

# **The Implications of Sanctions Relief Under the Iran Agreement**

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Chairman Shelby, Ranking Member Brown, and distinguished members of the Senate Committee on Banking, Housing, and Urban Affairs, I am honored to testify before you to discuss the sanctions implications of the recently announced Joint Comprehensive Plan of Action (JCPOA) between the P5+1 and Iran, otherwise known as the “Iran nuclear deal.” This Committee has an important role in evaluating the deal as Congress considers the sanctions implications for this particular deal and also the long-term implications for the use of America’s financial and economic power in national security.

I take this responsibility seriously given the gravity, stakes, and implications of this agreement and Congress’s role in reviewing the Iran nuclear deal on behalf of the American people. The question of a nuclear-armed Iran is a critical security issue for the United States, our allies, the broader Middle East, the global non-proliferation regime, and has serious implications for the potential and future use of American power in all its forms.

I come to this issue with views born from relevant experience – as the first-ever assistant secretary of the treasury for terrorist financing and financial crimes until May 2005, and then as the deputy assistant to the President and deputy national security advisor for combatting terrorism (2005-2009). While in these positions, we shaped the financial constriction campaign against Iran starting in 2005, and confronted the world’s leading state sponsor of terror.

I also come to this issue now as an outside expert, having written, taught, and spoken extensively about the use of sanctions and financial power in national security; counter-terrorism and transnational threats, strategy, and policies; and legal principles and constructs in national security decision-making, including in our coercive statecraft and diplomacy.

The task of negotiating a deal of this nature and complexity – with multiple parties and against an avowed enemy of the United States – has been a daunting and lengthy task. I know that those involved from the United States government – from multiple agencies and across two Administrations – have worked tirelessly on this issue.

And I know that all involved have been seeking a peaceful solution to the Iranian nuclear problem – through painstaking strategies of coercion, sanctions, and diplomacy. The financial and economic constriction campaign has been built methodically over the course of a decade to help drive the Iranian regime to the table and change the course of their nuclear program. Indeed, these efforts built on over three decades of sanctions against the Iranian regime for its support of terrorism, quest for a nuclear program, human rights abuses, and other dangerous activities.

These efforts have also been designed to constrain and isolate rogue Iranian behavior and protect the integrity of the U.S. and international financial systems. This was a monumental task, and there is no silver bullet that will get us everything we want in a deal.

Unfortunately, this is a flawed agreement. I have not been asked today to delineate all the gaps, problems, or challenges in the JCPOA, nor would I be qualified to do so. But I do want to point out three fundamental problems with the deal that frame my analysis:

1. **Problematic End State: Iran as a Nuclear Power.** The JCPOA does not ultimately constrain the Iranian nuclear program, but instead helps to expand and to legitimize it. The JCPOA moves fundamentally away from the agreed-upon baseline restrictions and demands of Iran that were long the basis of UN Security Council Resolutions (UNSCRs). Ultimately, the JCPOA stalls, enables, and then validates an Iranian nuclear program. After 10 years, the program will not be subject to any United Nations Chapter 7 scrutiny, and after 15 years, many of the key restrictions imposed will end. The provisions enabling advanced research and development, uranium enrichment activities, evolution toward the use of more sophisticated centrifuges, and the sunset provisions embedded in the agreement all contribute to a legitimated Iranian nuclear program.

These provisions are agreed absent clarity on Iran's prior attempts at militarization – “possible military dimensions” (PMDs) – and without a stricter inspection protocol or the allowance for American inspectors to be included on international inspection teams. Moreover, the arms and ballistic missile sanctions are scheduled to be lifted automatically after five and eight years, respectively, on the back of the JCPOA without account for Iran's belligerence, proliferation, or other dangerous behaviors, now or later.

With strategic patience, Iran can march toward a weaponized program with greater capabilities, breakout capacity, and more economic resources, resilience, and connectivity to the global oil markets and commercial system. Even if Iran complies with all elements of this deal, Iran will end up with an unfettered opportunity to break out and weaponize its nuclear program, overtly or covertly, along with an ability to arm itself and its allies more openly and aggressively. The end state of the agreement takes us far afield from the declared goal of successive administrations at the start of negotiations.

2. **Problematic Construct: Iran as Co-Equal.** The presumptions and processes of the JCPOA embed and define Iran as an equal party in pursuit of a peaceful nuclear program. Though a negotiating party should be treated fairly and with respect, it does not mean that the construct of the agreement should treat the parties equally. Iran has been the suspect party in the eyes of the international community, subject to strict UNSCRs and caught on several occasions in the past hiding elements of its nuclear program and its weaponization efforts. Iran should be required to prove the peaceful nature of its program and activities whenever challenged. It also does not mean that Iran should be treated as an aggrieved party when restrictions are placed on its program or questions asked. Instead, it should remain the suspect party in the eyes of the world's powers for the purposes of any deal.

Iran has been given a right to object, question, and stall any challenge to its nuclear program or application of sanctions. For example, it must be presented with evidence by the International Atomic Energy Agency (IAEA) and others if an inspection is requested; it can interrogate the information or object to “re-imposition” of sanctions; it sits on the new JCPOA appellate body, the “Joint Commission,” and can use procedural hurdles to delay; and it has the agreed-upon right to walk away from the deal unilaterally based on its perception that the JCPOA is not being honored.

Iran should be required to present information to answer legitimate questions and rebut reasonable assertions. The burden of persuasion and proof should always lie with Iran. The United States and her partners should not be put in the position of having to prove ab initio its concern or the basis for its question, having then to calculate whether and how to reveal sensitive information and intelligence to Iran (along with China and Russia). The structure, processes, and nature of this agreement give Iran the benefit of the doubt that it is pursuing a peaceful program, when the onus should remain with Iran throughout to prove the peaceful nature of its program, as constructed in the relevant UNSCRs. Importantly, Iran should not be given the unilateral right to withdraw from the deal when the world powers’ actions are subject to review and appeal under the JCPOA.

- 3. Problematic Sanctions Relief: Constraints on U.S. Financial and Economic Power.** The sanctions relief provided is too front-loaded, does not account for the increased risks stemming from Iranian commercial and financial activity, and broadly constrains the U.S. government’s ability to use effective financial power against Iranian “non nuclear” national security risks. Despite the attempts to phase out various sanctions lists and retain a “snapback” provision, the JCPOA contemplates early relief by allowing for frozen Iranian funds (upwards of \$150 billion) to be released after Implementation Day without constraint and for many of the financial, oil, and commercial sanctions and restrictions to be lifted.

Though there will be reticence by legitimate actors to jump back into Iranian markets too quickly, the sanctions architecture that has been put in place methodically over the course of many years will be unwound in swaths and will be difficult to maintain once momentum grows to do business with and in Iran. Instead of targeted unwinding and control of related risks, the sanctions unwinding framework appears to be driven by a desire to help reintegrate and rehabilitate the Iranian economy. The cost of this deal was the dismantling of the sanctions architecture and the defanging of America’s financial and economic power against Iran.

I will focus my testimony on this sanctions relief framework and why this presents a fundamental flaw in the structure of the JCPOA. Fundamentally, the Iranian nuclear deal sacrifices the ability of the United States to use its financial and economic power and influence to isolate and attack rogue and problematic Iranian activity – beyond the nuclear program. Beyond simple sanctions relief, we have negotiated away one of our most important tools of statecraft – the very financial and economic coercion that helped bring the Iranian regime to the table.

## Taking U.S. Financial and Economic Power Off the Table

In terms of sanctions relief, the most troubling question for Congress to consider is whether we have negotiated away the ability to use U.S. financial and economic power aggressively against the Iranian regime and economy – even to constrain “non nuclear” activities that present real and increasing threats.

Though “non nuclear” sanctions were supposedly off the table, the spirit and letter of the agreement may actually neuter U.S. ability to leverage one of its most powerful tools – its ability to exclude rogue Iranian actors and activities from the global financial and commercial system.

Paragraph 29 of the preface commits the parties to the following:

The EU and its Member States and the United States, consistent with their respective laws, will refrain from *any policy* specifically intended to directly and adversely affect the *normalization of trade and economic relations* with Iran inconsistent with their commitments not to undermine the successful implementation of this JCPOA. (Emphasis added)<sup>1</sup>

This provision, which appears in the section related to sanctions, clearly expresses the intent of the JCPOA to help normalize trade and economic relations with Iran as a cost of the deal. This text incorporated directly – along with the entire JCPOA – into the new UN Security Council Resolution (2231) passed unanimously on July 20, 2015, and the intent is reiterated explicitly in the preamble:

*Emphasizing* that the JCPOA is conducive to promoting and facilitating the development of normal economic and trade contacts and cooperation with Iran, and having regard to States’ rights and obligations relating to international trade.<sup>2</sup>

Ultimately, this means that the deal shields Iran’s economy from any efforts to exclude it from the global commercial and financial order. This power is at the heart of U.S. strategies post 9/11 to use financial and economic power to exclude rogue actors and illicit activities from the global order. With this constraint, the United States appears to have bound itself to restrict the type of effective tools it will use to affect Iranian behavior.

From the start of negotiations, what the Iranians wanted most was the ability to do business again – unfettered and plugged back into the global financial and commercial system. With a commitment to the reintegration of the Iranian economy on the back of the nuclear deal, the

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<sup>1</sup> “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 29.

([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/iran\\_joint-comprehensive-plan-of-action\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf))

<sup>2</sup> United Nations Security Council, “Resolution 2231 (2015),” July 20, 2015, page 2.

(<http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>)

Administration in essence put all effective sanctions on the table – those that can be used against Iranian support for weapons and technology proliferation, terrorism, human rights abuses, support for Assad, and even cyber attacks.

To understand this, one needs to appreciate why these financial and commercial measures were so effective in the first instance. These are not the “sanctions” of old. The financial constriction campaign which began against Iran in 2005, has proven effective over the past decade not because Iran has been hermetically sealed with naval blockades or particular individuals in the regime have been designated by the United Nations but because the United States – with support and actions from its allies and the private sector – helped unplug Iran from the global financial and commercial system.

This campaign was not built on the principles of classic trade embargoes. In this new construct, it did not matter if Iranians could buy Wrigley chewing gum on the streets of Tehran. Instead, the U.S. government, through the U.S. Treasury mounted a targeted financial campaign against key elements of the Iranian economy, which they needed to be able to do business effectively and give global reach to their activities. This began by targeting Iran’s banks. The Iranians’ use of their financial and commercial system to advance their nuclear weapons program and to support their military and intelligence operations was their Achilles’ heel.

Like a hunter’s trap, the financial campaign squeezed Iran’s ability to access the international financial system in stages – actually feeding off of Iran’s attempts to evade the program’s heightened scrutiny. This approach took time, patience, and coordination within the U.S. government and with allies. The driving principle would be the same as what had been driving the isolation of illicit financial activity since 9/11 – protecting the integrity of the international financial system.

This campaign unfolded in stages, and the international environment would need to be conditioned to reject doing business with Iran. It would not be a financial shock-and-awe campaign. Instead, it took time, using a series of coordinated steps to isolate key elements of the Iranian economy, starting with its banks, then shipping, then insurance, and finally its oil sector. If anything, this campaign looked more like a financial insurgency than a traditional sanctions program. The Iranians themselves called it the “hidden war.”

The U.S. Treasury targeted Iran’s banks by using Iran’s own conduct – its proliferation activity, support for terrorist groups and Shia militias, and lack of anti-money-laundering controls, as well as the secretive and corrupt nature of the regime itself – as the cornerstone of the campaign. Iran’s suite of suspect activities and attempts to avoid international scrutiny spurred the private sector to stop doing business with Iran. No reputable bank would want to be caught facilitating Iran’s nuclear program or helping it make payments to Hezbollah terrorist cells around the world. If they did, they would be caught and sanctioned, with enormous reputational and business consequences.

This was a virtuous cycle of isolation that would reduce Iranian access to the international financial system more and more over time. The more the Iranians tried to hide their

identities or evade sanctions, the more suspect their transactions would appear and the riskier it would become for banks and other financial institutions to deal with them. Over time, bank accounts, lines of credit, and correspondent accounts were shut down. Iran's own actions to avoid scrutiny and obfuscate transactions would lead to greater financial constriction.

The Iranians deepened their greatest vulnerability. They were blending legitimate business transactions with illicit ones by funneling them through similar conduits. The Iranian regime often tried to hide the nature of its transactions and the identities of the Iranian government entities involved. They used front companies, cut-outs, and businessmen to acquire items and goods abroad that were hard to acquire, sanctioned, or tied to their nuclear ambitions or their weapons programs.

At the same time, the Iranian military was taking greater control of the nation's economy. Importantly, the predominant economic player was Iran's Islamic Revolutionary Guard Corps (IRGC), the elite military and security unit founded in 1979. The IRGC had gained more power and influence over time as the protector and exporter of the revolution and reported directly to the Supreme Leader, Ayatollah Ali Khamenei.

The IRGC – with its vast network – has embedded itself into more industries within Iran, ultimately building what has been called a veritable business empire.<sup>3</sup> The regime and the IRGC's control of "charitable" foundations – known as *bonyads* – with access to billions of dollars of assets in the form of mortgages and business interests for veterans of the Iranian military – served as the baseline of its economic power, along with its ability to construct infrastructure through a corps of engineers. The reach of the IRGC's economic empire now extends to majority stakes in infrastructure companies, shipping and transport, beverage companies, and food and agriculture companies.<sup>4</sup>

In 2006, the IRGC acquired control of the Iranian telecommunications sector, and it began to control more elements of the nation's energy sector, including the development of pipelines and the valuable South Pars gas field. Some estimates note that the IRGC controls between 25 and 40 percent of Iran's gross domestic product (GDP).<sup>5</sup> The IRGC is deeply involved in building Iran's infrastructure, pursuing projects such as deep-water ports and underground facilities important to Iran's defense and economy. These projects and industries give the IRGC political power and access to profits and capital, which has grown over time.

The IRGC is an economic juggernaut, with responsibilities relating to the development of weapons of mass destruction, missile systems, and overseas operations. It is deeply involved in the Iranian nuclear program, and its international arm, the Qods Force (IRGC-QF), is responsible for providing support to terrorist proxies and exporting the Iranian Revolution.

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<sup>3</sup> Frederic Wehrey, Jerrold D. Green, Brian Nichiporuk, Alireza Nader, Lydia Hansell, Rasool Nafisi, & S. R. Bohandy, *The Rise of the Pasdaran: Assessing the Domestic Roles of Iran's Islamic Revolutionary Guards Corps* (Washington, DC: RAND Corporation, 2009).

<sup>4</sup> Emanuele Ottolenghi, *The Pasdaran: Inside Iran's Islamic Revolutionary Guard Corps* (Washington, DC: Foundation for Defense of Democracies, 2011), pages 44-45.

<sup>5</sup> *Ibid.*, page 43.

Between them, the IRGC and its Qods Force are responsible for all the activities – weapons proliferation, terrorist support, and militant activity – for which Iran has been sanctioned in the past.

From the U.S. perspective, this blend of activities created the ultimate vulnerability, particularly the blurred lines between legitimate industry and support for Iran’s nuclear program and terrorist groups. Wire transfers to terrorist groups and front companies flowing money into the coffers of the Revolutionary Guard were actions seen to threaten not only international security but also the integrity of the financial system. The nefarious nature of the activities, tied with the IRGC’s attempts to hide its hand in many of its economic dealings and operations, made Iran’s financial activity inherently suspect. Iran was making itself a prime target for the kind of financial isolation that fed off of the suspect conduct of rogue individuals, companies, and countries.

This constriction campaign focused not on squeezing or punishing the Iranian people, but instead on the financial infrastructure of the IRGC and the regime’s profits. This was not an embargo intended to punish Iran for political delicts. The financial campaign targeted suspect Iranian financial and commercial activity in order to protect the international financial system from Iran’s illicit financial activity.

As part of this effort, the U.S. Treasury made the argument directly to banks and companies around the world that it was too risky to do business with Iran, since no one really knew who was lurking behind corporate veils, pulling the strings, and accessing bank accounts and funding in Tehran. Would a bank be willing to risk its reputation by doing business, even inadvertently, with the IRGC or the Qods Force? Could their compliance officers guarantee that they knew who was behind their Iranian customers and transactions? Was trade with Iran worth the risk of access to American markets and banks?

All of this was amplified by parallel national legislation, UNSCRs, greater scrutiny from authorities around the world, and enforcement actions, led by the United States. The United States created a layered sanctions regime, with overlapping Executive Orders, designations, and eventually legislation, focused on the key elements of the Iranian regime and economy facilitating illicit and dangerous behavior. Each U.S. action spurred private sector and allied responses. The effects of this suspicion and isolation – driven by the private sector’s risk calculus and government actions – had a real world impact.

Iranian banks, including its Central Bank, could no longer access the international financial system; its shipping lines could not traverse ports easily or obtain insurance to operate; and – thanks to congressional and international action – its oil sales and revenues were suspended. Iran had to create workarounds, evasion schemes, and bartering arrangements to continue to do business.

The regime and the economy were affected by cascading isolation and falling oil prices. The pressure was increasing – belying the notion that the United States has been facing a cracking sanctions coalition and system. Quite the opposite was occurring. The ayatollahs’ concern over the strangulation of the Iranian economy and ultimately the regime – in concert with

lingering fears of the ghosts of the Green Movement – is what brought them to the negotiating table and launched them on the charm offensive that allowed them to turn the tables on the West. The sanctions pressure was not sustainable for the regime. President Rouhani admitted that these measures threatened to drive Iran into an economic “the Stone Age.”

The regime has needed access to capital, new technologies, and connectivity to the oil markets and the global economy to maintain and sustain their regime. That is what they lost over the past decade. That appears to be what they have gained and guaranteed in this deal.

In essence, the U.S. and her negotiating partners appear to have agreed to immunize Iran from any effective future financial or economic pressure – precisely the type that brought the regime to the table. And our negotiating partners – most champing at the bit to do business with Iran again – were willing to take advantage of this offering. Even during negotiations, China, which rejects the use of America’s global financial power and sanctions, and Russia, chafing under the weight of U.S. and EU sanctions, were all too willing to undermine U.S. economic leadership. China named Iran a founding member of its Asian Infrastructure Investment Bank (AIIB), and Russia quickly renewed its deal to sell SA-300 missiles to Tehran and then supported Iran’s demand to lift the arms and missile embargo.

We appear to be giving up this power by intending to “normalize” economic relations. This is a commitment we should not be making. This is highly problematic if the U.S. hopes to maintain any ability to use financial and economic power and suasion to affect Iranian behavior in the future – either to ensure compliance with any agreement or confront other elements of Iranian behavior. We will need to rely on sanctions and economic constriction campaigns even more aggressively to keep Iran honest in any deal and check its aggressive revolutionary agenda. Though Administration officials assure that it was clear at the table that all “non nuclear” sanctions would remain in effect, the United States will need to amplify its use of financial measures aggressively against key elements of the Iranian economy to deal with the increased risks of Iranian activity. It is not at all clear that this is well understood by all parties or part of our strategy.

Unfortunately, we have already begun this process of unwinding by agreeing to lift international sanctions under previous UNSCRs, without clarity on what restrictions will be placed on Iran moving forward in any new UNSCR. Once gone, the international architecture built via the UNSCRs will be difficult, if not impossible, to replace. This matters because the UNSCRs set the baseline for legal obligations for all Member States to use various national laws and authorities against Iranian illicit behavior, including those that have been reluctant to confront Iranian activity. It also matters because the new UNSCR commits the United States to others’ review of U.S. financial and other measures that may impact the Iranian economy. In this sense, it risks that the United States may appear isolated in any future action to sanction Iranian behavior outside the bounds of existing UNSCRs – and could have the Joint Commission established under the JCPOA reject U.S. actions against Iran.

If the United States now commits to the normalization of economic and trade relations, it may also be committing to a rehabilitation of the Iranian regime in the eyes of the global financial and commercial community. This proves highly problematic and undermines U.S.

credibility and power internationally if this is done without concern for the underlying concerns that drove its isolation in the first place – proliferation, support for terrorism, and development of weaponry and programs of concern controlled by the IRGC. These concerns will remain and increase even under the JCPOA.

This fundamental constraint of American financial power and economic influence against Iran in the JCPOA is exacerbated by structural, substantive, and other challenges enshrined in the unwinding framework.

### *Structural Problems with the Sanctions Relief Framework*

There are structural problems in the JCPOA sanctions unwinding framework that undermine the ability of the United States to use sanctions to constrain Iranian behavior and monitor Iranian compliance.

The “snapback” framework itself proves problematic and does not preserve U.S. and international ability to leverage effectively the sanctions regime against Iran. Initially, the snapback is a blunt instrument. Given that “snapback” would reimpose the international sanctions regime and potentially threaten any deal, there will be a great deal of reluctance to trigger this provision. In addition, pursuant to UNSCR 2231, paragraph 11, the snapback provision applies only to “significant non-performance of commitments under the JCPOA.”<sup>6</sup> This provision would not be seen as a tool to be used frequently or initially, and the incentive will be to negotiate away apparent or proven violations, even if deemed material yet not “significant.” The international community may have left itself no real recourse or sanction for incremental violations, which are likely and in line with past Iranian behavior. Realistically given the construct and consequences, only the most egregious violations that could be proven openly and convincingly to all parties would be subject to an international snapback.

How the snapback would work also affects its utility. If the snapback provisions allow the “grandfathering” of contracts signed before any snapback, the “snapback” loses its real-world effect to ensure compliance. Instead, such a provision might have the opposite impact intended by creating a “gold rush” incentive for commercial actors to get into the Iranian market and sign contracts as soon as possible. UNSCR 2231 seems to provide for such grandfathering in paragraph 14, noting that application of previous resolutions triggered by the UNSCR “do not apply with retroactive effect to contracts signed between any party and Iran or Iranian individuals and entities prior to the date of application...”<sup>7</sup> Clarity on this question is critical to understand whether any “snapback” procedure will even prove useful.

Importantly, in the notion of “snapback,” there has always been an assumption that the financial pressure could simply be turned on and off like a light switch – perhaps informed

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<sup>6</sup> United Nations Security Council, “Resolution 2231 (2015),” July 20, 2015. (<http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>)

<sup>7</sup> United Nations Security Council, “Resolution 2231 (2015),” July 20, 2015. (<http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>)

by a now-outdated view of sanctions. Unfortunately, the kind of global constriction campaign launched against the Iranians needed to be maintained and managed – like a garden infested with weeds. To maintain the pressure, the environment had to be tended to – with continual actions (quiet and public) against a set of Iranian financial and commercial targets that would try to find a way to access the international system

The financial argument at the heart of Iran’s isolation has been that Iran is engaged in a host of nefarious and illegal activities that have been facilitated by its interactions with the international financial system. It is the threat to the international financial system of the illicit and suspect flows of money that is the baseline for Iran’s isolation. If the perception is that this suspicion is gone and normalization is to follow, then the ability to use this kind of financial suasion to isolate Iran – even with snapback provisions that work – will be weakened.

The JCPOA also creates an Iranian snapback – a heckler’s veto on any re-imposition of “nuclear” sanctions. 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>8</sup>

Thus, if the United States attempts to trigger the “snapback” procedures or imposes any new sanctions, Iran could object to the re-imposition of “nuclear” related sanctions and simply walk away from the agreement. The broad definition of “nuclear” sanctions as used in the JCPOA context to include proliferation-related concerns adds to the concern that Iranian objections could be broad and used often to temper aggressive use of any snapback. If Iran cheats and gets caught, and the international community attempts to punish Iran, Iran can threaten to back out of the deal and expand its nuclear program. This may create reluctance to punish Iran for any violations short of the most flagrant and egregious violations and create a permissive environment for Iranian cheating and stonewalling of the IAEA.

With the appellate processes in the agreement – to include the Joint Commission and the Working Group on Implementation of Sanctions Lifting – any U.S. sanction or related action to which Iran objects would be subject to review by the other parties – including Iran, China, Russia, and Europe. This could become a venue to constrain American financial power – especially if it implicates national commercial interests that are intertwined with Iranian interests. This process creates a geo-economic incentive for Iran to entangle the economic interests of the parties – so as to use economic investments and interests as both a sword and a shield against future financial and economic pressure. In this regard, the Iranians would take a page out of Saddam Hussein’s playbook in fracturing the international sanctions regime by picking commercial winners and losers from key countries in the Oil-for-Food Program, as a diplomatic and economic hedge against future pressure.

### *Conduct-Based Sanctions and Concerns in the Unwinding Architecture*

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<sup>8</sup> “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 37. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/iran\\_joint-comprehensive-plan-of-action\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf))

The JCPOA sanctions unwinding framework does damage to the conduct-based sanctions and measures that have been so effective and driven most of the listings and designations by the United States and the international community. Though the international sanctions architecture has been built largely around concerns about the Iranian nuclear program, there are key elements of this regime – and especially in the United States – that relate to other serious international security concerns, including WMD and weapons proliferation, grave human rights abuses, support for terrorism and militia groups causing instability in countries like Yemen, and money laundering, corruption, and illicit financial activity facilitating these activities. This is not just a U.S. construct, but one embedded in other national and international sanctions and measures.

The JCPOA attempts to unwind sanctions tied to the nuclear file, but the unwinding is difficult and complicated given the interconnected nature and effects of such sanctions. In some instances, the unwinding can be managed. For example, the Obama administration has tied the taint of Iranian and Syrian activity together. The Iranian and Syrian governments collaborate to support terrorism, proliferate weapons, and to crack down on political opposition and civilian populations. The U.S. government has taken actions to designate Iranian entities and individuals for supporting the Assad regime. Helpfully, the European Union followed suit on August 24, 2011, by designating the Qods Force for supporting Syrian security services to repress civilians. On October 12, 2011, the Treasury designated Mahan Air for helping the Qods Force to ship weaponry – especially to Syria. Though these kinds of sanctions will remain in place, others that touch on Iranian illicit activity will not.

In many other cases, the unwinding schedule and some of the scheduled delistings implicate actors and activities beyond the nuclear file. The planned delisting of some key Iranian entities that have facilitated a range of Iranian illicit activities and the cessation of sanctions prohibitions against them, especially financing, raises serious questions and challenges to U.S. ability to affect Iranian behavior of concern.

The reintegration of Iranian banks into the global financial system, including via the SWIFT bank messaging system, presents perhaps the most concerning issue. For example, Bank Sepah, scheduled to be delisted after Implementation Day (listed in Annex II, Attachment 3), has been designated under U.S. authorities not simply because of its facilitation of the Iranian nuclear program and procurement but also its role in financing arms and missile deals, activities that should remain a concern and are subject to UN sanctions.

The Central Bank of Iran (CBI) itself has been designated in part because of broader sanctions evasion facilitation on behalf of the Iranian banking system. Treasury issued a finding in November 2011, under Section 311 of the USA PATRIOT Act that Iran, as well as its entire financial sector including the CBI, is a “jurisdiction of primary money laundering concern.”<sup>9</sup> Treasury cited Iran’s “support for terrorism,” “pursuit of weapons of mass

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<sup>9</sup> 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>)

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>10</sup> The entire country’s financial system posed “illicit finance risks for the global financial system.”<sup>11</sup> Those concerns persist and are not alleviated by the JCPOA or any Iranian commitments or actions.

The concerns about the integrity of the Iranian financial system are international in nature. The Financial Action Task Force (FATF), the global standard setting and assessment body for anti-money laundering, counter-terrorist financing, and counter-proliferation financing, has labeled Iran – along with North Korea – “a high risk and non-cooperative jurisdiction.” FATF has called on its members to “apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran.”<sup>12</sup>

As recently as June 26, 2015, FATF issued a statement warning that Iran’s “failure to address the risk of terrorist financing” poses a “serious threat ... to the integrity of the international financial system.”<sup>13</sup> The international community recognizes that Iran – regardless of the status of the nuclear program – poses a real and serious threat to the integrity of the global financial system.

Overall, the JCPOA lifts U.S. sanctions on 21 out of the 23 Iranian banks designated for proliferation financing – including both nuclear and ballistic missile activity.<sup>14</sup> The designation of Bank Saderat for terrorist financing will remain in place, but the sanctions against the Central Bank of Iran, which included concerns over sanctions evasion, will be lifted. Twenty-six other Iranian financial institutions blacklisted for providing financial services to previously-designated entities (including the National Iranian Oil Company (NIOC) which is being de-listed on Implementation Day) or for being owned by the government of Iran will also be delisted by the U.S. Treasury.<sup>15</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> 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>)

<sup>12</sup> The Financial Action Task Force, Public Statement, “FATF Public Statement 14 February 2014,” February 14, 2014. (<http://www.fatf-gafi.org/countries/d-i/islamicrepublicofiran/documents/public-statement-feb-2014.html>)

<sup>13</sup> The Financial Action Task Force, Public Statement, “FATF Public Statement 26 June 2015,” June 26, 2015. (<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/public-statement-june-2015.html>)

<sup>14</sup> U.S. sanctions on Ansar Bank and Mehr Bank are scheduled to remain in place. Sanctions on Arian Bank, Banco Internacional de Desarrollo, Bank Kargoshaee, Bank of Industry and Mine, Bank Melli, Bank Mellat, Bank Refah, Bank Sepah, Bank Tejarat, Europaisch-Iranische Handelsbank, Export Development Bank of Iran, First East Export Bank, First Islamic Bank, Future Bank, Iranian-Venezuela Bi-National Bank, Kont Investment Bank, Moallem Insurance Company, Persia International Bank, Post Bank, Sorinet Commercial Trust Bankers, and Trade Capital Bank (aka Bank Torgovoy Kapital ZAO) as well as the Central Bank of Iran (aka Bank Markazi Jomhuri Islami Iran) will be lifted on “Implementation Day.” See Attachment 3. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/annex\\_1\\_attachements\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachements_en.pdf))

<sup>15</sup> Over the past decade, the Treasury Department has designated 51 banks and their subsidiaries inclusive of the 23 banks designated as proliferators, Bank Saderat which was designated for financing terrorism, and the Central Bank of Iran. With the exception of Bank Saderat, Ansar Bank, and Mehr Bank, all Iranian financial institutions will be de-listed on Implementation Day.

The JCPOA explicitly calls for the lifting of sanctions on “[s]upply of specialized financial messaging services, including SWIFT, for persons and entities ... including the Central Bank of Iran and Iranian financial institutions.”<sup>16</sup> The European Union will lift SWIFT sanctions for the Central Bank of Iran and all Iranian banks<sup>17</sup> originally banned from SWIFT.<sup>18</sup>

By allowing most of the Iranian banks back into the international financial order without dealing with their underlying conduct or controls, the United States is assuming the good faith of the Iranian regime and allowing the Iranian banking system to be used by the regime to finance and facilitate other issues of significant national security concern.

This concern applies similarly in the transportation sector. The delisting of the various elements of the Islamic Republic of Iran Shipping Lines (IRISL) and the National Iranian Tanker Company (NITC) removes a significant restriction on Iran’s ability to proliferate weapons and evade existing or future sanctions. Many IRGC businesses that were involved in the procurement of material for Iran’s nuclear and ballistic missile programs will be delisted as will some of the worst actors involved in Iran’s nuclear weaponization activities. Problematically, the EU will lift all of its counter proliferation sanctions on Iran. The future delisting of individuals tied to the Iranian nuclear program, procurement, and likely proliferation adds to the concern that underlying proliferation issues and concerns have been left aside in the wake of the nuclear deal.

The delisting of these individuals and entities that present risks related to proliferation as well as the nuclear program underscores additional risk to U.S. national security and the integrity of the financial system. It also calls into question whether the United States and international community are concerned about the integrity of the financial system and will defend it.

There is no question trying to unwind any effective and global sanctions regime is difficult. Unwinding intertwined, conduct-based sanctions for a regime that uses its economy and system for various dangerous and nefarious activities of international security concern is incredibly challenging. But tearing down sanctions bluntly – encompassing issues of proliferation and weaponization – without addressing the underlying conduct creates real risks and does damage to the ability to use the very same tools against Iranian individuals

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<sup>16</sup> “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 19(iv).

([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/iran\\_joint-comprehensive-plan-of-action\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf))

<sup>17</sup> On Implementation Day, the EU will lift sanctions on the Central Bank of Iran and Bank Mellat, Bank Melli, Bank Refah, Bank Tejarat, Europaische-Iranische Handelsbank (EIH), Export Development Bank of Iran, Future Bank, Onerbank ZAO, Post Bank, and Sina Bank. On Transition Day, the EU will also lift sanctions on Ansar Bank, Bank Saderat, Bank Sepah and Bank Sepah International, and Mehr Bank. See Attachment 1, parts 1 and 2 and Attachment 2, parts 1 and 2. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/annex\\_1\\_attachements\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachements_en.pdf))

<sup>18</sup> The Council of the European Union, “Council Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures against Iran and Repealing Regulation (EU) No 961/2010,” *Official Journal of the European Union*, March 24, 2012. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1406807228342&uri=CELEX:32012R0267>)

and entities in the future. Under the JCPOA construct, those tools against delisted entities may no longer be available.

### *Heightened Risks Under the JCPOA Sanctions Unwinding*

The risks from Iran are real and will increase in an environment of sanctions unwinding under the JCPOA for a variety of reasons.

In the first instance, the unfettered return of funds to the Iranian regime will allow Tehran the flexibility to fund its allies and proxies and flex its muscles in the region. Iran will get a massive infusion of capital from initial sanctions relief, with estimates up to \$150 billion from frozen oil proceeds. There may be unaccounted-for money that is dislodged and returned to Iran – to include other frozen or blocked Iranian assets that are unreported or have remained in limbo in recent years due to the sanctions regime. Regardless of amounts available to the regime or percentage used to support terrorist proxies, there will be an infusion of terrorist financing into the global system. The Administration has acknowledged that some of the unfrozen funds will go to support terrorist and militant groups, like Hezbollah, HAMAS, Iraqi Shia militias, and the Houthis in Yemen. This is certainly the expectation of Iran’s allies. Iran could even use its capital to support the Taliban and al Qaida, with which Iran has maintained a relationship and provided support in the past.

With Iran expanding its reach and presence throughout the Middle East, witnessing IRGC commanders and proxies positioned from the Golan to Yemen, there will be more concern about Iran’s misuse of the economy, the benefits of sanctions relief, and the international financial and commercial system for dangerous and illicit activities. This infusion of cash will relieve budgetary constraints for a country that had only an estimated \$20 billion in fully accessible foreign exchange reserves prior to November 2013<sup>19</sup> but was spending at least \$6 billion annually to support Assad.<sup>20</sup>

The regime itself, and its core institutions like the Ministry of Intelligence and the IRGC, will benefit most immediately and deeply. Iran is a theocratic regime that controls the key elements of the economy, with the IRGC controlling the nation’s largest construction company, much of its telecommunications sector, strategic sectors like shipping, and a large portion of the value on the Tehran Stock Exchange.

Economic forecasts prior to the announcement of the JCPOA based on expectations of the sanctions relief assessed that Iran’s economic growth would likely stabilize around 2.6% in FY2015/16, and then accelerate to about 4% in FY 2016/17.<sup>21</sup> In the second half of the

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<sup>19</sup> 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](http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf))

<sup>20</sup> Eli Lake, “Iran Spends Billions to Prop Up Assad,” *Bloomberg*, June 9, 2015.

(<http://www.bloombergvie.com/articles/2015-06-09/iran-spends-billions-to-prop-up-assad>)

<sup>21</sup> Mark Dubowitz, Annie Fixler, & Rachel Ziemba, “Iran’s Economic Resilience Against Snapback Sanctions Will Grow Over Time,” *Foundation for Defense of Democracies & Roubini Global Economics*, June 2015.

decade, Iran's economic growth would likely average 3.5-4%. Depending on Iran's economic policy choices, in FY 2017/18, growth could reach 5-6%.

The IRGC has used the nation's banks, oil industry, infrastructure projects, and other nodes of the Iranian economy to profit, strengthen its hand, and repress internal threats to the regime. The mullahs have used their control of the economy – through *bonyads* and the Supreme Leader's vast financial network, known as Setad or EIKO, worth tens of billions of dollars to enrich themselves and exert more control over the country.

Despite the notion that the JCPOA resolves all “nuclear-related” concerns, it does not address real concerns over continued Iranian proliferation, to include missile and arms trade. With the allowance for an Iranian nuclear program, infrastructure, and research, the deal will likely increase (not decrease) the risk of proliferation – with potential Iranian trade and exchange with rogue third countries like North Korea.

The JCPOA de-lists several IRGC military research and development facilities. For example, EU sanctions on the Research Center for Explosion and Impact will be lifted after eight years. This entity was designated by the EU for connection to the possible military dimensions of Iran's nuclear program.<sup>22</sup> Whether or not the IAEA has reached a broader conclusion that Iran's program is peaceful and this center is not engaged in weapons-related activities, the sanctions will be lifted.

The JCPOA will lift both U.S. and EU sanctions on Iran's commercial airline Iran Air, on which the Qods Force depends to “dispatch weapons and military personnel to conflict zones worldwide. ... The Qods Force will have access to newer, larger, and more efficient planes with which to pursue its strategic objectives.”<sup>23</sup> Without financial constrictions or checks, Iran Air and other elements of the Iranian economy can be used to proliferate weapons and support the revolutionary activities of the regime beyond its borders.

The lifting of the arms and missile embargoes at the end of eight years exacerbates these concerns and serious risks. Whether or not the IAEA has determined that Iran's program is peaceful, Tehran will be permitted to engage in an expansion of its ballistic missile program after a maximum of eight years. Iran may also be able to expand its intercontinental ballistic missile program under the guise of satellite testing.

There will need to be vigilance – within the context of the JCPOA and outside its bounds – to the real potential of illegal and suspect Iranian procurement activities, which has been a part

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[http://www.defenddemocracy.org/content/uploads/publications/Iran\\_economy\\_resilience\\_against\\_snapback\\_sanctions.pdf](http://www.defenddemocracy.org/content/uploads/publications/Iran_economy_resilience_against_snapback_sanctions.pdf)

<sup>22</sup> The Council of the European Union, “Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 Implementing Regulation (EU) No 961/2010 on Restrictive Measures against Iran,” *Official Journal of the European Union*, December 2, 2011. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R1245>)

<sup>23</sup> Emanuele Ottolenghi & Saeed Ghasseminejad, “The Nuclear Deal's Impact on Iran's Revolutionary Guards,” *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

of Iranian evasion in the past. Counter-proliferation concerns – and the financing that supports these activities – will actually increase over time.

With the IRGC in control of more of the Iranian economy, including its infrastructure, telecommunications, and oil sector, risks of doing business in and with Iran will increase. The regime will use its control of the economy not only to further enrich itself but also to suppress internal opposition brutally and ensconce its rule. The concerns over human rights abuses and regime kleptocracy will grow.

The IRGC intervenes in Iran's economy through three principal channels: The IRGC Cooperative Foundation (its investment arm), the Basij Cooperative Foundation, and Khatam al-Anbiya Construction Headquarters. The Khatam al-Anbiya (KAA), a massive IRGC conglomerate, was designated by the United States as a proliferator of weapons of mass destruction.<sup>24</sup> It is Iran's biggest construction firm and, according to my colleagues' estimates, "may be its largest company outright, with 135,000 employees and 5,000 subcontracting firms."<sup>25</sup> The value of its current contracts is estimated to be nearly \$50 billion, or about 12% of Iran's gross domestic product.<sup>26</sup> KAA has hundreds of subsidiaries in numerous sectors of Iran's economy including its nuclear and defense programs, energy, construction, and engineering. The company is also involved in "road-building projects, offshore construction, oil and gas pipelines and water systems."<sup>27</sup> EU sanctions against the company will be lifted after eight years, whether or not the IAEA concludes that Iran's nuclear program is peaceful.

These three holding companies are direct shareholders of almost three hundred known businesses. My colleagues at the Foundation for Defense of Democracies have created a database of these companies and board members and provided it to the U.S. government.<sup>28</sup> As a result of the IRGC's control of the economy – which has grown over time – and sanctions relief, the risk of regime control over the economy will grow. In addition, the reality and risks of Iranian sanctions evasion, money laundering, the lack of transparency, and other financial crimes – the subject of international concern and U.S. regulatory action against Iran under the Patriot Act Section 311 – will increase, not decrease over time.

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<sup>24</sup> Department of State, Office of the Spokesman, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism," October 25, 2007. (<http://2001-2009.state.gov/r/pa/prs/ps/2007/oct/94193.htm>)

<sup>25</sup> Parisa Hafezi & Louis Charbonneau, "Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer," *Reuters*, July 6, 2015. (<http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706>); Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

<sup>26</sup> Benoît Faucon & Asa Fitch, "Iran's Guards Cloud Western Firms' Entry After Nuclear Deal," *The Wall Street Journal*, July 21, 2015. (<http://www.wsj.com/articles/irans-guards-cloud-western-firms-entry-after-nuclear-deal-1437510830>)

<sup>27</sup> Ibid.

<sup>28</sup> Iranian Official Journal, accessed July 20, 2015. (<http://www.gazette.ir/>)

Sanctions relief will increase risks over time, and Iranian foreign policy will continue to challenge and threaten U.S. interests. This makes the preservation and use of financial and economic power all the more important, with or without the JCPOA.

### **The Need for Economic and Financial Tools to “Push Back” against Iran**

The dangers, challenges, and risks from Iran on a regional and global scale will only increase over time. In the wake of the JCPOA, Secretary of State Kerry has stated that we will need to “push back” against Iran’s provocative and dangerous policies and tactics. CIA Director John Brennan has said that the United States will “keep pressure on Iran” and “make sure that it is not able to continue to destabilize a number of the countries in the region.”<sup>29</sup>

Indeed, the United States will need to push back, especially against increasing risks and threats from Iran. To do this, the United States will want to use its financial and economic tools and strategies to make it harder, costlier, and riskier for Iran to threaten the United States and our allies. This will mean devising and deploying aggressive strategies to exclude key elements of the Iranian regime and the IRGC, Qods Force, Ministry of Intelligence from the global financial and commercial system.

In many ways, the use of financial power and the strategies of financial and economic isolation, which have dominated the post 9/11 period, have become the national security tools of choice. This is especially the case where there are no military or kinetic solutions available and the United States needs to influence behavior and shape the environment well beyond its borders.

The United States has expanded the use of sanctions and preventive financial measures (like Section 311) in recent years to address a wider range of national security threats and risks – terrorist financing, proliferation, corruption/kleptocracy, organized crime, human rights abuses, money laundering, and most recently malicious cyber attacks. Iran, the leading state sponsor of terror, presents a special case where all of these risks apply and U.S. interests are threatened.

As noted above, the JCPOA does not alleviate these risks – and in fact, some of these threats will likely increase over time due to the loosening of financial and commercial restrictions on the regime in Tehran. Most would recognize that we must be able to use these sanctions and financial measures against Iran and that the JCPOA cannot mean that Iran can use the JCPOA as a shield against such measures in the future. We certainly cannot have negotiated “most favored nation” status to avoid the aggressive use of sanctions and financial measures to address growing threats from Iran. And it shouldn’t be that we have unilaterally disarmed by taking effective financial measures and strategies of economic exclusion off the table.

We must be sure of this. The United States will need to use the same types of financial

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<sup>29</sup> “CIA Director Says US Will Keep Pressure on Iran over Nuclear Capabilities No Matter Outcome of Ongoing Talks,” *Fox News*, March 23, 2015. (<http://www.foxnews.com/politics/2015/03/23/cia-director-says-us-will-keep-pressure-on-iran-over-nuclear-capabilities/>)

strategies and campaigns to isolate rogue Iranian activity. If done well, this will inherently and necessarily affect the trade, commerce, and economy of Iran. If the intent is to maintain existing sanctions without enforcing them or to use symbolic designations as a foreign policy tool, then we will have given up one of our most important and innovative national security tools. If the procedures embedded in the JCPOA have created an alternate structure for the effective application of all U.S. sanctions against Iran in the future, then we have traded away our ability to use such tools whenever the United States deems necessary and appropriate. If there is not clarity with respect to all this, we may find our tools more limited, we may exacerbate divides in policy and approach between Europe and the United States, and we could find ourselves isolated as we attempt to use America's continued economic and global economic reach for national security purposes.

Indeed, we can and should use these financial and economic tools aggressively moving forward and should ensure that the JCPOA does not represent a functional surrendering of this power. Pushing back against Iran by the international community and the United States will mean the United States using financial tools aggressively to impact the Iranian regime. If based on core international principles and underlying Iranian illicit and dangerous conduct, there will be inherent international and market support. Congress should ensure that these authorities and power – to isolate Iran financially and commercially when necessary – are preserved and leveraged against Iran's illicit conduct and attendant risk.

### **Congressional Action: Leveraging U.S. Financial and Economic Power to Address the Risks from Iran**

There are three critical principles for Congress to pursue, demand, and ensure related to sanctions and the JCPOA:

1. **Clarify the Deal.** Congress should ensure there is clarity in the JCPOA and in the execution of any sanctions unwinding plan. Most importantly, the United States needs to make clear to its negotiating partners and Iran that it will continue to use its financial and economic power aggressively to address real and perceived risks stemming from underlying suspect Iranian activity and actors. Many of the actions may overlap with prior "nuclear" sanctions and designations, and there must be a seriousness of enforcement of sanctions and vigilance against sanctions evasion, proliferation, and terrorist support. This will impact Iran's economy and trade, if done properly and with effect, and it's important for all parties to understand this now before the JCPOA is agreed and implemented.
2. **Maintain U.S. Power.** Congress should ensure the United States maintains as much financial and economic power and leverage as possible. If any deal is to succeed, the Iranians need to know that the United States can and will wield its financial and economic power aggressively to police compliance with the agreement. We should do what we can now to maintain our ability to use U.S. financial and economic reach to isolate rogue behavior and protect the integrity of the financial system. This not only allows us to make it harder, costlier, and riskier for Iran to engage in provocative,

dangerous, and suspicious activity, but it could be the only tool available to the United States to counter a more aggressive Iran around the world.

3. **Confront Risks.** Congress should mitigate the risks attendant to an enriched and emboldened regime in Tehran. This includes the real and admitted risks that the flow of unfrozen funds and the business deals and investments will be used by the regime to fund terrorist and militant proxies, prop up Assad and his brutality, further repress human rights in the country, fill the coffers of the mullahs and the Revolutionary Guard Corps, and continue a provocative and violent revolutionary agenda well beyond its borders. This may be seen by some as a perceived cost of any deal, but the attendant risks are not acceptable and must be confronted and mitigated. This will need to be done with a full suite of national powers and authorities, including our ability to isolate rogue Iranian activity from the global financial and commercial order.

With these three principles at the heart of the next steps, Congress and the Administration should consider aggressive steps and measures that leverage U.S. financial power and economic influence, based on accepted and adopted international standards. This could form the basis of a new strategy to address the real and dangerous risks stemming from Iran.

The United States should adopt a financial constriction campaign focusing on the IRGC, the Qods Force, the Ministry of Intelligence, and the core elements of the regime that engage in terrorist financing, proliferation of weapons and nuclear technology, and support to militias and activities that destabilize countries like Syria, Lebanon, Iraq, and Yemen. There will likely be overlap between prior nuclear sanctions and new sanctions and preventive measures, but doing this will test the notion that all parties understand that these kinds of measures were not on the table. Such an approach could also take from elements of key Iran sanctions legislation, like the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), to leverage the potential for secondary sanctions against those companies or individuals who decide to do business with designated Iranian actors. We would need to be prepared to designate third-country companies willing to choose to do business with Iran over the United States.

There should be a recommitment to the elements of a non-proliferation regime and a dedicated strategy, focusing on the proliferation risks attendant to any deal with Iran and the continued challenges with North Korea. This is critical in the context of the increased risk of proliferation and the ongoing crisis in Syria and the brutality of the Assad regime, which reportedly continues to use chemical weapons despite the international agreement that supposedly emptied his stockpiles and ended his programs. This would include tighter export control enforcement, interdictions, and financial restrictions tied to suspect Iranian actors and activities – including Iranian banks. This would also require a recommitment to the application of Executive Order 13382 for those engaged in proliferation finance, as well as the foreign sanctions evader program under Executive Order 13608.

The increased risk of corruption, money laundering, and illicit financial activity should also be addressed explicitly. The elements of the Section 311 action against Iran and the CBI

should be reiterated and reinforced with a designation of “primary money laundering concern” against the class of transactions involving any Iranian bank. This will ensure that the global financial system accounts for the increased risks of Iranian banks being misused by the regime for a whole host of dangerous activities and movement of money.

This could be amplified with a program – led by the European Union – to create a monitoring system through SWIFT (akin to the Terrorist Financing Tracking Program) to track and analyze suspect Iranian banking transactions. Instead of the blunt unwinding measure of plugging all Iranian banks (minus a few) back into the global banking messaging system, a monitoring program could provide a “halfway” house for reintegration of Iranian banks over time while managing the risk of more Iranian money traversing the banking system.

The Global Magnitsky Human Rights Accountability Act could be used expansively to target the finances and holdings of the Iranian regime and those involved in gross human rights violations on its behalf. This would entail holding elements of the regime accountable for human rights violations (to include the investigation of the murder of Argentine prosecutor Alberto Nisman) but also might include a preemptive asset recovery venture against the mullahs and IRGC leadership for kleptocracy and embezzlement of the Iranian people’s assets. This could be done in concert with key authorities and governments in Europe, where human rights are a major concern, and with global financial organizations like Transparency International, Interpol, and the World Bank Stolen Asset Recovery Initiative. Congress could also clarify and amplify the rights of American victims of Iranian-sponsored terrorism, especially their ability to attach Iranian funds for existing or future judgments.

These are just some of the measures that could be taken to confront the risks from Iran, clarify the contours of the JCPOA, and ensure the preservation of American leadership to protect both national security and financial integrity. Undertaking these types of steps – in whatever form – will likely be seen by diplomats as interfering with the JCPOA or any deal. Instead, they should be seen as necessary steps to enable any nuclear deal, temper market enthusiasm for doing business with a dangerous regime and jurisdiction, and preserve a key element of America’s power and leverage against Iran and other rogues.

Effective sanctions and financial measures rely on accepted international norms, a dedication to the principles of financial integrity, and the reputational and real risks attendant to touching tainted goods, money, or actors. These measures – often relying simply on suasion instead of enforcement – depend on the psychology of markets and the expectations of legitimate actors. Regulation and enforcement – most often coming from the United States – can shape environments and reduce the resources, reach, and impact of our enemies.

The United States has led sanctions enforcement globally for the past two decades – whether with respect to countries like Iran and Sudan or illicit conduct like terrorist financing, money laundering, and kleptocracy. The world will continue to rely on this leadership, and global banks, multinational companies, and market actors will respond to legitimate U.S. actions to identify and isolate rogue activity.

Importantly, we should stop undermining the perception of our financial and economic power. We can't argue in the same breath that the "snapback" sanctions as constructed offer a real Sword of Damocles to be wielded over the heads of the Iranians for years while arguing that there is no way now for the U.S. to maintain the crippling financial and economic isolation which helped bring the Iranians to the table. We can still wield our financial and economic power. Others will follow our lead.

## **Conclusion**

When the Iranians came to the table after President Rouhani's election to negotiate over the nuclear agreement, one Western diplomat based in Tehran told me in confidence, "You have won the war [using economic sanctions and financial pressure]." But he then asked, "Can you win the peace?"

I think and hope we can still "win the peace," but it will require using and leveraging the very same powers and authorities that helped bring the regime to the table. We must ensure that we have these financial and commercial authorities and suasion available in an era where such tools are critical to national security. We must also ensure that the JCPOA has not inadvertently empowered the regime in Tehran and taken one of America's most potent powers off the table.