



Reinforcing the Role of Sanctions in Restraining Iran

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The best way for the Trump administration to fulfill its commitment to repair the damage caused by what the president has described as the Obama administration’s “disastrous” approach to Iran in the wake of the Iran nuclear agreement involves a multipronged approach:

- *take back control of the narrative about the deal so as to expose Iran’s false claims;*
- *fully implement and enforce Iran’s obligations under the deal;*
- *enforce the remaining sanctions on Iran;*
- *press forward with additional sanctions for illicit behavior outside the scope of the deal; and*
- *apply proportional sanctions when Iran does not comply with parts of the nuclear deal.*

Unlike “tearing up the deal,” which puts the onus on the United States and may earn Iran political support in other capitals, this approach has the potential of winning international support for a much tougher stance against Iran to expose and disrupt Iranian malign activity.



One of the Trump administration's first orders of business will be deciding how to proceed with regard to the Iran nuclear deal. Indeed, without having to renegotiate or restructure anything, the new administration could bring significant pressure to bear on Iran. Although the Obama administration said it would hold Iran's feet to the fire on the full range of the Islamic Republic's illicit behavior—including still-sanctionable conduct such as support for terrorism, fomenting of regional instability, human rights violations, and ballistic missile procurement and proliferation—it did so only sporadically.

To the contrary, the Obama administration ceded the narrative to Tehran, which has successfully convinced many in the private and public sectors that in the wake of implementation of the nuclear agreement, they operate in a "post-sanctions environment." Speaking at the Council on Foreign Relations in April 2016, Iranian Central Bank governor Valiollah Seif claimed that "effective implementation of the agreement" must be done "in such a way that Iran's economic and business activities will be facilitated." But that assertion does not reflect the contents of the deal. The United States committed only to make its "best efforts in good faith"¹ to prevent interference with Iran's reintegration into the global financial system, a tacit acknowledgment that the outcome was not entirely within U.S. control. Rather, it is incumbent on Iran to demonstrate that it has ceased the behavior that made it a "financial pariah."² For the United States, failure to wield the remaining sanctions threatens to weaken compliance with future sanctions, whether against Iran or in other contexts.

In domestic rhetoric as well, Iranian officials have referred to lifting of the "*tahreem*" or embargo against Iran, when in fact the U.S. embargo on the export of goods and services to Iran remains largely in place. Some have feared that pushing back against this narrative would undermine the reformist Iranian president, Hassan Rouhani, leading up to presidential elections in May 2017, along with his ability to maintain Iran's commitment to the deal. However, more recently, Iranian officials have made clear that they do not intend to walk away from the deal. "The benefits of the deal are clear for everybody," Rouhani told

the Iranian Majlis in early December 2016.³ A few days earlier, his foreign minister, Mohammad Javad Zarif, said that U.S. efforts to punish Iran unilaterally would not undermine the agreement.⁴ Furthermore, Iran is intent on retaining support in European and Asian capitals for its broad interpretation of sanctions relief, both to encourage new business deals as well as to create a fissure within the P5+1 and weaken "snapback" sanctions capabilities. Following a meeting of the Joint Commission—a body set up by the P5+1 and Iran for dispute resolution related to implementation of the deal—the Russian representative told reporters, "The common approach from all the countries...was that it was necessary to do everything possible to avoid damage [to] implementation of the [nuclear deal]."⁵ The Europeans, for example, had certain assurances under the Obama administration that the United States would not jeopardize the sustainability of the deal. They have no such assurances from the Trump team. The new administration can leverage this uncertainty to seek cooperation, especially on new sanctions outside the scope of the nuclear deal.

There are several ways the new administration could successfully challenge Iran's regional aggression and disrupt its global terrorism, money laundering, and procurement networks (frequently referred to as the Iran Threat Network, or ITN) within this framework. Observers might reasonably also expect future congressional action in this area. Sanctions are part of that policy mix, and they constitute the focus of this paper.

Enhanced sanctions will work best, however, if they are accompanied by diplomatic, military, and intelligence measures in a coordinated campaign against Iran's destabilizing activities. Likewise, sanctions are most effective when they are adopted by an international coalition. Foreign partners have long been skeptical of U.S. unilateral sanctions when they are viewed as being capricious. Focusing on Iranian conduct that violates international norms will thus be most likely to draw multilateral support. Relatedly, demonstrating international resolve on nonnuclear issues is more apt to garner Iranian respect for the constraints of the deal itself.

As part of this approach, sanctions can play an enhanced role through a multipronged strategy: emphasizing the sanctions that remain, fully implementing those sanctions, imposing additional sanctions for nonnuclear transgressions, and applying proportional sanctions when Iran fails to comply with parts of the nuclear deal.

Emphasize Remaining Sanctions

The first component of this multipronged strategy is to change the narrative holding that sanctions are going away: this is not a post-sanctions environment, and Iran's ongoing illicit conduct is the reason for continued sanctions. Indeed, Iran made no commitment to cease nonnuclear malign activity and has not, in fact, halted it. In the words of Abbas Araqchi, Iran's deputy foreign minister and one of Iran's chief negotiators of the deal, "During the nuclear negotiations, we clearly said that questions of security, defense, ballistic missile and our regional policies were not negotiable and not linked to the nuclear talks."⁶ In fact, according to the top U.S. military commander in the Middle East, Army Gen. Joseph Votel, Iran has been more aggressive regionally since implementation of the nuclear agreement.⁷ Yet Iran is in complete control on this front: it can alter its behavior and cease engaging in illicit conduct, in which case sanctions will be removed. For the United States, rather than talking about reimposing suspended sanctions, which would receive strong pushback from U.S. allies, the narrative should be about exposing and disrupting persons and entities on still-sanctionable grounds.

Part of this new narrative involves repeating the statement that Iran remains subject to international norms. The idea is simple: "Iran gets no special pass." The nuclear accord does not prevent the imposition of nonnuclear sanctions or the use of other tools to contest such illicit conduct, just as arms treaties with the former Soviet Union did not spare it from other sanctions. Such an effort will be aimed, as noted, at changing the perception that sanctions are going away and the related Iranian narrative that any remaining restrictions signal bad faith by the United States.

Public statements should focus on the behavior that elicits sanctions, not the chilling impact they could have on investment in Iran or the uncertainty new sanctions would introduce. That said, the Trump administration should counter claims that the sanctions relief was "front-loaded" and make clear that a snapback of sanctions would have profound consequences for Iran. In doing so, Washington should emphasize that Iran still has much to lose—the bulk of Iran's no-longer-restricted assets remain offshore—and that renewed financial and commercial relationships remain tenuous. Statements should make a strong, direct case that Iran is violating international norms when it engages in deceptive behavior to deliver support to terrorist organizations; clandestine procurement for its missile program; use of information technology to suppress human rights; or violations of UN Security Council arms embargoes. The new U.S. administration should also make plain that the United States will expose and disrupt Iran's use of proxies to create plausible deniability and threaten asymmetric retaliation. The credibility of financial sanctions, and the ability to leverage them to build a multinational coalition, depends on responding directly to Iranian behavior and not casting sanctions-related actions as a tool of economic warfare.

Since the aim is to rally international support by showing that Iran rather than the United States is breaking the rules, sanctions enforcement should not be explained as a tactic to toughen the nuclear deal. Indeed, implying that the sanctions are meant to create uncertainty in the marketplace—to prevent Iran from benefiting from its yield from the nuclear deal—reinforces Iran's narrative that the United States isn't living up to its commitments under the Joint Comprehensive Plan of Action (JCPOA), as the deal is known. Likewise, revising or rescinding technical guidance on sanctions relief risks delegitimizing the Office of Foreign Assets Control (OFAC) in its role as technical implementer of sanctions policy. After all, the guidance is a reflection of underlying statute and regulation and does not alter legal realities. Furthermore, many of the regulatory realities reflect positions taken across U.S. sanctions programs and are not specific to the Iran program. Across-the-board changes may have unin-

tended consequences on other sanctions programs, whereas changing the rules only for Iran would complicate implementation.

Private-sector engagement on the risks of doing business with Iran opened up political space for European and Asian states to join in U.S.-led efforts to impose nuclear-related sanctions on the Islamic Republic. Given this history, the U.S. government should resume engagements with private- and public-sector actors around the world to highlight evidence that Iran continues to pose a threat to the global financial system. Rather than reassuring banks that doing business with Iran can help enshrine the nuclear deal, U.S. government officials at every level should emphasize that Iran bears the onus of demonstrating its adherence to the same requirements imposed on every other country by reining in illicit financial activity and conforming with international norms for its financial system. U.S. officials should also highlight the continued UN Security Council restrictions that Iran violates, including the embargo on Iranian arms exports extended under Security Council Resolution 2231 and the UN embargo on arming Hezbollah in Syria and the Houthis in Yemen. Recall that a number of Iranian individuals and entities sanctioned under earlier Security Council resolutions for their role in WMD procurement and weapons exports remain on the UN list. Also to be emphasized is that regional bodies concur with the United States that Hezbollah is a terrorist group—both the European Union and the Gulf Cooperation Council have designated Hezbollah in part or in full—and that Iranian human rights abusers are sanctionable not just by the United States but also by the EU. This will drive home the point that it is not only the United States that takes issue with Iran’s illicit conduct and continues to sanction Iran.

Furthermore, U.S. officials should emphasize that when foreign firms face problems in doing business with Iran, deceptive practices by Iranian companies are to blame. The U.S. mantra should be that the more Iran complies with international norms, the easier will be its integration into the world economy. Whenever Iranian officials complain about hindered access to the international financial system, Washington should quickly respond that Tehran must first comply with the

multinational Financial Action Task Force (FATF) standards on combating money laundering and terrorist financing.⁸ Indeed, U.S. officials should point out that Iran must act quickly not only to meet FATF standards but also to adopt Basel III requirements established over the past five years, including on transparency in financial accounts. Further, if Iran expects to have normal transactions with foreign banks, it needs to allow for information sharing on tax compliance in line with U.S. Foreign Account Tax Compliance Act (FATCA) requirements and now the OECD-sponsored Common Reporting Standard System adopted by more than a hundred countries.⁹ Whenever Iranian officials cite third-country concerns about U.S. penalties, Washington should respond that transparency from Iranian firms about their ownership would permit foreign businesses to easily comply with U.S. rules to avoid businesses affiliated with Iran’s Islamic Revolutionary Guard Corps (IRGC).

Rather than talking about the sanctions that have been lifted, U.S. officials should emphasize the sanctions that remain. In citing the JCPOA chapter and verse, Washington can point to text that underscores the risks of Iranian misbehavior: the retention of sanctions authorities (sanctions are waived or suspended, not terminated) and potential for snapback; the limited list of sanctions removed, clearly indicating many remaining nonnuclear sanctions;¹⁰ and footnotes that allow for abrogation of OFAC licenses should Iran misuse licensed aircraft.¹¹ Washington should then articulate that the flip side of its pledge not to introduce new nuclear sanctions is its reserved right to impose new sanctions for nonnuclear reasons. Such an approach lines up with the guiding principle suggested thus far: that the U.S. narrative should eschew a focus on sanctions going away while making clear that new sanctions do not represent a violation.

Fully Implement Existing Sanctions

The second element of the multipronged strategy is to intensify implementation of existing sanctions, since on a number of fronts, the Obama administration had been soft-pedaling the implementation of the existing sanctions designations.

■ TERRORISM

More-vigorous action is needed against several Iran-sponsored entities subject to sanctions for involvement in terrorism.

First is the Qods Force (QF), the branch of the IRGC responsible for external operations and support to terrorist proxies. The QF has been Iran's primary means of providing training materials and financial support to proxies worldwide, including in the Middle East (Lebanon, Syria, Iraq, Yemen) but also beyond (e.g., Nigeria, Kenya, Latin America). New designations under existing counterterrorism executive authorities could target QF personnel and support networks, such as those in Lebanon, Syria and Yemen, as well as outside the region, such as in sub-Saharan Africa and Latin America. For example, Kenyan officials arrested two Iranians in late November 2016 outside the Israeli embassy in Nairobi, where they reportedly had been casing the facility. The two Iranians, in a vehicle with diplomatic plates, had just visited a prison where two other Iranians were being held on terrorism-related charges. According to Kenyan officials, the two jailed Iranians belong to the Qods Force, and were convicted on charges of plotting attacks against Western interests in Kenya in 2013.¹² Diplomatic engagements should also include efforts to enforce UN travel bans on QF-affiliated individuals, including its commander, Qasem Soleimani.¹³

Second is Mahan Air, which was designated in 2011 for providing support to the QF. Targeting such QF-related sanctions evaders—agents and financial fronts—would expose and disrupt networks that facilitate the QF's provision of assistance to Iranian proxies. Mahan Air continues to fly routinely to Syria,¹⁴ possibly ferrying fighters and weapons. The airline also briefly made passenger flights from Tehran to Sana in the spring of 2015, not long after Houthi rebels took control of the Yemeni capital. These continued until the Saudi-led coalition bombed the tarmac to prevent a Mahan plane from landing.^{15, 16} Despite remaining on U.S. sanctions lists, Mahan Air has opened new routes to Moscow, Kiev, Copenhagen, and Paris since January 2016.¹⁷ The airline now reportedly flies to forty-three cities in twenty-nine countries, excluding Iran.¹⁸

The United States has taken only limited actions to

highlight the risks of doing business with Mahan Air. In 2012, the U.S. Department of the Treasury attached sanctions to 117 aircraft belonging to Iran Air, Mahan Air, and Yas Air, alleging that Tehran was sending both Iran Air and Mahan Air flights to Damascus to deliver military and crowd-control equipment to the Assad regime.¹⁹ Although the Iran Air planes were removed from sanctions lists as part of the JCPOA, more than forty Mahan Air and Yas Air planes remain subject to U.S. sanctions, and as a result, foreign banks that deal with them risk losing access to the U.S. financial system. This risk applies not just to the aircraft but also to any dealings with the airline as a whole. In May 2015, the United States designated Iraq-based Al-Naser Airlines,²⁰ from which Mahan obtained nine aircraft, and in March 2016 designated Britain- and UAE-based front companies acting on Mahan's behalf.²¹ In using sanctions authorities to expose Mahan's illicit activities and agents operating worldwide, the United States would support diplomatic efforts to encourage European, Asian, and Middle East states to ban Mahan flights, as Saudi Arabia did in April 2016,²² as well as put pressure on commercial actors to curtail relationships with Mahan, considering the additional sanctions risks. For example, such efforts could entail public exposure through designation of intermediaries that provide Mahan ticketing and other financial services in Europe and Asia, where banks would be unlikely to work directly with Mahan given the risk of losing access to the U.S. financial system.

Third on the list of entities against which additional enforcement is needed is Hezbollah. The Hezbollah International Financing Prevention Act (HIFPA), which came into effect in March 2016, extends to Hezbollah secondary sanctions like those employed against Iran. Prior to HIFPA, a series of U.S. actions had already constrained Hezbollah's financial operations, and the new law has intensified the pressure. The Treasury Department assessed in July 2016 that Hezbollah is in "its worst financial shape in decades."²³ For his part, in a televised address the previous month, Hezbollah secretary-general Hassan Nasrallah had denied the impact of outside pressure on the organization's commercial and criminal ties, insisting that Hezbollah was funded solely by Iran. This was despite

the bombing of a Lebanese bank earlier that month, widely believed to have been carried out by Hezbollah in response to the closure of reportedly hundreds of Hezbollah-related accounts by Lebanese banks, some of them arguably acting beyond the scope of the new U.S. law. While Lebanese regulatory authorities intervened to prevent so-called overcompliance with the U.S. law by local banks and forestall further confrontation with Hezbollah, additional U.S. designations of Hezbollah businessmen and businesses would give Lebanese banks cover to protect the Lebanese financial system from further abuse. Likewise, applying secondary sanctions under HIFPA to a financial institution banking Hezbollah or its associates outside the Middle East, such as in Africa or Latin America, would emphasize HIFPA's global reach and minimize the impact on Lebanon's financial sector.

Furthermore, investigations by U.S. and European law enforcement led to the revelation that Hezbollah's terrorist wing, the External Security Organization (aka the Islamic Jihad Organization), runs a dedicated entity specializing in worldwide drug trafficking and money laundering. This finding was made public in early 2016 by a joint operation that included the Drug Enforcement Administration (DEA), Customs and Border Protection, the Treasury Department, Europol, Eurojust, and authorities in France, Germany, Italy, and Belgium. The investigation spanned seven countries and led to the arrest of several members of Hezbollah's so-called Business Affairs Component (BAC) on charges of drug trafficking, money laundering, and procuring weapons for use in Syria.²⁴

As a result of this transnational investigation, authorities arrested "top leaders" of the BAC's "European cell." These included Mohamad Nouredine, "a Lebanese money launderer who has worked directly with Hezbollah's financial apparatus to transfer Hezbollah funds" through his companies while maintaining "direct ties to Hezbollah commercial and terrorist elements in both Lebanon and Iraq." In January 2016, the Treasury Department had designated Nouredine and his partner, Hamdi Zaher El Dine, as Hezbollah terrorist operatives, noting that the group needs individuals like these "to launder criminal proceeds for use in terrorism and political destabilization."

The outing of the BAC resulted from a series of DEA cases run under the rubric of "Project Cassandra," which targeted "a global Hezbollah network responsible for the movement of large quantities of cocaine in the United States and Europe." But there are many other recent cases in which transnational organized criminal activities are carried out by people with formal, even senior ties to the group.

Consider the two operatives arrested in October 2015 for conspiring to launder narcotics proceeds and international arms trafficking on behalf of Hezbollah. Iman Kobeissi, arrested in Atlanta, had offered to launder drug money for an undercover agent and informed him that her associates in Hezbollah were seeking to purchase cocaine, weapons, and ammunition. Joseph Asmar, arrested in Paris the same day in a coordinated operation, also discussed potential narcotics transactions with an undercover agent, offering to use his connections with Hezbollah to provide security for drug shipments. In total, the suspects mentioned criminal contacts in at least ten countries around the world, highlighting the transnational nature of this Hezbollah-run operation.

Indeed, over the past eighteen months, the group's criminal facilitators have been arrested around the world, from Lithuania to Colombia and many points in between. Others have been designated by the Treasury Department, including Kassem Hejeij, a businessman with direct ties to Hezbollah; Husayn Ali Faour, a member of the Islamic Jihad Organization; and Abd Al Nur Shalan, a key Hezbollah weapons procurer who has close ties with the group's leadership. In the words of a senior Treasury official, "Hezbollah is using so-called legitimate businesses to fund, equip, and organize [its] subversive activities."

Under the Obama administration, however, these investigations were tamped down for fear of rocking the boat with Iran and jeopardizing the nuclear deal. Now, the Trump administration should aggressively target Hezbollah's financial, logistical, and procurement networks, including resurrecting the DEA's now-defunct Project Cassandra. The new administration should also pursue Hezbollah's BAC operatives with designations and arrests, as well as seek extradition of arrested Hezbollah facilitators in France, Colom-

bia, Lithuania, and elsewhere, and thereafter indict them in U.S. courts.

■ BALLISTIC MISSILE DEVELOPMENT & CONVENTIONAL ARMS EXPORTS

Extension of ballistic missile and conventional arms restrictions on Iran for eight and five years, respectively, falls under UN Security Council Resolution 2231. Although UNSCR 2231 endorsed the JCPOA, Iran has said that it is bound only by the JCPOA and not the UN missile or arms restrictions, which it has long maintained are illegal. Since the JCPOA's implementation in January 2016, Iran has tested missiles on at least three separate occasions, most recently on January 29, 2017.²⁵ While UNSCR 2231 calls on Iran only to refrain from ballistic missile development—technically falling short of a ban—the resolution maintains sanctions, for the duration of the restrictions, on a number of Iranian individuals and entities involved in the country's ballistic missile program and arms exports. It also allows for new sanctions against those who act on behalf of those who remain on the list.

In addition to the remaining UN restrictions, U.S. sanctions continue to apply to a number of Iranian individuals and entities under Executive Order 13382, which applies financial sanctions to those involved in proliferation activities and their support networks.²⁶ Such nonproliferation sanctions can have a profound disruptive impact, since illicit procurement is often done under the guise of legitimate purchases of dual-use goods. These restrictions, however, have little meaning unless new entities are continuously added to the list of designated companies; otherwise, Iran will just create new shell fronts through which to evade the restrictions. The February 3, 2017, designation of several networks and supporters of Iran's ballistic missile procurement were the first such actions since the January 2016 designation of Mabrooka Trading for its role in missile-related procurement networks. In addition to targeting previously unknown or non-public fronts, robust implementation of nonproliferation sanctions ought to include continuing to identify affiliates of Iran's missile development complex, subagencies and commercial actors affiliated with

the Ministry of Defense and Armed Forces Logistics (MODAFL), the Defense Industries Organization, the Aerospace Industries Organization, which has done much of their missile work, and other key missile entities, including Shahid Hemmat Industrial Group and Shahid Bakeri Industrial Group, along with additional Iranian officials cooperating with North Korea on missile development. The March 2016 sanctions that targeted subsidiaries of Shahid Hemmat Industrial and the IRGC Al-Ghadir Missile Command provide an example.²⁷

Under the arms embargo of Security Council resolution 1747, adopted in March 2007, a number of Iranian individuals and entities were subjected to UN asset freezes and travel bans. These listings are maintained under the UNSCR 2231 regime. Notably, in 2012, Ali Akbar Tabatabaei, the commander of the IRGC-QF Africa Corps, was designated for overseeing weapons transfers in Africa, including a shipment intended for the Gambia by another sanctioned QF official, Hosein Aghajani.²⁸ The United States and UN also designated the earlier-mentioned Iranian cargo carrier Yas Air the same year for working with Hezbollah and Syrian officials to transfer weapons to Syria and the Tehran-based Behineh Trading Company for facilitating the entry of weapons and QF personnel into Nigeria.²⁹ In continuously updating these lists as new information becomes available, the United States must especially monitor Iranian arms transfers to Hezbollah in Syria and Houthi rebels in Yemen, and press for UN action in cases where sufficient evidence can be made public.

■ HUMAN RIGHTS ABUSES

Beginning in 2010 and lasting through 2014, the United States levied a number of sanctions against Iranian commercial and governmental entities and officials for committing "serious human rights abuses" linked to the crackdown following the Iranian election in 2009. Among those sanctioned was the IRGC for the mistreatment of political detainees held in a ward of Tehran's Evin Prison, which operates under the Guards' control.³⁰ The sanctions also extended

to the Basij and Iran's Law Enforcement Force, as well as to a number of senior security officials and government-related technology and telecommunications entities. However, no new human-rights-related designations have been made since implementation of the JCPOA.

Likewise, the EU has adopted a number of restrictive measures, including asset freezes and visa bans on individuals and entities responsible for committing human rights violations, as well as export bans on equipment that can be used for internal repression and monitoring telecommunications. Notably, the EU recently extended until April 2017 travel bans and asset freezes on eighty-two Iranian officials for their involvement in human rights violations.³¹ The new administration should consider additional designations to draw attention to Iran's poor human rights record and shore up EU support to maintain human-rights-related sanctions. (The EU must extend the restrictions annually.)

■ THE ISLAMIC REVOLUTIONARY GUARDS CORPS

The IRGC controls a large portion of the country's economy,³² and a number of its affiliates remain subject to U.S. and EU sanctions. As such, the application of U.S. secondary sanctions for dealings with IRGC affiliates remains a significant risk for companies looking to reengage with Iran. The engineering company Khatam al-Anbia (KACH) and a number of its subsidiaries, such as Sepanir Oil and Gas, which serves as the general contractor for part of the South Pars gas field, also remain on the UN sanctions list based on KACH's involvement in the construction of uranium enrichment sites at the Fordow enrichment plant.³³

The United States, however, has yet to impose secondary sanctions for dealings with the IRGC. Testifying at a hearing before the House Committee on Foreign Affairs on February 11, 2016, John Smith, the acting director of OFAC, said that he was not aware of any violations of U.S. sanctions targeting the IRGC since JCPOA implementation.³⁴ To be sure, the legal threshold for applying secondary sanctions is actually quite high: while an IRGC affi-

ate need not be listed by OFAC to create exposure for banks (it only needs to have more than 50 percent IRGC ownership), the banks must have "knowingly" engaged in a "significant transaction" to qualify for sanctions. The IRGC can exploit this standard by establishing front companies and hiding ownership or subsidiaries through nontransparent structures, making it nearly impossible for foreign companies to identify the true beneficial ownership of their counterparty.

When it comes to strengthening implementation of sanctions against the IRGC, the United States could take several steps. First, the Treasury Department can and should designate additional IRGC subsidiaries and front companies, based on either IRGC ownership or control, under existing executive orders. Independent researchers have already identified dozens of unlisted IRGC affiliates based on publicly available information.³⁵ Second, either executive or congressional action could be taken to lower the ownership threshold. Such a move, however, would put a greater onus on banks to identify the IRGC affiliates blocked by "operation of law" but not included on published sanctions lists, which will remain a challenge as long as Iranian financial and commercial sectors lack greater transparency. Third, Congress has raised the specter of designating the IRGC a foreign terrorist organization (FTO). Legislation introduced by Sen. Ted Cruz (R-TX) in early January 2017 calls on the State Department to assess the IRGC's suitability for designation as an FTO.³⁶ While there is no doubt that elements of the IRGC, such as the Qods Force, have engaged in support for terrorism, a designation would do little to strengthen sanctions against the IRGC, since it has already been designated under other authorities. Moreover, such a move is unlikely to curry international support.

■ STRICT ENFORCEMENT OF SEC REPORTING REQUIREMENTS

While the JCPOA allows firms to conduct a variety of new types of business with Iran, the nuclear deal does not change the requirement that firms report to the U.S. government about their business with Iran. This fact needs to be brought vigorously to the attention of

foreign firms, which must hear that failure to file the required reports will result in severe penalties. Disclosure of such ties, even if legally acceptable, could also trigger state-level divestment laws.

The reporting clause for business activities in Iran is located in Section 219 of the Securities and Exchange Commission (SEC) disclosure requirements, as mandated by the 2012 Iran Threat Reduction Act, with these requirements unaffected by the JCPOA.³⁷ Section 219 does not prohibit any conduct, but instead requires that issuers of publicly traded securities disclose in reports filed with the SEC any transaction with any part of the Iranian government, including the Central Bank; activities supporting the Iranian petroleum industry; facilitation of transactions with the IRGC; and transactions with persons sanctioned due to terrorism or weapons proliferations reasons.³⁸ Note that Section 219 applies not only to issuers of publicly traded securities but also to their “affiliates,” which include joint ventures, foreign-registered subsidiaries, and controlling shareholders. Likewise, Section 219 contains no “materiality” threshold, meaning that it applies to all activities, no matter how small. Since Section 219 was imposed, firms from Brazil, China, India, Japan, Britain, Switzerland, and Turkey, among other countries, have filed more than a thousand reports.

Because Section 219 disclosure requirements remain in effect, any firm with publicly traded securities in the United States will face increased reporting requirements if that firm does business with Iran. For instance, European firms previously forbidden from buying Iranian crude oil may decide to restart such purchases; if so, Section 219 disclosure requirements will be triggered. At first, the SEC Office of Global Security Risk rigorously enforced Section 219, querying companies about disclosures that omitted information about potential activities with Iran suggested by press reports. The SEC should resume such rigorous enforcement.

Consider New Nonnuclear Sanctions

In addition to more rigorously enforcing existing sanctions, the Trump administration should impose additional nonnuclear sanctions, especially for new

transgressions by Iran. Even though the United States never pledged to refrain from applying non-nuclear sanctions for Iran’s ongoing activities, linking new sanctions to Iran’s post-JCPOA behavior may make it easier for Washington to gain international understanding that these new sanctions are nonnuclear rather than a rebranding of the older nuclear sanctions.

■ CYBER SANCTIONS

Cyber is emerging as a key tool in Iran’s arsenal for dealing with both domestic and foreign threats.³⁹ Beyond the use of cyber tools for repression and monitoring of domestic opposition, a number of foreign attacks have been attributed to Iran in recent years. In August 2012, malware connected to Iran by U.S. intelligence officials destroyed data and disabled tens of thousands of Saudi Aramco computers.⁴⁰ The following month, hackers with ties to the Iranian government conducted a series of denial-of-service attacks primarily targeting the U.S. financial system, according to a March 2016 indictment of seven of the hackers.⁴¹ List-based blocking sanctions put into place by authorities under Executive Order 13694 of April 1, 2015, allow for targeting of “significant malicious cyber-enabled activities.” The authority, which was recently amended and deployed against Russian targets involved in cyber interference in the U.S. election, focused on the specific harms caused by significant malicious cyber-enabled activities, including threats to national security and critical infrastructure. Application of these sanctions could be used to expose Iranian entities involved in cyberattacks and create a possible deterrent to certain quasi-governmental and commercial actors within Iran, as well as foreign partners, from assisting in further development of Iranian offensive cyber capabilities.

■ MONEY LAUNDERING

Another possible tool is the “311” finding of Iran as a jurisdiction of primary money-laundering concern. The 311 (which refers to Section 311 of the USA PATRIOT Act) authorizes the treasury secretary to pursue a range of measures against a financial institu-

tion, jurisdiction, or class of transaction found to be of “primary money-laundering concern.” Associated with the finding against Iran in 2011, the Treasury Department issued a “notice of proposed rulemaking” calling for imposition of the “fifth special measure,” which would require U.S. financial institutions to implement additional due diligence to prevent improper indirect access to the U.S. financial system by Iran or Iranian entities. The finding was based on “Iran’s support for terrorism; pursuit of weapons of mass destruction (WMD); reliance on state-owned or controlled agencies to facilitate WMD proliferation; and the illicit and deceptive financial activities that Iranian financial institutions—including the Central Bank of Iran—and other state-controlled entities engage in to facilitate Iran’s illicit conduct and evade sanctions.”⁴² There is little reason to believe that Iran’s illicit financial conduct has ceased under the JCPOA. However, such regulatory measures are only implemented once a final rule has been issued, which was not done for the 311 on Iran. One option would be to make clear that this is a real option should FATF, the international standard-setting body for AML/CFT, remove Iran from its blacklist in June 2017 without Iran fulfilling the mutually agreed-on reforms under its FATF action plan.

■ COMMERCE AUTHORITIES

Somewhere between more rigorous implementation of existing restrictions and adoption of new sanctions would be fuller use of export controls. In part, this would mean devoting more resources and high-level attention to enforcing existing export controls. Generally speaking, this area gets woefully little attention and money because of the faulty perception that strict enforcement will cost U.S. jobs, when in fact most U.S. firms avoid questionable transactions. Thus, tighter enforcement will primarily affect foreign firms that incorporate U.S. products or technology in what they sell. In addition, it may well be appropriate to tighten export controls on products bound for Iran, such as products Iran is using for its cyberwarfare activities. Just by playing up export controls and their application to goods with more than 10 percent

U.S.-origin content, the U.S. government could have a considerable chilling effect on those considering selling dual-use items to Iran. In sum, compliance with export controls is so complicated and resource-intensive that it is an underappreciated deterrent to commercial actors.

Apply Proportional Sanctions for JCPOA Noncompliance

When Congress was considering the nuclear deal, the Obama administration insisted that it had reserved the right to apply proportional sanctions in the event of Iranian noncompliance with parts of the deal—that is, snapback of sanctions would not be an all-or-nothing proposition, nor would it depend on reaching consensus with the other major powers on whether Iran was complying with the deal’s provisions. Adam Szubin, acting undersecretary of the treasury for terrorism and financial intelligence, acknowledged the concerns of international partners regarding minor violations by Iran when he noted in December 2015 that “we retain full flexibility, from partial measures to total snap back...”⁴³ That flexibility, the Obama team insisted, showed that the threat of snapback sanctions was real, rather than a purely theoretical provision.

Unfortunately, Iran may well not be complying with a part of the deal—not violating the deal so openly that the other major powers will agree that a full sanctions snapback is required but nevertheless calling for a firm U.S. response. In particular, Iran has made limited use of the nuclear procurement mechanism, set up by the JCPOA, through which Iran is supposed to acquire all foreign materials for its enrichment program. As of mid-January 2017, the mechanism had received only five requests to provide restricted goods to Iran, three of which had been approved and two that remained pending with the UN Security Council.⁴⁴ It is implausible that a nuclear program the size and scope of Iran’s would need little from abroad. Indeed, the German government reported in summer 2016 that Iran continued to procure material for its nuclear program through other

channels.⁴⁵ Washington should therefore insist on a discussion in the Joint Commission about Iran's obligations regarding this procurement mechanism. In its current approach, Iran claims no obligation to follow this mechanism, asserting the obligation belongs entirely to the government of the country where the supplier is located (this was also the Obama administration's interpretation). The Trump administration should devote intelligence community resources to identifying Iranian procurement occurring outside this mechanism.

Should clear evidence emerge indicating Iran is avoiding its obligations to use the procurement channel, Washington has the right under the agreement to trigger the mechanisms for full reimposition of nuclear sanctions. However, such a move would be an extreme reaction to a limited violation, and other countries quite possibly might not go along—helping explain why the nuclear deal's critics said the snapback provisions were unlikely to be invoked. Altogether, the United States should make clear that it reserves the right to impose appropriate sanctions even in the absence of international agreement on how to respond. Washington here needs to show that it does indeed reserve the right to act unilaterally against limited Iranian noncompliance: snapback is not all-or-nothing, nor is it contingent on complete agreement within the international community. The Obama administration claimed to be contemplating such unilateral and limited action in the case of limited Iranian noncompliance, so the Trump administration would be on firm ground adopting such a policy.

Conclusion

The new administration should develop, articulate, and implement a clear post-JCPOA sanctions policy based on the elements laid out in this paper: emphasizing the sanctions that remain; fully implementing

those sanctions; and developing new nonnuclear sanctions and proportional responses to Iranian noncompliance with the JCPOA.

Allowing Iran to continue defining the success of the nuclear deal in terms of insufficient trade resumed or difficulty of financing obscures the role of Iran's nonnuclear behavior in dispelling potential commercial partners. Such behavior includes Iran's failure to abide by international norms both in moderating aggressive behavior in the region and in implementing reforms protecting its financial and commercial sectors from illicit financial activity and sanctions evasion. The Trump administration should therefore focus on Iran's conduct as the reason for the country's continuing isolation and the basis for a resumption of financial pressures.

While the administration has broad authority to shape sanctions policy and implementation, not all options are implementable, advisable, or should be employed immediately. First, there are limits to U.S. jurisdiction and the ability to compel foreign compliance. Consequently, policy should focus on building a broad coalition based on the consensus that Iranian behavior violates international norms. This is not to say that unilateral sanctions are useless. They can serve to communicate Iranian illicit activity and cause commercial actors to withdraw voluntarily from business based on reputational concerns, creating political openings for third countries to act. Second, Iran-specific changes to principles that underlie broader sanctions policy would complicate implementation. In such a case, direct action under existing authorities or the creation of new authorities is preferable to modifying guidance or enforcement. Finally, Congress is going to want to play a role in strengthening the role of sanctions in restraining Iran. The new administration and congress will need to work together to ensure that they are moving in the same direction.

Notes

1. See UN Security Council Resolution 2231, July 20, 2015, p. 17/104, par. 26, [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231(2015)).
2. Stuart Levey, "Kerry's Peculiar Message about Iran for European Banks," *Wall Street Journal*, May 12, 2016, <http://www.wsj.com/articles/kerrys-peculiar-message-about-iran-for-european-banks-1463093348>.
3. Shashank Bengali and Ramin Mostaghim, "Iran Says It Won't Walk Away from the Nuclear Deal That Trump Has Threatened to 'Dismantle,'" *Los Angeles Times*, December 4, 2016, <http://www.latimes.com/world/la-fg-iran-us-nuclear-20161204-story.html>.
4. *Ibid.*
5. Shadia Nasralla, "Iran Decides Not to Upset Nuclear Deal over U.S. Sanctions Extension," Reuters, January 10, 2017, http://mobile.reuters.com/article/idUSKBN14U2CL?feedType=RSS&feedName=Iran&virtualBrandChannel=10209&utm_source=dlvr.it&utm_medium=twitter.
6. "Iran Says Kerry's Remarks on Sanctions 'Unacceptable,'" *Gulf News*, October 17, 2016, <http://gulfnews.com/news/mena/iran/iran-says-kerry-s-remarks-on-sanctions-unacceptable-1.1913911>.
7. Kristina Wong, "U.S. General Sees 'Uptick' in Bad Behavior by Iran since Nuke Deal," *The Hill*, November 30, 2016, http://thehill.com/policy/defense/308151-us-general-sees-uptick-in-malign-iranian-activities-since-nuclear-deal#.WEBMCj_bCe4.twitter.
8. For more, see Katherine Bauer, "Iran Faces Challenges in Implementing Its FATF Action Plan," PolicyWatch 2717 (Washington Institute for Near East Policy, October 26, 2016), <http://www.washingtoninstitute.org/policy-analysis/view/iran-faces-challenges-in-implementing-its-fatf-action-plan>; see also Matthew Levitt and Katherine Bauer, "Iran's 'Resistance Economy'—and Stalled Reform Efforts," *Wall Street Journal*, September 23, 2016, <http://blogs.wsj.com/washwire/2016/09/23/irans%E2%80%8B-resistance-economy-and-stalled-reform-efforts/?cb=logged0.8635195400458011>.
9. Known formally as the Standard for Automatic Exchange of Financial Account Information, under the Convention on Mutual Administrative Assistance in Tax Matters. Some of the one hundred countries will begin the automatic exchange only in 2018.
10. JCPOA Annex II (about sanctions-lifting), Part B (what the U.S. government will do), Section 4.1.1., in which the deal expressly notes the U.S. pledge to cease applying sanctions on certain designated individuals and entities subject to sanctions under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA). The United States did not commit to lift CISADA. In fact, it is because CISADA still remains in effect that secondary sanctions apply to Iran-related individuals and entities designated under nonnuclear authorities.
11. JCPOA Annex II, Part B, footnote 12: "Should the United States determine that licensed aircraft, goods, or services have been used for purposes other than exclusively civil aviation end-use, or have been re-sold or re-transferred to persons on the SDN List, the United States would view this as grounds to cease performing its commitments under Section 5.1.1 in whole or in part." In other words, the consequence of using planes for anything other than "exclusively civil aviation end-use" is expressly written into the JCPOA.
12. Tom Odula, "Two Iranians Charged in Kenyan Court with Terrorism," Associated Press, December 1, 2016, <http://bigstory.ap.org/article/baa8add6425841a9b54efb7f8bd56850/2-iranians-charged-kenyan-court-terrorism>.
13. "The List Established and Maintained pursuant to Security Council Res. 2231 (2015)," United Nations, <https://scsanctions.un.org/fop/fop?xml=htdocs/resources/xml/en/consolidated.xml&xslt=htdocs/resources/xsl/en/iran.xsl>.
14. Emanuele Ottolenghi, "Flying in the Face of U.S. Sanctions," *Wall Street Journal*, February 3, 2016, <http://www.wsj.com/articles/flying-in-the-face-of-u-s-sanctions-1454531168>.
15. "First Iran Flight Lands in Shiite-Held Yemen Capital," *National*, March 1, 2015, <http://www.thenational.ae/world/middle-east/first-iran-flight-lands-in-shiite-held-yemen-capital>.
16. Mohammed Ali Kalfood and Kareem Fahim, "Saudis Hit a Yemeni Airport, Possibly Closing Aid Route," *New York Times*, April 28, 2015, <http://www.nytimes.com/2015/04/29/world/middleeast/saudis-hit-a-yemeni-airport-possibly-closing-aid-route.html>.

17. See Mahan Air Press Room, <http://www.mahan.aero/en/contact/press-room>.
18. See Mahan Air International Route Network, <http://www.mahan.aero/en/destinations/route-network>.
19. U.S. Department of the Treasury, "Treasury Designates Syrian Entity, Others Involved in Arms and Communications Procurement Networks and Identifies Blocked Iranian Aircraft," press release, September 19, 2012, <https://www.treasury.gov/press-center/press-releases/Pages/tg1714.aspx>.
20. U.S. Department of the Treasury, "Treasury Department Targets Those Involved in Iranian Scheme to Purchase Airplanes," press release, May 21, 2015, <https://www.treasury.gov/press-center/press-releases/Pages/jl10061.aspx>.
21. U.S. Department of the Treasury, "Treasury Sanctions Supporters of Iran's Ballistic Missile Program and Terrorism-Designated Mahan Air," press release, March 24, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0395.aspx>.
22. Sami Aboudi, "Saudi Arabia Suspends Iran's Mahan Air License to Use Its Air Space," Reuters, April 4, 2016, <http://www.reuters.com/article/us-saudi-iran-aviation-idUSKCN0X123L>.
23. U.S. Department of the Treasury, "Testimony of Acting Under Secretary for Terrorism and Financial Intelligence Adam J. Szubin before the House Committee on Foreign Affairs," press release, May 25, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0466.aspx>.
24. U.S. Drug Enforcement Administration, "DEA and European Authorities Uncover Massive Hizballah Drug and Money Laundering Scheme," February 1, 2016, <https://www.dea.gov/divisions/hq/2016/hq020116.shtml>.
25. Peter Kenyon, "Did Iran's Ballistic Missile Test Violate A U.N. Resolution?" NPR *Parallels*, February 3, 2017, <http://www.npr.org/sections/parallels/2017/02/03/513229839/did-irans-ballistic-missile-test-violate-a-u-n-resolution>.
26. U.S. Department of State, "Executive Order 13382—Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," July 1, 2005, <http://www.state.gov/documents/organization/135435.pdf>.
27. U.S. Department of the Treasury, "Treasury Sanctions Supporters of Iran's Ballistic Missile Program and Terrorism-Designated Mahan Air," press release, March 24, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0395.aspx>.
28. U.S. Department of the Treasury, "Treasury Targets Iranian Arms Shipments," press release, March 27, 2012, <https://www.treasury.gov/press-center/press-releases/Pages/tg1506.aspx>.
29. Ibid.
30. U.S. Department of the Treasury, "Treasury Sanctions Iranian Security Forces for Human Rights Abuses," press release, June 9, 2011, <https://www.treasury.gov/press-center/press-releases/Pages/tg1204.aspx>.
31. "Council Decision (CFSP) 2016/565 Amending Decision 2011/235/CFSP concerning Restrictive Measures Directed against Certain Persons and Entities in View of the Situation in Iran," *Official Journal of the European Union*, April 12, 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0565&qid=1460465337598&from=EN>.
32. Greg Bruno, Jayshree Bajoria, and Jonathan Masters, "Iran's Revolutionary Guards," *CFR Backgrounder*, Council on Foreign Relations, June 14, 2013, <http://www.cfr.org/iran/irans-revolutionary-guards/p14324>.
33. United Nations, "Security Council Imposes Additional Sanctions on Iran, Voting 12 in Favour to 2 Against, with 1 Abstention," June 9, 2010, <http://www.un.org/press/en/2010/sc9948.doc.htm>.
34. "Iran Nuclear Deal Oversight: Implementation and Its Consequences," hearing before the Committee on Foreign Affairs, U.S. House of Representatives, February 11, 2016, <http://docs.house.gov/meetings/FA/FA00/20160211/104456/HHRG-114-FA00-Transcript-20160211.pdf>.
35. See Annex I of 2015 testimony by Emanuele Ottolenghi before the House Committee on Foreign Affairs for a list of publicly traded companies in which the IRGC is a shareholder. The document contains active links to Tehran Stock Exchange ownership information. As Ottolenghi notes in his testimony, in a number of cases, ostensible ownership is held by undesignated IRGC affiliates whereas effective ownership and control by designated individuals or entities is obscured through the chain of fronts: "The Iran Nuclear Deal and Its Impact on Iran's Islamic Revolutionary Guard Corps," September 17, 2015, http://www.defenddemocracy.org/content/uploads/documents/Ottolenghi_HFAC_IranDeal_IRGC.pdf.

36. U.S. Senate Foreign Relations Committee, "S.67—A bill to direct the secretary of state to submit to Congress a report on the designation of Iran's Revolutionary Guard Corps as a Foreign Terrorist Organization, and for other purposes," 115th Congress (2017–18), <https://www.congress.gov/bill/115th-congress/senate-bill/67/text?q=%7B%22search%22%3A%5B%22S.67%22%5D%7D&r=1>.
37. This discussion of Section 219 draws heavily on Marik String and David Horn, "As Iran Sanctions Wane, SEC Reporting Will Not," *Securities Regulation & Law Report*, January 2016, available at https://www.wilmerhale.com/uploadedFiles/Shared_Content/Editorial/Publications/Documents/2016-01-26-Bloomberg-BNA-As-Iran-Sanctions-Wane-SEC-Reporting-Will-Not.pdf.
38. In a further complication for compliance, Section 219 exempts from disclosure dealings with the government of Iran if undertaken pursuant to a U.S. government license. It is not clear if that includes the general licenses issued by OFAC; see https://www.treasury.gov/resource-center/sanctions/Documents/hr_1905_pl_112_158.pdf, p. 22.
39. See Michael Eisenstadt, *Iran's Lengthening Cyber Shadow*, Research Note 34 (Washington DC: Washington Institute, 2016), http://www.washingtoninstitute.org/uploads/Documents/pubs/ResearchNote34_Eisenstadt.pdf.
40. Nicole Perlroth, "In Cyberattack on Saudi Firm, U.S. Sees Iran Firing Back," *New York Times*, October 23, 2016, <http://www.nytimes.com/2012/10/24/business/global/cyberattack-on-saudi-oil-firm-disquiets-us.html>.
41. Dustin Volz and Jim Finkle, "U.S. Indicts Iranians for Hacking Dozens of Banks, New York Dam," Reuters, March 25, 2016, <http://www.reuters.com/article/us-usa-iran-cyber-idUSKCNOWQ1JF>.
42. U.S. Department of the Treasury, "Fact Sheet: New Sanctions on Iran," press release, November 21, 2011, <https://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>.
43. U.S. Department of the Treasury, "Remarks by Acting Under Secretary for Terrorism and Financial Intelligence Adam Szubin at the Atlantic Council and the Iran Project Symposium," press release, December 17, 2015, <https://www.treasury.gov/press-center/press-releases/Pages/jl0304.aspx>.
44. United Nations, Second report of the Secretary-General on the implementation of Security Council resolution 2231 (2015), 30 December 2016, http://www.un.org/ga/search/view_doc.asp?symbol=S/2016/1136.
45. Ryan Browne, "German Intelligence: Iran May Have Tried to Violate Nuclear Deal," CNN, July 8, 2016, <http://www.cnn.com/2016/07/08/politics/germany-iran-violate-nuclear-deal/>.

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