

ARTICLE

“MORE HONORED IN THE BREACH THAN THE
OBSERVANCE”:

A LEGAL AND STRATEGIC ANALYSIS OF THE
ISLAMABAD MEMORANDUM OF UNDERSTANDING
BETWEEN THE UNITED STATES AND IRAN

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I. INTRODUCTION

Despite its obvious failure to prevent a new outbreak of hostilities in the short term, the Memorandum of Understanding (“MOU”)¹ signed by the United States and Iran on June 17, 2026, represents an important inflection point in the long-standing conflict between the two powers. While the MOU was dismissed by many commentators—even before the ink was dry—as a stopgap measure, containing vague, ambiguous, and perhaps even non-binding commitments,² in fact, it has reshaped the parameters of the conflict. A clear example is the struggle over the Strait of Hormuz. The MOU, and the divergent readings of it, have influenced the justifications or rationales each side maintains for returning to war. At the same time, the non-compliance that followed rather swiftly upon its signing does not preclude the MOU from having other normative effects,³ including on future negotiations to

1. Memorandum of Understanding, Iran-US, June 17, 2026, *reprinted in US-Iran Memorandum of Understanding in Full*, BBC NEWS (June 18, 2026), <https://www.bbc.com/news/articles/c4gy700j0eko> [https://perma.cc/V9UY-J49V] [hereinafter MOU]; see also *Tehran Publishes Islamabad Memorandum of Understanding Between Iran and US*, IRNA (June 17, 2026), <https://en.irna.ir/news/86186085/Islamabad-Memorandum-of-Understanding-between-Iran-and-US> [https://perma.cc/JY4A-WXWP] (reproducing the full text of the MOU as published by Iranian state media).

2. See, e.g., Marc Weller, *The US-Iran Memorandum of Understanding Nods to International Law. Can That Be Taken Seriously?*, CHATHAM HOUSE (June 19, 2026), <https://www.chathamhouse.org/2026/06/us-iran-memorandum-understanding-nods-international-law-can-be-taken-seriously> [https://perma.cc/PV5B-XU4W].

3. See generally Robert Howse & Ruti G. Teitel, *Beyond Compliance: Rethinking Why International Law Really Matters*, 1 GLOB. POL’Y 127 (2010) (discussing the inadequacy of concepts of compliance and non-compliance in measuring the actual effects in the world of international legal norms).

return to peace;⁴ there is literature that suggests that even peace agreements that fail to end the fighting nevertheless reduce the overall lethality of the conflict.⁵ As I shall point out in this Article, discussion of the MOU, even in the “expert” think tank world, has been marred by misunderstandings—including, in some cases, basic ignorance—concerning the detailed provisions of the MOU, for example the notion that the Agreement is non-binding or that all its obligations depend upon a subsequent final agreement.⁶ In this Article, I aim to explicate the terms of the MOU, pointing not only to its weaknesses but also to its innovative features, which might subsist as elements of a more comprehensive future agreement. As will be explained, ambiguities or vagueness in the MOU (such as concerning the final resolution of control over the Strait of Hormuz) may have contributed to the resumed hostilities of mid-July, but this does not mean that ambiguity in general is something to be avoided in peace agreements, or that all usage of ambiguity, vagueness, or incompleteness of obligations (“gaps”) in

4. See Max Fisher, *The Surprising Science of Cease-Fires: Even Failures Can Help Peace*, N.Y. TIMES: INTERPRETER (Sep. 15, 2016), <https://www.nytimes.com/2016/09/16/world/middleeast/another-cease-fire-in-syria-it-could-matter-even-if-it-fails.html> [<https://perma.cc/SWG4-G4S7>] (citing research by Madhav Joshi and J. Michael Quinn: “One of the best predictors of a peace agreement’s success is simply whether the parties had prior agreements, even if those earlier cease-fires failed. Not even a war’s duration or its intensity can so reliably predict a peace deal’s outcome. Neither does the poverty or ethnic diversity of the combatants.”); see also Madhav Joshi & J. Michael Quinn, *Is the Sum Greater than the Parts? The Terms of Civil War Peace Agreements and the Commitment Problem Revisited*, 31 NEGOT. J. 7 (2015). Though the Joshi and Quinn study focuses on civil conflicts, there is no particular reason why a similar logic would not apply to an interstate conflict like that between the United States and Iran.

5. See HUM. SEC. REP. PROJECT, HUMAN SECURITY REPORT 2012: SEXUAL VIOLENCE, EDUCATION, AND WAR: BEYOND THE MAINSTREAM NARRATIVE 178–79 (2012); Avishai Ben Sasson-Gordis & Simon Frankel Pratt, *Middle East Cease-Fires Matter Even When They’re Broken*, FOREIGN POL’Y (June 3, 2026), <https://foreignpolicy.com/2026/06/03/iran-lebanon-israel-cease-fires-peace/> [<https://perma.cc/E289-E7RJ>].

6. See, e.g., Tess Bridgeman, *Time to Repeal INARA and Move Forward with the Iran MoU*, JUST SEC. (June 18, 2026), <https://www.justsecurity.org/143274/repeal-inara-iran-move-mou/> [<https://perma.cc/5UMU-8D29>] (questioning the bindingness of the MOU as a treaty in international law); Duncan B. Hollis, *Is the MOU a Treaty or Not? And Why Should We Care?*, FOREIGN POL’Y (June 23, 2026), <https://foreignpolicy.com/2026/06/23/us-iran-war-mou-hormuz-trump-ceasefire-treaty-congress/> [<https://perma.cc/C6JF-GJEZ>] (treating the MOU’s binding character as uncertain). For historical background on US-Iranian relations and the nuclear question, see ERVAND ABRAHAMIAN, *THE COUP: 1953, THE CIA, AND THE ROOTS OF MODERN U.S.-IRANIAN RELATIONS* (2013), and SINA AZODI, *IRAN AND THE BOMB: THE UNITED STATES, IRAN, AND THE NUCLEAR QUESTION* 41–61 (2026).

the MOU was unjustifiable. The MOU has been dismissed on three grounds: that it is not binding; that its terms are too vague; and that the resumption of hostilities has rendered it dead. None survive examination. It is a binding international agreement. Its ambiguities are in large part deliberate. And it has not been terminated but suspended, with a core of obligations that neither party is free to shed. Whether the parties are complying with the MOU is the wrong question to be asking at this time. The right question is what it has already done and what it may continue to do.

This Article is divided into four parts. Part I provides the overall context, surveying US–Iran relations from the Cold War to the present, with particular focus on the more recent strife over Iran’s nuclear program and US sanctions that led up to the hostilities of 2025 and 2026 (hostilities which the MOU was intended to end). Part II looks at the nature and structure of the obligations in the MOU, addressing whether it is “binding” under international law and its two-fold character as an interim peace deal and as a blueprint for future negotiations, including those concerning Iran’s nuclear program. Part III is a textual legal analysis of the MOU, read in light of its context and other relevant international agreements and norms, including the recent US–Israel–Lebanon Framework, the United Nations Convention on the Law of the Sea (“UNCLOS”), and the rules on the use of force according to customary international law and UN Charter rules. This part also addresses how controversy over the meaning of certain provisions of the MOU feeds into the continuing conflict and how that controversy might be resolved in an ongoing process of negotiations. Part IV examines the broader impact of the MOU, beyond the question of whether a return to compliance or implementation can be achieved in the short term. The MOU may have established certain baselines or principles that are likely to be a starting point for any new effort at a negotiated settlement. More generally, it can be seen as an inflection point in the ongoing US–Iran relationship—in some respects a reflection of how fraught it is (the need for ambiguity or agreeing to disagree) but also the hope for a better, if distant, future (the plan for a US\$300 billion reconstruction development plan for Iran).

II. PART I: THE CONTEXT: NUCLEAR AMBIGUITY, SANCTIONS,
AND WAR

To understand the contents of the MOU, one needs to revisit the twists and turns of the US conflict with Iran over the last seven decades. In 1953, the Central Intelligence Agency (“CIA”) orchestrated a coup in Iran that brought the country’s experiment with democracy to a halt, removing the elected prime minister and restoring the Shah to effective power—an autocrat who ruled with an iron fist, imposing a form of decadent Western secularism while remaining subservient to the United States and, more generally, Western energy and other economic interests.⁷ The revolution that would overthrow the Shah began in 1977 as a mass civil society movement, combining left-wing, nationalist, and religious elements; the Ayatollah Khomeini and other clerics eventually took control of the movement, and then the country, once the Shah was removed in 1979.⁸ A key event during the Iranian revolution for US–Iran relations was the seizure by student activists of the US Embassy in Tehran, and the holding of the embassy employees and their families as hostages.⁹

After a failed attempt to free the hostages, the Carter Administration engaged in complex diplomatic operations, which—with the assistance of Algeria as a broker—resulted in the Algiers Accords.¹⁰ Iranian bank accounts were partially unfrozen, the hostages returned, and the Iran–United States Claims Tribunal was established to address actions of the revolutionary regime that

7. For a detailed and extensively documented account, see ABRAHAMIAN, *supra* note 6. See also STEPHEN KINZER, *ALL THE SHAH’S MEN: AN AMERICAN COUP AND THE ROOTS OF MIDDLE EAST TERROR* (2003).

8. Stephen Zunes, *The Iranian Revolution (1977–1979)*, INT’L CTR. ON NONVIOLENT CONFLICT (Apr. 2009), <https://www.nonviolent-conflict.org/wp-content/uploads/2016/02/The-Iranian-Revolution-1.pdf> [https://perma.cc/2B7M-UAS2].

9. See MARK BOWDEN, *GUESTS OF THE AYATOLLAH: THE FIRST BATTLE IN AMERICA’S WAR WITH MILITANT ISLAM* (2006).

10. Declaration of the Government of the Democratic and Popular Republic of Algeria, Jan. 19, 1981, 20 I.L.M. 223; JENNIFER K. ELSEA, CONG. RSCH. SERV., R43210, *THE IRAN HOSTAGES: EFFORTS TO OBTAIN COMPENSATION 2* (2015) (the United States “sought the good offices of Algeria to broker a deal,” producing “a set of executive agreements known collectively as the Algiers Accords”).

had an impact on US economic actors in Iran, primarily in the hydrocarbons sector, such as nationalization.¹¹

In October 1983, a bombing of US Marine Barracks in Beirut, Lebanon killed over 200 US troops.¹² The Reagan Administration blamed Iran as a state sponsor of terror and imposed sanctions on the country, particularly in connection with military sales (though enforced inconsistently, the Iran-Contra Affair was a sordid imbroglio where covert arms sales to Iran were used to supply anti-Communist rebels in Nicaragua).¹³ Other incidents contributed to tensions, such as the United States' accidental "shooting down" of a civilian Iranian passenger jet, Flight 655, by a US military ship operating in the Persian Gulf in 1988.¹⁴ The Iran-Iraq war led to operations in the Persian Gulf in which ships and other assets were targeted; the US military responded and eventually these skirmishes led to litigation between the United States and Iran at the International Court of Justice (the *Oil Platforms* case).¹⁵

In the 1990s, US policy remained focused on terrorism and on Iran's hostility toward, and threats against, US regional allies such as Israel and Saudi Arabia.¹⁶ But as information accumulated about Iran's nuclear program and its growing capability to enrich uranium, the emphasis shifted to preventing Iran from acquiring a nuclear weapon.¹⁷ For the Clinton Administration, sanctions appeared as the way to achieve this goal, and a complete trade and

11. See generally GEORGE H. ALDRICH, *THE JURISPRUDENCE OF THE IRAN-UNITED STATES CLAIMS TRIBUNAL* (1996); see also Jeremy K. Sharpe, *Iran-United States Claims Tribunal, in THE RULES, PRACTICE, AND JURISPRUDENCE OF INTERNATIONAL COURTS AND TRIBUNALS* 546–48, 552–55 (Chiara Giorgetti ed., 2012).

12. William E. Smith, *Carnage in Lebanon*, *TIME* (Oct. 31, 1983), <https://time.com/archive/6855217/carnage-in-lebanon/> [https://perma.cc/9XVG-SNJ8].

13. For a detailed account, see MALCOLM BYRNE, *IRAN-CONTRA: REAGAN'S SCANDAL AND THE UNCHECKED ABUSE OF PRESIDENTIAL POWER* (2014). See *id.* at 42–90 for especially relevant text.

14. Preliminary Objections Submitted by United States of America, Aerial Incident of 3 July 1988 (Iran v. U.S.), 2000 I.C.J. Pleadings 3, 3 (Mar. 4, 1991). The US guided-missile cruiser caused the deaths of the 290 people onboard the Iran Air Airbus A-300B. *Id.*

15. See Michael Bothe, *Oil Platforms Case (Iran v. United States of America)*, *MAX PLANCK ENCYC. PUB. INT'L L.* ¶¶ 1–3, 6 (Apr. 2011), <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e188> [https://perma.cc/8K7Q-ANBQ].

16. See Richard N. Haass, *The George H.W. Bush Administration*, in *THE IRAN PRIMER: POWER, POLITICS, AND U.S. POLICY* 136–38 (Robin Wright ed., 2010).

17. See AFSHIN MATIN-ASGARI, *AXIS OF EMPIRE: A HISTORY OF IRAN-US RELATIONS* 235 (2026).

investment ban was placed on Iran in 1995.¹⁸ The ban did not discourage Iran from proceeding with its ostensibly civilian nuclear ambitions.¹⁹ Iran was a signatory to the Non-Proliferation Treaty (“NPT”),²⁰ binding itself not to acquire nuclear weapons, and had a Safeguards Agreement with the International Atomic Energy Agency (“IAEA”).²¹ Even if Iran never decided, contrary to these commitments, to acquire nuclear weapons,²² the technical capacity to change course in the future, and in relatively short order, was something the regime apparently valued as leverage against the West—a posture of strategic ambiguity.²³

In his 2002 State of the Union address, President George W. Bush declared Iran part of what he styled an “axis of evil,”

18. Exec. Order No. 12,959, 60 Fed. Reg. 24,757 (May 9, 1995); *see also* Robert H. Pelletreau, *Iran: Ban on Trade and Investment*, U.S. DEP’T OF STATE (May 2, 1995), <https://1997-2001.state.gov/regions/nea/950502.html> [<https://perma.cc/2LR3-REWR>] (statement before the Subcomm. on Int’l Econ. Pol’y & Trade of the H. Comm. on Int’l Rels.).

19. On the advances in Iran’s nuclear program through the 1990s, *see* AZODI, *supra* note 6, at 57–61.

20. Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 [hereinafter NPT].

21. Agreement for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, IAEA-Iran, June 19, 1973, IAEA Doc. INFCIRC/214 (entered into force May 15, 1974).

22. While there was some exploratory research and development concerning a possible nuclear weapons program in the 1990s, in 2003 the Supreme Leader Ayatollah Khamenei declared a policy against the country developing nuclear weapons. *See* Madison Rinder, *The 2025 Case for an Iran Nuclear Deal*, 23 SANTA CLARA J. INT’L L. 103, 111 (2025). US intelligence estimates both in the Biden Administration and the Trump Administration indicate that Iran has not reversed this choice against developing a nuclear weapon. Dan De Luce, *There Is No Evidence Iran Has Decided to Rush Toward Building a Nuclear Weapon, CIA Director Says*, NBC NEWS (Oct. 7, 2024), <https://www.nbcnews.com/investigations/no-evidence-iran-rushing-build-nuclear-weapon-cia-director-says-rcna174004> [<https://perma.cc/QT6Q-KGE4>]; *Open Hearing: Worldwide Threats: Hearing Before the S. Select Comm. on Intel.*, 119th Cong. 5–6 (2025) (statement of Tulsi Gabbard, Dir. of Nat’l Intel.), <https://www.intelligence.senate.gov/2025/03/10/open-hearing-worldwide-threats/> [<https://perma.cc/DCP9-PJGK>] (“[T]he IC continues to assess that Iran is not building a nuclear weapon and Supreme Leader Khamenei has not authorized the nuclear weapons program that he suspended in 2003. The IC continues to monitor closely if Tehran decides to reauthorize its nuclear weapons program.”).

23. For a comprehensive overview of sanctions against Iran, whether related to its nuclear program or otherwise, *see* CARMEN-CRISTINA CÎRLIG, EUR. PARLIAMENTARY RSCH. SERV., BRIEFING PE 777.928, INTERNATIONAL SANCTIONS ON IRAN: OVERVIEW OF THE MAIN REGIMES AND RECENT EVENTS (2025). On strategic ambiguity, and the leverage that Iran saw it as providing, *see* AZODI, *supra* note 6, at 45–46.

implacable enemies of America, its interests, and its values.²⁴ The United States continued to tighten its sanctions, including secondary and financial sanctions that made it very difficult for Iran to engage in transactions with non-US actors.²⁵ In 2002, the IAEA began investigating Iran's nuclear activities.²⁶ In 2003, Iran struck a deal with France, Germany, and the United Kingdom voluntarily agreeing to suspend its enrichment program and adopt an additional protocol to its Safeguards Agreement, which would permit enhanced IAEA monitoring and verification.²⁷ The IAEA was not satisfied, however, that Iran was implementing this agreement in good faith, and in 2005 the Board of Governors found Iran in non-compliance with its Safeguards Agreement.²⁸ In 2006, the UN Security Council ("UNSC") adopted a resolution requiring that Iran suspend its enrichment program.²⁹ Iran responded by ceasing its voluntary implementation of the additional protocol and by resuming and expanding its uranium enrichment program.³⁰ There followed a series of UNSC resolutions with

24. Address Before a Joint Session of the Congress on the State of the Union, 1 Pub. Papers 129, 131 (Jan. 29, 2002).

25. See CLARA PORTELA, CREATIVITY WANTED: COUNTERING THE EXTRATERRITORIAL EFFECTS OF US SANCTIONS 2–3 (Eur. Union Inst. for Sec. Stud., Brief No. 22, 2021), https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_22_2021_0.pdf [<https://perma.cc/5MEC-UYNH>]; KENNETH KATZMAN, CONG. RSCH. SERV., RS20871, IRAN SANCTIONS (2016) (explaining that "many banks refuse to process payments for many of these [Iranian] transactions" and documenting Total, Statoil, ENI and Shell as having wound down Iranian energy work).

26. See NIMA GERAMI & PIERRE GOLDSCHMIDT, THE INTERNATIONAL ATOMIC ENERGY AGENCY'S DECISION TO FIND IRAN IN NON-COMPLIANCE, 2002–2006, at 1–2 (Ctr. for the Study of Weapons of Mass Destruction, Nat'l Def. Univ., Case Study No. 6, 2012), https://inss.ndu.edu/Portals/97/Documents/Publications/Case%20Studies/cswmd_cs6.pdf [<https://perma.cc/35RR-VWYP>].

27. See International Atomic Energy Agency [IAEA], *Communication Dated 26 November 2004 Received from the Permanent Representatives of France, Germany, the Islamic Republic of Iran and the United Kingdom Concerning the Agreement Signed in Paris on 15 November 2004*, at 3, IAEA Doc. INFCIRC/637 (Nov. 26, 2004) (reaffirming "the commitments in the Tehran Agreed Statement of 21 October 2003"); see also *Iran Signs Additional Protocol on Nuclear Safeguards*, IAEA (Dec. 18, 2003), <https://www.iaea.org/newscenter/news/iran-signs-additional-protocol-nuclear-safeguards> [<https://perma.cc/AA73-RS5D>].

28. IAEA, Bd. of Governors Res., *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran and Related Board Resolutions*, ¶¶ 1–2, IAEA Doc. GOV/2005/64 (Aug. 11, 2005).

29. See S.C. Res. 1696, ¶ 2 (July 31, 2006).

30. IAEA, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, ¶¶ 23, 30–34, IAEA Doc. GOV/2006/27 (Apr. 28, 2006).

increasingly severe sanctions against Iran. Neither the sanctions nor alternative methods (such as cyber- and physical sabotage of nuclear facilities and the assassination (by Israel) of a number of Iran's nuclear scientists)³¹ prevented Iran from continuing to develop its nuclear capacity, including enrichment to higher and higher grades of uranium. Nevertheless, diplomatic overtures continued.³²

In 2009, Barack Obama became President of the United States and Benjamin Netanyahu returned to power in Israel as Prime Minister. These two political developments reshaped the dynamics of the confrontation with Iran. Obama's orientation was towards a diplomatic solution to the Iran nuclear issue; Netanyahu sought to use force, and to enlist the United States in that effort.³³ The same year, a reformist movement emerged in Iran (the so-called Green Movement), seeking some measure of democratization and social liberalization.³⁴ The newly inaugurated Obama Administration declined to offer the Movement explicit support, mindful that US support could be exploited to delegitimize the movement as a front for American influence.³⁵ When the regime brutally crushed the Movement, the Obama Administration worked with Congress to further tighten sanctions on Iran.³⁶ At the same time, while not foreclosing military action as a last resort, Obama was determined to push hard to avoid the war that Netanyahu was seeking.³⁷ In

31. See Ehud Eilam, *How Israel Tried to Stop Iran's Nuclear Program*, KINGSTON CONSORTIUM ON INT'L SEC. (Oct. 17, 2022), <https://www.thekcis.org/publications/insights/insight-210> [<https://perma.cc/AQU8-XQRR>].

32. See AZODI, *supra* note 6, at 83–84.

33. See Tovah Lazaroff, 'Netanyahu Urged Obama to Bomb Iran,' JERUSALEM POST (Nov. 10, 2017), <https://www.jpost.com/middle-east/iran-news/netanyahu-urged-obama-to-bomb-iran-513938> [<https://perma.cc/PVL8-PEAV>].

34. See generally HAMID DABASHI, *THE GREEN MOVEMENT IN IRAN* (2011).

35. See *Obama Admits Mistake of Not Supporting Iran Protests in 2009*, IRAN INT'L (Oct. 15, 2022), <https://www.iranintl.com/en/202210150760> [<https://perma.cc/FM4F-BQTD>].

36. See Shabnam J. Holliday, *Beyond Hegemony, World Order as Domination: Iran's Green Movement and the Nuclear Sanctions Regimes*, 39 INT'L RELS. 171, 183 (2023).

37. See Peter Slevin, *Barack Obama Considers His Role in the Age of Trump*, NEW YORKER (May 4, 2026), <https://www.newyorker.com/magazine/2026/05/11/barack-obama-in-the-age-of-trump> [<https://perma.cc/7EAY-WLPY>]. See also *Obama Warns Against Pre-emptive Iran Strike*, BBC NEWS (Mar. 2, 2012), <https://www.bbc.com/news/world-us-canada-17236549> [<https://perma.cc/2BTM-97EE>]; Mark Landler, *Obama Presses Netanyahu to Resist Strikes on Iran*, N.Y. TIMES (Mar. 5, 2012), <https://www.nytimes.com/2012/03/06/world/middleeast/obama-cites->

2012, Administration officials established a back channel through Oman to explore an agreement that would constrain Iran's nuclear program in return for sanctions relief.³⁸ In 2013, an interim agreement, the Joint Plan of Action, was reached between Iran and the parties that would become known as the P5+1—the five permanent members of the Security Council (China, France, Russia, the United Kingdom, and the United States) plus Germany—with the participation of the EU's High Representative.³⁹ This agreement entailed temporarily freezing Iranian nuclear activities in exchange for limited sanctions relief, pending the negotiation of a permanent agreement.⁴⁰

Iran's final agreement with the P5+1 was reached in July 2015.⁴¹ The Agreement, the Joint Comprehensive Plan of Action ("JCPOA"), imposed a range of technical restraints on Iran's nuclear activities. Iran's obligations included: provisional implementation of the Additional Protocol of the Safeguards Agreement; reaffirmation of its obligation under the NPT not to seek a nuclear weapon; a commitment not to reprocess plutonium; continuous surveillance of uranium mines and mills and centrifuge production areas; a cap of 300 kg on its stockpile of enriched uranium; no enrichment at the Fordow facility reactor; no new heavy-water reactors; a limit of 5,060 IR-1 operating centrifuges; restraints on research and development of advanced centrifuges; and limitation of centrifuge testing to uranium at the Natanz facility.⁴² Once Iran had taken a specified set of steps to implement these obligations, and the IAEA had verified that it had done so ("Implementation

window-for-diplomacy-on-iran-bomb.html [https://perma.cc/NYB4-JY7W]; David Horowitz, *Netanyahu's Threats to Attack Iran 'Panicked' Obama into Nuke Talks*, *Author Says*, *TIMES ISR.* (Jan. 26, 2018), <https://www.timesofisrael.com/netanyahus-threats-to-attack-iran-panicked-obama-into-nuke-talks-author-says/> [https://perma.cc/AR46-75KN] (reporting journalist Ronen Bergman's claim that Netanyahu's threats to strike Iran's nuclear facilities led the Obama administration to accept Iran's 2012 offer of nuclear talks).

38. See WILLIAM J. BURNS, *THE BACK CHANNEL: A MEMOIR OF AMERICAN DIPLOMACY AND THE CASE FOR ITS RENEWAL* 346–47 (2019).

39. See Joint Plan of Action, Nov. 24, 2013, 53 I.L.M. 732.

40. *Id.*

41. Joint Comprehensive Plan of Action, July 14, 2015, S.C. Res. 2231, annex A (July 20, 2015) [hereinafter JCPOA].

42. See *id.*; see also KELSEY DAVENPORT & DARYL G. KIMBALL, *ARMS CONTROL ASS'N, IRAN NUCLEAR POLICY BRIEF, AN EFFECTIVE, VERIFIABLE NUCLEAR DEAL WITH IRAN* (2015), https://www.armscontrol.org/sites/default/files/files/TABs/TAB_2015Jul_Effective_Verifiable_Nuclear_Deal.pdf [https://perma.cc/3D7Z-648J].

Day”), nuclear-related sanctions imposed by the P5+1 would be lifted, as would UN Security Council sanctions, by virtue of a UNSC resolution incorporating key elements of the JCPOA. That resolution included a so-called “snapback” mechanism: should any of the P5+1 determine Iran is no longer in compliance with its JCPOA obligations, sanctions would automatically be reimposed.⁴³ The JCPOA would be terminated (“Termination Day”) ten years after coming into force, in October 2025 (as “Adoption Day” occurred in October 2015). Between Adoption Day and Implementation Day, Iran was to take a range of measures specified in the JCPOA to constrain its nuclear program.⁴⁴

The Obama Administration presented the JCPOA as a non-binding agreement (though elements of it were binding indirectly through a Security Council resolution)—a view that Mohammad Javad Zarif, then Iran’s foreign minister, among other Iranian officials, disputed.⁴⁵ Negotiations between the Administration and Congress resulted in a legislative framework for approval (or disapproval) of the JCPOA or any related nuclear agreement with Iran:⁴⁶ the Iran Nuclear Agreement Review Act (“INARA”).⁴⁷ In the summer of 2015, several legislative actions to disapprove the JCPOA were introduced pursuant to INARA, and while some passed

43. See Nicole Grajewski, *The Countdown to Prevent Another Iranian Nuclear Crisis Just Began*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Aug. 28, 2025), <https://carnegieendowment.org/emissary/2025/08/iran-snapback-sanctions-nuclear-crisis-jcpoa> [<https://perma.cc/8DAU-4WXM>]. Under the snapback mechanism, any JCPOA participant may notify the Security Council that it believes Iran is in significant non-performance; unless the Council adopts a resolution within thirty days to continue sanctions relief, the prior UN sanctions resolutions automatically reapply. S.C. Res. 2231, ¶¶ 11–12 (July 20, 2015).

44. These measures are outlined in *The Joint Comprehensive Plan of Action (JCPOA) at a Glance*, ARMS CONTROL ASS’N (Feb. 2025), <https://www.armscontrol.org/factsheets/joint-comprehensive-plan-action-jcpoa-glance> [<https://perma.cc/F2RT-V7QB>]. The fact sheet also explains Adoption Day, Implementation Day, and Termination Day. *Id.*

45. See Farshad Ghodoosi, *Binding Political Commitments*, 2020 U. ILL. L. REV. ONLINE 235, 236–38, <https://illinoislawreview.org/online/binding-political-commitments/> [<https://perma.cc/VE2B-TCN6>]; see also S.C. Res. 2231, *supra* note 43, ¶¶ 7, 11–12.

46. For a clear explanation of key points in this timeline, see *The Joint Comprehensive Plan of Action (JCPOA) at a Glance*, *supra* note 44.

47. See Iran Nuclear Agreement Review Act of 2015, Pub. L. No. 114-17, 129 Stat. 201 (codified at 42 U.S.C. § 2160e). For context, see Bridgeman, *supra* note 6. INARA “applies to any type of binding or non-binding arrangement ‘related to the nuclear program of Iran’ that . . . includes this new MOU, and any future final agreement that might be negotiated in the coming months.” *Id.*

the House, all eventually died in the Senate. As the Congressional Research Service notes: “[n]one of the bills was taken up by the Senate. In that body, several cloture motions on the disapproval resolution (H.J.Res. 61) were defeated and the review process under P.L. 114-17 ended on September 17, 2015, with no resolution either approving or disapproving the JCPOA being enacted.”⁴⁸

Implementation Day occurred in January 2016, and nuclear sanctions were duly lifted as explained by the Congressional Research Service:

U.S., U.N., and multilateral sanctions on Iran’s energy, financial, shipping, automotive, and other sectors were suspended or lifted upon the International Atomic Energy Agency (IAEA) certification on January 16, 2016, that Iran had complied with the stipulated nuclear dismantlement commitments under the agreement (“Implementation Day”). The relief allow[ed] Iran to freely export crude oil and to access its foreign exchange reserves held in foreign banks - a net amount (gross amount minus what is committed to creditors) of nearly US\$60 billion. On October 18 (“Adoption Day” of the JCPOA), the Administration issued provisional waivers of relevant sanctions laws, which took formal effect on Implementation Day.⁴⁹

The same Report noted however that a wide range of US sanctions had not been lifted (the JCPOA only dealt with sanctions that were nuclear-related). Thus:

Most sanctions that apply to U.S. companies remain in place, as will those secondary sanctions (sanctions on foreign firms) that have been imposed because of Iran’s support for terrorism, for human rights abuses, or its missile and advanced conventional weapons programs. Under U.N. Security Council Resolution 2231 of July 20, 2015, U.N. sanctions terminated as of Implementation Day, but a U.N. ban on Iran’s development of nuclear-capable ballistic missiles and its importation or exportation of arms remain in place for limited periods of time.⁵⁰

48. PAUL K. KERR & CLAYTON THOMAS, CONG. RSCH. SERV., R43333, IRAN NUCLEAR DEAL AND U.S. EXIT 21 (2018).

49. KATZMAN, *supra* note 25, at Summary.

50. *Id.*

In addition, as set out by the Treasury, a US embargo on trade with Iran remained in place, Iran had no access to the US financial system, and sanctions on non-US financial institutions' dealings with Iran remained unaffected.⁵¹

The INARA required the Administration to certify to Congress that Iran was implementing its JCPOA obligations in full (or alternately, to report any shortcomings).⁵² Such certification was a condition of Congress's continuing to permit sanctions relief. Through 2016 and 2017, there was a broad consensus among Iran's partners in the JCPOA—the P5+1 and the European Union—as well as the IAEA⁵³ that Iran was fully and faithfully implementing the JCPOA.⁵⁴ As the Congressional Research Service summarized the situation as of early 2018:

Then-Secretary of State Rex Tillerson issued this certification on July 17, 2017. All official reports and statements from the United Nations, European Union, the IAEA, and the P5+1 indicate that Iran has complied with the JCPOA. The most recent report from IAEA Director General Amano states that the IAEA has continued verification and monitoring of the restrictions described in Section T of the JCPOA, which prohibits a number of nuclear weapons-related activities. Secretary of State Michael Pompeo stated during an April 12, 2018, Senate Foreign Relations Committee hearing that he had seen no evidence of Iranian noncompliance with the agreement. High Representative of the European Union for Foreign Affairs and Security Policy Mogherini stated on April

51. U.S. DEP'T OF STATE & U.S. DEP'T OF THE TREASURY, GUIDANCE RELATING TO THE LIFTING OF CERTAIN U.S. SANCTIONS PURSUANT TO THE JOINT COMPREHENSIVE PLAN OF ACTION ON IMPLEMENTATION DAY 46–50 (2016).

52. See *Understanding the U.S. Compliance Certification and Why It Matters to the Iran Nuclear Deal*, ARMS CONTROL ASS'N (Aug. 29, 2017), <https://www.armscontrol.org/blog/2017-08-29/understanding-us-compliance-certification-why-matters-iran-nuclear-deal> [<https://perma.cc/LC7G-F9J8>].

53. See Federica Mogherini, *The Iran Nuclear Deal Is a Success—and the Whole World Is Safer for It*, GUARDIAN (Jan. 17, 2017), <https://www.theguardian.com/commentisfree/2017/jan/17/iran-nuclear-deal> [<https://perma.cc/6SVV-ADA2>]. In 2016 and 2017, the IAEA issued successive reports that Iran was in full compliance with the nuclear provisions of the JCPOA. AZODI, *supra* note 6, at 103–06.

54. See Mogherini, *supra* note 53 (providing an example of the views of the EU); AZODI, *supra* note 6, at 103–06.

16 that “Iran is fully compliant with its nuclear commitments.”⁵⁵

Nevertheless, President Donald Trump was determined to withdraw the United States from the JCPOA if it were not renegotiated to his satisfaction. Announcing the withdrawal in May 2018, Trump commented:

The structure of the deal, which gave far too many benefits upfront in exchange for too few concessions, crippled its chances for success. As a result, Iran continues to keep an archive of its past nuclear weapons work, enrich uranium, and develop ballistic missiles. Instead of using its newly acquired cash to help the people of Iran, the regime spends countless amounts destabilizing the Middle East and sponsoring terrorism.⁵⁶

President Trump further indicated some of the requirements for a new agreement that would satisfy him:

The way forward, [he] said, is for the United States to work with its allies to find a lasting solution to the threat posed by Iran. If Iran wants to be part of such a solution, the regime must engage in good faith, completely abandon any intent to develop nuclear weapons, and allow for the full verification of any denuclearization commitments. It must also cease its support for terrorism, its destabilizing regional activities, and its appalling human rights abuses. The JCPOA has failed on all of these counts.⁵⁷

Trump introduced a strategy of “maximum pressure,” tightening sanctions and their enforcement as a means to bring Iran to the table to negotiate an agreement that would meet his terms.⁵⁸

The prospect of US withdrawal from the JCPOA was greeted with criticism and disappointment by the other members of the

55. KERR & THOMAS, *supra* note 48, at 19.

56. *President Trump Says the Iran Deal Is Defective at Its Core. A New One Will Require Real Commitments*, WHITE HOUSE (May 11, 2018), <https://trumpwhitehouse.archives.gov/articles/president-trump-says-iran-deal-defective-core-new-one-will-require-real-commitments/> [https://perma.cc/HXE8-JHCQ].

57. *Id.*

58. See Nedim Hovic, *The International Law and Politics of the Trump Administration's Iran Policy*, 10 PENN. ST. J.L. & INT'L AFF. 59, 67 (2022). On “maximum pressure,” see AZODI, *supra* note 6, at 117–21.

P5+1.⁵⁹ After the United States made its final decision to withdraw from the JCPOA, the European Union made a concerted attempt to provide Iran with sufficient incentives to continue compliance despite the reimposition of US sanctions.⁶⁰ These efforts included creative attempts to protect EU economic actors from sanctions in their dealings with Iran and for the payment and settlement of transactions (“INSTEX”).⁶¹ They failed—the reimposition of US sanctions sent a strong message to the private sector about the risks of transacting with Iran, and no governmental attempt at a workaround proved able to overshadow that message. In 2019, Iran began to break out of the JCPOA, enriching uranium beyond the permitted levels, and by 2021 was moving quickly in the direction of non-observance of obligations under the Additional Protocol.⁶² Despite outside efforts to sabotage its nuclear program through the assassination of its scientists and through cyberattacks,⁶³ Iran had extraordinary success in accelerating enrichment; it began enriching to sixty percent in 2021 and by 2025 according to the IAEA had a stockpile of 274.8 kilograms of uranium enriched to that level of purity.⁶⁴ Sixty percent is generally understood to be very close to the threshold required to produce weapons-grade uranium, and Iran’s advances greatly

59. See Ashish Kumar Sen, *Where Does the P5+1 Stand on the Iran Nuclear Deal?*, ATL. COUNCIL: NEW ATLANTICIST (May 7, 2018), <https://www.atlanticcouncil.org/blogs/new-atlanticist/where-does-the-p5-1-stand-on-the-iran-nuclear-deal/> [<https://perma.cc/UZE2-RSFW>] (listing only the United States as “opposed” to the JCPOA and the United Kingdom, China, France, Russia, and Germany as “supportive”).

60. Anna Sauerbrey, *The Failure of Europe’s Feeble Muscle Flexing*, N.Y. TIMES (Feb. 10, 2020), <https://www.nytimes.com/2020/02/10/opinion/europe-iran-nuclear-deal.html> [<https://perma.cc/4XZR-DBM3>] (describing the European Union’s pledge to maintain trade with Iran and Germany, France, and Britain’s plans for the Instrument in Support of Trade Exchanges (Instex), which was “supposed to enable trade between Europe and Iran in defiance of United States sanctions”).

61. On INSTEX and its failure to facilitate trade and investment between European countries and Iran, see *id.*

62. IAEA, *Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)*, ¶¶ 4–10, IAEA Doc. GOV/2021/10 (Feb. 23, 2021); see also *Restoring the JCPOA’s Nuclear Limits*, ARMS CONTROL ASS’N (Feb. 2022), <https://www.armscontrol.org/factsheets/restoring-jcpoas-nuclear-limits> [<https://perma.cc/2DBJ-NSJZ>]. As a legal matter, the failure of JCPOA sanctions relief did not excuse Iran from its IAEA obligations.

63. See AZODI, *supra* note 6, at 118.

64. IAEA, *Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)*, at 8, IAEA Doc. GOV/2025/50 (Sep. 3, 2025).

reduced the breakout time relative to the period before the JCPOA.⁶⁵ During this period tensions were further heightened and diplomacy rendered more distant by events such as the assassination of Iranian military hero General Soleimani by US forces in January 2020 and various sabotage attempts against Iran's nuclear infrastructure, which were not clearly attributable between Israel and the United States.⁶⁶

Joseph Biden was inaugurated as President of the United States in 2021, having campaigned on returning the United States to the JCPOA.⁶⁷ The Biden Administration nevertheless failed to move swiftly to restore compliance.⁶⁸ Instead, the Administration required that Iran take "the first step."⁶⁹ This was hardly logical, given that it was the United States that had pulled out of the agreement and as the Administration was going further still, requiring that Iran also agree to enter into negotiations for a subsequent treaty that would deal with non-nuclear issues (like long-range ballistic missiles with conventional warheads). This upped the ante, since one feature of the JCPOA, albeit one criticized by Trump, was that it only addressed nuclear issues.⁷⁰ Nevertheless, talks on Iran and the United States moving back into compliance with the JCPOA did begin in Vienna, in the P5+1 format.⁷¹ While the US negotiating team was present in Vienna for these talks, Iranian negotiators refused to meet directly with US officials.⁷² Progress then grew more complicated on the Iranian

65. David Albright & Sarah Burkhard, *Iran's Recent, Irreversible Nuclear Advances*, INST. FOR SCI. & INT'L SEC. (Sep. 22, 2021), <https://isis-online.org/isis-reports/irans-recent-irreversible-nuclear-advances> [<https://perma.cc/4LAR-2LWL>].

66. See AZODI, *supra* note 6, at 120–21.

67. See Joe Biden, *Joe Biden: There's a Smarter Way to Be Tough on Iran*, CNN (Sep. 13, 2020), <https://www.cnn.com/2020/09/13/opinions/smarter-way-to-be-tough-on-iran-joe-biden> [<https://perma.cc/K29X-NMDC>].

68. See Tom Sauer, *The Failed Negotiations to Restore the Iran Nuclear Deal*, 15 GLOB. POL'Y 583, 585 (2024).

69. *Id.*

70. *Id.*

71. See Maziar Motamedi, *Vienna Talks on Iran's Nuclear Deal Conclude Hopeful Opening Week*, AL JAZEERA (Apr. 9, 2021), <https://www.aljazeera.com/news/2021/4/9/vienna-talks-on-irans-nuclear-deal-conclude-hopeful-first-week> [<https://perma.cc/NB8L-9XJM>].

72. AZODI, *supra* note 6, at 127–28.

side with the election of Ebrahim Raisi as President, a figure associated with hardliners in Iran.⁷³

One further complicating factor was Iranian insistence on “guarantees” that the United States would not again break its word and pull out of the agreement. How the United States could provide a guarantee that a subsequent Administration (or Congress) would not walk away from the JCPOA was a mystery.⁷⁴ One way of thinking about the problem would have been to front-load performance on the US and P5+1 side, offering considerable short-term sanctions lifting and other economic relief, so that even if a future US Administration were to break the agreement, Iran would already have realized much of its benefit. As will be discussed in Part III, various design features of the Islamabad MOU reflect this need to provide immediate or short-term benefits to Iran, such as the unfreezing of Iranian funds.

When President Trump returned to the Oval Office in January 2025, the Vienna talks had long since been paused.⁷⁵ The Ukraine war had further complicated matters, with Russia seeking guarantees from the United States that Ukraine-related sanctions would not undermine its capacity to trade with Iran once Iran received sanctions relief under a new nuclear deal.⁷⁶ In February 2025, the IAEA reported that Iran had achieved enrichment of uranium to sixty percent with a stockpile of 274.8 kilograms of such a grade of purity.⁷⁷ In March 2025, President Trump sent a

73. See Laura Rozen, *Iran Transition Puts Vienna Talks on Hold*, DIPLOMATIC (July 9, 2021), <https://diplomatic.substack.com/p/iran-transition-puts-vienna-talks> [https://perma.cc/86Z9-6YZY]; see also Ebrahim Raisi: Who Was Iran's Hardline President?, REUTERS (May 21, 2024), <https://www.reuters.com/world/middle-east/obituary-irans-president-raisi-took-hard-line-with-national-protests-nuclear-2024-05-20/> [https://perma.cc/Q2CY-6UHF].

74. See Robert Howse & Ruti G. Teitel, *From Grievances to Guarantees: Getting to Yes in the Iran Nuclear Talks*, INT'L ECON. L. & POL'Y BLOG (Dec. 5, 2021), <https://ssrn.com/abstract=6432859> [https://perma.cc/HY3S-86QZ].

75. Joe Gambrell, *Negotiations to Revive Iran Nuclear Deal on 'Pause' After Russia Demands Sanctions Relief*, PBS NEWS (Mar. 11, 2022), <https://www.pbs.org/newshour/world/negotiations-to-revive-iran-nuclear-deal-on-pause-after-russia-demands-sanctions-relief> [https://perma.cc/EKK4-25A9].

76. *Foreign Minister Lavrov Says Russia Received US Guarantees On Iran Deal*, ARAB NEWS (Mar. 15, 2022), <https://www.arabnews.com/node/2043331/world> [https://perma.cc/2Q9A-VDLX].

77. IAEA, *Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)*, ¶ 30, IAEA Doc. GOV/2025/8 (Feb. 26, 2025).

letter to Iran's then-Supreme Leader, Ayatollah Khamenei, apparently offering negotiations but also threatening military action if Iran was not prepared to accept the offer.⁷⁸ Negotiations did in fact take place, in Oman and later in Rome, in April and May 2025.⁷⁹ Offers from the Trump Administration and counter-proposals from Iran continued through June, essentially until the United States and Israel struck Iranian targets, including its nuclear facilities, in what became known as the Twelve-Day War.⁸⁰ A central impasse in these negotiations was the Trump Administration's (albeit wavering) insistence that Iran accept zero enrichment as part of a deal. Iran had never accepted such a demand, insisting on its right under the NPT to enrich for civilian nuclear purposes; a range of other states engaged in such enrichment in that context.⁸¹ In 2026, the Administration again attempted to negotiate an agreement with Iran, based on the claim that the destruction of Iran's nuclear program by US and Israeli strikes created a new opportunity for diplomacy.⁸² These negotiations were complicated by misunderstandings between the

78. See Kelsey Davenport, *Trump Sends Iran Letter Amid Military Threats*, ARMS CONTROL ASS'N: ARMS CONTROL TODAY (Apr. 2025), <https://www.armscontrol.org/act/2025-04/news/trump-sends-iran-letter-amid-military-threats> [https://perma.cc/BRG9-BNNS].

79. Matthew Lee & Jon Gambrell, *Iran and U.S. Move to Expert-Level Talks over Tehran's Nuclear Program After 2nd Round of Negotiations*, PBS NEWS (Apr. 19, 2025), <https://www.pbs.org/newshour/world/iran-and-u-s-move-to-expert-level-talks-over-tehrans-nuclear-program-after-2nd-round-of-negotiations> [https://perma.cc/DBC7-6BE9] (reporting that the first round was held in Muscat, the second in Rome on April 19, and a further round was set in Oman for April 26); *Fifth Round of Iran-U.S. Nuclear Negotiations Concludes*, IRNA (May 23, 2025), <https://www.globalsecurity.org/wmd/library/news/iran/2025/iran-250523-irna02.htm> [https://perma.cc/5SFJ-EBHQ] (reporting that the "fifth round . . . has come to an end in Rome, Italy").

80. Lee & Gambrell, *supra* note 79; *Fifth Round of Iran-U.S. Nuclear Negotiations Concludes*, *supra* note 79.

81. Colin Kahl & Alireza Nader, *Zero-Sum Enrichment: Six Reasons Why the United States Can't Force Iran's Nuclear Hand*, FOREIGN POL'Y (Oct. 14, 2013), <https://foreignpolicy.com/2013/10/14/zero-sum-enrichment/> [https://perma.cc/BW8D-QS3M].

82. Kelsey Davenport, *Trump Seeks Deal with Iran to End War*, ARMS CONTROL ASS'N: ARMS CONTROL TODAY (Apr. 2026), <https://www.armscontrol.org/act/2026-04/news/trump-seeks-deal-iran-end-war> [https://perma.cc/G7LU-2CRY] [hereinafter *Trump Seeks Deal*].

technical nuclear experts and the negotiating team,⁸³ and at times (though not consistently) by the Administration's insistence that Iran's non-nuclear ballistic missile development be put on the negotiating table.⁸⁴ On February 28, 2026, the United States and Israel again attacked Iran, in an operation the United States codenamed "Operation Epic Fury."⁸⁵ The opening strike killed Iran's Supreme Leader and senior officials.⁸⁶ The same wave struck a girls' school killing roughly 150 people (due apparently to US military error).⁸⁷ Further targeted killings and attacks on civilian infrastructure followed, some conducted by the United States, others by Israel.⁸⁸ Iran responded by striking strategic locations across the Gulf, including US bases but also some arguably civilian targets, and by closing the Strait of Hormuz.⁸⁹ As will be discussed in Part III of this Article, the approach to reopening the Strait of Hormuz in the Islamabad MOU was open-ended and incomplete in a way that quickly gave rise to allegations both of Iran and the United States concerning the other's non-compliance and consequent resumption of hostilities. In April 2026, there was a brief ceasefire and then, on June 17, the signing of the MOU that is the subject of this Article.⁹⁰

83. Laura Rozen, *Was Diplomacy with Iran Really Doomed to Fail?*, DIPLOMATIC (Mar. 4, 2026), <https://diplomatic.substack.com/p/was-diplomacy-with-iran-really-doomed> [https://perma.cc/7S3W-5JGZ].

84. See *Trump Seeks Deal*, *supra* note 82 (citing media reports that the US fifteen-point ceasefire plan included "suspension of ballistic missile activities" and that Iran's demands included "allowing Iran to retain its missile program"); *Iran Says Missile Programme Non-Negotiable as Tehran, Washington Eye Talks*, AL JAZEERA (Feb. 11, 2026), <https://www.aljazeera.com/news/2026/2/11/iran-says-missile-programme-non-negotiable-as-tehran-washington-eye-talks> [https://perma.cc/CL5P-GBFN].

85. See Davit Khachatryan, *Operation Epic Fury, Regime Change, and the Collapse of Legal Constraint*, CTR. FOR INT'L POL'Y (Mar. 4, 2026), <https://internationalpolicy.org/publications/epic-fury-international-law/> [https://perma.cc/CU3Z-TYVM].

86. See *id.*

87. See *id.*; see also *U.S. Responsible for Killing Over 100 Children in Iran School Attack*, AMNESTY INT'L USA (Mar. 23, 2026), <https://www.amnestyusa.org/blog/u-s-responsible-for-killing-over-100-children-in-iran-school-attack/> [https://perma.cc/HRT6-7PQB].

88. CHRISTOPHER M. BLANCHARD ET AL., CONG. RSCH. SERV., R48887, U.S. CONFLICT WITH IRAN 1 (2026).

89. *Multiple Arab States That Host US Assets Targeted in Iran Retaliation*, AL JAZEERA (Feb. 28, 2026), <https://www.aljazeera.com/news/2026/2/28/multiple-gulf-arab-states-that-host-us-assets-targeted-in-iran-retaliation> [https://perma.cc/MW6H-W6MV].

90. *The U.S. and Iran Struck a Two-Week Truce. Now What?*, COUNCIL ON FOREIGN RELS. (Apr. 8, 2026), <https://www.cfr.org/articles/the-u-s-and-iran-struck-a-two-week-truce->

*III. PART II: THE NATURE AND STRUCTURE OF OBLIGATIONS
UNDER THE MOU*

Before examining the detailed provisions of the MOU, it is useful to clarify the general nature of the Agreement's obligations and its overall structure. Many initial reactions to the MOU suggested that it was "non-binding" in international law,⁹¹ and that in any case its commitments were of an interim nature (they would simply be replaced if a final agreement were reached, or if not, they would be extinguished). As we shall see, matters are much more complicated.

As noted, the JCPOA was presented as a "non-binding" political agreement by the Obama Administration, a view that was at times contested by Iranian officials, though some of its elements acquired binding force by incorporation into a Security Council resolution.⁹² The JCPOA also contained an admittedly rather awkwardly worded clause that appears designed to carve the agreement out from the broader universe of international law⁹³ but, notably, no comparable provision can be found in the MOU. This suggests that unlike the JCPOA, which was considered as a, mostly, self-contained political understanding that did not affect the parties' international law rights and obligations, the MOU was intended to operate within the universe of international law as a binding agreement. What the MOU does provide is that a final agreement negotiated on its basis will be "endorsed by a binding UNSC resolution."⁹⁴ It has been suggested that this implies that the MOU itself is not binding. Such an inference is, however, unwarranted. There is a different compelling reason why a UNSC resolution is needed: Under Paragraph 7 of the MOU, the United

now-what [<https://perma.cc/YR6N-JFEQ>]. The two-week ceasefire, announced April 7, was mediated by Pakistan and included a plan to reopen the Strait of Hormuz. *Id.*

91. Criticism has come even from experts well informed on Iran diplomacy, such as Tess Bridgeman. See Bridgeman, *supra* note 6.

92. S.C. Res. 2231, *supra* note 43, ¶¶ 5–20.

93. Thus, paragraph (xi) of the JCPOA's Preamble and General Provisions stipulates: "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." JCPOA, *supra* note 41, pmb. & gen. provisions ¶ xi.

94. MOU, *supra* note 1, ¶ 14.

States “undertakes to terminate all types of sanctions against . . . Iran.”⁹⁵ These explicitly include sanctions under UNSC resolutions. These sanctions can only be terminated by further UNSC action, after having been reinstated through snapback.⁹⁶

One cannot rely then upon Paragraph 14 to conclude that the MOU itself is non-binding. How then is one to answer the question whether the MOU is binding? As Duncan Hollis has laid out in *Foreign Policy*, there is no intrinsic reason why an agreement entitled MOU cannot be binding as a matter of international law.⁹⁷ A 2016 State Department document notes:

While the use of a title such as ‘Memorandum of Understanding’ is common for non-binding documents, we caution that simply calling a document a ‘Memorandum of Understanding’ does not automatically denote for the United States that the document is non-binding under international law. The United States has entered into MOU’s that we consider to be binding international agreements.⁹⁸

As Hollis explains:

Under international law, two criteria identify a treaty. First, is there an agreement with clear commitments? This distinguishes treaties from the other things that states sign, such as G-7 summit declarations. The MOU fulfills this criterion. Consider Paragraph 4, which states that immediately on signing, the United States will begin removing its naval blockade. In Paragraph 5, Iran pledges to make arrangements—“using its best efforts”—for commercial vessels to safely pass through Hormuz without charge for 60 days. Stipulations such as these clearly make this an international agreement.

Second, is the agreement governed by international law? This turns on an examination of the text, surrounding circumstances, and subsequent practice. As things stand, that analysis produces a decidedly murky picture, although there’s

95. *Id.* ¶ 7.

96. Once reinstated through snapback, the sanctions in the prior UN resolutions remain in place “unless the Security Council decides otherwise.” S.C. Res. 2231, *supra* note 43, ¶ 12.

97. Hollis, *supra* note 6.

98. See *Guidance on Non-Binding Documents*, U.S. DEP’T OF STATE, <https://2009-2017.state.gov/s/1/treaty/guidance/index.htm> [<https://perma.cc/WY2E-NCUT>] (last visited Oct. 22, 2026).

still time for Washington and Tehran to jointly clarify the MOU's status.⁹⁹

Unlike Hollis, I do not think this is so murky. In the case of the Strait of Hormuz, for instance, Paragraph 5 of the MOU refers to “the applicable international law.”¹⁰⁰ Those provisions of the MOU that deal with the obligation “not to initiate any war” and “refrain from the use or threat of force” (Paragraph 1)¹⁰¹ bear upon elements of international law, including the customary international law on the use of force, that are intrinsically applicable, some of which may have the status of peremptory norms that may not even be excluded if the parties attempted by agreement to do so.¹⁰²

One vector of confusion about the legal status of the MOU arises from the place of “treaties” in the US constitutional framework. Treaties are a form of international agreement that become the law of the United States, once approved by a supermajority of the Senate.¹⁰³ Some treaties, the Supreme Court has long held, are self-executing—others must be implemented through further Congressional action to become the law of the United States. An important dimension of an international agreement that has this “treaty” form is that the Supremacy Clause would apply, prevailing over state law. However, many (perhaps most) of the international agreements which bind the United States

99. See Hollis, *supra* note 6. Hollis's summary of the criteria is clearly based on the definition of a treaty in the Vienna Convention on the Law of Treaties, which is generally considered to reflect customary international law. *Id.* “[T]reaty’ means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.” Vienna Convention on the Law of Treaties art. 2(1)(a), May 23, 1969, 1155 U.N.T.S. 331.

100. MOU, *supra* note 1, ¶ 5.

101. *Id.* ¶ 1.

102. See *Oil Platforms (Iran v. U.S.)*, Judgment, 2003 I.C.J. 161, ¶ 6 (Nov. 6) (separate opinion by Simma, J.). Even if one were to conclude that the relevant norms in international law on the use of force had only the status of custom, the parties would have to exclude them explicitly as governing law under the MOU.

103. U.S. CONST. art. II, § 2, cl. 2; see Curtis A. Bradley, Jack L. Goldsmith & Oona A. Hathaway, *The Failed Transparency Regime for Executive Agreements: An Empirical and Normative Analysis*, 134 HARV. L. REV. 629, 632–33 (2020) [hereinafter *The Failed Transparency Regime*]. The president only has specified constitutional power to make “treaties” under Article II. See *id.* at 631. However, executive agreements have become the primary means of concluding binding international agreements—a process that avoids Article II's onerous Senate requirements but is subject to the “transparency regime” imposed by Congress. See *id.* at 631, 632; see also CURTIS A. BRADLEY, *INTERNATIONAL LAW IN THE U.S. LEGAL SYSTEM* 31–73 (2013).

according to international law are not labeled as “treaties” in the constitutional sense (for example, trade agreements such as the WTO accords or the NAFTA, which is now the United States–Mexico–Canada Agreement (“USMCA”)).¹⁰⁴ While not treaties under the US Constitution, they fit the definition of a treaty under the Vienna Convention on the Law of Treaties (and are consequently binding in, and governed by, international law). Under the US constitutional and administrative law framework, such an agreement is often considered either a sole executive agreement (if Congress is not involved) or a congressional-executive agreement.¹⁰⁵

But to characterize an international agreement (a “treaty” according to international law but a sole executive agreement under US domestic law) as “binding” is not to suggest that all of its provisions entail the same level of bindingness. A binding agreement may contain provisions that are aspirational with no expectation of immediate compliance, as the WTO Appellate Body held in an early case.¹⁰⁶ State responsibility may also depend on how an obligation is framed. Even where a provision does impose an immediate obligation, the content of that obligation—and thus the scope of a party’s responsibility for failing to perform it—may be qualified by expressions such as “best efforts.” Paragraph 5 of the MOU, for example, uses this qualifier for Iran’s immediate obligations with respect to the Strait of Hormuz.

The MOU’s obligations fall into three categories. First, some of the obligations are immediately binding and remain binding regardless of the outcome of negotiations for a final deal. Thus, Paragraph 13 of the MOU states that negotiations on the final deal will exclude the provisions of Paragraphs 1, 4, 5, 10, and 11 of the MOU. Indeed, it says that the final negotiations are “subject to” the

104. See BRADLEY, *supra* note 103, at 74–79 (comparing the historical average number of executive agreements concluded by the United States in comparison to “treaties”).

105. See Bradley, Goldsmith & Hathaway, *The Failed Transparency Regime*, *supra* note 103, at 638–39. In this Article, we more generally categorize executive agreements into sole executive agreements and congressional-executive agreements.

106. See Appellate Body Report, *European Communities—Measures Concerning Meat and Meat Products (Hormones)*, ¶ 165, WTO Doc. WT/DS26/AB/R, WT/DS48/AB/R (adopted Feb. 13, 1998). The Appellate Body found that the harmonization provisions of the Agreement on the Application of Sanitary and Phytosanitary Measures—a binding treaty—set out a goal to be realized in the future rather than an obligation requiring immediate implementation.

“continuing” implementation of these paragraphs.¹⁰⁷ The obligations in these Paragraphs are not conditional upon the conclusion of a final agreement. Moreover, the MOU implicitly allows for these obligations to continue even if a final agreement is not achievable. Nor can they be altered in content through the negotiation of a final agreement.

Paragraph 1 concerns, as noted, the permanent end of hostilities and the obligation not to use or threaten force in the future. The remaining Paragraphs excluded from the final negotiations address the other core elements of the bargain: Paragraph 4, the removal of the US naval blockade; Paragraph 5, the Strait of Hormuz; Paragraph 10, licenses to sell oil; Paragraph 11, making available certain frozen or restricted funds or assets.

Second, there are immediately binding obligations that will terminate when and if a final deal is reached. Thus, Paragraph 9 states:

Pending the final deal, the United States of America and the Islamic Republic of Iran agree to maintain the status quo. The Islamic Republic of Iran will maintain the current status quo of its nuclear program, and the United States of America will not impose any new sanctions and will not deploy additional forces in the region.¹⁰⁸

The “Pending” language is consistent here with the possibility that this standstill provision would remain in force should a final agreement *not* be reached, and even if the attempt to reach it were abandoned.

Third, there are provisions in the MOU that specify the content or subject matter to be included in a final deal. Thus, for example, the mechanism for implementing a US\$300 billion reconstruction and development fund is to be established in the final agreement (Paragraph 6) as well as an “executive mechanism” to monitor compliance with the MOU and the final deal (Paragraph 12).¹⁰⁹

107. MOU, *supra* note 1, ¶ 13.

108. *Id.* ¶ 9.

109. *Id.* ¶¶ 6, 12.

IV. PART III: A TEXTUAL AND CONTEXTUAL ANALYSIS OF THE PROVISIONS OF THE MOU

With this schema of obligations in mind, I now turn to the individual Paragraphs of the MOU.

A. Paragraph 1: Cessation of Hostilities

Paragraph 1 establishes the obligation of a permanent ceasefire. It accordingly prohibits any use of force, or threat thereof, by one party against the other. Paragraph 1 specifically includes Lebanon in the obligation to “terminate military operations on all fronts.”¹¹⁰ This represents a clear victory for Iran—it succeeded in linking the ending of the Lebanon war being pursued by Israel to peace between Iran and the United States. However, the application of Paragraph 1 to Lebanon raises a number of complex issues and has already led Iran to accuse the United States of breaches.

While neither Hezbollah nor Israel is a party to the MOU, the opening statement of Paragraph 1 reads: “The United States of America and the Islamic Republic of Iran *and their allies in the current war* by signing this MOU, declare the immediate and permanent termination of military operations on all fronts, including in Lebanon . . .” (emphasis added).¹¹¹ This phrase is hard to parse. It may suggest that at one point there was an intent that Israel and Hezbollah add their signatures to the MOU; this seems far-fetched given the political realities that existed at the time the MOU was drafted. A more plausible, if not entirely unforced, reading is that Iran and the United States as signatories are making certain guarantees as to the conduct of their “allies.” A non-party is not generally bound by an agreement to which it did not consent, a point that Israel (correctly) made when the text of the MOU was revealed.¹¹²

As was quickly illustrated after the MOU was signed, policing the behavior of “allies” is far from straightforward. For example,

110. *Id.* ¶ 1.

111. *Id.*

112. See Dave DeCamp, *Israeli Ministers Say Israel Isn't Bound by US-Iran Deal, Won't Withdraw from Lebanon*, ANTIWAR.COM (June 15, 2026), <https://news.antiwar.com/2026/06/15/israeli-ministers-say-israel-isnt-bound-by-us-iran-deal-wont-withdraw-from-lebanon/> [https://perma.cc/2YB4-X6AC].

imagine a situation in which some Hezbollah fighting unit not under close central control might start to engage with Israeli troops, who have orders that they may respond, at least in self-defense. In failing to prevent such a response, is the United States in violation of Paragraph 1? Interpreting the text so that the answer would be “Yes” makes little sense. Surely, Paragraph 1 must be read in light of the UN Charter, which includes the inherent right of self-defense.¹¹³

Quite sensibly, the response of the parties was to agree to the creation of a “deconfliction cell” that would have the responsibility of addressing, jointly, incidents of this kind, and preventing them from escalating into full-scale violations of the ceasefire.¹¹⁴ The context was changed by the conclusion of an agreement between Israel, Lebanon, and the United States on a path toward ending the war there.¹¹⁵ Iran has presented this agreement as a violation of the obligations in Paragraph 1 of the MOU.¹¹⁶ The Trilateral Framework establishes a path toward withdrawal of IDF troops from Lebanon, while strengthening the capacity of Lebanon’s own army.¹¹⁷ Withdrawal or “redeployment” under the Framework is gradual, and dependent upon the disarmament of “all non-state armed groups.”¹¹⁸ Before the official text of the MOU was public,

113. Both the United States and Iran are bound by the UN Charter, which provides that “[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” U.N. Charter art. 103. By virtue of this clause, Iran and the United States may not diminish their obligations under the Charter, including with respect to the use of force.

114. Justin Salhani, *Deconfliction and Disarmament: Can Both be Pursued in Lebanon?*, AL JAZEERA (June 25, 2026), <https://www.aljazeera.com/news/2026/6/25/deconfliction-and-disarmament-can-both-be-pursued-in-lebanon> [https://perma.cc/U7JB-958D].

115. See Press Release, U.S. Dep’t of State, Trilateral Framework Between the United States of America, the State of Israel, and the Republic of Lebanon (June 26, 2026), <https://www.state.gov/releases/office-of-the-spokesperson/2026/06/trilateral-framework-between-the-united-states-of-america-the-state-of-israel-and-the-republic-of-lebanon> [https://perma.cc/ZA4H-BPYA].

116. See *Landmark Israel-Lebanon Agreement Intersects the U.S.-Iran Conflict*, SOUFAN CTR. (July 1, 2026), <https://thesoufancenter.org/intelbrief-2026-july-1/> [https://perma.cc/FW7U-UKS4].

117. See *id.* (describing the Framework as “a roadmap for Israeli forces to gradually withdraw from south Lebanon,” with the Lebanese Armed Forces assuming “full and effective security responsibility” in pilot zones with US assistance).

118. Press Release, U.S. Dep’t of State, *supra* note 115, ¶¶ 2–5; see also *Landmark Israel-Lebanon Agreement*, *supra* note 116 (describing the Framework as “a roadmap for Israeli forces to gradually withdraw from south Lebanon,” with the Lebanese Armed

Iran insisted on an interpretation that the MOU required complete and immediate withdrawal of the IDF from Lebanon.¹¹⁹

The plain text of Paragraph 1 does not require such a withdrawal. The language “termination of military operations on all fronts” cannot properly be interpreted in such a way as to preclude Israel’s right of self-defense under the UN Charter and customary international law. The subsequent Trilateral Framework, in turn, contains a commitment by Israel that any continuing military operations in Lebanon:

[A]re solely a consequence of the attacks, threat posed by, and hostile intent of non-state armed groups, particularly Hizballah. The Government of Israel underscores that the termination of this threat, through the disarmament and dismantlement of such groups in all of Lebanon and additional security arrangements to be agreed upon between the two countries, will eliminate any future need for IDF military action or presence in Lebanon. Pursuant to the above, the Government of Israel declares that it has no territorial ambitions in Lebanon.¹²⁰

This last sentence is quite important: Israel here has solemnly disassociated itself from the rhetoric even within the Israeli government itself just days before the conclusion of the Trilateral Framework, which suggested an intent to annex or occupy indefinitely parts of Lebanon.¹²¹ This, combined with the commitment to scale IDF presence and activities to situations of self-defense, is an important contribution of the United States as a broker and party of the Trilateral Framework to the implementation of Paragraph 1 of the MOU. It supports the obligation in Paragraph 1 to ensure “the territorial integrity and sovereignty of Lebanon.”¹²²

Forces assuming “full and effective security responsibility” in pilot zones with US assistance).

119. See John Gambrell, Sam Metz & Samy Magdy, *Iran Says the Initial Deal to End the War with the US Requires Israel to Withdraw from Lebanon*, AP NEWS (June 16, 2026), <https://apnews.com/article/iran-U.S.-war-israel-lebanon-oil-june-16-2026-d79458506c46e3f4a78aef0f9d8b9250> [https://perma.cc/X9BV-DM88].

120. Press Release, U.S. Dep’t of State, *supra* note 115, ¶ 5.

121. See, e.g., *Netanyahu Says Israel Won’t Leave Occupied Land in Lebanon*, AL JAZEERA (June 15, 2026), <https://www.aljazeera.com/news/2026/6/15/netanyahu-says-israel-wont-leave-occupied-land-in-lebanon> [https://perma.cc/QX8S-NJL9].

122. MOU, *supra* note 1, ¶ 1.

The dispute over the MOU and Lebanon obscures an important development in Paragraph 1. For the first time, Iran and the United States have explicitly agreed that stabilizing their own relationship requires reining in their “allies”—no less in Iran’s case Hezbollah or perhaps even the Houthis than Israel and perhaps Gulf states in the case of the United States. All previous attempts to link nuclear issues to regional stability and the role of proxies went nowhere. Despite its statements of dissatisfaction, Iran accomplished a significant reduction of hostilities in Lebanon.¹²³ The United States in turn rightly insisted that Iran should have an obligation to curb its own allies for the sake of peace and security. This is a genuine advancement, and whatever the fate of the MOU, it will be very difficult to argue going forward that any future accord between the United States and Iran should exclude completely these kinds of issues.

However fraught the disagreement over Lebanon and the MOU, it is of course the disaccord concerning the Strait of Hormuz that has led to the current resumption of hostilities. We will come to the disaccord shortly.¹²⁴ The MOU does not contain any special rules to address the consequences of a violation of any of its provisions. Nor does it contain any dispute mechanism to determine impartially whether a violation has occurred—an executive mechanism is merely foreseen for the final agreement (MOU Paragraph 12).

Under general international law, reflected in the ILC Articles on State Responsibility, forcible countermeasures are not permitted as a means of inducing a breaching state to comply with an international obligation.¹²⁵ Under customary international law on the use of force and the UN Charter, the exchange of fire cannot be justified, whether or not the MOU has been breached.¹²⁶ Both

123. See Laila Bassam & Steven Scheer, *Lebanon Fighting Eases After US-Iran Deal*, REUTERS (June 15, 2026), <https://www.reuters.com/world/middle-east/lebanon-warns-displaced-against-rushing-home-after-us-iran-deal-2026-06-15/> [<https://perma.cc/WR7F-Z6V2>].

124. See *infra* Part III.E.

125. Article 50 provides that countermeasures shall not affect the obligations on the use of force in the UN Charter. See G.A. Res. 56/83, annex, Responsibility of States for Internationally Wrongful Acts, art. 50(1)(a) (Dec. 12, 2001) [hereinafter ARSIWA].

126. Int’l L. Comm’n, *Rep. on the Work of Its Fifty-Third Session*, U.N. Doc. A/56/10, at 131–32 (2001) [hereinafter ARSIWA Commentary]. Article 50(1)(a) provides that countermeasures shall not affect “the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations.” ARSIWA, *supra* note 125, art. 50(1)(a).

the Trump Administration and Iran have made statements suggesting that, given the breaches that have occurred, they have a general right not to perform their obligations under the MOU.¹²⁷ There is, to date, no evidence that either the United States or Iran has formally terminated the MOU; indeed, the MOU does not contain any provision on how or in what circumstances either party might have a right to terminate the MOU. However, Iran has described the MOU as “suspended.”¹²⁸

The material breach provisions of the Vienna Convention on the Law of Treaties (“VCLT”) may help to clarify the effect of the various breaches on the legal status of the MOU. Since the MOU fits the definition of a treaty within the meaning of the VCLT, and many of its provisions are widely considered to constitute customary international law binding on all states, the VCLT is arguably relevant despite neither the United States nor Iran having ratified it.¹²⁹

Article 60 indicates: “A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in

The commentary states that this “excludes forcible measures from the ambit of permissible countermeasures,” and grounds the rule in the Friendly Relations Declaration, by which the General Assembly proclaimed that “States have a duty to refrain from acts of reprisal involving the use of force.” ARSIWA Commentary, *supra*, at 132, ¶¶ 4–5.

127. *Iran Declares Islamabad Agreement Suspended, Blames US Violations*, MIDDLE E. EYE (July 18, 2026), <https://www.middleeasteye.net/news/iran-declares-islamabad-agreement-suspended-blames-us-violations> [<https://perma.cc/PJ9A-BUAM>]. For the US position that Iran had breached the MOU, see Umar Farooq, *US-Iran MoU Ends: What Happens Next?*, AL JAZEERA (Aug. 16, 2026), <https://www.aljazeera.com/news/2026/8/16/us-iran-mou-is-set-to-expire-what-to-know> [<https://perma.cc/UR9R-VZ8F>] (reporting that by June 27, 2026, President Trump was describing Iranian strikes as “a foolish violation” of the MOU); Elise Spenner & Chris Boccia, *How the US-Iran Ceasefire and MOU Broke Down—A Timeline*, ABC NEWS (July 9, 2026), <https://abcnews.com/Politics/us-iran-ceasefire-mou-broke-timeline/story?id=134622392> [<https://perma.cc/69PB-L5A9>] (describing the United States as treating Iran’s June 25 and July 7 strikes on shipping as violations of the MOU).

128. *Iran Suggests MoU ‘Suspended’ as 50 Killed in US Strikes in July*, AL JAZEERA (July 18, 2026), <https://www.aljazeera.com/news/2026/7/18/iran-accuses-us-of-striking-critical-infrastructure-as-war-intensifies> [<https://perma.cc/P4QD-FCCL>].

129. The International Court of Justice has held that Article 60 of the VCLT reflects customary international law. *Gabčíkovo-Nagymaros Project* (Hung./Slovk.), Judgment, 1997 I.C.J. 7, ¶ 46 (Sep. 25); see also *Vienna Convention on the Law of Treaties*, U.S. DEP’T OF STATE, <https://2009-2017.state.gov/s/l/treaty/faqs/70139.htm> [<https://perma.cc/RNQ4-T4HU>] (last visited Oct. 20, 2026) (stating that the United States “considers many of the provisions of the Vienna Convention . . . to constitute customary international law”).

whole or in part.” Material breach is defined as “the violation of a provision essential to the accomplishment of the object or purpose of the treaty.” In the case of the MOU, there can be little doubt that the provisions on Hormuz are “essential to the accomplishment of the object or purpose of the treaty”: Hormuz has been a fundamental axis of conflict throughout the war.¹³⁰ As noted, neither the United States nor Iran has given formal notice of termination of the MOU, and indeed there is no provision in the MOU that provides that a party can terminate it through such formal notice¹³¹; in these circumstances, the best interpretation is that both parties have suspended their performance of obligations in the presence of “material breach” and have left the option open of returning to the performance of the MOU if their differences on Hormuz can be resolved.¹³² An additional obstacle to either the United States or Iran justifying termination of the MOU under Article 60 is the holding of the International Court of Justice that termination of a treaty is not available under Article 60 where both sides have breached the treaty. As noted, in the case of the MOU, both sides took actions in violation of Paragraph 1 of the MOU (restarting hostilities) within a very short time frame, each blaming the other for not respecting the MOU.¹³³

130. *Iran Declares Islamabad Agreement Suspended, Blames US Violations*, *supra* note 127 (reporting that Iran characterized the MOU as “suspended” rather than terminated); Farooq, *supra* note 127; Spennner & Boccia, *supra* note 127 (treating Iranian strikes as violations of the MOU).

131. *Gabčíkovo-Nagymaros*, 1997 I.C.J. ¶ 100 (holding that a formal notice of termination by a party cannot effectively terminate a treaty where the treaty does not have a termination clause that so provides).

132. It has been suggested by some that the MOU “expired” in mid-August, because the sixty-day deadline for concluding a final agreement expired. *See* Sarah Shamim, *US-Iran Memorandum of Understanding Expires: How and Why It Fell Apart*, AL JAZEERA (Aug. 17, 2026), <https://www.aljazeera.com/news/2026/8/17/us-iran-memorandum-of-understanding-expires-how-and-why-it-fell-apart> [https://perma.cc/PE3M-6M7Y]. However, as explained *supra* Part II, paragraph 13 of the MOU provides that negotiations on the final deal will exclude the provisions of paragraphs 1, 4, 5, 10, and 11. Those obligations remain in force regardless of the time frame for a final deal, so the MOU remains a binding treaty. It follows that the provision allowing the parties to extend the sixty-day deadline by consent, at any time and for any period, should also be read as still valid.

133. *See Gabčíkovo-Nagymaros*, 1997 I.C.J. ¶ 100.

B. Paragraph 2: Sovereignty and Non-Interference in Internal Affairs

Paragraph 2 of the MOU reads: “The United States of America and the Islamic Republic of Iran undertake to respect each other’s sovereignty and territorial integrity and to refrain from interfering in each other’s internal affairs.”¹³⁴ This provision has important implications given the context in which the war between the United States and Israel, on the one hand, and Iran, on the other, occurred. Initially, President Trump had threatened intervention in Iran if the regime continued to brutally suppress peaceful demonstrations.¹³⁵ However, this “humanitarian intervention”-type argument was not among the rationales the Trump Administration made for actually starting the war—these focused more on incentivizing Iran to come to the nuclear negotiating table and degrading its nuclear and conventional weapons capabilities.¹³⁶ Against the background of the targeted killings by Israel and the United States of many of Iran’s leaders and top officials in the early phase of the war, unlike the Israeli government, the Trump Administration has refrained from stating that regime change is a formal objective of the war¹³⁷ (although officials and President Trump have occasionally indicated their hope that the shake-up in the leadership due to these targeted killings might provide new openings for diplomacy).¹³⁸

134. MOU, *supra* note 1, ¶ 2.

135. See Raffi Berg & David Gritten, *Why Are There Protests in Iran and What Has Trump Said About US Action?*, BBC NEWS (Jan. 14, 2026), <https://www.bbc.com/news/articles/cgiw8wxl3d6o> [<https://perma.cc/T5LV-WACV>].

136. See Ariane Tabatabai, *Trump’s Shifting Objectives in Iran and How the War Could End*, CHI. COUNCIL ON GLOB. AFF. (Apr. 23, 2026), <https://globalaffairs.org/commentary/analysis/trumps-shifting-objectives-iran-and-how-war-could-end> [<https://perma.cc/627V-8ZD4>].

137. See *Transcript: Trump Addresses the Nation on Iran*, N.Y. TIMES (Apr. 1, 2026), <https://www.nytimes.com/2026/04/01/us/politics/trump-transcript-speech-iran.html> [<https://perma.cc/525X-GBPG>]. Trump has claimed: “Regime change was not our goal. We never said regime change, . . .” *Id.*

138. See Greg Myre, *Shifting Rationales for Strikes on Iran: White House Says It Doesn’t Want Regime Change*, NPR (Mar. 4, 2026), <https://www.npr.org/2026/03/04/nx-s1-5734006/shifting-rationales-for-strikes-on-iran-white-house-says-it-doesnt-want-regime-change> [<https://perma.cc/UBE9-EYKT>]; Berk Kutay Gokmen, *Trump Says He ‘Never Cared About Regime Change’ in Iran*, ANADOLU AGENCY (June 16, 2026), <https://www.aa.com.tr/en/americas/trump-says-he-never-cared-about-regime-change-in-iran/3968599> [<https://perma.cc/H4QH-XFBH>].

The obligation of non-interference in internal affairs at a minimum constitutes a repudiation of the idea that the United States can or should take actions to provoke or support regime change in Iran. This cements a divergence between the United States and Israel concerning how to deal with Iran.¹³⁹ A different question is whether and how Paragraph 2 purports to constrain the United States in taking actions in relation to human rights concerns in Iran. Human rights concerns, by virtue of international human rights law, are no longer simply “internal affairs.”¹⁴⁰ The fact that Paragraph 7 of the MOU undertakes, pursuant to a final deal, to terminate all sanctions on Iran implies a willingness to give up the sanctions instrument at least as a means of addressing concerns about human rights in Iran.

The affirmation in Paragraphs 1 and 2 of what are essentially the obligations of the United States and Iran under the UN Charter and the doctrine of non-intervention in customary international law¹⁴¹ seems to take the place of any kind of apology or acknowledgement of wrongdoing on the part of the United States for starting and waging a war that Iran has argued from the outset is manifestly illegal under the UN Charter,¹⁴² violating the prohibition on the use of force in Article 2(4), and not a justified response to any armed attack within the meaning of Article 51 of the Charter.¹⁴³ As Ruti Teitel has noted, President Trump is not

139. See Priyanka Shankar, *Netanyahu Meets Trump at the White House: What's on the Agenda, What's Next*, AL JAZEERA (July 28, 2026), <https://www.aljazeera.com/news/2026/7/28/netanyahu-in-the-white-house-whats-on-the-agenda-and-whats-next> [<https://perma.cc/9H9E-Y7FX>] (“‘Regime change’ in Iran appears to be a major sticking point between [Netanyahu and Trump].”).

140. Inst. de Droit Int'l, *The Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States*, 63 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 338 (1989).

141. For an articulation of non-intervention in customary international law, see *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 202 (June 27).

142. Thus, these commitments in Article 2 could be understood as assurances of non-repetition of the violations in question, a form of remedy for internationally wrongful conduct that is acknowledged in the ILC Articles on State Responsibility. See Sandrine Barbier, *Assurances and Guarantees of Non-Repetition*, in *THE LAW OF INTERNATIONAL RESPONSIBILITY* 551 (James Crawford, Alain Pellet & Simon Olleson eds., 2010).

143. See Permanent Rep. of Iran to the U.N., Letter dated Feb. 28, 2026 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2026/101 (Feb. 28, 2026). “The air strikes carried out by the United States and the Israeli regime constitute a clear violation of Article 2(4) of the Charter of the United Nations and amount to an open armed

going to apologize for past American wrongdoing, let alone his own.¹⁴⁴ It is remarkable that Iran agreed to an MOU that did not foresee, even in the final agreement, anything concerning reparations or any other process to address egregious violations of international humanitarian law.¹⁴⁵ Perhaps, though of course there is no explicit or even veiled admission of wrongdoing, one could look at elements of Paragraphs 1 and 2 that reaffirm the norms on the use of force and self-defense as a kind of implicit state

aggression against the Islamic Republic of Iran.” *Id.* In its own communication to the United Nations, the United States maintained that it was acting in individual and collective (with Israel) self-defense, citing “the imminence, gravity and scope of the threat posed by the Iranian regime today.” Permanent Rep. of the U.S. to the U.N., Letter dated Mar. 10, 2026 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2026/161 (Mar. 11, 2026). This implicit claim that “preemptive” self-defense is consistent with Article 51 of the UN Charter—that is, force in response to a threat absent the “armed attack” Article 51 requires—was echoed by the State Department’s Legal Adviser: “any legal analysis or process for determining the imminence of an attack and the proportionality of a potential response should account for the immense destructive power of nuclear weapons” Reed D. Rubinstein, *Operation Epic Fury and International Law*, U.S. DEP’T OF STATE: OFF. OF THE LEGAL ADVISER (Apr. 21, 2026), <https://www.state.gov/releases/office-of-the-legal-adviser/2026/04/operation-epic-fury-and-international-law> [<https://perma.cc/CS5Z-BY29>]. However, as noted *supra* note 22 and accompanying text, the Trump Administration’s own intelligence assessment has been that Iran does not have, and has not decided to acquire, nuclear weapons, making the claim of preemption on those grounds highly tenuous even under this permissive reading of Article 51. The US international law community has generally taken the view that the war violates the UN Charter and that the right of self-defense does not apply as the Administration suggests. See Isaac Chotiner, *The Lawlessness of Trump’s War on Iran*, NEW YORKER (Mar. 10, 2026), <https://www.newyorker.com/news/q-and-a/the-lawlessness-of-trumps-war-in-iran> [<https://perma.cc/2ZNZ-MC72>]; *On the U.S. Military Action Against Iran*, N.Y.C. BAR ASS’N (Apr. 27, 2026), <https://www.nycbar.org/press-releases/on-the-u-s-military-action-against-iran/> [<https://perma.cc/P9RB-GLLK>]; Tom Dannenbaum et al., *Over 100 International Law Experts Warn: U.S. Strikes on Iran Violate UN Charter and May Be War Crimes*, JUST SEC. (Apr. 13, 2026), <https://www.justsecurity.org/135423/professors-letter-international-law-iran-war/> [<https://perma.cc/YV3E-V634>]. For an explanation of how the UN Charter rules on the use of force might apply to “preemption” of a nuclear threat such as Iran’s, published well before the current conflict, see Mary Ellen O’Connell & Maria Alevras-Chenl, *The Ban on the Bomb – and Bombing: Iran, the U.S., and the International Law of Self-Defense*, 57 SYRACUSE L. REV. 497 (2007).

144. See Ruti Teitel, *Should America Ever Apologize?*, PROJECT SYNDICATE (Feb. 19, 2019), <https://www.project-syndicate.org/commentary/trump-pompeo-obama-cairo-apology-by-ruti-teitel-2019-02> [<https://perma.cc/CA82-NQZP>].

145. Prior to the MOU, Iran at times stated that war reparations were one of its key negotiating demands for an agreement with the United States. See *Iran Puts War Losses at \$270 Billion Demands Reparations from Gulf Countries*, IRANWIRE (Apr. 14, 2026), <https://iranwire.com/en/news/151197-iran-puts-war-losses-at-270-billion-demands-reparations-from-gulf-countries/> [<https://perma.cc/86MP-VJJ3>].

responsibility: they could be seen as assurances of non-repetition, which is one mode of state responsibility for international wrongfulness set out in the ILC Articles on State Responsibility.¹⁴⁶ Along similar lines, the MOU promise, however vague, of a US\$300 billion reconstruction and development plan for Iran could be regarded as a form of war reparations (albeit without any explicit admission of international wrongfulness or fault).

C. Paragraph 3: Deadline for Negotiation of a Final Deal

Paragraph 3 of the MOU reads: “The United States of America and the Islamic Republic of Iran commit to negotiating and achieving the final deal in maximum sixty days, extendable with mutual consent.”¹⁴⁷ The sixty days would normally expire in mid-August (if counted from the signing of the MOU on June 17). The question arises whether, however, the clock has, as it were, now stopped, if—as speculated above—the current situation is best understood as each side suspending performance of its obligations in response to alleged violations of the other side.

D. Paragraph 4: Removal (and Reinstatement) of the US Blockade

On April 13, 2026, in the course of the war with Iran, the United States initiated a blockade “against all vessels entering or departing Iranian ports and coastal areas, including ports on the Arabian Gulf and Gulf of Oman . . . the blockade would not be used to impede freedom of navigation for vessels transiting the Strait of Hormuz to and from non-Iranian ports.”¹⁴⁸ Paragraph 4 of the MOU required the United States to begin to remove the blockade immediately upon signing the MOU and fully end it within thirty days. The United States proceeded to implement this obligation promptly, and by June 18, 2026, the US Naval Institute was reporting the blockade as lifted.¹⁴⁹ Having fully performed the obligation in question, the United States instituted a new naval

146. See ARSIWA, *supra* note 125, art. 30.

147. MOU, *supra* note 1, ¶ 3.

148. See Raul (Pete) Pedrozo, *International Law Situations: Blockade*, 108 INT’L L. STUD. 159, 176 (2026).

149. See Heather Mongilio, *U.S. Ends Naval Blockade of Iran*, USNI NEWS (June 18, 2026), <https://news.usni.org/2026/06/18/u-s-ends-naval-blockade-of-iran> [<https://perma.cc/6GKG-UT22>].

blockade in the wake of the renewal of hostilities.¹⁵⁰ Should the parties decide to end the suspension of the performance of their obligations under the MOU, then to give *effet utile* to Paragraph 4 it seems fairly obvious that the United States would have to remove its blockade once again.

E. Paragraph 5: The Fate of the Strait of Hormuz

We now come to the part of the MOU that is the basis of the controversy that has been fueling the (unfortunately escalating) new hostilities. During the war, Iran's capacity to disrupt the passage of commercial ships through the Strait of Hormuz did considerable damage to the world economy, increasing the price of oil and disrupting supply chains that depended on the transit of goods through the Strait; arguably, these consequences were a crucial consideration in persuading the Trump Administration to return to diplomacy.¹⁵¹ Iran discovered an important asset in its ability to determine what ships pass through the Strait and under what conditions.¹⁵² Reinstating secure passage of maritime traffic through the Strait was among the most important objectives of the United States in ending the war, and perhaps the most important.¹⁵³ Before coming to the text of Paragraph 5 and how it addressed and, to some (perhaps lethal) extent, ignored this key issue, it is important to understand the legal and factual situation that prevailed prior to the war.

150. See Heather Mongilio, *U.S. Reinstates Naval Blockade in Strait of Hormuz*, USNI NEWS (July 13, 2026), <https://news.usni.org/2026/07/13/u-s-reinstates-naval-blockade-in-strait-of-hormuz> [https://perma.cc/QB6J-D68X].

151. Tobias Adrian et al., *How the War in the Middle East Is Affecting Energy, Trade, and Finance*, IMF BLOG (Mar. 30, 2026), <https://www.imf.org/en/blogs/articles/2026/03/30/how-the-war-in-the-middle-east-is-affecting-energy-trade-and-finance> [https://perma.cc/7GDY-48KS].

152. See Nate Swanson, *Iran Won the War but May Lose the Peace: Tehran Is Poised to Overplay Its Hand*, FOREIGN AFF. (June 18, 2026), <https://www.foreignaffairs.com/iran/iran-won-war-may-lose-peace> [https://perma.cc/Q7DP-KEXJ].

153. See David Cozocar, *Understanding the U.S.-Iran MOU: Hormuz First, Nuclear Talks Next*, TIMES ISR.: BLOGS (June 16, 2026), <https://blogs.timesofisrael.com/understanding-the-u-s-iran-mou-hormuz-first-nuclear-talks-next/> [https://perma.cc/L69S-CAE3].

The multilateral legal regime that governs transit through maritime passages such as straits is UNCLOS.¹⁵⁴ Neither the United States nor Iran has ratified UNCLOS (Iran has signed under certain conditions), though both have seemingly accepted parts of it as customary international law—while Iran has persistently objected to the view that the transit passage regime in the 1982 UNCLOS reflects custom.¹⁵⁵ Oman, the other coastal state of the Strait of Hormuz, *has* ratified UNCLOS and remains fully bound by it.¹⁵⁶

In UNCLOS, there are two different norms that govern passage through straits, “innocent passage” (the validity of which Iran does not appear to contest as a matter of customary international law) and “transit passage.”¹⁵⁷ Article 38 of UNCLOS provides that “transit passage . . . shall not be impeded.” This does not mean that coastal states are unable to regulate transit passage and place conditions on it. Thus, Article 42 reads:¹⁵⁸

1. Subject to the provisions of this section, States bordering straits may adopt laws and regulations relating to transit passage through straits, in respect of all or any of the following:

(a) the safety of navigation and the regulation of maritime traffic, as provided in article 41;

(b) the prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;

(c) with respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;

(d) the loading or unloading of any commodity, currency or person in contravention of the customs, fiscal,

154. See U.N. Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994) [hereinafter UNCLOS].

155. See Soheil Golchin, *Iran's Legal Strategy in Hormuz: Law of the Sea Considerations and Rules of Naval Warfare*, VÖLKERRECHTSBLOG (Apr. 16, 2026), <https://voelkerrechtsblog.org/irans-legal-strategy-in-hormuz/> [<https://perma.cc/P96L-CD45>].

156. See Farzin Nadimi, *Clarifying Freedom of Navigation in the Gulf*, WASH. INST. FOR NEAR E. POL'Y (July 24, 2019), <https://www.washingtoninstitute.org/policy-analysis/clarifying-freedom-navigation-gulf> [<https://perma.cc/BKK9-RLGW>].

157. See Golchin, *supra* note 155.

158. UNCLOS, *supra* note 154, art. 42.

immigration or sanitary laws and regulations of States bordering straits.

2. Such laws and regulations shall not discriminate in form or in fact among foreign ships or in their application have the practical effect of denying, hampering or impairing the right of transit passage as defined in this section.

While the UNCLOS provisions on transit through straits are silent on tolls and other charges (besides the general provision that regulations shall not “have the practical effect of denying, hampering or impairing the right of transit passage”¹⁵⁹), another section of UNCLOS, concerned with passage through the territorial sea, provides in Article 26:¹⁶⁰

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

UNCLOS does provide for the possibility of separate transit lanes through a strait, the separation of traffic.¹⁶¹ But there is a requirement that the states concerned cooperatively propose such schemes and present them to the International Maritime Organization (“IMO”).¹⁶²

Finally, UNCLOS defines passage as “innocent so long as it is not prejudicial to the peace, good order or security of the coastal State.”¹⁶³ Prior to the war, generally speaking, Iran allowed a free flow of maritime traffic through the Strait, without charging any fees or tolls (though Oman had been imposing navigation dues).¹⁶⁴

159. *Id.* art. 42(2).

160. *Id.* art. 26.

161. *Id.* art. 41. Article 41(1) states: “States bordering straits may designate sea lanes and prescribe traffic separation schemes for navigation in straits where necessary to promote the safe passage of ships.” Article 41(3) in turn provides that such schemes “shall conform to generally accepted international regulations.”

162. See International Maritime Organization [IMO], *Implications of the United Nations Convention on the Law of the Sea for the International Maritime Organization*, at 7–9, 18, 33, IMO Doc. LEG/MISC.8 (Jan. 30, 2014).

163. UNCLOS, *supra* note 154, art. 19(1).

164. See *Will Passage Fees Be Charged in the Strait of Hormuz?*, MAR. EXEC. (June 18, 2026), <https://maritime-executive.com/article/will-passage-fees-be-charged-in-the-strait-of-hormuz> [<https://perma.cc/SK4G-KPSA>] (describing Oman as seeking a

Later, Iran indicated its intention to charge tolls and control the traffic through the Strait through a registration system.¹⁶⁵ The United States sought a full return to the status quo of unimpeded, and largely free of charge, passage.¹⁶⁶ It was far from clear that Iran had bound itself to any legal regime that prohibited it from charging fees and exercising a measure of control over navigation of the Strait.¹⁶⁷ Indeed, as the above survey of the relevant UNCLOS provisions indicates, even if Iran were bound by them, it is not exactly obvious that it would be prohibited from imposing some reasonable charges on maritime traffic through the Strait, provided the impact was not an undue burden on passage and the charges had some relationship to services or responsibilities that Iran undertook in managing the Strait. The distinction that emerges from the UNCLOS framework, and from the positions taken by the United States and Oman, is between a toll levied on passage as such—which would be difficult to reconcile with the transit regime—and charges for specific services rendered to shipping, such as pilotage, towage, or insurance, which stand on a different footing.

Now let us turn to Paragraph 5 of the MOU. It clearly creates two separate regimes, one that applies to the immediate sixty-day period after signing, and another that relates to long-term management of the Strait. The immediate regime focused on Iran re-opening the Strait and attempting to get traffic flowing effectively and free of charge:

Upon the signing of this MOU, the Islamic Republic of Iran will make arrangements using its best efforts for the safe passage of commercial vessels, with no charge for 60 days only, from the Persian Gulf to the Sea of Oman and vice versa. The traffic

return to the “pre-war state, where ships made the transit without passage fees”). Notably, this would set a diverging precedent, as “[p]assage fees are not charged anywhere in the world for transit through natural channels.” *Id.*

165. *See id.*; *see also* Ephrat Livni, *Iran Makes Moves to Assert Control Over the Strait of Hormuz*, N.Y. TIMES (June 23, 2026), <https://www.nytimes.com/2026/06/23/world/middleeast/iran-control-strait-of-hormuz.html> [https://perma.cc/6ZYG-URE5]. The Iran-created Persian Gulf Strait Authority has also “demanded that vessels register and sign up for a new mandatory Iranian insurance policy” after the free sixty-day insurance period passes. *Id.*

166. *See* Caolán Magee, *Rubio Says Iran Cannot Charge Tolls in Hormuz: What We Know*, AL JAZEERA (June 24, 2026), <https://www.aljazeera.com/news/2026/6/24/rubio-says-iran-cannot-charge-tolls-in-hormuz-what-we-know> [https://perma.cc/6S84-ZCX7].

167. *See* Golchin, *supra* note 155.

of commercial vessels will immediately start, and considering the need for removing the technical and military obstacles, and de-mining by the Islamic Republic of Iran will be instated within 30 days.¹⁶⁸

The long-term arrangement is then outlined, in very open-ended terms:

The Islamic Republic of Iran will conduct dialog with the Sultanate of Oman, to define the future administration and maritime services in the Strait of Hormuz, in discussions with other Persian Gulf littoral states in line with the applicable international law and the sovereign rights of coastal states of the Strait of Hormuz.¹⁶⁹

One can immediately observe that despite the Administration stating often and stridently that there would be no fees or charges on passage through the Strait (at least, unless the United States was the one imposing them!),¹⁷⁰ Iran's obligation to refrain from fees in Paragraph 5 is explicitly limited to sixty days. The "best efforts" language also arguably allows Iran latitude to impose measures such as registration and inspections that it may need to protect its perceived security and sovereignty interests.

While taking steps to open the Strait immediately after the signing of the MOU, it is arguable that Iran was also jealously guarding what it saw as its right to control and charge for access to the Strait in the long-term, just as President Trump was stridently asserting the opposite. When we turn to the long-term regime foreseen in Paragraph 5, this is to be based on dialog with Oman and "in line with applicable international law."¹⁷¹ One implication of this provision is that any long-term arrangement for the administration of the Strait must be by agreement at least between Oman and Iran. This is certainly in line with the UNCLOS norms and is reinforced by the language stating that any settlement must respect the sovereign rights of (both) coastal states. The language of Paragraph 5 does not foresee any role or say for the United States

168. MOU, *supra* note 1, ¶ 5.

169. *Id.* ¶ 5.

170. *Trump Says US Could Charge for Strait of Hormuz Passage Amid Iran War*, AL JAZEERA (Apr. 6, 2026), <https://www.aljazeera.com/news/2026/4/6/trump-says-us-could-charge-for-strait-of-hormuz-passage-amid-iran-war> [https://perma.cc/ANS6-JNNM].

171. MOU, *supra* note 1, ¶ 5.

on the long-term future of the management of the Strait. The United States is not even mentioned, though of course it is the other party to the MOU.

By accepting the language “in line with applicable international law” in the MOU, did Iran agree in effect to accept the UNCLOS regime as a basis for a long-term arrangement for the Strait? Iran might argue that “applicable” means the law governing and binding on the parties at the time the MOU was signed. But since the UNCLOS regime is applicable to Oman, which has ratified the 1982 Convention, Oman would not, as long as it stays in UNCLOS, be able to agree to any arrangement with Iran that contravenes its obligations under UNCLOS (Oman’s UNCLOS obligations are not bilateral such that they would be inapplicable in an arrangement with Iran due to Iran’s own non-acceptance of UNCLOS; they are certainly obligations *erga omnes partes*,¹⁷² as the other states that benefit from the performance of the obligations are not just coastal states sharing the Strait but, and perhaps above all, states with ships transiting through it or reliant economically on transit of goods through it).¹⁷³

The battle of words and the various manipulations by both Iran and the United States were clearly fueled by the open-ended nature of Paragraph 5 concerning the longer-term future of the Strait. This is probably one of the greatest failures of the MOU. Arguably, what led to the breakout into full-on hostilities was an additional move coordinated by Oman and the United States—the opening of an alternative southern corridor of passage through the Strait, running up against the Omani coastline, announced by Oman in June.¹⁷⁴ Iran regarded this as an aggressive attempt to

172. See Application of Convention on Prevention and Punishment of Crime of Genocide (*Gam. v. Myan.*), Preliminary Objections, Judgment, 2022 I.C.J. 477, ¶ 107 (July 22).

173. See *The State of the Strait: The Role of Hormuz in the Middle East War So Far*, INT’L CRISIS GRP. (May 29, 2026), <https://www.crisisgroup.org/visual-explainers/hormuz/> [<https://perma.cc/8P98-BQP2>].

174. See Todd Riggs, *Oman Opens Temporary Strait of Hormuz Maritime Corridor*, OIL & GAS MIDDLE E. (June 24, 2026), <https://www.oilandgasmiddleeast.com/news/oman-opens-hormuz-corridor> [<https://perma.cc/462Y-ZH8P>]; see also Jay Hilotin, *Strait of Hormuz: Why Are There Two ‘Routes’?*, GULF NEWS (Aug. 5, 2026), <https://gulfnews.com/world/mena/strait-of-hormuz-why-are-there-two-routes-1.500630923> [<https://perma.cc/372F-A565>]; Barak Ravid, *U.S. Conducting Stealth Operation to Transport Oil Through Hormuz*, AXIOS (Aug. 19, 2026),

essentially preempt a solution by agreement that would honor at least to some extent its position on control and fees, through giving international shippers an alternative to dealing with Iran altogether. The United States seemed to have involvement through the Navy protecting some ships passing through that southern corridor. When Iran sought to foreclose the alternative to its own route by attacking ships trying to pass in the southern corridor, the United States recommenced attacks on Iranian assets, and these have since escalated at various times on both sides.

Was the opening of the southern corridor a violation of the MOU? Iran certainly sees it that way. Nothing in Paragraph 5 provides for it. On the other hand, a crucial object or purpose of the MOU is to restore traffic in the Strait, and opening a southern corridor could be considered as in line with that purpose. Oman labeled the corridor as “temporary” presumably to signal that it was not attempting to preempt a negotiated or coordinated solution with Iran. But if we turn to UNCLOS, which as noted is binding on Oman, Article 41 provides that all sea lanes and traffic separation schemes adopted pursuant to UNCLOS and supported by the IMO must be agreed by and with the coastal states. The southern corridor was not adopted through this procedure but rather operationalized through unilateral US military action.¹⁷⁵ That means that the scheme for a southern corridor could not be implemented through agreement between the IMO and Oman, excluding Iran—the other coastal state.

A variety of commentators have suggested solutions to the present dispute.¹⁷⁶ I am skeptical that the answer lies in a long-term fee collection scheme. Iran’s stated rationale for insisting on

<https://www.axios.com/2026/08/19/hormuz-iran-oil-gulf-trump>
[<https://perma.cc/RM94-4QCS>].

175. See Peter Eavis & John Ismay, *How the U.S. Navy Is Helping Get Oil Through the Strait of Hormuz*, N.Y. TIMES (Aug. 19, 2026), <https://www.nytimes.com/2026/08/19/business/iran-hormuz-oman-us-navy.html> [https://perma.cc/8C6T-DRPD].

176. See, e.g., Esfandiyar Batmanghelidj & Mehran Haghiriyan, *How a ‘Hormuz Fee’ Could Work*, BOURSE & BAZAAR FOUND. (July 10, 2026), <https://www.bourseandbazaar-substack.org/p/how-a-hormuz-fee-could-work> [https://perma.cc/Q8GH-AD6N] (proposing a modest service fee on large tankers leaving Gulf ports, paid to a multilateral body of the eight littoral states to fund maritime safety and environmental protection); Ellie Geranmayeh, *How the United States and Iran Can Solve Hormuz*, FOREIGN POL’Y (July 15, 2026), <https://foreignpolicy.com/2026/07/15/hormuz-iran-united-states-trump-war-israel-shipping/> [https://perma.cc/38U5-TRYX].

collecting fees now is that they could provide a kind of war reparations, helping to pay for the damage done to infrastructure from an illegal war of aggression (such a claim is complicated by Iran's own behavior, sometimes attacking non-belligerent states in the region and (arguably) non-military targets). The issue of post-war reconstruction and the role of the regional and international communities in paying for it should be dealt with apart from the issue of the Strait. The question of control is far more important than fees. Iran's view that as a coastal state it has a right to regulate traffic in the Strait is not contrary to such international law obligations as it has undertaken; its right to insist that any traffic separation scheme be agreed between Iran and Oman is in fact consistent with the UNCLOS regime. I do not see Iran compromising on these elements of sovereignty and control.

As Iran's former foreign minister Javad Zarif put it in a recent article in *Foreign Affairs*, Iran has come to "now view the strait as an existential matter of its own security."¹⁷⁷ This is not something that can be resolved by a compromise on fees. Under conditions of peace, I also do not see Iran abusing sovereignty and control to impede maritime traffic significantly. That is what past experience suggests. And if peace can be had, Iran is likely to keep the Strait open to international shipping in the future. As others have pointed out,¹⁷⁸ if shippers cannot rely on secure passage through the Strait, supply chains will eventually be modified and other routes opened, diminishing the value of the leverage that Iran gets from control in the event of another conflict. In Zarif's words: "[F]or Tehran, the leverage afforded by the strait is fragile. If Iran repeatedly threatens maritime traffic, it could turn much of the world against it. A sustained closure might also lead to accelerating international investments in pipelines, ports, and logistical land corridors that bypass the waterway altogether."¹⁷⁹

177. M. Javad Zarif, *An Iranian Vision of the New Middle East: Ending the War and Sustaining the Peace Requires a New Approach to Regional Security*, FOREIGN AFF. (July 20, 2026), <https://www.foreignaffairs.com/iran/iranian-vision-new-middle-east-zarif> [<https://perma.cc/5LUJ-CPXK>].

178. Swanson, *supra* note 152.

179. Zarif, *supra* note 177.

F. Paragraph 8: Nuclear-Related Provisions of the MOU

It will be recalled (see Part I of this Article) that the path to war emerged through US withdrawal from the JCPOA, and Iran's subsequent non-performance of that agreement, leading to rapid progress in its nuclear program including enrichment of uranium to around sixty percent, suggesting only a short jump to weapons-grade uranium (ninety percent) and then weaponization if Iran so wished. The Trump Administration claimed that its strikes on Iran during the war set back greatly its nuclear program, destroying completely key infrastructure. This is essential context for understanding the nuclear provisions of the MOU. Paragraph 8 contains a reaffirmation by Iran that it "shall not procure or develop nuclear weapons."¹⁸⁰ The JCPOA included a comparable affirmation. Then Paragraph 8 states the agreement of the United States and Iran to "resolve the issue of stockpiled enriched material." This will be done in accordance with the schedule that will be established for the removal of sanctions (Paragraph 7).¹⁸¹ Paragraph 8 specifies a minimum—or default—method for addressing the stockpiles as "downblending¹⁸² on site under the supervision of the IAEA." It is in the final deal that a "satisfactory framework" is to be developed that will then (i.e., after the final deal is agreed) permit the parties to "discuss the issue of enrichment and other mutually agreed matters related to the Islamic Republic of Iran's nuclear needs"¹⁸³ While sanctions relief will be coordinated with downblending of existing stockpiles of highly enriched uranium, only after the final deal will there be a framework in place for discussion of future enrichment activities by Iran.

This seems like an enormous climbdown from the position of the Trump Administration in the lead up to the war that any agreement and any sanctions relief would depend on Iran giving a

180. MOU, *supra* note 1, ¶ 8.

181. *Id.* ¶ 7.

182. For an explanation of downblending in this context, see *Uranium Downblending: The Science Behind the US-Iran Nuclear Deal*, VAJIRAM & RAVI (June 19, 2026), <https://vajiramandravi.com/current-affairs/uranium-downblending/> [<https://perma.cc/89UT-Q6CY>].

183. MOU, *supra* note 1, ¶ 8.

commitment of zero enrichment.¹⁸⁴ Enrichment was of course a key concern of the JCPOA but Iran was not required there to give it up entirely. Low-level enrichment is needed to operate reactors in a civilian nuclear program (and some reactors producing medical isotopes may use much higher levels).¹⁸⁵ Iran has consistently (and correctly) taken the position that none of its obligations under the NPT and related agreements require it to forgo its needs for a purely civilian nuclear program.¹⁸⁶

Around the time the MOU was finalized, a disagreement almost immediately ensued due to a remark of Vice President Vance suggesting that Iran's openness to full cooperation with and inspections by the IAEA was an achievement of the MOU.¹⁸⁷ As noted above, the reference to the IAEA in Paragraph 8 is to a very specific and limited role in supervising the downblending of stockpiles of enriched uranium. In fact, pursuant to its membership in the NPT and to the Safeguards Agreement it has with the IAEA, Iran has an ongoing obligation to full cooperation and to allow IAEA inspections.¹⁸⁸ It is not clear whether Vance was simply misinformed, whether he was distorting the agreement to pitch it to a domestic US audience, or whether there was some other confusion. One possibility is that in the negotiations the idea arose that there might be direct US participation in inspections; some

184. See Laura Rozen, *Vance: Iran Did Not Accept U.S. Demands*, *DIPLOMATIC* (Apr. 11, 2026), <https://diplomatic.substack.com/p/vance-says-iran-did-not-accept-us> [https://perma.cc/V8AP-FYX2].

185. See *Fact Sheet: Uranium Enrichment: For Peace or for Weapons*, CTR. FOR ARMS CONTROL & NON-PROLIFERATION (Apr. 26, 2021), <https://armscontrolcenter.org/uranium-enrichment-for-peace-or-for-weapons/> [https://perma.cc/5HVS-YX4A].

186. See Patrick Wintour, 'Deeply Ideological': *The Rationale Behind Iran's Insistence on Uranium Enrichment*, *GUARDIAN* (Jan. 30, 2026), <https://www.theguardian.com/world/2026/jan/30/rationale-behind-iran-uranium-enrichment-nuclear-ambitions> [https://perma.cc/FKC9-7D79]. Article IV of the NPT provides: "Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty." NPT, *supra* note 20, art. IV, ¶ 1.

187. See Nathan Williams & Francisco Velasquez, *Iran Says No New Commitments on Nuclear Sites After Vance Says Inspectors to Be Invited Back*, *BBC NEWS* (June 23, 2026), <https://www.bbc.com/news/articles/c3vy3nr63gxo> [https://perma.cc/A4K3-MJQ7].

188. See IAEA, Bd. of Governors Res., *Implementation of the NPT Safeguards Agreement and Relevant Provisions of United Nations Security Council Resolutions in the Islamic Republic of Iran*, ¶¶ 5–6, IAEA Doc. GOV/2026/40 (June 10, 2026).

reports suggest a side letter to that effect.¹⁸⁹ In any case, the current legal situation in Iran is at odds with the renewal of cooperation and inspections led by the IAEA. On June 25, 2025, Iran's parliament passed a bill that suspended all cooperation with the IAEA, in response to Israeli and US strikes on its nuclear facilities.¹⁹⁰ The legislation entered into force in July 2025.

In a statement of the mediators Pakistan and Qatar on June 22, it was announced "the creation of a mechanism for further technical talks," including a working group on nuclear issues.¹⁹¹ One expert, Kelsey Davenport, assesses that even if one makes maximalist assumptions about the damage that US and Israeli strikes have done to Iranian nuclear facilities, "even if Iran were starting from zero, it could revive its centrifuge product and uranium enrichment relatively quickly and return to the threshold of nuclear weapons in less than a year."¹⁹² Davenport still believes that something like a JCPOA 2.0 is both necessary and plausible to prevent proliferation.¹⁹³

The question is really how much value a few months of extra lead time would actually have in stopping Iran from weaponizing. There are reasons to be skeptical that either force or (now that it has gotten to a far more advanced stage of enrichment, and of resilience in its nuclear program than when the JCPOA was negotiated) a negotiated agreement with technical constraints will really provide much security against Iran weaponizing. It may be more fruitful to consider what kinds of incentives could encourage Iran to stick to its promise of not seeking a nuclear weapon and how it might be possible to improve deterrence and security in the

189. See Ariella Roitman, *Iran to Invite UN, US Nuclear Inspectors to Enriched Material Sites – Report*, JERUSALEM POST (June 18, 2026), <https://www.jpost.com/middle-east/iran-news/article-899900> [<https://perma.cc/6QVP-7T4C>].

190. *Iran's Parliament Approves Bill on Suspending Cooperation with IAEA*, REUTERS (June 25, 2025), <https://www.reuters.com/world/middle-east/iran-parliament-approves-bill-suspend-cooperation-with-un-nuclear-watchdog-2025-06-25/> [<https://perma.cc/EZT6-LJYH>].

191. Kelsey Davenport & Daryl G. Kimball, *Assessing the Islamabad MOU and the U.S.-Iran Nuclear Negotiations*, ARMS CONTROL ASS'N: ISSUE BRIEFS (June 22, 2026), <https://www.armscontrol.org/issue-briefs/2026-06/assessing-islamabad-mou-and-us-iran-nuclear-negotiations> [<https://perma.cc/9YXX-9WUQ>].

192. *Id.*

193. *See id.*

region to reduce possible interest on the part of Iran in weaponization.¹⁹⁴

The war has presumably shown Iran that it could successfully place pressure even on the United States to make peace through strategic use of its conventional arsenal, which has not apparently been significantly depleted by the war. As noted in Part I of this Article, at the time the Trump Administration withdrew from the JCPOA, it insisted that any new deal with Iran should constrain its arsenals of conventional ballistic missiles. President Trump has stated that he now has no concern with that, and such constraints form no part of the MOU, not even in terms of what is set out for future negotiation. This is a positive development, which reinforces conventional deterrence as an alternative to obtaining nuclear weapons. In a recent op-ed in the *Financial Times*, Alexander Stubb and Frank-Walter Steinmeier (respectively, the presidents of Finland and Germany) have called for a comprehensive regional security process for the Middle East as one way of moving forward on Iran—a larger political process involving, in principle, all willing regional actors; the existence of such a process might further provide a hedge against conflict-intensifying developments that could lead Iran to back out of its promise not to acquire a nuclear weapon.¹⁹⁵

G. Paragraph 9: Freezing the Status Quo Pending a Final Agreement

Paragraph 9 of the MOU reads:

Pending the final deal, the United States of America and the Islamic Republic of Iran agree to maintain the status quo. The Islamic Republic of Iran will maintain the current status quo of its nuclear program, and the United States of America will not impose any new sanctions and will not deploy additional forces in the region.¹⁹⁶

A preliminary observation is that these are structured as two independent obligations—thus, if Iran does not maintain the status

194. See Zarif, *supra* note 177.

195. See Alexander Stubb & Frank-Walter Steinmeier, *The Middle East Needs Its Own Helsinki Act*, *FIN. TIMES* (July 20, 2026), <https://www.ft.com/content/348530f8-994f-49ce-ae77-3e5d520c7794> [<https://perma.cc/B3CF-9B86>].

196. MOU, *supra* note 1, ¶ 9.

quo on its nuclear program, while it would be in violation of Paragraph 9, this would not impair the obligation of the United States to refrain from imposing new sanctions or deploying additional forces. But the question of what the “current status quo” means in terms of Iran’s nuclear program is a complex one,¹⁹⁷ especially in the wake of the damage done through US and Israeli strikes. Subject to the specific obligation in Paragraph 8, discussed above, to resolve the disposition of stockpiled enriched material, possibly through downblending, “the current status quo” would include Iran continuing to engage in enrichment activities and other efforts at further developing its nuclear program.

An alternative meaning of the “current status quo” would be that Iran undertakes not to make operational, or repair, facilities that have been impaired or destroyed through the strikes leading up to the MOU—or otherwise take measures that would reverse the setbacks created by the strikes. It is implausible that Iran would agree to a legal status quo under the MOU that enshrined the results of illegal use of force against its territory. With respect to the issue of cooperation with and inspections by the IAEA, as noted, the legal status quo within Iran existing at the time of the coming into force of the MOU is one of suspension of all cooperation; however, Iran has not formally repudiated its Safeguards Agreement (which remains in force as a matter of international law) or the Additional Protocol (although this was only applied provisionally) and so the *international* legal status quo is accordingly one of continuing obligation for Iran.¹⁹⁸

H. Paragraphs 10, 11, 6, and 7: Economic Incentives and Sanctions Lifting

A key feature of the JCPOA bargain was that nuclear-related sanctions would be lifted at a point in time where Iran was considered to have sufficiently implemented various technical restraints on its nuclear program. Because broad financial sanctions remained in place, isolating Iran from the international

197. See Sahil Shah, *What Is Iran's Nuclear Status Quo?*, FOREIGN POL'Y (June 24, 2026), <https://foreignpolicy.com/2026/06/24/iran-us-war-negotiations-nuclear-weapons-uranium-enrichment-diplomacy-mou/> [https://perma.cc/ZB7D-37HV].

198. See IAEA, *Implementation of the NPT Safeguards Agreement and Relevant Provisions of the United Nations Security Council Resolutions in the Islamic Republic of Iran*, ¶ 46, IAEA Doc. GOV/2026/8 (Feb. 27, 2026).

banking and financial system, as well as specific sanctions related to non-nuclear matters (terrorism, military equipment, human rights), lifting of nuclear-related sanctions did little to allow Iran to participate more fully in the world economy. As also noted, in the Biden era talks, a difficult challenge was to convince Iran that it would obtain sufficient benefits from the agreement in the near term that if a subsequent US Administration tore it up, entering into the agreement would still have been worthwhile for Iran.

The MOU contains a blueprint that if it were to be realized would provide vastly greater economic benefits for Iran. As we shall see, the difficulty is that its full implementation depends on many contingencies, a number of which the United States (and Iran) cannot fully control. One of the strong points in this blueprint was the good faith gesture of immediately providing Iran with a Treasury License that allowed the country to sell its oil outside of the sanctions regime (Paragraph 10). This was to continue until the termination of the sanctions altogether as part of a final deal.¹⁹⁹ The License authorized sales in dollars, which would presumably be extremely attractive to customers beyond China, Iran's main customer, which currently purchases ninety percent of its oil. Under the sanctions regime, this trade had nevertheless boomed, conducted through a network of shadow fleets, so-called teapot refineries,²⁰⁰ and murky mechanisms for moving the proceeds despite Iran being cut off from the international banking and financial systems.²⁰¹ The granting of the Treasury License allowed

199. OFF. OF FOREIGN ASSETS CONTROL, U.S. DEP'T OF THE TREASURY, GENERAL LICENSE X, AUTHORIZING THE PRODUCTION, DELIVERY AND SALE OF CRUDE OIL, PETROCHEMICAL PRODUCTS, AND PETROLEUM PRODUCTS OF IRANIAN-ORIGIN THROUGH AUGUST 21, 2026 (June 22, 2026), <https://ofac.treasury.gov/media/936206/download> [<https://perma.cc/F7W6-GFBJ>]. The License has since been revoked amid renewed hostilities. See OFF. OF FOREIGN ASSETS CONTROL, U.S. DEP'T OF THE TREASURY, GENERAL LICENSE X1, REVOCATION AND WIND DOWN OF JUNE 21, 2026 AUTHORIZATION FOR THE PRODUCTION, DELIVERY, AND SALE OF CRUDE OIL, PETROCHEMICAL PRODUCTS, AND PETROLEUM PRODUCTS OF IRANIAN-ORIGIN (July 7, 2026), <https://ofac.treasury.gov/media/936446/download> [<https://perma.cc/83QE-CHSA>].

200. See Anniek Bao, *China Skirts U.S. Sanctions as Top Buyer of Iranian Oil — Here's How, and Why That's Unlikely to Change Soon*, CNBC (June 27, 2025), <https://www.cnbc.com/2025/06/27/china-us-sanctions-shadow-fleet-top-iranian-oil-buyer-trade.html> [<https://perma.cc/4MWA-WKM4>]; see also John Basquill, *China 'Still Buying 90% of Iranian Oil' Despite US Sanctions Waiver*, GLOB. TRADE REV. (Mar. 25, 2026), <https://www.gtreview.com/news/global/china-still-buying-90-of-iranian-oil-despite-us-sanctions-waiver/> [<https://perma.cc/8J3U-C86M>].

201. See Saeed Ghasseminejad & Behnam Taleblu, *Despite War and Sanctions, Iran's Oil Exports Surge*, HILL (July 30, 2025), <https://thehill.com/opinion/national->

China to avoid some of the transaction costs of sanctions avoidance given the circumstances. China increased its purchases of Iranian oil following the signing of the MOU.²⁰² However, the License failed to attract (in the short period it was in effect) other customers.²⁰³

The License clearly allowed payments for the oil to move between the Central Banks of Iran and China, or other state intermediaries. But as regards customers other than China, most would need to engage in dollar-based oil transactions through the international banking and financial systems. In preparing for the MOU, the United States apparently did nothing to address the problem of non-US, or not exclusively US, banking and financial sanctions; these remained fully in place when the MOU went into effect.²⁰⁴ Iran had been reinstated in SWIFT, the international payments and settlement network between banks,²⁰⁵ in the wake of the JCPOA. Beginning in May 2019, some months after the Trump Administration had repudiated its obligations under the JCPOA, Iran signaled its own non-compliance with the JCPOA and Iranian banks were once again cut off from SWIFT.²⁰⁶ The lack of

security/5425710-despite-war-and-sanctions-irans-oil-exports-surge/
[https://perma.cc/KX4K-WAPA].

202. See Yoon Ju-heon, *Iran Exports \$6 Billion Crude Oil to China*, CHOSUN DAILY (July 20, 2026), <https://www.chosun.com/english/world-en/2026/07/19/H7HSAQZU3VGOPVUYRGEQK4QUA/> [https://perma.cc/AXJ4-MQDB].

203. See *Iran Struggles to Woo Oil Buyers Before US Waiver Expires*, RIGZONE (July 2, 2026), https://www.rigzone.com/news/wire/iran_struggles_to_woo_oil_buyers_before_U.S._waiver_expires-02-jul-2026-184039-article/ [https://perma.cc/QT63-ELNY].

204. See Christine E. Savage et al., *U.S. Sanctions Implications of the U.S.-Iran Memorandum of Understanding*, KING & SPALDING: INSIGHTS (June 25, 2026), <https://www.kslaw.com/insights/articles/u-s-sanctions-implications-of-the-u-s-%E2%80%93iran-memorandum-of-understanding> [https://perma.cc/K9RW-3UUT] (noting both that “all existing sanctions prohibitions, blocking rules, SDN designations, and enforcement risks remain fully in force” and that the MOU is “notably silent on what specific implementation steps must occur before asset release”).

205. For a clear and detailed explanation of SWIFT and its importance for international transactions, see MARCO CIPRIANI, LINDA S. GOLDBERG & GABRIELE LA SPADA, *FINANCIAL SANCTIONS, SWIFT, AND THE ARCHITECTURE OF THE INTERNATIONAL PAYMENTS SYSTEM* 16–22 (Fed. Rsrv. Bank of N.Y., Staff Rep. No. 1047, 2023), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr1047.pdf [https://perma.cc/V6TL-47VG].

206. See *What SWIFT Is and Why It Matters in the US-Iran Spat*, AL JAZEERA (Nov. 5, 2018), <https://www.aljazeera.com/economy/2018/11/5/what-swift-is-and-why-it-matters-in-the-us-iran-spat> [https://perma.cc/45C2-65TW]. Iran’s explicit indication that it would not continue to be bound by the JCPOA nuclear restrictions began with a statement of its Supreme National Security Council in May 2019, but that declaration gave

SWIFT access is not the only issue. With the snapback, as discussed in Part I above, UN and EU sanctions on Iran were reinstated²⁰⁷ (with Russia and China nevertheless challenging the propriety of the exercise of the snapback mechanism and not accepting the reinstatement of Security Council sanctions).²⁰⁸

A further obstacle to the sanctions relief promised in the MOU is the blacklisting of Iran by the Financial Action Task Force (“FATF”), the global anti-money laundering body.²⁰⁹ This blacklisting entails the FATF calling on states to take the following “countermeasures”:

Refusing the establishment of subsidiaries or branches or representative offices of financial institutions from the country concerned or otherwise taking into account the fact that the relevant financial institution or virtual asset service provider is from a country that does not have adequate AML/CFT systems; Prohibiting financial institutions from establishing branches or representative offices in the country concerned, or otherwise taking into account the fact that the relevant branch or representative office would be in a country that does not have adequate AML/CFT systems. On a risk basis, limiting business relationships or financial transactions, including virtual asset transactions, with the identified country or persons in the country concerned; and prohibiting

the other JCPOA parties sixty days to return to their own commitments under the Agreement before Iran would begin taking actions incompatible with the JCPOA restrictions. See *Rouhani Ultimatum on Nuclear Deal*, U.S. INST. OF PEACE: IRAN PRIMER (May 8, 2019), <https://iranprimer.usip.org/blog/2019/may/08/iran-reduces-compliance-nuclear-deal> [<https://perma.cc/4CFZ-GUAX>] (reproducing the Supreme National Security Council’s May 8, 2019 statement and reporting the sixty-day deadline given to the remaining JCPOA parties).

207. See Press Release, Council of the Eur. Union, Iran Sanctions Snapback: Council Reimposes Restrictive Measures (Sep. 29, 2025), <https://www.consilium.europa.eu/en/press/press-releases/2025/09/29/iran-sanctions-snapback-council-reimposes-restrictive-measures/> [<https://perma.cc/M3KD-3AP5>].

208. Merve Aydoğan, *US Accuses Russia, China of Blocking UN Sanctions Body to ‘Protect’ Tehran*, ANADOLU AGENCY (Mar. 12, 2026), <https://www.aa.com.tr/en/americas/us-accuses-russia-china-of-blocking-un-sanctions-body-to-protect-tehran/3862124> [<https://perma.cc/HUU8-YMEU>].

209. Press Release, Fin. Crimes En’f Network, Financial Action Task Force Identifies Jurisdictions with Anti-Money Laundering, Combating the Financing of Terrorism, and Counter-Proliferation Finance Deficiencies (Mar. 6, 2026), <https://www.fincen.gov/news/news-releases/financial-action-task-force-identifies-jurisdictions-anti-money-laundering-5> [<https://perma.cc/VE5S-HKCW>].

financial institutions and virtual asset service providers from establishing new correspondent relationships and requiring them to undertake a risk-based review of existing correspondent relationships with financial institutions and virtual asset service providers in the country concerned.²¹⁰

FATF is a voluntary body, and the United States is not bound to take or continue these “countermeasures” against Iran. However, the United States has a significant stake in the functioning and legitimacy of FATF and would not easily attempt to dismantle the blacklist regime for Iran unilaterally.

Beyond the Treasury License for the sale of oil and fuel, the MOU also provided for another form of short-term economic benefit to Iran: the unfreezing of Iranian funds and assets. This was to occur upon “implementation of the MOU.”²¹¹ These are to be made “fully available for use” and “fully usable for payment to any ultimate beneficiary designated by the Central Bank . . . of Iran.”²¹² This is subject to agreement on procedures for release of the funds during negotiations of a final deal.

Immediately after the signing of the MOU, the United States and Qatar began working to unlock a significant tranche of these assets—approximately US\$6 billion held in Qatar.²¹³ The US\$6 billion had been a payment from South Korea to Iran for oil that was frozen under the sanctions regime; as part of a prisoner exchange in 2023, the United States permitted the transfer of the funds to Qatar, possibly for purchase by Iran of goods covered by the humanitarian exception to sanctions (such as foodstuffs). The funds remain in Qatar and as yet have not been released to Iran in any form.²¹⁴

210. *Id.*

211. MOU, *supra* note 1, ¶ 11.

212. *Id.*

213. See Benoit Faucon, Alexander Ward & Summer Said, *U.S., Qatar Work to Give Iran Access to Billions of Dollars in Frozen Cash*, WALL ST. J. (June 19, 2026), <https://www.wsj.com/world/middle-east/iran-frozen-funds-qatar-effed975/> [<https://perma.cc/YQU4-TU6M>].

214. See Parisa Hafezi, *Iranian Source Says US Has Agreed to Unfreeze Iranian Funds, Washington Denies It*, REUTERS (Apr. 11, 2026), <https://www.reuters.com/business/finance/iranian-source-says-us-has-agreed-release-frozen-iranian-assets-qatar-other-2026-04-11/> [<https://perma.cc/8XZS-MBWP>]; see also Osama Saad El-Din, *The Story of Iran's \$6 Billion Frozen in Qatar, Explained Amid Uncertainty*, NEW ARAB (July 8, 2026), <https://www.newarab.com/news/irans-6-billion-frozen-qatar-explained> [<https://perma.cc/R2PE-QWHM>].

President Trump asserted shortly after the MOU was agreed that the US\$6 billion would be used by Iran to purchase US food and agricultural products.²¹⁵ Not surprisingly, Iranian officials strongly objected to the earmarking of unfrozen funds for the purchase of US agricultural goods, given that the explicit language of Paragraph 11 states that the unfrozen funds would be “fully usable for payment to any ultimate beneficiary designated by the Central Bank of . . . Iran.”²¹⁶

Using the MOU to give some sales to American farmers was, however, not just a distinctively Trumpian move of linking unrelated matters for some domestic political advantage. The US approach solved two problems. First of all, it avoided a clash with the snapback-reinstated international sanctions framework, because the nature of the sales would come under the cross-cutting mandatory UN exemption for humanitarian goods.²¹⁷ Second, it avoided FATF and related financial sanctions issues by obviating the need for an actual transfer of funds to the Iran Central Bank; instead, the United States would pay American farmers directly for the products.²¹⁸

215. Jon Gambrell & Josh Boak, *U.S. Official Says \$6 Billion in Frozen Iranian Assets Will Be Released, While Oman Discusses Possible Hormuz Service Fees with Tehran*, FORTUNE (June 29, 2026), <https://fortune.com/2026/06/29/frozen-iranian-assets-release-us-ceasefire-talks-oman-hormuz-service-fees/> [https://perma.cc/6QGM-EPZQ]; Ryan Hanrahan, *Iran Could Buy US Ag Products with Frozen Funds, Trump Admin Says*, FARM POL’Y NEWS (June 23, 2026), <https://farmpolicynews.illinois.edu/2026/06/iran-could-buy-us-ag-products-with-frozen-funds-trump-admin-says/> [https://perma.cc/X7W7-ZC5R] (reporting President Trump’s statement that the unfrozen Iranian money “is going to be used to buy food, and the food is going to be bought exclusively through the United States”); Don Jenkins, *Trump Reasserts U.S. to Spend Iranian Assets on Farm Goods*, CAP. PRESS (June 24, 2026), <https://capitalpress.com/2026/06/24/trump-reasserts-u-s-to-spend-iranian-assets-on-farm-goods/> [https://perma.cc/V444-AH5H].

216. MOU, *supra* note 1, ¶ 11.

217. See S.C. Res. 2664 (Dec. 9, 2022). For an explanation of the background to the resolution and its operation, see Caroline Crystal, *Landmark UN Humanitarian Sanctions Exemption Is a Massive Win but Needs More Support*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Mar. 20, 2023), <https://carnegieendowment.org/research/2023/03/landmark-un-humanitarian-sanctions-exemption-is-a-massive-win-but-needs-more-support> [https://perma.cc/2FXU-TLUM].

218. According to President Trump, “We will be releasing some of their money, that is totally controlled by us, to our Farmers and Ranchers, for the purchase of Corn, Wheat, Soybeans, and more. Food is desperately needed in Iran, and we will be purchasing it for them exclusively from the United States.” Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (June 24, 2026, 7:37 AM ET), <https://truthsocial.com/@realDonaldTrump/posts/116804880689253931> [https://perma.cc/UU4A-YHFD].

These complexities quickly stymied efforts to provide front-loaded economic benefits to Iran under the MOU. They are likely to create even more of a challenge in moving to the bold future outcome entrenched in the MOU: complete removal of sanctions and the establishment of a US\$300 billion reconstruction and economic development fund for Iran. In explicitly including UN Security Council sanctions as among those to be removed and using the language “all types,”²¹⁹ Paragraph 7 engages the United States to work with others in the international community to remove sanctions that cannot be lifted without their consent. This includes removing impediments to use of SWIFT (Belgium/the EU has the regulatory control of SWIFT, as it is domiciled in Belgium) and working in the FATF to obtain the removal of Iran from the blacklist and accordingly the withdrawal of the call for countermeasures. This can only happen over time and with a sustained political commitment by the United States to bring about this outcome. In addition, the role of Congress may complicate the lifting of some sanctions, even if the President generally has considerable discretion under sanctions legislation.²²⁰ One can easily see hardliners within the Iran regime arguing that such benefits are almost chimerical, or at least should be evaluated at a high discount rate for the various contingencies.

While Paragraph 7 does call for an agreed-on schedule for sanctions removal as part of the final deal, the indefiniteness of benefits is even more an issue with the projected US\$300 billion fund for the reconstruction and economic development of Iran. Paragraph 6 contemplates that the fund will be created with regional partners. Although it provides that the United States will grant “all required licenses waivers and permissions needed for the relevant financial transactions will be granted by” the United States,²²¹ it says nothing about the continuing effect of financial measures that the United States alone cannot terminate or suspend.

The US\$300 billion fund could conceivably be operated entirely through the US Treasury, US government agencies, and the sovereign wealth funds or other sovereign instrumentalities such

219. MOU, *supra* note 1, ¶ 7.

220. See Bridgeman, *supra* note 6.

221. MOU, *supra* note 1, ¶ 6.

as Central Banks of regional partners, in partnership with Iran's Central Bank. Funds could be channeled to infrastructure projects in Iran in this manner, without involving private actors dependent on the banking and financial systems that remained sanctioned or hobbled in relation to Iran. Ideally a kind of new umbrella intergovernmental entity to operationalize this would be established, an entity defined and structured in such a way as to elude any persisting sanctions. Otherwise, the operation of this fund would have to await the removal of the international non-US sanctions framework. This is likely to take time, because even if the removal of that framework is a priority for the United States (and, of course, Iran), concerns about money-laundering, financing of terrorism, and other financially related crime may persist: the FATF blacklisting of Iran, although obviously very supportive of the US sanctions regime, was in fact not based on nuclear concerns at all but matters such as money laundering within the FATF's core mandate.

V. *PART IV: CONCLUSION: ASSESSING THE MOU—A “BEYOND COMPLIANCE” ANALYSIS*

In light of the renewed hostilities and the range of controversies it has almost immediately generated over interpretation, it is easy to dismiss the MOU with labels such as “doomed to fail”²²² or “memorandum of misunderstanding.”²²³ The MOU is not simply the product of Trumpian diplomacy, which is often characterized as amateurish, transactional, and lacking needed attention to detail; it was brokered by seasoned diplomats and officials from Pakistan and Qatar, and immediately embraced by the G7 at the Paris summit that coincided with its signing. Despite Israeli efforts to eliminate Iran's negotiating capacity through targeted killings, Iran had an experienced, expert team involved in these talks. The gaps, ambiguities, and vagueness that we have

222. Neil Quilliam & Sanam Vakil, *The Iran Cease-Fire Was Doomed to Fail: Why Transactionalism Won't Deliver Peace in the Middle East*, FOREIGN AFF. (July 22, 2026), <https://www.foreignaffairs.com/iran/iran-cease-fire-was-doomed-fail> [https://perma.cc/RG2F-H9WY].

223. David Raikow, *The U.S. and Iran Signed a Memorandum of Misunderstanding*, FOREIGN POL'Y (July 17, 2026), <https://foreignpolicy.com/2026/07/17/trump-peacemaking-iran-war-mou/> [https://perma.cc/7ZGP-XA2K].

discussed above cannot simply be attributed to diplomatic incompetence.

Rather, the negotiators had to balance the imperative to bring an end to hostilities quickly and reestablish stability, above all in the case of the Strait of Hormuz, against the reality that addressing underlying grievances and claims would demand much longer and complicated talks which (as the clause allowing for indefinite extension of the deadline suggests) could go well beyond sixty days into the distant future.

A perpetual “hot” war between Iran and the United States is a theoretical possibility, but unlikely given the unpopularity of the war in the United States.²²⁴ Public support for the war in late July was at a very low point, as Congress again passed a resolution demanding that Trump seek formal Congressional approval for the war.²²⁵ To use a phrase of Churchill’s (from a very different context), the breakdown of the MOU may represent “the end of the beginning.”²²⁶ Eventually, Iran and the United States will find their way back to the negotiating table. Writing in the *Financial Times* at a moment when hostilities had restarted and were apparently escalating, Finland’s and Germany’s Presidents argue that “[t]he US–Iran framework, forged with the support of Pakistan, Qatar and others, is fragile but vital for de-escalation and a lasting end to the blockade”²²⁷ Lise Morjé Howard suggests that trust and loyalty among negotiators and mediators tend to lead them to build on earlier (albeit failed) agreements that they have developed: “early agreements provide the basis for subsequent agreements in a path-dependent manner . . . mediators were reluctant to question previously agreed upon principles.”²²⁸

224. Steven Shepard & Andrew Daniller, *Americans Broadly Disapprove of U.S. Military Action in Iran*, PEW RSCH. CTR. (Mar. 25, 2026), <https://www.pewresearch.org/politics/2026/03/25/americans-broadly-disapprove-of-u-s-military-action-in-iran/> [<https://perma.cc/L9SP-4KE9>].

225. Mary Clare Jalonick, *Some House Republicans Defect to Again Pass Resolution Seeking to Halt Military Action in Iran*, PBS NEWS (July 23, 2026), <https://www.pbs.org/newshour/politics/some-house-republicans-defect-to-again-pass-resolution-seeking-to-halt-military-action-in-iran> [<https://perma.cc/Y7FJ-LNJM>].

226. Winston S. Churchill, *The End of the Beginning*, Speech at the Lord Mayor’s Luncheon, Mansion House, London (Nov. 10, 1942), in WINSTON S. CHURCHILL, *THE END OF THE BEGINNING: WAR SPEECHES* 265 (Charles Eade ed., 1943).

227. Stubb & Steinmeier, *supra* note 195.

228. Lise Morjé Howard, *Peace Processes and Path Dependence: Institutionalizing Ethnic Division in Bosnia*, in *THE INTERNATIONAL COMMUNITY AND STATEBUILDING: GETTING ITS*

If perpetual war is implausible,²²⁹ so is a return to the very constrained approach of the JCPOA, focusing solely on nuclear restrictions and nuclear-related sanctions. The issues that the war, and recent geopolitical events, have brought to the fore, such as the fate of Hormuz, cannot be avoided.

If then, war is to be ended, some kind of peace agreement will be necessary that resolves, or at least has an effective agreement to disagree, on those issues. Within the albeit defective or incomplete terms of the MOU can be discerned some important agreements of principle, and it is hard to imagine wholesale backtracking from them in any future peace agreement, whether a final agreement pursuant to the MOU, or something new and *sui generis*.

- The nuclear issue cannot be detached from regional security and in particular the behavior of the allies or proxies of both the United States and Iran (in the United States' case, primarily Israel; the United States must ensure that Israel respects the sovereignty and territorial integrity of Lebanon).
- A long-term peace and nuclear deal need not include limits on Iran's conventional arsenal, including long-range ballistic missiles.
- The United States has no legitimate claim to demand or seek regime change in Iran or otherwise sway its internal politics. The same applies to Iran in the case of the United States.
- Partial or limited sanction relief will not be enough to integrate Iran into the global economy—the lifting of all sanctions must be diligently pursued.

ACT TOGETHER? 57, 58–59 (Patrice C. McMahon & Jon Western eds., 2012). While Howard focuses on what could be viewed as more of an inter-ethnic than inter-state conflict, the intense animosity often characterizing the US–Iran relationship gives it some of the characteristics of an existential conflict.

229. See Alex Raufoglu, *'Eventually They'll Return to the Table': Middle East Expert Gause Sees Diplomacy Surviving US-Iran Escalation*, RADIO FREE EUR./RADIO LIBERTY (July 15, 2026), <https://www.rferl.org/a/middle-east-expert-francis-gregory-gause-iran-mou-iran/33804176.html> [https://perma.cc/3QJH-6KWF]; Eric Schmitt & Jonathan Swan, *Trump Holds Off on Major Escalation Against Iran as Advisers Raise Concerns*, N.Y. TIMES (July 25, 2026), <https://www.nytimes.com/2026/07/25/us/politics/trump-iran-military.html> [https://perma.cc/UT36-L2HZ] (reporting concerns that a US war against Iran may not be sustainable given increasing shortages of key military equipment such as interceptors).

- An effective nuclear agreement need not ban all enrichment of uranium by Iran and can accommodate Iran's peaceful nuclear "needs."
- An agreement should have features that build trust and good will over time, giving the long-term possibility of a partnership that will end mutual demonization (the US\$300 billion fund is not the only way of realizing it, but this principle can be drawn from the general concept of such a fund).

In addition to the establishment of these principles as a general zone of agreement between the United States and Iran, there are other valuable meanings connected to the MOU exercise. First, there is the responsibility that regional powers took for facilitating the negotiations. If the approach in the MOU is to be continued in the future, it is arguable that regional powers affected by the issues being addressed should become parties, expanding a bilateral framework into a regional one. Second, the MOU negotiations involved ongoing commitment and participation at the highest levels, both on the US side and the Iranian side. While certain public niceties of distance were preserved, interactions between US and Iranian officials were all but direct in these talks. The recent escalation of hostilities makes a return to peace seem more difficult. But having gone through the MOU process may make it easier, once the parties have determined that the cost of war is too high and the gains, if any, too tenuous.²³⁰ But to have a definitive settlement of a wrongful war (wrongful from Iran's point of view and that of much of the international law community) with no acknowledgement or accounting for its wrongfulness, and move to a new positive or less destructive relationship, is perhaps too much to expect. But this is an opportunity for the next Administration;²³¹ until then, the best we can hope for is an eventual winding down of the fighting and a return to the MOU, with perhaps some additional

230. At the time this Article was submitted as a manuscript, there were already signs of a return to the negotiating table. See Michael Crowley, *Trump Backs New Iran Talks but It's Unclear What He Hopes to Achieve This Time*, N.Y. TIMES (July 27, 2026), <https://www.nytimes.com/2026/07/27/us/politics/trump-iran-talks-negotiations.html> [https://perma.cc/82D9-GKKN].

231. On how various US Presidents have offered expressions of regret or acknowledgement concerning past missteps in US foreign policy, see generally RUTI G. TEITEL, *PRESIDENTIAL VISIONS OF TRANSITIONAL JUSTICE* (2025).

clarifying protocols, on the Strait of Hormuz and some other matters of contestation.