

UNDERSTANDING THE ROLE OF SANCTIONS UNDER THE IRAN DEAL

HEARING BEFORE THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE ONE HUNDRED FOURTEENTH CONGRESS SECOND SESSION ON

EXAMINING THE NATURE OF THE SANCTIONS RELIEF THAT IS BEING
PROVIDED TO IRAN, INCLUDING THE RECENT FOCUS ON THE POTENTIAL
FOR GIVING IRAN ADDITIONAL ACCESS TO THE U.S. FINANCIAL
MARKET IN RETURN FOR ITS PREVIOUSLY NEGOTIATED TEMPORARY
NUCLEAR-RELATED COMMITMENTS SET FORTH IN THE "JOINT COMPREHENSIVE
PLAN OF ACTION"

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C O N T E N T S

TUESDAY, MAY 24, 2016

	Page
Opening statement of Chairman Shelby	1
Opening statements, comments, or prepared statements of:	
Senator Brown	2
WITNESSES	
Juan C. Zarate, Chairman and Cofounder, Financial Integrity Network	4
Prepared statement	31
Mark Dubowitz, Executive Director, Foundation for Defense of Democracies’ Center on Sanctions and Illicit Finance	7
Prepared statement	46
Michael Elleman, Consulting Senior Fellow for Regional Security Cooperation, International Institute for Strategic Studies—Americas	8
Prepared statement	72
Elizabeth Rosenberg, Senior Fellow and Director, Energy, Economics, and Security Program, Center for a New American Security	10
Prepared statement	78
Responses to written questions of:	
Senator Heitkamp	84

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TUESDAY, MAY 24, 2016

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:30 a.m., in room SD-538, Dirksen Senate Office Building, Hon. Richard C. Shelby, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN RICHARD C. SHELBY

Chairman SHELBY. The hearing will come to order.

Today the Committee will receive testimony on the repercussions of lifting economic sanctions from the world's leading State sponsor of terrorism—Iran.

In particular, it is important for this Committee to understand the effects of implementing the Joint Comprehensive Plan of Action, or more simply, the “Iran deal”. Time and again, Iran's actions have demonstrated that this deal has placed the U.S. in a position of weakness and given Iran the upper hand.

As U.S. and global sanctions evaporate, Iran continues, and in some cases appears to expand, its dangerous behavior. It continues to express its commitment to the destruction of Israel. It continues to operate its aggressive ballistic missile programs, including testing these missiles five times since the Iran deal's implementation date.

Yes, it continues to conduct illicit financing, sending hundreds of millions of dollars to groups like Hezbollah. It continues to promote severe and widespread human rights abuses, including record numbers of executions and oppressive restrictions on civil liberties.

We are now more than 4 months into the implementation of the Iran deal in which Iran promised to refrain from building a nuclear weapon in exchange for significant sanctions relief.

There is already a growing belief that this Administration has little interest in preserving the tools it would need to reimpose sanctions, should Iran violate the terms of the deal.

And while the world relies on the promises of a rogue Nation, Iran has begun to see immediate benefits from the agreement, despite its claim that they are not accruing fast enough.

For example, the deal gave Iran prompt access to approximately \$100 billion in previously frozen overseas assets. The deal also suspended virtually all European Union and United Nations sanctions imposed since 2010, including those on Iran's valuable energy sector.

In addition, it lifted most U.S. secondary sanctions on foreign entities and countries that transact business with Iran, including in the energy and banking sectors.

Still, the Obama administration continues to actively engage in further opening Iran's economy to the world. In March of this year, Treasury Secretary Lew said that the Administration would continue to seek ways to "make sure Iran gets relief."

In particular, the Administration has indicated its willingness to create avenues for a legitimate dollar trade with Iran, notwithstanding assurances that no Iranian transactions will touch the U.S. financial system in any way.

Undoubtedly, access to the world's strongest and most liquid currency would allow the Iranian economy to flourish in comparison to current levels. But with such new-found wealth, there would be no restrictions on how Iran would spend their windfall.

Many fear that there is absolutely no way to restrain a growing Iranian economy from funding Hezbollah, the Islamic Revolutionary Guard, Iran's missile program, and other priorities of Iran's Supreme Leader.

It is no surprise that, despite the misguided efforts of the Administration to put the global banking system at ease, financial institutions are reluctant to do business with Iran, as well they should be. Not only are international banking sanctions extremely—and purposefully—complicated to unwind, but the reputational risk that Iran poses remains significant.

Issues like these illustrate how the Iran deal was sealed before it was clear on how it would be implemented and, thus, whether or not it would work.

And while Iran has not changed any of its non-nuclear reckless behavior, it has become apparent that the Administration will bend over backwards to try to make the agreement even more attractive to Iran. During last year's negotiations, the White House gave the impression to Iran and the world that it thought any deal was better than no deal. Unfortunately, it is taking extreme measures to try to make a bad deal work.

I look forward to the testimony here today of our witnesses as the Committee evaluates the important issues before us and considers necessary and appropriate actions.

Senator Brown.

STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman. For the next 2 days, this Committee will examine the continuing role of U.S. sanctions on Iran, those lifted under the terms of the Joint Comprehensive Plan of Action and those still in place, to combat Iran's ongoing malicious behavior.

Iran is a State sponsor of terrorism. It destabilizes the region. It violates the human rights of its people. That is why the United States and our ally policymakers decided to focus on preventing the single greatest threat to the region and to the world—its nuclear program. They knew a nuclear-armed Iran would pose grave risks to us in our country, to Israel, and to the region. This original rationale is worth bearing in mind given the partisan rancor on this effort in the last 2 years.

Long before the JCPOA, there had been a broad bipartisan consensus in the Bush administration and the Obama administration on using tough economic sanctions to force Iran to the negotiating table and to agree to steps to block its pursuit of a nuclear weapon. In 2008, President Bush's National Security Adviser, Condoleezza Rice, signed a memorandum with P5+1 allies stating that, in return for Iran agreeing to limit its nuclear program, the U.S. was ready to recognize its right to peaceful nuclear energy, to work with its leaders to build confidence to begin to normalize trade and economic relations, and allow for civil aviation cooperation. A number of my colleagues have forgotten that position taken by an Administration not named Obama. That served as the basis for future discussions in the Obama administration.

That is why I was so disappointed—and I think most people in this country were so disappointed—in the partisan nature of the debate last year, including from colleagues who opposed the JCPOA even before reading it. Contrary to opponents' dire predictions, Iran complied with its commitments under the 2013 Interim Agreement, and the International Atomic Energy Agency has verified that Iran has met its JCPOA obligations.

Critics said our sanctions regime would unravel. They exaggerated the amount of sanctions relief Iran would receive. They claimed Iran would never shut down its centrifuges or disable its plutonium reactor or ship out its uranium or allow real-time monitoring of its nuclear sites. More recently, some allege that the Administration was preparing to provide Iran direct access to the U.S. financial system. Wrong on every count.

The nuclear agreement was one of the most significant national security achievements in a generation. It was accomplished without dragging the United States into another war in the Middle East.

This history underscores two points:

First, economic sanctions are means, not ends. Whether applied to Iran or Russia or Burma, they are meant to bolster diplomacy and force concrete changes in a Nation's behavior. In Iran's case, economic sanctions strengthened our national security and that of allies like Israel by forcing Iran's leaders to abandon key elements of their nuclear program—think back to Condoleezza Rice and President Bush—by forcing Iran's leaders to abandon key elements of their nuclear program that could have led to a bomb.

Second, whether we support it or oppose the JCPOA, we all understand the need to continue to combat the threat that Iran continues to pose to the United States or our allies. That requires the Administration to enforce existing sanctions, to designate new sanctions targets, to block Iran's pursuit of military technologies, and to take other steps to confront Iran and its terrorist proxies like Hezbollah.

It requires Congress to confirm immediately our chief sanctions enforcer from whom we will hear today. Just parenthetically, we know that Acting Under Secretary Szubin was originally a Bush appointee. Now he is an Obama appointee, and his confirmation has been blocked. He should be in place with full powers and the full support of the Senate. This nomination has been blocked for over a year, first by this Committee, now by Republican leadership on the Senate floor.

Congress must continue to provide close oversight and support robust military and other aid to regional partners like Israel. We should be focused on holding Iran's feet to the fire to ensure strict implementation of the agreement and to pressure leaders to change their own destabilizing behaviors.

I hope my colleagues will not try to relitigate the JCPOA by trying to reimpose old nuclear sanctions under new labels. Broad new sanction legislation that contradicts our commitments and tries to tie the President's hand would undermine the unity we have developed with our P5+1 partners around the world, and we should remember that. That will not help confront the threats Iran continues to pose or help the cause of regional stability. It will be seen as transparently political. It will invite a Presidential veto.

I welcome our witnesses. I look forward to hearing their perspectives.

Chairman SHELBY. Thank you, Senator Brown.

First, we will receive testimony from the Honorable Juan Zarate, chairman of the Financial Integrity Network, who also served as the Deputy Assistant to the President and Deputy National Security Adviser for Combating Terrorism from 2005 to 2009.

Next we will hear from Mr. Mark Dubowitz, executive director of the Foundation for Defense of Democracies.

Then we will hear from Mr. Michael Elleman, consulting senior fellow for regional security cooperation at the International Institute for Strategic Studies.

Finally, we will receive testimony from Ms. Elizabeth Rosenberg, a senior fellow and the director of the Energy, Economics, and Security Program at the Center for a new American Security.

Mr. Zarate, we will start with you. All of your written testimony will be made part of the hearing record in its entirety, and if you have been here before, you know you can sum up your remarks. Thank you.

STATEMENT OF JUAN C. ZARATE, CHAIRMAN AND COFOUNDER, FINANCIAL INTEGRITY NETWORK

Mr. ZARATE. Chairman Shelby, thank you for that kind introduction and the honor to be here today before you. Ranking Member Brown, thank you. Distinguished Members of the Senate Banking Committee, it is an honor to be back before you today, as well as to be testifying with this distinguished panel whom I count as friends as well as colleagues.

Chairman, when the JCPOA was being debated, I expressed deep concerns about the structure, demands, and effects of the nuclear deal on U.S. interests, especially in anticipation of increased Iranian belligerence and adventurism. Predictably, we have seen that belligerence continue.

Iran remains the leading State sponsor of terror and has continued its direct support to terrorist and militant proxies from the Golan to Yemen. Iran has conducted repeated ballistic missile tests in violation of U.N. sanctions. Iran has deployed troops and dispatched Shi'ite militias from around the world to fight for the Assad regime in Syria. Iran has continued to engage in human rights abuses. Iran continues to hold two American citizens unjustly while Robert Levinson remains unaccounted for.

In January of this year, Iranian naval forces arrested American sailors at gunpoint, broadcasting the video of their detention. And, Mr. Chairman, Iran continues to develop its cyber capabilities and has engaged in malicious cyberattacks against U.S. Government sites, the private sector, specific individuals, and sites like the Bowman Dam in the suburbs of New York.

Last year, Mr. Chairman, I explained that the JCPOA was fundamentally flawed, in part because it would empower and enrich the regime and ultimately constrain our ability to use the most effective financial and economic tools of isolation to counter dangerous Iranian behavior. Those deficits are revealing themselves.

I think it is important for this Committee to consider three fundamental issues with respect to the important role of sanctions and the nuclear deal moving forward.

First, Mr. Chairman, there is inherent tension and even contradictions in what the JCPOA promises. Ultimately, what we negotiated and promised was reintegration of Iran into the global economic system. Though non-nuclear sanctions were supposedly off the table, the agreement neuters U.S. ability to leverage one of its most powerful tools: its ability to exclude and unplug rogue Iranian actors' activities from the global financial and commercial system. Promising Iranian reintegration into the global system was not possible unless we were willing to defang our sanctions regime and ignore Iranian behavior, rehabilitate the perception of the Iranian regime ourselves, and take the most effective tools of financial isolation off the table.

The constriction campaign that was applied over the course of years—and I appreciate Senator Brown's reflection on that—was intended to use the illicit, dangerous, and illegitimate nature of Iranian activity as the driver for unplugging Iran from the global financial and commercial system. That underlying conduct has not changed. If anything, the risks have increased, especially as Iran uses the financial and commercial system to pursue all its goals. The Iranian system is corrupt, lacks transparency at all levels, and is centrally controlled by the regime. This explains why legitimate businesses are wary of reentering the Iranian market and why the Iranian leadership continues to complain that the United States has not satisfied its side of the bargain.

Second, Mr. Chairman, and unfortunately, the United States is falling into the trap of rehabilitating the Iranian economy. Throughout this deal, the onus should remain solely on Iran to alleviate concerns about its activities, lack of transparency, and failure to meet heightened global standards of financial integrity in the banking and commercial worlds. Iran should not get a free pass. This posture should force the Iranians to turn inward to determine how they can meet international expectations instead of trying to compel the United States and Europe to alter their standards or dictate to the private sector where and with whom they should do business.

Some recent U.S. actions have created the impression that the U.S. and European Governments have assumed the burden of reintegration of the Iranian economy into the global system. There have been reports that the U.S. might offer Iran the ability to access offshore dollar-clearing facilities, to allow for dollar-denomi-

nated transactions, and ease Iran's ability to trade internationally. The United States should not be offering special exemptions of measures to assist Iran with access to dollars while Iran remains a leading State sponsor of terror, subject to serious sanctions, and designated as a primary money-laundering concern.

The U.S. Government has been sending delegations around the globe to clarify existing sanctions and obligations, and apparently to explain how business with Iran may be undertaken with the Iranian regime. The burden instead should fall on Iran to demonstrate that its activities, policies, and use of its system is legitimate, transparent, and meets international standards.

The U.S. has announced that it plans to buy heavy water from the Iranian nuclear system. The U.S. should not usher Iran into the global economy, especially not in the nuclear markets.

Finally, the U.S. Treasury officials have reiterated their commitment to enforcing existing sanctions vigorously and maintaining the ability to use these tools effectively. These commitments, however, are undercut when the U.S. modifies its message to suggest that our sanctions regime should not constrain or affect the risk calculus of the private sector. Quite to the contrary, Mr. Chairman, the U.S. should be doing everything possible to reinforce the power and reach of U.S. measures.

Third, Mr. Chairman, we should continue to view the use of sanctions and the process of unwinding itself as critical and strategic levers to effect Iranian behavior. The U.S. should treat the JCPOA and its implementation as an ongoing process and evolution where sanctions and sanctions unwinding form a strategic part of U.S. and international efforts to not only enforce the deal but maintain economic and financial leverage against Iran, to push back on dangerous Iranian activity, and force the Iranians to make hard decisions about their role in the world.

Mr. Chairman, the Iranian regime has needed access to capital, new technologies, and connectivity to the markets globally. That is what it lost over the past decade. It is what the negotiated to regain in the JCPOA. And it is now the source of Iran's most significant complaint.

The United States must be willing to use its financial and economic toolkit to constrain dangerous Iranian behavior and encourage responsible Iranian activity. In fact, this is an alternative to war.

And just briefly, Mr. Chairman, this means forcing Iran to deal with the demands of the international marketplace on their own and addressing the underlying conduct that has proven problematic and continuously risky.

The United States will need to rely on sanctions and financial measures even more in the future, and we should be doing everything possible now to reinforce the strength and endurance of these powers—against Iran, against its proxies, and against other rogues in the international system.

Thank you, Mr. Chairman.

Chairman SHELBY. Thank you.

Mr. Dubowitz.

**STATEMENT OF MARK DUBOWITZ, EXECUTIVE DIRECTOR,
FOUNDATION FOR DEFENSE OF DEMOCRACIES' CENTER ON
SANCTIONS AND ILLICIT FINANCE**

Mr. DUBOWITZ. Chairman Shelby, Ranking Member Brown, Members of the distinguished Committee, on behalf of the FDD and its Center on Sanctions and Illicit Finance, thank you for the opportunity to testify. And it is certainly an honor to be testifying with Juan and Michael and Liz, whose work I greatly admire and whose service to our Nation I am thankful for.

Iran is engaged in a robust effort to legitimize its financial sector despite a decades-long rap sheet of financial crimes that it shows no sign of curbing. Since the conclusion of the JCPOA, the Obama administration has missed numerous opportunities to push back against this legitimization campaign. Instead of using non-nuclear sanctions to deter and punish Iran's continuing malign activities, the Administration runs the risk of being seen as the Islamic Republic's Trade Promotion Authority.

Iran complains that it has not received the sanctions relief it was promised, and the White House seems to think that it is our responsibility to deliver. But the regulatory and economic realities are very different. The Administration honored its commitments on Implementation Day in lifting or suspending the entire "nuclear-related" sanctions architecture. Iran, in fact, has already received an economic windfall: The JCPOA (as well as the interim agreement) provided Iran with economic relief that helped Tehran avoid a severe economic crisis and even initiate a modest recovery. The lifting of restrictions and access to \$100 billion in overseas assets and Iran's return to oil markets have all given Tehran hard currency to settle its outstanding debts, begin to repair its economy, build up its foreign exchange reserves, and ease a budgetary crisis. This has now freed up funds for financing terrorism.

Meanwhile, Iran continues ballistic missile development, regional destabilization, and egregious human rights abuses, and all of these have become just as problematic or, in fact, have gotten worse since the agreement.

Administration officials repeatedly pledged to you that they would continue to enforce non-nuclear sanctions to deter and punish Iran's dangerous activities. But in response, Iran has threatened to walk away from the deal and snap back its nuclear program if any meaningful sanctions are imposed for any reason.

Congress should reject this nuclear blackmail and hold the Administration accountable for its commitments. Sanctions against Iran's many malign activities are not JCPOA violations, as Iran claims, but, rather, an affirmation of U.S. policy as Secretary Kerry himself articulated to "oppose Iran's destabilizing policies with every national security tool available."

But it does not appear that the Administration is going to stand behind its own policy. Since the nuclear deal was signed, only nine individuals and nine entities have been added to Treasury's sanctions for all of Iran's ongoing illicit activities. These measures include ineffectual missile procurement sanctions imposed in response to repeated missile tests, and at the United Nations, the Administration has backed away from using the term "violations,"

instead arguing that the missile tests are inconsistent with Security Council Resolution 2231.

I would note Iran is in flagrant violation of 2231, which is the implementation resolution of the JCPOA. So Iran is not in compliance unless you draw an artificial distinction between the deal and the U.N. Security Council resolution that implements the deal.

Moreover, while the Administration has talked about human rights sanctions as a necessary tool to counter the regime's domestic oppression, that oppression has only intensified. And, in fact, the Administration has designated no individuals or entities for human rights abuses since the nuclear deal was reached and, in fact, only one individual and two entities since President Rouhani came into power in the summer of 2013. And now in response to Iranian pressure, as Mr. Zarate has said, the Administration is considering a new unilateral concession: direct or indirect access to dollarized financial transactions. This concession undercuts the effectiveness of our entire non-nuclear sanctions strategy which depends on the private sector's fear of the risks involved in transacting with Iran because of its illicit financial conduct. Allowing dollarized transactions aids Iran's push to legitimize its financial sector without ceasing the terrorism and missile financing, money laundering, and sanctions of Asian activities.

The JCPOA gave Iran a patient pathway to nuclear weapons capability by placing limited, temporary, and reversible constraints on its nuclear activities. It turned the regime from a nuclear pariah into a nuclear partner, without requiring it to come clean on its illegal weaponization activities. The regime is now trying to follow the same legitimization strategy by trying to gain international acceptance without demonstrable change in its illicit conduct. Change has to go far beyond a mere exercise in checking the box on technical requirements from the Financial Action Task Force related to money laundering and terror financing, and it has to require substantive changes in behavior. As long as Iran continues to fund Hezbollah, Tehran should never be legitimized as a responsible financial actor.

Let me conclude with this: Secretary Lew recently argued that sanctions are an effective instrument to address illicit activities, but they must be lifted when the illicit behavior changes. This is a very important principle, but it misses a crucial detail: Iran has not addressed the underlying illicit behavior that prompted many of the U.S. sanctions in the first place.

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

Chairman SHELBY. Thank you.

Mr. Elleman.

**STATEMENT OF MICHAEL ELLEMAN, CONSULTING SENIOR
FELLOW FOR REGIONAL SECURITY COOPERATION, INTER-
NATIONAL INSTITUTE FOR STRATEGIC STUDIES—AMERICAS**

Mr. ELLEMAN. Yes, thank you. Chairman Shelby, Ranking Member Brown, distinguished Members of the Committee, and the panel, I thank you for the opportunity to speak before you today.

As background, I wanted to say that my statement is informed by over two decades working as a missile scientist at Lockheed

Martin's research laboratories and more than 25 years observing and writing about ballistic missile proliferation. In 2010, I authored a dossier by the International Institute for Strategic Studies on Iran's ballistic missile capabilities. I continue to monitor missile developments around the world.

Ballistic missiles are central to Iran's deterrence posture and will remain so for the foreseeable future. This priority assigned to ballistic missiles is reflected by the size and the scope of Iran's arsenal. Given this importance, Iran is highly unlikely to surrender its current stockpile of systems. Even if Iran acquires advanced military aircraft, ballistic missiles will continue to play a primary role in Iran's force structure.

Iran's missiles can reach targets throughout the region. When armed only with conventional warheads, the missiles have limited military utility because they lack the accuracy to be able to predictably and reliably destroy a specific target. They can, however, be used to disrupt operations at key air bases, ports, and military facilities. Missile strikes against major cities could sow terror, potentially weaken the political resolve of Iran's adversaries and our partners. Iran exploits this fear of missile attacks by frequently brandishing its capabilities, including flights tests. In so doing, it seeks to deter, decouple the U.S.–Gulf partnership and intimidate regional rivals.

Ballistic missiles no doubt would be the preferred delivery platform should Iran ever acquire an atomic weapon. There is no formal definition of what constitutes a nuclear-capable missile, although the range-payload thresholds established in the Missile Technology Control Regime offer a broadly accepted classification measure. The MTCR restricts the transfer of missiles capable of delivering a 500-kilogram warhead to 300 kilometers.

Iran's Shahab, Qiam, Ghadr, Emad, and developmental Sajjil missiles all fit under this threshold definition. Iran possesses more than 300 nuclear-capable ballistic missiles.

Flight tests are an essential element of any missile program. Because Iran views ballistic missiles as a critical instrument of statecraft, deterrence, and warfighting, it will continue to test missiles. Sanctions are unlikely to prevent them from testing.

The pace of missile testing by Iran last year and this year is consistent with past practices. But Iran did not conduct any nuclear-capable missile launches in 2005, 2013, and 2014, when serious nuclear negotiations were underway. From 2006 to 2012, when the talks were going nowhere, Iran averaged roughly five tests per year. Three tests were performed last year, and five have occurred this year.

I have seen no evidence to suggest that Iran is trying to actively develop an intermediate- or intercontinental-range ballistic missile. I cannot speak to a covert program. The need to flight test missiles before they are made operational provides advanced warning of any new capabilities. Flight trials historically require 3 to 5 years, sometimes many more.

Available evidence, including the recent debut of the Emad missile in October of 2015, indicates that enhancing missile accuracy supersedes Iran's quest for longer-range systems.

Iran has used large rockets, however, to launch satellites into space. Satellite launch activity could in principle be used as the springboard to developing an intercontinental-range missile. But no country has ever converted a satellite launcher into a long-range missile. Iran is highly unlikely to develop and deploy an operationally ready intermediate-range missile before the end of this decade or an ICBM before 2022.

Iran possesses the technical, project management, and industrial capacity to develop and field ballistic missiles that it desires within reason. However, Iran is not fully self-sufficient. It must still import key components, materials, and technology to support the production and development of missiles. These vulnerabilities can and should be exploited.

Containing the program. Past multilateral sanctions appear to have slowed the development of Iran's Sajjil medium-range missile. The U.N. Panel of Experts on Iran sanctions played an important role in this success by enhancing international awareness and investigating violations of Resolution 1929. The Panel does not exist under Resolution 2231. It should.

The success of unilateral sanctions against Iranian enterprises and individuals is historically ambiguous. As Iran enters into the international trade, unilateral sanctions may or may not be more effective. It is difficult to predict.

The Proliferation Security Initiative, initiated under the Bush administration, is an international effort to disrupt the flow of WMD items, technologies, and related materials and could be an effective tool for intercepting shipments from North Korea, Iran's principal if not sole source of liquid propellant missile engines. Joint missile defense exercises with our Gulf partners—and Israel—offer a tangible counter narrative to Iran's missile tests and will enhance defense effectiveness in the long run.

And, finally, Iran has said that it does not need missiles with a range exceeding 2,000 kilometers. The U.S. should explore options that, at a minimum, would codify legally that range limit. Other limitations may be ripe for negotiation, including those that increase the transparency of Iran's space program, which would limit its ability to break out and create an ICBM.

Thank you. I look forward to your questions.

Chairman SHELBY. Thank you.

Ms. Rosenberg.

**STATEMENT OF ELIZABETH ROSENBERG, SENIOR FELLOW
AND DIRECTOR, ENERGY, ECONOMICS, AND SECURITY PRO-
GRAM, CENTER FOR A NEW AMERICAN SECURITY**

Ms. ROSENBERG. Chairman Shelby, Ranking Member Brown, and distinguished Members of the Committee, thank you for the opportunity to testify today on the role of sanctions under the Iran deal.

The Iran sanctions regime was, and remains, the most comprehensive program of U.S. and international sanctions commensurate with the grave security concerns regarding Iran's nuclear proliferation activities, its regional destabilization, ballistic missile program, support for terrorism, and abuse of human rights. Many U.S. and international sanctions on Iran were waived on Imple-

mentation Day, the milestone of the nuclear agreement, recognizing Iran's completion of its major initial nuclear commitments.

However, the United States maintains sanctions authorities relevant to Iran as part of the deal as well as a wide array of sanctions on Iran outside the scope of the deal, and the existing architecture of Iran's sanctions remains very powerful and affords an enormous amount of leverage to pursue Iran's security provocations and destabilization.

Following Implementation Day, Iran was able to expand its oil sales and has established new oil trading contracts in Europe and more deliveries to Asia. It also now has access to \$100 billion of its formerly frozen assets, as has been mentioned by my fellow panelists. Additionally, the United States, the EU, and the U.N. together removed hundreds of designated Iranian entities from sanctions lists, including Iranian banks, that then gained access to European financial institutions. Some Iranian banks are reestablishing branch licenses and correspondent relationships in Europe and are renewing their ties with Asian counterparts as well. Iran's charm offensive to market new deals for trade and investment, including in areas such as automobiles and airplanes, has also met some success internationally.

However, there are various reasons why Iran will expand its links to the international financial system only very slowly. The cumbersome unraveling of nuclear sanctions restrictions at banks and companies around the world in order to engaged in now permitted business with Iran is only one factor. Remaining sanctions on Iran for its terrorist and ballistic missile activities are a deterrent to those who would contemplate business with Iran along with prudential concerns related to a history of corruption and a lack of transparency and maneuverability for foreign firms in Iran's financial system. So for reasons of political and security risk, existing sanctions, and the serious financial challenges associated with attempting business in Iran, many global banks have made it clear that they do not plan on doing business in this jurisdiction.

In pursuing Iran's sanctions now and in the future, U.S. policymakers must prioritize the important work of isolating Iranian entities engaged in dangerous and illicit behavior through aggressive implementation of existing sanctions authorities. This means continuing and expanding sanctions designations targeting Iran's provocative and dangerous ballistic missile program and its reprehensible support for terrorism and abuse of human rights. This is particularly important with regard to the work of targeting the insidious and dangerous activities of the IRGC within and beyond the borders of Iran, including exposing the financial activity and holdings of the IRGC, its agents and instrumentalities, and Iran's regional terrorist proxies whenever feasible. The U.S. Government should designate the IRGC under its terrorism authorities, and it should urge EU counterparts to deny access to European airports for Mahan Air, given its involvement with Iranian support for terrorism.

Beyond designating more targets independently and in tandem with international partners, U.S. policymakers should also continue and expand educational outreach to highlight Iran's self-imposed financial problems, and this should be paired with a strategy to fa-

cilitate and encourage remediation of these problems by U.S. and foreign experts.

With regard to sanctions relevant to oversight of the nuclear deal, policymakers will now want to ensure that sanctions authorities are primed for use so that the United States and international allies are able to reimpose sanctions, in part or in whole, if Iran violates its nuclear commitments. Keeping authorities up to date means reauthorizing the Iran Sanctions Act before it expires at the end of the year. Additionally, it means readying potential additional contingency measures, including new approaches to sanctions enforcement or possible new sanctions authorities if Iran fails to uphold its commitments under the nuclear deal and if such new authorities are deemed absolutely necessary.

Thank you for the opportunity to testify today. I look forward to answering any questions you may have.

Chairman SHELBY. Thank you very much.

I will start with Mr. Dubowitz. In your testimony, Mr. Dubowitz, you discuss in detail a campaign run by Iran to legitimize its financial structure. Would you elaborate on what Iran is trying to accomplish and why we should be concerned?

Mr. DUBOWITZ. Thank you, Chairman Shelby. Iran is trying a legitimization strategy similar to the one that it did on the nuclear side, which involves basically denying, deceiving, and then demanding. And on the nuclear side, it denied illicit conduct, it deceived the international community, and it demanded escalating concessions.

On the financial track, Iran is doing the same thing. They are denying their illicit financial conduct, they are continuing that conduct, and now they are demanding new concessions to legitimize their financial sector. And greenlighting the greenback or dollarizing transactions using our currency would be a big win for Iran. It would give them the legitimacy that they seek without actually changing that fundamental conduct.

Chairman SHELBY. Mr. Zarate, in recent months both Acting Under Secretary Szubin and Secretary Lew denied that Iran would be given access to the dollar. In fact, Mr. Szubin testified before this Committee right here, and I quote, that “no Iranian banks can access the U.S. financial system, not even to execute a dollarized transaction where a split second’s worth of business is done in a New York clearing bank.” Those are his words.

Secretary Kerry, however, is on a worldwide mission to clarify how large non-U.S. banks can engage with the Iranian financial system.

My question: Do you believe there is a disconnect between Treasury and State or the White House with regard to the implementation of the Iran deal? And what is going on here? If so, and why?

Mr. ZARATE. Mr. Chairman, I think what is reflected in those comments that are contradictory and in tension is the fundamental tension in the JCPOA, which is that we intend to continue to use sanctions, and if that is the case—against underlying illicit conduct of the Iranian regime, then that means we are going to not only have to deny Iran access to the dollar and the U.S. financial system but actually proactively try to encourage others to unplug them from the international financial system. That has been the essence

of the financial constriction campaigns post-9/11 that have been so effective. And that has been, frankly, Treasury's playbook.

That does not meet neatly with the diplomatic demands that the Iranians are placing on the U.S., and I think the Secretary of State and the State Department are doing their best to demonstrate that the U.S. is adhering to the spirit and letter of the JCPOA, in part by encouraging reintegration of the Iranian economy. And so there is a disconnect in that regard.

With respect to the specific dollar issue, I think the one question that remains is whether or not the U.S. is going to encourage offshore dollar clearing. There are ways of allowing Iran access both for reputational reasons, as Mr. Dubowitz mentioned, but also for transactional reasons, to have access to dollars offshore which would not touch the U.S.

Chairman SHELBY. In other words, go in the back door, not the front door?

Mr. ZARATE. The back door, with layers of opacity, which makes it even harder to understand the transactions, and given the track record of the Iranian Government to use shell companies, front companies, that is a dangerous proposition and incentive for them to do business globally.

Chairman SHELBY. Mr. Elleman, you have testified that Iran already has shorter-range nuclear-capable missiles in its arsenal, which it continues to test. Could Iran develop and field a long-range missile capable of delivering a nuclear weapon to Europe or the United States before the Iran deal sunsets?

Mr. ELLEMAN. The short answer is probably, and probably yes. Iran has two pathways to developing an intercontinental-range missile or one that could strike Western Europe. They can use their existing systems that they have and just cluster them together, such as they have done with their space launch vehicle. Or they could pursue a more difficult, challenging, but fruitful path, and that is, leverage the solid propellant technology it is working on today. That would allow them to build missiles that are optimized and designed to need.

Chairman SHELBY. Thank you. Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Ms. Rosenberg, I would like to ask you a series of questions—and I would prefer short answers, if you can—on JCPOA. By Implementation Day, had Iran dismantled two-thirds of the installed centrifuge capacity and reduced its enriched uranium stockpile by over 95 percent?

Ms. ROSENBERG. Yes.

Senator BROWN. Did Iran destroy the core of its heavy-water reactor by filling it with concrete, cutting off its path to producing significant amounts of weapons-grade plutonium? And did it ship out excess heavy water to meet its commitments to hold no more than necessary for research?

Ms. ROSENBERG. Yes.

Senator BROWN. Did Iran implement all the JCPOA's verification measures, including allowing continuous monitoring of its necessary facilities and subjecting its centrifuge production in uranium mills and mines to surveillance by inspectors?

Ms. ROSENBERG. Yes, as confirmed by the IAEA.

Senator BROWN. In your view, do these actions move Iran further away from a nuclear weapon, making Israel and the region safer?

Ms. ROSENBERG. Yes, and I think proliferation security experts around the world all consider that the case.

Senator BROWN. Finally, has there been any indication from IAEA that Iran has cheated on its commitments under the JCPOA?

Ms. ROSENBERG. Not to our knowledge.

Senator BROWN. OK. Thank you for that.

Let me ask you a more detailed question. I know it is complicated because it is Iranian internal politics, but it seems that in Iran there are hardliners who have never reconciled with the nuclear agreement and are trying to sabotage it, and there are others who want more economic engagement with the outside world. That is the sort of political tension in that Nation's politics.

You have warned that new congressional sanctions could threaten JCPOA implementation. As you may know, there are bills before this Committee that would require additional mandatory sanctions against Iran and in some cases would reimpose a version of the old sanctions that the Administration agreed to waive as part of JCPOA.

How do you see such measures that some want to move through Congress, how do you seem them threatening JCPOA, the international community's agreed-upon process for dismantling and monitoring Iran's nuclear program?

Ms. ROSENBERG. So new sanctions, particularly if they are mandatory, will be broadly perceived as sanctions that undermine the deal. So the signatories to the deal agreed that they would not reimpose sanctions removed—nuclear sanctions removed as part of the deal. So reimposing those would undermine it and could potentially cause Iran to walk away from the deal.

However, the problems also exist with the other parties, the P5+1 parties. So these are important—they include important security allies, international allies of the United States. And if they perceive that the United States has willfully attempted to undermine the deal in this way, it will undermine transatlantic political cooperation as well as potentially the ability for those partners to work together to monitor evasion of sanctions and go after it.

Senator BROWN. If these bills were to pass the Senate and the House and become law, what would that mean in domestic Iranian politics? Which side in Iran would be bolstered by enactment of these sanctions bills?

Ms. ROSENBERG. Well, it certainly strengthens the narrative of hardliners in Iran who believe that the United States was disingenuous in negotiating this deal and causing Iran to make the concessions it has on its nuclear program and that the intent was never to see a successful case of nuclear diplomacy and the deal move forward.

Senator BROWN. So the hardliners in Iran would have fulfilled what they predicted all along if we were to do that.

Ms. ROSENBERG. Yes, and it would strengthen the narrative of others outside of Iran who also believe that to be the case.

Senator BROWN. The questions I asked you, the first series of questions—and thank you for answering them concisely—would the P5+1, if I were to ask the Ambassadors and the foreign ministers

and the experts on sanctions in their countries, would they have given the same answer, by and large?

Ms. ROSENBERG. Yes, and they have indicated previously that they would view the U.S. imposing new sanctions as unhelpful and a serious act of undermining the deal.

Senator BROWN. OK. Thank you. One last question. I know you have written about why you think existing U.S. legal authority for sanctions are sufficient to combat Iran's continuing destabilization activities outside of the nuclear arena. Briefly describe the full range of these legal authorities.

Ms. ROSENBERG. They are vast. There are terrorism authorities, proliferation authorities, which include not just nuclear capabilities but missile and other weapons capabilities as well; authorities related to Syria that would block support for Assad and the Syrian Government. There are authorities that deal with Yemen and support the Houthis there. Kingpin, narcotrafficking authorities; transnational organized crime; cyber; the gravity EO that deals with—the word escapes me at this moment, but human rights authorities, the sanctions evader EO, as well as the variety of statutes passed by this Congress and the previous one and before that which also deal with the variety of authorities the Administration can implement with regard to Iran.

Senator BROWN. And these sanctions are sufficient?

Ms. ROSENBERG. They cover basically the entirety of concerns that we would have with Iran and want to pursue, and they are not limiting. The IEEPA and TWEA also give additional authorities to the Executive to go after new instances of evasion or activities of threat and concern that we might want to target with such authorities.

Senator BROWN. Thank you.

Thank you, Mr. Chairman.

Chairman SHELBY. Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

As I am listening to the testimony here, I think there are short-term and there are long-term consequences to any deal that you make. Our country turns 250 years old in the year 2026, less than 10 years away. And yet we are looking at a deal with has been put together here, which was designed to slow down the Iranian nuclear program.

Mr. Elleman, as you know, under the JCPOA, Iran's U.N. ballistic missile restrictions will be lifted 8 years after the JCPOA adoption day or until the IAEA confirms the broader conclusion. My question is: If Iran continues testing missiles and satellites at its current rate, how would you assess Iran's ballistic missile capability at the completion of the JCPOA?

Mr. ELLEMAN. Well, it's difficult to predict, primarily because there will be decisions for Iran to make over the course of the next decade. Iran presently is focused on trying to increase the accuracy or the military utility of its ballistic missiles. In fact, we are seeing an evolution in their missile doctrine from one of just simply being able to punish an adversary or foe to one where they can actually deny an adversary military, you know, space, territory, or capability.

This is going to be a long, difficult process for them. I do not see them achieving it within the next decade to actually make them accurate enough with some sense of reliability. We have seen no evidence, at least in the public domain, of them pursuing an ICBM yet. That could change tomorrow. There could be a covert program.

What I can say is that if they were to attempt to develop longer-range systems that could threaten Western Europe or the United States mainland, they would have to do some testing of that system, and that test program would last likely in the 3- to 5-year time span, sometimes more.

Senator ROUNDS. How much would assistance from another Nation State help Iran progress toward a nuclear-capable missile?

Mr. ELLEMAN. Well, in my view—and not all of my colleagues support this conclusion, but in my view, Iran is not capable yet of manufacturing on its own the liquid propellant engines that power almost all of their missiles. That shortfall can really only be filled by importing engines from Korea, North Korea. It is possible they could import them from Russia, but I do not think Russia is in any mood to sell that type of weapons system, at least in the open market.

So I would say that this is one of the fundamental limitations that they will have, and this is why I made the point that the Proliferation Security Initiative could be a very effective tool in denying them the ability to produce greater numbers of missiles than they already have.

Senator ROUNDS. Thank you.

Mr. Dubowitz, the Iran deal suspended sanctions on Iran's economy in exchange for a reversible rollback of certain Iranian nuclear activities. It does not, however, preclude the United States from enforcing non-nuclear sanctions.

As Iran has made abundantly clear through its repeated provocative actions, the nuclear deal did not address Iran's illicit activities, including ballistic missile development, support for terrorism, regional destabilization, and human rights abuses. What is the message Congress should be sending international businesses that seek to reenter the Iranian market?

Mr. DUBOWITZ. Well, Senator, I think it is the complete opposite of the message that was part of the last exchange with Ranking Member Brown, which is that the JCPOA does not preclude non-nuclear sanctions, and the notion that Iran can threaten to snap back its nuclear programs and, therefore, deter us from using those non-nuclear sanctions actually contradicts the commitments that President Obama, Secretary Kerry, Under Secretary Sherman, then-Under Secretary Cohen, and Acting Under Secretary Szubin have made to Congress and to the American people, which is that they are going to use the full course of power of American economic and nonmilitary might to deter Iran from these destabilizing and dangerous activities. That is the message we should be sending not only the Iranians, but we should be sending it to the international community that Iran is engaged in dangerous, malign, and illicit conduct, and that the U.S. Government and U.S. Congress is not going to be shy about using all instruments, of course, of power, including sanctions, to stop that activity.

Senator ROUNDS. Thank you.

My time has expired. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman. And thank you all for your testimony.

Let me ask, we have had Secretary Kerry, we have had Assistant Secretary—I think that is his title, the number two, Tom Shannon, and we have had others probably most significantly before the Senate Foreign Relations Committee, and they have, in the questions that I have posed to them and others, said that any new sanctions that are not within the nuclear portfolio but continue to pursue the issues of Iranian malign actions, whether that be missile technology in violation of U.N. Security Council resolutions, whether that be its promotion of terrorism, whether that be the destabilization of the region, that those are not a breach of the P5+1. Is that your understanding, Mr. Zarate?

Mr. ZARATE. Yes, Senator.

Senator MENENDEZ. And how about you, Mr. Dubowitz?

Mr. DUBOWITZ. Absolutely, Senator.

Senator MENENDEZ. Mr. Elleman.

Mr. ELLEMAN. I would agree.

Senator MENENDEZ. Ms. Rosenberg.

Ms. ROSENBERG. Using existing authorities to go after those activities you were talking about?

Senator MENENDEZ. Using any new sanctions to go after those activities outside of the nuclear portfolio. They are not a violation of the JCPOA. Is that correct?

Ms. ROSENBERG. I do not view them as such.

Senator MENENDEZ. OK. So it is a reaffirmation by the private panel of what the Administration itself has told us.

Now, would it be fair to say that one of the driving elements of what brought Iran to the negotiating table was the comprehensive sanctions that the Congress led and the Administration enforced? Would you say that, Mr. Zarate?

Mr. ZARATE. Absolutely, Senator. In fact, President Rouhani said that the sanctions were moving Iran into the economic stone age.

Senator MENENDEZ. Mr. Dubowitz.

Mr. DUBOWITZ. Absolutely, Senator, because of the secondary sanctions' impact that actually reinforces the President's IEEPÀ power.

Senator MENENDEZ. So if, in fact, the sanctions brought us to the point where the Iranians were willing to negotiate, it shows that it has a force in changing attitudes and actions. Now, I may not have agreed with the JCPOA, but putting that aside, I am not going to relitigate it. The question is I think it is pretty clear that, but for the sanctions, the Iranians were on a path that they would have continued without feeling any consequence to pursue their nuclear program far beyond what we would want to see, far beyond any peaceful activity, and, obviously, for the purposes of nuclear weapons.

So if that is the case, then I do not understand at a time in which we seem to be making Iran's case for it, we seem to be working toward helping them—I mean, if I could strike a deal with somebody and have them, my other counterpart, implement all the elements that I need for my deal, whether it is buying heavy water

or whether it is making sure that I get access to the international financial markets, boy, I wish I could make a deal like that anytime where my counterpart actually is doing everything necessary to make the deal possible. But if I am going to do that, I should have an expectation that other things that we are concerned about that Iran is going to change its behavior, and it has not. It flouts international will, forget about U.S. will, in terms of its missile firings, including a missile that says, "Death to Israel". It is out there pursuing one of the worst humanitarian disasters we have in Syria because of its interests in having Hezbollah be a strong entity as its surrogate, so it does not care how many Syrians die until it can get a regime, whether it be Assad or anyone else, who guarantees that. And it continues to destabilize the entire region, and it continues to export terrorism.

So is there anything then that we should not be pursuing—in my view, that we should be pursuing a new set of sanctions outside of the nuclear portfolio, having nothing to do with the JCPOA, to try to get Iran to change its positions on these critical elements that is in the national interests and security of the United States? Is that a fair statement, Mr. Zarate?

Mr. ZARATE. It is a fair statement, Senator, and I would also say that it is not only a given that Iran is engaged in these underlying activities and dangerous activities, but it also comes at a time when we are heightening our scrutiny in terms of financial integrity with respect to corruption, with respect to human rights, with respect to beneficial ownership, which the Administration just published a final rule on.

We are actually heightening international expectations in terms of how transparency and integrity is undertaken in the international system, and Iran is doing the exact opposite. And so there is an inherent tension in that message as well. So not only can we and should we use sanctions as we have in the past against these underlying activities, but there are heightened expectations moving forward that should be placed on Iranian banks, Iranian companies, beneficial ownership, that should heighten scrutiny, not lessen it, with respect to Iranian behavior.

Senator MENENDEZ. One last question. Mr. Dubowitz, I hear many of my colleagues say we should keep Iran's feet to the fire, but if there is no fire, how do you keep their feet to it?

Mr. DUBOWITZ. Well, Senator Menendez, absolutely, and if you give Iran what effectively is a nuclear snapback, which is this ability to threaten us every time that we are going to use non-nuclear sanctions to deter the behavior, then, unfortunately, they have the upper hand, and their nuclear snapback ends up being a lot more powerful than our economic snapback, which means our ability to enforce the deal and deter Iranian behavior is much weaker.

Senator MENENDEZ. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Toomey.

Senator TOOMEY. Thank you, Mr. Chairman, and thank you very much for having this hearing. This is a very, very important discussion.

I remain strongly opposed to this deal that turns over something on the order of \$100 billion to the world's leading State sponsor of terrorism, a very dangerous and violent regime that is very hostile

to the United States. But not only did we release all of that money, but we lifted substantial sanctions, allowed Iran to retain important components of its nuclear infrastructure. And I would just like to ask a question for the record. Mr. Zarate, has the Iranian parliament ratified this agreement?

Mr. ZARATE. To be honest, Senator, not to my knowledge.

Senator TOOMEY. To your knowledge, have the top political authorities in Iran signed the agreement?

Mr. ZARATE. I do not think so, Senator. I have not seen evidence of that.

Senator TOOMEY. In fact, doesn't the Administration argue that this is not a legally binding agreement with respect to Iran but, rather, a set of political commitments?

Mr. ZARATE. That is right. They argue that this is not technically a treat.

Senator TOOMEY. Yeah. It seems a rather amorphous commitment on the part of the Iranians, despite the very real changes and concessions that the United States has made with the financial release, with the relief of sanctions, with permitting Iran to retain this infrastructure. But let me follow up on a line of questioning that Senator Menendez pursued.

Mr. Zarate, you went through a pretty powerful list in your written testimony of the ways in which Iran has behaved, as Mr. Dubowitz put it, "dangerous, malign, and illicit conduct" post-JCPOA, right? Including the repeated ballistic missile tests, the fact that Iran remains a leading State sponsor of terror, the deployment of troops to Syria to support the Assad regime, Iranian continued human rights abuses, detention of two American citizens, arresting American sailors at gunpoint, continuing to develop and engage in malicious cyberattacks.

Now, I share the view of Senator Menendez that in response to these really outrageous and aggressive behaviors, we have every right—in fact, responsibility, really, to impose the kind of sanctions that might dissuade these behaviors. But not only does the Administration disagree, it seems, with this approach, but would it be fair to say that the Administration appears to believe that it should be the United States' responsibility to facilitate the reintegration of Iran into the world economy?

That is what it looks like to me, and that strikes me as a bad idea, but, Mr. Zarate, I would like your thoughts on that.

Mr. ZARATE. Senator, absolutely, and I warned about this danger when I testified during the JCPOA debate before you, that this was a potential trap, that the Iranians were going to push the United States to help rehabilitate their image, their economy, their reintegration, and that they would argue that the spirit and letter of the deal required it.

Senator TOOMEY. Which is exactly what the Administration—

Mr. ZARATE. Exactly what is happening.

Senator TOOMEY. And what is the problem with that? Why is that a bad thing for the U.S. Government to be facilitating the reintegration of this very hostile regime into the world economy?

Mr. ZARATE. Well, there are three fundamental problems: One, it takes Iran off the hook of dealing with the underlying conduct itself

that is problematic—support to terrorism, support to Assad, human rights abuses.

Senator TOOMEY. Arguably, could it not be seen to be rewarding that kind of outrageous behavior?

Mr. ZARATE. Potentially, and that is the second problem, which is creating sort of dual standards. Why are we creating exemptions for the Iranians when, as I said before, our expectations are heightened with respect to what financial integrity and transparency looks like in the international system? We are fining major global banks billions of dollars, and yet we are now promoting the integration of Iranian banks, which we know have been used and will continue to be used for these illicit purposes? Why? It does not make any sense. So there is an inconsistency there.

And, third, we are giving up the strategic opportunity in putting the onus on Iran to resolve these issues themselves, to explain themselves to the market. That actually could promote reforms internally. It could force very hard decisions within Iran itself for the reformers, the moderates, to say, “We can no longer use our banks, our economy in this way.” So we are taking the hard decisions off the table and taking Iran off the hook.

Senator TOOMEY. And it appears implicitly to be virtually condoning the behavior.

But, Mr. Dubowitz, did you have any comment you would like to make on this?

Mr. DUBOWITZ. Well, very quickly. I mean, the U.S. Government did not promise Iran financial and economic outcomes. They specifically did not negotiate outcomes.

The second is that there is this prevailing and persistent myth that somehow we have to economically seduce the hard men of Iran, this despite the fact that President Obama’s former DCI, Leon Panetta, said the CIA assessment is that there are no moderates in the regime and that the U.S. negotiator, Wendy Sherman, has specifically said since the deal, publicly, that in this regime there are hard-liners and hard-hard-liners, and President Rouhani is a hard-liner.

So this notion that somehow there is—that continues to persist even today—an octogenarian—hard-line octogenarian was just appointed to the Assembly of Experts who is going to pick the Supreme Leader after Ali Khamenei, I do not know why this notion continues to persist in the halls of Congress and outside, that there are moderates who we should economically seduce. These are hard-hard-liners or hard-liners who continue to hold their people hostage and continue to engage in very dangerous and destabilizing activities.

Senator TOOMEY. Thank you very much.

Thank you, Mr. Chairman.

Chairman SHELBY. Senator Donnelly.

Senator DONNELLY. Thank you, Mr. Chairman.

I want to start out today by addressing what I see as a very big problem as we talk about sanctions against Iran, North Korea, Russia, or any other adversary of the United States: the fact that Adam Szubin has now been waiting more than a year for confirmation as Treasury’s Undersecretary for Terrorism and Financial Crimes.

Despite bipartisan support, despite being an undisputed expert in his field, despite our repeated calls for leadership on sanctions policy in this Administration, some of my colleagues refuse to give him a vote on the floor of the Senate. I hope we confront the irony of this situation head-on in tomorrow's hearing when Mr. Szubin testifies and answers our questions, still serving only in an acting capacity on matters we all agree are critical to national security. We are doing this man and our Nation a great disservice by our failure to act.

And I would like to put this question to all the members of our panel here today. What are your views on Mr. Szubin's nomination and do you have any concerns about his qualifications? Mr. Zarate.

Mr. ZARATE. I know Adam Szubin personally. I worked with him directly. I have deep respect and affection for Mr. Szubin. I have no question about his integrity and I think he would do a great job.

Senator DONNELLY. Mr. Dubowitz.

Mr. DUBOWITZ. I similarly know Mr. Szubin personally and have worked with him closely, and I think he is eminently qualified for that position.

Senator DONNELLY. Thank you. Mr. Elleman.

Mr. ELLEMAN. I do not know him and I am not intimately familiar with what he does, but I also—

Senator DONNELLY. That is still OK.

[Laughter.]

Mr. ELLEMAN. —but I have heard no reservations expressed by many of my colleagues.

Senator DONNELLY. Ms. Rosenberg.

Ms. ROSENBERG. I, too, have had the pleasure of working quite closely with Mr. Szubin. He is a dedicated public servant. He is knowledgeable. He is respected by those with whom he works and those who disagree with him. Not confirming him undermines his ability to do his job, which is far beyond the scope of the Iran deal, sanctions, and encompasses a much broader array of anti-money laundering and terrorist financing activities that are in our broader national interest to have him address.

Senator DONNELLY. Thank you.

Mr. Elleman, in my other role as Ranking Member of the Armed Services Subcommittee on Strategic Forces, I have dedicated a lot of time to studying Iran's missile program and the threat it poses to our homeland, our forward-deployed forces, and our allies in the Middle East and Europe. I spent a week earlier this year meeting with U.S. military leaders and foreign officials in Israel and across the Gulf States. One of our unifying concerns is that Iran continued to grow the size and sophistication of its ballistic missile arsenal even under the heaviest years of sanctions.

I am a firm believer we must invest in U.S. and allied missile defense systems to counter the threat posed by Iran's ballistic missiles. However, I am also interested in your views on how we can establish more effective sanctions related to Iran's missile program. So what are your top recommendations for improving our sanctions policy and enforcement on Iran's ballistic missile activities?

Mr. ELLEMAN. Well, I think for the sanctions to actually retard or erode Iran's capacity to grow the size of their arsenal or the capabilities of its arsenal, the sanctions would have to be inter-

national. You know, the U.S. applying certain restrictions will probably not do it because we are not trading with Iran and they are primarily relying on equipment—manufacturing equipment and components that have been obtained from Europe and other countries. So it has to be multilateral.

But I would also say the—you know, the primary provider of necessary technologies has been North Korea in the past. I am not aware of significant transfers of equipment or technology over the past 10 years or so.

Having said that, if Iran truly wants to expand the size of its arsenal, it is going to have to get missile engines from someone—and North Korea would be the most likely source—and the Proliferation Security Initiative would probably be the best tool to approach that.

Ms. ROSENBERG. Mr. Senator.

Senator DONNELLY. Yes?

Ms. ROSENBERG. May I speak to this issue as well?

Senator DONNELLY. You may.

Ms. ROSENBERG. Thank you.

I agree that internationalization and partnering with international jurisdictions to go after Iran's dangerous and concerning ballistic missile activities is certainly a strong direction for the sanctions program, as well as going after the procurement networks, a number of which the components—a number of which you have just mentioned.

Furthermore, additional efforts outside of the sanctions realm would certainly be beneficial, including interdiction efforts as well, which is a matter for different areas of Government.

Senator DONNELLY. What is your opinion on—Ms. Rosenberg—on how our counterterrorism sanctions can become more effective? What are your best ideas on that?

Ms. ROSENBERG. Thank you for the question. I have offered a couple of ideas in my testimony, including naming the IRGC in its entirety under Executive Order 13224, the terrorism authority, and going after, aggressively, agents, instrumentalities of the IRGC inside and outside of Iran, and asking foreign counterparts in other jurisdictions, specifically the EU, to mirror U.S. sanctions wherever possible in that domain.

Senator DONNELLY. Thank you.

Thank you, Mr. Chairman.

Chairman SHELBY. Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman.

Mr. Dubowitz—is that right?

Mr. DUBOWITZ. Dubowitz, yes.

Senator SCOTT. Dubowitz. OK, great.

In a recent televised interview, you compared the Iran deal to the North Korean deal in the 1990s. Obviously, that deal was flawed and we are still dealing with the serious ramifications of that deal. What specific similarities do you see in the two deals? And how strongly do you feel that 10 years from now we will be dealing with as volatile of a situation in Iran as we now see in North Korea?

Mr. DUBOWITZ. Thank you, Senator. Well, I think some of the similarities are certainly significant flaws and loopholes with respect to the reversibility of the nuclear restrictions.

The upfront sanctions relief nature of both deals—in fact, as I think Mr. Zarate can tell you even in more detail, one of the biggest mistakes that the Bush administration made was trading away extensive economic leverage that was established through the designation of Banco Delta Asia for a continuation of that—of that nuclear agreement and North Korean nuclear concessions that not only ended up being reversible but that the North Koreans violated egregiously.

And so the deal itself was fundamentally flawed in its architecture, just like the JCPOA—reversible concessions, big loopholes, and trading away significant economic leverage.

Senator SCOTT. A second question to you, sir. How important is enforcement of the sanctions against Iran that remain in place? And can you—can you supply any evidence that Iran believes that we, as a country, are serious about our enforcement mechanisms? It certainly seems to me to be—if I were in Iran, I would not take what we have done so far very seriously since they have already tested some ballistic missiles, from my perspective.

Mr. DUBOWITZ. Well, certainly the Iranians have made it clear that the procurement sanctions that have been imposed by the U.S. Treasury Department are meaningless, because these procurement networks can be reconstituted. And I would like to just provide a bit more detail on these ballistic missile sanctions.

For many years people said that you could not use powerful economic sanctions to change the risk-reward calculus of the Iranian regime with respect to its nuclear program. I think Congress proved that wrong. I think the U.S. Treasury Department proved that wrong.

I think with respect to ballistic missiles, as opposed to these narrow procurement sanctions we should look at sectors of the Iranian economy that actually support the ballistic missile program—mining and metallurgy, energy, automotive, telecom, electronics, construction, and the research institutions that back it up. All of these sectors of Iran's economy provide vital technologies, parts and components for Iran's missile program. If we were to impose sectors-based sanctions on those essential sectors that support the missile program, I think we would have a chance of actually changing this calculus.

So I believe that we need to look at much more coercive sanctions, permissible by the JCPOA, to change the mindset of the reigning regime with respect to its missile program.

Senator SCOTT. Thank you.

Mr. Zarate or Mr. Dubowitz, Treasury officials stated recently that they are not planning on issuing general license, but this contradicts earlier statements by the Obama administration that general license were a possibility. What are some of the specific hazards the U.S. could encounter if it grants a general license to Iran?

Mr. ZARATE. Senator, the relief to allow Iran to deal in dollars for international trade would give not only a stamp of legitimacy to Iranian behavior but would facilitate their reintegration into international trade, given the fact that the dollar is the predomi-

nant currency, the currency that is used in the oil trade in particular but also internationally.

And so this could take a variety of forms. It could be a general license. It could be a specific license. But it could be some form that allows an offshore facility that then allows Iran to access dollars in some way that then would give the markets confidence to be able to do business with Iran. That is what Iran wants and it is certainly something that the Secretary of State seems to be suggesting that we should be offering.

And I think the Treasury officials are trying to back away from that, in particular given the fact that, if we give this concession in the context of the JCPOA, we are admitting that our ability to withdraw the access to the dollar, which is a principal and important financial tool for us, becomes embedded in the JCPOA itself. And then we cannot use it for other reasons.

And so the Iranians are very smart about this. They have been gaming this throughout to get as much maximum benefit from U.S. concessions and the spirit and letter of the deal as possible.

Senator SCOTT. Thank you.

Mr. DUBOWITZ. Senator, if I could just add to that?

Senator SCOTT. Yes.

Mr. DUBOWITZ. Tomorrow at the hearing, when the Government witnesses are here, please do not get distracted about these commitments about access to the U.S. financial system. Also, do not get distracted by the notion of general licenses.

What I think the Administration is doing is they are using a class-of-transactions approach to sort of step by step, drip by drip begin to dollarize Iranian transactions. You have seen that with heavy water. You have seen that with aircraft licenses. You have seen that with the return of restricted oil escrow funds. You have seen that with possible humanitarian transactions.

So it is a class-of-transactions approach where the Administration will attempt to dollarize Iranian transactions, not through a wholesale general license but by these classes of transactions, so by the end of the Administration the Iranians have effectively gotten access to the U.S. dollar and used that legitimization as a way to get themselves out from under the strictures that they have been imposed.

Senator SCOTT. Thank you very much.

Chairman SHELBY. Senator Warren.

Senator WARREN. I think Senator Tester is up next.

Chairman SHELBY. OK.

Senator TESTER. Well, you are very gracious, Senator Warren. Thank you. And thank you, Mr. Chairman. And thank you all for your testimony.

I want to go back to one of the questions asked of you, Mr. Elleman, about Iran's testing of missiles. And I do not want to put words in your mouth. Did you say they are testing them at the same rate since the JCPOA as they were before, or did you say something different?

Mr. ELLEMAN. What I said was the resumed testing since October of 2015 is a historic norm for the way they have tested. But I did also note that they did not conduct tests in 2005, 2013, or 2014 when nuclear negotiations were making process.

Senator TESTER. OK. All right. So they are—I mean, they are basically acting the same way they did before the JCPOA was put into effect as far as missile capabilities?

Mr. ELLEMAN. In terms of missile capabilities that is correct.

Senator TESTER. OK. And so from a sanctions standpoint, do you advocate putting more sanctions on because of the missile testing they have done? Or do you not have a position on that?

Mr. ELLEMAN. Well, I think sanctioning the individuals and enterprises directly involved in the program is——

Senator TESTER. OK.

Mr. ELLEMAN. ——is an appropriate measure. Whether it is effective or not——

Senator TESTER. OK.

Mr. ELLEMAN. ——is probably another story.

Senator TESTER. OK, thank you.

Elizabeth, the last Iranian election, do you know anything about that? I mean, did the moderates win or did the hard-liners win? What happened there?

Ms. ROSENBERG. There was a relatively strong showing for what we might characterize as somewhat more pragmatist rather than hard-liner representatives. Nevertheless, the vetting that occurs in order to allow candidates to stand already selects out potential candidates who are on the more hard-line spectrum. Nevertheless, there were a relatively good showing by pragmatists.

Senator TESTER. So let me dig into this a little more because I think it goes back to Mr. Dubowitz's answer, and that is that would you classify the last election as being a different step than they had taken in previous elections, or same old same old stuff?

Ms. ROSENBERG. We could characterize it as in line, broadly speaking, with the election of President Rouhani, which is to say an expression of public sentiment that is veering a bit more toward pragmatic interest in international engagement, including economic relief.

Senator TESTER. And do you attribute that to anything specifically?

Ms. ROSENBERG. Extreme economic difficulty over the last several years and desire to see change, including getting out——

Senator TESTER. OK.

Ms. ROSENBERG. ——from under sanctions.

Senator TESTER. OK.

Senator Menendez talked about sanctions, and you talked about the fact, Michael, that the sanctions needed to be multilateral, whatever we do. Do you think the sanctions that we put on Iran would have been effective—would have been effective if it would have just been the United States and EU, and China and Russia would not have been onboard?

I am talking to Michael.

Mr. ELLEMAN. In terms of their nuclear and missile programs, likely not.

Senator TESTER. OK. So you believe it was critically important that the P5+1 truly had to stick together on the sanctions?

Mr. ELLEMAN. Yes.

Senator TESTER. Do you agree with that, Elizabeth?

Ms. ROSENBERG. I do.

Senator TESTER. OK. Let me ask all of you, the Ranking Member went through a list of things that Iran had done. Elizabeth answered yes to all of them. Would any of you disagree with Elizabeth's answers?

Mr. DUBOWITZ. Yeah, I would disagree. I mean, again, I made this point before.

Senator TESTER. You do not think that they have removed the nuclear material?

Mr. DUBOWITZ. No, I would disagree with the conclusion that Iran is in full compliance with the JCPOA.

Senator TESTER. OK, that is not what he asked. He asked if they had removed the material, if they had filled the reactors, if they got rid of the heavy water. Would you agree with that?

Mr. DUBOWITZ. I would—

Senator TESTER. Would you agree that they are still two to 3 months away from having access to a nuclear bomb that they were when we ratified the JCPOA?

Mr. DUBOWITZ. No. Based on the assessment of David Albright, they are 6 to 7 months away from having a nuclear weapon because they have the ability to reconstitute, replace, and reinstall the P1 centrifuges that did not get dismantled but actually just got warehoused. So we gained about 3 or 4 months in terms of nuclear breakout.

Senator TESTER. What about the heavy water?

Mr. DUBOWITZ. Well, in terms of the heavy water, the Iranians continue to produce heavy water. They continue to actually improve their capability to produce heavy water. And when all the restrictions on heavy water and plutonium reactors and reprocessing go away, Iran will be in a stronger position to actually develop a plutonium bomb.

Senator TESTER. OK.

In the heavy water realm, Elizabeth, would you classify it better in our hands, or Russia and China's hands?

Ms. ROSENBERG. The United States has a strong record on its ability to handle dangerous nuclear materials. I feel more confident in the United States' experts managing heavy water in this jurisdiction—

Senator TESTER. Yeah.

Ms. ROSENBERG. —rather than enabling States of proliferation concern to have access to that material.

Senator TESTER. All right.

Thank you, Mr. Chairman. Thank you, all of you, for your testimony.

Chairman SHELBY. Senator Cotton.

Senator COTTON. Thank you all for appearing today.

Mr. Zarate, you worked with Stuart Levey at the Treasury Department. Is that correct?

Mr. ZARATE. I did, Senator.

Senator COTTON. How long did you all work together?

Mr. ZARATE. We overlapped for a year and then I went to the White House to serve as Deputy National Security Advisor while he served as Undersecretary of the Treasury for Terrorism and Financial Intelligence.

Senator COTTON. And he is now the chief legal officer of HSBC Holdings.

Mr. ZARATE. That is correct.

Senator COTTON. Did you read Mr. Levey's *Wall Street Journal* op-ed a couple of weeks ago in the aftermath of John Kerry traveling Europe, acting as the Iranian Chamber of Commerce president?

Mr. ZARATE. I did read the op-ed, sir.

Senator COTTON. He said in that op-ed that, Washington is pushing non-U.S. banks to do what it is still illegal for American banks to do. Do you agree with that statement?

Mr. ZARATE. Based on press reports and what I have read, yes.

Senator COTTON. Could you elaborate a little bit on what Mr. Levey might have meant? What is Washington pushing non-U.S. banks to do that U.S. banks cannot do?

Mr. ZARATE. I think the concern was, based on the meetings that the Secretary of State was having in addition to some of the road shows that had been deployed on behalf of the U.S. Government, that there have been messages sent to European banks that there are no longer major restrictions to doing business in Iran and that they can manage the risks of doing business with or in Iran.

Senator COTTON. And a nearby article the same day suggested that Secretary Kerry was not successful in persuading those European banks to do such business. And Mr. Levey concluded his op-ed by saying, quote, "Our decisions"—HSBC—"will be driven by the financial-crime risks and the underlying conduct. For these reasons, HSBC has no intention of doing any new business involving Iran. Governments can lift sanctions but the private sector is still responsible for managing its own risk and no doubt will be held accountable if it falls short."

Mr. ZARATE. Right.

Senator COTTON. Do you agree that that is a—that private actors face genuine risk of being held accountable for doing what the current Administration is encouraging them to do?

Mr. ZARATE. Absolutely, Senator. As part of my private practice I work with banks like HSBC and others, dealing with the regulatory and real risks in the sanctions and financial crime environment. And they worry every day that not only are they going to be second-guessed but they will be fined billions of dollars, and that their access to U.S. markets will be put at risk if they do not manage their risk.

And so there is a sense in the private sector that there are mixed messages coming from the U.S.—strict adherence to U.S. norms and values and laws, and then a push to deal with what is an inherently risky jurisdiction in Iran at a time when those expectations are actually higher than ever before; 2016 presents heightened risk for banks to do business in financially risky environments, not less risk.

Senator COTTON. So you say mixed messages, so not just risk that a future Administration or future Congress may view the matter differently but actually different messages from different parts of the United States Government at this very moment.

Mr. ZARATE. Absolutely, and not just the U.S. Government but also State and local authorities and regulators. New York authori-

ties have placed some of the most stringent and heavy sanctions and enforcement actions against U.S. and European banks. And so banks are very worried about not just what the U.S. Treasury says or what the State Department says, but what New York and other regulator—other regulators have to say about this.

In addition, there is the real risk that what banks have to worry about, which is transparency and accountability, is absolutely absent in the Iranian market. And so the promotion of banking and any commercial activity in that environment is completely anathema to the message that the U.S. Government has been sending internationally for the last 15 years.

Senator COTTON. So these banks, and for that matter other companies that might wish to do business with Iran, in your professional judgment, face grave financial, legal, political, and reputational risks?

Mr. ZARATE. Enormous risks, in fact heightened risks after implementation day, as opposed to less risk.

Senator COTTON. Would you counsel any responsible member of a board of directors or a corporate general counsel for such banks or companies to accept those risks when the world may look very differently in a mere 7 months?

Mr. ZARATE. I would not because the sanctions environment is confused. The risk of Iranian cheating is high. The realities of Iranian lack of transparency, corruption, financial crime, and money laundering is incredibly high. And the inability for banks to actually understand who their customers are, who their counterparties are at a time when we are putting out new regulations just this month with respect to understanding beneficial ownership in shell companies, especially in the wake of the Panama Papers, is an incredibly risky proposition to go into Iran at this point.

Senator COTTON. OK.

And my time is nearly expired. Mr. Dubowitz, just one question about the total value of sanctions relief that Iran can expect to receive under the JCPOA. The President himself has suggested it could be as high as \$150 billion. Secretary Kerry and other Administrations have suggested it may be as low as 3 or \$5 billion. Other Administration officials have accused Members of Congress of lying by going with figures closer to the president's own figure than with Secretary Kerry's figure. What would you estimate, based on your calculations, is the total amount of sanctions relief that Iran can expect to receive under the JCPOA?

Mr. DUBOWITZ. Well, in terms of restricted oil escrow assets and frozen assets that are returned, they will have access to \$100 billion, of which they will have about \$55 billion in liquid assets and the remaining \$45 billion to pay off their debts.

But, Senator, as you know, if I give you \$100 and you pocket \$55, and you take \$45 and you pay off your credit card, right, the net benefit to you that you have got to report to the IRS is \$100. So that is the net benefit from the frozen assets.

In addition, Iran is going to receive hundreds of billions of dollars of additional sanctions relief based on oil exports, petrochemical exports, the expansion of its auto sector. And already Iran is predicted to have GDP growth of 3 to 4 percent. Inflation has gone down from 40 percent to about 11 percent.

So Iran has actually already received a significant economic windfall from both the JCPOA and the interim agreement numbering in the hundreds of billions of dollars in terms of its macro-economic stability and recovery.

Senator COTTON. But from the JCPOA itself somewhere in the neighborhood of \$100 billion?

Mr. DUBOWITZ. \$100 billion in the access to frozen assets and restricted oil funds.

Senator COTTON. Yeah. And then of course there is the additional benefits of economic growth since the JCPOA and the Obama administration have brought 6 percent growth to Iran while leaving us with 2 percent growth.

Mr. DUBOWITZ. And the Obama administration helped Iran avoid a balance-of-payments crisis and a severe economic crisis in 2013 through the interim agreement and through blocking legislation that this Committee and other committees have forwarded.

Senator COTTON. Thank you very much.

Chairman SHELBY. Senator Warren.

Senator WARREN. Thank you, Mr. Chairman.

Iranian officials are complaining about what they see as the slow pace of sanctions relief and the lack of additional foreign investment that they expected to see as a result of the nuclear deal. Now, if Iran complies with its obligations under the nuclear deal, they will get the sanctions relief that they bargained for. But Iran has a long history of money laundering, terrorist financing, corruption, which are among the reasons that Iran remains a pariah State in the eyes of the international community.

Ms. Rosenberg, instead of blaming the United States for its failure to emerge from economic isolation, what steps should Iran be taking if it wants to become a responsible member of the international financial and commercial system?

Ms. ROSENBERG. Thank you for the question.

To begin with, it could stop funding terrorism——

Senator WARREN. Yeah, that would be a good one.

[Laughter.]

Ms. ROSENBERG. ——and additionally, use this newly passed criminalization of terrorism law to prosecute cases of this, working with the IMF and the FATF to improve controls and risks in its system related to money laundering and terrorist financing.

It must address a variety of prudential risks related to capital adequacy, corporate governance, tax and financial disclosure, and furthermore, on a political level, to cease engaging in the kind of provocative regional behaviors that are a disincentive to those who would invest in the jurisdiction.

Senator WARREN. All right. Well, thank you. That is very helpful. You know, that is a long laundry list of reasons why companies are still reluctant to invest in Iran right now that have nothing to do with the nuclear deal. Iran is ranked 130th on the world Transparency International's Corruption Perceptions Index. It is ranked 118th on the World Bank's Ease of Doing Business Index. It is ranked 108th on the International Property Rights Index.

Ms. Rosenberg, if Iran complies with the nuclear deal, gets the sanctions relief it bargained for under that deal but fails to address systemic problems under these key economic metrics, is it realistic

for them to expect to be reintegrated into the international financial system or to see serious and sustained economic growth in the country?

Ms. ROSENBERG. I think, as has been pointed out, that there is potential for growth even under these difficult circumstances. However, few would believe that they are in any way living up to the potential that geological assets, a well-educated youthful population could provide if they were actually managing their risks.

Senator WARREN. Well, that is very helpful because, you know, it is no secret that there are some people in Congress who are committed to seeing the Iran nuclear agreement fail at any price, and we are hearing a lot of rumbling from them about holding up sanctions relief even if Iran complies with the deal.

Now, that might be good politics for some senators, but let us be clear: Such a move will play right into the hands of hard-liners in Iran who want to blame the West for their economic woes.

Here is the truth: We could give Iran all of the relief contemplated under the nuclear agreement tomorrow and Iran would still need to implement significant structural reforms and change its regional behavior in order to attract the sustained investment and reintegrate itself into the international financial and commercial system. Iran must implement serious structural reforms, crack down on money laundering, as you said, and stop sponsoring terrorism. Our job here is to keep the pressure on the Iranians to make sure that those changes are made, and not give them an excuse to avoid making those changes. Our job is to make sure that if Iran rejects comprehensive reforms, that it has no one to blame for its economic troubles other than itself. Now, there is one more thing I would like to ask you, and that is Adam Szubin is the Acting Undersecretary for Terrorism and Financial Crimes at Treasury. He is in charge of enforcing our sanctions against countries like Iran and targeting the financial networks of terrorist groups like ISIS. It has been more than a year since Mr. Szubin was nominated to this position and the Republicans who control the Senate have still not held a vote to confirm him.

Ms. Rosenberg, given the critical importance of Mr. Szubin's work to our national security, is there any credible reason for Republican senators to continue blocking his confirmation?

Ms. ROSENBERG. I think there is no credible reason to block his nomination—his confirmation. And in fact, it undermines broad national security interests in a variety of areas—proliferation, terrorist financing, the beneficial ownership and CDD rule that was mentioned earlier on the panel—if we do not—if he is not confirmed to this position.

Senator WARREN. So a delay undermines our national security.

Ms. ROSENBERG. I agree.

Senator WARREN. Thank you.

Thank you, Mr. Chairman.

Chairman SHELBY. Thank you all your appearance today. This has been a good hearing. And the Committee will be meeting—continue to meet on this issue. Thank you very much.

[Whereupon, at 12:03 p.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow:]

PREPARED STATEMENT OF JUAN C. ZARATE
 CHAIRMAN AND COFOUNDER, FINANCIAL INTEGRITY NETWORK

MAY 24, 2016

Chairman Shelby, Ranking Member Brown, and distinguished Members of the Senate Committee on Banking, Housing, and Urban Affairs, I am honored to be with you today to discuss the role and significance of sanctions in the Iran nuclear deal, the Joint Comprehensive Plan of Action (JCPOA). The JCPOA is an ongoing and unfolding agreement, with significant implications for how the United States continues to leverage its economic and financial influence to affect Iranian behavior and counter its nefarious activity. This is an important moment for the United States to examine Iranian activity around the globe soberly and determine how best to proceed with the agreement and against the Iranian threat.

When the JCPOA was being debated, I expressed deep concerns and reservations about its structure, demands, and effects on U.S. interests, especially in anticipation of increased Iranian belligerence and adventurism. In detailed testimony before both this Committee and the Senate on Foreign Relations Committee, I explained that the JCPOA was fundamentally flawed, in part because it would empower and enrich the regime and ultimately constrain our ability to use the most effective financial and economic tools of isolation to counter dangerous Iranian behavior.

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, Tehran 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.

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 on Iran to prove the peaceful nature of its program, as constructed in the prior, relevant UN Security Council Resolutions (UNSCRs).

Ultimately, what we negotiated and promised was Iran's reintegration into the global economic system. The JCPOA sacrifices the ability of the United States to use its financial and economic power and influence to isolate and attack dangerous and problematic Iranian activity—beyond the nuclear program. Beyond simple sanctions relief, we 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. Though “non-nuclear” sanctions were supposedly off the table, the spirit and letter of the agreement neutered Washington'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.

As I explained last year, promising Iranian reintegration into the global system was not possible unless we were willing to defang our sanctions regime and ignore Iranian behavior; rehabilitate the perception of the Iranian regime ourselves; and take the most effective tools of financial isolation off the table.

This is a critical point as Iran continues the range of dangerous activities that have been the subject of sanctions and international opprobrium. In the wake of the JCPOA implementation, these activities have included the following:

1. Iran has conducted repeated ballistic missile tests in violation of UN resolutions, including earlier this month according to Iranian news reports, and promises further tests. The launch in March also coincided with Vice President Biden's visit to Israel.
2. Qassem Soleimani, the head of the Iranian Revolutionary Guard Corps' (IRGC) Qods Force, traveled twice to Moscow in contravention of international travel bans to coordinate military cooperation with the Russian Government, to include the delivery of the S-300 system to Iran and defense of the Assad regime in Syria.
3. Iran remains the leading State sponsor of terror and has continued its direct support to terrorist proxies throughout the region, to include Hizballah's activities in Lebanon and Syria, as well as Iraqi Shi'ite militias who were responsible for the deaths of hundreds of Americans in Iraq and are now deployed in Syria to fight for the Assad regime. Iran's support of terrorist proxies is intended to destabilize regional Governments allied with the United States, and the Gulf States have uncovered and interdicted Iranian arms shipments to mi-

litias. In recent months, international naval forces have interdicted Iranian arms shipments likely headed to Houthi rebels in Yemen.

4. Iran has deployed troops—regular and from the IRGC—to Syria to fight for and defend the Assad regime, with reports of thousands on the ground. Qassem Soleimani continues to appear at key battlefronts throughout Syria, and the Iranians help funnel Iraqi, Afghani, and Pakistani Shi’ite militias into the battlefield.
5. Iran has continued to engage in human rights abuses and the restriction of democratic norms. In the run up to recent parliamentary elections, Iran disqualified thousands of individuals from running¹ and continues to hold the leaders of the Green Movement under house arrest.
6. Iran detained two Iranian–American citizens, a father and son, in October 2015 and February 2016, and continues to hold them. In addition, Robert Levinson remains missing after disappearing on Kish Island on March 9, 2007.
7. On January 12, 2016, Iranian naval forces arrested American sailors at gunpoint, broadcasting the video of their detention, and subsequently mocking the sailors through a reenactment at a rally commemorating the anniversary of the Iranian Revolution. The Iranians detained the American sailors days before the implementation of the JCPOA, and hours before the President’s State of the Union address.
8. Iran continues to develop its cyber capabilities and has engaged in malicious cyberattacks against U.S. Government sites, the U.S. private sector, and specific individuals. In March 2016, the Department of Justice indicted seven individuals who worked for the IRGC and carried out attacks on forty-six (46) American banks (including JPMorgan Chase, Bank of America, Capital One, and PNC Bank), the New York Stock Exchange, AT&T, and the Bowman Dam in a suburb of New York. In February 2014, Iran launched a cyberattack against the Las Vegas Sands Corporation.

Much of this activity is not a surprise, but it cannot be dismissed as simply the bad behavior of a recalcitrant IRGC or extremists within the Iranian system. In the Iranian system, these actions are blessed by the Supreme Leader, designed to promote the interests of the regime, and calculated to test the will of the West.

Importantly, the nature of the regime, its control of the economy, and its willingness to use the financial system to pursue all its goals internally and externally has not changed. The Iranian system is corrupt, lacks transparency at all levels, and is centrally controlled by the regime. This—along with the uncertainty of how the JCPOA will unfold—ultimately creates enormous risk for legitimate international actors and companies considering doing business in or with Iran. This explains why there has not been a wave of Western businesses investing aggressively or operating directly in Iran. It further explains why the Iranian leadership continues to complain that the United States has not satisfied its side of the bargain.

Exposing the Risky Nature of the Iranian Regime

The risks are real for the international business and banking communities, given the nature of the regime, the opacity of its economy, its continued dangerous and threatening activities, and remaining sanctions.

The constriction campaign that brought Iran to the negotiating table was premised on the suspicion of Iran’s behavior and use of its financial and commercial system for illicit and dangerous purposes. The U.S. Treasury targeted Iran’s banks by using Iran’s own conduct—its proliferation activity, support for terrorist groups and Shi’ite 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 has wanted to be caught facilitating Iran’s nuclear program or helping it make payments to Hizballah terrorist cells around the world. If they did, they would be caught and sanctioned, with enormous reputational and business consequences. These concerns continue.

This produced a virtuous cycle of isolation that reduced 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

¹Sam Wilkin, “Iran Excludes Most Candidates in Elite Assembly Election”, January 26, 2016 (<http://www.reuters.com/article/us-iran-election-candidates-idUSKCN0V419V>).

accounts were shut down. Iran's own actions to avoid scrutiny and obfuscate transactions led to greater financial constriction.

The Iranians deepened their greatest vulnerability. They blended 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 Government entities involved. They used front companies, cut-outs, and businessmen to acquire items and goods abroad that were hard to purchase, 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 IRGC, the elite military and security unit founded in 1979. The IRGC has gained more power and influence over time as the protector and exporter of the revolution and reports directly to the Supreme Leader, Ayatollah Ali Khamenei.

The IRGC is an economic juggernaut, with responsibilities related 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. Between them, the IRGC and its Qods Force are responsible for all the activities—weapons proliferation, terrorist support, and militant activity—for which Iran was sanctioned in the past.

The IRGC—with its vast network—has embedded itself into more industries within Iran, ultimately building what has been called a veritable business empire.² 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.³

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 oil field. This allowed the IRGC to exclude competition and make it more difficult for legitimate international businesses to operate. Some estimates note that the IRGC controls between 25 and 40 percent of Iran's gross domestic product (GDP).⁴ 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.

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.⁵ It is Iran's biggest construction firm and, according to some estimates, "may be its largest company outright, with 135,000 employees and 5,000 subcontracting firms."⁶ The value of its current contracts is estimated to be nearly \$50 billion, or about 12 percent of Iran's gross domestic product.⁷ 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 construc-

²Frederic Wehrey, Jerrold D. Green, Brian Nichiporuk, Alireza Nader, Lydia Hansell, Rasool Nafisi, and S.R. Bohandy, "The Rise of the Pasdaran: Assessing the Domestic Roles of Iran's Islamic Revolutionary Guards Corps" (Washington, DC: RAND Corporation, 2009).

³Emanuele Ottolenghi, "The Pasdaran: Inside Iran's Islamic Revolutionary Guard Corps" (Washington, DC: Foundation for Defense of Democracies, 2011), pp.44–45.

⁴Ibid, p.43.

⁵Department 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>).

⁶Parisa Hafezi and 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-idUSKCN0PGIXV20150706>); Emanuele Ottolenghi and 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/>).

⁷Benoit Faucon and Asa Fitch, "Iran's Guards Cloud Western Firms' Entry After Nuclear Deal", *The Wall Street Journal*, July 21, 2015 (<http://www.wsj.com/articles/trans-guards-cloud-western-firms-entry-after-nuclear-deal-1437510830>).

tion, oil and gas pipelines, and water systems.”⁸ EU sanctions against the company will be lifted after 8 years, whether or not the IAEA concludes that Iran’s nuclear program is peaceful.

These three 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.⁹ As a result of the IRGC’s control of the economy—control that has grown over time—together with 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 USA PATRIOT Act Section 311—will increase, not decrease over time.

With the IRGC in control of an increasing share of the Iranian economy, including its infrastructure, telecommunications, and oil sector, risks of doing business in and with Iran will increase. The regime will continue to 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.

As I have noted in the past, sanctions relief will increase risks over time, and Iran’s foreign policy will continue to challenge and threaten U.S. interests.

From the U.S. perspective, the blend of IRGC and regime 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 flooding 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. This has not changed.

As part of past efforts to exclude Iran from the financial system, 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 banks be willing to risk their reputations 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 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.”¹⁰ Treasury cited 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.”¹¹ The country’s entire financial system posed “illicit finance risks for the global financial system.”¹² Those concerns

⁸ Ibid.

⁹ *Iranian Official Journal*, accessed July 20, 2015 (<http://www.gazette.ir/>).

¹⁰ 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>).

¹¹ Ibid.

¹² 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>).

persist and are not alleviated by the JCPOA or any Iranian nuclear 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, counterterrorist financing, and counter-proliferation financing, has labeled Iran—along with North Korea—“a high risk and noncooperative jurisdiction.” FATF has called on its members to “apply effective countermeasures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran.”¹³

As recently as February 19, 2016, 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.”¹⁴ The international community recognizes that Iran—regardless of the status of its nuclear program—poses a real and serious threat to the integrity of the global financial system.

This financial and economic isolation was premised on the actions and nature of the Iranian regime itself. Since the announcement of the JCPOA, neither has changed. On the contrary, Iran has demonstrated its desire to continue its aggressive activities and support to causes and groups directly antithetical to U.S. interests.

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. 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 Hizballah, HAMAS, Iraqi Shi’ite militias, and the Houthis in Yemen. This is certainly the expectation of Iran’s allies. Iran could even use its capital to support the Taleban 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, and 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. The infusion of cash as a result of sanction relief will relieve budgetary constraints for a country that had only an estimated \$20 billion in fully accessible foreign exchange reserves prior to November 2013¹⁵ but was spending at least \$6 billion annually to support Assad.¹⁶

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. The mullahs have used their control of the economy—through bonyads and the Supreme Leader’s vast financial network, known as Setad or EIKO, and which is 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 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 stated that we will need to “push back” against Iran’s provocative and dangerous policies and tactics. CIA Director John Brennan 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.”¹⁷

¹³The Financial Action Task Force, Public Statement, “FATF Public Statement 19 February 2016”, February 19, 2016 (<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2016.html>).

¹⁴Ibid.

¹⁵Mark Dubowitz and Rachel Ziemba, “When Will Iran Run Out of Money?” *Foundation for Defense of Democracies and Roubini Global Economics*, October 2, 2013.

¹⁶Eli Lake, “Iran Spends Billions To Prop Up Assad”, *Bloomberg*, June 9, 2015 (<http://www.bloombergvew.com/articles/2015-06-09/iran-spends-billions-to-prop-up-assad>).

¹⁷“CIA Director Says U.S. Will Keep Pressure on Iran over Nuclear Capabilities No Matter Outcome of Ongoing Talks”, *Fox News*, March 23, 2015 (<http://www.foxnews.com/politics/>).

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Indeed, the United States will need to push back, especially against increasing risks and threats from Iran. This has been evident in the wake of the JCPOA Implementation Day. 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 U.S. and our allies. This will mean devising and deploying aggressive strategies to exclude key elements of the Iranian regime and the IRGC, Qods Force, and Ministry of Intelligence from the global financial and commercial system.

The Risks of Doing Business in Iran

On January 16, 2016, the United States, the European Union, the United Nations, and other countries unwound a substantial number of sanctions on the Islamic Republic of Iran as part of their obligations under the JCPOA. Most notably, many EU and UN sanctions, as well as many U.S. “secondary” sanctions, will no longer remain in force. “Primary” U.S. sanctions programs barring almost all U.S. persons from doing Iran-linked business remain.¹⁸

In the wake of Implementation Day and with remaining sanctions and financial crime concerns, important questions exist regarding what doing business in or with Iran now means and how to evaluate and manage such risk.

As Iran attempts to reintegrate into the world economy, many challenges remain for companies considering doing business in the Islamic Republic, with Iranian counterparties, or supporting customers operating in Iran. Dealing with the spectrum of risk—financial crime, regulatory, reputational, and policy—in the Islamic Republic will require that U.S., European, Asian, Middle Eastern, and other firms clearly understand the patchwork of sanctions that will remain in place on the country, as well as many of the systemic issues, such as corruption, impacting various Iranian business sectors. Companies must also factor into their business decisions the risk that sanctions may “snap back” in the medium or long term.

The risks are amplified by Iran’s long history of sanctions evasion, illicit finance and corruption, and opaque financial and commercial practices. In 2015, Emanuele Ottolenghi produced a report¹⁹ for the Center on Sanctions and Illicit Finance at the Foundation for Defense of Democracies detailing the various illicit and suspicious methods used by the Iranian regime to operate in the global financial and commercial system—including the establishment of sophisticated procurement networks and use of gatekeepers to facilitate financing.

This complicated risk environment has dissuaded most legitimate companies from reentering and investing in the Iranian economy. While Iranian markets may appear attractive, companies considering transacting with persons in Iran or doing business in Iran are proceeding with caution. The recent parliamentary elections in Iran have not altered this analysis or trajectory fundamentally. Companies considering doing business in Iran or with Iranian persons must contend with at least eight sanctions and financial crimes-related risks:

1. *Primary U.S. Sanctions.* Most U.S. primary sanctions, which broadly prohibit U.S. persons from conducting transactions in Iran, with persons resident in Iran, or with the Government of Iran, will remain in force. These U.S. primary sanctions pose significant risks for any multinational company considering doing business in Iran. U.S. jurisdiction is broad and U.S. regulators can use it to target transactions that may not initially appear to touch U.S. markets or involve U.S. persons.

U.S. jurisdiction applies to all U.S. individuals (including U.S. citizens and permanent resident aliens, wherever located, as well as persons located in the United States) and entities (including any entity located or operating in the United States, organized under the laws of the United States, as well as foreign branches of U.S. entities). Further, the United States may impose penalties (civil or criminal) on any foreign person who causes a U.S. person to violate sanctions regulations.²⁰

For example, if a Middle Eastern, European, or Asian financial institution conducts transactions on behalf of an Iranian company and the transaction involves a U.S. bank or a correspondent account located in the United States, U.S. regulators will likely have jurisdiction over the transaction and can impose penalties on the

2015/03/23/cia---director---says---us---will---keep---pressure---on---iran---over---nuclear---capabilities/).

¹⁸ Primary sanctions are those that apply directly to (1) the activities of U.S. persons (including persons located in the United States), (2) non-U.S. persons who cause U.S. persons to violate U.S. sanctions regulations, (3) activities taking place within the United States, and (4) transfers of U.S.-regulated goods, services, and technologies. Secondary sanctions apply to non-U.S. persons where the United States lacks jurisdiction to impose primary sanctions. Such sanctions often include privileging a company’s access to U.S. markets on compliance with U.S. sanctions regulations.

¹⁹ Report available upon request.

²⁰ See 50 U.S.C. §1705.

non-U.S. financial institution. Similarly, if a Middle Eastern exporting company with U.S. offices relies on those offices for back office functions for transactions related to Iran or with an Iranian, the U.S. offices providing back office support will be engaged in the prohibited exportation of services to Iran (and can be subject to OFAC penalties). Where the Middle Eastern entity caused the U.S. offices to provide the services without knowledge of the Iranian nexus, U.S. regulators could impose fines on that Middle Eastern entity for causing the U.S. offices to violate the sanctions.

Even those U.S. companies taking advantage of the new General License H—which permits foreign subsidiaries of U.S. companies to engage in certain activities in Iran—will face significant sanctions-related risks. While these subsidiaries may be allowed to conduct those activities, if the U.S. parent company is involved in any Iran-related business or transactions, it will likely be exposed to U.S. primary sanctions.²¹ Multinational companies must build a firewall between U.S. parents and any foreign subsidiary doing business with Iranian persons or in Iran, which may be difficult to effectively do in practice.

Because the breadth of U.S. jurisdiction is expansive, companies based in Europe and Asia must be aware that any engagement with Iran may still expose them to remaining U.S. sanctions. Companies, particularly ones operating across borders, have to pay careful attention to whether they may be subject to U.S. jurisdiction, which might pose one of the most pressing regulatory risks that any company considering entering Iranian markets will face.

2. Remaining U.S. Secondary Sanctions. Foreign businesses considering doing business in Iran will continue to face the risk of violating remaining “secondary sanctions” on Iran, which prohibit foreign financial institutions and other non-U.S. headquartered companies from doing certain business with Iran. While many of the secondary sanctions imposed since 2010 have been unwound,²² non-U.S. persons are still at risk for violating remaining U.S. secondary sanctions if they engage in transactions with any one of more than 200 people and entities listed as Specially Designated Nationals (SDNs) including the IRGC and its affiliates.

These restrictions pose additional and significant risks because under U.S. law, entities owned or controlled 50 percent or more by designated persons—so-called “shadow SDNs”—are by law also considered SDNs. For example, if a foreign financial institution processes transactions on behalf of an entity that is owned or controlled by the IRGC (whether or not that entity is listed on national or international lists of designated parties), it could be subject to U.S. secondary sanctions. This creates significant risk for financial institutions and other companies wishing to do business in Iran, given that the IRGC controls a significant portion of the economy.²³ This risk is further exacerbated by Iranian attempts to create a “gold rush” psychology in the marketplace and to muddy the waters regarding what restrictions may apply to specific transactions. We should expect Iranian customers and counterparties to alter ownership interests, names of entities, and ownership structures in an attempt to hide links to designated parties. This would match past practices of sanctions evasion and obfuscation of financial transactions in the past.

Determining whether a customer, partner, or counterparty is owned or controlled by a designated person will be a challenging task, further complicated by the fact

²¹ Note that U.S. parent companies are permitted to establish policies and procedures that allow these foreign subsidiaries to conduct business in Iran and with Iranian persons, though after the initial decision to reengage in Iran-related business and the establishment of procedures for doing so, U.S. persons cannot be involved in the activities of their foreign subsidiaries relating to transactions with Iranian persons or in Iran. Similarly, U.S. companies can make their automated computing, accounting, and communications systems available for their subsidiaries conducting permitted activities in Iran. In effect, this permits foreign subsidiaries doing permitted business in Iran to continue to use the same computer systems as their parent companies. Note however that provision does not allow U.S. parents to otherwise be involved in those activities in any way.

²² Following Implementation Day, non-U.S. entities can now conduct certain transactions with:

- The financial and banking industry in Iran, including maintaining correspondent accounts for non OFAC-designated Iranian financial institutions, the provision of financial messaging services, dealing in the rial and in Iranian sovereign debt, and issuing credit cards for Iranians;
- Insurance-related activities consistent with the JCPOA, including payment of claims to non-U.S. persons;
- The energy industry;
- Shipping, shipbuilding, and port operations;
- Precious and raw/semi-finished metals dealers; and
- The automotive industry, insofar as non-U.S. goods, technology, and services are involved.

²³ Estimates vary on how much of the Iranian economy is controlled by the IRGC, with many analysts suggesting the IRGC controls as much as 35 percent.

that the Office of Foreign Assets Control (OFAC) at the United States Department of the Treasury has provided limited guidance on how companies looking to do business in Iran can determine whether they are inadvertently doing business with the IRGC. OFAC recommends only that “a person considering business in Iran or with Iranian persons conduct due diligence sufficient to ensure that it is not knowingly engaging in transactions with the IRGC or other Iranian or Iran-related persons on the SDN List and keep records documenting that due diligence.” Businesses looking to enter the Iranian market must make their own determinations about what constitutes “sufficient” due diligence without more precise guidance and while the structure of civil and criminal penalties for sanctions violations remains in place.

Further, non-U.S. persons still need to be aware of remaining U.S. export controls. For example, restrictions still apply regarding the facilitation of Iranian acquisition or development of weapons of mass destruction. In addition, transfers of certain potential dual-use materials must be approved via the procurement channel established by the JCPOA. U.S. origin goods, technology, and services also are subject to the Export Administration Regulations, which retain prohibitions on exports and reexports to Iran.

3. *Remaining EU and UN Sanctions.* While most EU and UN sanctions on Iran have been unwound, a number of important restrictions remain in place.²⁴ Under EU law, trade restrictions on the sale, export, provision, or servicing of goods deemed to be “internal repression equipment,” or used for “telecommunications surveillance and interception,” remain in place. Likewise, the EU will continue to impose asset freezes and prohibitions on business and trade with individuals and entities designated for committing human rights abuses and restrictions on the trade of certain items related to nuclear proliferation.

Like the United States, the EU has also delisted certain entities that are thus no longer subject to its asset freeze, prohibition to make funds available, and visa ban. However, certain financial institutions such as Ansar Bank, Bank Saderat Iran, Bank Saderat PLC, and Mehr Bank remain listed by the EU.

UN Security Council Resolutions that imposed sanctions on Iran for its nuclear program were terminated on Implementation Day. Thus, the United Nations no longer imposes limits on providing insurance and reinsurance products to Iranian entities, and no longer prohibits the opening of new Iranian bank branches or subsidiaries outside Iran (nor is there a mirrored prohibition on entities from UN member States doing the same within Iran). However, a UN arms embargo and UN sanctions on Iran’s ballistic missile program remain in place. Further, some individuals designated by the UN for participating in nuclear and ballistic missile programs remain designated.²⁵ The recent missile tests and Iranian promises for more simply exacerbate the risk that additional sanctions will be applied.

4. *Likely Additional Sanctions.* Businesses interested in entering Iran should be aware that additional designations and sanctions are likely as the United States Congress continues to focus on illicit Iranian behavior and as Iran continues with activities such as ballistic missile testing and the provision of support to terrorist groups. Congress has explored additional sanctions legislation, in particular related to more stringent sanctions tied to the IRGC and its ownership and control inter-

²⁴ Under EU law, several engagements previously prohibited, including associated services, are now allowed so long as they avoid dealing with listed Iranian persons:

- Financial, banking, and insurance measures involving Iranian entities—including the provision of insurance to Iranian oil and gas shipments—are now permitted by EU law and do not require prior authorization;
- The import, purchase, swap, and transport crude oil and petroleum products, gas, and petrochemical products from Iran, and the export of equipment to Iran for use in the energy industry are now permitted;
- Engagements with the Iranian shipping, shipbuilding, and transport sectors are no longer restricted;
- Trade with Iran involving gold, other precious metals, banknotes, and coinage is now permissible;
- While the sale or transfer of certain graphite and raw/semi-finished metals to any Iranian entity is no longer prohibited, such activity is subject to an authorization regime; and
- While the sale or transfer of Enterprise Resource Planning software to any Iranian entity for use in activities consistent with the JCPOA is no longer prohibited, such activity is subject to an authorization regime.

²⁵ Pursuant to the terms of United Nations Security Council Resolution (UNSCR) 2231 (2015) (which endorsed the JCPOA), all prior United Nations Security Council Resolutions mandating sanctions on Iran—namely, UNSCR 1696 (2006), 1737 (2007), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010), and 2224 (2015)—were formally terminated upon receipt of the IAEA’s report verifying that Iran has met its nuclear-related obligations under the JCPOA. Through UNSCR 2231, the UN continues to impose certain restrictions on nuclear, conventional arms, and ballistic missile-related activities involving Iran.

ests. Though the Administration will resist actions that appear to reimpose lifted sanctions, both the House of Representatives and the Senate appear interested in pursuing legislation that directly or indirectly impacts Iran, including the recent legislation imposing additional sanctions on Hizballah.

The Administration has wanted to demonstrate its willingness to sanction non-nuclear Iranian behavior, both to stave off additional congressional action and address Iranian threats to U.S. interests. It has not wanted, however, to impose sanctions or financial measures that would allow Iran to claim that the United States had violated the terms of the JCPOA. Since Implementation Day, the Treasury Department has twice used ballistic missile-related designations—in January 2016, designating 11 entities and individuals involved in procurement on behalf of Iran's ballistic missile program, and then again in March 2016, designating additional parties tied to the missile program. Companies are aware that additional Iranian individuals, companies, and related networks could be designated, effectively requiring an end to any financial or commercial relationship.

This risk increases as Iran engages in activities that spur additional U.S. and possibly EU sanctions. In addition to its support to terrorist groups and the Assad regime, its ballistic missile program, and human rights abuses, there are other risks attendant to doing business with Iran. Iran's link with North Korea, and in particular its cooperation on proliferation and ballistic missile-related issues, increases the likelihood that the United States and the European Union will impose additional sanctions on the Islamic Republic. For example, in late January, France requested the European Union consider imposing additional sanctions on Iran for its continued ballistic missiles activities.

5. *Iran's Potential Cheating on the JCPOA.* If the United States or other members of the P5+1 conclude that Iran is cheating on its obligations under the JCPOA, they can snap back many of the sanctions into place. In the context of any potential snapback, OFAC has made clear that there will be no "grandfather" clause for pending transactions, meaning foreign companies doing business in Iran would need to very quickly wind down their operations, potentially at a significant loss. While the Obama administration will be unlikely to push for a comprehensive snapback of sanctions unless there is a serious, material breach of the JCPOA, Treasury Department officials have made it clear that they have developed more limited snap back mechanisms in the case that Iran pushes the envelope and engages in activities that violate its obligations. Similarly, depending on the outcome of the U.S. presidential election in November 2016, candidates have expressed a desire to reimpose sanctions on Iran. Such action could pose serious risks for foreign companies doing business in the Islamic Republic.

6. *Sanctions Violations Enforcement Posture.* The United States Department of the Treasury has indicated it will continue to aggressively enforce regulations remaining in place. For example, acting Under Secretary of the Treasury for Terrorism and Financial Intelligence Adam Szubin noted, following Implementation Day, that "[w]e have consistently made clear that the United States will vigorously press sanctions against Iranian activities outside of the Joint Comprehensive Plan of Action—including those related to Iran's support for terrorism, regional destabilization, human rights abuses, and ballistic missile program." Indeed, the day after JCPOA Implementation Day, the U.S. Government imposed sanctions on entities and individuals in the Middle East and Asia for supporting Iran's ballistic missile program. These types of sanctions will be used to help demonstrate to Iran and U.S. allies that Washington remains prepared to use economic measures to enforce existing sanctions. In addition, Iran's history of using a variety of financial and commercial measures to hide its hand to evade sanctions and the scrutiny of the international community adds additional risk that sanctions may be applied.

7. *Regulatory Risk From Multiple Enforcement Agencies.* From a regulatory and enforcement perspective, it is important to note that the Treasury Department and OFAC are not the only arbiters of sanctions violations and requirements. The United States Department of Justice, the Securities and Exchange Commission, State prosecutors, and various New York authorities, such as the Department of Financial Services, will all play a significant role in how existing sanctions regulations and related laws are enforced. Local authorities may elect to take a more aggressive enforcement posture with respect to sanctions violations, which would fall outside of the Federal Government's control. Any company considering doing business in Iran or with Iranian individuals or entities will need to pay close attention to the regulatory and enforcement postures taken by these other Government agencies.

8. *Financial Crimes Risks in Iran.* Though the recent business attention on Iran has understandably focused on sanctions-related issues, banks and businesses must remember that other financial crimes concerns in the Islamic Republic remain pervasive. In particular, the nature of the Iranian economy and the role of the Govern-

ment within the economy present serious risks related to bribery and corruption, money laundering, and illicit financing. Iran ranked 130 of 175 countries in Transparency International's Corruption Perceptions Index as of 2015.

In 2011, the U.S. identified Iran as a jurisdiction of primary money laundering concern pursuant to Section 311 of the USA PATRIOT Act. The FATF first raised concerns over Iran's lack of a comprehensive anti-money laundering/countering the financing of terrorism (AML/CFT) framework in 2007, and it still urges Iran to meaningfully address AML/CFT deficiencies and will consider urging stronger countermeasures later this year. OFAC also has made it clear that activity inconsistent with a wide range of Executive Orders imposing sanctions on Iran (including for providing support to terrorism, undermining the stability of Yemen, and other behaviors) could still subject U.S. and non-U.S. persons to sanctions. Now, the Iranian Government has indicated that it will begin to target "financial corruption," and has sentenced Iranian billionaire Babak Zanjani, who helped the regime evade oil-related sanctions, and two others to death for corruption. Attention on the issue of corruption will now grow, as Iran attempts to do business with the world. Any companies looking to do business in Iran must be acutely aware of serious financial integrity risks beyond those posed by remaining sanctions.

As some of the sanctions on Iran are unwound, many European, Asian, and Middle Eastern companies understandably want to reengage in the Iranian economy. The risk appetites of companies will likely vary by sector, with large oil, aerospace, auto, infrastructure, and equipment companies likely more willing to enter Iranian markets more quickly and with a higher tolerance for risk. For example, Airbus has already agreed to sell Iran 114 airplanes, and Boeing has obtained a license from OFAC to begin commercial discussions with Iranian airlines.

In contrast, other sectors will have a more conservative risk approach. Shipping insurers have already recommended a greater degree of caution. For example, the London Protection and Indemnity Club, a member of the International Group of Protection and Indemnity Clubs, the main association of global tanker insurers, has recommended shipping insurers not enter contracts or fixtures involving previously sanctioned Iranian trade or entities without performing extensive due diligence. Similarly, financial institutions will be more reluctant to reenter Iranian markets, given recent enforcement actions targeting their activities and the stricter financial crime compliance environment globally.

A significant challenge will be how financial institutions wary of the risks of doing business in Iran respond to pressure from clients with greater risk appetites to provide financial services for activities in Iran. Iran has already complained that European banks have remained reluctant to engage in commercial activity with Iran, and is now asking the IMF to help assuage such concerns with a report slated for release in 2018. Additional pressure and statements from Iranian leadership, including the Iranian Central Bank Governor, are echoing the charge that the United States is not fulfilling its obligations under the "spirit and letter" of the nuclear deal. The Iranian charge is that the U.S. sanctions and narrative of Iranian risk are still scaring away investment and financial dealings.

The desire in and from Tehran to see the fruits of the nuclear negotiations, especially with more banking activity with the West, will add pressure to those institutions that remain cautious. For example, some financial institutions, including at least one major Japanese bank, have begun processing nondollarized transactions for clients operating in the Islamic Republic. Others have begun to flirt with the Iranian market, with South Korean commercial bank, Woori Bank, indicating it wants to turn its Tehran presence into a branch office, and Austrian Raiffeisen Bank International (RBI) signing a memorandum of understanding with Iran's Department of Environment. Importantly, it appears that the Iranians realize that in order to do business legitimately with the West, they must meet the standards demanded in the Western banking world for transparency and accountability. But the Iranians are intent to force the United States and Europe to resolve this issue for them and to mark this as an essential part of JCPOA implementation.

Keeping the Burden of Persuasion and Reform on Iran

In implementing the deal, the United States should not fall into the trap of helping Iran rehabilitate itself. Throughout this deal, the onus should remain solely on Iran to alleviate concerns about its activities, lack of transparency, and failure to meet heightened global standards of financial integrity in the banking and commercial worlds. Iran should not get a free pass on the reforms, modernization, and accountability necessary for acceptance as a legitimate actor in the world—diplomatically and economically. This posture should force the Iranians to turn inward to determine how they can meet international expectations, instead of trying to compel

the United States and Europe to alter their standards or dictate to the private sector where and with whom they should do business.

Unfortunately in the desire to appear to be complying with the deal, some U.S. actions have created the impression that the United States and European Governments have assumed the burden of reintegration of the Iranian economy into the global system. There are some examples worth noting:

1. There have been reports that the United States might offer Iran the ability to access offshore dollar-clearing facilities, to allow for dollar-denominated transactions and ease Iran's ability to trade internationally. Though such a maneuver would not allow Iran direct access to dollar clearing in the United States, it could be structured in a manner to create the same effect. Iranian trade would then be facilitated in a way not contemplated in the JCPOA. The United States should not be offering special exemptions or measures to assist Iran with access to dollars while Iran remains a leading State sponsor of terror, subject to serious sanctions, and designated as a "primary money laundering concern."

In addition, if the United States were to provide Iran with access to U.S. dollars for offshore transactions, then the United States would lose the ability to threaten this access in response to a range of Iranian provocations in the future. In effect, by couching access to the Western financial system and the U.S. dollar as part of the nuclear deal, the United States would no longer be able to cut Iran off from this benefit if it significantly increased its support for terrorism, as Iran would claim that such an attempt at coercion would violate the letter of the nuclear agreement. This would further give away coercive financial leverage without any bargained-for concession by Iran. Iran's underlying conduct outside of the nuclear issue was not on the table during negotiations. The United States and the international community should not open the door to broad benefits of relief from financial exclusion that the Iranians neither negotiated nor deserve.

2. The U.S. Government has been sending delegations around the globe to clarify existing sanctions and obligations and apparently to explain how business may be undertaken with the Iranian regime. Though regulatory clarity is important, the United States should not be launching road shows attempting to dampen concerns about the risks of doing business in or with Iran, especially when those risks are increasing. The burden instead should fall on Iran to demonstrate to Governments, the private sector, and the markets that its activities, policies, and use of its financial and commercial system are legitimate, transparent, and meet international standards. Iran should be concentrating on necessary reforms, hard policy decisions, and its own road shows to prove that it can be trusted as a responsible international player. Until then, Iran will be seen as a risky jurisdiction in which to invest and do business. It should not be the responsibility of the United States or Europe to prod businesses and banks to enter the Iranian market.

3. The United States has announced that it plans to buy heavy water from the Iranian nuclear system, thus enabling Iran to produce more heavy water than it needs and facilitating the economic uses of a nuclear program built in violation of previous international sanctions. This also legitimates Iran's nuclear program in a way that is not obligated in the JCPOA and promotes Iran's expanded nuclear program. Aside from not encouraging and promoting the Iranian nuclear program beyond what is required in the JCPOA, the United States should not be serving as Iran's market safety valve for the sale of heavy water, displacing existing supplies to the United States from legitimate suppliers like Canada and Argentina. As with any Iranian economic activity, Iran should be forced to deal with the international markets on its own, meeting relevant market and regulatory demands directly. The United States should not usher Iran into the global economy artificially, especially not in the nuclear markets, and allow Iran benefits that were not negotiated in the JCPOA and for which the international community has not received consideration.

4. It has been important that the U.S. Treasury and other U.S. Government officials have reiterated the commitment to enforcing existing sanctions vigorously and maintaining the ability to use the tools of financial coercion to affect Iranian behavior. These commitments, however, are undercut when the United States modifies its messaging to suggest that our sanctions regime should not constrain or affect the risk calculus of the private sector. Though intended to demonstrate that the United States is upholding its end of the JCPOA bargain, softened language appears to suggest that the United States is already backing away from its willingness to use existing sanctions against Iran. Recently, Secretary Kerry met with European banks and noted that European businesses should not use the United States as an excuse not to invest in Iran. European businesses should be encouraged to listen to and account for U.S. regulatory, enforcement, and policy concerns—not ignore long-standing and legitimate concerns.

The United States cannot alter this commitment to enforce sanctions, weaken its call for heightened global standards for financial integrity, or jump every time Iran complains about its inability to access the global financial system. The United States cannot mute itself or its willingness to use some of our most effective financial and economic tools against dangerous Iranian activity. Unfortunately, the United States has quieted its voice too often in the face of Iranian aggression and violations in the hopes of a nuclear deal—from the deafening silence as the Green Movement was crushed brutally to current vacillation on whether recent ballistic missile tests violate the letter and spirit of the JCPOA and the related UN Security Council Resolution 2231.

The United States cannot be in the position of rehabilitating the Iranian economy and image. This proves highly problematic and undermines U.S. credibility and power internationally if this is done without concern for the underlying issues and conduct that drove its isolation in the first place—proliferation, support for terrorism, human rights violations, and development of weaponry and programs of concern controlled by the IRGC. 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. Iran should be forced to deal with these risks directly.

The Strategic Use of Sanctions Moving Forward and Targeted Unwinding

The United States should treat the JCPOA and its implementation as an ongoing process, where sanctions and sanctions unwinding form a strategic part of U.S. and international efforts to enforce the deal, maintain economic and financial leverage, push back on dangerous Iranian activity, and force the Iranians to make hard decisions about their role in the world. Sanctions and financial measures in this regard are not just tools that were used to get Iran to the table, but are essential levers of influence moving forward. Indeed, how sanctions are deployed and unwound could affect the internal dynamics of Iran in furtherance of U.S. and allied interests.

In the first instance, the United States should not shy away from the use of sanctions against Iranian behavior and underlying conduct that is already subject to sanctions. The U.S. Government has the authority and ability to apply sanctions for the full suite of nefarious Iranian behavior—to include human rights violations and malicious cyber activity. This includes enforcement of existing sanctions and application of new measures to constrain Iranian behavior and discipline the international system. The United States retains the power and credibility to do this. The effects of U.S. actions are global and set the international norms for acceptable behavior. Absent U.S. action, attention, and enforcement, Iranian provocations will likely not be met with credible international push-back. If U.S. financial and economic measures are based on facts and can be explained credibly as furthering U.S. legal requirements and international norms, the impact will remain global and the effect real.

In addition, the United States should not diminish its ability to use targeted unwinding tools to force Iran to make hard choices about its behavior in the international system. If implementation of the JCPOA is viewed as an ongoing and long-term process, then the United States should be thinking creatively about how to use these targeted unwinding measures to effectuate its strategic goals.

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. In many other cases, the unwinding schedule and some of the scheduled delistings implicate actors and activities beyond the nuclear file, complicating our ability to easily unwind sanctions and threatening our ability to impose coercive leverage in the case of Iranian malfeasance beyond the nuclear file. The delisting of some key Iranian entities that have facilitated a range of Iranian illicit activities and the cessation of sanctions prohibitions against them, especially terrorism financing, raises serious challenges to U.S. ability to affect Iranian behavior of concern.

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 for various dangerous and nefarious activities of international security concern is incredibly challenging. But tearing down sanctions bluntly—particularly when pulling down the nuclear sanctions also threatens to pull down U.S. leverage related to issues of missile proliferation and terrorism—without addressing that underlying and related conduct creates real risks and does damage to the ability to use the very same tools against Iranian individuals and entities in the future.

In light of the risks of doing business with Iran, 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 was designated under U.S. authorities not simply because of its facilitation of the Ira-

nian 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 JCPOA explicitly called 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.”²⁶ The European Union lifted SWIFT-related sanctions for the Central Bank of Iran and all Iranian banks²⁷ originally banned from SWIFT.²⁸

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

Instead, we should consider a process of targeted unwinding that meets our strategic goals—and could even provide Iran relief if it is willing to abide by international rules and norms regarding transparency and accountability of its financial system. For Iranian banks, this would mean a stricter, monitored reentry into the financial system, given continued concerns about their facilitation of illicit and dangerous activities by the regime. This could be effectuated through a program—led by the European Union—to create a monitoring system through SWIFT (akin to the Terrorist Financing Tracking Program) to monitor all Iranian cross-border transactions and allow for the tracking and analysis of suspect Iranian banking activities. Instead of the blunt unwinding measure of plugging all Iranian banks (minus a few) back into the global banking messaging system, an aggressive 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.

This type of system might actually force the Iranian regime to make some hard choices about not using its banks to facilitate illicit or dangerous activities that would be subject to monitoring and exposure. A system of targeted unwinding could advance the strategic goal that Iran not misuse its economy and financial system to benefit terrorists, proxies, and accelerate its nefarious international ambitions and capabilities. If such a system could prove effective, it might spur responsible reform within Iran as it tries to reintegrate into the global system. This in turn would give global banks and businesses some assurance that the Iranian banking system is maturing and under some degree of scrutiny. Scrutiny over such financial activity and reforms could help alleviate concerns by legitimate banks that they are being exposed to dangerous risk, especially if legitimate and trusted Government agencies (like financial intelligence units) are involved in the monitoring. This, in turn, could blunt Iranian claims that the United States was de facto continuing the imposition of sanctions by scaring Western banks away from doing business in Iran or with businesses interested in doing business in Iran.

The current tension with Iran over the unwinding of sanctions underscores that the implementation of the JCPOA and “negotiations” with Iran will be ongoing. In this regard, we should take full advantage of the leverage we have and devise new mechanisms to ensure we meet our strategic goals. We should be reinforcing this power and capability, not undermining it.

Faulty Assumptions

The current state of sanctions unwinding reveals certain misconceptions about the state of play regarding the JCPOA and the position of the United States to strike a better bargain. There are many assumptions articulated at the time that need to be questioned, and there are a few that are clearly incorrect. It is important that this be clarified as the JCPOA unfolds and expectations and precedents are formed.

²⁶“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).

²⁷On Implementation Day, the EU lifted sanctions on the Central Bank of Iran and Bank Mellat, Bank Melli, Bank Refah, Bank Tejarat, Europäische-Iranische Handelsbank (EIH), Export Development Bank of Iran, Future Bank, Onerbank ZAO, Post Bank, and Sina Bank. Separately, the EU also lifted sanctions on Bank Sepah and Bank Sepah International. On Transition Day, the EU will also lift sanctions on Ansar Bank, Bank Saderat, 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_attachments_en.pdf).

²⁸The 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>).

At the time of the negotiations, the financial and economic pressure campaign was not faltering, and the U.S. was not at risk of losing its ability to squeeze and influence Iran in the short term.

The regime and the economy were affected by cascading isolation and falling oil prices. During the period of the negotiations, the pressure was increasing—belying the notion that the United States was facing a cracking sanctions coalition and system. Quite the opposite was occurring. The ayatollahs' concern over the strangulation of the Iranian economy—in concert with lingering fears of the ghosts of the Green Movement—is ultimately 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 “Stone Age.”

The regime needs access to capital, new technologies, and connectivity to the oil markets and the global economy to maintain and sustain itself. That is what it lost over the past decade. It is what the Iranians negotiated to regain in the JCPOA. This is now the source of Iran's most significant complaint.

There was also never a neat divide between “nuclear” and “non-nuclear” sanctions when the constriction campaign launched in 2005. This campaign was intended to use the illicit, dangerous, and illegitimate nature of Iranian activity as the driver for unplugging Iran from the global financial and commercial system. This is something I tried to articulate in my testimonies before the Senate last year. The sanctions were focused on the fact that the Iranians were leveraging their own economy to profit the regime and allow the construction of a suspect nuclear infrastructure and ballistic missiles, support terrorists and militias, strengthen Assad in Syria, engage in financial obfuscation, and perpetrate massive human rights abuses. Other than the nuclear issues, the underlying conduct was not on the table during the JCPOA negotiations. Without resolution of those issues, the triggers for financial isolation remain. Thus, we are witnessing the difficulty of unwinding sanctions that have been triggered by underlying Iranian conduct that has yet to change.

Moreover, the JCPOA has not resulted in the diplomatic unity promised or rewards for good behavior. Russia has quickly made its own deals and pacts with Iran—expanding coordination and cooperation in Syria and Iraq and signing deals for weapons systems. The United States has been forced to assuage skeptical allies in the Gulf and Israel and mend diplomatic wounds. European countries are engaging at different levels and pace with Iran, sending mixed messages about what is expected by the international community. With the varied sanctions regimes, American companies are disadvantaged by the commercial opening provided to European companies. Legitimate companies concerned about real and reputational risks sit on the sidelines while less responsible actors dive into the Iranian market. Our closest allies are worried, and the responsible actors are losing market opportunities.

Finally, it is not clear that the JCPOA has opened a channel through which Iran can constructively engage with the international community and address the other serious concerns about its dangerous policies and behavior. On the contrary, Iran appears intent and willing to exacerbate those risks and tensions across the board. The JCPOA may have emboldened the regime to take more aggressive steps, exacerbating concerns among U.S. allies that Iran is being given free rein to expand its influence and threaten their interests. Just as important, the United States seems not to have a plan as to how to use the JCPOA implementation to drive broader strategic goals of constraining Iranian adventurism and sparking internal reforms.

The Iranians need to decide that they are willing and able to address those issues of concern and change their behavior—to include issues of financial transparency, terrorist financing, and corruption. The Iranians must find tangible ways to demonstrate that necessary reforms are possible before they can expect to be treated as legitimate actors in the financial and commercial systems. This is the source of their isolation.

Conclusion

In the short term, the aversion to the risks of doing business in and with Iran will continue, especially if Iran continues to demonstrate an unwillingness to stop its provocative and dangerous activity. More importantly, Iran will not be in a position to join the international community completely, if it does not demonstrate clearly that it can engage as a trusted and transparent actor in the financial system. The onus to prove this should be on Iran's shoulders. Any complaints about lack of access to capital, markets, or investment should be posed to the clerical regime. Iran has to decide whether it will abide by international standards, norms, and obligations. Absent this, it will remain a risky environment in which to do business, no matter how attractive the opportunities.

The United States must be willing to use its financial and economic toolkit to constrain dangerous Iranian behavior and encourage responsible Iranian activity. This means forcing Iran to deal with the demands of the international market place on its own and addressing the underlying conduct that has proven problematic and risky. The United States must continue to isolate rogue Iranian activity—and that of its proxies—through the use of sanctions and financial measures that exclude such actors from the global financial and commercial system. The United States cannot abandon its use of these tools, especially as the JCPOA unfolds and Iran continues to test the bounds of U.S. will. The United States will need to rely on sanctions and financial measures even more in the future, and we should be doing everything we can to reinforce the strength and endurance of these powers—against Iran and other rogue actors in the international system.

PREPARED STATEMENT OF MARK DUBOWITZ
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SANCTIONS AND ILLICIT FINANCE
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Congressional Testimony

**Understanding the Role of Sanctions
Under the Iran Deal**

Mark Dubowitz
Executive Director
Foundation for Defense of Democracies
FDD's Center on Sanctions and Illicit Finance

**Hearing before the
Senate Committee on Banking, Housing, and Urban Affairs**

Washington, DC
May 24, 2016



Mark Dubowitz

May 24, 2016

Chairman Shelby, Ranking Member Brown, members of the Committee, on behalf of the Foundation for Defense of Democracies and its Center on Sanctions and Illicit Finance, thank you for the opportunity to testify.

INTRODUCTION

Iran is engaged in a robust effort to legitimize its financial sector despite a decades-long rap sheet of financial crimes and illicit financial activities that it shows no sign of curbing. Since the conclusion of the JCPOA, the Obama administration has missed numerous opportunities to push back against Iran's legitimization campaign. Instead of insisting on an end to Iran's continuing malign activities (terrorism, human rights violations, and other destabilizing activities in Syria, Iraq, Yemen, Lebanon, and other countries across the Middle East), and using non-nuclear sanctions to deter and punish these activities, the administration is now effectively acting as Iran's trade promotion and business development authority. Indeed, the administration may be departing from its original JCPOA negotiating position that it would only suspend or lift so-called U.S. "nuclear sanctions" under its executive authority. Rather, the administration is allowing Iran to hold the U.S. responsible for delivering financial and economic outcomes.

Iran complains that it has not received the sanctions relief it was promised. But the regulatory and economic realities are very different. The administration honored its commitments on Implementation Day in lifting or suspending the entire "nuclear-related" sanctions architecture. Iran already has received an economic windfall: The JCPOA (as well as the interim agreement in place during the negotiations) provided Iran with substantial economic relief that helped Tehran avoid a severe economic crisis and even return to a modest recovery path. The lifting of restrictions on Iran's use of frozen overseas assets of about \$100 billion gives it badly needed hard currency to settle its outstanding debts, repair its economy, build up its diminished foreign exchange reserves, and ease a budgetary crisis, which has actually freed up funds for the regime to increase its financing of terrorism.

The nuclear deal also did nothing to address the full range of Iran's other illicit activities, including ballistic missile development, support for terrorism, regional destabilization, and human rights abuses. Indeed, the weakening of missile language in the key UN Security Council Resolution coupled with the lifting of a conventional arms embargo after five years and the missile embargo after eight will undermine international efforts to combat these activities. Meanwhile, Iran's domestic repression has intensified with a record number of executions in 2015.¹ When President Rouhani was elected in June 2013, there was a widespread assumption that he would shepherd in an era of greater freedoms in Iran. Yet, domestic repression has intensified. As United Nations Special Rapporteur on human rights in the Islamic Republic of Iran Ahmed Shaheed reports, there has been no "meaningful change on the ground."²

¹ UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Press Release, "Zeid calls for an end to executions for drug offences in Iran," April 14, 2016, (<http://shaheedoniran.org/english/human-rights-at-the-united-nations/human-rights-monitoring-mechanisms/high-commissioner-office/zeid-calls-for-an-end-to-executions-for-drug-offences-in-iran/>)

² UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, "Press Conference Statement," March 10, 2016, (<http://shaheedoniran.org/english/dr-shaheeds-work/press-releases/press-conference-statement-on-10-march-2016/>)

Mark Dubowitz

May 24, 2016

During last summer's congressional review period, Obama administration officials pledged that the United States would continue to enforce non-nuclear sanctions and oppose the full range of Iran's illicit and dangerous activities. This was a very logical approach. While the JCPOA lifts sanctions on Iran's nuclear activities, it does not preclude the United States from using these non-nuclear sanctions – despite Iranian threats that it would view any imposition of sanctions as a violation of the deal and grounds to “snapback” its nuclear program.³

Congress should reject the Iranian position – which amounts to nuclear blackmail – and hold the administration to its commitments. Sanctions need to target Iran's support for terrorism, ballistic missile program, support for the Assad regime in Syria and designated Shiite militias in Iraq, and human rights abuses. These steps are not a violation of the JCPOA, but rather an affirmation of stated U.S. policy to “oppose Iran's destabilizing policies with every national security tool available.”⁴

Sadly, since the JCPOA was reached, the administration has only issued a handful of new designations; only nine individuals and nine entities have been added to Treasury's sanctions list.⁵ These designations include ineffectual sanctions targeting Iran's missile procurement networks. Tehran can easily reconstitute these networks, and therefore the designations do not impose the kind of economic costs needed to change Tehran's calculus. Discussions at the UN Security Council are unlikely to lead to any meaningful response to Iran's repeated ballistic missile tests,⁶ and the administration has backed away from language of “violations,” instead arguing that missile activities are “inconsistent” with UN Security Council Resolution 2231.⁷

The administration also has failed to enforce human rights sanctions against Iran. Indeed, since the JCPOA was concluded last summer, the administration has designated no individuals or entities for human rights abuses. In fact, only one individual and two entities have been sanctioned for human rights violations since Rouhani came to power in the summer of 2013.⁸ This is a sharp drop from the 34 individuals and entities designated between 2009 and 2013.⁹

³ Column Lynch, “Iran to United Nations: New Sanctions Could Kill Nuclear Deal,” *Foreign Policy*, July 28, 2015. (<https://foreignpolicy.com/2015/07/28/john-kerry-obama-administration-terrorism-human-rights-iran-to-united-nations-new-sanctions-could-kill-nuclear-deal/>)

⁴ John Kerry, “Remarks on Nuclear Agreement With Iran,” *National Constitution Center*, September 2, 2015. (<http://www.state.gov/secretary/remarks/2015/09/246574.htm>)

⁵ U.S. Department of the Treasury, Office of Foreign Assets Control, “Counter Terrorism Designations; Non-proliferation Designations,” March 24, 2016. (<https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20160324.aspx>); U.S. Department of the Treasury, Office of Foreign Assets Control, “Non-proliferation Designations,” January 17, 2016. (<https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20160117.aspx>)

⁶ Julian Pecquet, “U.S. Looks to Sidestep U.N. on New Iran Sanctions,” *Al-Monitor*, March 29, 2016.

⁷ Louis Charbonneau, “Exclusive: Iran missile tests were ‘in defiance of U.N. resolution - U.S., allies,” *Reuters*, March 30, 2016. (<http://www.reuters.com/article/us-iran-missiles-idUSKCN0WV2HE>)

⁸ U.S. Department of the Treasury, Press Release, “Treasury Sanctions Iranian Official for Human Rights Abuses,” May 23, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/l2411.aspx>); U.S. Department of the Treasury, Press Release, “Treasury Designates Additional Individuals and Entities Under Iran-related Authorities,” December 30, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/l9731.aspx>)

⁹ Information available via the U.S. Department of the Treasury's “Sanctions List Search” database, accessed on May 4, 2016 at <https://sanctionssearch.ofac.treas.gov/>.

Mark Dubowitz

May 24, 2016

And even this is a relatively dismal record compared to the European Union, which designated 84 individuals and one entity between 2009 and 2015.¹⁰

Meanwhile, the administration is touring Western capitals to encourage banks to re-enter the Iranian market and is reportedly mulling a new unilateral concession that Iran did not negotiate as part of the JCPOA: Iranian use of dollarized financial transactions through offshore dollar-clearing, intra-bank book transfers and conversions, or some other kind of mechanism that would allow Iran access to the dollar. This concession, a response to threats from Iran's Supreme Leader Ali Khamenei,¹¹ undercuts the efficacy of future non-nuclear sanctions, which depend on the private sector's perception of the severe financial risks involved in transactions with Iran. Easing dollarized transaction restrictions also aids an Iranian push to legitimize its financial sector without halting the terror, nuclear, and missile financing, not to mention the money-laundering and sanctions evasion that violate international norms of responsible financial activities.

In remarks before the Carnegie Endowment for International Peace, Treasury Secretary Jack Lew argued that sanctions are an effective instrument to address illicit activities, but they must be lifted when the illicit behavior changes.¹² This is an important principle, but the commentary surrounding these remarks misses a crucial detail: Iran has not addressed the underlying behavior that prompted many of the U.S. sanctions.

GREEN-LIGHTING THE GREENBACK FOR AN ILLICIT FINANCIAL ACTOR

While U.S. and European diplomats celebrated the conclusion of the Joint Comprehensive Plan of Action last summer, Iran's Supreme Leader Ali Khamenei and his government saw that deal not as the end of the negotiations, but as the beginning. This has become increasingly clear in their criticism of sanctions relief and demand for more.¹³

Some of this additional sanctions relief will flow to the coffers of terrorist groups and rogue actors. While President Obama claimed that the JCPOA's sanctions relief would not be a "game-

¹⁰ The Council of the European Union, "Council Regulation No 359/2011 of 12 April 2011," *Official Journal of the European Union*, as amended April 7, 2015. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02011R0359-20150409>)

¹¹ Ali Khamenei, "Islamic Republic Has Destroyed Enemy Trenches Inside Iran," *Remarks in the city of Mashhad*, March 20, 2016. (<http://english.khamenei.ir/news/3550/Islamic-Republic-Has-Destroyed-Enemy-Trenches-Inside-Iran>)

¹² Jacob Lew, "The Evolution of Sanctions and Lessons for the Future," *Remarks before the Carnegie Endowment for International Peace*, March 30, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/10398.aspx>)

¹³ Guy Faulconbridge, "Iran calls on U.S. to reassure European banks over trade with Tehran," *Reuters*, February 4, 2016. (<http://www.reuters.com/article/us-iran-britain-trade-idUSKCN0VD2K2>); "Iran's Supreme Leader says U.S. lifted sanctions only on paper," *Reuters*, April 27, 2016. (<http://www.reuters.com/article/us-iran-economy-khamenei-idUSKCN0X00RK>); Robin Wright, "Iran's Javad Zarif on the Fraying Nuclear Deal, U.S. Relations, and Holocaust Cartoons," *The New Yorker*, April 25, 2016. (<http://www.newyorker.com/news/news-desk/irans-javad-zarif-on-the-fraying-nuclear-deal-u-s-relations-and-holocaust-cartoons>); Jay Solomon, Asa Fitch, and Benoit Faucon, "Iran's Central Bank Chief Warns Banking-Access Issues Jeopardize Nuclear Deal," *The Wall Street Journal*, April 15, 2016. (<http://www.wsj.com/articles/irans-central-bank-chief-warns-banking-access-issues-jeopardize-nuclear-deal-1460745930#:~:zh=1-dQFrvZaA>)

Mark Dubowitz

May 24, 2016

changer” for Iran.¹⁴ Supreme Leader Ali Khamenei stated in a speech less than one week after the JCPOA announcement, “We shall not stop supporting our friends in the region: The meek nation of Palestine, the nation and government of Syria ... and the sincere holy warriors of the resistance in Lebanon and Palestine.”¹⁵ The infusion of cash and other assets as a result of the JCPOA is relieving budgetary challenges for a country that had only an estimated \$20 billion in fully accessible foreign exchange reserves prior to November 2013¹⁶ but was spending at least \$6 billion annually to support Assad.¹⁷

In January 2016, Secretary of State John Kerry admitted that Iran would use some of the funds from sanctions relief to aid its nefarious activities and support terrorism. Referring to the previously frozen assets to which Iran now has access, he noted, “Some of it will end up in the hands of the IRGC or other entities, some of which are labeled terrorists.”¹⁸

Even against this backdrop, Iran is pressing for additional concessions. Supreme Leader Ali Khamenei has argued that the United States has “removed the sanctions in paper only” and blames the U.S. for the fact that global banks are keeping Iran at arm’s length.¹⁹ Foreign financial institutions rightly assess that there are too many counter-party risks from Iran’s continuing illicit financial activities and are hesitant about re-engaging with Iran.²⁰

Assess to the Dollar and Dollarized Transactions

Iran wants direct – or, at a minimum, indirect – access to the U.S. dollar because the dollar is the preferred currency for global trade. The overwhelming majority, 87 percent,²¹ of international trade is conducted in U.S. dollars; 43 percent of international financial transactions are denominated in dollars;²² and more than 60 percent of total allocated global foreign exchange

¹⁴ Barack Obama, Press Briefing, “Press Conference by the President,” *The White House*, July 15, 2015.

(<https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president>)

¹⁵ “Iran Press Review 20 July,” *Foundation for Defense of Democracies*, July 20, 2015.

(<http://www.defenddemocracy.org/iran-press-review-20-july>)

¹⁶ Mark Dubowitz and Rachel Ziemba, “When Will Iran Run Out of Money?” *Foundation for Defense of Democracies and Roubini Global Economics*, October 2, 2013.

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

¹⁷ Eli Lake, “Iran Spends Billions to Prop Up Assad,” *Bloomberg*, June 9, 2015.

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

¹⁸ Elise Labott, “John Kerry: Some sanctions relief money for Iran will go to terrorism,” *CNN*, January 21, 2016.

(<http://www.cnn.com/2016/01/21/politics/john-kerry-money-iran-sanctions-terrorism/>)

¹⁹ Aresu Egbali and Margherita Stancati, “Iran’s Supreme Leader Says Sanctions Still Affecting Country’s Economy,” *The Wall Street Journal*, March 20, 2016. (<http://www.wsj.com/articles/irans-supreme-leader-says-sanctions-still-affecting-countrys-economy-1458302695>)

²⁰ Annie Fixler, “Global Banks Wrestle with Iran’s Return,” *Foundation for Defense of Democracies*, February 12, 2016. (<http://www.defenddemocracy.org/media-hit/annie-fixler-global-banks-wrestle-with-irans-return/>); Martin Arnold, Geoff Dyer, and Najmeh Bozorgmehr, “European banks resist calls to increase business ties with Iran,” *The Financial Times* (UK), May 12, 2016. (<http://www.ft.com/intl/cms/s/0/acae21f2-1796-11e6-bb7d-ee563a5a1cc1.html#axzz48S96J671>)

²¹ John Mauldin, “China’s Renminbi Is Well on Its Way to Becoming a Global Reserve Currency,” *Business Insider*, September 29, 2013. (<http://www.businessinsider.com/renminbi-soon-to-be-a-reserve-currency-2013-9>)

²² Greg Ip, “U.S. Influence Hinges on Future of Dollar, Yuan,” *The Wall Street Journal*, April 15, 2015.

(<http://www.wsj.com/articles/u-s-influence-hinges-on-future-of-dollar-yuan-1429120648>)

Mark Dubowitz

May 24, 2016

reserves are denominated in U.S. dollars.²³ However, beginning in 2008, Iran began demanding crude oil payments in euros and yen.²⁴ Nothing is prohibiting Iran from doing this now.

In 2008, Treasury banned Iran's last access point to the U.S. financial system by prohibiting what are referred to as "U-turn" transactions, which are transactions between a foreign bank and an Iranian bank that briefly transit the U.S. financial system in order to dollarize the transaction.²⁵ At the time, Treasury's Office of Foreign Assets Control noted that the purpose of the action was "to further protect the U.S. financial system from the threat of illicit finance posed by Iran and its banks."²⁶

Since that time, Iran's illicit financial activities have continued. In November 2011, Treasury issued a finding under Section 311 of the USA PATRIOT Act that Iran (and its entire financial sector, including its central bank) was a "jurisdiction of primary money laundering concern."²⁷ Treasury cited 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."²⁸ The entire country's financial system posed "illicit finance risks for the global financial system."²⁹

Despite Iran's ongoing illicit financial activities, the Obama administration appears ready to comply with Tehran's demands for more relief. News reports indicate that Washington is examining deal sweeteners to encourage greater foreign investment in Iran. Specially, the administration reportedly is looking for ways to dollarize Iranian transactions.³⁰ This is intended to encourage large European and other banks to return to business with Iran and help alleviate their concerns about the legal risks associated with engaging with a country still under U.S. sanctions for money laundering, terrorism and missile proliferation, and human rights abuses.³¹

²³ "Currency Composition of Official Foreign Exchange Reserves (COFER)," *International Monetary Fund*, March 31, 2016. (<http://data.imf.org/?sk=E6A5F467-C14B-4A88-9F6D-5A09FC4F62A4>)

²⁴ "Iran Ends Oil Transactions In U.S. Dollars," *Associated Press*, April 30, 2008.

(<http://www.cbsnews.com/news/iran-ends-oil-transactions-in-us-dollars/>)

²⁵ U.S. Department of the Treasury, Press Release, "Fact Sheet: Treasury Strengthens Preventive Measures Against Iran," November 6, 2008. (<https://www.treasury.gov/press-center/press-releases/Pages/tg1258.aspx>)

²⁶ U.S. Department of the Treasury, Office of Foreign Assets Control, "Iranian Transactions Regulations," *Federal Register*, November 10, 2008. (<https://www.gpo.gov/fdsys/pkg/FR-2008-11-10/pdf/E8-26642.pdf>)

²⁷ U.S. Department of the Treasury, Press Release, "Finding That the Islamic Republic of Iran is a Jurisdiction of Primary Money Laundering Concern," November 18, 2011. (<http://www.treasury.gov/press-center/press-releases/Documents/iran311Finding.pdf>)

²⁸ U.S. Department of the Treasury, Press Release, "Finding That the Islamic Republic of Iran is a Jurisdiction of Primary Money Laundering Concern," November 18, 2011. (<http://www.treasury.gov/press-center/press-releases/Documents/iran311Finding.pdf>)

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

³⁰ Bradley Klapper, "Republicans worry Obama is opening door to new Iran relief," *Associated Press*, March 24, 2016. (<http://bigstory.ap.org/article/b2c1eb1820154a518deb12b85882536e/gop-worries-obama-leaving-door-open-new-iran-relief>)

³¹ Eric B. Lorber, "Treasury Prepares to Take Dollarized Transactions with Iran Offshore," *Foundation for Defense of Democracies*, March 31, 2016. (<http://www.defenddemocracy.org/media-hit/eric-b-lorber-treasury-prepares-to-take-dollarized-transactions-with-iran-offshore/>)

Mark Dubowitz

May 24, 2016

In March, in a hearing before the House Financial Services Committee, Secretary of the Treasury Jack Lew avoided answering direct questions posed by Chairman of the House Foreign Affairs Committee, Rep. Ed Royce, on whether the U.S. administration is “considering permitting Iranian banks to clear transactions in dollars with U.S. banks or foreign financial institutions including offshore clearing houses.”³² Secretary Lew responded by stating that the administration continues to explore ways “to make sure Iran gets relief” from sanctions. Congress is rightfully concerned.

Permitting Iran access to the U.S. dollar would contradict repeated administration promises to Congress, and goes beyond any commitments made to Iran under the JCPOA.³³ During the weeks of intense congressional debate about the nuclear agreement and in the months following, administration officials repeatedly pledged that Iran would not be granted access to the U.S. financial system. Treasury Secretary Lew was adamant during a congressional grilling last July: “Iranian banks will not be able to clear U.S. dollars through New York,” he told both the Senate Foreign Relations Committee and House Foreign Affairs Committee, or “hold correspondent account relationships with U.S. financial institutions, or enter into financing arrangements with U.S. banks.”³⁴

In August before this committee, Treasury’s Acting Under Secretary for Terrorism and Financial Intelligence Adam Szubin similarly testified that Iran will not “be able to clear U.S. dollars through New York” or have correspondent accounts or financing arrangements with U.S. banks.³⁵ Most explicitly, Szubin publicly committed:

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.³⁶

On Implementation Day (January 16, 2016), even as the administration suspended many of the most impactful secondary sanctions on Iran under the terms of the JCPOA, it vowed that the Islamic Republic would never get the ultimate prize: access to the U.S. financial system or dollar

³² “The Annual Testimony of the Secretary of the Treasury on the State of the International Financial System,” *Hearing before the House Financial Services Committee*, March 22, 2016.

(<http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400462>)

³³ U.S. Department of the Treasury, “Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day,” issued January 16, 2016, updated March 24, 2016. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf)

³⁴ Jacob Lew, “Written Testimony of the Secretary of the Treasury,” *Hearing before the Senate Foreign Relations Committee*, July 23, 2015. (http://www.foreign.senate.gov/imo/media/doc/07-23-15%6201_ew%620Testimony.pdf); Jacob Lew, “Written Testimony of the Secretary of the Treasury,” *Hearing before House Foreign Affairs Committee*, July 28, 2016. (<http://docs.house.gov/meetings/FA/FA00/20150728/103823/HHRG-114-FA00-Wstate-LewJ-20150728.pdf>)

³⁵ Adam Szubin, “Written Testimony,” *Hearing before the Senate Banking, Housing, and Urban Affairs Committee*, August 5, 2015. (<https://www.treasury.gov/press-center/press-releases/Pages/j0144.aspx>)

³⁶ Adam Szubin, “Beyond the Vote: Implications for the Sanctions Regime on Iran,” *Keynote Address before The Washington Institute for Near East Policy*, September 16, 2015. (<http://www.washingtoninstitute.org/uploads/Documents/other/SzubinTranscript20150916-v2.pdf>)

Mark Dubowitz

May 24, 2016

transactions. Treasury's guidance about sanctions relief stated that U-turn transactions remain banned. It explained that, despite the suspension of sanctions, "foreign financial institutions need to continue to ensure they do not clear U.S. dollar-denominated transactions involving Iran through U.S. financial institutions." Treasury emphasized: "The clearing of U.S. dollar- or other currency-denominated transactions through the U.S. financial system or involving a U.S. person remain prohibited." Treasury noted that the JCPOA "does not impact the November 2011 finding by the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) that Iran is a Jurisdiction of Primary Money Laundering Concern."³⁷

News reports indicate that the administration now may permit dollarized transactions as long as: 1) no Iranian banks are involved in the transactions; 2) no Iranian rials enter into the transaction at the dollar clearing facility; and 3) the payment does not start or end with U.S. dollars.³⁸ The transaction would be temporarily converted into dollars allowing the European (or other foreign) bank to conduct at least part of the exchange in dollars, which banks prefer because the dollar is a stable currency with less fluctuations and therefore less risk.

Any authorization of dollarized transactions would likely need to make it clear that U.S. banks would be shielded from liability for providing dollars to the offshore transaction facility (potential liability could exist for U.S. persons indirectly providing services to a prohibited Iranian person otherwise). Further, it would also need to make clear that foreign banks are only permitted to engage in transactions in dollars received via the facility so long as those transactions are consistent with the relief provided under the JCPOA.

Foreign financial institutions would still face significant due diligence challenges to ensure that none of the parties to the transaction remain under U.S. sanctions or are owned or controlled by a sanctioned entity. As I have detailed in prior testimony before this Committee, the pervasive influence of the IRGC throughout Iran's economy means that this due diligence will be critical in order to ensure that foreign companies and foreign banks are not complicit in Iran's terror finance or the range of other illicit financial activities in which Iranian entities regularly engage. Reportedly, U.S. banks are drafting their own blacklists of companies with connections to the Iranian government – beyond those the designations Treasury has imposed – to protect themselves from transacting with an agent of Iranian financial institutions or the government of Iran.³⁹

Whether or not, the administration moves ahead with a blanket license or some other measure authorizing all Iran-related dollarized transactions, specific classes of dollarized transactions are already permitted. In general, U.S. banks are permitted "to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer arises from, and is ordinarily incident and necessary to give effect to, an underlying transaction that has been authorized by a specific or general license," according to Treasury's

³⁷ U.S. Department of the Treasury, "Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day," issued January 16, 2016, updated March 24, 2016. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf)

³⁸ "New U.S. sanctions concession to Iran may be in works: AP," *Associated Press*, March 31, 2016. (<http://www.cbsnews.com/news/new-us-sanctions-concession-to-iran-may-be-in-works-ap/>)

³⁹ Colby Adams, "Banks Draft 'Shadow' Blacklists of Iranian Firms No Longer Cited by OFAC," *MoneyLaundering.com*, May 3, 2016. (<http://www.moneylaundering.com/News/Pages/138074.aspx>)

Mark Dubowitz

May 24, 2016

Iranian Transactions and Sanctions Regulations.⁴⁰ U.S. financial institutions are permitted (with some restrictions) to process transactions related to food, medicines, and medical supplies and personal remittances.⁴¹ Treasury also issued a general license allowing U.S. persons to engage in transactions related to negotiating contracts with Iran's airline industry, provided the execution of the contract is contingent on receiving a specific license,⁴² and a general license for trade in certain goods and services related to personal communications.⁴³

During the interim agreement, the U.S. government worked directly with foreign financial institutions to facilitate the repatriation of \$11.9 billion in Iranian assets held abroad.⁴⁴ It is not clear how much of those assets – if any – were released or returned as dollar-denominated funds or dollarized through related conversions out of or into other currencies at some point in the transaction. Now, the administration may be poised to permit the dollarization of Iran's previously frozen assets, worth approximately \$100 billion, in response to Iranian complaints that they are not able to use these funds.⁴⁵ Additionally, the administration will likely route the \$8.6 million payment for 32 metric tons of Iranian heavy water through a foreign financial institution, although administration officials have not provided specific details about whether this payment will use dollars.⁴⁶

There appears to be no regulation expressly permitting foreign financial institutions to use offshore dollars to transact with Iran. Treasury's guidance notes that it is prohibited for foreign financial institutions to "clear U.S. dollar-denominated transactions involving Iran *through U.S. financial institutions*"⁴⁷ (emphasis added), but it is not clear if the transactions are permitted if they do not transit a U.S. bank. European banks, however, have received substantial fines from the U.S. government as well as from New York regulators.⁴⁸ This is giving those with a global

⁴⁰ "Title 31: Money and Finance: Treasury, Part 560—Iranian Transactions and Sanctions Regulations," §560.516 Transfers of funds involving Iran, *Electronic Code of Federal Regulations*, May 5, 2016. (<http://www.ecfr.gov/cgi-bin/retrieveECFR?pp=&SID=1163143fa7cc31e414670ca6ab97006&mc=true&n=pt31.3.560&r=PART&v=HTML>)

⁴¹ U.S. Department of the Treasury, Office of Foreign Assets Control, "Clarifying Guidance: Humanitarian Assistance and Related Exports to the Iranian People," February 6, 2013. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/hum_exp_iran.pdf)

⁴² U.S. Department of the Treasury, Office of Foreign Assets Control, "General License I," March 24, 2016. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_gli.pdf)

⁴³ U.S. Department of the Treasury, "OFAC FAQs: Iran Sanctions," Iranian General License D-1, updated February 7, 2014. (https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#gl1)

⁴⁴ U.S. Department of the Treasury, "Frequently Asked Questions Relating to the Extension of Temporary Sanctions Relief through June 30, 2015, to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran," November 25, 2014. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf)

⁴⁵ Barbara Slavin, "Central Bank governor: Iran expects access to US financial system," *Al-Monitor*, April 15, 2016. (<http://www.al-monitor.com/pulse/originals/2016/04/iran-expects-limited-access-us-financial-system.html>)

⁴⁶ Adam Kredo, "Obama Admin Withholding Details of 'Potentially Illegal' Deal to Buy Iranian Nuke Materials," *Washington Free Beacon*, April 27, 2016. (<http://freebeacon.com/national-security/obama-admin-withholding-deal-iran-nuclear/>)

⁴⁷ U.S. Department of the Treasury, "Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day," issued January 16, 2016, updated March 24, 2016. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf)

⁴⁸ David Enrich, Noémie Bissière, and Madeleine Nissen, "Potential BNP Penalty Worries European Banks," *The Wall Street Journal*, June 24, 2014. (<http://www.wsj.com/articles/potential-bnp-penalty-worries-european-banks-1403638199>)

Mark Dubowitz

May 24, 2016

presence and with substantial U.S. operations pause until they are certain that they will not be on the wrong side of a future enforcement action.

Congress is rightly concerned about the dollarized transaction issue and how the administration could provide Iran with such access. In addition to simply reinstating the U-turn general license that was in place prior to November 2008, there are a number of different mechanisms the United States could employ.

First, the United States could allow Iran to use what are known as offshore “large-value payment systems.”⁴⁹ Currently, offshore clearing houses and individual banks themselves have dollars within their holdings. Alternatively, the United States may permit dollar clearance through the Asian Clearing Union (which Iran had been using in 2009 to evade sanctions⁵⁰) or allow banks to conduct what are known as “book transfers.”⁵¹

If the U.S. government wants to allow dollarized transactions, Treasury could issue a general license permitting – or a statement of guidance allowing – U.S. banks to provide dollars for an offshore clearing facility overseen by a foreign government or foreign bank.⁵² When transmitting payments between Iranian companies and European companies, for example, the foreign financial institution would use this offshore clearing facility to convert the transaction into dollars. Treasury would issue similar licenses or guidance vis-à-vis the Asian Clearing Union or book transfers.

Congress should reject all of these attempts to give Iran direct or indirect access to the U.S. dollar. Iran did not explicitly negotiate this concession as part of the JCPOA and should not now be given a unilateral concession of this magnitude – particularly given its continued record of illicit behavior.

Arguments and Counterarguments

Ahead of any action by Treasury to allow dollarized transactions, it is important for Congress to understand the counterpoints to arguments that the administration is likely to put forward.⁵³

Better Intelligence: The White House may argue that allowing dollar transactions could yield better intelligence. In 2008, when Treasury banned U-turn transactions, it determined that the

⁴⁹ For an in-depth look at large-value payment systems, see Morten L. Bech, Christine Preisig, and Kimmo Soramäki, “Global Trends in Large-Value Payments,” *Federal Reserve Bank of New York Economic Policy Review*, September 2008. (<https://www.newyorkfed.org/medialibrary/media/research/epr/08v14n2/0809prei.pdf>)

⁵⁰ Avi Jorisch, “How Iran Skirts Sanctions,” *The Wall Street Journal*, November 4, 2009.

(<http://www.wsj.com/articles/SB10001424052748703298004574457322960633830>)

⁵¹ Katherine Bauer, “Potential U.S. Clarification of Financial Sanctions Regulations,” *The Washington Institute for Near East Policy*, April 5, 2016. (<http://www.washingtoninstitute.org/policy-analysis/view/potential-u.s.-clarification-of-financial-sanctions-regulations>)

⁵² Eric B. Lorber, “Treasury Prepares to Take Dollarized Transactions with Iran Offshore,” *Foundation for Defense of Democracies*, March 31, 2016. (<http://www.defenddemocracy.org/media-hit/eric-b-lorber-treasury-prepares-to-take-dollarized-transactions-with-iran-offshore/>)

⁵³ The following counterarguments are outlined in Mark Dubowitz and Jonathan Schanzer, “Dollarizing the Ayatollah,” *The Wall Street Journal*, March 27, 2016. (<http://www.wsj.com/articles/dollarizing-the-ayatollahs-1459115248>)

Mark Dubowitz

May 24, 2016

risks simply outweighed the intelligence benefits. Four years later, Treasury pushed to ban several Iranian banks, including the central bank, from the SWIFT financial messaging system. The threat to the integrity of the global financial system from Iranian banks, it again determined, was too grave, despite the intelligence that could be gathered.

Assets vulnerable to future sanctions: The administration might claim that Treasury could capture dollar-denominated assets when Iran violates the nuclear agreement or uses the greenback to finance terrorism or ballistic missiles. This wouldn't be realistic. Iran knows the U.S. can freeze transactions that are even temporarily converted to dollars, making it unlikely that the regime would hold registered dollar accounts in sufficient quantities in banks where U.S. authorities have reach. If anything, Iran is likely to keep its dollar holdings in offshore accounts or in pallets of cash out of the reach of U.S. authorities. Indeed, after the Supreme Court issued its decision affirming the ability of victims of Iranian terrorism to seize certain assets of the Central Bank of Iran, Iranian officials stated that allowing assets to remain in dollar accounts was "poor planning" and "clear negligence."⁵⁴ Having learned this lesson, if the regime contemplates a nuclear violation or gets wind of new sanctions, it is likely to quickly dump whatever traceable dollar assets it holds.

Iranian economic recovery: The administration may also argue that providing dollarized transactions is necessary in order to ensure that Iran's economy grows, and Tehran sees the economic benefits of the deal. And yet, this also contradicts the evidence: Tehran has already received substantial sanctions relief, which has provided a major "stimulus package."

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. The economy shrank by six percent in the 2012-13 fiscal year, and bottomed out the following year, dropping another two percent.⁵⁵ Accessible foreign exchange reserves were estimated to be down to only \$20 billion.⁵⁶

This changed during the nuclear negotiations. During the 18-month period starting in late 2013, interim sanctions relief⁵⁷ and the lack of new shocks enabled Iran to move from a severe recession to a modest recovery.⁵⁸ During that time, the Islamic Republic received \$11.9 billion

⁵⁴ Arash Karami, "Who's to blame for US seizure of \$2 billion in Iranian assets?" *Al-Monitor*, April 28, 2016. (<http://www.al-monitor.com/pulse/originals/2016/04/ahmadinejad-us-supreme-court-iran-terror-2-billion.html>)

⁵⁵ Mark Dubowitz, Annie Fixler, and Rachel Ziemba, "Iran's Economic Resilience Against Snapback Sanctions Will Grow Over Time," *Foundation for Defense of Democracies and Roubini Global Economics*, June 2015. (http://www.defenddemocracy.org/content/uploads/publications/Iran_economy_resilience_against_snapback_sanctions.pdf)

⁵⁶ Mark Dubowitz and Rachel Ziemba, "When Will Iran Run Out of Money?" *Foundation for Defense of Democracies and Roubini Global Economics*, October 2, 2013. (http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf)

⁵⁷ U.S. Department of the Treasury, "Frequently Asked Questions Relating to the Extension of Temporary Sanctions Relief through June 30, 2015, to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran," November 25, 2014. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf)

⁵⁸ Mark Dubowitz and Rachel Ziemba, "Early Signs of an Iranian Economic Recovery," *Foundation for Defense of Democracies*, January 9, 2016. (<http://www.defenddemocracy.org/media-hit/early-signs-of-an-iranian-economic-recovery/>); Jennifer Hsieh, Rachel Ziemba, and Mark Dubowitz, "Iran's Economy: Out of the Red, Slowly

Mark Dubowitz

May 24, 2016

through the release of restricted assets, while sanctions on major sectors of its economy were suspended. This facilitated strong imports that supported domestic investment, especially from China. The Obama administration also de-escalated the sanctions pressure by blocking new congressional legislation.⁵⁹ Jointly, these forces rescued the Iranian economy and its leaders, including the Revolutionary Guard, from an imminent and severe balance of payments crisis. In the 2014-15 fiscal year, the Iranian economy rebounded and grew at a rate of 3 to 4 percent.⁶⁰

Now, under the JCPOA, Iran has received access to an additional \$100 billion in previously frozen foreign assets, significantly boosting its accessible foreign exchange reserves, and permitting it to pay off outstanding debts.⁶¹ Sanctions were also lifted on Iran's crude oil exports and upstream energy investment and on key sectors of the economy, and hundreds of Iranian banks, companies, individuals, and government entities were removed from sanctions lists. The additional access of Iranian institutions to global financial payments systems has reduced transaction costs and the need for intermediaries.

In the current fiscal year – with declining oil prices and a tight monetary policy to rein in inflation – Iran's economy grew only slightly, and may have even experienced a modest contraction.⁶² But in the coming fiscal year, its economy is projected to grow at a rate of 3 to 6 percent, according to estimates from the International Monetary Fund, World Bank, and private analysts.⁶³ Assuming that Iran continues to make modest economic reforms to attract investment, the country's economic growth is projected to stabilize around 4 to 4.5 percent annually over the next five years.⁶⁴

Growing," *Foundation for Defense of Democracies and Roubini Global Economics*, October 2014.

(http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport_Oct14.pdf); Jennifer Hsieh, Rachel Ziemba, and Mark Dubowitz, "Iran's Economy Will Slow but Continue to Grow Under Cheaper Oil and Current Sanctions," *Foundation for Defense of Democracies and Roubini Global Economics*, February 2015.

(http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport_FEB15.pdf)
⁵⁹ Mark Landler, "Senate Bill to Impose New Sanctions on Iran Spurs Veto Threat From White House," *The New York Times*, December 19, 2013. (http://www.nytimes.com/2013/12/20/world/middleeast/senate-bill-to-impose-new-sanctions-on-iran-spurs-veto-threat-from-white-house.html?_r=1)

⁶⁰ International Monetary Fund, "Iran Faces Multiple Challenges as Growth Prospects Brighten," *IMF Survey*, January 20, 2016. (<http://www.imf.org/external/pubs/ft/survey/so/2016/new012016a.htm>)

⁶¹ Brian Murphy, "Iran claims \$100 billion now freed in major step as sanctions roll back," *The Washington Post*, February 1, 2016. (https://www.washingtonpost.com/world/iran-claims-100-billion-now-freed-in-major-step-as-sanctions-roll-back/2016/02/01/edfc23ca-c8e5-11e5-a7b2-5a2f824b02e9_story.html); Mark Dubowitz, Annie Fixler, and Rachel Ziemba, "Iran's Mysterious Shrinking Reserves: Estimating the Value of Tehran's Foreign Assets," *Foundation for Defense of Democracies and Roubini Global Economics*, September 2015. (http://www.defenddemocracy.org/content/uploads/publications/FDDRoubini_Report_Irans_mysterious_shrinking_reserves.pdf)

⁶² Saeed Ghasseminejad, "Rouhani's abysmal economic record and the West's dilemma," *Business Insider*, March 30, 2016. (<http://www.businessinsider.com/rouhani-abysmal-economic-record-and-the-west-dilemma-2016-3>); International Monetary Fund, "Iran Faces Multiple Challenges as Growth Prospects Brighten," *IMF Survey*, January 20, 2016. (<http://www.imf.org/external/pubs/ft/survey/so/2016/new012016a.htm>)

⁶³ International Monetary Fund, "IMF Country Report No. 15/349: Islamic Republic of Iran," December 2015. (<http://www.imf.org/external/pubs/ft/scr/2015/cr15349.pdf>); World Bank, "Global Economic Prospects: Spillovers amid Weak Growth," January 2016. (<http://www.worldbank.org/content/dam/Worldbank/GEP/GEP2016a/Global-Economic-Prospects-January-2016-Spillovers-amid-weak-growth.pdf>); Additional data available upon request.

⁶⁴ International Monetary Fund, "IMF Country Report No. 15/349: Islamic Republic of Iran," December 2015. (<http://www.imf.org/external/pubs/ft/scr/2015/cr15349.pdf>)

Mark Dubowitz

May 24, 2016

Going beyond the spirit of the deal: The administration might also argue that the West needs to provide economic incentives for Tehran to comply with the nuclear deal. Given its post-deal record of missile activities, hostage taking, terrorism, regional aggression, and illegal arms deals, as well as a financial sector that remains rotten to the core, Tehran is hardly in a position to complain that the “spirit” of the deal now requires more American generosity. President Obama explicitly acknowledged that Iran is not keeping to the spirit of the agreement,⁶⁵ and yet administration officials have stated that it is America’s responsibility to go beyond its commitments under the agreement to ensure that Iran “get[s] the benefits that they are supposed to get,” according to Secretary Kerry.⁶⁶ During last summer’s debate, administration officials claimed that denying Iran access to the dollar and the U.S. financial system would provide Washington with leverage after the deal was done. Providing a unilateral concession now would have far-reaching consequences. Not only would it throw away U.S. leverage, but it would also undermine the West’s ability to address Iran’s other nefarious activities.

If the United States provides dollarized access now, and six months from now, Iran conducts more ballistic missile tests or executes more dissidents or provides more weapons to the Assad regime in Syria, Washington won’t be able to revoke Iran’s access to dollarized transactions. Iran will argue, convincingly, that the U.S. provided this sanctions relief under the JCPOA, so it can’t re-impose this sanction for non-nuclear reasons later.⁶⁷ Iran will threaten to walk away from the deal and deploy its own “nuclear snapback,” where it will threaten to walk away from the deal and reconstitute its nuclear program.

As I have warned in prior testimonies, Iran will use this threat to deter the use of both nuclear and non-nuclear sanctions by dividing the United States and Europe. Once European companies are sufficiently invested in Iran’s lucrative markets, any Iranian violations of the deal are likely to provoke disagreements between Washington and its European allies. Indeed, why would the Europeans agree to new sanctions when they have big money on the line? Their arguments against new nuclear sanctions will include questions about the credibility of evidence, the seriousness of the nuclear infractions, the appropriate level of response, and likely Iranian retaliation.

The same dynamics apply to the imposition of non-nuclear sanctions, such as terrorism or human rights sanctions. On July 20, 2015, Iran informed the UN Security Council, stating that it may “reconsider its commitments” under the agreement if “new sanctions” are imposed “irrespective of whether such new sanctions are introduced on nuclear related or other grounds.”⁶⁸ Would Europe agree to Washington’s plan to withdraw U.S. dollar access if, for example, the Central

⁶⁵ Julian Hattis, “Obama: Iran not following ‘spirit’ of deal,” *The Hill*, April 1, 2016.

(<http://thehill.com/policy/national-security/274954-obama-iran-has-followed-letter-but-not-spirit-of-uke-deal>)

⁶⁶ John Kerry, “Remarks After Meeting Iranian Foreign Minister Zarif,” *United Nations*, April 19, 2016.

(<http://www.state.gov/secretary/remarks/2016/04/255977.htm>)

⁶⁷ Example derived from analysis of my colleague at FDD’s Center on Sanctions and Illicit Finance, Eric Lorber. Eric B. Lorber, “FPI Conference Call on Implications of Granting Iran Access to U.S. Financial Market,” *Foreign Policy Initiative*, April 7, 2016. (<http://www.foreignpolicy.org/content/transcript-fpi-conference-call-implications-granting-iran-access-us-financial-market>)

⁶⁸ Column Lynch, “Iran to United Nations: New Sanctions Could Kill Nuclear Deal,” *Foreign Policy*, July 28, 2015. (<https://foreignpolicy.com/2015/07/28/john-kerry-obama-administration-terrorism-human-rights-iran-to-united-nations-new-sanctions-could-kill-nuclear-deal/>)

Mark Dubowitz

May 24, 2016

Bank of Iran was found – once again – to be financing terrorism? This is doubtful given that Tehran would threaten to return to its nuclear activities including large-scale uranium enrichment, putting not just European investments but the entire nuclear deal in jeopardy.

Instead of granting such a significant unilateral concession of Iranian access to dollarized transactions, the United States should require major reciprocal steps by Tehran. Iran must start to address all of its non-nuclear malign activities – indeed, the very concerns that administration officials promised that they were going to address using the remaining non-nuclear sanctions. It would be a mistake to provide unilateral concessions and diminish America's leverage at the very time that Washington ought to be cracking down on Iran's missile activity, terrorism, regional aggression and human rights abuses.

U.S. policy to date can be summed up this way: We did not want bad Iranian banks touching our financial sector, and we did not want our dollar directly or indirectly touching the rial, even through dollarized transactions. But the next president's ability to target Iran's malign activities with non-nuclear sanctions will be much more difficult if billions of dollarized transactions are green-lighted. The next administration won't easily be able to reverse this once it is in motion, made even more difficult by inevitable European and Asian pushback.

If the Obama administration grants Iran access to the world's most important currency, U.S. sanctions will be severely undermined without any reciprocity. Tehran will receive yet another significant and unilateral concession. And Washington will have lost critical leverage to target Iran's terror finance, missile activities, destabilizing regional aggression, systemic human rights abuses, and the financial and military backing of the Assad regime.

BUILDING INTERNATIONAL LEGITIMACY WITHOUT CHANGING BEHAVIOR

The Joint Comprehensive Plan of Action has turned Iran from a nuclear pariah to nuclear partner without requiring Iran to come clean on its decades-long track record of nuclear mendacity. The December 2015 International Atomic Energy Agency decision to "close" the file on outstanding concerns about the possible military dimensions of Iran's program⁶⁹ means that, without ever admitting to weaponization activities, Iran has convinced the international community to wipe its slate clean.

These schemes continue. With reports that Iran exceeded limits on its heavy water production⁷⁰ and worked out a deal to sell 32 tons to the United States,⁷¹ Iran has created a clever plan: Produce too much heavy water so as to break the nuclear agreement, then get the United States to pay Tehran to get rid of it so that it can continue to produce an essential element for a plutonium-bomb making capability. This is of particular concern as the key restrictions on Iran's nuclear

⁶⁹ Laurence Norman, "IAEA Board Agrees to Close File on Iran's Past Nuclear Activities," *The Wall Street Journal*, December 15, 2015. (<http://www.wsj.com/articles/iaea-board-agrees-to-close-iran-past-nuclear-activities-file-1450195869>)

⁷⁰ "Iran briefly overstepped a limit set by nuclear deal, IAEA says," *Reuters*, February 26, 2016.

(<https://www.yahoo.com/news/iran-overstepped-limit-set-nuclear-deal-iaea-report-171008398.html?ref=gs>)

⁷¹ Jay Solomon, "U.S. to Buy Material Used in Iran Nuclear Program," *The Wall Street Journal*, April 22, 2016 (<http://www.wsj.com/articles/u-s-to-buy-material-used-in-iran-nuclear-program-1461319381>)

Mark Dubowitz

May 24, 2016

program, including on both its uranium and plutonium paths to a bomb, begin to sunset during an eight- to fifteen-year period.

We are also witnessing Iran's attempts to play the same game with the international financial and business community. The government has mounted a full-court press to persuade the global financial community to overlook its long rap sheet of financial crimes⁷² and to persuade the United States to green-light Iran's access to U.S. dollar transactions,⁷³ an action that goes beyond the sanctions relief promised by the nuclear agreement.⁷⁴

Iranian Central Bank Governor Valiollah Seif has publicly criticized the U.S. for "not honoring its obligations" and explicitly called for the U.S. to change its laws to allow Iran to access the U.S. financial system.⁷⁵ Deliberately sidestepping Iran's record of illicit financial activities, he and Foreign Minister Javad Zarif regularly dismiss concerns about Iran's support for terrorism and provocative ballistic missile launches.⁷⁶ The Supreme Leader has accused the United States of scaring business away from Iran and creating "Iranophobia."⁷⁷

Tehran's record of illicit financial activities and the central role of the Central Bank of Iran (CBI) in these efforts require scrutiny. Between 2006 and 2011, as the U.S. sanctioned Iranian banks, the CBI facilitated transactions for designated banks involved in proliferation and terror financing and, according to Treasury, helped them evade sanctions.⁷⁸ As a result, Treasury took the necessary step in November 2011 of designating Iran and its entire financial sector — including its central bank — a "jurisdiction of primary money laundering concern."⁷⁹ The following year, Congress statutorily designated the CBI for its support of nuclear and missile proliferation, terrorism, and money laundering, and banned all transactions with it beyond limited crude oil sales and humanitarian trade.⁸⁰

⁷² U.S. Department of the Treasury, Press Release, "Fact Sheet: New Sanctions on Iran," November 21, 2011. (<https://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>)

⁷³ "New U.S. sanctions concession to Iran may be in works: AP," *Associated Press*, March 31, 2016. (<http://www.cbsnews.com/news/new-us-sanctions-concession-to-iran-may-be-in-works-ap/>)

⁷⁴ U.S. Department of the Treasury, "Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day," issued January 16, 2016, updated March 24, 2016. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf)

⁷⁵ Valiollah Seif, "A Conversation With Valiollah Seif," *Council on Foreign Relations*, April 15, 2016. (<http://www.cfr.org/global/conversation-valiollah-seif/p37733>)

⁷⁶ Eli Lake, "Show Iran a Little Disrespect," *Bloomberg*, April 26, 2016. (<http://www.bloombergview.com/articles/2016-04-26/show-iran-a-little-disrespect>); Robin Wright, "Iran's Javad Zarif on the Fraying Nuclear Deal, U.S. Relations, and Holocaust Cartoons," *The New Yorker*, April 25, 2016. (<http://www.newyorker.com/news/news-desk/irans-javad-zarif-on-the-fraying-nuclear-deal-u-s-relations-and-holocaust-cartoons>)

⁷⁷ "Iran's Supreme Leader says U.S. lifted sanctions only on paper," *Reuters*, April 27, 2016. (<http://www.reuters.com/article/us-iran-economy-khamenei-id/USKCN0X00RK>)

⁷⁸ U.S. Department of the Treasury, Financial Crimes Enforcement Network, Advisory, "Update on the Continuing Illicit Finance Threat Emanating from Iran," June 22, 2010. (https://www.fincen.gov/statutes_regs/guidance/html/fin-2010-a008.html)

⁷⁹ 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>)

⁸⁰ National Defense Authorization Act For Fiscal Year 2012, Pub. L. 112-81, U.S.C. § 1245. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa_publaw.pdf)

Mark Dubowitz

May 24, 2016

The CBI continues to deny its role as Iran's central bank for terror finance. The bank had appealed to the U.S. Supreme Court to overturn the seizure of nearly \$2 billion of its assets to settle outstanding judgments won by victims of Iranian-backed terrorism.⁸¹ When the Supreme Court issued its ruling last month affirming the lower court's decision to award the funds to these victims,⁸² Iran denounced it as a theft of Iranian property.⁸³ Tehran still owes other terrorism victims another \$53 billion in outstanding judgments.⁸⁴

Washington's Actions Go Beyond its JCPOA Commitments

Since the JCPOA, the Obama administration has missed the opportunity to push back against Iran's legitimization campaign. Instead of insisting on an end to Iran's continuing malign activities, the administration is now dangerously close to becoming Iran's trade promotion and business development authority.

Last month, the administration sent letters to all 50 states urging them to reconsider any Iran sanctions legislation they had previously passed.⁸⁵ Thirty states and the District of Columbia have some form of Iran divestment legislation or policy.⁸⁶ Starting about a decade ago, individual states began passing legislation requiring state pension funds to divest from companies that engaged in specific sanctionable activities and made investments in the Iranian energy sector. Many state laws tied the imposition of sanctions to both Iran's pursuit of weapons of mass destruction and its support for terrorism.⁸⁷ Many of these measures contain termination clauses linked to Iran's removal from the state sponsors of terrorism list or similar certifications that Iran is no longer engaged in the support of international terrorism.

The JCPOA in paragraph 25 commits the federal government to "actively encourage officials at the state or local level to take into account the changes in the U.S. policy reflected in the lifting of sanctions under this JCPOA and to refrain from actions inconsistent with this change in

⁸¹ Lawrence Hurley, "Iran central bank takes Beirut bombing case to U.S. Supreme Court," *Reuters*, January 13, 2016. (<http://www.reuters.com/article/us-usa-court-iran-idUSKCN0UR0T20160113>)

⁸² *Bank Markazi aka Central Bank of Iran v. Peterson et al.*, Decision, No. 14-770, (Supreme Court of the United States, April 20, 2016). (http://www.supremecourt.gov/opinions/15pdf/14-770_9o6b.pdf)

⁸³ Rick Gladstone, "Iran Accuses U.S. of Theft in \$2 Billion Court Ruling for Terror Victims," *The New York Times*, April 21, 2016. (http://www.nytimes.com/2016/04/22/world/middleeast/iran-accuses-us-of-theft-in-2-billion-court-ruling-for-terror-victims.html?_r=1)

⁸⁴ Orde Kittrie, "After Supreme Court Decision, Iran Still Owes \$53 Billion in Unpaid U.S. Court Judgments to American Victims of Iranian Terrorism," *Foundation for Defense of Democracies*, May 2016. (http://www.defenddemocracy.org/content/uploads/documents/Kittrie_After_SCOTUS_Iran_Owes.pdf)

⁸⁵ Eli Lake, "Obama Administration Urges States to Lift Sanctions on Iran," *Bloomberg*, April 19, 2016.

(<https://www.bloomberg.com/view/articles/2016-04-18/obama-administration-urges-states-to-lift-sanctions-on-iran>)

⁸⁶ "State Legislation," *United Against Nuclear Iran*, accessed July 6, 2015.

(<http://www.unitedagainnucleariran.com/state-legislation>)

⁸⁷ For example, see Florida State Legislature, Committee Substitute for Senate Bill No. 2142, Protecting Florida's Investments Act, 2007. (http://laws.frules.org/files/Ch_2007-088.pdf); California Legislature, Assembly Bill 221, January 29, 2007. (http://www.leginfo.ca.gov/pub/07-08/bill_asm_00_0201-0250/ab_221_bill_20071014_chaptered.html); Illinois General Assembly, Public Act 095-0616, September, 2007. (<http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-0616>); General Assembly of Pennsylvania, Senate Bill 928, Protecting Pennsylvania's Investments Act, 2009. (<https://legiscan.com/PA/text/SB928/2009>)

Mark Dubowitz

May 24, 2016

policy.”⁸⁸ The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, among other measures, affirms the authority of states to impose sanctions or divest from Iran if they wish to do so.⁸⁹ This provision is unaffected by the JCPOA, however, the administration’s actions to-date raise serious questions. Will the White House try to force individual states to lift their divestment measures, even as the termination criteria for the legislation have not been met? Congress should pay particular attention to any actions by the federal government that go beyond simply informing states and local authorities about the nuclear deal.

In recent weeks, Secretary of State John Kerry has been on an international “road show”⁹⁰ to encourage large European banks to return to business with Iran and help alleviate their concerns about the legal risks associated with engaging with a country still under U.S. sanctions for money laundering, terrorism and missile proliferation, and human rights abuses. Under the JCPOA in paragraph 29, the United States committed to “refrain[ing] from any policy specifically intended to directly and adversely affect the normalisation of trade and economic relations.”⁹¹ There is a big difference, however, between not interfering with the normalization of trade and commercial relations and actively advocating for banks and companies to enter the Iranian market.

But international banks are not taking the bait.⁹² Notably, HSBC Chief Legal Officer and former Treasury Under Secretary Stuart Levey stated that the decisions of his bank are “driven by the financial-crime risks and the underlying conduct,” and there have been no assurances that Iran’s financial institutions have addressed the illicit conduct for which they were sanctioned in the first place.⁹³ Indeed, the International Monetary Fund (IMF)’s David Lipton noted on a visit to Tehran, “The best thing the government can do, and the banks can do, is to bring those standards up to international levels and try to reassure foreign partners, banks and otherwise that Iran’s banks are safe to deal with.”⁹⁴ Former Treasury spokesperson Hagar Hajjar Chemali noted, “The

⁸⁸ Joint Comprehensive Plan of Action, Vienna, July 14, 2015, paragraph 25. (http://eas.europa.eu/statements-eas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

⁸⁹ U.S. Department of State, “Fact Sheet: Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA),” May 23, 2011. (<http://www.state.gov/e/eb/enc/iransanctions/docs/160710.htm>); Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. 111-195, 124 Stat. 1332-1333, codified as amended at 111 U.S.C. § 202. (<https://www.congress.gov/111/plaws/publ195/PLAW-111/publ195.pdf>)

⁹⁰ David Brunnstrom, “Kerry seeks to soothe European bank nerves over Iran trade,” *Reuters*, May 12, 2016. (<http://www.reuters.com/article/us-iran-banks-kerry-idUSKCN0Y300J>); Felicia Schwartz, “Kerry Tries to Drum Up Some Business in Europe for Iran,” *The Wall Street Journal*, May 10, 2016. (<http://www.wsj.com/articles/kerry-tries-to-drum-up-some-business-in-europe-for-iran-1462902185>)

⁹¹ Joint Comprehensive Plan of Action, Vienna, July 14, 2015, paragraph 29. (http://eas.europa.eu/statements-eas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

⁹² Martin Arnold, Geoff Dyer, and Najmeh Bozorgmehr, “European banks resist calls to increase business ties with Iran,” May 12, 2016. (<http://www.ft.com/intl/cms/s/0/acae21f2-1796-11e6-bb7d-ee563a5a1cc1.html>)

⁹³ Stuart Levey, “Kerry’s Peculiar Message About Iran for European Banks,” *The Wall Street Journal*, May 12, 2016. (<http://www.wsj.com/articles/kerrys-peculiar-message-about-iran-for-european-banks-1463093348>)

⁹⁴ Golnar Motevalli, “Iran Must Fix Own Banks to Win Overseas Business, IMF Says,” *Bloomberg*, May 17, 2016. (<http://www.bloomberg.com/news/articles/2016-05-17/iran-must-fix-own-banks-to-win-business-from-overseas-imf-says>)

Mark Dubowitz

May 24, 2016

only move that could help bring on the business is for Tehran to change its foreign policy and improve its financial transparency measures.”⁹⁵

Counteracting Iran's Narrative

Economic forecasters argue that Iran's ability to take advantage of sanctions relief depends not primarily on additional American concessions but on Iran's own economic policies. Specifically, Iran needs to implement policies to attract foreign investment and to address systemic illicit finance risks. The IMF explained in a December 2015 report:

Bolstering the AML/CFT framework would facilitate the re-integration of the domestic financial system into the global economy, lower transaction costs, and reduce the size of the informal sector. It will also help better detection of illegal proceeds, including those related to tax evasion and corruption. Staff urged the authorities to adopt a comprehensive CFT law that properly criminalizes terrorist financing (TF) and contains mechanisms for the implementation of United Nations Security Council Resolutions related to terrorism and TF.⁹⁶

The future success of Iran's economy depends on foreign investment and on Tehran's ability to alleviate the concerns of international banks and companies that Iran is committed to ending its support for terrorism, missile development, and destabilizing regional activities, and to reducing the economic power of the Islamic Revolutionary Guard Corps and the supreme leader's business empire. All of these issues increase the risks of investing in the Islamic Republic, regardless of what deal sweeteners the White House provides.

But Iranian leaders are attempting to persuade the global financial community to overlook these risks and to treat Iran as a member of the international community in good standing. The global anti-money laundering and anti-terror finance standards body the Financial Action Task Force (FATF) regularly warns members that they should “apply effective counter-measures to protect their financial sectors” from illicit finance risks emanating from Iran.⁹⁷ As recently as February 2016, FATF warned that Iran's “failure to address the risk of terrorist financing” poses a “serious threat ... to the integrity of the international financial system.”⁹⁸ So now, Iran has begun to engage with FATF in order to get itself off the blacklist.⁹⁹ Tehran also expressed its intention to join the FATF-style regional body the Eurasian Group,¹⁰⁰ which is dominated by Russia.

⁹⁵ Hagar Hajar Chemali, “If Iran Wants Business, It's Up to Iran to Change,” *The Huffington Post*, May 15, 2016. (http://www.huffingtonpost.com/entry/if-iran-wants-business-its-up-to-iran-to-change_us_57392bb6e4b06d0de18b041c)

⁹⁶ International Monetary Fund, “IMF Country Report No. 15/349: Islamic Republic of Iran,” December 2015. (<http://www.imf.org/external/pubs/ft/cr/2015/cr15349.pdf>)

⁹⁷ For example, see 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>)

⁹⁸ The Financial Action Task Force, Public Statement, “FATF Public Statement – 19 February 2016,” February 19, 2016. (<http://www.fatf-gafi.org/countries/d-i/iran/documents/public-statement-february-2016.html>)

⁹⁹ Michelle Caruso-Cabrera, “Iran pushes for acceptance in global banking system,” *CNBC*, April 30, 2016. (<http://www.cnbc.com/2016/04/30/iran-pushes-for-acceptance-in-global-banking-system.html>)

¹⁰⁰ Irene Madongo, “Iran to Gain Observer Status in Eurasian Group by Summer, Says FIU Chief,” *MoneyLaundering.com*, April 27, 2016. (<http://www.moneylaundering.com/News/Pages/138005.aspx>)

Mark Dubowitz

May 24, 2016

In order to get off of FATF's blacklist, Iran will need to make substantial changes to its anti-money laundering regulation and fulfill a FATF action plan, but Iran will also attempt to use this process as part of its narrative and efforts to normalize its place in the international community. Iran needs to change its notorious illicit financial activities, but step-by-step, Iran will try to legitimize itself in the global financial and business community without fundamentally changing its financial practices. Just as it went from nuclear pariah to nuclear partner under the JCPOA without admitting to its nuclear weaponization work, Tehran will use this same strategy of coupling a denial of wrongdoing with demands for more and more concessions.

Congress can play an important role working with Treasury to counteract this narrative and maintain the market's understanding of the risks by exposing Iran's ongoing deceptive conduct and illicit activities in ways that illuminate for markets the risks involved in doing business with Iran. Commercial actors are currently hesitating because Iran's behavior is not conducive to effective risk management.¹⁰¹ As Jarrett Blanc, assistant coordinator of the State Department's nuclear deal implementation team, noted in remarks before business leaders in Zurich, "Business decisions, not surprisingly, in fact take into account concerns well beyond sanctions."¹⁰² Congress can keep the pressure on by exposing Iran's illicit networks and deceptive conduct that heightens the private sector's risk management concerns.

RECOMMENDATIONS

Addressing the Iranian threat requires a coherent strategy deploying all tools of American statecraft, including deploying covert, military, economic, and cyber resources. As requested by this Committee, I focused my recommendations on sanctions, but I urge that these measures not be considered in isolation. Sanctions are most effective when combined with other tools of coercive statecraft.

As I have explained, the JCPOA permits sanctions on Tehran for non-nuclear activities such as missile tests, terrorism, regional aggression and human rights abuses. Iran is likely to protest these non-nuclear sanctions and may even threaten to walk away from the nuclear agreement. Congress should not let these threats dissuade it from taking action. If Iran does walk away, Washington can rightfully argue that Iran is to blame for the dissolution of the deal. The United States then will be better positioned to take other coercive steps with more international support.

¹⁰¹ "The over-promised land," *The Economist*, April 23, 2016.

(<http://www.economist.com/news/business/21697276-it-proving-harder-expected-investors-make-start-over-promised-land>); Fabio Benedetti Valentini, "Europe's Banks Are Staying Out of Iran," *Bloomberg*, May 2, 2016, (<http://www.bloomberg.com/news/articles/2016-05-03/europe-s-banks-haunted-by-u-s-fines-forgo-iran-deals-amid-boom>); Patrick Clawson, "Misleading Claims About U.S. Barriers to Iran-Europe Financial Ties," *The Washington Institute for Near East Policy*, April 27, 2016, (<http://www.washingtoninstitute.org/policy-analysis/view/misleading-claims-about-u-s-barriers-to-iran-europe-financial-ties>); Lawrence Franklin, "Iran Comes Clean on Banking Problems," *Gatestone Institute*, May 5, 2016, (<http://www.gatestoneinstitute.org/7958/iran-bank-problems>)

¹⁰² John Miller, "Don't blame our sanctions, U.S. tells nervous Iran investors," *Reuters*, May 4, 2016, (<http://www.reuters.com/article/us-iran-economy-sanctions-idUSKCN0XV1X1>)

Mark Dubowitz

May 24, 2016

Congress can take the lead in enhancing non-nuclear sanctions, increasing the enforcement of remaining sanctions, and defending the threat that Iran's illicit financial activities pose to the integrity of the U.S. financial system in the following eleven ways:

1. Protect the integrity of the U.S. dollar from Iranian illicit finance.

After Treasury revoked the U-turn general license and designated Iran as a jurisdiction of primary money laundering concern, Congress included in Section 1245(c) of the National Defense Authorization Act of 2012 a prohibition stipulating, "The President shall, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block and prohibit all transactions in all property and interests in property of an Iranian financial institution if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person."¹⁰³ Section 1245(b) also codified the Section 311 finding that Iran is a jurisdiction of primary money laundering concern.

Congress can underline that Section 1245(c) codifies the U-turn ban by stating that it is prohibited for any U.S. financial institution to process any transactions for Iranian entities, even when such "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."¹⁰⁴

To prevent the use of offshore clearing, Congress also can state that it is prohibited for a U.S. financial institution to provide dollars for clearing facilities if any party to the transaction anywhere in the financial chain is an Iranian entity.

Congress furthermore should authorize mandatory sanctions on any offshore large value payment system that provides dollar-clearing services in any transactions involving an Iranian party. The termination of these prohibitions should be linked to a certification from the president that Iran is no longer involved in supporting terrorism and illicit missile development as well as addressing its outstanding obligations to compensate victims of Iranian terrorism.

Finally, Congress should 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. This reporting requirement will be useful in identifying entities for further government or non-governmental action. The Government Accountability Office (GAO) or a similar governmental or quasi-government body should verify this list and add any additional persons or entities not identified by Treasury.

2. Reauthorize the Iran Sanctions Act, a critical foundation of the sanctions architecture

While the Obama administration has suspended sanctions on key segments of the Iranian economy according to the JCPOA, only Congress can formally lift many of these sanctions. The

¹⁰³ National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81, U.S.C. § 1245, page 351. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/nda12_publaw.pdf)

¹⁰⁴ U.S. Department of the Treasury, Office of Foreign Assets Control, "Iranian Transactions Regulations," *Federal Register*, November 10, 2008. (<https://www.gpo.gov/fdsys/pkg/FR-2008-11-10/pdf/E8-26642.pdf>)

Mark Dubowitz

May 24, 2016

administration has also pledged to “snap” sanctions back into place if Tehran violates the terms of the agreement. At the end of this year, however, the Iran Sanctions Act (ISA) is set to expire unless lawmakers act to reauthorize it. ISA is a critical foundation of the Iran sanctions architecture and should be reauthorized. As a distinguished member of this committee, Senator Robert Menendez (D-NJ) has noted, if ISA is not reauthorized, there will be nothing “to snapback to.”¹⁰⁵

Reauthorizing ISA would not violate the JCPOA, as no new sanctions would be imposed. Iran may voice objection to the reauthorization, perhaps even threatening to walk away from the agreement, but Congress should call Iran’s bluff and not allow the regime to have veto power over American laws. Furthermore, the justification for ISA is not only Iran’s nuclear program, but also its support for international terrorism. Indeed, when the bill (which at the time also authorized sanctions against Libya) was signed into law in 1996, President Bill Clinton stated that it would “help to deny those countries the money they need to finance international terrorism ... [and] limit the flow of resources necessary to obtain weapons of mass destruction.”¹⁰⁶

3. Strengthen sanctions against the IRGC by targeting its support for terrorism and expanding non-proliferation sanctions and designations.

To date, the administration has refused to impose terrorism sanctions against the Islamic Revolutionary Guard Corps by either designating it under Executive Order 13224 or by declaring the entity to be a Foreign Terrorist Organization. If the administration refuses to designate the IRGC for terrorism, Congress should impose the same penalties provided under the FTO designation or Executive Order 13224 through other means. Such sanctions would reinforce existing secondary sanctions against companies engaged in business with IRGC companies. They would also provide another warning to foreign companies contemplating illicit business in Iran.

In the missile arena, numerous companies owned or controlled by the IRGC and MODAFI and high-ranking Iranian officials involved in the program have not been sanctioned. Congress should require the administration to provide a list of all of the individuals and entities involved in Tehran’s ballistic missile development. GAO or a similar governmental or quasi-government body should verify this list and add any additional persons or entities not identified by Treasury. Congress should require Treasury to add all of those identified on this list to the Specially Designated Nationals list under its counter-proliferation authorities. These should also include any entities owned or controlled by designated entities.

¹⁰⁵ Robert Menendez, Press Release, “Menendez Delivers Remarks on Iran Nuclear Deal at Seton Hall University’s School of Diplomacy and International Relations,” August 18, 2015. (<https://www.menendez.senate.gov/news-and-events/press/menendez-delivers-remarks-on-iran-nuclear-deal-at-seton-hall-universitys-school-of-diplomacy-and-international-relations>)

¹⁰⁶ Bill Clinton, “Remarks on Signing the Iran and Libya Sanctions Act of 1996 and an Exchange With Reporters,” *The White House*, August 5, 1996. (<http://www.presidency.ucsb.edu/ws/index.php?pid=53160&tid=iran&cid=1>)

Mark Dubowitz

May 24, 2016

4. Require updated reporting on IRGC penetration in sectors of the Iranian economy, along with reporting on the sectors involved in Iran's ballistic missile development.

The Iran Freedom and Counter-Proliferation Act of 2012 requires the president to provide a report to Congress every 180 days on "which sectors of the economy of Iran are controlled directly or indirectly by Iran's Revolutionary Guard Corps."¹⁰⁷ Congress can update this reporting requirement so that the president must provide not only an assessment of which sectors are controlled by the IRGC, but also a determination of the nature and extent of the IRGC's penetration into key sectors of Iran's economy. This report should include an analysis of the contribution of the most significant sectors to Iran's GDP; a list of the largest companies in that sector, and their links to the Revolutionary Guards (whether or not they meet the ownership or IRGC Watch List thresholds). The report should also provide a qualitative and quantitative assessment of the IRGC's involvement in each sector. Congress should then create sector-based sanctions targeting any sector of the Iranian economy with a significant IRGC presence.

Congress also should require a similar report on the sectors of Iran's economy that are contributing directly or indirectly to the development of the country's ballistic missile program. The report should list all foreign investors in the sectors and all foreign persons engaging in business with these sectors. Much of this is available through open source information. Indeed, FDD's research has revealed that metallurgy and mining; chemicals, petrochemicals, and energy; construction; automotive; and electronic, telecommunication, and computer science sectors are involved in Iran's ballistic missile program.¹⁰⁸ These sectors are a good starting point. From there, Congress can then authorize sanctions on sectors identified in the study. These sanctions could build on the precedent that Congress and Treasury have set of targeting sectors connected to Iran's nuclear program.

5. Require the administration to report on Iran's deceptive conduct and illicit activities, as well as the role of the IRGC and other rogue actors in Iran's networks.

As Iran engages with FATF and seeks to restore its status at this global terrorism finance standards body, Tehran will attempt to further the narrative that it is a responsible global actor. Congress should counter the Iranian narrative and explain to markets 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 already-existing market concerns of doing business with Iran. Congress should underscore that responsible actors have an obligation to keep Iran at arm's length unless and until Iran's behavior becomes conducive to effective risk management.

Congress should require the administration to provide detailed reporting on Iran's deceptive conduct and illicit activities. Unlike the reports mentioned in the previous recommendation, these

¹⁰⁷ National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, 126 Stat. 1632, codified as amended at 112 U.S.C. § 1245. (https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112_239.pdf)

¹⁰⁸ Saeed Ghasseminejad, "Iran's Ballistic Missile Program and Economic Sanctions," *Foundation for Defense of Democracies*, March 17, 2016. (http://www.defenddemocracy.org/content/uploads/documents/Ballistic_Missile_Sanctions.pdf)

Mark Dubowitz

May 24, 2016

reports should focus on exposing Iran's shadow networks and the role of the IRGC and other designated Iranian actors in "legitimate" businesses.

6. Require the U.S. Treasury to create an IRGC Watch List.

Congress should consider a legislative requirement that Treasury create an "IRGC Watch List" of entities that do not meet the threshold for designation but have demonstrable connections to the IRGC. Treasury or another government agency such as the GAO should maintain the list and evaluate both public and classified information on companies that may be used as fronts for 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 evolving use of deceptive business practices.

Even in the post-JCPOA environment, the exposure of the links between Iranian companies and the Revolutionary Guards can still discourage business ties and protect the unwitting complicity of foreign companies in the IRGC's illicit behavior. Exposing the links between the IRGC and seemingly legitimate Iranian enterprises can go a long way to reducing the IRGC's ability to fund terrorism, human rights violations, and other malign activities. This Watch List would also be a critical resource for risk compliance officers at financial institutions who want to limit their company's exposure to bad actors. Again, this information can be gleaned through open sources. My colleagues Emanuele Ottolenghi and Saeed Ghasseminejad have already identified about 230 companies over which the IRGC exercises significant influence either through equity shares or positions on the board of directors.¹⁰⁹

7. Require the U.S. Treasury to designate companies with IRGC or MODAFIL beneficial ownership.

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 recommendations.¹¹⁰ At the beginning of this month, Treasury announced the final rule on customer due diligence and proposed beneficial ownership legislation requiring financial institutions in the United States to "identify and verify the identity of any individual who owns 25 percent or more of a legal entity, and an individual who controls

¹⁰⁹ Data available upon request; Emanuele Ottolenghi, "The Iran Nuclear Deal and its Impact on Iran's Islamic Revolutionary Guards Corps, Appendix I and II," *Testimony before the House Foreign Affairs Middle East and North Africa Subcommittee*, September 17, 2015.

(<http://docs.house.gov/meetings/FA/FA13/20150917/103958/HHRG-114-FA13-Wstate-OttolenghiE-20150917-SD001.pdf>)

¹¹⁰ Financial Action Task Force, "International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation," February 2012, page 60. (http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf); U.S. Department of the Treasury, "Treasury Issues Proposed Rules to Enhance Financial Transparency," July 30, 2014. (<http://www.treasury.gov/press-center/press-releases/Pages/12595.aspx>); Samuel Rubinfeld, "Proposed Rule to Force Banks to Identify Beneficial Owners," *The Wall Street Journal*, July 30, 2014. (<http://blogs.wsj.com/riskandcompliance/2014/07/30/u-s-treasury-proposes-rule-forcing-banks-to-identify-beneficial-owners/>)

Mark Dubowitz

May 24, 2016

the legal entity.”¹¹¹ Congress should require the Treasury Department to lower the threshold for designation to the 25-percent beneficial ownership threshold rather than majority ownership and also include “board of directors’ criteria.” The latter criteria takes into account not only equity shares but also seats on the board of directors or an ability “to otherwise control the actions, policies, or personnel decisions” used to determine ownership.¹¹² Under new criteria, many additional IRGC- and MODAF- controlled entities would likely be eligible for sanctions. Lowering the threshold would likely also generate greater public scrutiny and enhanced due diligence procedures by the private sector.

8. Require reporting to the Securities and Exchange Commission regarding any transactions with IRGC Watch List companies or joint ventures with IRGC entities.

The Iran Threat Reduction and Syria Human Rights Act of 2012 requires companies publicly traded in the U.S. to file reports with the Securities and Exchange Commission (SEC) on any transactions or dealings with sanctioned entities or the government of Iran (unless the company received specific authorization from the U.S. government).¹¹³ To address the IRGC’s role in Iran’s economy, Congress can amend this report to require companies to include: 1) any business in sectors with significant IRGC penetration; 2) any joint ventures with public or private Iranian companies (as even so-called private companies are often heavily influenced or controlled by the IRGC); 3) any transactions with companies on the IRGC Watch List; and 4) any transactions with the sectors connected to Iran’s ballistic missile program.

Congress should mandate that any company that does not provide timely and accurate reports – and does not amend previous reports when new information comes to light about potential IRGC-linked partners – would be penalized.

9. Require Treasury to explain the qualitative and quantitative effects of individual designations against Iranian entities.

In the wake of Iran’s October and November 2015 ballistic missile tests in violation of UN Security Council resolutions,¹¹⁴ the U.S. Treasury designated 11 individuals and companies

¹¹¹ U.S. Department of the Treasury, Press Release, “Treasury Announces Key Regulations and Legislation to Counter Money Laundering and Corruption, Combat Tax Evasion,” May 5, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/10451.aspx>)

¹¹² For example, see Legal Information Institute, “U.S. Code § 8725 - Liability of Parent Companies for Violations of Sanctions by Foreign Subsidiaries,” *Cornell University Law School*, accessed October 29, 2015. (<https://www.law.cornell.edu/uscode/text/22/8725>)

¹¹³ Iran Threat Reduction and Syria Human Rights Act of 2012, 112 U.S.C. § 219. (https://www.treasury.gov/resource-center/sanctions/Documents/hr_1905_pl_112_158.pdf)

¹¹⁴ Sam Wilkins, “Iran tests new precision-guided ballistic missile,” *Reuters*, October 11, 2015. (<http://www.reuters.com/article/2015/10/11/us-iran-military-missiles-idUSKCN08305120151011>); “U.S.: Iran missile test ‘clear violation’ of U.N. sanctions,” *CBS*, October 16, 2015. (<http://www.cbsnews.com/news/iran-ballistic-missile-test-un-sanctions-us-ambassador-samamba-power/>); Bradley Klapper, “US official says Iran tested ballistic missile last month, at least 2nd time since nuke deal,” *Associated Press*, December 8, 2015. (<http://www.usnews.com/news/politics/articles/2015/12/08/us-official-iran-tested-ballistic-missile-last-month>); Louis Charbonneau, “Iran’s October missile test violated U.N. ban: expert panel,” *Reuters*, December 16, 2015. (<http://www.reuters.com/article/us-iran-missiles-un-exclusive-idUSKBN0TY1T920151216>)

Mark Dubowitz

May 24, 2016

involved in a proliferation network.¹¹⁵ In March, Treasury designated another two entities related to Iran's ballistic missile program.¹¹⁶ These designations have a minimal tangible impact on Iran's ballistic missile development as Iran will likely simply reconstitute procurement networks using new front companies and middlemen and establish new subsidiaries. With an eye toward improving the current system, Congress should require the Treasury Department to provide a qualitative and quantitative explanation of the projected effects of designations. This assessment would include an economic analysis as well as a policy assessment about whether or not the designation is likely to change Iran's calculations about specific actions.

10. Expand human rights sanctions by imposing sanctions on Iranian state organs responsible for institutionalized human rights abuses and by linking sanctions concessions to improvements in human rights conditions.

With a few exceptions, U.S. sanctions against Iranian human rights abusers have primarily targeted individuals. Congress should expand these sanctions and impose human rights sanctions on state organs responsible for institutionalized human rights abuses, as well as individuals who work for these state organs. This will help Washington target the people, companies, and sources of revenue that facilitate and embolden Iran's vast system of domestic repression and single out the institutions, such as prisons or military bases, at which abuses like torture and arbitrary detention occur and the Iranians responsible for those abuses. Many of these institutions, including the notorious Evin prison's Ward 2A for political prisoners,¹¹⁷ are controlled by the Revolutionary Guards.

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, 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. It could also prompt the private sector to end trade relations with other entities in Iran that have been publicly accused of committing abuses but have not yet been sanctioned.

The United States should also build on its global human rights leadership by linking 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.

¹¹⁵ U.S. Department of the Treasury, Press Release, "Treasury Sanctions Those Involved in Ballistic Missile Procurement for Iran," January 17, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/j10372.aspx>)

¹¹⁶ U.S. Department of the Treasury, Press Release, "Treasury Sanctions Supporters of Iran's Ballistic Missile Program and Terrorism-Designated Mahan Air," March 24, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/j10395.aspx>)

¹¹⁷ "A Tour of Ward 2A of Evin Prison," *Iran Human Rights Documentation Center*, accessed February 17, 2016. (<http://www.iranhrdc.org/english/news/features/1000000578-a-tour-of-ward-2a-of-evin-prison.html>)

Mark Dubowitz

May 24, 2016

11. Target corruption and kleptocracy for reasons related to terrorism and human rights issues.

The Revolutionary Guards and the ruling elite (including the Supreme Leader) have enriched themselves at the expense of the Iranian people. The United States can lead efforts to develop new policy tools, including financial sanctions tools, to combat corruption in Iran as well as in other authoritarian governments. Congress can help develop a mechanism to facilitate the sharing of intelligence between international partners on illicit or suspicious financial activities to protect the integrity of the global financial system and prevent corrupt officials from using the world's banking systems.

Congress should consider legislation targeting corruption in all state sponsors of terrorism. The link between the funds generated from corruption and the sponsorship of terrorism by these regimes is well documented. The pending Global Magnitsky Human Rights Accountability Act is one mechanism that could be used to target corruption in Iran. That legislation authorizes sanctions not only against human rights violators but also against government officials and their associates responsible for or complicit in significant corruption.¹¹⁸

Focusing on corruption is crucial because authoritarian leaders paint civil society groups as foreign agents, pass laws to regulate these groups, and cast themselves as defenders of traditional values against a decadent and deviant West. They have a more difficult time, however, using ideological, cultural, or nationalist arguments to justify thievery. Most ordinary people believe that international action against "crooks and thieves" in their countries is legitimate. Targeting corrupt individuals and institutions will not only impose economic costs, but it will also demonstrate to the Iranian people that the United States and the international community oppose the enrichment of oligarchs at the expense of ordinary people.

Conclusion

Congress is well positioned to assist the current and future administrations in stemming the tide of Iranian aggression in the region and its repression at home. Over the next decade, Iran could very easily and faithfully comply with the JCPOA and still emerge in ten to fifteen years as a threshold nuclear power with an industrial-size, advanced centrifuge-powered enrichment program; an ICBM program; access to advanced heavy weaponry; and a more powerful economy that would be immune to Western sanctions. To prevent this from happening, the United States needs a comprehensive strategy to sharpen its tools of economic coercion. It is my hope that these recommendations will assist Congress in that endeavor.

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

¹¹⁸ Global Magnitsky Human Rights Accountability Act, S.284, 114th Congress (2015).
(<https://www.congress.gov/bills/114/congress/2/senate/bills/284>)

PREPARED STATEMENT OF MICHAEL ELLEMAN

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MAY 24, 2016

Chairman Shelby, Ranking Member Brown, distinguished Members of the Committee, I am pleased to testify before you today about Iran's Ballistic Missile Program and the role of sanctions under the Iran Deal.

My statement is informed by two decades of work as a missile scientist at Lockheed Martin's R&D laboratory, and more than 25 years observing and writing about ballistic-missile proliferation. I have participated in technical exchanges and visited missile production and testing facilities in at least seven countries, and have worked missile-related issues with technical experts from throughout the world. Over the past decade I have interviewed, formally and informally, Russian and Ukrainian missile experts who have worked in Iran and witnessed first-hand the status of its missile program and its indigenous capabilities. In 2010, I authored a dossier by the International Institute for Strategic Studies on *Iran's Ballistic Missile Capabilities*, which was a collaborative study supported by missile specialists from Russia, Germany, France, Israel, and the U.S. I continue to monitor missile developments around the world.

My statement today reflects my views and not necessarily those of any organization to which I consult.

Iran's Ballistic Missile Doctrine and Capabilities

Ballistic missiles are central to Iran's deterrence posture and will remain so for the foreseeable future. The priority assigned to ballistic missiles is reflected by the size and scope of Iran's arsenal, the largest and most diverse in the region. Given this importance, Iran will not surrender its current systems, except, possibly, under the direst of circumstances. Even if Iran acquires advanced military aircraft in the near future, ballistic missiles will continue to play a prominent role in its force structure.

Iran's pursuit of ballistic missiles predates the Islamic revolution. Ironically, the shah teamed with Israel to develop a short-range system after Washington denied his request for Lance missiles. Known as Project Flower, Iran supplied the funds and Israel provided the technology. The monarchy also pursued nuclear technologies, suggesting an interest in a delivery system for nuclear weapons. Both programs collapsed after the revolution.

Under the shah, Iran had the largest air force in the Gulf, including more than 400 combat aircraft. But Iran's deep-strike capability degraded rapidly after the Islamic Revolution and the break in ties with the West limited access to spare parts, maintenance, pilot training and advanced armaments. Consequently, Tehran turned to missiles to deal with an immediate war-time need after Iraq's 1980 invasion, and the subsequent air and missile attacks on Iranian cities. Iran acquired Soviet-made Scud-Bs, first from Libya, then from Syria and North Korea. It used these 300-km missiles against Iraq from 1985 until the war ended in 1988.

In Tehran's view, ballistic missiles played a critical role in responding to Iraqi missile attacks, and deterring future ones. The Iranian regime also witnessed how quickly the U.S.-led coalition devastated the Iraqi army in 1991, the same army Iran battled to a standstill during an 8-year war. The only notable response from Iraq during Operation Desert Storm came in the form of ballistic-missile attacks against Israel, Saudi Arabia, and other Gulf countries. The diversion of coalition aircraft to the "Scud-hunting" mission, and away from the assault on Iraqi troops and equipment, further informed Tehran's thinking.

Throughout the 1990s and beyond, Tehran steadily expanded its missile arsenal. It invested heavily in its own industries and infrastructure to lessen dependence on unreliable foreign sources, and is now able to produce its own missiles, although some key components still need to be imported. Iran has demonstrated that it can also significantly expand the range of acquired missiles, as it has done with Nodong missiles acquired from North Korea. Iran's missiles can already hit any part of the Middle East, including Israel. Tehran has established the capacity to create new missiles to address a most of its strategic objectives.

Iran's Arsenal

The Islamic Republic's arsenal now includes several types of short-range and medium-range missiles. Estimates vary on specifics, and Iran has exaggerated its capabilities in the past. There is widespread consensus that Tehran has acquired and creatively adapted foreign technology to continuously increase the quality and quan-

tity of its arsenal. It has also launched an ambitious space program that works on some of the same technology. The arsenal includes:

Shahab missiles: Since the late 1980s, Iran has purchased additional short- and medium-range missiles from foreign suppliers and adapted them to its strategic needs. The Shahabs, Persian for “meteors,” were long the core of Iran’s program. They use liquid fuel, which involves a time-consuming launch. They include:

The Shahab-1 is based on the Scud-B. (The Scud series was originally developed by the Soviet Union). It has a range of about 300 km or 185 miles, and carries a one-ton warhead.

The Shahab-2 is based on the Scud-C. It has a range of about 500 km, or 310 miles, but with a 720-kg warhead. In mid-2010, Iran is widely estimated to have between 200 and 300 Shahab-1 and Shahab-2 missiles capable of reaching targets across the Gulf. Iran began modifying its Shahab-2s in 2010 to create the Qiam missile. The Qiam can fly roughly 600 km and has a detachable warhead, making it more difficult to detect and track using missile-defense radars.

The Shahab-3 is based on the Nodong, which is a North Korean missile. It has a range of about 900 km or 560 miles. It has a nominal payload of 1,000 kg. A modified version of the Shahab-3, renamed the Ghadr-1, began flight tests in 2004. It theoretically extends Iran’s reach to about 1,600 km or 1,000 miles, which qualifies as a medium-range missile. It carries a smaller, 750-kg warhead.

Although the Ghadr-1 was built with key North Korean components, Defense Minister Ali Shamkhani boasted at the time it first appeared, “Today, by relying on our defense industry capabilities, we have been able to increase our deterrent capacity against the military expansion of our enemies.”

A modified version of the Ghadr-1 missile, known as Emad, was tested in October 2015. Emad has four fins mounted at the base of the detachable warhead. In principle, the fins can steer the warhead toward the target as it descends through the atmosphere. In practice, however, full development of the Emad will take a decade or more, and scores of flight tests. The Emad’s appearance indicates that Iran seeks to improve the accuracy of its missiles, a priority that supersedes the need to develop longer-range missiles. Iran has repeatedly said that it does not need missiles with a range of greater than 2,000 km, or 1,200 miles.

Sajjil means “baked clay” in Persian. The Sajjil-2s are medium-range missiles that use solid fuel, which offers many strategic advantages. They are less vulnerable to preemption because the launch requires shorter preparation—minutes rather than hours. Iran is the only country to have developed missiles of this range without first having developed nuclear weapons.

The Sajjil-2 is domestically produced. It has a range of about 2,000 km or 1,200 miles when carrying a 750-kg warhead. It was test fired in 2008 under the name, Sajjil. The Sajjil-2, which is probably a slightly modified version, began test flights in 2009. This missile would allow Iran to “target any place that threatens Iran,” according to Brig. Gen. Abdollah Araghi, a Revolutionary Guard commander.

The Sajjil-2 appears to have encountered technical issues and has not been fully developed. No flight tests have been conducted since 2011. If Sajjil-2 flight testing resumes, the missile’s performance and reliability could be proven within a year or two. The missile, which is unlikely to become operational before 2017, is the most probable nuclear delivery vehicle—if Iran decides to develop an atomic bomb.

Space program: Iran’s ambitious space program provides engineers with critical experience developing powerful booster rockets and other skills that could be used in developing longer-range missiles, including ICBMs.

The Safir, which means “messenger” or “ambassador” in Persian, is the name of the carrier rocket that launched Iran’s first satellite into space in 2009. It demonstrated a new sophistication in multistage separation and propulsion systems.

The Simorgh, which is the Persian name of a benevolent, mythical flying creature, is another carrier rocket to launch satellites. A mock-up was unveiled in 2010. The Simorgh may have been flight tested in April 2016, though it either failed, or only the first stage was launched. The first stage is powered by a cluster of four-Nodong engines.

Military and Strategic Utility of Iran’s Missiles

Iran’s ballistic missiles have poor accuracy. The successful destruction of a single fixed military target, for example, would probably require Iran to use a significant percentage of its missile inventory. Against large military targets, such as an airfield or seaport, Iran could conduct harassment attacks aimed at disrupting operations or damaging fuel-storage depots. However, the missiles would probably be unable to shut down critical military activities. Missile defenses would further degrade the military utility of Iran’s missiles.

Without a nuclear warhead, Iran's ballistic missiles are likely to be more effective as a political tool to intimidate or terrorize an adversary's urban areas, increasing pressure for resolution or concessions. Such attacks might trigger fear, but the casualties would probably be low—likely less than a few hundred, even if Iran unleashed its entire ballistic missile arsenal and a majority succeeded in penetrating missile defenses.

The technology adopted for use on the new Emad indicates that Iran hopes to improve the precision of its larger missiles. Substantial improvements in missile accuracy will take years, if not a decade, to materialize.

Ballistic missiles no doubt would be the preferred delivery platform should Iran ever acquire an atomic weapon. There is no formal definition of what constitutes a "nuclear-capable missile," although the range-payload threshold established in the Missile Technology Control Regime (MTCR) offers a broadly accepted classification measure. The MTCR restricts the transfer of missiles capable of delivering a 500 kg payload to 300 km.

Iran's Shahab, Qiam, Ghadr, Emad, and developmental Sajjil missiles exceed the MTCR performance threshold. Under this definition, Iran possesses more than 300 nuclear-capable ballistic missiles.

Flight tests are an essential element of any missile program. Flight tests are used to:

- Validate the design, performance and reliability of a missile, under a variety of operational conditions;
- Verify the quality of indigenously produced missiles;
- Ensure reliability as the missiles age;
- Provide troop training and ensure readiness;
- Strengthen the credibility of a Nation's deterrence capabilities;
- Threaten and coerce rivals.

Because Iran views ballistic missiles as a critical instrument of statecraft, deterrence, and war-fighting, Tehran will very likely continue with missile testing. Sanctions are unlikely to deter Iran from testing its missiles.

The pace of missile testing by Iran last year and this year is consistent with past practices. Iran did not conduct a nuclear-capable missile launch in 2005, 2013, or 2014, when serious nuclear negotiations were underway. From 2006 to 2012, when talks were going nowhere, Iran averaged roughly five test launches per year. Three flight tests were performed in 2015, and five have occurred this year.

To place this in perspective, the U.S. and Soviet Union, on average, conducted more than 10 flight tests per year for each operational system throughout the Cold War. Given the number of systems deployed, each side conducted about one test a week.

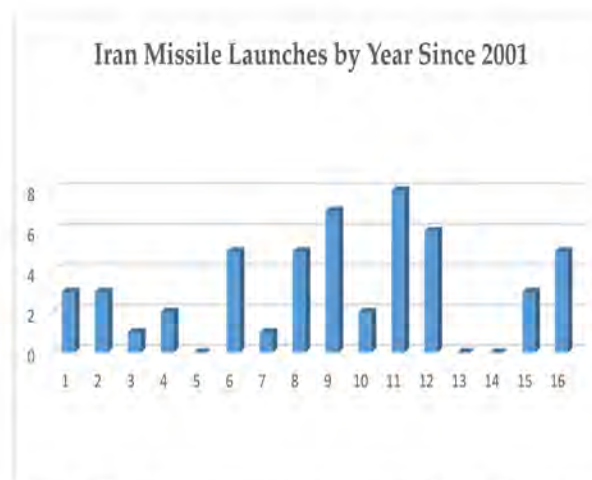


Figure 1 – The approximate number of nuclear-capable missile tests since 2001.

Long-Range Missiles

I have seen no evidence to suggest that Iran is actively developing an intermediate- or intercontinental-range ballistic missile (IRBM or ICBM, respectively). I cannot speak to a covert program. The need to flight test missiles before they are made operational provides advanced warning of new capabilities. Flight trials involve a dozen or more test launches, and historically require 3 to 5 years to complete, sometimes more.

Available evidence, including the recent debut of the Emad medium-range missile, indicates that enhancing missile accuracy supersedes Iran's quest for longer-range systems.

Iran could attempt to use Sajjil technologies to produce a three-stage missile capable of flying 3,700 km or 2,200 miles. But it is unlikely to be developed and actually fielded before the Sajjil-2 missile is fully developed.

Iran could elect to develop a "second-generation" intermediate-range missile of 4,000 km to 5,000 km, or 2,500 miles to 3,100 miles, using solid-fuel technology. This path would provide a basis for also developing an ICBM. However, Iran's engineers would need to design, develop and test a much larger rocket motor to support IRBM and ICBM projects. Large motor development typically requires 2 to 3 years, and involves many ground tests to validate design and production, as well as performance and reliability. Ground testing would necessarily be followed by at least 3 years of flight trials. Thus, there is little reason to believe that the Islamic Republic could field an IRBM before 2020. Moreover, Iran would still have to rely on imported technologies, production materials, components and technical assistance.

Iran's past missile and space-launcher efforts suggest that Tehran would probably develop and field an IRBM before trying to develop an intercontinental ballistic missile capable of reaching the United States more than 9,000 km or 5,600 miles away. If development of an intermediate- and intercontinental-missile are pursued in tandem, Iran could conceivably field an operational ICBM in 2022, at the earliest. If done sequentially, Iran will struggle to achieve a viable ICBM capability before 2025.

Iran could attempt a short-cut to an IRBM or ICBM capability. Satellite launch activity could, in principle, be used as a springboard to developing an IRBM or ICBM. However, no country has converted a satellite launcher into a long-range ballistic missile. There are sound reasons why such a conversion has not materialized.

Without question, rockets designed to boost a satellite into orbit and long-range ballistic missiles employ many of the same technologies, key components, and operational features. There are, however, key characteristics that differentiate satellite launchers from ballistic missiles, apart from the payload itself. Firstly, ballistic missile payloads must survive the rigors of reentry into the earth's atmosphere. Protecting a long-range missile's payload from the extreme heat and structural loads experienced during reentry requires the development and production of special materials, as well as testing and validation under real conditions.

Secondly, satellite-launch vehicles and long-range ballistic missiles employ distinctly different trajectories to fulfil their respective missions. The different trajectories call for different propulsion systems for optimal performance. One cannot simply swap out one engine for another and expect the missile to perform with high dependability. Multiple flight tests of the new configuration are needed to validate performance and reliability.

A third, less obvious difference lies with the operational requirements. Before flight, satellite launchers, unlike their ballistic missile counterparts, are prepared over a period of many days, if not weeks. Components and subsystems are checked and verified prior to launch. The mission commander has the flexibility to wait for ideal weather before initiating the countdown. If an anomaly emerges during the countdown, engineers can delay the launch, identify and fix the problem, and restart the process.

In contrast, ballistic missiles, like other military systems, must perform reliably under a variety of operational conditions with little or no warning. These operational requirements impose a more rigorous validation scheme, which includes an extensive flight-test program. Normally, only after successfully completing validation testing is a missile deemed to be combat ready. This latter requirement, and the need to ensure prelaunch survivability, explain why the Soviets and Americans never converted a satellite launcher into a ballistic missile, though the reverse process occurred frequently. China developed its early long-range missiles (DF-3, DF-4, and DF-5) and satellite launchers (CZ-2 and CZ-3) in parallel. However, running the developmental programs in tandem did not obviate the need to conduct a full set of flight trials over many years for the military missiles. Nor did the parallel programs shorten the development timeline significantly.

Iran's Safir and Simorgh rockets are optimized to lift a satellite into orbit. The second stages used by the Safir and Simorgh are powered by low-thrust, long-action time engines, which accelerate the satellite along a path that parallels the earth's surface. A ballistic missile trajectory must climb to higher altitudes to optimize its range capacity. An underpowered second stage would necessarily fight gravitational forces over a longer time, robbing the payload of velocity and thus range. Iran would likely modify the Simorgh by replacing the second stage's propulsion system with a Scud or Nodong engine.

Iran could opt to modify the Simorgh satellite-launch platform for use as a ballistic missile, though the transformation would not be simple or quick. There would still be a need to flight test the transformed Simorgh in a ballistic missile mode. If Iran built a ballistic missile using the Simorgh's first stage, and replaced the second stage with a Nodong, the notional missile might achieve a maximum range of 4,000 to 6,000 km, depending on configuration details and the payload. To reach the continental U.S., a powerful third stage would have to be developed and added to the first two stages of the Simorgh. The notional missile would remain poorly suited for use as a ballistic missile, because it would be too large and cumbersome to deploy on a mobile launcher. It would therefore have to be placed in a silo, making it an attractive target for adversaries possessing advance reconnaissance and strike capabilities.

Nonetheless, Iran could elect to upgrade and modify its Simorgh. The Soviet Union considered an analogous upgrade in 1957, when the Yangel Design Bureau suggested combining the main boosters of the R-12 and R-14 missiles to create the R-16 ICBM. The R-16 was successfully developed, but only after substantial redesign, including the development of new engines using more energetic propellants. The Soviet experience suggests that Iran would find it challenging and time consuming to build an operational ICBM derived mainly from Simorgh hardware. A new missile design seems more plausible.

Indigenous Capabilities

Iran possesses the technical, project-management and industrial capacity to develop and field the ballistic missiles it desires. But development of new systems will require sustained investment, years of patience and a tolerance for failed projects.

The modifications of the Shahab-2 and Shahab-3, to create the Qiam and Ghadr missiles, respectively, demonstrate Iran's technical prowess and ingenuity. North Korea has no equivalent, suggesting that Iran is slowly surpassing its original supplier of systems, components and technology. Iran has also leveraged Shahab-3 technology to develop the Safir and Simorgh satellite launchers. Finally, Iran has, over the course of three decades, mastered many key aspects of solid-propellant motor production.

However, Iran is not fully self-sufficient. Available evidence indicates that Iran cannot fabricate reliably the Scud and Nodong liquid-propellant engines that power its operation missiles. This may change in the future, although the history of "reverse-engineering" complex equipment suggests otherwise. The Soviet Union, for example, could not successfully clone the German V-2 missile after the war, despite having access to much of the original production line, the original blueprints and many of the key German specialists that developed the V-2. Similarly, the Soviet attempt to reverse-engineer the American B-29 bomber resulted in a Tu-4 which did not perform like the original. It seems much more likely than not that if Iran wishes to expand its arsenal of liquid-fueled missiles, it will have to import additional engines from North Korea. North Korea's liquid-fueled engines were very likely fabricated in the Soviet Union in the 1980s and 1990s.

Iran's development of the Sajjil-2 missile appears to have stalled, partly because it cannot indigenously produce some of the key ingredients used in the manufacture of solid-propellant motors. Iran has successfully imported key ingredients, though disruptions to the supply chain have forced it to use multiple providers. Relying on different suppliers, each of whom produces key ingredients to different standards, introduces many new variables to the solid-propellant production process, which is challenging enough under the best of circumstances. The challenges are amplified many fold as the size of the rocket motor to be produced grows. Iran's reliance on foreign suppliers creates opportunities for those countries that seek to slow the development of large missiles propelled by solid propellant.

Iran-North Korea Missile Cooperation

North Korea supplied Iran with ballistic missiles and technology beginning in the mid-1980s and receding in the late 1990s. The relationship was highly transactional; missiles and missile technologies were exchanged for cash. Evidence over the past decade indicates that North Korea-Iran cooperation is limited in both scope

and depth. Some testing data may have been exchanged in the early 2000s, as Iran began efforts to modernize the design of the Nodong/Shahab-3 to create the Ghadr missile. North Korea is not known to have tested an equivalent version of the Nodong, although imprecise mock-ups of a missiles having a nosecone geometry similar to the Ghadr's were shown during a military parade in Pyongyang in late 2010.

Sharing of blueprints and other sensitive information seems unlikely, primarily because of security issues. Interviews with Russian and Ukrainian missile specialists who worked in Iran during the late-1990s, and early-2000s reveal that Tehran heavily compartmentalizes its most valued weapons programs. This was done to prevent foreigners from understanding the scope and status of Iran's missile endeavors, its indigenous capabilities, and its technology import requirements. It seems reasonable that the same security standards and practices are applied to the North Koreans who may continue to assist Iranian efforts. The barriers erected to preserve security would also, by definition, impede cooperation.

Signs of minimal cooperation are also evidenced by the missiles and satellite-launch vehicles developed by the two countries. North Korea's Taepo-dong 1 satellite launcher, which overflew Japan in 1998, was a three-stage system. Iran's Safir launch vehicle uses two stages. North Korea abandoned the Taepo-dong 1, in favor of the larger Taepo-dong 2 (Unha) launcher, after only one (unsuccessful) flight. The Safir has been used at least seven times since 2008, with just over half of the launches resulting in success.

Iran's Simorgh launch vehicle, like the Safir, is a two-stage rocket. North Korea's Unha is a three-stage system. And while it is true that the first stage of the Unha and Simorgh are powered by a cluster of four Nodong engines, the two designs are significantly different. South Korea recovered from the ocean two Unha first stages, the first from the December 2012 flight, the second from the February 2016 launch. After analyzing the recovered debris, the South Korean Government concluded that in addition to the four main engines, four small ones were also used to steer the Unha during first-stage operation. Each of the steering engines received its fuel and oxidizer by tapping into the plumbing that feeds an adjacent main engine. This arrangement reduces slightly the thrust output of the main engines by depriving it of the propellant flow diverted to the steering engines. The small reduction in thrust is compensated, though not fully, by the thrust generated in the steering engines. The Unha configuration is a reasonable, low-risk design.

Photographs of the Simorgh's first stage show that it too employs four steering engines for flight control. However, a separate pump—scavenged from a Scud engine—is used to deliver fuel and oxidizer to the four steering engine. The Iranian design provides the Simorgh's first stage with an extra 13 tons of thrust when compared to the Unha's first stage. The different designs indicate that North Korea and Iran do not share blueprints for their respective satellite launchers. Given the more sensitive nature of ballistic missile designs, it is reasonably safe to conclude that the two countries do not codevelop military missiles.

Containing Iran's Ballistic Missile Program

Multilateral sanctions, most notably UN Resolution 1929, likely played a prominent role in retarding development of the Sajjil medium-range missile. Technical challenges and the deaths of several key personnel in late-2011 may also contributed to the delays. The apparent success of the sanctions, which disrupted the supply of critical ingredients used to produce solid fuels, was facilitated by the UN Panel of Experts on Iran. The Panel was responsible for investigating potential violations. The investigations, and reporting to the Panel by Governments interdicting proscribed shipments to Iran, raised international awareness of the sanctions. The Panel's work also identified illicit networks and pathways, which further underscored the international community's role in enforcing Resolution 1929.

However, the Panel does not exist under Resolution 2231. The U.S. should work with the Security Council to reinstate the Panel, with a focus on enforcing the trade restrictions contained in Resolution 2231.

The success of unilateral sanctions, especially those leveled against Iranian enterprises and individuals, is historically ambiguous. Iran creates new trading companies to replace those that have been sanctioned. As Iran renews international trade under the relief granted by the JCPOA, unilateral sanctions may or may not become more effective. It is difficult to predict.

The Proliferation Security Initiative—and international effort to disrupt the flow of WMDs and related technologies—could be an effective tool for intercepting shipments from North Korea, Iran's principle, if not sole source for missile engines. Without a supply of additional engines from North Korea, Iran will find it difficult to expand its arsenal of liquid-fueled missiles. This may drive Iran to seek greater

self-reliance, but the cost of developing and qualifying a production line for these engines will be high.

In response to the growing threats posed by Iran's ballistic-missile arsenal, the Pentagon has worked tirelessly with our Gulf partners, Israel and NATO to deploy regional-missile defenses for protection. Joint missile-defense exercises with our Gulf partners—and Israel—offer a tangible counter narrative to Iran's missile tests, and possibly deter Iranian use of missiles. Joint-exercises will also serve to enhance the capabilities and effectiveness of the missile-defense systems deployed in the region.

Iran has said it does not need missiles with a range exceeding 2,000 km. The U.S. should explore options that, at a minimum, would legally codify that range limit. Other limitations may be ripe for negotiation, including those that increase the transparency of Iran's space program.

PREPARED STATEMENT OF ELIZABETH ROSENBERG

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MAY 24, 2016

Chairman Shelby, Ranking Member Brown, and distinguished Members of the Committee, thank you for the opportunity to testify today on the role of sanctions under the Iran deal.

Sanctions on Iran created the pressure necessary to compel Iran to agree to a deal with the international community last year. In exchange for economic relief, the Iranian Government agreed to curb its nuclear weapons capability. The effectiveness of Iran sanctions can be traced directly to the diligence and creativity of policy-makers in Congress and in this Administration, as well as the previous one. Specifically, the leadership of U.S. lawmakers and executive branch implementation and enforcement officials helped to craft a coherent international message regarding Iran's threatening proliferation behavior, a multilateral coalition to isolate Iran diplomatically and financially, and the collective financial leverage so critical to delivering the Iran nuclear deal. This deal was a major step forward in proliferation security in the Middle East and I applaud the work of this Committee for your important role in facilitating effective nuclear diplomacy.

The Iran sanctions regime was, and remains, the most comprehensive program of U.S. and international sanctions, commensurate with the grave security concerns regarding Iran's nuclear proliferation activities, as well as its ongoing regional destabilization, ballistic missile program, support for terrorism, and abuse of human rights. Many U.S. and international sanctions on Iran were waived on Implementation Day, the milestone of the nuclear deal recognizing Iran's completion of its major initial commitments to ship out nearly all of its enriched uranium, disassemble thousands of centrifuges, and submit to a much more comprehensive inspections regime. However, the United States maintains sanctions authorities relevant to Iran as part of the deal, as well as a wide array of sanctions on Iran outside the scope of the deal, including those that bar U.S. companies and citizens from doing business with Iran. The existing architecture of Iran sanctions remains very powerful and affords an enormous amount of leverage to U.S. policymakers to pursue Iranian security provocations and destabilization.

Unwinding Nuclear Sanctions Under the Iran Deal

On Implementation Day the removal of many EU sanctions and the exercise of U.S. sanctions waivers and issuance of licenses permitted Iran to expand its oil sales and access \$100 billion in frozen assets.¹ Additionally, the United States, the EU, and the UN together removed hundreds of designated Iranian entities from sanctions lists, including Iranian banks that then gained access to European financial institutions. Iranian institutions have been able to expand their international ties since January, though this expansion is far from the tidal wave of new economic activity that many hoped for or feared. Iran has established new oil trading con-

¹“Written Testimony of Adam J. Szubin, Acting Under Secretary of Treasury for Terrorism and Financial Intelligence United States Senate Committee on Banking, Housing, and Urban Affairs”, U.S. Department of the Treasury, press release, August 5, 2015, <https://www.treasury.gov/press-center/press-releases/Pages/j10144.aspx>.

tracts in Europe² and expanded oil deliveries to Asia.³ Several Iranian banks are reestablishing branch licenses and correspondent relationships in Europe and are renewing their ties with Asian counterparts.⁴ Additionally, Iran's charm offensive to market new deals for trade and investment, including in areas such as automobiles and airplanes, have met some success internationally.⁵

There are various reasons why Iran will expand its links to the international financial system slowly, however. The cumbersome unraveling of nuclear sanctions restrictions at banks and companies around the world in order to engage in now-permitted business with Iran is only one factor. Remaining sanctions on Iran for its terrorist and ballistic missile activities are a deterrent to those who would contemplate business with Iran, along with prudential concerns related to a history of corruption, and a lack of transparency and maneuverability for foreign firms in Iran's financial system. Beneficial ownership information for Iranian legal entities is notoriously unavailable and confusing, and there is a lack of confidence in Iranian due process mechanisms for foreign entities conducting business there. Iranian banks also lag behind many emerging market peers in compliance with global tax, financial reporting, capital requirements, and anti-money laundering standards, a fact tacitly acknowledged by Iranian financial overseers.⁶ The Financial Action Task Force has pointed out risks associated with Iran's economy in grave terms,⁷ Transparency International ranks Iran 130 out of 168 on their corruption index,⁸ the World Bank's Ease of Doing Business Ranking puts Iran at number 118 out of 189,⁹ and the International Monetary Fund has recently called attention to Iran's troubled banking system.¹⁰ These various factors represent tremendous impediments to foreign investment in Iran and the creation of new commerce for the Iranian regime and people.

Beyond Iran's self-imposed financial troubles, its escalating regional provocations and continued aggression through proxies make the specter of future confrontation with its neighbors or the United States a real possibility. Iran has the largest, most lethal ballistic missile arsenal in the Middle East and has stepped up missile tests in recent months.¹¹ It has also expanded its material support to the Houthis in Yemen and continues to support other proxies that destabilize the region, including Hezbollah. Iran's aggressive rhetoric and flagrant disregard for the United Nations' restrictions on ballistic missile activity is a red flag to potential partners, who are already wary of the reckless behavior of Iran's revolutionary leaders.

For reasons of political and security risk, existing sanctions, and the serious financial challenges associated with attempting business with Iran, many global banks have made it clear that they do not plan on doing business with Iran. In addition, as HSBC has pointed out, the different rules for U.S. banks and foreign banks when it comes to dealing with Iran is another road block for many foreign banks

²"Italy's Renzi Signs Potentially Huge Business Deals in Iran", *Reuters*, April 12, 2016, <https://www.reuters.com/article/us-iran-italy-idUSKCN0X91I2>.

³Chen Aizhu, "Exclusive: Iran Renews Oil Contracts With China, Taps New Buyers", *Reuters*, December 3, 2015, <http://www.reuters.com/article/us-china-iran-oil-idUSKBN0TM0CN20151203>.

⁴Martin Arnold, "British Regulators Help Iranian Banks Come in From the Cold", *Financial Times*, January 31, 2016, <http://www.ft.com/intl/cms/s/0/54144ec2-c692-11e5-b3b1-7b2481276e45.html#axzz45ojdIkOv>.

⁵Mehrnoosh Khalaj and Michael Stothard, "Peugeot Agrees Deal To Revive Iran Partnership", *Financial Times*, February 7, 2016, <http://www.ft.com/intl/cms/s/0/71b1acd8-cdbb-11e5-831d-09f7778e7377.html#axzz45oJdIkOv>.

⁶Barbara Slavin, "Central Bank Governor: Iran Expects Access to U.S. Financial System", *Al-Monitor*, April 15, 2016, <http://www.al-monitor.com/pulse/originals/2016/04/iran-expects-limited-access-us-financial-system.html>; Patrick Clawson, "Iran Locks Itself Out of the International Financial System While Blaming Washington", *The Washington Institute*, Policywatch 2600, April 5, 2016, <http://www.washingtoninstitute.org/policy-analysis/view/iran-locks-itself-out-of-the-international-financial-system-while-blaming-u>.

⁷"FATF Public Statement—19 February 2016", FATF, High-risk and noncooperative jurisdictions, February 19, 2016, <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2016.html>.

⁸"Corruption by Country/Territory: Iran", *Transparency International*, accessed April 14, 2016, <https://www.transparency.org/country/#IRN>.

⁹"Ease of Doing Business Index", World Bank, Accessed April 14, 2016, <http://data.worldbank.org/indicator/IC.BUS.EASE.XQ>.

¹⁰"Islamic Republic of Iran—2015 Article IV Consultation—Press Release; Staff Report; and Statement by the Executive Director for the Islamic Republic of Iran", International Monetary Fund, IMF Country Report No. 15/349, December 2015, <http://www.imf.org/external/pubs/ft/scr/2015/cr15349.pdf>.

¹¹Kambiz Foroohar, "U.S. Frowns on New Iran Sanctions by Congress After Missile Test", *Bloomberg*, April 13, 2016, <http://www.bloomberg.com/news/articles/2016-04-13/u-s-argues-against-more-iranian-sanctions-after-missile-tests>.

that work to create institution-wide compliance protocols across all the jurisdictions in which they operate.¹² It can be too difficult, risky, or impractical to have different compliance practices for U.S. business units by comparison to those for business units outside the United States, and foreign banks reasonably fear that creating different standards may expose them to complicated and expensive regulatory actions in the future if policy changes. The financial institutions and companies that will attempt new Iran business are generally moving slowly with actual contracts and deals, biding time to discover what market pitfalls or potential future sanctions may mean for their business. Furthermore, many of these banks are regional banks with a relatively smaller capacity to handle trade and structured finance, and retail services. They may also be more concentrated in Asia, with more limited exposure to the U.S. financial system than their European counterparts.

Overseeing the Nuclear Deal and Addressing Non-Nuclear Concerns With Iran

The core technical work of overseeing the Iran deal falls to nuclear experts involved in compliance and verification activities. The International Atomic Energy Agency (IAEA), the lead institution on this effort, has so far given Iran fair marks for upholding its nuclear commitments under the deal. In February, it issued its first monitoring report following Implementation Day, raising no concerns about Iran's activities.¹³

For sanctions officials, overseeing the nuclear deal involves two primary lines of effort. The first is education and outreach to the global community to clarify what new business activities are permitted under the nuclear deal and what remain off limits pursuant to existing sanctions. This educational initiative is, by necessity, ongoing, given the dynamic nature of sanctions and evasion techniques that designated entities may pursue. The U.S. Government has sent delegations around the world in this effort, but much more must be done to address confusion within the global private sector about what business is now allowed with Iran and the appropriate controls that must be in place to prevent sanctions violations in the future.¹⁴

The second primary effort for sanctions officials overseeing the nuclear deal is ensuring that sanctions authorities are primed for use, so that the United States and international allies are able to reimpose sanctions in part or in whole if Iran violates its nuclear commitments. Keeping authorities up to date means the reauthorization of the Iran Sanctions Act before it expires at the end of the year. Additionally, it means readying potential additional contingency measures, including new approaches to sanctions enforcement or possible new sanctions authorities, if Iran fails to uphold its commitments under the nuclear deal.

Using sanctions to address non-nuclear concerns with Iran is distinct from oversight of the nuclear deal. Unique authorities exist for sanctioning Iran's support for terrorism and use of ballistic missiles, its involvement in narcotics trafficking and malicious cyberattacks, as well as its human rights abuses. The Treasury Department has announced scores of designations under these authorities over the years, including a number of designations during negotiations on the nuclear deal. In recent months the Obama administration announced sanctions on Iran for its ballistic missile procurement activities and tests, including new sanctions on Implementation Day.¹⁵ It also announced designations highlighting Iran's support for terrorism, including through designations of entities and individuals that support Mahan Air, in March, and Hezbollah, in January and April.¹⁶ This is important work and I urge

¹² Stuart Levey, "Kerry's Peculiar Message About Iran for European Banks", *The Wall Street Journal*, May 12, 2016, <http://www.wsj.com/articles/kerrys-peculiar-message-about-iran-for-european-banks-1463093348>.

¹³ "Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)", IAEA, February 26, 2016, <https://www.iaea.org/sites/default/files/gov-2016-8-derestricted.pdf>.

¹⁴ Ladane Nasseri, "Executives Are Confused by Iran Sanctions", *Bloomberg*, May 17, 2016, <http://www.bloomberg.com/news/articles/2016-05-17/iran-s-allure-tempered-by-confusion-on-sanctions-survey-shows>.

¹⁵ "Treasury Sanctions Those Involved in Ballistic Missile Procurement for Iran", U.S. Department of the Treasury, press release, January 17, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/j10322.aspx>.

¹⁶ "Treasury Sanctions Supporters of Iran's Ballistic Missile Program and Terrorism-Designated Mahan Air", U.S. Department of the Treasury, press release, March 24, 2016; "Treasury Sanctions Key Hizballah Money Laundering Network", U.S. Department of the Treasury, press release, January 28, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/j10331.aspx>; "Publication of the Hizballah International Financing Prevention Act of 2015 Related Sanctions Regulations; Counter Terrorism Designations Updates; Syria Designations Updates", U.S. Department of the Treasury, April 15, 2016, <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20160415.aspx>.

the Administration to expand its sanctions implementation and enforcement in these areas. This is particularly important with regard to the work of exposing and targeting the insidious and dangerous activities of the IRGC within and beyond the borders of Iran, including exposing the financial activity and holdings of the IRGC, its agents and instrumentalities, and Iran's regional terrorist proxies, whenever feasible. The U.S. Government should, at a minimum, designate the IRGC under its terrorism authorities.

Beyond designating more targets, sanctions officials in the Administration should pursue non-nuclear concerns with Iran by urging foreign counterparts to match U.S. sanctions measures related to Iran's support for terrorism and use of ballistic missiles, as well as its human rights abuses. This includes outreach to European officials in the position to enhance EU sanctions lists to include more IRGC targets and entities involved in Iran's ballistic missile program and support for terrorism. As a specific example, outreach to the Europeans should include encouraging EC authorities to use sanctions restrictions to deny access to European airports for Mahan Air, given its involvement with Iranian support for terrorism. Expanding transatlantic unity on sanctions targeting Iran's continued security provocations and destabilizing regional role will send an important message to Iran: the international community, led by the United States and Europe, broadly condemns Iran's threatening behavior and is expanding its campaign to expose, interdict, and counter it through security and diplomatic means.

Alongside this additional sanctions implementation and coordination activity, U.S. policymakers and their European counterparts should also specifically and publicly identify Iran's self-imposed financial problems. Doing so will make clear to Iran and the global community that Iran bears significant responsibility for improving its economic conditions, and that the removal of sanctions under the nuclear deal cannot independently deliver a windfall to Iran. The strongest and most credible strategy to highlight Iran's need to improve its financial transparency and accountability is for technical experts inside the U.S. Government, as well as outside at institutions such as the International Monetary Fund, the Financial Action Task Force, Transparency International and elsewhere, to point out the technical problems in the anti-money laundering, counterterrorist financing, and countercorruption domains that Iran must address. Additionally, such experts should be encouraged and allowed, by license if they are U.S. persons, to offer technical guidance to Iranian financial institutions to conduct this work. This will support U.S. policy interests in achieving greater transparency in the Iranian financial industry, and it will clearly demonstrate that the United States is not the roadblock to economic reform. It could help to reinvigorate private business in Iran to better challenge the insidious control of the IRGC over significant parts of the Iranian economy. Also, it could allow Iran to reap the economic benefits of the nuclear deal, thereby strengthening this important proliferation security accomplishment.

A Strategy for Powerful, Sustainable Sanctions on Iran

In pursuing Iran sanctions now and in the future, U.S. policymakers must prioritize both the important work of isolating Iranian entities engaged in dangerous and illicit behavior, as well as a methodological approach to sanctions as a policy tool that supports sanctions' continued cogency and sustainability. Given that Iran sanctions authorities are already extraordinarily extensive and powerful, this means focusing on aggressively using existing authorities and avoiding the creation of new authorities that might sow confusion or undermine existing ones.

There are three particular hazards that U.S. sanctions policy officials must avoid. First, policymakers must refrain from the reimposition of sanctions waived under the nuclear deal. Parties to the Iran deal agreed to refrain from reimposing sanctions waived under the accord.¹⁷ Reimposing these sanctions would be seen at best as undermining confidence and adherence to the deal and at worst as contravention and grounds for throwing out the deal, a significant setback to proliferation security. Second, policymakers must avoid creating new standards, terminology, or timelines that do not line up with existing statutes and create significant confusion for those working to implement and abide by sanctions. The establishment of mismatched standards or terminology may be accidental, but can be difficult to correct and unintentionally harmful to the private sector or policy interests.

The third hazard that sanctions policymakers must avoid is one of strategic and wide-ranging national security significance. Policymakers must be careful not to put in place new sanctions that so significantly alter international financial flows and banking activities that they undermine the attractiveness or primacy of the U.S. financial system and the dollar as a reserve currency. If powerful new sanctions

¹⁷ *Joint Comprehensive Plan of Action*, July 14, 2015, 13–14.

cause companies and banks to leave U.S. jurisdiction out of a desire to avoid confusing, cumbersome, expensive, and threatening sanctions restrictions, then U.S. security and intelligence leaders will have less insight into illicit financial flows and will face a less transparent international financial system. Additionally, the reach and leverage of U.S. sanctions will shrink and this critical security tool will be dulled. Treasury Secretary Lew has warned against the overuse of sanctions multiple times in recent weeks, urging his colleagues and successors in the sanctions arena not to use them lightly as “they can strain diplomatic relationships, introduce instability into the global economy, and impose real costs on companies here and abroad. And of course they carry a risk of retaliation.”¹⁸ Policymakers could diminish the power of the U.S. financial system with zealous overuse of the tool.

Policy proposals to create new sanctions restrictions on Iran’s use of the dollar in all financial transactions may be an instance of flirtation with the hazards outlined above. It is not the most effective way to draw attention to Iran’s significant illicit activities of concern, and it adds little additional bite to U.S. sanctions on Iran while lending strength to the argument that the United States seeks to undermine the nuclear deal by making it difficult for Iran to reap the economic benefit of its bargain. Furthermore, it may undermine the strength of the U.S. financial system over the longer term. As background, in 2008 U.S. policymakers barred so-called U-Turn transactions for Iranian entities—the transfer of funds by a foreign bank through a U.S. financial institution to a second foreign bank for the benefit of an Iranian bank. Since that time, Iran has been able to use the U.S. dollar if a transaction does not touch a U.S. bank or citizen. In practice this means that Iranian banks or companies cannot deal in dollars for any transaction of significant size or for any significant number of transactions, as any transaction (or series of transactions) of scale must be cleared through a U.S. financial institution and would therefore violate the U-Turn rule. In simplest terms, Iran is virtually barred from use of the U.S. financial system because of the U-Turn prohibition. In response to recent rumors that the Administration might be considering loosening this prohibition, President Obama made clear that the United States has no plans to do so.¹⁹

The U-Turn rule is highly consequential for global financial institutions. Attempts to circumvent it have proven expensive and caused tremendous reputational damage, as shown by some of the big bank sanctions violations cases of the last decade.²⁰ The aggressive enforcement posture of U.S. financial officials in these cases has contributed to a tendency among foreign banks to aggressively avoid U.S. sanctions violations by refusing business with Iran, even when permissible under sanctions rules and when it could involve very small dollar amounts that may not need to be cleared through a U.S. financial institution. Banks’ so called derisking behavior, which has accelerated, not abated, even as nuclear tensions with Iran have receded somewhat, underscores the inaccessibility to Iran of the U.S. financial system.

In this context, anxiety about Iranian use of the U.S. dollar may be overstated in many instances and discussion of new dollar-related sanctions can distract from the grave and urgent need to focus more directly on Iran’s terrorism and regional destabilization activities. Furthermore, such new sanctions would not serve U.S. nuclear security interests if they are construed as seeking to disable Iran’s ability to use the international financial system and collapse the nuclear deal. Also, if new sanctions remove or restrict waiver authority for the President, it will make the sanctions less flexible, and less of a true bargaining chip for the Administration to use with Iran to coerce policy change from Tehran. Finally, introducing a chilling new restriction on dollar activity in the financial system may cause some global banks to shrink their footprint in U.S. jurisdiction to avoid exposure to threatening penalties. Over the long term this may have negative implications for U.S. financial system strength and the reach of sanctions.

¹⁸“Remarks of Secretary Lew on the Evolution of Sanctions and Lessons for the Future at the Carnegie Endowment for International Peace”, U.S. Department of the Treasury, press release, March 30, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0398.aspx>; “Treasury Secretary Jacob J. Lew Remarks at Council on Foreign Relations: America and the Global Economy: The Case for U.S. Leadership”, U.S. Department of the Treasury, press release, April 11, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0415.aspx>.

¹⁹“Press Conference by President Obama, 4/1/2016”, The White House, press release, April 1, 2016, <https://www.whitehouse.gov/the-press-office/2016/04/01/press-conference-president-obama-412016>.

²⁰Patricia Hurtado, “BNP Paribas Pleads Guilty in U.S. to Violating Sanctions”, *Bloomberg*, July 9, 2014, <http://www.bloomberg.com/news/articles/2014-07-09/bnp-paribas-pleads-guilty-in-u-s-to-violating-sanctions>.

The Key Leadership Role for Congress on Iran Policy

Congress has a number of critical roles to play on Iran policy. A primary one is providing current and future oversight of the deal, ensuring that the IAEA is adequately funded to sustain its nuclear inspection and verification activities in Iran. Congress should fully support the office of the Coordinator for Iran Nuclear Implementation. Additionally, lawmakers should provide sanctions investigators, implementers, and enforcement officials at the Treasury and State Departments and in the intelligence community sufficient resources to carry out their activities related to the Iran deal as well as Iranian activities beyond the scope of the deal. In addition to these resource issues, Congress should continue to play an important role in helping to conceive of and prepare for additional sanctions measures related to Iran if it breaches the nuclear deal. This includes eventual reauthorization of the Iran Sanctions Act.

Aside from sanctions measures, Congress has several other important responsibilities in the successful execution of an effective Iran policy. Through appropriations and authorizations processes it must ensure that the United States has adequate ballistic missile defense capabilities in the Middle East. It should also provide an oversight role to ensure that the United States makes available these capabilities to partners in the region and engages with them in robust partner capacity building and cooperation in counterterrorism activities and interdiction efforts to expose and halt Iran's material support to Hezbollah, the Assad regime, and the Houthis in Yemen. Congress should also expand its support to Israel, a key ally in the Middle East, in intelligence-sharing and military aid arenas.

Conclusion

Iran sanctions are a powerful tool in the U.S. security arsenal and have delivered successful nuclear diplomacy and a historic deal. Even while many sanctions have recently been rolled back as part of this deal, the regime is still extensive and strong. Policymakers should continue to forcefully implement sanctions on Iran to address its destabilizing regional role and support for terrorism. But they must avoid undermining the availability of sanctions by diminishing the strength and reach of the U.S. financial system. As a tool of first resort, sanctions are an essential part of the U.S. security infrastructure, and policymakers must prioritize a sustainable approach to ensure the cogency and effectiveness of sanctions as a central part of U.S. policy toward Iran in the future.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR HEITKAMP
FROM ELIZABETH ROSENBERG**

Q.1. What steps, if any, should Congress take to ensure the United States maintains sufficient authority to pressure Iran in non-nuclear areas?

A.1. The array of authorities available to U.S. implementers and enforcers of sanctions covers a wide range of Iran's illicit non-nuclear activity of concern, including support for terrorism, regional destabilization, human rights abuse, evasion of sanctions, and others. Additionally, statutory authorities, primarily including IEEPA, are available to enforcement officials to quickly and creatively target potential new Iranian activities of concern in the non-nuclear space. It is not necessary for Congress to create additional authorities to target illicit Iranian activity of concern given the broad scope of these combined current authorities. However, it is important and appropriate for Congress to closely monitor Iran's malign activity to ascertain if and when a previously unforeseen need may arise to develop additional sanctions authorities to pressure Iran in the non-nuclear sphere.

Q.2. What risks would the United States encounter if the Iran Sanctions Act is not reauthorized by the end of the year?

A.2. A number of important sanctions authorities that have been used to target Iran are encompassed in the Iran Sanctions Act, including many that were waived pursuant to the JCPOA on Implementation Day in January. Reauthorizing the Iran Sanctions Act before its expiration at the end of 2016 may be useful to keep the sanctions authorities contained in this statute close at hand in case Iran violates its commitments under the nuclear deal and international leaders decide to reimpose sanctions. However, it is not necessary to reauthorize the Iran Sanctions Act in order to have access to all the same sanctions targeting capabilities. The IEEPA statute includes sufficient authority for Administration policy-makers to move quickly to pressure Iran with sanctions even without the Iran Sanctions Act remaining part of U.S. law. Furthermore, to the extent that reauthorizing the Iran Sanctions Act may create ill will and negative political provocation with Iran and among P5+1 partners, it may undermine the nuclear deal. This in turn can be counterproductive to the important goal of advancing proliferation security through the nuclear deal.