

“ENDING SANCTIONS: CONTRASTING THE IRAN AND LIBYA CASES”

**TESTIMONY
OF
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BEFORE
SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
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Chairman Roskam, Ranking Member Lewis, members of the Oversight Subcommittee, it's an honor to speak with you about Iran sanctions.

I've been asked to discuss how Iran's situation now, under the new nuclear deal, compares to Libya's situation in late 2003, after the Qaddafi regime renounced its nuclear and chemical weapons programs. I dealt with the Libya matter when I was Under Secretary of Defense for Policy, working for Secretary Don Rumsfeld, from July 2001 until August 2005.

The comparison of Iran and Libya comes up before this Subcommittee because Iran is subject to sanctions under 26 U.S.C. 901(j). That law says that U.S. taxpayers can't get credit for taxes paid to countries with which the United States has severed diplomatic relations or which the Secretary of State has designated as a supporter of terrorism. The President has the authority to waive that measure "in the national interest." President Obama may be considering such a waiver, now that Iran has entered into the nuclear deal formally known as the Joint Comprehensive Plan of Action (JCPOA).

Over ten years ago, in January 2005, President Bush waived the same measure on foreign tax credits regarding Libya, after the Libyan government relinquished its weapons-of-mass-destruction programs and cut its support for terrorism.

The question is: Does President Bush's waiver regarding Libya argue for a waiver now by President Obama regarding Iran?

I see material differences between the cases.

The Libyan regime made an unequivocal decision not only to stop its WMD programs, but to invite American and British engineers into Libya to dismantle the programs' facilities and to take the equipment out of the country. When the Americans and others entered Libya, they were let into all the locations they wanted

to inspect. They were given far more information than they already had. Libyan officials didn't play the game of saying that they'll confirm data if the foreigners will tell them what they know.

Libya's dictator, Muammar Qaddafi, had resolved to get out of the WMD business. His government announced the decision on television without qualifications or ambiguity. Qaddafi himself publicly confirmed it. The open, cooperative way that Libyan officials worked with Americans and others to disclose and dismantle the WMD programs persuaded everyone involved that Qaddafi was serious about permanently ending Libya's WMD programs. His words were clear and categorical and his actions were consistent with his words.

This is not, however, the case with the words and actions now of Iran's leaders.

In the JCPOA, the Iranian regime "reaffirms that under no circumstances will Iran ever seek, develop or acquire any nuclear weapons." But that simply restates its essential Nuclear Non-Proliferation Treaty obligation, which Iran accepted in 1970 and then, in recent years, violated. Iran's various nuclear activities are all violations of that obligation. That's why the United Nations Security Council supported economic sanctions against Iran. That's why there's been all the diplomacy for years between Iran, on the one hand, and the IAEA and the so-called EU-3 and the P-5-plus-one, on the other.

Iran has never admitted that its uranium enrichment, ballistic missile and other nuclear programs aim to create a weapons capability. It has never admitted that they violate the Non-Proliferation Treaty. It has never apologized for them and doesn't, in the nuclear deal, promise to end them permanently. So Iran's new reaffirmation that it won't seek to develop or acquire nuclear weapons is not valuable. Just as some clothing stores sell "pre-torn jeans," the Iranians have sold President Obama a pre-broken promise.

Consider other words and actions of the Iranian government. Iran has not made an open book of its nuclear-weapons-related secrets, as Libya did. It has not given international inspectors free rein to visit anywhere in Iran. On the contrary, it demanded restrictions on inspectors, making it difficult and perhaps impossible for them to prove violations, even if the inspectors somehow learn of them.

The JCPOA inspection regime focuses mainly on *declared* facilities – that is, those that the Iranian government declares are open for inspection. It's not reasonable to assume, however, that Iran would choose to violate the deal in a declared facility. The key to deterring or detecting violations is the power to inspect *undeclared* facilities promptly. But the JCPOA ensures that the Iranian government can block inspections of undeclared facilities, or at least defer them for over three weeks. As a practical matter, it will likely be able to defer inspections far longer than that. This undercuts the inspection regime. If Iran were challenged by a demand for inspection

of an undeclared facility, it would have substantial time to conceal or destroy evidence.

The issue of undeclared facilities is important. Iran over the years built large nuclear facilities that it managed to conceal from foreign eyes for long periods of time. A former top IAEA official, Olli Heinonen, now at Harvard University, commented a couple of years ago, "If there is no undeclared installation today . . . it will be the first time in 20 years that Iran doesn't have one."

Among the most notorious flaws of the JCPOA inspection regime is that it may permit the Iranians, in effect, to inspect themselves. At the Parchin military facility, for example, the IAEA agreed that Iranians rather than IAEA personnel could gather necessary soil samples and turn them over to the IAEA. This too undermines the inspection regime and shows that Iran has an entirely different approach from that of Libya a decade or so ago.

Unlike Libya, Iran has not invited American and other foreign engineers to come in and dismantle its nuclear facilities. Under the JCPOA, Iran preserves its nuclear facilities, including for enriching uranium and for building nuclear-capable ballistic missiles. Under UN Security Council sanctions resolutions, Iran was required to give up uranium enrichment entirely, but it's not required to do so under the JCPOA. Iran under the JCPOA is allowed to continue to enrich uranium, to continue nuclear research and development, to increase eventually the quality of the centrifuges used for enrichment and to continue to improve its technology for long-range ballistic missiles that have no purpose other than to deliver nuclear warheads.

As I mentioned, Section 901(j) sanctions can be based on a country's support for terrorism. It bears noting that, when President Bush lifted them for Libya, the Qadafi regime was showing that it was moving away from such support. The Iranian regime now, however, has made no such showing. On the contrary, it appears intent on continuing to finance, arm, train and aid Hezbollah and other terrorist organizations. President Obama has had to explain to critics that such support for terrorism does not violate the JCPOA and is a separate matter entirely.

To understand the differences between the Libyan and Iranian cases, it's helpful to recall why Libya renounced its WMD programs and why Iran agreed to the JCPOA.

The Qadafi regime in Libya grew anxious about its WMD programs. It had created them to bolster its security, but it came in time to view them as excessively costly. Ultimately, it feared that those WMD programs, rather than making Libya stronger, were putting the Qadafi regime in America's crosshairs. After the United States overthrew both the Taliban and Saddam Hussein regimes, Qadafi decided that it was simply too risky to persist with his WMD programs.

Economic sanctions were damaging Libya's economy. To obtain relief from UN Security Council sanctions, the Qadafi regime negotiated a deal to pay compensation to the families of victims of Pan Am 103, the plane from New York that Libyan agents in 1988 blew up over Lockerbie, Scotland. When the Security Council lifted sanctions in September 2003, the U.S. representative explained why America abstained rather than voting yes.

He cited Libya's involvement in terrorism and "most important—its pursuit of weapons of mass destruction and their means of delivery." Specifying that "Libya's continued nuclear infrastructure upgrades raise concerns" and that Libya was "actively developing biological and chemical weapons," he warned that the United States would "intensify its efforts to end Libya's threatening actions," and that this included keeping U.S. bilateral sanctions on Libya in force.

The United States demonstrated knowledge and resolve when it intercepted a ship carrying centrifuges from Malaysia to Libya in October 2003. Then, on December 13, 2003, U.S. forces in Iraq captured Saddam Hussein, who was humiliated on televisions around the world when he emerged disheveled and powerless from the "spider hole" in which he had been hiding. One can only imagine how those images of Saddam's degradation affected Qadafi. It was only six days later, on December 19, 2003, that the Libyan government announced that it would cooperate with the United States and Britain to disclose and dismantle its nuclear weapons program, end its work on chemical weapons, rid itself of advanced ballistic missiles and prove that it was not working on biological weapons.

The story of Iran and the JCPOA is different in important respects, though its roots also emerge from the American post-9/11 war on terrorism. Iran became willing to make concessions to get nuclear negotiations underway with the EU-3 (Britain, France and Germany) in 2003, only after U.S.-led forces had overthrown the regimes to Iran's right (in Afghanistan) and left (in Iraq). Iranian leaders, however, soon stopped worrying that America might also strike them militarily. As U.S. military problems in Iraq grew in 2004 and beyond, the Iranian regime evidently concluded that Western diplomacy was not backed by a credible threat of force.

Iranian officials wanted a deal to lift economic sanctions against their country, but they didn't negotiate under the pressure or fear felt by Qadafi. After President Obama came to office in 2009, they saw that the United States had no intention to prevent them militarily from acquiring nuclear weapons, despite President Obama's occasional *pro forma* declaration that "all options are on the table." They saw further that the United States, through official public statements and otherwise, was doing what it could to preclude Israeli military action against Iran.

President Obama agreed to direct U.S. participation in nuclear talks with Iran in 2013 and then to bilateral talks with Iran in 2014. This gave prestige to the Iranian regime, gratifying its leaders, who had long resented U.S. efforts to isolate them. For

a while, President Obama's team apparently tried to persuade them to renounce nuclear weapons, but the Iranian regime proved unpersuadable.

President Obama then radically changed U.S. policy without publically announcing as much. He continued to say he would block Iran from obtaining a nuclear weapon, but he dropped his previous insistence that Iran end and dismantle its nuclear program. The new policy, simply, was to delay Iran. It became clear that his chief goal went beyond the nuclear issue; it was forging a new U.S.-Iranian relationship that could blossom into a partnership on the basis of shared interests, including opposition to the Sunni Islamist extremism of ISIS.

President Obama evidently reasoned as follows: Continuing to press Iran for a renunciation of nuclear weapons would be vain. It would kill prospects for improved U.S.-Iranian relations. So, rather than fruitlessly insist on solving the nuclear problem once and for all, the nuclear talks should paper the problem over. The JCPOA needed only to delay Iran, not block it. The deal would serve its purpose if it allowed President Obama to argue that it was better than war, which was its sole alternative and was unacceptable. So much for the pretense that "all options are on the table." Iranian leaders seem in any event to have discounted that bluff long ago.

To achieve the paper deal, U.S. officials made concession after concession – regarding enrichment, anytime-anywhere inspections, the timing of lifting sanctions, missiles and so on. President Obama's new approach empowered Iran's leaders. They flaunted their leverage in various ways, through diplomatic inflexibility, disrespectful public statements about President Obama and America, and contemptuous treatment of American political prisoners. The U.S. concessions eventually brought everyone to common ground.

That, I believe, is how we reached the current juncture. Iran's nuclear program is not dead, as Libya's program was after Qadafi dropped it in December 2003. The main justifications for dropping foreign-tax-credit sanctions against Libya were that Qadafi had utterly abandoned his pursuit of WMD and cut support for terrorism. Neither of these justifications applies to Iran at present. Nor has the Iranian regime, to put it mildly, made America whole for having seized the U.S. embassy in 1979 and held U.S. diplomats hostage for over a year. Those outrages were why the U.S. severed diplomatic relations with Iran thirty-five years ago, which is essential to the rationale for Section 901(j) sanctions.

The JCPOA came into being mainly for two reasons. First, it served the Iranian regime's interest in removing economic sanctions. Iran will promptly receive hundreds of billions of dollars in unfrozen assets, oil revenues and other benefits of expanded trade and investment. And second, it served the Obama administration's

interest in a plausible way to claim that the Iranian nuclear problem is resolved. The key word here is “plausible,” for the problem is in fact not at all resolved.

The administration and its supporters rely on the JCPOA’s length, obscure wording and technical complexity to hide the reality that Iran remains committed and able to become a nuclear-weapons state in the near future, even if it complies with its obligations. It could have a nuclear weapon even sooner if it violates the deal.

Given its record, there’s no good reason to assume Iran will comply. Given the verification regime’s weaknesses, there’s no reason to assume we’ll detect, let alone be able to prove, violations when they occur. And given the long history of unpunished arms control violations by non-law-abiding regimes, there’s no reason to expect that America or anyone else will enforce the JCPOA if and when we do detect Iranian violations.

In fact, Iran has wasted no time in making a mockery of the whole exercise by announcing that it has tested a new nuclear-capable ballistic missile called the Emad. The test flouts U.N. Security Council Resolution 2232, which prohibits Iran from undertaking “any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology.” Resolution 2232 is the Security Council’s vehicle for implementing the JCPOA; it is part and parcel of the Iran nuclear deal. But Iran claims that it’s not bound to comply with Resolution 2232. In refraining from contradicting Iran on this point, President Obama has shown Iran that it can violate its nuclear obligations with impunity. We can expect more violations in the future with the same impunity.