

HOUSE COMMITTEE ON FOREIGN AFFAIRS

“Iran Nuclear Negotiations After the Second Extension: Where Are They Going?”

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Chairman Royce, Ranking Member Engel, and other Members of the Committee, thank you for giving me the opportunity to share my thoughts on the Iran nuclear issue.

With the Iran nuclear negotiations now well into their second extension period, no one can confidently predict that a comprehensive agreement will eventually be reached. President Obama speaks of less than a 50 percent chance of success. While some significant progress has been achieved over the last year, wide gaps remain on some central issues.

Requirements of a sound comprehensive agreement

To meet its goal of preventing Iran from acquiring a nuclear weapon, the Obama Administration is seeking an agreement that would lengthen to at least one year the time it would take Iran to produce enough nuclear material for a single nuclear weapon, should it decide to leave or violate the agreement. A one-year “breakout” time would require Iran to reduce substantially its current operational centrifuge enrichment capability as well as to cap the amount of low-enriched uranium stocks on its territory at a low level. To block the plutonium path to a bomb, Iran would have to re-design its Arak reactor to lower its production of plutonium to such a small amount that breakout would be infeasible.

To deter and detect violations at both declared and covert locations, the deal would have to provide for rigorous monitoring measures that go well beyond the IAEA’s Additional Protocol, and it would require Iran to resolve concerns about its past activities that the IAEA suspects were related to nuclear weapons development. And to build confidence that Iran’s nuclear program is peaceful, the agreement would need to have a duration of about 15 years.

A key Iranian goal is the early removal of U.N., U.S., and European Union sanctions. To meet U.S. requirements, the suspension and eventual lifting of sanctions would have to be timed to coincide with Iran’s performance in implementing agreed constraints on its nuclear program as well as with the IAEA’s conclusions regarding Iran’s compliance with its obligations.

Some observers, in the U.S. and abroad, have called for an agreement obliging Iran to abandon key elements of its nuclear program – for example, an agreement banning enrichment altogether and requiring the dismantlement of enrichment facilities and the Arak reactor. Such an agreement would be ideal. But no one who closely follows Iran and its domestic politics believes that it is achievable, whatever pressures we are able to bring to bear. Iranian leaders have successfully convinced their public that an enrichment capability is an inalienable right, an essential component of a respectable civil nuclear program, and a source of national pride – and that giving it up in the face of Western pressure would be a national humiliation. No one across

the Iranian political spectrum, even those who strongly want a deal, would be prepared to accept an outcome banning enrichment and dismantling nuclear facilities.

But we don't need such an ideal but unattainable agreement to protect our national security and that of our partners in the Middle East. An agreement along the lines that the United States and its P5+1 partners are seeking – one that would allow a strictly limited and heavily monitored enrichment program – could also prevent Iran from acquiring nuclear weapons. It could do so by making it clear to future Iranian leaders that the time it would take them to build a nuclear weapon is long, that efforts to break out at declared or covert locations would be detected at an early date, and that the United States and others in the international community would have plenty of time to intervene decisively to stop them, through diplomatic or economic pressures or the use of military force.

Alternatives to a negotiated deal

In evaluating any deal that may emerge from negotiations, it is important to compare it not with the best deal we can possibly imagine but with the realistic alternatives to a negotiated solution. One alternative is to try to continue ratcheting up economic pressures until Iran accedes to our demands. But it is unclear the extent to which we could command the necessary international support for dramatically strengthened sanctions, and it is unclear whether even such strengthened sanctions could compel Iran's acceptance of our demands.

Another alternative is military force. Military force could set back Iran's nuclear program. But such a setback would probably only be temporary, and the use of force could trigger an Iranian decision to go for nuclear weapons as soon as possible, a decision that we believe has so far been deferred. Moreover, with IAEA inspectors evicted, we would lose our best window into Iran's program and, at least as important, we would lose the international support we would need to keep pressure on Iran in the post-attack environment.

The United States may eventually decide that the deal Iran is willing to accept does not meet essential U.S. requirements. In that case, the Administration will have little choice but to pursue these non-diplomatic alternatives. But in evaluating whether an attainable deal is good enough, it is essential to have a clear-eyed view of the alternatives to a negotiated solution.

Iran's reluctance to compromise

If Iran is truly interested in pursuing a civil nuclear energy program, the deal the P5+1 countries are offering should be acceptable. The limited enrichment program that would be permitted would enable Iran to provide fuel for one or two research reactors; it could continue importing fuel from Russia for the Bushehr power reactor or any additional power reactors it buys from Russia; and in the long term, once the agreement has expired, it would have the freedom to increase its enrichment capacity to promote its ambitious future nuclear energy goals. And critical to the Iranian economy, sanctions would be suspended at an early date as Iran meets implementation milestones and eventually would be lifted, with Congressional approval, as the IAEA concludes that Iran's program is peaceful.

But so far, Iran has not been willing to accept such an approach. It has resisted all but a very modest reduction in its current centrifuge enrichment capacity, and it favors a relatively short-duration agreement that would allow it to ramp up its enrichment program to industrial scale (more than ten times its current operational capacity) at an early date. It has also been reluctant to permit inspector access to military installations or to accept monitoring measures beyond the Additional Protocol.

Although Iran has been prepared to compromise on some important issues – including to reduce the plutonium production capacity of the Arak reactor, re-purpose the Fordow enrichment facility, and ship most of its low-enriched uranium stocks to Russia – its rigidity on central issues such as enrichment capacity and duration made it impossible to come to agreement before the deadline of the last extension period on November 24th.

We can only speculate why Iran has not been prepared to compromise on these central issues. In the run-up to the November deadline, Iran may have seen itself in a strong position and felt that it only needed to wait until the United States and its partners accepted a deal largely on its terms. It may have calculated that the U.S. would make concessions on the nuclear issue to gain Iran's cooperation in defeating the Islamic State and in addressing other regional issues. It may have figured that President Obama was anxious to conclude a deal before the Republicans took over the Senate. By the end of the November negotiating round, when U.S. negotiators stood their ground, the Iranians presumably learned that such calculations were wrong.

A more fundamental explanation is that deep internal divisions within Iran – not just on the contents of an agreement but on the very idea of an agreement – have prevented the adoption of a pragmatic Iranian negotiating posture. Some in Iran support an agreement and believe it is needed to alleviate Iran's economic plight. Some others claim Iran can manage economically without an agreement and are only willing to support a deal largely on Iran's terms. Still others oppose any deal, believing it would threaten Iran's revolutionary ideals and, for some individuals and entities, could prevent them from exploiting the sanctions for their own economic benefit.

President Rouhani has spoken out publicly in support of a nuclear agreement, arguing that the lifting of sanctions and ending of Iran's economic isolation are essential if its economy is to recover. But the ultimate decision-maker will be Supreme Leader Khamenei, and he seems deeply skeptical of the value of an agreement. He frequently states that the West cannot be trusted to remove sanctions, and he therefore favors an "economy of resistance," which he claims would rely on Iran's domestic resources and enable Iran to manage economically without an agreement or the lifting of sanctions.

Of course, a further explanation for Iran's reluctance to scale back its existing program and its insistence on being able to expand its program rapidly at an early date may be its desire to preserve a nuclear weapons option. The U.S. Intelligence Community continues to believe that a decision on whether to pursue nuclear weapons has not yet been taken, but it judges that Iran wants to keep its options open for the future. Iranian advocates of nuclear weapons may believe that an agreement that ensures a rapid breakout time, avoids intrusive monitoring, and has a short duration would keep that option more alive than one that substantially lengthens breakout time,

provides for rigorous monitoring, and has a long duration – an outcome they may regard as effectively burning their bridges to acquiring nuclear weapons.

But whatever the explanation or combination of explanations, Iran will have to adopt a more realistic and pragmatic approach to the negotiations if agreement on the major elements of a deal is to be reached by March and a final deal is to be concluded by the end of June.

Interim deal favors the United States and its partners

The stepped-up pace of negotiations since the most recent extension was agreed in November – with several meetings between Secretary Kerry and Foreign Minister Zarif – suggests that all parties are genuinely interested in reaching a comprehensive deal by June at the latest. But while no party would like to see the Joint Plan of Action (JPOA) extended indefinitely or become permanent, the current interim arrangements appear much more favorable to the United States and its P5+1 partners than to Iran.

When the JPOA was concluded in November 2013, a number of observers, especially Israel, condemned the deal on the grounds that Iran would not abide by the constraints on its nuclear program and the JPOA's modest sanctions relief measures would lead to the unraveling of the sanctions regime. These predictions never materialized. The IAEA has repeatedly reported that Iran has complied with its JPOA commitments, and the most consequential sanctions, including on banking and oil, have remained intact.

Still, critics of the JPOA and of the negotiations continue to argue that the interim deal is in Iran's interest, claiming that Iran is "playing for time" and "stringing us along." In their view, the JPOA has not really halted Iran's nuclear program and has allowed Tehran to strengthen its economy. But this assessment is deeply flawed.

The JPOA has stopped forward movement in Iran's nuclear program in most critical respects. Iran is no longer producing 20 percent enriched uranium and has eliminated all 20 percent uranium hexafluoride by diluting it or converting it to oxide or fuel rods. Its stock of enriched uranium hexafluoride below 5 percent is capped at the November 2013 level. It has not installed or operated any additional centrifuges, and has not produced more centrifuges except to replace broken ones. Its centrifuge research and development program is strictly limited to prevent advancement to the next level of performance for each model. Meaningful progress toward operation of the Arak reactor has been blocked by banning the production or testing of fuel and the installation of additional reactor components.

Critics claim there are areas in which Iran's program can advance despite the JPOA. They point out, for example, that enriched uranium below 5 percent that is turned into oxide can be turned back into gas in violation of the agreement in a few weeks. They note that, even though the JPOA prevents certain advanced centrifuges from being installed or tested realistically with gas, it doesn't ban more preliminary R&D work (i.e., mechanical testing) without gas. And they say the JPOA doesn't prevent Iran from illicitly procuring equipment for the Arak reactor or from proceeding with some site construction work that does not involve the installation of key components.

It is true that there are some activities that Iran has continued under the JPOA. But these activities are relatively minor. In most consequential respects, Iran's program has been frozen. Iran has not been able to take meaningful steps toward shortening its breakout capability. Indeed, because of the JPOA, particularly the neutralization of the 20 percent stockpile, Iran's breakout time has increased. In the absence of the JPOA, the expansion of the program would have reduced the breakout time to a matter of a few weeks.

Moreover, because the JPOA calls for more frequent IAEA inspections of enrichment plants and gives the IAEA access to centrifuge production facilities, uranium mines and mills, and other key locations, the interim arrangements provide the international community a much better window into Iranian nuclear activities than we would otherwise have.

The argument that the JPOA has led to an erosion of sanctions and reduced economic pressures against Iran is sharply contradicted by the facts. Although companies around the world have held discussions with Iran in the hope of entering or re-entering the Iranian market, they are taking a very cautious approach, waiting for a nuclear deal to be concluded and sanctions to be removed before taking the risk of signing new contracts. With all consequential sanctions intact, Iran is still not a place where reputable banks and companies want to do business.

Under JPOA's sanctions relief measures, Iran has received \$700 million per month of its own oil revenues that had been frozen in overseas restricted accounts. But these repatriated funds are a small fraction of the losses Iran continues to suffer from the sanctions. The Treasury Department estimates that in 2014, oil sanctions alone deprived Iran of about \$40 billion in oil revenues, and that over the next six months it will lose another \$15 billion. The recent sharp decline in oil prices is the equivalent of a major new sanction on Iran. Treasury Undersecretary David Cohen recently testified that, in the course of the current extension period, the drop in oil price will mean an additional loss of \$11 billion.

While President Rouhani's economic team has adopted more effective policies than those of his predecessor, the Iranian economy as a whole remains in very bad shape. After a few years of a contracting GDP, Iran's per capita GDP is at least \$1200 lower today than the \$7000 per capita figure in 2012. The Iranian currency, the rial, has declined by about 56 percent since January 2012 and by about 16 percent since the JPOA was signed in November 2013. Inflation has come down somewhat since Rouhani took office, but remains high at 17 percent.

So it is hard to understand why the Iranians would have any incentive to play for time or string us along by prolonging the negotiations. They are the ones whose nuclear program has been frozen. They are the ones whose economy continues to suffer under punishing sanctions and now the steep drop in oil prices. No one wants to prolong the negotiations and the interim arrangements indefinitely. But there should be little doubt that it is Iran, not the United States or its partners, that is the clear loser the longer the JPOA remains in effect.

The likely effects of new sanctions legislation

Many in Congress believe that current economic pressures against Iran are not enough and that, in order to compel Tehran to adopt a more forthcoming position in the negotiations, it is necessary to legislate additional sanctions. One widely supported approach is to adopt tough new sanctions that would be imposed only if there is no agreement at the end of the current extension period or if Iran violates the interim agreement.

Proponents of new sanctions legislation are right that economic pressure brought Iran to the negotiating table and that continuing pressure will be essential to get Tehran to accept reasonable compromises. But enacting new sanctions legislation at this time – even sanctions that would not be imposed until a future date – would likely have the opposite effect than what the proponents intend. It could weaken the overall sanctions regime and produce not a softening but a hardening of the Iranian negotiating position.

Iranian officials have stated that new sanctions would mean a halt to the current negotiating process. It is hard to know whether Iran would actually follow through with that threat. It might decide to leave the talks or it might decide to continue them, perhaps after the Majlis had adopted its own tit-for-tat legislation requiring a resumption or expansion of currently-frozen nuclear activity if no agreement is reached by June.

But just as troublesome as the risk of an Iranian walkout is the impact new U.S. sanctions legislation would have on the internal debate in Tehran and on prospects for positive changes in Iran's negotiating position. Opponents of a deal would seize on the new legislation to argue that the United States is violating the spirit of the JPOA, that the U.S. has no intention of ultimately removing the sanctions, and that the U.S. Administration cannot be counted on to deliver its end of any agreement eventually reached. The critics – whose strong influence has so far impeded the adoption of a pragmatic Iranian negotiating position – would be further strengthened. Playing on Iranian hyper-sensitivity to giving in to foreign pressures, they would demand that U.S. pressure tactics not be rewarded by making concessions in the talks. Thus, instead of compelling Iran to be more flexible, new U.S. legislation could produce greater defiance, further entrench rigid Iranian negotiating positions, and increase support for the Supreme Leader's pipedream of an "economy of resistance" that could manage effectively without a nuclear deal. So even if a new sanctions law did not precipitate an abrupt termination of the talks, it could increase the likelihood that the negotiations will ultimately fail.

Not only would a new sanction law be counterproductive in terms of its goal of altering Iran's negotiating position; it could also have a very negative impact on the unity of the international sanctions coalition. Until now, that coalition has stayed together and continued to implement strong sanctions because it saw the Iranians as the main impediment to a deal. Key countries would regard new legislation as unnecessarily provocative and as putting at risk prospects for a successful negotiated solution. The blame for any impasse or breakdown could shift from Iran to the United States – a shift that Iran's active public diplomacy machine would be eager to encourage. More and more countries could be expected to relax their implementation of sanctions, and the overall sanctions regime could begin to unravel.

Moreover, the extent to which new sanctions legislation would actually result in stronger economic pressure is unclear. In recent years, the United States has been very successful in persuading foreign governments and companies to go along with U.S. sanctions, sometimes at considerable economic sacrifice to themselves. In particular, key countries like China, India, Japan, and South Korea were willing to cut way back on their purchases of Iranian crude oil, reducing their imports by as much as 50 percent or even more. But some of these countries have been warning the United States that they will resist cutting back further. Especially if new U.S. legislation is seen as having a disruptive effect on the talks, new sanctions requiring Iran's crude oil customers to reduce by at least an additional 30 percent or even to end all purchases could well fall on deaf ears. Instead of putting more pressure on Iran, we could find ourselves in high-profile disputes with key partner countries, threatening them with sanctions for violating our law.

If Iran remains unwilling to make the compromises needed to conclude an agreement and if negotiations break down as a result, it will be essential to ratchet up sanctions to a significantly higher level. But our ability to do that would be seriously impaired if we had fractured the international sanctions coalition by prematurely enacting new sanctions legislation.

So adopting a new sanctions law at the present time is very risky. But it is also unnecessary. With existing sanctions still in place – and their devastating effects further amplified by the drop in oil prices – Iran remains under intense economic pressure. As time passes, it will become harder and harder for Iranian opponents of a nuclear deal to make the case that Iran's economy can recover, or even muddle through, without an agreement.

If Tehran nonetheless remains unwilling or unable to make the compromises necessary to reach a deal and the talks break down, then the Congress, with the support of the Administration, can move very quickly to adopt and begin implementing new sanctions. The Iranians fully expect that this will happen. There is no need to legislate those sanctions in advance in order to ensure their credibility.

The current situation is frustrating. The United States has put forward reasonable proposals, but the Iranians are not showing sufficient flexibility – and the talks drag on. Because sanctions helped bring Iran to the negotiating table and induced them to begin negotiating seriously, it is understandable to assume that still more sanctions will produce the desired result. But given the dynamics of Iranian domestic politics, adopting new sanctions legislation now would probably only harden the Iranian negotiating position. And if legislative action is perceived internationally as undermining the talks, it could end up eroding the sanctions regime that the legislation was designed to strengthen.

What should be done?

Under these circumstances, how should the United States proceed? First, we should be patient. Our negotiators should continue to explore creative ways of persuading Iran to accept a deal that meets our essential requirements, and they should continue to seek an early conclusion, if possible, well before the late June deadline. But they need not be in a rush. If Iran remains reluctant to compromise, the United States and its P5+1 partners can afford to wait. After all, the current interim deal is much more favorable to the P5+1 than to Iran. It is the Iranians who

should be feeling increasingly burdened by persistent sanctions and a continuing freeze on their nuclear program. Of course, the United States and its partners would like to make the current extension the last one. But if a sound agreement is not possible by the end of June, the option of another extension should not be ruled out. And if there is no agreement by June and the negotiations are discontinued, it should be Iran, and not the United States, that is responsible for pulling the plug.

Second, the United States should do whatever it can to maintain and enhance the effectiveness of existing sanctions. The Treasury Department should continue its aggressive efforts to remind governments and companies around the world that sanctions remain in place and that Iran “is not open for business.” Undersecretary Cohen testified last week that, since the JPOA was signed, nearly 100 individuals and entities have been sanctioned for helping Iran evade sanctions and other offenses and that sanctions violators have received more than \$350 million in penalties. U.S. officials should stress to their counterparts around the world that prospects for a peaceful, negotiated solution depend on not relaxing the pressure at this crucial stage of the negotiations.

Third, governments with access and influence in Tehran – especially those whose leaders are able to be in direct contact with Supreme Leader Khamenei – should be encouraged to impress on Iranian officials and especially the Supreme Leader that the international community expects Iran to take a realistic and flexible approach to the negotiations and that, if it fails to do so, Iran will only heighten concerns about the purpose of its nuclear program, will remain the target of economic sanctions, and will be unable to get its economy moving again.

Fourth, while negotiations are underway, the Administration should do contingency work with the Congress and its international partners on a Plan B – a plan for the eventuality that no agreement will be reached. Instead of confronting each other on the early enactment of a new sanctions law, the executive and legislative branches should begin now to jointly develop sanctions legislation that would be ready to be voted and immediately implemented in the event of a breakdown of the negotiations or an Iranian violation of the interim deal. The Administration should also begin now to consult key foreign partners on enhancements of the international sanctions regime as well as adjustments in cooperative defense plans that may be warranted in the wake of a breakdown of negotiations. At the same time, it should make clear, especially to Iranian audiences, that the United States remains fully committed to seeking a fair, negotiated solution to the nuclear issue and that work on Plan B is preparation for a contingency that hopefully will not arise. Presumably Iran is already working on a Plan B of its own.