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Using 'technical guarantees' to restore and sustain the Iran nuclear deal

GLOBAL SECURITY POLICY BRIEF

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Executive Summary

- As negotiations on the restoration of the Joint Comprehensive Plan of Action (JCPOA) – or the Iran nuclear deal – resume in Vienna, this paper proposes how to address the Iranian demand for guarantees that the lifting of US secondary sanctions will deliver sustained economic benefits.
- Due to the fraught experience of the JCPOA's implementation and the consequences of former US President Donald Trump's unilateral abrogation of the deal in 2018, the aims of the negotiating parties have shifted. Initially preoccupied with measures to monitor Iran's compliance with its nuclear commitments, there is now a growing search for mechanisms to monitor and verify that the P5+1 will uphold their side of the bargain and ensure Iran derives tangible economic benefits from the deal.
- Iran's pursuit of guarantees is not only about protection from the re-imposition of sanctions but also reflects the need to address the concerns that private companies have which may otherwise deter them from investing even if sanctions are not reimposed.
- This paper examines why political and legal guarantees are insufficient or implausible means to achieve this new aim. Explaining the validity of the Iranian demand for guarantees, the authors provide a selection rubric for the identification of economic projects that can act as technical guarantees.
- The ideal features of such projects would help ensure that their implementation would support relevant stakeholders in their effort to ensure that sanctions relief is better delivered, build shared interests in cooperating to improve the credibility of economic incentives for Iran, and increase the cost of any decision to reduce compliance with the agreement.
- In this way, technical guarantees can serve to increase the credibility of the long-term commitments enshrined in the JCPOA, paving the way for the deal's restoration, sustainment, and ability to act as an enabling step toward further diplomacy in the future.

Introduction

In February 2021, Iranian Supreme Leader Ayatollah Ali Khamenei outlined Iran's "final" stance on new negotiations for the restoration of the Joint Comprehensive Plan of Action (JCPOA). Ayatollah Khamenei declared that sanctions relief must be implemented "in practice" and not merely "on paper." To return to full compliance with the JCPOA, Iran would seek to "verify" that sanctions relief had been fully implemented and ensure that the economic benefits promised under the deal would materialise. Given the Supreme Leader's stance, the verification of sanctions relief was a key demand of the Rouhani administration during the first six rounds of negotiations. The new Raisi administration, which entered into office in August 2021, has continued to make this demand. In an October press conference during which he reiterated that Iran would soon return to talks in Vienna, Iranian Foreign Minister Hossein Amir Abdollahian explained that they "are keeping [their] eyes on the issue of verification and receiving the necessary guarantees for the implementation of commitments by the Western parties."¹

As negotiators prepare for the seventh round of talks, which will take place in late November, the issues

of verification and guarantees loom large. For the Raisi administration, the decision to restore mutual compliance with the JCPOA as part of the Biden administration's intended re-entry into the agreement hinges on the adoption of a new approach to verification and guarantees. Political constraints mean that the deal will be essentially unchanged from the agreement adopted in July 2015 should it be successfully restored. But the Raisi administration will be under significant political pressure to demonstrate that it has not repeated the Rouhani administration's mistakes in negotiating a return to mutual compliance with the deal. Just as President Obama declared that the JCPOA "is not built on trust; it is built on verification" following the original implementation of the agreement, the bitter experience of President Trump's unilateral withdrawal from the deal has led to President Raisi's particular mandate—verify, do not trust.² As such, Iranian officials are insisting that the restored deal be supported by "objective guarantees" that make sanctions relief commitments credible.

This paper considers the Iranian demand for guarantees to be legitimate and provides a framework for designing technical steps to rebuild the credibility of the long-term commitments enshrined in the JCPOA. The framework is built

1 Maclean, William. 'Verification of Sanctions Relief a Top Issue in Nuclear Talks'. Reuters, 9 October 2021. <https://www.reuters.com/world/middle-east/verification-sanctions-relief-top-issue-nuclear-talks-iran-2021-10-09/>.

2 Woolf, Chris. 'Iran Deal Not Based on Trust, Rather Verification, Says Obama'. The World, 14 July 2015. <https://theworld.org/stories/2015-07-14/iran-deal-not-based-trust-rather-verification-says-obama>.

around the concept of a *technical guarantee*, which we define as a sequence of physical or institutional steps that can alter future incentive structures in favour of the continued implementation of an agreement.³ These steps can be embodied in collaborative technical projects that constitute shared physical investments in continued engagement, and physical and institutional progress toward the normalisation of nuclear and economic relations that is envisioned in the JCPOA. Such steps can help make political guarantees “objective” in the sense that they could be objectively observed by all sides and would rely on evolving physical and institutional realities rather than malleable political or juridical norms.

Such steps could be objectively observed by all sides and would rely on evolving realities rather than malleable political or juridical norms.

3 For scholarship on the use of technological infrastructure to build credible commitments in non-proliferation diplomacy, see Lawrence, Christopher. ‘Normalization by Other Means: Technological Infrastructure and Political Commitment in the North Korean Nuclear Crisis’. *International Security* 45, no. 1: 9–50. <https://direct.mit.edu/isec/article/45/1/9/95258/Normalization-by-Other-Means-Technological> and ‘A Theory of Engagement with North Korea’. Belfer Center for Science and International Affairs, May 2019. <https://www.belfercenter.org/publication/theory-engagement-north-korea>.

Such guarantees are necessary for two reasons. First, restoring full compliance with the JCPOA is politically challenging for all sides, but especially for the Raisi administration. Since the Trump administration’s unilateral withdrawal from the nuclear deal, the failed implementation of the JCPOA has been used as a political cudgel in Iran, with hardline politicians using the dashed hopes of the nuclear deal to undermine moderate and reformist politicians.⁴ During his speech marking the changeover from the Rouhani to Raisi administrations, Ayatollah Khamenei criticised the outgoing Rouhani administration for having been too eager and trusting when it came to negotiating with the West. In his view, the failure of the Rouhani administration made clear that “trusting the West does not work.”⁵ Khamenei’s remarks echoed the criticisms that had been levied by hardline politicians. Still, whether or not the West can be trusted, the Raisi administration has been tasked to restore the JCPOA as a strategic imperative. In this way, guarantees of sanctions relief are necessary for the

4 The failure of the nuclear deal to deliver the expected economic benefits significantly weakened the bloc of moderate and reformist politicians that had backed Rouhani during his two terms in office. See: Ayatollahi Tababar, Mohammad. ‘Iran’s War Within: Ebrahim Raisi and the Triumph of the Hard-Liners’. *Foreign Affairs*, October 2021. <https://www.foreignaffairs.com/articles/iran/2021-08-05/irans-war-within-ebrahim-raisi>.

5 ‘Iran’s Khamenei Warns to Not Trust West as New Government Expected’. AFP, 28 July 2021. <https://www.france24.com/en/live-news/20210728-iran-s-khamenei-warns-to-not-trust-west-as-new-government-expected>.

Raisi administration to claim that it has not made the same mistake as the Rouhani administration, and therefore to defend itself and the nuclear deal from political attacks. The Raisi administration cannot really claim to have achieved a “better deal” as the terms of the JCPOA will not change. So the Raisi administration must demonstrate that the process by which it has restored the agreement, and the process by which that agreement is to be implemented, have been meaningfully improved.⁶

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Second, beyond the political dynamics in Tehran, verification and guarantees have practical importance. The

economic commitments made under the nuclear deal are detailed in Annex II, which describe the “effects of the lifting” US and EU sanctions particularly for Iran’s financial, energy, transport, metals, and automotive sectors.⁷ The initial implementation of sanctions relief and the subsequent reimposition of US secondary sanctions made clear for Iran that governments have a limited ability to encourage companies to engage in trade and investment in formerly sanctioned countries, and especially in a country where the potential

⁷ After the US abrogated the JCPOA, remaining participants affirmed their commitment regarding the following objectives “in good faith and in a constructive atmosphere”:

- the maintenance and promotion of wider economic and sectoral relations with Iran;
- the preservation and maintenance of effective financial channels with Iran;
- the continuation of Iran’s export of oil and gas condensate, petroleum products and petrochemicals;
- the continuation of sea (including shipping and insurance), land, air and rail transportation relations;
- the promotion of export credit cover;
- clear and effective support for economic operators trading with Iran, particularly small and medium-sized enterprises which are the backbone of many economies;
- the encouragement of further investments in Iran;
- the protection of economic operators for their investment and other commercial and financial activities in or in relation to Iran;
- the bringing together of private and public sector experts, including through the promotion of Business Councils;
- the practical support for trade with and investment in Iran;
- the protection of companies from the extra-territorial effects of US sanctions.

Statement from the Joint Commission of the Joint Comprehensive Plan of Action, 6 July 2018, [https://eeas.europa.eu/headquarters/headquarters-homepage/48076/statement-joint-commission-joint-comprehensive-plan-action_en?mc_cid=2d4577e8aa&mc_eid=\[UNIQID\]](https://eeas.europa.eu/headquarters/headquarters-homepage/48076/statement-joint-commission-joint-comprehensive-plan-action_en?mc_cid=2d4577e8aa&mc_eid=[UNIQID])

⁶ Batmanghelidj, Esfandiyar. ‘Nuclear Talks Under Raisi: Iran’s Diplomats Are Going Slow to Appear Smart’. European Council on Foreign Relations, 19 October 2021. <https://ecfr.eu/article/nuclear-talks-under-raisi-irans-diplomats-are-going-slow-to-appear-smart/>.

“snapback” of UN sanctions looms. For example, the Obama administration failed in its bid to get major banks to begin processing Iran-related transactions in support of international trade.⁸ Governments also have no ability to compel companies to engage in business in circumstances where some sanctions have been reimposed. The European Union’s effort to use a blocking statute to punish companies for complying with US secondary sanctions failed to safeguard trade with Iran even in the non-sanctionable humanitarian sector. European companies and banks routinely denied services related to Iran citing commercial factors.⁹ Even in China, major state companies limited their Iran activities. For example, in January 2019, Bank of Kunlun, a Chinese bank owned by state oil giant CNPC, changed its policies in order to comply with US secondary sanctions on Iran.¹⁰

Iranian negotiators are rightly concerned that economic operators, particularly banks, will be hesitant to provide routine services for Iran-related trade given the lack of legal guarantees surrounding the deal’s continued implementation and the perception that a future US administration might once again change policy dramatically. The unwillingness of some entities to support Iran-related transactions has major knock-on effects even for those companies that do wish to engage and conduct business in Iran because of their need for basic correspondent banking and trade finance. State-backed export credit agencies in France, Italy, Germany, and Denmark had made significant progress in establishing trade finance facilities to support the growing number of European exporters selling goods to Iran, but all European efforts faced roadblocks when banks were unwilling to sign-on to the schemes even before the Trump administration’s withdrawal from the agreement.¹¹ For this reason, Iran’s pursuit of guarantees is not only about protection from the re-imposition of sanctions, but also part of an effort to address the ways in which concerns about the possible reimposition of sanctions affect companies’ risk perceptions and thereby their willingness to take advantage of economic opportunities when sanctions are rolled back.

8 Batmanghelidj, Esfandiyar. ‘Verification and the Credibility of Sanctions Relief for Iran’. Bourse & Bazaar Foundation, 7 February 2021. <https://www.bourseandbazaar.com/articles/2021/2/7/verification-and-the-credibility-of-sanctions-relief-for-iran>.

9 Geranmayeh, Ellie, and Manuel Lafont Rapnouil. ‘Meeting the Challenge of Secondary Sanctions’. European Council on Foreign Relations, 25 June 2019. https://ecfr.eu/publication/meeting_the_challenge_of_secondary_sanctions/.

10 Motamedi, Maziar. ‘Policy Change at China’s Bank of Kunlun Cuts Iran Sanctions Lifeline’. Bourse & Bazaar Foundation, 2 January 2021. <https://www.bourseandbazaar.com/articles/2019/1/2/policy-change-at-chinas-bank-of-kunlun-cuts-sanctions-lifeline-for-iranian-industry>.

11 Front, Laurence. ‘Export Finance Won’t Save Iran Business: French Official’. Reuters, 15 May 2018. <https://www.reuters.com/article/us-iran-nuclear-france-idUSKCN1IG1RF>.

Importantly, a more directed and technical approach to sanctions relief is consistent with the exhortations within the JCPOA. Article 29 of the JCPOA stipulates that 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.”¹² Past experience makes clear that failing or refusing to intervene to support economic operators is *itself* a policy that undermines “successful implementation” of the nuclear deal. If transactions that are “allowed” as per the commitments set forth in Annex II are not completed because of the failure of JCPOA parties to ensure that willing companies can engage in trade with Iran, then normalisation is adversely affected—there is no acts and omissions distinction when it comes to sanctions relief. As early as December 2015, Iran raised concerns that aspects of US domestic legislation could violate Article 29.¹³ But these concerns were never adequately addressed.

12 ‘Full Text of the Joint Comprehensive Plan of Action’. European Parliament, 15 July 2015. <https://www.europarl.europa.eu/cmsdata/122460/full-text-of-the-iran-nuclear-deal.pdf>.

13 Shabani, Mohammad Ali. ‘US, Iran Move to Avert Firestorm Over Visa Waiver Program Changes’. Al Monitor, 20 December 2015. <https://www.al-monitor.com/originals/2015/12/visa-waiver-program-changes-zarif-kerry-letter.html>.

Political and legal guarantees fall short

The need for the technical guarantees envisioned in this paper also reflects two facts: political guarantees are insufficient and legal guarantees are non-existent. Western leaders have sought to address Iranian concerns around the credibility of sanctions relief commitments in their political statements. Most recently, in a joint statement issued on 29 October 2021, President Biden, Chancellor Merkel, President Macron, and Prime Minister Johnson noted “President Biden’s clearly demonstrated commitment to return the US to full compliance with the JCPOA and to stay in full compliance, so long as Iran does the same.”¹⁴ Such language could also be incorporated into the text of the statement that is released by the JCPOA Joint Commission framing the agreement on the nuclear deal’s restoration. But this would not go far beyond the exhortation in Article VIII of the JCPOA preamble, in which the P5+1 commits to “implement this JCPOA in good faith and in a constructive atmosphere, based on mutual respect, and to refrain from

14 ‘Joint Statement by the President of France Emmanuel Macron, Chancellor of Germany Angela Merkel, Prime Minister of the United Kingdom and Northern Ireland Boris Johnson, and President of the United States Joseph R. Biden, Jr. on Iran’. White House, 30 October 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/30/joint-statement-by-the-president-of-france-emmanuel-macron-chancellor-of-germany-angela-merkel-prime-minister-of-the-united-kingdom-and-northern-ireland-boris-johnson-and-president-of-the-united-st/>.

any action inconsistent with the letter, spirit and intent of this JCPOA that would undermine its successful implementation.” Political guarantees did nothing to prevent the Trump administration’s unilateral withdrawal from the agreement at a time when Iran remained in full compliance with its commitments. So, Iran is seeking assurances that go beyond those that can be provided “on paper.”

Political guarantees did nothing to prevent the Trump administration’s unilateral withdrawal from the agreement at a time when Iran remained in full compliance with its commitments.

Legal guarantees were also sought. The Rouhani administration invoked international law following the Trump administration’s 2018 abrogation of the JCPOA and reimposition of both primary and secondary sanctions against Iran. Iran took its case to the International Court of Justice (ICJ) where Iran claimed that the US’s reimposition of sanctions was in violation of the 1955 Treaty of Amity—a bilateral treaty signed by the US government and the Imperial State of Iran securing the diplomatic

and commercial interests of both countries.¹⁵ On 3 February 2021, the ICJ rejected the US’s preliminary objections and ruled in favour of Iran, finding that it had jurisdiction to hear the case. Whereas Iran initiated the case in July of 2018 by submitting its complaint and by submitting its memorial in May 2019, the ICJ recently extended the US’s deadline to submit its counter-memorial to November 22, 2021. Importantly, even if the ICJ should find Iran’s case sound and rule in favour of enforcing the terms of the Treaty of Amity on the US, the ICJ has no mechanisms by which to enforce its rulings. As such, the Biden administration—or its successor for that matter—could simply ignore such rulings with little to no consequences. The US has done exactly this in the past, asserting US national security interests to ignore ICJ rulings. For example, in the early stages of the current ICJ case, the ICJ preliminarily ordered that the US lift sanctions on medicine, devices, foodstuffs and agricultural equipment. Citing

¹⁵ In the 1955 Treaty of Amity, both Iran and the United States agreed to designate the ICJ as the venue by which to resolve any disputes regarding the treaty. In *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Iran argues that the 1955 Treaty of Amity is an enforceable treaty under international law and claims that the United States’ reimposition of sanctions is in violation of Clauses 1 and 2 of Article IV and Clause 1 of Article V—clauses in the Treaty of Amity specifically pertaining to the facilitation of economic relations between the two countries. Initially, the United States objected to the ICJ’s jurisdiction, arguing that the scope of Iran’s complaints falls outside the scope of the 1955 Treaty of Amity.

national security concerns, the Trump administration rejected the ICJ's ruling. Iran's invocation of the 1955 Treaty of Amity—an antiquated treaty signed by the monarchy that the Islamic Republic replaced—demonstrates the JCPOA's lack of effective mechanisms to address signatory concerns in the area of economic commitments.

The failure of the Rouhani administration to achieve anything more than symbolic victories through the pursuit of legal recourse reflects the fact that international law provides no real means to establish a legal guarantee that the US, or any other JCPOA party, will continue to implement their commitments under the deal so long as Iran remains in compliance. Domestic law and political aims, especially those justified by reference to national security, will continue to trump the commitments outlined in the JCPOA. Even in the politically unlikely event that the JCPOA was to be enshrined in US domestic law as an international treaty, a determined US president could still withdraw, just as President Trump did with the Paris Climate Agreement.¹⁶

Political and legal guarantees are means for the P5+1 and Iran to overcome a deficit of trust, but they do not actually address the underlying reasons for the lack of trust. Part of the

problem has been that while many of the diplomatic concessions enshrined in the JCPOA have been designed to reward Iran for its compliance in the present, less attention has been paid to how the implementation of sanctions relief would bolster the future durability of the agreement. When the question of the credibility of long-term commitments has arisen, the P5+1 has relied on political and legal guarantees rather than crafting physical or institutional steps that enhance the durability of those commitments. But just as in the classic prisoner's dilemma, if engagements are not crafted in a way that establishes and reinforces a “shadow of the future,” then the incentives to cooperate in the present iteration of diplomacy can easily break down.

Political and legal guarantees do not actually address the underlying reasons for the lack of trust.

Fortunately, an alternate approach exists that uses the implementation of diplomatic concessions not simply as an effort to induce cooperation in the present iteration of engagement, but rather as an opportunity to iterate the “games,” creating more areas in which the P5+1 and Iran are presented with opportunities to cooperate in order to achieve optimal, “win-win” outcomes. Each instance

¹⁶ McGrath, Matt. ‘Climate Change: US Formally Withdraws from Paris Agreement’. BBC, 4 November 2020. <https://www.bbc.co.uk/news/science-environment-54797743>.

of cooperation—for example in a technical project or program related to the economic commitments of the JCPOA—can generate new incentives that reinforce the decision of the P5+1 and Iran to maintain that cooperation. In this way, where political and legal guarantees fall short, addressing the issue of verification and guarantees “in practice” through technical cooperation can establish a more powerful kind of guarantee.

Establishing technical guarantees

Traditional nonproliferation diplomacy has offered inducements to reward Iran for nuclear rollback and restraint and promised future political and economic normalisation if that nuclear restraint is continued. While legal or written guarantees are often put forth to clarify and accredit those promises, if parties to an agreement face no incentive to follow through on those promises, their counterparts are unlikely to take those guarantees at face value. A technical guarantee is designed to overcome that credibility deficit through cooperative technical or economic programs that constitute shared physical or institutional investment in those political commitments. All three of these diplomatic tools—inducements, written agreements, and technical guarantees—are needed for nonproliferation success in both the near and long term.

The essential distinction between a written and a technical guarantee is that the latter would take place in a physical or institutional space, and would be embodied in some type of irreversible process that is consistent with the political commitment being made. In this way, the key political commitments are reflected in hard and soft infrastructures. Once commitments are embodied in physical or institutional space, they would no longer rely exclusively on interpretive legal language or malleable political assurances. Instead, a technical guarantee can be self-enforcing in the sense that, once its physical or institutional implementation steps have unfolded, its reversal would exact costs on all parties involved.

There is an important precedent for such technical guarantees within the JCPOA. The civil nuclear cooperation envisioned by the JCPOA, principally the redesign of the Arak Heavy Water Research Reactor, has several features of a technical guarantee. This cooperation included multiple JCPOA parties, it involved collaboration between governments and economic operators, it was highly technical in nature, and required new institutional arrangements such as the formation of a dedicated working group. Like the rest of Iran’s nuclear commitments, the modernisation of the Arak reactor was subject to third-party verification by the IAEA. Because of these features, the civil nuclear cooperation under the JCPOA showed a greater degree

of durability than other aspects of the deal. The Trump administration only fully revoked waivers permitting civil nuclear cooperation by JCPOA parties in May 2020, two years after the US withdrawal from the agreement.¹⁷ One of the fundamental asymmetries of the JCPOA is that the nuclear commitments made by Iran were subject to such technical guarantees, whereas the economic commitments made by the P5+1 had no such technical or institutional support to make those commitments verifiable and durable. Notably, this asymmetry is highlighted in a recent report by the influential Majlis Research Center that proposes a “checklist” for sanctions verification.¹⁸

The significant and proscriptive cooperation between Iran and the P5+1 on the Arak Heavy Water Research Reactor can be contrasted with the deliberate laissez-faire approach to the implementation of sanctions relief, in which Western governments operated under the assumption that companies and banks would prove able to avail themselves of the opportunities presented by sanctions relief. The failures of this approach are perhaps most evident in the thwarted modernisation of Iran’s ageing civilian

airline fleet.¹⁹ Iran’s multi-billion contracts with American planemaker Boeing and European plane makers Airbus and ATR were the highest-profile examples of post-sanctions economic engagement. Although the negotiations on these deals began prior to the implementation of the JCPOA, within a few months after the sanctions were fully lifted it became clear that progress was slower than expected—the deal with Boeing was not signed until December 2016. Even after the contracts were in hand, the plane makers and their eager Iranian customers struggled to structure the necessary financing for the deals, as the world of aviation finance and major commercial banks snubbed Iran.

As the aircraft deals languished, they became symbolic of the growing unease that the lifting of sanctions was not leading to the expected normalisation of economic relations. Efforts by US and European officials to try and shepherd the aircraft deals were ad hoc and were therefore seen as exceptional interventions that went beyond the basic sanctions relief commitments enshrined in the JCPOA. In the end, despite a late attempt by Boeing’s leadership to enamour the Trump administration to their pending sale to Iran, the American plane maker failed to deliver a single aircraft. European plane

17 ‘Arak Nuclear Complex’. NTI, 25 October 2021. <https://www.nti.org/education-center/facilities/arak-nuclear-complex/>.

18 Batmanghelidj, Esfandiyar. ‘Here’s What Iran Wants From Sanctions Relief’. Bourse & Bazaar Foundation, 1 October 2021. <https://www.bourseandbazaar.com/articles/2021/10/1/heres-what-iran-wants-from-sanctions-relief>.

19 Beals, Rachel. ‘Boeing Will Lose Out on \$20 Billion in Iran Deals as Airbus, GE Impacted’. MarketWatch, 8 May 2018. <https://www.marketwatch.com/story/boeing-will-lose-out-on-20-billion-in-iran-deals-as-airbus-ge-impacted-2018-05-08>.

makers Airbus and ATR, which likewise depended on special licenses from the US Department of Treasury due to American-made parts content in their aircraft, only managed to deliver a combined 16 planes from Iran's total orders of 120 aircraft.²⁰ The failure to facilitate the sale of civilian aircraft to Iran was a profound failure of JCPOA implementation, not only because a commitment was broken, but also because a potential technical guarantee had gone unprovided. The provision of maintenance and parts, technical collaboration on safe and efficient operation, and Iranian demand for air transit would all be required for benefits from the acquired aircraft to accrue. It is incumbent on the P5+1 to understand economic engagements such as the sale of civilian aircraft not merely as a transaction to be enabled through sanctions relief, but as a commitment to be actively facilitated through prescribed technical and institutional interventions.

The self-enforcing characteristics of a technical guarantee are, of course, easy to define in principle, but in practice must be *designed into* the technical projects that embody the political commitment. Table 1 outlines several criteria for designing technical guarantees for confidence building. First, a technical project is

chosen whose physical realisation is consistent with the political commitment that it is intended to accredit. For instance, if a commitment is made to normalise economic and trade relations, then the negotiators might choose to modernise some part of Iranian infrastructure that will entail future maintenance, replacement parts, and exchange of technical expertise. A second, and related, criteria is that the project should offer pending future benefits to both sides of the engagement that are *contingent* on future cooperation. These pending benefits can constitute a new form of shared interest and mutual leverage that can support the durability of the political commitment being made. These commitments should also foster new stakeholder groups that have a stake in the success of the deal. Third, construction or implementation steps should entail costs on both sides of the arrangement, which in turn can function as physical demonstrations of commitments that are observable by all sides. Finally, the major milestones of the implementation process should be *time directional*, meaning that reversing those steps exacts a cost on all sides of the agreement. This cost might simply be the loss of sunk investments and non-receipt of pending benefits, but it is important that some components of these costs be nonrecoverable.

20 'Iran Getting New Planes from Europe Before US Sanctions Return'. Al Jazeera, 4 August 2018. <https://www.aljazeera.com/news/2018/8/4/iran-getting-new-planes-from-europe-before-us-sanctions-return>.

Table 1: Technical guarantees selection rubric

Features	Why this matters	Examples
1. Embodying the commitment - Infrastructural changes should be consistent with the political commitment being made.	The opportunity for sceptical decision-makers to watch political changes materialise physically can avert the credibility problems associated with political promises.	Partial construction steps in parallel with disclosures of nuclear data or dismantlement or downblending of enriched uranium.
2. Building shared incentives - Each step creates pending future rewards for each side that are contingent on completion of later steps.	Pending contingent rewards constitute new incentives for all sides to continue implementation.	Shared infrastructures such as ports, international transit rail lines and air travel, or shared energy infrastructures can be designed so that they only provide benefits if fully constructed and jointly operated, which in turn requires future engagement
3. Financial exposure – Each step exerts tangible costs on the side that implements it, parties have “skin in the game.”	Each costly step demonstrates continued commitment to further engagement and cooperation.	Construction costs, dismantlement or physical transformation of previous infrastructures, etc.
4. Transparency – Technical steps should be objectively observable by all sides, and subject to shared physical interpretations.	Observable and costly technical steps can render political commitments “objectively visible” to all sides, including external bodies tasked with verification duties.	Construction steps; physical delivery of technical components or material resources; verified alteration of previous technical infrastructures.
5. Time-directionality – Steps should leverage technological inertia such that physical progress becomes costly for all sides to reverse.	If physical steps are easy to reverse, they are little better than “paper commitments,” and hence illustrate lack of commitment.	Pouring of concrete; physical construction and delivery of technical components and materials; irreversible disclosures of sensitive design data or tacit knowledge.
6. Enlisting new domestic constituencies – Technical steps can be designed to build domestic constituencies in Iran and/or the P5+1 who share a stake in continued implementation.	Domestic politics in each state consistently present one of the biggest barriers to non-proliferation engagement. Building new coalitions that support engagement can offset these challenges.	New manufacturing jobs associated with building energy, rail, airline or other infrastructures can build domestic support for diplomacy.
7. Graduated sequence – Technical implementation can be conducted in a series of parallel steps spread out across stages.	Graduated sequences can manage risks that each side faces in implementing its steps and provide information about the other side’s intentions that can offset those perceived risks.	Partial construction steps and contingent financing tranches in parallel with disclosures of nuclear data, dismantlement, or downblending of enriched uranium.

Getting creative about commitments

Using a selection rubric, like the one outlined in this paper, officials from the P5+1 and Iran can evaluate potential projects that can act as technical guarantees. These projects are not intended to be a major departure from the types of economic activities that were expected to follow the implementation of the JCPOA. There are two reasons why policymakers ought to be confident about making technical commitments in the context of deeper and more directed economic cooperation.

First, the troubled experience of sanctions relief between 2016 and 2018 was a learning experience for all JCPOA parties. Government officials and business executives alike have a more sophisticated understanding of the challenges that remain in completing complex transactions in post-sanctions environments. The increased coordination between foreign ministries and treasury ministries, particularly in Europe, that was spurred by the need to respond to the reimposition of US secondary sanctions, will help enable the design and implementation of technical guarantees. Those companies that do plan to take advantage of the opportunities created by the lifting of US secondary sanctions will be able to do so with a keener understanding of the necessary compliance frameworks and treasury management strategies.

Second, the dramatic change in regional views of the JCPOA creates new spaces in which to build shared incentives and create new constituencies. Iran's Arab neighbours have signalled their support for the deal and also publicly recognised the ways in which sanctions relief could benefit the regional economy. In a joint statement issued on November 17, the US and the Gulf Cooperation Council (GCC) "affirmed that deeper economic ties after the lifting of US sanctions under the JCPOA are in the mutual interest of the region."²¹

The JCPOA creates new spaces in which to build shared incentives and create new constituencies. Iran's Arab neighbours have signalled their support for the deal and also publicly recognised the ways in which sanctions relief could benefit the regional economy.

21 'US GCC Iran Working Group Statement'. US Department of State, 17 November 2021. <https://www.state.gov/u-s-gcc-iran-working-group-statement/>.

The UAE, a key US partner in the Middle East, has not waited for the lifting of US secondary sanctions to revitalise its trade with Iran and has recently supplanted China as Iran's top trade partner.²² The more favourable regional environment also creates channels for the US to increase its economic commitments to the JCPOA. While primary sanctions and domestic political constraints make significant American financial investments in Iran (such as credit lines) untenable, the US can explore ways to make significant financial commitments to projects in regional countries that benefit Iran.

Example projects

Given these factors, officials from the P5+1 and Iran should arrive at the negotiations in Vienna ready to think creatively and ambitiously about the kinds of projects that can serve as technical guarantees. This section includes examples of projects that would be worth exploring and that meet the criteria set out in the selection rubric.

- **Create an investor-state council** – The P5+1 and Iran should institutionalise dialogue between state actors and economic operators to ensure that challenges related to the implementation

²² Batmanghelidj, Esfandiyar. 'UAE Earns Big as Iran Sells Oil to China'. Bourse & Bazaar Foundation, 27 October 2021. <https://www.bourseandbazaar.com/articles/2021/10/27/uae-earns-big-as-iran-sells-oil-to-china>.

of sanctions relief are quickly communicated and investigated. The council would mandate regular reporting by a panel of experts appointed by the council members to determine the nature of these challenges and to propose possible remedies. The council would also measure and track the economic impacts of JCPOA implementation in Iran and among Iran's key trade partners.

- **Establish a new trade bank** – European governments should commit to establishing a dedicated trade bank to support trade with Iran, enabling the operationalisation of financing commitments made by export credit agencies. The set-up of this bank and its compliance framework would involve direct support from US authorities, including expansive licensing.
- **Modernise Iran's civil aviation fleet** – The P5+1 and Iran should take a more directed approach to the modernisation of Iran's civil aviation fleet. This will require an active role for American and European governments to structure financing for multi-billion dollar acquisitions. Financing could come from Russian and Chinese banks.
- **Support regional trade harmonisation** – The P5+1 should provide funding and institutional support for the harmonisation of regional trade, particularly between Iran and Iraq, the GCC, and

Afghanistan. Such a programme would lead to the creation of a new regional trade commission that is funded to provide technical assistance and training to customs administrations in a collaborative format, raising capacity and standards on both sides of each border. Grant funding should also be provided for the installation of new technology for customs administration.

- **Complete investments in Iran's automotive sector** – The P5+1 should accelerate the transfer of technology into Iran's automotive sector through the facilitation of state-backed investments led by French, German, and Chinese automakers. These investments would help Iran reduce emissions and support the development of exports of Iranian automotive parts and vehicles.
- **Provide water management technology** – The P5+1 should establish a multi-country programme to transfer water management technology to address the strain on watersheds shared between Iran, Iraq, and Kuwait, and Iran and Pakistan. The rollout of this technology will create opportunities for European and Chinese companies to provide key equipment and technical expertise, with a view to indigenisation.
- **Extend financing for Chabahar Port** – The P5+1 should speed the development of Iran's Chabahar Port through the provision of financing from a multilateral development bank. Loans could be made to third-countries that seek to benefit from Chabahar's expanded operations, such as India, Japan, or Uzbekistan, and subsequently reinvested as part of existing bilateral frameworks with Iran.
- **Regionalise the nuclear fuel supply chain** – Iranian officials appear supportive of moves by the UAE and Saudi Arabia to develop civilian nuclear energy. In order to support regional buy-in for the JCPOA, the P5+1 could endorse the creation of a regional nuclear fuel cycle centre in which the active cooperation of multiple regional players is necessary in order to sustain the safe and efficient operation of the supply chain.

Importantly, while the aforementioned projects are necessarily complex and will take months and years to fully realise, this is a desired feature of the technical guarantees approach. The P5+1 and Iran do not need to develop a full roadmap for each of the projects during the course of the negotiations in Vienna in order for the projects to serve as technical guarantees. Instead, a few minimum steps must be taken. A clear political commitment must be provided for the selected projects, the bodies responsible for

implementation must be identified and engaged, and the initial steps of implementation should be detailed. If these minimum conditions are met, the technical guarantees can be considered in effect as the P5+1 and Iran will be able to verify the implementation of these projects in a step-by-step fashion, and by extension the implementation of sanctions relief. Importantly, many of the economic benefits that Iran will gain from the implementation of sanctions relief can be considered “automatic benefits” and will not require significant policy interventions. Such benefits include higher oil exports, greater access to foreign exchange liquidity, and reduced inflationary pressures.²³ This immediate economic uplift will give the P5+1 and Iran time and space to engage in technical projects that ensure the fully realised benefits of a restored JCPOA include those economic outcomes, such as complex investments, that require more concerted steps towards economic normalisation.

23 Batmanghelidj, Esfandiyar. ‘Sharp Relief: Automatic Benefits and the Iran Nuclear Deal’. European Council on Foreign Relations, 11 November 2021. <https://ecfr.eu/article/sharp-relief-automatic-benefits-and-the-iran-nuclear-deal/>.

Conclusion

The P5+1 and Iran are poised to return to the negotiating table to seek US re-entry into the JCPOA and the restoration of mutual compliance with the deal. Still, pessimism continues to loom over the talks, threatening the ability of all parties to think creatively about the technical solutions that can help bridge certain gaps in the negotiations. The concept of technical guarantees outlined in this paper can help pave the way for meaningful, beneficial, and sustainable sanctions relief. While the onus is largely on the US to ascertain how to facilitate technical projects as part of the process of sanctions relief, all JCPOA participants, as well as Iran’s traditional trading partners could and should play a role in devising the hard and soft infrastructures envisioned here, which would serve to create new and durable incentives around continued compliance with the JCPOA. Of course, Iran too will need to take steps to make long-term technical guarantees workable. These steps include the implementation of the Financial Action Task Force (FATF) action plan and domestic legal reforms to reduce red-tape and reputational risks for foreign investors.

Meaningful action on sanctions relief for Iran within the framework of the JCPOA would also signal to other sanctioned states that the US and Europe are able to deliver credible sanctions relief, meaning that

diplomatic negotiations that require a change in policy or behaviour will be worthwhile.²⁴ Such action is especially important in the context of the Biden administration's stated concern for the long-term efficacy of sanctions, which was made evident in the recently released 2021 Sanctions Review conducted by the US Department of Treasury.²⁵ The wider context in which questions related to the restoration of the JCPOA are being handled is significant, especially as President Biden has also committed to restoring alliances. Given the adverse effect that the Trump administration's abrogation of the JCPOA has had on the security of key partners and allies, bold leadership that ensures the US has "skin in the game" in diplomatic agreements must compensate for insufficient political guarantees and untenable legal guarantees. The other members of the P5+1, as well as US partners with an interest in functional bilateral relations with Iran, must push the Biden administration to understand its unique responsibilities as an enabler of the technical guarantees that restoring and sustaining the JCPOA will require.

24 For more on failure to credibly lift sanctions and the impact on US diplomacy, see: Batmanghelidj, Esfandiyar, and Mahsa Rouhi. 'The Iran Nuclear Deal and Sanctions Relief: Implications for US Policy'. *Survival* 63, no. 4 (2021): 183–98. <https://doi.org/10.1080/00396338.2021.1956192>.

25 'US Department of the Treasury Releases Sanctions Review' US Department of the Treasury, 18 October 2021. <https://home.treasury.gov/news/press-releases/jy0413>



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