

**(Re-) Taking the lead: the Iranian nuclear crisis and the reallocation of leadership between the EU and the US**

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Version 1.0

*Book chapter for “Crisis across the Atlantic?  
Institutional Resilience and democratic decision-making under pressure  
Crisis across the Atlantic?”, edited by Sebastian Harnisch, Cameron Thies, and Gordon  
Friedrichs (forthcoming)*

*Abstract*

*Keywords:*

## 1. Introduction

The US-led Iraq war, starting in March 2003, generated an intense debate about when it is legitimate to use force against proliferation of weapons of mass destruction (WMD) and what force can accomplish. This debate is often described as a conflict between the US, charting a new unilateralist course that undermines the existing UN-based international order, and the rest of the world, preferring a more multilateral process. Moreover, often this debate is portrayed as a transatlantic one in which European governments are leading protagonists of multilateralism against a growing US unilateralism (Fehl 2012).

These portrayals are not partially wrong but also potentially misleading. Historically, the United States, while resisting some multilateral for a sometimes has actively endorsed other mini- and multilateral fora at (all) other times. This has been true for the Bush Jr. administration, which had been identified as most critical of multilateral rules (Thimm 2016; Skidmore 2010), as it has been true for the Obama administration (Skidmore 2012). In the nonproliferation realm, the United States has worked through the established Nuclear Suppliers Group (NSG) or the newly founded Proliferation Security Initiative (PSI) when it felt that the Nonproliferation Treaty is not working (Rathbun 2014). Similarly, when North Korea declared its withdrawal from the NPT, the US State Department animated the Chinese government in 2003 to launch the Six-Party process to prevent the crisis from escalating (Harnisch/Roesch 2011) as it has launched unilateral cyberattacks against Pyongyang's ballistic missile program in 2014 (Sanger/Broad 2017).

Current conflicts over the instruments against proliferation thus do look less like fights over uni-, mini- or multilateralism rather than debates over what the nonproliferation requires or what it should require. Similarly, the controversy in voices over the use of force is not only or primarily a transatlantic one. There are many disparate views on this question, within the European Union, within the United States administrations as well as across the international community as the analysis below attests. Disagreements about when and under what conditions force should be used are common rather than exceptional (Sarvarian 2014; . The more interesting questions for us here are: What exactly do the transatlantic partners think are the rules governing the conflict over the Iranian nuclear program are? And how did they go about solving the conflicts over the diverging interpretation of those rules?

To begin to answer these questions this chapter explores the disagreements between and among transatlantic partners as well as the Iranian and others governments, such as Russia's and the People's Republic of China. Analytically, this brief survey of transatlantic conflicts identifies three distinct phases and discusses the mechanisms used to solve those disagreements. Much of those disagreements were related to two broad problems: First, the scope of Iran's permitted / acceptable nuclear activities in the past, present and in the future; second, the role of the UN Security Council as a mechanism to legitimize sanctions, both positive and negative. I then offer a systematic discussion of three conflict resolution

mechanisms identified in the introduction to this volume: Institutions, a division of labor and the expansion of the sphere of democracies. I close this chapter by outlining the implication of this case to the wider question of transatlantic crisis resilience as we enter a period of uncertainty under the Trump administration (Santoro in this volume).

## **2. E3/EU and the prevention of crisis escalation**

Conflict over nonproliferation policies vis-à-vis Iran have been a constant feature of transatlantic relations for almost four decades (Etemad 1987; Kemp 1999). Episodes of disagreements have been particularly frequent since 1992 when the EU started a strategy of “constructive engagement” vis-à-vis Tehran (Rudolf 1999). The recent cycle of crisis, starting in 2002, has been especially virulent, however, because in 2003, the United States and its coalition partners (among them several European nations) used military force to (allegedly) prevent the regime of Saddam Hussein from acquiring WMD, thereby raising the specter of the use of military force against other proliferators (Müller 2003, Smeland 2004).<sup>1</sup> Moreover, the ongoing disagreement over the meaning and consequences of global nonproliferation norms in the conflict over Iran’s nuclear activities have great potential to shape the future of the nonproliferation regime as all major NPT member states participated directly or indirectly in the P5+1 negotiations (Reardon 2014; Santoro 2016).

### *2.1 Episode 1: Disagreement over NPT obligations and UN involvement*

The transatlantic schism over Iran occurred after the National Council of Resistance, an Iranian opposition group, had publicized the clandestine construction of a large uranium enrichment facility in Natanz and a heavy-water reactor in Arak, both of which could be used for producing weapons-grade material (Uranium (U235) Plutonium (PU 239) and both of which had not been declared to the International Atomic Energy Agency (IAEA). When IAEA Director El Baradei visited the site in Natanz in late February 2003, just one month before military altercation in Iraq started, he described the facility as “stunning”, leading the IAEA to reassess Iran’s nuclear program (Baradei 2011: 114).

In early May 2003, then, Teheran reportedly sent a message to Washington through the Swiss government that it was prepared to negotiate a “grand bargain”.<sup>2</sup> Iran offered to

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<sup>1</sup> In addition, the Israeli bombardment of a Syrian nuclear facility in 2007 once more made clear that Jerusalem would use any means to prohibit any Arab state in its neighborhood the acquisition of nuclear weapons (Spector/Cohen 2008).

<sup>2</sup> In contrast, the North Korean regime declared its withdrawal from the NPT on January 11th, 2003, after a long, arduous and finally unsuccessful implementation process of the Geneva Agreement in which it

address, among other things, concerns about its nuclear program and support for terrorism in exchange for the establishment of diplomatic relations and the lifting of economic sanctions. The Bush administration did not respond to the Iranian initiative because it was deeply divided whether to seek regime-change in Iran (Parsi 2007: 243-257). Instead, Washington called for a non-compliance resolution in the run-up to the September 2003 IAEA Board of Governors meeting (Samore 2005: 2).

The escalating crisis in Iraq and Iran (and North Korea) hit the European Union hard in the summer of 2003: not only were EU member states still of different (very) minds about the US-led intervention in Iraq but also was the EU in the midst of negotiating a trade and cooperation agreement with Tehran. The Union met the challenge at the European Council meeting in April and its General Affairs and External Relations Council meeting in June (Hertwig 2009, Smeland 2004). At the April meeting, the EU Council directed the High Representative to accelerate his analysis of the global threat situation and the drafting of a long-term strategy to address these threats (European Council 2003a). In June, then, the General Affairs Council expressed serious concerns about fuel-cycle activities and stressed “the need for Iran to answer timely, fully and adequately all questions raised regarding its nuclear programme” (EU General Affairs Council 2003). Both decisions directly led to the development of the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction (EU Basic Principles 2003), the adoption of the EU’S WMD strategy in the Declaration of the European Council (European Council 2003b), and the first ever “European Security Strategy: A Secure Europe in a Better World” (ESS 2003).

Against this background, British Foreign Secretary Jack Straw, contacted his German and French counterparts in the summer of 2003 to address the simmering situation in Iran (House of Lords 2005: 20). The so-called E3 would become directly involved in the negotiation process with Iran, taking over the leadership at least in the first period. At the time, the Bush administration, emboldened by military actions in Iraq, called for an immediate referral from the Board of Governors of the IAEA to the United Nations Security Council. But the E3 drafted a compromise resolution, which called on Tehran to accelerate its cooperation with the IAEA and to provide full transparency about its undeclared past activities. The draft resolution also demanded Tehran’s acceptance of the Additional Protocol and “to suspend all further uranium enrichment-related activities, including the further introduction of nuclear material into Natanz”. Moreover it asked, as a confidence building measure, to suspend any reprocessing activities, pending provisions by the Director General of the assurances required by Member States and pending satisfactory application of the provisions of the Additional Protocol (IAEA Governors Board 2003).

The E3 initiative had its critics among EU member states (European Voice, 2004a, 2004b; Corriere della Serra 2004). The E3 group, who would subsequently coordinate their

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had promised to trade proliferation-prone nuclear facilities for a normalization of relations with the United States.

positions on the level of Political Directors before, during and after respective meetings with the Iranians, the United States, Russia and China, did regularly brief other EU member states in meetings of the Political and Security Committee and General Affairs Council meetings. During this first period, official EU documents never officially supported the initiative. But skeptical EU member states, such as Italy, Spain and Portugal, would tone down their reservation only after EU High Representative Javier Solana joined the E3 in late 2004 to formally represent all other EU members in the EU3 group (Harnisch 2007:9). This became all the more important after Solana (and his successors) started to negotiate with the support of the EU in various fora, among other the IAEA Governors Board, and after the EU started to sanction Iran collectively (Meier 2013).

Senior policymakers in the Bush administration were among the staunchest critics of the E3 initiative in this period. In September 2003, the US administration openly tried to frustrate E3 efforts to enter into direct talks with Tehran while suspending the referral of the Iran dossier to the UN Security Council by the IAEA Board of Governors.<sup>3</sup> The E3, however, stuck to its “diplomacy first approach” and persuaded other Board members to forego the referral. For the upper echelon in Washington, the Tehran talks amounted to “European unilateralism” which undermined further multilateral action through the IAEA and the UN SC (Ford 2008). While not all decision makers in the administration held the view of Vice President Cheney – who stated bluntly: we do not negotiate with evil, we defeat it” – up until President Bush’s trip to Europe in early February 2005, there was tolerance at best for the dealings of the E3 (Parsi 2007: 243-257).

In October 2003, then, the E3 foreign ministers travelled to Tehran. In the resulting Joint Statement by the three EU Foreign Ministers (October 21, 2003), the so called Teheran Declaration, Iran promised three things: First it would fully cooperate with the IAEA and resolve all outstanding safeguard issues concerning its nuclear past; Secondly, Iran would sign the Additional Protocol, begin the ratification process and adhere to the provisions in the Additional Protocol pending ratification. Thirdly, Tehran promised to “voluntarily suspend all uranium enrichment and reprocessing activities as defined by the IAEA”.<sup>4</sup> In return, the E3 stated that the full implementation of Iran’s decision, and confirmed by the IAEA, should enable a resolution of the conflict in the IAEA. In addition, the E3 agreed that a full resolution of all outstanding safeguards issues would open the way for longer-term cooperation, potentially including Iranian access to modern technology in a variety of areas.<sup>5</sup> The

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<sup>3</sup> Working level relations between the EU and the US administration were less contentious, e.g. in May 2003, John Wolf, US Assistant Secretary of State for Nonproliferation, called upon Europeans to use their diplomatic weight to convince Iran to give up its fuel cycle activities (Agence Europe 2005: 7).

<sup>4</sup> The Teheran Joint Statement did not elaborate on the duration and scope of the suspension, thus leading to conflicting interpretations between Iran and the EU-3. Hence, the so-called “Paris Accord” (see below) in December 2004, specified the terms of the Teheran Statement in greater detail.

<sup>5</sup> This vaguely termed promise was specified by EU-3 negotiators in private. They stated that the EU was prepared to help Iran’s civilian nuclear program by guaranteeing access to nuclear fuel and management of spent fuel, if Teheran was prepared to forego the development of an indigenous fuel cycle capability, cf. Samore 2005: 4.

Europeans also committed themselves to promoting security and stability in the region, which included the establishment of a zone free from Weapons of Mass Destruction in the Middle East (Joint Statement 2003).

The E3 efforts were not bound to last. By mid-2004, the Iran side had reneged on two critical promises in the Tehran Joint declaration: on the one hand, Iran resumed the manufacture and assembly of centrifuges and began producing feed material for enrichment, thereby undercutting the E3 interpretation that “all enrichment activities were to stop, including preparatory activities; on the other hand, as Iranian negotiators made clear, the suspension of fuel-cycle activities were meant to be temporary, thereby undercutting the E3 contention that “objective guarantees” of the peaceful intentions of Iran meant the “permanent cessation of all enrichment activities (Meier 2013: 6).

This put the E3 in an awkward position between Tehran and Washington as the latter two drifted apart. For the Bush administration took the position that Iran, by repeatedly violating its IAEA safeguards obligations, had permanently lost its rights to conduct sensitive fuel-cycle activities, including all stages of the enrichment process (Mousavian 2014: 202). Still reluctant to refer the Iran dossier to the UN SC, and despite Iran’s ongoing preparatory enrichment activities, the (now) EU3 then tried and succeeded to negotiate another diplomatic settlement to the simmering crisis.

The subsequent Paris agreement (PA) drew important lessons from the failure of the Tehran accord (Meier/Quille 2005: 1). To begin with, it was a two-sided “agreement”, including the Iranian side rather than a mere statement by the three European Foreign Ministers. Secondly, the terms and scope of the suspension of uranium enrichment and plutonium reprocessing were much more detailed, including procurement, conversion, assembly, production and testing activities. Thirdly, the agreement called for “objective guarantees” that Iran would not use its nuclear program for military purposes. Fourthly, concerning the duration of the suspension, the PA defined that suspension will be essential, “while negotiations on a longer-term agreement are under way.”<sup>6</sup> Fifthly, the E3/EU offered more detailed benefits in case of Iranian cooperation including additional political and economic inducements such as the resumption of talks on a TCA. Finally, the PA committed the parties to setting up a steering committee which in turn was to convene three working groups on political and security issues (subsequently chaired by the UK), on technology and cooperation (subsequently chaired by Germany), and on nuclear issues (subsequently chaired by France). The working groups were asked to provide progress reports to the steering committee, thereby adding momentum to the negotiation process of a final settlement (IAEA 2004).

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<sup>6</sup> Although the EU3 recognized in the PA that the suspension was a voluntary confidence building measure and not a legal obligation.

The PA temporarily smoothed the ruffled feathers on both sides: Iran again fully suspended enrichment and reprocessing as well as related activities. European negotiators persuaded the Bush administration to explicitly supporting the European mediation, despite its sustained concerns about the military application of Iran's nuclear activities. Thus, after 18 months of negotiation Washington agreed to enhance the E3/EU rooms of manoeuvre by allowing Europeans to offer spare parts for Iran's dilapidated civilian aircraft fleet and to start negotiations on Iran's accession to the WTO (Harnisch/Linden 2005). But the diplomatic route eventually failed when the conservative administration of the newly elected Mahmoud Achmadinejad took office and escalated Iranian nuclear activities.

## *2.2 Episode 2: Transatlantic convergence and collective bargaining (2005-2012)*

During the second phase, transatlantic approaches towards Iran converged significantly.<sup>7</sup> Three factors appear to have been decisive: first, after much haggling the Bush-administration, under the impression of the worsening security situation in Iraq and the lack of finding significant WMD activities, legitimizing the intervention, changed its approach vis-à-vis the EU3 initiative. Beginning in early 2005, Washington gave limited support by offering a partial lifting of economic sanctions for aircraft spare parts deliveries to Iran (Seaboyer/Thränert 2007: 111-114). Second, EU3, and EU member states, became convinced, after a series of negotiations and respective agreements in Tehran and Paris, that their incentive-based approach needed to be supplemented both by integrating new instruments and actors. Third, Iran's growing intransigence, which started already under President Khatami but escalated profoundly after the election of the conservative Presidential candidate, Mahmoud Achmadinejad in July 2005 (Harnisch 2007).

Right after the election of President Achmadinejad the EU3 had tabled in August 2005 a detailed "Framework for a Long-Term Agreement". The plan offered assurances for the supply of low-enriched uranium (LEU) for Light-Water reactors and proposed to establish a nuclear fuel reserve in a third country. In exchange, the EU3 demanded a binding commitment "not to pursue fuel cycle activities other than the construction and operation of light water power and research reactors" and an obligation not to withdraw from the NPT (Art. 10) (IAEA 2005).

Iran, however, immediately rejected the proposal, insisting that the proposal did recognize its inalienable right to enrich uranium and subsequently started further uranium conversion activities. As a consequence, the EU and the United States supported a IAEA Board of Governors resolution in September 2005, finding that Iran's recent nuclear activities "have given rise to questions that are within the competences of the Security Council" (IAEA

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<sup>7</sup> Arguably, the US shifted its position much further into the EU3 direction than the other way around. It follows that critics of the EU position misinterpret the historical data, cf. Kaussler 2012; Sauer 2008.

BoG 2005). Then in January 2006, when Iran requested the removal of IAEA surveillance equipment in Natanz to restart the uranium enrichment process, EU High representative, Javier Solana, found that Iran had clearly rejected the EU3 process and that the time had come for the Security Council to reinforce the authority of IAEA resolutions (Meier 2013: 7).

The EU3 turned into the P-5+1 format when joined by the United States, China, and Russia, indicating the involvement of the authority of the UN Security Council as the main forum to address threats to international security. In parallel, the EU3's incentive-based strategy shifted towards a dual-track approach, involving both diplomatic offers by P-5 and UN-based and bilateral economic sanctions. As the Iranian nuclear activities became ever more daring, increasing both the quantity and quality of production capacity and uranium derivatives, the EU3 role changed too: First, the P-5 offered much more diplomatic leverage to the EU3 which had been struggling to keep their member states aboard; in turn, the EU3 also became a major diplomatic conduit between the stark positioning of the Bush and incoming Obama administration and the much more cautious Russian and Chinese viewpoints (Gianella 2012). Moreover, as one of Iran's major trading partners, sanctions by the EU and its members states not only hurt the Iranian economy but also signaled a new European resolve, since several Southern European member states, among them Italy and Greece, had been long been opposed to sanctions due to their extensive economic ties with Tehran (Portela 2015).

Following a Presidential Statement in late March 2006, the UN SC adopted Res. 1696 under Chapter VII (July 31), giving the Iranian regime a deadline until August to meet the Council's requests and suspending sensitive fuel-cycle work. Upon Iran's non-compliance, the Council imposed a first round of sanctions in December 2006 (UN SC Res. 1737), which focused on dual-use items for Iran's nuclear and ballistic missile program. These sanctions, and those imposed by UN SC Res. 1747 under Chapt. VII, Art. 41 (March) were implemented by the EU and its member states in April 2007, addressing over 80 Iranian individuals and entities to the fullest (and a bit beyond) so that the Union again positioned itself between the "sceptics in the Council" (China and Russia) and the "protagonists in the Council" (The US and partially UK) (Santoro 2016: 277).

Supplementing the drive towards sanctions however, was a new EU3+3 offer (June 1, 2006) which now had the support of all P-5 (thus also the United States). The plan included two important novelties: on the one hand, it demanded the suspension of fuel-cycle activities during negotiations, but "offered" a review of that suspension when Iran had met its obligations with the IAEA; on the other hand, the plan offered Iran part-ownership of a plant in Russia to enrich Iranian-produced uranium (Council of the European Union 2006). While Iran rejected the proposal, setting in motion the Council's sanction regime, Tehran in principle accepted the idea of a consortium handling sensitive fuel-cycle activities to build trust among the parties concerned.

As the EU3's facilitation of convergence among Security Council members started to bear fruits, producing resolutions under Chapter VII, IAEA Director El Baradei sensed in mid-2007 that while Iran was making technical headway, policymakers, especially in the US, were set to a sanction-based approach. As a consequence, El Baradei signaled, on Iran's initiative, that the Agency was ready to negotiate a "work plan" to settle (some of) the outstanding issues in Iran's dossier (Baradei 2011: Chapt. 11). Further ambivalence when a US National Intelligence Estimate became public in November 2007, which suggested that Iran "had halted its nuclear weapons program in 2003 while keeping its options open to resume it. On both accounts, the EU3, but the UK and France in particular, insisted that even if the work plan worked the dossier could not be closed and the dual-approach had to be followed through (Meier 2013: 11).

But the coalition forged in the UN SC by the EU3 held onto its double-tracked strategy: In March 2008 the UN SC adopted Res. 1803 addressing past weaponization studies and ongoing centrifuge test; in June, then, based on Chinese initiative the P5+1 tabled another proposal, focusing on trading a "freeze-of enrichment" against a "freeze of sanctions" to be followed by a suspension of both (US State Dept. 2008). When the Iranian regime finally rejected the proposal, the UN SC reaffirmed all foregoing resolutions by adopting UN SC Res. 1835.

The 2008 US elections changed the transatlantic dynamics. The incoming Obama administration accepting direct negotiations without preconditions, bringing the US much closer to the EU3 position. However, with the French government shifting towards a harder stance on enrichment under the newly elected President Sarkozy, France and the UK became concerned with the US moving to a more conciliatory stance, i.e. allowing for some future enrichment as part of a final settlement (Parsi 2012: 10-12). Advances in Iranian nuclear capacities, i.e. the number of centrifuges installed at Natanz and the stockpile of 20% enriched uranium shifted the attention from "zero enrichment" to the preventing enrichment to higher levels. In turn, the initiative moved to the US delegation in the summer of 2009 when the Iranian requested IAEA assistance with the replacement of fuel for its Tehran Research Reactor (TRR), producing almost 20% enriched uranium (Meier 2013: 12).

The Obama administration, after much haggling, proposed to turn much of the low-enriched uranium Iran had produced until October 2009 into fuel for the TRR, so as to increase the time span Tehran would need to produce enough nuclear-weapons grade material. And yet, despite the crippling economic sanctions, Iranian negotiators could not secure domestic support for the October 1, 2009 proposal (Fitzpatrick 2011). After the Vienna Group, the IAEA, Russia, France and the US had negotiated with the Iranian delegation, the talks on the "October proposal eventually broke down over legal and technical concerns and the initiative turned towards Brazil and Turkey (Parsi 2012: 142-143).

In May 2010, then, Brazilian President Lula da Silva and Turkish Prime Minister, Recep Tayyip Erdogan met with Iranian President Achmadinejad, signing a joint declaration,

which obliged Tehran to send 1.200 kg of LEU to Turkey, to be returned as nuclear fuel for the TRR within a one-year period. This time Western countries objected, stating that the amount to be transferred left an Iranian stockpile in place large enough to produce a nuclear weapon after additional enrichment procedures. Against the background of Iran's ongoing nuclear activities, human rights concerns after the Presidential election protests in the fall of 2009, including the detention of British embassy staff, the UN SC adopted a fresh, and harsh, resolution on June 9, 2010 aiming at Iran's ballistic missile program, the import of heavy weapon and additional individuals and companies involved in illicit activities (UN SC Res. 1929).

The situation further escalated before it stabilized in 2013. Unsatisfied about the remit of Res. 1929, the US, EU and several other states added uni-, and plurilateral sanctions against the Iranian nuclear, oil and financial industry, e.g. targeting the Iranian Central Bank. In addition, in September 2009 the US, UK and France revealed that Iran had clandestinely built a Fuel Enrichment Plant in Fordow near Qom (called FFEP) which was especially hardened against military strikes. Then, in early 2010, the Israeli government let it be known that it stood ready to attack Iranian nuclear facilities so that US and EU officials engaged with their Israeli counter parts to calm the situation (Gibson 2015: 10). After several rounds of talks in Geneva and Istanbul, the EU imposed an oil embargo, hitting Iran hard, so that the parties met again in April 2012 (Anthony et al. 2016). At a subsequent meeting in Bagdad, the EU3, now under the leadership of HR Catherine Ashton, tabled a plan, entitled: stop, shut, and ship. It foresaw an obligation to end the production of 20% enriched uranium, closing the FFEP and the shipping of the remaining 20% stockpile out of the country for the production of fuel for the TRR. And yet, substantial differences remained and no further political negotiations were scheduled (Fabius 2016: 9-10).

### *2.3 Episode 3: Transatlantic "divisions of labor" and the JCPOA (2013-2017)*

The situation improved in June 2013 after Hassan Rouhani, an experienced Nuclear negotiator and moderate candidate, won the Iranian Presidential election (Gibson 2015: 9). Already in November 2013, the P5+1 and Iran had agreed on a "Joint Plan of Action" (JPA). It foresaw that Iran would freeze some of its most sensitive nuclear activities in exchange for a partial lifting of sanction to gain time for negotiating a larger settlement. More specifically, Iran, at the time, had enough uranium hexafluoride containing up to 5% uranium-235, which, when further enriched, would have yielded enough weapons-grade material for as many as eight nuclear weapons. Also, the stockpile of 20% enriched uranium-235 would, if it had been further enriched, have been sufficient for a nuclear weapon in an even shorter time period. By implementing the JPA, Iran converted much of that material for use as fuel in a research reactor located in Tehran (TRR), or diluted the rest of the stockpile so that it contained no

more than 5% uranium-235, thereby exponentially reducing the breakout capacity (Katzmann/Kerr 2017: 5).

After extending the “suspension period” several times, the parties then finally in June 2015 announced the “Joint Comprehensive Plan of Action” (JCPOA). The JCPOA limits Iran’s enrichment and heavy water reactor programs for an extended period of up to 15 years. It also establishes an elaborate monitoring system designed to detect Iranian efforts to produce nuclear weapons in declared or covert facilities. Moreover, the JCPOA also indefinitely prohibits Iranian “activities which could contribute to the design and development of a nuclear explosive device,” including research and diagnostic activities.<sup>8</sup>

Negotiating the JCPOA involved at least eight specific items, the weighted combination and sequence of which was topic of various diplomatic meetings in Oman, Israel, Turkey, Kazakhstan, Austria, Switzerland, Belgium and Luxembourg over a period of almost two years. More specifically, the negotiations addressed 1) constraints on Iran’s capacity to enrich uranium, both by limiting the number and quality of centrifuges and their design as well as the sequence of their installment; 2) the amount and quality of uranium (or pre-products) stockpiles, that is dilution of higher enriched uranium or the swap of HEU with LEU nuclear fuel for Iran’s reactors;<sup>9</sup> 3) limits on the installment of a (proliferation-prone) Heavy-Water Reactor in Arak and the development of a related plutonium reprocessing plant; 4) the conversion of the (formerly clandestine) hardened enrichment facility in Fordow into a “nuclear physics research center without any centrifuge cascades; 5) the clarification of all issues involving a “possible military dimension” (PMD) of the Iranian nuclear program;<sup>10</sup> 6) the (sequenced) lifting of UN-based as well as uni- and plurilateral sanctions; 7) transparency measures 8) implementation mechanisms, involving the role of the IAEA, the UN Security Council and several national legislatures.<sup>11</sup>

The negotiations resulting in the JCPOA were marked by intense pulling and hauling between Iran and P5+1 as well as between the transatlantic partners. The negotiations restarted in earnest only after the election of Hassan Rouhani and the establishment of a common front against the rise of the so-called Islamic State created favorable international conditions for subsequent talks (Gibson 2015). In late 2013, while P5+1 experts held technical talks on the first-phase of a settlement, the US delegation engaged in secret bilateral talks with the Iranian side in Oman, tabling a new policy document, integrating major

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<sup>8</sup> The JCPOA and its various annexes are accessible at: <http://www.consilium.europa.eu/en/policies/sanctions/iran/jcpoa-restrictive-measures/>

<sup>9</sup> To complicate matters further: the mix of limitation on the enrichment capacity and the availability of uranium stockpiles determines (to a large extent) the timeframe in which Iran may produce a nuclear weapon, i.e. the breakout timeframe, cf. Heinonen/Henderson 2015.

<sup>10</sup> PMD related issues involve those mentioned in the Road Map between Iran and the IAEA, including e.g. the activities at the military site in Parchin, cf. ISIS 2015.

<sup>11</sup> On the role of the UN Security Council and Res. 2231 in the implementation process of the JCPOA, cf. Haupt 2016; On the role of the IAEA in negotiating and implementing the JCPOA, Martinelli/Zucchetti 2016.

components of a former Iranian proposal, the Zarif-Plan, which also included all phases. The French Foreign Minister Fabius intervened, criticizing harshly both content and procedure of the US proposal. While the P5+1 in the end accepted a revised version of the original proposal, this “backchannel episode” set a competitive tone between the French and US administrations, thereby complicating a common EU3 leadership (Fabius 2016: 15-18).

The “backchannel episode” changed the structure of the negotiations: on the one hand, the talks between technical, policy experts and principals, i.e. Foreign minister multiplied often involving several meetings in different European and Middle-Eastern major cities, including EU-Iran talks in Jerusalem. On the other hand, while national officials, most importantly US, British, French and Iranian, now pushed the negotiations ahead, there was an intricate division of labor among the P5+1 and the EU negotiation teams, including EU top negotiator, Helga Schmid (de la Baume 2015). The US team, now supported by US Secretary of Energy, Ernie Moniz, an experienced nuclear scientist, focused on Iran’s enrichment capacity, the French team covered PMD issues, while the Russian and Chinese negotiators assessed the options for an international consortium to swap parts of the LEU/HEU stockpile in exchange for nuclear fuel and the conversion of the PU-based reactor in Arak. But in the final three month, the EU3 negotiating team under the leadership of Federica Mogherini and Helga Schmid directed the drafting and final revisions of the JCPOA which also included in-depth consultations with the IAEA (Fabius 2016).

### *3. Resisting crisis: mechanism to cope with transatlantic discord*

One persistent source of conflict among transatlantic partners before the Iranian nuclear crisis had been the use and effectiveness of multilateral institutions against proliferation. It follows that one of the key goals of the E3/EU3 initiative was to make “multilateralism effective” again (Portela 2015; Santoro 2016). This meant on the one hand that the E3 initiative had to bring into convergence positions in a European Union that still suffered from deep divisions over the Iraq conflict. Crucial in this exercise was that the E3 merged into the EU3 over the course of the year 2004 so as to represent other EU member states and to mediate between the diverse positions towards a more robust engagement vis-à-vis Tehran. This included both cleavages over nonproliferation norms, e.g. whether Iran had foregone its right to the whole spectrum of fuel-cycle activities forever (Germany opposed vs. France and the UK leaning towards it) and certain policy instruments, most notably economic sanctions (Southern members with extensive business ties opposed vs. Northern members in favor). While arguments persisted over the entire period of the negotiations, the EU3 initiative as a new informal institution, succeeded, especially in the final phase, in making the “EU multilateralism” as an established institution work so that it could take over international leadership function over the course of the events.

Effectuating the EU as a nonproliferation actor allowed the EU3 to facilitate several national and international institutions to function in the way the EU wanted them to function. First, and most importantly, the EU3 enabled the growing number of sceptics of the Iraq intervention in the Bush administration to first call for tolerance and then guarded support of the diplomacy-first strategy of the EU. As the fall-out from the ill-conceived Iraq intervention grew, the EU3 provided a promising alternative to the unilateral course during the Iraq campaign. Then, after the first two diplomatic efforts (Tehran and Paris agreements) had run their course, the EU3 engagement provided crucial legitimacy to a more forceful course, ultimately joined, if cautiously by Russia and China.

As David Santoro has shown succinctly, the EU3 also effectuated the IAEA-based compliance procedure of the Nuclear Non-Proliferation regime. Starting with the IAEA safeguards procedures, the involvement of the IAEA Board of Governors and the transfer to the UN Security Council, which, in turn, may then use Chapter VII to legitimize coercive economic and military sanctions to change the policy preferences of the targeted state (Santoro 2016). But in doing so, the EU3 has also shaped a new consensus on what the specific meaning of the nuclear nonproliferation norm is: What does it mean to prevent a state from becoming a nuclear weapon state? Traditionally, as Hymans and Gratias have aptly shown (Hymans/Gratias 2013), this meant to prevent a state from conducting a (successful) nuclear weapon test. However, over the course of the Iraq, North Korean and Iranian crisis this goalpost has shifted to a new, higher, standard: to prevent a state from holding a “significant quantity” (SQ) of weapons grade material.

In the concrete Iranian case, the EU3 has defined the SQ-metric – in close collaboration with the US and others – in terms of the timeframe a nuclear-capable state may have to develop enough weapons grade material for at least one nuclear device, thereby situating the SQ-metrics meaning squarely between opposite interpretations of that norm.<sup>12</sup> On the one hand restrictive interpretations in the neoconservative faction of the Bush administration and Israel argue that Iran, and other potential proliferator, should be banned from having access to full-fuel cycle activities (uranium enrichment and plutonium reprocessing) that enable them to produce significant quantities of weapons grade material.<sup>13</sup> On the other hand, the Russian and Chinese interpretation under which Iran must be prevented from holding a significant quantity of weapons grade material but where Iran may be allowed full access to fuel-cycle activities under IAEA-safeguards even before all outstanding past safeguards violation have been dispelled. It follows that the JCPOA spells out specific limitation of the Centrifuge design, number of centrifuges and centrifuge

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<sup>12</sup> The timeframe of about one year is certainly related to the time needed for a preemptive strike, the threat thereof, and the preparation for the military consequences of such a strike.

<sup>13</sup> Over the course of the Iranian crisis, the Israeli government under Prime minister Netanyahu set the limit at 200 kg of 20% enriched uranium as an intervention point for a preemptive strike against respective Iranian facilities.

facilities, level of enrichment, centrifuge production and R&D as well as the stockpile and quality of enriched uranium (Katzmann/Kerr 2017: 10-11).

By effectuating the standing procedure of the Nonproliferation regime, the EU3 and the Obama administration, then prevented not only Israel from conducting a preemptive strike on the Natanz and Fordow facilities, as Israel had recently pursued a “preemptive campaign” against a similar, but less advanced nuclear site in Syria. The EU 3 also set the nonproliferation agenda, to a substantial extent, by developing a public goal for the international community in its conflict with Iran. Against the background of the Iraq war and the Libyan intervention, non-aligned states have become considerably more sceptical about the private goals of Western countries, most notably regime change or prolonging favorable economic relations. Iran’s regime by quelling opposition forces in 2009 or by kidnapping diplomatic staff has tried to change the negotiation agenda and take advantage of it. To resist these and other efforts has been a major achievement of the EU3 initiative.

Another persistent point of contention between transatlantic partners has been the division of labor and bearing of the costs of leadership (Sperling 2015). After the Iraq debacle, especially in the UN Security Council it was readily apparent that both, the Bush administration and the Russian and Chinese government were ready to cede the policy initiative to the EU so as to avoiding another imminent and direct controversy with each other. For the Bush administration, the EU initiative posed a small risk as it would soon falter and then (hopefully) bring along other permanent members for more robust actions. For China and Russia, the EU3 promised to bring the US back into the UN Security Council, thereby reducing the risk that both nations would have to oppose the US (militarily) outside the Council.

Legitimate leadership goes hand in hand with accepted rules and procedures as well as the bearing the costs of rule compliance. So by “gold plating” UN-based sanctions, that is by adding more severe restrictions when transposing UN-based sanctions into EU law, the EU3 displayed the willingness to pay a (domestic) price for improving the chances that harder sanctions may change the Iranian strategic calculus (Portela 2015: 191). Going beyond UN sanctions certainly helped the EU3 to gain acceptance with the US but may also have send crucial signals to Iran, China and Russia that the EU3 is not merely a commercial actor when its collective nonproliferation interests are concerned. Moreover, to prepare for worse, military action, the EU3 had to “create a trail of legitimacy” that diplomacy had run its course and all other instruments had been tried and retried.

But note that over the course of the crisis the division of labor among all P5+1 increased as mutual trust grew after the backchannel episode (see above). Not only did the P5 and Germany agree upon an informal division of labor among national governments, e.g. France focusing on PMD or Russia on “Nuclear swap mechanisms”, but also did the EU3 and the High Representative, despite changes in personnel, provide continuous leadership functions. This included the integration of the IAEA and its leadership, after the Agency

under Mohammed El Baradei had initiated its own crisis resolution mechanism (the work plan), as well as the final drafting of the JCPOA with the Iranian delegation in numerous expert meetings.<sup>14</sup>

Applying our third mechanism to resolve transatlantic conflicts to the Iranian case, the expansion of the sphere of democracies, seems odd. As mentioned above, the EU3 initiative, too a large extent, has been an exercise to marginalize those neoconservative forces in the United States and the Bush government which thought of and propagated regime change in Iran. In this sense, the European initiative was meant to prevent the expansion of the sphere of democracies because after the divisive experience of the US-led intervention in Iraq, the E3 foreign ministers concluded that neither would the European Union agree on a military-based democratization agenda nor had this agenda any (serious) chance of success. The failed European-led intervention in Libya and the emergence of the so-called Islamic State only reinforced this lesson of the Iraq war.

Saying that the EU3 has not been about extending the sphere of democracy does not mean that the initiative has nothing to do with democratic politics. It does. As the US leadership role in world politics became ever more politicized and the US foreign policy debate more polarized, the US executive branch has (almost) lost two important policy tools: the capacity to make treaty-based promises that bind following US administration in their conduct with foreign governments and the capacity to fine-tune the application of US and multilateral sanctions. In both cases, as the notorious letter of 46 Republican Senators to the Iranian leadership attests,<sup>15</sup> the polarized domestic debate on security policy in the United States has undercut or at least hindered the capacity of the US Presidency to lead in world politics. While the European Union has its own internal divisions, the application of economic sanctions and/or the Union's treaty making capacity has not been substantially trimmed in the case of Iran. It follows that the EU3 could supplement important resources to the common transatlantic effort that enabled the US government to play a constructive role in the mitigation of the crisis.

#### *4. Conclusion*

Transatlantic conflicts are inevitable. They are part an inherent part of a democratic polity as well as politics between them. The real question how these conflicts are resolved or

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<sup>14</sup> Reportedly, Helga Schmid, the EU3 top negotiator, set in every US-Iranian bilateral talks so that respective member states delegated considerable competences and trust to the EU3 negotiating team, cf. de la Baume 2015.

<sup>15</sup> In this letter, Sen. Cotton, a first term Republican senator from Arkansas, and 46 other Republicans, claiming to explain the US constitutional process to the Iranian leadership, purported that any deal reached with the US executive branch that was not ratified by Congress would be an 'executive agreement' that could easily be overturned by the next administration, cf. Cotton et al. 2015.

at least mitigated. For the European Union, the crisis over the Iranian nuclear program stemmed from two interwoven conflicts: the divisive politics of the US-led Iraq intervention and the Iranian challenge to the Nonproliferation regime. To recreate unity or at least compatibility between EU member states has been therefore almost as much a goal of the EU3 initiative as it has been to keep Iran from becoming a “nuclear state”. Peace among Europeans as well as peace for the Europeans has always been two sides of the same coin of the “effective multilateralism” of the European Union.

To make “multilateralism effective again” in the Iranian nuclear crisis, the E3/EU3 provided crucial leadership functions: the group set the agenda – suspension of enrichment for UN SC transfer suspension – represented the different parties concerned – limits on the breakout capacity for an eventual access to fuel-cycle activities – and mediated between the parties by offering sanction relief for transparency and verification.

In providing leadership, the EU3 initiative made multilateral institutions effective again in two interrelated ways: it created legitimacy by broadening the participation over time from E3 to EU3 to P5+1, also including non-aligned states, and by specifying the nonproliferation norms for the Iranian case: a member in clear non-compliance who had allegedly pursued a nuclear weapons program and who now allegedly sought a reintegration into the NPT-regime. The absence of rules and institutions for this case has been (and probably will be in the future) a persistent source of friction for transatlantic partners. It remains to be seen how Israel, a fellow democracy with particular threat and security perceptions, will situate itself vis-à-vis the rules based NPT-regime in the future, as it has regularly asserted and implemented its right to use force against alleged proliferators.

In the Iranian case, European policy makers have used alternative fora – the E3/EU3 – and a variety of established institutions to circumvent the opposition by central policy makers in the Bush administration for a diplomacy-first strategy vis-à-vis Iran. Over time, and with the Iraq intervention getting from bad to worse – it became easier to find “like-minded states” for a negotiated solution but much harder to pinpoint it because the Iranian stockpiles and technological capacity grew. In that phase, from 2006 to 2012, multilateralism vs. unilateralism was not the question anymore – at least for the United States – but which specific solution multilateralism may offer.

In the current phase (see article by David Santoro), the (partial) solution of the JCPOA faces opposition both from among and within the parties concerned. Compliance is not assured, neither by the United States after the election of Donald Trump nor by Iran, which holds presidential elections later this summer. These oppositional forces may well bring the (imperfect) JCPOA down, even if the current Israeli government holds back its instincts. As scholars, we need to understand the interaction between domestic and international opposition to multilateral institutions better. When do those institutions and informal divisions of labor fail and why. Treating the “other” as a unitary or static actor does not help. Understanding the

multiple dynamics that shape transatlantic cooperation may help us to find constructive solutions for intricate policy problems.

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