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Saving Transatlantic Cooperation and the Iran Nuclear Deal

A View from Europe and the United States

Corentin Brustlein, James Dobbins, Dalia Dassa Kaye, Oliver Meier, Marco Overhaus, Neil Quilliam, Charles Ries, Dorothée Schmid, Sanam Vakil, and Azadeh Zamirirad

Transatlantic differences over the future of the Iran nuclear deal – or the Joint Comprehensive Plan of Action (JCPOA) of July 2015 – are damaging a nuclear accord that all parties, except the United States, see as delivering on its purpose. They also increase the risk of Washington and European capitals working at cross-purposes vis-à-vis Iran and broader regional policies. To avoid such a scenario, the E3 (France, Germany, United Kingdom)/European Union (EU) and the United States need to set up new channels of communication to avoid a transatlantic rift, to attempt – if at all possible – to preserve the Iran deal, and to secure its benefits for regional and global security.

US and European approaches towards Iran have increasingly grown apart. Washington and Europe differ in their threat perceptions, their preferred foreign policy tools, and their general outlooks on Tehran. European actors generally do not see Iran as the main source of regional instability in the Middle East and have stressed the significance of engagement to complement coercive measures. Few of the above elements apply to the current US administration. The context could hardly be more challenging for transatlantic cooperation on the Iran nuclear deal.

Although President Donald Trump once again waived nuclear-related sanctions in January, he did not certify that the nuclear agreement is still in the national security interest of the United States, leaving the JCPOA in limbo. In his January 12th statement, the President issued an ultimatum to Congress and his European partners, giving them a "last chance" to fix what he described as the deal's "disastrous flaws" by mid-May 2018. The administration seeks to eliminate the deal's "sunset clauses" by making its restrictions permanently binding, to add restrictions on Iran's missile programme, and to alter provisions so that "anytime, anywhere" inspections become possible. If these conditions are not met, the President stated that the United States would leave the agreement unilaterally.

At the same time, European officials have made it clear that they will not use the JCPOA to leverage Iran on non-nuclear-related issues, and there is a strong Euro-

pean commitment to keep the nuclear agreement intact. Against this background, it might well be that transatlantic partners are unable to find a path towards keeping the United States in the JCPOA. Even if Washington leaves the agreement, however, transatlantic coordination will still be needed to prevent further deterioration in relations, which could make cooperation in dealing with Iran difficult and even include a trade war across the Atlantic. With or without US participation in the nuclear deal, transatlantic cooperation remains desirable and possible. After all, the United States and Europe share the objectives of preventing Iran from becoming a nuclear-weapon state, halting its development of long-range nuclear-capable missiles, encouraging adherence to human rights norms, and curbing its activities in the region. There are still options to preserve transatlantic unity while also creating opportunities for wider cooperation on Iran.

Option A: Keeping the United States in the Nuclear Agreement

For this option to be feasible, both Washington and Europe must demonstrate a willingness to compromise. The Trump administration needs to accept less than its maximalist demands and acknowledge that only by doing so will its European partners be open to addressing issues related to Iran's regional policies and missile activities. At the same time, Europeans have to be more vocal about US concerns that they do share. They also need to continue to impress on their US interlocutors that a unilateral US withdrawal would have a detrimental impact upon transatlantic relations. Moreover, both sides should offer clear and specific proposals on how – and through what channels – they plan to resolve current disputes over the Iran nuclear deal and the wider portfolio of issues.

Even if the US administration continues to waive nuclear-related sanctions after mid-May, uncertainty about future implementation will prevail. The administration is currently required to certify every 90 days that the Iran accord remains in the interest of US national security and to renew sanctions waivers every 120 days. Extending these timelines or eliminating them altogether – steps Congress is considering in its debates on changing the Iran Nuclear Agreement Review Act (INARA) of 2015 – would provide the necessary breathing space for a continuous transatlantic dialogue on the future of the JCPOA. Here, Europeans are well-advised to continue engaging with US legislators to reduce the risk of Congress amending INARA in a way that would bring Washington into violation of the JCPOA.

In order to address the issue of "sunsets", both sides could begin discussions on how to turn some of the restrictions on Iran's nuclear activities into more general norms and rules within the non-proliferation regime. Such an approach would have the advantage of seeking to extend some of the limits beyond the timelines contained in the JCPOA while also making them applicable to other states. A "Dialogue on Non-proliferation Benefits", for instance, could strengthen the Non-Proliferation Treaty (NPT) by embedding in it norms for proliferation-resistant nuclear reactors or against reprocessing. Another way of extending restrictions by elevating them to multilateral norms might be to encourage states to open sensitive facilities, such as those for medical isotope production, to multilateral cooperation. This would, in fact, strengthen the NPT as a whole instead of limiting it to the Iranian case. Given that the sunset clauses come into play many years in the future, there should be ample time to align US and European views, provided both sides commit to work towards that objective without the imposition of artificial deadlines.

Some proliferation concerns, however, are best discussed within the framework of the nuclear deal itself. As specified in the JCPOA, the so-called Joint Commission – consisting of Iran and the other parties to the agreement (E3/EU+3) – can "modify, as necessary, procedures to govern its activities". Using this forum could be an open-

ing to address some US concerns, such as the issue of Section T. That section is vague in specifying the International Atomic Energy Agency's ability to verify the absence of activities "which could contribute to the development of a nuclear explosive device". Such an approach could serve as a precedent on how to make better use of the JCPOA itself to direct concerns about Iranian compliance. In order to coordinate their efforts, transatlantic partners should institutionalise a forum of their own that would meet prior to sessions of the Joint Commission.

Furthermore, a regional security channel should be convened. A "Transatlantic Dialogue on Gulf Security" could be a starting point to discuss issues of mutual concern, such as the conflict in Yemen, ballistic missile programmes, or nuclear safety. For such a dialogue to be meaningful, it would require high-level political participation. First, transatlantic partners need to define attainable milestones. This should be discussed in a non-public setting under less political pressure. Should an agreement on the substance of such a dialogue be achieved, multilateral talks with Iran and members of the Gulf Cooperation Council could then be facilitated. Regular status reports from the US and European sides should be used to keep the process moving.

The aim of these proposed steps is to produce a common understanding that can save the JCPOA, thereby strengthening some of its provisions without violating the agreement, while allowing for new multilateral fora to address other areas of regional concern. This would be the optimal outcome, but it will also be necessary to prepare for alternative options, including the prospect of the United States leaving the agreement.

Option B: Managing a US Exit While Saving the Agreement

If nuclear-related US sanctions are reimposed in mid-May, this in itself does not need to lead to the collapse of the nuclear deal. As long as the remaining parties to the agreement – first and foremost Iran – continue to adhere to the JCPOA and UN Security Council Resolution 2231, a US withdrawal might not kill the accord. Should the United States re-impose nuclear-related sanctions, the E3/EU's first priority will be to prevent the enforcement of secondary sanctions. Political channels between Washington and the remaining E3/EU+2 will be needed to discuss the specifics of US withdrawal, allowing for the possibility of a "soft" US exit, whereby Washington would re-impose sanctions but refrain from enforcing them extraterritorially. If Washington opts for a soft exit, the remaining parties can work together to keep the JCPOA alive and leave the door open for a US return. This will require significant assurances to private-sector investors in Iran that they will be protected from possible secondary sanctions enforcement, thereby reducing as much uncertainty as possible so that Iran continues to see the economic benefits of adhering to the agreement.

Bringing Washington back into the existing agreement – now or under a new US administration – should remain an option. However, European governments will insist that Washington cannot get a better deal by leaving it. Moreover, leaving the JCPOA makes additional non-proliferation and regional security measures less likely. Maintaining bridges for Washington's eventual return to the JCPOA after an exit would require close coordination by the E3/EU with Russia, China, and most importantly, with Iran to secure their continued commitment to the nuclear deal.

If the Trump administration leaves the agreement and also acts to impede the E3/EU+2 from economic cooperation with Iran, tough European counter-measures are likely to follow. Given the broad international support for the JCPOA – including from a number of key US allies such as Japan, South Korea, India, Australia, and Canada – the United States may well be isolated. The political costs of Washington leaving the deal would thus be high, including long-lasting damage to US reliability in the eyes of international partners.

A European response could include reviving its Blocking Statute of 1996 to counter US extraterritorial sanctions imposed on European companies. This could be a necessary step to protect the legitimate interests of European enterprises. Updating the annex of that statute would already send a message to Washington that Europeans mean business. They could also draft new legislation that would allow for countermeasures against US companies and require US subsidiaries located in Europe to adhere to European regulations where these differ from American regulations.

European partners have called for continued US participation in the JCPOA beyond May 2018. As long as the United States keeps implementing the agreement, there is a much better chance of finding common ground on the JCPOA and issues outside the agreement's scope. Should the United States leave the deal, transatlantic conditions for coming to terms on nuclear- and non-nuclear-related issues will worsen significantly. Moreover, the United States and its European partners will run the risk of further transatlantic alienation and a trade war, making an effective alignment of their Iran policies much less likely. Most importantly, however, uncertainty about the future of the JCPOA may push Iran itself out of the deal, possibly bringing Tehran closer to the nuclear threshold while leaving the international community divided and unable to respond effectively. Transatlantic partners should have a strong interest in avoiding such a worst-case scenario.

Time for Transatlantic Cooperation

Strong transatlantic cooperation holds the best prospects for achieving the core common objective of preventing a nuclear-armed Iran. Americans and Europeans need to step up their consultation efforts, and they need to do this now. They should continue to consult by building up issue-specific fora outside of the JCPOA, agreeing on tangible goals. Both sides also need to find a common understanding on how to sequence problems and issues of mutual interest to find short- and long-term solutions. By addressing issues step by step rather than in an all-or-nothing manner, they can pave the way for a continuous transatlantic dialogue on the JCPOA and on broader regional issues. These fora can also serve as a clearing house for issues to be taken to the Joint Commission, which oversees implementation of the Iran deal. Such cooperation will be important even if it cannot induce the United States to remain in the JCPOA. A negotiated US exit from the agreement can increase the prospects of the deal's survival and address other important issues impacting regional stability. Most significantly, ongoing dialogue and coordination among transatlantic partners would send a strong political message, namely that the United States and its European partners still form a powerful alliance of strong, like-minded actors on the global stage.

SWP
Stiftung Wissenschaft und Politik
German Institute for International and Security Affairs

Ludwigkirchplatz 3–4
10719 Berlin
Telephone +49 30 880 07-0
Fax +49 30 880 07-100
www.swp-berlin.org
swp@swp-berlin.org

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The Authors*

Corentin Brustlein, Head of Security Studies, Ifri
James Dobbins, Distinguished Chair on Security and Diplomacy, RAND
Dalia Dassa Kaye, Director of Center for Middle East Public Policy, RAND
Oliver Meier, Deputy Head, International Security Division, SWP
Marco Overhaus, Senior Associate, The Americas Division, SWP
Neil Quilliam, Senior Research Fellow, Middle East and North Africa Programme, Chatham House
Charles Ries, Vice President International, RAND
Dorothée Schmid, Head of the Turkey and Middle East Programme, Ifri
Sanam Vakil, Associate Fellow, Middle East and North Africa Programme, Chatham House
Azadeh Zamirirad, Senior Associate, Middle East and Africa Division, SWP

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