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Treaty Obligations versus Extra-territoriality“

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Introduction

In the past year the 'Doomsday Clock' has not progressed further towards man-made global catastrophe, hence, remaining at 2 minutes to midnight.¹ This news certainly had soothing effect on the worried minds who have for the longest time been anxious about the world finally consuming itself due to rising tensions in international relations. A pivotal aspect pertaining to these tensions is evidently owed to the uptrend of populist governments around the globe. Politics, orchestrated by the Donald Trumps and Jair Bolsonaros of this world are evidently not conducive for boosting empathetic mindsets and global welfare. But why? To my mind, the spectre of racial segregation – triggered by various crises of the near past, above all, the 2015 migrational crises – has been summoned to induce 'western populations' with fear, ultimately, leading to inclining xenophobia and inevitable hate towards those who did not choose to leave their home countries and start a new life in alien lands, but are seeking refuge in order to survive. Relating thereto, certain Austrian politicians chose to forge a term called 'economic refugee' to spark off popular debate resulting in the screening of each and every refugee's motives for coming to 'our lands.' Consequently, this general suspicion has not only led to resistance of the general public in condoning charity and displaying efforts for integration, but has also further worsened the societal climate – not least – due to selective media coverage of delinquent immigrants. These alarming trends seem to be mocking the tenet – directly resulting from the atrocities committed in World War II – conveying that 'the dignity of men is unimpeachable.' Ashamedly, the boundaries set by these words – as necessary corollary for preventing such anthropogenic catastrophes from ever happening again – not only seem to be melting away, but are intentionally being melted away considering global issues such as financial inequality, discrimination of women and migration. However, as the purpose of this thesis lies in a similarly urgent yet different genre of global issues – namely, the nuclear arms race – I would like to close these prior thoughts with famous words:

*Principiis obsta. Sero medicina parata, cum mala per longas convaluere moras.*²

¹ Mecklin J, '2019 Doomsday Clock Statement' (Science and Security Board Bulletin of the Atomic Scientist) <<https://thebulletin.org/doomsday-clock/current-time/>> accessed 26 April 2019.

² Naso PO and Holzberg N, *Remedia Amoris* (Reclam 2011) 2.

The aim of this thesis is to assess the European Union's position on and motivation for implementing legislation to block extra-territorial legislation, directly affecting entities of European provenience. Relating thereto, the protagonists are the legal instruments colloquially referred to as 'the European Blocking Statute', implemented in 1996 to counteract US American unlawful economic sanctions. Due to the fact that these instruments have been 'revived' in the light of the Joint comprehensive Plan of Action – a state-of-the-art international agreement, conducted between the E3+3 and Iran, to curb Iranian nuclear weapon aspirations – their nature and scope are yet again of striking relevance. Hence, giving rise to an urge for scrutinizing the current foundations of EU Common Foreign and Security Policy in the light of major pertinent changes to it by virtue of the Treaty of Lisbon.

First, the international law tenets pivotal to comprehending the conflicting Parties' positions will be zeroed in on. Second, the diplomatic efforts enabling conclusion of the JCPOA and its legal classification will be in focus. Moreover, the ramifications of endorsing the agreement in United Nations Security Council Resolution 2231 will be assessed – hence, elucidating upon the effects of this type of legal instruments. Third, the foundations of EU Common Foreign and Security Policy prior to and after the *Treaty of Lisbon* will be delineated in order to enable grasping of the framework for purporting legislation that countervails extra-territorial effects of non-EU legislation. Lastly, an estimation concerning the odds of failure of the JCPOA and the author's opinion regarding the matter will be displayed.

Principal Abbreviations

AB	Advisory Board
AP	Additional Protocol
BS	Blocking Statute
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CSA	Comprehensive Safeguards Agreement
ECJ	European Court of Justice
EP	European Parliament
EU	European Union
EUBS	European Union Blocking Statute
FAC	Foreign Affairs Council
FYR	Federal Yugoslav Republic
GA	General Assembly
GC	General Court (of the European Union)
GATT	General Agreement on Tariffs and Trade
HR	High Representative
IAEA	International Atomic Energy Agency
ICJ	International Court of Justice
INFCIRC	Information Circular (of the International Atomic Energy Agency)
JA	Joint Action
JC	Joint Commission
JCPOA	Joint Comprehensive Plan of Action
JPA	Joint Plan of Action
MEDC	More Economically Developed
MoU	Memorandum of Understanding
MS	Member States
NFC	Nuclear Fuel Cycle
NNWS	Non-Nuclear Weapons State
NPT	Non-Proliferation Treaty
PCIJ	Permanent Court of International Justice
RBS	Revived Blocking Statute
SC	Security Council
SCR	Security Council Resolution
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNC	Charter of the United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution

UPR	Uniting for Peace Resolution
US	United States
USA	United States of America
VCLT	Vienna Convention on the Law of Treaties
WMD	Weapons of Mass Destruction
WTO	World Trade Organization

Table of Cases (in chronological order)

Wimbledon (Britain et al v Germany) [1923] PCIJ Series A01.

Lotus (France v Turkey) (Judgment) [1927] PCIJ Permanent Series A10.

North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) (1969) ICJ Rep 3.

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (Advisory Opinion) [1971] ICJ Rep 71.

Case 22/70 Commission v Council (ERTA) [1971] ECR 263.

Gulf of Maine (Canada v United States of America) [1984] ICJ Rep 165.

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) [1986] ICJ Rep 392.

Lockerbie Case (Libyan Arab Jamahiriya v. United Kingdom) [1992] ICJ Rep 3.

Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226.

Prosecutor v Tadic (Judgment in Sentencing Appeals) [2000] 39 ILM 635.

Joined Cases C-402/05 P and 415/05 P Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities [2008] ECR I-6351.

Table of Instruments (in chronological order)

Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter).

General Agreement on Tariffs and Trade (adopted 30 October 1947, entered into force 1 January 1948) 55 UNTS 187 (GATT).

United Nations General Assembly Resolution 5/377 (3 November 1950) UN Doc A/RES/5/377.

Statute of the International Atomic Energy Agency (adopted 23 October 1956, entered into force 29 July 1957) 276 UNTS 3 (IAEA-Statute).

Treaty on the Non-Proliferation of Nuclear Weapons (adopted on 1 July 1968, entered into force on 5 March 1970) 729 UNTS 161 (NPT).

Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT).

United Nations Security Council Resolution 713 (25 September 1991) UN Doc S/RES/713.

Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effect of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom [1996] OJ L309/1.

Joint Action 96/668/CFSP of 22 November 1996 adopted by the Council on the basis of Articles J.3 and K.3 of the Treaty on European Union concerning measures protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom [1996] OJ L309/7.

The Tehran Agreement (2003).

United Nations Security Council Resolution 1696 (31 July 2006) UN Doc S/RES/1696.

Council Regulation (EU) 182/2011 of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers [2011] OJ L 55/13.

Joint Plan of Action (2013).

United Nations Security Council Resolution 2231 (20 July 2015) UN Doc S/RES/2231.

Joint Comprehensive Plan of Action (2015).

Consolidated versions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/1.

Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extra- territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom [2018] OJ L199I/1.

Commission Implementing Regulation (EU) 2018/1101 of 3 August 2018 laying down the criteria for the application of the second paragraph of Article 5 of Council Regulation (EC) No 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom [2018] OJ L199I/7.

I. Setting the Scene

‘In the Supreme State nations as a whole have a right to coerce individual nations, if they should be unwilling to perform their obligations.’³

These words concerning the impairment of states’ sovereignty in the light of the ‘Superior International State’ by Christian Wolff (1679-1754) exemplify the maturity of an everlasting debate: to what extent can sovereignty shield states against international intervention in domestic affairs? The rudimentary answer relating thereto would be that transmutation,⁴ arising from epochal crises, has culminated in the common perception that in principle ‘all states enjoy sovereign equality and shall refrain from threat or actual use of force against the territorial integrity or political independence of one another.’⁵ Nevertheless, as the concept of sovereignty is pivotal to international law, one cannot refrain from contextualising it historically when elucidating upon its scope.

Remarkably, the predominant view of considering sovereignty as the supreme authority or absolute, uncontested power over all matters within a territory, and the necessary corollary of attributing it to the respective state seems to have been blurred by the centuries.⁶ This transition is primarily owed to the fact that sovereignty rights have gradually been conferred upon supranational and international entities. Hence, partly abandoning the fundamental structures of the Westphalian System.⁷ Consequently, and not least because of the incremental malleability of sovereignty’s core elements in today’s inter-dependent, globalised world, the accretion of international constitutionalisation is increasingly graspable. This may ultimately stem from pressing societal issues that can only be effectively addressed by establishing constraining international constitutional law as global policy instrument.⁸ Unfortunately, the minimum

³ Orakhelashvili A, ‘The Origins of Consensual Positivism - Pufendorf, Wolff and Vattel’, *Research Handbook on the Theory and History of International Law* (Edward Elgar Publishing 2011) 97.

⁴ The concept of sovereignty has been moulded by the Treaty of Westphalia (1648), the Congress of Vienna (1815), and the establishment of the League of Nations (1919) and the United Nations (1945).

⁵ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter) Article 2.

⁶ Alvarez JE, ‘State Sovereignty is Not Withering Away: A Few Lessons for the Future’ in Cassese A (ed), *Realizing Utopia: The Future of International Law* (OUP 2012) 29.

⁷ Grote R, ‘Westphalian System’ in Rüdiger Wolfrum (ed), *The Max Planck Encyclopaedia of Public International Law (MPEPIL)* vol X (OUP 2012) para 6. While States are still considered the dominant actors in the current system their classical role as sovereign within the respective territory is being increasingly diluted. For example, exclusive territorial jurisdiction of EU member States has waned with regard to the CJEU’s competences.

⁸ Dunoff JL and Trachtman JP, ‘A Functional Approach to International Constitutionalization’ in Jeffrey L. Dunoff and Joel P. Trachtman (eds), *Ruling the World?: Constitutionalism, International Law, and Global Governance* (Cambridge University Press 2009) 11-B.

degree of ‘commanding-power’ necessary for enabling states to derive from it their very existence, has yet been quantifiable.⁹ Thus, for the time being, barring the path to final breakthrough.

In absentia of a unified international constitution, it must therefore suffice to call upon pertinent judicial legislation to shed light on two key aspects foundational to international treaty law.¹⁰ In 1923 the PCIJ found that binding treaty obligations [in reference to international law *per se*] are indeed no curtailment to states’ sovereignty, but even arise from it – based on the notion that states are free, hence inherently comprising the ability to choose their engagements.¹¹ Four years later, consolidating the antecedent premise the Court further elaborated upon the very nature of international law principles. Above all, pointing out that:

*‘International law governs relations between independent states. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these coexisting independent communities or with a view to the achievement of common aims. Restrictions upon the independence of states cannot therefore be presumed’.*¹²

Moreover, especially with relevance for foreign intervention, the court declared that ‘the first and foremost [r]estriction imposed by international law upon states is the prohibition to exercise its powers in the territory of another state’.¹³ Inevitably, with the world becoming increasingly inter-connected, the essence of the erstwhile dictums has become more susceptible to urges of change. Primarily, the question arose as to whether the trade-off between preserving states’ *domaine réservé* and intensified participation in the global economy has led to a point where economic coercion can cross the line of being in conflict with respective underlying principles.¹⁴

In general, it can be said that due to extensive proliferation of normative, contract, and integrative treaty law, traditional elements of the reserved domain have been gradually falling out of its scope indeed.¹⁵ Especially international economic integration in consideration of the GATT has played a crucial role with reference to shifting states’ sovereign right to economic self-determination into a stress ratio with reaping

⁹ Cassese A, ‘States: Rise and Decline of the Primary Subjects of the International Community’ in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (1st edn, OUP Press 2012) 51. Reference to the transposed Cartesian dictum by Vittorio Emanuele Orlando, ‘*ibeo, ergo sum*.’

¹⁰ Due to this thesis’ focus on the binding nature of international treaty law and pertinent threats to it by virtue of extraterritorial jurisdiction, the scope of scrutiny is limited to selected cases that are particularly important to the subject topic.

¹¹ Feinäugle C, ‘Wimbledon, The’ in Rüdiger Wolfrum (ed), *MPEPIL*, vol X (OUP 2012) para 17.

¹² *The Case of the SS Lotus (France v Turkey)* (Judgment) [1927] PCIJ Permanent Series A10, 18.

¹³ Bogdandy AV and Rau M, ‘Lotus, The’ in Rüdiger Wolfrum (ed), *MPEPIL* vol X (OUP 2012) para 8.

¹⁴ The principles of immediacy and non-intervention.

¹⁵ Ziegler KS, ‘Domaine Réservé’ in Rüdiger Wolfrum (ed), *MPEPIL*, vol III (OUP 2012) para 7.

major economic benefits for societal development.¹⁶ It can clearly be said that the resulting interdependence casted by states' obligations under the umbrella of international trade, has demonstrably led to unprecedented global prosperity – nonetheless, failing to entirely constrain its downsides. The potential drawbacks become visible in the light of single markets, whose economic performance literally dwarfs that of individual nations' economies.¹⁷ Therefore, regional integration has become a necessary corollary for effectively enforcing mutual interests and exploiting unused synergy potential in a globalized world - not to mention, the resulting political influence of institutionalized single markets in terms of external bargaining powers.¹⁸

In the light of continuous European Integration, triggered by the European Coal and Steel Community, the meanwhile evolved European Union has long claimed its role in global polity – not least because of the powers conferred upon it by the *Treaty of Lisbon*.¹⁹²⁰ Alluding to Article 47 Treaty on the European Union, precisely, the EU's 'capacity to have rights in its own name and be subject to obligations of all kinds',²¹ the constituted legal personality may be one (if not *the*) major legal ramification for the European Project by virtue of the *Treaty* – awarding it extensive *pouvoir* in external affairs, hence finally paving the way to making it a credible partner on international terrain. This logic is additionally manifested by the Union's competence in concluding international treaties pursuant to Articles 37 TEU and 216 TFEU.²² Nevertheless, with all that being said, it is of utmost importance to emphasise that the EU's subordination to its Member States' sovereignty remains unambiguous as can be deduced from the entirety of provisions laid down in the Treaties.²³ Eventually, this notion is reaffirmed by Member States' right to Union-withdrawal pursuant to Article 50 TEU²⁴ – notwithstanding the concrete leaving proceedings' opacity, considering the mind-boggling BREXIT undertaking and stalemated negotiations relating thereto.

¹⁶ General Agreement on Tariffs and Trade (adopted 30 October 1947, entered into force 1 January 1948) 55 UNTS 187 (GATT).

¹⁷ Eurostat, 'Gross Domestic Product at Market Prices'

<<https://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tec00001&language=en>> accessed 28 February 2019. Representative table of GDP data for Europe from 2007 – 2018 to illustrate the ratio of single and joint European economic performance.

¹⁸ Mestral AD, 'Economic Integration, Comparative Analysis' in Rüdiger Wolfrum (ed), *MPEPIL*, vol III (OUP 2012) para 32. Supranational coordination and the establishment of rules in certain policy areas have been expedited by growing economic inter-dependence.

¹⁹ Major changes in Common Commercial Policy as well as Common Foreign and Security Policy have been undertaken and are now embedded in Article 2 TFEU.

²⁰ The structural differences of CFSP before and after Lisbon will be subject to thorough scrutiny in section III.

²¹ Geiger R, 'Article 47 TEU' in Rudolf Geiger, Daniel-Erasmus Khan and Markus Kotzur (eds), *European Union Treaties: A Commentary* (CHBeck 2015) para 1.

²² *ibid* n 4.

²³ Tomuschat C, 'Lisbon Treaty' in Rüdiger Wolfrum (ed), *MPEPIL*, vol VI (OUP 2012) para 9. First and foremost, it has to be borne in mind that due to the Union's missing *Kompetenz-Kompetenz* its powers remain *compétences d'attribution*. (i.e. vested rights)

²⁴ *ibid* para 12.

To conclude these extensive opening assumptions two final aspects shall be touched upon before leaving the stage to the thesis' protagonists. The first being the rationale behind imposing economic sanctions, and the second being states' motivation behind treaty compliance (i.e. the benefits they hope to be reaping by subjugating to treaty obligations).

It is certainly not astonishing that nudging a target into succumbing to international law principles – by constraining its economic conduct – is in general considered as a humane [i.e. proportional] approach to achieving global polity aims. Especially in the light of sanguinary undertakings and atrocities committed in numerous armed conflicts in the advancing 20th century, one must regard them as the necessary corollary of curbing escalations that inevitably resulted in states resorting to war. Nevertheless, the scope and intensity by virtue of which some sanctions regimes hit states have been highly critical, pre-eminently due to the detrimental effects casted on their civil populations. Consequently, a line of demarcation constraining erratic sanctions imposition has been drawn by the UN General Assembly in purporting that 'all states shall cease the adoption or implementation of any unilateral measures that infringe upon international law'.²⁵²⁶ However, in lieu of enabling developing countries to gain long chased factual independence in order to manoeuvre their economies self-sufficiently – even if only to a rudimental degree – the impression hardens that unilateral measures with extraterritorial effects have been gradually misused as tools for pressuring countries politically and economically, ultimately aiming at curtailment or even deprivation of sovereignty rights.²⁷ From an international economic law point of view, for instance the provisions of the WTO Agreements – in principle – contain far reaching limitations with regard to economic coercive measures.²⁸ However, due to the fact that non-WTO Members (e.g. Iran) are not protected by respective provisions and Art XXI GATT entails – among others – exceptions for states' actions 'in pursuance of obligations under the United Nations Charter to maintain international peace and security', most sanctions regimes are considered as permissible due to underlying enactment of measures comprised by SC resolutions.²⁹ This stems from the fact that Articles 25 and 103 UNC unfold prevailing effects vis-à-vis UN Members States, consequently casting aside other treaty obligations under

²⁵ Happold M, 'Economic Sanctions and International Law: An Introduction', Matthew Happold and Paul Eden (eds), *Economic Sanctions and International Law* (Hart Publishing 2016) 4. In Resolution 68/180 the GA primarily states that infringement upon international law principles inevitably impedes 'realisation of the full rights set forth in the Universal Declaration of Human Rights and other pertinent instruments relating thereto'.

²⁶ For a detailed view of states' economic social and cultural rights obligations - especially with regard to the International Covenant on Economic, Social and Cultural Rights - see Ssenyonjo M, *Economic, Social and Cultural Rights in International Law* (2nd edn, Hart Publishing 2016).

²⁷ *ibid* n 18. Particularly, the notion of countries systematically being discouraged from exercising their rights – within the boundaries of free will – accretes.

²⁸ Carter BE, 'Economic Sanctions' in Rüdiger Wolfrum (ed), *MPEPIL* vol III (OUP 2012) para 28.

²⁹ GATT Article XXI.

international law towards sanctioned targets.³⁰ Due to the far reaching impact of these legal instruments, voices of criticism concerning infringements upon the rule of law have become louder lately – certainly, sparked off by the ambivalence of prerequisites for SC action to be in line with the powers conferred upon it according to Chapter VII UNC.³¹ This aspect paired with the fact that crucial consultations – leading to final signing off on sanctions-related decisions – are still being held behind closed doors, not only comprises transparency issues, but also gives present practise a touch of arbitrariness.³² Consequently, the question arises why less influential states even bother to fulfil their treaty obligations in the face of ubiquitous legal uncertainty as the corollary of the global economy’s unlevel playing field?

First and foremost, it shall be mentioned that if actions amounting to universally abandoning the principle of *pacta sunt servanda* or going even further like dissolving the United Nations and other IOs were undertaken, the world would undoubtedly bring anarchy upon itself – considering the progression of global economic integration.³³ However, even with all the contemporary doomsday phantasies circulating, the abysmal notion of world powers abandoning international law principles at the price of global peace – inevitably resulting in World War III, i.e. nuclear annihilation – is an excessively pessimistic revelation, that seems too far away to even play with the thought of crediting it. In times of fading western hegemony caused by globalisation, the gradually inclining influence of emerging markets on global governance – above all, due to the strong economic momentum gained by BRICS states – slowly starts toppling MEDC’s pre-eminent position, thus curbing feasibility of unilateral political crusades.³⁴ Relating thereto, concluding myriads of treaties seems to be a prerequisite for successfully monitoring and maintaining economic growth in the long run, mainly due to the prisoner’s dilemma states are finding themselves in with respect to global competition and productivity.³⁵ The underlying (renowned) game theory concept frequently used to evaluate states’ actions and their respective motivation, assuming that they are rationally behaving actors adhering to their needs, is called ‘Tit for Tat’. Essentially, it pivotally purports that, when interacting, cooperation will initially be condoned to the first move only and its further pre-eminence depends on what

³⁰ Happold M, 'Economic Sanctions and International Law: An Introduction', Matthew Happold and Paul Eden (eds), *Economic Sanctions and International Law* (Hart Publishing 2016) 1.

³¹ Wet E de, *The Chapter VII Powers of the United Nations Security Council* (Hart Publishing 2004) 133. To my mind, the claim that *jus cogens* and the United Nations’ purposes and principles (i.e. general international law) reflect the final boundaries to SC discretion under Article 39 is favourable.

³² Farall JM, *United Nations Sanctions and the Rule of Law* (1st edn, Cambridge University Press 2007) 186.

³³ Cassese A, 'States: Rise and Decline of the Primary Subjects of the International Community' in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (1st edn, OUP 2012) 66. Referring to the possibility of launching legal fiats such as a decision by all members to repeal the founding treaties.

³⁴ Furthermore, sub-state actors - especially multinational corporations - have significantly benefited from redistribution of conventional economic power stemming from market liberalization and privatization of key economic sectors such as commodities, thus usurping State monopolies.

³⁵ Sykes A and Guzman A, 'Economics of International Law' in Francesco Parisi (ed), *The Oxford Handbook of Law and Economics*, vol 3 (OUP 2017) 439.

the other party will have been done in its respective antecedent moves.³⁶ Furthermore, in coherence with this notion, it is presumably conducive for reciprocal behaviour when both states prefer mutual compliance over mutual violation – which indubitably goes hand in hand with deontological notions of compliant behaviour, notwithstanding consequentialist exceptions like promoting own interests in lieu of acting according to the overall good.³⁷³⁸ Due to these considerations, and the contractual (i.e. synallagmatic) nature of international agreements *in concreto* treaties,³⁹ the proceedings elucidated upon in the next section shall encompass ‘specifying actions that parties are supposed to take at various times, as functions of the conditions that then prevail’ as underlying notion.⁴⁰

³⁶ Axelrod R and Hamilton WD, ‘The Evolution of Cooperation’ (1981) 211 *Science* 1390. For a heuristic concept that elucidates upon States’ possible measures taken with regard to ensuring partners’ compliance – sometimes referred to as the ‘Three Rs of Compliance’ – see Guzman A, *How International Law Works: A Rational Choice Theory* (OUP 2008).

³⁷ Sykes A and Guzman A, ‘Economics of International Law’ in Francesco Parisi (ed), *The Oxford Handbook of Law and Economics*, vol 3 (OUP 2017) 442. Relating thereto, an implausible threat of withdrawing from an agreement by one party as reaction to violations to it by another party – arising from conclusions by the latter that the agreement no longer serves its interests – will not result in continued compliance.

³⁸ Eyal Z and Medina B (eds), *Law, Economics, and Morality* (OUP 2010) 289. However, there is an inherent threshold – even though not quantifiable – of sufficiently good or bad being at stake that urges individuals to override their consequentialist behaviour and makes them act according to the greater good.

³⁹ Posner RA, ‘Comparative and International Law’, *Economic Analysis of Law*, vol 9 (Wolter Kluwer Law & Business 2014) 992. Applying the economics of contracts to treaty law is not a wild assumption, considering that States behave much like individuals – especially in commercial interactions.

⁴⁰ Schmolke KU, ‘Contract Theory and the Economics of Contract Law’ in Emanuel V Towfigh and Niels Petersen (eds), *Economic Methods for Lawyers* (Edward Elgar Publishing 2017) 98. For functionalist elaborations on treaty law – especially with reference to ‘a contract being what a contract does, and law telling it what it does’ – see Rasulov A, ‘Theorizing Treaties’ in Christian J Tams, Antonios Tzanakopoulos and Andreas Zimmermann (eds), *Research Handbook on the Law of Treaties* (Edward Elgar Publishing 2016) 106.

II. The Joint Comprehensive Plan of Action⁴¹

Due to the limited scope of this thesis, only the main events,⁴² imperative to successfully concluding the infamous Joint Comprehensive Plan of Action – succinctly, paving the way to its conclusion – will be propounded upon.⁴³ These milestones shall operate as points of reference when mapping the notions comprised by *the Agreement*⁴⁴. Nevertheless, the underlying principles, essential to the rise of the dispute – precisely, compliance with these principles *per se* as ultimate aim comprised by the JCPOA – shall first be summarized. Lastly, section II shall deal with the legal ramifications for the JCPOA through endorsing it in United Nations Security Council Resolution 2231.

A. Basic Observations

In a nutshell, the linchpin to grasping the complex foundations of this international relations dispute is the global nuclear non-proliferation regime, implemented during the climaxing Cold War.⁴⁵ Relating thereto, the *lex lata* cornerstone for international nuclear disarmament efforts, the Non-Proliferation Treaty⁴⁶ – *in concreto*, supposed substantial breaches to it by Iran – is pivotal to the recently, unfortunately yet again, blazing up dispute.⁴⁷

Ab initio it has been clear that there is no effective alternative to international verification when implementing regulation and respective monitoring of the use of nuclear technology for peaceful purposes

⁴¹ The Joint Comprehensive Plan of Action (see Appendix A) is an international agreement, conducted by the EU3+3, to reintegrate Iran into the world community. It dismisses non-proliferation sanctions, stemming from nuclear weapons aspirations of the country's policy makers, that have ultimately led to economic detriment. Both legal practice and doctrine have acknowledged that it is to be considered a major breakthrough of international diplomacy in the light of efforts to contain the non-proliferation of weapons of mass destruction. Nevertheless, the agreement has lately been disputed due to US American allegations of pertinent substantive breaches by Iran, and subsequent abandonment by the USA. Relating thereto, see 'President Donald J. Trump Is Ending United States Participation in an Unacceptable Iran Deal' (*The White House*) <<https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-ending-united-states-participation-unacceptable-iran-deal/>> accessed 9 March 2019.

⁴² The Tehran Agreement of 2003 and the Joint Plan of Action of 2013 (being the immediate predecessor to the JCPOA, constituting the foundation to antecedent diplomatic negotiations) are generally accepted as foundations to final dispute resolution efforts and shall therefore be discussed upon.

⁴³ For a more detailed nuclear diplomacy timeline with Iran see Sanders-Zakre A, 'Timeline of Nuclear Diplomacy With Iran' (*Arms Control Association*) <<https://www.armscontrol.org/factsheet/Timeline-of-Nuclear-Diplomacy-With-Iran>> accessed 9 March 2019.

⁴⁴ Hereinafter, when referring to the JCPOA as 'Agreement', the term shall be capitalized for reasons of conclusiveness.

⁴⁵ Joyner DH, *Iran's Nuclear Program and International Law* (1st edn, OUP 2016) 73. The International Non-Proliferation Regime is based on the Nuclear Non-Proliferation Treaty, International Atomic Energy Agency safeguards agreements (conducted between the IAEA and respective Non-Nuclear Weapon States), and subsidiary arrangements related to the latter.

⁴⁶ Treaty on the Non-Proliferation of Nuclear Weapons (adopted on 1 July 1968, entered into force on 5 March 1970) 729 UNTS 161 (NPT).

⁴⁷ *ibid* para 2. Key legal questions in dispute revolve around alleged violations of NPT substantive standards. Therefore, the nuclear non-proliferation regime will be touched upon compendiously.

only.⁴⁸ Primarily, this stems from the fact that the substantial benefits to using this technology – even though highly beneficial, thus tempting – have an abysmal downside to them. This downside in context with history’s teachings on how states have always been striving for attaining possession of the ‘biggest bat’ (i.e. state of the art arms technology) – be it as deterrent or, for instance, as the means to actively indulging upon expansion phantasies – have certainly made independently operating international observation of the progressing Nuclear Age a necessary corollary. Consequently, triggered upon suggestion⁴⁹ of former US President Dwight Eisenhower in 1953, in 1957 the International Atomic Energy Agency was founded.⁵⁰ Essentially, the Agency’s⁵² operations are conducted under a ‘three pillar regime’ entailing technology, safety, and verification duties – the latter being conducted by inspecting members’ compliance with the obligations laid down in respective Comprehensive Safeguards Agreements.⁵³ These CSAs *tout court* stipulate safeguards administered to ensure the peaceful use of fissionable material and dual-use materials – i.e. elements of the nuclear fuel cycle⁵⁴ that can be used for arms purposes – and are bilaterally concluded between the IAEA and respective members according to the Agency’s competences enshrined in Art. III (B) (5) IAEA-Statute in conjunction with Art. III (1) NPT.⁵⁵

Generally speaking, the agreements contain obligations for the members that basically require of them providing the IAEA with information on all nuclear related activities – publicly or privately undertaken – additionally permitting the Agency to conduct integrated inspections to verify the reported information.⁵⁶ Lest it be that the inspections bring about substantial indications for non-compliance with

⁴⁸ Rockwood L, ‘Ensuring Compliance with Standards on Peaceful Use of Nuclear Energy’ in Cassese A (ed), *Realizing Utopia: The Future of International Law* (OUP 2012) 305. Due to the unforeseeable future of this energy carrier – i.e. the temporary absence of an existent feasible substitute to nuclear energy, especially with regard to its efficiency concerning independence from external factors (e.g. climate conditions) – benefits of the technology can positively enhance development in certain regions of the world and ultimately all of mankind. Moreover, there are manifold additional applications that can substantially benefit from nuclear technology, (e.g. medicine, agriculture, etc.) subsequently making research and development efforts vital to societal progress.

⁴⁹ *ibid* 306. Referring to the ‘Atoms of Peace’ speech before the UN General Assembly, therein promoting ‘the creation of an agency responsible for promoting atomic energy and verifying the safe and peaceful uses of nuclear material and facilities.’

⁵⁰ Statute of the International Atomic Energy Agency (adopted 23 October 1956, entered into force 29 July 1957) 276 UNTS 3. The objectives laid down in the statute are first and foremost the acceleration and enlargement of nuclear energy’s contribution to peace, health and prosperity throughout the world.

⁵¹ International Atomic Energy Agency, ‘Information Circular’ (20 February 2019) INFCIRC/2/Rev.84. Currently, there are 171 Members to the IAEA.

⁵² Hereinafter, when referring to the IAEA as ‘Agency’, the term shall be capitalized for reasons of conclusiveness.

⁵³ Rautenbach J, ‘International Atomic Energy Agency’ in Rüdiger Wolfrum (ed), *MPEPIL* vol. V (OUP 2012) para 24. Yet again, in consideration of the thesis’ scope, I will focus on the third pillar namely ‘Safeguards and Verification’.

⁵⁴ ‘Nuclear Fuel Cycle Overview’ (*World Nuclear Association*) <<http://www.world-nuclear.org/information-library/nuclear-fuel-cycle/introduction/nuclear-fuel-cycle-overview.aspx>> accessed 13 March 2019. (‘The nuclear fuel cycle is the series of industrial processes which involve the production of electricity from uranium in nuclear power reactors.’)

⁵⁵ *ibid* para 47. Both legal practice and doctrine have frequent recourse to the pivotal role of comprehensive safeguards agreements and their verification for maintaining the nuclear non-proliferation regime.

⁵⁶ *ibid* para 51. For detailed descriptions of the tools available to the Agency for making respective conclusions see INFCIRC/153.

safeguards obligations, there is an integrated procedure assuring the restoration of compliant conduct.⁵⁷ Technically, it is disputed whether infringements of CSA-obligations *ipso jure* constitute violations of the NPT – in essence conferring upon them extensive normative character by virtue of customary international law.⁵⁸ However, it suffices to say that – yet again, and notwithstanding the relevance of the debate for international law – due to this thesis’ focus, the diplomatic efforts preceding the conclusion of the JCPOA shall now be discussed.

Firstly, the notion comprised by referring to Iran as part of the infamous Axis of Evil⁶⁰ must be borne in mind when elucidating upon the first diplomatic milestone in focus: the Tehran Agreement – symbolizing mutual consensus between the EU3 and Iran by making the latter sign an Additional Protocol⁶¹ with the IAEA.⁶² Subsequently, the AP had been eventually signed in December 2003, despite demonstrations against it in Iran, culminating in Iranian Parliament refusing ratification due to a taint of capitulation to foreign adversaries.⁶³ However, unfortunate annihilation phantasies concerning Israel – surrounding numerous statements by former Iranian President Ahmadinejad and Supreme Leader Khamenei – sounded the bell for the most severe period of tensions in nuclear diplomacy with Iran,

⁵⁷ Rockwood L (n 46). The following measures can be taken by the IAEA – each having as prerequisite the unfruitful outcome of the prior. Firstly, discussions with members aiming at resolving the dispute; secondly, the Agency is entitled to undertake special inspections of all relevant facilities; thirdly, suspending the members rights under IAEA Membership by the General Conference; fourthly, reporting the state to the SC for possible sanctions imposition as last resort to avert major threats to peace. (For elucidations upon the procedure under Chapter VII UNC of Section II.B.)

⁵⁸ Bothe M, ‘Weapons of Mass Destruction, Counter-Proliferation’ in Rüdiger Wolfrum (ed), *MPEPIL* vol X (OUP 2012) para 12. The ICJs *Nuclear Weapons Advisory Opinions* demand ‘negotiations in good faith’ concerning effective measures to cease the nuclear arms race in the light of the NPT. Moreover, stating that these negotiations are not only obligatory in terms of conduct, but even obligations to achieve the desired result, and expressly declaring that these obligations are part of customary international law.

⁵⁹ For detailed scrutiny of the scholarly debate see Joyner DH, *Iran’s Nuclear Program and International Law* (1st edn, OUP 2016) 77.

⁶⁰ ‘President Delivers State of the Union Address’ (*The White House*) <<https://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020129-11.html>> accessed 13 March 2019. In his ‘State of the Union Address’ on 29 January 2002 former US President George W. Bush referred to Iran as ‘aggressively pursuing weapons of mass destruction and exporting terror, while the Iranian people’s hope for freedom is being repressed by an unelected few.’ Moreover, stating that there are countries [including Iran] ‘constituting an axis of evil, that are underway of [a]rming themselves to threaten the peace of the world.’

⁶¹ Organisation for Economic Co-operation and Development, *International Nuclear Law : History, Evolution and Outlook* (OECD Publishing 2010) 253. These instruments provide the Agency with the means to holistically assess members’ compliance with the respective CSAs.

⁶² Fayazmanesh S, *The United States and Iran: Sanctions, Wars, and the Policy of Dual Containment* (Routledge 2008) 145. A solution was reached on 21 October 2003, when European frustration and discomfort as a corollary of US-Israeli ubiquitous threats against Iran led to Great Britain, France, and Germany increasing pressure on Iran to finally stop nuclear enrichment and sign the AP. The negotiations undertaken in Tehran culminated in a statement issued by Iran wherein it ‘reaffirmed that nuclear weapons had no place in Iran’s defence doctrine, that its nuclear programme and activities had been exclusively for the peaceful domain, that it had decided to sign the IAEA-AP, and will immediately cease all uranium enrichment and reprocessing activities.’

⁶³ *ibid* 146. The accord managed to deescalate tensions and circumvented interventionist ambitions – mainly due to the subsequent IAEA report clearly stating that Iran was compliant with its CSA.

ultimately leading to SC referral by the IAEA.⁶⁴ Unfortunately, due to Iranian failure to comply with the SC proposal⁶⁶ aiming at circumventing the imposition of sanctions, SCR 1696 was the first major resolution comprising economic constraints imposed.⁶⁷ In the following years, the regime under President Ahmadinejad – that has to date been among the most conservative since the rise of the Islamic Republic⁶⁸ – regularly undertook hefty exchanges of blows on the stage of world politics, resulting in a myriad of unilateral and multilateral sanctions, *de facto* entirely isolating Iran from international relations, above all, barring its economic undertakings globally.⁶⁹ At this point it shall be reiterated, that the purpose for international efforts – allegedly limited to curbing Iranian nuclear aspirations, subsequently eliminating the Iranian threat to international peace and security – nevertheless, brought with it a notion of ambiguity.⁷⁰ Relating thereto, it bears noting that by taking all circumstances of hitherto stated events into due consideration the next event in focus seems like a necessary corollary of the psychology of political momentum.⁷¹

Secondly, bearing in mind the substantial amelioration of the political climate owed to the presidencies of US President Barack Obama and Iranian President Hassan Rouhani – who had just won

⁶⁴ Mahmud Amadinejad was Iranian President from 2005 to 2013 – Ali Khamenei is the incumbent Iranian Supreme Leader. For depictions of the Iranian constitution and the respective functions of political organs laid down therein, e.g., see Erfani M, *Introduction to Business Law in Iran* (3rd edn, Jungle Publications 2010).

⁶⁵ Mousavian SH, *The Iranian Nuclear Crisis: A Memoir* (Carnegie Endowment for International Peace 2012) 222. Alongside bellicose rhetoric, the fact that Iran resumed its centrifuge enrichment programme at the Natanz Pilot Plant was the last straw and catalyst for referral. Former Secretary General of the IAEA Mohammed ElBaradei, relating thereto, claimed that ‘the IAEA will not be able to confirm the peaceful nature of Iran’s nuclear activities, unless it permitted inspections beyond the scope laid down in its AP’.

⁶⁶ *ibid* 245. The EU3+3 suggested that it would, above all, ‘reaffirm Iran’s right to develop nuclear energy for peaceful purposes consonant with its NPT obligations’ if Iran, *inter alia*, committed to ‘addressing all outstanding concerns of the IAEA through full cooperation with the Agency.’

⁶⁷ For a list of sanctions entailed by the resolution, and legitimisation relating to the imposition see SC Res 1696 (31 July 2006) UN Doc S/RES/1696.

⁶⁸ Referring to the timespan beginning with the changing Iranian political system by virtue of the Islamic Revolution in 1979, transforming the Iranian monarchy into an Islamic Republic (i.e. Republic, containing democratic elements within a theocratic frame). For elucidations upon the specifics to this transition, e.g., see Bakhsh S, *The Reign of the Ayatollahs: Iran and the Islamic Revolution* (Tauris 1985).

⁶⁹ Notwithstanding the manifold unilateral sanctions against Iran, the SC adopted 9 resolutions from July 2006 to June 2013 aimed at finally ending Iranian threats to world peace. Relating to the SC counter-proliferation sanctions within the realm of international law cf Joyner DH, ‘UN Counter-Proliferation Sanctions and International Law’ in Larissa van den Herik (ed), *Research Handbook on UN Sanctions and International Law* (Edward Elgar Publishing 2017). Furthermore, for European sanctions imposed as countermeasures with regard to Iranian behaviour see Dupont PE, ‘Unilateral European Sanctions as Countermeasures: The Case of the EU Measures Against Iran’ in Happold M and Eden P (eds), *Economic Sanctions and International Law* (Hart Publishing 2016) pp. 37 et seq. Lastly, for an in-depth analysis of the integrated approach concerning unilateral and multilateral counter-proliferation sanctions against Iran cf Pyka A, *Wirtschaftssanktionen der Vereinten Nationen und der Europäischen Union: Eine Analyse anhand des Sanktionsregimes gegen den Iran*, vol 861 (Nomos 2015) pp. 135 et seq.

⁷⁰ Wet E de (n 29). Both legal practice and academia, especially with regard to sanctions imposition by the SC, harshly criticised possible incompatibilities with the rule of law due to the proceedings’ lack of transparency.

⁷¹ Kenney PJ and Rice TW, ‘The Psychology of Political Momentum’ (1994) 47 Political Research Quarterly 923. Failing attainment of a political accord by hardliner’s methods, made the people of Iran decide in favour of a more liberal candidate in the 2013 presidential elections.

the elections – first indications of a softening tone in US-Iran relations, hence enabling compilation of a ‘truce’ between the dispute’s two main opponents by unravelling the nuclear deadlock, were observable in 2013.⁷² Consequently, a renewed approach to diplomatic negotiations had finally been undertaken by a bilateral exchange between former US Secretary of State John Kerry and Iranian Foreign Minister Javad Zarif.⁷³ Succeeding this paradigm shift, the Geneva talks marked a major breakthrough in resolving the nuclear crisis, yielding an interim agreement – the Joint Plan of Action.⁷⁴⁷⁵ After being referred to as a ‘landmark step toward reaching a [f]inal diplomatic resolution’ by numerous officials, the agreement was finally knighted by remarks of President Obama stating:

*‘While today’s announcement is just a first step, it achieves a great deal. For the first time in nearly a decade, we have halted the progress of the Iranian nuclear program, and key parts of the program will be rolled back’*⁷⁶

Following these words, nearly two and a half years later, on 14th of July 2015, this ‘great deal’ had finally been struck – the JCPOA.⁷⁷ The Agreement is considered to be a watershed moment in international relations – comprising 159 total pages and leading to comprehensive reintegration of Iran into the international community within a period of 10 years.⁷⁸ Therefore, the succeeding sections shall be

⁷² York D, ‘Obama Holds Historic Phone Call with Rouhani and Hints at End to Sanctions’ *The Guardian* (28 September 2013) <<https://www.theguardian.com/world/2013/sep/27/obama-phone-call-iranian-president-rouhani>> accessed 14 March 2019. President Obama congratulated President Rouhani in a historic phone call, that marked the first direct contact between the USA and Iran since the 1979 revolution. Consequently, the direct talks on highest level had been ‘raising hopes of an end to crippling economic sanctions against Iran.’

⁷³ Sanders-Zakre A, ‘Timeline of Nuclear Diplomacy With Iran’ (*Arms Control Association*) <<https://www.armscontrol.org/factsheet/Timeline-of-Nuclear-Diplomacy-With-Iran>> accessed 9 March 2019. On 26 September 2013 Javad Zarif had presented a new proposal to resolve the Iran nuclear crisis on the side-lines of the UNGA. The result of the meeting was the declaration that ‘immediately addressing concerns of the opposing sides and moving towards finalizing a deal within a year shall be the top priority, to be further negotiated at a meeting in Geneva on 15 October 2013.’

⁷⁴ ‘Guidance Relating to the Provision of Certain Temporary Sanctions Relief in Order to Implement the Joint Plan of Action Reached on November 24, 2013, between the P5+1 and the Islamic Republic of Iran’ (*US Department of Treasury*) <https://www.treasury.gov/resourcecenter/sanctions/Programs/Documents/jpoa_guidance.pdf> accessed 14 March 2019. The Joint Plan of Action on Iran’s nuclear programme was adopted by the EU3+3 on November 24th 2013 and essentially comprised cessation of key aspects of the Iranian nuclear programme. Responding to these limitations set by Iran, the EU3+3 had agreed to commit to sanctions relief for a preliminary period of 6 months – revocable immediately upon Iranian infringement of the prerequisites laid down in the accord.

⁷⁵ Sanders-Zakre A (n 71). The JPOA was – to a great extent – based on an updated 2012 nuclear package, already proposed at a meeting in Almaty, Kazakhstan in February 2013. For detailed depictions of the package cf Mousavian SH (n 63) pp. 465.

⁷⁶ Joyner DH (n 43) 61.

⁷⁷ Sanders-Zakre A (n 71). The EU3+3 and Iran announced that the comprehensive deal had been concluded. Moreover, a roadmap agreement between the IAEA and Iran, targeted at inspecting the potential military dimension of Iran’s nuclear programme, had been completed.

⁷⁸ Joyner DH (n 43) 62.

dedicated to identifying the tenets comprised by the Agreement on the one hand, and its legal nature on the other hand.

B. Treaty or Political Commitment?

While the archaic notion that treaties' binding character, and Parties' will to act accordingly, has long been derived from and secured by the fact that it has been sworn to the gods,⁷⁹ mankind has in the meantime progressed to following generally accepted principles governing international law.⁸⁰ Treaty law *per se* is situated within the boundaries of this international law and therein operates as *lex specialis*, capable of explicitly regulating the intricacies of complex matters between two or more states. The sustained party autonomy – i.e. the autonomy to deviate from the general rules – is only constrained by international law's peremptory norms.⁸¹ These norms' nature – thus, identification – is extremely hard to grasp, which is owed to the fact that they are intrinsically superior.⁸² Relating thereto, it can be stated that international law falls into two broad classes of law, namely, *jus cogens*⁸³ and *jus dispositivum* – the first enjoying supremacy over the latter, not least because the latter may be excluded or modified in accordance with Parties' duly expressed will.⁸⁴ Next, contingent upon the elaborations of the international law hierarchy of norms – *in concreto*, treaty law's rank within it – the character of treaties shall be scrutinized.

⁷⁹ Kolb R, 'Introduction: Treaties in International Relations', *The Law of Treaties: An Introduction* (Edward Elgar Publishing 2016) 2. Bearing in mind the picture of two leaders of belligerent tribes negotiating a truce, finally sealing the agreement – i.e. expressing their will to comply with the terms – with an oath to the deities.

⁸⁰ Cassese A, *International Law* (2nd edn, OUP 2005) 198. Remarkably, treaty law is not superior to customary law and vice versa, consequently, possessing the same rank and status. However, a necessary corollary relating thereto is the application of three general principles to enable determining the prevailing norms (substantive to a case): *lex posterior derogat legi priori*, *lex posterior generalis non derogat priori speciali*, and *lex specialis derogat legi generali*. Pursuant to these principles it must not be overlooked that a newer general norm might prevail over an older special norm, contingent to regulating identical subjects.

⁸¹ Kolb R (n 77) pp. 5. Greater speciality does not refer to the subject matter but the number of states bound by the rules laid down in a treaty. Keeping this in mind, it is clear that general rules of customary international law are not capable of regulating, e.g., investment activities of Austrian and Namibian Entities within either state's territory – mainly because the regulatory exigencies simply need to be carefully evaluated, and have in this case been subsequently moulded into a Bilateral Investment Treaty, establishing the suitable framework see Austria-Namibia BIT (2003). Remarkably, this aspect reflects the main function of customary international law – that differs substantially from that of treaty law – namely, providing and maintaining the basic principles ultimately leading to peaceful global development through consensus in lieu of more sanguinary means. It fulfils this function by being binding to all states of the world and even entities different from states – subsequently, treaty law is 'particular international law' binding contingent upon ratification or accession, and customary international law is 'general international law' ubiquitously binding.

⁸² Orakhelashvili A, *Peremptory Norms in International Law* (OUP 2008) 8. This attribute is especially derived from the non-validity – i.e. nullity – of agreements infringing upon peremptory norms.

⁸³ Weatherall T, *Jus Cogens: International Law and Social Contract* (Cambridge University Press 2015) 8-B. To my mind, the dogmatic classification of *jus cogens* as obligations *erga omnes* – i.e. obligations that claim primacy 'against all' – is very comprehensively described by regarding them as 'obligations owed by each state to the international community as a [w]hole.'

⁸⁴ Orakhelashvili (n 80) 9. Hence, peremptory norms create exceptions from the *lex specialis* rule by prevailing over treaties.

First and foremost, a differentiated approach must already be pursued when it comes to the term treaty itself, because its meaning differs under international law and respective municipal laws.⁸⁵ Under international law, ‘treaty’ is the generic term for a myriad of agreements, that have all established their own nomenclature.⁸⁶ Nevertheless, whether an agreement is a treaty or not, does not depend on its name, but essentially on its power to cast legally binding effects upon the Parties.⁸⁷ Furthermore, it must be governed by international law – i.e. precisely, *e contrario*, not governed by a law other than international.⁸⁸ By contrast to treaties, there are also various other forms of instruments – the non-binding ones. Such memorandums of understanding (MOUs) function as an important pillar in conducting international relations, succinctly, enabling inter-state deal-making on politically controversial topics that are highly unlikely to ever reach treaty form.⁸⁹ It bears noting that calling a document either treaty or MOU is not sufficient to designate it as the desired instrument – even more confusingly some treaties are disguised by calling them MOUs.⁹⁰ An addendum to this hullabaloo is, furthermore, the scholarly debate that has been sparked off by extrapolating the principle of estoppel to international law.⁹¹ However, importantly, the ICJ⁹² endorsed a *stricto sensu* distinction between estoppel and acquiescence by evincing requirements of the first as to detriment and prejudice.⁹³ Concretely, in consideration of acquiescence being ‘consent inferred from a juridically relevant silence or inaction,’⁹⁴ estoppel is more of a ‘representation the truth of which the entity on whose behalf it is made is precluded from denying in certain circumstances, notably reliance and detriment.’⁹⁵

⁸⁵ First off, the conditions under international law will be elucidated upon, before moving on to swiftly juxtaposing these conditions to US American law. This is due to the fact that the Trump Administration frequently argues that the actions undertaken by the Obama Administration were unlawful – thus, making the JCPOA null and void.

⁸⁶ Fitzmaurice M, ‘Treaties’ in Rüdiger Wolfrum (ed), *MPEPIL* vol IX (OUP 2012) para 16. A few examples for documents that may be considered as treaties – regardless of their naming – are conventions, protocols, charters, pacts, agreements, concordats, or joint communiqués;

⁸⁷ *ibid* 17. Relating thereto, the ICJ has ruled that binding agreements must ‘enumerate commitments to which the Parties have consented in order to create rights and obligations.’

⁸⁸ *ibid* 18.

⁸⁹ Aust A, *Modern Treaty Law and Practice* (3rd edn, Cambridge University Press 2013) 28. Like the term ‘treaty’, ‘memorandum of understanding’ is a generic term as well. Other names for these instruments are, e.g., political agreements, gentlemen’s agreement, non-binding agreements, and *de facto* agreements.

⁹⁰ *ibid* 28. According to the International Law Commission, the main aspects differentiating treaties and MOUs are that the latter constitute political commitments and are not governed by international law.

⁹¹ Cottier T and Müller JP, ‘Estoppel’ in Rüdiger Wolfrum (ed), *MPEPIL* vol III (OUP 2012) para 1. Borrowed from common law jurisdictions and endorsed by the civil law notion of good faith, the doctrine of estoppel ‘protects legitimate expectations of States as conjured up by the conduct of another State.’

⁹² E.g. cf *Gulf of Maine Case (Canada v United States of America)* [1984] ICJ Rep 165.

⁹³ Cottier T and Müller JP (n 89) para 6.

⁹⁴ Antunes NSM, ‘Acquiescence’ in Rüdiger Wolfrum (ed), *MPEPIL* vol I (OUP 2012) para 2. (‘*Qui tacit consentire videntur si loqui debuisset ac potuisset*’, meaning, he who keeps silent is held to consent if he must and can speak)

⁹⁵ Crawford J, *Brownlie’s Principles of Public International Law* (8th edn, OUP 2012) 422. In other words, estoppel prevents Parties from *ex post* changing their opinion regarding obligations they had already legally committed to – notwithstanding the titling of the respective instrument. One might say that it is an international law auxiliary concept related to maxims such as *non licet venire contra factum proprium* – even if only in a rather attenuated form.

Consequently, for decisions concerning the nature of an agreement – i.e. interpretation – necessitate fundamental principles to distinguish treaties from the other (non-binding) forms of agreements. Hence, the Vienna Convention on the Law of Treaties⁹⁶ as codification of international treaty law has been adopted. It, thus, simplifies the strenuous task of ‘attempting to persuade the relevant interpretative community that a certain meaning is the most appropriate to adopt.’⁹⁷ Although the Convention has not been ratified by some major global actors⁹⁸ troubling its status as customary international law in the entirety of norms, the highly relevant Articles 31-33 – namely, the interpretive principles – have been widely acknowledged as such.⁹⁹ Moreover, treaties – therefore, also the VCLT – may as well extend their normative relevance beyond the actual Parties and the scope of their operation, through the influence they have on the development of new rules of customary international law through state practice.¹⁰⁰ Hence, and not least because of the USA’s status as Party to the Agreement – not having adopted the VCLT – the international legal instruments known to US law and the legal opinion regarding the Convention’s applicability shall be touched upon.

Initially, as I have mentioned before, there is a discrepancy between the term ‘treaty’ under international law and municipal law. Pursuant to Article 1 VCLT, firstly, its *ratio materiae* is limited to interstate treaties, and secondly, its *ratio personae* – in the light of the potential diversity of signatories – is limited to States.¹⁰¹¹⁰² Nevertheless, US law has a more differentiated approach when it comes to treaties – precisely, there are four different types of ‘international pacts’ in total: international agreements, treaties, executive agreements, and nonlegal agreements.¹⁰³ The executive agreement is an instrument that has been carved out by the Supreme Court and practice enabling the President to commit to foreign affairs more

⁹⁶ Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT).

⁹⁷ Waibel M, ‘Uniformity versus Specialization (2): A Uniform Regime of Treaty Interpretation’ in Christian J Tams, Antonios Tzanakopoulos and Andreas Zimmermann (eds), *Research Handbook on the Law of Treaties* (Edward Elgar Publishing 2016) 375.

⁹⁸ E.g. the United States of America and France.

⁹⁹ Waibel M (n 89) 380.

¹⁰⁰ Fitzmaurice M, ‘Treaties’ in Rüdiger Wolfrum (ed), *MPEPIL* vol IX (OUP 2012) para 15. Relating thereto the ICJ stated that the provisions must be of fundamentally norm-creating character, and are additionally contingent upon a very widespread and representative participation in the convention they are embedded in. For more details see *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)* (1969) ICJ Rep 3.

¹⁰¹ Dörr O and Schmalenbach K (eds), *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2012) Article 1 para 1. For international law’s perception of a treaty cf 13 para 2.

¹⁰² For elaborations on ‘Full Powers’ see Aust A, *Modern Treaty Law and Practice* (3rd edn, Cambridge University Press 2013) pp. 71.

¹⁰³ Mulligan SP, ‘International Law and Agreements: Their Effect upon U.S. Law’ (Congressional Research Service 2018) RL32528 pp. 3. Basically, ‘international agreement’ is a generic term for all legally binding agreements between the USA and foreign states or bodies – hence, synonymous with ‘treaties’ under international law. Moreover, treaties are only the instruments ratified by Senate. The third legally binding type of agreement is the ‘executive agreement’, these instruments are entered into by the President without Senate’s consent. The residual instruments are such of non-binding character, thus, being referred to as nonlegal agreements.

independently – this is mainly owed to the US Constitution’s tacitness on guidance regarding treaties.¹⁰⁴ Most importantly it must not be overlooked that pursuant the VCLT, terms laid down by it ‘are without prejudice to the use of those terms by municipal law’¹⁰⁵ – i.e. it anticipates terminological divergences, and subsequently, prevents possible predominance of the international usage by reiterating that the definitions pursuant to Article 2 (1) ‘exhaust their meaning within the Convention.’¹⁰⁶ Relating thereto, as regards the Convention’s applicability in the United States, courts and the executive branch acknowledge its status as reflecting customary international law concerning many matters.¹⁰⁷

Truth be told, my prior elaborations on the principle of estoppel might have already unkenneled the doctrinal classification of the instrument, hence, it is time to draw the curtain: the JCPOA is a political commitment. Why? Because it is designated as non-binding according to its character, derived from the language used by the Parties and the elements embedded in it.¹⁰⁸ Nonetheless, by virtue of the legal procedure under Chapter VII of the UN Charter – precisely, implementation of an SCR – its provisions became binding upon all members of the UN. Conclusively, the Agreement’s faith is closely intertwined with that of SCR 2231 (hereinafter, *the Resolution*). Thus, making juxtaposing the two instruments – firstly, by scrutinizing the Agreement’s structure, substance, and scope; and secondly, by touching upon the Resolution’s content *in concreto* relevant legal ramifications for the JCPOA – a prerequisite for grasping the multi-tier approach, undertaken by the Parties.¹⁰⁹

i. Structure

The road to implementation stipulates a meticulously planned approach to secure holistic compliance with the prerequisites laid down by the Agreement. Firstly, the *Adoption Day*¹¹⁰ was considered the point in time where the Agreement was to come into effect. Secondly, on *Implementation*

¹⁰⁴ Clark K, ‘The Paris Agreement: Its Role in International Law and American Jurisprudence’ (2018) 8 Notre Dame Journal of International & Comparative Law p. 118 et seq. Notwithstanding given competence – under Article 2 of the Constitution – a treaty, in order to lawfully pass the ratification procedure, must ‘be secured and sought advice of by at least two-thirds of the Senate.’ Moreover, such agreements have to be consonant with the law *in concreto* they must either be based on existing legal authority or be derived from the President’s inherent control over foreign affairs. For depictions relating thereto, e.g., see Carter BE and Weiner AS, *International Law* (6th edn, Wolter Kluwer Law & Business 2011) pp. 262.

¹⁰⁵ cf Article 2 VCLT.

¹⁰⁶ Dörr O and Schmalenbach K (eds), (n 93) Article 2 para 56.

¹⁰⁷ Mulligan SP (n 95) n 13. Relating thereto, even though it lacks ratification by the Senate, the US Supreme Court calls upon it as ‘an authoritative guide to customary international law of treaties’ because it is representative for actual state practice.

¹⁰⁸ cf Joint Comprehensive Plan of Action (2015).

¹⁰⁹ Section II.C is dedicated to SCRs – to be precise, it comprises a general depiction of their role in international relations, the pertinent implementation procedure sought upon, and their legal effects. Lastly, certain supplements to the Agreement by virtue of the Resolution shall be focused upon.

¹¹⁰ 19th of October 2015.

Day the seven SCRs – imposed between 2006 and 2015 – were to be set aside, moreover, commitments by the EU and USA were undergone comprising suspension of their major unilateral sanctions upon implementation of limitations by Iran with regard to its nuclear programme. Thirdly, *Transition Day*¹¹¹ signifies setting aside of nearly all of the unilateral sanctions imposed by the EU and USA *de facto* ending the segregation of Iran from global economy. Lastly, *Termination Day* marks the end of implementation after a period of 10 years – coinciding with the termination of Resolution 2231 – at that point in time all sanctions are to be finally terminated. Then, the Iranian nuclear programme will be legally levelled with that of other Non-Nuclear Weapons States consonant with the NPT – subsequently, miscellaneous elements contained in the Agreement foresee general limitations upon Iran’s nuclear activities namely measures enhancing transparency of future endeavours. Importantly, the Agreement stipulates the possibility of earlier relief in all points upon IAEA discretion – the prerequisite is attestation of peaceful use of the entire nuclear materials possessed by Iran, laid down to enhance and promote additional transparency by Tehran. Furthermore, in order for the JCPOA to prevail, an institutional body was formed to support the implementation proceedings and avert relapse to hostile acts: *the Joint Commission*.¹¹²

ii. Substance

The main reason for establishing the JC is evidently the sensitive nature of the very matters it has to occupy itself with. Due to the provisions entitling Iran to monitored transfer of nuclear technology, a Damocles sword is ubiquitously swinging over the Agreement. This frail exchange, to my mind, marks the

¹¹¹ Transition day takes place upon discretion of the Joint Commission cf n 110.

¹¹² Meier O and Zamirirad A, ‘Die Atomvereinbarung mit Iran: Folgen für regionale Sicherheit und Nichtverbreitung’ (2015) 70 SWP-Aktuell 4. The JC is compiled of emissaries from all Parties to the Agreement. Succintly, it monitors the implementation procedure within the first 10 years, sustaining de-escalation efforts in case of disputes regarding compliance of Parties. The EU High Commissioner for Foreign Affairs and Security Policy therein takes the leading role of coordinator – above all, entailing an equal voting right to that of the other Parties’ representatives to the JC. The major coordination task is to oversee the quarterly held commission meeting *inter alia* ruling on decisions regarding the transfer of nuclear technology, approvals of Iranian nuclear activities in research and development, consultations in case of disputes between the IAEA and Iran in terms of premature sanction relief, deliberations upon conflicts concerning access to Iranian nuclear facilities, and adjustments of implementation proceedings of the JCPOA.

breaking point of the JCPOA.¹¹³ Not least because of the designation of a *Snap Back Mechanism*¹¹⁴ that has been entailed to deter Iran from non-compliant behaviour, moreover, alleviating international criticism – especially, from Iran’s adversaries in the MENA region. In conclusion, with reference to the mechanism, it must be stated that the procedure foreseen by the Agreement *de facto* gives the five permanent members of the UNSC the option to end implementation of the JCPOA in a rather expedited manner –i.e. at their discretion – in case Iran resumes its prior bellicose line of policy and decides to evidently meddle with the provisions laid down by the Agreement.

iii. Scope

The key commitments pertaining to the JCPOA mainly include limitations in quantity and specifications of nuclear and dual-use materials.¹¹⁵ Moreover, Iran has declared that it will provisionally

¹¹³ *ibid* 5. In principle, a ‘Procurement Working Group’ forming part of the JC is earmarked to scrutinise any applications for supplies in nuclear technology, dual-use goods, and other relevant services – precisely, examining the requests and approving them within 30 days. The last instance in such matters is the UNSC, vested with the power to overrule pertinent decisions. Furthermore – concerning nuclear technology in general and exported dual-use goods, the IAEA and exporting states have full permission to verify the continuance of these materials in Iran’s territory. This procedure marks *terra incognita* in export control and is designed to prevent military use of civil nuclear technology by embellishing increased transparency, ultimately enabling sustainable *prima facie* evaluations by the JC. However, this procedure comes at the cost of diluting international non-proliferation standards – mainly, because the USA have first-time consented to officially giving a NNWS access to nuclear technology without the prerequisite of entirely ceasing activities within the nuclear fuel cycle. (since Iran was granted permission to continue Uranium enrichment – constituting a vital part of the NFC – while receiving modern nuclear technology)

¹¹⁴ *ibid* 5. Succinctly, it comprises every Party’s right to submit problems in implementation proceedings to the Joint Commission for consultations. Firstly, political resolution of the conflict is mandatory – this *Consultation and Clarification*-procedure resembles customary proceedings pertaining to arms control agreements and are typically the precursor to formal infringement proceedings. (For the role of arms control agreements in international diplomacy, in particular, them comprising ‘fundamentally important mechanisms for the effective management of what came to be referred to as strategic-deterrence, not exclusively in the light of atomic or nuclear weapons but undoubtedly especially associated with them’ cf Haines S, ‘The Developing Law of Weapons: Humanity, Distinction, and Precautions in Attack’ in Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (OUP 2015) pp. 277-3 et seq) Secondly, *in eventu* the Parties cannot mutually agree to a resolution of the dispute – within a period of 15 days – every participant to the procedure can adhere to the foreign ministers of the EU3+3, who are subsequently obligated to deal with the topic. Simultaneously, the litigants can submit the dispute to a three-member *Advisory Board* – consisting of one member appointed by each of the participants in the dispute and a third independent member. Thirdly, should the AB not come to beneficial understandings after another 15 days the case remigrates to the JC for final 5 days of deliberations, concluding with a recommendation. Lastly, if the complaining Party opines that the problem pivotal to the dispute is to be considered a major obstacle to the implementation of the JCPOA, it can refer the case to the UNSC. Should the SC – after a period of another 30 days – be unable to conclude that the sanctions entailed in the antecedent SCRs (imposed between 2006 and 2010) can no longer be set aside due to infringements to the Agreement by Iran arising from the problem subject to the dispute before the JC, the full range of multilateral sanctions will resurge.

¹¹⁵ Joyner DH (n 43) pp. 222 et seq. As already mentioned, the Agreement consists of 159 total pages including 141 pages of annexes circumscribing precisely stipulations on the key commitments made by all the Parties. First and foremost, consonant with its main aim – namely, reducing Iran’s breakout time and ultimately preventing it from acquiring nuclear weapons – the JCPOA primarily limits Iran’s uranium enrichment activities by decreasing its existing stockpile of low-enriched uranium on the one hand. Precisely, the LEU is decreased by 98 percent to a total of 300 kg, a maximum capacity which Iran must adhere to for 15 years. Secondly, two-thirds of operational centrifuges are to be stored for ten years while 20 percent of the remaining

apply the IAEA-AP preceding its formal ratification, implement the modified Code 3.1.¹¹⁶ standard as foreseen by its CSA with the IAEA, and furthermore allow enhanced access by the IAEA to sites within its territory.¹¹⁷ In alignment with these regulations a Roadmap Agreement had been drafted and signed by all Parties. This RA constituted a concurrent regime to the JCPOA for ‘clarification of past and present outstanding issues regarding Iran’s nuclear programme.’¹¹⁸ What is more, Annex I contains principles supplementing Iran’s obligations under Article II NPT – succinctly – not only the prohibition on horizontal proliferation of nuclear weapons to NNWS in the sense of ‘proscribing the manufacture or other acquisition of a nuclear explosive device,’ but also more comprehensive measures that envisage a delineation of activities ‘short of the manufacture or other acquisition of a nuclear weapon but nevertheless capable of contributing to the development of a nuclear explosive device.’¹¹⁹

While the list of commitments from Iranian side is rather extensive, one must not overlook that the limitations are neither of permanent duration nor do they outweigh the potential benefits of the Agreement. Videlicet – upon successful implementation of the JCPOA – Iran will be entitled to develop and use a ‘full scale indigenous nuclear programme, including the uranium enrichment element,’¹²⁰ this position of the EU3+3 can be taken from *paragraph iv* of the general provisions stating:

‘Successful implementation of this JCPOA will enable Iran to fully enjoy its right to nuclear energy for peaceful purposes under the relevant articles of the Nuclear Non-Proliferation Treaty (NPT) in line with

centrifuges in operation are restricted to nuclear research purposes. Thirdly, the heavy-water reactor at the Arak facility will be redesigned in such a manner that it cannot any longer produce weapons-grade plutonium – relating thereto, all the fuel produced by the reactor will be shipped outside of Iran. Additionally, Iran committed to cease fuel reprocessing at the facility for fifteen years.

¹¹⁶ *ibid* 232. (‘... modified Code 3.1. stipulates that preliminary design information on new nuclear facilities must be reported to the IAEA as soon as the decision to construct or to authorize construction has been taken, whichever is earlier.’)

¹¹⁷ Perkovich G, ‘Implications of the Joint Comprehensive Plan of Action’ (2017) 1898 AIP Conference Proceedings pp. 040001-3 et seq. Concretely, Annex I to the JCPOA provides the IAEA with the right to access even undeclared – to be precise, locations that have neither been declared in the CSA nor the AP – *in eventu* concerns arise that activities inconsistent with the Agreement are undertaken. What is more, in case of prohibition of access or unsatisfactory explanatory solutions for such conduct, the Agency can submit an access request to the JC – whose majority decisions Iran committed to respect.

¹¹⁸ Joyner DH (n 43) 224. Basically, it aims at ‘addressing long-standing concerns by the IAEA on the possible military dimensions of the Iranian nuclear programme.’ Consequently, the RA had been the final assessment on the resolution of outstanding issues opposed to initiate *Implementation Day*. This approval was given on 2nd of December 2015 when the IAEA issued document GOV/2015/68 concluding that ‘the Agency found no credible indications of the diversion of nuclear material in connection with the possible military dimensions to Iran’s nuclear programme.’

¹¹⁹ *ibid* 225. (‘These activities include, *inter alia*, developing or using computer models to simulate nuclear explosions, developing or using multipoint explosive detonation systems suitable for a nuclear explosive device, developing or using explosively driven neutron sources. All of these are precursor capacities necessary for developing a functioning nuclear warhead.’)

¹²⁰ *ibid* 226.

*its obligations therein, and the Iranian nuclear program will be treated in the same manner as that of any other non-nuclear weapon state party to the NPT.*¹²¹

Nevertheless, notwithstanding the major triumph for diplomacy and watershed moment for peaceful resolution of international disputes, scepticism on all sides of the bargain seemed more than appropriate considering the willingly chosen form of the agreement – i.e. its designation as political commitment. Therefore, the EU3+3 moulded the Agreement's underlying principles into a legally binding instrument by endorsing the JCPOA in a SCR, in order to ensure its successful implementation.

C. United Nations Security Council Resolution 2231¹²²

As previously mentioned, SCR 2231 endorses the Agreement, moreover, complementing additional elements to it. Above all, conferring binding character upon the provisions entailed by the JCPOA, thus, altering their legal status – i.e. constituting legal certainty regarding consequences resulting from non-compliant behaviour of states *in concreto* stipulating that non-compliant behaviour of either Party will certainly lead to generally acknowledged sanctioning as foreseen by international law – is the most important aspect.¹²³

i. Legal Foundations

‘Delegated law-making’ is a complex phenomenon that has various sides to it.¹²⁴ Explicit forms of this delegation – frankly, the ‘explicit authority to legislate’ – are rarely manifested with regard to international organizations.¹²⁵ However, within the framework of the UN Charter the United Nations Security Council – in its role as ‘law-making body’ – is one of the UN’s principal organs¹²⁶ that fulfils the function of ‘ensuring prompt and effective action under its primary responsibility, namely, maintaining international

¹²¹ Joint Comprehensive Plan of Action (2015) Preamble and General Provisions vi.

¹²² United Nations Security Council Resolution 2231 (20 July 2015) UN Doc S/RES/2231; cf Appendix B.

¹²³ Kerr P, ‘The JCPOA and Safeguards: Model or Outlier?’ (2017) 24 The Nonproliferation Review 267.

¹²⁴ Johnstone I, ‘Law-Making by International Organizations: Perspectives from IL/IR Theory’ in Jeffrey L Dunoff and Mark A Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (CUP 2013) 266. Referring to the different forms of delegation: explicit, implicit, and attenuate. (E.g. the Members partly conferring – i.e. delegating – their sovereign rights upon the United Nations in the light of efforts to secure global peace)

¹²⁵ *ibid* 268.

¹²⁶ cf Article 7 UNC.

peace and security.’ In this capacity it is explicitly vested with delegated rights.¹²⁷ Nonetheless, whilst performing this maintenance function, its actions are on one side inherently limited by the purposes and principles of the UN, and on the other side – yet again – by international law’s peremptory norms.¹²⁸ Precisely, the measures taken are broadly referenced to as decisions under Article 25 UN Charter¹²⁹ – subsequently, all UN Members¹³⁰ are obligated to assure compliance when the Security Council acts in a peacekeeping function.¹³¹¹³² These mandatory powers, constituting so-called ‘executive law-making’¹³³ by *the* UN’s executive organ, have been wielded regularly since the end of the Cold War – in particular against threats or breaches to peace.¹³⁴ Due to the Security Council’s design, reaching a common denominator for unequivocal measures – i.e. consensus in politically controversial subjects – can sometimes be rather tedious.¹³⁵ However, in consideration of the far-reaching scope of these decisions, necessary compromises function as means for safeguarding precipitance and ruling out political crusades.

a. United Nations Security Council Resolutions: Sources of International Law

Both legal practice and doctrine, consider binding resolutions to be treaty-like instruments that – by virtue of Article 103 UN Charter – supersede (any) other treaty obligations adversely affecting the provisions

¹²⁷ Wood MS, ‘United Nations Security Council’ in Rüdiger Wolfrum (ed), *MPEPIL*, vol X (OUP 2012) para 1. The UN members have conferred upon it these powers pursuant to Article 24 (1) UNC. (‘In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that carrying out its duties under this responsibility the Security Council acts on their behalf.’)

¹²⁸ *ibid* 18.

¹²⁹ Dunoff JL and Trachtman JP (eds), *Ruling the World?: Constitutionalism, International Law, and Global Governance* (Cambridge University Press 2009) 115. Moreover, even non-members of the UN are bound to such decisions by virtue of Article 48 of the Charter.

¹³⁰ It bears noting that according to Article 2 (6) of the Charter, measures to maintain international peace and security also pervade non-members of the UN with legally binding effects.

¹³¹ Köck HF and Fischer P, *Das Recht der Internationalen Organisationen* (3rd edn, Linde Verlag 1997) 233-1.

¹³² Technically, there are different forms of decisions the Security Council can mould its consensus into. For a detailed description of the different instruments, e.g., see Wolfrum R, ‘Resolution, Erklärung, Beschluß’, *Handbuch Vereinte Nationen* (2nd edn, Beck 1991) pp. 693 et seq.

¹³³ For elaborations on executive decisions – being referred to as ‘executive law-making’ – see Johnstone I (n 108) 272-C.

¹³⁴ White ND, ‘Lawmaking’ in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (1st edn, OUP 2016) 568.

¹³⁵ Wood MS (n 98) para 9. Above all, bearing in mind the super powers and their widely opposite political strategies and goals – the SC is an organ of limited composition. It includes 5 permanent members (China, France, United Kingdom, United States of America, and Russia) and 10 non-permanent members. (5 of which are elected annually for a two year term by the UN General Assembly, requiring approval by qualified majority – the possibility of serving two consecutive terms being excluded) In principle, 9 affirmative votes are obligatory for a decision to thrive. Moreover, the permanent members enjoy veto-powers that enable barring of decisions adversely affecting their agenda – as has been frequent practice during the Cold War. For the role of ‘abstaining’ from decisions see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276* (Advisory Opinion) [1971] ICJ Rep 71.

laid down by them.¹³⁶ This gives rise to an urge for scrutinizing the framework under which such decisions are taken.¹³⁷ Non-forcible binding measures, such as resolutions to endorse non-proliferation efforts against weapons of mass destruction, are within the Security Council's powers under Chapter VII titled '*Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.*'¹³⁸ The prerequisite for implementing coercive measures according to Articles 40, 41 and 42 lies in identifying such actions – as delineated by the chapter's title – pursuant to Article 39 of the Charter.¹³⁹

Importantly, on the one hand, the Charter does not *per se* include a review mechanism for measures imposed by the SC, but on the other hand also does not explicitly exclude them either.¹⁴⁰ To my mind, judicial review over SC measures is – thus – a necessary corollary of the principle of transparency and the rule of law, above all, considering *de facto* exercising of discretion in the light of Article 39.¹⁴¹ Especially in the light of the truly extensive nature of the powers entailed, encompassing acts to address both abstract and concrete situations capable of posing threats to peace and security.¹⁴² Nevertheless, bearing in mind the constraining complexity of voting procedures – i.e. the prerequisite of concurring votes of all permanent members – decisions on determining a threat to peace seem to fall far from being arbitrary.¹⁴³ Not least, especially in the light of proportionality, one must not overlook that the SC is the lone standing institutional organ capable of establishing globally effective instruments consistently addressing the menace of proliferation of weapons of mass destruction.¹⁴⁴ In the present case this was undertaken by initially curbing

¹³⁶ Boyle A, 'International Lawmaking: Towards a New Role for the Security Council' in Cassese A (ed), *Realizing Utopia: The Future of International Law* (OUP 2012) 179. Resolutions are furthermore regarded as extensions of the UN Charter, relating thereto see *Lockerbie Case (Libyan Arab Jamahiriya v. United Kingdom)* [1992] ICJ Rep 3.

¹³⁷ With reference to – yet again – the limited scope of this thesis, only Chapter VII powers under the UN Charter will be touched upon due to their relevance for the JCPOA.

¹³⁸ Tzanakopoulos A, *Disobeying the Security Council: Countermeasures against Wrongful Sanctions* (University of Oxford 2011) 2.

¹³⁹ Wet E de, *The Chapter VII Powers of the United Nations Security Council* (Hart Publishing 2004) 134. It is hotly debated within legal doctrine whether or not the SC has full discretion within Articles 39, 40, 41 and 42. To my mind, it seems inconsistent with basic tenets of the law to confer full discretion – i.e. the *pouvoir* of identification, and implementation of measures – to the SC. Therefore, judicial control – as exercised by the ICJ's in form of Advisory Opinions – enhances plausibility in terms of transparency and the rule of law.

¹⁴⁰ Zappalà S, 'Securing Human Rights?: Achievements and Challenges of the UN Security Council' in Bardo Fassbender (ed), *Reviewing Security Council Measures in the Light of International Human Rights Principles* (Oxford University Press 2011) 175-2.

¹⁴¹ *ibid* 178. Legal doctrine and practice have acknowledged 'the incidental power of international judicial bodies to review SC measures.' However, being inherently limited to: amenability exclusively for international judicial bodies, on an incidental basis, and only to the limited extent that taking a decision in specific proceedings before the respective organ has triggered questions concerning the SC action – thus, making scrutiny indispensable. Relating thereto, e.g., see *Prosecutor v Tadic* (Judgment in Sentencing Appeals) [2000] 39 ILM 635.

¹⁴² Benshoof J, 'Women, Peace, and Security' in Jared Genser and Bruno Stagno Ugarte (eds), *The United Nations Security Council in the Age of Human Rights* (CUP 2014) 72. An example for abstract situations capable of threatening world peace and security is – among others – the proliferation of weapons of mass destruction.

¹⁴³ Garvey JJ, *Security Council Mandate of Universal Standards* (OUP 2013) 63.

¹⁴⁴ *ibid* 64. To my mind, in consideration of the lack of acceptable alternatives, the hegemonic outcry concerning the SC's legislative role seems to be rather out of place.

potential threats emanated by a state's nuclear programme through imposing economic sanctions, and ultimately, by conveying prospects of sanctions relief upon compliant behaviour with international law *in concreto* the NPT.

b. Consequences of Disregarding United Nations Security Council Resolutions

Strikingly, yet again with reference to the supremacy of decisions taken by the Security Council, the question arises whether attributing to SCRs binding character makes the UN Charter a global constitution – in other words: how enforceable is the UNC *in concreto* binding decision made pursuant to it? As regards this notion, the quality of international law *in concreto* Security Council Resolutions as *ultima ratio* instruments within ‘a sovereign coercive order steering human behaviour through determining offenses and sanctions contingent upon pertinent infringements’ shall be elucidated upon.¹⁴⁵ The second element has already been shed light on, subsequently being considered as fulfilled.¹⁴⁶ However, evincing the first's incidence – specifically, the coercive nature of resolutions under international law – might not present itself quite so unequivocally.

In general, the legally binding effect of SCRs in the light of even derogating the *pacta tertiis* rule substantiates the scope of obligations created by SC decisions relating to maintaining world peace – hence, eradicating allegations of ‘soft-law’ character envisaged by such international law instruments.¹⁴⁷ Relating thereto, the coercive measures inflicted upon those who breach them – frankly, the consequences of not complying with SCRs – shall be expounded. Firstly, it must be stated that the Charter does not foresee the power of member states to terminate or amend the binding enforcement measures imposed by the SC under Chapter VII on their own accord.¹⁴⁸ Nonetheless, there are scenarios – e.g. measures imposed in the light

¹⁴⁵ Kelsen H, *Reine Rechtslehre* (Franz Deuticke 1960) 321. (‘Nach der hier vorgetragenen Bestimmung des Rechtsbegriffes ist das sogenannte Völkerrecht Recht, wenn es eine als souverän vorausgesetzte Zwangsordnung menschlichen Verhaltens ist; wenn es an von ihm bestimmte Tatbestände als Bedingungen von ihm bestimmte Zwangsmaßnahmen als Folgen knüpft und daher, so wie das staatliche Recht, in Rechtssätzen beschrieben werden kann.’)

¹⁴⁶ cf 10. The UN Charter has been concluded by its Members under the principle of sovereign equality pursuant to Article 2 (1). Hence, not least because of explicitly delegated powers (embedded by Article 24) and implicitly delegated powers (e.g., indicated by Article 1) – for elaborations on the implied powers doctrine, e.g., see Cassese A (n 78) 179 et seq. – it is a partly sovereign compulsive order.

¹⁴⁷ Graf Vizthum W, ‘Article 2 (6)’ in Bruno Simma (ed), *Charta der Vereinten Nationen* (CHBeck 1991) para 4. Regardless of these allegations, Article 2 (6) – according to legal doctrine and practice – unfolds third party effects with respect to ‘the coexistence of the members of the international community.’ Bearing in mind the broad public's colloquial reference to international law – *in concreto* decision-making by the UN – as *soft-law* because of its alleged *de facto* ‘toothless character’ due to dependence upon Members' compliance, more precisely the lack of reprisals relating to non-compliance.

¹⁴⁸ Wet E de (n 122) 375. This seems logical in the light of potentially different conclusions made by states in the same affair, heavily dependent on their geo-political interests – hence, resulting in ‘major legal uncertainty and undermining of the UN collective security system.’

of Resolution 713¹⁴⁹ – that enable states to take necessary and appropriate steps to secure their territorial integrity and political independence, overruling the restrictions imposed by a resolution.¹⁵⁰

This aspect is *per analogiam* also consistent with the principles laid down in the UNGA's Uniting for Peace Resolution.¹⁵¹ Moreover, in terms of SC activities ultimately being constrained by *jus cogens*, coherently, in case of SCR's incompatibility with international law's peremptory norms – precisely, measures laid down by them opposing the invocation on these provisions *erga omnes* by state actors – the latter, yet again, unfold supremacy.¹⁵² With reference to judicial review being a necessary corollary of extensive powers,¹⁵³ an approach for assessing the consonance of its measures with the principles of international law – conversely, the principles of the United Nations – is presumably embedded in Article 38 ICJ Statute.¹⁵⁴ However, as to judicial review of SC action, there has yet been identification of a standard

¹⁴⁹ UNSC Res 713 (25 September 1991) UN Doc S/RES/713. This resolution imposed an arms embargo upon the Federal Yugoslav Republic that was sparked off by 'fighting in Yugoslavia, which had caused a heavy loss of human life and material damage, thus, threatening international peace and security.'

¹⁵⁰ Wet E de (n 122) 248. Article 51 UNC entails the inherent right of individual or collective self-defense *in eventum* the SC not (yet) having adopted appropriate measures to maintain international peace and security. Relating thereto the armed conflict in Yugoslavia is exemplifying for this 'self-defense exception'. As of May 1992, Bosnia-Herzegovina was already a separate state bringing up the problem of the resolution being technically maintained against the entire territory of the – then – FYR. Nonetheless, BH needed arms supplies in order to defend itself against the ethnical cleansings undertaken by Bosnian Serb forces that were supported by the Yugoslav People's Army. Thus, and not least because of the political element to recognizing the newly formed state, it is an example for potential inaction of the SC by virtue of opposing political agendas. Succinctly, the case evinced possible conflicts of the rule of 'parallelism of forms' and 'parallelism of competencies' with respect to SCRs. Frankly, the prerequisite for ending action under a resolution is the implementation of another resolution – equalizing the effects of the first – hence, vetoing the termination of measures under a prior resolution is amenable to the P5 subsequently constituting their so-called 'reverse veto'.

¹⁵¹ Droubi S, *Resisting United Nations Security Council Resolutions* (Routledge 2014) 213. ('[T]he failure of the Security Council to discharge its responsibilities ... does not relieve Member States of their obligations or the United Nations of its responsibility under the Charter to maintain international peace and security.') See UNGA Res 5/377 (3 November 1950) UN Doc A/RES/5/377. Stemming from this as a logical corollary, the ascertainment of MSs and GA responsibility to collectively address the crises created – through persuading challenges to the lawfulness of mandatory resolutions – can be made. Nevertheless, it is purported that the UPR does not indicate a legal basis for GA seizure of situations already decided upon by the SC, on the grounds of alleged incompatibilities of respective resolutions with *jus cogens*.

¹⁵² *ibid* 111. Succinctly, with reference to one of the ICJ's Nuclear Advisory Opinions – see *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226 – parts of legal doctrine assert that 'if survival of the victim state is at risk, non-compliance with the SCR cannot be considered unlawful.'

¹⁵³ Lauterpacht H, *The Function of Law in the International Community* (OUP 1933) pp. 103. With law being 'the regulation of human conduct resulting in limiting their freedom of action' it is clear that the restrictions imposed upon sovereign states – i.e. actions with regard to their respective sovereign territory – by international law was considered incompatible with *inter alia* the principle of non-intervention; However as the PCIJ famously stated in its *Lotus Case* see n 10, 'restrictions upon the independence of states cannot be presumed because the rules of law binding upon states emanate from their free will.' Moreover, in alignment with the maxim *neminem laedit qui jure suo utitur*, the *sum jus* shall be starting point of judicial inquiry in order to ultimately identify the freedom of action resulting therefrom. Consequently, to my mind, the logical corollary is that if SCRs are ultimately constrained by *jus cogens* and the measures imposed run afoul of complying with these peremptory norms, then judicial review is amenable by virtue of implicitly delegated powers pursuant to the principles of the UN Charter.

¹⁵⁴ Pellet A, 'Article 38' in Andreas Zimmermann and others (eds), *The Statute of the International Court of Justice: A Commentary* (2nd edn, OUP 2012) para 73. The judicial function of the court has not least been underlined in its *Nicaragua Case*. Therein it was stated that 'the Security Council has functions of a political nature assigned to it, whereas the Court exercises purely judicial functions. Both organs can therefore perform their separate but complimentary functions with respect

for such proceedings, thus, leading to the ICJ declining any authority relating thereto.¹⁵⁵ Therefore, the conclusive argument relating thereto is that in principle – cognate to the maxim *nemo plus iuris transferre potest quam ipse habet* – states cannot create an international organisation which is beyond reproach of the very rules they cannot unbind themselves from.¹⁵⁶ Nonetheless, the absence of a direct review mechanism does not exclude the fact that incidental review may be a way of effectively finding that a SCR to be invalid.¹⁵⁷ Regardless of these heuristic assumptions, the mere fact that states failing to comply with the SC's mandatory decisions might open Pandora's Box – i.e. risk heavy gusts of sanctions, reprisals, and countermeasures impossible against them – with regard to ultimately being economically isolated from the world community, make these instruments an effective deterrent for constraining states' belligerent behaviour.¹⁵⁸

ii. Ramifications for the JCPOA

First and foremost, Resolution 2231 confers 'Article 103-effect' upon the JCPOA provisions, hence, giving its provisions supremacy over conflicting obligations under any other international agreement.¹⁵⁹ Considering the prior elaborations that only resolutions can terminate measures entailed in prior resolutions, the EU3+3 comprising the 5 permanent members of the SC already connoted great political weight in establishing the legally non-binding agreement. Additionally, this fact facilitated the hurdle of 'compulsory concurring votes' of the P5 when adopting the Resolution endorsing the JCPOA.¹⁶⁰

to the same event' – see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* [1986] ICJ Rep 392 n 114.

¹⁵⁵ Garvey JJ, 'Security Council Mandate of Universal Standards', *Nuclear Weapons Counterproliferation: A New Grand Bargain* (Oxford University Press 2013) 52. Nevertheless, scholarly debate has been triggered by the Court's acquiescence with regard to the SC's legislative actions.

¹⁵⁶ Tzanakopoulos A, *Disobeying the Security Council: Countermeasures against Wrongful Sanctions* (University of Oxford 2011) 71.

¹⁵⁷ Martenczuk B, 'The Security Council, the International Court and Judicial Review: What Lessons from Lockerbie' (1999) 10 528. Even though the ICJ does not have the explicit authority to set aside a SCR, it does not lack judicial authority and impartiality – comparable to advisory opinions' lack of unfolding binding legal effects notwithstanding their huge factual influence on interpretations of international law. Thus, it is not very likely that political organs are keen on disregarding judgments identifying their decisions to be exceeding respective powers *in concreto* signifying inconsistencies with *jus cogens*.

¹⁵⁸ For detailed elaborations on measures at the SC's disposal see Ruys T, 'Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework' in Larissa van den Herik (ed), *Research Handbook on UN Sanctions and International Law* (Edward Elgar Publishing 2017) pp. 19; for potential outcomes of economic sanctions – i.e. their effectiveness – see Tzanakopoulos A, 'States Reaction to Illegal Sanctions' in Happold M and Eden P (eds), *Economic Sanctions and International Law* (Hart Publishing 2016) pp. 80.

¹⁵⁹ Wood MS, 'United Nations Security Council' in Rüdiger Wolfrum (ed), *MPEPIL*, vol X (OUP 2012) para 15.

¹⁶⁰ Referring to the amenable 'reverse veto' of the P5 with regard to termination of reprisals stated at n 134.

In terms of interpretation, Articles 31 and 32 VCLT are not applicable notwithstanding SCRs prevailing doctrinal classification as treaty-like instruments.¹⁶¹ Thus, the standard for revealing the *telos* of a resolution is interpretation substantiated by the peculiar nomenclature¹⁶² – generally accepted as constituting binding effects – typically used by the SC in mandatory decisions. Not only the fact that the language used in the Resolution indicates the Council’s will in constituting legally binding effects,¹⁶³ but also the mere fact that endorsing a political commitment in a non-binding SC decision seems redundant considering the efforts undertaken by all Parties. Not least it must be reiterated that enhancing the role of the nuclear non-proliferation regime is a vital necessity for peace and stability throughout the globe – but especially in the politically unstable MENA region. As regards Iran one has to bear in mind that high ranking officials and expert commentators on world politics have asserted for many years that Iran’s disruptive behaviour – precisely, inclining political influence on its neighbours – might cause other states to equally seek nuclear weapons capacity.¹⁶⁴ Thus, endorsing the Agreement in SCR 2231 to ensure implementation of its provisions is unambiguously better – succinctly, more effective and more proportionate – than preventive strikes against Iran, falsifying belligerent rhetoric claiming that ‘military strikes were the [o]nly way to stop Iran and prevent regional proliferation.’¹⁶⁵ Moreover, this notion

¹⁶¹ cf n 120.

¹⁶² Joyner DH (n 43) pp. 194. (‘First, words matter. And the Security Council employs a variety of words and phrases in order to express different meanings and intended effects of the provisions of its resolutions. Even within the same resolution, the Council will choose leading words – typically verbs occurring at the beginning of each operative paragraph – which the members of the Council can agree upon to express the Council’s will regarding the content of each respective paragraph. Some limited empirical work has been done in identifying these different leading words and the meaning that they convey concerning the Council’s will regarding the content of the paragraphs or sentences they lead. Some of these leading words are ‘decides,’ ‘recommends,’ ‘calls upon,’ ‘requests,’ ‘demands,’ ‘warns,’ and ‘urges.’)

¹⁶³ SC Res 2231 (20 July 2015) UN Doc S/RES/2231. (‘...Underscoring that Member States are obligated under Article 25 of the Charter of the United Nations to accept and carry out the Security Council’s decisions, Firstly, *endorses* the JCPOA, and urges its full implementation on the timetable established in the JCPOA; Secondly, *calls upon* all Members States, regional organizations and international organizations to take such actions as may be appropriate to support the implementation of the JCPOA, including by taking actions commensurate with the implementation plan set out in the JCPOA and this resolution and by refraining from actions that undermine implementation of commitments under the JCPOA; Thirdly, requests the Director General of the IAEA to undertake the necessary verification and monitoring of Iran’s nuclear-related commitments for the full duration of those commitments under the JCPOA, and reaffirms that Iran shall cooperate fully as the IAEA requests to be able to resolve all outstanding issues, as identified in IAEA reports; Fourthly, *requests* the Director General of the IAEA to provide regular updates to the IAEA Board of Governors and, as appropriate, in parallel to the Security Council on Iran’s implementation of its commitments under the JCPOA and also to report to the IAEA Board of Governors and in parallel to the Security Council at any time if the Director General has reasonable grounds to believe there is an issue of concern directly affecting fulfilment of JCPOA commitments;’)

¹⁶⁴ Perkovich G, ‘Implications of the Joint Comprehensive Plan of Action’ (2017) 1898 AIP Conference Proceedings 040001-9. Beginning in the 1990s assumptions were made that Iran would reject diplomacy in preference of marching on to acquire nuclear weapons – hence, the logical corollary being that states like Egypt, Saudi Arabia, and Turkey are inevitably going to seek enrichment too. This theory had been partly verified by a statements by Prince Turki al-Faisal of Saudi Arabia in which he attested that ‘if Iran has the ability to enrich uranium to whatever level, it is not just Saudi Arabia that is going to ask for that,’ going even further in claiming that ‘whatever the Iranians have, we will have too.’

¹⁶⁵ *ibid* 040001-10. In the light of Saudi aspirations to acquire countervailing nuclear capabilities, the JCPOA assures that Iran’s compliant behaviour with the Agreement significantly reduces the potential threat to Saudi Arabia – hence, ameliorating their interest in nuclear weapons.

potentially causes actions emanating devastating effects on civil populations¹⁶⁶ – subsequently *prima facie* being the last resort, definitely not a means of prevention for unsubstantiated allegations.¹⁶⁷

With all that being said, one shall however not forget that the role of the Security Council in terms of conflict resolution bears resemblance to that of a *deus ex machina* ‘harbouring no long-term objectives of its own other than the selfless, altruistic one of securing peace agreements.’¹⁶⁸ Consequently, with reference to its ‘divine’ purpose, it must be reiterated that the only instrument standing between Iran’s full-scale reintegration into the global community and reimposition of multilateral and unilateral sanctions is SCR 2231. Compendiously: falls the Resolution, falls the Agreement – subsequently, leading to escalations that will surely reach an unprecedented level in no time.

D. Concluding Remarks

Finally, it must be reiterated that the JCPOA plays an essential role in international relations. Concluding this non-binding international agreement – the provisions of which have ultimately been given legally binding effect by virtue of United Nations Security Council Resolution 2231 – will go down in history as a watershed moment for stabilising the Middle East, consequently, playing a crucial role in securing world peace. However, notwithstanding the ingenuity of the entailed dispute resolution mechanism to counteract imprudent decisions of either Party’s leaders – precisely, referring to every Parties’ right to nominate emissaries to the Joint Commission, the Advisory Board’s functions and respective balanced voting procedures – *realpolitik* seems to have already tightened its grip to an unbearable degree for the Agreement to prevail. Nevertheless, SCR 2231 is a beacon of hope depicting – yet again – international law’s vital role in the process of moulding global polity in order to procure public welfare for all mankind. Compendiously, the SC members’ reverse veto ultimately sustains the Agreement – i.e. questioning the structure of the UN executive organ by a member of this very organ would equate to ‘biting the hand that

¹⁶⁶ The World Bank in its report on poverty in Iraq indicates what is clearly perceivable, stating that ‘Iraq is moving forward but the challenge requires re-development and recovery of what has been lost’ cf World Bank Iraq Poverty Reduction Strategy High Committee, *Confronting Poverty in Iraq* (The World Bank 2011) xxi <<https://doi.org/10.1596/978-0-8213-8562-3>> accessed 26 March 2019; Regarding devastating effects on the civil population in Iraq *in concreto* humanitarian consequences sparked off prior to military intervention – namely, caused by economic sanctions – cf Cortright D (ed), *The Sanctions Decade : Assessing UN Strategies in the 1990s* (Lynne Rienner Publishers 2000) pp. 37; For the process undergone to form a system coordinating humanitarian intervention in a world of sovereign states cf Thakur R, ‘The Use of International Force to Prevent or Halt Atrocities: From Humanitarian Intervention to the Responsibility to Protect’ in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2015) pp. 815.

¹⁶⁷ For elucidations upon international humanitarian law ‘regulating the conduct of hostilities based on a balance between military necessity and humanity’ cf Melzer N, ‘Keeping the Balance between Military Necessity and Humanity: A Response to Four Critiques of the ICRC’s Interpretive Guidance on the Notion of Direct Participation in Hostilities’ in John Cerone (ed), *International Humanitarian Law* (Edward Elgar Publishing 2017) pp. 327.

¹⁶⁸ Chesterman S, *Just War or Just Peace?: Humanitarian Intervention and International Law* (OUP 2001) 160.

feeds you’ considering the benefits they reap from the current system. Relating thereto, in the light of contemporary hegemonic outcries by various LEDCs, establishing constraining international constitutional law would be *the* auxiliary tool to further constrain pertinent rash political crusades – hence, unequivocally leading to an accretion of the rule of law on a global scale.¹⁶⁹

¹⁶⁹ To my mind, it is a necessary corollary to establish international constitutional law in order to de-escalate tensions that have already been rising with regard to emerging markets and ‘the West.’ It bears noting that BRICS states *eo ipso* accumulate political momentum due to their inclining economic importance in the global economy. (Above all, China has long claimed its role as ‘economic super power’ and will not give in to decisions significantly adversely affecting its own agenda) To this regard, one cannot deny that international law must react to these realities and adopt new mechanisms to include these actors in global policy making more comprehensively – even if it means conferring bargaining powers from the west to the east. We must learn from the mistakes of the past and neutralize the menace of World War III.

III. Council Regulation (EC) 2271/96 and Joint Action 668/96: The EU ‘Blocking Statute’

One – if not the most – essential question arising concerning UN Security Council Resolutions is that of respective compliance by the international community of states. As I have previously mentioned, under Articles 25 UNC and contrary to the *pacta tertiis* rule, legal doctrine and practice have unequivocally attributed legally binding effects to resolutions perpetrating the SC’s function of maintaining international peace and security – hence, binding not only upon UN Members but all states.¹⁷⁰ However, as the EU – a supranational entity *sui generis* – is neither a Member of the UN nor *per definitionem* a state, its role regarding implementation of the JCPOA and more general in global governance shall be touched upon in consideration of its ‘permanent observer status’ to the UN.¹⁷¹ Furthermore, these basic observations will function as preliminaries to presenting the protagonist of this thesis: the European Union ‘Blocking Statute.’ (Hereinafter; *the Statute*, EUBS, or BS) Conclusively, this section shall deal with the legal ramifications [of the ‘revived’ instruments] for sustaining the JCPOA, importantly, comprising the EU’s stance on sustaining the frail Agreement in times of recurring tensions between the USA and Iran.¹⁷²

A. Basic Observations

First things first, the European Union is not a state as commonly conceived – falling short of statehood status mainly because it lacks own territory and population.¹⁷³ Nonetheless, it possesses international legal personality since its predecessor organizations had been granted such personality by virtue of the ERTA-

¹⁷⁰ cf n 145.

¹⁷¹ Boisson de Chazournes L, ‘Relations with other International Organizations’ in in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (1st edn, Oxford University Press 2016) 706. In principle, the observer status includes the right to obtain ‘a greater participation from international organizations.’ However, due to the fact that observers have no real right to participate in form of suggestions or proposals on amendments – *in concreto* intervene when influence on discussions is necessary – an enhanced observer status has been established. As many aspects of the legislative activities of international organizations fall within the scope of community competence, the right to independently participate seems to be a necessary corollary – despite the fact that the EU’s representative cannot cast votes. Nonetheless, the current situation is more plausible than relying on the discretion of a meeting’s president to address word to the forum, bearing in mind the EU’s pioneering role in international relations.

¹⁷² cf n 39. Referring to US President Trump’s rhetoric towards the JCPOA, e.g., in calling it a bad deal.

¹⁷³ Klabbers J, ‘Sui Generis? The European Union as an International Organization’ in Dennis Patterson and Anna Södersten (eds), *A Companion to European Union Law and International Law* (Wiley Blackwell 2016) 1. (‘...for some, the European Union is the archetype of a supranational organization. It is held to be a species of the genus international organization, but one where decision making is more centralized than in others and actually takes place not so much between member states but above them. This claim is then often accompanied by the statement that there is really only one example of such a supranational organization: the European Union.’)

judgment,¹⁷⁴ additionally being underpinned by Article 47 TEU¹⁷⁵ stipulating that ‘the Union shall have legal personality.’¹⁷⁶ The extent of its powers, which is virtually the origin of supranationality *per se*, is demonstrated by the aspect that the EU is – due to its MSs partly submitting their sovereign rights – provided with mechanisms for autonomous law-making.¹⁷⁷ As regard Articles 216 (1) TFEU¹⁷⁸ and 37 TEU (the external competence to conclude treaties) it shall be mentioned that ‘the Union has the power to conclude treaties either derived from its explicit or implicit competences’ – relating thereto, in attainment of the principle of subsidiarity, it is presumed that in subject matters where the EU has internal competences it also has competences vis-à-vis third states.¹⁷⁹ Succinctly, the binding effects of such international treaties have been subject to ECJ jurisdiction on numerous occasions, hence, accordingly encompassing ‘wide-ranging direct effect that shall be subject to fulfilling certain conditions.’¹⁸⁰ Moreover, it is undisputed that in principle the EU, like its MS, is bound by the Charter of the United Nations, especially – as emphasised before¹⁸¹ – with regard to global peace and security.¹⁸² Not least because of Security Council actions’ relevance for EU CFSP, the pertinent framework shall be elucidated upon next *ab initio* dealing with the Union’s competence to conclude international agreements.

¹⁷⁴ cf Case 22/70 *Commission v Council* (ERTA) [1971] ECR 263.

¹⁷⁵ Consolidated versions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/1.

¹⁷⁶ Klabbers J (n 168) 8. (‘... surely, it was never plausible to create an entity with treaty-making powers, and even a foreign and security policy, without this entity being a legal person.’).

¹⁷⁷ Ziegler KS, ‘The Relationship between EU Law and International Law’ in Dennis Patterson and Anna Södersten (eds), *A Companion to European Union Law and International Law* (Wiley Blackwell 2016) 43. For a detailed depiction of the EU’s competences in law-making, especially with regard to the principles of conferral of powers and subsidiarity – to be precise, exclusive, shared, and coordinative competences – see Khan KS, ‘Article 2 TFEU’ in Rudolf Geiger, Daniel-Erasmus Khan and Markus Kotzur (eds), *European Union Treaties: A Commentary* (CHBeck 2015) pp.202.

¹⁷⁸ Consolidated versions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/1.

¹⁷⁹ *ibid* 44. As regards the Union’s international law obligations in general, it is acknowledged to be bound by the ‘objective elements’ of international law, meaning that *jus cogens*, the UN Charter by virtue of Article 103 UNC, and customary international law parallel to treaty law are considered as binding. Moreover, pursuant to Article 3 (5) TEU it is recognised that ‘in the relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the Charter of the United Nations.’ Not least, relating thereto, the EU’s role with reference to the JCPOA shall be presented shortly.

¹⁸⁰ *ibid* 46. Concretely, the ECJ formulated three prerequisites for treaties in order to unfold direct effect upon the MS of the Union: firstly, the EU must be bound by the treaty; secondly, the relevant treaty provisions must be sufficiently clear, precise, and unconditional to be capable of direct application; and thirdly, direct effect must not be precluded by the nature and structure – i.e. the broad logic – of a treaty.

¹⁸¹ cf n 145.

¹⁸² Czuczai J, ‘The Autonomy of the EU Legal Order and the Law-Making Activities of International Organizations: Some Examples Regarding the Council’s Most Recent Practice’ (2012) 31 *Yearbook of European Law* 455. (‘... Article 21(1), first paragraph, TEU mentions among the guiding principles, based on which the external action of the EU on the international scene shall be developed, the: ‘respect for the principles of the United Nations Charter and international law’).

i. Common Foreign and Security Policy *post* Lisbon

Nowadays the EU's role in external relations – specifically, in global policy – among other delineations boils down to that of a normative power,¹⁸³ while its competences have been exalted through major modifications undertaken by virtue of the *Treaty of Lisbon*.¹⁸⁴ Remarkably, it abandoned the former three-pillar structure, establishing a unified European Union legal system.¹⁸⁵ In principle, this 'de-pillarization' extends the Community method to all spheres of action, where no express exception is made.¹⁸⁶ Since the area of CFSP is one of these expressly excepted domains, and its conception is pivotal to comprehending the notions comprised by the EUBS, the pertinent foundations shall be examined.

Basically, the 'new' CFSP is only rudimentarily delineated in Article 24 (1) TEU – compendiously, lacking precise definition.¹⁸⁷ Moreover, its legal nature in terms of defining the scope for EU competence is simultaneously meagrely embellished.¹⁸⁸ Albeit the taciturn elaborations, Article 25 TEU is more distinct *inter alia* stating that 'the EU shall conduct its CFSP by adopting decisions defining: actions to be

¹⁸³ Búrca G de, 'EU External Relations: The Governance Mode of Foreign Policy' in Bart van Vooren, Steven Blockmans and Jan Wouters (eds), *The EU's Role in Global Governance: The Legal Dimension* (OUP 2013) pp. 39 et seq. Normative power is broadly referred to as 'promoting norms in a normative way – precisely, the promotion of multilateralism and of values such as respect for international law, human rights and democracy, through non-coercive means.'

¹⁸⁴ Edward D and Lane R, *Edward and Lane on European Union Law* (Edward Elgar Publishing 2013) para 3.75. The domain of CFSP holds a special position within Union law, mainly because the institutional framework which governs most of the residual EU activities does not apply to it – hence, it is being regulated by peculiar rules and procedures. Above all, excluding the adoption of legal acts; leaving determination of its strategic interests in terms of objectives and general guidelines to the European Council; and setting the frame and adoption of decisions necessary for defining and implementing CFSP to the Council as well. In general, it evinces only minor roles for the European Parliament and the Commission – mainly, limiting their competences to consultations with the High Representative on aspects and basic choices regarding the pursued policy. Relating thereto, the most important accretion to CFSP *post* Lisbon is indubitably the establishment of the EU High Representative for Foreign Affairs and Security Policy – colloquially referred to as the 'EU foreign minister.' Competences of this organ are: developing and ensuring implementation of decisions adopted in the field of Common Foreign and Security Policy, chairing the RELEX configuration of the Council, and representation of the EU in CFSP matters.

¹⁸⁵ Craig P and Búrca G de, *EU Law: Text, Cases, and Materials* (Sixth, Oxford University Press 2015) 11. The infamous three-pillar structure of the European Union had been introduced by virtue of the TEU, signed in Maastricht in February 1992, amending major elements of the Rome Treaty. It then comprised the EC Treaty as first pillar, CFSP building on earlier mechanisms for European Political Cooperation as second pillar, and Justice and Home Affairs as third pillar. Importantly, the Commission, European Parliament, and ECJ, had only minor roles under the former framework.

¹⁸⁶ Fischer P, *Introduction to EU Law: The Legal System of the EU* (University of Vienna 2018) 39. ('The Community method simply means that the European Court of Justice has jurisdiction in practically all areas and that decisions are taken – in principle – by qualified majority vote in the Council, accompanied by the co-decision procedure in the European Parliament which is now called the ordinary legislative procedure. Exceptions to the European Court's jurisdiction are only to be found in two areas: in the area of common foreign and security, and defense policy')

¹⁸⁷ Geiger R, 'Article 24 TEU' in Rudolf Geiger, Daniel-Erasmus Khan and Markus Kotzur (eds), *European Union Treaties: A Commentary* (CHBeck 2015) para 1. Therefore, it basically covers the entire EU foreign policy except for Part V TFEU activities and TFEU internal policies that comprise external aspects due to supranational structuring.

¹⁸⁸ Eeckhout P, 'The EU's Common Foreign and Security Policy after Lisbon: From Pillar Talk to Constitutionalism', *EU Law After Lisbon* (Oxford University Press 2012) 268. ('Article 2(4) TFEU simply provides that the Union shall have competence, in accordance with the provisions of the TEU, to define and implement a common foreign and security policy, including the progressive framing of a defense policy. The nature of that competence is not clarified, in contrast with the preceding paragraphs of Article 2, which define exclusive and shared competences.')

undertaken by the Union; positions to be taken by the Union; and arrangements relating to the first points mentioned, additionally strengthening systematic co-operation between Member States in the conduct of policy.’ Concretely, it bears noting that this enumeration of various forms of action – at the Union’s disposal when perpetrating common foreign and security policy – includes former ‘common actions’ and ‘common positions,’ amalgamating them under the umbrella term ‘decisions.’¹⁸⁹ Nonetheless, as previously mentioned,¹⁹⁰ concluding legislative acts in the light of CFSP has been expressly excluded – notwithstanding the potentially binding effect of such decisions pursuant to Article 288 (4) TFEU¹⁹¹ – purported even twice in the TEU.¹⁹² Therefore, questions arise as to how these decisions are concluded and what they are if not legislative acts.

First, the different organs of the European Union have been ascribed with particular roles in the conduct of foreign and security policy. Remarkably, it must be reiterated that a qualitative and quantitative preponderance in favour of the European Council, the Council and the High Representative is observable.¹⁹³ This dominant position is further highlighted by the procedural aspects of decision-making – that has been giving rise to intense debate ever since the inception of a common foreign and security policy on European level.¹⁹⁴ Currently, the system foresees, in principle, unanimous voting modalities.¹⁹⁵

¹⁸⁹ Geiger R, ‘Article 25 TEU’ in Rudolf Geiger, Daniel-Erasmus Khan and Markus Kotzur (eds), *European Union Treaties: A Commentary* (CHBeck 2015) para 1.

¹⁹⁰ cf n 181.

¹⁹¹ (‘A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.’)

¹⁹² Eeckhout P (n 183) pp. 279. Literally, Articles 24 (1) and 31 (1) TEU evince that ‘the adoption of legislative acts shall be excluded.’ Moreover, relating thereto, judicial review of decisions by the ECJ is excluded pursuant to Article 275 TFEU. Additionally, the EP’s role is limited to consultations with the HR in matters of CFSP. These consultations are to be taken into ‘due consideration’ according to Art 36 TEU. However, it must be mentioned that at least the Parliament has the possibility to gain insight to classified documents pertaining to foreign affairs through its foreign affairs committee cf Edward D and Lane R (n 179) 3.75.

¹⁹³ Cherubini P, ‘The Role and the Interactions of the European Council and the Council in the Common Foreign and Security Policy.’, *The European Union after Lisbon: Constitutional Basis, Economic Order and External Action* (Springer 2012) pp. 471. On the one hand, the European Council’s has important competences *inter alia* comprising the appointment – and potential dismissal – of the HR; determination of objectives of and general principles for CFSP – adopting the necessary pertinent decisions; and participate in decision-making, juxtaposed to the Council. On the other hand, the Council – to be precise, the *Foreign Affairs Council* – complements the European Council’s role by framing the CFSP and taking decisions ‘necessary for defining and implementing it.’ The High Representative’s role has already been delineated in n 181, however, for further elaborations on the HR’s role especially in the light of ‘personifying the inter-institutional, shared executive power’ cf Craig P, *The Lisbon Treaty: Law, Politics, and Treaty Reform* (OUP 2013) 88-3.

¹⁹⁴ Eeckhout P (n 183) 278. Generally speaking, ‘unanimity is regarded as safeguarding national sovereignty, whereas qualified majority is advanced as indispensable for effective decision-making.’

¹⁹⁵ Edward D and Lane R (n 179) 3.76. Diverging voting modalities – i.e. consensus by qualified majority – are *inter alia* admissible when the Council (hereinafter, FAC) adopts decisions in definition of the EU action or position on the basis of a decision of the European Council relating to strategic interests and objectives; and if presented by the HR at request of the European Council. Moreover, such decisions that perpetrate the implementation of actions according to points one and two, or if the FAC is instructed by the European Council (acting unanimously). Interestingly, Art. 31 entails a right to (relative) veto if a member of the FAC declares that a decision runs afoul of vital reasons of national policy, if ‘one-third of member states

Second, initially it must be clarified that due to the scope of this thesis only Part V of the TFEU, namely, the conclusion of international agreement shall be subject of scrutiny at this point.¹⁹⁶ When concluding international agreements, the EU has – by virtue of the ramifications of the *Treaty of Lisbon* – ascribed utmost importance to the HR for FASP.¹⁹⁷ As regards this vital role in negotiating and concluding international agreements, the HR’s role in JCPOA proceedings is exemplifying.¹⁹⁸ These prior elaborations delineate what ‘decisions’ are legally, precisely, it can be stated that ‘compared with regulations, decisions claim individual validity and not general applicability, and are generally binding,’¹⁹⁹ except for the area of CFSP where they constitute foundations for organs’ actions vis-à-vis third states or international organizations.²⁰⁰

ii. Extraterritoriality

Essentially, the conflict that has arisen between the EU and the USA is owed to the fact that the Trump Administration claims that Iran is in breach of its obligations purported by the JCPOA.²⁰¹ Contrarily, the EU has made clear that ‘as long as Iran is in compliance with its substantive obligations

representing one-third of the Union’s population makes such a declaration a decision cannot be adopted.’ For more detailed pertinent depictions cf Geiger R, ‘Article 31 TEU’ in Rudolf Geiger, Daniel-Erasmus Khan and Markus Kotzur (eds), *European Union Treaties: A Commentary* (CHBeck 2015) para 10.

¹⁹⁶ Part V foresees a peculiar procedure for conducting CFSP cf n 184.

¹⁹⁷ The underlying procedure stipulated vests the Union with *pouvoir* to ‘conclude agreements with one or more countries or international organizations where the treaties so provide or – like in the case of the JCPOA – where the conclusion is provided for in a legally binding Union act’ pursuant to Article 216 TFEU. Relating thereto, Article 218 TFEU purports the relevant procedure of negotiating and concluding these agreements, stating that *inter alia* proceedings: (1) are contingent upon authorisation of the Council; (2) rely on the Council to nominate the negotiator and a special committee with which the negotiations must be conducted; (3) by proposal of the negotiator to the Council is to be made permissible for signing and if necessary the Council shall approve its provisional application before entry into force; (4) are concluded by a decision of the Council, yet again, contingent upon a proposal by the negotiator. Importantly, Art. 218 para 7 permits derogations from this procedure in the light of modifications to the agreement by virtue of a body set up by the agreement – suffice it to say that the Joint Commission entailed in the JCPOA is such a body. Ultimately, it bears noting that the MSs, EP, Council or Commission have the right to obtain a decision by the ECJ concerning the consonance of the agreement with the Treaties, hampering the entering into force.

¹⁹⁸ For the HR’s role entailed in the JCPOA *in concreto* in JC-proceedings cf n 225.

¹⁹⁹ Kotzur M, ‘Article 288 TFEU’ in Rudolf Geiger, Daniel-Erasmus Khan and Markus Kotzur (eds), *European Union Treaties: A Commentary* (CHBeck 2015) para 21.

²⁰⁰ Succintly, through the ‘JCPOA-lense’ the HR for FASP received permission by the Council to negotiate and conclude the agreement on behalf of the EU parallel to France, Germany, and the UK. For an overview on the legal framework relevant to *mixed agreements* within the framework of EU’s external relations see Edward D and Lane R (n 179) para 14.74; for a detailed depiction of *mixed agreements* as ‘international agreements concluded by the Union and the Member States together,’ furthermore, elaborating on ECJ jurisdiction, e.g., see Kuijper PJ and others, *The Law of EU External Relations: Cases, Materials, and Commentary on the EU as an International Legal Actor* (1st edn, Oxford University Press 2013) pp. 952.

²⁰¹ To date, in absence of factual evidence, allegations regarding ‘infringing upon the spirit of the Agreement’ have amassed lately.

according to the Agreement' it will safeguard the provisions that were laid down.²⁰² However, the political pressure of the dispute is steadily increasing since the reimposition of US unilateral sanctions – not least because of secondary sanctions that pervade European entities, imposing on them fines for conducting 'lawful business'²⁰³ with Iran, lest it be that they have business endeavours in the US. Strikingly, this conduct is highly contentious – especially, since Iran's behaviour has remained incontestable, subsequently constituting an unequivocal and legally impeccable foundation for European entities to make business with Iranian entities consonant with international law. Consequently, an issue regarding extraterritorial jurisdiction arises – to be precise, US American conduct is in conflict with the EU's and its MSs' competence to 'make, apply, and enforce rules of conduct in respect of persons, property, or events within its territory'²⁰⁴ – hence, running afoul of the international law principle of non-intervention.²⁰⁵

In principle, the modern perception of the sovereign territorial state is that the state *per se* possesses sovereignty, hence, delimiting its sovereign jurisdiction by its particular territory not the members of this territory.²⁰⁶ In an increasingly inter-dependent world, events outside the boundaries of this territory may equally influence the conduct of entities within the boundaries – meaning that states might be obliged to resort to jurisdiction with extraterritorial effects in order to guard their vital interests. However, the unconstrained implementation of such 'extraterritorial jurisdiction' is not permissible under the principles

²⁰² 'Declaration by the High Representative on Behalf of the EU Following US President Trump's Announcement on the Iran Nuclear Deal (JCPOA)' (*European Council*, 5 September 2018) <<https://www.consilium.europa.eu/en/press/press-releases/2018/05/09/declaration-by-the-high-representative-on-behalf-of-the-eu-following-us-president-trump-s-announcement-on-the-iran-nuclear-deal-jcpoa/>> accessed 27 March 2019. ('As long as Iran continues to implement its nuclear related commitments, as it has been doing so far and has been confirmed by the International Atomic Energy Agency in 10 consecutive reports, the EU will remain committed to the continued full and effective implementation of the nuclear deal.')

²⁰³ Since there has yet been a substantive breach to the JCPOA – to be precise, the JC or IAEA have not identified the presence of pertinent uncompliant behaviour from Iranian side – Resolution 2231 remains in force. At this instance, it shall be reiterated that in this case the prerequisite of concurrent votes by the P5 in the United Nations Security Council bars unlawful political crusades in the light of the 'reverse veto' cf n 148. Therefore, termination of the Resolution – i.e. reimposition of full-fledged economic sanctions against Iran – is contingent upon factually proven uncompliant behaviour of Iran, and not subject to mere allegations. Considering the importance of the rule of law in contemporary society – especially, with regard to authoritarian regimes of the past and present that unfortunately caused detrimental effects for civil populations all around the world – this procedure is certainly desirable.

²⁰⁴ Kamminga MT, 'Extraterritoriality' in Rüdiger Wolfrum (ed), *MPEPIL*, vol III (OUP 2012) para 1. The extraterritorial effects of US jurisdiction are evidently in conflict with international law in the light of SCR 2231. Therefore, the question arises if punitive measures vis-à-vis entities from third states are permissible. To my mind, *prima facie* assessment clearly indicates their void character. However, the elucidations upon the EU 'Blocking Statute' shall clarify the opinion of the European legislator regarding this matter.

²⁰⁵ The foundational principles governing such conflicts are, yet again, derived from the *Lotus Case* cf n 10. Firstly, it is 'a matter of international law whether a state may fully exercise extraterritorial jurisdiction.' Secondly, international law 'in general prohibits the exercise of extraterritorial enforcement jurisdiction unless explicitly stating the contrary.' Thirdly, extraterritorial prescriptive and adjudicative jurisdiction is only permissible if 'the extraterritorial event is sufficiently connected with the exercising state.'

²⁰⁶ Abizadeh A, 'Sovereign Jurisdiction, Territorial Rights, and Membership' in AP Martinich and Kinch Hoekstra (eds), *The Oxford Handbook of Hobbes* (OUP 2016) 411-2. ('The state's territorial rights are held *in rem* against all persons.')

of international law notwithstanding some exceptions. Precisely, it shall be mentioned that unambiguously ‘providing a coherent and straightforward model by which it can be authoritatively determined whether in a given situation the exercise of extraterritorial jurisdiction by way of prescription or adjudication is lawful or not’ is currently not feasible.²⁰⁷ But, suffice it to say that the reimposition of unilateral sanctions by the USA – i.e. their detrimental extraterritorial effects²⁰⁸ – can compendiously be identified as contrary to international law in the light of SCR 2231, especially, with reference to sustainable compliance by all remaining Parties.

As regards the EU – a supranational organization that is on the one hand enjoying legal personality, and on the other hand enjoying ‘enhanced observer status’ in the UN – it has a different perception of this binding international law, while pursuing a different avenue than the current US Administration concerning possible disregard for UNSCRs.²⁰⁹ Initially, the underlying notion relating to the enforceability of UN resolutions is that ‘EU law acts as a door opener for international law in the member states’ legal orders and provides an enforcement mechanism, that gives it a hierarchical boost.’²¹⁰ This ‘boost’ even complements to international law a (to my mind) necessary element that it has been ‘deprived of’ by the UN’s founders and (so far) also by global judicial lawmaking: judicial review of Security Council Resolutions.²¹¹ In its famous *Kadi Case*²¹² the European Court of Justice for the first time annulled a

²⁰⁷ Kamminga MT (n 201) para 15. Different principles have been derived from the foundational principles. Relating thereto, one such refined kernel, namely, the ‘effects principle’ is (among others) pertinent to the present case. Basically, it dates back to a dictum of the US federal court stating that ‘any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the state reprehends.’ Nevertheless, legal practice – i.e. states exercising extraterritorial jurisdiction – picks and chooses from the different principles, contingent upon the type of policy they need to justify.

²⁰⁸ The detrimental effects comprised by US Executive Order No. 13846, F.R. 38939 *inter alia* depicted by Section 2 of the latter relate to secondary sanctions regarding foreign financial institutions ‘conducting or facilitating any significant financial transactions with Iran’ – *de facto* coercing banks into dismissing Iran related transactions.

²⁰⁹ For the role of SCRs as sources of international law cf 27-a, for their legally binding character cf n 145.

²¹⁰ Ziegler KS (n 172) 45. (‘international law can be enforced by all mechanisms used to enforce EU law, in particular by national courts, and it will benefit from the doctrine of supremacy of EU law according to which it enjoys a higher rank than member states’ constitutions.’)

²¹¹ Technically, not United Nations Security Council Resolutions *per se* but the European regulation implementing an SCR has been subject to scrutiny by the ECJ.

²¹² Joined Cases C-402/05 P and 415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities* [2008] ECR I-6351. The underlying dispute is as follows: Mr. Yassin Abdullah Kadi (a resident of Saudi Arabia with assets in Sweden) and Al Barakaat (a charitable organization for Somali refugees) were identified as possible supporters of Al-Qaida. Consequently, UN sanctions in form of asset freezes were adopted under Chapter VII of the Charter. The EU transposed the measures laid down by the UNSC by implementing a Regulation, which Mr Kadi and also Al-Barakaat ultimately remedied by attacking it before the EU Courts. Due to the fact that the claimants were named in the Regulation they aimed at respective annulment invoking Article 263 TFEU. Therefore, the General Court had to examine whether the UNSC had possibly infringed *jus cogens* by ignoring fundamental rights. After this had been neglected in the proceedings before the GC in the appellate procedure (before the ECJ) the Court found that the ‘protection of fundamental rights forms part of the very foundations of the Union legal order’ and furthermore stated that ‘[a]ll Union measures must be compatible with fundamental rights.’ However, it must be mentioned that it was clearly evinced that the review of lawfulness would be limited to the enacting legislative act – i.e. the Regulation not the SCR. Ultimately, with regard to the underlying claims, the Court found that the claimants had been

European regulation implementing a UN resolution. It is widely recognised that the case is currently among the leading ones regarding the EU constitutional debate – precisely, pertaining to resolving the question of ‘what the EU is.’²¹³ In conclusion of the proceedings the Advocate General opined that:

*‘if there had been an effective mechanism for judicial control at the level of the UN, then this might have released the Community from the obligation to provide for judicial control.’*²¹⁴

The notion comprised by this statement highlights an increasingly important general aspect of sanctions imposition on a global scale: the importance of regional organizations²¹⁵ *in concreto* the political power they (evidently obtain and) are willing to exercise in absence of global (holistic) mechanisms. Keeping this in mind, the EU’s countermeasures to (unlawful) US unilateral sanctions reimposition – namely, the EUBS – can finally be presented.

iii. Fundamental Features of the Instruments

Concretely, legislation unfolding extraterritorial effects gives the respective legislator the means of ‘punishing or putting pressure on third states to change their conduct.’²¹⁶ This premise was pivotal to the case of implementing US American legislation of 1996 called ‘D’Amato Act’ – but commonly referred to

deprived of the right to judicial review on the grounds that they were included in a list of individuals and entities that are subject to sanctions without being informed concerning the grounds for these actions against them.

²¹³ Nevill P, ‘Interpretation and Review of UN sanctions by European Courts: Comity and Conflict in Larissa van den Herik (ed), *Research Handbook on UN Sanctions and International Law* (Edward Elgar Publishing 2017) 442. (‘Cases about sanctions are often cited for establishing important legal principles in European law. The leading case about damages for losses caused by legislative acts is *Centro-Com* ... The leading case about the principle of equivalence, *Bosphorus*, is about UN FRY sanctions. The leading EU constitutional case on ‘what is the EU?’ following *Van Gen den Loos*, *Les Verts* and *Opinion 1/91* is *Kadi* ... It is no surprise because cases about UN sanctions sit at the intersection of legal systems, rules and values.’)

²¹⁴ Feinäugle C, ‘*Kadi Case*’ in Rüdiger Wolfrum (ed), *MPEPIL*, vol VI (OUP 2012) para 26. (‘This was seen as hinting to the application also to the relationship between the international legal order and the European legal order of the ‘Solange’ idea of the Federal Constitutional Court of Germany on the relationship between the German national level and the EC level in the question of human rights protection. The ECJ would then conduct a full review of regulations based on UN resolutions sanctioning individuals only as long as there is no adequate human rights protection on UN level. But the ECJ did not adopt this formulation in its decision.’)

²¹⁵ Sossai M, ‘UN Sanctions and Regional Organizations: An Analytical Framework’ in Larissa van den Herik (ed), *Research Handbook on UN Sanctions and International Law* (Edward Elgar Publishing 2017) 397. There is no uniform definition of the term ‘regional arrangement or agency’ available, hence – consonant with Article 52 UNC according to legal doctrine and practice – regional shall be interpreted as contingent upon the prerequisite of ‘close and reliable ties among its members, not simply to geographical proximity.’

²¹⁶ Kamminga MT (n 201) para 18. (‘While such economic sanctions may be unproblematic if adopted pursuant to enforcement action taken by the United Nations Security Council they may be controversial if imposed unilaterally.’)

as ‘ILSA’²¹⁷ – starting point for proceedings that resulted in implementing the EUBS.²¹⁸ Essentially, it is considered retaliation for the disastrous event at *Lockerbie*²¹⁹ in 1988 – that had led to multiple civilian casualties due to an airplane crash resulting from a terrorist act perpetrated by Libyan terrorists.²²⁰ Due to the extraterritorial effects emanating from these measures – namely, prescriptive jurisdiction sanctioning foreign entities investing in Iran and Libya – the EU enacted pertinent legislation blocking these effects. Thus, giving birth to the EUBS.²²¹

Before elucidating upon the fundamental features of the Statute, the nature of blocking statutes in general shall be expeditiously delineated. Basically, blocking legislation is a type of countermeasure against unlawful exercise of extraterritorial jurisdiction.²²² Precisely, alike the case of protecting European entities against secondary sanctions by the USA, states can ‘impede the application of the foreign law or award – that is illegal and extraterritorial – in its territory and in relation to its nationals by way of prescriptive countermeasures.’²²³ In clarification of these remarks, the ‘EU position on extraterritoriality’²²⁴ clearly stipulates that in order for the Union to accept extraterritorial effects of foreign legislation it must (1) entail a proper jurisdictional base and (2) not be in conflict with prohibitive principles

²¹⁷ Gilman BA, ‘H.R.3107 - 104th Congress (1995-1996): Iran and Libya Sanctions Act of 1996’ (5 August 1996) <<https://www.congress.gov/bill/104th-congress/house-bill/3107>> accessed 29 March 2019. The Iran and Libya Sanctions Act of 1996 stipulates (in Section 4) ‘U.S. policy with respect to Iran and Libya and urges the President to commence diplomatic efforts with U.S. allies to establish multilateral trade sanctions against Iran, including limiting its development of petroleum resources, in order to end its ability to support acts of international terrorism and efforts to develop or acquire weapons of mass destruction. Requires the President to report periodically to the appropriate congressional committees on the extent of the success of such efforts. Authorizes the President to waive such sanctions if certain requirements are met.’

²¹⁸ Additionally, a few months prior to enacting the ‘ILSA,’ the ‘Helms-Burton Act’ commonly referred to as ‘LIBERTAD’ passed the house – compendiously, it signed off the imposition of economic sanctions against the Castro regime of Cuba cf Burton D, ‘H.R.927 - 104th Congress (1995-1996): Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996’ (12 March 1996) <<https://www.congress.gov/bill/104th-congress/house-bill/927>> accessed 29 March 2019.

²¹⁹ cf n 134.

²²⁰ Lutterotti L von, ‘The US Extraterritorial Sanctions of 1996 and the EU Reaction’ in Stefan Griller (ed), *External Economic Relations and Foreign Policy in the European Union*, vol 20 (Springer 2002) 242. Frankly, by (above all) sanctioning foreign investments in the petroleum industries of Iran and Libya the efficiency of US sanctions against these countries is significantly altered. In justification of these measures comprising extraterritorial effects, the US claimed that providing Iranian and Libyan governments with such funds would ultimately lead to fostering world-wide terrorism, hence, causing detrimental effects globally.

²²¹ cf Council Regulation (EC) 2271/96 OJ L 309/1 and Joint Action 668/96 OJ L309/7.

²²² Kamminga MT (n 201) para 26. Precisely, referred to as ‘blocking statutes,’ these instruments ‘attempt preventing the implementation of extraterritorial legislation by prohibiting compliance with them.’ They do this by either prohibiting the enforcement of judgments, prohibiting co-operation with foreign court proceedings, or providing for the recovery of damages suffered as a result of extraterritorial enforcement measures.

²²³ Ziaee SY, ‘Jurisdictional Countermeasures versus Extraterritoriality in International Law’ (2016) 4 Russian Law Journal 30. (‘One of the most prominent blocking statutes is EU Regulation 2271/96 of 1996 which provides protection against and counteracts the effects of the extraterritorial application of specified laws listed in an annex to the regulation.’)

²²⁴ The official document depicting the EU’s stance on extraterritoriality is referred to as ‘the Comments’ and has been adopted by the COREPER cf ‘European Communities: Comments on the U.S. Regulations concerning Trade with the U.S.S.R.’ (1982) 21 International Legal Materials 891

of general international law.²²⁵ As this criteria was not adhered to by the USA,²²⁶ blocking legislation imposing pertinent blocking effects had been issued accordingly.

Succintly, Council Regulation (EC) 2271/96 and Joint Action 668/96 provided a legal base for neutralising all claims filed under the ILSA and LIBERTAD acts.²²⁷ Suffice it to say that therefore the former CFSP framework must be rudimentarily contextualised before succeeding to analysing the contemporary foundations and concrete amendments to the instruments with regard to the JCPOA. As previously indicated, CFSP has increasingly been subject to European integration by virtue of various treaty amendments of the past. Initially, the relevant provisions for the EUBS at the time were Articles J and K TEU purporting the procedure for Joint Actions; and Articles 73c, 113, and 235 EC Treaty for the legislative procedure of implementing Council Regulations.²²⁸ Notwithstanding their past relevance, these foundations have withered away and are now entailed in Articles 25 TEU and 288 (2) in conjunction with 289 TFEU respectively.²²⁹²³⁰

²²⁵ Lutterotti L von (n 216) pp. 247 et seq. As regards the first aspect the jurisdictional base required must adhere to the principles laid down on jurisdiction by international law, e.g., the ‘effects principle.’ For detailed delineations of the principles cf Dover R and Frosini J, ‘The Extraterritorial Effects of Legislation and Policies in the EU and US’ (Directorate-General for External Policies of the Union) PE 433.701 pp. 9 et seq. Furthermore, the second aspect specifically prohibits infringements of principles of international law *per se*.

²²⁶ *ibid* 257. Both legal acts [the Helms-Burton and the D’Amato Act] had been identified as contrary to international law.

²²⁷ Kern Alexander S, *Economic Sanctions: Law and Public Policy* (Palgrave Macmillan 2009) 247. (‘The EU Regulation prohibited EU nationals and business entities incorporated in the EU from complying with Titles III and IV of the Helms-Burton Act and with the sanction provisions of the Iran/Libya Sanctions Acts and, to the extent that it applies to EU nationals outside US territory, to the Cuban Embargo Regulations. The Regulation authorizes nationals of the European Community states to file actions against the US government for any damages or penalties imposed as a result of the US action. Moreover, the Regulation effectively blocks the recognition and enforcement within the EU of any judgment by a court or tribunal outside the Community which gives effect to the US legislation. It also makes ‘non-compliance with a judgement under the Act obligatory and permits EU persons and companies to recover the amounts obtained by US nationals under Title III of Helms-Burton.’)

²²⁸ Eeckhout P, ‘Common Foreign and Security Policy’, *EU External Relations Law* (2nd edn, OUP 2011) 469. Concerning the first, interestingly, the Treaty did not provide a definition of the concept itself but only the procedure for adopting JAs – resulting in a ‘halfway house between informal co-ordination of policies and the adoption of formal legal instruments with specific legal effects’ because they were generally accepted as binding under international law but no enforcement mechanism was entailed relating to them. As regards the framework for implementing Council Regulations see Witte B de, ‘Legal Instruments, Decision-Making and EU Finances’, *The Law of the European Union and the European Communities* (4th edn, Wolter Kluwer Law & Business 2008) pp. 280.

²²⁹ Eeckhout P, ‘The EU’s Common Foreign and Security Policy after Lisbon: From Pillar Talk to Constitutionalism’, *EU Law After Lisbon* (OUP 2012) pp. 277 et seq. Importantly, *in addendum* to the previous elaborations on decisions (cf 38), it shall be mentioned that replacing joint actions and common positions with the genus of decisions does not imply their distinction by virtue of these new instruments. Precisely, there are decisions of ‘operational action’ and such that ‘define the approach of the Union regarding a particular matter of geographical or thematic nature.’ Moreover, CFSP decisions need to identify the provisions of the TEU they are based on, hence, contributing to a form of survival of joint actions and common positions.

²³⁰ Article 288 (2) TFEU. (‘A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.’) For details on the ordinary legislative procedure, eg., see Craig P, ‘Legal Acts, Hierarchy, and Simplification’ in Paul Craig, *The Lisbon Treaty: Law, Politics, and Treaty Reform* (OUP 2013).

B. Relevance for the JCPOA

Initially, it is important to emphasise that the EU's position is pivotal to sustaining the JCPOA – *in concreto* indicated by the role of High Representative for Foreign Affairs and Security Policy stipulated by the Agreement.²³¹ This position has frequently been subject to clarification by official statements²³² and, above all, the acts 'reviving' the EUBS.²³³ Essentially, the RBS does not change the essential elements of law foreseen by the EUBS, but rather defines 'objectives, content, scope and duration of the underlying provisions,' which is in consonance with the rules regarding implementing and delegating acts conducted by the Commission²³⁴ – these general rules have been laid down as necessary corollary to doctrinal critique concerning the possibility that such acts may run afoul of the principle of subsidiarity.²³⁵ Nevertheless, it must be noted that due to the peculiarities of CFSP, not least owed to the *Treaty of Lisbon*, the pertinent acts fall out of this ordinary examination procedure's scope purported to scrutinize implementing and delegated acts – subsequently, yet again, underpinning the incline in authority that has been conferred upon the Union in matters of CFSP.

In conclusion, the RBS does not change the essential elements of law foreseen by the EUBS, but merely reacts to the contemporary US American measures aiming at coercing economic actors of European provenience into ceasing business operations with Iran. Therefore, the 'revived' Blocking Statute countervails unlawful unilateral US sanctions – that ultimately infringe upon international law *in concreto* the mandatory United Nations Security Council Resolution 2231 – by shielding European natural persons and business entities against measures adversely affecting their lawful endeavours.

²³¹ Meier O and Zamirirad A, 'Die Atomvereinbarung mit Iran: Folgen Für Regionale Sicherheit und Nichtverbreitung' (2015) 70 SWP-Aktuell 8. The inception of the Agreement meant the beginning of a new phase in European CFSP exemplified by the delicate subject of non-proliferation policy, not least derived from the EU's pivotal (first time) role as independent actor in implementing a non-proliferation agreement. What is more, the EU is an independent member of the Joint Commission of the JCPOA, represented by the HR. For the functions entailed in the JC and the HR's position therein cf n 110. For details on the general aspects concerning EU external representation, e.g., cf Dijkstra H and Elsuwege P van, 'Representing the EU in the Area of CFSP: Legal and Political Dynamics' in Steven Blockmans and Panos Koutrakos (eds), *Research Handbook on the EU's Common Foreign and Security Policy* (Edward Elgar Publishing 2018) pp. 44.

²³² E.g., see Council of the EU Press Release 65/19.

²³³ The relevant legislative act reviving the EUBS is Commission Implementing Regulation (EU) 2018/1101. Moreover, Commission Delegated Regulation (EU) 2018/1100 amends the annex of the EUBS comprising necessary adjustment for countervailing contemporary unilateral US sanctions.

²³⁴ For details on the regulatory framework relating thereto see Regulation (EU) 182/2011.

²³⁵ Craig P, *The Lisbon Treaty: Law, Politics, and Treaty Reform* (OUP 2013) 185. ('It should be noted at the outset that the Subsidiarity Protocol only applies to draft legislative acts, and does not cover delegated or implementing acts. It is certainly possible that a detailed delegated act might be felt to infringe subsidiarity, but the Protocol provides no mechanism for checks by national Parliaments on such measures.')

IV. The Joint Comprehensive Plan of Action: A Defunct Agreement?

The IAEA has recently again attested Iran full compliance with the terms laid down in its CSA with the Agency, meaning that the only Party that is to date in breach of its commitments under the JCPOA is the United States of America.²³⁶ Precisely, the agreement requires of exiting Parties issuance of a non-compliance letter to the United Nations Security Council that must be accompanied by proof of good-faith usance of the dispute resolution mechanism entailed by the Agreement – neither of which has been undertaken prior to US unilateral sanction reimposition.²³⁷ Therefore, lest it be that the situation dramatically worsens due to sudden Iranian exit from the Agreement, it is highly unlikely that the JCPOA will wane – not least because High Representative Federica Mogherini declared that ‘as long as Iran continues to implement its nuclear related commitments, the EU will remain committed to the continued and effective implementation of the Agreement,’²³⁸ meaning that the revived blocking Statute will remain in place for the time being, hence, upholding the Joint Comprehensive Plan of Action.

However, from a more general point of view, the underlying notion that sparks off most of contemporary international conflicts, namely, disregard for the tenet that ‘in scarcity each who has equal entitlement is entitled to an equal share’ presumably remains the fundamental problem of our time.²³⁹ Remarkably, the most striking questions relating thereto is how the resources of this earth can be used in a sustainable manner, without intrigues and conflicts (between sovereign equal states) tearing apart entire regions of the world in pursuance of political and/or economic agendas to indulge upon hegemonic aspirations. Relating thereto it shall be mentioned that states are ‘the entities of free will.’²⁴⁰ What is more, strikingly, those who have authorised the formation of states after World War II envisaged ‘their creations’

²³⁶ Joyner DH, ‘Arms Control Law’ (*Arms Control Law*) <<https://armscontrollaw.com>> accessed 25 April 2019. Both, Israel and the USA evidently try to lobby IAEA Director General Amano into re-opening the IAEA assessment of the possible military dimension of Iran’s nuclear program. However, the latest IAEA Director General’s report to the Board of Governors of February 22nd 2019, clearly states full compliance from Iranian side. (cf Appendix C)

²³⁷ Kerr P and Katzman K, ‘Iran Nuclear Agreement and U.S. Exit’ (Congressional Research Service 2018) R43333 25. Officials of the Trump Administration base the justification of US withdrawal on the assumption that the JCPOA is explicitly non-binding and therefore cannot unfold any adverse legal affect to either Party of the Agreement. However, these assumptions wholly disregard the legally binding character conferred upon the provisions of the JCPOA by SCR 2231.

²³⁸ ‘Speech by High Representative/Vice-President Federica Mogherini on the Iran Nuclear Agreement at the European Parliament Plenary Session’ (*EEAS - European External Action Service - European Commission*) <https://eeas.europa.eu/headquarters/headquarters-homepage/46380/speech-high-representativevice-president-federica-mogherini-iran-nuclear-agreement-european_en> accessed 25 April 2019.

²³⁹ Raz J, *The Morality of Freedom* (OUP 2009) 223. However, sadly, this entitlement varies from region to region and people to people – bearing in mind contemporary recurring accretion of racial, religious, and gender discrimination.

²⁴⁰ Hegel GWF, *Vorlesungen über die Philosophie des Rechts: Wintersemester 1821/22*. (Felix Meiner Verlag 2015) 1042. (‘Der Staat ist Dasein des freien Willens, und fragen wir was der freie Wille sei, so muß die Natur des Geistes und seiner Bestimmungen als dies erkannt werden, daß jede Bestimmung die Totalität ist.’)

to be viable and independent, hence, conferring upon these entities the right of self-determination.²⁴¹ This very right to act self-determined is embedded in the purposes of the United Nations and ultimately aims at ‘promoting and encouraging respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language, or religion.’²⁴² In order to achieve these goals, global polity must either try to worsen the situations of the ones more favoured with opportunity, or improve the situations for the ones who are less well-favoured.²⁴³ To my mind, resolving this matter is one of the most important (and equally urgent) tasks of our time. Nonetheless, I am well aware of the fact that the imitator is far from seeing things through – thus, ‘his imitation is more gimmick than earnest.’²⁴⁴ Consequently, and without further ado, I would like to close this thesis with the following statement:

‘With political will, perseverance and through multilateral diplomacy, we can solve the most difficult issues and find practical solutions that are effectively implemented.’²⁴⁵

²⁴¹ Young IM, *Global Challenges: War, Self-Determination and Responsibility for Justice* (Polity Press 2007) 45. (‘For a state to be sovereign or self-determining, and thus to have a right of non-interference, it was thought, it must be large enough to stand against other states if necessary, and have the right amount and kind of resources so that its people can thrive economically without depending on outsiders.’)

²⁴² Lawson E, *Encyclopedia of Human Rights* (2nd edn, Taylor & Francis 1996) xxi.

²⁴³ Nozick R, *Anarchy, State, and Utopia* (Basic Books 1974) 235.

²⁴⁴ Horneffer A, *Platon: Der Staat* (Alfred Kröner Verlag 1973) 333. (‘Also wir sind nun vollkommen einig, daß der Nachahmer so gut wie nichts von der Sache versteht, die er vorführt. Nachahmung ist ein Spiel, nichts Ernstes. Alle aber, die sich in der tragischen Dichtkunst versuchen, sei es in Jamben, sei es in epischen Versen, sind durch und durch Nachahmer.’)

²⁴⁵ Blockmans S and Koutrakos P (eds), ‘Non-Proliferation of Weapons of Mass Destruction’ in *Research Handbook on the EU’s Common Foreign and Security Policy* (Edward Elgar Publishing 2018) 190.

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Appendix A

Joint Comprehensive Plan of Action

Vienna, 14 July 2015

PREFACE

The E3/EU+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy) and the Islamic Republic of Iran welcome this historic Joint Comprehensive Plan of Action (JCPOA), which will ensure that Iran's nuclear programme will be exclusively peaceful, and mark a fundamental shift in their approach to this issue. They anticipate that full implementation of this JCPOA will positively contribute to regional and international peace and security. Iran reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons.

Iran envisions that this JCPOA will allow it to move forward with an exclusively peaceful, indigenous nuclear programme, in line with scientific and economic considerations, in accordance with the JCPOA, and with a view to building confidence and encouraging international cooperation. In this context, the initial mutually determined limitations described in this JCPOA will be followed by a gradual evolution, at a reasonable pace, of Iran's peaceful nuclear programme, including its enrichment activities, to a commercial programme for exclusively peaceful purposes, consistent with international non-proliferation norms.

The E3/EU+3 envision that the implementation of this JCPOA will progressively allow them to gain confidence in the exclusively peaceful nature of Iran's programme. The JCPOA reflects mutually determined parameters, consistent with practical needs, with agreed limits on the scope of Iran's nuclear programme, including enrichment activities and R&D. The JCPOA addresses the E3/EU+3's concerns, including through comprehensive measures providing for transparency and verification.

The JCPOA will produce the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran's nuclear programme, including steps on access in areas of trade, technology, finance, and energy.

PREAMBLE AND GENERAL PROVISIONS

- i. The Islamic Republic of Iran and the E3/EU+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy) have decided upon this long-term Joint Comprehensive Plan of Action (JCPOA). This JCPOA, reflecting a step-by-step approach, includes the reciprocal commitments as laid down in this document and the annexes hereto and is to be endorsed by the United Nations (UN) Security Council.
- ii. The full implementation of this JCPOA will ensure the exclusively peaceful nature of Iran's nuclear programme.
- iii. Iran reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons.
- iv. Successful implementation of this JCPOA will enable Iran to fully enjoy its right to nuclear energy for peaceful purposes under the relevant articles of the nuclear Non-Proliferation Treaty (NPT) in line with its obligations therein, and the Iranian nuclear programme will be treated in the same manner as that of any other non-nuclear-weapon state party to the NPT.
- v. This JCPOA will produce the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran's nuclear programme, including steps on access in areas of trade, technology, finance and energy.
- vi. The E3/EU+3 and Iran reaffirm their commitment to the purposes and principles of the United Nations as set out in the UN Charter.
- vii. The E3/EU+3 and Iran acknowledge that the NPT remains the cornerstone of the nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament and for the peaceful uses of nuclear energy.
- viii. The E3/EU+3 and Iran commit to implement this JCPOA in good faith and in a constructive atmosphere, based on mutual respect, and to refrain from any action inconsistent with the letter, spirit and intent of this JCPOA that would undermine its successful implementation. The E3/EU+3 will refrain from imposing discriminatory regulatory and procedural requirements in lieu of the sanctions and restrictive measures covered by this JCPOA. This JCPOA

builds on the implementation of the Joint Plan of Action (JPOA) agreed in Geneva on 24 November 2013.

- ix. A Joint Commission consisting of the E3/EU+3 and Iran will be established to monitor the implementation of this JCPOA and will carry out the functions provided for in this JCPOA. This Joint Commission will address issues arising from the implementation of this JCPOA and will operate in accordance with the provisions as detailed in the relevant annex.
- x. The International Atomic Energy Agency (IAEA) will be requested to monitor and verify the voluntary nuclear-related measures as detailed in this JCPOA. The IAEA will be requested to provide regular updates to the Board of Governors, and as provided for in this JCPOA, to the UN Security Council. All relevant rules and regulations of the IAEA with regard to the protection of information will be fully observed by all parties involved.
- xi. All provisions and measures contained in this JCPOA are only for the purpose of its implementation between E3/EU+3 and Iran and should not be considered as setting precedents for any other state or for fundamental principles of international law and the rights and obligations under the NPT and other relevant instruments, as well as for internationally recognised principles and practices.
- xii. Technical details of the implementation of this JCPOA are dealt with in the annexes to this document.
- xiii. The EU and E3+3 countries and Iran, in the framework of the JCPOA, will cooperate, as appropriate, in the field of peaceful uses of nuclear energy and engage in mutually determined civil nuclear cooperation projects as detailed in Annex III, including through IAEA involvement.
- xiv. The E3+3 will submit a draft resolution to the UN Security Council endorsing this JCPOA affirming that conclusion of this JCPOA marks a fundamental shift in its consideration of this issue and expressing its desire to build a new relationship with Iran. This UN Security Council resolution will also provide for the termination on Implementation Day of provisions imposed under previous resolutions; establishment of specific restrictions; and conclusion of consideration of the Iran nuclear issue by the UN Security Council 10 years after the Adoption Day.

- xv. The provisions stipulated in this JCPOA will be implemented for their respective durations as set forth below and detailed in the annexes.
- xvi. The E3/EU+3 and Iran will meet at the ministerial level every 2 years, or earlier if needed, in order to review and assess progress and to adopt appropriate decisions by consensus.

Iran and E3/EU+3 will take the following voluntary measures within the timeframe as detailed in this JCPOA and its Annexes

NUCLEAR

A. ENRICHMENT, ENRICHMENT R&D, STOCKPILES

1. Iran's long term plan includes certain agreed limitations on all uranium enrichment and uranium enrichment-related activities including certain limitations on specific research and development (R&D) activities for the first 8 years, to be followed by gradual evolution, at a reasonable pace, to the next stage of its enrichment activities for exclusively peaceful purposes, as described in Annex I. Iran will abide by its voluntary commitments, as expressed in its own long-term enrichment and enrichment R&D plan to be submitted as part of the initial declaration for the Additional Protocol to Iran's Safeguards Agreement.
2. Iran will begin phasing out its IR-1 centrifuges in 10 years. During this period, Iran will keep its enrichment capacity at Natanz at up to a total installed uranium enrichment capacity of 5060 IR-1 centrifuges. Excess centrifuges and enrichment-related infrastructure at Natanz will be stored under IAEA continuous monitoring, as specified in Annex I.
3. Iran will continue to conduct enrichment R&D in a manner that does not accumulate enriched uranium. Iran's enrichment R&D with uranium for 10 years will only include IR-4, IR-5, IR-6 and IR-8 centrifuges as laid out in Annex I, and Iran will not engage in other isotope separation technologies for enrichment of uranium as specified in Annex I. Iran will continue testing IR-6 and IR-8 centrifuges, and will commence testing of up to 30 IR-6 and IR-8 centrifuges after eight and a half years, as detailed in Annex I.
4. As Iran will be phasing out its IR-1 centrifuges, it will not manufacture or assemble other centrifuges, except as provided for in Annex I, and will replace failed centrifuges with centrifuges of the same type. Iran will manufacture advanced centrifuge machines only for the purposes specified in this JCPOA. From the end of the eighth year, and as described in Annex I, Iran will start to manufacture agreed numbers of IR-6 and IR-8 centrifuge machines without rotors and will store all of the manufactured machines at Natanz, under IAEA continuous monitoring until they are needed under Iran's long-term enrichment and enrichment R&D plan.

5. Based on its own long-term plan, for 15 years, Iran will carry out its uranium enrichment-related activities, including safeguarded R&D exclusively in the Natanz Enrichment facility, keep its level of uranium enrichment at up to 3.67%, and, at Fordow, refrain from any uranium enrichment and uranium enrichment R&D and from keeping any nuclear material.
6. Iran will convert the Fordow facility into a nuclear, physics and technology centre. International collaboration including in the form of scientific joint partnerships will be established in agreed areas of research. 1044 IR-1 centrifuges in six cascades will remain in one wing at Fordow. Two of these cascades will spin without uranium and will be transitioned, including through appropriate infrastructure modification, for stable isotope production. The other four cascades with all associated infrastructure will remain idle. All other centrifuges and enrichment-related infrastructure will be removed and stored under IAEA continuous monitoring as specified in Annex I.
7. During the 15 year period, and as Iran gradually moves to meet international qualification standards for nuclear fuel produced in Iran, it will keep its uranium stockpile under 300 kg of up to 3.67% enriched uranium hexafluoride (UF₆) or the equivalent in other chemical forms. The excess quantities are to be sold based on international prices and delivered to the international buyer in return for natural uranium delivered to Iran, or are to be down-blended to natural uranium level. Enriched uranium in fabricated fuel assemblies from Russia or other sources for use in Iran's nuclear reactors will not be counted against the above stated 300 kg UF₆ stockpile, if the criteria set out in Annex I are met with regard to other sources. The Joint Commission will support assistance to Iran, including through IAEA technical cooperation as appropriate, in meeting international qualification standards for nuclear fuel produced in Iran. All remaining uranium oxide enriched to between 5% and 20% will be fabricated into fuel for the Tehran Research Reactor (TRR). Any additional fuel needed for the TRR will be made available to Iran at international market prices.

B. ARAK, HEAVY WATER, REPROCESSING

8. Iran will redesign and rebuild a modernised heavy water research reactor in Arak, based on an agreed conceptual design, using fuel enriched up to 3.67 %, in a form of an international partnership which will certify the final design. The reactor will support peaceful nuclear research and radioisotope production for medical and industrial purposes. The redesigned and rebuilt Arak reactor will not produce

weapons grade plutonium. Except for the first core load, all of the activities for redesigning and manufacturing of the fuel assemblies for the redesigned reactor will be carried out in Iran. All spent fuel from Arak will be shipped out of Iran for the lifetime of the reactor. This international partnership will include participating E3/EU+3 parties, Iran and such other countries as may be mutually determined. Iran will take the leadership role as the owner and as the project manager and the E3/EU+3 and Iran will, before Implementation Day, conclude an official document which would define the responsibilities assumed by the E3/EU+3 participants.

9. Iran plans to keep pace with the trend of international technological advancement in relying on light water for its future power and research reactors with enhanced international cooperation, including assurance of supply of necessary fuel.
10. There will be no additional heavy water reactors or accumulation of heavy water in Iran for 15 years. All excess heavy water will be made available for export to the international market.
11. Iran intends to ship out all spent fuel for all future and present power and research nuclear reactors, for further treatment or disposition as provided for in relevant contracts to be duly concluded with the recipient party.
12. For 15 years Iran will not, and does not intend to thereafter, engage in any spent fuel reprocessing or construction of a facility capable of spent fuel reprocessing, or reprocessing R&D activities leading to a spent fuel reprocessing capability, with the sole exception of separation activities aimed exclusively at the production of medical and industrial radio-isotopes from irradiated enriched uranium targets.

C. TRANSPARENCY AND CONFIDENCE BUILDING MEASURES

13. Consistent with the respective roles of the President and Majlis (Parliament), Iran will provisionally apply the Additional Protocol to its Comprehensive Safeguards Agreement in accordance with Article 17(b) of the Additional Protocol, proceed with its ratification within the timeframe as detailed in Annex V and fully implement the modified Code 3.1 of the Subsidiary Arrangements to its Safeguards Agreement.
14. Iran will fully implement the "Roadmap for Clarification of Past and Present Outstanding Issues" agreed with the IAEA, containing arrangements to address past and present issues of concern relating to its nuclear programme as raised in the annex to the IAEA report of 8 November 2011 (GOV/2011/65). Full implementation

of activities undertaken under the Roadmap by Iran will be completed by 15 October 2015, and subsequently the Director General will provide by 15 December 2015 the final assessment on the resolution of all past and present outstanding issues to the Board of Governors, and the E3+3, in their capacity as members of the Board of Governors, will submit a resolution to the Board of Governors for taking necessary action, with a view to closing the issue, without prejudice to the competence of the Board of Governors.

15. Iran will allow the IAEA to monitor the implementation of the voluntary measures for their respective durations, as well as to implement transparency measures, as set out in this JCPOA and its Annexes. These measures include: a long-term IAEA presence in Iran; IAEA monitoring of uranium ore concentrate produced by Iran from all uranium ore concentrate plants for 25 years; containment and surveillance of centrifuge rotors and bellows for 20 years; use of IAEA approved and certified modern technologies including on-line enrichment measurement and electronic seals; and a reliable mechanism to ensure speedy resolution of IAEA access concerns for 15 years, as defined in Annex I.
16. Iran will not engage in activities, including at the R&D level, that could contribute to the development of a nuclear explosive device, including uranium or plutonium metallurgy activities, as specified in Annex I.
17. Iran will cooperate and act in accordance with the procurement channel in this JCPOA, as detailed in Annex IV, endorsed by the UN Security Council resolution.

SANCTIONS

18. The UN Security Council resolution endorsing this JCPOA will terminate all provisions of previous UN Security Council resolutions on the Iranian nuclear issue - 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010) and 2224 (2015) – simultaneously with the IAEA-verified implementation of agreed nuclear-related measures by Iran and will establish specific restrictions, as specified in Annex V.¹
19. The EU will terminate all provisions of the EU Regulation, as subsequently amended, implementing all nuclear-related economic and financial sanctions, including related designations, simultaneously with the IAEA-verified implementation of agreed nuclear-related measures by Iran as specified in Annex V, which cover all sanctions and restrictive measures in the following areas, as described in Annex II:
- i. Transfers of funds between EU persons and entities, including financial institutions, and Iranian persons and entities, including financial institutions;
 - ii. Banking activities, including the establishment of new correspondent banking relationships and the opening of new branches and subsidiaries of Iranian banks in the territories of EU Member States;
 - iii. Provision of insurance and reinsurance;
 - iv. Supply of specialised financial messaging services, including SWIFT, for persons and entities set out in Attachment 1 to Annex II, including the Central Bank of Iran and Iranian financial institutions;
 - v. Financial support for trade with Iran (export credit, guarantees or insurance);
 - vi. Commitments for grants, financial assistance and concessional loans to the Government of Iran;
 - vii. Transactions in public or public-guaranteed bonds;
 - viii. Import and transport of Iranian oil, petroleum products, gas and petrochemical products;
 - ix. Export of key equipment or technology for the oil, gas and petrochemical sectors;
 - x. Investment in the oil, gas and petrochemical sectors;
 - xi. Export of key naval equipment and technology;

¹ The provisions of this Resolution do not constitute provisions of this JCPOA.

- xii. Design and construction of cargo vessels and oil tankers;
 - xiii. Provision of flagging and classification services;
 - xiv. Access to EU airports of Iranian cargo flights;
 - xv. Export of gold, precious metals and diamonds;
 - xvi. Delivery of Iranian banknotes and coinage;
 - xvii. Export of graphite, raw or semi-finished metals such as aluminum and steel, and export of software for integrating industrial processes;
 - xviii. Designation of persons, entities and bodies (asset freeze and visa ban) set out in Attachment 1 to Annex II; and
 - xix. Associated services for each of the categories above.
20. The EU will terminate all provisions of the EU Regulation implementing all EU proliferation-related sanctions, including related designations, 8 years after Adoption Day or when the IAEA has reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities, whichever is earlier.
21. The United States will cease the application, and will continue to do so, in accordance with this JCPOA of the sanctions specified in Annex II to take effect simultaneously with the IAEA-verified implementation of the agreed nuclear-related measures by Iran as specified in Annex V. Such sanctions cover the following areas as described in Annex II:
- i. Financial and banking transactions with Iranian banks and financial institutions as specified in Annex II, including the Central Bank of Iran and specified individuals and entities identified as Government of Iran by the Office of Foreign Assets Control on the Specially Designated Nationals and Blocked Persons List (SDN List), as set out in Attachment 3 to Annex II (including the opening and maintenance of correspondent and payable through-accounts at non-U.S. financial institutions, investments, foreign exchange transactions and letters of credit);
 - ii. Transactions in Iranian Rial;
 - iii. Provision of U.S. banknotes to the Government of Iran;
 - iv. Bilateral trade limitations on Iranian revenues abroad, including limitations on their transfer;
 - v. Purchase, subscription to, or facilitation of the issuance of Iranian

- sovereign debt, including governmental bonds;
- vi. Financial messaging services to the Central Bank of Iran and Iranian financial institutions set out in Attachment 3 to Annex II;
 - vii. Underwriting services, insurance, or reinsurance;
 - viii. Efforts to reduce Iran's crude oil sales;
 - ix. Investment, including participation in joint ventures, goods, services, information, technology and technical expertise and support for Iran's oil, gas and petrochemical sectors;
 - x. Purchase, acquisition, sale, transportation or marketing of petroleum, petrochemical products and natural gas from Iran;
 - xi. Export, sale or provision of refined petroleum products and petrochemical products to Iran;
 - xii. Transactions with Iran's energy sector;
 - xiii. Transactions with Iran's shipping and shipbuilding sectors and port operators;
 - xiv. Trade in gold and other precious metals;
 - xv. Trade with Iran in graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes;
 - xvi. Sale, supply or transfer of goods and services used in connection with Iran's automotive sector;
 - xvii. Sanctions on associated services for each of the categories above;
 - xviii. Remove individuals and entities set out in Attachment 3 to Annex II from the SDN List, the Foreign Sanctions Evaders List, and/or the Non-SDN Iran Sanctions Act List; and
 - xix. Terminate Executive Orders 13574, 13590, 13622, and 13645, and Sections 5 – 7 and 15 of Executive Order 13628.
22. The United States will, as specified in Annex II and in accordance with Annex V, allow for the sale of commercial passenger aircraft and related parts and services to Iran; license non-U.S. persons that are owned or controlled by a U.S. person to engage in activities with Iran consistent with this JCPOA; and license the importation into the United States of Iranian-origin carpets and foodstuffs.
23. Eight years after Adoption Day or when the IAEA has reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities,

whichever is earlier, the United States will seek such legislative action as may be appropriate to terminate, or modify to effectuate the termination of, the sanctions specified in Annex II on the acquisition of nuclear-related commodities and services for nuclear activities contemplated in this JCPOA, to be consistent with the U.S. approach to other non-nuclear-weapon states under the NPT.

24. The E3/EU and the United States specify in Annex II a full and complete list of all nuclear-related sanctions or restrictive measures and will lift them in accordance with Annex V. Annex II also specifies the effects of the lifting of sanctions beginning on "Implementation Day". If at any time following the Implementation Day, Iran believes that any other nuclear-related sanction or restrictive measure of the E3/EU+3 is preventing the full implementation of the sanctions lifting as specified in this JCPOA, the JCPOA participant in question will consult with Iran with a view to resolving the issue and, if they concur that lifting of this sanction or restrictive measure is appropriate, the JCPOA participant in question will take appropriate action. If they are not able to resolve the issue, Iran or any member of the E3/EU+3 may refer the issue to the Joint Commission.
25. If a law at the state or local level in the United States is preventing the implementation of the sanctions lifting as specified in this JCPOA, the United States will take appropriate steps, taking into account all available authorities, with a view to achieving such implementation. The United States will actively encourage officials at the state or local level to take into account the changes in the U.S. policy reflected in the lifting of sanctions under this JCPOA and to refrain from actions inconsistent with this change in policy.
26. The EU will refrain from re-introducing or re-imposing the sanctions that it has terminated implementing under this JCPOA, without prejudice to the dispute resolution process provided for under this JCPOA. There will be no new nuclear-related UN Security Council sanctions and no new EU nuclear-related sanctions or restrictive measures. The United States will make best efforts in good faith to sustain this JCPOA and to prevent interference with the realisation of the full benefit by Iran of the sanctions lifting specified in Annex II. The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from re-introducing or re-imposing the sanctions specified in Annex II that it has ceased applying under this JCPOA, without prejudice to the dispute resolution process provided for under this JCPOA. The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from imposing new nuclear-related sanctions. Iran has stated that it will treat such a re-introduction or re-imposition of the sanctions

specified in Annex II, or such an imposition of new nuclear-related sanctions, as grounds to cease performing its commitments under this JCPOA in whole or in part.

27. The E3/EU+3 will take adequate administrative and regulatory measures to ensure clarity and effectiveness with respect to the lifting of sanctions under this JCPOA. The EU and its Member States as well as the United States will issue relevant guidelines and make publicly accessible statements on the details of sanctions or restrictive measures which have been lifted under this JCPOA. The EU and its Member States and the United States commit to consult with Iran regarding the content of such guidelines and statements, on a regular basis and whenever appropriate.
28. The E3/EU+3 and Iran commit to implement this JCPOA in good faith and in a constructive atmosphere, based on mutual respect, and to refrain from any action inconsistent with the letter, spirit and intent of this JCPOA that would undermine its successful implementation. Senior Government officials of the E3/EU+3 and Iran will make every effort to support the successful implementation of this JCPOA including in their public statements². The E3/EU+3 will take all measures required to lift sanctions and will refrain from imposing exceptional or discriminatory regulatory and procedural requirements in lieu of the sanctions and restrictive measures covered by the JCPOA.
29. The EU and its Member States and the United States, consistent with their respective laws, will refrain from any policy specifically intended to directly and adversely affect the normalisation of trade and economic relations with Iran inconsistent with their commitments not to undermine the successful implementation of this JCPOA.
30. The E3/EU+3 will not apply sanctions or restrictive measures to persons or entities for engaging in activities covered by the lifting of sanctions provided for in this JCPOA, provided that such activities are otherwise consistent with E3/EU+3 laws and regulations in effect. Following the lifting of sanctions under this JCPOA as specified in Annex II, ongoing investigations on possible infringements of such sanctions may be reviewed in accordance with applicable national laws.
31. Consistent with the timing specified in Annex V, the EU and its Member States will terminate the implementation of the measures applicable to designated entities and individuals, including the Central Bank of Iran and other Iranian banks and financial institutions, as detailed in Annex II and the attachments thereto.

² 'Government officials' for the U.S. means senior officials of the U.S. Administration.

Consistent with the timing specified in Annex V, the United States will remove designation of certain entities and individuals on the Specially Designated Nationals and Blocked Persons List, and entities and individuals listed on the Foreign Sanctions Evaders List, as detailed in Annex II and the attachments thereto.

32. EU and E3+3 countries and international participants will engage in joint projects with Iran, including through IAEA technical cooperation projects, in the field of peaceful nuclear technology, including nuclear power plants, research reactors, fuel fabrication, agreed joint advanced R&D such as fusion, establishment of a state-of-the-art regional nuclear medical centre, personnel training, nuclear safety and security, and environmental protection, as detailed in Annex III. They will take necessary measures, as appropriate, for the implementation of these projects.
33. The E3/EU+3 and Iran will agree on steps to ensure Iran's access in areas of trade, technology, finance and energy. The EU will further explore possible areas for cooperation between the EU, its Member States and Iran, and in this context consider the use of available instruments such as export credits to facilitate trade, project financing and investment in Iran.

IMPLEMENTATION PLAN

34. Iran and the E3/EU+3 will implement their JCPOA commitments according to the sequence specified in Annex V. The milestones for implementation are as follows:

- i. Finalisation Day is the date on which negotiations of this JCPOA are concluded among the E3/EU+3 and Iran, to be followed promptly by submission of the resolution endorsing this JCPOA to the UN Security Council for adoption without delay.
- ii. Adoption Day is the date 90 days after the endorsement of this JCPOA by the UN Security Council, or such earlier date as may be determined by mutual consent of the JCPOA participants, at which time this JCPOA and the commitments in this JCPOA come into effect. Beginning on that date, JCPOA participants will make necessary arrangements and preparations for the implementation of their JCPOA commitments.
- iii. Implementation Day is the date on which, simultaneously with the IAEA report verifying implementation by Iran of the nuclear-related measures described in Sections 15.1. to 15.11 of Annex V, the EU and the United States take the actions described in Sections 16 and 17 of Annex V respectively and in accordance with the UN Security Council resolution, the actions described in Section 18 of Annex V occur at the UN level.
- iv. Transition Day is the date 8 years after Adoption Day or the date on which the Director General of the IAEA submits a report stating that the IAEA has reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities, whichever is earlier. On that date, the EU and the United States will take the actions described in Sections 20 and 21 of Annex V respectively and Iran will seek, consistent with the Constitutional roles of the President and Parliament, ratification of the Additional Protocol.
- v. UN Security Council resolution Termination Day is the date on which the UN Security Council resolution endorsing this JCPOA terminates according to its terms, which is to be 10 years from Adoption Day, provided that the provisions of previous resolutions have not been reinstated. On that date, the EU will take the actions described in Section 25 of Annex V.

35. The sequence and milestones set forth above and in Annex V are without prejudice to the duration of JCPOA commitments stated in this JCPOA.

DISPUTE RESOLUTION MECHANISM

36. If Iran believed that any or all of the E3/EU+3 were not meeting their commitments under this JCPOA, Iran could refer the issue to the Joint Commission for resolution; similarly, if any of the E3/EU+3 believed that Iran was not meeting its commitments under this JCPOA, any of the E3/EU+3 could do the same. The Joint Commission would have 15 days to resolve the issue, unless the time period was extended by consensus. After Joint Commission consideration, any participant could refer the issue to Ministers of Foreign Affairs, if it believed the compliance issue had not been resolved. Ministers would have 15 days to resolve the issue, unless the time period was extended by consensus. After Joint Commission consideration – in parallel with (or in lieu of) review at the Ministerial level – either the complaining participant or the participant whose performance is in question could request that the issue be considered by an Advisory Board, which would consist of three members (one each appointed by the participants in the dispute and a third independent member). The Advisory Board should provide a non-binding opinion on the compliance issue within 15 days. If, after this 30-day process the issue is not resolved, the Joint Commission would consider the opinion of the Advisory Board for no more than 5 days in order to resolve the issue. If the issue still has not been resolved to the satisfaction of the complaining participant, and if the complaining participant deems the issue to constitute significant non-performance, then that participant could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part and/or notify the UN Security Council that it believes the issue constitutes significant non-performance.
37. Upon receipt of the notification from the complaining participant, as described above, including a description of the good-faith efforts the participant made to exhaust the dispute resolution process specified in this JCPOA, the UN Security Council, in accordance with its procedures, shall vote on a resolution to continue the sanctions lifting. If the resolution described above has not been adopted within 30 days of the notification, then the provisions of the old UN Security Council resolutions would be re-imposed, unless the UN Security Council decides otherwise. In such event, these provisions would not apply with retroactive effect to contracts signed between any party and Iran or Iranian individuals and entities prior to the date of application, provided that the activities contemplated under and execution of such contracts are consistent with this JCPOA and the previous and current UN Security Council resolutions. The UN Security Council, expressing its intention to

prevent the reapplication of the provisions if the issue giving rise to the notification is resolved within this period, intends to take into account the views of the States involved in the issue and any opinion on the issue of the Advisory Board. Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part.

United Nations

S/RES/2231 (2015)



Security Council

Distr.: General

20 July 2015

Resolution 2231 (2015)

**Adopted by the Security Council at its 7488th meeting, on
20 July 2015**

The Security Council,

Recalling the Statement of its President, S/PRST/2006/15, and its resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), and 1929 (2010),

Reaffirming its commitment to the Treaty on the Non-Proliferation of Nuclear Weapons, the need for all States Party to that Treaty to comply fully with their obligations, and *recalling* the right of States Party, in conformity with Articles I and II of that Treaty, to develop research, production and use of nuclear energy for peaceful purposes without discrimination,

Emphasizing the importance of political and diplomatic efforts to find a negotiated solution guaranteeing that Iran's nuclear programme is exclusively for peaceful purposes, and *noting* that such a solution would benefit nuclear non-proliferation,

Welcoming diplomatic efforts by China, France, Germany, the Russian Federation, the United Kingdom, the United States, the High Representative of the European Union for Foreign Affairs and Security Policy, and Iran to reach a comprehensive, long-term and proper solution to the Iranian nuclear issue, culminating in the Joint Comprehensive Plan of Action (JCPOA) concluded on 14 July 2015, (S/2015/544, as attached as Annex A to this resolution) and the establishment of the Joint Commission,

Welcoming Iran's reaffirmation in the JCPOA that it will under no circumstances ever seek, develop or acquire any nuclear weapons,

Noting the statement of 14 July 2015, from China, France, Germany, the Russian Federation, the United Kingdom, the United States, and the European Union aimed at promoting transparency and creating an atmosphere conducive to the full implementation of the JCPOA (S/2015/545, as attached as Annex B to this resolution),

Affirming that conclusion of the JCPOA marks a fundamental shift in its consideration of this issue, and *expressing* its desire to build a new relationship with

PREFACE

The E3/EU+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy) and the Islamic Republic of Iran welcome this historic Joint Comprehensive Plan of Action (JCPOA), which will ensure that Iran's nuclear programme will be exclusively peaceful, and mark a fundamental shift in their approach to this issue. They anticipate that full implementation of this JCPOA will positively contribute to regional and international peace and security. Iran reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons.

Iran envisions that this JCPOA will allow it to move forward with an exclusively peaceful, indigenous nuclear programme, in line with scientific and economic considerations, in accordance with the JCPOA, and with a view to building confidence and encouraging international cooperation. In this context, the initial mutually determined limitations described in this JCPOA will be followed by a gradual evolution, at a reasonable pace, of Iran's peaceful nuclear programme, including its enrichment activities, to a commercial programme for exclusively peaceful purposes, consistent with international non-proliferation norms.

The E3/EU+3 envision that the implementation of this JCPOA will progressively allow them to gain confidence in the exclusively peaceful nature of Iran's programme. The JCPOA reflects mutually determined parameters, consistent with practical needs, with agreed limits on the scope of Iran's nuclear programme, including enrichment activities and R&D. The JCPOA addresses the E3/EU+3's concerns, including through comprehensive measures providing for transparency and verification.

The JCPOA will produce the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran's nuclear programme, including steps on access in areas of trade, technology, finance, and energy.

PREAMBLE AND GENERAL PROVISIONS

- i. The Islamic Republic of Iran and the E3/EU+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy) have decided upon this long-term Joint Comprehensive Plan of Action (JCPOA). This JCPOA, reflecting a step-by-step approach, includes the reciprocal commitments as laid down in this document and the annexes hereto and is to be endorsed by the United Nations (UN) Security Council.
- ii. The full implementation of this JCPOA will ensure the exclusively peaceful nature of Iran's nuclear programme.
- iii. Iran reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons.
- iv. Successful implementation of this JCPOA will enable Iran to fully enjoy its right to nuclear energy for peaceful purposes under the relevant articles of the nuclear Non-Proliferation Treaty (NPT) in line with its obligations therein, and the Iranian nuclear programme will be treated in the same manner as that of any other non-nuclear-weapon state party to the NPT.
- v. This JCPOA will produce the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran's nuclear programme, including steps on access in areas of trade, technology, finance and energy.
- vi. The E3/EU+3 and Iran reaffirm their commitment to the purposes and principles of the United Nations as set out in the UN Charter.
- vii. The E3/EU+3 and Iran acknowledge that the NPT remains the cornerstone of the nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament and for the peaceful uses of nuclear energy.
- viii. The E3/EU+3 and Iran commit to implement this JCPOA in good faith and in a constructive atmosphere, based on mutual respect, and to refrain from any action inconsistent with the letter, spirit and intent of this JCPOA that would undermine its successful implementation. The E3/EU+3 will refrain from imposing discriminatory regulatory and procedural requirements in lieu of the sanctions and restrictive measures covered by this JCPOA. This JCPOA

builds on the implementation of the Joint Plan of Action (JPOA) agreed in Geneva on 24 November 2013.

- ix. A Joint Commission consisting of the E3/EU+3 and Iran will be established to monitor the implementation of this JCPOA and will carry out the functions provided for in this JCPOA. This Joint Commission will address issues arising from the implementation of this JCPOA and will operate in accordance with the provisions as detailed in the relevant annex.
- x. The International Atomic Energy Agency (IAEA) will be requested to monitor and verify the voluntary nuclear-related measures as detailed in this JCPOA. The IAEA will be requested to provide regular updates to the Board of Governors, and as provided for in this JCPOA, to the UN Security Council. All relevant rules and regulations of the IAEA with regard to the protection of information will be fully observed by all parties involved.
- xi. All provisions and measures contained in this JCPOA are only for the purpose of its implementation between E3/EU+3 and Iran and should not be considered as setting precedents for any other state or for fundamental principles of international law and the rights and obligations under the NPT and other relevant instruments, as well as for internationally recognised principles and practices.
- xii. Technical details of the implementation of this JCPOA are dealt with in the annexes to this document.
- xiii. The EU and E3+3 countries and Iran, in the framework of the JCPOA, will cooperate, as appropriate, in the field of peaceful uses of nuclear energy and engage in mutually determined civil nuclear cooperation projects as detailed in Annex III, including through IAEA involvement.
- xiv. The E3+3 will submit a draft resolution to the UN Security Council endorsing this JCPOA affirming that conclusion of this JCPOA marks a fundamental shift in its consideration of this issue and expressing its desire to build a new relationship with Iran. This UN Security Council resolution will also provide for the termination on Implementation Day of provisions imposed under previous resolutions; establishment of specific restrictions; and conclusion of consideration of the Iran nuclear issue by the UN Security Council 10 years after the Adoption Day.

- xv. The provisions stipulated in this JCPOA will be implemented for their respective durations as set forth below and detailed in the annexes.
- xvi. The E3/EU+3 and Iran will meet at the ministerial level every 2 years, or earlier if needed, in order to review and assess progress and to adopt appropriate decisions by consensus.

Iran and E3/EU+3 will take the following voluntary measures within the timeframe as detailed in this JCPOA and its Annexes

NUCLEAR

A. ENRICHMENT, ENRICHMENT R&D, STOCKPILES

1. Iran's long term plan includes certain agreed limitations on all uranium enrichment and uranium enrichment-related activities including certain limitations on specific research and development (R&D) activities for the first 8 years, to be followed by gradual evolution, at a reasonable pace, to the next stage of its enrichment activities for exclusively peaceful purposes, as described in Annex I. Iran will abide by its voluntary commitments, as expressed in its own long-term enrichment and enrichment R&D plan to be submitted as part of the initial declaration for the Additional Protocol to Iran's Safeguards Agreement.
2. Iran will begin phasing out its IR-1 centrifuges in 10 years. During this period, Iran will keep its enrichment capacity at Natanz at up to a total installed uranium enrichment capacity of 5060 IR-1 centrifuges. Excess centrifuges and enrichment-related infrastructure at Natanz will be stored under IAEA continuous monitoring, as specified in Annex I.
3. Iran will continue to conduct enrichment R&D in a manner that does not accumulate enriched uranium. Iran's enrichment R&D with uranium for 10 years will only include IR-4, IR-5, IR-6 and IR-8 centrifuges as laid out in Annex I, and Iran will not engage in other isotope separation technologies for enrichment of uranium as specified in Annex I. Iran will continue testing IR-6 and IR-8 centrifuges, and will commence testing of up to 30 IR-6 and IR-8 centrifuges after eight and a half years, as detailed in Annex I.
4. As Iran will be phasing out its IR-1 centrifuges, it will not manufacture or assemble other centrifuges, except as provided for in Annex I, and will replace failed centrifuges with centrifuges of the same type. Iran will manufacture advanced centrifuge machines only for the purposes specified in this JCPOA. From the end of the eighth year, and as described in Annex I, Iran will start to manufacture agreed numbers of IR-6 and IR-8 centrifuge machines without rotors and will store all of the manufactured machines at Natanz, under IAEA continuous monitoring until they are needed under Iran's long-term enrichment and enrichment R&D plan.

5. Based on its own long-term plan, for 15 years, Iran will carry out its uranium enrichment-related activities, including safeguarded R&D exclusively in the Natanz Enrichment facility, keep its level of uranium enrichment at up to 3.67%, and, at Fordow, refrain from any uranium enrichment and uranium enrichment R&D and from keeping any nuclear material.
6. Iran will convert the Fordow facility into a nuclear, physics and technology centre. International collaboration including in the form of scientific joint partnerships will be established in agreed areas of research. 1044 IR-1 centrifuges in six cascades will remain in one wing at Fordow. Two of these cascades will spin without uranium and will be transitioned, including through appropriate infrastructure modification, for stable isotope production. The other four cascades with all associated infrastructure will remain idle. All other centrifuges and enrichment-related infrastructure will be removed and stored under IAEA continuous monitoring as specified in Annex I.
7. During the 15 year period, and as Iran gradually moves to meet international qualification standards for nuclear fuel produced in Iran, it will keep its uranium stockpile under 300 kg of up to 3.67% enriched uranium hexafluoride (UF₆) or the equivalent in other chemical forms. The excess quantities are to be sold based on international prices and delivered to the international buyer in return for natural uranium delivered to Iran, or are to be down-blended to natural uranium level. Enriched uranium in fabricated fuel assemblies from Russia or other sources for use in Iran's nuclear reactors will not be counted against the above stated 300 kg UF₆ stockpile, if the criteria set out in Annex I are met with regard to other sources. The Joint Commission will support assistance to Iran, including through IAEA technical cooperation as appropriate, in meeting international qualification standards for nuclear fuel produced in Iran. All remaining uranium oxide enriched to between 5% and 20% will be fabricated into fuel for the Tehran Research Reactor (TRR). Any additional fuel needed for the TRR will be made available to Iran at international market prices.

B. ARAK, HEAVY WATER, REPROCESSING

8. Iran will redesign and rebuild a modernised heavy water research reactor in Arak, based on an agreed conceptual design, using fuel enriched up to 3.67 %, in a form of an international partnership which will certify the final design. The reactor will support peaceful nuclear research and radioisotope production for medical and industrial purposes. The redesigned and rebuilt Arak reactor will not produce

weapons grade plutonium. Except for the first core load, all of the activities for redesigning and manufacturing of the fuel assemblies for the redesigned reactor will be carried out in Iran. All spent fuel from Arak will be shipped out of Iran for the lifetime of the reactor. This international partnership will include participating E3/EU+3 parties, Iran and such other countries as may be mutually determined. Iran will take the leadership role as the owner and as the project manager and the E3/EU+3 and Iran will, before Implementation Day, conclude an official document which would define the responsibilities assumed by the E3/EU+3 participants.

9. Iran plans to keep pace with the trend of international technological advancement in relying on light water for its future power and research reactors with enhanced international cooperation, including assurance of supply of necessary fuel.
10. There will be no additional heavy water reactors or accumulation of heavy water in Iran for 15 years. All excess heavy water will be made available for export to the international market.
11. Iran intends to ship out all spent fuel for all future and present power and research nuclear reactors, for further treatment or disposition as provided for in relevant contracts to be duly concluded with the recipient party.
12. For 15 years Iran will not, and does not intend to thereafter, engage in any spent fuel reprocessing or construction of a facility capable of spent fuel reprocessing, or reprocessing R&D activities leading to a spent fuel reprocessing capability, with the sole exception of separation activities aimed exclusively at the production of medical and industrial radio-isotopes from irradiated enriched uranium targets.

C. TRANSPARENCY AND CONFIDENCE BUILDING MEASURES

13. Consistent with the respective roles of the President and Majlis (Parliament), Iran will provisionally apply the Additional Protocol to its Comprehensive Safeguards Agreement in accordance with Article 17(b) of the Additional Protocol, proceed with its ratification within the timeframe as detailed in Annex V and fully implement the modified Code 3.1 of the Subsidiary Arrangements to its Safeguards Agreement.
14. Iran will fully implement the "Roadmap for Clarification of Past and Present Outstanding Issues" agreed with the IAEA, containing arrangements to address past and present issues of concern relating to its nuclear programme as raised in the annex to the IAEA report of 8 November 2011 (GOV/2011/65). Full implementation

of activities undertaken under the Roadmap by Iran will be completed by 15 October 2015, and subsequently the Director General will provide by 15 December 2015 the final assessment on the resolution of all past and present outstanding issues to the Board of Governors, and the E3+3, in their capacity as members of the Board of Governors, will submit a resolution to the Board of Governors for taking necessary action, with a view to closing the issue, without prejudice to the competence of the Board of Governors.

15. Iran will allow the IAEA to monitor the implementation of the voluntary measures for their respective durations, as well as to implement transparency measures, as set out in this JCPOA and its Annexes. These measures include: a long-term IAEA presence in Iran; IAEA monitoring of uranium ore concentrate produced by Iran from all uranium ore concentrate plants for 25 years; containment and surveillance of centrifuge rotors and bellows for 20 years; use of IAEA approved and certified modern technologies including on-line enrichment measurement and electronic seals; and a reliable mechanism to ensure speedy resolution of IAEA access concerns for 15 years, as defined in Annex I.
16. Iran will not engage in activities, including at the R&D level, that could contribute to the development of a nuclear explosive device, including uranium or plutonium metallurgy activities, as specified in Annex I.
17. Iran will cooperate and act in accordance with the procurement channel in this JCPOA, as detailed in Annex IV, endorsed by the UN Security Council resolution.

SANCTIONS

18. The UN Security Council resolution endorsing this JCPOA will terminate all provisions of previous UN Security Council resolutions on the Iranian nuclear issue - 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010) and 2224 (2015) – simultaneously with the IAEA-verified implementation of agreed nuclear-related measures by Iran and will establish specific restrictions, as specified in Annex V.¹
19. The EU will terminate all provisions of the EU Regulation, as subsequently amended, implementing all nuclear-related economic and financial sanctions, including related designations, simultaneously with the IAEA-verified implementation of agreed nuclear-related measures by Iran as specified in Annex V, which cover all sanctions and restrictive measures in the following areas, as described in Annex II:
- i. Transfers of funds between EU persons and entities, including financial institutions, and Iranian persons and entities, including financial institutions;
 - ii. Banking activities, including the establishment of new correspondent banking relationships and the opening of new branches and subsidiaries of Iranian banks in the territories of EU Member States;
 - iii. Provision of insurance and reinsurance;
 - iv. Supply of specialised financial messaging services, including SWIFT, for persons and entities set out in Attachment 1 to Annex II, including the Central Bank of Iran and Iranian financial institutions;
 - v. Financial support for trade with Iran (export credit, guarantees or insurance);
 - vi. Commitments for grants, financial assistance and concessional loans to the Government of Iran;
 - vii. Transactions in public or public-guaranteed bonds;
 - viii. Import and transport of Iranian oil, petroleum products, gas and petrochemical products;
 - ix. Export of key equipment or technology for the oil, gas and petrochemical sectors;
 - x. Investment in the oil, gas and petrochemical sectors;
 - xi. Export of key naval equipment and technology;

¹ The provisions of this Resolution do not constitute provisions of this JCPOA.

- xii. Design and construction of cargo vessels and oil tankers;
 - xiii. Provision of flagging and classification services;
 - xiv. Access to EU airports of Iranian cargo flights;
 - xv. Export of gold, precious metals and diamonds;
 - xvi. Delivery of Iranian banknotes and coinage;
 - xvii. Export of graphite, raw or semi-finished metals such as aluminum and steel, and export of software for integrating industrial processes;
 - xviii. Designation of persons, entities and bodies (asset freeze and visa ban) set out in Attachment 1 to Annex II; and
 - xix. Associated services for each of the categories above.
20. The EU will terminate all provisions of the EU Regulation implementing all EU proliferation-related sanctions, including related designations, 8 years after Adoption Day or when the IAEA has reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities, whichever is earlier.
21. The United States will cease the application, and will continue to do so, in accordance with this JCPOA of the sanctions specified in Annex II to take effect simultaneously with the IAEA-verified implementation of the agreed nuclear-related measures by Iran as specified in Annex V. Such sanctions cover the following areas as described in Annex II:
- i. Financial and banking transactions with Iranian banks and financial institutions as specified in Annex II, including the Central Bank of Iran and specified individuals and entities identified as Government of Iran by the Office of Foreign Assets Control on the Specially Designated Nationals and Blocked Persons List (SDN List), as set out in Attachment 3 to Annex II (including the opening and maintenance of correspondent and payable through-accounts at non-U.S. financial institutions, investments, foreign exchange transactions and letters of credit);
 - ii. Transactions in Iranian Rial;
 - iii. Provision of U.S. banknotes to the Government of Iran;
 - iv. Bilateral trade limitations on Iranian revenues abroad, including limitations on their transfer;
 - v. Purchase, subscription to, or facilitation of the issuance of Iranian

- sovereign debt, including governmental bonds;
- vi. Financial messaging services to the Central Bank of Iran and Iranian financial institutions set out in Attachment 3 to Annex II;
 - vii. Underwriting services, insurance, or reinsurance;
 - viii. Efforts to reduce Iran's crude oil sales;
 - ix. Investment, including participation in joint ventures, goods, services, information, technology and technical expertise and support for Iran's oil, gas and petrochemical sectors;
 - x. Purchase, acquisition, sale, transportation or marketing of petroleum, petrochemical products and natural gas from Iran;
 - xi. Export, sale or provision of refined petroleum products and petrochemical products to Iran;
 - xii. Transactions with Iran's energy sector;
 - xiii. Transactions with Iran's shipping and shipbuilding sectors and port operators;
 - xiv. Trade in gold and other precious metals;
 - xv. Trade with Iran in graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes;
 - xvi. Sale, supply or transfer of goods and services used in connection with Iran's automotive sector;
 - xvii. Sanctions on associated services for each of the categories above;
 - xviii. Remove individuals and entities set out in Attachment 3 to Annex II from the SDN List, the Foreign Sanctions Evaders List, and/or the Non-SDN Iran Sanctions Act List; and
 - xix. Terminate Executive Orders 13574, 13590, 13622, and 13645, and Sections 5 – 7 and 15 of Executive Order 13628.
22. The United States will, as specified in Annex II and in accordance with Annex V, allow for the sale of commercial passenger aircraft and related parts and services to Iran; license non-U.S. persons that are owned or controlled by a U.S. person to engage in activities with Iran consistent with this JCPOA; and license the importation into the United States of Iranian-origin carpets and foodstuffs.
23. Eight years after Adoption Day or when the IAEA has reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities,

whichever is earlier, the United States will seek such legislative action as may be appropriate to terminate, or modify to effectuate the termination of, the sanctions specified in Annex II on the acquisition of nuclear-related commodities and services for nuclear activities contemplated in this JCPOA, to be consistent with the U.S. approach to other non-nuclear-weapon states under the NPT.

24. The E3/EU and the United States specify in Annex II a full and complete list of all nuclear-related sanctions or restrictive measures and will lift them in accordance with Annex V. Annex II also specifies the effects of the lifting of sanctions beginning on "Implementation Day". If at any time following the Implementation Day, Iran believes that any other nuclear-related sanction or restrictive measure of the E3/EU+3 is preventing the full implementation of the sanctions lifting as specified in this JCPOA, the JCPOA participant in question will consult with Iran with a view to resolving the issue and, if they concur that lifting of this sanction or restrictive measure is appropriate, the JCPOA participant in question will take appropriate action. If they are not able to resolve the issue, Iran or any member of the E3/EU+3 may refer the issue to the Joint Commission.
25. If a law at the state or local level in the United States is preventing the implementation of the sanctions lifting as specified in this JCPOA, the United States will take appropriate steps, taking into account all available authorities, with a view to achieving such implementation. The United States will actively encourage officials at the state or local level to take into account the changes in the U.S. policy reflected in the lifting of sanctions under this JCPOA and to refrain from actions inconsistent with this change in policy.
26. The EU will refrain from re-introducing or re-imposing the sanctions that it has terminated implementing under this JCPOA, without prejudice to the dispute resolution process provided for under this JCPOA. There will be no new nuclear-related UN Security Council sanctions and no new EU nuclear-related sanctions or restrictive measures. The United States will make best efforts in good faith to sustain this JCPOA and to prevent interference with the realisation of the full benefit by Iran of the sanctions lifting specified in Annex II. The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from re-introducing or re-imposing the sanctions specified in Annex II that it has ceased applying under this JCPOA, without prejudice to the dispute resolution process provided for under this JCPOA. The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from imposing new nuclear-related sanctions. Iran has stated that it will treat such a re-introduction or re-imposition of the sanctions

specified in Annex II, or such an imposition of new nuclear-related sanctions, as grounds to cease performing its commitments under this JCPOA in whole or in part.

27. The E3/EU+3 will take adequate administrative and regulatory measures to ensure clarity and effectiveness with respect to the lifting of sanctions under this JCPOA. The EU and its Member States as well as the United States will issue relevant guidelines and make publicly accessible statements on the details of sanctions or restrictive measures which have been lifted under this JCPOA. The EU and its Member States and the United States commit to consult with Iran regarding the content of such guidelines and statements, on a regular basis and whenever appropriate.
28. The E3/EU+3 and Iran commit to implement this JCPOA in good faith and in a constructive atmosphere, based on mutual respect, and to refrain from any action inconsistent with the letter, spirit and intent of this JCPOA that would undermine its successful implementation. Senior Government officials of the E3/EU+3 and Iran will make every effort to support the successful implementation of this JCPOA including in their public statements². The E3/EU+3 will take all measures required to lift sanctions and will refrain from imposing exceptional or discriminatory regulatory and procedural requirements in lieu of the sanctions and restrictive measures covered by the JCPOA.
29. The EU and its Member States and the United States, consistent with their respective laws, will refrain from any policy specifically intended to directly and adversely affect the normalisation of trade and economic relations with Iran inconsistent with their commitments not to undermine the successful implementation of this JCPOA.
30. The E3/EU+3 will not apply sanctions or restrictive measures to persons or entities for engaging in activities covered by the lifting of sanctions provided for in this JCPOA, provided that such activities are otherwise consistent with E3/EU+3 laws and regulations in effect. Following the lifting of sanctions under this JCPOA as specified in Annex II, ongoing investigations on possible infringements of such sanctions may be reviewed in accordance with applicable national laws.
31. Consistent with the timing specified in Annex V, the EU and its Member States will terminate the implementation of the measures applicable to designated entities and individuals, including the Central Bank of Iran and other Iranian banks and financial institutions, as detailed in Annex II and the attachments thereto.

² 'Government officials' for the U.S. means senior officials of the U.S. Administration.

Consistent with the timing specified in Annex V, the United States will remove designation of certain entities and individuals on the Specially Designated Nationals and Blocked Persons List, and entities and individuals listed on the Foreign Sanctions Evaders List, as detailed in Annex II and the attachments thereto.

32. EU and E3+3 countries and international participants will engage in joint projects with Iran, including through IAEA technical cooperation projects, in the field of peaceful nuclear technology, including nuclear power plants, research reactors, fuel fabrication, agreed joint advanced R&D such as fusion, establishment of a state-of-the-art regional nuclear medical centre, personnel training, nuclear safety and security, and environmental protection, as detailed in Annex III. They will take necessary measures, as appropriate, for the implementation of these projects.
33. The E3/EU+3 and Iran will agree on steps to ensure Iran's access in areas of trade, technology, finance and energy. The EU will further explore possible areas for cooperation between the EU, its Member States and Iran, and in this context consider the use of available instruments such as export credits to facilitate trade, project financing and investment in Iran.

IMPLEMENTATION PLAN

34. Iran and the E3/EU+3 will implement their JCPOA commitments according to the sequence specified in Annex V. The milestones for implementation are as follows:

- i. Finalisation Day is the date on which negotiations of this JCPOA are concluded among the E3/EU+3 and Iran, to be followed promptly by submission of the resolution endorsing this JCPOA to the UN Security Council for adoption without delay.
- ii. Adoption Day is the date 90 days after the endorsement of this JCPOA by the UN Security Council, or such earlier date as may be determined by mutual consent of the JCPOA participants, at which time this JCPOA and the commitments in this JCPOA come into effect. Beginning on that date, JCPOA participants will make necessary arrangements and preparations for the implementation of their JCPOA commitments.
- iii. Implementation Day is the date on which, simultaneously with the IAEA report verifying implementation by Iran of the nuclear-related measures described in Sections 15.1. to 15.11 of Annex V, the EU and the United States take the actions described in Sections 16 and 17 of Annex V respectively and in accordance with the UN Security Council resolution, the actions described in Section 18 of Annex V occur at the UN level.
- iv. Transition Day is the date 8 years after Adoption Day or the date on which the Director General of the IAEA submits a report stating that the IAEA has reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities, whichever is earlier. On that date, the EU and the United States will take the actions described in Sections 20 and 21 of Annex V respectively and Iran will seek, consistent with the Constitutional roles of the President and Parliament, ratification of the Additional Protocol.
- v. UN Security Council resolution Termination Day is the date on which the UN Security Council resolution endorsing this JCPOA terminates according to its terms, which is to be 10 years from Adoption Day, provided that the provisions of previous resolutions have not been reinstated. On that date, the EU will take the actions described in Section 25 of Annex V.

35. The sequence and milestones set forth above and in Annex V are without prejudice to the duration of JCPOA commitments stated in this JCPOA.

DISPUTE RESOLUTION MECHANISM

36. If Iran believed that any or all of the E3/EU+3 were not meeting their commitments under this JCPOA, Iran could refer the issue to the Joint Commission for resolution; similarly, if any of the E3/EU+3 believed that Iran was not meeting its commitments under this JCPOA, any of the E3/EU+3 could do the same. The Joint Commission would have 15 days to resolve the issue, unless the time period was extended by consensus. After Joint Commission consideration, any participant could refer the issue to Ministers of Foreign Affairs, if it believed the compliance issue had not been resolved. Ministers would have 15 days to resolve the issue, unless the time period was extended by consensus. After Joint Commission consideration – in parallel with (or in lieu of) review at the Ministerial level – either the complaining participant or the participant whose performance is in question could request that the issue be considered by an Advisory Board, which would consist of three members (one each appointed by the participants in the dispute and a third independent member). The Advisory Board should provide a non-binding opinion on the compliance issue within 15 days. If, after this 30-day process the issue is not resolved, the Joint Commission would consider the opinion of the Advisory Board for no more than 5 days in order to resolve the issue. If the issue still has not been resolved to the satisfaction of the complaining participant, and if the complaining participant deems the issue to constitute significant non-performance, then that participant could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part and/or notify the UN Security Council that it believes the issue constitutes significant non-performance.
37. Upon receipt of the notification from the complaining participant, as described above, including a description of the good-faith efforts the participant made to exhaust the dispute resolution process specified in this JCPOA, the UN Security Council, in accordance with its procedures, shall vote on a resolution to continue the sanctions lifting. If the resolution described above has not been adopted within 30 days of the notification, then the provisions of the old UN Security Council resolutions would be re-imposed, unless the UN Security Council decides otherwise. In such event, these provisions would not apply with retroactive effect to contracts signed between any party and Iran or Iranian individuals and entities prior to the date of application, provided that the activities contemplated under and execution of such contracts are consistent with this JCPOA and the previous and current UN Security Council resolutions. The UN Security Council, expressing its intention to

prevent the reapplication of the provisions if the issue giving rise to the notification is resolved within this period, intends to take into account the views of the States involved in the issue and any opinion on the issue of the Advisory Board. Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part.

Appendix C



Board of Governors

GOV/2019/10

Date: 22 February 2019

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Item 5 of the provisional agenda
(GOV/2019/11)

Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231 (2015)

Report by the Director General

A. Introduction

1. This report of the Director General to the Board of Governors and, in parallel, to the United Nations Security Council (Security Council), is on the Islamic Republic of Iran's (Iran's) implementation of its nuclear-related commitments under the Joint Comprehensive Plan of Action (JCPOA) and on matters related to verification and monitoring in Iran in light of Security Council resolution 2231 (2015). It also provides information on financial matters, and the Agency's consultations and exchanges of information with the Joint Commission, established by the JCPOA.

B. Background

2. On 14 July 2015, China, France, Germany, the Russian Federation, the United Kingdom, the United States of America,¹ with the High Representative of the European Union for Foreign Affairs and Security Policy (E3/EU+3) and Iran agreed on the JCPOA. On 20 July 2015, the Security Council adopted resolution 2231 (2015), in which, inter alia, it requested the Director General to "undertake the necessary verification and monitoring of Iran's nuclear-related commitments for the full duration of those commitments under the JCPOA" (GOV/2015/53 and Corr. 1, para. 8). In August 2015, the Board of Governors authorized the Director General to implement the necessary verification and monitoring

¹ On 8 May 2018, the President of the United States of America, Donald Trump, announced that the "United States will withdraw from the Iran nuclear deal", 'Remarks by President Trump on the Joint Comprehensive Plan of Action', at: <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-joint-comprehensive-plan-action/>.

of Iran's nuclear-related commitments as set out in the JCPOA, and report accordingly, for the full duration of those commitments in light of Security Council resolution 2231 (2015), subject to the availability of funds and consistent with the Agency's standard safeguards practices. The Board of Governors also authorized the Agency to consult and exchange information with the Joint Commission, as set out in GOV/2015/53 and Corr. 1.

3. In December 2016 and January 2017, the Director General shared with Member States nine documents,² developed and endorsed by all participants of the Joint Commission, providing clarifications for the implementation of Iran's nuclear-related measures as set out in the JCPOA for its duration.³

4. The estimated cost to the Agency for the implementation of Iran's Additional Protocol and for verifying and monitoring Iran's nuclear-related commitments as set out in the JCPOA is €9.2 million per annum. For 2019, extrabudgetary funding is necessary for €4.0 million of the €9.2 million.⁴ As of 20 February 2019, €3.1 million of extrabudgetary funding was available to meet the cost of JCPOA-related activities for 2019 and beyond.

C. JCPOA Verification and Monitoring Activities

5. Since 16 January 2016 (JCPOA Implementation Day), the Agency has verified and monitored Iran's implementation of its nuclear-related commitments in accordance with the modalities set out in the JCPOA,⁵ consistent with the Agency's standard safeguards practices, and in an impartial and objective manner.^{6,7} The Agency reports the following for the period since the issuance of the Director General's previous quarterly report.⁸

C.1. Activities Related to Heavy Water and Reprocessing

6. Iran has not pursued the construction of the Arak heavy water research reactor (IR-40 Reactor) based on its original design.^{9,10} Iran has not produced or tested natural uranium pellets, fuel pins or fuel assemblies specifically designed for the support of the IR-40 Reactor as originally designed, and all existing natural uranium pellets and fuel assemblies have remained in storage under continuous Agency monitoring (paras 3 and 10).¹¹

² Reproduced in INFCIRC/907 and INFCIRC/907/Add.1.

³ GOV/2017/10, para. 3.

⁴ The cost of the provisional application of Iran's Additional Protocol (€3.0 million) and €2.2 million for the inspector costs related to the verification and monitoring of Iran's nuclear-related commitments as set out in the JCPOA are being met from the regular budget (GC(60)/2).

⁵ Including the clarifications referred to in para. 3 of this report.

⁶ GOV/2016/8, para. 6.

⁷ Note by the Secretariat, 2016/Note 5.

⁸ GOV/2018/47.

⁹ The calandria was removed from the reactor and rendered inoperable during preparation for Implementation Day and has been retained in Iran (GOV/INF/2016/1, Arak heavy water research reactor, paras 3(ii) and 3(iii)).

¹⁰ As indicated previously (GOV/2017/24, footnote 10), Iran has changed the name of the facility to the Khondab Heavy Water Research Reactor.

¹¹ The paragraph references in parentheses throughout Sections C and D of this report correspond to the paragraphs of 'Annex I – Nuclear-related measures' of the JCPOA.

7. Iran has continued to inform the Agency about the inventory of heavy water in Iran and the production of heavy water at the Heavy Water Production Plant (HWPP)¹² and allowed the Agency to monitor the quantities of Iran's heavy water stocks and the amount of heavy water produced at the HWPP (para. 15). On 16 February 2019, the Agency verified that the plant was in operation and that Iran's stock of heavy water was 124.8 metric tonnes.¹³ Throughout the reporting period, Iran had no more than 130 metric tonnes of heavy water (para. 14).

8. Iran has not carried out activities related to reprocessing at the Tehran Research Reactor (TRR) and the Molybdenum, Iodine and Xenon Radioisotope Production (MIX) Facility or at any of the other facilities it has declared to the Agency (paras 18 and 21).¹⁴

C.2. Activities Related to Enrichment and Fuel

9. At the Fuel Enrichment Plant (FEP) at Natanz, there have been no more than 5060 IR-1 centrifuges installed in 30 cascades, which remain in the configurations in the operating units at the time the JCPOA was agreed (para. 27). Iran has not withdrawn any IR-1 centrifuges from those held in storage¹⁵ for the replacement of damaged or failed IR-1 centrifuges installed at FEP (para. 29.1).

10. Iran has continued the enrichment of UF₆ at FEP.¹⁶ Iran has not enriched uranium above 3.67% U-235 (para. 28).

11. Throughout the reporting period, Iran's total enriched uranium stockpile has not exceeded 300 kg of UF₆ enriched up to 3.67% U-235 (or the equivalent in different chemical forms) (para. 56). The quantity of 300 kg of UF₆ corresponds to 202.8 kg of uranium.¹⁷

12. As of 16 February 2019, the quantity of Iran's uranium enriched up to 3.67% U-235 was 163.8 kg,¹⁸ based on the JCPOA and decisions of the Joint Commission.¹⁹

13. At the Fordow Fuel Enrichment Plant (FFEP), no more than 1044 IR-1 centrifuges have been maintained in one wing (Unit 2) of the facility (para. 46). On 19 February 2019, the Agency verified that 1020 IR-1 centrifuges were installed in six cascades. On the same date, the Agency also verified that ten IR-1 centrifuges were installed in a layout of 16 IR-1 centrifuge positions²⁰ and one IR-1

¹² HWPP is a facility for the production of heavy water which, according to the design information provided by Iran to the Agency on 25 January 2016, has a nominal capacity of 16 tonnes of nuclear-grade heavy water per year and an actual capacity of "about 20 tonnes" of nuclear-grade heavy water per year. Iran informed the Agency, in a letter dated 18 June 2017, that the "maximum annual capacity of the Heavy Water Production Plant (HWPP) is 20 Tons".

¹³ On 16 February 2019, the Agency confirmed that, since the Director General's previous report, 1.0 metric tonnes of heavy water had been shipped out of Iran and Iran had used 1.4 metric tonnes of heavy water for research and development (R&D) activities related to the production of deuterated compounds for medical applications. These R&D activities were conducted under continuous monitoring by the Agency.

¹⁴ Including hot cells at TRR and the MIX facility and shielded cells, referred to in the decision of the Joint Commission of 14 January 2016 (INFCIRC/907).

¹⁵ Para. 14 of this report.

¹⁶ Under the JCPOA, "[f]or 15 years the Natanz enrichment site will be the sole location for all of Iran's uranium enrichment related activities including safeguarded R&D" (para. 72).

¹⁷ Considering the standard atomic weight of uranium and fluorine.

¹⁸ Comprising 139.8 kg of uranium in the form of UF₆; 10.4 kg of uranium in the form of uranium oxides and their intermediate products; 4.3 kg of uranium in fuel assemblies and rods; and 9.3 kg of uranium in liquid and solid scrap.

¹⁹ Decisions of the Joint Commission of 6 January 2016 and 18 December 2016 (INFCIRC/907), and 10 January 2017 (INFCIRC/907/Add.1).

²⁰ GOV/2017/48, footnote 20.

centrifuge was installed in a single position,²¹ for the purpose of conducting “initial research and R&D activities related to stable isotope production”.^{22,23} Throughout the reporting period, Iran has not conducted any uranium enrichment or related research and development (R&D) activities, and there has not been any nuclear material at the plant (para. 45).

14. All centrifuges and associated infrastructure in storage have remained under continuous Agency monitoring (paras 29, 47, 48 and 70).²⁴ The Agency has continued to have regular access to relevant buildings at Natanz, including all of FEP and the Pilot Fuel Enrichment Plant (PFEP), and performed daily access upon Agency request (para. 71). The Agency has also continued to have regular access to FFEP, including daily access upon Agency request (para. 51).

15. Iran has conducted its enrichment activities in line with its long-term enrichment and R&D enrichment plan, as provided to the Agency on 16 January 2016 (para. 52).

16. On 16 February 2019, the Agency verified that all irradiated TRR fuel elements in Iran have a measured dose rate of no less than 1 rem/hour (at one metre in air).

17. Iran has not operated any of its declared facilities for the purpose of re-converting fuel plates or scrap into UF₆, nor has it informed the Agency that it has built any new facilities for such a purpose (para. 58).

C.3. Centrifuge Research & Development, Manufacturing and Inventory

18. No enriched uranium has been accumulated through enrichment R&D activities, and Iran’s enrichment R&D with and without uranium has been conducted using centrifuges within the limits defined in the JCPOA (paras 32–42).

19. Iran has provided declarations to the Agency of its production and inventory of centrifuge rotor tubes and bellows and permitted the Agency to verify the items in the inventory (para. 80.1). The Agency has conducted continuous monitoring, including through the use of containment and surveillance measures, and verified that the declared equipment has been used for the production of rotor tubes and bellows to manufacture centrifuges only for the activities specified in the JCPOA (para. 80.2). Iran has not produced any IR-1 centrifuges to replace those that have been damaged or failed (para. 62).

20. All declared rotor tubes, bellows and rotor assemblies have been under continuous monitoring by the Agency, including those rotor tubes and bellows manufactured since Implementation Day (para. 70). Iran has manufactured rotor tubes using carbon fibre that has been sampled and tested by the Agency, all of which has been subject to Agency containment and surveillance measures.^{25,26}

²¹ On 29 January 2018, Iran provided the Agency with updated design information for FFEP, which included a temporary setup for a single IR-1 centrifuge position for “separation of stable isotopes” in Unit 2.

²² GOV/2016/46, para. 12.

²³ On 19 February 2019, 13 IR-1 centrifuges were not installed and were stored within the facility under Agency monitoring.

²⁴ On 26 November 2018, the Agency verified that during this reporting period Iran had removed two IR-1 centrifuge rotors from storage at FEP to a declared centrifuge manufacturing facility that is subject to Agency monitoring, for the purpose of testing such rotors for stable isotope production.

²⁵ Decision of the Joint Commission of 14 January 2016 (INFCIRC/907).

²⁶ GOV/2016/46, para. 18.

D. Transparency Measures

21. Iran has continued to permit the Agency to use on-line enrichment monitors and electronic seals which communicate their status within nuclear sites to Agency inspectors, and to facilitate the automated collection of Agency measurement recordings registered by installed measurement devices (para. 67.1). Iran has issued long-term visas to Agency inspectors designated for Iran as requested by the Agency, provided proper working space for the Agency at nuclear sites and facilitated the use of working space at locations near nuclear sites in Iran (para. 67.2).

22. Iran has continued to permit the Agency to monitor – through measures agreed with Iran, including containment and surveillance measures – that all uranium ore concentrate (UOC) produced in Iran or obtained from any other source is transferred to the Uranium Conversion Facility (UCF) at Esfahan (para. 68). Iran also provided the Agency with all information necessary to enable the Agency to verify the production of UOC and the inventory of UOC produced in Iran or obtained from any other source (para. 69).

E. Other Relevant Information

23. Iran continues to provisionally apply the Additional Protocol to its Safeguards Agreement in accordance with Article 17(b) of the Additional Protocol, pending its entry into force. The Agency has continued to evaluate Iran's declarations under the Additional Protocol, and has conducted complementary accesses under the Additional Protocol to all the sites and locations in Iran which it needed to visit. Timely and proactive cooperation by Iran in providing such access facilitates implementation of the Additional Protocol and enhances confidence.

24. The Agency's verification and monitoring of Iran's other JCPOA nuclear-related commitments continues, including those set out in Sections D, E, S and T of Annex I of the JCPOA.

25. During this reporting period, the Agency has not attended meetings of the Procurement Working Group of the Joint Commission (JCPOA, Annex IV – Joint Commission, para. 6.4.6).

F. Summary

26. The Agency continues to verify the non-diversion of declared nuclear material at the nuclear facilities and locations outside facilities where nuclear material is customarily used (LOFs) declared by Iran under its Safeguards Agreement. Evaluations regarding the absence of undeclared nuclear material and activities for Iran remained ongoing.

27. Since Implementation Day, the Agency has been verifying and monitoring the implementation by Iran of its nuclear-related commitments under the JCPOA.

28. The Director General will continue to report as appropriate.

Abstract

In dieser Masterarbeit wird der „Joint Comprehensive Plan of Action“ bzw. die Risiken eines Scheiterns der in der Vereinbarung niedergelegten Bestimmungen analysiert. Ziel des JCPOA ist es der Islamischen Republik Iran Anreize zu geben um – von sich aus – die potenziell auf die Erzeugung von Kernwaffen abstellenden Teile ihres Atomprogramms einzustellen. Das „Atomabkommen“ wurde zwischen den E3+3 und dem Iran geschlossen und sieht detaillierte Regelungen vor, die die Zielerreichung sicherstellen sollen. Zum Einen ist darin niedergelegt, dass jegliche multi- und unilaterale Wirtschaftssanktionen die im Verlauf der letzten Jahrzehnte gegen den Iran erlassen wurden sukzessive aufgehoben werden. Zum Anderen ist die Bedingung für diese wirtschaftliche Reintegration des Irans primär, dass auf die Anreicherung von Uran über einen gewissen Schwellenwert verzichtet wird und zusätzlich von der Erzeugung anderer –für die Herstellung von Atombomben essenzieller – Bestandteile des nuklearen Brennstoffkreislaufs Abstand genommen wird.

Da die gründliche aber vor allem seriöse Behandlung des Stoffes der Auseinandersetzung mit wichtigen Grundsätzen des Völkerrechts bedarf, wird zunächst auf einschlägige Elemente eingegangen. Vor allem die Kontextualisierung des modernen Verständnisses von Souveränität – sowie dessen historische Grundlagen – soll dabei hervorgehoben werden. Danach werden die Meilensteine der diplomatischen Verhandlungen im Vorfeld zum Abschluss des JCPOA skizziert um im Anschluss daran eine völkerrechtliche Einordnung des „Atomabkommens“ zu treffen. Diesbezüglich ist besonders die Relevanz der UN Sicherheitsratsresolution 2231 hervorzuheben, die den Bestimmungen letztendlich rechtsverbindlichen Charakter verleiht. Des Weiteren wird auf die grundsätzliche Rolle dieser Rechtsinstrumente im Bereich der internationalen Beziehungen eingegangen.

Im vorletzten Teil der Arbeit wird zunächst auf die Veränderungen der EU GASP im Zuge des Vertrags von Lissabon eingegangen, die eine kohärente Gegenüberstellung der 1996 erlassenen „EU Blocking Statute“ mit ihrem (wiederbelebten) zeitgenössischen Pendant ermöglicht. Dabei wird detailliert auf den Stellenwert einer vollwertigen gemeinsamen europäischen Außen- und Sicherheitspolitik eingegangen. Die Erläuterungen bezüglich dieser (bereits erfolgten) Aufwertung dient als Fundament für die Umschreibung der Kernelemente der Instrumente. Hierbei wird vor allem analysiert wie die EUBS die nachteilige extraterritoriale Wirkung unilateraler Wirtschaftssanktionen anderer Staaten neutralisiert um die legitimen, wirtschaftlichen Interessen von Entitäten europäischer Provenienz zu schützen.

Abschließend wird hinsichtlich des außerplanmäßigen Austritts der Vereinigten Staaten von Amerika aus dem Abkommen eine Prognose zum Fortbestandes des JCPOA gegeben und die Meinung des Autors präsentiert.