

Congressional Testimony

Examining What a Nuclear Iran Deal Means for Global Security

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Chairman Ros-Lehtinen, Ranking Member Deutch, members of the Subcommittee, on behalf of the Foundation for Defense of Democracies (FDD), thank you for inviting me to testify today. I am honored to be testifying with General Michael Hayden and Karim Sadjadpour, whose work I greatly admire.

Thank you for inviting me here today to discuss what an Iranian nuclear deal means for global security. I will focus on the role that Congress can play to enforce a comprehensive agreement, provide increased leverage to respond to Iranian nuclear non-compliance, and deter and punish the full range of Iran's illicit and dangerous activities. Congress can achieve these goals by defending the sanctions architecture that it was so instrumental in creating.

INTRODUCTION

A negotiated agreement is the preferred solution to peacefully prevent Iran from achieving a nuclear weapons capacity. Iran's record of nuclear deception, role as the leading state sponsor of terrorism, and egregious human rights abuses, however, does not inspire confidence in Tehran's commitment to honor a final nuclear agreement with the P5+1.

Moreover, America may not be demanding the best deal it can get. Administration officials are on record committing to a deal that will "dismantle" "a lot" or "significant" portions of Iran's nuclear infrastructure.

On November 24, 2013, Secretary of State John Kerry said:

The [interim] deal is the beginning and first step. It leads us into the negotiation, so that we guarantee that while we are *negotiating for the dismantling*, while we are negotiating for the tougher positions, they will not grow their program and their capacity to threaten Israel (emphasis added).¹

In December 2013, Secretary Kerry also explained that the purpose of sanctions is to help convince Iran to *dismantle* its nuclear program:

I don't think that any of us thought we were just imposing these sanctions for the sake of imposing them. We did it because we knew that it would hopefully *help Iran dismantle its nuclear program*. That was the whole point of the [sanctions] regime (emphasis added).²

In December 2013, Under Secretary of State and lead U.S. negotiator in the P5+1 talks

¹ MaryAlice Parks, "Sec. John Kerry: 'No Daylight' Between Israel, U.S. on Goal for Iran Nuclear Program," *ABC News*, November 24, 2013. (<http://abcnews.go.com/blogs/politics/2013/11/sec-john-kerry-no-daylight-between-israel-and-united-states/>)

² John Kerry, "The P5+1's First Step Agreement With Iran on its Nuclear Program," *Testimony before the House Foreign Affairs Committee*, December 10, 2013. (<http://www.state.gov/secretary/remarks/2013/12/218578.htm>)

Wendy Sherman said:

This *includes a lot of dismantling of their infrastructure*, because, quite frankly, we're not quite sure what you need a 40-megawatt heavy water reactor, which is what Arak is, for any civilian peaceful purpose (emphasis added).³

In January 2014, White House Press Secretary Jay Carney said:

Now, we have also been clear that as part of that comprehensive agreement, should it be reached, Iran will be required to agree to strict limits and constraints on all aspects of its nuclear program to include the *dismantlement of significant portions of its nuclear infrastructure* in order to prevent Iran from developing a nuclear weapon in the future (emphasis added).⁴

Based on press reporting and statements from administration officials, it now appears that the terms of a deal being negotiated in Vienna could fall short of the dismantlement of “significant” or “a lot” of Iran’s nuclear program.⁵ The reason: Iran has increased its negotiating leverage.

During the 2013 negotiations leading to the Joint Plan of Action (JPOA), the White House yielded to Supreme Leader Ali Khamenei’s red lines against reducing enrichment capacity and foreclosing an industrial-size program. Iran thus continued uranium enrichment, building long-range ballistic missiles, and developing advanced centrifuges. Iran further refused to accept intrusive U.N. or other inspections, balked at dismantling the heavy-water reactor at Arak, and declined to discuss past weaponization research. It also pocketed a concession that any restrictions on its nuclear program would be of limited duration. When the restrictions expire, Iran will almost certainly have a large-scale, industrial-size civilian nuclear program, with an easier clandestine “sneak out” option, which could be used to rapidly produce nuclear weapons if the Iranian leadership elects to do so.

Tehran has treated the P5+1’s concessions to its demands as permanent – effectively making further diplomatic advances contingent on greater Western “flexibility.” P5+1 negotiators, by contrast, appear to be trying to find ways to accommodate Khamenei’s red lines. Take, for instance, the recent American suggestion to disconnect the centrifuge

³ “Lead Negotiator: U.S. Would Consider Limited Enrichment By Iran with Conditions,” *PBS Newshour*, December 4, 2013. (http://www.pbs.org/newshour/bb/world-july-dec13-sherman_12-04/)

⁴ The White House, “Press Briefing by Press Secretary Jay Carney,” January 23, 2014. (<http://m.whitehouse.gov/the-press-office/2014/01/23/press-briefing-press-secretary-jay-carney-1232014>)

⁵ Paul Richter & Ramin Mostaghim, “Report Says U.S. May OK More Centrifuges in Iran Nuclear Talks,” *Los Angeles Times*, October 20, 2014; (<http://www.latimes.com/world/middleeast/la-fg-iran-nuclear-20141021-story.html>) & David Sanger, “U.S. Hopes Face-Saving Plan Offers a Path to a Nuclear Pact With Iran,” *The New York Times*, September 19, 2014. (http://www.nytimes.com/2014/09/20/world/middleeast/us-hopes-face-saving-plan-offers-apathto-a-nuclear-pact-with-iran.html?_r=0)

pipng at Iran’s enrichment facilities instead of dismantling Iran’s centrifuges entirely.⁶ As it stands now, Iran would be able to easily resurrect its enrichment program in a few weeks, simply by reconnecting the piping.⁷

In another scenario, Iran could be required to disconnect all “excess” centrifuges and cascade piping used in the uranium-enrichment process at Iran’s Natanz facility – and retire around 14,000 first-generation machines into storage under United Nations safeguards. Tehran might accept the proposal so long as advanced centrifuge development continues – and the 14,000 excess older centrifuges aren’t disconnected unless they are swapped for fewer but more-advanced models, which can be reconnected much more quickly than the older ones. Any plan that would allow more advanced centrifuges to replace older models, even if the new models aren’t enriching, could actually lead to Natanz becoming more efficient. This would dramatically reduce the amount of time Iran would need to enrich to weapons-grade uranium.

Iran’s current sites, with their tested infrastructure, can also be used to perfect ever-more advanced centrifuges. This would make it far easier for Iran to build small, very-difficult-to-detect clandestine facilities that could enable Iran to “sneak out” or to reduce the time necessary to “break-out” at known, U.N. monitored installations.

It is also increasingly clear that a final agreement will fail to address Iran’s ballistic missile program, despite the requirements of U.S. legislation and U.N. Security Council resolutions.⁸ The P5+1 is apparently narrowly defining the ability to affix a warhead to a ballistic missile, as evidenced by Under Secretary of State Wendy Sherman, who stated in congressional testimony, “We must address long-range ballistic missiles capable of carrying nuclear warheads. So, it’s not about ballistic missiles per se. It’s about when a missile is combined with a nuclear warhead.”⁹ The exclusion of ballistic missiles themselves from the negotiations also raises verification and monitoring concerns. As the January 2014 report of the Defense Department’s Defense Science Board noted, the

⁶ David Sanger, “U.S. Hopes Face-Saving Plan Offers a Path to a Nuclear Pact With Iran,” *The New York Times*, September 19, 2014. (http://www.nytimes.com/2014/09/20/world/middleeast/us-hopes-face-saving-plan-offers-apathto-a-nuclear-pact-with-iran.html?_r=0)

⁷ Olli Heinonen, “Key Limitations on Iran’s Uranium Enrichment Program,” *Iran Task Force*, October 2014. (http://taskforceoniran.org/pdf/Enrichment_Memo.pdf)

⁸ Among other references to Iran’s ballistic missile capabilities, U.N. Security Council Resolution 1929 of June 2010 states, “Iran shall not undertake any activity related to ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missile technology, and that States shall take all necessary measures to prevent the transfer of technology or technical assistance to Iran related to such activities.” United Nations, Press Release, “Security Council Imposes Additional Sanctions on Iran, Voting 12 in Favour to 2 Against, with 1 Abstention Brazil, Turkey, Lebanon Say Tehran Declaration Could Boost Diplomatic Efforts, While Sanctions Represent Failure of Diplomacy,” June 9, 2010. (<http://www.un.org/News/Press/docs/2010/sc9948.doc.htm>)

⁹ Wendy Sherman, “House Foreign Affairs Committee Holds Hearing on Iran Nuclear Negotiations,” *Testimony before the House Foreign Affairs Committee*, July 29, 2014. (accessed via Congressional Quarterly)

verification and inspection mechanisms “accounting for warheads instead of delivery platforms” are “inadequate.”¹⁰

The P5+1 also appears willing to defer consideration of possible military dimensions (PMD) of Iran’s military-nuclear program until after the conclusion of a comprehensive agreement. International Atomic Energy Agency Director General Yukiya Amano has been clear that Iran has not cooperated with the IAEA to resolve outstanding issues of concern related to Iran’s past (and possibly ongoing) weaponization activities.¹¹ A September 2014 IAEA report revealed that Iran has failed to implement the preliminary, incremental steps it promised to the IAEA.¹² It seems unlikely that a final deal will require Iran to fully address these concerns. The likely scenario is that the P5+1 would set up a structure of phased sanctions relief calibrated to Iran’s resolution of outstanding IAEA concerns.

This is a mistake: Without resolving these PMD issues, the IAEA will not easily establish an effective monitoring, verification, and inspection regime to ensure that Iran’s nuclear activities are entirely peaceful. The IAEA cannot determine how far along Iran was on the path to nuclear weapons, where this activity took place, and who was involved. It is also unrealistic to assume that Iran, which failed to come clean on its weaponization activities when Western economic leverage was at its height, will be more forthcoming after a deal is signed. At that point, the euphoria of a diplomatic achievement, coupled with the provision of sanctions relief not linked to the satisfaction of the IAEA’s concerns, will continue to strengthen Iran’s economic recovery while providing additional leverage to Iran’s leadership to resist IAEA demands. Indeed, the assumption that sanctions relief can be carefully calibrated to Iranian nuclear behavior – with an overreliance on the rapid reimposition of sanctions in the event of Iranian non-compliance, could prove to be a fundamental flaw in the nuclear agreement (see below).

For these and other reasons, there is cause to fear that if a comprehensive agreement is reached between the P5+1 and Iran, it will not adequately prevent Iran’s uranium and plutonium pathways to a nuclear weapon, address Iran’s ability to develop long-range ballistic missiles capable of carrying nuclear warheads, and provide an adequate monitoring, verification, and inspection regime.

As a result, the more flawed the nuclear deal, the more important it will be to maintain sanctions as a critical instrument of deterrence and punishment for Iranian non-

¹⁰ U.S. Department of Defense, Defense Science Board, “Assessment of Nuclear Monitoring and Verification Technologies,” January 2014, page ii.

(<http://www.acq.osd.mil/dsb/reports/NuclearMonitoringAndVerificationTechnologies.pdf>)

¹¹ Jay Solomon, “Iran Blocks Inspections, Hobbling Nuclear Deal,” *The Wall Street Journal*, October 31, 2014; (<http://online.wsj.com/articles/iran-blocks-inspections-hobbling-nuclear-deal-1414797490>) & “Challenges in Nuclear Verification: The IAEA’s Role on the Iranian Nuclear Issue,” *Brookings Institution*, October 31, 2014. (<http://www.brookings.edu/events/2014/10/31-challenge-nuclear-verification-iran-iaea-amano>)

¹² International Atomic Energy Agency, “Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions in the Islamic Republic of Iran,” September 5, 2014. (<http://isis-online.org/uploads/isis-reports/documents/gov-2014-43.pdf>)

compliance; as a vital enforcement mechanism to support a monitoring, verification, and inspection regime; and as a tool to curb Iran's support for terrorism and its abuse of human rights – two other issues that a nuclear deal with Iran will not address.

If a comprehensive agreement falls short of important parameters and allows Iran to retain essential elements of its military-nuclear infrastructure, Congress can and should defend the sanctions architecture that brought Iran to the negotiating table. Congress designed many of the toughest sanctions against Iran, and it will be vital for Congress to defend this core sanctions architecture to maintain essential economic leverage. Without it, the administration cannot effectively enforce the terms of the deal or punish Iranian non-compliance.

THE ADMINISTRATION'S PLAN TO CIRCUMVENT CONGRESS

The New York Times revealed in October that the administration has studied the issue of how the president might suspend the “vast majority” of sanctions while bypassing Congress.¹³ According to one unnamed senior administration official: “We wouldn't seek congressional legislation in any comprehensive agreement for years. The early suspensions would be executive action.”¹⁴

The approach likely would rely on a series of national security or national interest waivers, special rules, exemptions, licensing provisions, sunsets, and other tools that could be used at the president's discretion to cancel investigations or not enforce sanctions contained in Iran sanctions legislation (Iran Sanctions Act (ISA), Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), Section 1245 of the 2012 National Defense Authorization Act (NDAA), and Iran Freedom and Counter-Proliferation Act (IFCA)). The president could also terminate, suspend, or amend key executive orders that are not codified in legislation (and therefore not linked to legislative termination criteria), such as Executive Orders 13224, 13382, 13553, 13574, and 13628. Specifically, he could unilaterally suspend or terminate the designation of Iranian entities on Treasury's Specially Designated Nationals (SDN) list that are not codified under legislation.¹⁵ For a guide to how the administration may do this, I recommend looking at the unwinding of U.S. sanctions on Burma.¹⁶

Should he embrace this approach, the president would be rejecting the advice of many members of this committee and 344 members of the House of Representatives who, in a

¹³ David Sanger, “Obama Sees an Iran Deal That Could Avoid Congress,” *The New York Times*, October 20, 2014. (http://www.nytimes.com/2014/10/20/us/politics/obama-sees-an-iran-deal-that-could-avoid-congress-.html?_r=1)

¹⁴ David Sanger, “Lawmakers Express Skepticism on Iran Nuclear Deal,” *The New York Times*, July 29, 2014. (<http://www.nytimes.com/2014/07/30/world/middleeast/lawmakers-voice-skepticism-on-iran-nuclear-deal.html>)

¹⁵ For an analysis of how the Obama administration would suspend Iran sanctions, see a forthcoming paper from Jordan Chandler Hirsch & Matthew Blumenthal, Yale Law School.

¹⁶ Michael F. Martin, “U.S. Sanctions on Burma,” *Congressional Research Service*, October 19, 2012. (<http://fpc.state.gov/documents/organization/200048.pdf>); see also a forthcoming paper from Jordan Chandler Hirsch & Matthew Blumenthal, Yale Law School.

July 2014 letter to the president, underscored the importance of adhering to the termination criteria in CISADA and Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA) on the full range of Iran’s illicit activities, not just its nuclear program: “Iran’s permanent and verifiable termination of all these activities – not just some – is a prerequisite for permanently lifting most congressionally-mandated sanctions.”¹⁷ The letter also emphasized that “the concept of an exclusively defined ‘nuclear related’ sanction on Iran does not exist in U.S. law.” Indeed, “almost all sanctions related to Iran’s nuclear program are also related to Tehran’s advancing ballistic missile program, intensifying support for international terrorism, and other unconventional weapons programs.”¹⁸

Sanctions Termination Criteria

U.S. law links the termination of many of the most punitive financial and energy sanctions against Iran to specific criteria set out in the CISADA,¹⁹ and modified by ITRA.²⁰ They require the president to certify to Congress that Iran has “ceased providing support for acts of international terrorism and no longer satisfies the requirements for designation as a state sponsor of terrorism,” and that Iran has “ceased the pursuit, acquisition, and development, and verifiably dismantled its nuclear, biological, and chemical weapons and ballistic missiles and ballistic missile launch technology.”²¹

It seems highly unlikely that any deal under consideration will meet these termination criteria. For example, press reports indicate that Iran’s sponsorship of terrorism is not within the scope of the deal being negotiated and any agreement on ballistic missiles is unlikely to address all aspects of Iran’s missile development.²²

¹⁷ House Committee on Foreign Affairs, Press Release, “342 House Members Join Chairman Royce, Ranking Member Engel in Calling on President Obama to Consult Congress on Iran Nuclear Negotiations,” July 10, 2014. (<http://foreignaffairs.house.gov/press-release/342-house-members-join-chairman-royce-ranking-member-engel-calling-president-obama>)

¹⁸ House Committee on Foreign Affairs, Press Release, “342 House Members Join Chairman Royce, Ranking Member Engel in Calling on President Obama to Consult Congress on Iran Nuclear Negotiations,” July 10, 2014. (<http://foreignaffairs.house.gov/press-release/342-house-members-join-chairman-royce-ranking-member-engel-calling-president-obama>)

¹⁹ U.S. House of Representatives, 111th Congress, 2nd Session, P.L. 111-195, “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010,” Section 401, *Government Printing Office*, 2010, page 40. (<http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>)

²⁰ U.S. House of Representatives, 112th Congress, 2nd Session, H.R. 1905, “Iran Threat Reduction and Syria Human Rights Act of 2012,” *Government Printing Office*, 2012. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1905enr/pdf/BILLS-112hr1905enr.pdf>)

²¹ U.S. House of Representatives, 111th Congress, 2nd Session, P.L. 111-195, “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010,” Section 401, *Government Printing Office*, 2010, page 40. (<http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>)

²² Armin Rosen, “Obama Sent A Letter To Iran's Supreme Leader Tying The ISIS Fight To A Nuclear Deal,” *Business Insider*, November 6, 2014; (<http://www.businessinsider.com/r-obama-sent-secret-letter-to-iran-on-fighting-islamic-state-wsj-2014-11>) & Wendy Sherman, “House Foreign Affairs Committee Holds Hearing on Iran Nuclear Negotiations,” *Testimony before the House Foreign Affairs Committee*, July 29, 2014. (accessed via Congressional Quarterly)

It also seems improbable that a final agreement regarding Iran's nuclear program will resolve all of the money laundering and illicit finance concerns, particularly those related to the Central Bank of Iran (CBI). The U.S. imposed sanctions on the Central Bank of Iran pursuant to Section 1245 of the National Defense Authorization Act (NDAA) for Fiscal Year 2012. These sanctions were premised on the Central Bank's involvement in money laundering, terror finance, and weapons proliferation.²³ To date, the administration has not rescinded its USA PATRIOT Act Section 311 finding with respect to Iran, which found the entire Iranian financial system, including its Central Bank, to be a threat to the international financial system.²⁴

Conduct-Based Financial Sanctions

The Obama administration has recognized that the Iran sanctions regime is designed to respond to the full range of Iran's dangerous activities. As U.S. Treasury Under Secretary David Cohen explained, a primary goal of the sanctions on Iran is to "protect the integrity of the U.S. and international financial systems" from illicit finance.²⁵ Following five years of individual designations of Iranian and foreign financial institutions for involvement in illicit finance supporting weapons proliferation and terrorism,²⁶ Treasury issued a finding under Section 311 of the USA PATRIOT Act that Iran is a "jurisdiction of primary money laundering concern."²⁷ Treasury cited Iran's "support for terrorism," "pursuit of weapons of mass destruction," and use of "deceptive financial practices to facilitate illicit conduct and evade sanctions."²⁸

²³ U.S. House of Representatives, 112th Congress, 1st Session, P.L. 112-81, "National Defense Authorization Act for Fiscal Year 2012," Section 1245: Imposition of Sanctions With Respect to the Financial Sector of Iran, *Government Printing Office*, 2011, page 350.

(<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1540enr/pdf/BILLS-112hr1540enr.pdf>)

²⁴ David S. Cohen, "The Entire Iranian Banking Sector," *U.S. Department of the Treasury*, November 22, 2011. (<http://www.treasury.gov/connect/blog/Pages/The-Entire-Iranian-Banking-Sector.aspx>)

²⁵ David Cohen, "Remarks of Under Secretary for Terrorism and Financial Intelligence David Cohen Before the New York University School of Law on 'The Law and Policy of Iran Sanctions'," *New York University School of Law*, September 12, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1706.aspx>)

²⁶ Treasury designated 23 Iranian and Iranian-allied foreign financial institutions as "proliferation supporting entities" under Executive Order 13382 and sanctioned Bank Saderat as a "terrorism supporting entity" under Executive Order 13224. At least eight of the sanctioned banks were designated for their ties to Iran's Islamic Revolutionary Guard Corps (IRGC) or because they were controlled by banks with IRGC links: Bank Sepah (Iran); Bank Melli (Iran); Arian Bank (Iran); Bank Kargoshaee (Iran), controlled by Bank Melli; Future Bank (Bahrain), controlled by Bank Melli; Post Bank of Iran (Iran), controlled by Bank Sepah; Ansar Bank (Iran); Mehr Bank (Iran). U.S. Department of the Treasury, Press Release, "Treasury Cuts Iran's Bank Saderat Off from U.S. Financial System," September 8, 2006; (<http://www.treasury.gov/press-center/press-releases/Pages/hp87.aspx>) & U.S. Department of the Treasury, Press Release, "Treasury Designates Major Iranian State-Owned Bank," January 23, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1397.aspx>)

²⁷ U.S. Department of the Treasury, Press Release, "Finding That the Islamic Republic of Iran is a Jurisdiction of Primary Money Laundering Concern," November 18, 2011. (<http://www.treasury.gov/press-center/press-releases/Documents/Iran311Finding.pdf>)

²⁸ U.S. Department of the Treasury, Press Release, "Finding That the Islamic Republic of Iran is a Jurisdiction of Primary Money Laundering Concern," November 18, 2011. (<http://www.treasury.gov/press-center/press-releases/Documents/Iran311Finding.pdf>)

Treasury targeted the CBI and made it clear that the entire country's financial system posed "illicit finance risks for the global financial system."²⁹ The Financial Action Task Force (FATF), an international body comprised of 34 members plus the European Commission and the Gulf Co-operation Council,³⁰ reaffirmed this concern by warning its members that they should, "advise their financial institutions to give special attention to business relationships and transactions with Iran, including Iranian companies and financial institutions," and to, "apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran."³¹

Because the Section 311 finding is conduct-based, the lifting of this action should be dependent on specific changes in the full range of Iran's illicit finance activities. However, Washington has, in the past, made the mistake of giving "bad banks" access to the global financial system in order to secure a nuclear agreement.

In 2005, Treasury issued a Section 311 finding against Macau-based Banco Delta Asia,³² and within days, North Korean accounts and transactions were frozen or blocked in banking capitals around the world. However, facing a North Korean negotiating team that refused to make nuclear concessions before sanctions relief and a North Korean regime, which had defiantly conducted its first nuclear test,³³ the State Department advocated for the release of frozen North Korean funds on good faith.³⁴ The State Department ultimately prevailed, and Chinese and other banks renewed their financial relationships with Pyongyang. Washington lost its leverage and its credibility by divorcing the Section 311 finding from the illicit conduct that had prompted the designation in the first place. Undeterred, North Korea moved forward with its nuclear weapons program, not to mention money laundering, counterfeiting, and other financial crimes.

Compromising the integrity of the U.S. and global financial system to conclude a limited agreement with North Korea neither sealed the deal nor protected the system. There are concerns that we might see a repetition of this cycle with Iran if financial restrictions are lifted without certifications that Iran's illicit finance activities have ceased.

CONGRESSIONAL DEFENSE OF THE SANCTIONS ARCHITECTURE

²⁹ U.S. Department of the Treasury, Press Release, "Fact Sheet: New Sanctions on Iran," November 21, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>)

³⁰ A list of the members of FATF can be found FATF's website. "FATF Members and Observers," *Financial Action Task Force Website*, accessed June 23, 2014. (<http://www.fatf-gafi.org/pages/aboutus/membersandobservers/>)

³¹ The Financial Action Task Force, Public Statement, "FATF Public Statement 14 February 2014," February 14, 2014. (<http://www.fatf-gafi.org/countries/d-i/islamicrepublicofiran/documents/public-statement-feb-2014.html>)

³² U.S. Department of the Treasury, Press Release, "Treasury Designates Banco Delta Asia as Primary Money Laundering Concern Under USA PATRIOT Act," September 15, 2005. (<http://www.treasury.gov/press-center/press-releases/Pages/js2720.aspx>)

³³ David E. Sanger, "North Koreans Say They Tested Nuclear Device," *The New York Times*, October 9, 2006. (<http://www.nytimes.com/2006/10/09/world/asia/09korea.html?pagewanted=all>)

³⁴ Juan Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare*, (New York: Public Affairs, 2013), page 258.

Congress should defend the core sanctions architecture, based on the following principles:

- preserving core elements of the financial and energy sanctions architecture until Iran has ended all forms of illicit activity, since rebuilding that architecture and regaining international buy-in would be extremely challenging;
- recognizing the inherent asymmetry between the reciprocal concessions provided as part of a comprehensive agreement. Indeed, it may be more difficult for the P5+1 to re-impose sanctions in a timely manner in the event of Iranian non-compliance than it will be for Iran to re-start or construct key elements of its nuclear and ballistic missile infrastructure;
- providing the United States and its P5+1 partners with sufficient economic leverage through the maintenance of specific sanctions after an agreement is signed to deter and commensurately punish Iranian non-compliance. This will provide leverage to support a monitoring, verification, and inspection regime, and provide a mechanism for U.S. unilateral and third-party sanctions to penalize Iran if Iran violates the terms of the agreement;
- maintaining the original-stated rationale for the sanctions against Iran, particularly the financial sanctions designed to protect the integrity of the global financial system from the illicit activities of Iranian entities; and,
- reaffirming sanctions related to terrorism and human rights to support the Obama administration's stated policy that terrorism and human rights sanctions are distinct from "nuclear-related sanctions" and therefore not precluded as a result of any agreement. This will ensure that, after a long-term agreement on the status of Iran's nuclear program is reached, the United States continues to pressure Iran to end its support for global terrorism, active support for the Bashar al-Assad regime in Syria, and its vast system of domestic repression at home.

In order to prevent the provision of sanctions relief in advance of Iran meeting specific, verifiable nuclear and illicit finance benchmarks, Congress can provide rigorous oversight of all sanctions relief, legislate objective criteria that must be met before relief can be provided, and lay out specific punishments for Iranian non-compliance with the agreement.

Congress should request a clear definition from the Obama administration and the P5+1 partners on what constitutes a breach of the nuclear agreement, particularly in light of Iran's track record of nuclear non-compliance. For example, according to David Albright and his colleagues at the Institute for Science and International Studies, in analyzing a recent November IAEA report, Iran has fed uranium into an advanced centrifuge, going

beyond the advanced centrifuge research and development permitted under the JPOA and thus violating the terms of JPOA.³⁵

There is ample reason for concern that the P5+1 may not effectively respond to Iranian non-compliance given the complexities of detection, Iranian obfuscation, and the political and bureaucratic challenges (coordinating between the IAEA, P5+1 and within the U.S. government) in getting firm agreement over whether non-compliance occurred and determining the appropriate response. There may be a tendency for senior administration officials to not respond effectively to evidence of Iranian non-compliance out of fear that vigorous enforcement could lead to Iranian countermeasures. This may be particularly problematic when Congress is concerned about reports of a growing U.S.-Iran détente and possible American-Iranian coordination to weaken the Islamic State.³⁶ As a result, Congress should assert and act on its prerogative to provide oversight on what would constitute a material breach of the agreement.

The Psychology Versus the Legalities of “Snapbacks”

Based on press reports, it appears that the Obama administration is designing a phased-program of sanctions relief using “suspensions” and “snapbacks” where sanctions will be suspended and then re-imposed in the event of Iranian non-compliance.³⁷ This approach may also be adopted by the European Union. It may also potentially be used to deal with the U.N. Security Council Resolutions and related sanctions.

The legalities of snapbacks are relatively simple. In the U.S., the Obama administration could decide unilaterally, on evidence of Iranian non-compliance, to immediately re-impose any of the suspended sanctions. In the European Union, where the *imposition* of sanctions requires the support of all 28 members of the EU, sanctions could be suspended temporarily, for example every 180 days, with a vote necessary to *renew the suspension*, and thus a veto by only one member state would reinstate the sanctions. A similar mechanism could be used at the U.N. Security Council, where a renewal of the suspension of the U.N. Security Council Resolutions could be blocked by one UNSC permanent member. This would effectively give France, for example, a veto over the renewal of the suspension of sanctions in the EU and the United States, France, or the U.K. a veto over the continued suspension of sanctions at the UNSC.

³⁵ David Albright, Paulina Izewicz, Andrea Stricker, and Serena Kelleher-Vergantini, “ISIS Analysis of IAEA Iran Safeguards Report,” *Institute for Science and International Security*, November 7, 2014, pages 1 & 3. (http://isis-online.org/uploads/isis-reports/documents/ISIS_Analysis_IAEA_Report_7Nov2014-Final.pdf)

³⁶ Jay Solomon & Carol E. Lee, “Obama Wrote Secret Letter to Iran’s Khamenei About Fighting Islamic State,” *The Wall Street Journal*, November 6, 2014; (<http://online.wsj.com/articles/obama-wrote-secret-letter-to-irans-khamenei-about-fighting-islamic-state-1415295291>) Michael R. Crittenden & Carol E. Lee, “Obama’s Letter to Iran Rattles Congressional Nerves,” *The Wall Street Journal*, November 6, 2014; (<http://blogs.wsj.com/washwire/2014/11/06/obamas-letter-to-iran-rattles-congressional-nerves/>) & Jay Solomon & Maria Abi-Habib, “U.S., Iran Relations Move to Détente,” *The Wall Street Journal*, October 28, 2014. (<http://online.wsj.com/articles/u-s-iran-relations-move-to-detente-1414539659>)

³⁷ David Sanger, “Obama Sees an Iran Deal That Could Avoid Congress,” *The New York Times*, October 20, 2014. (http://www.nytimes.com/2014/10/20/us/politics/obama-sees-an-iran-deal-that-could-avoid-congress.html?_r=1)

The politics and economics of snapbacks are more complicated. Politically, at the U.S., EU, and UNSC levels, respectively, there would have to be agreement that there is sufficient evidence of Iranian non-compliance to warrant a decision to reinstate the sanctions. There are bound to be significant disputes on the evidence, differing assessments of the seriousness of infractions, fierce debates about the appropriate level of response, and concerns about Iranian retaliation. The snapback is equally challenging to implement given the economic realities that will follow a nuclear deal. International sanctions took years before a critical mass of international companies terminated their business ties with Tehran. Once loosened, with so many international companies positioning to get back into Iran,³⁸ it will be difficult to persuade these companies to leave again, especially as Western companies, and their lobby groups, will argue that Chinese, Russian, Turkish, and other less cooperative countries are bound to backfill if they do.

The Iranian regime also is likely to take steps to minimize its economic exposure when it anticipates that it will violate any nuclear agreement. For example, it may move its oil revenues out of Western bank accounts into accounts held in jurisdictions less exposed to U.S. pressure; this will diminish the impact of a snapback of the oil-revenue escrow restrictions, which may be a preferred way for the Obama administration to maintain some economic leverage. Finally, as discussed below, Iran will enjoy substantial psychological benefits from the deal that will translate into improved macroeconomic conditions – as it already has under the JPOA.³⁹

The Psychology Versus the Legalities of Sanctions

An overreliance on “snapback” sanctions can be problematic since the impact of the underlying sanctions is as much psychological as legal. The efficacy of sanctions is predicated upon a strategy of escalation and the perception of high risk. An ever-expanding web of restrictions effectively spooked foreign businesses from investing in, or trading with, Iran. During the period of sanctions escalation, fear triumphed over greed as companies viewed Iran as an economic minefield, and Iranian investors and consumers lost confidence in their economy. Unfortunately, the JPOA began to reverse this phenomenon. As FDD’s economic research has shown,⁴⁰ the Obama administration’s estimates of the value of direct sanctions relief provided by the JPOA did not account for

³⁸ Jay Solomon, “Oil, Auto Companies Make Plans to Invest in Iran if Sanctions Ease,” *The Wall Street Journal*, July 1, 2014; (<http://online.wsj.com/articles/oil-auto-companies-make-plans-to-invest-in-iran-if-sanctions-ease-1404257812>) & Saeed Kamali Dehghan, “Iranians and Multinationals Hungry For Nuclear Deal That Will End Sanctions,” *The Guardian* (U.K.), November 14, 2014. (<http://www.theguardian.com/world/2014/nov/14/iranians-multinationals-hungry-nuclear-deal-to-end-sanctions>)

³⁹ Paul Domjan, Mark Dubowitz, Jennifer Hsieh, & Rachel Ziemba, “Sanctions Relief: What Did Iran Get?,” *Foundation for Defense of Democracies & Roubini Global Economics*, July 2014. (<http://defenddemocracy.org/content/uploads/general/RoubiniFDDReport.pdf>)

⁴⁰ Paul Domjan, Mark Dubowitz, Jennifer Hsieh, & Rachel Ziemba, “Sanctions Relief: What Did Iran Get?,” *Foundation for Defense of Democracies & Roubini Global Economics*, July 2014. (<http://defenddemocracy.org/content/uploads/general/RoubiniFDDReport.pdf>)

the psychological impact on markets, business, and investors and the broader impact on Iran's macroeconomic environment.

Using a proprietary sentiment indicator developed by Roubini Global Economics, in partnership with the Foundation for Defense of Democracies,⁴¹ we have tracked the economic impact of the de-escalation of sanctions (since mid-2013), the optimism surrounding the election of President Rouhani (June 2013), the announcement of the JPOA agreement (November 2013), the announcement of the JPOA implementation agreement (January 2014), and the subsequent direct sanctions relief. The indicator identified a change in the perceptions of Iran globally and perhaps more importantly within Iran itself, where confidence in the rial's value increased, making Iranians more confident to hold domestic assets rather than hoarding dollars or fuelling domestic asset bubbles. This, in turn, gave breathing space to the Iranian government to put its economy on a stronger foundation by tightening fiscal and monetary policy to restrain inflation.

As a result, the Iranian economy has shown signs of modest growth and stabilization. There has been an undeniable shift in market psychology, both among Iranian businesses and those companies angling to do business with Iran. The change in Iranian consumer and investor sentiment has boosted Iran's economic performance, as reflected in modest GDP growth, a stabilization of Iran's currency, and a significant drop in inflation.⁴²

Indeed, Iran has been on a modest recovery path since its *annus horribilis* of 2012 and the first half of 2013, when the Iranian economy was hit with an asymmetric shock from sanctions targeting: the Central Bank of Iran, Iranian oil exports, access to the SWIFT international banking system, the National Iranian Oil Company, shipping and insurance, key sectors of the Iranian economy, including energy, shipping and shipbuilding, and precious metals, among others. The poor economic management of the Iranian economy by the Mahmoud Ahmadinejad government further exacerbated these sanctions-induced shocks. Since the election of Hassan Rouhani as Iran's president in June 2013, a more competent economic team, under less severe sanctions-induced economic stress than its predecessors, has implemented more effective monetary and fiscal policies, which have increased the durability of Iran's recovery.

As Iran's economic recovery becomes more durable, and less susceptible to snapback sanctions, economic pressure will diminish as an effective tool to respond to Iranian nuclear non-compliance. This will make it more likely that the U.S. will be forced to choose between either tolerating Iranian cheating or using more coercive means, including military force, to enforce the deal and prevent it from unraveling.

RECOMMENDATIONS

⁴¹ Mark Dubowitz & Paul Domjan, "New Sentiment Indicator Shows Positive Impact of Sanctions Relief on Iran's Economy," *Foundation for Defense of Democracies & Roubini Global Economics*, May 15, 2014. (http://www.defenddemocracy.org/content/uploads/documents/Final_Sentiment_Report.pdf)

⁴² Jennifer Hsieh, Rachel Ziemba, & Mark Dubowitz, "Iran's Economy, Out of the Red, Slowly Growing," *Foundation for Defense of Democracies & Roubini Global Economics*, October 2014. (http://defenddemocracy.org/content/uploads/publications/RoubiniFDDReport_Oct14.pdf)

Since sanctions snapbacks will be difficult to implement politically and economically, Congress needs to defend the sanctions architecture in a way that is not overly reliant on mechanisms to re-impose sanctions; the snapback has a role to play (as noted below) but only in the context of a comprehensive sanctions relief program where core elements of the sanctions are maintained. Congress should consider adopting the following recommendations into a sanctions defense, enforcement, and relief bill to preserve American economic leverage.⁴³ This leverage will be critical to the enforcement of a nuclear deal with an Iranian regime that has a decades-long track record of nuclear mendacity, and a long rap sheet of terrorist activities and financial crimes.

Financial Sector Sanctions

While U.S. financial sanctions are implemented and enforced by the U.S. Treasury Department, Congress can play a crucial role by legislating the terms of a rehabilitation program for designated Iranian banks and by laying out specific benchmarks that must be met prior to the suspension of financial sanctions.

1. Develop a rehabilitation program for designated Iranian banks that puts the onus on Tehran to demonstrate that the banks are no longer engaged in illicit financial conduct.

As part of sanctions relief, the P5+1 may agree to the suspension of sanctions against specific Iranian banks. While Treasury will ultimately be responsible for U.S. designations, Congress can and should lay out criteria for de-designation and for re-designation if a bank re-engages in illicit financial activities.

Congress should require that Treasury submit a financial sanctions rehabilitation program plan and mandate that specific benchmarks be met before Treasury can suspend the designations of qualifying banks. This legislation could include snapback provisions that will immediately re-designate banks that engage in illicit financial transactions. As an additional deterrent against banned activity, all re-designated banks would permanently lose the right to qualify for rehabilitation and be permanently banned from the U.S. financial system and SWIFT (assuming EU agreement). Congress could also amend CISADA and Section 1245 of the FY2012 NDAA to ensure that any foreign financial institution transacting with a permanently banned Iranian bank would be automatically subject to penalties, including losing correspondent banking relationships with U.S. financial institutions. Congress should also require Treasury to include a certification, subject to periodic reviews, that will be published in the Federal Register prior to de-designation.

Legislation should enable Congress to affirm or reject these certifications.

⁴³ Mark Dubowitz & Richard Goldberg, "Smart Relief after an Iran Deal," *Foundation for Defense of Democracies*, June 2014.
(http://www.defenddemocracy.org/content/uploads/documents/Final_Smart_Sanctions_Report.pdf)

2. Legislate criteria for the suspension of sanctions on the Central Bank of Iran and the lifting of the Section 311 finding against the entire Iranian financial system.

The suspension of sanctions against CBI, even more than the de-designation of individual Iranian banks, would provide significant relief to Iran and should therefore also be tied to verifiable changes in Iranian behavior. Before suspending the statutory designation of the CBI under Section 1245 of the FY2012 NDAA, the president should be required to provide certifications to Congress. Lawmakers could require the president to certify to Congress, prior to suspending sanctions against CBI, that Iran is no longer a “jurisdiction of primary money laundering concern” and that the CBI, as the central pillar of Iran’s illicit financial activities, is no longer engaged in “support for terrorism,” “pursuit of weapons of mass destruction,” or any “illicit and deceptive financial activities.” Congress could stipulate that Treasury must be confident that the entire country’s financial system no longer poses “illicit finance risks for the global financial system.” The legislation should also enable Congress to affirm or reject these certifications.

Finally, Congress should require a presidential certification that Iran is no longer a “jurisdiction of primary money laundering concern” prior to the suspension of the Section 311 finding against Iran’s entire financial system. This would include the financing of terror groups, such as Hezbollah, Hamas, Palestinian Islamic Jihad, and others. Treasury could also be required to provide certification of its confidence that Iran no longer poses illicit finance risks for the global financial system. Again, legislation should enable Congress to affirm or reject this certification.

3. Tie gold sanctions relief to money laundering certifications

Iran’s money laundering and sanctions evasion activities will remain a concern even after a potential nuclear agreement is reached. Therefore, Congress should pass legislation to amend the Iran Freedom and Counter-Proliferation Act (IFCA)⁴⁴ which was enacted as part of the FY2013 National Defense Authorization Act to require a presidential certification that the Iranian financial sector, including the CBI, is no longer a jurisdiction of primary money laundering concern prior to the suspension of precious metal sanctions. The amendment could also clarify that any temporary suspension will only become permanent when the president can provide certification that Iran is no longer a state sponsor of terrorism. Legislation should enable Congress to affirm or reject this certification.

Energy Sector Sanctions

Iran is under four main types of energy sanctions:

⁴⁴ U.S. Department of State, “Fact Sheet: Iran Freedom and Counter-Proliferation Act of 2012,” accessed June 25, 2014. (<http://www.state.gov/documents/organization/208111.pdf>)

- a) Refined petroleum sanctions related to the domestic production and import of refined petroleum products (pursuant to the Iran Sanctions Act as modified by CISADA);
- b) Investment and technology-related sanctions that have reduced Iran’s petroleum production capacity (pursuant to ISA as modified by CISADA and provisions of ITRA);
- c) Financial sanctions that curtail its ability to export its crude oil (pursuant to Section 1245 of the FY2012 NDAA) and access the crude oil revenues generated from those sales (pursuant to the “February 6” escrow provisions of ITRA⁴⁵).
- d) Sector-based sanctions (pursuant to the Iran Freedom and Counter Proliferation Act in the FY2013 NDAA).

Congress created these sanctions and the secondary sanctions. It should therefore play a leading role in determining how and when they can be suspended.

4. Legislate the “snapback” provisions and sunset terms of refined petroleum, investment, technology-related, and sector-based energy sanctions.

Under current legislation, the president is able to temporarily suspend the refined petroleum sanctions on Iran for twelve months pursuant to the national security interest waiver in CISADA.⁴⁶ This suspension has a significant impact on Iran’s ability to import higher quality refined petroleum products from foreign suppliers, instead of relying on domestic substitutes that have contributed to pollution. Certain investments, technology-related sanctions, and sector-based energy sanctions can also be suspended for 180 days pursuant to the president’s national security interest waiver authority – either through the Iran Sanctions Act or IFCA.⁴⁷

For refined petroleum, investments, technology-related, and sector-based energy sanctions, Congress should legislate conditions for the “snapback” of any suspension of these sanctions to deter or punish Iranian non-compliance with the final agreement. Specifically, Congress should require that in order for the president to use and renew the national security waivers, he must certify that Iran is fulfilling its commitments under the comprehensive nuclear agreement and that no energy-related monies, technologies, goods, or services are being used in Iran’s energy sector to support illicit proliferation

⁴⁵ Kenneth Katzman, “Iran Sanctions,” *Congressional Research Service*, May 7, 2014, page 22. (<http://fas.org/sgp/crs/mideast/RS20871.pdf>)

⁴⁶ A twelve month suspension is permissible under CISADA if the “government with primary jurisdiction over the person is closely cooperating with the United States in multilateral efforts to prevent Iran from acquiring weapons of mass destruction or advanced conventional weapons.” U.S. House of Representatives, 111th Congress, 2nd Session, P.L. 111-195, “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010,” *Government Printing Office*, 2010, page 14. (<http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>)

⁴⁷ U.S. Department of State, “Fact Sheet: Iran Freedom and Counter-Proliferation Act of 2012,” accessed June 25, 2014. (<http://www.state.gov/documents/organization/208111.pdf>)

activities, terrorism or any financial crimes. If the president cannot make this certification, all energy sanctions should be re-imposed.

Legislation should enable Congress to affirm or reject these certifications.

Finally, Congress should be prepared to automatically renew the provisions of the Iran Sanctions Act for an additional five-year period, and override the president's authority to unilaterally allow the legislation to sunset, when it ceases to be effective on December 31, 2016.

5. Protect Europe's crude oil embargo and the maintenance of current Iranian crude oil export levels by clarifying and strengthening exceptions to Section 1245 sanctions.

During the JPOA negotiating period, the Obama administration has allowed the maintenance of Iran's crude oil export levels and has not sought "further reductions from the current purchasers of Iranian crude oil."⁴⁸ Therefore, under the JPOA, Iran has received substantial sanctions relief because further significant reductions in crude oil imports have not been mandated. Rather than this continued non-enforcement of the significant reduction requirements under FY2012 NDAA Section 1245, Congress could amend the legislation to allow for the maintenance of current levels of crude oil imports from Iran so long as Iran complies with the terms of the final nuclear agreement. This amendment of the legislation should also include a clarification that condensates are "counted" as part of the crude oil imports. During the JPOA period, as a concession to Iran, the Obama administration has permitted Iran unrestricted sales of condensates despite congressional interpretation of Section 1245 that condensates were also subject to the significant reduction requirements.⁴⁹

Since Section 1245 is linked to the Central Bank of Iran's role in supporting terrorism and other financial crimes, Congress should clarify in legislation that Iran's oil buyers are not permitted to increase their imports of crude oil from Iran – or rather if they do, they may be subject to U.S. sanctions – until the president can certify that Iran is no longer a state sponsor of terrorism and the CBI and Iran's entire financial sector are no longer primary money laundering concerns. Legislation should enable Congress to affirm or reject this certification.

In addition to restricting the purchases of Iran's customers to current levels, these congressional actions will support Europe's crude oil embargo, which has had a serious impact on Iran's oil exports. The cumulative effect of U.S. and European sanctions reduced Iranian crude oil exports, which accounted for approximately 80 percent of

⁴⁸ U.S. Department of the Treasury, "Frequently Asked Questions Relating to the Extension of Temporary Sanctions Relief to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran," July 21, 2014, page 7. (http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_faqs_ext.pdf)

⁴⁹ Arshad Mohammed & Timothy Gardner, "Why Higher Iran Oil Exports Are Not Roiling Nuclear Deal," *Reuters*, June 12, 2014. (<http://www.reuters.com/article/2014/06/12/us-iran-nuclear-oil-insight-idUSKBN0EN2GL20140612>)

Iran's export earnings, from 2.5 million barrels per day to approximately 1 million.⁵⁰ Congressional legislation to clarify that any suspension of the significant reduction requirements does not also allow for the increase in imports or new customers could provide support for European countries to resist potential pressure from their EU partners to suspend or lift the embargo prematurely.

6. Legislate under what circumstances funds in escrow accounts can be released.

Oil revenues are currently accumulating in escrow accounts subject to the "February 6" restrictions of ITRA.⁵¹ Iran can only spend these escrow funds on non-sanctionable goods, as defined under U.S. law, in the countries where they are accumulating (China, India, Japan, South Korea, Turkey, and Taiwan) or on humanitarian goods from a third country. The funds are accumulating in the escrow accounts because Tehran has not yet found enough goods in those countries that the government wants to purchase despite Japan's world-class pharmaceuticals industry, India's large generic drug industry, and South Korea's and Japan's sophisticated medical equipment production.

During the initial six months of the JPOA and the four-month extension, Iran has received \$7 billion in installments from these escrow accounts. The funds have been released to the Iranian government to spend at its discretion. Under Secretary Cohen testified before the full committee of the House Foreign Affairs Committee that the U.S. Treasury "can't guarantee" that Iran is not using these funds to finance terrorism.⁵²

As part of a comprehensive agreement or another extension of the interim agreement, the P5+1 may agree to release additional funds from the escrow accounts. Instead of allowing the repatriation of the funds to Iran, Congress should amend ITRA to create a mechanism for the release of specific amounts in installments if Iran is complying with its commitments. A payment plan could be tied to verifiable implementation of specific commitments under the agreement. This mechanism should ensure that the funds are being used for the purchase of non-sanctioned goods and not for illicit activities.

Congress could work with the Treasury Department to provide for the transfer of the escrow funds to a select few qualified foreign banks (for example, in Europe from where Iran could import goods and services), as determined by the Treasury Department. Iran could then have access to these oil revenues for the purposes of purchasing unlimited amounts of non-sanctionable goods, as defined under U.S. law, from the country where the qualifying bank is domiciled. These funds would not be permitted to be used for third-country, non-humanitarian trade but could be used to purchase humanitarian goods from any trading partner.

⁵⁰ "Sanctions Reduced Iran's Oil Exports and Revenues in 2012," *U.S. Energy Information Administration*, April 26, 2013. (<http://www.eia.gov/todayinenergy/detail.cfm?id=11011>)

⁵¹ Kenneth Katzman, "Iran Sanctions," *Congressional Research Service*, May 7, 2014, page 22. (<http://fas.org/sgp/crs/mideast/RS20871.pdf>)

⁵² David Cohen, "House Foreign Affairs Committee Holds Hearing on Iran Nuclear Negotiations," *Testimony before the House Foreign Affairs Committee*, July 29, 2014. (accessed via Congressional Quarterly)

As part of the amendment to ITRA, Congress could clarify that none of these escrowed oil funds can be repatriated back to Iran until Treasury certifies that Iran is no longer a “primary money laundering concern” or a state sponsor of terrorism.

Legislation should enable Congress to affirm or reject these certifications.

7. Work with the administration on licenses provided to those transacting business or other activities with Iran

Congress also needs greater insight into the administration’s ability to license certain transactions under both its executive orders, including in codified legislation, and under the International Emergency Economic Powers Act (IEEPA) authorities. Congress needs to know who is receiving licenses for doing business in Iran – from general licenses to specific licenses – and for what purposes. In addition to the de-designation processes for SDNs, including Iranian financial institutions, this is another way that the administration may provide select relief to Iran, relatively free of congressional oversight. Congress should require presidential certifications for any license granted and legislation should enable Congress to affirm or reject these certifications.

Other Sanctions

Press reports indicate that the terms of any final agreement are unlikely to address outstanding concerns regarding Iran’s support for terrorism, threatening and destabilizing behavior towards its neighbors, and systematic human rights abuses. As such, Congress should clarify that no sanctions relief will go to Iran’s Islamic Revolutionary Guard Corps (IRGC) or IRGC-affiliated entities. Terrorism and human rights sanctions should also be strengthened and expanded if the behavior underlying these sanctions continues. This is in keeping with the Obama administration’s insistence that the negotiations only cover “nuclear-related sanctions” and that as a matter of policy, terrorism and human rights sanctions will continue to be enforced.⁵³

8. Reinforce certifications for suspensions of sector-based sanctions.

In addition to imposing sector-wide energy sanctions, IFCA also designated Iran’s shipping, shipbuilding, and port operator sectors. The legislation further prohibited the transfer of goods and services to such sectors, and the sale, supply, or transfer of various

⁵³ For example, Jake Sullivan, then-national security adviser to Vice President Biden and deputy assistant to President Obama and current senior advisor to the U.S. government and participant in the P5+1 negotiations said, “We have made clear that sanctions relating to terrorism and sanctions relating to human rights violations are not covered by the discussions that we are having on the nuclear file . . . I can tell you, as a matter of policy this administration is committed to continuing to enforce and follow through on that set of sanctions.” Jake Sullivan, “Washington Forum: A Conversation with Jake Sullivan, Deputy Assistant to President Obama and National Security Adviser to Vice President Joe Biden,” *Foundation for Defense of Democracies Washington Forum 2014*, May 1, 2014. (http://www.defenddemocracy.org/stuff/uploads/documents/SullivanFinal_transcript_WF14.pdf)

metals and materials to blacklisted sectors, individuals, and any sector determined to be linked to the IRGC.⁵⁴

Congress should clarify that any suspension of these sector-based sanctions requires a presidential certification that each sector is not linked to the IRGC or involved in supporting terrorism or other illicit activities as stipulated under U.S. law. Congress could specify that the certification must be renewed every six months, and if the president cannot make the certification for a given sector, those sanctions would immediately snap back into effect. Legislation should enable Congress to affirm or reject these certifications.

9. Enforce and expand designations of IRGC-affiliated entities.

Designating entities and individuals in order to implement existing sanctions, including sanctions against the IRGC, is permitted under the JPOA. In August, the Treasury and State Departments announced the imposition of sanctions including “targeting Iran’s missile and nuclear programs, sanctions evasion efforts, and support for terrorism.”⁵⁵

Congress could also clarify that designations will continue and that no sanctions, whether based on the IRGC’s nuclear, ballistic missile, or terrorism activities, will be lifted against any entity or financial institution specifically designated because of its connection to the IRGC unless, and until, the president certifies that Iran is no longer a state sponsor of terrorism and the IRGC no longer meets the criteria as a designated entity under U.S. law. Legislation should enable Congress to affirm or reject these certifications.

As my colleagues at FDD, Emanuele Ottolenghi and Saeed Ghasseminejad, have argued, sanctioning IRGC entities and targeting the IRGC’s “economic empire” will “weaken those inside Iran who are most likely to oppose a deal and seek to sabotage it.”⁵⁶

10. Enforce and expand terrorism- and human rights-related designations.

Iran’s continued support for global terrorism requires that U.S. terrorism sanctions be maintained and expanded, notwithstanding any nuclear deal. Currently, Iran is subject to a wide range of terrorism-related sanctions imposed through both executive orders and

⁵⁴ U.S. Department of State, “Fact Sheet: Iran Freedom and Counter-Proliferation Act of 2012,” accessed June 25, 2014. (<http://www.state.gov/documents/organization/208111.pdf>)

⁵⁵ U.S. Department of the Treasury, Press Release, “Treasury Targets Networks Linked to Iran,” August 29, 2014; (<http://www.treasury.gov/press-center/press-releases/Pages/jl2618.aspx>) & U.S. Department of State, Press Release, “Additional Sanctions Imposed by the Department of State Targeting Iranian Proliferators,” August 29, 2014. (<http://www.state.gov/r/pa/prs/ps/2014/231159.htm>)

⁵⁶ Emanuele Ottolenghi & Saeed Ghasseminejad, “If The US Wants A Nuclear Deal, It Needs To Fully Enforce Its Sanctions Against Iran's Revolutionary Guards,” *Business Insider*, September 19, 2014. (<http://www.businessinsider.com/sanctioning-the-irgc-is-the-path-to-a-nuclear-deal-2014-9>)

legislation. The main target of these sanctions is Iran's IRGC, including its overseas terrorist arm, the Quds Force, designated by the United States for terrorism since 2007.⁵⁷

Congress should work with the Obama administration to enhance terrorism sanctions if Iran's terror finance and support for international terrorism continues, something the administration, as previously noted, has stated it is committed to doing. As government reports confirm, there remains strong evidence that Iran-backed terrorism has continued.⁵⁸

At the same time, Iran's human rights record has, by numerous expert accounts, not improved under President Hassan Rouhani.⁵⁹ The United Nations Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran concluded that human rights violations "persist, and in some cases appear to have worsened" over the past year.⁶⁰ Therefore, sanctions against Iranian human rights violators should remain in place regardless of a possible nuclear agreement with Iran.

Congress should work with the Obama administration to significantly expand U.S. human rights sanctions against any and all Iranian officials, entities, or instrumentalities engaged in human rights abuses. These designations would include targeted sanctions imposing travel bans and asset freezes on human rights abusers, economic sanctions against elements of the Iranian economy under their control, and stiff penalties against those who provide support to these abusers. A suggested list of potential sanctions targets includes the following Iranian persons and entities as well as any other persons or entities conducting transactions for or on behalf of these individuals or entities:

- the Supreme Leader of Iran;
- the President of Iran;
- a current or former key official of, manager or director of an entity that may be owned or controlled by, or senior adviser to:
 - the Supreme Leader of Iran;
 - the Office of the Supreme Leader of Iran;
 - the President of Iran;
 - the Office of the President of Iran;

⁵⁷ U.S. Department of State, Press Release, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism," October 25, 2007. (<http://2001-2009.state.gov/r/pa/prs/ps/2007/oct/94193.htm>)

⁵⁸ U.S. Department of State, "State Sponsors of Terrorism Overview," *Country Reports on Terrorism 2013*, April 30, 2014. (<http://www.state.gov/j/ct/rls/crt/2013/224826.htm>)

⁵⁹ "Iranian Nobel Laureate: Human Rights As Bad As Under Ahmadinejad," *Associated Press*, November 12, 2014; (<http://english.alarabiya.net/en/perspective/features/2014/11/12/Iranian-Nobel-laureate-Human-rights-as-bad-as-under-Ahmadinejad.html>) & Sangwon Yoon, "Iran Leader Fails to Deliver on Rights Promises, UN Says," *Bloomberg*, October 27, 2014. (<http://www.bloomberg.com/news/2014-10-27/iran-leader-fails-to-deliver-on-rights-promises-un-says.html>)

⁶⁰ United Nations General Assembly, "Situation of Human Rights in the Islamic Republic of Iran," August 27, 2014, page 3. (<http://shaheedoniran.org/wp-content/uploads/2014/09/A-69-356-SR-Report-Iran.pdf>)

- the Islamic Revolutionary Guard Corps;
 - the Basij-e Motaz'afin;
 - the Guardian Council;
 - the Ministry of Intelligence and Security of Iran;
 - the Atomic Energy Organization of Iran;
 - the Islamic Consultative Assembly of Iran;
 - the Assembly of Experts of Iran;
 - the Ministry of Defense and Armed Forces Logistics of Iran;
 - the Ministry of Justice of Iran;
 - the Ministry of Interior of Iran;
 - the prison system of Iran;
 - the judicial system of Iran; or
 - any citizen of Iran included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury;
- a citizen of Iran indicted in a foreign country for or otherwise suspected of participation in a terrorist attack; or
 - a family member of an individual described above who is not a United States person.

Congress could also direct the U.S. intelligence community to establish an interagency task force dedicated to finding and seizing assets of these human rights abusers. Congress could further require regular reporting on the progress being made by this “regime asset task force.” All of these sanctions could be expanded beyond asset blocking and visa bans to include, for example, sanctions against financial institutions that conduct transactions with persons sanctioned for human rights violations.

Conclusion

Despite optimism in the press and within the P5+1 that a comprehensive nuclear agreement that effectively constrains Iran’s illicit nuclear infrastructure is achievable, the Obama administration appears to be moving away from its commitments to verifiably dismantle “substantial” portions or “a lot” of Iran’s nuclear program. With significant parts of its nuclear infrastructure left intact, Iran’s record of nuclear deception, support for terrorism, human rights abuses and non-compliance with existing agreements does not inspire confidence in Tehran’s commitment to honor any final nuclear agreement. Throughout the JPOA period, congressional leaders on both sides of the aisle have remained clear-eyed about this record and the need for profound skepticism regarding Iranian commitments.

Congress designed many of the toughest sanctions that forced Tehran to the negotiation table. It should now therefore assert and act on its prerogative – and responsibility to its constituents – in helping to defend the core sanctions architecture it built.

Regardless of the post-November 24 scenario – whether the P5+1 and Iran reach a comprehensive agreement, reach a parameters agreement or expanded JPOA with an extension of the negotiations, or break off talks – Congress has a vital role to play to protect and enhance U.S. economic leverage. This leverage will be essential to enforce any deal and pressure Tehran to end the full range of its illicit activities. The worse the nuclear agreement – that is, the greater the amount of nuclear activity that Iran is allowed to maintain and the weaker the inspection, verification, and monitoring regime – the more important this economic leverage will become.

Unless the United States and our international partners are prepared to use military force to address every breach and every instance of non-compliance, American sanctions will be an effective mechanism to enforce any agreement and punish Iranian cheating so that the world is not threatened by a nuclear-armed Iran. Congress's role here can make the difference between a nuclear-armed Iran and an ensuing regional nuclear arms race and a more secure and stable region.

Thank you again for inviting me to testify before this distinguished Subcommittee. I look forward to your questions.