Congressional Testimony

# The Implications of Sanctions Relief Under the Iran Agreement

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Chairman Shelby, Ranking Member Brown, members of the Senate Banking, Housing, and Urban Affairs 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.

I will focus my remarks in the "summary" section below on:

(1) The Joint Comprehensive Plan of Action's (JCPOA) major design flaws, which provide Iran with patient paths to nuclear weapons and greater ballistic missile, heavy weaponry, and economic capabilities;

(2) The interplay between the P5+1 economic sanctions "snapback" and Iran's "nuclear snapback" in limiting the ability of the United States to impose sanctions (a) to address Iranian non-compliance with the JCPOA and, (b) to punish Iranian illicit conduct in a range of non-nuclear activities such as support for terrorism; and,

(3) How sanctions relief under the JCPOA benefits the most hardline elements in Iran including the Islamic Revolutionary Guard Corps (IRGC) and Iran's Supreme Leader Ali Khamenei.

The full testimony elaborates on the flaws of the current JCPOA and provides recommendations on how it should be amended before Congress considers approving it. Parts 1 and 2 of the testimony provide an in-depth analysis of the nuclear and sanctions relief concerns, respectively, in the current JCPOA. These two sections expand upon the arguments laid out in the summary section below regarding Iran's patient paths to a nuclear weapon and the unraveling of international and U.S. economic sanctions.

In Parts 3 and 4, I assess alternatives and provide recommendations on what Congress can do to improve the deal with Iran. This analysis begins on page 32. In these sections, I discuss the precedents for congressional disapproval of treaties and executive agreements, analyze the possible scenarios if Congress disapproves of this nuclear deal with Iran, and provide recommendations for specific amendments to the JCPOA.

I conclude by discussing how Congress can defend the sanctions architecture against its precipitous unraveling under the JCPOA so that the United States can maintain peaceful economic leverage to enforce this deal in the future.

## SUMMARY

*Patient Path to Nuclear Weapons*

The JCPOA provides Iran with patient paths to a nuclear weapon and intercontinental ballistic missile (ICBM) capability over the next decade and a half. As I explain below in Parts 1 and 2 of the testimony, Tehran has to simply abide by the agreement to emerge as a threshold nuclear power with an industrial-size enrichment program; near-zero breakout time; an easier clandestine sneak-out pathway; an advanced long-range ballistic missile program, including ICBMs; access to advanced heavy weaponry; and a more powerful economy increasing immunized against Western sanctions.

First, on so-called "Implementation Day," Iran will receive substantial sanctions relief with which it can defend its economy against future sanctions pressure. Iran may also use sanctions relief to increase its support for terrorism and other rogue regimes and to expand its conventional military power. The JCPOA front-loads sanctions relief, providing Iran with access to around $100 billion in restricted oil revenues and reconnecting Iranian banks, including the Central Bank of Iran, back into the global financial system. Sanctions on Iran's crude oil export transactions will be lifted, as will sanctions on key sectors of the Iranian economy including upstream energy investment and energy-related technology transfers, the auto industry, petrochemicals, and shipping, as well as the precious metals trade. This sanctions relief will enable Iran to build greater economic resilience against future pressure—both sanctions aimed at isolating other illicit financial conduct and so-called "snapback" sanctions in the event of Iranian nuclear non-compliance.

Then, after five years, or earlier if the International Atomic Energy Agency (IAEA) reaches a broader conclusion that Iran's nuclear program is only for peaceful purposes, the international arms embargo will be lifted, meaning that Iran can also expand its conventional military capabilities and those of its proxies. Former Under Secretary of State for Political Affairs Nicholas Burns, one of the other witnesses at this hearing, noted one week before the announcement of the JCPOA that lifting the arms embargo "would be a great mistake. Iran is selling arms, giving arms, fueling civil wars in Yemen, in Lebanon, in Syria and Iraq, and so those arms prohibitions on Iran are very important."[1] He also has explained that the arms embargo was put in place "for very good reason." He continued that it is not in the interest of the United States "to see these arms embargos lifted from Iran. It is an issue that should not be part of these negotiations. … I think we ought to maintain these U.N. embargos."[2] In five years, however, they will disappear, giving Iran access to combat aircraft, attack helicopters, battle tanks, among other advanced weapons systems.

After eight years, and even earlier if the IAEA reaches a broader conclusion, restrictions on Iran's ballistic missile development will lapse, despite recommendations from Chairman of the Joint Chiefs of Staff Gen. Martin Dempsey that "[u]nder no circumstances should we relieve pressure on Iran relative to ballistic missile capabilities and arms trafficking."[3]

Between years eight and 15, restrictions on Iran's nuclear activities will begin to lapse whether or not the IAEA has concluded that Iran's nuclear program is entirely peaceful.

After ten years, the U.N. Security Council will close the Iranian nuclear portfolio and no longer be "seized" on the issue. The file will return to the IAEA, and Iran will be considered to have a normal, legal nuclear program. Iran will be converted from one-time nuclear pariah to nuclear partner. At that time, and especially after year 15 when Iran's nuclear program will be poised for

[1] "Nicholas Burns on Iran Nuclear Deal," *NBC News*, July 7, 2015. (http://www.nbcnews.com/video/nicholas-burns-on-iran-nuclear-deal-479107651869)
[2] "Iran Nuclear Talks Continue As Leaders Try To Work Out A Deal," *Al Jazeera America News Daily*, July 7, 2015. (http://america.aljazeera.com/watch/shows/live-news/2015/7/iran-nuclear-talks-continue-as-leaders-try-and-work-out-a-deal.html)
[3] Gen. Martin E. Dempsey, "Counter-ISIL (Islamic State of Iraq and the Levant) Strategy," *Hearing before the Senate Armed Services Committee*, July 7, 2015. (http://www.cq.com/doc/congressionaltranscripts-4718823?8)

much greater expansion to industrial-size, Iran will be better positioned to stymie IAEA verification and monitoring and to avoid cooperating with IAEA inspections. The United States will have a greatly diminished economic sanctions capability to force the Iranian government back into compliance on remaining obligations and to enforce the deal against Iranian stonewalling of the IAEA. Indeed, the only choice at that point may be the use of U.S. military force against a much more powerful Iran to prevent it from building nuclear weapons.

*Nuclear Snapback vs Sanctions Snapback*

In addition to this "patient pathway," the JCPOA also creates an Iranian "nuclear snapback" instead of an effective economic sanctions snapback. Throughout the negotiations, the Obama Administration assured the public and Congress that if Iran violated its nuclear commitments under the final deal, sanctions could be "snapped back" into place. This reflects a too-optimistic assessment of the following: the lag-time between the imposition of sanctions and market and Iranian reaction; the willingness of companies to terminate business relationships; the extent to which "grandfather" provisions would immunize international investments from snapback sanctions; and, the eventual impact on Iran's economy. Given these factors, there is likely very little "snap" in snapback sanctions.

The current United Nations sanctions snapback architecture in the JCPOA further limits Washington's ability to re-impose sanctions by creating a drawn out dispute resolution mechanism. The mechanism creates a 60-plus day delay between the time that the United States (or another P5+1 member) announces that a violation has occurred and the time that U.N. sanctions may be re-imposed.

The process is governed by a Joint Commission on which Iran sits as an equal voting member. The Obama Administration presumes that even if Russia and China were to take Iran's side in a dispute, Washington could count on the votes of France, Britain, and Germany as well as the EU representative. This 5-3 vote breakdown assumes no geopolitical or domestic political changes in European countries. Is it not just as plausible that the United States will find itself on the Joint Commission not with President Holland and Chancellor Merkel but with new European leaders less amenable to a new U.S. president's demands to snap back U.N. sanctions? Even though the U.N. snapback sanctions mechanism permits the United States to move unilaterally at the U.N. Security Council to overcome Chinese and Russian objections to snapbacks, it is difficult to imagine that Washington would act without the support of its key European allies.

Furthermore, as international companies reengage in the Iranian market, European countries may experience domestic economic pressure not to re-impose sanctions. These companies may have invested billions of dollars back into Iran and may be unwilling to walk away from those investments despite Iranian nuclear non-compliance.

As a result, in a scenario of Iranian non-compliance, Washington may face European leaders less supportive of U.S. positions, European companies heavily invested in and less willing to leave Iran, and the specter of Iran threatening to walk away from its nuclear commitments (the Iranian "nuclear snapback," as discussed below). If Washington subsequently loses a vote in the Joint Commission, will Washington be willing to unilaterally escalate the matter to the U.N. Security

Council for further consideration?

Instead of an effective sanctions snapback, the JCPOA provides Iran with a powerful "nuclear snapback." In three places, the JCPOA makes it clear that using snapback sanctions may lead to a cancelling of the agreement, with Iran walking away from its commitments and resuming its nuclear program. In short, it will be difficult to persuade our P5+1 partners to punish Iran for any violations short of the most flagrant and egregious because any punishment of a small-to-medium level violation may lead Iran to stop complying with the agreement. As discussed, Iran may also use an implicit—or explicit—threat of nuclear escalation to pressure U.S. allies not to support efforts to address Iranian non-compliance

The United States may be left with a choice of either not addressing examples of minor-to-medium levels of cheating—notwithstanding that Iran historically has used incremental cheating to expand its nuclear program—or allowing Iran to walk away from the deal as the aggrieved party if Washington tries to re-impose sanctions.

*Sanctions Relief Benefits Hardliners*

The sanctions relief provided for under the JCPOA will benefit the most hardline element of the regime: Iran's Islamic Revolutionary Guard Corps (IRGC) and Supreme Leader Ali Khamenei's financial empire—a "shadowy network of off-the-books front companies," according to the U.S. Treasury.[4] The network, headed by an organization known as the Execution of Imam Khomeini's Order (EIKO) or Setad, is reportedly worth $95 billion.[5] EIKO and its subsidaries will be de-listed by both the EU and United States on Implementation Day. Rather than benefit independent Iranian businesses, the sanctions relief may reinforce IRGC and state control of key sectors of Iran's economy and the empowerment of Iranian oligarchs.

The European Union will lift sanctions against major IRGC-controlled entities like the IRGC Cooperative Foundation (the Guard's investment arm) and Khatam Al Anbiya (the construction conglomerate); the United States will de-list four IRGC-linked banks on Implementation Day: Arian Bank, Bank Kargoshaee, Bank Melli, and Future Bank. In reference to Bank Melli, the U.S. Treasury Department has stated:

> "Bank Melli also provides banking services to the IRGC and the Qods Force. Entities owned or controlled by the IRGC or the Qods Force use Bank Melli for a variety of financial services. From 2002 to 2006, Bank Melli was used to send at least $100 million to the Qods Force. When handling financial transactions on behalf of the IRGC, Bank Melli has employed deceptive banking practices to obscure its involvement from the international banking system. For example, Bank Melli has requested that its name be removed from financial transactions."[6]

[4] Department of the Treasury, Press Release, "Treasury Targets Assets of Iranian Leadership," June 4, 2013. (http://www.treasury.gov/press-center/press-releases/Pages/jl1968.aspx)
[5] Steve Stecklow, Babak Dehghanpisheh & Yeganeh Torbati, "Khamenei Controls Massive Financial Empire Built on Property Seizures," *Reuters*, November 11, 2013. (http://www.reuters.com/investigates/iran/#article/part1)
[6] Department of the Treasury, Press Release, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism," October 25, 2007. (http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx)

Lifting sanctions on Bank Melli, among others, will provide the IRGC and Qods Force with renewed access to the international financial systems and an easier ability to finance their illicit activities. De-listed banks, including the Central Bank of Iran, will be allowed back onto the SWIFT financial messaging system, and Europe may increasingly become the economic destination of choice for regime-connected, corrupt, IRGC oligarchs.

*Hampering Our Ability to Address Iran's Other Illicit Conduct*

This "nuclear snapback" not only provides Tehran with the ability to immunize itself against both political and economic pressure and block the enforcement of the agreement, it also diminishes the ability of the United States to apply any sanctions, including non-nuclear sanctions, against the full range of Iran's illicit conduct.

The JCPOA effectively dismantles the U.S. and international economic sanctions architecture, which was designed to address the full range of Iran's illicit activities. As a result of these illicit activities, Iranian banks including the Central Bank of Iran (CBI) were banned from SWIFT. The JCPOA severely undermines these measures, but not because Iran has halted its financial crimes. If the United States finds, for example, that Iran is using its central bank to facilitate terror financing, as it has done in the past, will Washington be able to impose new sanctions? The JCPOA appears to provide Iran with grounds to walk away from the deal if any sanctions are imposed. Iran has already stated that it may "reconsider its commitments" under the JCPOA if "new sanctions [are imposed] with a nature and scope identical or similar to those that were in place prior to the implementation date, irrespective of whether such new sanctions are introduced on nuclear related or other grounds."[7] It seems improbable that the United States would be willing to reimpose sanctions on Iran's central bank, and pressure Europe to expel CBI from SWIFT, under any scenario short of the most egregious—especially if Iran threatens to walk away from the agreement and resume its nuclear activities.

The current JCPOA is deeply-flawed because it fails to permanently block the Islamic Republic's pathways to nuclear weapons; it is also dangerous for American national security because it degrades Washington's ability to use non-military means to protect its national security interests and its allies against a range of Iranian illicit and destabilizing activities. If the United States cannot use economic pressure effectively to address future Iranian nuclear non-compliance or to target the full range of Iran's illicit nuclear activities, military force may become the only means available to U.S. policymakers. As a result, the JCPOA may make war with Iran more not less likely, and when that war comes, Iran will be stronger and the consequences will be more severe.

[7] 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/)

## PART 1: NUCLEAR FLAWS

### FLAWED DEAL CONSTRUCTION: THE PATIENT PATHWAYS TO A BOMB

The Joint Comprehensive Plan of Action is fundamentally flawed in its construction. Even if Iran doesn't violate the JCPOA, over time, it will have patient pathways to nuclear weapons, an ICBM program, access to heavy weaponry, an economy immunized against sanctions pressure, and a more powerful regional position where it can continue its destabilizing and aggressive behavior. Even if Iran abides by the deal, it can re-open and expand each of the pathways to a nuclear bomb.

Under the JCPOA, Iran will be permitted over the next 8.5 to 15 years to expand its nuclear program. The deal allows certain restrictions on Iran's nuclear activities to lapse after 8.5 and 10 years, and many additional restrictions to terminate after 15 years (see Figure 1). Additionally, once Iran has implemented its nuclear commitments under the JCPOA to reduce its operating centrifuges, reduce its low-enriched uranium stockpile, and modify the Arak heavy-water reactor, the international economic sanctions architecture will be nearly completely unwound (see Figure 2).

**Figure 1: Iran's Nuclear Expansion**

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| **After Implementation Day, Iran can:** | Iran will retain its Arak heavy water reactor, albeit subject to modernization and redesigning.<br><br>Enrichment capacity:<br>• Continue enriching uranium up to 3.67% at Natanz.<br>• Enrich uranium using 5,060 IR-1 centrifuges in up to 30 cascades at Natanz.<br>• Put surplus centrifuges in storage.<br>• Maintain a stockpile of up to 300 kg of 3.67% enriched uranium.<br><br>Centrifuge R&D:<br>• Continue R&D, so long as it does not lead to increases in Iran's stockpile of low-enriched uranium (LEU).<br>• Engage in limited enrichment R&D using advanced centrifuges.<br>• Engage in uranium testing at Natanz.<br><br>Convert Fordow into a nuclear physics and technology center and will be open for "international collaboration."<br>• Retain 1,044 IR-1 centrifuges provided they are not using uranium, and operate 348 for the production of stable isotopes.<br>• Maintain other cascades in "idle" position. |
| **After Transition Day (8 years):** | Iran will seek ratification of Additional Protocol in Majles (Parliament).<br><br>Iran can start building up to 200 IR-6 and IR-8 centrifuges per year. |

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| **After 10 years, Iran can:** | Increase its enrichment capacity at Natanz.<br><br>Expand R&D enrichment using advanced centrifuges.<br><br>Expand testing of the IR-4 and IR-5 centrifuges.<br><br>Enrich using advanced centrifuges and/or more than 5,060 IR-1 centrifuges at Natanz (unless otherwise specified in Iran's long-term, voluntary commitment with the IAEA).<br><br>Breakout time drops to "almost down to zero," according to President Obama.[8] |
| **After 15 years, Iran can:** | Build additional heavy water reactors and stockpile heavy water.<br><br>Build additional enrichment facilities.<br><br>Enrich uranium and conduct uranium R&D at Fordow.<br><br>Increase its uranium enrichment levels to above 3.67%.<br><br>Engage in spent fuel reprocessing (Iran states that it intends not to but is not bound not to).<br><br>Deploy, at an industrial-scale, advanced centrifuges at Natanz and Fordow and new facilities.<br><br>Increase without limit its stocks of LEU.<br><br>Build and/or operate facilities related to the conversion of scrap or fuel plates back to UF6. |
| **After 20 years:** | The "containment and surveillance" measures of rotors and bellows for Iranian centrifuges by the IAEA will lapse. |
| **After 25 years:** | The IAEA will cease monitoring the production of uranium ore concrete from all such plants in Iran.<br><br>Iran will no longer have to provide the IAEA with information that would allow the agency to authenticate Iran's inventory of uranium ore concrete or Iran's production or import of this material. |
| **Permanent restrictions:** | Iran has promised to ship-out all of Arak's spent fuel for the duration the reactor's life.<br><br>Should Iran fail to attain a fuel-supply contract for its research reactor in Tehran (TRR), the P5+1 are required to provide Iran with near 20% U308 that will be used for fuel fabrication for the entire time the TRR remains in operation. |

[8] "Transcript: President Obama's Full NPR Interview on Iran Nuclear Deal," *NPR*, April 7, 2015. (http://www.npr.org/2015/04/07/397933577/transcript-president-obamas-full-npr-interview-on-iran-nuclear-deal)

**Figure 2: Dismantlement of the International Sanctions Architecture**

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| **After Implementation Day:** | The EU will terminate sanctions on the following from Council Decision 2010/413/CFSP and Council Regulation 267/2012:<br>• Financial, banking, and insurance<br>  ○ Financial messaging sanctions remain on the books but entities are de-listed and thus allowed back into SWIFT.<br>• Oil, gas, and petrochemicals<br>• Shipping, shipbuilding, and transport related to Islamic Republic of Iran Shipping Lines **(**IRISL) and civil aviation<br>• Gold, precious metals, banknotes, and coinage<br>• Metals are allowed through single procurement channel<br>• Software is allowed through single procurement channel<br><br>The EU will amend counter proliferation-related sanctions consistent with what is permitted by the new UNSC resolution.<br><br>The EU will remove designated entities (most major Iranian banks, including the Central Bank of Iran (CBI)) from its list. |
| | The United States will cease the application for non-US persons of the following sanctions:<br>• Financial and banking (including financial messaging services and transactions with CBI, National Iranian Oil Company, Naftiran Intertrade Company, and National Iranian Tanker Company (NITC))<br>• Insurance<br>• Energy and petrochemicals<br>• Shipping, shipbuilding, and port sectors<br>• Gold and other precious metals<br>• Software<br>• Automotive<br><br>Remove designated entities including major banks (Melli, Mellat, Sepah, Central Bank of Iran), shipping companies, EIKO, and major oil and gas firms from its lists. Of the nearly 650 entities that have been designated by the U.S. Treasury for their role in Iran's nuclear and missile programs or for being owned or controlled by the government of Iran, more than 67% will be de-listed within 6-12 months.<br><br>Terminate executive orders:<br>• 13574 prohibiting financial transactions with ISA designated entities.<br>• 13590 prohibiting provision of goods and services to Iran's energy and petrochemical sectors<br>• 13622 prohibiting transactions with NIOC and NICO.<br>• Sections 5, 6, 7 and 15 of 13628 prohibiting goods and technology to expand Iran's domestic refined petroleum production.<br>• 13645 prohibiting transactions in rials, transactions with the shipping sector, transactions with the automotive sector. |

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| **After 5 years:** | The U.N. arms embargo will be lifted. |
| **After Transition Day (8 years):** | The EU will terminate sanctions on the following:<br>• SWIFT (Most major Iranian banks including the CBI are permitted onto SWIFT after Implementation Day)<br>• Shipping, shipbuilding**,** and transport related to the nuclear and missile technology control lists<br>• Ballistic missiles<br><br>The EU will also remove additional banks (Saderat, Ansar, Mehr) and the IRGC, IRGC-QF, Qassem Soleimani, and nuclear and missile related entities from its counter proliferation lists. |
| | The United States will terminate the statutory sanctions.<br><br>The United States will remove additional entities including:<br>• Some of those designated during the JPOA negotiations like Aria Nikan Marin Industry which sources goods for Iran's nuclear program and whose customers include Khatam Al Anbiya, and Iran Pooya, which supplies material for centrifuge production;<br>• Two central figures in Iran's weaponization and nuclear activities, Fereidoun Abbasi-Davani and Mohsen Fakhrizadeh, the former head of the Atomic Energy Organization of Iran, and the AQ Khan of Iran's nuclear weapons development, respectively;<br>• The Organization of Defensive Innovation and Research (SPND), an entity involved in research related to nuclear weapons; and<br>• Jahan Tech Rooyan Pars and Mandegar Baspar Kimiya Company, which were involved in illicit procurement .<br><br>After eight years, only 25 percent of the nearly 650 entities that have been designated by Treasury over the past decade for their role in Iran's nuclear and ballistic missile program or for being owned and controlled by the Government of Iran will remain sanctioned. |
| **After Termination Day (10 years):** | The U.N. will no longer be "seized of the Iran nuclear issue."<br>The EU will terminate all remaining sanctions in Council Decision 2010/413/CFSP and Council Regulation 267/2012 |
| **Sanctions that remain after 10 years:** | EU human rights sanctions.<br><br>U.S. terrorism and human rights sanctions (for example, U.S. sanctions on Bank Saderat and Qassem Soleimani, although neither will be under EU counter proliferation sanctions. Terrorism and Syria-related sanctions on Soleimani will remain.).<br><br>No U.N. sanctions. |

The administration states that the goal of the nuclear deal is to cut off Iran's "four pathways to a nuclear weapon:" the two uranium pathways through Natanz and Fordow, the plutonium pathway at the Arak reactor, and the clandestine pathway.[9]

The JCPOA is fundamentally flawed in its design because if Iran abides by the deal, it can still re-open and expand each of these pathways.

During the first ten years, Iran can test advanced centrifuges in a way that does not accumulate enrichment uranium; however, after 8.5 years, Iran can commence R&D and testing with uranium in up to 30 IR-6's and IR-8's.[10] After ten years, Iran can increase the number and type of centrifuges operating at the Natanz facility, further reducing the limited restriction on this pathway.

As restrictions on Iran's enrichment program lapse, Iran can operationalize an unlimited number of advanced centrifuges. These centrifuges can more easily be used in a clandestine program because they are more efficient than Iran's basic models, can enrich uranium to weapons-grade faster requiring a fewer number of machines, and can be housed in smaller, harder-to-detect facilities. Iran's breakout time—the amount of time it takes to enrich enough uranium for one bomb to weapons-grade—will begin to drop below the one-year breakout time after year 10 and hit near-zero breakout by year 13, according to President Obama.[11] Even if there is a "softer landing" on breakout time after year 10 than the president predicted, Iranian breakout time will fall to near-zero after year 15 given the end of restrictions on the type and quantity of centrifuge deployment, the accumulation of low-enriched uranium, and the enrichment of uranium above 3.67% to 20% and 60%.[12] As a result, Iran's nuclear program will no longer be at the one-year breakout time that the Obama Administration established as its benchmark.

Additionally, after fifteen years, Iran can build an unlimited number of advanced centrifuge-powered enrichment facilities.[13] Iran will also be permitted to enrich uranium at its undergrounded facility at Fordow[14]—a facility possibly impenetrable to U.S. military strikes. Indeed, under the deal, Iran will be permitted to build multiple Fordow-type facilities. Thus, in a decade and a half, Iran will be on a path to an industrial-sized, widely-dispersed nuclear program

[9] Ernest Moniz, "A Nuclear Deal that Offers a Safer World," *The Washington Post*, April 12, 2015. (https://www.washingtonpost.com/opinions/a-safer-iran/2015/04/12/ae3a7f78-dfae-11e4-a1b8-2ed88bc190d2_story.html)
[10] "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex I, paragraphs 32, 37, 38. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_nuclear_related_commitments_en.pdf)
[11] "Transcript: President Obama's Full NPR Interview on Iran Nuclear Deal," *NPR*, April 7, 2015. (http://www.npr.org/2015/04/07/397933577/transcript-president-obamas-full-npr-interview-on-iran-nuclear-deal)
[12] The JCPOA notes that Iran will only enrich to 3.67% for 15 years but does not specify the restrictions after that. Iran's enrichment levels after 15 years will be governed by its "voluntary commitments" in its long term enrichment and enrichment R&D plan, submitted to the IAEA. There are non-military uses for 20% and 60% enriched uranium, and therefore Iran may argue that it needs to enrich to those higher levels after 15 years. "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex I, paragraphs 28 and 52. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_nuclear_related_commitments_en.pdf)
[13] "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex I, paragraph 31. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_nuclear_related_commitments_en.pdf)
[14] Ibid., paragraph 45.

with an ICBM program and will have the capability to enrich very quickly to weapons-grade at hardened, buried under mountains, Fordow-type enrichment facilities.

After fifteen years, Iran can also build an unlimited number of heavy water reactors. The JCPOA prohibits Iran from building additional heavy water reactors for fifteen years and after that, relies on a non-binding Iranian intention to build only light water reactors. This intention might change.[15] The deal also relies on Iranian intentions not to engage in spent fuel reprocessing,[16] a process from which plutonium for a nuclear bomb can be recovered.

The only permanent restriction on Iran's ability to use its heavy water reactors to reprocess plutonium for weapons purposes is the requirement to ship all spent fuel out of Iran "for the lifetime of the reactor."[17] When Arak is no longer operational, does this restriction also lapse? When Iran has multiple heavy water reactors and assesses that the United States has limited coercive options outside of military force to respond a violation of this ban, it may feel emboldened to retain spent fuel inside the country.

While abiding by the terms of the JCPOA, Iran can exercise strategic patience and wait patiently to open up these multiple pathways to nuclear weapons while building up immunity against economic sanctions, leveraging its nuclear snapback to constrain Western retaliation to violations, and increasing its regional power.

How would Iran achieve these objectives based on the JCPOA's deal terms?

1. **Do the bare minimum to address the PMD issue** and fulfill the initial nuclear commitments.

Iran is required to work with the International Atomic Energy Agency (IAEA) to resolve past and present issues of concern regarding the possible military dimensions (PMDs) of Iran's program.[18] The IAEA will have tight deadlines to which it has to adhere in a politicized post-Iran deal environment. The IAEA will have limited time and space to resolve the outstanding issues. It remains unclear what will happen if the IAEA is not satisfied. What will be its path of recourse? Will Iran be required to make an expanded declaration of all of Iran's nuclear activities, including past activity, to set a credible baseline for monitoring and verification?

Iran has reportedly already refused to allow certain scientists and facilities to be included in the list requested during the negotiations. The bilateral IAEA-Iran agreement may reportedly include only one visit to Parchin.[19] Will the IAEA be able to interview all of the scientists, visit all of the

[15] Ibid., paragraph 16.
[16] Ibid., paragraphs 18-19.
[17] Ibid., paragraph 11.
[18] Ibid., paragraph 66.; International Atomic Energy Agency, Press Release, "IAEA Director General's Statement and Road-Map for the Clarification of Past & Present Outstanding Issues Regarding Iran's Nuclear Program," July 14, 2015. (https://www.iaea.org/newscenter/pressreleases/iaea-director-generals-statement-and-road-map-clarification-past-present-outstanding-issues-regarding-irans-nuclear-program)
[19] Louis Charbonneau & Arshad Mohammed, "Exclusive: Draft Deal Calls for UN Access to All Iran Sites – Source," *Reuters*, July 13, 2015. (http://www.reuters.com/article/2015/07/14/us-iran-nuclear-deal-exclusive-idUSKCN0PN2NY20150714)

sites, and see all of the documents to address their questions from the November 2011 IAEA report? What about questions that have arisen since that 2011 IAEA report? These appear not to be permitted under the "Roadmap for Clarification of Past and Present Outstanding Issues."[20]

**2. Use sanctions relief to build economic resiliency and benefit the IRGC.**

After Iran completes specific, but reversible, nuclear steps, most EU and U.S. economic sanctions will begin to unwind, and Iran can increasingly immunize its economy against future economic pressure. The economic impact of sanctions relief is likely to be substantial, starting slowly after a deal and building over time.

Economic forecasts prior to the announced deal based on expectations of the sanctions relief assessed that Iran's economic growth would likely stabilize around 2.6% in FY2015/16, and then accelerate to about 4% in FY 2016/17. In the second half of the decade, Iran's economic growth would likely average 3.5-4%.[21] Depending on Iran's economic policy choices, in FY 2017/18, growth might reach 5-6%.

The IRGC will be a significant beneficiary of the sanctions relief. Combined with the de-listing of IRGC officials and IRGC-linked entities, the relaxed banking standards will grant the Iranian regime the ability to move its money anywhere in the world. With EU sanctions also set to be lifted on major Iranian banks, Europe will become an economic free zone for Iran's most dangerous people and entities.

**3. Begin purchasing arms after the United Nations arms embargo terminates.**

According to the U.N. Security Council resolution, the arms embargo will end in five years.[22] After five years, Iran can begin purchasing "battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, [and] missiles."[23] Iran can purchase these goods with the cash it has received through sanctions relief to build its own military capacities. Tehran may also illicitly provide these heavy arms to its allies and proxies.

[20] International Atomic Energy Agency, Press Release, "IAEA Director General's Statement and Road-Map for the Clarification of Past & Present Outstanding Issues Regarding Iran's Nuclear Program," July 14, 2015. (https://www.iaea.org/newscenter/pressreleases/iaea-director-generals-statement-and-road-map-clarification-past-present-outstanding-issues-regarding-irans-nuclear-program)

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

[22] United Nations Security Council, "Resolution 2231 (2015)," July 20, 2015, Annex B, paragraph 5, page 100. (http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf)

[23] Ibid.

4. **Develop a long-range ballistic missile system** after the termination of the ballistic missile sanctions.

U.N., U.S., and EU ballistic missile sanctions will be terminated.[24] Notably, the JCPOA permits this to happen after eight years or after the IAEA reaches a so-called "broader conclusion" that Iran's program is entirely peaceful and contains no undeclared activities, "whichever is *earlier*." (emphasis added). In short, whether or not the IAEA has determined that Iran's program is peaceful, Tehran will be permitted to engage in an expansion of its ballistic missile program after a maximum of eight years. Iran may also be able to expand its intercontinental ballistic missile program under the guise of satellite testing. The U.S. Defense Department notes, "Iran has publicly stated it may launch a space launch vehicle by 2015 that could be capable of intercontinental ballistic missile ranges if configured as a ballistic missile."[25]

Even with the current sanctions in place, Iran reportedly has the "largest and most diverse" ballistic missile program in the Middle East.[26] The U.S. Defense Department has repeatedly assessed that Iran's ballistic missiles could be "adapted to deliver nuclear weapons."[27] Last year, Director of National Intelligence James Clapper testified before Congress that if Iran chooses to make a bomb, Iran would choose "a ballistic missile as its preferred method of delivering nuclear weapons."[28] According to Clapper, these missiles are "inherently capable of delivering WMD."[29] Why is Iran permitted to engage in ballistic missile development—the development of the likely delivery vehicle if Iran builds a nuclear warhead—*before* the international community is certain that Iran's existing nuclear program is peaceful?

5. **Reap additional economic and military benefits** when additional sanctions terminate and more entities are de-listed by the United States and EU.

Of the nearly 650 entities that have been designated by the U.S. Treasury Department for their role in Iran's nuclear and missile programs or for being owned or controlled by the government of Iran, more than 67 percent will be de-listed from Treasury's blacklists within 6 to 12 months. After eight years, only 25 percent of the entities that have been designated over the past decade will remain sanctioned.

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[24] "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex V, paragraphs 19 and 20.1. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_5_implementation_plan_en.pdf); United Nations Security Council, "Resolution 2231 (2015)," July 20, 2015, Annex B, paragraph 3, page 99. (http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf)

[25] U.S. Department of Defense, "Unclassified Report on Military Power of Iran," January 2014, page 1. (http://freebeacon.com/wp-content/uploads/2014/07/Iranmilitary.pdf)

[26] Michael Elleman, "Iran's Ballistic Missile Program," *The Iran Primer*, accessed August 25, 2014. (http://iranprimer.usip.org/resource/irans-ballistic-missile-program)

[27] U.S. Department of Defense, "Unclassified Report on Military Power of Iran," April 2010, page 10. (http://www.iranwatch.org/sites/default/files/us-dod-reportmiliarypoweriran-0410.pdf); U.S. Department of Defense, "Unclassified Report on Military Power of Iran," April, 2012, page 1. (http://fas.org/man/eprint/dod-iran.pdf)

[28] James R. Clapper, "Statement for the Record: Worldwide Threat Assessment of the US Intelligence Community" *Testimony before the Senate Select Committee on Intelligence*, January 29, 2014, page 6. (http://online.wsj.com/public/resources/documents/DNIthreats2014.pdf)

[29] Ibid.

After eight years—whether or not the IAEA has determined that Iran's nuclear program is entirely peaceful—additional significant EU sanctions will be lifted. These include sanctions on the IRGC, Quds Force, IRGC Air Force, and the Ministry of Defense. Additionally, the United States will lift sanctions on two central figures in Iran's nuclear development: Fereidoun Abbasi-Davani and Mohsen Fakhrizadeh. Abbasi-Davani is the former head of the Atomic Energy Organization of Iran. Fakhrizadeh is the AQ Khan of Iran's nuclear weapons development. The United States will also de-list—among other entities involved in Iran's nuclear program—the Organization of Defensive Innovation and Research (SPND), an entity "primarily responsible for research in the field of nuclear weapons development."[30]

Additionally, Iran could argue that other "non-nuclear" sanctions should also be lifted under the JCPOA according to paragraph 26:

> "The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from imposing new nuclear-related sanctions. Iran has stated that it will treat such a re-introduction or re-imposition of the sanctions specified in Annex II, or such an imposition of new nuclear-related sanctions, as grounds to cease performing its commitments under this JCPOA in whole or in part."[31]

Paragraph 29 of the preface states:

> "The EU and its Member States and the United States, consistent with their respective laws, will refrain from *any policy* specifically intended to directly and adversely affect the *normalization of trade and economic relations* with Iran inconsistent with their commitments no to undermine the successful implementation of this JCPOA."[32] (emphasis added)

While paragraph 26 only refers to the imposition of new nuclear-related sanctions, Iran may be able to argue that U.S. terrorism-related sanctions to the extent they have any economic impact on Iran are in violation of the JCPOA because they block the normalization of trade and economic relations. For example, Iran could claim that the imposition of sanctions on Iranian banks for terrorist financing would impede normal trade and economic relations. Tehran also can threaten to use its "nuclear snapback" (described below) to persuade the EU and other countries not to comply with any new U.S. non-nuclear sanctions, complicating Washington's ability to constrain and deter the full range of Iran's illicit conduct.

### 6. Transform from a nuclear pariah to a nuclear partner.

After ten years, the United Nations will remove the Iranian nuclear file from its agenda and will "no longer be seized of the Iran nuclear issue." At that time, Iran will no longer be under any Chapter 7 resolutions and will have a legitimate and legal nuclear program. Iran can also **build**

[30] Department of State, Media Note, "Additional Sanctions Imposed by the Department of State Targeting Iranian Proliferators," August 29, 2014. (http://www.state.gov/r/pa/prs/ps/2014/231159.htm)
[31] "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, paragraph 26. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)
[32] Ibid., paragraph 29.

**additional scientific knowledge** because research and development restrictions will be lifted. Even prior to the lifting of restrictions on R&D, Iranian scientists can acquire knowledge and skills that can be used to move quickly to nuclear breakout at the time of Iran's choosing. Under the JCPOA, all parties also commit to cooperate on enhancing Iran's ability to respond to nuclear security threats "including sabotage,"[33] which may limit the use of cyber and other tools to counter Iran's nuclear expansion or to respond to Iranian noncompliance.

**7. Use the threat of a "nuclear snapback" to ward off any attempt to use the sanctions snapback.**

The JCPOA explicitly states, "Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part."[34] In effect, Iran has given advance notice that using snapback sanctions may lead to cancellation of the JCPOA. If the United States or any of its partners insist on re-imposing sanctions, Iran may simply walk away from the deal. If Iran cheats and gets caught, and the international community attempts to punish Iran, Iran can threaten to back out of the deal and expand its nuclear program. It is quite likely under such circumstances that the P5+1 will be reluctant to punish Iran for any violations short of the most flagrant and egregious violations. This would create a permissive environment for Iranian cheating and stonewalling of the IAEA.

**8. Build an advanced centrifuge-powered, industrial-size nuclear program.**

After fifteen years, the significant restrictions on Iran's nuclear program will have lapsed. Iran will be permitted to have:

- Multiple enrichment facilities;
- A near-zero breakout time with faster advanced centrifuges;
- An easier clandestine sneak-out with fewer machines deployed in smaller facilities;
- Plutonium reprocessing;
- A stockpile of enriched uranium to 20 or 60% levels; and,
- An expanded ballistic missile program.

**9. Stymie IAEA inspections.**

Throughout the duration of the JCPOA, Iran can delay IAEA inspections of suspected sites without facing consequences. The JCPOA creates a 24-day delay between a formal IAEA request to access a suspicious site and the date on which Iran must allow access. As former Deputy Administrator for Defense Nuclear Nonproliferation at the National Nuclear Security Administration William Tobey explains, "24 days … [is] ample time for Iran to hide or destroy evidence."[35]

[33] "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex III, paragraph 10.2. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_3_civil_nuclear_cooperation_en.pdf)
[34] "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, paragraph 37. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)
[35] William Tobey, "The Iranian Nuclear-Inspection Charade," *The Wall Street Journal*, July 15, 2015. (http://www.wsj.com/articles/the-iranian-nuclear-inspection-charade-1437001048)

Former Deputy Director General for Safeguards at the IAEA Dr. Olli Heinonen explains that for small facilities, 24 days is enough time for Iran to "sanitize" suspected sites, including, for example, where Iran may be engaged in weaponization activities.[36] Iran is also likely to have developed contingency plans to respond to IAEA demands to visit these sites. According to Dr. Heinonen, Tehran may only need two days to remove nuclear equipment from a small facility[37] and remove any traces of uranium, which even environmental sampling may be unable to detect. As Dr. Heinonen notes:

> "Time for 'scrubbing' takes on special salience in nuclear-related developments without nuclear material present. Some of the past concealment events carried out by Iran in 2003 left no traces to be detected through environmental sampling."[38]

**10. Become a threshold nuclear weapons state.**

While adhering to the letter of its commitments under the JCPOA, Iran will emerge in 15 years with multiple pathways to a nuclear weapon. Iran will have a powerful economy, immunized against sanctions pressure and increased military and regional power. Iran will likely be the dominant power in the region and a threshold nuclear weapons state. Iran will have achieved its goals through strategic patience by following the terms of the deal.

The JCPOA does not prevent a nuclear-armed Iran; rather it provides multiple patient pathways for Iran.

## THE JCPOA'S IRANIAN NUCLEAR SNAPBACK

**The JCPOA contains a weak enforcement mechanism**. Throughout the negotiations, Obama Administration officials have explained that under a final deal, the United States and its allies would be able to re-impose sanctions quickly in order to punish Iranian non-compliance and bring Iran back into compliance with its nuclear commitments. This was the so-called "snapback" sanction.

Even as originally conceived, this enforcement mechanism was flawed[39] because there would likely be significant disagreements between the United States, European states, and members of the U.N. Security Council on the evidence, the seriousness of infractions, the appropriate level of response, and likely Iranian retaliation. In addition to this diplomatic hurdle, the snapback sanction mechanism was economically flawed because it took years to persuade international

[36] Bill Gertz, "Ex-IAEA Leader: 24-Day Inspection Delay Will Boost Iranian Nuclear Cheating," *The Washington Free Beacon*, July 21, 2015. (http://freebeacon.com/national-security/ex-iaea-leader-24-day-inspection-delay-will-boost-iranian-nuclear-cheating/)

[37] Michael R. Gordon, "Provision in Iran Accord Is Challenged by Some Nuclear Experts," *The New York Times*, July 22, 2015. (http://www.nytimes.com/2015/07/23/world/middleeast/provision-in-iran-accord-is-challenged-by-some-nuclear-experts.html?referrer=&_r=1&gwh=F74FAB44A324C6E6F96BB6460E6FBCDA&gwt=pay)

[38] Olli Heinonen, "The Iran Nuclear Deal and its Impact on Terrorism Financing," *Testimony Before the House Financial Services Committee, Task Force to Investigate Terrorism Financing*, July 22, 2015. (http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=399373)

[39] For more detail on the challenges of the "snapback" sanction, see "The 'Snapback' Sanction as a Response to Iranian Non-Compliance," *Iran Task Force*, January 2015. (http://taskforceoniran.org/pdf/Snapback_Memo.pdf)

companies to exit Iran after they had invested billions of dollars; once companies re-enter the Iranian market, it will be difficult to get them to leave again. Just the other day, Foreign Minister Mohammad Zarif noted that the "swarming of businesses to Iran" is a barrier to the re-imposition of sanctions, and once the sanctions architecture is dismantled, "it will be impossible to reconstruct it." Zarif boasted that Iran can restart its nuclear activities faster than the United States can re-impose sanctions.[40]

Furthermore, sanctions impacted reputational and legal risk calculations of private companies evaluating potential business deals with an Iranian government, economy, and entities that had consistently engaged in deceptive and other illicit conduct. The question of risk and the integrity of Iran's economy and financial dealings cannot be turned on and off quickly. The snapback sanction in the JCPOA also has an additional economic delay because it may grandfather in existing deals, providing an incentive for companies to move as quickly as possible to sign major long-term deals so that any existing contacts will not be subject to snapback sanctions.

**The JCPOA further undermines the snapback sanction—the United States' only peaceful enforcement mechanism—through the dispute resolution mechanism**, which is governed by a Joint Commission compromised of the United States, EU, France, U.K., Germany, China, Russia and Iran. The mechanism creates a 60-plus day delay between the time that the United States (or another P5+1 member) announces that a violation has occurred and the time that United Nations sanctions may be re-imposed.[41]

If the United States believes that Iran has violated the deal, Washington will refer Iran to the Joint Commission, which consists of the P5+1, Iran, and an EU representative. If the issue cannot be resolved by consensus within the Joint Commission, after a process of 35 days, the United States can then unilaterally refer the issue to the U.N. Security Council. The Security Council must then pass a resolution (which the United States can veto) to continue the current sanctions relief. If that resolution is not passed within another 30 days, the previous U.N. sanctions will be re-imposed. The "snap" in "snapback" therefore takes more than two months. The mechanism also does not provide for any unilateral re-imposition of sanctions, nor does the U.N. Security Council resolution, Resolution 2231, which the Obama Administration pushed forward to a vote despite congressional requests to delay until after Congress had thoroughly reviewed the deal.[42]

Furthermore, the resolution states that **the snapback mechanism is for issues of "significant non-performance," implying that it would not likely be used for incidents of incremental**

[40] "Foreign Investments in Iran to Serve as Barrier for Sanctions Snapback – FM," *Voice of the Islamic Republic of Iran, Radio Farhang* (in Persian), July 21, 2015. (Accessed via BBC Worldwide Monitoring)
[41] "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, paragraphs 36-37. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)
[42] Steny Hoyer, Press Release, "Hoyer: U.N. Security Council Vote Should Wait for Congressional Review Period," July 17, 2015. (http://www.democraticwhip.gov/content/hoyer-un-security-council-vote-should-wait-congressional-review-period); House Committee on Foreign Affairs, Press Release, "Chairman Royce, McCaul to President on Iran Deal: UN Security Council Should Wait Until Congressional Review is Complete," July 16, 2015. (http://foreignaffairs.house.gov/press-release/chairmen-royce-mccaul-president-iran-deal-un-security-council-should-wait-until); "Congress Leaders Ask White House To Delay UN Vote on Iran Deal," *JTA*, July 17, 2015. (http://forward.com/news/breaking-news/312210/congress-leaders-ask-white-house-to-delay-un-vote-on-iran-deal/)

**cheating**. The Iranian regime has previously been inclined to cheat incrementally, not egregiously, even though the sum total of its incremental cheating has been egregious. The snapback provision incentivizes Iran to continue this behavior because there is no enforcement mechanism to punish incremental cheating.

**More importantly, the JCPOA has armed Iran with its own nuclear "snapback" against attempts to re-impose U.N. sanctions in response to Iranian nuclear violations.** The JCPOA explicitly states, "Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part."[43]

This nuclear snapback also is included in text relating to both EU and U.S. economic snapbacks:

> "The EU will refrain from re-introducing or re-imposing the sanctions that it has terminated implementing under this JCPOA without prejudice to the dispute resolution mechanism provided for under this JCPOA. There will be no new nuclear-related UN Security Council sanctions and no new EU nuclear-related sanctions or restrictive measures."[44]

In addition:

> "The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from re-introducing or re-imposing the sanctions specified in Annex II that it has ceased applying under this JCPOA, without prejudice to the dispute resolution process provided for under this JCPOA … [and] will refrain from imposing new nuclear-related sanctions. ***Iran has stated that it will treat such a re-introduction or re-imposition of the sanctions specified in Annex II, or such an imposition of new nuclear-related sanctions, as grounds to cease preforming its commitments under this JCPOA in whole or in part***."[45] (emphasis added)

Finally, the JPCOA contains an explicit requirement for the EU and the United States to do nothing to interfere with the normalization of trade and economic relations with Iran:

> "The EU and its Member States and the United States, consistent with their respective laws, will ***refrain from any policy specifically intended to directly and adversely affect the normalization of trade and economic relations with Iran*** inconsistent with their commitments not to undermine the successful implementation of this JCPOA."[46] (emphasis added)

Iran can use these provisions to argue that any re-imposition of sanctions, even if implemented on non-nuclear grounds "adversely affects the normalization of trade and economic relations"

[43] "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, paragraph 37. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)
[44] Ibid, paragraph 26.
[45] Ibid.
[46] Ibid, paragraph 29.

and will challenge attempts by the EU or United States to re-instate sanctions on non-nuclear grounds. Iran will threaten to simply walk away from the deal and expand its nuclear program.

Even while incrementally cheating on its commitments, Iran could force the United States and Europe to choose between not strictly enforcing the agreement and abrogating the whole agreement. Given the normal political and diplomatic environment, which encourages parties not to undermine existing agreements, it is highly likely that that the United States and Europe would choose not to address incremental cheating. Iran is likely to get away with small- and medium-sized violations, since both the United States and Europe are heavily invested in this deal and would only abrogate it for a major violation. **The JCPOA's language also provides Iran with an opening to insist that other non-nuclear sanctions measures, including Iran's inclusion on the state sponsor of terrorism list, hinders trade and therefore should be terminated.**

The JCPOA is flawed in its design; it contains no peaceful, effective means to enforce the deal and explicitly provides Iran with an opening for a nuclear snapback that it can use to characterize itself as the aggrieved party if the EU or U.S. re-imposes sanctions. This nuclear snapback could be particularly effective against the Europeans, who will be loath to do anything that leads to Iranian nuclear escalation, and on whose support the United States needs on the Joint Commission, at the U.N. Security Council, in a coordinated transatlantic snapback scenario of EU and U.S. sanctions, or, at a minimum, to comply with U.S. secondary sanctions. To neutralize the effectiveness of economic snapbacks, Iran could target Europe as the weakest link through threats of nuclear escalation or through inducements of substantial investment and commercial opportunities. And we must bear in mind that Iran needs only to move one of the three European nations in the talks or shake the EU consensus in order to undermine this enforcement mechanism.

## PART 2: SANCTIONS RELIEF FLAWS

### JCPOA & CHALLENGE TO CONDUCT-BASED FINANCIAL SANCTIONS

The JCPOA also dismantles the international economic sanctions architecture which was designed to respond to the full range of Iran's illicit activities, not only the development of Iran's illicit nuclear program. The United States has spent the last decade building a powerful yet delicate sanctions architecture to punish Iran for its nuclear mendacity, illicit ballistic missile development, vast financial support for terrorist groups, backing of other rogue states like Bashar al-Assad's Syria, human rights abuses, and the financial crimes that sustain these illicit activities. More broadly, a primary goal of the sanctions on Iran, as explained by senior Treasury Department officials over the past decade, was to "protect the integrity of the U.S. and international financial systems" from Iranian illicit financial activities and the bad actors that facilitated these.[47]

**The goal of sanctions was to provide the president with the tools to stop the development of an Iranian nuclear threshold capacity and also to protect the integrity of the U.S.-led global**

[47] David Cohen, "The Law and Policy of Iran Sanctions," *Remarks before the New York University School of Law*, September 12, 2012. (http://www.treasury.gov/press-center/press-releases/Pages/tg1706.aspx)

**financial sector from the vast network of Iranian financial criminals and the recipients of their illicit transactions.** This included brutal authoritarians, terrorist funders, weapons and missile proliferators, narco-traffickers, and human rights abusers.

Tranche after tranche of designations issued by the Treasury, backed by intelligence that often took months, if not years, to compile, isolated Iran's worst financial criminals. And designations were only the tip of the iceberg. Treasury officials traveled the globe to meet with financial leaders and business executives to warn them against transacting with known and suspected terrorists and weapons proliferators.[48] This campaign was crucial to isolating Iran in order to deter its nuclear ambitions and also to address the full range of its illicit conduct.

Following years of individual designations of Iranian and foreign financial institutions for involvement in the illicit financing of nuclear, ballistic missile, and terrorist activities,[49] 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 Central Bank of Iran (CBI), is a "jurisdiction of primary money laundering concern."[50] 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."[51] The entire country's financial system posed "illicit finance risks for the global financial system."[52] Internationally, the global anti-money laundering and anti-terror finance standards body the Financial Action Task Force (FATF) also warned its members that they should "apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran."[53]

As recently as June 26, 2015, FATF issued a statement warning that Iran's "failure to address the risk of terrorist financing" poses a "serious threat … to the integrity of the international financial system."[54]

The Section 311 finding was conduct-based; **it would be appropriate, therefore, to tie the lifting of sanctions on all designated Iranian banks, especially the legislatively-designated**

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

[49] Treasury designated 23 Iranian and Iranian-allied foreign financial institutions as "proliferation supporting entities" under Executive Order 13382 and sanctioned Bank Saderat as a "terrorism supporting entity" under Executive Order 13224. U.S. Department of the Treasury, Press Release, "Treasury Cuts Iran's Bank Saderat Off from U.S. Financial System," September 8, 2006; (http://www.treasury.gov/press-center/press-releases/Pages/hp87.aspx) & U.S. Department of the Treasury, Press Release, "Treasury Designates Major Iranian State-Owned Bank," January 23, 2012. (http://www.treasury.gov/press-center/press-releases/Pages/tg1397.aspx)

[50] 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)

[51] Ibid.

[52] 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)

[53] 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)

[54] The Financial Action Task Force, Public Statement, "FATF Public Statement 26 June 2015," June 26, 2015. (http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/public-statement-june-2015.html)

**Central Bank of Iran, and their readmission onto SWIFT and into the global financial system, to specific changes in the conduct of these Iranian entities across the full range of Iran's illicit financial activities. However, the JCPOA requires the lifting of financial sanctions—including the SWIFT sanctions—prior to a demonstrable change in Iran's illicit financial conduct.**

In the past, Washington has given "bad banks" access to the global financial system in order to secure a nuclear agreement. In 2005, Treasury issued a Section 311 finding against Macau-based Banco Delta Asia,[55] and within days, North Korean accounts and transactions were frozen or blocked in banking capitals around the world. North Korea refused to make nuclear concessions before sanctions relief and defiantly conducted its first nuclear test.[56] The State Department advocated for the release of frozen North Korean funds on good faith,[57] and ultimately prevailed. As a result, however, Washington lost its leverage and its credibility by divorcing the Section 311 finding from the illicit conduct that had prompted the finding in the first place. Undeterred, North Korea moved forward with its nuclear weapons program while continuing to engage in money laundering, counterfeiting, and other financial crimes.

Compromising the integrity of the U.S. and global financial system to conclude a limited agreement with North Korea neither sealed the deal nor protected the system. The JCPOA appears to repeat this same mistake by lifting financial restrictions on bad banks without certifications that Iran's illicit finance activities have ceased.

**The JCPOA stipulates that of the nearly 650 entities that have been designated by the U.S. Treasury for their role in Iran's nuclear and missile programs or for being owned or controlled by the government of Iran, more than 67 percent will be de-listed from Treasury's blacklists within 6-12 months.** This includes the Central Bank of Iran and most major Iranian financial institutions. After eight years, only 25 percent of the entities that have been designated by Treasury over the past decade will remain sanctioned. A number of the banks that are to be de-designated originally were designated for multiple reasons, not just nuclear, including for financing Iran's missile program (e.g. Bank Sepah), providing banking services to those banks designated for missile financing (e.g. Post Bank of Iran, EIH) or, in the case of the Central Bank of Iran, for multiple financial crimes as discussed above.

Many IRGC businesses that were involved in the procurement of material for Iran's nuclear and ballistic missile programs will be de-listed as will some of the worst actors involved in Iran's nuclear weaponization activities. Even worse, the EU will lift all of its counter proliferation sanctions on Iran. Although human rights-related sanctions will remain, and terrorism and Syria-related sanctions will remain on notorious Quds Force commander Qassem Soleimani,[58]

[55].U.S. Department of the Treasury, Press Release, "Treasury Designates Banco Delta Asia as Primary Money Laundering Concern Under USA PATRIOT Act," September 15, 2005. (http://www.treasury.gov/press-center/press-releases/Pages/js2720.aspx)

[56] David E. Sanger, "North Koreans Say They Tested Nuclear Device," *The New York Times*, October 9, 2006. (http://www.nytimes.com/2006/10/09/world/asia/09korea.html?pagewanted=all)

[57] Juan Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare*, (New York: Public Affairs, 2013), page 258.

[58] The Council of the European Union, "Council Implementing Regulation (EU) No 611/2011 of 23 June 2011 Implementing Regulation (EU) No 442/2011 Concerning Restrictive Measures in View of the

sanctions against the Qods Force itself will be lifted (although certain Syria-related sanctions will remain).

What is especially notable about the lifting of designations is that the Obama Administration has provided no evidence to suggest that these individuals, banks, and businesses are no longer engaging in the full range of illicit conduct on which the original designations were based. What evidence, for example, is there for the de-designation of the Central Bank of Iran, which is the main financial conduit for the full range of Iran's illicit activities, and how does a nuclear agreement resolve its proven role in terrorism and ballistic missile financing, money laundering, deceptive financial activities, and sanctions evasion? In other words, with the dismantlement of much of the Iran sanctions architecture in the wake of a nuclear agreement, the principle upon which Treasury created the sanctions architecture—the protection of the global financial system—is no longer the standard.

## SWIFT: CASE STUDY IN THE JCPOA'S PRECIPITOUS SANCTIONS RELIEF

The sanctions relief provided to Iran through its re-admission into the SWIFT financial messaging system is a case study in the scale of precipitous sanctions relief afforded to Iran under the JCPOA. It is also a cautionary study in how difficult it will be to snap back the most effective economic sanctions.

The JCPOA obligates the United States, European Union, and United Nations to lift sanctions at two specific intervals: On "Implementation Day" when the IAEA verifies that Iran has implemented its nuclear commitments under the JCPOA to reduce its operating centrifuges, reduce its low-enriched uranium stockpile, and modify the Arak heavy-water reactor, among other requirements; and on "Transition Day" in eight years or when the IAEA has reached a "broader conclusion" that Iran's nuclear program is entirely peaceful, whichever comes first. This last clause is critical: **Even if the IAEA cannot verify the peaceful nature of Iran's program, Iran will receive additional sanctions relief.**

The JCPOA will provide Iran with more than $100 billion in sanctions relief, if you include the funds reportedly tied up in oil escrow accounts, and as much as $150 billion based on figures quoted by President Obama,[59] which presumably includes funds that are legally frozen and those to which banks have been unwilling to provide Iran free access, even though they weren't under formal sanctions. These funds could flow to the coffers of terrorist groups and rogue actors like Hezbollah, Hamas, Palestinian Islamic Jihad, Iraqi Shiite militias, the Houthis in Yemen, and Syrian President Bashar al-Assad's regime in Damascus. President Obama has claimed the

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Situation in Syria," *Official Journal of the European Union*, June 24, 2011. (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:164:0001:0003:EN:PDF); The Council of the European Union, "Council Implementing Regulation (EU) 790/2014 of 22 July 2014 Implementing Article 2(3) of Regulation (EC) No 2580/2001 on Specific Restrictive Measures Directed Against Certain Persons and Entities with a View to Combatting Terrorism, and Repealing Implementing Regulation (EU) No 125/2014," *Official Journal of the European Union*, July 23, 2014. (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0790)

[59] Jeffrey Goldberg, "'Look ... It's My Name on This': Obama Defends the Iran Nuclear Deal," *The Atlantic*, May 21, 2015. (http://www.theatlantic.com/international/archive/2015/05/obama-interview-iran-isis-israel/393782/)

money would not be a "game-changer" for Iran.[60] As Supreme Leader Ali Khamenei, however, 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."[61] This infusion of cash will relieve budgetary constraints for a country, which had only an estimated $20 billion in fully accessible foreign exchange reserves prior to November 2013[62] but was spending at least $6 billion annually to support Assad.[63]

The real prize for Iran in the JCPOA sanctions relief package is regaining access to SWIFT, (the Society for Worldwide Interbank Financial Telecommunication) a little-known, but ubiquitous banking system that has been off-limits to the country since March 2012. **Iran's successful negotiation of the lifting of this sanction is a case study in how the JCPOA provides precipitous sanctions relief to Iran prior to a demonstrable change in Iranian financial practices.**

SWIFT is the electronic bloodstream of the global financial system. It is a member-owned cooperative comprising the most powerful financial institutions in the world, which allows more than 10,800 financial companies worldwide to communicate securely.[64]

By 2012, SWIFT represented one of Tehran's last entry points into the global financial system, as the United States and the European Union had sanctioned scores of banks, energy companies, and other entities under the control of the IRGC. In March 2012, SWIFT disconnected 15 major Iranian banks from its system in 2012 after coming under pressure from both the United States and the European Union.[65] It was a substantial blow to Tehran since SWIFT was not only how Iran sold oil but also how Iranian banks moved money. According to SWIFT's annual review, Iranian financial institutions used SWIFT more than 2 million times in 2010.[66] These transactions, according to *The Wall Street Journal*, amounted to $35 billion in trade with Europe alone.[67]

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[60] Barack Obama, "Press Conference by the President," *Washington, D.C.*, July 15, 2015. (https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president)
[61] "Iran Press Review 20 July," *Foundation for Defense of Democracies*, July 20, 2015. (http://www.defenddemocracy.org/iran-press-review-20-july)
[62] Mark Dubowitz & Rachel Ziemba, "When Will Iran Run Out of Money?," *Foundation for Defense of Democracies & Roubini Global Economics*, October 2, 2013. (http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf)
[63] 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)
[64] "Company Information," *SWIFT Website*, accessed July 20, 2015. (http://www.swift.com/about_swift/company_information/company_information?rdct=t&lang=en)
[65] SWIFT, Press Release, "SWIFT Instructed to Disconnect Sanctioned Iranian Banks Following EU Council Decision," March 15, 2012. (http://www.swift.com/news/press_releases/SWIFT_disconnect_Iranian_banks)
[66] "Annual Review 2010," *SWIFT Website*, accessed January 9, 2012, page 29. http://www.swift.com/about_swift/publications/annual_reports/annual_review_2010/SWIFT_AR2010.pdf
[67] "Swift Sanctions on Iran," *The Wall Street Journal*, February 1, 2012. (http://online.wsj.com/news/articles/SB10001424052970203718504577178902535754464)

As a result of congressional legislation targeting SWIFT,[68] EU regulators instructed SWIFT to remove specified Iranian banks from the SWIFT network.[69] It was congressional pressure, and an unwillingness by Congress to accept arguments advanced by Obama Administration officials that such action would undercut the multilateral sanctions regime, which finally persuaded the Obama Administration and EU officials to act.

Today, the JCPOA explicitly calls for the lifting of sanctions on the "[s]upply of specialized financial messaging services, including SWIFT, for persons and entities … including the Central Bank of Iran and Iranian financial institutions."[70] EU will lift SWIFT sanctions for the Central Bank of Iran and all Iranian banks[71] originally banned from SWIFT.[72]

The nuclear deal also lifts U.S. sanctions on 21 out of the 23 Iranian banks designated for proliferation financing—including both nuclear and ballistic missile activity.[73] The designation of Bank Saderat for terrorist financing will remain in place, but the sanctions against the Central Bank of Iran will be lifted. Twenty-six other Iranian financial institutions blacklisted for providing financial services to previously-designated entities (including NIOC which is being de-listed on Implementation Day) or for being owned by the government of Iran will also be removed from Treasury's blacklist.[74]

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[68] Senator Robert Menendez, Press Release, "Menendez Hails Banking Committee Passage of Iran Sanctions Legislation," February 2, 2012. (http://www.menendez.senate.gov/newsroom/press/menendez-hails-banking-committee-passage-of-iran-sanctions-legislation)

[69] "Payments System SWIFT to Expel Iranian Banks Saturday," *Reuters*, March 15, 2012. (http://www.reuters.com/article/2012/03/15/us-nuclear-iran-idUSBRE82E15M20120315)

[70] "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)

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

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

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

[74] Over the past decade, the Treasury Department has designated 51 banks and their subsidiaries inclusive of the 23 banks designated as proliferators, Bank Saderat which was designated for financing terrorism, and the Central Bank of Iran. With the exception of Bank Saderat, Ansar Bank, and Mehr Bank, all Iranian financial institutions will be de-listed on implementation day. Note, there is an inconsistency in Attachment 3. The Joint Iran-Venezuela Bank is listed as the same entry as Iran-Venezuela Bi-National Bank. On the SDN list, the two are listed with unique entries and different designations. FDD assumes, however, that both banks are being de-listed.

**The Obama Administration is assuming that the SWIFT sanctions (and other economic sanctions) can be reconstituted either in a snapback scenario or under non-nuclear sanctions like terrorism. However, the JCPOA notes that Iran may walk away from the deal and abandoned its nuclear commitments if new sanctions are imposed**: "Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part."[75] This gives Iran an effective way to intimidate the United States, and in particular, Europe into not reinstating sanctions, except for the most severe violations.

The threat of this "nuclear snapback" will prevent a response to technical and incremental violations for fear that Iran will walk away from the agreement and escalate its program, provoking a possible military crisis. It will also be used to make it very difficult for the United States and EU to ever reimpose SWIFT sanctions, which the Iranian government is likely to see as an act of economic or financial war, and will threaten to retaliate accordingly. This nuclear snapback will be discussed in greater detail in a subsequent section.

## THE IRGC: THE JCPOA'S BIG WINNER

**The IRGC stand to be the greatest beneficiary from the economic relief granted under the JCPOA through both an improvement in Iran's overall macroeconomic environment and through the dominance of the Revolutionary Guards in key strategic areas of the Iranian economy.** Already, the sanctions relief provided as part of the Joint Plan of Action (JPOA) enabled Iran to move from a severe economic recession to a modest recovery. During the JPOA negotiations, Iran received $11.9 billion in direct sanctions relief, including on major sectors of Iran's economy such as the auto and petrochemical sectors, permission to trade in gold, and President Obama's decision to de-escalate the sanctions pressure by blocking new congressional sanctions, rescued the Iranian economy and its rulers, including the IRGC, from a rapidly deteriorating balance of payments.[76]

In 2014, Iran's exports to Europe increased 48% year-over-year. Overall, between March 2014 and February 2015, Iran's non-oil and gas exports increased 22%.[77] The JPOA facilitated imports from the EU through a relaxation of the bloc's banking restrictions which increased the authorization thresholds for "non-sanctioned trade" ten-fold, from €40,000 to €400,000. Iran had better access to European goods, including spare parts for its automotive industry. The JPOA also suspended petrochemical sanctions; these exports rose 32% to $3.17 billion.[78]

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[75] "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, paragraph 37. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

[76] Jennifer Hsieh, Rachel Ziemba, & Mark Dubowitz, "Iran's Economy: Out of the Red, Slowly Growing," *Foundation for Defense of Democracies & Roubini Global Economics*, October 2014. (http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport_Oct14.pdf); Jennifer Hsieh, Rachel Ziemba, & Mark Dubowitz, "Iran's Economy Will Slow but Continue to Grow Under Cheaper Oil and Current Sanctions," *Foundation for Defense of Democracies & Roubini Global Economics*, February 2015. (http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport_FEB15.pdf)

[77] Emanuele Ottolenghi & Saeed Ghasseminejad, "Iran Sanctions Relief Sparks Growing Trade with Europe, Asia," *Foundation for Defense of Democracies*, March 27, 2015. (http://www.defenddemocracy.org/media-hit/Iran-sanctions-relief-sparks-growing-trade-with-Europe-Asia/)

[78] Ibid.

Economic forecasts prior to the announcement of the JCPOA based on expectations of the sanctions relief assessed that Iran's economic growth would likely stabilize around 2.6% in FY2015/16, and then accelerate to about 4% in FY 2016/17.[79] In the second half of the decade, Iran's economic growth would likely average 3.5-4%. Depending on Iran's economic policy choices, in FY 2017/18, growth could reach 5-6%.

In addition to the improvement in Iran's macroeconomic picture, which reduces threats to the political survival of the regime, the big winner from the unraveling of European and American sanctions will be the IRGC, which will earn substantial sanctions relief. **The IRGC not only directs Iran's external regional aggression, its nuclear and ballistic missile programs, and its vast system of domestic repression; the Guards also control at least one-sixth of the Iranian economy.[80] Their control over strategic sectors of the Iranian economy—banking, energy, construction, industrial, engineering, mining, shipping, shipbuilding, amongst others—means that any foreign firms interested in doing business with Iran will have to do business with the IRGC.**

In anticipation of the sanctions relief in a final nuclear deal, President Rouhani's 2015 budget rewards the IRGC. It includes a 48% increase on expenditures related to the IRGC, the intelligence branches, and clerical establishment. Iran's defense spending was set to increase by one-third, to $10 billion annually—excluding off the books funding.[81] The IRGC and its paramilitary force, the *Basij*, are set to receive 64% of public military spending, and the IRGC's massive construction arm Khatam al-Anbiya (which will be delisted by the European Union and is the dominant player in key strategic sectors of Iran's economy) will see its budget double. Rouhani's budget also included a 40% increase ($790 million) for Iran's Ministry of Intelligence.[82] Iran's latest five-year plan, announced days before the JCPOA, calls for an additional increase in military spending to 5% of the total government budget.[83] With access to additional revenue around the corner and with the termination of the arms embargo just over the horizon, Iran knows how it will spend its new cash.

My colleagues at the Foundation for Defense of Democracies Emanuele Ottolenghi and Saeed Ghasseminejad have done an extensive review of the sanctions relief and the entities that will be

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

[80] Parisa Hafezi & Louis Charbonneau, "Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer," *Reuters*, July 6, 2015. (http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706)

[81] Emanuele Ottolenghi & Saeed Ghasseminejad, "Iran's Repressive Apparatus Gets a Raise," *The Wall Street Journal*, December 22, 2014. (http://www.wsj.com/articles/emanuele-ottolenghi-and-saeed-ghasseminejad-irans-repressive-apparatus-gets-a-raise-1419281552)

[82] Ibid.

[83] Abbas Qaidaari, "More Planes, More Missiles, More Warships: Iran Increases Its Military Budget By A Third," *Al-Monitor*, July 13, 2015. (http://www.al-monitor.com/pulse/originals/2015/07/khamenei-orders-increase-military.html)

de-listed under the JCPOA.[84] The following is based on their analysis.

**Access to Europe and the De-Listing of IRGC Entities**

With the lifting of EU sanctions under the JCPOA, Europe will increasingly become an economic free zone for Iran's most dangerous people and entities. In addition to the lifting of specific types of economic and financial sanctions, the **JCPOA requires the United States and Europe to remove numerous IRGC-linked entities from their sanction lists**.

Europe will de-list significant IRGC entities and persons including the Quds Force. Some of these de-listings will occur on Implementation Day, but many more will fall off after eight years (assuming that they are even enforced over the next eight years).

Khatam al-Anbiya (KAA), a massive IRGC conglomerate, was designated by the United States as a proliferator of weapons of mass destruction.[85] It is Iran's biggest construction firm and, according to my colleagues' estimates, "may be its largest company outright, with 135,000 employees and 5,000 subcontracting firms."[86] The value of its current contracts is estimated to be nearly $50 billion, or about 12% of Iran's gross domestic product.[87] 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 is also involved in "road-building projects, offshore construction, oil and gas pipelines and water systems."[88] EU sanctions against the company will be lifted after eight years, whether or not the IAEA concludes that Iran's nuclear program is peaceful.

Similarly, the IRGC Cooperative Foundation (a.k.a. *Bonyad Taavon Sepah*), the IRGC investment arm, was designated by the U.S. Treasury as a proliferator of weapons of mass destruction,[89] but is slated to be de-listed by the EU after eight years as a result of the JCPOA. It

[84] Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/)
[85] Department of State, Office of the Spokesman, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism," October 25, 2007. (http://2001-2009.state.gov/r/pa/prs/ps/2007/oct/94193.htm)
[86] Parisa Hafezi & Louis Charbonneau, "Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer," *Reuters*, July 6, 2015. (http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706); Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/)
[87] Benoît Faucon & Asa Fitch, "Iran's Guards Cloud Western Firms' Entry After Nuclear Deal," *The Wall Street Journal*, July 21, 2015. (http://www.wsj.com/articles/irans-guards-cloud-western-firms-entry-after-nuclear-deal-1437510830)
[88] Ibid.
[89] Department of the Treasury, Press Release, "Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL," December 21, 2010. (http://www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx)

is not listed among the entities that the United States will de-list. The portfolio of IRGC Cooperative Foundation controls more than 20% of the value of the Tehran Stock Exchange.[90]

Ansar Bank and Mehr Bank, which are both IRGC-linked and were designated by the Treasury for providing financial services to the IRGC,[91] will also be de-listed by the EU (but not by the United States). They will be allowed back onto the SWIFT system and may open branches, conduct transactions, and facilitate financial flows for the IRGC.

**Other IRGC-linked banks, like Bank Melli,[92] will be de-listed by both the United States and Europe upon Implementation Day and allowed back onto SWIFT.**

The Quds Force, the IRGC's external arm, will also be a beneficiary of sanctions relief. In addition to the EU de-listing, the JCPOA will lift both U.S. and EU sanctions on Iran's commercial airline Iran Air, on which the Quds Force depends to "dispatch weapons and military personnel to conflict zones worldwide. … The Quds Force will have access to newer, larger, and more efficient planes with which to pursue its strategic objectives."[93]

The JCPOA also de-lists several IRGC military research and development facilities. For example, EU sanctions on the Research Center for Explosion and Impact will be lifted after eight years. This entity was designated by the EU for connection to the possible military dimensions of Iran's nuclear program.[94] Whether or not the IAEA has reached a broader conclusion that Iran's program is peaceful and this center is not engaged in weapons-related activities, the sanctions will be lifted.

In eight years, United States will also lift sanctions on central pillars of Iran's nuclear and weaponization activities. Two central individuals, Fereidoun Abbasi-Davani and Mohsen Fakhrizadeh, will be de-listed. Abbasi-Davani is the former head of the Atomic Energy Organization of Iran.[95] Fakhrizadeh is the AQ Khan of Iran's nuclear weapons development and, according to the U.S. State Department, "managed activities useful in the development of a

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

[91] Department of the Treasury, Press Release, "Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL," December 21, 2010. (http://www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx)

[92] Department of the Treasury, Press Release, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism," October 25, 2007. (http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx)

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

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

[95] Department of State, Press Statement, "Increasing Sanctions Against Iranian Nuclear Proliferation Networks Joint Treasury and State Department Actions Target Iran's Nuclear Enrichment and Proliferation Program," December 13, 2012. (http://www.state.gov/r/pa/prs/ps/2012/12/202023.htm)

nuclear explosive device" and designated "for his involvement in Iran's proscribed WMD activities."[96]

The United States will also de-list the Organization of Defensive Innovation and Research (SPND), an entity "primarily responsible for research in the field of nuclear weapons development," according to the U.S. State Department. The organization was designated less than a year ago, during the P5+1 negotiations with Iran, and was created by Fakhrizadeh.[97] The EU will also de-list SPND and Abbasi-Davani and Fakhrizadeh at the same time.

Additionally, the United States will de-list Aria Nikan Marin Industry, which sources goods for Iran's nuclear program and whose customers include Khatam al-Anbiya;[98] Iran Pooya, which supplies material for centrifuge production;[99] and the Kalaye Electric Company, which was designated as a proliferator in 2007 for its involvement in Iran's centrifuge research and development efforts.[100] Kalaye Electric was a site of centrifuge production in 2003. When the IAEA requested access and the ability to take environmental samples, Iran delayed granting access and, according to experts, took "extraordinary steps to disguise the past use and purpose of this facility."[101]

Jahan Tech Rooyan Pars and Mandegar Baspar Kimiya Company will also be delisted. These two entities were involved in illicit procurement of proliferation-sensitive material.[102]

## JCPOA BENEFITS KHAMENEI'S NETWORK OF CORRUPTION

My colleagues Emanuele Ottolenghi and Saeed Ghasseminejad have also studied the sanctions relief scheduled to be provided to Supreme Leader Ali Khamenei under the JCPOA. As they explain, the de-listing of these entities "will pump tens of billions of dollars into the supreme leader's personal coffers, helping him secure his grip on the Iranian people, and bolstering Iran's ability to promote its agenda abroad."[103] The following is based on their analysis.

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[96] Department of State, Media Note, "Additional Sanctions Imposed by the Department of State Targeting Iranian Proliferators," August 29, 2014. (http://www.state.gov/r/pa/prs/ps/2014/231159.htm)
[97] Ibid.
[98] Department of State, Press Statement, "Increasing Sanctions Against Iranian Nuclear Proliferation Networks Joint Treasury and State Department Actions Target Iran's Nuclear Enrichment and Proliferation Program," December 13, 2012. (http://www.state.gov/r/pa/prs/ps/2012/12/202023.htm)
[99] Ibid.
[100] Department of the Treasury, Press Release, "Treasury Targets Iranian Companies for Supporting WMD Proliferation," February 16, 2007. (http://www.treasury.gov/press-center/press-releases/Pages/hp267.aspx)
[101] "ISIS Imagery Brief: Kalaye Electric," *Institute for Science and International Security*, March 31, 2005. (http://isis-online.org/publications/iran/kalayeelectric.html)
[102] Department of State, Media Note, "Additional Sanctions Imposed by the Department of State Targeting Iranian Proliferators," August 29, 2014. (http://www.state.gov/r/pa/prs/ps/2014/231159.htm)
[103] Emanuele Ottolenghi & Saeed Ghasseminejad, "Under Iran Agreement, U.S. Will Delist All Entities Controlled by Supreme Leader," *Foundation for Defense of Democracies*, July 27, 2015.. (http://www.defenddemocracy.org/media-hit/ottolenghi-ghasseminejad-us-will-delist-entities-controlled-by-khamenei/)

Khamenei controls a network of foundations reportedly worth $95 billion.[104] At the top, sits the Execution of Imam Khomeini's Order (EIKO) or Setad. The U.S. Treasury Department designated this organization and its subsidiaries in June 2013 and noted at the time that the purpose of EIKO was "to generate and control massive, off-the-books investments, shielded from the view of the Iranian people and international regulators."[105]

Then-Under Secretary for Terrorism and Financial Intelligence David S. Cohen further explained:

> "Even as economic conditions in Iran deteriorate, senior Iranian leaders profit from a shadowy network of off-the-books front companies. While the Iranian government's leadership works to hide billions of dollars in corporate profits earned at the expense of the Iranian people, Treasury will continue exposing and acting against the regime's attempts to evade our sanctions and escape international isolation."[106]

An overview of the EIKO's holdings reveals the extent of its control of the Iranian economy. The value of EIKO's real estate portfolio totals nearly $52 billion; its stakes in publicly traded companies total nearly $3.4 billion (in 2013);[107] and Khamenei controls more than five percent of publicly traded companies on Tehran's Stock Exchange.[108]

EIKO's investment arm, Rey Investment Company is worth $40 billion, according to the U.S. Treasury.[109] Tadbir Group, EIKO's investment arm on the Tehran Stock Exchange, controls (among other entities) Parsian Bank and Karafarin Bank—valued at $900 and $830 million respectively.[110] EIKO also controlled a factory in Germany that may have provided Iran with critical dual-use technology for its nuclear program.[111]

The United States is scheduled to de-list Khamenei's financial empire on Implementation Day (in about 6-12 months) despite the fact that none of these entities were designated for nuclear proliferation. Instead, EIKO and the companies it controls were designated under Executive Order 13599 which blocks the property of the Government of Iran (GOI) or any subdivision, instrumentality or agency of the Government of Iran as well as any as well as any person owned or controlled by, or acting for or on behalf of, the GOI. Executive Order 13599 builds on the

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[104] Steve Stecklow, Babak Dehghanpisheh & Yeganeh Torbati, "Khamenei Controls Massive Financial Empire Built on Property Seizures," *Reuters*, November 11, 2013. (http://www.reuters.com/investigates/iran/#article/part1)
[105] Department of the Treasury, Press Release, "Treasury Targets Assets of Iranian Leadership," June 4, 2013. (http://www.treasury.gov/press-center/press-releases/Pages/jl1968.aspx)
[106] Ibid.
[107] Steve Stecklow, Babak Dehghanpisheh & Yeganeh Torbati, "Khamenei Controls Massive Financial Empire Built on Property Seizures," *Reuters*, November 11, 2013. (http://www.reuters.com/investigates/iran/#article/part1)
[108] Emanuele Ottolenghi & Saeed Ghasseminejad, "Who Really Controls Iran's Economy," *The National Interest*, May 20, 2015. (http://nationalinterest.org/feature/who-really-controls-irans-economy-12925)
[109] Ibid.
[110] Emanuele Ottolenghi & Saeed Ghasseminejad, "The Bank of Ayatollah," *National Post* (Canada), December 18, 2013. (http://news.nationalpost.com/full-comment/ottolenghi-ghasseminejad-the-bank-of-ayatollah) The net worth of Parsian Bank and Karafarin Bank is calculated from the Tehran Stock Exchange.
[111] Michael Birnbaum & Joby Warrick, "A Mysterious Iranian-Run Factory in Germany," *The Washington Post*, April 15, 2013. (https://www.washingtonpost.com/world/europe/a-mysterious-iranian-run-factory-in-germany/2013/04/15/92259d7a-a29f-11e2-82bc-511538ae90a4_story.html)

Section 311 of the USA Patriot Act finding that Iran is a jurisdiction of primary money laundering concern.[112]

These entities were involved in illicit financial practices including government corruption, and there is no indication that this conduct has changed. They continue to pose risks to the integrity of the global financial system and to engage in illicit and corrupt business practices. Yet, it appears that they will be granted a clean bill of health as a result of the JCPOA.

**List of Companies Controlled by EIKO Scheduled to be De-listed by the United States**

- Behsaz Kashane Tehran Construction Co.
- Commercial Pars Oil Co.
- Cylinder System L.T.D.
- Dey Bank
- Execution of Imam Khomeini's Order (EIKO)
- Ghadir Investment Company
- Ghaed Bassir Petrochemical Products Company
- Golden Resources Trading Company L.L.C.
- Hormoz Oil Refining Company
- Iran & Shargh Company
- Karafarin Bank
- Mahab Ghodss Consulting Engineering Company
- Marjan Petrochemical Company
- MCS Engineering
- MCS International Gmbh
- Modaber
- Omid Rey Civil & Construction Company
- One Class Properties (Pty) Ltd.
- One Vision Investments 5 (Pty) Ltd.
- Pardis Investment Company
- Pars Oil and Gas Company
- Pars Oil Co.
- Parsian Bank
- Persia Oil & Gas Industry Development Co.
- Polynar Company
- Rey Investment Company
- Rey Niru Engineering Company
- Reyco Gmbh.
- Rishmak Productive & Exports Company

[112] "Executive Order 13599," *Federal Register*, February 8, 2012. (http://www.gpo.gov/fdsys/pkg/FR-2012-02-08/pdf/2012-3097.pdf); U.S. Department of the Treasury, Press Release, "Treasury Targets Assets of Iranian Leadership," June 4, 2013. (http://www.treasury.gov/press-center/press-releases/Pages/jl1968.aspx); "New US Sanctions on the Government of Iran and Iranian Financial Institutions," *Steptoe & Johnson, LLP*, February 7, 2012. (http://www.steptoe.com/publications-newsletter-431.html)

- Royal Arya Co.
- Sadaf Petrochemical Assaluyeh Company
- Sina Bank
- Sina Shipping Company Limited
- Tadbir Brokerage Company
- Tadbir Construction Development Company
- Tadbir Economic Development Group
- Tadbir Energy Development Group Co.
- Tadbir Investment Company
- Tosee Eqtesad Ayandehsazan Company
- Zarin Rafsanjan Cement Company

## PART 3: ALTERNATIVES TO THE CURRENT JCPOA

Discussions of disapproving this current JCPOA quickly turn to questions of the alternative to this agreement. Those who support this JCPOA present a false choice between this agreement and war, and portray those who question this agreement as having no proposed alternative. As the liberal public intellectual Leon Wieseltier eloquently explains:

> "But what is the alternative? This is the question that is supposed to silence all objections. It is, for a start, a demagogic question. This agreement was designed to prevent Iran from acquiring nuclear weapons. If it does not prevent Iran from acquiring nuclear weapons—and it seems uncontroversial to suggest that it does not guarantee such an outcome—then it does not solve the problem that it was designed to solve. And if it does not solve the problem that it was designed to solve, then it is itself not an alternative, is it? The status is still quo. Or should we prefer the sweetness of illusion to the nastiness of reality? For as long as Iran does not agree to retire its infrastructure so that the manufacture of a nuclear weapon becomes not improbable but impossible, the United States will not have transformed the reality that worries it. We will only have mitigated it and prettified it. We will have found relief from the crisis, but not a resolution of it."[113]

There is an alternative to this current JCPOA. It is an amended JCPOA. Congress should require the administration renegotiate certain terms of the proposed JCPOA and resubmit the amended agreement for congressional approval. The amended JCPOA should much more effectively "cut off every single one of Iran's pathways"[114] to a nuclear bomb and retains tools of effective and peaceful sanctions enforcement against Iranian illicit behavior on multiple fronts. President Obama and his Cabinet have repeatedly said, "No deal is better than a bad deal."[115] In making

[113] Leon Wieseltier, "The Iran Deal and the Rut of History," *The Atlantic*, July 27, 2015. (http://www.theatlantic.com/international/archive/2015/07/iran-deal-history/399644/)
[114] Barack Obama, "Press Conference by the President," *The White House, Washington, D.C.*, July 15, 2015. (https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president)
[115] For example, Barack Obama, "Remarks by the President in a Conversation with the Saban Forum," *Willard Hotel, Washington, D.C.*, December 7, 2013. (https://www.whitehouse.gov/the-press-office/2013/12/07/remarks-president-conversation-saban-forum); John Kerry, "Interview With Martha Raddatz of ABC This Week," *Washington, D.C.*, March 1, 2015. (http://www.state.gov/secretary/remarks/2015/03/238051.htm); Susan Rice,

this commitment, the President had an acceptable alternative path in mind or he would not have threatened to walk away from the table.[116] It is reasonable to assume that no president would enter negotiations, especially over something as fundamental to American national security as preventing Iran from developing nuclear weapons, unless that president had a well-developed best alternative to a negotiated agreement.

As I discuss below, it is not unprecedented for Congress and a U.S. administration to work together to renegotiate the terms of a treaty or non-binding agreement. Congress can use this precedent to encourage the strengthening of the deal on its technical and conceptual merits. Congress should insist on an alternative to this deeply flawed deal and keep the president to his commitment that such alternatives always did—and continue to—exist. An agreement that gives Iran patient pathways to a nuclear weapon, access to heavy weaponry and ICBM technology, while enriching the leading state sponsor of terrorism, and its most hardline elements the IRGC and Iran's Supreme Leader with hundreds of billions of dollars in sanctions relief, should be unacceptable. An agreement that undermines the use of peaceful economic leverage should be unacceptable. An agreement that leaves military force as the only effective option for a future president to stop Iran's nuclear weapons development should be unacceptable.

The current JCPOA legitimizes Iran's nuclear program, provides significant sanctions relief prior to a demonstrable change in the conduct that prompted the sanctions, and risks spurring nuclear proliferation in the Middle East. No deal is better than this current JCPOA, and a better alternative is achievable.

## CONGRESSIONAL PRECEDENTS

Throughout American history, Congress has rejected or required amendments to more than 200 treaties and international agreements (of which about 80 were multilateral).[117] This includes major bilateral and multilateral arms control and nuclear agreements during and after the Cold War. My colleague at the Foundation for Defense of Democracies Orde Kittrie, professor of law at Arizona State University and former lead attorney for nuclear affairs at the State Department, has studied the issue of Congressional review of international agreements. The following is based on his research as well as the analysis of other experts.

During the Cold War, Congress played an active role in the negotiation and renegotiation of critical arms control agreements. Democratic Senator Henry "Scoop" Jackson took a leadership role in this respect in opposition to the Nixon administration. Following the Strategic Arms Limitation Talks (SALT I), Jackson authored an amendment to the resolution of approval that required future strategic arms control negotiations to set American strategic arms at parity with

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"Remarks As Prepared for Delivery at AIPAC Annual Meeting," *Washington, D.C.*, March 2, 2015. (https://www.whitehouse.gov/the-press-office/2015/03/02/remarks-prepared-delivery-aipac-annual-meeting-national-security-advisor)

[116] For example, June 30, 2015, President Obama said that he would "will walk away from the negotiations if, in fact, it's a bad deal." Barack Obama, "Remarks by President Obama and President Rousseff of Brazil in Joint Press Conference," *The White House, Washington D.C.*, June 30, 2015. (https://www.whitehouse.gov/the-press-office/2015/06/30/remarks-president-obama-and-president-rousseff-brazil-joint-press)

[117] For an analysis of the period prior to 1900, see R. Earl McClendon, "The Two-Thirds Rule in Senate Action Upon Treaties, 1789-1901," *The American Journal of International Law*, Vol. 26, No. 1 (Jan., 1932), pages 37-56.

those of the Soviet Union. The Jackson amendment provided criteria for future agreements and "emphasize the disquiet of many members of Congress … concerning the terms" of the agreement.[118] It expressed a Sense of Congress that, "urges and requests the President to seek a future treaty that, inter alia, would not limit the United States to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union."[119] On September 11, 1972, the Senate passed the Jackson amendment by a vote of 56 to 35. This amendment laid the predicate for Senator Jackson's later critique that the Carter Administration did not meet this standard in the SALT II Treaty.[120]

The Threshold Test Ban Treaty (TTBT) of 1974 was also initially blocked by the Senate because of concerns over Soviet compliance. TTBT was not submitted to the Senate for approval for two years after signing and was not ratified until after the United States and Soviet Union reached agreement 14 years later on additional provisions to enhance America's ability to verify Soviet compliance.[121]

Republicans and Democrats in the Senate also expressed disapproval of SALT II in a letter to President Carter in 1979. After the Soviet invasion of Afghanistan, Carter withdrew the treaty from Senate consideration.[122] President Reagan withdrew from voluntary adherence when the treaty expired in 1985, and then began negotiating the Strategic Arms Reduction Treaty (START) and working on the Strategic Defense Initiative (SDI).[123]

During the Presidency of Bill Clinton, Congress and the administration engaged in a four-year long discussion over the ratification of the Chemical Weapons Test Ban Treaty. It was only approved by Congress after the inclusion of 28 conditions in the resolution of ratification.[124] This treaty included 87 participating countries. The 1997 resolution of ratification of the Conventional Forces in Europe also contained 14 conditions. Congressional input derailed neither treaty.

At the end of the George W. Bush Administration, the United States and United Arab Emirates negotiated a civil nuclear cooperation agreement (called a 123 agreement). However, then-Chairman of the House Foreign Affairs Committee Howard Berman (D-CA) objected that the agreement did not ensure that the UAE would not engage in enrichment and reprocessing.[125] In response to Congressional pressure, the treaty was not submitted for approval, but instead, the incoming Obama Administration re-opened the negotiations. The amended agreement then included a binding commitment from the UAE not to engage in domestic enrichment or

[118] Michael Krepon, "The Jackson Amendment," *Arms Control Wonk*, August 6, 2009. (http://krepon.armscontrolwonk.com/archive/2414/the-jackson-amendment); "Congress Approves SALT Offensive Arms Agreement." *Congressional Quarterly*, 1973. (http://library.cqpress.com/cqalmanac/document.php?id=cqal72-1251467)
[119] Ibid.
[120] Ibid.
[121] "The Treaty on the Limitation of Underground Nuclear Weapon Tests (TTBT)," United States of America – Union of Soviet Socialist Republics, July 3, 1974. (http://www.state.gov/t/isn/5204.htm)
[122] "Milestones: 1969–1976: Strategic Arms Limitations Talks/Treaty (SALT) I and II," *U.S. Department of State Website*, accessed July 27, 2015. (https://history.state.gov/milestones/1969-1976/salt)
[123] Ibid.
[124] Jonathan B. Tucker, "U.S. Ratification of the Chemical Weapons Convention," *National Defense University Press*, December 2011. (http://ndupress.ndu.edu/Portals/68/Documents/casestudies/CSWMD_CaseStudy-4.pdf)
[125] Interview with former State Department arms control expert, July 23, 2015.

reprocessing. In short, Congress expressed concerns about specific components of an agreement; the administration listened to Congress and renegotiated a stronger agreement.

**In these examples, Congress played a significant role in rejecting or modifying important national security treaties or agreements. In some cases, like SALT I, TTBT, and SALT II, these were arms control agreements negotiated with the Soviet Union, a much more formidable adversary than Iran, in possession of thousands of nuclear tipped missiles where the risk and consequences of war were much greater. In the case of the Chemical Weapons Ban Treaty, this was a complicated multilateral negotiation involving 87 countries as compared to the six countries involved in the Iran negotiations. In the example of the 123 agreement, this was a complicated agreement that set a "gold standard" for civil nuclear cooperation that barred enrichment or reprocessing that is being overturned by the JCPOA. In several of the above examples, these were treaties that were legally binding as opposed to the non-binding political agreement that is the JCPOA.**

## LIKELY SCENARIOS IF CONGRESS REJECTS THIS CURRENT JCPOA

If Congress passes a Joint Resolution of Disapproval of the JCPOA and overrides a presidential veto, there are three likely scenarios that will result. None is good, but each is preferable to the current JCPOA, which provides Iran with multiple pathways to a nuclear bomb and provides the international community with no peaceful means to enforce the agreement.

### Scenario 1: Iranian Faithful Compliance

In this scenario, despite the rejection of the JCPOA by Congress, Iran could decide to implement its commitments in good faith. The implementation of Iran's nuclear commitments would then trigger U.N. and EU sanctions relief under the terms of the JCPOA.

In this case, the president would have two options:

A) Rebuff Congress and wield executive authority to the extent possible to neutralize the Corker-Cardin statutory sanctions block and proceed with the deal, In this case, the president could provide a substantial amount of the sanctions relief committed under the JCPOA by de-designating Iranian entities on Treasury's Specially Designated Nationals list,[126] working with the Europeans to permit most Iranian financial institutions back onto the SWIFT financial messaging system, and de-designating the Central Bank of Iran and permitting Iranian oil exports to increase. He would do this by following his signing statement where he declared section 1245 of the National Defense Authorization Act of 2012 (which imposed the legislative designation of the CBI and the legislative scheme to grant exceptions only to countries buying Iranian oil which "significantly reduced" these purchases) to be "non-binding" if it "conflicts with [his] constitutional authorities" to "conduct foreign relations";[127] or,

[126] "Specially Designated National List," *U.S. Department of the Treasury Website*, July 23, 2015. (http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx)
[127] The White House, Press Release, "Statement by the President on H.R.1540," December 31, 2011. (https://www.whitehouse.gov/the-press-office/2011/12/31/statement-president-hr-1540)

B) Accept the results of the Joint Resolution of Disapproval passed by Congress and undertake efforts to persuade our partners to join the U.S. in demanding that key parts of the agreement be renegotiated on better terms.

Scenario 1B would be the preferable outcome as it would maintain U.S. economic leverage and also lead to a renegotiation of the most troubling elements of the agreement (some of these are outlined below as examples). Even Scenario 1A would be preferable to the current JCPOA because although the United States would be providing certain sanctions relief, congressional disapproval would temper the markets. Western companies and banks, which are hesitant about re-entering the Iranian market because of market and counter-party risks—would be even less likely to enter into new business transactions. International banks are likely to take a wait-and-see approach before doing business with Iran—especially given the market-based risks, continued financial sanctions that target the IRGC and terrorism activities, and their uncertainties of what a new American administration would do with respect to the JCPOA and sanctions enforcement.

Foreign companies and financial institutions are likely to be cautious even if a vote of disapproval fails. They will be even more cautious if it succeeds. The U.S. financial sanctions regime will still retain its powerful deterrent effect even if Congress requires the administration to renegotiate the JCPOA. However, over time, under the JCPOA, market risks will diminish, banks will grow more confident about the counter-party risks, and political pressure will applied to finance the investment and trade that their home-country energy and industrial companies are seeking. The U.S. will never have greater economic leverage than it has now to renegotiate a better deal.

**Scenario 2: Iranian Walk Away**

If Congress disapproves of the JCPOA, Iran could decide to abandon its commitments and walk away from the JCPOA. The new U.N. Security Council resolution would not be implemented and the existing U.N. sanctions and arms embargo and ballistic missile restrictions would remain. If past is prologue, Iran will escalate its nuclear program incrementally not massively to avoid crippling economic sanctions or U.S. military strikes. Iranian nuclear escalation historically has involved incremental increases with the goal of avoiding a U.S. massive response.

For example, based on the IAEA reports from December 2008, February 2013 and November 2013, during the approximately five-year period of the most intense sanctions escalation during President Obama's term, Iran's nuclear program expanded as follows:

- Increase from 3,936 IR-1 operational centrifuges (5,412 total installed) in the December 2008 IAEA report to 9,146 IR-1 operational centrifuges (15,748 total installed) in the November 2013 IAEA report at the Natanz enrichment facility;
    - *Increase of 1,042 IR-1 operational centrifuges per year*
    - *Increase of 2,067 IR-1 installed centrifuges per year*

- Increase from zero IR-1s at Fordow in December 2008 to 696 IR-1 operational centrifuges (2,710 total installed) in November 2013;
    - *Increase of 139 IR-1 operational centrifuges per year*
    - *Increase of 542 IR-1 installed centrifuges per year*

- Increase from 180 IR-2m's centrifuges partially or fully installed in February 2013 at Natanz to 1,008 IR-2m's fully or partially installed in November 2013.
    - *Increase of 828 IR-2m partially or fully installed centrifuges in 9 months*

- Increase from 630 kg of Iran's low-enriched 3.5% stockpiles in November 2008 to 10,357 kg in November 2013.
    - *Increase of 1,945 kg of 3.5% LEU per year*

- Increase from zero kg of Iran's low-enriched 19.75% stockpiles in November 2008 to 410 kg in November 2013.
    - *Increase of 82 kg of 19.75% LEU per year*

While this increase was concerning, Tehran was careful not to engage in massive nuclear escalation that could trigger more crippling economic sanctions or military strikes. Despite President Hassan Rouhani's statement that if the West does not provide Iran with the nuclear deal it wants, Iran "will go back to the old path, stronger than what they [the West] can imagine,"[128] Iran has moved cautiously.

Iran is unlikely to rapidly move to rapid nuclear breakout because this would risk war (which despite the U.S. aversion to war, Iran understands it would ultimately lose). Rapid breakout would also likely unify Europe and the United States (and perhaps even Russia and China)—the opposite of what Iran seeks to achieve. All the P5+1 countries, including Russia and China, have been committed to stopping an Iranian nuclear weapon because of their own self-interest. This was even true of Russia, which faced U.S. and EU sanctions during the Iran negotiations over their invasion of Crimea and eastern Ukraine.

In this scenario, the president would use the power of secondary sanctions to persuade the Europeans to join a U.S.-led effort to isolate Iran again. EU sanctions would likely hold or, at a minimum, European companies and banks would be reluctant to re-enter Iran. China, India, Japan, South Korea and Turkey would be unlikely to release the $100 billion in oil escrow funds for fear of U.S. sanctions. Furthermore, these sanctions require Iran to spend the funds on goods from those countries so it is advantageous to those countries to keep the funds in escrow. It is a boon to their exports. Why would they release the funds so that Iran can spend the money elsewhere?

[128] "Iran's Rouhani Says the West Should Remain Committed to a Final Nuclear Deal: IRNA," *Reuters*, June 30, 2015. (http://www.reuters.com/article/2015/06/30/us-iran-nuclear-rouhani-idUSKCN0PA2DI20150630)

If Iran were to massively escalate, for example to 15,000 operational IR-1 centrifuges or deploy its existing 1,000 IR-2m centrifuges plus thousands more in a break-out scenario, the U.S. would be forced to respond with crippling sanctions or military force.

In addition to the re-imposition of sanctions suspended under the JPOA, these crippling sanctions could include the following new sanctions measures:

- Designating all remaining Iranian financial institutions and instructing SWIFT to expel all remaining financial institutions from the SWIFT messaging system;
- Sanctioning any U.S. or foreign financial institution that provides Iran access to, or use of, any of its funds except for humanitarian-related transactions;
- Dramatically reducing permissible imports of Iranian crude products;
- Banning countries buying Iranian crude from using oil escrow funds to export all non-humanitarian commercial goods to Iran;
- Blacklisting additional sectors of the Iranian economy owned or controlled by the government of Iran and/or the IRGC, including the mining, engineering and construction sectors;
- Re-imposing and vigorously enforcing gold sanctions to deny Iran access to gold to replenish its FX reserves;
- Imposing tighter sanctions on non-oil Iranian commercial exports;
- Expanding the definition of crude oil sanctions to include all oil products; and,
- Imposing additional sanctions against the holdings of Iran's bonyads and investment funds, and entities owned and or controlled by the IRGC, the Quds Force, the Supreme Leader and other entities.

The credibility of the U.S. threat to use crippling sanctions or military force is critical to deterring Iran from crossing U.S. redlines, which need to be clearly set by this or the next president.

**Scenario 3: Divide the P5+1**

In the third scenario, Iran could implement certain nuclear commitments but choose not to implement others, thus creating diplomatic ambiguity. Iran could then try to use diplomatic leverage to divide the Russians and Chinese from the West, and the Europeans from the United States. Iran's compliance with certain commitments might still trigger U.N. and EU sanctions relief, but Iran could exploit the P5+1 discord to demonstrate obstinacy on their JCPOA commitments, including on inspections, resolution of PMD issues, and the pace of nuclear compliance, among others.

This would be a messy scenario because of the divisions between the P5+1 partners, but ultimately, if all of the members were united around the goal of preventing an Iranian nuclear weapons, the situation may not reach a point of critical escalation – either in tensions between the U.S. and its partners and Iranian nuclear escalation. The president could threaten the use of new sanctions to keep countries and companies from normalizing with Iran and work to persuade the Europeans to join the United States in demanding that key parts of the agreement be renegotiated on better terms.

If we take the Secretary of State at his word, and he feels he would have no credibility in negotiating a new agreement, the Obama Administration can leave the issue of negotiations to the next administration. We would survive the period of time until a new administration (Democratic or Republican) takes office because Iran would not want to trigger major U.S. retaliation by engaging in massive nuclear escalation (see above).

**CONTINUE ECONOMIC AND DIPLOMATIC PRESSURE ON IRAN**

None of the above scenarios is ideal but they are not likely to be disasters, either. And they are better than this deal. These options ultimately depend on the power of American coercive diplomacy, economic sanctions, and the credibility of the American military option.

Secondary sanctions rely on the private sector making business decisions to minimize risk and maximize profits. All U.S. secondary sanctions present companies with a straightforward choice: You can do business with the United States or you can do business with rogue actors. In the case of Iran sanctions, when companies are presented with the choice between America's $17 trillion economy and Iran's approximately $400 billion economy, the overwhelming majority of companies will choose the United States.

The alternative to the current JCPOA depends on American coercive diplomacy: 1) leveraging the power of U.S. secondary sanctions to persuade international financial institutions and companies to stay out of Iran; 2) the use of military power, either directly or through the support of allies, against Iranian regime interests in Syria, Iraq, Yemen; and 3) the credible threat of conventional and cyber-enabled strikes against Iran's nuclear program, which is likely to increase after January 2017.

If the president believes that the United States has an effective economic snapback a decade or more in the future after companies have invested billions of dollars in the Iranian economy, then U.S. sanctions remain strong today. The international sanctions architecture is not yet crumbling, and Iran's economy is still fragile.

If the president believes, however, that the multilateral sanctions regime cannot withstand the fallout of the above scenarios, how will the United States have economic leverage in the future? If multilateral sanctions will not hold in the face of a renewed commitment to negotiate an improved agreement, then United States does not have sufficient peaceful economic leverage to enforce this agreement in the future when Iran's nuclear program will be much bigger, Iran can leverage its "nuclear snapback" against the re-imposition of sanctions, Iran's economy will be much stronger, and America's P5+1 partners will have made significant investments that they will be loathe to lose.

Furthermore, if the P5+1 unity and the international sanctions architecture would have held when the United States was prepared to walk away from the table during the negotiations, it can hold now. It is better to test the strength of international sanctions and U.S. secondary sanctions now rather than in a future breakout or sneakout scenario when Iran's nuclear program and economy are greatly expanded.

Even if the international community lifts all other sanctions, the world would merely revert to a pre-2010 dynamic in which the Washington imposed unilateral sanctions and presented foreign companies with a choice of doing business in the United States or Iran. Washington would have difficult conversations with its allies about sanctions enforcement, but given the power of U.S. markets and the dominance of the U.S. dollar, foreign companies are likely to keep Iran at arm's length.

## AMENDMENTS TO IMPROVE THE JCPOA

The JCPOA can be improved by returning to the principles that Congress has laid out and that are contained in six U.N. Security Council Resolutions. These include:

1) Sufficient dismantlement to ensure Iran cannot build a nuclear weapon;
2) Gradual sanctions relief and an agreement of sufficient duration tied to Iranian performance;
3) Serious inspection regime that combines short-notice, surprise inspections with extensive monitoring of declared sites; and,
4) Maintenance of sufficient economic leverage to peacefully enforce the agreement against Iranian non-compliance.

This current JCPOA can be improved in key areas. The following section provides a few examples of the specific changes that should be made. This is not an exhaustive list but is provided as an illustration of how Congress could require reasonable modifications to the agreement. The president should to be able to build consensus with U.S. allies that these (and other) amendments strengthen the deal and that congressional support is critical for a durable agreement.

### 1. Include a sunset clause that must be voted on every 10 years.

If it is currently unacceptable for Iran to obtain a nuclear weapons capacity, what is the reason for an arbitrary 10 and 15 year sunset of the limitations on Iran's nuclear activities? Instead, the agreement could be structure in such a way that the limitations only sunset upon an affirmative vote of the United Nations Security Council.

### 2. Permanently require excess uranium to be shipped out of Iran.

In the current JCPOA, Iran is required to ship out spent fuel from the Arak reactor for the lifetime of this facility. A similar requirement should be included that requires that excess enriched uranium above 300 kg be shipped out from Iran. During the Joint Plan of Action (JPOA) interim agreement, Iran failed to abide by its commitment to convert all excess uranium into uranium dioxide.[129] Rather than leave open the possibility that Iran may be unable to fulfill

[129] David Albright, Serena Kelleher-Vergantini, & Andrea Stricker, "Iran's Newly Produced Low Enriched Uranium Hexafluoride: Definitely not Converted into Uranium Dioxide," *Institute for Science and International Security*, July

its commitments regarding conversion of excess uranium, it could simply be required to be exported. In addition, there should be a permanent ban on Iran's ability to produce highly enriched uranium (HEU) and a permanent ban on reprocessing and reprocessing R&D.

3. **Limit Iran's enrichment to IR-1 centrifuges and prohibit advanced centrifuge R&D.**

Iran has no need for advanced centrifuges to meet its practical needs for civilian energy. These advanced models, once operational, reduce Iranian breakout time, and given a much easier clandestine sneak option. The JCPOA permits this capability beginning in year 8, accelerates in after year 10, and permits unlimited and industrial-scale deployment after year 15. Breakout time drops after year 10 from one-year, the Obama Administration's benchmark for an adequate time to mount a diplomatic, economic and military response, to perhaps "almost down to zero" by year 13, according to President Obama.[130] Respected nuclear physicist David Albright explains that the installation and operation of advanced centrifuges in year 13 "would allow Iran to lower its break-out times down to days or a few weeks."[131]

Once restrictions disappear at year 15 on full-scale deployment of advanced centrifuges, enrichment about 3.67% and the accumulation of stockpiles of LEU about 300 kg, Iran will be at near-zero breakout. With high-powered centrifuges capable of reaching enrichment targets at much greater efficiency, Iran also will need far fewer machines; this makes it easier for Iran to hide these centrifuges in a heavily fortified Fordow enrichment facility (which it will be able to use for enrichment or to build multiple Fordow-type facilities after year 15) – and enable an easier clandestine sneakout option to a nuclear weapon.

An amended agreement would ban the use of, and R&D into, these advanced centrifuges.

4. **Require an invasive inspections regime that allows go anywhere, anytime access to places, personnel, and paperwork. The inspections regime should be modeled on the South Africa experience.**

Former IAEA Deputy Director-General for Safeguards Olli Heinonen was recently asked by a member of Congress to rate the JCPOA verification and inspection regime on a scale of one to 10. He responded:

> "Thank you, Mr. Congressman. And I perhaps use this opportunity also to clarify my rating, which Ranking Member Lynch asked earlier today. He asked me to rate the deal with a scale from one to 10. *And as you see from my testimony, I actually have divided this testimony in three parts.*

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1, 2015. (http://isis-online.org/uploads/isis-reports/documents/ISIS_Comments_on_JPA_Report_July_1_2015_Final.pdf)

[130] "Transcript: President Obama's Full NPR Interview on Iran Nuclear Deal," *NPR*, April 7, 2015. (http://www.npr.org/2015/04/07/397933577/transcript-president-obamas-full-npr-interview-on-iran-nuclear-deal)

[131] Eli Lake, "Where the U.S. Caved to Get Iran to Sign," *Bloomberg*, July 17, 2015. (http://www.bloombergview.com/articles/2015-07-17/where-the-u-s-caved-to-get-iran-to-sign)

> "*One part is the declared facilities with declared materials; one is the rights and provisions to access undeclared activities, where I raised those concerns; and then there is a third category, which I mentioned in my written statement, which are some other activities which are proscribed, like activities related to acquisition of computers software to design nuclear explosive devises, to certain multipoint detonation systems.*
>
> "When I look the rating for each of those I think it's better to look each of those and you'll make your own risk assessment on that. *The first one, when I said* a *rating seven to eight, this is for declared facilities, the way I see. And why it is not higher is because there is this dispute settlement process, which you miss after 24 days or even more*. But then if you ask me to *give the rating for this access to suspected sites, undeclared sites, I don't think that I would give more than five, if we use this rating*. And then *if you ask my opinion with other possibilities to find these computer codes and someone using them, and there is actually even not really an inspection procedure for that, I think it's a zero. It's not even one*. So I think that this clarifies and answers to your concerns." (emphasis added)[132]

Elsewhere, Dr. Heinonen has written:

> "The IAEA verification regime must go further than the Additional Protocol (AP). Contrary to what is commonly understood, the AP does not provide the IAEA with unfettered access. Currently, the IAEA does not have access to Iran's sensitive nuclear information. For years, inspectors have been stonewalled. A verifiable agreement would require unfettered access to all key facilities, personnel, documentation, and other information being sought. The AP, by itself, does not fully oblige this."[133]

Dr. Heinonen argues that this "AP-plus" verification and inspection regime must be permanent:

> "AP-plus verification activities cannot end upon the expiration of an arbitrary period of time, but rather only when the IAEA has concluded that all nuclear material and activities in Iran are in peaceful use, that there are no undeclared activities, and the U.N. Security Council is able to conclude that Iran has fully restored international confidence in the peaceful nature of its nuclear program."[134]

[132] For more details, see Olli Heinonen, "Testimony on The Iran Nuclear Deal and its Impact on Terrorism Financing," *Testimony before the Committee on Financial Services Task Force to Investigate Terrorism Financing*, July 22, 2015. (http://financialservices.house.gov/uploadedfiles/hhrg-114-ba00-wstate-oheinonen-20150722.pdf)
[133] Olli Heinonen, "Verifying Iran for the Long Term," *Iran Task Force Memo*, March 2015. (http://taskforceoniran.org/pdf/Verifying_Iran.pdf)
[134] Ibid.

There is precedent for the IAEA to carry out additional verification measures alongside the Additional Protocol. Dr. Heinonen writes:

> "South African authorities adopted, in the early 1990's, an open, completely transparent policy of IAEA inspections 'any time—any place, with a reason.' Although South Africa ratified the AP in 2002, the IAEA continued to conduct such additional transparency measures parallel to its implementation of the AP until South Africa was given a clean bill of health in 2010. The rationale for the approach and extended monitoring was that enrichment and weapons-related know-how remained after the dismantlement of the actual infrastructure."[135]

**5. Require up-front ratification of the Additional Protocol.**

Under the JCPOA, Iran is not required to ratify the Additional Protocol until eight years into the agreement. Iran is only required to provisionally and voluntarily implement it. Iran signed the Additional Protocol in 2003 and provisionally implemented it while negotiating with the EU3.[136] But after the IAEA referred Iran to the U.N. Security Council for non-compliance with the NPT Safeguards Agreement, Iran suspended its voluntary implementation.[137] Iran has in the past used these "voluntary" measures to avoid complete and consistent implementation. Since the Additional Protocol plays a role in the verification regime, Iran should be required as part of the final deal to ratify the Additional Protocol up front. As discussed, verification and inspection requirements must go beyond the AP and must be permanent.

**6. Proper resolution of the PMD Issue.**

The "Road-Map for the Clarification of Past and Present Outstanding Issues Regarding Iran's Nuclear Program," is of great concern both because of the expedited time frame and the fear that this process will not address sufficiently the many outstanding questions that the IAEA and the U.S. intelligence community has about the possible military dimensions of Iran's nuclear weapons program. For Congress to judge that the PMD issue has been resolved sufficiently, according to William Tobey, the former deputy administrator for defense nuclear nonproliferation at the National Nuclear Security Administration, the IAEA must confirm that:

- It has a complete and correct understanding of the full extent of Iran's nuclear activities, including any military dimensions;
- It has found no indication that Iran is engaged in any military dimensions;
- It has found no indication of the diversion of declared nuclear material from peaceful activities nor any indication of undeclared nuclear material or activities; and,

[135] Ibid.
[136] International Atomic Energy Agency, Press Release, "Iran Signs Additional Protocol on Nuclear Safeguards," December 18, 2003. (https://www.iaea.org/newscenter/news/iran-signs-additional-protocol-nuclear-safeguards)
[137] Semira N. Nikou, "Timeline of Iran's Nuclear Activities," *United States Institute of Peace*, accessed July 27, 2015. (http://iranprimer.usip.org/resource/timeline-irans-nuclear-activities)

- It can monitor the people, facilities, sites, equipment, and materials involved in any military dimensions to ensure timely detection of any resumption of this work.[138]

**7. Tie sanctions relief to concrete changes in the conduct, which prompted sanctions.**

As explained in the next section, the sanctions relief in the amended JCPOA should link the lifting of sanctions with concrete changes in the conduct that prompted sanctions in the first place. The P5+1 could provide certain temporary relief without lifting sanctions.[139] Such a model would provide immediate economic relief to the Iranian people while retaining international economic leverage to enforce the agreement and address the range of Iranian illicit conduct that sanctions were aimed at addressing.

## PART 4: CONGRESSIONAL DEFENSE OF THE SANCTIONS ARCHITECTURE

In addition to working with the administration to renegotiate the most concerning components of the JCPOA, Congress can also act unilaterally and with the administration to ensure that the sanctions architecture is not precipitous unraveled. This defense of the sanctions architecture will provide peaceful economic leverage to enforce a better deal.

### Tie Sanctions Relief to Demonstrable Changes in Iranian Conduct

Since sanctions snapbacks are a flawed mechanism, the lifting of sanctions should be tied to changes in Iran's conduct that prompted the sanctions in the first place. The provision of sanctions relief should only occur after Iran meets specific, verifiable nuclear and illicit finance benchmarks.

Congress should require that the Obama Administration renegotiate the terms of the sanctions relief. The administration and Congress should work together to create a more effective sanctions relief program that deters and punishes Iranian non-compliance and supports the monitoring, verification, and inspection regime. The United States should also make it clear to Iran that Washington will continue to impose sanctions and target Iran's support for terrorism and its abuse of human rights, and particularly the dangerous role played by the IRGC across a range of illicit activities.

The following recommendations outline how Congress can defend the conduct-based sanctions architecture. These recommendations are aimed at providing a more effective mechanism for sanctions relief under an amended JCPOA.

[138] William Tobey, "The Hollow Core of the Iran Nuclear Deal," *Iran Task Force*, June 2015. (http://taskforceoniran.org/pdf/PMD.PDF)

[139] For a model on how such sanctions relief could be structured, see Mark Dubowitz & Richard Goldberg, "Smart Relief After an Iran Deal," *Foundation for Defense of Democracies*, June 2014. (http://www.defenddemocracy.org/content/uploads/documents/Final_Smart_Sanctions_Report.pdf)

1. **Develop a rehabilitation program for designated Iranian banks that puts the onus on Tehran to demonstrate that the banks are no longer engaged in illicit financial conduct.**

While U.S. financial sanctions are implemented and enforced by the Treasury Department, Congress can play a crucial role by legislating the terms of a rehabilitation program for designated Iranian banks and by laying out specific benchmarks that must be met prior to the suspension of financial sanctions.

Congress should require that Treasury submit a financial sanctions rehabilitation program plan that includes specific benchmarks that institutions must meet before Treasury suspends or terminates key designations. The rehabilitation program should focus on industry standards of financial integrity. Congress should also require Treasury to include a certification, subject to periodic reviews, that will be published in the Federal Register prior to de-designation.

Long term, the creation of a rehabilitation program would have implications beyond Iranian financial sanctions. This program would provide a framework for financial institutions designated for a range of illicit financial activities to improve their compliance standards and be readmitted to the global financial system as an institution in good standing.

2. **Work with the Obama Administration on licenses to foreign financial institutions and foreign companies engaging in business transactions with Iran.**

Given the significant presence of the IRGC in key strategic sectors of Iran's economy,[140] including the financial sector, it will very difficult for foreign financial institutions to confirm that their counterparts on any transaction are not connected to the IRGC. Only those institutions with the strictest compliance procedures may be able to differentiate between upstanding Iranian corporations and corrupt firms. Western banks, especially those that have previously run afoul of U.S. sanctions, may be hesitant to re-enter the Iranian financial market and reportedly only considering financing non-Iranian firms working in Iran.[141]

The United States can incentivize the implementation of strict due diligence and "know your customer" procedures by granting special licenses to companies to operate in Iran, but only for transactions not connected to the IRGC and not in support of terrorism, ballistic missile development, and human rights abuses. Even those foreign financial institutions will face significant risks from IRGC, ballistic missile, terrorism, and human rights sanctions; from lawyers seeking to collect on tens of billions of dollars in judgments on behalf of victims of Iranian terrorism; and from the reputational damage from association with repressive and dangerous regime elements. Buyer and seller beware will likely still be the operating principle for heads of global compliance of these banks long after a nuclear deal is concluded.

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[140] Emanuele Ottolenghi & Saeed Ghasseminejad, "Who Really Controls Iran's Economy," *The National Interest*, May 20, 2015. (http://nationalinterest.org/feature/who-really-controls-irans-economy-12925); Ali Alfoneh, "Sanctions Relief and the IRGC," *FDD Policy Brief*, June 4, 2015. (http://www.defenddemocracy.org/media-hit/ali-alfoneh-sanctions-relief-and-the-irgc/)

[141] Martin Arnold, Simond Kerr, & Ben McLannahan, "Post-Deal Iran an Opportunity but Legal Minefield Too," *Financial Times*, July 19, 2015. (http://www.ft.com/intl/cms/s/0/dc76399e-2aff-11e5-8613-e7aedbb7bdb7.html#axzz3gTRC6LZP)

This licensing program can, again, serve as a model for other sanctions programs. For example, while isolating Russian oligarchs who engage in corrupt business practices, the United States can provide special licenses for companies for companies that work with independent, well-managed Russian businesses.

**3. Legislate criteria for the suspension of sanctions on the Central Bank of Iran and the lifting of the Section 311 finding.**

The suspension of sanctions against the Central Bank of Iran, even more than the de-designation of individual Iranian banks, will provide significant relief to Iran and should therefore also be tied to verifiable changes in Iranian behavior. Lawmakers could require the president to certify to Congress, prior to suspending sanctions against the CBI and prior to the lifting of the Section 311 finding, that Iran is no longer a "jurisdiction of primary money laundering concern" and that the CBI, as the central pillar of Iran's illicit financial activities, is no longer engaged in "support for terrorism," "pursuit of weapons of mass destruction," including the development of ballistic missiles, or any "illicit and deceptive financial activities." Congress should stipulate that Treasury must certify that the entire country's financial system no longer poses "illicit finance risks for the global financial system." Congress should consider enshrining the Section 311 finding in legislation and making the lifting of the 311 subject to specific termination criteria relating to Iranian illicit conduct.

The legislation of termination criteria for the Section 311 finding would prevent a politically motivated lifting of the finding like that which occurred in the Banco Delta Asia case.

**4. Legislate under what circumstances funds in escrow accounts can be released.**

An estimated $100 billion in Iranian oil revenues have accumulated in semi-restricted escrow accounts and can only be spent on non-sanctionable goods in the countries where they are accumulating or on humanitarian goods from a third country. Between January 2014 and June 30, 2015, under the JPOA, Iran received $11.9 billion in installments from these escrow accounts.[142] Instead of allowing the repatriation of the funds to Iran, Congress should amend the Iran Threat Reduction Act (ITRA) to create a mechanism for the release of specific amounts in installments if Iran is complying with its commitments. However, these funds should not be repatriated to Iran and be moved to escrow accounts where Iran can spend them on non-sanctionable European goods and where they can be more easily recaptured in a snapback scenario (European banks are more likely to comply than Chinese banks, for example). None of these escrowed oil funds should be repatriated back to Iran until Treasury certifies that Iran is no longer a "primary money laundering concern" and a state sponsor of terrorism and Congress approves this certification.

[142] 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, pages 5-6. (http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf)

**5. Enforce and expand designations of IRGC-affiliated entities.**

Even an amended JCPOA will not address Iran's support for terrorism, threatening and destabilizing behavior towards its neighbors, and systematic human rights abuses. As such, Congress should require presidential certifications that no sanctions relief will go to the IRGC or IRGC-affiliated entities.

Congress could clarify that it expects that no sanctions on IRGC-linked entities, whether based on nuclear, ballistic missile, or terrorism activities, will be lifted against any entity or financial institution until the president certifies that Iran is no longer a state sponsor of terrorism and the IRGC no longer meets the criteria as a designated entity under U.S. law. Congress should go further and designate the IRGC in its entirety under Executive Order 13224 for its role in directing and supporting international terrorism (it is currently only designated under Executive Order 13382 for proliferation purposes; the Quds Force is designated under EO 13224).

**6. Enforce and expand IRGC, terrorism- and human rights-related designations.**

Iran's continued support for global terrorism requires that U.S. terrorism sanctions be maintained and expanded. Iran's human rights record has, by numerous expert accounts, deteriorated under President Hassan Rouhani.[143] Congress should work with the Obama Administration to enhance terrorism sanctions, particularly focused on the IRGC and Quds Force and its various officials, entities, and instrumentalities. Congress should work with the Obama Administration to significantly expand U.S. human rights sanctions against any and all Iranian officials, entities, and instrumentalities engaged in human rights abuses. The penalties for both of these sanctions should go beyond travel bans and asset freezes and target the sectors, entities, and instrumentalities that provide revenues to fund Iranian terrorism activities and/or human rights abuses.

The expansion of these sanctions would help temper market enthusiasm about Iranian business opportunities by demonstrating that transactions with Iran continue to carry significant counter-party and reputational risks. As my colleague and Chairman of FDD's Center on Sanctions and Illicit Finance Juan Zarate explains, "United States will need to amplify its use of financial measures aggressively against key elements of the Iranian economy to deal with the increased risks of Iranian activity."[144]

He goes on to explain, "There will likely be overlap between prior nuclear sanctions and new sanctions and preventive measures, but doing this will test the notion that all parties understand that these kinds of measures [non-nuclear related sanctions] were not on the table."[145]

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[143] "Iranian Nobel Laureate: Human Rights As Bad As Under Ahmadinejad," *Associated Press*, November 12, 2014. (http://english.alarabiya.net/en/perspective/features/2014/11/12/Iranian-Nobel-laureate-Human-rights-as-bad-as-under-Ahmadinejad.html); Sangwon Yoon, "Iran Leader Fails to Deliver on Rights Promises, UN Says," *Bloomberg*, October 27, 2014. (http://www.bloomberg.com/news/2014-10-27/iran-leader-fails-to-deliver-on-rights-promises-un-says.html)

[144] Juan Zarate, "Sanctions and the JCPOA," *Testimony before the Senate Foreign Relations Committee*, July 30, 2015. (http://www.foreign.senate.gov/imo/media/doc/07-30-15%20ZarateTestimony.pdf)

[145] Ibid.

## CONCLUSION

As a result of the sunset of restrictions on Iran's nuclear program and ballistic missile program and the access to heavy weaponry, Iran over time will be permitted not only to maintain its current nuclear capacity, but also to develop it further to an industrial-size nuclear program with a near-zero breakout time, an easier-to-hide and more efficient advanced-centrifuge-powered clandestine sneak-out pathway, and multiple heavy water reactors. Iran will be able to buy and sell heavy weaponry with the expiration of the arms embargo, bolstering IRGC military capabilities, and arming the most destabilizing and dangerous regimes and terrorism organizations. Iran will also be able to access key technologies to further develop its long-range ballistic missile program, including for the building of an ICBM that threatens the United States.

At the same time, the JCPOA dismantles much of the international sanctions architecture, while abandoning the core principles of the conduct-based sanctions regime that the Obama and George W. Bush Administrations had built up for more than a decade. The unraveling of the U.S. and EU sanctions regimes leaves Iran as a growing economy increasingly immunized against future economic sanctions snapbacks. It provides Iran with $100-$150 billion in early sanctions relief and hundreds of billions of dollars in future relief with which the leading state sponsor of terrorism can continue to fund its dangerous activities. Of great concern, the JCPOA provides Iran with a "nuclear snapback" to intimidate Europe, the United States, and other countries, to refrain from using sanctions as an effective mechanism to enforce the nuclear agreement and to target the full range of its illicit conduct including its support for terrorism.

The JCPOA is a fundamentally flawed deal in its inherent design. Rather than block Iran's pathways to a nuclear bomb, it provides a new path, the "patient path." Congress should require the Obama Administration to renegotiate and fix the major flaws of the agreement and resubmit an amended JCPOA to Congress for review. Throughout American history, Congress has rejected or required amendments to more than 200 treaties and international agreements (of which about 80 were multilateral). This includes major bilateral and multilateral arms control and nuclear agreements during and after the Cold War.

This testimony provides examples of reasonable and modest amendments to the current JCPOA. These amendments would create an agreement that improves the chances of permanently blocking all of the Islamic Republic of Iran's pathways to a nuclear bomb. Simultaneously, Congress should defend the economic sanctions architecture it helped create and tie all future sanctions relief to verifiable changes in Iranian conduct that prompted the sanctions in the first place.