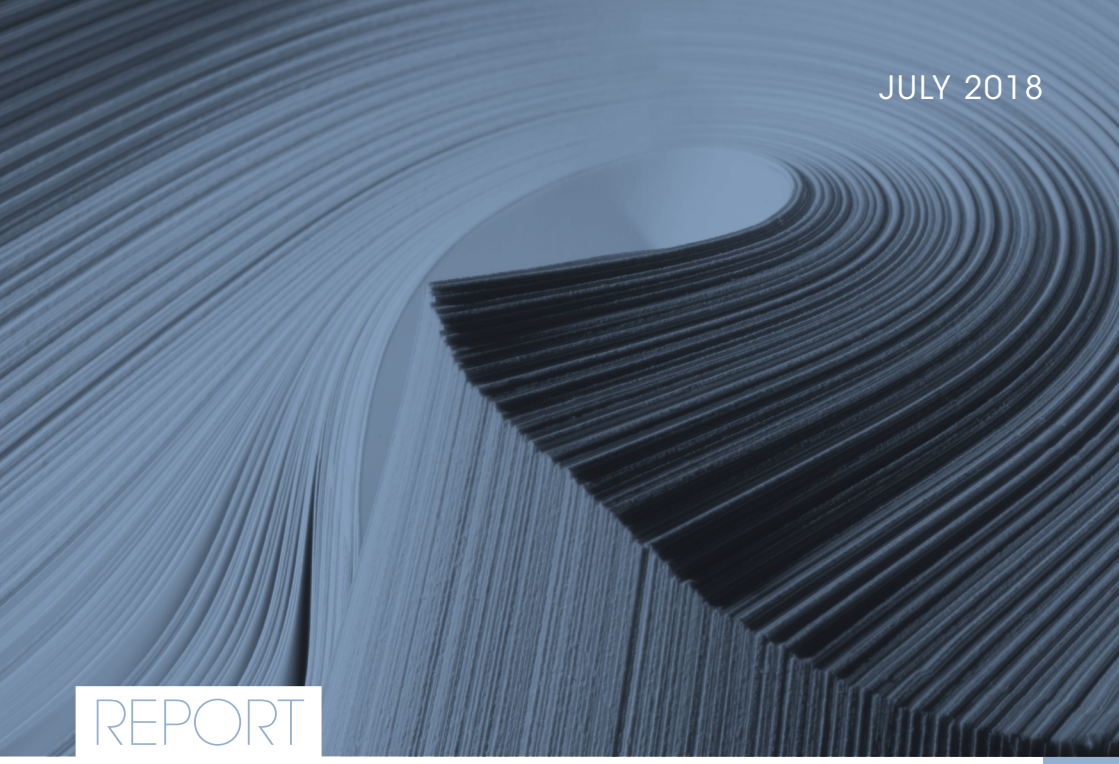

JULY 2018

REPORT

THE AMERICAN WITHDRAWAL FROM THE VIENNA AGREEMENT ON THE IRAN NUCLEAR PROGRAMME: A CONTRASTING LEGAL SITUATION

Work group chaired by
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le club des juristes

AD HOC COMMISSION

THE AMERICAN WITHDRAWAL FROM THE VIENNA AGREEMENT ON THE IRAN NUCLEAR PROGRAMME: A CONTRASTING LEGAL SITUATION

REPORT OF THE CLUB DES JURISTES

Ad hoc commission

JULY 2018

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Table of contents

Foreword

Delphine O and Philippe Bonnecarrère

In an international context marked by increasing uncertainty and instability with respect to relations between states, it is more than ever necessary to return to international law as it defines and provides a framework for these relations. The specific example of the American withdrawal from the Joint Comprehensive Plan of Action (the JCPOA), agreement between the P5+1 and Iran, confirmed by the announcement of President Donald Trump on May 8th of this year, provides us with additional proof. When a major player in international relations thus decides to withdraw from a commitment that it had voluntarily agreed to, and which bears the seal of the international community in the form of a UN resolution, the law provides a resource and compass for the other states, which enables them to envisage the available responses faced with an unprecedented decision.

That is the point of the report by the Iran Commission of the Club des Juristes, which outlines the legal framework in which the Vienna agreement was concluded and provides a series of possible reactions to the withdrawal of the United States from this agreement. Whether it is the International Court of Justice, the World Trade Organization or the European Union's blocking statute, it should be noted that in all cases these reactions involve multilateral institutions, and the American attitude underlines both their fragility and the need to reinforce them.

But policy must extend beyond the legal framework on which it is based. The turmoil caused by the American withdrawal from the JCPOA and the threat of extraterritorial sanctions being applied to European companies – which, conversely, comply with the law – highlights the absence of European mechanisms, both economic and legal, which would enable them to resist the American pressure. Without strong political will on the part of

the European Union member states to obtain such mechanisms, either by reinforcing what exists or quite simply by inventing new ones, the power balance will continue to see the Old Continent at a disadvantage. Our sovereignty itself is at stake in the European response to the American threats of sanctions. Without provoking a trade war, which would harm the economic interests of both sides of the Atlantic, it is more than high time for Europe to restore balance to the power relationship with the United States and to provide itself with the instruments that are essential for exercising sovereignty.

Delphine O, Deputy, Chair of the France-Iran Friendship Group in the French National Assembly

Philippe Bonnecarrère, Senator, Chair of the France-Iran Friendship Group in the French Senate

Preface

Bernard Stirn

Signed on July 14th, 2015, by Iran, the five permanent members of the Security Council and the European Union, the Vienna agreement opened the door to Iran's return to the concert of nations and to consideration of Iran economic prospects in light of its great potential. The unilateral withdrawal of the United States from this agreement, announced in May 2018 by President Donald Trump, compromises hopes and weakens the projects that the Vienna agreement had given rise to and which had begun, albeit timidly.

The resulting legal situation is highly confusing. The other signatory states and the European Union have declared that they are still bound by the Vienna agreement. A United Nations Security Council resolution and a European Union regulation, which remain applicable, have been passed to ensure its enforcement.

Such a confusing situation requires precise and solid legal analysis. That is what the Iran Commission of the Club des Juristes has attempted to do, under the joint leadership of the French former Minister of Justice, Dominique Perben, and Louis de Gaulle. Even if, as the title of the report indicates, "the role of the Club des Juristes is not to be political, even less geopolitical", specifying current law, formulating the questions that arise therefrom and exploring future options are, on the other hand, part of the Club's remit.

In a dense and precise report, the Commission reviews all of the data available on the subject. Without having too many illusions concerning their effectiveness, it surveys the possible responses via the UN, the World Trade Organization and national courts, in particular in France, concerning the strict liability of the state. It highlights the questions arising from the extraterritorial dimension, which is being asserted more and more, of the rule of law and the associated sanctions.

The report helps respond to the questions that many companies are confronted with today in the execution of previously concluded contracts and previously prepared projects. It opens paths that show to what extent openness, understanding and dialogue are preferable to withdrawal, intolerance and isolation. In this regard it shares the hope that Iran, which also has to make progress with regard to respecting universal values, will continue to advance toward peaceful and fruitful relations with the entire international community.

"Although born in a prosperous realm, we did not believe that its boundaries should limit our knowledge, and that the lore of the East should alone enlighten us" says Usbek in one of the *Persian Letters*. May this phrase, published by Montesquieu in 1721, continue to inspire, three centuries later, and for the benefit of all, discussion between Iran and the other countries.

Bernard Stirn, Section President at the French Council of State, member of the Club des Juristes

Summary

"The withdrawal of the United States from the Vienna agreement on the Iranian nuclear programme: a contrasting legal situation"

On July 14th 2015 in Vienna, Iran, the five members of the UN Security Council (China, the United States, the Russian Federation, France and the United Kingdom), Germany and the European Union reached an agreement aimed at guaranteeing the exclusively peaceful nature of Iran's nuclear programme, through the implementation of a Joint Comprehensive Plan Of Action (JCPOA).

This agreement, concluded for a period of 10 years, raised great hopes concerning the development of economic relations with Iran, a key country in the Middle East lying astride the Silk Road to Asia, whose population of 80 million inhabitants has an exceptionally high level of education and which has significant natural resources.

In exchange for Iran's commitments, the other signatory countries agreed to suspend the economic sanctions imposed on Iran so that it could once again trade on the international markets. As a result, the European Union lifted most of the nuclear-related economic and financial sanctions that it had imposed on Iran. Where the Americans were concerned, sanctions affecting non-Americans conducting certain activities in relation to Iran (so-called "secondary" sanctions) were also lifted ("primary" sanctions were maintained, however, as specified in the Vienna agreement; these primary sanctions had been implemented after the Islamic revolution, and in general forbid "American persons" from importing or exporting goods, technology and services from and to Iran, as well as having any relations with the Iranian government).

The 2015 Vienna agreement raised real hopes and relaunched economic discussion between Iran and the rest of the world, including Europe. This economic development nonetheless remained limited, essentially due to the reluctance of the international banking system to engage with Iran, and also due to the inability of the Iranians to reform their banking system and to end the economic abuses of the Revolutionary Guards or the "foundations".

Even if it has not kept all of its promises and has generated a certain frustration among Iranian authorities and the economic circles, which estimates that the occidental countries have not honoured their obligations by not providing the expected economic compensation, it cannot be denied that international economic relations with Iran have developed considerably following the signing of the Vienna agreement, and many international companies, in particular French, have invested in projects with and in Iran.

In this context, the American withdrawal from the Vienna agreement in May 2018 constitutes a sufficiently serious event, with an impact that was immediately felt in Iran and by the projects conducted by French and European companies, so that the Commission of the Club des Juristes in charge of studying business law in Iran focus on this issue.

The obvious consequence of the American withdrawal from the Vienna agreement is the announced progressive re-establishment of secondary American extraterritorial sanctions, with some taking effect on August 7th, 2018 (banning the Iranian government from using the dollar, banning trade in gold and some other metals and minerals – aluminium, steel, coal, and the automobile sector), and the rest on November 5th, 2018 (the maritime, transport, oil and energy, financial, banking and insurance sectors).

The unilateral re-imposition of these American extraterritorial sanctions constitutes a threat that is sufficiently significant for European companies trading with Iran that many of them have decided to halt their dealings with their Iranian partners and to stop investing in Iran. The risk of American penalties is obviously having a major impact on the decision by companies to leave Iran.

The Club des Juristes examined if the analysis should stops at this threat, whereas it would seem that the American initiative is unilateral while the Vienna agreement is multilateral. Iran, the Russian Federation, China, France, Germany and more generally the European Union have affirmed their sovereignty by deciding to continue to respect the agreement, which continues to have legal effect. In the same way, the UN resolutions have remained unchanged following the withdrawal of the United States. This situation raises the question concerning the legal effects of a partially-maintained Vienna agreement, effects which are not limited to the threat of American extraterritorial sanctions.

It is not the role of the Club des Juristes to be political, even less geopolitical. Thus, we are not taking a position with respect to the reasons and real or announced justifications which in 2018 have motivated the United States to unilaterally withdraw from the Vienna agreement signed in 2015. Nor are we taking a position on the whys and wherefores of the positions of Iran and the other signatory countries which have chosen, for the moment, to remain in the Vienna agreement.

The Vienna agreement, while initially undemanding for the signatory countries as they were not strictly required to abide by it, has nonetheless produced very concrete effects. The parties, including the United States, have respected their commitments. Iran has frozen its nuclear programme and restricted it to civilian purposes. The other signatory countries have partially raised the nuclear sanctions.

While it does not meet the definition of an international treaty but is rather a simple international agreement, the provisions of the Vienna agreement have nonetheless led to other international statutes that French law cannot ignore: on the one hand, the agreement has been accepted by the United Nations Security Council under the terms of resolution 2231 of July 20th, 2015; on the other, EU regulation 2015/1863 of the Council of October 18th, 2015, adopting the Vienna agreement, has entered French law through article 288 § 2 of the Treaty on the Functioning of the European Union.

The American withdrawal announced by President Donald Trump on May 8th, 2018, after having been applied for two years, raises questions concerning its legality under international public law. It is in particular a question of determining if this unilateral withdrawal complies with the provisions of the Vienna agreement without contravening the UN Security Council resolution confirming the recognition and application of the Vienna agreement.

The Vienna agreement contains a mechanism for withdrawing before the end date, which is set for October 18th 2025, called snap back. This is a two-step process for resolving disputes, the first internal to the Vienna agreement, the second in the framework of the UN. The first step consists of setting up an ad hoc commission (called "Joint commission") charged with examining any breaches of commitment by any of the participants, in order to find a solution. The purpose of this mechanism is to provide a means for consensual withdrawal. Without agreement on the time frames specified in the agreement, the "plaintiff" country has the right to consider that an "unresolved issue (is) grounds to cease performing its commitments under the JCPOA in whole or in part".

It is enlightening to note that this snap-back mechanism, inserted by common agreement of all signatory parties to enable withdrawal from the Vienna agreement or to be able to oppose an anticipatory breach, can only be triggered in two cases: (1) either Iran considers that one or all the other signatory parties are not respecting their commitments, (2) or one of the EU+3 states considers that Iran is not meeting its commitments. In other words, to engage this procedure, the United States must be able to reproach Iran with not meeting its commitments, which could be problematic as the International Atomic Energy Agency (IAEA)'s inspections have never revealed a breach by Iran of its commitment to non-proliferation. Conversely, only Iran could consider that the unilateral withdrawal of the United States constitutes a breach of its commitments. The Vienna agreement does not state that a member of the E3/EU+3 group can trigger the snap-back mechanism to resolve disputes with another member of the E3/EU+3 group, so neither France nor European Union can, in principle, trigger this procedure in protest at the unilateral withdrawal of the United States.

The Vienna agreement states that, when the snap-back mechanism comes to an end and all review procedures have been exhausted, each signatory state can raise the issue with the United Nations Security Council, for "notable breach of commitments by other participants", which triggers a second step for resolving the issue in application of resolution 2231 of July 20th, 2015, and article 41 of the United Nations Charter. In concrete terms, this means submitting a resolution aimed at maintaining the raising of the UN sanctions to the United Nations Council (resolutions 1696, 1737, 1747, 1803, 1835, 1929, 2224). If the Security Council does not adopt a new resolution within the time limit, all UN resolutions which had been suspended in application of the Vienna agreement will once again have full effect, "unless the Security Council decides otherwise". It is difficult to imagine that a "decision to the contrary" could be adopted by the Council without the agreement of the United States, which as a permanent member has a veto right.

On May 8th, 2018, the United States neither invoked nor applied these provisions governing the conditions for withdrawal from the Vienna agreement. There was a simple reason for this, it would seem: the agreement's conditions did not seem likely to be met as all of the parties had respected their commitments and had been performing them for more than two years (since October 18th, 2015) - including Iran, as the IAEA confirmed on several occasions that the country had complied with its non-proliferation commitments. In reality, the United States has justified its withdrawal from the Vienna agreement by citing the agreement's unsatisfactory nature, in particular because it does not include a renunciation by Iran of its ballistic missile programme or its development and because the duration of the agreement was to be extended past October 18th, 2025. These reasons would seem to be politically motivated. From a strictly legal perspective, they do not a priori constitute reasons likely to trigger the conflict resolution procedures as stated in the Vienna agreement. However, it is these procedures that provide a legal basis for one party to oppose an anticipatory breach, or to submit the dispute to the United Nations Security Council so they can take "measures that do not involve armed force", including "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations" (article 41 of the United

Nations Charter), or of proposing a Security Council resolution aimed at maintaining the raising of UN sanctions, a vote without which all UN resolutions suspended by the Vienna agreement will have full effect, "unless the Security Council decides otherwise".

According to the Vienna agreement, the United States therefore has no legal reason for opposing an anticipatory breach in order to terminate its own commitments to raising the national and international sanctions imposed on Iran.

For its part, Iran could ask the Joint Commission to declare that the United States "is not meeting its commitments under the terms of the present JCPOA". Such a request would be of limited value, however, as it would permit only Iran to oppose the United States (and de facto the other signatory parties) for anticipatory breach, which, while it would enable Iran to restart its nuclear programmes, would then in turn trigger the re-imposition of the UN sanctions. Iran could also ask the UN Security Council to impose sanctions on the United States, although in practice this is impossible, given the American veto in the Security Council. Finally, Iran could submit a resolution to the Security Council aimed at maintaining the suspension of the UN sanctions, which would once again be pointless as the United States would refuse to vote for such a resolution, which would legally mean the UN resolutions suspended by the Vienna agreement would take effect, and as well the American extraterritorial sanctions. It is therefore difficult for Iran to directly penalise the unilateral withdrawal of the United States.

For their part, the other signatory parties (Germany, China, United States, the Russian Federation, France and the United Kingdom) are relatively helpless as the Vienna agreement does not foresee the possibility of a member of the E3/EU+3 group in the Joint Commission referring a dispute with another member of the E3/EU+3 group. They could, of course, submit the matter to the Security Council, but the hurdle would be the same for Iran as the ultimate result would be the re-imposition of the UN sanctions, which is precisely what these countries have wanted to avoid until now.

However, while no explicit sanction is foreseen, the Vienna agreement still applies, as does United Nations Security Council resolution 2231 of July 20th, 2015, and EU regulation 2015/1863 of the Council of October 18th, 2015, has entered French law. These non-rescinded statutes continue to have not only the intended effect with respect to the signatory states and their nationals, but also that which the United States intends to confer through its unilateral withdrawal, and outside the framework of the Vienna agreement, and which will challenge the sovereignty of the other signatory countries which intend to continue applying the Vienna agreement and subsequent international statutes.

In this context, it seems legally debatable for one party to a contract concluded between an Iranian entity and a foreign entity from one of the signatory countries of the Vienna agreement to legitimately prevail of the re-imposition of the secondary sanctions to terminate said contract (subject, of course, to the terms of the contract and the applicable law). In effect, for both of them and their Iranian partner, the Vienna agreement continues to have legal effect and, under the terms of this agreement, the American withdrawal and the unilateral re-imposition of the extraterritorial secondary sanctions has no legal basis in the Vienna agreement and is in direct conflict with the legal effects that the other signatory states wanted to maintain by remaining in the Vienna agreement. As a result, the entity (in particular Iranian) that is subjected to such termination could contest its validity before any relevant court (in particular arbitration court) and claim indemnification for damages. The terminating entity that raised the threat of the extraterritorial sanctions would then be placed in a legally sensitive situation as, on the one hand, it would be liable with respect to the co-contracting party and, on the other, by continuing to do business with an Iranian entity it would be subject to the American extraterritorial sanctions.

Of course, insofar as the re-imposition of these extraterritorial sanctions has no legal basis in the Vienna agreement, the French company (for example) placed in such a situation might want to contest application of the sanctions through the relevant American courts (whose decision, one is inclined to think, would not be favourable to such a submission, given American doctrine on the legal force of the Vienna agreement). But it

is understood that, in any case, this company would be in an extremely uncomfortable situation, as such a dispute, if possible, would take time, during which the sanctions would apply.

In these conditions, it would appear eminently desirable for the signatory parties that intend to demonstrate their sovereignty by remaining in the agreement, foremost France and the European Union, to exercise every possible available reaction and to take every measure they can.

The IAEA and United Nations General Assembly may thus be requested to ask the International Court of Justice for an advisory opinion on the validity of the American justification for its withdrawal from the Vienna agreement, even though Iran seems to have respected its commitments under the agreement. Such a ruling, even if non-binding, could constitute a point of reference for the WTO judge, arbitrators, national courts, etc.

Thus, a "violation complaint" to the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) is also possible for France or the European Union, in order to contest the secondary sanctions of the United States against Iran, which block European companies.

Although everyone is aware of the operational and legal limits of such measures, the European Union could also block the American extraterritorial sanctions by implementing EU Council regulation n° 271/96, called the "blocking regulation", banning any national of a European Union member state from complying with any injunction or ban resulting from an extraterritorial sanction, and blocking execution of these sanctions within the territory of the European Union.The 1996 blocking regulation nonetheless requires strengthening and addenda, not only through an update to cover all of the sanctions that have appeared since 1996, but also to provide sufficient protection in order to impede any inquiry by the OFAC (the Office of Foreign Assets Control) and to enable challenges to OFAC decisions.The blocking law should itself have extraterritorial effect in order to protect all of a group's subsidiaries around the world. For example, the law could call for the French state to ban the transmission of documents and the collection of testimony by a foreign state or its representatives.

In any event, the inextricable situation in which companies, in particular French companies, find themselves is of course the consequence of the decision by the United States to unilaterally withdraw from the Vienna agreement, but it is also the result of the decision by the other signatory parties, and in particular France, to honour their commitment by remaining in the Vienna agreement.

If the French government refuses to take action to indemnify companies forced to unilaterally terminate their commitments with Iran or to take measures likely to oppose the unilateral American decision to impose sanctions, the state could be strictly liable, as it would result in unusual and special restrictions for some users. The Vienna agreement is not, of course, an international treaty, but the subsequent statutes, headed by EU regulation 2015/1863 of the Council of October 18th, 2015, integrate this agreement in the French legal corpus, to the extent that the French state must be able to give it reasonably expected legal force. None of the exceptions exonerating the state from this responsibility seem applicable. No deliberately discriminatory statute has been implemented as the French state has not withdrawn from the international Vienna agreement and has not implemented any sanctions against French companies that have trade links with Iran. In addition, if the state should refuse to oppose the American sanctions, it would be difficult to consider it as fulfilling an objective to satisfy overriding public interest for the nation, precisely because the French government has not withdrawn from the Vienna agreement.

This is reflected in legal analysis of the decision by the United States to withdraw from the Vienna agreement while ignoring the relevant procedures and without regard to the fact that Iran and the other signatory countries are remaining; which is likely to have significant legal consequences. Companies are caught between a rock and a hard place: on the one side, the American extraterritorial sanctions, and on the other, they are liable if they leave Iran.

States and the European Union, and in particular France, affirm their sovereignty by confirming that they are remaining in the Vienna agreement.

This sovereignty nonetheless carries with it duties and responsibilities that they must fully assume, especially as it can be predicted that there will be legal challenges to the American decision.

Introduction

1. Following the 2002 revelations made by dissident Iranians of the existence of an Iranian nuclear programme, and disturbed by the bellicose threats of Iranian President Mahmoud Ahmadinejad, the United Nations Security Council adopted a certain number of resolutions requiring Iran to stop enriching uranium for military purposes. These resolutions were progressively accompanied by restrictive measures[1] designed to persuade Iran to comply.

2. In addition to these sanctions, the European Union (EU) and the United States have imposed a series of autonomous economic and financial sanctions on Iran, including:

- trade restrictions on certain goods: a ban on exporting to Iran, weapons, dual-use goods and goods likely to be used to enrich uranium; a ban on importing from Iran crude oil, natural gas, petroleum and petrochemical products; a ban on selling or providing equipment critical for use in the energy sector, gold, other precious metals and diamonds, certain naval equipment, certain software, etc.;
- financial restrictions: the freezing of the Iranian Central Bank's and the main Iranian commercial banks' assets, establishment of a notification and authorisation mechanism for fund transfers exceeding certain amounts and intended for Iranian financial institutions;
- measures in the transportation sector: a ban on access to EU airports for the Iranian cargo planes, a ban on technical and maintenance services for Iranian cargo planes or ships transporting banned materials or goods;

(1) Resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010) of the United Nations Security Council.

- restrictions on travel and an asset freeze for designated persons and entities.

3. Following the election of Hassan Rouhani as President of the Islamic Republic of Iran, the country actively engaged in negotiations in order to have the international sanctions lifted.

4. Following almost two years of negotiations, on July 14th, 2015, Iran and the group of 5+1 (the five permanent members of the Security Council[2] plus Germany), as well as the EU agreed to a Joint Comprehensive Plan of Action (called the JCPOA). This JCPOA states a series of steps for the years to come aimed at guaranteeing the exclusively peaceful nature of Iran's nuclear programme.

5. In exchange, the other signatory countries agreed to suspend the economic sanctions imposed on Iran so that it could once again trade on the international markets.

6. Thus, on January 16th, 2016, (the date the agreement was implemented), the EU lifted all nuclear-related economic and financial sanctions against Iran. Nonetheless, certain restrictions continue to apply[3].

7. Where the Americans were concerned, sanctions affecting non-Americans conducting certain activities in relation to Iran (so-called "secondary" sanctions) have been raised as part of the JCPOA.The purpose of these sanctions was to dissuade non-Americans (individuals and companies) from taking part in activities with Iran or face severe penalties[4].The raising of the secondary sanctions enabled non-American persons and entities to operate in almost all economic sectors in Iran without risk of being charged or fined by American federal agencies, including the Office of Foreign Assets Control (OFAC).

(2) Germany, China, United States, the Russian Federation, France and the United Kingdom.
(3) Notably regarding certain listed people and entities, the sale and transfer of technologies linked to armaments, ballistic missiles, dual-use civil and military goods and technologies, and information technology enabling the control or restriction of fundamental liberties *[Information Note on EU sanctions to be lifted under the Joint Comprehensive Plan of Action (JCPOA)*, January 16th, 2019, n° SN 10176/1/17 REV 1].
(4) See "La BNP Paribas formellement condamnée à une amende record aux États-Unis", *Le Monde*, 1st May 2015.

8. On the other hand, and in compliance with the provisions of the JCPOA, the Americans have maintained their "primary" sanctions on Iran. These sanctions were established after the Islamic revolution, and forbid, in general, "American persons" from importing/exporting, directly or indirectly, goods, technology, and services, to and from Iran, as well as from having any relations with the Iranian government.

9. The 2015 Vienna agreement raised real hopes and relaunched economic discussion between Iran and the rest of the world, including Europe. This economic development nonetheless remained limited essentially due to the reluctance of the international banking system to engage with Iran, and also due to the inability of the Iranians to reform their banking system[5] and to end the economic abuses of the Revolutionary Guards and the "foundations" close to the country's Supreme Leader[6].

10. With a lack of fluid international flow and therefore a chronic lack of international financing for projects and companies, the Vienna agreement has not had the impact that the Iranians and Europeans had hoped. Therefore, a certain frustration set in with the Iranian authorities and economic milieu, which felt that the occidental countries have not honoured their obligations by not providing the expected economic compensation resulting from the Vienna agreement.

11. In this context, the American withdrawal from the Vienna agreement in May 2018 constitutes a sufficiently serious event, with an impact that was immediately felt in Iran and on projects conducted by French and European companies, so that the Commission of the Club des Juristes in charge of studying business law in Iran has focused on the issue.

12. It is indeed undeniable that there is a desire on both sides to develop economic relations between the West and Iran and that the withdrawal of the United States constitutes an additional significant obstacle.

(5) In 2018, Iran was still on the black list of countries not fighting against money laundering and the financing of terrorism, as established by the Financial Action Task Force (FATF), an intergovernmental organisation which establishes international norms in the area.
(6) The foundations (*bonyad*) are quasi-state-owned companies with opaque activities which, according to estimates, directly control between 20% and 40% of the Iranian GDP, which is 120 billion euros (D. MINOUI, "L'islamo-business opaque des fondations iraniennes", L'Express, June 1st, 2006).

13. Is this obstacle really insurmountable?

14. It is not the role of the Club des Juristes to be political, even less geopolitical. Furthermore, we are not taking a stand on the reasons and justifications, real or announced, which have pushed the United States to make this decision. Nor are we taking a position on the whys and wherefores of the positions of Iran and the other countries that signed the JCPOA, and which have chosen, for the moment, to remain in the Vienna agreement.

15. On the other hand, this situation deserves to be studied from a legal perspective to assess the legal effect of the American withdrawal and the consequences for the other signatory parties of remaining in the agreement, including, first and foremost, Iran.

16. We would first like to quickly summarise the idea of international sanctions, a central concept here, as the main economic object of the Vienna agreement is the commitment of the Occidental countries, most notably, of course, the United States, to lift their international (and extraterritorial) sanctions against Iran and therefore western companies, to develop business relations, direct or indirect, with Iran or Iranian companies.

1. EXTRATERRITORIALITY

1.1. The principle of extraterritorial sanctions

17. European legislation[7] tends, as does American legislation, to have extraterritorial application[8]. Such a term is used when a state asserts jurisdiction to ensure its policy is as effective as possible even though the activities and entities involved are not within its borders.

18. The idea of extraterritoriality is different from that of supranationality, which designates what exceeds sovereignty[9] and includes the standards and principles of international organisations such as the FSB, the IOSCO and the Basel Committee.

19. Extraterritoriality can be direct or indirect.

20. It is direct when a state imposes or forbids attitudes to a foreigner: this can apply to anyone, including those that directly or indirectly control it.

21. Extraterritoriality is indirect when the state "uses roundabout means to achieve an objective, which supposes that its measures have an effect outside its borders[10]". Thus in terms of banking resolution (dealing with the failure of banking and financial companies) where someone is used as a relay to enable the resolution authorities to reach assets located somewhere where they do not have jurisdiction[11].

(7) T. BONNEAU, *Régulation bancaire et financière européenne et internationale,* Bruylant, 4th ed. 2018, p. 20-21.
(8) Esp. " Le rapport de synthèse" by H. SYNVET, in "Les enjeux de l'extraterritorialité en droit financier", *RD bancaire et fin.* July-August 2015, Dossier 41.
(9) J.-P. MATTOUT, "Droit bancaire, supranationalité et extraterritorialité : la *lex mercatoria " RD bancaire et fin.,* May-June 2015, Dossier 32, spec. n° 2.
(10) SYNVET, OP. CIT. N° 24.
(11) *Ibid.*

22. One of the difficulties arising from extraterritoriality is linked to connecting factors: what are the criteria that enable a state to justify application of its legislation? Commodity and currency exchange may be one; the same observation is true for the potential effect of a transaction within the territory of the state that is attempting to apply its legislation. This study does not intend to analyse the particularities of such or such legislation, in particular American federal law, or review procedures that it can propose against the decisions of the American administration[12].

23. Some of these criteria are not entirely convincing. Thus the use of a currency for the main transaction which is, hypothetically, made outside the territory of the state that is attempting to apply its legislation. It is true that executing this transaction can lead to compensatory operations within the territory of the state which asserts its jurisdiction. But as said operations are only accessories to the main operations conducted elsewhere, it is doubtful whether use of the state's currency is enough to establish jurisdiction. One is forced to ask the question if, apart from legal criteria, it is not truly the political will that constitutes the real connecting factor!

24. Extraterritoriality violates sovereignty of States. This is the case during an embargo aimed at preventing any trade with a country: as soon as one is imposed, to both nationals of the state which adopts the embargo and to foreign nationals of other states which do not, hypothetically. This violation of sovereignty is even more severe when another state wants their nationals to be able to continue their activities with the embargoed country unlike the state imposing the embargo. The fact that they cannot, due to the penalties they risk on the part of the state behind the embargo, is a violation of the authority of the states, and therefore a violation of their sovereignty.

(12) On questions linked to extraterritoriality, it might be useful for readers to refer to an article by R. BISMUTH *"Pour une appréhension nuancée de l'extraterritorialité du droit américain – Quelques réflexions autour des procédures et sanctions visant Alstom et BNP Paribas", Annuaire Français de Droit International (2015), vol. LXI, 2016, p. 785-807.*

25. The extraterritoriality of embargo laws is a violation of fundamental rights, in particular freedom of enterprise and the right to property, protected by articles 16[13] and 17[14] of the Charter of Fundamental Rights of the European Union. It also flies in the face of the objectives of the WTO, which are to encourage commerce between states.

26. The extraterritoriality of embargo laws very directly affects the economic stakeholders. It calls the continuity of the current contracts into question: indeed, it forces those dealing with people and entities from the embargoed country to stop fulfilling their contracts. This is not without consequence. Independently of the clauses establishing the consequences of halting a contract due to an embargo, stopping a contract leads, at the least, to lower earnings. It also leads to negating the reason for the investments that had been made in order to develop business within the embargoed country and therefore in order to make a profit from the turnover generated in that territory. Furthermore, the investment made prior to enforcement of the embargo constitutes a dead loss which is not generally compensated, either by the country imposing the embargo or by the states whose economic stakeholders have suffered.

1.2. The American extraterritorial sanctions re-imposed on May 8th, 2018

27. On May 8th, 2018, the United States announced it was withdrawing from the JCPOA and re-imposing the sanctions which had been raised in application of the agreement. In reaction to this announcement, American President Donald Trump published a National Security Memorandum instructing the Secretary of State and the Secretary of the Treasury to prepare for the re-imposition of all of the American sanctions applied in the framework of the JCPOA.

(13) Article 16, Charter of Fundamental Rights of the European Union: *"The freedom to conduct a business in accordance with Community law and national laws and practices is recognised."*
(14) Article 17, 1, op cit. : *"Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest".*

Recall that the JCPOA had permitted most of the so-called "secondary" sanctions linked to nuclear sector to be raised[15].

28. As a result of this unilateral withdrawal, the United States declared that it wanted to re-establish the following sanctions:

- **"primary" sanctions are maintained** to prohibit the US persons, companies and any other structure held or controlled by a US person from establishing commercial relations with Iranian persons or entities. The terms "American" or "US person" refer to anyone holding the American citizenship, any entity operating under American law including foreign subsidiaries of American companies, as well as permanent residents of the United States (holders of a green card);
- **"secondary" sanctions are re-imposed,** affecting non-Americans, once they do business with Iran, following the re-imposition of sanctions and on expiry of the grace periods granted by the American administration.

29. Thus, as of August 7th, 2018, (90-day wind-up period), the penalties for the following activities will be re-imposed, and will force companies to stop their business, in connection with:

- the purchase or acquisition of American currency by the Iranian government;
- trading in gold or other precious metals with Iran;
- the direct or indirect sale, supply or transfer from or to Iran of graphite, crude or semi-crude metals such as aluminium, steel, coal and software used in industrial processes;
- the purchase or sale of significant amounts in Iranian Rials or the constitution of significant reserves or of bank accounts in Iranian Rials outside of Iran;

(15) *OFAC Licence H Authorizing Certain Transactions Relating to Foreign Entities Owned or Controlled by a United States Person*, revoked June 27th, 2018.

- the purchase of, subscription to or brokering for the issuing of Iranian debt instruments;
- the Iranian automobile sector.

30. As of November 5th, 2018, (180-day wind-up period), non-American companies held or controlled by US persons must terminate their dealings with Iran, in particular:

- Iran's port operators, maritime transport and shipbuilding, including certain designated Iranian companies[16];
- petroleum transactions: the purchase of petroleum, petroleum products or petrochemical products from Iran, with, in particular, the National Iranian Oil Company (NIOC), the Naftiran Intertrade Company (NICO), and the National Iranian Tanker Company (NITC);
- transactions with the Iranian Central Bank and the Iran's financial institutions;
- services specialised in transmitting the financial orders of the Iranian Central Bank and Iran's financial institutions;
- insurance and reassurance brokers for transactions with Iran;
- the Iranian energy sector.

31.The American government has announced that it wants to reduce the impact of these sanctions for American and foreign companies, as far as the period prior to application of the sanctions is concerned. Notably, if a non-Iranian or non-American is supposed to receive a payment after the expiry of the aforementioned wind-up periods (August 6th, 2018 and November 4th, 2018), for goods or services which were provided or delivered to another Iranian party prior to August 6th, 2018 or November 4th, 2018, under the terms of a contract concluded prior to May 8th, 2018 and these activities complied with the American sanctions applicable at the time of said deliveries or supplies, the American government will permit the non-American, non-Iranian, to receive payment for these goods or services in compliance with the terms of the written contract or written agreement.

(16) *The Islamic Republic of Iran Shipping Lines* (IRISL), *South Pipping Line Iran* and their subsidiaries.

32. On the other hand, the provision or delivery of goods or services and/or the issuance of additional loans or credit to an Iranian co-contracting party after the aforementioned transition periods, may result in application of the American sanctions, unless these activities are exempt from the regulation, authorised by the OFAC or non-sanctionable.

2. THE LEGAL EFFECT OF THE AMERICAN WITHDRAWAL FROM THE VIENNA AGREEMENT OF 2015 (JCPOA)

2.1. Nature and scope of the JCPOA

33. The JCPOA is one of a number of general agreements, of differing natures and legal effects, concluded by France, Germany, the United Kingdom, the European Union, the Russian Federation, China and the United States of America (jointly called the "E3/EU+3 group"), on the one hand, and Iran, on the other.

34. This international agreement both reaffirms the supremacy of the Non-Proliferation Treaty (NPT) of March 5th, 1970, and adds to the Parameters for a Joint Comprehensive Plan Of Action regarding the Islamic Republic of Iran's Nuclear Program (JCPOA) signed by the same parties on April 2nd, 2015[17].

35. The JCPOA establishes a flexible institutional and normative framework. Article XI of the preamble states that:

> *"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".*

(17) H. CHERIEF, "Iran. Crise nucléaire : le compromis permanent?, *Diploweb*, Tuesday January 5th, 2016.

36. The terminology employed to qualify the scope of the states' commitments is deliberately relaxed. Article VII of the preamble indeed specifies that the participants:

> *"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. […] the E3/EU+3 and Iran will make every effort to support the successful implementation of this JCPOA".*

37. Article 23 states that *"the United States **will seek** such legislative action as may be appropriate to terminate, or modify to effectuate the termination of, the sanctions" and article 25 "the United States will take **appropriate steps,** taking into account all available authorities, with a view to achieving such implementation".*

38. The parties nonetheless reciprocally agreed:

- on the one hand, for the EU+3 states, to partially raise the nuclear sanctions, and;
- on the other, for Iran, to freeze the development of its nuclear programme in order to restrict to civilian purposes.

39. Regardless of whether or not the JCPOA is restrictive, it is an objective fact that to date the reciprocal "voluntary measures" called for by the Vienna agreement have effectively been implemented by all of the parties until the United States decided to unilaterally withdraw from the agreement on May 8th, 2018.

40. The JCPOA is an international agreement, which is defined under international law as: "A community of views on an established point, question, choice, etc.[18]".

(18) J. BASDEVANT, *Dictionnaire de la terminologie du droit international.*

41. This definition must be understood with reference to that of an international treaty, which is a written agreement between subjects of international law, intended to procure legal effect. The treaty demonstrates a voluntary agreement which creates a commitment which must be respected by the party states, subject to engagement of their international liability. It requires ratification by all of the signatory states[19].

42. While it does not meet the definition of an international treaty but rather of a simple international agreement, nonetheless the provisions of the JCPOA are behind other international statutes that French law cannot ignore.

43. First of all, the agreement was accepted by the United Nations Security Council under resolution 2231 of July 20th, 2015. This resolution is not in itself strictly constraining as the Security Council merely:

> *"Endorses the JCPOA, and urges its full implementation on the timetable established in the JCPOA" (§ 1)*
>
> *"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." (§2)*

44. Further, EU regulation 2015/1863 of the Council of October 18th 2015 adopting the JCPOA has entered French law under the terms of article 288 of the Treaty on the Functioning of the European Union which states:

(19) Article 2, section 2,paragraph 2 of the United States Constitution establishes the power of the Senate, the power of *"Advice and Consent"*, in particular for treaties. Unlike the legislation and nominations which are passed by simple majority, international treaties must be ratified by a two-thirds majority of the senators present. This prerogative of the Senate underlines, de facto, the need for any President of the United States to obtain a consensus in the Senate before signing any treaty. In the case of the Vienna agreement, the absence of a Senate majority meant that President Barack Obama had to reach an agreement that was more flexible and less committal than a treaty, including in the formulation, thus enabling him to reach an agreement in principle with the Senate.

'"To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.
A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States […]".

In particular, article 14 of EU regulation 2015/1863 of October, 18th 2015 states that:

"In accordance with the JCPOA, Member States should terminate implementation of all Union nuclear-related economic and financial sanctions simultaneously with the IAEA-verified implementation by Iran of agreed nuclear-related measures."

2.2. The withdrawal conditions contained within the JCPOA

45. The American withdrawal from the JCPOA, announced by President Donald Trump on May 8th, 2018, after two years of implementation, raises questions concerning its legal effects whereas the Vienna agreement continues to apply for the other signatory states.

46. The question is whether this unilateral withdrawal is taking place in compliance:

- with the provisions of the Vienna agreement;
- and without contravening the Security Council resolution approving the JCPOA.

47. There are two ways that signatory parties can withdraw from the Vienna agreement:

- either at the end of their reciprocal commitments, meaning on the Termination Day set by the agreement **(2.2.1)**;
- or before then in the event of a breach by one of the parties in application of the dispute resolving mechanism stated in the agreement **(2.2.2)**.

2.2.1. Withdrawing at the end of the JCPOA

48. The duration of the JCPOA agreed by the signatory states is stated in annex V of the JCPOA. Termination Day occurs – as long as the resolutions have not been changed – 10 years after Adoption Day, October 18th 2015.

49. The JCPOA is therefore scheduled to apply, in principle, until October 18th 2025, at which time the states will be entirely free and the Security Council will no longer be concerned with the Iran nuclear question, unless there is a new agreement at the end.

2.2.2. The withdrawal from the JCPOA in application of the snapback mechanism

50. The JCPOA also states the possibility of withdrawing in the event of dispute with the other signatory parties, at the end of a two-step dispute resolution process; the first within the JCPOA, the second organised in the framework of the UN.

a. The first step in resolving disputes relating to the JCPOA

51. Disputes resulting from non-performance of the commitments by one of the parties to the JCPOA can be submitted to a Joint Commission set up by agreement and whose composition and missions are stated in its annex IV[20].

52. Apart from monitoring Iran's strict compliance with the non-proliferation commitments, the Joint Commission also monitors the application of the JCPOA and examines any breaches by the participants, in order to find a solution.

(20) This Joint Commission is comprised of: (i) representatives of the participants in the JCPOA, namely the three EU countries (France, Germany, the United Kingdom), China, Russia, the United States and Iran, as well as (ii) of the High Representative of the European Union for Foreign Affairs and Security Policy, who acts as Joint Commission coordinator.

53. The purpose of the JCPOA dispute settlement mechanism is to provide a means for consensual withdrawal.

54. The JCPOA dispute resolution process is eminently consensual, as the decisions of the Joint Commission are made "by consensus" (each participant in the JCPOA has a vote), in accordance with the following plan:

- summoning of the Joint Commission by the High Representative: the Commission must meet within one week after receiving the request from the coordinator (reduced to three business days if urgent);
- the Commission then has 15 days to *"resolve the dispute*[21]*"*, unless there is mutual agreement to extend the deadline.

If the issue is not resolved by the Commission, the following review procedures are implemented:

- any dissatisfied participant can bring the dispute before the Foreign Ministers, who must make a ruling within 15 days, unless an extension is mutually agreed, and/or;
- the claimant or participant whose conduct is at issue can also bring the dispute before the Advisory Council comprised of three members (two members appointed by each of the parties to the dispute and a third independent member),

and the Advisory Council can consider the issue simultaneously to or after the Foreign Ministers have ruled.

The Advisory Council's ruling is non-binding.

If the issue is not resolved by the Advisory Council, the Joint Commission once again has five days to propose a solution.

If this solution is still not satisfactory, the claimant has the right to consider that *"unresolved issue (is) grounds to cease performing its commitments under the JCPOA in whole or in part"*.

(21) Nothing is specified with respect to the procedures for resolving the submitted dispute. The Commission will in all likelihood be tasked with bringing the parties together in order to reach a consensual agreement.

In this event, that party can *"decide"* to so inform the United Nations Security Council (below, n° 58 s.).

55. As a mechanism to resolve disputes, annex IV of the JCPOA states that the Joint Commission can in particular be asked to:

> *"(i) Review and consult to address issues arising from the implementation of sanctions lifting as specified in this JCPOA and its Annex II (2.1.12);*
>
> *(ii) Review, with a view to resolving, any issue that a JCPOA participant believes constitutes non-performance by another JCPOA participant of its commitments under the JCPOA, according to the process outlined in the JCPOA (2.1.14);*
>
> *(iii) Consult and provide guidance on other implementation matters that may arise under the JCPOA (2.1.16)".*

56. The referral is made via a coordinator, in the person of the High Representative of the European Union.

57. On reading articles 36 and 37[22], it would appear that the dispute resolution mechanism – also called the snap-back clause – must be sued exclusively in the following two situations:

- either Iran considers that one of the participants of the JCPOA or all of the members are not respecting their commitments;
- or one of the EU+3 states considers that Iran is not meeting its commitments.

58. Consequently, only Iran could consider that the unilateral withdrawal from the JCPOA by the United States constitutes a breach of its commitments, as the International Atomic Energy Agency's (IAEA) inspections never revealed a breach by Iran in the framework of its non-proliferation commitments.

(22) Article 36 of the JCPOA: *"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.* […]".

59. The JCPOA does not seem to have foreseen the possibility of a referral to the Joint Commission by a member of the E3/EU+3 group in the framework of a dispute with another member of the E3/EU+3 group. Which is not the case of the disputes foreseen by resolution 2231, which enables "any participant" to ask the Security Council to rule on a dispute linked to the execution of the JCPOA (below, n° 58 s.).

b. The second step involved in resolving disputes before the Security Council in application of resolution 2231 of July 20th 2015

60. When the claimant has exhausted all review procedures stated in the JCPOA, each of the signatory states may bring the dispute before the United Nations Security Council in application of article 37 of the JCPOA.

61. Under the terms of article 10 of the resolution 2231, the Security Council:

> *"expresses its intention to address possible complaints by JCPOA participants about significant non-performance by another JCPOA participant".*

62. The jurisdiction of the Security Council is based on article 41 of the Charter of the United Nations:

> *"The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations".*

63. This dispute resolution procedure, which corresponds to the second phase of dispute resolution relating to the JCPOA, takes place as follows:

(i) Starting from notification by the claimant state[23] of "notable non-respect of the commitments of the JCPOA", each member of the Security Council has 10 days to submit a resolution aimed at maintain the lifting of the UN sanctions for vote by the Security Council (resolutions 1696, 1737, 1747, 1803, 1835, 1929, 2224).

It should be noted that nothing is stated with respect to the issue of knowing if the claimant state must be a signatory party to the JCPOA or if any member of the Security Council can make such a submission. the purpose of acting immediately limits the referral to just the signatory parties of the JCPOA, but as it is a matter of international public policy, and the extraterritorial sanctions can affect any state, the issue remains open.

It should be recalled that based on each of these resolutions the member states of the Security Council have been "invited" to take part in the sanctions through their own legislation.

Most of the European Union regulations relating to the sanctions against Iran are based on the UN resolutions.

As soon as the latter are restored, the member states will have no choice but to reactivate, in turn, the sanctions that preceded the JCPOA.

(ii) In the absence of a proposed resolution within 10 days of the notification, the President of the Security Council is responsible for submitting said project to the Council for a vote.

The vote must take place within 30 days of the notification (the ruling of the Advisory Council can be heard).

(iii) If the Security Council does not adopt a new resolution within the time limit, all of the UN resolutions which had been raised in application of the JCPOA will once again take full effect, "unless the Security Council decides otherwise" (article 12).

(23) The notification must describe *"the appropriate steps efforts"* made by the claimant to exhaust all of the paths of the snapback mechanism foreseen under the JCPOA.

The term *"unless (they) decide otherwise"* confirms the extremely consensual nature of the JCPOA. Nonetheless, it is difficult to consensual approach of the JCPOA. Nonetheless it seems difficult to imagine that a "decision otherwise" could be adopted by the Council, with the United States having the right to veto as a permanent member, unless it abstains from voting and thus lets the resolution be adopted.

2.3. Analysis of the legality of the American withdrawal from the JCPOA

64. The analysis shows the conditions for withdrawal from the JCPOA (op. cit., n° 43 s.) that have not been cited nor applied by the United States, nor were they likely to be.

65. To May 8th, 2018, the date of the unilateral withdrawal of the United States, all of the parties to the JCPOA had respected their commitments and had executed them for more than two years (since October 18th 2015).

66. In particular, and as stated in article 36 of the JCPOA, the United States could have gone to the Joint Commission if it had "believed that Iran was not meeting its commitments under this JCPOA".

67. The United States did not do so. Doubtless because the IAEA had confirmed, numerous times, that Iran was complying with its non-proliferation commitments under the JCPOA.

68. The United States has justified its withdrawal from the JCPOA due to its unsatisfactory nature, in particular because it does not make Iran renounce its ballistic missile or enrichment programme and the duration of the JCPOA was to be extended.

69. These reasons would seem to be politically motivated. From a strictly legal perspective, these are not reasons likely to trigger the conflict resolution procedures that the JCPOA enables a party:

- either to oppose an anticipatory breach for non-performance (op. cit., n° 45: an *"unresolved issue (is) grounds to cease performing its commitments under the JCPOA in whole or in part"*);
- or to take the dispute before the United Nations Security Council under article 37 of the JCPOA in order for them to take *"measures not involving the use of armed force", including "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations"* (article 41 of the Charter of the United Nations, op. cit., n° 60);
- or to submit a resolution to the Security Council aimed at maintaining the raising of the UN sanctions (resolutions 1696, 1737, 1747, 1803, 1835, 1929, 2224), or to let the President of the Security Council submit such a project to the Security Council, and without it passing all of the UN resolutions raised by the JCPOA would take again full effect *"unless the Security Council decides otherwise"* (article 12 of the Charter of the United Nations, op. cit., n° 61).

70. For the United States to be able to assert these sanctions, likely triggering a unilateral or multilateral re-imposition of the UN or national (including extraterritorial) sanctions, they would have to trigger the procedure, what they have not done.

71. According to the JCPOA, the United States therefore has no legal foundation for opposing an anticipatory breach in order to terminate its own commitments to raising the national and international sanctions imposed on Iran.

72. For all of that, no sanctions are possible under the JCPOA, whose legal effects are maintained with respect to the other signatory countries.

2.4. The legal consequences of the withdrawal by the United States and of the other parties maintaining the JCPOA

73. As has been shown (op. cit., n° 62 s.), the unilateral withdrawal of the United States from the JCPOA has no legal basis either in the JCPOA or in other UN legislation.

74. For its part, Iran could ask the Joint Commission to declare that the United States "is not meeting its commitments under the terms of the present JCPOA". However, such a submission would be of little use as it would only enable Iran:

- to accuse the United States (and de facto the other signatory parties) of failure to perform, which would of course enable it to relaunch its nuclear programmes, but would also in turn trigger the re-imposition of the UN sanctions;
- or ask the UN Security Council to impose sanctions on the United States, although in practice this is impossible, given the American veto in the Security Council.
- or submit a resolution to the Security Council aimed at maintaining the raising of the UN sanctions (resolutions 1696, 1737, 1747, 1803, 1835, 1929, 2224) (or let the President of the Security Council do so), which would again be in vain as the United States would refuse to accept such a resolution, which would legally mean the UN resolutions lifted by the JCPOA would take full effect, and therefore also the American extraterritorial sanctions (article 12 of the Charter of the United Nations, op. cit., n° 61 s.).

75. It is therefore difficult for Iran to directly challenge the unilateral withdrawal of the United States from the JCPOA.

76. For their part, the other signatory countries of the JCPOA (France, Germany, the United Kingdom, the European Union, the Russian Federation and China) are relatively helpless as the JCPOA does not foresee the possibility of a referral of the Joint Commission by a member of the E3/EU+3 group in the framework of a dispute with another member of the E3/EU+3 group (op. cit., n° 52).

77. They could, of course, submit the matter to the Security Council, but the hurdle would be the same for Iran as the ultimate result would be the re-imposition of the UN sanctions, which is precisely what these countries have wanted to avoid until now.

78. However, while no explicit sanction is foreseen as it is a unilateral withdrawal by the United States and not one of the cases foreseen by the JCPOA or the United Nations, the JCPOA still applies, as does the United Nations Security Council resolution 2231 of July 20th, 2015, and EU regulation 2015/1863 of the Council of October 18th, 2015, entered in French law (article 288 of the TFEU).

79. This state of law has several consequences: these non-rescinded statutes continue to have effects not only with respect to the signatory states and their citizens, but also any effects that the United States intends to confer through its unilateral withdrawal, and outside the framework of the Vienna agreement, will be confronted with the sovereignty of the other signatory countries which intend to continue applying the Vienna agreement and subsequent international statutes.

3. THE LEGAL MEANS TO CHALLENGE THE NON-COMPLIANCE OF THE AMERICAN UNILATERAL WITHDRAWAL FROM THE JCPOA

3.1. Contesting the implementation of a withdrawal clause in an agreement due to the unilateral withdrawal of the United States

80. It seems legally debatable for one party to a contract concluded between an Iranian entity and a foreign entity from one of the signatory countries of the Vienna agreement to legitimately prevail of the re-imposition of the secondary sanctions to terminate said contract (subject, of course, to the terms of the contract and the applicable law). In fact, for both of them (the party and their Iranian partner), the Vienna agreement continues to have legal effect and, under the terms of this agreement, the American withdrawal and the unilateral re-imposition of the extraterritorial secondary sanctions has no legal basis in the Vienna agreement and

is in direct conflict with the legal effects that the other signatory states wanted to maintain by remaining in the Vienna agreement.

81. As a result, the entity (in particular Iranian) that is subjected to such termination could contest its validity in any relevant court and request indemnification for damages.

82. In doing so, the entity could attempt an arbitration procedure for the company in breach. It should be recalled that Iran has a modern legal framework that favours arbitration for international trade through its law of 1997 on the international trade, based on the UNCITRAL model, and through its 2001 ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In Iran, there are two arbitration institutions: at a national level, the Arbitration Centre of the Iran Chamber (ACIC) created in 2002 under the aegis of the Iran Chamber of Commerce, and at an international level the Tehran Regional Arbitration Center (TRAC) under the aegis of the Asian-African Legal Consultative Organization (AALCO). Nonetheless, use of ad hoc arbitration administered by other institutions represents a non-negligible part of trade arbitration in Iran.

83. The recent decision of the UNCITRAL in the framework of an arbitration introduced in 2015 by a major Iranian family, Dayyani versus South Korea, for having prevented them from purchasing, in 2010-2011, the electronic conglomerate Daewoo, whose majority shareholder at the time was the quasi-public company Korea Asset Management Corp, for which the Dayyani family was the distributor in Iran, all under the pressure of American sanctions, must be mentioned. The sentence favouring the Dayyani family[24] was in particular obtained on the basis of ignorance of the bilateral treaty concluded between South Korea and Iran in 1998 and more particularly due to the breach of its obligation to be fair and equitable.

(24) A fine of over 68 million American dollars, plus damages of 12 millions of American dollars and 2 million of American dollars for legal costs, was awarded against the South Korean state.

84. Ultimately, the entity submitting the termination which invokes the threat of extraterritorial sanctions would then be placed in a legally sensitive situation:

- on the one hand, its responsibility vis-à-vis its co-contracting party would be engaged;
- further, by continuing its activity with an Iranian entity, it would be exposed to American extraterritorial sanctions.

85. Of course, insofar as the re-imposition of these extraterritorial sanctions has no legal basis in the Vienna agreement, the entity in question would want to challenge the application of the sanctions in the relevant American courts. If such a challenge is possible, one would think that the American courts would find in their favour given American doctrine on the legal force of the Vienna agreement. But it is clear that in all cases the company would be in a very uncomfortable situation as it would have to choose between leaving itself legally exposed to fines for wrongful termination, or suffer the American extraterritorial sanctions.

86. In these conditions, it would appear eminently desirable for the signatory parties of the JCPOA that intend to demonstrate their sovereignty by remaining in the agreement, foremost France and the European Union, to exercise every possible available reaction and to take every measure they can.

87. Among these measures are the referral to the International Court of Justice (below, n° 89 s.), referral to the Dispute Settlement Body of the WTO (below, n° 89 s.) and implementation of blocking statutes (below, n° 122 s.). Failing that, the responsibility of the state could be engaged (below, n° 135 s.).

3.2. Referral to the International Court of Justice

88. Could the International Court of Justice (ICJ) rule on the dispute resulting from the non-respect by the United States of resolution 2231?

89. The ICJ has a double role, with both contentious and advisory jurisdiction.

90. As far as its contentious jurisdiction is concerned, there is little chance that the dispute resulting from the non-respect by the United States of resolution 2231 will be submitted to it, insofar as the ICJ can only intervene if the states in question accept its jurisdiction.

Among the member states of the JCPOA, only Germany and the United Kingdom accept the ICJ's jurisdiction.

The other signatory parties of the JCPOA could still refer the matter to the ICJ in the framework of a compromise, but this seems unlikely given the American position[25].

The ICJ's jurisdiction can still be admitted a posteriori under the terms of the forum prorogatum[26] rule, but this also seems unlikely as the United States is usually opposed to the Court's jurisdiction.

Finally, Iran could refer the matter to the ICJ on the basis of the 1955 Treaty of Amity and Economic Relations, which is still in effect and which enabled Iran to bring two matters before the Court (ICJ Offshore oil platforms – Islamic Republic of Iran v United States of America, ruling of November 6th, 2003; ICJ Certain Iranian assets – Islamic Republic of Iran v United States of America; case pending). It is notable that Iran has just filed a complaint against the United States before the International Court of Justice on the subject of the reactivation of the secondary sanctions (https://www.press-tv. com/Detail/2018/07/16/568287/Zarif-ICJ-Iran-US-Sanctions-JCPOA).

(25) To date, the only litigation submitted to the ICJ against the United States on the basis of a compromise has been at the initiative of Canada – Delimitation of the maritime boundary in the Gulf of Maine area.

(26) If a state does not recognise the jurisdiction of the Court at the time of the filing against it, of an originating motion, it can still accept the jurisdiction at a later date, to enable the Court to hear the case: in such a situation, the Court has jurisdiction by *forum prorogatum*

91. Insofar as the consultative function is concerned, the ICJ cannot be asked to intervene by states, but only by five organisations, 15 specialised United Nations agencies and a related organisation.

The IAEA is a related organisation[27]. To this end, it could refer the matter to the ICJ in application of paragraph 2 of article 96 of the Charter of the United Nations:

> *"Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court* ***on legal questions arising within the scope of their activities****".*

The IAEA could therefore ask for an advisory opinion concerning the validity of the American justification for the withdrawal from the JCPOA even though Iran seems to have respected its obligations under the terms of the agreement.

92. The United Nations General Assembly could also refer the matter to the ICJ on the same bases as article 96 (b) of the Charter of the United Nations.

93. The ICJ had the occasion to interpret the expression *"within the scope of their activities"* in a narrow manner, thus limiting the advisory jurisdiction of the ICJ to the specialized agencies of the UN (see, for example, for the WHO: ICJ, Legality of the use by a state of nuclear weapons in armed conflict, Advisory opinion of July 8th, 1996). It is not impossible for the ICJ to consider that the legal effects of the JCPOA and of resolution 2231 do not enter exclusively in *"within the scope of their activities"* for the IAEA.

The IAEA would have, for example, the right to request an advisory opinion to interpret the agreement to know what it must monitor/control – but not to obtain an opinion on all of these texts.

(27) *These are intergovernmental organisations that are connected to the UN under conditions similar to those of specialist institutions, but which have a greater degree of independence.* (J-P Maury, "Le Système Onusien" ("The UN System"), Pouvoirs 2004/2 – no. 109, p. 42).

94. Nonetheless, article 96 (a) of the Charter states that *"The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question"*.

It is therefore enough if a resolution is adopted by the UNGA with a two-thirds majority, which does not seem insurmountable.

95. The ICJ could thus give its opinion on the scope of the JCPOA and resolution 2231 stating that:

- the withdrawal from the JCPOA by the United States has not respected the conditions contained within the agreement and resolution 2231;
- the United States had from then on an international obligation not to re-impose the secondary sanctions;
- the re-imposition of the sanctions can therefore not have international effect.

96. While not mandatory, this opinion from the ICJ could constitute a point of reference for the WTO judge, arbitrators, national courts, etc.

3.3. The extraterritoriality of the American sanctions: a trade dispute which can be resolved within the framework of the WTO?

3.3.1. Conflict resolution by the Dispute Settlement Body (DSB)

97. In 1994, at the end of the Uruguay Round, the World Trade Organization (WTO) succeeded the General Agreement on Tariffs and Trade (GATT). Its objective is to monitor the liberalisation and regulation of international commerce and to administer the different trade agreements concluded between member states which concern goods, services and intellectual property (in particular by reducing tariffs and other obstacles to trade).

One of the WTO's missions also consists of resolving disputes likely to arise in the framework of trade relations between the member countries. To this

end, the Dispute Settlement Body (DSB) was set up through the Understanding on rules and procedures governing the settlement of disputes adopted at the end of the Uruguay Round. This succeed the Dispute Settlement Mechanism initially laid out in the GATT, making it faster, more accessible and more effective[28].

98. All signatory parties of the JCPOA are members of the WTO, with the exception of Iran, which is an observer and has been negotiating its membership since 2005[29].

99. The status of Observer State merely enables them to monitor the discussions on specific themes and, when appropriate, participate in committees. This status does not at all provide protection under the provisions of the WTO, nor to refer matters to the DSB.

100. The issue of the legality of the American extraterritorial sanctions with under the rules of international trade was first contested in 1996, during the American trade and financial embargo of Cuba. It should be recalled that Cuba was then a member of the WTO, and had been since April 20th, 1995.

(28) At the end of 2014, 488 disputes had been brought before the WTO, with the United States figuring among the most active members (source: https://www.wto.org/english/res_e/publications_e/wto_at_twenty_e.htm, "The WTO at 20: dispute settlement in the framework of the WTO").
(29) A dedicated work group was created in 2005 to study and monitor the process of Iran's accession to the WTO.

The Cuban precedent relating to the challenging of the extraterritoriality of American laws before the WTO: non-existent jurisprudence

The recourse to the WTO in the context of litigation opposing the United States and Europe – concerning unilateral sanctions deployed through extraterritorial laws – is not in itself new. In fact, a case was brought before the WTO by Europe in the 1990s in response to the laws that violated the right to trade with Cuba.

It is interesting to note that the implementation of extraterritorial sanctions by the United States in 1996 was in the context of a complex period, internationally speaking. The post-Soviet Union parenthesis indeed opened the way to a restructuring of the world balances of force with the perspective of a triumphant unilateralism for Washington.

The referral to the WTO by the European Union in 1996, in addition to the legal and trade aspects, marked a strong political response by the European states; and also the desire to preserve their interests and to reaffirm the role of multilateralism.

In 1996, when Congress adopted the Helms-Burton Act which aimed at penalising foreign companies that did business in Cuba, Libya and Iran, the United States de facto confirmed, the return of the principle of power as the standard of reference and regulation internationally.

The reaction of the EU states was to refer the matter to the WTO with respect to the "[…] provisions hereafter, at the very least: articles I, III, V, XI and XIII of the 1994 GATT and articles I, III, VI, XVI and XVII of the GATS, with particular regard to the annex on the movement of persons providing services arising from the agreement".

A special group was set up at the request of the European Community under the terms of article 7 of the GATT in order to rule on the dispute, in which it opposed the United States. Although initiated, the WTO procedure was quickly halted, due to close contact between the European Community and the United States. On April 21st, 1997, the Special Group of the WTO (WT/ DS38/5) suspended its work in compliance with article 12-12 of the Dispute Settlement Understanding.

When the European Union went to the WTO in 1996, its approach aimed to call upon external arbitration in the dispute with the United States in the framework of Washington's limitation of trade with Cuba. By opting for a referral to the WTO, the European Union adopted a dissenting stance with respect to the compliance of the Helms-Burton and Amato-Kennedy Acts, while wishing to avoid a direct escalation with the United States.

In the EU's approach with the WTO, rather than through the coercive aspect, it is the ability of this institution throughout the settlement process to provide a mediation framework that should be noted.

In effect, in the event of the dispute opposing the United States and the European Union, the process did not reach a conclusion due to reconciliation between Washington and Brussels bringing about the end of the matter with the WTO in 1997.

This absence of an advisory opinion today leads one to presume rather than affirm the effectiveness of such a procedure in the framework of a new case against Washington.

A European Union referral to the WTO must also look beyond the procedural aspects, in particular by taking into consideration the position of the United States with respect to international organisations. Current American foreign policy indicates that a return to very marked isolationism in which the marginalisation, even weakening of the international organisations seems to be the orientation.

With respect to this state of mind, the United States may attempt to violate the legitimacy of the WTO in the event of an unfavourable decision.

101. Under the terms of the Dispute Settlement Understanding, the DSB (comprised of all of the members of the WTO) can "establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreement".

The objective is to "secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements".

102. Article 3 defines trade disputes as:

> *"situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member".*

Therefore, disputes submitted to the DSB only concern the member states (or their customs territories) which can intervene as party, or as a third party.

Article 10-2 of the Memorandum states:

> *"Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB (referred to in this Understanding as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel."*

The demonstration of the interest in taking action (legal or economic) is not necessary, nor a prejudice as the requesting state is not required to prove the negative effects on trade resulting from the alleged violation[30]; simple violation of an agreement stated in annex II of the Understanding is enough to form a basis for referral to the DSB.

103. The formal complaint is materialised in a "request for consultation" by the requesting state. It automatically triggers the Dispute Resolution Mechanism. The defending state cannot withdraw.

104. Disputes are settled in two steps:

- the first phase is "amicable" and is initiated by the requesting state through a request for consultation to which the opposing party must respond. Failing a mutually acceptable solution, a "special group" may be established (comprised of three independent experts appearing in a list drawn up by the member states) at the request of the requesting state. The special group's report is submitted to the parties so that they can find a mutually acceptable solution;
- the second phase is "contentious", and occurs in the event the amiable phase fails. The procedure then continues before the DSB, which examines the special group's report and uses it as a basis for a decision, unless one of the parties decides to appeal. The DSB rules in accordance with the principle of "reverse consensus", meaning that the decision is automatically adopted, unless there is a consensus to reject it. The special group's role is therefore decisive as its conclusions are usually adopted by the DSB.

(30) There is a presumption that an infraction of the WTO rules has an adverse impact on other members and it is up to the accused member to provide proof to the contrary (article 3-7 of the Understanding).

The average timeframe for a case before the DSB (including the conciliation phase) is approximately from 12 months to 18 months in the event of appeal. The Memorandum encourages positive solutions and also offers other instruments for finding an amicable resolution, such as the "Good offices", mediation, conciliation, and arbitration.

Appeals are handled by three of the seven members comprising the WTO's Appellate Body. It can confirm, modify or annul a report drafted by the special group. The DSB must then accept or reject the Appellate Body's report; rejection is only possible by reverse consensus.

105. The DSB must also ensure execution of its decisions (articles 21 and 22 of the Understanding). To this end:

- the member state must comply with the WTO agreements and with the DSB's decision within 8 to 15 months and inform the DSB of said execution through status reports;
- failing this, and after authorisation by the DSB, the requesting state can take retaliatory action in the form of proportionate trade sanctions.

3.3.2. Legal basis for contesting the legality of the American extraterritorial sanctions in the framework of the WTO

106. Article XXIII.1 of the GATT of 1994 specifies different types of complaints:

"1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of:

- the failure of another contracting party to carry out its obligations under this Agreement, or
- the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
- the existence of any other situation."

107. The first type of complaint, called a "violation complaint" can be made as soon as a violation by a member state of one of its obligations under the terms of the founding texts of the WTO is observed[31].

108. In the event of extraterritorial sanctions, the violation complaint could be formulated based on the following reasons:

a. Challenging the sanctions for use of the American dollar with Iran

109. The United States' ban on use of the American dollar for transactions made by a company from a member country as soon as it trades with Iran or with listed persons could be considered a contravention of article XI of the General Agreement on Trade in Services (GATS) of 1994 which states:

> *"Except under the circumstances envisaged in Article XII, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments".*

110. Article XII of the aforementioned text concerns the case where such restrictions may be justified to preserve the balance of payments in the event of a financial crisis. This situation can obviously not be invoked by the United States in order to justify the sanctions imposed on companies located in member states of the WTO once they use the American dollar.

b. Challenging sanctions due to the ban on tendering bids for government procurement markets in the United States

111. The ban on bidding on government procurement markets in the United States on pain of sanctions (in particular imposed by the D'Amato-Kennedy Act of 1996) could be considered a contravention of the Agreement on Government Procurement of 1994[32].

(31) The other two types of complaints are less common. The *"'Non-violation' complaints"* can be used to challenge any action taken by a member state once the effect is to cancel or compromise a benefit under the legislation, without there being a specific violation of a provision states. Finally, the *"non-violation complaint"* could target any situation once a benefit accrues from termination or compromise, but in practice no complaint of this type has been filed with the WTO.
(32) Source: https://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm.

112. This states the provisions relating to the qualification procedures and supplier participation in calls for tender published in the member countries, while limiting the exclusion of said suppliers "for reasons such as bankruptcy or false statements, on condition that this measure be compatible with the provisions of this agreement relating to national treatment and to non-discrimination".

113. By excluding European (and Russian and Chinese) suppliers for the simple reason that they had traded with Iranian persons or entities, the United States could be considered not to be complying with the rules of the WTO.

114. In addition, article VII states "A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement", which excludes other access restrictions, such as those of the American sanctions[33].

c. Challenging the sanctions due to the ban on obtaining licences within the United States

115. As stated above, the purpose of this study is not to analyse the legality of the decisions made by the American administration from the point of view of internal American law, nor to review procedures that provide arguments from American law against these decisions.

116. Nonetheless, there are arguments from international legal order which could be used by an American judge ruling on the validity of the sanctions imposed by the American administration against non-Americans for violation of the sanctions imposed by the United States on Iran.

117.The American sanctions imposed by the United States against contravening parties, involving the ban on obtaining licences within the United States, could be considered to correspond to the qualitative restrictions on member states in violation of article XI of the GATT:

(33) National Assembly, rapport d'information sur l'extraterritorialité n° 4082, October 5th, 2016.

"General elimination of quantitative restrictions: 1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party".

118. The abundance of texts (no fewer than 27 executive orders, 11 acts of Congress, the extensive FAQs, more than 29 federal register notices, etc.) and the lack of comprehensibility of American legislation concerning the embargo against Iran could also constitute a violation under the terms of its transparency requirement.

Article X.1 of the GATT indeed requires information associated with trade to be published in a form accessible to third parties and does not tolerate any uncertainty of application. This provision requires transparency for existing trade rules as a fundamental principle of the rules of international trade.

119. The United States could be tempted to invoke the limit relating to national security, as stated in article XXI-c) of the GATT:

"Nothing in this Agreement shall be construed […] c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security."

Nonetheless, this provision does not appear justified in the present case as, hypothetically, the American re-imposition of extraterritorial sanctions is exactly contrary to its commitments under the terms of the United Nations Charter (op. cit., nos. 67 and 68).

120. **Nota Bene**

The procedure before the WTO does not suspend sanctions imposed by a state and therefore does not prevent companies from being penalised as long as no ruling is made.

3.4. Implementation of the blocking statutes

121. The European Union could block the American extraterritorial sanctions by implementing EU Council regulation n° 271/96, called a "blocking regulation". The blocking regulation was adopted in 1996 as a counter-measure to American extraterritorial sanctions with respect to Cuba and Iran.

122. Under the terms of this regulation, any citizen of an EU member state or any entity registered in a member state:

- is required to inform the European Commission of the existence of an extraterritorial sanction which will affect its economic or financial interests, within 30 days of the date when it has knowledge of the measure;
- is forbidden from complying, directly or indirectly, actively or by omission, with any injunction or ban resulting, directly or indirectly, from an extraterritorial sanction.

123. The regulation also states that financial compensation for damages, including legal fees, resulting from the application of an extraterritorial sanction or originating in said sanction may be awarded. Such compensation could be sought from a person or entity at the origin of the prejudice The compensation would be collected through the seizure or sale of goods, including shares, held by said persons and entities within the European Union.

124. No legal decision nor any decision by an administrative authority that results in an extraterritorial sanction can be either recognised or executed. From that point on, no decision made on the basis of an extraterritorial sanction by an American jurisdiction or court could be executed within the EU. In that regard, the regulation considerably limits application of such sanctions.

125. The blocking regulation of 1996 requires, nonetheless, additions and reinforcement. The list of American legislative instruments imposing extraterritorial sanctions and annexed to the regulation must, of course, be updated to include all of the acts of Congress and the Executive Orders adopted since 1996.

126. The blocking regulation could be consolidated in order to provide sufficiently broad shield (for more than complaints based on the legal arguments cited above; op. cit., n° 62 s.) in order to:

- prevent, beforehand, the Office of Foreign Assets Control from launching an inquiry and to enable challenges to the OFAC decision; by doing so, the legitimacy of an OFAC inspection would be neutralised by the blocking regulation;
- challenge the legitimacy of a sanction announced by the OFAC, if it is based on extraterritorial sanctions which should not apply to a European citizen within the EU.

127. It goes without saying that it is critical for all member states to harmonise and strictly apply this regulation. No amendments by member states should be authorised so that application of the counter-measures can guarantee greater protection of the EU's interests.

128. Concerning the potential obstacle of the OFAC's inquiry, there are two possible cases:

- either the targeted European entity has no connecting link with the United States, in which case there is an infringement of EU's sovereignty. From that point, the blocking law could enable the company concerned to refuse an inquiry, prevent documents from being seized and people interrogated;
- or the targeted entity has subsidiaries, holdings or goods in the United States, in which case the blocking law could enable it to seek an emergency interim ruling by one of the EU member states (within 48 business hours) banning the inquiry. Such a decision would then be subject to the exequatur procedure in the United States.

129.The blocking regulation should itself have extraterritorial effect in order to protect all of a group's subsidiaries around the world. For example, the EU regulation could call for the French state to ban the transmission of documents and the collection of testimony by a foreign state or its representatives.

130. If, nonetheless, the OFAC's investigation cannot be blocked, it should be strictly limited to the subsidiary located in or doing direct contractual business with Iran, so that:

- only majority-held subsidiaries, meaning those for which more than 50% of the shares or voting rights are controlled, should be liable for prosecution;
- minority-held subsidiaries should be outside the scope of the OFAC, as they are not controllable.

131. As for challenging the decision of the OFAC, the question of what legal tools the blocking regulation should makes available to an EU citizen, so that that person can legitimately seek protection against a fine imposed by the OFAC. In the current state of the regulation, banning a European entity from applying an OFAC sanction subjects it to a double penalty: on the one hand, with respect to the OFAC for default of payment and, on the other, vis-à-vis the EU for the banned payment.

132. Challenging an OFAC decision before the American or European courts will not have a suspensive effect.

133. In addition to the economic impact, the effects of American sanctions on a company's business and worldwide reputation remain substantial. Apart from defamation or libel suits, there is today no means to protect oneself against threats to one's image nor against the risks of consumer boycott, as the latter are free to decide.

3.5. The liability of the French state

134. By unilaterally denouncing the Vienna agreement and by concomitantly extending the extraterritorial sanctions to every company, even non-American, trading with Iran, the American government is inevitably pushing non-American companies to sever their trade contracts with the Iran government or with Iranian companies (op. cit., n° 78 s.).

135. This unilateral severance of contractual relations, for a legal perspective at the initiative of the companies, will engage said companies' liability for breach of contract, as the unilateral American decision has no legal basis (op. cit., n° 81 s.).

136. At that point the question of whether French companies can attribute any liability to the French state, as they may feel that the French government's inaction or its refusal to take all possible measures in order to countermand the effects of the American institutions to impose sanctions caused them unusual and special prejudice.

137. There is immediately the question of how laws and regulations establish liability. This is based on the breach of the equality of public burdens caused by an administrative decision which results in unusual and special treatment of a user / citizen or a restricted category of users / citizens. It thus establishes the right to compensation based on the administration's strict liability.

138. The court's decision of principle on the matter related to a refusal by the public authorities to assent to a decision of the courts in order to re-establish public order, which said refusal deemed legitimate by the administration due to the lawlessness resulting from the intervention of the police but which resulted in unusual and special treatment of the owner of the asset which in a way "bore the brunt" of the administrative decision made in the name of public interest.

139. Such a decision, which imposes on the user a particular constraint that disrupts the balance of equality with respect to public burdens, to that user's detriment, entitles the user to compensation in that the prejudice is unusual[34].

140. This principle of strict liability for breach of equality of public burdens has been extended first to the law and regulations (French Council of State, January, 14th 1938, *Société des produits laitiers La Fleurette*) then to international agreements:

(34) French Council of State, November 30th, 1923, *Couiteas*

"the responsibility of the state is likely to be engaged based on the equality of citizens with respect to public burdens to ensure the repair of prejudice born of agreements concluded by France with other states and lawfully incorporated in the internal order, on condition, on the one hand, that neither the agreement itself nor the law which may have authorised its ratification can be interpreted as having intended to exclude any indemnification[35]".

141. This decision has been extended and now the French Council of State has adopted the principle that:

"the state's responsibility resulting from the laws is likely to be engaged […] due to its obligations to ensure compliance with international agreements by the public authorities in order to correct all prejudices which result from application of a law adopted in ignorance of France's international commitments36".

142. The Vienna agreement is not, of course, an international treaty, but the subsequent statutes, headed by EU regulation 2015/1863 of the Council of October 18th, 2015, integrate this agreement in the French legal corpus, so that the French state must be able to give it reasonably expected legal force.

143. In this case, it could be argued that the refusal of the government to take action to indemnify companies forced to unilaterally terminate their commitments with Iran is a decision likely to engage the administration's strict liability as it imposes unusual and special burdens on a category of users.

144. No deliberately discriminatory statute has been implemented as the French state has neither withdrawn from the international Vienna agreement nor has it implemented any sanctions against French companies

(35) Waline note on French Council of State judgement, March 30th, 1966, *Compagnie générale d'énergie radioélectrique.*
(36) French Council of State, February 8th, 2007, *Gardedieu.*

that have trade links with Iran. The regime that is discriminatory by nature cannot therefore justify the breach of the principle of equality of public burdens[37].

145. For its part, a refusal by the state to oppose the American sanctions, even if it was qualified as a government act (and therefore unlikely to be cancelled or to engage the state's liability), could hardly be considered to be fulfilling the objective of satisfying overriding public interest as the French government has not withdrawn from the Vienna agreement.

146. Finally, Iranian companies could seek to have the French state declared liable on the basis of a breach of the bilateral Treaty for the reciprocal promotion and protection of investments concluded between Iran and France on November 12th, 2004, if the French state does not take the action required to protect Iranian investors in France or to encourage investment between the two countries, as it is required to do under the provisions of the treaty.

(37) Conseil d'État, 17 octobre 1978, *Perthuis*.

Recommendations of the Commission

Incite states, in particular France and the European Union, which intend to demonstrate their sovereignty by remaining in the Vienna agreement despite the unilateral withdrawal of the United States, to give full effect to their decision by taking certain appropriate measures, in particular:

obtain an advisory opinion from the International Court of Justice, requested by the International Atomic Energy Agency or the United Nations General Assembly, on the justification of the United States withdrawal from the Vienna agreement;

file a complaint for breach with the Dispute Settlement Body of the World Trade Organization;

neutralise the effect of the extraterritorial sanctions by reinforcing blocking regulations (EU Council regulation n°271/96) to (i) impede the OFAC's investigations by asking a court in one of the member states of the EU for an emergency ruling and (ii) challenge the decision of the OFAC in the American or European courts, while providingsuspensive effects;

ask the relevant courts to rule on the merits of anticipatory withdrawal from a contract due to the re-imposition of American extraterritorial sanctions whereas the states of which the contracting parties are citizens are still part ofthe Vienna agreement.

ANNEX I
Joint Comprehensive Plan of Action, Vienna, July 14th 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[38].

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);

(38) The provisions of this Resolution do not constitute provisions of this JCPOA.

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;

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 aluminium 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 Rials;

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 aluminium 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 acces-

sible 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 statements[39]. 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. Consistent with the timing specified in

(39) 'Government officials' for the U.S. means senior officials of the U.S. Administration.

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.

ANNEX II

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 Iran strengthened by the implementation of the JCPOA and to bring to a satisfactory conclusion its consideration of this matter,

Affirming that full implementation of the JCPOA will contribute to building confidence in the exclusively peaceful nature of Iran's nuclear programme,

Strongly supporting the essential and independent role of the International Atomic Energy Agency (IAEA) in verifying compliance with safeguards agreements, including the non-diversion of declared nuclear material to undeclared purposes and the absence of undeclared nuclear material and undeclared nuclear activities, and, in this context, in ensuring the exclusively peaceful nature of Iran's nuclear programme, including through the implementation of the "Framework for Cooperation" agreed between Iran and the IAEA on 11 November 2013 and the "Roadmap for Clarification of Past and Present Outstanding Issues", and recognizing the IAEA's important role in supporting full implementation of the JCPOA,

Affirming that IAEA safeguards are a fundamental component of nuclear non-proliferation, promote greater confidence among States, inter alia, by providing assurance that States are complying with their obligations under relevant safeguards agreements, contribute to strengthening their collective security and help to create an environment conducive to nuclear cooperation, and further recognizing that effective and efficient safeguards implementation requires a cooperative effort between the IAEA and States, that the IAEA Secretariat will continue to engage in open dialogue on safeguards matters with States to increase transparency and build confidence and to interact with them on the implementation of

safeguards, and in this case, avoid hampering the economic and technological development of Iran or international cooperation in the field of peaceful nuclear activities; respect health, safety, physical protection and other security provisions in force and the rights of individuals; and take every precaution to protect commercial, technological and industrial secrets as well as other confidential information coming to its knowledge,

Encouraging Member States to cooperate, including through IAEA involvement, with Iran in the framework of the JCPOA in the field of peaceful uses of nuclear energy and to engage in mutually determined civil nuclear cooperation projects, in accordance with Annex III of the JCPOA,

Noting the termination of provisions of previous resolutions and other measures foreseen in this resolution, and inviting Member States to give due regard to these changes,

Emphasizing that the JCPOA is conducive to promoting and facilitating the development of normal economic and trade contacts and cooperation with Iran, and having regard to States' rights and obligations relating to international trade,

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,

1. Endorses the JCPOA, and urges its full implementation on the timetable established in the JCPOA;

2. 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;

3. 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;

4. 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;

Terminations

5. Requests that, as soon as the IAEA has verified that Iran has taken the actions specified in paragraphs 15.1-15.11 of Annex V of the JCPOA, the Director General of the IAEA submit a report confirming this fact to the IAEA Board of Governors and in parallel to the Security Council;

6. Requests further that, as soon as the IAEA has reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities, the Director General of the IAEA submit a report confirming this conclusion to the IAEA Board of Governors and in parallel to the Security Council;

7. Decides, acting under Article 41 of the Charter of the United Nations, that, upon receipt by the Security Council of the report from the IAEA described in paragraph 5:

a) The provisions of resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010) and 2224 (2015) shall be terminated;

b) All States shall comply with paragraphs 1, 2, 4, and 5 and the provisions in subparagraphs (a)-(f) of paragraph 6 of Annex B for the duration specified in each paragraph or subparagraph, and are called upon to comply with paragraphs 3 and 7 of Annex B;

8. Decides, acting under Article 41 of the Charter of the United Nations, that on the date ten years after the JCPOA Adoption Day, as defined in the JCPOA, all the provisions of this resolution shall be terminated, and none of the previous resolutions described in paragraph 7 (a) shall be applied, the Security Council will have concluded its consideration of the

Iranian nuclear issue, and the item "Non-proliferation" will be removed from the list of matters of which the Council is seized;

9. Decides, acting under Article 41 of the Charter of the United Nations, that the terminations described in Annex B and paragraph 8 of this resolution shall not occur if the provisions of previous resolutions have been applied pursuant to paragraph 12;

Application of Provisions of Previous Resolutions

10. Encourages China, France, Germany, the Russian Federation, the United Kingdom, the United States, the European Union (EU), and Iran (the "JCPOA participants") to resolve any issues arising with respect to implementation of JCPOA commitments through the procedures specified in the JCPOA, and expresses its intention to address possible complaints by JCPOA participants about significant non-performance by another JCPOA participant;

11. Decides, acting under Article 41 of the Charter of the United Nations, that, within 30 days of receiving a notification by a JCPOA participant State of an issue that the JCPOA participant State believes constitutes significant non-performance of commitments under the JCPOA, it shall vote on a draft resolution to continue in effect the terminations in paragraph 7 (a) of this resolution, decides further that if, within 10 days of the notification referred to above, no Member of the Security Council has submitted such a draft resolution for a vote, then the President of the Security Council shall submit such a draft resolution and put it to a vote within 30 days of the notification referred to above, and expresses its intention to take into account the views of the States involved in the issue and any opinion on the issue by the Advisory Board established in the JCPOA;

12. Decides, acting under Article 41 of the Charter of the United Nations, that, if the Security Council does not adopt a resolution under paragraph 11 to continue in effect the terminations in paragraph 7 (a), then effective midnight Greenwich Mean Time after the thirtieth day after the notification to the Security Council described in paragraph 11, all of the provisions of resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008),

1835 (2008), and 1929 (2010) that have been terminated pursuant to paragraph 7 (a) shall apply in the same manner as they applied before the adoption of this resolution, and the measures contained in paragraphs 7, 8 and 16 to 20 of this resolution shall be terminated, unless the Security Council decides otherwise;

13. Underscores that, in the event of a notification to the Security Council described in paragraph 11, Iran and the other JCPOA participants should strive to resolve the issue giving rise to the notification, expresses its intention to prevent the reapplication of the provisions if the issue giving rise to the notification is resolved, decides, acting under Article 41 of the Charter of the United Nations, that if the notifying JCPOA participant State informs the Security Council that such an issue has been resolved before the end of the 30-day period specified in paragraph 12 above, then the provisions of this resolution, including the terminations in paragraph 7 (a), shall remain in effect notwithstanding paragraph 12 above, and notes Iran's statement that if the provisions of previous resolutions are applied pursuant to paragraph 12 in whole or in part, Iran will treat this as grounds to cease performing its commitments under the JCPOA;

14. Affirms that the application of the provisions of previous resolutions pursuant to paragraph 12 do 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 the JCPOA, this resolution and the previous resolutions;

15. Affirms that any application of the provisions of previous resolutions pursuant to paragraph 12 is not intended to harm individuals and entities that, prior to that application of those provisions, engaged in business with Iran or Iranian individuals and entities that is consistent with the JCPOA and this resolution, encourages Member States to consult with each other with regard to such harm, and to take action to mitigate such unintended harm for these individuals and entities, and decides if the provisions of previous resolutions are applied pursuant to paragraph 12 not to impose measures with retroactive effect on individuals and entities for business activities with Iran that were consistent with the JCPOA, this resolution and the previous resolutions prior to the application of these provisions;

JCPOA Implementation

16. Decides, acting under Article 41 of the Charter of the United Nations, to review recommendations of the Joint Commission regarding proposals by States to participate in or permit nuclear-related activities set forth in paragraph 2 of Annex B, and that such recommendations shall be deemed to be approved unless the Security Council adopts a resolution to reject a Joint Commission recommendation within five working days of receiving it;

17. Requests Member States seeking to participate in or permit activities set forth in paragraph 2 of Annex B to submit proposals to the Security Council, expresses its intention to share such proposals with the Joint Commission established in the JCPOA for its review, invites any Member of the Security Council to provide relevant information and opinions about these proposals, encourages the Joint Commission to give due consideration to any such information and opinions, and requests the Joint Commission to provide its recommendations on these proposals to the Security Council within twenty working days (or, if extended, within thirty working days);

18. Requests the Secretary-General, in order to support JCPOA implementation, to take the necessary administrative measures to facilitate communications with Member States and between the Security Council and the Joint Commission through agreed practical arrangements;

19. Requests the IAEA and the Joint Commission to consult and exchange information, where appropriate, as specified in the JCPOA, and requests further that the exporting states cooperate with the Joint Commission in accordance with Annex IV of the JCPOA;

20. Requests the Joint Commission to review proposals for transfers and activities described in paragraph 2 of Annex B with a view to recommending approval where consistent with this resolution and the provisions and objectives of the JCPOA so as to provide for the transfer of items, materials, equipment, goods and technology required for Iran's nuclear activities under the JCPOA, and encourages the Joint Commission to establish procedures to ensure detailed and thorough review of all such proposals;

Exemptions

21. Decides, acting under Article 41 of the Charter of the United Nations, that the measures imposed in resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), and 1929 (2010) shall not apply to the supply, sale, or transfer of items, materials, equipment, goods and technology, and the provision of any related technical assistance, training, financial assistance, investment, brokering or other services, by JCPOA participant States or Member States acting in coordination with them, that is directly related to:

(a) the modification of two cascades at the Fordow facility for stable isotope production;

(b) the export of Iran's enriched uranium in excess of 300 kilograms in return for natural uranium; and

(c) the modernization of the Arak reactor based on the agreed conceptual design and, subsequently, on the agreed final design of such reactor;

22. Decides, acting under Article 41 of the Charter of the United Nations, that Member States engaging in the activities permitted in paragraph 21 shall ensure that: (a) all such activities are undertaken strictly in accordance with the JCPOA; (b) they notify the Committee established pursuant to resolution 1737 (2006) and, when constituted, the Joint Commission ten days in advance of such activities; (c) the requirements, as appropriate, of the Guidelines as set out in the relevant INFCIRC referenced in resolution 1737 (2006), as updated, have been met; (d) they have obtained and are in a position to exercise effectively a right to verify the end-use and end-use location of any supplied item; and (e) in case of supplied items, materials, equipment, goods and technology listed in the INFCIRCs referenced in resolution 1737 (2006), as updated, they also notify the IAEA within ten days of the supply, sale or transfers;

23. Decides, acting under Article 41 of the Charter of the United Nations, also that the measures imposed in resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), and 1929 (2010) shall not apply to the extent necessary to carry out transfers and activities, as approved on a case-by-case basis in advance by the Committee established pursuant to resolution 1737 (2006), that are:

a) directly related to implementation of the nuclear-related actions specified in paragraphs 15.1-15.11 of Annex V of the JCPOA;

b) required for preparation for the implementation of the JCPOA; or,

c) determined by the Committee to be consistent with the objectives of this resolution;

24. Notes that the provisions of paragraphs 21, 22, 23 and 27 continue in effect if the provisions of previous resolutions are applied pursuant to paragraph 12;

Other Matters

25. Decides to make the necessary practical arrangements to undertake directly tasks related to the implementation of this resolution, including those tasks specified in Annex B and the release of guidance;

26. Urges all States, relevant United Nations bodies and other interested parties, to cooperate fully with the Security Council in its exercise of the tasks related to this resolution, in particular by supplying any information at their disposal on the implementation of the measures in this resolution;

27. Decides that all provisions contained in the JCPOA are only for the purposes of its implementation between the E3/EU+3 and Iran and should not be considered as setting precedents for any other State or for principles of international law and the rights and obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and other relevant instruments, as well as for internationally recognized principles and practices;

28. Recalls that the measures imposed by paragraph 12 of resolution 1737 (2006) shall not prevent a designated person or entity from making payment due under a contract entered into prior to the listing of such a person or entity, provided that the conditions specified in paragraph 15 of that resolution are met, and underscores, that if the provisions of previous resolutions are reapplied pursuant to paragraph 12 of this resolution, then this provision will apply;

29. Emphasizes the importance of all States taking the necessary measures to ensure that no claim shall lie at the instance of the Government of Iran, or any person or entity in Iran, or of persons or entities designated pursuant to resolution 1737 (2006) and related resolutions, or any person claiming through or for the benefit of any such person or entity, in connection with any contract or other transaction where its performance was prevented by reason of the application of the provisions of resolutions 1737 (2006), 1747 (2007), 1803 (2008), 1929 (2010) and this resolution;

30. Decides to remain seized of the matter until the termination of the provisions of this resolution in accordance with paragraph 8.