

Committee on Oversight and Government Reform, National Security Subcommittee

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# Assessing the Iran Deal

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Washington, DC  
April 5, 2017

Chairmen Chaffetz and DeSantis, Ranking Members Cummings and Lynch, members of the committee, on behalf of the Foundation for Defense of Democracies and our Center on Sanctions and Illicit Finance, thank you for the opportunity to testify. This testimony will analyze both the nuclear and sanctions elements of the Iran nuclear deal known as the Joint Comprehensive Plan of Action (JCPOA), describe steps taken since the JCPOA by Iran and the Obama and Trump administrations, and recommend a path forward for a comprehensive plan to use all elements of American power including sanctions to address the continued Iranian threat.

## **PATIENT PATHWAY TO NUCLEAR WEAPONS**

President Donald Trump promised to “rigorously enforce” the JCPOA,<sup>1</sup> which he has also called “the worst deal ever negotiated.”<sup>2</sup> While strict enforcement is an important first step, it is insufficient. The JCPOA provides Iran with a patient pathway to nuclear weapons capability. If the United States simply enforces the agreement, Iran will become a threshold nuclear weapons state.

The JCPOA preserved essential elements of the country’s nuclear infrastructure and placed only limited, temporary, and reversible constraints on Iran’s nuclear activities. In exchange, Iran got the complete dismantlement of many of the most effective U.S. and international economic sanctions.

At the heart of the JCPOA is a fatal flaw: Iran does not need to cheat to reach threshold nuclear weapons capabilities. By following the deal, and waiting patiently for key constraints to disappear, Tehran can emerge as a threshold nuclear power with an industrial-size enrichment program; near-zero breakout time; an easier clandestine sneak-out pathway; an advanced long-range ballistic missile program, including intercontinental ballistic missiles; access to advanced heavy weaponry; greater regional dominance; and a more powerful economy increasingly immunized against Western sanctions.

In less than four years under UN Security Council Resolution 2231 in which the JCPOA is embedded, the UN embargo on conventional arms sales will disappear. In less than seven years, the restrictions on ballistic missile development will disappear, too.<sup>3</sup> From there, Tehran can significantly enhance its military power – as well as the capabilities of its proxies – by acquiring advanced conventional weapons and further expanding its long-range ballistic-missile program to include intercontinental ballistic missiles. No country developing ICBMs has ever not also obtained nuclear weapons.

Under the terms of the JCPOA, Iran’s uranium and plutonium pathways to atomic weapons expand over time, as well. The deal allows for Iran to continue limited testing and ultimately ramp up the testing of even more advanced centrifuges in seven years, and install these machines in its Natanz enrichment facility in nine years from now.<sup>4</sup> Breakout time – the amount of time needed to enrich one bomb’s worth of fissile material to nuclear grade – drops from one year, where it is now, to months and then just weeks.<sup>5</sup>

In less than 15 years, the majority of restrictions on vital components of a military-nuclear program vanish. This includes bans on uranium enrichment above 3.67 percent purity and the

stockpiling of low-enriched uranium.<sup>6</sup> At that time, Iran can restart its uranium enrichment in the Fordow nuclear facility – a previously secret nuclear site buried under a mountain that is believed to be impenetrable to U.S. military strikes. Moreover, Iran can build an unlimited number of other advanced centrifuge-powered enrichment facilities just like Fordow.<sup>7</sup> Iran can deploy an unlimited number of advanced centrifuges in these facilities. They are more efficient than Iran’s basic models, can enrich uranium to weapons-grade faster thereby requiring a fewer number of machines, and can be housed in smaller, harder-to-detect facilities. While building clandestine facilities and diverting uranium to these sites would be a JCPOA violation, the leaders in Iran know that the challenge of monitoring and inspecting such a massive nuclear program on a territory more than twice the size of Texas will be a formidable challenge for the IAEA and Western intelligence services.

## **VERIFICATION WITHOUT PHYSICAL ACCESS TO MILITARY SITES**

The nuclear deal also does not guarantee physical inspections of military sites even if the IAEA believes Iran is conducting weaponization activities. The case study of the Parchin military base makes clear this fatal flaw.

In September 2015, IAEA Director General Yukiya Amano visited the Parchin military base, but the IAEA did not conduct a physical inspection. Indeed, rather than conducting on-site inspections with the physical presence of inspectors at the location (per the IAEA’s standard practices), Iranian inspectors took environmental samples while IAEA inspectors monitored remotely.<sup>8</sup> This “self-inspection” protocol was a response to Iranian objections over physical inspections.

Prior to the announcement of the JCPOA, Iranian Supreme Leader Ali Khamenei proclaimed that “inspection of our military sites is out of the question.”<sup>9</sup> Similarly, in the days following the announcement of the nuclear agreement, Foreign Minister Mohammad Javad Zarif stated before the Iranian parliament that Iran had successfully achieved its goal of preventing IAEA access to military facilities.<sup>10</sup> Even as U.S. officials asserted that the deal provided unprecedented access to Iranian facilities, Ali Akbar Velayati, an advisor to Khamenei, confirmed that “entry into our military sites is absolutely forbidden.”<sup>11</sup>

Despite the lack of physical inspections, the environmental samples from Parchin revealed the existence of man-made uranium particles. Last summer, *The Wall Street Journal* reported that U.S. officials believed those particles were related to previous nuclear weapons activities. “The existence of two particles of uranium there would be consistent with our understanding of the involvement of Parchin in a past weapons program, but by themselves don’t definitively prove anything,” a senior administration official said.<sup>12</sup>

William Tobey, former deputy administrator for defense nuclear nonproliferation at the National Nuclear Security Administration, explained that these particles are “prima facie evidence” of undeclared nuclear material in Iran. “A larger quantity of uranium left them behind,” he notes.<sup>13</sup> For years, Iran has denied that it engaged in nuclear weaponization activities at the site, yet has vigorously engaged in cleanup efforts, which have compromised the IAEA’s ability to investigate.<sup>14</sup> These efforts, Tobey explains, have created an ambiguous situation that is

beneficial to the Iranians. The IAEA's findings are inconclusive, and this uncertainty means that the international community will not be united in its response.

That is all the more reason why the IAEA should continue to investigate and attempt to verify Iran's declarations about its nuclear activities. As former IAEA Deputy Director General and my FDD colleague Olli Heinonen explained, the IAEA "has an obligation to carry out its safeguards verification mission under the comprehensive safeguards agreement. The possible existence of undeclared uranium at Parchin gets to the heart of those provisions."<sup>15</sup> Yet, to date, the IAEA has not specified its follow-up investigation efforts, and its recent reports have lacked important, technical details about Iran's compliance with its JCPOA obligations, according to the nuclear experts at the Institute for Science and International Security.<sup>16</sup>

This is a dangerous precedent. The IAEA did not insist on physical inspections of Parchin, instead agreeing to an Iranian demand that its own scientists do the sampling. Then, when the IAEA discovered uranium particles in these samples, it did not insist on a follow-up inspection, physical or otherwise, which is required under the comprehensive safeguards agreement to which Iran is a party. Tehran is establishing the precedent for blocking future inspections of military sites; it could deny the IAEA physical access to the facilities, and then invoke the example of Parchin to deny access for follow-up inspections, even if suspicious materials or activities are discovered. This scenario will severely erode the efficacy of the verification regime that the Obama administration touted as an achievement of the JCPOA.

This problem is compounded by the way all of Iran's weaponization activities were resolved. In December 2015, the IAEA decided to "close" the file on outstanding concerns about possible military dimensions of Iran's nuclear program.<sup>17</sup> Without ever admitting to weaponization activities, Iran convinced the international community to wipe the slate clean. The IAEA's report on the possible military dimensions of Iran's nuclear program<sup>18</sup> left many questions unanswered.<sup>19</sup>

In addition to prohibiting on-site inspections of suspected military sites, Iran can delay IAEA inspections of suspected sites without facing consequences. The JCPOA creates a minimum of a 24-day delay (possibly longer) between a formal IAEA request to access a suspicious site and the date Iran must allow access. As Mr. Tobey explains, "24 days ... [is] ample time for Iran to hide or destroy evidence."<sup>20</sup>

Dr. Heinonen agrees. He argues that, for small facilities, 24 days is enough time for Iran to "sanitize" suspected sites, including, for example, where Iran may be engaged in weaponization activities.<sup>21</sup> Iran is also likely to have developed contingency plans to respond to IAEA demands to visit these sites. According to Dr. Heinonen, Tehran may only need two days to remove nuclear equipment from a small facility<sup>22</sup> and remove any traces of uranium, which even environmental sampling may be unable to detect. As Dr. Heinonen notes:

Time for 'scrubbing' takes on special salience in nuclear-related developments without nuclear material present. Some of the past concealment events carried out by Iran in 2003 left no traces to be detected through environmental sampling.<sup>23</sup>

Finally, to prevent the U.S. and its allies from pushing for greater access and more thorough inspections, Iran will likely threaten to deploy its “nuclear snapback.” The JCPOA explicitly states, “Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part.”<sup>24</sup> In effect, if Washington attempts to exercise its rights under the JCPOA to unilaterally snap back the UN sanctions to force Iran to allow the IAEA to gain access, Tehran has warned that it will walk away from the deal and snap back its nuclear program. Fearing this, the Europeans, Chinese, or Russians may be reluctant to pressure Tehran to comply with the terms of the deal or even to punish Iran for violations short of the most flagrant and egregious violations. The lack of specific sanctions agreed to between the parties (short of deal-ending sanctions) undercuts the inspection regime and makes it that much more difficult to force access to Iranian military sites.

### **SANCTIONS RELIEF AND IRAN’S ECONOMIC GROWTH**

On January 16, 2016, the nuclear agreement reached “Implementation Day,” and Iran received substantial sanctions relief, including access to around \$100 billion in restricted oil revenues.<sup>25</sup> Iranian banks, including the Central Bank of Iran, were reconnected to the global financial system through the SWIFT financial network.<sup>26</sup> Sanctions on Iran’s crude oil export transactions were lifted along with sanctions on key sectors of the Iranian economy, including upstream energy investment and energy-related technology transfers, the auto industry, petrochemicals, and shipping, as well as the precious metals trade. Tehran already appears to be using this relief to pay off some of its outstanding debts, repair its damaged economy, fortify itself against future sanctions pressure, continue its support for terrorist groups, provide additional funds to allied rogue regimes, and expand its conventional military power.

This sanctions relief served as a major “stimulus package” for Iran. Iran has brought oil to market more quickly than expected by drawing down its inventories, while also accessing imports, and stabilizing the economy.<sup>27</sup> As a result, in the first half of the 2016/2017 fiscal year, Iran’s real GDP grew by an impressive 7.4 percent, according to the International Monetary Fund (IMF).<sup>28</sup> The organization projects that Iran’s economic growth for the entire FY 2016/17 will have been 6.6 percent, will settle to 3.3 percent this year (FY 2017/18), and will stabilize at about 4.5 percent over the medium term. After the implementation of the JCPOA’s sanctions relief, inflation has dropped to single digits and has stabilized at about 9.5 percent since the middle of last year,<sup>29</sup> down from an annual rate of more than 30 percent between 2012 and 2014.<sup>30</sup>

This is a major shift. In 2012 and 2013, Iran’s economy was crashing. It had been hit with an asymmetric shock from sanctions, including those targeting its central bank, oil exports, and access to the SWIFT financial messaging system.<sup>31</sup> The economy shrank by more than six percent in the 2012/13 fiscal year, largely due to the drop in oil exports and revenue because of tightening sanctions, and it bottomed out the following year, contracting by another two percent.<sup>32</sup> Accessible foreign exchange reserves were estimated to be down to only \$20 billion, limiting imports.<sup>33</sup> At the time, the rial was collapsing,<sup>34</sup> reportedly in one week in September 2012, the rial lost nearly 60 percent of its value.<sup>35</sup>

This all started to change during the nuclear negotiations. During the 18-month period starting in late 2013, interim sanctions relief and the lack of new sanctions-induced shocks saved the Iranian leadership – including the supreme leader and Islamic Revolutionary Guard Corps (IRGC) – from a balance of payments crisis. This enabled Iran to move from a severe recession to a modest recovery.<sup>36</sup> In the 2014/15 fiscal year, the Iranian economy rebounded and grew at a rate of at least three percent.<sup>37</sup>

With substantial sanctions relief in hand from the nuclear agreement, the Iranian regime is now working to insulate itself from future economic pressure. Iran's plan: undermine the efficacy of U.S. sanctions by persuading European and Asia countries to oppose the snapback of sanctions and challenge the American position; fortify the economy's sufficiency to lessen the economic blow from U.S. measures; and render sanctions useless against a near-zero nuclear program.

### **OBAMA ADMINISTRATION PROVIDED RELIEF BEYOND THE JCPOA**

As if it did not concede enough, the Obama administration attempted to provide economic relief to Tehran beyond its JCPOA obligations. First, it actively encouraged foreign businesses to invest in Iran, notwithstanding the ongoing designation of Iran as a “jurisdiction of primary money laundering concern”<sup>38</sup> and the fact that Iran remains on the black list of the Financial Action Task Force (FATF), the global body monitoring and addressing money laundering and terror finance.<sup>39</sup> Former Secretary of State John Kerry engaged in an international invest-in-Tehran “road show”<sup>40</sup> to encourage large European banks to do business with Iran, arguing that banks simply needed to “do their normal due diligence.”<sup>41</sup> The largest global banks, however, have been reluctant to restart relationships with Iranian financial institutions because they know that there is no “normal due diligence” in a country that engages in such extensive illicit financial activities.

The Obama administration also urged state and local governments to lift their own sanctions on Iran,<sup>42</sup> many of which were tied not only to Iran's illicit nuclear program but also to its role as the leading state sponsor of terrorism.<sup>43</sup> The JCPOA itself contained language that complicates a more robust sanctions effort. Under the terms of the accord, the United States and the European Union committed to “refrain from any policy specifically intended to directly and adversely affect the normalization of trade and economic relations.”<sup>44</sup> Iran interpreted this to mean that the United States and EU cannot implement terrorism or other non-nuclear sanctions – and has since threatened to walk away from the JCPOA and restart its nuclear program if such sanctions are imposed.<sup>45</sup> Iranian officials also argue that the United States must go further, pushing skittish multilateral companies and global banks back into Iran.

The Trump administration is likely to take a different approach, arguing that there is a big difference between not interfering with commercial relations and actively advocating for banks and companies to enter the Iranian market. Since taking office on January 20, the new administration already has reiterated the position of the Obama administration that non-nuclear sanctions are not a violation of the JCPOA,<sup>46</sup> designated 25 Iranian and foreign persons and entities involved in Iran's illicit ballistic missile program or aiding the IRGC's terrorism activities,<sup>47</sup> sanctioned another 11 Chinese, North Korean, and UAE companies and individuals for providing sensitive technology to Iran which could aid its ballistic missile development, and

sanctioned another 19 companies and individuals for other violations of the Iran, North Korea, and Syria Nonproliferation Act.<sup>48</sup>

**Recommendation 1:** Congress should play an active role in countering Iran’s financial legitimacy campaign by drawing attention to the ongoing compliance and business risks involved in transactions with Iran. Congress should expose Iran’s ongoing deceptive conduct and illicit activities through both open-source data and declassified evidence to build on the well-documented market concerns of doing business with Iran. These risks need to be highlighted by U.S. administration officials at Financial Action Task Force meetings, including at the upcoming June meeting where Washington should resist efforts to permanently lift the mandatory countermeasures on Iran that were temporarily suspended in June 2016.<sup>49</sup>

**Recommendation 2:** Congress should require the administration to provide detailed reporting on Iran’s deceptive conduct and illicit activities, exposing Iran’s shadow networks, the corruption of top Iranian officials, and the role of the IRGC and other designated Iranian actors in “legitimate” businesses. This should include passing enhanced auditing standards required for a company doing business in Iran, given the financial risks. These measures will underscore that responsible actors have an obligation to keep Iran at arm’s length until there is greater certainty that they are not implicated in illegal activity.

### *Dollarized Transactions*

The Obama administration’s post-JCPOA sanctions concessions were not only limited to business roadshows and efforts to undercut state and local sanctions. Secretary Kerry also briefed State Department reporters on a plan to license foreign banks to use dollars when processing transactions with their Iranian counterparts<sup>50</sup> – a concession never explicitly negotiated as part of the nuclear deal. This prompted a backlash in Congress that had Treasury Department officials scrambling to issue guidance that Washington was not permitting Iranian access to the U.S. financial system, even as they left open the possibility of offshore dollar clearing.<sup>51</sup>

Iran wants direct – or, at a minimum, indirect – access to the U.S. dollar because the dollar is the preferred currency for global trade. In 2008, Treasury banned Iran’s last access point to the U.S. financial system by prohibiting “U-turn” transactions between a foreign bank and an Iranian bank that briefly transit the U.S. financial system to dollarize the transaction.<sup>52</sup> At the time, Treasury’s Office of Foreign Assets Control noted that the move was designed to “protect the U.S. financial system from the threat of illicit finance posed by Iran and its banks.”<sup>53</sup>

Three years later, Treasury designated Iran as a jurisdiction of primary money laundering concern under Section 311 of the USA PATRIOT Act because of Iran’s “support for terrorism,” “pursuit of weapons of mass destruction” – including its financing of nuclear and ballistic missile programs – and the use of “deceptive financial practices to facilitate illicit conduct and evade sanctions.”<sup>54</sup> In other words, Iran’s entire financial system posed illicit finance risks to the global system.

Permitting Iran access to the U.S. dollar would have contradicted promises the Obama administration repeatedly made.<sup>55</sup> Most explicitly, Treasury's former Acting Under Secretary for Terrorism and Financial Intelligence Adam Szubin publicly committed in September 2015:

Iran will not be able to open bank accounts with U.S. banks, nor will Iran be able to access the U.S. banking sector, even for that momentary transaction to, what we call, dollarize a foreign payment. It was once referred to as a U-turn license, and Iran was allowed to make such offshore-to-offshore payments that cross U.S. banking sector thresholds for just a second. That is not in the cards.<sup>56</sup>

However, in October 2016, Treasury updated language in its "Frequently Asked Questions" resource about the JCPOA to state that foreign financial institutions are permitted to process dollar-denominated transactions involving Iran. Treasury's guidance previously stipulated that foreign financial institutions could not clear "dollar-denominated transactions involving Iran through U.S. financial systems," but it never clarified what was actually permitted.<sup>57</sup> Risk-averse global banks assumed that actions not explicitly permitted remained off-limits. The updated guidance represented a further concession to Iran outside the scope of the JCPOA.

If the United States were to go a step further and provide dollarized access now, Iran would claim that this sanctions relief is part of "nuclear sanctions" lifted by the JCPOA. It would then be difficult to revoke this access for non-nuclear reasons when Iran conducts another ballistic missile test, provides even more lethal assistance to Syrian President Bashar al-Assad, executes more dissidents, or engages in other provocative and illicit behavior in the future.<sup>58</sup> Iran will threaten to walk away from the deal and restart its nuclear program, effectively neutralizing Washington's ability to use non-nuclear sanctions.

**Recommendation 1:** Congress should consider legislation to prohibit U.S. financial institutions from processing transactions for Iranian entities, even when such a "transfer was by order of a non-Iranian foreign bank from its own account in a domestic bank to an account held by a domestic bank for a non-Iranian foreign bank."<sup>59</sup> Congress could also state that it is prohibited for a U.S. financial institution to provide dollars for offshore clearing facilities if any party in the financial chain is an Iranian entity. The termination of this prohibition could be linked to a presidential certification that Iran is no longer supporting terrorism and developing ballistic missile capabilities.

**Recommendation 2:** Congress could also require the Treasury Department to report on all financial institutions involved in giving Iran direct or indirect access to the U.S. dollar, with details on institutions, transactions, counterparties, and mechanisms. Any financial institution or offshore large value payment system that provides dollar-clearing services in transactions involving an Iranian party should be liable for sanctions.

### ***Treasury FAQs about Permitted Business with Iran***

In October 2016, the Obama administration found yet another way beyond the JCPOA to quietly ease sanctions on Iran.<sup>60</sup> Treasury's Office of Foreign Assets Control (OFAC) updated its



Frequently Asked Questions (FAQs) and significantly eased restrictions on transactions between Iran and non-U.S. banks and companies.<sup>61</sup>

In addition to the change regarding dollarized transactions as discussed above, the new guidance also stipulated that it is not necessarily prohibited for foreign companies to do business with a non-sanctioned entity that is minority-owned or -controlled by an entity on its sanctions list. Iran's Islamic Revolutionary Guard Corps (IRGC), the key driver of proliferation, terrorism, and human rights abuses for the Iranian regime, maintains a pervasive role in the Iranian economy but often keeps its ownership of companies under 50 percent to avoid sanctions.<sup>62</sup> In effect, the Obama administration green-lighted business with companies in which the Guard has a significant business interest below the 50-percent threshold.

Currently, Treasury uses the 50-percent threshold to determine IRGC ownership (or ownership by any other designated entity); however a 25-percent threshold would better reflect global standards and Treasury's own regulations and recommendations regarding beneficial ownership, those who "own, control, and profit from companies."<sup>63</sup> Foreign companies are able to do business with companies owned by the IRGC if those companies are not explicitly designated on Treasury's Specially Designated Nationals list. The threshold for "shadow SDNs" is similarly set at 50 percent.<sup>64</sup>

**Recommendation:** Congress should require the Treasury Department to lower the threshold for designation to the 25-percent beneficial ownership threshold rather than majority ownership. This change should also be reflected in Treasury's "shadow SDN" guidance. Under new criteria, many additional IRGC-controlled entities (and companies owned by sanctioned persons) would be eligible for designation, and foreign companies would shun business with Iranian partners with IRGC connections. Lowering the threshold would also generate greater public scrutiny and enhanced due diligence and auditing by the private sector. Additionally, Congress and the administration should clarify ambiguities in the law that allow business with IRGC companies not designated by the U.S. government as agents or affiliates of the IRGC.<sup>65</sup>

Obama's Treasury Department's updated guidance also took a weak stance on the question of know your customer's customer (KYCC), a hotly debated topic in the world of corporate compliance. According to the new guidance, "OFAC does not expect a non-U.S. financial institution to repeat the due diligence its customers have performed on an Iranian customer unless the non-U.S. financial institution has reason to believe that those processes are insufficient." The new Treasury guidance thus lowers the compliance requirements for global banks doing business with companies that may have significant ties to illicit actors in Iran. In effect, unless a non-U.S. financial institution has a specific reason to believe that a customer's clients are sanctioned, it can process transactions and provide banking services. Given the United States' history of leading the global efforts to ensure the international financial system is not abused by terrorists, money launderers, and weapons proliferators, this is a significant weakening of the international KYCC principles.

**Recommendation:** The Trump administration should issue new FAQs or make an announcement revoking these changes to the FAQs – which have no legal standing and are mere statements of how an administration interprets regulations. Congress should encourage the Trump administration to take such steps immediately.

## IRAN'S ONGOING MALIGN ACTIVITIES

In spite – or perhaps because – of the significant sanctions relief received, Iran's destabilizing and malign activities have accelerated since the announcement of the JCPOA in July 2015.

### *Ballistic Missiles*

Between July 2015 and February 2017, Iran tested as many as 14 ballistic missiles, according to a comprehensive study by my FDD colleague Behnam Ben Taleblu,<sup>66</sup> and reportedly tested another two short-range ballistic missiles in early March.<sup>67</sup> These tests violate the UN Security Council resolution endorsing the nuclear deal. Lamentably, the JCPOA fails to address Iran's ballistic missiles despite the U.S. intelligence community's assessment that ballistic missiles would be Iran's preferred delivery vehicle for a nuclear bomb.<sup>68</sup>

Under the Trump administration, Treasury has issued designations under proliferation and terrorism authorities,<sup>69</sup> and the State Department also designated companies for violating the Iran, North Korea, and Syria Nonproliferation Act.<sup>70</sup> While these are important first steps and an indication that the Trump administration seeks to enforce U.S. sanctions against Iran, Congress can take a leadership role in crafting policies to create additional pressure on the Iranian regime to change its behavior.

A bipartisan group of senators and representatives introduced two important pieces of legislation at the end of March.<sup>71</sup> Among other measures, the Senate bill imposes secondary sanctions on any individual or entity found to be financing or supporting Iran's ballistic missile development. The House bill also imposes ballistic missile sanctions, and requires the president to issue a report to Congress on Iranian and foreign individuals and companies that are part of Iran's global supply chain. This report would likely serve as the basis for additional sanctions.

**Recommendation:** Congress should require the administration to report on the link between the global supply chain and the sectors of Iran's economy that contribute directly or indirectly to the development of the country's ballistic missile program. Much of this information is available through open source material. Indeed, FDD's research has revealed that supply chains in the metallurgy and mining; chemicals, petrochemicals, and energy; construction; automotive; and electronic, telecommunication, and computer science sectors are involved in Iran's ballistic missile program.<sup>72</sup>

### *Iran's Islamic Revolutionary Guard Corps*<sup>73</sup>

Last month, the Trump administration was reportedly<sup>74</sup> contemplating whether to designate Iran's Islamic Revolutionary Guard Corps (IRGC) as a foreign terrorist organization,<sup>75</sup> a State Department listing that includes Hamas, Hezbollah, the Islamic State, and other groups. The

United States has for the past three decades officially delineated Iran as the leading sponsor of terrorism.<sup>76</sup> In 2007, a number of Democratic and Republican politicians, including then-Senators Hillary Clinton and Barack Obama,<sup>77</sup> cosponsored a bill known as the Iran Counter-Proliferation Act that called on the George W. Bush administration to report on its efforts to designate the Revolutionary Guard as a Foreign Terrorist Organization.<sup>78</sup> But the bill did not pass.

From the IRGC's inception in 1979, terrorism has been its defining feature. The 125,000-strong force has always been commanded by violent, religious ideologues.<sup>79</sup> During the 1980s, the IRGC conducted vicious campaigns against all forms of dissent, as well as against ethnic minorities, especially the Kurds and the Baluchis. Throughout the 1990s, the group attacked the Iranian reform movement and became even more feared than Iran's intelligence ministry, which had a reputation for human rights abuses. In 1999, Supreme Leader Ali Khamenei unleashed the IRGC to crush student protests – a move that President Hassan Rouhani, then the secretary of the Supreme National Security Council, had passionately supported.<sup>80</sup> In the summer of 2009, the Guard also squashed the pro-democracy Green Revolution, arresting thousands and torturing hundreds.<sup>81</sup> Over the years, the IRGC has also overseen a terror apparatus that has assassinated intellectuals, journalists, dissident politicians, and literary figures abroad.

Yet it is IRGC's terrorism abroad that has garnered the most attention. In the early 1980s, it combined various Lebanese Shiite groups to form Hezbollah, now Iran's most dependable and lethal proxy. At Iran's behest, Hezbollah bombed a U.S. Marine compound in Beirut in 1983, killing 238 U.S. service members. Since then, the Guard has continuously trained and armed non-Iranian Shiite radicals, often dispatching them against Americans. The 1996 Khobar Tower bombing in Saudi Arabia, which killed 19 American service members, was an Iranian-directed proxy attack.<sup>82</sup> Since 2003, Iranian-supplied munitions and Iranian-trained paramilitary forces have killed and maimed U.S. troops in Iraq.<sup>83</sup>

In 2011, the Revolutionary Guard attempted to conduct its first attack on U.S. soil by assassinating the Saudi ambassador to the United States, Adel al-Jubeir, at a restaurant in Washington, D.C.<sup>84</sup> Then-Attorney General Eric Holder declared that the failed plot was “directed and approved by elements of the Iranian government, and, specifically by the senior members of the Qods Force,” which is an arm of the IRGC.<sup>85</sup> An Iranian agent pleaded guilty to the crime and has been sentenced to 25 years in prison.<sup>86</sup>

In Syria, the Guard has been instrumental in preserving the regime of President Bashar al-Assad. Under the direction of IRGC General Hossein Hamadani, recently killed in battle, Syrian militias modeled after Hezbollah entered the battle.<sup>87</sup> It can be said that Assad's war crimes are also the IRGC's war crimes since the IRGC directed military operations, carried out by either Shiite militias or Assad's forces, explicitly aimed at slaughtering civilians. But the Islamic Republic was not punished for these atrocities at any point during the first six years of the war. It seemed, at the time, that President Obama was focused on brokering his Iran nuclear deal and thus wanted to avoid at all costs a collision with Iran and its Shiite militias.

The Trump administration must know that it cannot stabilize the Middle East without first weakening the IRGC. And to do that, it should target the group's financial empire. The IRGC has become Iran's "most powerful economic actor," according to the U.S. Treasury.<sup>88</sup>

If President Trump faces opposition to designating the IRGC as an FTO, he can use Executive Order 13224, signed by President Bush in 2001, which gives the administration the authority to freeze the assets of individuals or groups that either carry out terrorist acts or are planning them. Indeed, the new Senate bill mandates sanctions on the IRGC in its entirety pursuant to Executive Order 13224. President Trump should comply and shut the Guard out of the global financial and commercial markets. Bush used this authority in 2007 to block the assets of the Quds Force after it provided material support to Hezbollah, the Taliban, and three Palestinian terrorist groups.<sup>89</sup>

Targeting only the Quds Force, however, did not go far enough. As the war in Syria demonstrates, the Quds Force is not a separate entity but an integral part of the IRGC. Quds Force and Revolutionary Guard units operate as one, with personnel routinely rotating back and forth within a unified command structure.<sup>90</sup> Further, the Quds Force plays only a small role in the IRGC's vast business ventures, which it uses to fund its terrorist activities.

The United States has designated the IRGC under nonproliferation and human rights authorities,<sup>91</sup> demonstrating a willingness to label the entire organization for these illicit activities. But these sanctions do not specifically target the role of the Guard in supporting terrorism. Sanctions are designed to address the underlying illicit conduct in order to change behavior. And there is clear evidence of the IRGC's role in conducting and supporting terrorist activities. The Trump administration should not accept the argument that this designation under Executive 13224 will provoke the IRGC to threaten or commit more acts of terrorism if it is designated. To do so would hold American policy hostage to any terrorist organization issuing these threats.

Designating the IRGC for terrorism also should pave the way for designating thousands of business entities owned or controlled by the IRGC and would likely draw greater international attention in the global financial and business community to the terrorism financing risks involved in transactions with Iran. This would further squeeze the Guard financially, since it would highlight the risks for European and Asian corporations looking to do business worth billions of dollars in sectors the Guard controls. This is particularly important now, because the EU will lift its nuclear sanctions on all IRGC entities by October 2023, pursuant to the JCPOA.

Designating the IRGC for terrorism would not violate the JCPOA – despite protests by Iran to the contrary. Washington should proactively explain that if the nuclear deal falls apart as a result of this designation, the blame falls squarely on Iran both for its decision to walk away from the agreement and for its terrorism support in the first place. To tame the Islamic Republic, the United States must diminish the Guard's power. Labeling it a terrorist group is just one way to begin that process.

**Recommendation 1:** Executive Order 13324 should be applied against the IRGC in its entirety. Congress should encourage the administration to significantly expand the number of IRGC designations from the current 60 to include the thousands of front companies operated by the Guard.

**Recommendation 2:** Congress should require that the Treasury Department create an “IRGC Watch List” of entities that do not meet the threshold for designation but have demonstrable connections to the IRGC. As the IRGC continues to evolve, and as its influence and control in the Iranian economy becomes increasingly sophisticated and hidden, enforcement of IRGC-related sanctions must also evolve. The criteria for inclusion on the IRGC Watch List should be flexible to account for the IRGC’s use of deceptive business practices.

### *Iran Air’s Continued Illicit Activities*

The JCPOA lifted sanctions against Iran’s state-owned airline, Iran Air, despite a lack of evidence that the airline had ceased the illicit conduct for which it had been sanctioned in the first place. In 2011, Washington designated Iran Air for providing material support and services to the IRGC and Iran’s Ministry of Defense. At the time, Treasury noted, “Rockets or missiles have been transported via Iran Air passenger aircraft, and IRGC officers occasionally take control over Iran Air flights carrying special IRGC-related cargo ... carried aboard a commercial Iran Air aircraft, including to Syria.”<sup>92</sup>

When the previous administration was asked why sanctions on Iran Air were lifted, State Department Spokesman John Kirby did not argue that Iran Air’s behavior had changed,<sup>93</sup> or that the IRGC is no longer using the airline to ship weapons to Syria. Instead, he said merely that the administration was comfortable with its decision, though he was “not at liberty to go into the reasons behind” the de-listing.<sup>94</sup>

Based on open source research, my FDD colleague Emanuele Ottolenghi has concluded that between January 16, 2016 (Implementation Day) and March 30, 2017, Iranian airlines have flown at least 690 flights from Iran to Syria, including 114 on Iran Air.<sup>95</sup> The use of deceptive practices – turning off tracking signals, using false tail numbers, or listing fabricated itineraries<sup>96</sup> – indicates that these flights were likely part of Iran’s efforts to arm the Syrian government. I am confident, based on my sourcing, that in the past few months, Iran Air has transported hundreds of thousands of kilograms of missiles and katyusha rockets and hundreds of fighters to Syria and Yemen.

Iran Air also is unlikely to retain all of the aircraft it is now set to purchase from Western companies (since its current fleet is only 36 planes<sup>97</sup> but it has signed preliminary contracts for nearly 200), and instead likely will transfer, resell, or lease them to sanctioned airlines, including Mahan Air, which the U.S. government designated for supporting the IRGC’s terrorism activities.<sup>98</sup>

Despite these concerns, Boeing and Airbus sales to Iran continue apace. These deals should not be allowed to proceed. The licenses should be immediately suspended, pending a thorough

investigation into Iran Air's conduct. If the investigation determines that Iran Air is engaged in illicit activities, the licenses should be canceled and Iran Air re-designated. Sales of new aircraft to Iran should only move forward once Iran has demonstrated that it will no longer use civilian aircraft for malign purposes and that none of the aircraft will end up in the hands of sanctioned entities.

**Recommendation 1:** Congress should require the administration to investigate suspicious flights to determine whether or not Iran Air is engaged in illegal and illicit conduct supporting Iran's malign activities in Syria, Yemen, and throughout the region. If the IRGC or other designated entities have used Iran Air to ship weapons and/or fighters to Syria, Iran Air should face new sanctions. And any licenses for aircraft sales should be revoked.

**Recommendation 2:** Representatives and Senators should send letters to Boeing, Airbus, and other manufacturers reminding them that they will incur significant reputational and legal risks if the IRGC uses their planes to aid the Syrian and Yemeni war effort. Additionally, Congress could remind these companies and the banks or aircraft leasing firms financing the deals that if Iran Air is re-sanctioned, they will likely be left holding the tab.

**Recommendation 3:** Congress should require the president to certify that none of Iran's commercial planes are being used for purposes other than exclusively civil aviation end-use. The certification could then include at least a five-year waiting period, after which new planes could be sold only on a trial basis, with only a small number of planes delivered per year with full payment made by Iran in cash at the time of delivery.

**Recommendation 4:** Congress should also expand sanctions against entities that are aiding the IRGC's efforts in Syria, Yemen, and elsewhere by authorizing sanctions against any foreign company providing replacement parts, dual-use items, financial services, and ground services to airlines involved in weapons shipments. Currently, Mahan Air flies routes to major European destinations, and the companies involved in servicing those planes are likely violating U.S. laws. Congressional efforts to expand sanctions should severely limit Mahan's ability to operate.

### ***Illicit Activities by Previously Designated Iranian Entities***

The ongoing illicit activities of Iran Air are indicative of a greater problem with the JCPOA. The deal lifted sanctions on numerous Iranian entities without providing evidence that the companies and individuals in question had changed their behavior. As the Trump administration conducts a review of U.S.-Iran policy, Congress should request the intelligence community to reassess the de-listing of entities whose illicit behavior has not changed.

Two further examples are:

*Bank Sepah*

When Treasury sanctioned Bank Sepah in 2007, then-Under Secretary for Terrorism and Financial Intelligence Stuart Levey called the bank the “financial linchpin of Iran’s missile procurement network,” noting that the bank “has actively assisted Iran’s pursuit of missiles capable of carrying weapons of mass destruction.”<sup>99</sup> The nuclear agreement, however, lifted U.S. sanctions on the bank despite Obama administration promises that the JCPOA would only lift “nuclear” sanctions. Levey, now the chief legal officer of HSBC, noted the contradiction: “One of the narratives was that the missile sanctions were not lifted. ... I never did understand what that meant with Bank Sepah not being sanctioned.”<sup>100</sup>

The lifting of sanctions on Bank Sepah occurred under troubling circumstances. In January 2016, the Obama administration reportedly signed a secret agreement with Iran<sup>101</sup> to support the lifting of UN sanctions against Bank Sepah and its London branch in exchange for the release of U.S. hostages held in Iran – part of a larger package of concessions to Iran.<sup>102</sup> Under the nuclear agreement, the UN and European Union were not slated to lift sanctions on Bank Sepah until 2023.<sup>103</sup> As a result, the Iranian negotiating team scored a hat trick: It convinced the P5+1 negotiators not to include ballistic missile restrictions in the nuclear agreement and at the same time to lift sanctions on entities – including Bank Sepah – involved in ballistic missile procurement.<sup>104</sup> No less importantly, Tehran successfully weakened United Nations restrictions on its ballistic missile development.<sup>105</sup>

Now, the bank can operate freely in Europe, bolstering an already thriving illicit procurement network. Iran’s efforts to illegally acquire nuclear and unconventional weapons technology were robust in 2015, according to Germany’s domestic intelligence agency, and its “already considerable procurement efforts” for its “ambitious missile technology program” increased further.<sup>106</sup> Now that Iran’s preferred missile-financing bank is back in business, these efforts could multiply.

**Recommendation 1:** Congress should request a report from the Trump administration and the intelligence community to determine whether the bank is still involved in Iran’s missile procurement network, and if not, which financial institution(s) has stepped in to fill the gap. Any financial institution involved in Iran’s ballistic missile development and illicit procurement should be immediately sanctioned.

*Execution of Imam Khomeini’s Order (EIKO)*

The JCPOA sanctions relief is also benefitting the Supreme Leader Ali Khamenei’s financial empire – a “shadowy network of off-the-books front companies,” according to the U.S. Treasury.<sup>107</sup> The network, headed by an organization known as the Execution of Imam Khomeini’s Order (EIKO) or Setad, is reportedly worth at least \$95 billion.<sup>108</sup> When Treasury designated the organization and its subsidiaries in June 2013, the department noted that the purpose of EIKO was “to generate and control massive, off-the-books investments, shielded from the view of the Iranian people and international regulators.”<sup>109</sup> Despite the fact that the sanctions were unrelated to Iran’s illicit nuclear program, the U.S. lifted the sanctions as part of the nuclear agreement.

The supreme leader, the IRGC, and the ruling elite in Iran have enriched themselves at the expense of the Iranian people. As then-Assistant Secretary of the Treasury Daniel Glaser noted, this type of corruption “stifles economic development, impairs democratic institutions, erodes public trust, and impairs international cooperation ... [and] creates space for criminals to flourish.”<sup>110</sup> In Iran, these criminals are not only traditional thugs, but are also state-sponsored human rights violators.

**Recommendation 1:** Congress should request an intelligence assessment of EIKO to determine its involvement in systemic corruption in Iran. If the organization has indeed not reformed its illicit financial conduct, Congress could require the administration to re-designate EIKO under anti-money laundering and kleptocracy authorities.

**Recommendation 2:** Last session, Congress passed the Global Magnitsky Human Rights Accountability Act, which (among measures targeting human rights violators) authorizes sanctions against government officials and their associates responsible for significant corruption.<sup>111</sup> Congress should request a report from the intelligence community naming all EIKO managers. The relevant congressional committees should require the president to assess whether these individuals should be sanctioned under Global Magnitsky.

## ONGOING SYSTEMIC HUMAN RIGHTS ABUSES

Nearly two years after the announcement of the JCPOA, the Iranian regime continues to repress its people. Far from ushering a new era of freedom, there has been no meaningful change in the regime’s deplorable human rights record, according to Dr. Ahmed Shaheed, who served as the United Nations Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran during and after the JCPOA negotiations.<sup>112</sup>

When President Rouhani was elected in June 2013, there was a widespread, but incorrect, assumption that he would shepherd in an era of greater freedoms in Iran. Instead, even in the wake of the nuclear deal, the human rights situation has deteriorated even further. The Islamic Republic continues to commit serious human rights abuses. Just last month, the new Special Rapporteur Asma Jahangir presented the latest report before the UN Human Rights Council and painted a bleak picture.<sup>113</sup> In her report, Jahangir noted that the use of the death penalty, including for juvenile offenders is “very high;” human rights activists and journalists are being “arrested, detained and prosecuted for the peaceful exercise of their profession or of their legitimate rights to freedoms of expression and association;” and minority communities continue “to face persistent discrimination and persecution.”<sup>114</sup> Meanwhile, Iran continues to hold hostage U.S., Canadian, British, and other dual nationals.

Despite this behavior, Tehran wants the nuclear agreement to wipe clean its record of systemic human rights abuses. It hopes that businesses seeking to enter the Iranian market will ignore this repression. But the world must hold Iran accountable. Sadly, Washington’s most recent human rights designations took place in 2014, and at the time, the Obama administration only designated one individual and two entities.<sup>115</sup> Congress and the Trump administration have an opportunity, and a moral obligation, to change the direction of U.S. human rights policy on Iran.



**Recommendation 1:** Congress should impose human rights sanctions on state organs responsible for institutionalized human rights abuses, as well as individuals who work for these state organs. Expanding the designation list to include the people, companies, and state institutions like prisons and military bases (many of which are controlled by the IRGC) at which abuses like torture and arbitrary detention occur will help cut off the sources of revenue that facilitate and embolden Iran's vast system of domestic repression.

**Recommendation 2:** Congress should also consider the creation of a new authority to designate an entity, or even an entire country, as a "jurisdiction of human rights concern." Using the model of Section 311 of the USA PATRIOT Act, the finding would carry regulatory implications in the United States but would also send a strong signal to foreign companies and banks, even if they are not directly affected by the finding. The goal of this policy would be to encourage the private sector to sever ties with institutions that perpetrate human rights abuses.

**Recommendation 3:** Congress should work with the Trump administration to link any further sanctions relief concessions to Iran with an improvement in Tehran's atrocious human rights record. During the Cold War, Western negotiators linked certain arms control agreements with the Soviet Union to demands for Moscow's adherence to the civil rights portion of the 1975 Helsinki Accords. By contrast, the JCPOA did not require Tehran to make any improvements in its human rights record. This is a mistake: It would be much easier to monitor Iran's nuclear program in a relatively freer and more transparent Iran.

## **CONCLUSION: DEVELOPING A COMPREHENSIVE IRAN PLAN**

To address the continued Iranian threat, Congress and the new administration need to treat Iran in the way that Ronald Regan treated the Soviet Union. In the early 1980s, President Reagan instructed his National Security Council to develop a comprehensive strategy to undermine the Soviet Union. The Trump National Security Council needs a similar plan, one that uses both covert and overt economic, financial, political, diplomatic, cyber, and military power to subvert and roll back the Iranian threat.

Iran's Supreme Leader Khamenei has alluded to his regime being "on the edge of a cliff" as a result of the 2009 democratic uprisings.<sup>116</sup> President Trump should create the distinct impression that America will help the millions of Iranians who despise the regime to push it over that edge.

In addition, as discussed above, the Trump administration, with assistance from Congress, needs to reinvigorate the sanctions regime aimed at Iran's support for terrorism, ballistic-missile development, human-rights abuses, war crimes, and destabilizing activities in the Middle East. These sanctions need to target, in particular, the Islamic Revolutionary Guard Corps, which controls strategic areas of Iran's economy. The new bipartisan legislation introduced in the House and Senate is a good start in rebuilding peaceful tools of leverage targeting Iran's continued illicit conduct.

Foreign diplomats may balk, but these sanctions are fully compliant with the nuclear deal. As President Barack Obama stated in August 2015, “We will continue to have sanctions in place on Iran’s support for terrorism and violation of human rights. We will continue to insist upon the release of Americans detained unjustly.”<sup>17</sup> This comment was reiterated by Obama’s secretary of state and acting under secretary of Treasury for terrorism and financial intelligence who said, “The United States will oppose Iran’s destabilizing policies with every national security tool available,” and, “We will be aggressively countering the array of Iran’s other malign activities. The JCPOA in no way limits our ability to do so, and we have made our posture clear to both Iran and to our partners.”<sup>18</sup> When the Trump administration implements stricter sanctions, international banks and companies will think twice about working with IRGC companies, especially if doing so might mean losing access to the U.S. market.

With regard to the nuclear deal, the Trump administration needs to rigorously enforce the agreement by using the Joint Commission, the Procurement Channel, and strict interpretations of the terms of the agreement. But as discussed, a sole focus on enforcement presents a bedeviling paradox: The greater the focus on enforcement, the higher the likelihood Iran will emerge with nuclear weapons. As a result of the sunset provisions, the JCPOA provides Iran with patient pathways to nuclear weapons capability.

The Trump administration should work with Congress to design a statutory architecture that freezes the Iranian nuclear program where it is today and impose new crippling sanctions if it expands in any way that drops nuclear breakout time to less than one year. To achieve this, advanced centrifuge research, development, and deployment levels, for example, need to be significantly constrained. There is no compelling reason for Iran to have a breakout time to a nuclear bomb of less than one year.

The Trump administration also needs to put Iran on notice that the U.S. will use force to counter Iranian aggression. Sanctions without the credible threat of military action will always be insufficient to change the regime’s calculus.

While applying pressure on the regime, the administration should make it clear to the Chinese, Europeans, and Russians that Washington is prepared to negotiate a follow-on agreement that addresses the fatal flaws of the original deal. Tehran, still struggling to attract foreign investment because of its continued malign activities, can benefit from such an offer if it is prepared to come back to the table and halt its subversive behavior.

Thank you for the opportunity to testify today. I look forward to your questions.

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