA: according to the #EU spokesman the participants in the #ViennaTalks face a choice – either to accept the current text or to recognise that the talks failed. The Joint Commission of the #JCPOA didn't authorise the EU coordinator to make statements like that". Tweet by Michael Ulyanov, Russian permanent representative to international organisations in Vienna, @Amb\_Ulyanov, 10:12am, 11 August 2022.

<sup>74</sup> A European official said, "The delay in finalising the talks stems from the psychology that each side believes the other needs the deal more. This is compounded by the fact that both sides constantly misread each other's timelines". Crisis Group telephone interview, 1 September 2022. See also "Iran is in no rush to restore the JCPOA – The U.S. and Europe need the deal", *Kayhan*, 26 August 2022 (Persian).

<sup>75</sup> Hardline *Kayhan* wrote, "So far, the Vienna talks have not reached a stage that would satisfy Iran's national interest or benefit Iran economically. They remain inconclusive on the four key issues [ie, safeguards, sanctions relief, guarantees and sequencing]". See "So-called reformists should not interpret extortion as agreement", *Kayhan*, 10 August 2022 (Persian).

ry out, particularly with the IAEA's monitoring so severely hampered. Sands in the political hourglass also work against a resolution. The Biden administration may be increasingly reluctant to proceed with an agreement that will prompt heated congressional debate as November's midterm elections loom.<sup>76</sup> At the same time, if midterm elections place Republicans hostile to the deal in charge of one or both houses of Congress, Iran may worry that the legislators' harassment will derail the deal's implementation, and decide to spare itself the hassle.<sup>77</sup> The leadership in Tehran may prefer to wait and see who the next U.S. president will be in 2025. Iran also has its own presidential election coming up in 2025, which is likely to create further delays.

Although there is still a chance for the Vienna process to generate a successful outcome by year's end, there is also reason to fear that the current framework may soon be acknowledged as no longer fit for purpose, with the gaps over safeguards, sanctions and guarantees too wide to bridge, and the distrust between the U.S. and Iran too deep to overcome. As such, it is time for the parties to seriously consider alternatives that could help prevent a dangerous escalatory spiral.

#### A. *Dealing with No Deal*

In a post-JCPOA era, the parties should try to manage tensions within the framework of a broadly scoped new deal, a narrower new arrangement or a series of one-off agreements on specific issues. They could also seek to build confidence by resolving longstanding humanitarian issues. The range of options includes:

- **More-for-more.** Given that both the U.S. and Iran seek gains that the other side regards as exceeding JCPOA parameters, they could discuss these demands as part of an arrangement that widens the scope of negotiations. The Biden administration's desire for a "longer and stronger" deal that strengthens non-proliferation provisions, including by extending nuclear restrictions that under the JCPOA phase out over time ("sunsets"), and more rigorous monitoring is matched by

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<sup>76</sup> Crisis Group interviews, U.S. officials, Washington, July-August 2022. The 2015 Iran Nuclear Agreement Review Act (INARA) requires renewed congressional scrutiny in case of any change to the JCPOA or any new agreement with Iran. Public Law 114-17, Federal Register, 22 May 2015. If such a deal is reached, the White House has a five-day window to transmit the contents to Congress, which then has 30 days to review them. If the Senate and House of Representatives are against the deal, the president could veto any legislative effort within twelve days to block it and resist a veto override effort during the subsequent ten days if supported by one third of lawmakers. The State Department indicated in May that should a deal be concluded, "pursuant to INARA, it is our intention to submit it for a congressional review if – and it's a big if – there is a mutual return to compliance with the JCPOA". "Department Press Briefing", U.S. State Department, 25 May 2022.

<sup>77</sup> Republican senators have promised to once again undermine the deal. Patricia Zengerle, "U.S. Republican senators say they will not back new Iran nuclear deal", Reuters, 14 March 2022. A recent example of such attempts is a proposed bill that would eliminate the sunset provision of the Iran Sanctions Act, currently set to expire on 31 December 2026, entirely. "Scott, colleagues introduce bill to solidify U.S. sanctions on Iran", press release, Office of Senator Tim Scott, 10 August 2022. An adviser to Iran's Supreme Leader said, "Biden's situation is not good and the Republicans are likely to come back to power. Thus, it is probable that the U.S. would exit the JCPOA again. The serious question facing us is whether it is expedient for Iran to agree to a deal that would slow down our current economic progress only to disrupt it again". See "Kamal Kharrazi: It doesn't seem that the JCPOA will prompt a major economic boon", *Fararu*, 19 July 2022 (Persian).

Iran's wish for a deal that entails more extensive, verifiable and sustainable economic dividends. Even in the current negotiations, Iran asked for relief from U.S. primary sanctions, which apply to U.S. persons and entities.<sup>78</sup> The JCPOA did not touch upon these, except in a few minor areas, and present negotiations likewise grapple mainly with secondary sanctions.<sup>79</sup> As Crisis Group has suggested in the past, a follow-on agreement to a revived JCPOA or one that is negotiated in the absence of restoration should include both more stringent conditions for withdrawal, enshrined in an exit clause (which the JCPOA lacks), and higher costs for the party that violates the deal.<sup>80</sup>

Yet shifting to a more substantial set of discussions over a more-for-more arrangement is difficult to envision when talks about reviving the existing baseline understanding (that is, the JCPOA itself) have been so fraught. Iran's refusal to negotiate directly with the U.S. and the increasingly tense relations between Russia and the West add layers of complexity. Even if accepted in principle by both sides, what is likely to be a prolonged and difficult dialogue would still need to first address immediate non-proliferation concerns, with the entire process remaining at the mercy of regional escalation.

- **Less-for-less (interim deal).** Another option would be to shift talks to a more limited interim agreement focused on the most proliferation-sensitive activities Iran is undertaking (eg, seeking to reduce the level of uranium enrichment), along with the restoration of IAEA monitoring and verification, in return for relief from U.S. sanctions on oil exports and/or the release of frozen assets. Such an approach would have the benefits of capping the growing nuclear crisis and giving the U.S. and Iran the capacity to present to domestic critics that they have conceded little, while bypassing the thorny questions of sanctions relief guarantees or sunsets on nuclear limitations.

There is precedent. Iran and world powers reached an interim agreement in November 2013 that opened breathing space for negotiating the comprehensive accord concluded in July 2015.<sup>81</sup> But at the time, the U.S. and Iran negotiated the understanding for the most part through a secret bilateral channel in Oman, and both sides had the political will to freeze the escalatory dynamics. These ingredients are now in short supply, especially in Tehran: indeed, both sides contemplated an interim deal in February-March 2021 before Iran dismissed the idea in favour of pursuing full JCPOA restoration; it was broached again in December, but Iran did not accept.<sup>82</sup> The flip side to having conceded

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<sup>78</sup> The Raisi administration also wants to outperform its predecessor by extracting more concessions from the U.S. Crisis Group telephone interviews, current and former Iranian officials, January-August 2022.

<sup>79</sup> Primary sanctions apply to U.S. persons and entities, while secondary sanctions extend to non-U.S. actors. One benefit of lifting the primary sanctions from Iran's perspective would be to enable currency conversion and limited access to the U.S. financial system to facilitate Iran's banking transactions. Crisis Group telephone interviews, Iranian negotiator, February-March 2022.

<sup>80</sup> See Crisis Group Report, *The Iran Nuclear Deal at Six*, op. cit.

<sup>81</sup> "Joint Plan of Action" (JPOA), IAEA, 24 November 2013.

<sup>82</sup> A senior White House official said, "The key advantage of an interim agreement is that it does not have sunsets". Crisis Group interview, Washington, June 2022. But an Israeli official warned that "the

less is also having delivered, on the U.S. side, fewer nuclear restrictions than the JCPOA, and on the Iranian side, only partial sanctions relief.

Many diplomats observing the negotiations do not believe a less-for-less deal is realistic under present circumstances. One senior European official said it would be “impossible”, citing the likely complications of finding a mutually acceptable set of commensurate quid pro quos.<sup>83</sup> The West would likely demand that Iran freeze enrichment beyond 5 per cent, blend down its stockpile of uranium enriched to 60 per cent, refrain from producing and installing additional advanced centrifuges, halt uranium metallurgy work and restore the IAEA’s enhanced monitoring.<sup>84</sup> Yet for Iran, these are key sources of leverage that it will want to have to strengthen its hand in negotiations. It is unlikely to give them away for anything short of a price that would in all likelihood be prohibitive for Washington, not least because any resulting deal would be notified to Congress.<sup>85</sup>

- **Single-measure deal.** If the less-for-less option comprises multiple measures in one package, its most modest version would be a single-measure exchange that helps manage tensions and keeps the diplomatic path open. For example, Iran could dilute its existing uranium stockpile enriched at 60 per cent, which is near weapons-grade, in return for the U.S. partly unfreezing Iran’s assets abroad; or Iran could restore the IAEA’s enhanced access as devised in the JCPOA in return for the U.S. lifting restrictions on Iran’s oil exports.

Pursuit of this option entails some of the same difficulties as an interim deal, namely lack of face-to-face contacts, mismatched expectations and domestic political pushback; it will be a challenge convincing Iran to roll back what it sees as its key nuclear leverage for limited financial returns. Conceivably, however, its scope would not reach the threshold of the 2015 Iran Nuclear Agreement Review Act, which requires U.S. congressional review of any new deal with Iran.<sup>86</sup> If successful, the parties could then pursue a series of similar single-measure deals that would eventually bring them to the outcome that a direct attempt at an interim agreement might have produced.

- **Humanitarian deal.** There are four U.S.-Iranian dual nationals detained in Iran, while more than a dozen Iranians are in U.S. jails on various charges.<sup>87</sup> The terms of a four-for-four prisoner swap are almost complete – it reportedly also

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problem with an interim agreement, which imposes fewer constraints on Iran’s nuclear program, is that it could become permanent”. Crisis Group interview, Washington, November 2021.

<sup>83</sup> The diplomat added, “We went around in circles over this question in early 2021”. Crisis Group interview, Brussels, 14 June 2022.

<sup>84</sup> Crisis Group interviews, U.S. and European officials, Washington, March 2021-July 2022.

<sup>85</sup> A former U.S. official said, “The price will be indistinguishable from that of a full return to the JCPOA, but the benefit will be even less than a restored JCPOA, which the critics already call a ‘shorter and weaker’ deal”. Crisis Group interview, Washington, 24 July 2022. See also Lahav Harkov and Anna Ahronheim, “Bennett: Shorter, weaker Iran deal may be coming soon”, Reuters, 20 February 2022.

<sup>86</sup> Crisis Group interviews, current and former U.S. officials, Washington, June-July 2022.

<sup>87</sup> Stephen Kalin, “Iran prisoners’ families ask Biden to push for their release as chances of a deal dim”, *The Wall Street Journal*, 12 May 2022; Siamak Namazi, “I’m an American. Why have I been left to rot as a hostage of Iran?”, *The New York Times*, 29 June 2022; and “Iranian spokesperson sees ‘significant’ progress in talks with U.S. on prisoner swap”, RFE/RL, 7 March 2022.

includes Iran receiving some access to its frozen assets in South Korea – but deadlock in the JCPOA talks has hindered the parties in carrying it out.<sup>88</sup> Iran and the U.S. could revive this understanding and wrap it into any of the abovementioned options. Should they fail with respect to those options, they should consider making the swap anyway given humanitarian exigencies, and because securing at least this one understanding could usher in an atmosphere more conducive to talks on political matters.

### B. *Halting the Downward Spiral*

The political clock in Washington, set against Tehran's insistence on further negotiating terms in the draft agreement, raises the odds against the parties striking a final bargain. If diplomatic efforts drag on or – worse – hit a dead end, and the alternative courses laid out above fail to gather steam, the parties could enter an escalatory spiral that risks triggering a military confrontation. As such, both sides should at least start considering steps to mitigate the potential for escalation, as even the prolongation of an uneasy status quo is preferable to a dangerous cycle of one-upmanship. Both sides would need to make a concerted effort to respect red lines and avoid certain tripwires. In the absence of direct contacts between Iran and the U.S., it would fall to European and/or regional intermediaries to broker an informal understanding about where the tripwires lie.

The first concerns uranium enrichment and nuclear transparency. Assessments that Iran appears not to have moved toward building a nuclear weapon offer little comfort when considering how advanced and opaque Iran's nuclear activities are at present. Western powers would almost certainly view Iran's stepping up enrichment to 90 per cent, undertaking weaponisation-related activities or further hampering what remains in terms of international oversight of nuclear facilities under Iran's safeguards agreement as tripwires that would increase the possibility of a forcible overt or stepped-up covert response by the U.S. and/or Israel.<sup>89</sup> In return for Iran

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<sup>88</sup> For both sides' position on the June 2021 understanding, see Maziar Motamedi, "Iran accuses US, UK of holding prisoner exchange talks 'hostage'", *Al Jazeera*, 17 July 2021; and Nick Wadhams, "US rejects Iran's 'cruel' suggestion of deal on US detainees", *Bloomberg*, 17 July 2021. The UK, which negotiated the terms with Iran on behalf of the U.S., struck its own prisoner deal with Iran, which included a condition to furlough Morad Tahbaz, a triple Iranian-U.S.-UK citizen. The fact that Iran did not set Tahbaz free deepened mistrust in Washington. Crisis Group interviews, U.S. officials, Washington, March–July 2022. See also Patrick Wintour and Jamie Grierson, "Free at last: Zaghari-Ratcliffe and Ashoori head back to UK after six-year ordeal", *The Guardian*, 16 March 2022; and "Iran grants environmental activist Morad Tahbaz bail", *BBC*, 28 July 2022. South Korean officials, who face Iranian legal and political pressure to release Tehran's assets, are concerned for the safety and security of their diplomatic staff in Iran as well as of their tankers passing through the Strait of Hormuz. Crisis Group interviews, senior South Korean officials, Seoul, April 2022. See also "Iran submits LOI for ISDS to S. Korea for frozen assets", *Korean Broadcasting System*, 29 January 2022; and "Iranian newspaper warns South Korea could be blocked from Persian Gulf shipping", *Press TV*, 17 April 2022.

<sup>89</sup> Weaponisation-related activities are outlined in Section T of the JCPOA. A senior Israeli defence official assessed, "We are not [in an emergency situation] yet. After enriched uranium, you need to build a bomb and carry out weaponisation. That takes between eighteen months and two years". Crisis Group interview, Jerusalem, July 2022. According to Israeli media reports, an attack on Iran's nuclear sites could set nuclear activities back by as little as five months or as much as eighteen. Alon

not crossing these thresholds, the West could commit not to snap back UN sanctions – itself a risky step that, as noted, could push Iran to exit the NPT.

Another potential tripwire concerns covert operations against Iranian nuclear sites and scientists, which in the past have hardly disrupted or delayed its activities, and often also prompted Iranian countermoves.<sup>90</sup> Israel has reportedly been mounting more such attacks, under its expanded “Octopus doctrine” of targeting Iranian individuals and facilities involved in nuclear and non-nuclear activity rather than Iran’s regional proxies and partners.<sup>91</sup> The U.S. may be unable to stop Israeli covert action against Iran’s nuclear program, but given the risk such attacks entail for Washington, it should strongly counsel against such measures. Gulf Arab governments with open lines of contact to both the Iranian and Israeli governments could also take a quiet but more proactive role in urging greater restraint.<sup>92</sup>

Reciprocally, Iran should refrain from attacks on U.S. and allied interests. Any U.S. or Israeli fatalities in the region or beyond would risk enflaming tensions. U.S. assessments that Iran still entertains the idea of targeting current or former officials to avenge Soleimani’s killing are also cause for serious concern. This course would be a recipe for U.S. retaliation.<sup>93</sup> It would set off a dangerous new cycle of confrontation if Tehran were to pursue it. To help manage regional tensions, Washington should encourage the tentative steps being taken toward diplomatic engagement between its Gulf Arab allies and Tehran, even as it pursues greater defensive cooperation and in-

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Ben David, “The nuclear deal gives the IDF time: A possible attack on Iran will not only be from the air”, *Maariv*, 3 June 2022. In July 2022, former Israeli Prime Minister Ehud Barak posited that “unlike the surgical operations that were considered twelve years ago, or could have been considered four years ago – operations which could have substantially delayed the Iranian program (while risking a war with Iran) – the present possibilities bring all the risk of war (especially for Israel) with only scant likelihood of delaying the Iranian nuclear program”. Ehud Barak, “Iran can transform itself into a nuclear power – and it’s too late to stop it by a surgical attack”, *Time*, 25 July 2022.

<sup>90</sup> Iran responded to the November 2020 killing of one of its top nuclear scientists by, among other steps, raising uranium enrichment levels to 20 per cent, then increasing them to 60 per cent in the immediate aftermath of an attack on the Natanz fuel enrichment plant.

<sup>91</sup> Dion Nissenbaum, Dov Lieber and Aresu Eqbali, “Israel expands operations against Iranian nuclear, military assets”, *The Wall Street Journal*, 20 June 2022.

<sup>92</sup> Danny Citrinowicz, “Israel and Iran need to turn down the heat. The UAE could be the best choice as conduit”, *The Atlantic Council*, 21 March 2022.

<sup>93</sup> Jana Winter, “U.S. government warns that Iran may try to kill American officials as revenge for killing top general”, *Yahoo! News*, 13 July 2022. Sentiment against negotiations with Iran hardened in the U.S. following the 12 August attack in New York state on writer Salman Rushdie, a UK-U.S. dual national. Ayatollah Ruhollah Khomeini issued a fatwa decades ago calling for Rushdie to be killed for his writings. Initial investigations by New York police noted that the perpetrator had “a likely adherence or sympathy towards Shia extremism and sympathies to the Iranian regime/Islamic Revolutionary Guard Corps”. Blinken, meanwhile, denounced the Iranian government’s history of anti-Rushdie incitement and the state media’s jubilant coverage of the attack as “despicable”. Iran’s foreign ministry rejected “any connection” with the attacker, while asserting: “We do not consider anyone other than [Rushdie] and his supporters worthy of blame and even condemnation”. Martin Chulov, “Salman Rushdie attack: Iranians react with mixture of praise and concern”, *The Guardian*, 13 August 2022; Jana Winter, “Suspect in Salman Rushdie attack sympathized with Iranian regime, NYPD intelligence bulletin says”, *Yahoo! News*, 15 August 2022; “The Attack against Salman Rushdie”, U.S. State Department, 14 August 2022; and “Iran rejects any links with Salman Rushdie’s attacker”, *Tehran Times*, 15 August 2022.

telligence sharing among them and with Israel. It may not be able to defuse the possibility of a regional escalation, but it can at least work to ringfence the fallout.

Steering clear of these red lines and tripwires could thwart an escalatory dynamic for some length of time but would – at best – result in a crisis deferred, not resolved. Neither the conceptual framework nor the methods used in the past can be assumed to apply in present circumstances. Nearly twenty years after the standoff over Iran’s nuclear program began, the core of the bargain for which Crisis Group advocated from the onset to resolve the crisis seems increasingly untenable. On one hand, Iran is now practically a threshold nuclear weapon state and temporary restrictions on its capabilities are unlikely to alleviate its adversaries’ concerns. On the other hand, the West has repeatedly proven incapable of providing effective and sustainable economic incentives to Tehran.<sup>94</sup>

Washington and its allies may believe that, if the JCPOA process is definitively over, they will always be able to look to additional economic pressure or the use of force to protect their interests. But the belief that economic pressure will produce a better outcome is a chimera when Iran holds that the only thing more dangerous than suffering from sanctions is surrendering to them.<sup>95</sup> Moreover, while there may be a military *option* for setting back Iran’s nuclear program through airstrikes or covert attacks, there is no military *solution* to the crisis, as an attack is likely to set Iran dashing toward a nuclear weapon, the ultimate deterrent. Iran’s retaliation would probably also involve threats to U.S. assets and interests in the Middle East, risking a protracted military quagmire that the U.S., weary of entanglements in the region, almost certainly wishes to avoid.

## V. Conclusion

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The parties to the JCPOA have spent more than four of the six years since the agreement came into effect just keeping it alive. President Trump’s unilateral withdrawal in 2018, followed by a “maximum pressure” campaign of economic and political pressure, threatened to kill it. But with Trump’s departure from office in January 2021, a return to health became possible. For the past seventeen months, Iran, the deal’s other remaining signatories and the Biden administration have worked to revive the deal. Washington and its partners operated on the premise that it was still the best

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<sup>94</sup> A senior Iranian official said, “The West was unwilling to allow Iran to have a dozen centrifuges in 2003. What forced them to countenance Iran spinning thousands of centrifuges in 2015 was our much more advanced nuclear capabilities. This is the fruit of resistance”. Crisis Group interview, Doha, 27 March 2022. A former Iranian official warned, “A strong faction in Iran is now pushing the system to break out to 90 per cent, so that the country can negotiate with the West as a threshold nuclear weapon state and get them to lift sanctions only in return for Iran not crossing the Rubicon to weaponisation”. Crisis Group telephone interview, July 2022.

<sup>95</sup> As Biden’s special envoy for Iran put it, “We have gone through several years of a real-life experiment in the very policy approach critics of the JCPOA advocated: a so-called maximum pressure policy, designed to strangle revenue for the Iranian regime, in hopes of getting Iran to accept far greater nuclear restrictions and engage in far less aggressive behaviour. Many of us strongly disagreed with this policy at the time, but we could of course not prove that it would fail. That was then. This is now. Then we predicted. Now we know”. See “Testimony of Robert Malley Special Envoy for Iran”, U.S. State Department, 25 May 2022.

available framework for keeping the Iranian nuclear program in check and under strict international oversight. Tehran was motivated by the promise of large economic dividends. Neither side had a better alternative.

The effort to restore the deal has been an arduous and in many ways peculiar exercise. The parties needed to arrive at not a new accord but a pathway to adapting and re-entering an existing one. Gruelling deliberations bookended long periods of hiatus. There was no direct engagement between the two main protagonists, who seemingly had the same objective but had vastly diverging – perhaps irreconcilable – views of what mutual compliance with the JCPOA entailed in practice.

In the ornate meeting rooms of Vienna's Coburg Palace, where the parties worked out the draft text of a renewed JCPOA over the past few months, they inscribed the phrase "nothing is agreed until everything is agreed" on the front page. That has turned out to be the story of the restoration effort, in which many things were agreed, but alas, not everything may end up settled. Thus far, Iran and the U.S. have failed to find common ground on key issues that could very well sink the deal. They might yet have time to bridge the remaining gaps. It falls to both of them to salvage something from what could soon be reduced to nothing. An agreement is still possible, but it requires affirmative political will and recognition of the fact that all alternatives are worse than a deal that, while imperfect, still satisfies most of the parties' needs.

If they fail to return to compliance with the accord, however, they will face yet more choices about whether – and how – to prevent their four-decade rivalry from degenerating into deeper acrimony. A wise option would be single-measure quid pro quos combined with tacit acknowledgement of each other's red lines to avert nuclear and regional escalation until the time is ripe for a durable diplomatic settlement.

**Tehran/Washington/Brussels, 12 September 2022**

## Appendix A: Reports and Briefings on the Middle East and North Africa since 2019

### Special Reports and Briefings

*Council of Despair? The Fragmentation of UN Diplomacy*, Special Briefing N°1, 30 April 2019.

*Seven Opportunities for the UN in 2019-2020*, Special Briefing N°2, 12 September 2019.

*Seven Priorities for the New EU High Representative*, Special Briefing N°3, 12 December 2019.

*COVID-19 and Conflict: Seven Trends to Watch*, Special Briefing N°4, 24 March 2020 (also available in French and Spanish).

*A Course Correction for the Women, Peace and Security Agenda*, Special Briefing N°5, 9 December 2020.

*Ten Challenges for the UN in 2021-2022*, Special Briefing N°6, 13 September 2021.

### Israel/Palestine

*Defusing the Crisis at Jerusalem's Gate of Mercy*, Middle East Briefing N°67, 3 April 2019 (also available in Arabic).

*Reversing Israel's Deepening Annexation of Occupied East Jerusalem*, Middle East Report N°202, 12 June 2019.

*The Gaza Strip and COVID-19: Preparing for the Worst*, Middle East Briefing N°75, 1 April 2020 (also available in Arabic).

*Gaza's New Coronavirus Fears*, Middle East Briefing N°78, 9 September 2020 (also available in Arabic).

*Beyond Business as Usual in Israel-Palestine*, Middle East Report N°225, 10 August 2021 (also available in Arabic).

*The Israeli Government's Old-New Palestine Strategy*, Middle East Briefing N°86, 28 March 2022 (also available in Arabic).

*Realigning European Policy toward Palestine with Ground Realities*, Middle East Report N°237, 23 August 2022 (also available in Arabic).

### Iraq/Syria/Lebanon

*Lessons from the Syrian State's Return to the South*, Middle East Report N°196, 25 February 2019.

*The Best of Bad Options for Syria's Idlib*, Middle East Report N°197, 14 March 2019 (also available in Arabic).

*After Iraqi Kurdistan's Thwarted Independence Bid*, Middle East Report N°199, 27 March 2019 (also available in Arabic and Kurdish).

*Squaring the Circles in Syria's North East*, Middle East Report N°204, 31 July 2019 (also available in Arabic).

*Iraq: Evading the Gathering Storm*, Middle East Briefing N°70, 29 August 2019 (also available in Arabic).

*Averting an ISIS Resurgence in Iraq and Syria*, Middle East Report N°207, 11 October 2019 (also available in Arabic).

*Women and Children First: Repatriating the Westerners Affiliated with ISIS*, Middle East Report N°208, 18 November 2019.

*Ways out of Europe's Syria Reconstruction Conundrum*, Middle East Report N°209, 25 November 2019 (also available in Arabic and Russian).

*Steadying the New Status Quo in Syria's North East*, Middle East Briefing N°72, 27 November 2019 (also available in Arabic).

*Easing Syrian Refugees' Plight in Lebanon*, Middle East Report N°211, 13 February 2020 (also available in Arabic).

*Silencing the Guns in Syria's Idlib*, Middle East Report N°213, 15 May 2020 (also available in Arabic).

*Pulling Lebanon out of the Pit*, Middle East Report N°214, 8 June 2020 (also available in Arabic).

*Iraq: Fixing Security in Kirkuk*, Middle East Report N°215, 15 June 2020 (also available in Arabic).

*Exiles in Their Own Country: Dealing with Displacement in Post-ISIS Iraq*, Middle East Briefing N°79, 19 October 2020 (also available in Arabic).

*How Europe Can Help Lebanon Overcome Its Economic Implosion*, Middle East Report N°219, 30 October 2020 (also available in Arabic).

*Avoiding Further Polarisation in Lebanon*, Middle East Briefing N°81, 10 November 2020 (also available in Arabic).

*Iraq's Tishreen Uprising: From Barricades to Ballot Box*, Middle East Report N°223, 26 July 2021 (also available in Arabic).

*Managing Lebanon's Compounding Crises*, Middle East Report N°228, 28 October 2021 (also available in Arabic).

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International Crisis Group

**Headquarters**

Avenue Louise 235, 1050 Brussels, Belgium

Tel: +32 2 502 90 38

[brussels@crisisgroup.org](mailto:brussels@crisisgroup.org)

**New York Office**

[newyork@crisisgroup.org](mailto:newyork@crisisgroup.org)

**Washington Office**

[washington@crisisgroup.org](mailto:washington@crisisgroup.org)

**London Office**

[london@crisisgroup.org](mailto:london@crisisgroup.org)

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