



# The Iran Deal's Fatal Flaws After One Year

## Emboldened Iran and Diminished American Deterrence

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FOUNDATION FOR DEFENSE OF DEMOCRACIES



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## Table of Contents

Executive Summary.....	5
Iran's Nuclear Snapback.....	9
Iranian Violations and Western Acquiescence .....	12
Iranian Illicit Procurement.....	14
Verification and Parchin.....	17
Iranian Airlifts to Syria.....	18
Iran's Financial Legitimization Campaign.....	20
Illicit Financial Risks Remain.....	24
Europe is at Risk .....	26
Washington's Actions Go Beyond its JCPOA Commitments.....	28
How the Administration Might "Dollarize" Iran's Transactions.....	31
Assess to the Dollar and Dollarized Transactions: Arguments and Counterarguments.....	34
Better Intelligence.....	35
Assets Vulnerable to Future Sanctions.....	35
Undermining Confidence in the Dollar.....	35
Iranian Economic Recovery.....	36
Empowering the "Moderates".....	37
Encouraging Good Behavior.....	38
Recommendations.....	38
Conclusion.....	48



## Executive Summary

As we mark the one-year anniversary since the announcement of the Joint Comprehensive Plan of Action (JCPOA), it is worth recalling why this deal is fatally flawed. The JCPOA provides Iran with a patient pathway to nuclear weapons capability by placing limited, temporary, and reversible constraints on Iran's nuclear activities. These nuclear "sunset provisions," which begin to expire in eight years and mostly disappear over a period of ten to fifteen years, leave Iran as a threshold nuclear power with an industrial-size, uranium enrichment and plutonium program; near-zero nuclear breakout capacity; an advanced centrifuge-powered clandestine sneakout capability; advanced ballistic missile and ICBM programs; access to advanced heavy weaponry; greater regional hegemony; and a more powerful economy that could be immune to Western sanctions. Even as Iran temporarily scaled back some of its nuclear activities under the JCPOA, the regime's illicit effort to obtain proliferation-related technology continues while its other non-nuclear malign activities are expanding.

**“In fear of the nuclear snapback, the Obama administration has missed numerous opportunities ... to push back against Iran's malign activities.”**

The deal (as well as the interim agreement in place during the negotiations) provided Iran with substantial economic relief that helped the regime avoid a severe economic crisis and return to a modest recovery path. The lifting of restrictions on Iran's use of frozen overseas assets of about \$100 billion gave Tehran badly needed hard currency to settle its outstanding debts, begin to repair its economy, build up its diminished foreign exchange reserves, and ease a budgetary crisis, which in turn freed up funds for the financing of terrorism.

The nuclear deal also did nothing to address the full range of Iran's illicit activities, including ballistic

missile development, support for terrorism, regional destabilization, and human rights abuses. Indeed, the weakening of missile language in the key UN Security Council Resolution and the lifting of a conventional arms embargo after five years, and the missile embargo after eight years, undermine international efforts to combat Iran's illicit activities.

During last summer's congressional review period, Obama administration officials pledged that the United States would continue to enforce non-nuclear sanctions and oppose all of Iran's dangerous activities. However, many of us raised concerns that Iran would view any imposition of sanctions as a violation of the deal and grounds to "snap back" its nuclear program,<sup>1</sup> and that those threats would in effect prevent Washington from imposing new non-nuclear sanctions. This is what we called Iran's "nuclear snapback."

In fear of the nuclear snapback, the Obama administration has missed numerous opportunities since the conclusion of the JCPOA to push back against Iran's malign activities, including support for terrorism, human rights abuses, and other destabilizing activities in Syria, Iraq, Yemen, Lebanon, and other countries across the Middle East. Iran also has tested nuclear-capable ballistic missiles seven times since July 2015 in violation of UN Security Council resolutions.<sup>2</sup> Yet,

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1. 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/>)

2. News outlets reported tests in October and November 2015 and in March and May 2016. Military expert Michael Elleman testified before Congress that Iran conducted three tests in 2015 and five tests in 2016. One of the tests in 2015 took place prior to the announcement of the JCPOA. Michael Elleman, "Iran's Ballistic Missile Program," *Testimony before the Senate Banking, Housing, and Urban Affairs Committee*, May 24, 2016. ([http://www.banking.senate.gov/public/\\_cache/files/f64d023a-d6fc-4dc4-84a7-ea10ba8192cf/90DC029490361D182584B92FCAD76111.052416-elleman-testimony.pdf](http://www.banking.senate.gov/public/_cache/files/f64d023a-d6fc-4dc4-84a7-ea10ba8192cf/90DC029490361D182584B92FCAD76111.052416-elleman-testimony.pdf))

the administration has only issued a handful of new designations,<sup>3</sup> including an ineffectual targeting of Iran's missile procurement networks. Tehran can easily reconstitute these networks, and the designations do not impose the kind of economic costs needed to change Tehran's strategic calculus.

In the past weeks, reports revealed Iran's ongoing attempts to illegally procure nuclear and ballistic missile technology and raw materials.<sup>4</sup> This activity violated UN Security Council Resolution 1929 (in place prior to January 2016), it violates UN Security Council Resolution 2231, and it violates the spirit, if not the letter, of the JCPOA. In its annual report released at the end of June, Germany's domestic intelligence agency found that Iran engaged in a "quantitatively high level" of attempts to acquire nuclear and missile technology and equipment.<sup>5</sup> German states also released their own intelligence reports, and multiple reports noted that Iran attempted to procure goods and technology relevant to "atomic, biological, and chemical weapons" and "nuclear and missile delivery programs."<sup>6</sup> In its

coverage of these reports, *The Wall Street Journal* spoke with two German intelligence officers who stated that Iran's illegal procurement efforts continued in 2016 – well after Implementation Day (January 16, 2016).<sup>7</sup> If these 2016 activities included nuclear goods and technologies, Iran would be in violation of its JCPOA obligations; for missile-related technologies, Tehran would be in violation of UNSCR 2231.

The Obama administration and its European allies have not imposed meaningful sanctions or punished Iran for its illicit activities. In fact, nuclear experts at the Institute for Science and International Security found that over the past two years, "The Obama administration has inhibited federal investigations and prosecutions of alleged Iranian illegal procurement efforts."<sup>8</sup>

The Obama administration also has failed to enforce human rights sanctions against Iran. Since the JCPOA was concluded last summer, the administration has designated no individuals or entities for human rights abuses, and has issued only three designations since Hassan Rouhani took power in the summer of 2013.<sup>9</sup> Meanwhile, Iran continues to hold hostage U.S., Canadian, and British dual nationals Bagher and Siamak Namazi, Homa Hoodfar, and Nazanin Ratcliffe

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

4. David Albright and Andrea Stricker, "Iranian Atomic Energy Organization Attempted Carbon Fiber Procurement," *Institute for Science and International Security*, July 7, 2016. ([http://isis-online.org/uploads/isis-reports/documents/AEOI\\_Attempted\\_Carbon\\_Fiber\\_Procurement\\_7Jul2016.pdf](http://isis-online.org/uploads/isis-reports/documents/AEOI_Attempted_Carbon_Fiber_Procurement_7Jul2016.pdf))

5. Benjamin Weinthal, "German intel report charges Iran seeking illegal nuke, missile tech," *Fox News*, July 7, 2016. (<http://www.foxnews.com/world/2016/07/07/german-intel-report-charges-iran-seeking-illegal-nuke-missile-tech.html>)

6. Benjamin Weinthal, "Exclusive: Iran sought chemical and biological weapons technology in Germany," *The Jerusalem Post* (Israel), July 9, 2016. (<http://www.jpost.com/Diaspora/Exclusive-Iran-sought-chemical-and-biological-weapons-technology-in-Germany-459905>)

7. Anton Troianovski and Jay Solomon, "Germany Says Iran Kept Trying to Get Nuclear Equipment After Deal," *The Wall Street Journal*, July 8, 2016. (<http://www.wsj.com/articles/germany-says-iran-kept-trying-to-get-nuclear-equipment-after-deal-1468006075>)

8. David Albright and Andrea Stricker, "Previously Sanctioned Iranian Entities Doing Business in China," *Institute for Science and International Security*, July 7, 2016. ([http://isis-online.org/uploads/isis-reports/documents/Previously\\_Sanctioned\\_Iranian\\_Entities\\_Doing\\_Business\\_in\\_China\\_7Jul2016\\_Final.pdf](http://isis-online.org/uploads/isis-reports/documents/Previously_Sanctioned_Iranian_Entities_Doing_Business_in_China_7Jul2016_Final.pdf))

9. U.S. Department of the Treasury, Press Release, "Treasury Sanctions Iranian Official for Human Rights Abuses," May 23, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/jl2411.aspx>); U.S. Department of the Treasury, Press Release, "Treasury Designates Additional Individuals and Entities Under Iran-related Authorities," December 30, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/jl9731.aspx>)

as well as Nizar Zakka, a Lebanese citizen and U.S. permanent resident as well as many other individuals. This is unacceptable and inexcusable. They must be released unconditionally and immediately.

As international businesses re-enter the Iranian market, the regime continues to oppress its citizens and deny their basic human rights. The regime seems to hope that the promise of profits will blind the international community to Iran's vast system of domestic repression.

Those of us who were critical of the deal also raised concerns that Iran would view the JCPOA not as the end of the negotiations, but as the beginning, and demand ever-greater sanctions relief, as we have indeed seen.<sup>10</sup> We have witnessed the Iranian government's full-court press to persuade the United States to green-light Iran's access to U.S. dollar transactions.<sup>11</sup> This significant and unilateral concession to Iran would go beyond the sanctions relief promised by the nuclear agreement,<sup>12</sup>

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10. Guy Faulconbridge, "Iran calls on U.S. to reassure European banks over trade with Tehran," *Reuters*, February 4, 2016. (<http://www.reuters.com/article/us-iran-britain-trade-idUSKCN0VD2K2>); Bozorgmehr Sharafedin, "Iran's Supreme Leader says U.S. lifted sanctions only on paper," *Reuters*, April 27, 2016. (<http://www.reuters.com/article/us-iran-economy-khamenei-idUSKCN0XO0RK>); Robin Wright, "Iran's Javad Zarif on the Fraying Nuclear Deal, U.S. Relations, and Holocaust Cartoons," *The New Yorker*, April 25, 2016. (<http://www.newyorker.com/news/news-desk/irans-javad-zarif-on-the-fraying-nuclear-deal-u-s-relations-and-holocaust-cartoons>); Jay Solomon, Asa Fitch, and Benoit Faucon, "Iran's Central Bank Chief Warns Banking-Access Issues Jeopardize Nuclear Deal," *The Wall Street Journal*, April 15, 2016. (<http://www.wsj.com/articles/irans-central-bank-chief-warns-banking-access-issues-jeopardize-nuclear-deal-1460745930#:ZHcJ-dQfzyZaA>)  
11. "New U.S. sanctions concession to Iran may be in works: AP," *Associated Press*, March 31, 2016. (<http://www.cbsnews.com/news/new-us-sanctions-concession-to-iran-may-be-in-works-ap/>)  
12. U.S. Department of the Treasury, "Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day," issued January 16, 2016, updated March 24, 2016. ([https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa\\_faqs.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf))

and seemed to be under active consideration by the State Department before congressional pressure stopped it (for now).<sup>13</sup> Iran has pressured the Financial Action Task Force (FATF) to remove it from its financial "blacklist." While FATF recently refused to do so, it did suspend mandatory counter-measures against Iran for one year and opened up the possibility for future changes in the not-too-distant future.<sup>14</sup> Iran is also seeking membership in the World Trade Organization (WTO), and enjoys the backing of some European countries. WTO membership for Iran could severely curtail Washington's future ability to use financial and economic sanctions.<sup>15</sup>

Statements by administration officials such as Secretary of State John Kerry that it is America's responsibility to ensure that Iran "get[s] the benefits that they are supposed to get"<sup>16</sup> are very problematic. The administration is allowing Iran to hold the U.S. responsible for delivering financial and economic outcomes, and for providing ever-greater sanctions relief in order to persuade Iran to keep to the JCPOA.

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13. Adam Kredo, "Obama Admin Battling Internal War Over Giving Iran Access to U.S. Dollars," *The Washington Free Beacon*, June 22, 2016. (<http://freebeacon.com/national-security/obama-admin-battling-internal-war-giving-iran-access-u-s-dollars/>)  
14. The Financial Action Task Force, Public Statement, "Public Statement – 24 June 2016," June 24, 2016. (<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-june-2016.html>)  
15. Allison Carnegie, "Here's what will happen if Iran joins the WTO," *The Washington Post*, October 24, 2015. (<https://www.washingtonpost.com/news/monkey-cage/wp/2015/10/24/heres-what-will-happen-if-iran-joins-the-wto/>); Trade Practitioner, "EP Committee on International Trade Proposes New Position on Iran," *Squire Patton Boggs*, May 26, 2016. (<http://www.tradepractitioner.com/2016/05/ep-committee-on-international-trade-proposes-new-position-on-iran/>); "Switzerland to help Iran join WTO," *Mehr News Agency* (Iran), February 27, 2016. (<http://en.mehrnews.com/news/114811/Switzerland-to-help-Iran-join-WTO>)  
16. John Kerry, "Remarks After Meeting Iranian Foreign Minister Zarif," *United Nations*, April 19, 2016. (<http://www.state.gov/secretary/remarks/2016/04/255977.htm>)

This is not good policy. Instead, Congress should ensure that the onus is placed on Iran. If Tehran wants more sanctions relief and wants to encourage multinational companies to enter the Iranian market, it must change its dangerous behavior.

**“If Tehran wants more sanctions relief and wants to encourage multinational companies to enter the Iranian market, it must change its dangerous behavior.”**

The JCPOA lifts sanctions on Iran's nuclear activities, but it does not preclude the United States from using non-nuclear sanctions – despite statements from Iran that it will view any imposition of sanctions as a violation of the deal and grounds to “snapback” its nuclear program.<sup>17</sup> Congress should reject that Iranian position – which amounts to a form of nuclear blackmail – and hold the administration accountable for its commitments to “oppose Iran's destabilizing policies with every national security tool available.”<sup>18</sup> Sanctions need to be imposed to target Iran's support for terrorism, ballistic missile program, support for the Bashar al-Assad regime in Syria and designated Shiite militias in Iraq, and human rights abuses. These steps are not a violation of the JCPOA, but rather an affirmation of the stated U.S. policy. Specifically, we recommend that Congress consider taking the following steps:

1. Protect the integrity of the U.S. dollar from Iranian illicit finance.
2. Reauthorize the Iran Sanctions Act, an important foundation of the sanctions architecture.

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17. 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/>)

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

3. Counter the narrative that Iran is a responsible financial actor.
4. Strengthen sanctions against the Islamic Revolutionary Guard Corps (IRGC) by designating it for terrorism and expanding non-proliferation sanctions and designations.
5. Require updated reporting on IRGC penetration in sectors of the Iranian economy, along with reporting and sanctions on the sectors involved in Iran's ballistic missile development.
6. Require the U.S. Treasury to designate companies with IRGC or Ministry of Defense beneficial ownership.
7. Require the U.S. Treasury to create an IRGC Watch List.
8. Require reporting to the Securities and Exchange Commission regarding any transactions with IRGC Watch List companies or in sectors connected to Iran's ballistic missile program.
9. Insist on robust investigation into illicit procurement and outstanding concerns about the possible military dimensions of Iran's nuclear program.
10. Expand human rights sanctions by imposing sanctions on Iranian state organs responsible for institutionalized human rights abuses and by linking sanctions concessions to improvements in human rights conditions.
11. Target corruption and kleptocracy for reasons related to terrorism and human rights issues.
12. Require reporting on U.S. citizens and other dual-nationals held hostage in Iran.

13. Require reporting on and expand sanctions against Iran's support for the Assad regime and IRGC activities in Syria.

14. Require presidential certification that commercial planes are only being used for civil aviation end-use before authorizing the sale of any aircraft to Iran.

15. Prohibit any U.S. financial institution, including the Export-Import Bank, from financing any trade with Tehran while Iran remains a state sponsor of terrorism.

16. Require reporting on the use of foreign airports and seaports by sanctioned Iranian entities.

America needs a comprehensive strategy deploying all of the coercive tools of statecraft to push back against the full range of Iran's malign activities. If Washington does not confront these activities now and at every turn, in ten to fifteen years, we may face a situation in which the president has insufficient leverage to respond to an expanding Iranian military-nuclear program, regional aggression, and global terrorism. The U.S. may have only military force left to respond to Iran's nuclear and other dangerous activities – at which time, the Iranian regime will be stronger, and the consequences of such military action likely will be severe.

## Iran's Nuclear Snapback

In previous reports, we warned that Iran will threaten to restart its nuclear program in order to neutralize the use of both nuclear and non-nuclear sanctions. We call this Iran's "nuclear snapback."

This is one of the fatal flaws of the JCPOA.

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. Under a final deal, these officials explained, 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.<sup>19</sup>

United Nations Resolution 2231 states, however, that the sanctions snapback mechanism is for issues of "significant non-performance," implying that it would not likely be used for incidents of incremental cheating.<sup>20</sup> The Iranian regime is cheating incrementally, not egregiously, although the sum total of these infractions may ultimately be egregious (see the following section). The snapback provision incentivizes Iran to continue this behavior because there is no enforcement mechanism to punish incremental cheating. In short, because any re-imposition of sanctions is likely to scuttle the entire agreement, Iran could force the United States and Europe to choose between not strictly enforcing the agreement against its cheating and abrogating the whole agreement.

According to statements from the Obama administration, the snapback will also not be used to address Iranian violations of the non-nuclear provisions of UN Security Council resolutions, namely the arms embargo and the ballistic missile restrictions.<sup>21</sup> To date, the United Nations has not taken action to address IRGC-Quds Force Commander Qassem Soleimani's visits to Russia and Iraq (where he is leading designated Iraqi Shiite militias,

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19. 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](http://taskforceoniran.org/pdf/Snapback_Memo.pdf))

20. United Nations Security Council, "Resolution 2231 (2015)," July 20, 2015, page 4, paragraph 11. ([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)))

21. Louis Charbonneau and Michelle Nichols, "No automatic return of sanctions if Iran breaks arms embargo: Kerry," *Reuters*, August 11, 2015. (<http://www.reuters.com/article/2015/08/11/us-iran-nuclear-kerry-sanctions-idUSKCN0QG22M20150811>)

the IRGC, and Hezbollah militants in support of the Assad regime) in violation of international sanctions.<sup>22</sup> The UN also has not punished Iran for its violation of the ballistic missile restrictions. Last December, the UN Panel of Experts concluded that Iran's missile tests violate UN resolutions,<sup>23</sup> and just last week, according to news reports, UN Secretary General Ban Ki-moon said the missile launches were "not consistent" with the spirit of the JCPOA.<sup>24</sup>

One of the reasons for the international community's hesitancy to punish Iran's misbehavior is that the JCPOA makes it clear that re-imposing sanctions in response to an Iranian violation may lead to a cancellation of the agreement, with Iran walking away from its commitments and resuming its nuclear program. Under the JCPOA, both the EU and U.S. "will refrain from re-introducing or re-imposing" the sanctions specified by the JCPOA and "from imposing new nuclear-related sanctions" except in cases of egregious Iranian violations

of the deal.<sup>25</sup> Nor will there be any "new nuclear-related UN Security Council sanctions ... [or] new EU nuclear-related sanctions or restrictive measures."<sup>26</sup> The text repeatedly states that if the U.S. or EU re-impose sanctions, even in the case of an Iranian violation, Tehran will treat this "as grounds to cease performing its commitments under this JCPOA in whole or in part."<sup>27</sup>

The JCPOA's language also provides Iran with an opening to diminish the ability of the United States to apply any sanctions, including non-nuclear sanctions, against any of Iran's illicit conduct. The JCPOA contains an explicit requirement for the EU and the United States to do nothing to "directly and adversely affect the normalisation of trade and economic relations with Iran,"<sup>28</sup> which Iran can use to argue against any sanctions, nuclear or non-nuclear, that will have an adverse impact on Iran's economy.

**“The JCPOA makes it clear that re-imposing sanctions in response to an Iranian violation may lead to a cancellation of the agreement, with Iran walking away from its commitments and resuming its nuclear program.”**

Iran has already threaten to walk away from the deal and expand its nuclear program if the United States and its allies attempt to impose non-nuclear sanctions in response to Iranian ballistic missile tests, terrorism, or other nefarious activities. Immediately after the UN endorsed the JCPOA last July, Iran reminded the international community that it would "reconsider its commitments" under the JCPOA if "new sanctions [are imposed] ... irrespective of whether such new sanctions are introduced on nuclear related or

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22. Jennifer Griffin and Lucas Tomlinson, "Exclusive: Quds Force commander Soleimani visited Moscow, met Russian leaders in defiance of sanctions," *Fox News*, August 6, 2015. (<http://www.foxnews.com/politics/2015/08/06/exclusive-quds-force-commander-soleimani-visited-moscow-met-russian-leaders-in/>); Caleb Weiss, "Qods Force commander photographed with Iraqi militia in Aleppo," *The Long War Journal*, October 18, 2015. (<http://www.longwarjournal.org/archives/2015/10/qods-force-commander-photographed-with-iraqi-militia-in-aleppo.php>); Caleb Weiss, "Iranian Qods Force leader reportedly in Fallujah," *The Long War Journal*, May 23, 2016. (<http://www.longwarjournal.org/archives/2016/05/iranian-quds-force-leader-reportedly-in-fallujah.php>); Amir Toumaj and Max Peck, "The IRGC's involvement in the battle for Aleppo," *The Long War Journal*, February 13, 2016. (<http://www.longwarjournal.org/archives/2016/02/the-irgcs-involvement-in-the-battle-for-aleppo.php>)  
23. Louis Charbonneau, "Iran's October missile test violated U.N. ban: expert panel," *Reuters*, December 16, 2015. (<http://www.reuters.com/article/us-iran-missiles-un-exclusive-idUSKBN0TY1T920151216>)  
24. Michelle Nichols, "Iran missile tests 'not consistent' with nuclear deal spirit: U.N. report," *Reuters*, July 7, 2016. (<http://www.reuters.com/article/us-iran-missiles-un-idUSKCN0ZN2JV>)

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25. 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](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf))  
26. Ibid.  
27. Ibid, paragraphs 26 and 37.  
28. Ibid, paragraph 29.

other grounds.”<sup>29</sup> Supreme Leader Ali Khamenei reiterated this threat in his October 21 letter on Iran’s implementation of the JCPOA:

Imposition of any sanctions at any level and under any pretexts (including the repeated and fabricated pretexts of terrorism and human rights) by any of the negotiating countries will be considered a violation of the JCPOA.<sup>30</sup>

Again in March, following one of Iran’s illegal ballistic missile tests, the Iranian deputy foreign minister warned – in an apparent threat to deter the international community from imposing sanctions in response to the test – that if Iran’s “interests are not met under the nuclear deal,” it would walk away from its commitments.<sup>31</sup>

Iran will also use the threat of a nuclear snapback to divide the United States and Europe. There are likely to be significant disagreements between the United States, Europe, and members of the UN Security Council concerning the evidence, the seriousness of infractions, the appropriate level of response, and likely Iranian retaliation. Moreover, as international companies reengage in the Iranian market, European countries are likely to experience domestic economic pressure not to re-impose sanctions, and any Iranian violations of the deal are likely to provoke disagreements between

Washington and its European allies. Indeed, why would the Europeans agree to new sanctions when they have big money on the line? Mere days after the JCPOA was announced, 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.<sup>32</sup>

The recently announced \$25 billion preliminary deal between Boeing and Iran Air further undermines the Obama administration’s much-touted economic snapback. Iran had targeted the Europeans to block any transatlantic re-imposition of sanctions by signing a similar deal with Boeing’s competitor Airbus and with ATR, a joint venture between Airbus and Italy’s Finmeccanica. French and Italian financial institutions and export credit agencies will finance these purchases, with a combined value of close to 30 billion dollars.<sup>33</sup> Now, with a major American company and banks also invested in Iran, Tehran will not even need the transatlantic divide. 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. Business lobbies on both sides of the Atlantic will oppose any return to sanctions.

From Iran’s perspective, this is a smart strategy: Snapping back sanctions would cause American and European aviation companies and banks to lose billions of dollars in unpaid contracts. These companies and banks would surely lobby the White House and European capitals

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29. 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/>)

30. “Iran Press Review,” *Foundation for Defense of Democracies*, October 21, 2015. (<http://fdd.cmail20.com/t/ViewEmail/r/941B907BD0F8D6F62540EF23F30FEDED/18EF3159F08F673E DDA3541AF197FE1F>)

31. Adam Kredo, “Iran Threatens to Walk Away from Nuke Deal After New Missile Test,” *The Washington Free Beacon*, March 8, 2016. (<http://freebeacon.com/national-security/iran-threatens-walk-away-nuclear-deal-missile-test/>)

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32. “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)

33. Robert Wall, “Iran to Buy up to 40 ATR Turboprop Planes,” *The Wall Street Journal*, February 1, 2016. (<http://www.wsj.com/articles/iran-to-buy-up-to-40-atr-turboprop-planes-1454330448>)

against restoring sanctions against Tehran, or at least seek reassurances that the aviation and financial sectors would be spared. In other words, with these deals, Iran can further exploit the tension between national security and Western commercial interests.

## Iranian Violations and Western Acquiescence

With America's coercive statecraft tools sufficiently neutralized, Iran has stepped up its illicit activities across a range of fields.

Since the announcement of the JCPOA, Iran has seven times tested ballistic missiles capable of carrying nuclear warheads in violation of UN Security Council resolutions.<sup>34</sup> In December, the UN Panel of Experts concluded that Iran's missile tests violated UN Security Council Resolution 1929,<sup>35</sup> and, as noted above, just last week UN Secretary General Ban Ki-moon said the

34. News outlets reported tests in October and November 2015 and in March and May 2016. Military expert Michael Elleman testified before Congress that Iran conducted three tests in 2015 and five tests in 2016. One of the tests in 2015 took place prior to the announcement of the JCPOA. Michael Elleman, "Iran's Ballistic Missile Program," *Testimony before the Senate Banking, Housing, and Urban Affairs Committee*, May 24, 2016. ([http://www.banking.senate.gov/public\\_cache/files/f64d023a-d6fc-4dc4-84a7-ea10ba8192cf/90DC029490361D182584B92FCAD76111.052416-elleman-testimony.pdf](http://www.banking.senate.gov/public_cache/files/f64d023a-d6fc-4dc4-84a7-ea10ba8192cf/90DC029490361D182584B92FCAD76111.052416-elleman-testimony.pdf)); Sam Wilkins, "Iran tests new precision-guided ballistic missile," *Reuters*, October 11, 2015. (<http://www.reuters.com/article/2015/10/11/us-iran-military-missiles-idUSKCN0S505L20151011>); Bradley Klapper, "US official says Iran tested ballistic missile last month, at least 2nd time since nuke deal," *Associated Press*, December 8, 2015. (<http://www.usnews.com/news/politics/articles/2015/12/08/us-official-iran-tested-ballistic-missile-last-month>); Nasser Karimi, "Iran test-fires ballistic missile, latest after nuclear deal," *Associated Press*, May 9, 2016. (<http://www.bigstory.ap.org/article/5cb0901c025a4cfb93c4fb08558d68c0/iran-test-fires-ballistic-missile-latest-after-nuclear-deal>)

35. Louis Charbonneau, "Iran's October missile test violated U.N. ban: expert panel," *Reuters*, December 16, 2015. (<http://www.reuters.com/article/us-iran-missiles-un-exclusive-idUSKBN0TY1T920151216>)

Iran's repeated missile launches were "not consistent" with the spirit of the JCPOA.<sup>36</sup>

**“The administration has only issued sanctions against missile procurement networks that Tehran can easily reconstitute ... Unlike the economic sanctions imposed on Iran for its military-nuclear program, these sanctions have minimal, if any, economic impact on Iran and on the strategic calculus of Iran's leaders.”**

In response, the administration has only issued sanctions against missile procurement networks that Tehran can easily reconstitute,<sup>37</sup> as the regime has done time and again. Unlike the economic sanctions imposed on Iran for its military-nuclear program, these sanctions have minimal, if any, economic impact on Iran and on the strategic calculus of Iran's leaders. Treasury has issued only 18 new designations since last July as compared to more than a hundred between November 2013 and July 2015, according to former Treasury official Katherine Bauer.<sup>38</sup> Meanwhile, discussions at the UN Security Council are unlikely to lead to any meaningful response,<sup>39</sup> and the administration has

36. Michelle Nichols, "Iran missile tests 'not consistent' with nuclear deal spirit: U.N. report," *Reuters*, July 7, 2016. (<http://www.reuters.com/article/us-iran-missiles-un-idUSKCN0Z2N2JV>)

37. U.S. Department of the Treasury, Press Release, "Treasury Sanctions Those Involved in Ballistic Missile Procurement for Iran," January 17, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0322.aspx>); U.S. Department of the Treasury, Press Release, "Treasury Sanctions Supporters of Iran's Ballistic Missile Program and Terrorism-Designated Mahan Air," March 24, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0395.aspx>)

38. Katherine Bauer, "One Year Post-JCPOA, Not Post-Sanctions," *The Washington Institute for Near East Policy*, July 13, 2016. (<http://www.washingtoninstitute.org/policy-analysis/view/one-year-post-jcpoa-not-post-sanctions>)

39. Julian Pecquet, "U.S. Looks to Sidestep U.N. on New Iran Sanctions," *Al Monitor*, March 29, 2016. (<http://www.usnews.com/news/articles/2016-03-29/us-looks-to-sidestep-united-nations-on-iran-missiles-sanctions>)

backed away from language of “violations,” instead arguing that missile activities are “inconsistent” with UN Security Council Resolution 2231.<sup>40</sup> Indeed, as part of the JCPOA, the P5+1 accepted an apparent weakening of the UN restrictions,<sup>41</sup> and even these remaining restrictions will be lifted in eight years.

The administration has also failed to vigorously enforced human rights sanctions against Iran. Since the JCPOA was concluded last summer, the administration has not designated any individuals or entities for human rights abuses. Indeed, only one individual and two entities have been sanctioned for human rights violations since Rouhani came to power in the summer of 2013.<sup>42</sup> This is a sharp drop from the 34 individuals and entities designated between 2009 and 2013,<sup>43</sup> itself a relatively dismal record compared to the European Union, which designated 84 individuals and one entity between 2009 and 2015.<sup>44</sup> The lack of human rights designations is not the result of an improved situation on the ground in Iran. In fact, the Islamic Republic continues to commit serious human rights abuses, including limiting freedom of expression

and the press; engaging in arbitrary detention and torture; and discriminating against women, ethnic and religious minorities, and other vulnerable populations.<sup>45</sup> The regime reigns over its citizens using repression and violence to rule through fear.

When President Rouhani was elected in June 2013, there was a widespread, but incorrect, assumption that he would shepherd in an era of greater freedoms in Iran. Instead, the human rights situation in Iran has deteriorated even further, even in the wake of the nuclear deal.<sup>46</sup> The regime is suppressing internal dissent, and the IRGC has arrested hundreds of activists, journalists, and regular citizens in what human rights experts call the “largest crackdown since the violent state suppression” in 2009.<sup>47</sup> 2015 saw a record number of executions, including 16 juveniles.<sup>48</sup> As United Nations Special Rapporteur on the situation of human rights in the

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

41. Colum Lynch, “Washington Made it Easy for Iran to Fire Its Ballistic Missiles,” *Foreign Policy*, March 16, 2016. (<http://foreignpolicy.com/2016/03/16/washington-made-it-easy-for-iran-to-fire-its-ballistic-missiles/>)

42. U.S. Department of the Treasury, Press Release, “Treasury Sanctions Iranian Official for Human Rights Abuses,” May 23, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/jl2411.aspx>); U.S. Department of the Treasury, Press Release, “Treasury Designates Additional Individuals and Entities Under Iran-related Authorities,” December 30, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/jl9731.aspx>)

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

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

45. United Nations Human Rights Council, “Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran,” March 10, 2016. (<http://shaheedoniran.org/wp-content/uploads/2016/03/SR-Report-HRC2016FE.pdf>); United Nations General Assembly, “Situation of human rights in the Islamic Republic of Iran,” October 6, 2015. (<http://shaheedoniran.org/wp-content/uploads/2015/10/SR-Report-Iran-Oct2015.pdf>)

46. United Nations Human Rights Council, “Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran,” March 10, 2016. (<http://shaheedoniran.org/wp-content/uploads/2016/03/SR-Report-HRC2016FE.pdf>)

47. “Largest Wave of Arrests by Iran’s Revolutionary Guards Since 2009,” *International Campaign for Human Rights in Iran*, November 19, 2015. (<https://www.iranhumanrights.org/2015/11/irgc-intelligence-arrests/>)

48. UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Press Release, “Zeid calls for an end to executions for drug offences in Iran,” April 14, 2016. (<http://shaheedoniran.org/english/human-rights-at-the-united-nations/human-rights-monitoring-mechanisms/high-commissioner-office/zeid-calls-for-an-end-to-executions-for-drug-offences-in-iran/>); “Growing Up on Death Row: The Death Penalty and Juvenile Offenders in Iran,” *Amnesty International*, January 25, 2016. (<http://www.amnestyusa.org/research/reports/growing-up-on-death-row-the-death-penalty-and-juvenile-offenders-in-iran>)

Islamic Republic of Iran Dr. Ahmed Shaheed reports, there has been no “meaningful change on the ground.”<sup>49</sup>

Iran is also the world’s leading state sponsor of terrorism, according to the U.S. State Department.<sup>50</sup> In its annual terrorism report, the department noted that Iran “arms Hezbollah with advanced long-range Iranian-manufactured missiles, in violation of UN Security Council Resolutions 1701 and 1747.”<sup>51</sup>

Meanwhile, Iran continues to engage in destabilizing activities across Syria, Iraq, Yemen, Lebanon, and other countries across the Middle East.<sup>52</sup> According to Director of National Intelligence James Clapper, Iran’s involvement in conflicts throughout the region “deepened” throughout 2015,<sup>53</sup> and CENTCOM Commander Gen. Joseph L. Votel testified before Congress that Iran has “grown more aggressive in the days since the agreement.”<sup>54</sup> He further testified that even with the JCPOA, “Iran’s malign activities to

expand its influence continues, thorough the provision of support to terrorist groups and allied militias.”<sup>55</sup>

### *Iranian Illicit Procurement*

At the end of June, Berlin’s domestic intelligence agency issued a damning report about Iran’s illicit procurement efforts in Germany. News reports began covering the revelations just last week. The German report noted that Iran’s “illegal proliferation-sensitive procurement activities” reached a “quantitatively high level ... particular[ly] with regard to items which can be used in the field of nuclear technology ... [and] Iran’s ambitious missile technology program.” While the report covered 2015, the intelligence agency concluded, “It is safe to expect that Iran will continue its intensive procurement activities in Germany using clandestine methods to achieve its objectives.”<sup>56</sup>

**“Illegal proliferation-sensitive procurement activities” reached a “quantitatively high level ... particular[ly] with regard to items which can be used in the field of nuclear technology ... [and] Iran’s ambitious missile technology program.”**

--German Federal Ministry of the Interior

Alongside the federal report, German states also released their own intelligence reports. The German state of Saarland revealed that Iran and North Korea sought technology for “atomic, biological, or chemical

49. UN Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, “Press Conference Statement,” March 10, 2016. (<http://shaheedoniran.org/english/dr-shaheeds-work/press-releases/press-conference-statement-on-10-march-2016/>)

50. Justin Siberell, “Special Briefing: Country Reports on Terrorism,” *U.S. Department of State*, June 2, 2016. (<http://www.state.gov/r/pa/prs/ps/2016/06/258013.htm>); U.S. Department of State, “Country Reports on Terrorism 2015,” June 2016. (<http://www.state.gov/documents/organization/258249.pdf>)

51. U.S. Department of State, “Country Reports on Terrorism 2015,” Chapter 3: State Sponsors of Terrorism Overview, June 2016. (<http://www.state.gov/j/ct/rls/crt/2015/257520.htm>)

52. For additional information on how Iran destabilizes the region, see Matthew Levitt, “Under cover of nuclear deal, Iran foments regional instability,” *The Hill*, July 12, 2016. (<http://thehill.com/blogs/pundits-blog/international/287342-under-cover-of-nuclear-deal-iran-foments-regional>)

53. James Clapper, “Worldwide Threat Assessment of the US Intelligence Community,” *Testimony before the Senate Armed Services Committee*, February 9, 2016, page 24. ([http://www.armed-services.senate.gov/imo/media/doc/Clapper\\_02-09-16.pdf](http://www.armed-services.senate.gov/imo/media/doc/Clapper_02-09-16.pdf))

54. Spencer Ackerman, “US Central Command nominee has ‘concerns’ about progress against Isis,” *The Guardian* (UK), March 9, 2016. (<https://www.theguardian.com/world/2016/mar/09/us-isis-syria-strategy-central-command-nomination-joseph-votel>)

55. Joseph Votel, “Advance Questions,” *Testimony before the Senate Armed Services Committee*, March 9, 2016. ([http://www.armed-services.senate.gov/imo/media/doc/Votel\\_03-09-16.pdf](http://www.armed-services.senate.gov/imo/media/doc/Votel_03-09-16.pdf))

56. “2015 Annual Report on the Protection of the Constitution Facts and Trends,” *Federal Ministry of the Interior* (Germany), English Summary, June 28, 2016, page 30. (<https://www.verfassungsschutz.de/embed/annual-report-2015-summary.pdf>); “Verfassungsschutzbericht 2015 vorgestellt (The Federal Office for the Protection of the Constitution’s 2015 report),” *Bundesamt für Verfassungsschutz* (Germany), June 28, 2016. (<https://www.verfassungsschutz.de/de/aktuelles/meldungen/me-20160628-vorstellung-vs-b-2015>)

weapons.” The state of Rhineland-Palatinate reported that Iran targeted German companies seeking equipment for “atomic, biological, and chemical weapons” and goods which are relevant to “nuclear and missile delivery programs.”<sup>57</sup> Notably, the report from North-Rhine-Westphalia stated that in 2015, Iran made more than 125 attempts to acquire proliferation sensitive goods for its nuclear and missile program, an increase of at least 50 percent over the previous year.<sup>58</sup> This increase should not come as a surprise. Iranian officials – including President Rouhani – have pledged to continue acquiring goods for Iran’s missile program and have stated that Iran will not abide by UN restrictions on its missile program.<sup>59</sup>

Simultaneously, the Institute for Science and International Security released two reports about Iran’s ongoing illegal procurement activities.<sup>60</sup> The Atomic

Energy Organization of Iran (AEOI) – an organization previously sanctioned by the U.S., EU, and UN but removed from sanctions lists on the JCPOA’s Implementation Day (January 16, 2016) – attempted to procure tons of carbon fiber, which is used in the production of centrifuges. The incident occurred after the implementation of the JCPOA, indicating that AEOI is still engaged in illegal activities. Moreover, authors David Albright and Andrea Stricker explain that untreated carbon fiber has a lifespan of only one to five years, meaning that AEOI could not have been trying to acquire the materials for later use after restrictions on the number and type of centrifuges begin to expire in eight to ten years. Finally, the authors warn:

AEOI had enough carbon fiber to replace existing advanced centrifuge rotors and had no need for additional quantities over the next several years, let alone for tons of carbon fiber. This attempt thus raises concerns over whether Iran intends to abide by its JCPOA commitments. ... [The] procurement of tons of this carbon fiber would have allowed Iran to surge in the construction of advanced centrifuges in case of a breakdown of the JCPOA in the near term. Iran thus may have been seeking to hedge against any near-term breakdown of the JCPOA.<sup>61</sup>

In its second report, the Institute reveals that “many previously sanctioned Iranian entities” – entities that were involved in illicit procurement in the past but were removed from U.S. and EU sanctions lists as a result of the JCPOA – “are now very active in procuring goods in China.”<sup>62</sup>

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57. Benjamin Weinthal, “Exclusive: Iran sought chemical and biological weapons technology in Germany,” *The Jerusalem Post* (Israel), July 9, 2016. (<http://www.jpost.com/Diaspora/Exclusive-Iran-sought-chemical-and-biological-weapons-technology-in-Germany-459905>)

58. Benjamin Weinthal, “Post-JCPOA, Iran Revs Up Nuclear, Missile Procurement in Germany,” *Foundation for Defense of Democracies*, July 8, 2016. (<http://www.defenddemocracy.org/media-hit/benjamin-weinthal-post-jcpoa-iran-revs-up-nuclear-missile-procurement-in-germany/>)

59. For example, “Iran unveils new missile, says seeks peace through strength,” *Reuters*, August 22, 2015. (<http://www.reuters.com/article/us-iran-military-missile-idUSKCN0QR07C20150822>); Tzvi Kahn, “Iran’s Ballistic Missile Program Continues,” *Foreign Policy Initiative*, August 31, 2015. (<http://www.foreignpolicy.org/content/fpi-bulletin-iran%E2%80%99s-ballistic-missile-program-continues>)

60. David Albright and Andrea Stricker, “Iranian Atomic Energy Organization Attempted Carbon Fiber Procurement,” *Institute for Science and International Security*, July 7, 2016. ([http://isis-online.org/uploads/isis-reports/documents/AEOI\\_Attempted\\_Carbon\\_Fiber\\_Procurement\\_7Jul2016.pdf](http://isis-online.org/uploads/isis-reports/documents/AEOI_Attempted_Carbon_Fiber_Procurement_7Jul2016.pdf)); David Albright and Andrea Stricker, “Previously Sanctioned Iranian Entities Doing Business in China,” *Institute for Science and International Security*, July 7, 2016. ([http://isis-online.org/uploads/isis-reports/documents/Previously\\_Sanctioned\\_Iranian\\_Entities\\_Doing\\_Business\\_in\\_China\\_7Jul2016\\_Final.pdf](http://isis-online.org/uploads/isis-reports/documents/Previously_Sanctioned_Iranian_Entities_Doing_Business_in_China_7Jul2016_Final.pdf))

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61. David Albright and Andrea Stricker, “Iranian Atomic Energy Organization Attempted Carbon Fiber Procurement,” *Institute for Science and International Security*, July 7, 2016. ([http://isis-online.org/uploads/isis-reports/documents/AEOI\\_Attempted\\_Carbon\\_Fiber\\_Procurement\\_7Jul2016.pdf](http://isis-online.org/uploads/isis-reports/documents/AEOI_Attempted_Carbon_Fiber_Procurement_7Jul2016.pdf))

62. David Albright and Andrea Stricker, “Previously Sanctioned Iranian Entities Doing Business in China,” *Institute for Science and International Security*, July 7, 2016. ([http://isis-online.org/uploads/isis-reports/documents/Previously\\_Sanctioned\\_Iranian\\_Entities\\_Doing\\_Business\\_in\\_China\\_7Jul2016\\_Final.pdf](http://isis-online.org/uploads/isis-reports/documents/Previously_Sanctioned_Iranian_Entities_Doing_Business_in_China_7Jul2016_Final.pdf))

Iran's illicit procurement efforts violate UN Security Council Resolution 2231 (and UNSCR 1929 that was in place before it) and the spirit, if not the letter, of the JCPOA. UNSCR 2231 prohibits Iran from undertaking any activity related to the development of ballistic missiles capable of delivering nuclear weapons, and any exception would need to be approved by the Security Council.<sup>63</sup> Indeed, when speaking about the German intelligence report, Chancellor Angela Merkel noted that Iran's continued efforts to develop its ballistic missile program are "in conflict with the relevant provisions of the UN Security Council."<sup>64</sup>

Meanwhile, the JCPOA also prohibits Iran from acquiring or seeking to procure nuclear and nuclear dual-use goods outside of the Procurement Channel.<sup>65</sup> But technically, it is the supplying country's responsibility to report the potential sale to the Procurement Working Group. As the JCPOA is structured, Iran could continue its attempts to procure goods illegally, but until it succeeds in acquiring a good and then is caught with the illegal item, the P5+1 are unlikely to count the incident as a violation. This is a fatal flaw of the JCPOA. In normal law enforcement situations, if someone is caught attempting to commit a crime, that action is punishable. Not succeeding in committing an illegal act does not exonerate the criminal.

And yet, after the German report came out, Berlin's Foreign Minister rushed to claim that Iran was still in compliance with the nuclear agreement, blaming hardline elements of the regime for trying to tank the

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63. United Nations Security Council, "Resolution 2231 (2015)," July 20, 2015, page 4, paragraph 11. ([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)))

64. Benjamin Weinthal, "German intel report charges Iran seeking illegal nuke, missile tech," *Fox News*, July 7, 2016. (<http://www.foxnews.com/world/2016/07/07/german-intel-report-charges-iran-seeking-illegal-nuke-missile-tech.html>)

65. Joint Comprehensive Plan of Action, Annex IV – Joint Commission, Vienna, July 14, 2015, paragraph 6.5. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/annex\\_4\\_joint\\_commission\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_4_joint_commission_en.pdf))

JCPOA – as if to claim that none of the procurement attempts were approved by the Iranian government.<sup>66</sup> The U.S. State Department similarly denied that recent reports show that Iran is in violation. "We have absolutely no indication that Iran has procured any materials in violation of the JCPOA," State Department Spokesman John Kirby said emphatically.<sup>67</sup> He also dismissed the significance of the German report noting that it only covered the period of time before Implementation Day – as if to say, anything that occurred between July 14, 2015 and January 16, 2016 is excused.

**“Illicit procurement should never be excused, even if it occurred prior to the JCPOA’s implementation. And *The Wall Street Journal* also spoke with two German intelligence officers who stated that Iran’s illegal procurement efforts continued in 2016 – well after Implementation Day.”**

Illicit procurement should never be excused, even if it occurred prior to the JCPOA's implementation. And *The Wall Street Journal* also spoke with two German intelligence officers who stated that Iran's illegal procurement efforts continued in 2016 – well after Implementation Day.<sup>68</sup>

Iran's continued illicit procurement activities underscore the startling revelation by the Institute for Science and International Security that "the Obama administration has inhibited federal investigations and prosecutions of

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66. Frank Jordans, "Germany wary of Iran's nuclear, missile procurement efforts," *Associated Press*, July 8, 2016. (<http://bigstory.ap.org/1c45e42b0a8340d8b5c62df327aaa817>)

67. John Kirby, "Daily Press Briefing," *U.S. Department of State*, July 8, 2016. (<http://www.state.gov/r/pa/prs/dpb/2016/07/259479.htm>)

68. Anton Troianovski and Jay Solomon, "Germany Says Iran Kept Trying to Get Nuclear Equipment After Deal," *The Wall Street Journal*, July 8, 2016. (<http://www.wsj.com/articles/germany-says-iran-kept-trying-to-get-nuclear-equipment-after-deal-1468006075>)

alleged Iranian illegal procurement efforts.”<sup>69</sup> They also note that the P5+1 are trying “to keep secret problematic Iranian actions.”<sup>70</sup>

### ***Verification and Parchin***

In the year since the JCPOA, we have also learned more about the Parchin military base where the International Atomic Energy Agency (IAEA) believes that Iran conducted weaponization activities. And so the December 2015 IAEA decision to “close” the file on outstanding concerns about the possible military dimensions of Iran’s program<sup>71</sup> is troubling: Without ever admitting to weaponization activities, Iran has convinced the international community to wipe its slate clean. The IAEA’s report on the possible military dimensions of Iran’s nuclear program<sup>72</sup> left many questions unanswered.<sup>73</sup> Among them, what were man-made uranium particles doing at the Parchin military base?

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69. David Albright and Andrea Stricker, “Previously Sanctioned Iranian Entities Doing Business in China,” *Institute for Science and International Security*, July 7, 2016. ([http://isis-online.org/uploads/isis-reports/documents/Previously\\_Sanctioned\\_Iranian\\_Entities\\_Doing\\_Business\\_in\\_China\\_7Jul2016\\_Final.pdf](http://isis-online.org/uploads/isis-reports/documents/Previously_Sanctioned_Iranian_Entities_Doing_Business_in_China_7Jul2016_Final.pdf))

70. David Albright and Andrea Stricker, “Iranian Atomic Energy Organization Attempted Carbon Fiber Procurement,” *Institute for Science and International Security*, July 7, 2016. ([http://isis-online.org/uploads/isis-reports/documents/AEOI\\_Attempted\\_Carbon\\_Fiber\\_Procurement\\_7Jul2016.pdf](http://isis-online.org/uploads/isis-reports/documents/AEOI_Attempted_Carbon_Fiber_Procurement_7Jul2016.pdf))

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

72. International Atomic Energy Agency, “Final Assessment on Past and Present Outstanding Issues regarding Iran’s Nuclear Programme,” December 2, 2015, page 11. (<https://www.iaea.org/sites/default/files/gov-2015-68.pdf>)

73. “The Possible Military Dimensions of Iran’s Nuclear Program,” *Iran Task Force*, December 2015. ([http://taskforceoniran.org/pdf/The\\_PMDs\\_of\\_Iran%E2%80%99s\\_Nuclear\\_Program.pdf](http://taskforceoniran.org/pdf/The_PMDs_of_Iran%E2%80%99s_Nuclear_Program.pdf)); Olli Heinonen, “Next Steps in the Implementation of the JCPOA,” *Foundation for Defense of Democracies*, December 8, 2016. (<http://www.defenddemocracy.org/media-hit/next-steps-in-the-implementation-of-the-jcpoa/>)

William Tobey, former deputy administrator for defense nuclear nonproliferation at the National Nuclear Security Administration, explains these particles are “prima facie evidence” of undeclared nuclear material in Iran. “A larger quantity of uranium left them behind,” he notes.<sup>74</sup> For years, Iran has denied that it engaged in nuclear weaponization activities at the site and has vigorously engaged in clean-up efforts, which have compromised the IAEA’s ability to investigate.<sup>75</sup> These efforts, Tobey explains, have created an ambiguous situation that is beneficial to the Iranians. The IAEA’s findings are inconclusive, and this uncertainty means that the international community will not be united in any response.

Last month, *The Wall Street Journal* reported that U.S. officials believe those particles likely relate to previous nuclear weapons activities. “The existence of two particles of uranium there would be consistent with our understanding of the involvement of Parchin in a past weapons program, but by themselves don’t definitively prove anything,” the article quoted a senior administration official as saying.<sup>76</sup> Indeed, that is all the more reason why the IAEA should continue to investigate and attempt to verify Iran’s declarations about its nuclear activities. As former IAEA Deputy Director General

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74. William Tobey, “Iran’s Parchin Particles: Why Should Two Mites of Uranium Matter?” *Foreign Policy*, July 7, 2016. (<http://foreignpolicy.com/2016/07/07/irans-parchin-particles-why-should-two-mites-of-uranium-matter/>)

75. David Albright, Serena Kelleher-Vergantini, and Andrea Stricker, “Parchin: Will the IAEA Verify the Absence of Nuclear Weapons Activities in Iran?” *Institute for Science and International Security*, June 20, 2016. ([http://isis-online.org/uploads/isis-reports/documents/Parchin\\_Post\\_Implementation\\_Day\\_June\\_20\\_2016\\_Final.pdf](http://isis-online.org/uploads/isis-reports/documents/Parchin_Post_Implementation_Day_June_20_2016_Final.pdf)); David Albright and Serena Kelleher-Vergantini, “Parchin in the IAEA’s Final Assessment on the Possible Military Dimensions to Iran’s Nuclear Program,” *Institute for Science and International Security*, December 3, 2015. ([http://isis-online.org/uploads/isis-reports/documents/Parchin\\_Final\\_Assessment\\_on\\_PMD\\_Issues\\_3Dec2015-Final.pdf](http://isis-online.org/uploads/isis-reports/documents/Parchin_Final_Assessment_on_PMD_Issues_3Dec2015-Final.pdf))

76. Jay Solomon, “Uranium Provides New Clue on Iran’s Past Nuclear Arms Work,” *The Wall Street Journal*, June 19, 2016. (<http://www.wsj.com/articles/uranium-provides-new-clue-on-irans-past-nuclear-arms-work-1466380760>)

Olli Heinonen explained, the IAEA “has an obligation to carry out its safeguards verification mission under the comprehensive safeguards agreement. The possible existence of undeclared uranium at Parchin gets to the heart of those provisions.”<sup>77</sup> Yet, to date, the IAEA has not specified its follow-up investigation efforts, and its recent reports have lacked important, technical details about Iran’s compliance with its JCPOA obligations, according to the nuclear experts at the Institute for Science and International Security.<sup>78</sup>

This is a dangerous precedent. The IAEA did not insist on physical inspections of Parchin, instead agreeing to an Iranian demand that its own scientists do the sampling. Then, when the IAEA discovered highly suspicious uranium particles, it did not insist on a follow-up inspection, physical or otherwise, which is required under the comprehensive safeguards agreement to which Iran is party. Tehran is establishing the precedent for future inspections of military sites; it will not permit the IAEA physical access to the facilities, and then may invoke the example of Parchin to deny access (physical or otherwise) for follow-up inspections if suspicious materials or activities are discovered. If this transpires, it will vitiate the verification regime that the administration has touted as an achievement of the JCPOA.

### *Iranian Airlifts to Syria*

As previously discussed, Iran’s human rights abuses have gotten worse, not better, since the JCPOA. They also are not contained within the country’s borders.

77. Olli Heinonen, “Uranium Particles at Parchin Indicate Possible Undeclared Iranian Nuclear Activities,” *Foundation for Defense of Democracies*, July 1, 2016. (<http://www.defenddemocracy.org/media-hit/olli-heinonen1-uranium-particles-at-parchin-indicate-possible-undeclared-iranian-nuclear-a/>)

78. David Albright, Serena Kelleher-Vergantini, and Andrea Stricker, “IAEA’s Second JCPOA Report: Key Information Still Missing,” *Institute for Science and International Security*, May 31, 2016. ([http://isis-online.org/uploads/isis-reports/documents/Second\\_JCPOA\\_Post-Implementation\\_Day\\_Report\\_May\\_31\\_2016\\_Final.pdf](http://isis-online.org/uploads/isis-reports/documents/Second_JCPOA_Post-Implementation_Day_Report_May_31_2016_Final.pdf))

A report by Syrian and Lebanese researchers found that there is sufficient evidence to charge the Iranian leadership with complicity in war crimes and crimes against humanity in Syria, but the international community has refused to act.<sup>79</sup> In the meantime, the Syrian regime itself has become “little more than a puppet” of the Iranian regime and the IRGC.<sup>80</sup>

Iran has enabled Syrian President Bashar al-Assad to remain in power, bombing civilians with impunity, leading to more than 470,000 deaths. Others have fled to neighboring states and Europe, causing millions of displaced refugees, an ensuing humanitarian crisis, and a surge in jihadist groups operating in Syria and abroad. The Syria crisis, in turn, fueled the rise of ISIS, which is threatening multiple countries, including the United States and Europe. Iran’s support for Assad reached new levels in the last year, including the provision of IRGC ground forces, weaponry, intelligence, telecommunications, and financial support.<sup>81</sup>

Since the start of the Syrian civil war, Mahan Air has become the Revolutionary Guard’s primary conduit for transporting weapons and military personnel to Assad and Hezbollah operations in Syria.<sup>82</sup> At the same time, Iran Air has repeatedly flown routes known to be used to resupply Assad.<sup>83</sup> As recently as June 9, an Iran Air jet landed in Abadan, Iran, the logistical hub of the

79. Shiar Youssef, “Iran in Syria: From an Ally of the Regime to Occupying Force,” *Naame Shaame*, 2<sup>nd</sup> Edition, April 2016. (<http://www.naameshaam.org/naame-shaam-releases-updated-report-on-irans-role-in-syria/>)

80. Ibid, page 10.

81. Max Peck, “Doubling Down on Damascus: Iran’s Military Surge to Save the Assad Regime,” *Foundation for Defense of Democracies*, January 11, 2016. ([http://www.defenddemocracy.org/content/uploads/documents/Doubling\\_Down\\_on\\_Damascus.pdf](http://www.defenddemocracy.org/content/uploads/documents/Doubling_Down_on_Damascus.pdf))

82. U.S. Department of the Treasury, Press Release, “Treasury Designates Iranian Commercial Airline Linked to Iran’s Support for Terrorism,” October 12, 2011. (<https://www.treasury.gov/press-center/press-releases/Pages/tg1322.aspx>)

83. Emanuele Ottolenghi, “The risks of the Iran-Boeing deal,” *The Hill*, June 21, 2016. (<http://thehill.com/blogs/pundits-blog/international/284269-the-risks-of-the-iran-boeing-deal>)

Revolutionary Guard's airlifts to Assad and Hezbollah.<sup>84</sup> After a little over an hour on the tarmac, it continued to Syria. Iran Air regularly flies to Damascus with its planes' transponders broadcasting an outdated Najaf-Tehran flight number, making it appear that the flights were between Iran and Iraq.<sup>85</sup> This is a familiar technique that Iran used in hiding the illicit behavior of the Islamic Republic of Iran Shipping Lines (IRISL) and National Iranian Tanker Company (NITC) when they, too, used to turn off transponders or change their naming and registration markings to avoid detection.<sup>86</sup>

Despite this record of illicit behavior, the Obama administration is pushing Boeing's \$25 billion deal with Iran Air, which has a long rap sheet of illegal activities. In June 2010, the United Nations Security Council cautioned that Iran Air's cargo division may be involved in sanctions evasion.<sup>87</sup> Washington designated the airline a year later for providing material support and services to the IRGC and Ministry of Defense.<sup>88</sup>

84. @eottolenghi, "Iran Air flying Abadan to Damascus. Less than 6 months after JCPOA implementation, Iran Air running #SyriaExpress," *Twitter*, June 9, 2016. (<https://twitter.com/eottolenghi/status/741034437341786112>)

85. "Flight IR-3486 from Al Najaf to Tehran," *EasyFly Club*, accessed July 5, 2016. (<http://easyfly.club/flights/iran-air/1ad6/ir-3486>)

86. For example, U.S. Department of the Treasury, Office of Foreign Assets Control, "Global Advisory to the Maritime Industry Regarding the Islamic Republic of Iran Shipping Lines," July 19, 2012. ([https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ofac\\_irisl\\_advisory\\_07192012.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ofac_irisl_advisory_07192012.pdf)); U.S.

Department of the Treasury, Press Release, "Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL," December 21, 2010. (<https://www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx>); David Cohen, "Iran Sanctions: Ensuring Robust Enforcement, and Assessing Next Steps," *Testimony before the Senate Committee on Banking, Housing, and Urban Affairs*, June 4, 2013. ([http://www.banking.senate.gov/public\\_cache/files/c6ae9124-e150-4bce-8f9d-b36d5359722f/23C6AE00CC53D93492511CC744028B5E.cohentestimony6413.pdf](http://www.banking.senate.gov/public_cache/files/c6ae9124-e150-4bce-8f9d-b36d5359722f/23C6AE00CC53D93492511CC744028B5E.cohentestimony6413.pdf))

87. United Nations Security Council, Resolution 1929, June 9, 2010, page 7. ([https://www.iaea.org/sites/default/files/unscl\\_res1929-2010.pdf](https://www.iaea.org/sites/default/files/unscl_res1929-2010.pdf))

88. U.S. Department of the Treasury, "Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities," June 23, 2011. (<https://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

At the time, Treasury noted, "Rockets or missiles have been transported via Iran Air passenger aircraft, and IRGC officers occasionally take control over Iran Air flights carrying special IRGC-related cargo ... carried aboard a commercial Iran Air aircraft, including to Syria."<sup>89</sup> Iran Air not only flaunted the UN global arms embargo, it violated civil aviation rules by allowing the Guard to "disguise and manifest such shipments as medicine and generic spare parts."<sup>90</sup>

**“Since the start of the Syrian civil war, Mahan Air has become the Revolutionary Guard’s primary conduit for transporting weapons and military personnel to Assad and Hezbollah operations in Syria.”**

As a result of the nuclear deal, the U.S. lifted sanctions against Iran Air, despite the fact that the original designations were not related to Iran's nuclear program and despite the administration's commitment to retain non-nuclear sanctions. But when asked why sanctions were lifted, State Department Spokesman John Kirby did not argue that Iran Air's behavior had changed. He also did not reassure Americans that the IRGC is no longer using the airline to ship weapons to Syria.<sup>91</sup> Instead, he said merely that the administration was comfortable with its decision, though he was "not at liberty to go into the reasons behind" the de-listing.<sup>92</sup>

Boeing, Airbus, and the banks that are considering financing the \$50 billion in deals with Iran Air face a due diligence nightmare in trying to ascertain whether Iran Air will be using their planes for nefarious purposes

89. *Ibid.*

90. *Ibid.*

91. "Boeing's historic deal with Iran rests on shaky foundations," *Associated Press*, June 23, 2016. (<http://www.foxnews.com/us/2016/06/23/boeing-historic-deal-with-iran-rests-on-shaky-foundations.html>)

92. John Kirby, "Daily Press Briefing," *U.S. Department of State*, June 23, 2016. (<http://www.state.gov/r/pa/prs/dpb/2016/06/259015.htm>)

or transferring them to Mahan Air and the three other sanctioned Iranian airlines (Caspian, Meraj, and Pouya aka Yas Air).<sup>93</sup> The IRGC's deep penetration in the Iranian aviation industry, and its use of Iranian airlines for illicit and dangerous activities pose significant risks for these Western companies.

## Iran's Financial Legitimization Campaign

Even as Iran is violating the spirit, and perhaps the letter, of the JCPOA as well as UN Security Council Resolution 2231, Tehran is demanding ever-greater sanctions relief. While U.S. and European diplomats celebrated the conclusion of the Iran nuclear deal last summer, Iran's Supreme Leader Ali Khamenei and his government saw that deal not as the end of the negotiations, but as the beginning. This has become increasingly clear in their criticism of sanctions relief and demand for more.<sup>94</sup>

Some of this additional sanctions relief will flow to the coffers of terrorist groups and rogue actors. While President Obama claimed that the JCPOA's sanctions relief would not be a "game-changer" for Iran,<sup>95</sup> Supreme Leader Khamenei stated in a speech less than one week after the JCPOA announcement, "We shall not stop supporting our friends in the region: The meek nation of Palestine, the nation and government of Syria ... and

93. U.S. Department of the Treasury, Press Release, "Treasury Targets Networks Linked to Iran," August 29, 2014. (<https://www.treasury.gov/press-center/press-releases/Pages/jl2618.aspx>)

94. For example, Guy Faulconbridge, "Iran calls on U.S. to reassure European banks over trade with Tehran," *Reuters*, February 4, 2016. (<http://www.reuters.com/article/us-iran-britain-trade-idUSKCN0VD2K2>); Jay Solomon, Asa Fitch, and Benoit Faucon, "Iran's Central Bank Chief Warns Banking-Access Issues Jeopardize Nuclear Deal," *The Wall Street Journal*, April 15, 2016. (<http://www.wsj.com/articles/irans-central-bank-chief-warns-banking-access-issues-jeopardize-nuclear-deal-1460745930#:ZHcj-dQfzyZaA>)

95. Barack Obama, Press Briefing, "Press Conference by the President," *The White House*, July 15, 2015. (<https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president>)

the sincere holy warriors of the resistance in Lebanon and Palestine."<sup>96</sup> The infusion of cash and other assets as a result of the JCPOA is relieving budgetary challenges for a country that had only an estimated \$20 billion in fully accessible foreign exchange reserves prior to November 2013<sup>97</sup> but was spending at least \$6 billion annually to support Assad.<sup>98</sup>

In January 2016, Secretary of State John Kerry admitted that Iran would use some of the funds from sanctions relief to aid its nefarious activities and support terrorism. Referring to the previously frozen assets to which Iran now has access, he noted, "Some of it will end up in the hands of the IRGC or other entities, some of which are labeled terrorists."<sup>99</sup> Just last month, Hezbollah's Secretary General Hassan Nasrallah reminded the public that "Hezbollah's budget, its income, its expenses, everything it eats and drinks, its weapons and rockets, come from the Islamic Republic of Iran."<sup>100</sup>

Even with considerably more money at its disposal to spend on supporting its proxies, Iran is pushing for additional concessions. The Iranian regime has mounted a full-court press to persuade the global

96. "Iran Press Review 20 July," *Foundation for Defense of Democracies*, July 20, 2015. (<http://www.defenddemocracy.org/iran-press-review-20-july>)

97. Mark Dubowitz and Rachel Ziemba, "When Will Iran Run Out of Money?" *Foundation for Defense of Democracies and Roubini Global Economics*, October 2, 2013. ([http://www.defenddemocracy.org/content/uploads/documents/Iran\\_Report\\_Final\\_2.pdf](http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf))

98. 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>)

99. Elise Labott, "John Kerry: Some sanctions relief money for Iran will go to terrorism," *CNN*, January 21, 2016. (<http://www.cnn.com/2016/01/21/politics/john-kerry-money-iran-sanctions-terrorism/>)

100. Majid Rafizadeh, "In first, Hezbollah confirms all financial support comes from Iran," *Al Arabiya* (Saudi Arabia), June 25, 2016. (<http://english.alarabiya.net/en/perspective/features/2016/06/25/In-first-Hezbollah-s-Nasrallah-confirms-all-financial-support-comes-from-Iran.html>)

financial community to overlook its long rap sheet of financial crimes<sup>101</sup> and to persuade the United States to provide additional sanctions relief<sup>102</sup> that goes beyond anything promised by the nuclear agreement.

Supreme Leader Khamenei has argued that the United States has “removed the sanctions in paper only” and blames the U.S. for the fact that global banks are keeping Iran at arm’s length.<sup>103</sup> Iranian Central Bank Governor Valiollah Seif has publicly criticized the U.S. for “not honor[ing its] obligations” and explicitly called for the U.S. to change its laws to allow Iran to access the U.S. financial system.<sup>104</sup> Meanwhile, he and Foreign Minister Javad Zarif regularly dismiss concerns about Iran’s support for terrorism and provocative ballistic missile launches, deliberately sidestepping Iran’s record of illicit financial activities.<sup>105</sup>

Tehran’s record of illicit financial activities and the central role of the Central Bank of Iran (CBI) in these efforts require scrutiny. Between 2006 and 2011, as the U.S. sanctioned Iranian banks, the CBI

facilitated transactions for designated banks involved in proliferation and terror financing and, according to Treasury, helped them evade sanctions.<sup>106</sup> As a result, Treasury took the necessary step in November 2011 of designating Iran and its entire financial sector – including its central bank – a “jurisdiction of primary money laundering concern.”<sup>107</sup> The following year, Congress statutorily designated the CBI for its support of nuclear and missile proliferation, terrorism, and money laundering, and banned all transactions with it beyond limited crude oil sales and humanitarian trade.<sup>108</sup> Despite these multiple grounds for sanctions against the CBI, the Obama administration lifted or suspended all executive branch and congressional sanctions against the Iranian central bank despite presenting no evidence that it had stopped the full range of its illicit financial activities.

While the CBI continues to deny its role as Iran’s central bank for illicit finance, including terrorism, Tehran owes victims of Iranian terrorism more than \$50 billion in outstanding judgments.<sup>109</sup> The central bank had appealed to the U.S. Supreme Court to overturn the seizure of nearly \$2 billion of its assets to settle outstanding judgments won by these victims

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

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

103. Aresu Eqbali and Margherita Stancati, “Iran’s Supreme Leader Says Sanctions Still Affecting Country’s Economy,” *The Wall Street Journal*, March 20, 2016. (<http://www.wsj.com/articles/irans-supreme-leader-says-sanctions-still-affecting-countrys-economy-1458502695>)

104. Valiollah Seif, “A Conversation with Valiollah Seif on the Future of the Iranian Economy,” *Council on Foreign Relations*, April 15, 2016. (<http://www.cfr.org/global/conversation-valiollah-seif/p37733>)

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

106. U.S. Department of the Treasury, Financial Crimes Enforcement Network, Advisory, “Update on the Continuing Illicit Finance Threat Emanating from Iran,” June 22, 2010. ([https://www.fincen.gov/statutes\\_regs/guidance/html/fin-2010-a008.html](https://www.fincen.gov/statutes_regs/guidance/html/fin-2010-a008.html))

107. 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>)

108. National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81, 125 Stat. 1298, codified as amended at 112 U.S.C. §1245. ([https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa\\_publaw.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa_publaw.pdf))

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

of terrorism.<sup>110</sup> When the Supreme Court issued its ruling in April affirming the lower court's decision to award the funds to victims,<sup>111</sup> Iran denounced it as a theft of Iranian property<sup>112</sup> and sued the U.S. in the International Court of Justice.<sup>113</sup>

Iran remains recalcitrant in admitting these past wrongs. Just as the JCPOA turned Iran from a nuclear pariah to nuclear partner without requiring Iran to come clean on its decades-long track record of nuclear mendacity, Iran is using a similar scheme to legitimize its financial sector. On the nuclear front, Iran denied its weaponization efforts, deceived the international community about its illicit nuclear activities, and escalated its demands for fewer nuclear constraints. On the financial track, Tehran is following the same strategy. Iranian leaders are denying their illicit financial conduct, they are attempting to deceive the international community about this ongoing illicit conduct, and now they are demanding new sanctions relief and concessions to legitimize their financial sector.

The Financial Action Task Force (FATF), the global anti-money laundering and anti-terror finance standards body, has been a major barrier to Iran's legitimization effort. The body regularly warns members that they

should "apply effective counter-measures to protect their financial sectors" from illicit finance risks emanating from Iran.<sup>114</sup> To counter these warnings and their impact on the global financial community's reluctance to re-engage with Iran's financial sector, Iran engaged in a robust campaign to get itself off FATF's blacklist.<sup>115</sup> Tehran also expressed its intention to join the FATF-style regional body, the Eurasian Group,<sup>116</sup> which is dominated by Russia.

**“Iranian leaders are denying their illicit financial conduct, attempting to deceive the international community about ongoing illicit conduct, and demanding new sanctions relief.”**

In June, at its meeting in South Korea, FATF declined to remove Iran from its high-risk blacklist but suspended for one year its call for mandatory counter-measures to be imposed by global banks. On one hand, FATF's directive was a clear rejection of the Islamic Republic's lobbying campaign to legitimize itself as a responsible financial actor: "Until Iran implements the measures required to address the deficiencies identified in the Action Plan, the FATF will remain concerned with the terrorist financing risk emanating from Iran and the threat this poses to the international financial system." Even as FATF temporarily suspended its call for countries to apply counter-measures, the body

110. Lawrence Hurley, "Iran central bank takes Beirut bombing case to U.S. Supreme Court," *Reuters*, January 13, 2016. (<http://www.reuters.com/article/us-usa-court-iran-idUSKCN0UR0IT20160113>)

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

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

113. Asa Fitch and Aresu Egbali, "Iran Sues U.S. in International Court Over Frozen Assets," *The Wall Street Journal*, June 16, 2016. (<http://www.wsj.com/articles/iran-sues-u-s-in-international-court-over-frozen-assets-1466027629>)

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

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

116. Irene Madongo, "Iran to Gain Observer Status in Eurasian Group by Summer, Says FIU Chief," *MoneyLaundering.com*, April 27, 2016. (<http://www.moneylaundering.com/News/Pages/138005.aspx>); Irene Madongo, "Eurasian Group Grants Iran Observer Status," *MoneyLaundering.com*, June 14, 2016. (<http://www.moneylaundering.com/News/Pages/138665.aspx>)

warned its members and all jurisdictions to “advise their financial institutions to apply enhanced due diligence to business relationships and transactions” with Iran.<sup>117</sup> The message from FATF was clear: Iran may say it is open for business, but it is not yet safe to do so.

On the other hand, the temporary suspension of mandatory counter-measures could signal a shift in FATF's position and increase the likelihood that, under pressure from European and Asian countries eager to get back to business with Tehran, Iran gets taken off the blacklist next year without a fundamental change in its financial criminal behavior.

In order to get off of FATF's blacklist, Iran will need to make substantial changes to its anti-money laundering regulation and fulfill a FATF action plan. But Iran is in flagrant violation of FATF requirements to comply with UN Security Council Resolutions to target proliferation financing. Tehran's partnership with North Korea in both missile, and potentially nuclear, development is in clear violation of UN sanctions on Pyongyang.<sup>118</sup>

And make no mistake: Tehran's efforts to pass laws that purport to address international counter-terrorism financing standards are hollow and do not conform to FATF standards. As the world's leading state sponsor of terrorism,<sup>119</sup> Iran's definitions of terrorism and terrorism financing exclude groups “attempting to end foreign occupation, colonialism and racism,” and have

117. The Financial Action Task Force, Public Statement, “Public Statement – 24 June 2016,” June 24, 2016. (<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-june-2016.html>)

118. Ali Alfoneh and Scott Modell, “The Iran-North Korea Nuclear Nexus: Unanswered Questions,” *Foundation for Defense of Democracies*, January 2016. (<http://www.defenddemocracy.org/content/uploads/documents/Iran DPRK.pdf>)

119. Justin Siberell, “Special Briefing: Country Reports on Terrorism,” *U.S. Department of State*, June 2, 2016. (<http://www.state.gov/r/pa/prs/ps/2016/06/258013.htm>); U.S. Department of State, “Country Reports on Terrorism 2015,” June 2016. (<http://www.state.gov/documents/organization/258249.pdf>)

other language to justify terrorism against America and its allies. Iran's leaders are telling the world, “We will arm and bankroll whomever we want but won't call them terrorists.”

Iran also stated that it is ready to join the World Trade Organization (WTO),<sup>120</sup> and the Swiss President and the European Parliament Committee on International Trade have already expressed support.<sup>121</sup> Accession would require significant economic reforms, intellectual property protections, and other significant restructuring to liberalize Iran's economy.<sup>122</sup> Such reforms are likely to be opposed by the supreme leader, the IRGC, and other vested interests as they will undermine their ability to censor content and dominate the Iranian economy; however, the process is more important to Iran's legitimization campaign than whether or not the regime intends to implement any reforms.

From an American national and economic security perspective, Iran should not be permitted to become a member of the WTO until it ceases to support terrorism and engage in missile proliferation. If Iran becomes a member of the WTO, it will be much more

120. Tom Miles, “Iran, biggest economy outside WTO, says it's ready to join,” *Reuters*, December 17, 2015. (<http://www.reuters.com/article/us-iran-wto-idUSKBN0U02NZ20151217>)

121. Trade Practitioner, “EP Committee on International Trade Proposes New Position on Iran,” *Squire Patton Boggs*, May 26, 2016. (<http://www.tradepractitioner.com/2016/05/ep-committee-on-international-trade-proposes-new-position-on-iran/>); “Switzerland to help Iran join WTO,” *Mehr News Agency* (Iran), February 27, 2016. (<http://en.mehrnews.com/news/114811/Switzerland-to-help-Iran-join-WTO>)

122. Allison Carnegie, “Here's what will happen if Iran joins the WTO,” *The Washington Post*, October 24, 2015. (<https://www.washingtonpost.com/news/monkey-cage/wp/2015/10/24/heres-what-will-happen-if-iran-joins-the-wto/>); Tom Miles, “Iran, biggest economy outside WTO, says it's ready to join,” *Reuters*, December 17, 2015. (<http://www.reuters.com/article/us-iran-wto-idUSKBN0U02NZ20151217>); Zahra Alipour, “Is it time to tame Iran's lawless publishing sector?” *Al Monitor*, May 24, 2016. (<http://www.al-monitor.com/pulse/originals/2016/05/iran-copyright-infringement-berne-convention.html#ixzz49csRxEO5>)

difficult for the U.S. and its allies to impose sanctions. While sanctions are permissible under a national security exception in WTO rules, “these actions would clearly violate the spirit of the WTO and have therefore been rarely used,” according to Columbia University Professor Allison Carnegie.<sup>123</sup> The United States would lose its powerful coercive sanctions tools – tools that have been the centerpiece of the administration’s nuclear and non-nuclear strategy against Iran.

Iran will attempt to use the FATF and WTO processes as part of its narrative and efforts to normalize its place in the international community. Step-by-step, Iran will try to legitimize itself in the global financial and business community without fundamentally changing its financial practices. Just as it went from nuclear pariah to nuclear partner under the JCPOA without admitting to its nuclear weaponization work, Tehran will use this same strategy of coupling a denial of wrongdoing with demands for more and more concessions.

## Illicit Financial Risks Remain

For now, most large banks have not been fooled by the Islamic Republic’s game.<sup>124</sup> After a decade of Treasury warnings, which were backed by sanctions on Iran for its nuclear and weapons proliferation, terror financing, regional aggression, and money laundering, the private sector has a clear view of the risks of doing business in Iran. Banks are “driven by the financial-crime risks and the underlying conduct,” HSBC Chief Legal Officer Stuart Levey, who was once Obama’s Treasury undersecretary for terrorism and financial intelligence,

123. Allison Carnegie, “Here’s what will happen if Iran joins the WTO,” *The Washington Post*, October 24, 2015. (<https://www.washingtonpost.com/news/monkey-cage/wp/2015/10/24/heres-what-will-happen-if-iran-joins-the-wto/>)

124. Martin Arnold, Geoff Dyer, and Najmeh Bozorgmehr, “European banks resist calls to increase business ties with Iran,” *Financial Times* (UK), May 12, 2016. (<http://www.ft.com/cms/s/0/aca21f2-1796-11e6-bb7d-ee563a5a1cc1.html?siteeditions=intl#axzz4Dq4m1bCq>)

reminded the U.S. government in a *Wall Street Journal* op-ed recently. “No one has claimed that Iran has ceased to engage in much of the same conduct for which it was sanctioned.”<sup>125</sup>

Indeed, the International Monetary Fund (IMF)’s David Lipton noted on a visit to Tehran, “The best thing the government can do, and the banks can do, is to bring those standards up to international levels and try to reassure foreign partners, banks and otherwise that Iran’s banks are safe to deal with.”<sup>126</sup> Former Treasury spokesperson Hagar Hajjar Chemali noted, “The only move that could help bring on the business is for Tehran to change its foreign policy and improve its financial transparency measures.”<sup>127</sup>

Economic forecasters argue that Iran’s ability to take advantage of sanctions relief depends not primarily on additional American concessions but on Iran’s own economic policies. Specifically, according to the IMF, Iran needs to implement policies to attract foreign investment and to address systemic illicit finance risks.<sup>128</sup>

Until Iran alleviates money laundering and terror finance concerns by committing to end its support for terrorism, missile development, and destabilizing regional activities, and to reduce the economic power of the Revolutionary Guard and the supreme leader’s

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

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

127. Hagar Hajjar Chemali, “If Iran Wants Business, It’s Up to Iran to Change,” *The Huffington Post*, May 15, 2016. ([http://www.huffingtonpost.com/entry/if-iran-wants-business-its-up-to-iran-to-change\\_us\\_57392bbfe4b06dede18b941c](http://www.huffingtonpost.com/entry/if-iran-wants-business-its-up-to-iran-to-change_us_57392bbfe4b06dede18b941c))

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

business empire, banks will keep Iran at arm's length. The enhanced due diligence companies will need to apply to any transaction with Iran will prove a nightmare because many Iranian companies – especially including companies controlled by the IRGC – use nontransparent corporate structures and shadow companies to hide their true ownership interests.

In addition to implementing the regime's policies to support terrorism and destabilize its neighbors, the IRGC has become a dominant force in the Iranian economy, and Iran's "most powerful economic actor," according to the U.S. Treasury.<sup>129</sup> The IRGC's control over strategic sectors of the Iranian economy means that any foreign firms interested in doing business with Iran will have to do business with the Guard.<sup>130</sup> Businesses are rightfully concerned that they may be inadvertently dealing with companies owned or controlled by sanctioned entities or those that may become sanctioned when their ties to the IRGC become apparent.

Those multinational companies and global banks who care about long-term protection of their assets are not rushing back into Iran because they understand the risks of getting entangled in massive money-laundering, corruption, and terror finance schemes that

129. U.S. Department of the Treasury, Press Release, "Treasury Submits Report to Congress on NIOC and NITC," September 24, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1718.aspx>)

130. For an extensive analysis of the role of the IRGC in strategic sectors of the Iranian economy and how it will benefit from sanctions relief under the JCPOA, we recommend the testimony of our FDD colleague Emanuele Ottolenghi before the House Foreign Affairs Middle East and North Africa Subcommittee. Emanuele Ottolenghi, "The Iran Nuclear Deal and its Impact on Iran's Islamic Revolutionary Guards Corps," *Testimony before the House Foreign Affairs Middle East and North Africa Subcommittee*, September 17, 2015. (<http://docs.house.gov/meetings/FA/FA13/20150917/103958/HHRG-114-FA13-Wstate-OttolenghiE-20150917.pdf>); In the coming weeks, FDD will also be publishing a comprehensive study building on this testimony and providing innovative policy ideas for Congress on ways to use economic pressure against the Revolutionary Guards.

pose unmanageable risks to their stakeholders. Tehran ranked 150 out of 189 countries on the World Bank's 2016 "Ease of Doing Business" Index on "protecting minority investors."<sup>131</sup> Foreign companies know that the pervasiveness of corruption presents significant challenges since evidence of bribes triggers the U.S. Foreign Corrupt Practices Act and the UK Bribery Act, which involve severe civil and criminal penalties. Transparency International ranks Iran 130 out of 168 countries on its corruption perception index, and the Basel Institute on Governance ranked Iran as the worst country in the world with regard to risks from money laundering and terrorism financing in its annual Anti-Money Laundering Index report.<sup>132</sup>

The private sector knows that now is not the right time to rush back into a country that still remains designated by the U.S. government as a "jurisdiction of primary money-laundering concern."<sup>133</sup> When Treasury issued this designation in November 2011, the department 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."<sup>134</sup> Iran's entire financial system posed illicit finance risks to the global system. The nuclear deal has not changed the Iranian regime's

131. "Doing Business 2016: Ease of Doing Business in Iran, Islamic Republic," *World Bank Group*, accessed July 8, 2016. (<http://www.doingbusiness.org/data/exploreeconomies/iran/>)

132. "Corruption by Country/Territory: Iran," *Transparency International*, accessed February 12, 2016. (<https://www.transparency.org/country/#IRN>); "Basel AML Index 2015 Report," *Basel Institute on Governance*, August 18, 2015. ([https://index.baselgovernance.org/sites/index/documents/Basel\\_AML\\_Index\\_Report\\_2015.pdf](https://index.baselgovernance.org/sites/index/documents/Basel_AML_Index_Report_2015.pdf))

133. 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>)

134. 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>)

malign foreign and economic policies, which have had a remarkable consistency over the years. As Foreign Minister Mohammad-Javad Zarif wrote in his memoir, tending to the country's economic welfare was not enough for Iran's leaders: "We have also defined a global vocation ... we do not exist without our revolutionary goals."<sup>135</sup>

### ***Europe is at Risk***

Europe in particular is vulnerable to the illicit finance risks posed by a legitimized Iranian banking system. For now, Iran remains cut off from the U.S. financial system, but the JCPOA terminated financial sanctions against most Iranian financial institutions. The nuclear deal lifted U.S. sanctions on 21 out of the 23 Iranian banks designated for proliferation financing – including both nuclear and ballistic missile activities – and 26 other financial institutions blacklisted for providing financial services to previously-designated entities or for being owned by the government of Iran.<sup>136</sup>

**“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.”**

Meanwhile, the European Union lifted sanctions against most Iranian banks that it sanctioned over the past decade and removed restrictions on financial messaging services, allowing these Iranian banks back into the SWIFT financial messaging system from

135. Ali Alfoneh and Reuel Marc Gerecht, "An Iranian Moderate Exposed," *The New Republic*, January 23, 2014. (<https://newrepublic.com/article/116167/mohammad-javad-zarif-irans-foreign-minister-religious-zealot>)

136. Over the past decade, the U.S. 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. Joint Comprehensive Plan of Action, Annex II, Vienna, July 14, 2015, Attachment 3. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/annex\\_1\\_attachements\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachements_en.pdf))

where they were expelled in March 2012.<sup>137</sup> 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 SWIFT system, Iranian banks are also using the Trans-European Automated Real-Time Gross Settlement Express Transfer (Target2) system. Target2 is the European Central Bank's proprietary electronic interbank payment system, equivalent to the U.S. Fedwire, and the system that settles transactions in euros through the SWIFT gateway. Iranian banks, however, regularly violate the European Central Bank's guidelines and terms of use. Participants in the Target2 system are required to comply with all obligations related to "prevention of money laundering, the financing of terrorism, proliferation-sensitive nuclear activities and the development of nuclear weapons delivery systems."<sup>138</sup> Instead, Iranian banks are complicit in this type of illicit finance.

Target2 could be used unwittingly to aid Iranian sanctions-busting schemes. If an Iranian trader, for example, wants to convert euros from his Chinese bank account into yuan and then transfer those yuan to an account held by a Chinese producer of maraging steel (which is used to build advanced centrifuges), the Iranian trader's bank will likely use the Target2 system. This hypothetical scenario is very plausible, especially as many previously sanctioned entities are actively procuring raw materials in China relevant to Iran's nuclear program, according

137. Joint Comprehensive Plan of Action, Annex II – Sanctions-related commitments, Vienna, July 14, 2015. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/annex\\_2\\_sanctions\\_related\\_commitments\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_2_sanctions_related_commitments_en.pdf)); SWIFT, Press Release, "SWIFT instructed to disconnect sanctioned Iranian banks following EU Council decision," March 15, 2012. (<https://www.swift.com/insights/press-releases/swift-instructed-to-disconnect-sanctioned-iranian-banks-following-eu-council-decision>)

138. "Decision of the European Central Bank of 24 July 2007 concerning the terms and conditions of TARGET2-ECB," as amended, May 16, 2016. ([http://www.ecb.europa.eu/ecb/legal/pdf/celex\\_02007d0007-20160516\\_en\\_txt.pdf](http://www.ecb.europa.eu/ecb/legal/pdf/celex_02007d0007-20160516_en_txt.pdf))

to the Institute for Science and International Security.<sup>139</sup> Iran's use of the euro for illicit financial activities poses significant risks for European banking regulators and the financial institutions they oversee. It is also barred by the specific guidelines of Target 2.

Meanwhile, previously sanctioned banks with illicit finance records are freely operating in Europe. For example, the United States sanctioned Europäisch-Iranische Handelsbank (EIH Bank) in September 2010 for providing financial services to sanctioned Iranian banks.<sup>140</sup> Then-Treasury Undersecretary Stuart Levey called the bank a "key financial lifeline for Iran," noting that it "facilitated billions of dollars' worth of transactions on behalf of Iranian banks previously designated for proliferation-related activities."<sup>141</sup> Among other crimes, Treasury noted that the bank facilitated multiple transactions between weapons exporters and WMD proliferators.<sup>142</sup> According to a *Wall Street Journal* report, the bank was "involved in a broad sanctions-evasion scheme, conducting euro-denominated transactions" on behalf of the sanctioned Bank Sepah.<sup>143</sup> After significant U.S. pressure, including

the intervention of President Obama with Chancellor Angela Merkel,<sup>144</sup> the EU followed suit and designated EIH Bank in May 2011.<sup>145</sup>

Current and former senior members of EIH Bank's supervisory board also have served in senior leadership positions at other banks, including First East Export Bank, Bank Mellat, Future Bank (a Bank Melli subsidiary), and the Bank of Industry and Mine, all of whom were previously designated by the U.S. and EU for involvement in illicit finance in support of Iran's nuclear and ballistic missile programs.<sup>146</sup> Notably, First East Export Bank was one of only three banks that the UN designated for facilitating financial transactions for Iran's illicit nuclear program.

Under the JCPOA, however, the U.S. and EU lifted sanctions on EIH Bank without providing evidence that the bank ceased its illicit financial practices. EIH Bank is back in business. French energy company Total is reportedly using the bank to arrange payments to

144. John Vinocur, "Loopholes Let Iran Off the Hook," *The New York Times*, August 10, 2010. ([http://www.nytimes.com/2010/08/03/world/middleeast/03iht-politicus.html?\\_r=0](http://www.nytimes.com/2010/08/03/world/middleeast/03iht-politicus.html?_r=0)); David Crawford, "Germany Rebuffs U.S. Calls to Shut Iran Bank," *The Wall Street Journal*, April 12, 2011. (<http://www.wsj.com/articles/SB10001424052748703841904576256711528931504>)

145. "EU blacklists German-Iran bank for sanctions evasion," *Reuters*, May 24, 2011. (<http://www.reuters.com/article/germany-iran-bank-idUSLDE74N0XT20110524>)

146. "Europäisch-Iranische Handelsbank AG," *Iran Watch*, January 16, 2016. (<http://www.iranwatch.org/iranian-entities/europaisch-iranische-handelsbank-ag>); "Annual Report 2013," *Europäisch-Iranische Handelsbank*, 2013. ([http://eihbank.com/eihbank\\_GB2013.pdf](http://eihbank.com/eihbank_GB2013.pdf)); "Ali Divandari," *Iran Watch*, January 16, 2016. (<http://www.iranwatch.org/iranian-entities/ali-divandari>); Mohammadreza Saroukhani, *LinkedIn*, accessed July 8, 2016. (<https://www.linkedin.com/in/mohammadreza-saroukhani-742339102>); "Board of Directors," *Bank of Industry and Mines* (Iran), accessed June 24, 2016. (<http://en.bim.ir/board-of-directors/default.bim>); "Board of Directors," *Future Bank* (Iran), accessed June 24, 2016. (<http://www.futurebank.com.bh/brdOfDirectors.asp>); Additional data available upon request.

139. David Albright and Andrea Stricker, "Previously Sanctioned Iranian Entities Doing Business in China," *Institute for Science and International Security*, July 7, 2016. ([http://isis-online.org/uploads/isis-reports/documents/Previously\\_Sanctioned\\_Iranian\\_Entities\\_Doing\\_Business\\_in\\_China\\_7Jul2016\\_Final.pdf](http://isis-online.org/uploads/isis-reports/documents/Previously_Sanctioned_Iranian_Entities_Doing_Business_in_China_7Jul2016_Final.pdf))

140. U.S. Department of the Treasury Press Release, "Treasury Department Targets Iranian-Owned Bank in Germany Facilitating Iran's Proliferation Activities," September 7, 2010. (<https://www.treasury.gov/press-center/press-releases/Pages/tg847.aspx>)

141. Stuart Levey, "Written Testimony," *Hearing before the House Committee on Foreign Affairs*, December 1, 2010. (<https://www.treasury.gov/press-center/press-releases/Pages/TG985.aspx>)

142. U.S. Department of the Treasury, Press Release, "Treasury Department Targets Iranian-Owned Bank in Germany Facilitating Iran's Proliferation Activities," September 7, 2010. (<https://www.treasury.gov/press-center/press-releases/Pages/tg847.aspx>)

143. Peter Fritsch and David Crawford, "Small Bank in Germany Tied to Iran Nuclear Effort," *The Wall Street Journal*, July 18, 2010. (<http://www.wsj.com/articles/SB10001424052748704229004575371341662207242>)

ship exports of Iranian crude to Europe,<sup>147</sup> and starting in June 2016, Indian refineries are using EIH Bank to settle billions of dollars in outstanding debts owed to Iran for previous crude oil purchases.<sup>148</sup> According to conversations with industry experts, EIH is acting as a hub that mediates on behalf of European banks looking to transact with Iranian banks. These European banks are outsourcing their due diligence, “know-your-customer,” and other compliance responsibilities to an Iranian bank operating in Germany with a long rap sheet of financial crimes. With EIH managing risks for these European banks, there is a threat to the integrity of the European banking sector, their regulators and auditors, as well as a significant spillover threat to U.S. financial markets.

## Washington's Actions Go Beyond its JCPOA Commitments

Last summer's Joint Comprehensive Plan of Action was objectively a very good deal for Tehran: It preserved essential elements of the country's nuclear infrastructure and placed only temporary, limited restrictions on its nuclear ambitions, which start expiring in eight years. In exchange, Iran got the complete dismantlement of many of the most impactful U.S. and international economic sanctions.

147. Benoit Faucon, “Iran's Oil Deals Hit Banking Snag,” *The Wall Street Journal*, May 26, 2016. (<http://www.wsj.com/articles/irans-oil-deals-hit-banking-snag-1464255004>)

148. Nidhi Verma, “India begins settling Iran oil dues via Germany's EIH bank – sources,” *Reuters*, June 8, 2016. (<http://in.reuters.com/article/india-iran-payment-idINKCN0YU1HE>); “Indian Oil, MRPL Make \$330 Million Iran Payment Via Germany-Based EIH Bank,” *NDTV* (India), June 8, 2016. (<http://profit.ndtv.com/news/corporates/article-indian-oil-mrpl-make-330-million-iran-payment-via-germany-based-eih-bank-1416958>)

In January, the accord proceeded as scheduled. Iran mothballed some of its nuclear infrastructure and got the coveted stamp of approval from the International Atomic Energy Agency. Following that, Washington and the Europeans terminated or suspended a slew of punishing economic sanctions and even agreed to hand over access to a \$100 billion in blocked Iranian assets.<sup>149</sup>

But then the Obama administration went even further. After committing to “actively encourage” state and local government to lift their own sanctions,<sup>150</sup> the administration sent letters to all 50 governors urging them to reconsider all Iran-sanctions measures.<sup>151</sup> Starting about a decade ago, individual states began passing legislation requiring state pension funds to divest from companies that engaged in specific sanctionable activities and made investments in the Iranian energy sector. Many state laws tied the imposition of sanctions

149. Adam Szubin, “Written Testimony,” *Hearing before the Senate Committee on Banking, Housing, and Urban Affairs*, August 5, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0144.aspx>); Brian Murphy, “Iran claims \$100 billion now freed in major step as sanctions roll back,” *The Washington Post*, February 1, 2016. ([https://www.washingtonpost.com/world/iran-claims-100-billion-now-freed-in-major-step-as-sanctions-roll-back/2016/02/01/edfc23ca-c8e5-11e5-a7b2-5a2f824b02c9\\_story.html](https://www.washingtonpost.com/world/iran-claims-100-billion-now-freed-in-major-step-as-sanctions-roll-back/2016/02/01/edfc23ca-c8e5-11e5-a7b2-5a2f824b02c9_story.html)); Mark Dubowitz, Annie Fixler, and Rachel Ziemba, “Iran's Mysteriously Shrinking Reserves: Estimating the Value of Tehran's Foreign Assets,” *Foundation for Defense of Democracies and Roubini Global Economics*, September 2015. ([http://www.defenddemocracy.org/content/uploads/publications/FDDRoubini\\_Report\\_Irans\\_mysterious\\_shrinking\\_reserves.pdf](http://www.defenddemocracy.org/content/uploads/publications/FDDRoubini_Report_Irans_mysterious_shrinking_reserves.pdf)); Arshad Mohammed, “Iran to have access to over \$100 billion when deal implemented: U.S. officials,” *Reuters*, July 14, 2015. (<http://www.reuters.com/article/us-iran-nuclear-usa-details-idUSKCN0PO14D20150714>)

150. Joint Comprehensive Plan of Action, Vienna, July 14, 2015, paragraph 25. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/iran\\_joint-comprehensive-plan-of-action\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf))

151. Eli Lake, “Obama Administration Urges States to Lift Sanctions on Iran,” *Bloomberg*, April 19, 2016. (<https://www.bloomberg.com/view/articles/2016-04-18/obama-administration-urges-states-to-lift-sanctions-on-iran>); “State Legislation,” *United Against Nuclear Iran*, accessed July 6, 2015. (<http://www.unitedagainstnucleariran.com/state-legislation>)

to both Iran's pursuit of weapons of mass destruction and its support for terrorism.<sup>152</sup> Many of these measures contain termination clauses linked to Iran's removal from the state sponsors of terrorism list or similar certifications that Iran is no longer engaged in the support of international terrorism.

The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) includes provisions affirming the authority of states to impose sanctions or divest from Iran if they wish to do so.<sup>153</sup> While the JCPOA does not impact these provisions, the administration's actions to-date raise serious questions. Will the White House try to force individual states to lift their divestment measures, even as the termination criteria for the legislation have not been met? Congress should pay particular attention to any actions by the federal government that go beyond simply informing states and local authorities about the nuclear deal.

The Obama administration opened the door to Iran's financial legitimization strategy when it agreed to the nuclear deal: Under the terms of the accord, as discussed, the United States and the European Union committed to "refrain from any policy specifically intended to

directly and adversely affect the normalisation of trade and economic relations."<sup>154</sup> Iran has interpreted this to mean that the United States or EU cannot implement terrorism or other non-nuclear sanctions – even if they are entirely justified – or Iran will walk away from the JCPOA and "snap back" its nuclear program. Iranian officials also argue that the United States must go further, pushing skittish multilateral companies and global banks back into Iran.

And so, in recent months, Secretary of State John Kerry has been on an international invest-in-Tehran "road show"<sup>155</sup> to encourage large European banks to return to business with Iran. Banks simply need to "do their normal due diligence and know who they're dealing with," Kerry told reporters.<sup>156</sup> But the banks know that there is no "normal due diligence" in a country as corrupt as the Islamic Republic.

A tough-minded American administration would argue that there is a big difference between not interfering with commercial relations and actively advocating for banks and companies to enter the Iranian market. And by buying into Iran's arguments, Washington is becoming the trade-promotion agent for a rogue state.

In an attempt to assuage their concerns further, Secretary Kerry's staff briefed State Department reporters on a plan

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152. For example, see Protecting Florida's Investments Act, Committee Substitute for Senate Bill No. 2142, Florida State Legislature, 2007. ([http://laws.flrules.org/files/Ch\\_2007-088.pdf](http://laws.flrules.org/files/Ch_2007-088.pdf)); Assembly Bill 221, California Legislature, January 29, 2007. ([http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_0201-0250/ab\\_221\\_bill\\_20071014\\_chaptered.html](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0201-0250/ab_221_bill_20071014_chaptered.html)); Public Act 095-0616, Illinois General Assembly, September 2007. (<http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-0616>); Protecting Pennsylvania's Investments Act, Senate Bill 928, General Assembly of Pennsylvania, 2009. (<https://legiscan.com/PA/text/SB928/2009>)

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

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154. Joint Comprehensive Plan of Action, Vienna, July 14, 2015, paragraph 29. ([http://eeas.europa.eu/statements-eeas/docs/iran\\_agreement/iran\\_joint-comprehensive-plan-of-action-en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action-en.pdf))

155. David Brunnstrom, "Kerry seeks to soothe European bank nerves over Iran trade," *Reuters*, May 12, 2016. (<http://www.reuters.com/article/us-iran-banks-kerry-idUSKCN0Y30QJ>); Felicia Schwartz, "Kerry Tries to Drum Up Some Business in Europe for Iran," *The Wall Street Journal*, May 10, 2016. (<http://www.wsj.com/articles/kerry-tries-to-drum-up-some-business-in-europe-for-iran-1462902185>)

156. Josh Lederman, "US says Iran open for business, but Europe's banks disagree," *Associated Press*, May 12, 2016. (<http://bigstory.ap.org/article/73fd6c11e9b6474896cf59a4fc3ba108/us-says-banks-wont-be-punished-lawful-business-iran>)

to issue a license to permit foreign banks to use dollars when processing transactions with their Iranian counterparts<sup>157</sup> – a concession never explicitly negotiated as part of the nuclear deal. This prompted a backlash in Congress that had Treasury Department officials scrambling to issue guidance that Washington is not permitting Iranian access to the U.S. financial system, even as they left open the possibility of offshore dollar clearing.<sup>158</sup>

Iran wants direct – or, at a minimum, indirect – access to the U.S. dollar because the dollar is the preferred currency for global trade. In 2008, Treasury banned Iran's last access point to the U.S. financial system by prohibiting what are referred to as "U-turn" transactions, which are transactions between a foreign bank and an Iranian bank that briefly transit the U.S. financial system in order to dollarize the transaction.<sup>159</sup> At the time, Treasury's Office of Foreign Assets Control noted that the purpose of the action was "to further protect the U.S. financial system from the threat of illicit finance posed by Iran and its banks."<sup>160</sup>

Permitting Iran access to the U.S. dollar would contradict repeated administration promises to

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

"Officials: US considers easing ban on dollars to help Iran," *Associated Press*, March 31, 2016. (<http://bigstory.ap.org/article/d527c4f64b464801a2ed4573a13b4627/officials-us-mulls-new-rules-dollars-help-iran>)

158. Karoun Demirjian, "Treasury sanctions chief warns even tightest U.S. policy can't keep every dollar out of Iran," *The Washington Post*, May 26, 2016. (<https://www.washingtonpost.com/news/powerpost/wp/2016/05/26/treasury-sanctions-chief-warns-even-tightest-u-s-policy-cant-keep-every-dollar-out-of-iran/>)

159. U.S. Department of the Treasury, Press Release, "Fact Sheet: Treasury Strengthens Preventive Measures Against Iran," November 6, 2008. (<https://www.treasury.gov/press-center/press-releases/Pages/hp1258.aspx>)

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

Congress, and goes beyond any commitments made to Iran under the JCPOA.<sup>161</sup> During the weeks of intense congressional debate about the nuclear agreement and in the months following, administration officials repeatedly pledged that Iran would not be granted access to the U.S. financial system. Treasury Secretary Jack Lew was adamant during a congressional grilling last July. "Iranian banks will not be able to clear U.S. dollars through New York," he told both the Senate Foreign Relations Committee and House Foreign Affairs Committee, or "hold correspondent account relationships with U.S. financial institutions, or enter into financing arrangements with U.S. banks."<sup>162</sup>

### **“Permitting Iran access to the U.S. dollar ... goes beyond any commitments made to Iran under the JCPOA.”**

In August, before the Senate Banking Committee, Treasury's Acting Under Secretary for Terrorism and Financial Intelligence Adam Szubin similarly testified that Iran will not "be able to clear U.S. dollars through New York" or have correspondent accounts or financing arrangements with U.S. banks.<sup>163</sup> Most explicitly, Szubin publicly committed:

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

162. Jacob Lew, "Written Testimony of the Secretary of the Treasury," *Hearing before the Senate Foreign Relations Committee*, July 23, 2015. (<http://www.foreign.senate.gov/imo/media/doc/07-23-15%20Lew%20Testimony.pdf>); Jacob Lew, "Written Testimony of the Secretary of the Treasury," *Hearing before House Foreign Affairs Committee*, July 28, 2016. (<http://docs.house.gov/meetings/FA/FA00/20150728/103823/HHRG-114-FA00-Wstate-LewJ-20150728.pdf>)

163. Adam Szubin, "Written Testimony," *Hearing before the Senate Banking, Housing, and Urban Affairs Committee*, August 5, 2015. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0144.aspx>)

Iran will not be able to open bank accounts with U.S. banks, nor will Iran be able to access the U.S. banking sector, even for that momentary transaction to, what we call, dollarize a foreign payment. It was once referred to as a U-turn license, and Iran was allowed to make such offshore-to-offshore payments that cross U.S. banking sector thresholds for just a second. That is not in the cards.<sup>164</sup>

On Implementation Day (January 16, 2016), even as the administration suspended many of the most impactful secondary sanctions on Iran under the terms of the JCPOA, it vowed that the Islamic Republic would never get the ultimate prize: access to the U.S. financial system or dollar transactions. Treasury's guidance about sanctions relief stated that U-turn transactions remain banned. It explained that, despite the suspension of sanctions, "foreign financial institutions need to continue to ensure they do not clear U.S. dollar-denominated transactions involving Iran through U.S. financial institutions." Treasury emphasized: "The clearing of U.S. dollar- or other currency-denominated transactions through the U.S. financial system or involving a U.S. person remain prohibited." Treasury noted that the JCPOA "does not impact the November 2011 finding by the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) that Iran is a Jurisdiction of Primary Money Laundering Concern."<sup>165</sup>

If the United States provides dollarized access now, and in the future Iran conducts another ballistic missile test or executes more dissidents or provides more weapons to the Assad regime in Syria, the next administration will not be able to revoke Iran's access to dollarized transactions. Tehran will argue, convincingly, that Washington provided this sanctions relief under the JCPOA, so it cannot re-impose this sanction for non-nuclear reasons later.<sup>166</sup> Iran will threaten to walk away from the deal and deploy its own "nuclear snapback." This will effectively paralyze America's Iran policy as even the minimalist instrument of coercion, the non-nuclear sanction, will be increasingly neutralized.

### ***How the Administration Might "Dollarize" Iran's Transactions***

News reports indicate that the administration is contemplating ways to dollarized transactions as long as: 1) no Iranian banks are involved in the transactions; 2) no Iranian rials enter into the transaction at the dollar clearing facility; and 3) the payment does not start or end with U.S. dollars.<sup>167</sup> The transaction would be temporarily converted into dollars allowing European (or other foreign) banks to conduct at least part of the exchange in dollars, which banks prefer because the dollar is a stable currency with less fluctuations and therefore less risk.

Any authorization of dollarized transactions would likely need to make it clear that U.S. banks would be shielded from liability for providing dollars to

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

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

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166. Example derived from analysis of FDD's Center on Sanctions and Illicit Finance senior advisor Eric Lorber. Eric Lorber, "FPI Conference Call on Implications of Granting Iran Access to U.S. Financial Market," *Foreign Policy Initiative*, April 7, 2016. (<http://www.foreignpolicyi.org/content/transcript-fpi-conference-call-implications-granting-iran-access-us-financial-market>)

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

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

There appears to be no regulation expressly permitting foreign financial institutions to use offshore dollars to transact with Iran. Treasury's guidance notes that it is prohibited for foreign financial institutions to "clear U.S. dollar-denominated transactions involving Iran *through U.S. financial institutions*"<sup>168</sup> (emphasis added), but it is not clear if the transactions are permitted if they do not transit a U.S. bank.

In a House Foreign Affairs Committee hearing in May, Szubin testified that foreign banks are currently permitted to use the dollars already in their possession to clear transactions with Iran. "Every foreign bank in the world has U.S. dollars in their possession. Our sanctions do not extend to those dollar bills, and foreign actors aren't under our jurisdiction if they choose to give those to any actor, including an Iranian actor."<sup>169</sup>

This argument, however, does not address the fact that dollars circulating overseas do eventually return to the United States, thereby establishing a jurisdictional link. Foreign financial institutions do not know how

long dollars tainted by an Iranian transaction must remain outside the U.S. before they can be moved through the U.S. financial system without fear of U.S. sanctions.<sup>170</sup> Moreover, European banks have received substantial fines from the U.S. government as well as from New York regulators.<sup>171</sup> This is giving those with a global presence and with substantial U.S. operations pause until they are certain that they will not be on the wrong side of a future enforcement action. Additional guidance, letters of comfort, or licenses are likely necessary before foreign financial institutions with a large global and U.S. presence will process dollarized transactions for Iran.

Foreign financial institutions would still face significant due diligence challenges to ensure that none of the parties to the transaction remain under U.S. sanctions or are owned or controlled by a sanctioned entity. Reportedly, banks are drafting their own blacklists of companies with connections to the Iranian government – beyond those designations Treasury has imposed – to protect themselves from transacting with an agent of Iranian financial institutions or the government of Iran.<sup>172</sup>

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

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

169. Adam Szubin, "Iran Nuclear Deal Oversight: Implementation and Its Consequences (Part II)," *Hearing before the House Committee on Foreign Affairs*, May 25, 2016. (<http://foreignaffairs.house.gov/hearing/hearing-iran-nuclear-deal-oversight-implementation-and-its-consequences-part-ii>)

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170. For a more detailed analysis of Under Secretary Szubin's remarks and remaining ambiguities and risks, see Eric Lorber, "How Iran Taints the Dollar," *Foundation for Defense of Democracies*, May 26, 2016. (<http://www.defenddemocracy.org/media-hit/eric-b-lorber-how-iran-taints-the-dollar/>)

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

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

First, the United States could allow Iran to use what are known as offshore “large-value payment systems.”<sup>173</sup> Currently, offshore clearing houses and individual banks themselves have dollars within their holdings. Alternatively, the United States may permit dollar clearance through the Asian Clearing Union (which Iran had been using in 2009 to evade sanctions<sup>174</sup>) or allow banks to conduct what are known as “book transfers.”<sup>175</sup>

If the U.S. government wants to allow dollarized transactions, Treasury could issue a general license permitting – or a statement of guidance allowing – U.S. banks to provide dollars for an offshore clearing facility overseen by a foreign government or foreign bank.<sup>176</sup> When transmitting payments between Iranian companies and European companies, for example, the foreign financial institution would use this offshore clearing facility to convert the transaction into dollars. Treasury would issue similar licenses or guidance to permit dollarization through the Asian Clearing Union or through book transfers.

Alternatively, rather than move ahead with a blanket license, the administration could use a class-of-transactions approach. Specific classes of dollarized

transactions are already permitted. In general, U.S. banks are permitted “to process transfers of funds to or from Iran ... [if the] underlying transaction ... has been authorized by a specific or general license,” according to Treasury’s Iranian Transactions and Sanctions Regulations.<sup>177</sup>

**“Congress is rightly concerned about how the administration could provide Iran with access to the U.S. dollar. In addition to simply reinstating the U-turn general license ... there are a number of different mechanisms the United States could employ.”**

During the interim agreement, the U.S. government worked directly with foreign financial institutions to facilitate the repatriation of \$11.9 billion in Iranian assets held abroad.<sup>178</sup> It is not clear how much of those assets – if any – were released or returned as dollar-denominated funds or dollarized through related conversions out of or into other currencies at some point in the transaction. Now, the administration may be poised to permit the dollarization of Iran’s previously frozen assets, worth approximately \$100 billion, in response to Iranian complaints that they are not able to use these funds.<sup>179</sup> Additionally, the administration

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

174. Avi Jorisch, “How Iran Skirts Sanctions,” *The Wall Street Journal*, November 4, 2009. (<http://www.wsj.com/articles/SB10001424052748703298004574457322960633830>)

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

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

177. “Title 31: Money and Finance: Treasury, Part 560—Iranian Transactions and Sanctions Regulations,” §560.516 Transfers of funds involving Iran, *Electronic Code of Federal Regulations*, May 5, 2016. (<http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=116314f3fa7cc31c414670ca6ab97006&mc=true&n=pr31.3.560&r=PART&ty=HTML>)

178. U.S. Department of the Treasury, “Frequently Asked Questions Relating to the Extension of Temporary Sanctions Relief through June 30, 2015, to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran,” November 25, 2014. ([https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa\\_ext\\_faq\\_11252014.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf))

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

may route the \$8.6 million payment for 32 metric tons of Iranian heavy water through a foreign financial institution, although administration officials have not provided specific details about whether this payment will use dollars.<sup>180</sup>

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

Iran also wants the U.S. government to specifically authorize the use of dollars in other classes of transactions, including payments for aircraft sales. That is the significance of the \$25 billion preliminary deal between Boeing and Iran Air. In addition to implicating a major U.S. company in the Islamic Republic's support for terrorism and regional adventurism, it is the financing of the deal that is central to Iran's demands for economic legitimacy. Tehran wants U.S. banks to finance the Boeing deal and for the administration to permit the transaction to transit the U.S. financial system or take place through offshore dollar clearing facilities. Iran wants to get the planes now, pay later, borrow the money from Western lenders, and secure its access to dollarized transactions – a benefit never authorized under the terms of the nuclear deal. With each class of transactions that is dollarized, Iran is slowly undermining the ban on Iranian access to the U.S. financial system.

Congress should reject all of these attempts to give Iran direct or indirect access to the U.S. dollar. Iran

did not explicitly negotiate this concession as part of the JCPOA and should not now be given a unilateral concession of this magnitude – particularly given its continued record of illicit behavior. Congress recently underscored these concerns in a bipartisan Senate letter sent to President Obama and in multiple pieces of legislation introduced in the House and Senate.<sup>181</sup>

## Assess to the Dollar and Dollarized Transactions: Arguments and Counterarguments

Ahead of any action by Treasury to allow dollarized transactions, it is important for Congress to understand the counterpoints to arguments that the administration is likely to put forward.<sup>182</sup>

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181. Office of Senator Susan Collins, Press Release, “Senators Collins, Nelson Lead Bipartisan Letter Urging Administration to Preserve Maximum Strength of Sanctions Until Iran Abandons Its Illicit, Non-Nuclear Activities,” July 11, 2016. (<https://www.collins.senate.gov/newsroom/senators-collins-nelson-lead-bipartisan-letter-urging-administration-preserve-maximum>); United States Financial System Protection Act of 2016, H.R. 4992, 114<sup>th</sup> Congress (2016). (<https://www.govtrack.us/congress/bills/114/hr4992>); Preventing Iran's Access to United States Dollars Act of 2016, S. 2752, 114<sup>th</sup> Congress (2016). (<https://www.congress.gov/bill/114th-congress/senate-bill/2752>); Office of Representative Leonard Lance, Press Release, “House Passes Lance Amendment Blocking Iran's Access to U.S. Dollar,” July 7, 2016. (<http://lance.house.gov/newsroom/press-releases/house-passes-lance-amendment-blocking-iran-s-access-to-us-dollar>); House Committee on Foreign Affairs, Press Release, “Chairman Royce Introduces Bill to Deny Iran Access to U.S. Dollar,” April 19, 2016. (<https://foreignaffairs.house.gov/press-release/chairman-royce-introduces-bill-to-deny-iran-access-to-u-s-dollar/>)

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

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

### ***Better Intelligence***

The White House may argue that allowing dollar transactions could yield better intelligence. In 2008, when Treasury banned U-turn transactions, it determined that the risks simply outweighed the intelligence benefits. Four years later, Treasury pushed to ban several Iranian banks, including the central bank, from the SWIFT financial messaging system. The threat to the integrity of the global financial system from Iranian banks, it again determined, was too grave, despite the intelligence that could be gathered.

### ***Assets Vulnerable to Future Sanctions***

The administration might claim that Treasury could capture dollar-denominated assets when Iran violates the nuclear agreement or uses the greenback to finance terrorism or ballistic missiles. This would not be realistic. Iran knows the U.S. can freeze transactions that are even temporarily converted to dollars, making it unlikely that the regime would hold registered dollar accounts in sufficient quantities in banks where U.S. authorities have reach. If anything, Iran is likely to keep its dollar holdings in offshore accounts or in pallets of cash out of the reach of U.S. authorities. Indeed, after the Supreme Court issued its decision affirming the ability of victims of Iranian terrorism to seize certain assets of the Central Bank of Iran, Iranian officials stated that allowing assets to remain in dollar accounts was “poor planning” and “clear negligence.”<sup>183</sup> Having learned this lesson, if the regime contemplates a nuclear violation or gets wind of new sanctions, it is likely to quickly dump whatever traceable dollar assets it holds.

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

### ***Undermining Confidence in the Dollar***

Administration officials may also argue, as they did during the JCPOA debate,<sup>184</sup> that not providing Iran with sanctions relief – in this case access to the U.S. dollar – will undermine the dollar’s position as the preferred currency for global trade.<sup>185</sup> The overwhelming majority, 87 percent,<sup>186</sup> of international trade is conducted in U.S. dollars; 43 percent of international financial transactions are denominated in dollars;<sup>187</sup> and more than 60 percent of total allocated global foreign exchange reserves are denominated in U.S. dollars.<sup>188</sup>

Despite analysts’ predictions over the past decade and especially after the 2008 financial crisis that the dollar would lose its preeminence, the dollar remains dominant because it is the most liquid currency, and U.S. Treasury bills are seen as the safest investment, even during financial crises. There are legitimate long-term concerns about challenges to the U.S.-led international financial order and the dollar’s position within that system, but whether or not Iran gets access to dollarized transactions has little to no bearing on this issue. Indeed, with a concern over the euro because

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184. Warren Stobel, “Dollar could suffer if U.S. walks away from Iran deal - John Kerry,” *Reuters*, August 11, 2015. (<http://uk.reuters.com/article/uk-iran-nuclear-kerry-idUKKCN0QG1UW20150811>)

185. For an example of this argument, see Elizabeth Rosenberg and Richard Nephew, “Iran’s broken financial system,” *Politico*, June 6, 2016. (<http://www.politico.com/agenda/story/2016/06/iran-broken-financial-system-000139>)

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

187. Greg Ip, “U.S. Influence Hinges on Future of Dollar, Yuan,” *The Wall Street Journal*, April 15, 2015. (<http://www.wsj.com/articles/u-s-influence-hinges-on-future-of-dollar-yuan-1429120648>)

188. International Monetary Fund, “Currency Composition of Official Foreign Exchange Reserves (COFER),” March 31, 2016. (<http://data.imf.org/?sk=E6A5F467-C14B-4AA8-9F6D-5A09EC4E62A4>)

of the Brexit and European debt crises and the yuan due to the sustainability of Chinese economic growth and the fragility of the Chinese banking sector, there continues to be a flight to the dollar.

### *Iranian Economic Recovery*

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

In 2012 and 2013, Iran's economy was crashing. It had been hit with an asymmetric shock from sanctions, including those targeting its central bank, oil exports, and access to the SWIFT financial messaging system. The economy shrank by six percent in the 2012-13 fiscal year, and bottomed out the following year, dropping another two percent.<sup>189</sup> Accessible foreign exchange reserves were estimated to be down to only \$20 billion.<sup>190</sup>

This changed during the nuclear negotiations. During the 18-month period starting in late 2013, interim sanctions relief<sup>191</sup> and the lack of new shocks enabled

Iran to move from a severe recession to a modest recovery.<sup>192</sup> During that time, the Islamic Republic received \$11.9 billion through the release of restricted assets, while sanctions on major sectors of its economy were suspended. This facilitated strong imports that supported domestic investment, especially from China. The Obama administration also de-escalated the sanctions pressure by blocking new congressional legislation.<sup>193</sup> Jointly, these forces rescued the Iranian economy and its leaders, including the Revolutionary Guard, from an imminent and severe balance of payments crisis. In the 2014-15 fiscal year, the Iranian economy rebounded and grew at a rate of at least three percent.<sup>194</sup>

Now, under the JCPOA, Iran has received a sanctions windfall and its economy is beginning to recover. In the fiscal year that ended in March, Iran's economy grew

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192. Mark Dubowitz and Rachel Ziemba, "Early Signs of an Iranian Economic Recovery," *Foundation for Defense of Democracies*, January 9, 2016. (<http://www.defenddemocracy.org/media-hit/early-signs-of-an-iranian-economic-recovery/>); Jennifer Hsieh, Rachel Ziemba, and Mark Dubowitz, "Iran's Economy: Out of the Red, Slowly Growing," *Foundation for Defense of Democracies and Roubini Global Economics*, October 2014. ([http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport\\_Oct14.pdf](http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport_Oct14.pdf)); Jennifer Hsieh, Rachel Ziemba, and Mark Dubowitz, "Iran's Economy Will Slow but Continue to Grow Under Cheaper Oil and Current Sanctions," *Foundation for Defense of Democracies and Roubini Global Economics*, February 2015. ([http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport\\_FEB15.pdf](http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport_FEB15.pdf))

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

194. International Monetary Fund, "Iran Faces Multiple Challenges as Growth Prospects Brighten," *IMF Survey*, January 20, 2016. (<http://www.imf.org/external/pubs/ft/survey/so/2016/new012016a.htm>); Mark Dubowitz, Annie Fixler, and Rachel Ziemba, "Don't Buy the Spin: Iran is Getting Economic Relief," *Foundation for Defense of Democracies and Roubini Global Economics*, June 2016. ([http://www.defenddemocracy.org/content/uploads/documents/Dont\\_Buy\\_The\\_Spin.pdf](http://www.defenddemocracy.org/content/uploads/documents/Dont_Buy_The_Spin.pdf))

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

190. Mark Dubowitz and Rachel Ziemba, "When Will Iran Run Out of Money?" *Foundation for Defense of Democracies and Roubini Global Economics*, October 2, 2013. ([http://www.defenddemocracy.org/content/uploads/documents/Iran\\_Report\\_Final\\_2.pdf](http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf))

191. U.S. Department of the Treasury, "Frequently Asked Questions Relating to the Extension of Temporary Sanctions Relief through June 30, 2015, to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran," November 25, 2014. ([https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa\\_ext\\_faq\\_11252014.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf))

only slightly, and may have even experienced a modest contraction because of with declining oil prices and a tight monetary policy to rein in inflation.<sup>195</sup> But in the current fiscal year, Iran's economy is projected to grow at a rate of nearly four percent.<sup>196</sup> Assuming that Iran continues to make modest economic reforms to attract investment, the country's economic growth is projected to stabilize around 4 to 4.5 percent annually over the next five years.<sup>197</sup>

**“Under the JCPOA, Iran has received a sanctions windfall and its economy is beginning to recover. ... The country's economic growth is projected to stabilize around 4 to 4.5 percent annually over the next five years.”**

### *Empowering the “Moderates”*

The administration may argue that additional sanctions relief is necessary to empower moderate forces in Iran so that they can push back against hardline elements who want to pursue policies antithetical to U.S. interests. Former CIA Director Leon Panetta, however, explained that the intelligence community's assessment is the Iranian regime is not meaningfully divided into

“moderate” and “hardline” camps.<sup>198</sup> Or, as former Under Secretary of State and U.S. negotiator in the Iran talks Wendy Sherman noted, “There are hardliners in Iran, and then there are hard-hardliners in Iran. Rouhani is not a moderate, he is a hardliner.”<sup>199</sup>

Analysis that President Rouhani represents a moderate wing fails to appreciate the Iranian political system and atmosphere. When he was elected, he was hailed as a man of the system who nevertheless wanted to make fundamental changes that would gradually bring greater freedom to Iranian society and politics. This assessment ignores the evidence. In 1999, he supported crushing student protests and called for the execution of those agitating for greater freedom.<sup>200</sup> Last year, our colleagues at the Foundation for Defense of Democracies conducted an in-depth study of his writings, speeches, and autobiography. Their research revealed that his “politics aren't reformist”; his priority is to “ensure the regime's continuing dominion.” He is “a founding father of Iran's theocracy and its nuclear-weapons program” and has “arduously and vengefully worked to see the revolution succeed.”<sup>201</sup>

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195. Saeed Ghasseminejad, “Rouhani's abysmal economic record and the West's dilemma,” *Business Insider*, March 30, 2016.

(<http://www.businessinsider.com/rouhanis-abysmal-economic-record-and-the-wests-dilemma-2016-3>); International Monetary Fund, “Iran Faces Multiple Challenges as Growth Prospects Brighten,” *IMF Survey*, January 20, 2016. (<http://www.imf.org/external/pubs/ft/survey/so/2016/new012016a.htm>)

196. Mark Dubowitz, Annie Fixler, and Rachel Ziemba, “Don't Buy the Spin: Iran is Getting Economic Relief,” *Foundation for Defense of Democracies and Roubini Global Economics*, June 2016. ([http://www.defenddemocracy.org/content/uploads/documents/Dont\\_Buy\\_The\\_Spin.pdf](http://www.defenddemocracy.org/content/uploads/documents/Dont_Buy_The_Spin.pdf))

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

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198. David Samuels, “The Aspiring Novelist Who Became Obama's Foreign-Policy Guru,” *The New York Times Magazine*, May 5, 2016.

([http://www.nytimes.com/2016/05/08/magazine/the-aspiring-novelist-who-became-obamas-foreign-policy-guru.html?\\_r=2](http://www.nytimes.com/2016/05/08/magazine/the-aspiring-novelist-who-became-obamas-foreign-policy-guru.html?_r=2))

199. Matthew Riley, “Lead U.S. negotiator of Iran deal Sherman analyzes the agreement,” *The Duke Chronicle*, February 5, 2016.

(<http://www.dukechronicle.com/article/2016/02/lead-u-s-negotiator-of-iran-deal-sherman-analyzes-the-agreement>)

200. Sohrab Ahmari, “Behind Iran's ‘Moderate’ New Leader,” *The Wall Street Journal*, June 16, 2013. (<http://www.wsj.com/articles/SB10001424127887323566804578549262039104552>); Hassan Rouhani, “Remarks before the Iranian Majlis,”

*Translation provided by BBC World Media Watch*, July 14, 1999.

(<http://news.bbc.co.uk/2/hi/world/monitoring/394731.stm>)

201. Reuel Marc Gerecht and Ali Alfoneh, “Persian Truths and American Self-Deception: Hassan Rouhani, Muhammad-Javad Zarif, and Ali Khamenei in Their Own Words,” *Foundation*

*for Defense of Democracies*, March 24, 2015. (<http://www.defenddemocracy.org/content/uploads/publications/Truths-and-American-Self-Deception.pdf>)

Some argued that sanctions relief would benefit Iranian society, but early reporting revealed that “the only deals being struck have been with state-backed conglomerates.”<sup>202</sup> One of the major flaws of the JCPOA is its enrichment of the most dangerous elements of the Iranian regime, Iran’s Islamic Revolutionary Guard Corps.

### ***Encouraging Good Behavior***

The administration might also argue that the West needs to provide economic incentives for Tehran to comply with the nuclear deal and that providing additional sanctions relief will encourage Iran to moderate its behavior on a host of other, non-nuclear issues. President Obama explicitly acknowledged that Iran is not keeping to the spirit of the agreement,<sup>203</sup> and yet administration officials have stated that it is America’s responsibility to go beyond its commitments under the agreement to ensure that Iran “get[s] the benefits that they are supposed to get,” according to Secretary Kerry.<sup>204</sup> Given its post-deal record of hostage taking, terrorism, regional aggression, and illegal arms deals, as well as a financial sector that remains rotten to the core, Tehran is hardly in a position to complain that the “spirit” of the deal now requires more American generosity.

If the Obama administration grants Iran access to the world’s most important currency, U.S. sanctions will be severely undermined without any reciprocity. Tehran will receive yet another significant and unilateral concession. And Washington will have lost critical

leverage to target Iran’s terror finance, missile activities, destabilizing regional aggression, systemic human rights abuses, and the financial and military backing of the Assad regime. The next president’s ability to target Iran’s malign activities with non-nuclear sanctions will be much more difficult if billions of dollarized transactions are green-lighted. The next administration will not be able to easily to reverse this once it is in motion, made even more difficult by inevitable European and Asian pushback.

Instead of granting such a significant unilateral concession of Iranian access to dollarized transactions, the United States should require major reciprocal steps by Tehran. Iran must start to address all of its non-nuclear malign activities – indeed, the very concerns that administration officials promised that they were going to address using the remaining non-nuclear sanctions. The onus should be on Iran to address its pattern of illicit conduct and terror financing and to convince the global financial system that it has turned a corner. Washington should not let Iran’s leaders off the hook on the essential decision of whether to change their foreign and economic policies to encourage investment or sacrifice their economy and the welfare of their people in the name of the Islamic revolution.

## **Recommendations**

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

After Treasury designated Iran as a jurisdiction of primary money laundering concern, Congress included a prohibition in Section 1245(c) of the National Defense Authorization Act of 2012 stipulating, “The President shall, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block and prohibit all transactions in all property and interests in property of an Iranian financial

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202. Thomas Erdbrink, “In Iran, State-Backed Companies Win from Lifted Sanctions,” *The New York Times*, February 5, 2016.

(<http://www.nytimes.com/2016/02/06/world/middleeast/in-iran-state-backed-companies-win-from-lifted-sanctions.html>)

203. Julian Hatter, “Obama: Iran not following ‘spirit’ of deal,” *The Hill*, April 1, 2016. (<http://thehill.com/policy/national-security/274954-obama-iran-has-followed-letter-but-not-spirit-of-nuke-deal>)

204. John Kerry, “Remarks After Meeting Iranian Foreign Minister Zarif,” *United Nations*, April 19, 2016. (<http://www.state.gov/secretary/remarks/2016/04/255977.htm>)

institution if such property and interests in property are in the United States, come within the United States, or are or come within the possession or control of a United States person.”<sup>205</sup> Section 1245(b) also codified the Section 311 finding that Iran is a jurisdiction of primary money laundering concern.

Congress can strengthen and clarify this provision by stating that it is prohibited for any U.S. financial institution to process any transactions for Iranian entities, even when such a “transfer was by order of a non-Iranian foreign bank from its own account in a domestic bank to an account held by a domestic bank for a non-Iranian foreign bank.”<sup>206</sup> Congress should also state that it is prohibited for a U.S. financial institution to provide dollars for offshore clearing facilities if any party to the transaction anywhere in the financial chain is an Iranian entity.

Congress should require the Treasury Department to report on all financial institutions involved in giving Iran direct or indirect access to the U.S. dollar, with details on institutions, transactions, counterparties, and mechanisms. Congress furthermore should authorize mandatory sanctions on any offshore large value payment system that provides dollar-clearing services in any transactions involving an Iranian party. The termination of these prohibitions should be linked to a certification from the president that Iran is no longer involved in supporting terrorism and illicit missile development and that the Iranian regime has addressed its outstanding obligations to compensate victims of Iranian terrorism.

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205. National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112-81, 125 Stat. 1298, codified as amended at 112 U.S.C. §1245, page 351. ([https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa\\_publaw.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ndaa_publaw.pdf))

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

## 2. Reauthorize the Iran Sanctions Act, an important foundation of the sanctions architecture.

While the Obama administration has suspended sanctions on key segments of the Iranian economy according to the JCPOA, only Congress can formally lift many of these sanctions. The administration has also pledged to “snap” sanctions back into place if Tehran violates the terms of the agreement. At the end of this year, however, the Iran Sanctions Act is set to expire unless lawmakers act to reauthorize it. The Iran Sanctions Act is a critical foundation of the Iran sanctions architecture and should be reauthorized. As Senator Robert Menendez (D-NJ) has noted, if the Iran Sanctions Act is not reauthorized, there will be nothing “to snapback to.”<sup>207</sup>

**“The justification for the Iran Sanctions Act is not only Iran’s nuclear program, but also its support for international terrorism.”**

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

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

terrorism ... [and] limit the flow of resources necessary to obtain weapons of mass destruction.”<sup>208</sup>

### 3. Counter the narrative that Iran is a responsible financial actor.

As Iran engages with the global financial community and seeks to gain legitimacy, Tehran will attempt to further the narrative that it is a responsible global actor. Congress should counter the Iranian narrative and explain to markets the ongoing compliance and business risks involved in transactions with Iran. Congress should expose Iran's ongoing deceptive conduct and illicit activities through both open source data and declassified evidence to build on the already-existing market concerns of doing business with Iran. Congress also should require the administration to provide detailed reporting on Iran's deceptive conduct and illicit activities. These reports should focus on exposing Iran's shadow networks, the corruption of top Iranian officials, and the role of the IRGC and other designated Iranian actors in “legitimate” businesses. This will underscore that responsible actors have an obligation to keep Iran at arm's length unless and until Iran's behavior becomes conducive to effective risk management.

Finally, the notion that Iran can threaten to “snap back” its nuclear program and therefore deter Washington from using non-nuclear sanctions contradicts the commitments by the president and numerous administration officials to Congress and the American people. The administration pledged to use the full power of American economic and non-military might to deter Iran from destabilizing and dangerous activities. Congress should amplify the message not only to the Iranians but to the international community that Iran is engaged in dangerous, maligned, and illicit conduct,

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208. Bill Clinton, “Remarks on Signing the Iran and Libya Sanctions Act of 1996 and an Exchange With Reporters,” *The White House*, August 5, 1996. (<http://www.presidency.ucsb.edu/ws/index.php?pid=53160&st=iran&st1>)

and that the U.S. government will not hesitate to use all instruments of coercive power, including sanctions, to stop that activity.

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

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

In the missile arena, numerous companies owned or controlled by the IRGC and the Iranian Ministry of Defense and Armed Forces Logistics (MODAFL) and high-ranking Iranian officials involved in the program have not been sanctioned. Congress should require the administration to provide a list of all of the individuals and entities involved in Tehran's ballistic missile development. The U.S. Government Accountability Office or a similar governmental or quasi-government body should verify this list and add any additional persons or entities not identified by Treasury. Congress should require Treasury to add all of those identified on this list to the Specially Designated Nationals list under its counter-proliferation authorities. These should also include any entities owned or controlled by designated entities.

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

The Iran Freedom and Counter-Proliferation Act of 2012 requires the president to provide a report to Congress every 180 days on “which sectors of the economy of Iran are controlled directly or indirectly by Iran’s Revolutionary Guard Corps.”<sup>209</sup> Congress can update this reporting requirement so that the president must provide not only an assessment of which sectors are controlled by the IRGC, but also a determination of the nature and extent of the IRGC’s penetration into key sectors of Iran’s economy. This report should include an analysis of the contribution of the most significant sectors to Iran’s GDP, a list of the largest companies in that sector, and their links to the Revolutionary Guard (whether or not they meet the ownership or IRGC Watch List thresholds that are discussed below). The report should also provide a qualitative and quantitative assessment of the IRGC’s involvement in each sector. Congress should then create sector-based sanctions targeting any sector of the Iranian economy with a significant IRGC presence.

Congress also should require a similar report on the sectors of Iran’s economy that are contributing directly or indirectly to the development of the country’s ballistic missile program. The report should list all foreign investors in the sectors and all foreign persons engaging in business with these sectors. Much of this is available through open source information. Indeed, FDD’s research has revealed that metallurgy and mining; chemicals, petrochemicals, and energy; construction; automotive; and electronic, telecommunication, and computer science sectors are

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 209. National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, 126 Stat. 1632, codified as amended at 112 U.S.C. §1245. ([https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112\\_239.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112_239.pdf))

involved in Iran’s ballistic missile program.<sup>210</sup> These sectors are a good starting point. From there, Congress should authorize sanctions on sectors identified in the study. These sanctions could build on the precedent that Congress and Treasury have set of targeting sectors connected to Iran’s nuclear program.

**6. Require the U.S. Treasury to designate companies with IRGC or MODAFL beneficial ownership.**

Currently, Treasury uses the 50-percent threshold to determine IRGC ownership (or ownership by any other designated entity); however a 25-percent threshold would better reflect global standards and Treasury’s own recommendations.<sup>211</sup> In May, Treasury announced the final rule on customer due diligence and proposed beneficial ownership legislation requiring financial institutions in the United States to “identify and verify the identity of any individual who owns 25 percent or more of a legal entity, and an individual who controls the legal entity.”<sup>212</sup> Congress should require the Treasury Department to lower the threshold for

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 210. Saeed Ghasseminejad, “Iran’s Ballistic Missile Program and Economic Sanctions,” *Foundation for Defense of Democracies*, March 17, 2016. ([http://www.defenddemocracy.org/content/uploads/documents/Ballistic\\_Missile\\_Sanctions.pdf](http://www.defenddemocracy.org/content/uploads/documents/Ballistic_Missile_Sanctions.pdf))

211. The Financial Action Task Force, “International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation,” February 2012, page 60. ([http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)); U.S. Department of the Treasury, “Treasury Issues Proposed Rules to Enhance Financial Transparency,” July 30, 2014. (<http://www.treasury.gov/press-center/press-releases/Pages/jl2595.aspx>); Samuel Rubinfeld, “Proposed Rule to Force Banks to Identify Beneficial Owners,” *The Wall Street Journal*, July 30, 2014. (<http://blogs.wsj.com/riskandcompliance/2014/07/30/u-s-treasury-proposes-rule-forcing-banks-to-identify-beneficial-owners/>)

212. U.S. Department of the Treasury, Press Release, “Treasury Announces Key Regulations and Legislation to Counter Money Laundering and Corruption, Combat Tax Evasion,” May 5, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0451.aspx>)

designation to the 25-percent beneficial ownership threshold rather than majority ownership and also include “board of directors’ criteria.” The latter criteria takes into account not only equity shares but also seats on the board of directors or an ability “to otherwise control the actions, policies, or personnel decisions” used to determine ownership.<sup>213</sup> Under new criteria, many additional IRGC- and MODAFL-controlled entities would likely be eligible for sanctions. Lowering the threshold would likely also generate greater public scrutiny and enhanced due diligence procedures by the private sector.

## **7. Require the U.S. Treasury to create an IRGC Watch List.**

Congress should consider a legislative requirement that Treasury create an “IRGC Watch List” of entities that do not meet the threshold for designation but have demonstrable connections to the IRGC. Treasury, or another government agency such as the Government Accountability Office, should maintain the list and evaluate both public and classified information on companies that may be used as fronts for the IRGC. As the IRGC continues to evolve, and as its influence and control in the Iranian economy becomes increasingly sophisticated and hidden, enforcement of IRGC-related sanctions must also evolve. The criteria for inclusion on the IRGC Watch List should be flexible to account for the IRGC’s evolving use of deceptive business practices.

Even in the post-JCPOA environment, the exposure of the links between Iranian companies and the Revolutionary Guard can still discourage business ties and protect the unwitting complicity of foreign

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

companies in the IRGC’s illicit behavior. Exposing the links between the IRGC and seemingly legitimate Iranian enterprises can go a long way to reducing the IRGC’s ability to fund terrorism, human rights violations, and other malign activities. This Watch List would also be a critical resource for risk compliance officers at financial institutions who want to limit their company’s exposure to bad actors. Again, this information can be gleaned through open sources. Our colleagues Emanuele Ottolenghi and Saeed Ghasseminejad have already identified about 230 companies over which the IRGC exercises significant influence either through equity shares or positions on the board of directors.<sup>214</sup>

## **8. Require reporting to the Securities and Exchange Commission regarding any transactions with IRGC Watch List companies or in sectors connected to Iran’s ballistic missile program.**

The Iran Threat Reduction and Syria Human Rights Act of 2012 requires companies publicly traded in the U.S. to file reports with the Securities and Exchange Commission (SEC) that include any transactions or dealings with sanctioned entities or the government of Iran unless the company received specific authorization from the U.S. government.<sup>215</sup> To address the IRGC’s role in Iran’s economy, Congress can amend this report to require companies to include: 1) any business in sectors with significant IRGC penetration; 2) any joint

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214. Data available upon request; Emanuele Ottolenghi, “The Iran Nuclear Deal and its Impact on Iran’s Islamic Revolutionary Guards Corps, Appendix I and II,” *Testimony before the House Foreign Affairs Middle East and North Africa Subcommittee*, September 17, 2015. (<http://docs.house.gov/meetings/FA/FA13/20150917/103958/HHRG-114-FA13-Wstate-OttolenghiE-20150917-SD001.pdf>)

215. Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1095, 112<sup>th</sup> Congress (2015), §219. ([https://www.treasury.gov/resource-center/sanctions/Documents/hr\\_1905\\_pl\\_112\\_158.pdf](https://www.treasury.gov/resource-center/sanctions/Documents/hr_1905_pl_112_158.pdf))

ventures with public or private Iranian companies (as even so-called private companies are often heavily influenced or controlled by the IRGC); 3) any transactions with companies on the IRGC Watch List; and 4) any transactions with the sectors connected to Iran's ballistic missile program.

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

**9. Insist on robust investigation into Iran's ongoing illicit procurement efforts and outstanding concerns about the possible military dimensions of Iran's nuclear program.**

The recent report from German intelligence, as well as independent reporting by the nuclear experts at the Institute for Science and International Security, raises serious concerns about Iran's ongoing illicit procurement and the U.S. and international community's failure to hold Iran accountable for its illegal activities. Congress should insist on detailed briefings from the administration on its intelligence and law enforcement efforts to combat these ongoing violations of Iran's obligations under UN Security Council Resolution 2231 and the JCPOA. Congress should also require the administration to report on, and sanction, those Iranian entities involved in these procurement efforts – even if those same entities were de-listed under the JCPOA.

Additionally, Congress should insist on a detailed briefing from the administration and from International Atomic Energy Agency officials about follow-up investigations to clarify ongoing questions about nuclear-related activities at the Parchin military base and man-made uranium particles found at the site. As former IAEA

Deputy Director General Olli Heinonen noted, when the evidence on the ground does not match a country's declarations about its nuclear activities, follow-up investigations are standard procedure, but the IAEA has not indicated what follow up it is doing.<sup>216</sup> Even if U.S. officials try to dismiss the issue by acknowledging that the particles are related to previous weaponization activities about which the U.S. was already aware, the IAEA needs to know, for example, what the source is of the particles and where that nuclear material is now in order for the Agency to verify the completeness and correctness of Iran's declarations. Congress should hold the administration accountable for its promise that the nuclear deal would provide unprecedented transparency. So far, the administration and the IAEA have fallen short. Failure to follow through on this will establish Parchin as a precedent that Iran will use to deny physical access to future military sites as well as any type of follow-up inspections if suspicious materials or activities are discovered.

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

The administration's record of human rights sanctions since the JCPOA and, indeed, since Rouhani took power in 2013, has been abysmal. There is ample evidence of continued and escalating human rights crimes. Congress needs to hold the president accountable for his commitment to defend the Iranian people using the ample executive and statutory authority he has to crack down on the regime's domestic repression.

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216. Olli Heinonen, "Uranium Particles at Parchin Indicate Possible Undeclared Iranian Nuclear Activities," *Foundation for Defense of Democracies*, July 1, 2016. (<http://www.defenddemocracy.org/media-hit/olli-heinonen1-uranium-particles-at-parchin-indicate-possible-undeclared-iranian-nuclear-a/>)

With a few exceptions, U.S. sanctions against Iranian human rights abusers have primarily targeted individuals. Congress also should impose human rights sanctions on state organs responsible for institutionalized human rights abuses, as well as individuals who work for these state organs. This will help Washington target the people, companies, and sources of revenue that facilitate and embolden Iran's vast system of domestic repression and single out the institutions, such as prisons or military bases, at which abuses like torture and arbitrary detention occur and the Iranians responsible for those abuses. Many of these institutions, including the notorious Evin prison's Ward 2A for political prisoners,<sup>217</sup> are controlled by the Revolutionary Guard.

Congress should also consider the creation of a new authority to designate an entity, or even an entire country, as a "jurisdiction of human rights concern." Using the model of Section 311 of the USA PATRIOT Act, the finding would carry regulatory implications in the United States but would also send a strong signal to foreign companies, even if they are not directly affected by the finding. The goal of this policy would be to encourage the private sector to sever ties with institutions that perpetrate human rights abuses. It could also prompt the private sector to end trade relations with other entities in Iran that have been publicly accused of committing abuses but have not yet been sanctioned.

The United States should also build on its global human rights leadership by linking any further sanctions relief concessions to Iran with an improvement in Tehran's atrocious human rights record. During the Cold War, Western negotiators linked certain arms control agreements with the Soviet Union to demands for

Moscow's adherence to the civil rights portion of the 1975 Helsinki Accords. By contrast, the JCPOA did not require Tehran to make any improvements in its human rights record. This is a mistake: It would be much easier to monitor Iran's nuclear program in a relatively freer and more transparent Iran.

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

Corruption and kleptocracy are not just financial transparency issues, but are also human rights issues. Corruption is the reason many authoritarian leaders seize and cling to power. It is the glue that holds their regimes together, giving dictators spoils to distribute. As U.S. Assistant Secretary of the Treasury Daniel Glaser noted, corruption "stifles economic development, impairs democratic institutions, erodes public trust, and impairs international cooperation ... [and] creates space for criminals to flourish."<sup>218</sup> In Iran, these criminals are not only traditional thugs, but are also state-sponsored human rights violators.

**“It would be much easier to monitor Iran's nuclear program in a relatively freer and more transparent Iran.”**

The Revolutionary Guard and the ruling elite (including the supreme leader) have enriched themselves at the expense of the Iranian people. The United States can lead efforts to develop new policy tools, including financial sanctions tools, to combat corruption in Iran as well as in other authoritarian governments. Congress can help develop a mechanism to facilitate the sharing of intelligence between international partners on illicit

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

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218. Daniel Glaser, "The Role of Transparency in Fighting Corruption in Financial Systems," *Remarks at the Atlantic Council and Thomson Reuters "Power Of Transparency" Speaker Series*, April 21, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0437.aspx>)

or suspicious financial activities to protect the integrity of the global financial system and prevent corrupt officials from using the world's banking systems.

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

Congress should consider legislation targeting corruption in all state sponsors of terrorism. The link between the funds generated from corruption and the sponsorship of terrorism by these regimes is well documented. The pending Global Magnitsky Human Rights Accountability Act is one mechanism that could be used to target corruption in Iran. That legislation authorizes sanctions not only against human rights violators but also against government officials and their associates responsible for or complicit in significant corruption.<sup>219</sup>

### **12. Require reporting on U.S. citizens and other dual-nationals held hostage in Iran.**

Even as Iran released in January Jason Rezaian, Saeed Abedini, Amir Hekmati, and Nosratollah Khosravi – four American citizens the regime was unjustly holding hostage – the Islamic Republic continued to arrest,

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219. Global Magnitsky Human Rights Accountability Act, S. 284, 114<sup>th</sup> Congress (2015). (<https://www.congress.gov/bill/114th-congress/senate-bill/284>)

imprison, and harass American citizens in Iran. Today, Iran is holding hostage U.S., Canadian, and British dual nationals Bagher and Siamak Namazi, Homa Hoodfar, and Nazanin Ratcliffe, as well as Nizar Zakka, a Lebanese citizen and U.S. permanent resident as well as many other individuals. The regime also refuses to give information on missing American citizen Robert Levinson, who vanished after traveling to Iran more than eight years ago.

This is unacceptable and inexcusable. Congress should require the administration to report to Congress on U.S. citizens and other dual-nationals detained in Iran or harassed by agents of the regime. The release of these innocent individuals must be a priority for the United States, and Iran should receive no additional sanctions relief until all who are unjustly held are released.

### **13. Require reporting on and expand sanctions against Iran's support for the Assad regime and IRGC activities in Syria.**

Congress should require regular reporting from the administration on Iran's activities in Syria. This report should detail which IRGC units are actively participating in the Syrian war and what assistance they provide to the Assad regime. It should also explain what types of support (provision of arms, financial support, intelligence sharing, and military strategy) Iran provides, including support that comes in the form of energy supplies, loans, lines of credit, and cash.<sup>220</sup>

Congress can also authorize sanctions against entities that are aiding the IRGC's efforts in Syria. Congress should expand sanctions against Iranian airlines and front companies that carry weapons, equipment, and personnel to aid Iran's efforts in Syria. These include

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220. Max Peck, “Doubling Down on Damascus: Iran's Military Surge to Save the Assad Regime,” *Foundation for Defense of Democracies*, January 2016. ([http://www.defenddemocracy.org/content/uploads/documents/Doubling\\_Down\\_on\\_Damascus.pdf](http://www.defenddemocracy.org/content/uploads/documents/Doubling_Down_on_Damascus.pdf))

front companies for Iran Air, Mahan, Meraj, Caspian Airlines, and Pouya aka Yas Air (the last four remain under U.S. sanctions and none of the five have been similarly sanctioned by Europe). Administration officials have testified before Congress that the United States is “actively engaged to try to prevent Mahan Air from being able to fly.”<sup>221</sup> The U.S. should further consider sanctions against any foreign company providing replacement parts or dual-use items to these airlines. In addition to authorizing secondary sanctions against companies that provide services (financial services and ground services including fueling) to Mahan Air and the other sanctioned airlines, Congress can require the administration to report on who provides financial services when its aircraft land at international destinations. Moreover, airlines pay for ground services locally, usually transacting through a local bank. Congress could require other airlines to receive certification from their own banks that they do not also provide financial services to sanctioned airlines.

#### **14. Require presidential certification that commercial planes are only being used for civil aviation end-use.**

Iran must be prevented from misusing U.S.-made aircraft and those containing American parts given Iran's history of sanctions evasion, support for terrorism, and aid to the Assad regime in Syria. Sales of new aircraft to Iran by Boeing, Airbus, or other companies should only move forward once Iran has demonstrated that it will no longer use civilian aircraft for malign purposes and that none of the aircraft will end up in the hands of sanctioned entities. Before any sales are licensed, Congress should require the president to certify that none of Iran's commercial planes are being used for purposes other than exclusively civil aviation end-use.

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221. Julian Pecquet, “US seeks to block sanctioned Iranian airline's flights into Europe,” *Al Monitor*, February 11, 2016. (<http://www.al-monitor.com/pulse/originals/2016/02/us-treasury-block-iran-airline-mahan-sanctions.html#>)

The certification should then include at least a five-year waiting period after which new planes should be sold only on a trial basis, with only a small number of planes delivered per year with full payment made by Iran in cash at the time of delivery. This is perfectly consistent with the provisions of the JCPOA requiring the U.S. government to set up a licensing regime to permit these sales.<sup>222</sup>

**“Sales of new aircraft to Iran...should only move forward once Iran has demonstrated that it will no longer use civilian aircraft for malign purposes.”**

If any evidence surfaces that Iran Air has resold, leased, or transferred these planes to designated entities or that any Iranian airline is using commercial planes to support the war in Syria or for any other malign purposes, all licenses should be revoked and all deals automatically cancelled. In the interim, Turkish and Gulf airlines have significantly increased their domestic and international routes for Iranian citizens.<sup>223</sup> European airlines are also re-opening routes between Europe and Tehran.<sup>224</sup> All of these carriers remain better alternatives than Iranian airlines that are plagued with corruption and

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222. Joint Comprehensive Plan of Action, Annex II – Sanctions-related commitments, Vienna, July 14, 2015, paragraph 5.1.1, footnote 12. ([http://eeas.europa.eu/statements-eeas/docs/iran-agreement/annex\\_2\\_sanctions\\_related\\_commitments\\_en.pdf](http://eeas.europa.eu/statements-eeas/docs/iran-agreement/annex_2_sanctions_related_commitments_en.pdf))

223. “Window on Iran's aviation market,” *OAG*, 2016. (<http://www.oag.com/window-on-irans-aviation-market-0>)

224. “Iran: European airlines set to resume flights to Tehran,” *Associated Press*, January 28, 2016. (<http://www.foxnews.com/travel/2016/01/28/iran-european-airlines-set-to-resume-flights-to-tehran.html>); Lizzie Porter, “British Airways to relaunch direct London to Iran flights in July,” *The Telegraph* (UK), February 3, 2016. (<http://www.telegraph.co.uk/travel/destinations/middle-east/iran/articles/British-Airways-to-relaunch-direct-London-to-Iran-flights-in-July/>); Gary Raynaldo, “European airlines fly back into competitive Iran market,” *LinkedIn*, April 19, 2016. (<https://www.linkedin.com/pulse/european-airlines-fly-back-competitive-iran-market-gary-raynaldo>)

implicated in a range of malign activities – as long as the presidential certification cannot be made.

**15. Prohibit any U.S. financial institution, including the Export-Import Bank, from financing any trade with Tehran while Iran remains a state sponsor of terrorism.**

Iran remains the leading state sponsor of terrorism, according to the State Department's annual report, released last month.<sup>225</sup> Iran's terrorism financing poses a threat to the integrity of the U.S. and global financial system. Therefore, in addition to the certifications that Iran is not misusing its commercial aircraft, Congress should prohibit Treasury from licensing U.S. or foreign financial institutions to facilitate any trade with Iran while it remains a state sponsor of terrorism. No banks should be permitted to finance the Boeing or Airbus deals, amongst others, given the risks discussed above that any financing arrangement exposes Western companies and banks to billions of dollars of unpaid contracts and makes them accomplices in a lobbying effort against snapback sanctions.

Additionally, the Export-Import bank should not provide any financing for trade with Iran while the country remains a state sponsor of terrorism. The U.S. government should not be using U.S. taxpayer funds to guarantee trade with the leading state sponsor of terrorism. Congress should emphasize that it is prohibited for Ex-Im to provide any guarantees or credit for any trade with the government of Iran or any Iranian entity. The Foreign Assistance Act of 1961 prohibits Ex-Im from providing such financing, but the legislation contains a national security interest waiver.<sup>226</sup> Congress should limit the president's ability to use this waiver.

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225. Justin Siberell, "Special Briefing: Country Reports on Terrorism," *U.S. Department of State*, June 2, 2016. (<http://www.state.gov/r/pa/prs/ps/2016/06/258013.htm>)

226. Foreign Assistance Act of 1961, Pub. L. 87-195, codified as amended at U.S.C. §620A. (<https://www.usaid.gov/sites/default/files/documents/1868/faa.pdf>)

**“Iran remains the leading state sponsor of terrorism, according to the State Department's annual report, released last month. Iran's terrorism financing poses a threat to the integrity of the U.S. and global financial system. ... Congress should prohibit Treasury from licensing U.S. or foreign financial institutions to facilitate any trade with Iran while it remains a state sponsor of terrorism.”**

**16. Require reporting on the use of foreign airports and seaports by sanctioned Iranian entities.**

Treasury officials have publicly stated that they are working with their partners to “prevent Mahan Air from acquiring aircraft and aircraft parts and software, preventing the opening of new routes and working to get existing routes canceled.”<sup>227</sup> And yet, despite U.S. sanctions, the airline continues to fly to major European and Asian destinations. At these locations, the airline receives services from local companies including baggage handling, ticketing, and a variety of other ground services.<sup>228</sup> Moreover, Mahan pays for these ground services locally, and likely uses local banks to conduct the transactions.

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227. Julian Pequet, “U.S. seeks to block sanctioned Iranian airline's flights to Europe” *Al Monitor*, February 11, 2016. (<http://www.al-monitor.com/pulse/originals/2016/02/us-treasury-block-iran-airline-mahan-sanctions.html>)

228. Plane tracking data available upon request. Based on public information, FDD has identified the following companies who are providing services to Mahan Air: Aerotech FMS Pvt. Ltd. (New Delhi, India), Air China Cargo (China), AHS Group (Munich and Köln, Germany), Airport Handling (Milan, Italy), Aviator (London Gatwick, United Kingdom), DUS Airport Cargo (Dusseldorf, Germany), Havaş (Istanbul Ataturk and Ankara, Turkey), SAS Ground Services UK Ltd. (Manchester, United Kingdom), and Swissport International Ltd. (Moscow, Russia).

The Iran Freedom and Counter-Proliferation Act of 2012 (which is part of the National Defense Authorization Act for Fiscal Year 2013) requires the administration to report on foreign vessels calling at ports that are controlled by the IRGC-owned company Tidewater.<sup>229</sup> The bill also requires the administration to report to Congress on all airports at which sanctioned Iranian airlines have landed. This report is crucial for Congress to understand how Mahan Air and other designated Iranian airlines are evading U.S. sanctions. This report must be unclassified but may contain a classified annex. Congress should use this report to pressure U.S. allies to cease allowing Mahan Air and other sanctioned airlines to land at their airports.

This provision, however, is set to expire at the end of the year. Tidewater, Mahan Air, and other IRGC-linked entities remain sanctioned because of their ongoing illicit activities. The reporting requirement should therefore be extended.

## Conclusion

In March, Secretary Lew gave a speech in which he warned, “Since the goal of sanctions is to pressure bad actors to change their policy, we must be prepared to provide relief from sanctions when we succeed. If we fail to follow through, we undermine our own credibility and damage our ability to use sanctions to drive policy change.”<sup>230</sup>

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229. National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, 126 Stat. 1632, codified as amended at 112 U.S.C. §1252. ([https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112\\_239.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/pl112_239.pdf)); U.S. Department of the Treasury, Press Release, “Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities,” June 23, 2011. (<https://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx>)

230. Jacob Lew, “The Evolution of Sanctions and Lessons for the Future,” *Remarks before the Carnegie Endowment for International Peace*, March 30, 2016. (<https://www.treasury.gov/press-center/press-releases/Pages/jl0398.aspx>)

This is an important principle; but while Iran has agreed to a nuclear deal, it has not addressed the full range of illicit activities that prompted U.S. and international sanctions. The United States has spent the last decade building a powerful sanctions architecture to address not only Iran’s nuclear program, but also its ballistic missile development, vast 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.<sup>231</sup> As FATF’s June 2016 statement makes clear, Iran’s illicit finance continues; therefore efforts to isolate this activity from the international financial system must also continue.

De-coupling the lifting of sanctions from a change in the behavior that prompted sanctions in the first place risks undermining the very arguments that make sanctions an effective tool of national security policy. Sanctions work not when the U.S. merely imposes them on Iranian companies, but when foreign businesses stop doing business with these Iranian entities because they believe that Treasury is using objective measures to determine which entities pose illicit finance risks. If companies see Treasury’s actions as political rather than merit-based maneuvers, then sanctions as a credible instrument of coercive statecraft will be damaged beyond repair.

Instead of bending to Iranian demands, Washington and its partners should be pushing Tehran to end its many illicit activities. The world needs to hold Iran accountable. Legitimacy cannot be granted without a

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231. 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>)

dramatic change in the Islamic Republic's respect for international norms, financial transparency, and the freedoms and human rights of its people. Congress can lead the charge, as it has done in the past, by increasing pressure on the regime to change its behavior.

Policymakers have to deal with one of the fatal flaws of the agreement: The JCPOA's nuclear "sunset provisions," begin to expire in eight years and mostly disappear over a period of ten to fifteen years. This will leave Iran as a major nuclear power with expanded and multiple pathways to a nuclear weapon, an ICBM program, regional power, and possible economic immunity to future sanctions. Even as Iran has temporarily scaled back some of its nuclear activities, the regime's illicit effort to obtain proliferation-related technology continues – and its other non-nuclear malign activities are expanding.

To confront this reality, the United States needs a comprehensive strategy to sharpen its tools of coercion. It is our hope that these recommendations will assist in that endeavor.

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### Photo credits

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The Foundation for Defense of Democracies is a non-profit, non-partisan policy institute dedicated exclusively to promoting pluralism, defending democratic values, and fighting the ideologies that drive terrorism. Founded shortly after the attacks of 9/11, FDD combines policy research, democracy and counterterrorism education, strategic communications, and investigative journalism in support of its mission.

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CSIF seeks to illuminate the critical intersection between the full range of illicit finance and national security, including money laundering, terrorist financing, sanctions evasion, proliferation financing, cyber crime and economic espionage, and corruption and kleptocracy. This includes understanding how America can best use and preserve its financial and economic power to promote its interests and the integrity of the financial system. The Center also examines how America's adversaries may be leveraging economic tools and power.

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