

Congressional Testimony

Perspectives on the Strategic Necessity of Iran Sanctions

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Chairman Shelby, Ranking Member Brown, members of the Committee, 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 Patrick Clawson whose work I greatly admire.

I will focus my testimony on the strategic necessity of deadline-triggered sanctions aimed at ensuring the success of the current negotiations. Specifically, I will explain how these measures can restore U.S. negotiating leverage. I also will respond to what appear to be the Obama administration's main arguments against these deadline-triggered sanctions.

EXECUTIVE SUMMARY

Deadline-triggered sanctions are a strategic necessity to make it clear to Iran the consequences of its unwillingness to reach a timely and acceptable nuclear compromise. To date, the Iranian government remains unwilling to come into compliance with its international obligations as the search for a comprehensive agreement between the West and Iran enters the sixth year for the United States, and the twelfth year for the Europeans. At the same time, as U.S. negotiating leverage has diminished, the Obama administration has lowered its nuclear demands to try to accommodate the red lines laid out by Iran's Supreme Leader.

The White House also has provided a financial lifeline to Iran in the form of sanctions relief. As a result, Iran's economy has stabilized and is on a modest recovery path after a deep, sanctions-induced recession in 2012 and 2013. This has reduced Iranian regime fears of another economic crisis and increased economic resilience against future pressure.

Congress imposed many of the most impactful sanctions over the objections of the Obama administration. Using arguments that the Obama administration is repeating today, administration officials expressed deep concerns that Central Bank of Iran, oil export, and SWIFT (Society for Worldwide Interbank Financial Telecommunication) sanctions, amongst others, would alienate U.S. allies, undermine the international effort to isolate Iran, and redound to Iran's benefit. For example, in the Obama administration's intense pushback against congressional sanctions targeting Iran's central bank and oil exports, then-Secretary of the Treasury Timothy Geithner wrote a letter expressing the administration's objections:

I am writing to express the administration's strong opposition to this amendment because, in its current form, it threatens to undermine the effective, carefully phased, and sustainable approach we have taken to build strong international pressure against Iran ... In addition, the amendment would potentially yield a net economic benefit to the Iranian regime.¹

Obama administration officials now widely acknowledge the important role these congressional sanctions played in convincing Iran to come to the negotiating table. As those sanctions were aimed at changing the calculus of the Iranian regime regarding its commitment to retaining its nuclear program, and not just regarding the regime's willingness to negotiate, so too must

¹ Josh Rogin, "Menendez Livid at Obama Team's Push to Shelve Iran Sanctions Amendment," *Foreign Policy*, December 1, 2011. (<http://foreignpolicy.com/2011/12/01/menendez-livid-at-obama-teams-push-to-shelve-iran-sanctions-amendment/>)

deadline-triggered sanctions be part of the strategy to reverse the troubling dynamic of decreasing U.S. leverage and Iranian intransigence.

In its opposition to these new deadline-triggered sanctions, the Obama administration argues:

1. The Joint Plan of Action (JPOA) has “frozen” Iran’s nuclear program, and the deadline-trigger sanctions could threaten this achievement.

The JPOA has not frozen Iran’s program. Iran has suspended mostly those aspects of the program that no longer need significant advancement, while continuing to work on those elements of the program it has not yet mastered. This strategy follows the approach established by President Hassan Rouhani, dating back to his time as Iran’s chief nuclear negotiator with the EU3 from 2003 to 2005. Rouhani described this strategy as one in which, “We [Iran] only agreed to suspend activities in those areas where we did not have technical problems.”²

Iran has taken advantage of gaps and ambiguities in, and differences in interpretation regarding, the JPOA. It has engaged in mechanical testing of advanced centrifuges, accumulated greater stockpiles of low-enriched uranium in easily reversible oxide form, announced the construction of two new nuclear reactors, and continued to illicitly procure parts for its nuclear program. The JPOA also does not prevent Iran from moving forward on critical parts of its military nuclear infrastructure, including construction of the non-nuclear elements of its Arak heavy-water reactor, long-range ballistic missiles capable of carrying a nuclear warhead and, most critically, long-standing IAEA concerns about the possible military dimensions of Iran’s program.

2. Deadline-triggered sanctions violate a U.S. commitment to “refrain from imposing new nuclear-related sanctions.”

The JPOA does not prohibit the passage of sanctions to be imposed after the expiration of the deadline of the interim agreement. The deadline-triggered sanctions will be “imposed” if and only if no agreement is reached by the June 30, 2015 deadline. This deadline is not congressionally invented but rather a deadline agreed upon by the P5+1 and Iran. The bill also reportedly provides the President with unlimited 30-day waivers after the deadline to waive the imposition of new sanctions indefinitely.

The deadline-triggered sanctions wouldn’t tie negotiators hands. They are reportedly linked to whether or not the P5+1 and Iran have reached a viable agreement by June 30, 2015, and the trigger is not reportedly related to the content of the agreement.

3. Iran will walk away from the negotiations if sanctions, including deadline-triggered measures, are imposed.

² Hassan Rouhani, “Beyond the Challenges Facing Iran and the IAEA Concerning the Nuclear Dossier,” *Text of speech to the Supreme Cultural Revolution Council originally printed in Rahbord*, September 30, 2005, page 13. (<http://lewis.armscontrolwonk.com/files/2012/08/Rahbord.pdf>)

The Iranian threat to walk away from the negotiations is counter-historical. Despite multiple rounds of sanctions, Iran has remained at the negotiation table for over a decade, using talks to legitimize its nuclear weapons program and to avoid a full U.S.-led financial and trade embargo.

Iran has successfully used the JPOA period and previous negotiations to transform the debate from one of “Can Iran have a nuclear program?” to “How much of a nuclear program can Iran have?” While it is possible that Iranian negotiators might walk away temporarily from the talks, the history of the Iran talks suggests that they won’t, and if they do, they are likely to return.

There is also a strong economic reason for Iran not to walk away from the negotiations. If Tehran terminated the talks, such a move would trigger a program of even more severe sanctions than currently contemplated, including a complete financial and trade embargo that could cripple its economy and put the regime’s survival in question.

Finally, if negotiations break down upon the passage of sanctions triggered to the expiration of the JPOA deadline, this should raise questions about the durability of any future deal. Acquiescence to this threat now would hand Iran effective veto power over the future actions of American lawmakers or the next U.S. president and raise serious concerns about the ability of the United States to enforce any nuclear deal.

4. Tehran has “escalation dominance” through its ability to restart and expand its nuclear program.

Notwithstanding sanctions pressure, Iran has advanced its nuclear program, especially during the Ahmadinejad era. However, Iran has historically escalated its nuclear activities cautiously, so as not to invite a military response from the United States or Israel or to trigger crippling sanctions from the international community. Iranian nuclear escalation historically has involved incremental increases with the goal of avoiding egregious cheating that would precipitate a massive response.

Escalatory nuclear activities, where Iran moves to undetectable breakout through the rapid expansion of its enrichment capacity or blocks weapons inspectors from monitoring its declared facilities, would likely garner a negative international response. All the members of the P5+1 assess a nuclear-armed Iran as a threat to their own interests and are invested in the talks to stop Tehran from acquiring this capability. It is difficult to imagine that any member would support Iranian nuclear escalation in response to deadline-triggered sanctions.

The U.S., not Iran, retains “escalation dominance,” and can accordingly leverage greater economic pressure on the Islamic Republic if it engages in escalatory nuclear activities. Washington also retains far greater escalation dominance through its military, cyber, and covert power if Iran foolishly escalated.

5. The introduction of deadline-triggered sanctions would isolate the United States from our international coalition.

The idea that new sanctions against Iran – triggered off a deadline to which the entire P5+1 has agreed – would isolate the U.S. from its P5+1 allies, is an argument in conflict with the Obama administration's position on Russia. The U.S. and EU have imposed tough sanctions on Moscow related to the crisis over Ukraine and Crimea. The Obama administration has argued that its dispute with Russia over Ukraine will remain separate from the talks with Iran and that Moscow will not leave the P5+1 talks over Ukraine-related sanctions.

So far, the administration's assessment is correct: Russia remains committed to the P5+1 talks. Why would President Putin leave the P5+1, or become even more supportive of Iran, over deadline-triggered sanctions on Iran when he didn't after Washington imposed sanctions on his own country?

If the coalition has held against Iran despite Ukraine-related sanctions on Russia, Moscow is likely to stay put as a member of the coalition in dealing with Iran. It, too, is concerned about a nuclear-armed Iran and sees the negotiations as a way to protect its own interests. China is part of the P5+1 for similar reasons.

If Russia and China are likely to remain part of the coalition, primarily because the talks help secure their own interests, it is highly improbable that France, Great Britain, and Germany would break rank.

6. New deadline-triggered sanctions will empower the hardliners in Iran.

The direct and indirect economic relief precipitated by the Obama administration's decision to de-escalate the sanctions pressure has stabilized the Iranian economy and strengthened the hardliners who no longer fear the collapse of their economy and the prospect of a severe, sanctions-induced depression. They also have preserved both the essential elements of their nuclear infrastructure under the JPOA and the ability to move ahead on those parts of their military-nuclear program they haven't mastered. They are further emboldened by Iran's growing regional dominance over Iraq, Syria, Lebanon, and Yemen. It is not surprising that these hardliners, including the Supreme Leader himself, may not be willing to compromise further.

As it stands now, given the political climate in Iran, a deal based what the West is prepared to offer is unlikely unless the pressure on Tehran is intensified or Washington and its partners are willing to make future concessions. The goal of deadline-triggered sanctions is to convince that those in Iran who are still resisting further compromise that the Iranian regime cannot survive economically without a deal, and thus tip the scales in favor of nuclear compromise.

7. New sanctions are not needed because the fall in the price of oil is inflicting sufficient damage on Iran's economy.

The rapid decline in the price of oil is not a substitute for deadline-triggered sanctions. Iran has lived for two years without full access to its overseas oil revenues. Iran experienced its own asymmetric oil shock between 2012 and 2013 when U.S. sanctions targeted Iranian oil exports, requiring countries to make significant reductions in Iranian oil purchases, while locking up Iran's oil profits through a little-understood provision of the Iran Threat Reduction Act (ITRA).

Today, in a strange twist of fate, these restrictions blunt the full impact of the drop in oil prices on Iran's economy. Iran's foreign revenues from energy products are captured in escrow accounts, mitigating the direct pass-through of declining oil revenue on the Iranian economy.

To be sure, the drop in the price of oil will still be a drag on Iran's economy and has an impact on Iranian investor and consumer sentiment. But the Islamic Republic has weathered sanctions. It can weather the declining price of oil, too. If economic leverage has any chance of convincing Iran of the need for nuclear compromise, it will take deadline-triggered sanctions to signal the consequences of the failure to reach a deal. If no deal is reached, it will take major sanctions escalation, not just falling oil prices, to once again reanimate the fear the regime felt in 2012 and 2013 when it narrowly escaped potential economic collapse.

8. Sanctions will make it more likely that the United States will have to use military force to stop Iran's military-nuclear program.

Supporters of deadline-triggered sanctions believe that increased economic pressure on Iran will prevent war. As the Obama administration has acknowledged, these economic sanctions, including the congressional measures passed over the administration's objections, are the reason that Iran is negotiating seriously today. They remain the most effective tool for convincing Iran of the necessity of nuclear compromise, for ensuring Iranian compliance with a comprehensive agreement, and for punishing Iranian non-compliance.

By contrast, continuous extensions of the JPOA will only serve to help Iran advance its nuclear program in critical areas, build greater economic resiliency, and extend its influence regionally. This may lead to a situation in the future in which the president has insufficient economic leverage to respond to Iranian nuclear mendacity. At that point, he or she will be faced with a painful choice between accepting an Iranian bomb and using military force to forestall that possibility. This will make war more, not less, likely.

By deploying deadline-triggered sanctions to lay out the concrete consequences of continued Iranian nuclear intransigence, Congress can and should strengthen U.S. negotiating leverage and increase the likelihood of a peaceful nuclear compromise. This is in America's interest.

INTRODUCTION

To date, the Iranian government remains unwilling to come into compliance with its international obligations. At the same time, as the Obama administration has lowered its nuclear demands, U.S. negotiating leverage has diminished. If anything, the administration has accommodated the red lines laid out by Iran's Supreme Leader, Ali Khamenei. Let me state clearly, the administration deserves credit for its attempt to find a compromise with Iran. I support the diplomatic process. However many of its specific overtures have only hardened Iranian nuclear intransigence, as the search for a comprehensive agreement between the West and Iran enters the sixth year for the United States, and the twelfth year for the Europeans.

The largest obstacle to a deal right now, after Iranian intransigence, is the Obama administration's assumption that it has sufficient leverage to conclude an acceptable final deal. After a successful period of escalating congressionally-mandated sanctions targeting the Iranian economy, passed over the objections of the Obama administration (which subsequently embraced them), the White House has provided a financial lifeline to Iran in the form of sanctions relief. After receiving what will be \$12 billion in repatriated oil revenues by June 30, 2015, and many billions more in ancillary benefits, Iran's economy has stabilized and is on a modest recovery path. This comes after a severe sanctions-induced recession of 2012 and early 2013. The Iranian economy has undeniably benefited from both the direct and indirect economic relief provided as part of the November 24, 2013 Joint Plan of Action (JPOA), which is on its second extension to June 30, 2015. This has reduced Iranian regime fears of another economic crisis and increased economic resilience against future pressure.

The net result is that Western negotiating leverage has decreased. Only deadline-triggered sanctions can help Washington regain that leverage. These sanctions carry some risk but that risk can be mitigated. More importantly, the benefits outweigh the risks. Indeed, deadline-triggered sanctions are necessary to increase the pressure on Iran to reach a nuclear agreement that will verifiably prevent Iran from retaining a nuclear weapons capacity.

THE DIMINISHMENT IN U.S. NEGOTIATING LEVERAGE

A negotiated agreement is the preferred solution to peacefully preventing Iran from retaining a nuclear weapons capacity. A verifiable, comprehensive agreement would bring Iran into compliance with United Nations Security Council (UNSC) resolutions and International Atomic Energy Agency (IAEA) requirements. It is important to remember here that the goal of preventing Iran from achieving a nuclear weapons capability is not about Iranian capitulations to American demands, but rather about bringing Iran into compliance with international obligations.

An unfortunate dynamic has developed. The United States and its P5+1 negotiating partners continue to make concessions to try to accommodate Iranian Supreme Leader Ali Khamenei's red lines while Tehran escalates its nuclear demands.³ As Senate Foreign Relations Committee Ranking Member Robert Menendez has stated, "For over one year, we remain trapped in the same fruitless, cyclical narrative which has us conceding our positions – transforming the Arak reactor rather than dismantling it; converting Fordow for some alternate use, rather than closing it; and disconnecting centrifuges, rather than destroying them. And – perhaps more significantly – Iran isn't budging on full access to questionable sites and the duration of the agreement."⁴

³ Behnam Ben Taleblu, "Khamenei's Ominous Nuclear Infographic," *FDD Policy Brief*, May 9, 2014; (<http://www.defenddemocracy.org/media-hit/behnam-ben-taleblu-khameneis-ominous-nuclear-infographic/>) Behnam Ben Taleblu, "Khamenei's Expanding Nuclear Redlines," *FDD Policy Brief*, October 10, 2014; (<http://www.defenddemocracy.org/media-hit/behnam-ben-taleblu-khameneis-expanding-nuclear-redlines/>) & Ali Alfoneh, "Khamenei's Speech After the JPOA Extension," *FDD Policy Brief*, December 3, 2014. (<http://www.defenddemocracy.org/media-hit/ali-alfoneh-khameneis-speech-after-the-jpoa-extension/>)

⁴ Senator Robert Menendez, "Dismantling Iran's Nuclear Weapons Program: Next Steps To Achieve A Comprehensive Deal" *Senate Foreign Relations Committee*, December 3, 2014. (<http://www.foreign.senate.gov/press/chair/release/chairman-menendezs-opening-remarks-at-hearing-on-dismantling-irans-nuclear-weapons-program-next-steps-to-achieve-a-comprehensive-deal>)

Western negotiators also have reportedly given way on the long-standing international demand that Iran roll back its program to develop ballistic missiles capable of carrying nuclear weapons. *Reuters* reported in the spring that, “Iranian Foreign Minister Mohammad Javad Zarif merely laughed and ignored” U.S. negotiators when they sought to discuss Iran’s missile program and the possibility military dimensions of Tehran’s nuclear work.⁵

In July 2014, before the first JPOA extension, Khamenei significantly raised Iran’s demands by stipulating that Iran needs twenty times the enrichment capacity that it currently has.⁶ This demand underscored the wide gap between the P5+1 and Iran and further complicated efforts to impose reasonable limits on Iran’s uranium enrichment program, which is required, under multiple U.N. Security Council resolutions, to be suspended. In January 2015, Ali Akbar Salehi, head of the Atomic Energy Organization of Iran (AEOI), reiterated Khamenei’s statement and emphasized, “Now that Iran is at the apex of power and possesses the region’s golden key, it will not climb down from its demands.”⁷

The United States has not pushed back. Obama administration officials are on record committing to a deal that will “dismantle” “a lot” or “significant” portions of Iran’s nuclear infrastructure.⁸ But, based on press reporting and statements from administration officials, it now appears that the terms of a deal being negotiated in Geneva could fall far short of the dismantlement of “significant” portions or “a lot” of Iran’s nuclear program.⁹ P5+1 negotiators have put proposals on the table requiring that Iran disconnect the centrifuge piping at its enrichment facilities instead of dismantling its centrifuges entirely.¹⁰ This is not an acceptable compromise. This scenario would position Iran to be able to easily resurrect its enrichment program in as little as a few weeks, simply by reconnecting the piping, or perhaps longer if excess centrifuges were removed and Iran could somehow be prevented from replacing them with fewer but more advanced

⁵ Louis Charbonneau & Parisa Hafezi, “Exclusive: Iran Pursues Ballistic Missile Work, Complicating Nuclear Talks,” *Reuters*, May 15, 2014. (<http://www.reuters.com/article/2014/05/15/us-iran-nuclear-missiles-idUSBREA4E11V20140515>)

⁶ Saeed Kamali Dehghan & Julian Borger, “Iran Needs Greater Uranium Enrichment Capacity, Says Ayatollah Ali Khamenei,” *The Guardian* (U.K.), July 8, 2014. (<http://www.theguardian.com/world/2014/jul/08/iran-increase-uranium-enrichment-capacity-supreme-leader-ali-khamenei>)

⁷ Ali Alfoneh, “Iran Nuclear Chief Reveals Gaps With P5+1,” *FDD Policy Brief*, January 13, 2015. (<http://defenddemocracy.org/media-hit/ali-alfoneh-iran-nuclear-chief-reveals-gaps-with-p51/>)

⁸ 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/>) Secretary of State John Kerry, “The P5+1’s First Step Agreement With Iran on its Nuclear Program,” *Testimony before the House Committee on Foreign Affairs*, December 10, 2013; (<http://www.state.gov/secretary/remarks/2013/12/218578.htm>) “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/) & The White House, Press Release, “Press Briefing by Press Secretary Jay Carney,” January 23, 2014. (<http://www.whitehouse.gov/the-press-office/2014/01/23/press-briefing-press-secretary-jay-carney-1232014>)

⁹ 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 E. 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)

¹⁰ David E. 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)

machines.¹¹ Yet, even after the West appeared willing to make this ill-advised concession, Iran refuses to reach an agreement with the international community.

As Robert Einhorn, former State Department special advisor for nonproliferation and arms control and former U.S. delegate to the Iran nuclear negotiations acknowledges, the “United States has made substantial concessions on the enrichment issue ... but Iran has hardly budged.”¹² He correctly notes that the United States has changed its position from “a ban on enrichment to allowing a small enrichment program and later from a small number of centrifuges to a significantly higher number. It also agreed that once the agreement expires, Iran would be free to proceed with its enrichment program in a manner and pace of its own choosing.”

Iran, by contrast, has only “been prepared to discuss readily-reversible modifications of its centrifuge program that would only slightly reduce its existing enrichment capacity, it has not been willing to scale back its centrifuge capability sufficiently to make a compromise possible.”¹³

Meanwhile, Iran is asserting regional dominance. In Lebanon, Hezbollah, terrorist group and Iranian proxy, has become the dominant political and military force;¹⁴ in Iraq, the elite Quds Force of Iran’s Islamic Revolutionary Guard Corps (IRGC) has reportedly taken over the defense of Iraq and the organization and direction of Iraqi forces against the Islamic State;¹⁵ and in Yemen, Houthi militants supported by Iran have captured the presidential compound and control the capital of Sana’a.¹⁶ Iranian officials openly brag about their newfound regional dominance. Ali Riza Zakani, a member of the Iranian parliament who is close to Iran’s Supreme Leader, reportedly declared last year that three Arab capitals had “fallen into Iran’s hands and belong to the Iranian Islamic Revolution,” and that Sana’a would soon be the fourth.¹⁷

In Syria, more than a year after President Obama walked back from his redline over the use of chemical weapons, Iran’s ally President Bashar al-Assad is more secure in his position. Indeed, the U.S. and coalition forces appear tacitly allied with Assad in the fight against the Islamic State. President Obama’s letter to Khamenei in November 2014 about cooperation between the

¹¹ Olli Heinonen, “Key Limitations on Iran’s Uranium Enrichment Program,” *Iran Task Force*, October 2014. (http://taskforceoniran.org/pdf/Enrichment_Memo.pdf)

¹² Robert Einhorn, “Will Iran Play Ball in Nuke Talks?,” *The National Interest*, January 14, 2015. (<http://nationalinterest.org/feature/will-iran-play-ball-nuke-talks-12031?page=4>)

¹³ Robert Einhorn, “Will Iran Play Ball in Nuke Talks?,” *The National Interest*, January 14, 2015. (<http://nationalinterest.org/feature/will-iran-play-ball-nuke-talks-12031?page=4>)

¹⁴ Tony Badran, “An Iranian Proxy Still Holds All The Cards In Lebanon,” *Business Insider*, December 18, 2014. (<http://www.businessinsider.com/an-iranian-proxy-still-holds-all-the-cards-in-lebanon-2014-12>)

¹⁵ Hamza Hendawi Qassim Abdul-Zahra, “Iran Has Never Been More Influential In Iraq,” *Associated Press*, January 12, 2015. (<http://www.businessinsider.com/iran-has-never-been-more-influential-in-iraq-2015-1>)

¹⁶ “Houthi Storm Presidential Palace in Yemen,” *Al Arabiya* (Saudi Arabia), January 20, 2015. (<http://english.alarabiya.net/en/News/middle-east/2015/01/20/Houthi-rebels-take-over-Yemeni-presidential-palace-.html>)

¹⁷ Michael Segall, “How Iran Views the Fall of Sana’a, Yemen: ‘The Fourth Arab Capital in Our Hands,’” *Jerusalem Center for Public Affairs*, November 3, 2014. (<http://jcpa.org/article/iran-sanaa-yemen/>)

United States and Iran against the Islamic State in Iraq and Syria¹⁸ reinforces the notion that there is a growing U.S.-Iran détente and possible American-Iranian coordination to weaken the Islamic State.¹⁹ If anything, Obama's letter reinforced the perception that Washington *needs* Tehran, and this strengthens Iranian leverage at the nuclear negotiations.

Simultaneously, as a result of diminishing sanctions pressure, the Iranian economy has shown signs of modest growth and stabilization. There has been a notable shift in market sentiment,²⁰ both among Iranians and those companies interested in doing business with Iran. International companies that had refrained from engaging in transactions with Tehran over concerns about reputational and business risk are now exploring ways to re-enter the Iranian market in the event that sanctions are ultimately relaxed. And their prevailing assumption is that it is only a matter of time. Just this month Abbas Araghchi, Iran's chief nuclear negotiator, reportedly boasted according to Iranian media that America had "declare[d] to the entire world that the sanctions are still in place and only a part of the restrictions against Iran have been suspended" but that they had "proved unsuccessful to a large degree."²¹

Meanwhile, 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.²²

Iran has been on a modest, albeit fragile, 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. This included the targeting of: the Central Bank of Iran, Iranian oil exports, access to Iranian oil revenues, access to the SWIFT international banking system, the National Iranian Oil Company, 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 (2005-2013) further exacerbated these sanctions-induced shocks. Since the election of Hassan Rouhani as Iran's president in June 2013, however, the economy has stabilized. Rouhani has a more competent economic team, working under less severe sanctions-induced economic stress than its predecessors, which has implemented more effective monetary and fiscal policies. This has strengthened the durability of Iran's recovery.

While Iran will not experience an economic boom until the vast majority of sanctions have been lifted, the diminished sanctions pressure and changing market psychology have stabilized the economy and strengthened its resilience to future pressure. Iran's official inflation rate dropped

¹⁸ 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://www.wsj.com/articles/obama-wrote-secret-letter-to-irans-khamenei-about-fighting-islamic-state-1415295291?autologin=y>)

¹⁹ Jay Solomon & Maria Abi-Habib, "U.S., Iran Relations Move to Détente," *The Wall Street Journal*, October 28, 2014. (<http://www.wsj.com/articles/u-s-iran-relations-move-to-detente-1414539659?autologin=y>)

²⁰ Paul Domjan & Mark Dubowitz, "New Sentiment Indicator Shows Positive Impact of Sanctions Relief on Iran's Economy," *FDD Iran Sanctions Analysis*, May 15, 2014. (<http://defenddemocracy.org/media-hit/dubowitz-mark-new-sentiment-indicator-shows-positive-impact-of-sanctions-relief-on-irans/#sthash.AEV3FK45.dpuf>)

²¹ "Araqchi Stresses US Failure in Spoiling World's Post-Geneva Opportunities for Mending Ties with Iran," *Fars News Agency* (Iran), January 3, 2015 (<http://english.farsnews.com/newstext.aspx?nn=13931013001218>)

²² 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)

from 40 percent in 2013 to under 20 percent by 2014, the rial is no longer plummeting, and GDP is forecast at about 2.5 percent for 2014/2015 compared to negative 6.6 percent in 2012/2013.²³ Even with oil prices plummeting, and the rial softening, Iran's economy is still likely to grow in 2015/16 by around 1.5 percent. This is a view corroborated by the recent World Bank global report, which tends to be conservative.²⁴

The stabilization of the Iranian economy is a worrying development given the importance of economic pressure as an instrument of negotiating leverage. It is also a direct result of the Obama administration's decision to de-escalate the sanctions pressure, and the direct and indirect economic relief provided as part of the JPOA. These concessions represent a marked departure from years of sanctions escalation under George W. Bush and the first Obama administration, in which Congress played a critical role in imposing the most meaningful and effective sanctions on the Islamic Republic.

HISTORY OF SANCTIONS ESCALATION

Since 2006, when the United States joined the Europeans in negotiations with Iran and implemented a parallel pressure campaign to isolate Iran's economy, escalating sanctions have been effective in convincing Iran to negotiate over its illicit nuclear program.

Although Iran was first added to the State Department's State Sponsors of Terrorism list in 1984 and was subsequently under U.S. sanctions for its support for terrorism, missile proliferation, human rights abuses, and its nuclear program,²⁵ these sanctions failed to halt Iran's illicit activities. Beginning in 2006, the Bush administration, and then the Obama administration, with bipartisan leadership from Congress, designed a new and unprecedented campaign of economic pressure.

In the first two and a half years of the effort, beginning during the Bush administration, then-Treasury Under Secretary for Terrorism and Financial Intelligence Stuart Levey made more than 80 visits to foreign countries to meet not only with his government counterparts but also with the heads of more than 60 banks.²⁶ These meetings had the effect of conditioning the environment to reject Iranian transactions. Simultaneously, using Executive Orders 13224 (2001) and 13382 (2005) targeting the financing of terrorism and weapons proliferation, respectively, Treasury began to designate individual Iranian banks for their role in facilitating illicit financial activities.

The State Department supported Treasury's efforts through a diplomatic push to explain the financial campaign, as well as to increase the political pressure on Iran. Working bilaterally and within the United Nations, Foggy Bottom began to build international buy-in for broader

²³ 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)

²⁴ World Bank, "Global Economic Prospects," January 2015, page 86. (http://www.worldbank.org/content/dam/Worldbank/GEP/GEP2015a/pdfs/GEP15a_web_full.pdf)

²⁵ "State Sponsors of Terrorism," *U.S. Department of State Website*, accessed June 13, 2014. (<http://www.state.gov/j/ct/list/c14151.htm>)

²⁶ Robin Wright, "Stuart Levey's War," *The New York Times*, November 2, 2008. (<http://www.nytimes.com/2008/11/02/magazine/02IRAN-t.html?pagewanted=all&r=0>)

sanctions against Iran. It was not easy. While the U.N. Security Council eventually passed four sanctions resolutions against Iran starting in 2006,²⁷ each resolution required months of negotiations and significant compromises in order to get Chinese and Russian approval.

In 2009, the Obama administration, in an attempt to demonstrate its commitment to engagement with Tehran, suspended the Iran sanctions escalation campaign. Rather than convince the Iranians to negotiate, the pause in the steady drum beat of designations pursuant to existing executive orders provided Iran with economic breathing room and time to march ahead with its nuclear program. It also undermined the stated goal of the sanctions – to protect the integrity of the global financial system from Iranian illicit conduct.²⁸

Meanwhile, Iran continued to refuse to cooperate with the IAEA or to comply with U.N. Security Council resolutions. Following the U.S., French, and British revelation of the existence of the previously undeclared Fordow nuclear enrichment plant near Qom in September 2009,²⁹ Iran briefly negotiated and agreed to a proposal to export its 20 percent enriched uranium for reprocessing and fuel fabrication for the Tehran Research Reactor.³⁰ Within weeks of the announced deal, however, Supreme Leader Khamenei voiced strong opposition to the agreement.³¹ Iran then offered counterproposals that weakened the deal and were unacceptable to the P5+1.³²

Once the Obama administration recognized that its diplomatic overtures were being ignored, it gave Treasury permission to resume the financial pressure campaign. Juan Zarate, a former Treasury Assistant Secretary who was the architect of what became Treasury's Office of Terrorism and Financial Intelligence, observed that it took several years to rebuild the economic pressure necessary to convince Iranian leaders to come to the table.³³

Concerned that the pressure was insufficient to halt Iran's nuclear weapons program, Congress intervened through the bipartisan passage of multiple pieces of legislation.³⁴ Passed between

²⁷ "United Nations Sanctions," *Foundation for Defense of Democracies Website*, accessed October 28, 2014.

(<http://defenddemocracy.org/united-nations-sanctions>)

²⁸ Juan Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare* (New York: Public Affairs, 2013), pages 324-328.

²⁹ David E. Sanger & William J. Broad, "U.S. and Allies Warn Iran Over Nuclear 'Deception,'" *The New York Times*, September 25, 2009. (<http://www.nytimes.com/2009/09/26/world/middleeast/26nuke.html?pagewanted=all>)

³⁰ David E. Sanger, "Iran Deal Would Slow Making of Nuclear Bombs," *The New York Times*, October 21, 2009. (<http://www.nytimes.com/2009/10/22/world/middleeast/22nuke.html>)

³¹ Nima Gerami, "Leadership Divided? The Domestic Politics of Iran's Nuclear Debate," *The Washington Institute for Near East Policy*, February 2014, page 34.

(http://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus134_Gerami-2.pdf)

³² "Iran Puts Conditions on Nuclear Fuel Swap," *USA Today*, December 12, 2009.

(http://usatoday30.usatoday.com/news/world/2009-12-12-iran-nuclear_N.htm)

³³ Juan Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare* (New York: PublicAffairs, 2013), pages 324-328; & Stuart Levey, "Comments During Panel on Terrorist Financing," Aspen Institute, July 2011, cited in "Zarate Blasts Obama's Iran Sanctions Pause," *Money Jihad*, October 7, 2011.

(<http://moneyjihad.wordpress.com/2011/10/07/zarate-blasts-obamas-iran-sanctions-pause/>)

³⁴ 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;

(<http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>) U.S. House of Representatives, 112th Congress, 1st Session, P.L. 112-81, "National Defense Authorization Act for Fiscal Year 2012," Section 1245:

2010 and 2013, the congressional sanctions targeted Iran's financial, energy, shipping, insurance, precious metals, and industrial trade, including successful efforts (initially opposed by the Obama administration) to cut off Iran's economic and financial lifelines. This included its crude oil exports, Central Bank of Iran (CBI) access to the global financial system, and the use of the SWIFT banking system.

Of these legislative sanctions, the most impactful was the Menendez-Kirk amendment, under Section 1245 of the National Defense Authorization Act (NDAA) of 2012. It built on an extraordinary step taken by Treasury on November 22, 2011. Expanding on its designations of Iranian financial institutions, Treasury issued a Section 311 (of the Patriot Act) finding that the entire country of Iran was "a jurisdiction of primary money laundering concern," citing Iran's "support for terrorism," "pursuit of weapons of mass destruction," and use of "deceptive financial practices to facilitate illicit conduct and evade sanctions."³⁵ Treasury targeted the CBI and made it clear that the country's entire financial system posed "illicit finance risks for the global financial system."³⁶

The Menendez-Kirk amendment, building off of Treasury's 311 finding, targeted foreign financial institutions conducting transactions with the Central Bank of Iran.³⁷ The legislation blocked the assets of designated Iranian financial institutions, including the CBI. Menendez-Kirk also prohibited access to the U.S. financial system for any foreign financial institution that the President determined had conducted or facilitated significant financial transactions with the Central Bank of Iran or any other designated Iranian financial institution (with humanitarian exceptions as well as crude oil exceptions for those countries "significantly reducing" their volume of crude oil imports). The implementation of these sanctions effectively cut off the CBI from the global financial system and reduced Iranian crude oil exports, which accounted then for approximately 80 percent of Iran's export earnings, from 2.5 million barrels per day to approximately 1 million.³⁸

Despite the broad bipartisan support for the Menendez-Kirk amendment, the Obama White House strongly opposed it. Opposition to the idea of sanctioning the Central Bank of Iran and

Imposition of Sanctions With Respect to the Financial Sector of Iran, *Government Printing Office*, 2011; (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1540enr/pdf/BILLS-112hr1540enr.pdf>) 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>) & U.S. House of Representatives, 112th Congress, 2nd Session, H. R. 4310, "National Defense Authorization Act for Fiscal Year 2013," Section 1241: Iran Freedom and Counter-Proliferation Act of 2012, *Government Printing Office*, 2012. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr4310enr/pdf/BILLS-112hr4310enr.pdf>)

³⁵ 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>)

³⁶ 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>)

³⁷ U.S. Department of the Treasury, Press Release, "Fact Sheet: Treasury Amends Iranian Financial Sanctions Regulations to Implement the National Defense Authorization Act," February 27, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1434.aspx>)

³⁸ U.S. Energy Information Administration, "Sanctions Reduced Iran's Oil Exports And Revenues In 2012," *Today in Energy*, April 26, 2013. (<http://www.eia.gov/todayinenergy/detail.cfm?id=11011>)

Iranian oil exports dated back to the Bush administration. It stemmed from fear of sending shock waves through financial and energy markets. However, Congress ultimately challenged conventional wisdom that these sanctions should be off limits.³⁹ In December 2011, then-Treasury Secretary Geithner wrote a letter to Senate leaders expressing the “administration’s strong opposition to this amendment,” and Under Secretary of State Wendy Sherman and Treasury Under Secretary David Cohen spoke out against the amendment at a Senate Foreign Relations Committee hearing.⁴⁰

Using arguments that they are repeating today, Obama administration officials expressed deep concerns that the amendment would alienate U.S. allies, undermine the international effort to isolate Iran, and rebound to Iran’s benefit.⁴¹ Congress overrode their objections, however. The final version of the amendment passed by a vote of 100-0, including with the support of then-chairman of the Senate Foreign Relations Committee John Kerry.⁴² Obama administration officials now acknowledge that the provision was “extraordinarily successful in driving down Iran’s ability to sell oil” and has “proven to be so effective.”⁴³

In February 2012, a similar dynamic developed as Congress pushed for new coercive sanctions measures.⁴⁴ By that time, SWIFT (Society for Worldwide Interbank Financial Telecommunication) represented one of Tehran’s last entry points into the global financial system. Iran had been using SWIFT’s ubiquitous electronic financial messaging service to conduct business with its trading partners, to sell its oil, to raise capital for its energy sector, to procure energy-related equipment and technology, and to buy and sell other goods and services. In 2010, 19 Iranian banks and 25 Iranian entities reportedly used SWIFT more than 2 million times, sending 1,160,000 messages and receiving 1,105,000.⁴⁵ These messages and transactions amounted to \$35 billion in trade with Europe alone.⁴⁶

Congress sought to prevent Iran from accessing the SWIFT system in accordance with SWIFT’s own bylaws requiring that its “services should not be used to facilitate illegal activities.”

³⁹ John Hannah, “Sanctioning Iran’s Central Bank: An Important Step Too Long In Coming,” *Foreign Policy*, May 17, 2012. (<http://foreignpolicy.com/2012/05/17/sanctioning-irans-central-bank-an-important-step-too-long-in-coming/>)

⁴⁰ Josh Rogin, “Menendez Livid at Obama Team’s Push to Shelve Iran Sanctions Amendment,” *Foreign Policy*, December 1, 2011. (<http://foreignpolicy.com/2011/12/01/menendez-livid-at-obama-teams-push-to-shelve-iran-sanctions-amendment/>)

⁴¹ Josh Rogin, “Menendez Livid at Obama Team’s Push to Shelve Iran Sanctions Amendment,” *Foreign Policy*, December 1, 2011. (<http://foreignpolicy.com/2011/12/01/menendez-livid-at-obama-teams-push-to-shelve-iran-sanctions-amendment/>)

⁴² Josh Rogin, “Iran Sanctions Amendment Emerges from Conference Largely Intact,” *Foreign Policy*, December 13, 2011. (<http://foreignpolicy.com/2011/12/13/iran-sanctions-amendment-emerges-from-conference-largely-intact/>)

⁴³ Under Secretary of the Treasury for Terrorism and Financial Intelligence David Cohen, “FY15 Department of the Treasury’s Office of Terrorism and Financial Intelligence Budget,” *Testimony before the Senate Appropriations Subcommittee on Financial Services and General Government*, April 2, 2014.

(<http://www.cq.com/doc/congressionaltranscripts-4453825?5&search=Rz3w3nor>)

⁴⁴ Paul Richter, “Obama Administration Takes Back Seat On Iran Sanctions,” *Los Angeles Times*, February 17, 2012. (<http://articles.latimes.com/2012/feb/17/world/la-fg-us-iran-20120218>)

⁴⁵ “Annual Review 2010,” *SWIFT Website*, accessed January 9, 2012, page 29.

(http://www.swift.com/about_swift/publications/annual_reports/annual_review_2010/SWIFT_AR2010.pdf)

⁴⁶ Editorial, “Swift Sanctions on Iran,” *The Wall Street Journal*, February 1, 2012.

(<http://online.wsj.com/news/articles/SB10001424052970203718504577178902535754464>)

Moreover, SWIFT was required by its own bylaws to prohibit access if a “user is subject to sanctions.”⁴⁷ The Senate Banking Committee began working on an amendment. Co-authored by Senators Menendez and Roger Wicker, and inspired by Senator Mark Kirk, the amendment provided the administration with the authority to sanction financial communications services providers, including SWIFT, if they serviced EU-designated financial institutions. The amendment ultimately became part of the Iran Threat Reduction and Syria Human Rights Act (ITRA) of 2012 and passed with overwhelming bipartisan support.

The Obama administration, however, was hesitant to target Iran’s access to SWIFT. The administration sought to persuade key legislators that it was better positioned to pursue this matter quietly rather than having Congress adopt punitive measures against a critical global financial actor, like SWIFT. However, as in other cases of sanctions against Iran, congressional pressure proved to be useful leverage in persuading foreign governments, in this case the European Union, to pass and enforce their own sanctions.

The European Council soon announced that, “no specialized financial messaging shall be provided to those persons and entities subject to an asset freeze.” EU regulators instructed SWIFT to remove specified Iranian banks from the SWIFT network.⁴⁸ SWIFT’s chief executive Lázaro Campos announced that his consortium would remove Iranian banks, noting that, “disconnecting banks is an extraordinary and unprecedented step for SWIFT. It is a direct result of international and multilateral action to intensify financial sanctions against Iran.”⁴⁹ Once again, the threat of congressional sanctions, passed over the objections of the Obama administration, played an important role in persuading foreign governments, in this case the EU, to comply with U.S.-led pressure on Iran.⁵⁰

In short, Congress has withstood pressure from the Obama administration and moved ahead in a broad, bipartisan way to impose several of the most impactful sanctions on Iran. These sanctions were later embraced by the administration, and led to Iran’s sanctions-induced economic crisis in 2012 and 2013, which provided the U.S. with its best leverage to convince Iran to compromise on its nuclear program.

Today, however, P5+1 sanctions relief and the decision by the Obama administration to de-escalate the sanctions pressure have undercut that leverage. Iran’s Supreme Leader Khamenei remains unwilling to compromise. Now, deadline-triggered sanctions must be part of the strategy to reverse the troubling dynamic of decreasing U.S. leverage and Iranian intransigence.

DEADLINE-TRIGGERED SANCTIONS: ARGUMENTS & RESPONSES

⁴⁷ “SWIFT Corporate Rules,” *SWIFT Website*, accessed September 6, 2014.

(http://www.swift.com/about_swift/legal/swift_corporate_rules?rdct=t)

⁴⁸ “Payments System SWIFT to Expel Iranian Banks Saturday,” *Reuters*, March 15, 2012.

(<http://www.reuters.com/article/2012/03/15/us-nuclear-iran-idUSBRE82E15M20120315>)

⁴⁹ Rick Gladstone & Stephen Castle, “Global Network Expels as Many as 30 of Iran’s Banks in Move to Isolate Its Economy,” *The New York Times*, March 16, 2012. (http://www.nytimes.com/2012/03/16/world/middleeast/crucial-communication-network-expelling-iranian-banks.html?_r=0)

⁵⁰ Rachelle Younglai & Roberta Rampton, “U.S. Pushes EU, SWIFT to Eject Iran Banks,” *Reuters*, February 15, 2012. (<http://www.reuters.com/article/2012/02/16/us-iran-usa-swifidUSTRE81F00120120216>)

Obama administration officials have come to acknowledge the important role sanctions played in convincing Iran to come to the negotiating table.⁵¹ As those sanctions were aimed at changing the calculus of the Iranian regime, so too are new deadline-triggered sanctions aimed at convincing the Iranian government to compromise.

The following are the arguments and responses on the legitimacy and efficacy of deadline-triggered sanctions.

1. The Joint Plan of Action has “frozen” Iran’s nuclear program; deadline-trigger sanctions threaten this achievement.

Argument

President Obama and senior administration officials have argued that the Joint Plan of Action has “frozen” Iran’s nuclear program and, in key areas, “rolled it back.”⁵² They argue that deadline-triggered sanctions could put an end to the negotiations,⁵³ or prevent them from preserving the JPOA’s status quo, which, even if imperfect, is better than the alternatives.⁵⁴ The administration warns that deadline-triggered sanctions could lead to Iranian nuclear escalation shortening Iran’s “breakout” time or clandestine “sneakout” ability,⁵⁵ a rupture of the international coalition,⁵⁶ and the necessity of U.S. military strikes to prevent an Iranian nuclear weapon.⁵⁷

⁵¹ For example, see The White House, Office of the Press Secretary, “Background Briefing by Senior Administration Officials on First Step Agreement on Iran’s Nuclear Program,” November 24, 2013. (<http://www.whitehouse.gov/the-press-office/2013/11/24/background-briefing-senior-administration-officials-first-step-agreement>)

⁵² For example, see Marie Harf, “Daily Press Briefing,” *U.S. Department of State*, January 14, 2015; (<http://www.state.gov/r/pa/prs/dpb/2015/01/235983.htm#IRAN2>) President Barack Obama, “President Obama and UK Prime Minister David Cameron Hold Joint News Conference,” January 16, 2014; (<http://www.cnn.com/TRANSCRIPTS/150116/se.01.html>) Secretary of State John Kerry, “Extension of Iran Nuclear Talks,” *U.S. Department of State*, July 18, 2014; (<http://www.state.gov/secretary/remarks/2014/07/229491.htm>) & Samantha Power, “Remarks at the University of Louisville McConnell Center,” *University of Louisville*, January 12, 2015. (<http://usun.state.gov/briefing/statements/235806.htm>)

⁵³ Laura Rozen & Julian Pecquet, “US Tells Congress New Sanctions Could Derail Iran Deal Talks,” *Al-Monitor*, July 29, 2014. (<http://www.al-monitor.com/pulse/originals/2014/07/us-congress-iran-nuclear-deal-sanctions.html#>)

⁵⁴ “Kerry Says Only ‘Fools’ Would Walk Away From Nuclear Talks,” *Agence France-Presse*, November 24, 2014. (<http://news.yahoo.com/kerry-says-only-fools-walk-away-nuclear-talks-180123390.html>)

⁵⁵ For example: If legislation is passed, “likelihood of the entire negotiations collapsing is very high. And if that happens, there is no constraint on Iran, at that point, going back and doing exactly what it had been doing before they came to the table: developing a heavy water reactor that, once built, is extraordinary difficult to dismantle and very difficult to hit militarily, going back at underground facilities that are very hard to reach militarily, accelerating advanced centrifuges that shorten the time span in which they can achieve breakout capacity.” President Barack Obama, “President Obama and UK Prime Minister David Cameron Hold Joint News Conference,” January 16, 2014. (<http://www.cnn.com/TRANSCRIPTS/150116/se.01.html>)

⁵⁶ For example: “New sanctions will actually likely weaken the sanctions pressure on Iran, by undermining crucial international support for the existing multilateral sanctions against Iran. ... If we pull the trigger on new nuclear-related sanctions now, we will go from isolating Iran to potentially isolating ourselves.” Samantha Power, “Remarks at the University of Louisville McConnell Center,” *University of Louisville*, January 12, 2015. (<http://usun.state.gov/briefing/statements/235806.htm>)

⁵⁷ Christi Parsons, “Obama Tells Congress That More Sanctions On Iran Could Lead To War,” *Los Angeles Times*, January 16, 2015. (<http://www.latimes.com/world/middleeast/la-fg-obama-iran-talks-20150116-story.html>)

Response

The JPOA has not frozen Iran's program. Rather, it has suspended some key elements of the program while allowing Iran to continue advancing other elements, all the while increasing its nuclear leverage. In truth, under the JPOA, Iran has suspended mostly those aspects of the program that no longer need significant advancement, while continuing to work on those elements of the program it has not yet mastered. This is a critical distinction. This strategy follows one established by President Rouhani, dating back to his time as Iran's chief nuclear negotiator with the EU3 (Britain, France and Germany) from 2003 to 2005. Rouhani described this strategy as one in which, "We [Iran] only agreed to suspend activities in those areas where we did not have technical problems."⁵⁸ He further described this approach as central to the development of a key nuclear facility: "While we were talking with the Europeans in Tehran, we were installing equipment in parts of the nuclear conversion facility in Isfahan. By creating a calm environment, we were able to complete the work there."⁵⁹

Under Rouhani's leadership, which has been widely hailed as "moderate," Iran has continued this strategy of advancing its nuclear program while negotiating in a more "calm environment." In areas not adequately addressed by the JPOA, Iran is gaining time to advance the military-nuclear elements of its program.

On the positive side, Iran has agreed to: temporarily cease enriching uranium to 20 percent; not add to its stockpiles of 3.5 percent enriched uranium in *non-oxide* form; not install new centrifuges, or turn on installed but not yet operationalized existing machines, in its enrichment facilities; suspend construction of the nuclear-related elements of its Arak heavy-water reactor, though general construction can continue; and, stop semi-industrial and industrial-size production of its existing advanced centrifuges or the feeding of uranium hexafluoride gas (UF6) into more advanced models for the purpose of enrichment. It also has permitted the IAEA to increase the frequency and quality of its monitoring of Iran's declared facilities. As a result, Iran's breakout time, defined as the time it takes to produce a bomb's worth or more of weapons-grade uranium, lengthened from one month prior to the JPOA⁶⁰ to about two months in April.⁶¹ Announcing the extension of the JPOA, Secretary Kerry stated that as a result, Iran's breakout time "has already been expanded."⁶²

⁵⁸ Hassan Rouhani, "Beyond the Challenges Facing Iran and the IAEA Concerning the Nuclear Dossier," *Text of speech to the Supreme Cultural Revolution Council originally printed in Rahbord*, September 30, 2005, page 13. (<http://lewis.armscontrolwonk.com/files/2012/08/Rahbord.pdf>)

⁵⁹ Chen Kane, "Nuclear Decision-Making in Iran: A Rare Glimpse," *Brandeis University*, May 2006. (<http://www.brandeis.edu/crown/publications/meb/MEB5.pdf>)

⁶⁰ Oren Dorell, "Report: Iran May Be Month From a Bomb," *USA Today*, October 25, 2013. (<http://www.usatoday.com/story/news/world/2013/10/24/iran-bomb-one-month-away/3181373/>)

⁶¹ Stuart Winer & AFP, "Kerry: Iran Could Produce Nuclear Bomb in Two Months," *Times of Israel*, April 9, 2014; (<http://www.timesofisrael.com/kerry-iran-could-produce-nuclear-bomb-in-two-months/>)

⁶² Secretary of State John Kerry, "Solo Press Availability in Vienna, Austria," *U.S. Department of State*, November 24, 2014. (<http://www.state.gov/secretary/remarks/2014/11/234363.htm>). Unlike Secretary Kerry's assessment, nuclear nonproliferation expert David Albright continues to estimate Iran's breakout time as two months. David Albright, "Next Steps to Achieve a Comprehensive Deal," *Testimony before the Senate Foreign Relations Committee*, December 3, 2014, page 13.

Iran, however, has taken advantage of gaps and ambiguities in, and differences in interpretation regarding, the JPOA. Iran has engaged in mechanical testing of advanced centrifuges, accumulated low-enriched uranium in easily reversible oxide form, announced the construction of two new nuclear reactors, and continued to engage in illicit procurement for its nuclear program. Iran also has benefitted from other areas where the JPOA does not address key elements of Iran's nuclear infrastructure, including long-range ballistic missiles capable of carrying a nuclear warhead or long-standing IAEA concerns about the possible military dimensions of Iran's program.

As the JPOA negotiations drag on, Iran continues to enrich uranium below five percent and it continues to stockpile this enriched uranium in an oxide form easily converted into gas for further enrichment. Between January 20 and November 24, 2014, for example, Iran accumulated roughly 2,681 kilograms of low-enriched uranium,⁶³ which is enough for approximately two and a half nuclear bombs, if further enriched to weapons grade.⁶⁴ Experts expect that the current extension will allow the Iranians to enrich about one more bomb's worth of low enriched uranium.⁶⁵

Iran has also continued advanced centrifuge research and development. Iran announced it conducted "mechanical" tests on an IR-8 advanced centrifuge.⁶⁶ Iran introduced UF₆ gas into an IR-5 advanced centrifuge, in apparent violation of the JPOA. The administration has asked Iran to cease this activity.⁶⁷ These are not merely technical concerns. On the contrary, these easier-to-hide, next-generation centrifuges require smaller numbers of units to produce weapons-grade uranium. In other words, by using advanced centrifuges rather than the less efficient IR-1s

http://www.isisnucleariran.org/assets/pdf/Albright_Testimony_Senate_Foreign_Relations_Committee_Dec_3_2014-Final.pdf

⁶³ This number includes the 2,566 kg that Iran has enriched to 3.5 percent and the 115.6 kg of 20 percent enriched uranium that Iran has down-blended according to the terms of the JPOA. David Albright & Paulina Izewicz, "Update on Iran's Stock of Less than Five Percent Low Enriched Uranium," *Institute for Science and International Security*, November 24, 2014.

http://www.isisnucleariran.org/assets/pdf/35_LEU_stocks_report_Iran_nuclear_ISIS_update_Nov24_final.pdf

⁶⁴ This estimate is derived from the number of kilograms of LEU that The Wisconsin Project on Nuclear Arms Control reported would be "theoretically needed to produce a bomb's worth of weapon-grade uranium metal." See Valerie Lincy & Gary Milhollin, "Iran's Nuclear Timetable," *Iran Watch*, December 2, 2014.

www.iranwatch.org/our-publications/articles-reports/irans-nuclear-timetable

⁶⁵ This estimate comes from calculations conducted by Greg Jones, a senior research and nuclear analyst at the Nonproliferation Policy Education Center. It was cited in Adam Kredo, "Iran: 'Americans Have Very Clearly Surrendered'," *The Washington Free Beacon*, November 25, 2014. (<http://freebeacon.com/national-security/iran-americans-have-very-clearly-surrendered>)

⁶⁶ See the case of the IR-8, as it, and other such centrifuges pose similar challenges. Michelle Moghtader & Fredrik Dahl, "Iran Says Tested New Nuclear Enrichment Machine, May Irk West," *Reuters*, August 27, 2014; (<http://www.reuters.com/article/2014/08/27/us-iran-nuclear-centrifuges-idUSKBN0GR1KL20140827>) & The International Atomic Energy, "Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions in the Islamic Republic of Iran," November 7, 2014, page 6.

(<http://www.iaea.org/sites/default/files/gov2014-58.pdf>) For more details, see text of footnote 33 in the IAEA report.

⁶⁷ David Albright & Andrea Stricker, "A Note On Iran's IR-5 Centrifuge Feeding," *Institute for Science and International Security*, page 1. (http://www.isisnucleariran.org/assets/pdf/Note_IR-5_Feeding_Iran_Nuclear_JPA_20Nov2014-Final.pdf)

currently enriching uranium, Tehran could more rapidly produce weapons-grade uranium in a shorter, less detectable, manner.

The JPOA also does not address Iran's development of ballistic missiles. The Islamic Republic continues the testing and development of these missiles, including long-range models capable of delivering a nuclear warhead. Iran is required by U.S. legislation and U.N. Security Council resolutions to cease its ballistic missile development.⁶⁸ Top administration officials repeatedly told lawmakers and the press that Iran would have to address its ballistic missile program in the context of a final agreement. Nonetheless, Tehran has routinely stated that ballistic missiles will not be part of any negotiations.⁶⁹

Nor does the JPOA address all aspects of Iran's illicit nuclear activities. Iran has continued its illicit procurement, including procurement for its Arak heavy-water reactor. The United States has reportedly presented evidence to the United Nations that Iran is escalating efforts to procure equipment for Arak.⁷⁰ This procurement is a violation of U.N. Security Council resolutions, but the Obama administration has argued that Iran is not violating the JPOA.⁷¹ In fact, U.S. government experts have repeatedly presented evidence about Tehran's illicit nuclear activities and non-compliance with its international nuclear obligations to the U.N. Panel of Experts while simultaneously stating that Iran is in compliance with the JPOA. This underscores the many gaps between the JPOA and the UNSC resolutions and the danger that Iran may continue to negotiate concessions that undercut these original resolutions.

The JPOA also does not address adequately Iran's lack of cooperation with the IAEA on questions of the possible military dimensions (PMDs) of Iran's program. Instead, it makes the "IAEA responsible for verification of nuclear-related measures," and establishes a "Joint Commission" of the P5+1 and Iran to "work with the IAEA to facilitate resolution of past and present issues of concern."⁷² IAEA Director General Yukiya Amano has been clear that Iran has not resolved outstanding issues of concern related to Iran's past and possibly ongoing

⁶⁸ 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>)

⁶⁹ "موشک‌های ایران تحت هیچ شرایطی قابل مذاکره نیست/ مداخله هیچکس را نمی‌پذیریم" *Fars News Agency* (Iran), April 16, 2014; (<http://www.farsnews.com/newstext.php?nn=13930126000956>) & "Iran Will Boost Missile Capability: Cmdr.," *Press TV* (Iran), May 26, 2014; (<http://www.presstv.com/detail/2014/05/26/364239/iran-says-will-make-stronger-missiles/>) & "روحانی: توان موشکی ایران به هیچ وجه قابل مذاکره نیست" *Kayhan* (Iran), August 17, 2014. (<http://kayhan.ir/fa/news/21352>)

⁷⁰ Ian J. Stewart & Andrea Stricker, "US Should Stop Iran Buying Material for Arak Nuclear Plant," *The Telegraph* (U.K.), December 12, 2014; (<http://www.telegraph.co.uk/news/worldnews/middleeast/iran/11288503/US-should-stop-iran-buying-material-for-Arak-nuclear-plant.html>) & Colum Lynch, "U.S. Accuses Iran of Secretly Breaching U.N. Nuclear Sanctions," *Foreign Policy*, December 8, 2014. (<http://foreignpolicy.com/2014/12/08/us-accuses-iran-of-secretly-breaking-un-nuclear-sanctions-exclusive/>)

⁷¹ Jen Psaki, "Daily Press Briefing," *U.S. Department of State*, December 8, 2014. (<http://www.state.gov/r/pa/prs/dpb/2014/12/234818.htm#IRAN>)

⁷² "Joint Plan of Action," Geneva, November 24, 2013, page 1. (http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf)

weaponization activities.⁷³ A September 2014 IAEA report revealed that Iran has failed to implement the preliminary, incremental steps it promised to the IAEA.⁷⁴

The IAEA and the international community continue to have an incomplete picture of the Iranian nuclear program and its history. Without resolving these issues of the possible military dimensions of Iran's program, the IAEA will not easily establish an effective monitoring, verification, and inspection regime to ensure that Iran's nuclear activities are peaceful. The IAEA cannot determine how far along Iran is on the path to nuclear weapons, what are the nature of past and current activities, and who is involved. Without this baseline, it will be difficult to design an effective monitoring, verification, and inspection regime.⁷⁵ As former Deputy Director of the IAEA Olli Heinonen explained, "the IAEA Secretariat will not be able to come to a conclusion that all nuclear material in Iran is in peaceful use."⁷⁶

Addressing the issue of Iran's past nuclear activities and possible military dimensions of the program is not a question of punitively insisting upon an Iranian *mea culpa* or capitulation. It is a question of compliance with international obligations and is a prerequisite to establishing a robust verification regime under any deal. It also cuts right to the core of the question as to whether Iran has "frozen" its nuclear program. Without getting straight answers on PMDs before any final agreement is reached, and giving Iran the space to advance other aspects of its military-nuclear program, the JPOA allows Iran to use the "calm environment" afforded by the negotiations to advance its program in a number of dangerous areas.

2. Deadline-triggered sanctions violate a U.S. commitment to "refrain from imposing new nuclear-related sanctions."

Argument

The administration argues that sanctions, whether or not deadline-triggered or imposed by Congress, are a violation of the JPOA. According to the Joint Plan of Action, the "U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from imposing new nuclear-related sanctions."⁷⁷ The JPOA explicitly notes that this commitment, as well as all other P5+1 and Iranian commitments, is "time-bound, with a duration

⁷³ 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>)

⁷⁴ 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>)

⁷⁵ Nuclear Verification Capabilities Independent Task Force of the Federation of American Scientists, "Verification Requirements for a Nuclear Agreement with Iran," September 2014. (<http://fas.org/wp-content/uploads/2014/09/verification-requirements-for-a-nuclear-agreement-with-iran-sept-2014.pdf>)

⁷⁶ Olli Heinonen, "Verifying Iran's Nuclear Compliance," *Testimony before the House Committee on Foreign Affairs*, June 10, 2014.

(http://belfercenter.ksg.harvard.edu/publication/24303/olli_heinonens_testimony_on_verifying_irans_nuclear_compliance.html)

⁷⁷ "Joint Plan of Action," Geneva, November 24, 2013, page 3. (http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf)

of 6 months, and renewable by mutual consent, during which all parties will work to maintain a constructive atmosphere for negotiations in good faith.”⁷⁸

Response

The deadline-triggered sanctions under consideration will take effect if, and only if, no agreement is reached by the June 30, 2015 deadline. This deadline is not congressionally invented but rather a deadline agreed-upon by the P5+1 and Iran. In fact, it represents the second extension of the original JPOA deadline agreed to as part of the JPOA implementation agreement in January 2014.⁷⁹ The JPOA does not prohibit Congress from introducing, let alone passing, deadline-triggered sanctions to be implemented after the JPOA’s duration. The deadline-triggered sanctions legislation reportedly also provides the President with unlimited 30-day waivers after the June 30, 2015 deadline to waive the imposition of new sanctions indefinitely subject to a certification that continued negotiations are “likely to result in achieving a long-term comprehensive solution with Iran.”⁸⁰

Two weeks ago, State Department Spokesperson Marie Harf reiterated, “If we can’t [get an agreement], we can put ... additional sanctions on in 24 hours.”⁸¹ Deadline-triggered sanctions reinforce that statement by changing it from a hypothetical to a statement of fact: “If we can’t get an agreement *by June 30, 2015*, we *will* put additional sanctions on in 24 hours.” Congressional legislation laying out deadline-triggered sanctions specifies that there are consequences if Iran refuses to reach an agreement by the June 30, 2015 deadline. Congressional action strengthens, and adds credibility to, the administration’s self-imposed deadline with a sequenced, and gradually accelerated, series of sanctions if no deal is reached.

There have also been arguments raised that legislation would “tie the hands” of the negotiators. While I would argue, and have argued in the past,⁸² that Congress must be permitted to play a role in assessing the general parameters of a final agreement, the deadline-triggered sanctions legislation reportedly includes only Sense of Congress language on what these general parameters should include.⁸³ The deadline-triggered sanctions are reportedly linked to whether or

⁷⁸ “Joint Plan of Action,” Geneva, November 24, 2013, page 1.

(http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf)

⁷⁹ Parisa Hafezi & Justyna Pawlak, “Iran Nuclear Deal To Take Effect On January 20,” *Reuters*, January 12, 2014.

(<http://www.reuters.com/article/2014/01/12/us-iran-nuclear-idUSBREA0B0H820140112>)

⁸⁰ Julian Pequet, “Congress to Vote on Toned-Down Iran Sanctions Bill,” *Al Monitor*, January 16, 2015.

(<http://www.al-monitor.com/pulse/originals/2015/01/iran-sanctions-toned-down-bill-vote.html#>)

⁸¹ Marie Harf, “Daily Press Briefing,” *U.S. Department of State*, January 13, 2015.

(<http://www.state.gov/r/pa/prs/dpb/2015/01/235916.htm>)

⁸² 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)

⁸³ U.S. Senate, 114th Congress, 1st Session, “A Bill to Expand Sanctions Imposed with Respect to Iran and to Impose Additional Sanctions with Respect to Iran, and For Other Purposes,” pages 4-7, accessed January 16, 2015.

(<http://www.al-monitor.com/pulse/files/live/sites/almonitor/files/documents/2015/M-K%20Iran%20Sanctions%20Bill%202015.pdf>)

not the P5+1 and Iran have reached a viable agreement by June 30, 2015, and the trigger is not reportedly related to the content of the agreement between the P5+1 and Iran.⁸⁴

3. Iran will walk away from the negotiations if sanctions, including deadline-triggered measures, are imposed.

Argument

The Obama administration argues that the passage of deadline-triggered sanctions will cause Iran to walk away from the negotiating table. Iran's chief nuclear negotiator, Foreign Minister Mohammed Zarif, made this threat in December 2013,⁸⁵ during the debate over S.1881, the *Nuclear Weapon Free Iran Act of 2013*, a predecessor to the legislation currently under consideration by this Committee, which the Obama administration also threatened to veto.

Response

The Iranian threat to walk away from the negotiations is counter-historical. Iran has remained at the negotiation table for over a decade, using talks to legitimize its nuclear weapons program, and to avoid a full U.S.-led financial and trade embargo. Iran began negotiating first with the EU3 (U.K., France, and Germany) between 2003 and 2005, and then with the P5+1 beginning in 2006. At the same time, starting in 2006, Iran faced increasing and escalating rounds of pressure from the United States, European Union, the U.N. Security Council, and the broader international community. At no point during these negotiations, despite numerous rounds of international sanctions, did Iran permanently leave the negotiation table. While it is possible that Iranian negotiators might walk away temporarily from the talks, the history of the Iran talks suggests that they won't, and if they do, they are likely to return.

The reason: Iran has benefited from its participation in the nuclear negotiations.⁸⁶ The JPOA negotiations are the latest talks in which Iran has won concessions and acceptance of its nuclear activities. The claim by Tehran that its "right" to domestic enrichment is effectively enshrined in the JPOA, and the acceptance of the "fact" of an Iranian domestic enrichment capacity in the JPOA, are some of the latest examples of this pattern.⁸⁷ The P5+1 has shifted its position from the dismantling or shutting of key nuclear facilities, including Fordow and Arak, and restrictions on Iran's ballistic missile program, to embracing compromise proposals to transform Fordow, modify Arak, and permit Iran to retain even a long-range missile program capable of carrying a

⁸⁴ U.S. Senate, 114th Congress, 1st Session, "A Bill to Expand Sanctions Imposed with Respect to Iran and to Impose Additional Sanctions with Respect to Iran, and For Other Purposes," pages 8-12, accessed January 16, 2015. (<http://www.al-monitor.com/pulse/files/live/sites/almonitor/files/documents/2015/M-K%20Iran%20Sanctions%20Bill%202015.pdf>)

⁸⁵ Robin Wright, "Exclusive: Iran's Foreign Minister Says Sanctions Would Kill Nuclear Deal," *TIME*, December 9, 2013. (<http://world.time.com/2013/12/09/exclusive-irans-foreign-minister-says-sanctions-would-kill-nuclear-deal/>)

⁸⁶ For more on this argument, see Ray Takeyh, "Iran's Vested Interest in Nuclear Talks," *Los Angeles Times*, November 11, 2014. (<http://www.latimes.com/opinion/op-ed/la-oe-1112-takeyh-iran-new-senate-20141112-story.html>)

⁸⁷ "Iran Enrichment Right Recognized in Deal: Zarif," *Press TV* (Iran), November 24, 2013; (<http://www.presstv.com/detail/2013/11/24/336364/iran-right-to-enrich-recognized-zarif/>) & Ali Alfoneh, "Iran Nuclear Chief Reveals Gaps With P5+1," *FDD Policy Brief*, January 13, 2015. (<http://www.defenddemocracy.org/media-hit/ali-alfoneh-iran-nuclear-chief-reveals-gaps-with-p51/>)

warhead.⁸⁸ Iran has successfully used the JPOA period and previous negotiations to transform the debate from one of “Can Iran have a nuclear program?” to “How much of a nuclear program can Iran have?”

Iran has also simultaneously used negotiations to limit the ability of the international community to address its other problematic behavior while engaging in what *The Washington Post* editorial board last week notes are “pressure tactics...considerably more noxious than the threat of future sanctions.”⁸⁹ During JPOA negotiations, the Iranian government has continued to engage in terrorist activities and systematic human rights abuses,⁹⁰ including the unlawful detention of American hostages such as journalist Jason Rezaian. As *The Washington Post* editorial board observed: “It’s difficult to avoid the conclusion that [Mr. Rezaian] is being used as a human pawn in the regime’s attempt to gain leverage in the negotiations.”⁹¹ Yet the international community has not significantly pressured the regime to change this behavior. This absence of meaningful administration action on Iran’s human rights record builds on the administration’s troubling decision in 2009, which former Secretary of State Hillary Clinton now says she regrets,⁹² not to back the pro-democracy Green Movement, a decision which stemmed from concerns that even rhetorical pressure might derail U.S. efforts to engage with Iran on its nuclear program.

There is also a strong economic reason for Iran not to walk away from the negotiations. If Tehran terminated the talks, such a move could trigger a program of even more severe sanctions than contemplated under the current deadline-triggered sanctions bill. These could include a complete financial and trade embargo on Iran where Congress blacklists the entire Iranian economy as a zone of proliferation and terrorism concern. These new sanctions could be structured as a rolling embargo so that each new element comes into effect every 30 days in response to Iranian nuclear escalation and provides “off-ramps” to give Iran the opportunity to de-escalate its nuclear activities and avoid the collapse of its economy by returning to negotiations.

Finally, if negotiations break down upon the passage of sanctions linked to the expiration of the JPOA deadline, this should raise questions about the durability of any future deal. If the Obama administration yields to an Iranian threat to walk away in response to a non-violation of the

⁸⁸ For more analysis of the P5+1’s shifting position on Fordow, see Michael Singh, “Is Iran Out-Negotiating The Obama Administration?” *Foreign Policy*, March 4, 2014.

(http://shadow.foreignpolicy.com/posts/2013/03/04/is_iran_out_negotiating_the_obama_administration)

⁸⁹ “Iran Doesn’t Hesitate To Use A Human Pawn As Nuclear Negotiations Go On,” *The Washington Post*, January 17, 2015. (http://www.washingtonpost.com/opinions/iran-doesnt-hesitate-to-use-a-human-pawn-as-nuclear-negotiations-go-on/2015/01/17/83449774-9dad-11e4-bcfb-059ec7a93ddc_story.html)

⁹⁰ For example, see Mark Kirk & Marco Rubio, “Iran’s Horrific Human-Rights Record,” *The Daily Beast*, November 7, 2014; (<http://www.thedailybeast.com/articles/2014/11/07/iran-s-horrific-human-rights-record.html>) & Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, United Nations General Assembly, “Situation of Human Rights in the Islamic Republic of Iran,” August 27, 2014. (<http://shaheedoniran.org/wp-content/uploads/2014/09/A-69-356-SR-Report-Iran.pdf>)

⁹¹ “Iran Doesn’t Hesitate To Use A Human Pawn As Nuclear Negotiations Go On,” *The Washington Post*, January 17, 2015. (http://www.washingtonpost.com/opinions/iran-doesnt-hesitate-to-use-a-human-pawn-as-nuclear-negotiations-go-on/2015/01/17/83449774-9dad-11e4-bcfb-059ec7a93ddc_story.html)

⁹² Jay Solomon & Peter Nicholas, “Iran Talks Likely to Figure in Any 2016 Hillary Clinton Bid,” *The Wall Street Journal*, December 5, 2014. (<http://www.wsj.com/articles/iran-talks-likely-to-figure-in-any-hillary-clinton-2016-bid-1417823608?KEYWORDS=haim+saban>)

JPOA, it will be handing Iran veto power over the actions of American lawmakers or the next U.S. president. It raises serious concerns about the ability of the United States to enforce any nuclear deal. Pushing back against Iranian threats now is essential to establish a baseline of what is acceptable behavior after any agreement is reached. The message needs to be sent to Iran's leadership that this isn't a negotiation between two sides with equally meritorious positions; Iran is in violation of six U.N. Security Council resolutions, its obligations under the Non-Proliferation Treaty, and many IAEA requirements.

4. Tehran, not Washington, has “escalation dominance” through its ability to restart and expand its nuclear program.

Argument

The Obama administration fears that if Congress passes deadline-triggered sanctions, Iran will retaliate with escalatory nuclear activities,⁹³ including restarting 20 percent enrichment, working on Arak's reactor core or fuel assemblies, enriching uranium to 60 percent, limiting IAEA access to its declared facilities, or operationalizing more of its centrifuges, amongst other scenarios.

Response

Unlike passage of deadline-triggered sanctions, such escalatory nuclear activities would violate the JPOA. Such an Iranian move is possible. Notwithstanding sanctions pressure, Iran has advanced its nuclear program, especially during the Ahmadinejad era. Iran, however, has historically escalated its nuclear activities cautiously, so as not to invite a military response from the United States or Israel or trigger crippling sanctions from the international community. Iranian nuclear escalation historically has involved incremental increases with the goal of avoiding egregious cheating that would precipitate a massive response. While Iran cheats incrementally, the sum total of its cheating can be egregious, as the West discovered when it revealed that Iran was building clandestine nuclear facilities at Fordow, Natanz, and Arak. As noted above, Iran's continued advanced research will make concealing its illicit nuclear activities easier, not harder.

Escalatory nuclear activities, where Iran moves to undetectable breakout through the rapid expansion of its enrichment capacity, or blocks weapons inspectors from monitoring its declared facilities, would likely garner a negative international response, including from countries like Russia and China (and certainly from the Europeans). All the members of the P5+1 assess a nuclear-armed Iran as a threat to their own interests and are invested in the talks to stop Tehran from acquiring this capability. It is difficult to imagine that any member would support Iranian nuclear escalation in response to deadline-triggered sanctions designed to persuade Tehran to accept their own compromise proposals.

Meanwhile, as previously discussed, the United States could respond to such nuclear escalation with massive sanctions escalation of its own. The current sanctions regime is tough but the West has not yet imposed truly “crippling” sanctions on Iran. The United States could further escalate

⁹³ Terry Atlas, “Escalation Likely If Iran Talks Fail, U.S. Official Says,” *Bloomberg*, October 24, 2014. (<http://www.bloomberg.com/news/2014-10-24/escalation-likely-if-iran-talks-fail-u-s-official-says.html>)

sanctions by locking up all of Iran's currency reserves held abroad. This means blocking Iranian access to, or use of, its overseas financial reserves for any purpose except for permitted humanitarian trade, effectively shutting down non-humanitarian imports and possibly even collapsing the rial. This would fuel inflation and asset bubbles, force fiscal austerity, and send Iran back into a deep recession. Congress could go farther and pass laws to blacklist the entire Iranian economy. This would precipitate a major economic shock that will lead to an economic depression and represent a potential threat to the survival of the regime. As noted above, this could be structured as a rolling embargo so that each new element comes into effect every 30 days in response to Iranian nuclear escalation and provides "off-ramps" to give Iran the opportunity to de-escalate its nuclear activities and avoid the collapse of its economy by returning to negotiations.

It is important to remember that at every juncture, the U.S., not Iran, retains "escalation dominance"⁹⁴ and can accordingly leverage greater economic pressure on the Islamic Republic if Tehran engages in escalatory nuclear activities. Washington also retains far greater escalation dominance through military, cyber, and covert action that it could wield if Iran foolishly escalated.

5. The introduction of deadline-triggered sanctions would isolate the United States from our international coalition.

Argument

President Obama has argued that the introduction of deadline-triggered sanctions would "isolate the United States from our international coalition."⁹⁵ The concern is that new sanctions during these negotiations, even if deadline-triggered, would lead Russia, China, and perhaps even the EU3, to blame the Americans for undermining the negotiations process. This would strengthen Iran's case that Washington, not Tehran, is to blame for the impasse, and make it more difficult to enforce existing sanctions against Iran.

Response

The idea that new sanctions against Iran – triggered off a deadline to which the entire P5+1 has agreed – will isolate the U.S. from its P5+1 allies, is an argument in conflict with the Obama administration's position on Russia. The U.S. and EU have imposed tough sanctions on Moscow over the Ukraine and Crimea crisis. The Obama administration has argued that its disagreement

⁹⁴ "Escalation dominance" is a theoretical term often applied to conventional and nuclear conflicts, which in this case is being used to describe U.S. economic power over an adversary. For this term's military usage with respect to a hypothetical military scenario involving Iran, see: Kenneth M. Pollack, *Unthinkable: Iran, the Bomb, and American Strategy*, (New York: Simon & Schuster, 2013) page 328.

⁹⁵ The White House, Press Release, "Readout of the President's Meeting with Members of the Congressional Leadership," January 13, 2015. (<http://www.whitehouse.gov/the-press-office/2015/01/13/readout-president-s-meeting-members-congressional-leadership>)

with Russia over Ukraine will remain separate from the talks with Iran and that Moscow will not leave the P5+1 talks over Ukraine-related sanctions.⁹⁶

So far, the administration's assessment is correct: Russia remains committed to the P5+1 talks. While Russia has continued negotiating with Iran over an on-again, off-again \$20 billion oil-for-goods deal,⁹⁷ a deal which the administration has stated would violate existing U.S. sanctions,⁹⁸ Russia did not withdraw from the nuclear talks or move forward with any major sanctions-busting deals. There is no publicly available evidence of a marked increase in Russian sanctions busting with Iran even after the West imposed sanctions on major Russian companies.

Why would President Putin leave the P5+1, or become supportive of Iran, over deadline-triggered sanctions on Iran when he didn't after Washington imposed sanctions on his own country? In fact, while under sanctions by the United States, Moscow has offered to oversee a fuel-swap deal with Iran that the administration has praised.⁹⁹

If the coalition has held against Iran despite Ukraine-related sanctions on Russia, Moscow is likely to stay put as a member of the coalition in dealing with Iran. It, too, is concerned about a nuclear-armed Iran and sees the negotiations as a way to protect its own interests. China is part of the P5+1 for similar reasons; it prefers a non-nuclear armed Iran and is especially concerned about what an Iranian nuclear weapon could mean for global oil prices, upon which its energy import-dependent economy depends. Despite considerable Sino-American tensions over issues in the Pacific Rim, China has remained committed to the P5+1 talks.

If Russia and China are likely to remain part of the coalition, primarily because the talks help secure their own interests, it is highly improbable that France, Great Britain, and Germany would break rank. Indeed, during the JPOA negotiations, the French maintained a tougher position on Iranian nuclear concessions, and, along with the U.K. and Germany, led the drive in the European Union to impose an oil embargo on Iran, and tough financial sanctions.

Rather than signaling to its P5+1 partners that nothing should be an excuse for breaking up the coalition, certainly not deadline-triggered sanctions, the administration's rhetoric regrettably has given comfort to Iran and may have the unintended consequence of weakening the coalition.

6. New deadline-triggered sanctions will empower the hardliners in Iran.

Argument

⁹⁶ For example, see Teresa Welsh, "Despite Ukraine, U.S. and Russia Cooperate on ISIS and Iran," *U.S. News and World Report*, October 15, 2014. (<http://www.usnews.com/news/articles/2014/10/15/despite-ukraine-us-and-russia-cooperate-on-isis-and-iran>)

⁹⁷ Jonathan Saul & Parisa Hafezi, "Iran, Russia Working to Seal \$20 Billion Oil-for-Goods Deal: Sources," *Reuters*, April 2, 2014. (<http://www.reuters.com/article/2014/04/02/us-iran-russia-oil-idUSBREA311K520140402>)

⁹⁸ Patricia Zengerle, "Treasury Official: Firms Not in New Deal with Iran After Pact," *Reuters*, April 2, 2014. (<http://www.reuters.com/article/2014/04/02/us-iran-nuclear-usa-sanctions-idUSBREA311TV20140402>)

⁹⁹ David E. Sanger, "Role for Russia Gives Iran Talks a Possible Boost," *The New York Times*, November 3, 2014. (<http://www.nytimes.com/2014/11/04/world/middleeast/role-for-russia-gives-iran-nuclear-talks-a-possible-boost.html>)

President Rouhani, Foreign Minister Zarif, and other more pragmatic Iranian government officials who were instrumental in persuading the Supreme Leader to agree to the JPOA, are serious about a nuclear deal. They face intense opposition from hardline opponents including the Revolutionary Guards, the clerical establishment, and elements within the Iranian parliament, judiciary, intelligence services, and elsewhere in the security establishment. Therefore, any new sanctions will undermine such pragmatic forces and, in turn empower Iran's hardliners.

Response

The direct and indirect economic relief precipitated by the Obama administration's decision to de-escalate the sanctions pressure has stabilized the Iranian economy. The hardliners no longer fear the collapse of their economy and the prospect of a severe, sanctions-induced depression. Throughout the period of sanctions escalation, those hardline elements benefitted from sanctions-busting schemes to enrich themselves but they feared for the survival of the regime. Those fears have subsided. These hardliners are feeling relief as their economy stabilizes. They have preserved both the essential elements of their nuclear infrastructure under the JPOA and the ability to move ahead on those parts of their military-nuclear program they haven't mastered. They are further emboldened by Iran's growing regional dominance over Iraq, Syria, Lebanon, and Yemen. All the while, they continue to grow rich off their sanctions-busting schemes. It is not surprising that these hardliners, including the Supreme Leader himself, may not be willing to compromise further. And if they are willing to agree to a more favorable deal for Iran, why do it now, they must ask themselves, and forgo future Western concessions?

Deadline-triggered sanctions are reportedly targeted at sectors of the economy linked to these hardliners, specifically Iran's Islamic Revolutionary Guard Corps (IRGC). These measures would be intended to undercut the economic power of those who oppose a comprehensive nuclear agreement. The IRGC has benefited from the very sanctions relief that was meant to encourage Iran to make nuclear concessions, for example, in the petrochemical sector where the Supreme Leader and the IRGC are dominant players.¹⁰⁰ The IRGC's contracting firm Khatam al-Anbiya has also been a major beneficiary of sanctions relief as it uses its market dominance to extract its share of these economic benefits.¹⁰¹

Meanwhile, the so-called "moderates" are empowering the "hardliners." President Rouhani has shielded the IRGC and other government-insiders from his own anti-corruption initiatives.¹⁰² His

¹⁰⁰ Emanuele Ottolenghi & Saeed Ghasseminejad, "The Geneva Joint Plan of Action and Iran's Petrochemical Sector," *FDD Policy Brief*, December 9, 2013. (<http://www.defenddemocracy.org/media-hit/the-geneva-joint-plan-of-action-and-irans-petrochemical-sector/>)

¹⁰¹ Ali Alfoneh, "Iran Sanctions Relief Backfires, Benefitting the IRGC," *FDD Policy Brief*, October 7, 2014. (<http://www.defenddemocracy.org/media-hit/ali-alfoneh-iran-sanctions-relief-backfires-benefitting-the-irgc/>)

¹⁰² Ali Alfoneh, "Iran's 'Reformist' President Is Shielding Powerful Revolutionary Guard From Anti-Corruption Campaign," *Business Insider*, January 12, 2015. (<http://www.businessinsider.com/rouhani-is-shielding-the-powerful-revolutionary-guard-from-his-anti-corruption-campaign-2015-1>)

budget supports some of the worst actors in the Iranian political sphere. Reports indicate the IRGC and Basij Forces will be receiving “sixty-four percent of public military spending.”¹⁰³

As it stands now, given the political climate in Iran, a deal based on what the West is prepared to offer is unlikely unless the pressure on Tehran is intensified or Washington and its partners are willing to make future concessions. Again, I refer to the analysis of former U.S. delegate to the negotiations, Robert Einhorn:

There appear to be three different camps within Iran on the nuclear negotiations. The first wants an agreement, believes an agreement is necessary to rebuild Iran’s economy and end its isolation internationally, and recognizes that significant adjustments in Iran’s negotiating position are necessary to reach an agreement. The second can grudgingly accept an agreement provided it is largely on Iran’s terms. But this second camp feels Iran doesn’t need an agreement, can manage well enough economically and internationally without one, and therefore doesn’t feel compelled to make what it regards as unwarranted concessions. The third camp opposes any agreement both for ideological and self-interested reasons. ... *The combined weight of the second and third camps has effectively prevented Iran from adopting a negotiating posture that would allow a compromise to be reached.* (emphasis added).¹⁰⁴

The goal of deadline-triggered sanctions is to convince that second camp that Iran cannot survive economically without a deal, and thus tip the scales in favor of nuclear compromise.

7. New sanctions are not needed because the fall in the price of oil is inflicting sufficient damage on Iran’s economy.

Argument

The Iranian economy is reeling from a 60 percent drop in the price of oil. With this price drop in Iran’s most valuable asset, which accounts for about 50 percent of its government budget, the argument can be made that new sanctions are unnecessary. Indeed, the market will increase U.S. negotiating leverage with Iran making Tehran more amenable to nuclear compromise.

Response

The rapid decline in the price of oil is not a substitute for deadline-triggered sanctions. Iran has lived for two years without full access to its overseas oil revenues. Iran experienced its own asymmetric oil shock between 2012 and 2013 when U.S. sanctions targeted Iranian oil exports, requiring countries to make significant reductions in Iranian oil purchases, while locking up Iran’s oil profits through a little-understood provision of the Iran Threat Reduction Act

¹⁰³ Emanuele Ottolenghi & Saeed Ghasseminejad, “Iran’s Repressive Apparatus Gets a Raise,” *The Wall Street Journal*, December 22, 2014. (<http://www.wsj.com/articles/emanuele-ottolenghi-and-saeed-ghasseminejad-irans-repressive-apparatus-gets-a-raise-1419281552?tesla>)

¹⁰⁴ Robert Einhorn, “Will Iran Play Ball in Nuke Talks?,” *The National Interest*, January 14, 2015. (<http://nationalinterest.org/feature/will-iran-play-ball-nuke-talks-12031?page=4>)

(ITRA).¹⁰⁵ This legislation, designed to pressure Iran to relinquish its illicit nuclear program, required countries buying Iranian oil to pay for their purchases in escrow accounts denominated in local currency and in banks domiciled in the purchasing countries, namely China, India, Japan, South Korea, Turkey, and Taiwan. The funds were then available to Iran, but only for purchasing local goods in local currency from those countries, or humanitarian goods from others. For example, Chinese refineries had to pay for Iranian oil in yuan deposited into Chinese banks, and Iran could use the yuan to purchase goods from China, as long as those purchases didn't involve any sanctionable goods (for example, maraging steel for the development of advanced centrifuges).

The system worked well for Iran's main oil buyers, who could still purchase approved quantities of Iranian oil without sanctions penalties, as long as they were significantly reducing those purchases over time. Simultaneously, they exported more domestically produced goods to Iran.

Meanwhile, the Iranian government suffered, because monthly oil revenues began accumulating in these accounts as Iran could not find enough non-sanctionable goods that it wanted to buy from those six countries (Europe, which was Iran's preferred shopping zone, had become far more restrictive).

As a result, prior to the JPOA, an estimated \$80 billion of Iran's oil revenue was sitting in overseas escrow accounts.¹⁰⁶ In fact, the U.S. government estimated that Iran could only spend about half of its recurring monthly oil revenues on imports in 2013, leaving the rest to pile up in escrow.¹⁰⁷

This all changed after the announcement of the JPOA in November 2013. Under this agreement, beginning in January 2014, the P5+1 agreed to return to Iran what averages out to \$700 million per month¹⁰⁸ from these semi-restricted oil escrow accounts. By June 30, 2015, when the current extension of the interim agreement is set to expire, Iran will have received about \$12 billion from these escrow accounts to spend however it desires. Prior to the agreement, Iran had fully accessible overseas cash reserves of only \$20 billion¹⁰⁹ meaning that this \$12 billion infusion into Iran's economy represents a 60 percent increase in Iran's fully accessible foreign exchange reserves.

Today, in a strange twist of fate, these restrictions blunt the full impact of the drop in oil prices on Iran's economy. Iran's foreign revenues from energy products are captured in escrow

¹⁰⁵ Kenneth Katzman, "Iran Sanctions," *Congressional Research Service*, May 7, 2014, page 22.

(<http://fas.org/sgp/crs/mideast/RS20871.pdf>)

¹⁰⁶ Mark Dubowitz & Rachel Ziemba, "When Will Iran Run Out of Money?," *Foundation for Defense of Democracies & Roubini Global Economics*, October 2, 2013.

(http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf)

¹⁰⁷ Marjorie Olster, "US: Iran Can't Access Much Oil Income," *Associated Press*, August 30, 2013.

(<http://news.yahoo.com/apnewsbreak-us-iran-cant-access-much-oil-income-074343048--politics.html>)

¹⁰⁸ Following the second extension of the JPOA, the payment schedule between December 2014 and June 2015 provides Iran with \$490 million on December 10, December 31, January 21, February 11, March 4, March 25, April 15, May 6, May 27, and June 22.

¹⁰⁹ Mark Dubowitz & Rachel Ziemba, "When Will Iran Run Out of Money?," *Foundation for Defense of Democracies and Roubini Global Economics*, October 2, 2013.

(http://www.defenddemocracy.org/stuff/uploads/documents/Iran_Report_Final_2.pdf)

accounts, mitigating the direct pass-through of declining oil revenue on the Iranian economy. Khamenei is almost certainly concerned while he watches his most valuable asset declining in value. But because there is a limited direct transfer mechanism from oil sales to the Iranian government budget, the immediate impact is limited. The cheaper oil merely implies a slower accumulation of reserves in semi-accessible accounts.

To be sure, the drop in the price of oil will still be a drag on Iran's economy and has an impact on Iranian investor and consumer sentiment. Growth is estimated to slow to 1.5 percent in fiscal year 2015/2016 after 2.5 percent growth in 2014/2015.¹¹⁰ The new Iranian government budget, pegged at \$72 per barrel compared to \$100 last year,¹¹¹ was recently lowered to \$40 per barrel.¹¹² This will likely force to the government to cut government spending and increase tax revenues. Lower oil prices could also diminish the enthusiasm of energy companies mulling a return to the Iranian energy sector if the ongoing nuclear negotiations lead to permanent sanctions relief. Moreover, Iranian black-market oil deals look less attractive now that buyers can purchase cheaper oil without illegal sanctions busting.

The Islamic Republic, however, has weathered sanctions. It can weather the declining price of oil, too. If economic leverage has any chance of convincing Iran of the need for nuclear compromise, it will take deadline-triggered sanctions to signal the consequences of the failure to reach a deal. If no deal is reached, it will take major sanctions escalation, not just falling oil prices, to once again reanimate the fear the regime felt in 2012 and 2013 when it narrowly escaped potential economic collapse.

CONCLUSION

Supporters of deadline-triggered sanctions believe that increased economic pressure on Iran will help prevent war with Iran. As the Obama administration has acknowledged, economic sanctions, including the congressional measures passed over the administration's objections, are the reason that Iran is negotiating seriously today. They remain the most effective tool for convincing Iran of the necessity of nuclear compromise, for ensuring Iranian compliance with a comprehensive agreement, and for punishing Iranian non-compliance.

Former Secretary of State George Shultz noted that if you wait to use pressure until the last resort, "by that time the level of force and the risk involved may have multiplied many times over."¹¹³ Instead, the use of economic leverage now, in the form of deadline-triggered sanctions, will ensure that the United States and our international partners have the possibility of achieving a deal that verifiably prevents Iran from acquiring a nuclear weapons capability and signals to Tehran that the P5+1 is not prepared to negotiate indefinitely.

¹¹⁰ World Bank, "Global Economic Prospects," January 2015, page 86.

(http://www.worldbank.org/content/dam/Worldbank/GEP/GEP2015a/pdfs/GEP15a_web_full.pdf)

¹¹¹ "So Much For the Rally: Oil Reverses Morning Surge," *Reuters*, January 15, 2015.

(<http://www.cnn.com/id/102338983>)

¹¹² Ladane Nasser, "Iran Lowers Oil Price for Budget to \$40 After Collapse," *Bloomberg*, January 15, 2015.

(<http://www.bloomberg.com/news/2015-01-15/iran-s-budget-assumes-40-oil-after-prices-decline-33-.html>)

¹¹³ George P. Shultz, *Turmoil and Triumph: My Years as Secretary of State*, (New York: Charles Scribner's Sons, 1993), page 345.

By contrast, continuous extensions of the JPOA will only serve to help Iran advance its nuclear program in critical areas, build greater economic resiliency, and extend its influence regionally. This may lead to a situation in the future in which the president has insufficient economic leverage to respond to Iranian nuclear mendacity. At that point, he or she will be faced with a painful choice between accepting an Iranian bomb and using military force to forestall that possibility. By deploying deadline-triggered sanctions to lay out the concrete consequences of continued Iranian nuclear intransigence, Congress can and should strengthen U.S. negotiating leverage and increase the likelihood of a peaceful nuclear compromise. This is in the American interest.

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