JEB HENSARLING, TX , CHAIRMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

M E M O R A N D U M

To: Members of the Committee on Financial Services

From: FSC Majority and Minority Staff

Date: July 21, 2015

Subject: July 22, 2015, Task Force to Investigate Terrorism Financing hearing titled "The Iran Nuclear Deal and its Impact on Terrorism Financing"

The Task Force to Investigate Terrorism Financing will hold a hearing entitled "The Iran Nuclear Deal and its Impact on Terrorism Financing" on Wednesday, July 22, 2015, at 4:15 p.m. in room 2128 of the Rayburn House Office Building. This will be a one-panel hearing with the following witnesses:

- Mr. Ilan I. Berman, Vice President, American Foreign Policy Council
- Mr. Mark Dubowitz, Executive Director, Foundation for Defense of Democracies
- Mr. Steven R. Perles, Senior Attorney and Founder, Perles Law Firm, P.C.
- Olli Heinonen, Senior Fellow, Belfer Center for Science and International Affairs, John F. Kennedy School of Government
- Richard Nephew, Program Director, Economic Statecraft, Sanctions and Energy Markets, Center on Global Energy Policy, Columbia University

Background[1]

Iran and the "P5+1" negotiating powers – the United States, France, Britain, Germany, Russia, and China – engaged in negotiations and finalized a comprehensive nuclear agreement known as a Joint Comprehensive Plan of Action (referred to as JCPA or JCPoA) on July 14, 2015. The JCPA entails substantial commitments by Iran to adhere to strict new limitations on its nuclear program, in exchange for broad sanctions relief. Some U.S. sanctions have been suspended since January 2014 under an interim nuclear accord known as a Joint Plan of Action (JPA or JPoA).

There are many layers of sanctions imposed on Iran by the United States and its allies, as well as by the United Nations Security Council. The core of the U.S. sanctions regime has been to impose sanctions on foreign entities that conduct certain transactions with Iran. Broad international compliance with these U.S. sanctions has been pivotal to the effectiveness of the sanctions. For the purposes of this memorandum, the term "sanctions" refers to the collective sanctions imposed by the United States, its allies, and the U.N. Security Council.

Sanctions have taken a toll on Iran's economy, by all accounts, as indicated below.

- *Gross Domestic Product (GDP) Decline*. Treasury Secretary Jacob Lew told a Washington D.C. think-tank on April 29, 2015 that Iran's GDP shrank by 9% in the two years ending in March 2014, and is now 15%-20% smaller than it would have been had post-2010 sanctions not been imposed.[2] The sanctions relief of the JPA enabled Iran to achieve slight growth of about 1%-1.5% for all of 2014, according to the International Monetary Fund. The number of nonperforming loans held by Iranian banks increased to about 15%-30%,[3] and the unemployment rate, according to outside observers, is about 20%, although the Iranian government reports the rate at 13%.[4]

- *Reduction in Oil Exports and Oil Production*. Sanctions drove Iran's crude oil sales down about 60% from 2.5 million barrels per day (mbd) in 2011, reducing Iran's revenue from crude oil from $100 billion in 2011 to about $25 billion in 2014, although the 2014 figures are due in part to the sharp drop in oil prices in the second half of that year. The JPA caps Iran's crude oil exports at about 1.1 mbd.[5] When the JPA began implementation, Iran's oil production stood at about 2.6-2.8 mbd down from nearly 4.0 mbd at the end of 2011.[6] Iran has avoided dramatic

[1] This memorandum was prepared by the Congressional Research Service at the Task Force's request, and has been reviewed and approved by the Financial Services Committee staff.
[2] Department of the Treasury. Remarks of Secretary Jacob J. Lew at the Washington Institute for Near East Policy 30th Anniversary Gala. April 29, 2015.
[3] "Iran's Pivotal Moment." http://www.euromoney.com. September, 2014.
[4] http://www.worldbank.org/en/country/iran/overview
[5] "Why Higher Iran Oil Exports Are Not Roiling Nuclear Deal." *Reuters*, June 13, 2014.
[6] Rick Gladstone, "Data on Iran Dims Outlook for Economy," *New York Times*, October 13, 2012.

production cuts by storing millions of barrels of unsold crude oil on tankers in the Persian Gulf and in storage tanks on shore. However, according to Treasury Secretary Lew, it is not certain that Iran could quickly return its exports to pre-2012 levels even if sanctions were suspended, because Iran's infrastructure needs substantial modernization.

- *Inaccessibility of Hard Currency*. Not only have Iran's oil exports fallen by volume, but Iran cannot access the great bulk of the hard currency it is paid for its oil (other than the $700 million per month agreed under the JPA). The total Iranian hard currency reserves held in foreign banks are estimated to be about $150 billion.[7] Of that amount, about 75% reportedly is held in foreign banks that are abiding by sanctions and refuse to transfer the funds to Iran's Central Bank.

- *Currency Decline and Inflation Effects*. Sanctions caused the value of the Iranian *rial* on unofficial markets to decline about 56% from January 2012 until January 2014. The drop in value of the currency caused inflation to accelerate during that period to a reported 50% to 70%—a higher figure than the approximately 40% figure acknowledged by Iran's Central Bank. The sanctions relief of the JPA has contributed to a stabilization of Iran's currency and associated reduction of the inflation rate to below 20%.[8]

- *Drop in Industrial Production*. Iran's economy is industrializing, but the manufacturing sector remains dependent on imported parts. Many Iranian manufacturers have been unable to obtain credit and must pre-pay to obtain parts from abroad, often through time-consuming and circuitous mechanisms. This difficulty is particularly acute in the automotive sector, which is Iran's largest industry aside from its energy sector. Iran's production of automobiles fell by about 60% from 2011 to 2013.[9] The JPA has benefitted the auto sector because it eased sanctions on that sector, but press reports say that manufacturing overall has rebounded only modestly since the JPA implementation began.

Sanctions Eased Under the JPA

The sanctions relief to be provided under the JCPA far exceed the "limited, temporary, targeted, and reversible" easing of sanctions under the JPA. The JPA's sanctions relief has been as follows:[10]

[7] Jeffrey Goldberg interview with President Barack Obama. *The Atlantic,* May 31, 2015.
[8] http://www.tradingeconomics.com/iran/inflation-cpi
[9] Nahid Kalbasi. "Have International Sanctions Crippled Iran's Auto Industry." Washington Institute for Near Policy, June 3, 2015.
[10] The Administration sanctions suspensions and waivers are detailed at http://www.state.gov/p/nea/rls/220049.htm.

- Iran's existing oil customers were not required to reduce their oil purchases from Iran "significantly" from the levels they were when the JPA went into effect. To avoid penalizing these oil buyers while the JPA is in effect, the Administration exercised waiver authority under Section 1245(d)(1) of the National Defense Authorization Act for FY2012 (P.L. 112-81) and Section 1244c(1) of the Iran Freedom and Counter-Proliferation Act (IFCA: Title XII, subtitle D, of the National Defense Authorization Act for FY2013, P.L. 112-239). The European Union amended its regulations to allow shipping insurers to provide insurance for ships carrying oil from Iran.[11]

- Iran was able to receive $700 million per month in hard currency from oil sales and $65 million per month to make tuition payments for Iranian students abroad (paid directly to the educational institutions). The waiver authority under Section 1245(d)(1) of the FY2012 NDAA enables Iran's Central Bank to receive these proceeds directly.

- The JPA permitted Iran to resume sales of petrochemicals and trading in gold and other precious metals, and to resume transactions with foreign firms involved in Iran's automotive manufacturing sector. To enable these transactions, the Administration suspended application of Executive Orders 13622 and 13645, several provisions of U.S.-Iran trade regulations, and several sections of IFCA.

- The parties to the JPA pledged to facilitate humanitarian transactions that are already allowed by U.S. and partner country laws, such as sales of medicine to Iran, but which many banks refuse to finance. The United States also committed to license safety-related repairs and inspections inside Iran for certain Iranian airlines.

- The JPA required that the P5+1 "not impose new nuclear-related sanctions," if Iran abides by its commitments under this deal, to the extent permissible within their political systems.[12]

Sanctions Easing Under the JCPA[13]

According to the text of the JCPA, the following sanctions are to be eased:[14]

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[11] Daniel Fineren. "Iran Nuclear Deal Shipping Insurance Element May Help Oil Sales." Reuters, November 24, 2013.
[12] White House Office of the Press Secretary. "Fact Sheet: First Step Understandings Regarding the Islamic Republic of Iran's Nuclear Program." November 23, 2013.
[13] Complete references to the laws and Executive Orders discussed in this section can be found in: CRS Report RS20871, *Iran Sanctions*, by Kenneth Katzman; and CRS Report R43311, *Iran: U.S. Economic Sanctions and the Authority to Lift Restrictions*, by Dianne E. Rennack. http://www.politico.com/story/2015/07/full-text-iran-deal-120080.html
[14] http://www.politico.com/story/2015/07/full-text-iran-deal-120080.html

- Many U.S., virtually all EU, and most U.N. sanctions will be suspended after the International Atomic Energy Agency (IAEA) has verified that Iran has taken certain key nuclear-related steps that are stipulated in an Annex of the JCPA (primarily reducing the size and scope of its enrichment of uranium).

- The U.S. sanctions that are to be suspended are primarily those that sanction foreign entities and countries for conducting specified transactions with Iran (so-called "secondary sanctions"). U.S. sanctions that generally prohibit U.S. firms from conducting transactions with Iran were not altered under the JPA. However, the JCPA does commit the United States to licensing the sale to Iran of commercial aircraft, and the importation of Iranian luxury goods such as carpets, caviar, and some fruits and nuts.[15]

- The U.S. sanctions to be suspended are mostly those imposed since U.N. Security Council Resolution 1929 was enacted in June 2010.[16] That Resolution identified Iran's energy sector as a potential contributor to Iran's "proliferation-sensitive nuclear activities."[17] The sanctions relief in the JCPA includes: [18] (1) energy sanctions, including those that limit Iran's exportation of oil and sanction foreign sales to Iran of gasoline and energy sector equipment, and which limit foreign investment in Iran's energy sector – core provisions of the Iran Sanctions Act (P.L. 104-172 as amended, Section 1245(d)(1) of the National Defense Authorization Act for FY2012 (P.L. 112-81), and provisions of the Iran Threat Reduction and Syria Human Rights Act (P.L. 112-158); (2) sanctions on foreign banks that conduct transactions with Iranian banks – the core of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA); (3) sanctions on Iran's auto sector and trading in the *rial*; (4) the EU ban on purchases of oil and gas from Iran; and (5) the ban on Iran's use of the SWIFT electronic payments system that enables Iran to move funds from abroad to its Central Bank or its commercial banks.

- Easing the U.S. sanctions that are required under the JCPA will necessitate also terminating the following Executive Orders: 13574, 13590, 13622, 13645, and sections 5-7 and 15 of Executive Order 13628.[19]

- Under the JCPA, the United States is to revoke the designations made under various

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[15] The U.S. importation of these luxury goods was permitted during 2000-2010, under a modification to the Executive Order 12959 that imposed a ban on U.S. trade with Iran.

[16] The exact U.S. sanctions laws whose provisions might be waived are discussed in: CRS Report RS20871, *Iran Sanctions*, by Kenneth Katzman, and CRS Report R43311. *Iran: U.S. Economic Sanctions and the Authority to Lift Restrictions*, by Dianne Rennack.

[17] The text of the Resolution is at: https://www.iaea.org/sites/default/files/unsc_res1929-2010.pdf

[18] http://iranmatters.belfercenter.org/blog/translation-iranian-factsheet-nuclear-negotiations; and author conversations with a wide range of Administration officials, think tank, and other experts, in Washington, D.C. 2015.

[19] For more information on these Executive Orders and their provisions, see CRS Reports RS20871 and R43311, op.cit.

Executive Orders of numerous specified Iranian economic entities and personalities, including the National Iranian Oil Company (NIOC), various Iranian banks, and many energy and shipping-related institutions. That step would enable foreign companies to resume transactions with those Iranian entities without risking being penalized by the United States.

- The JCPA requires the Administration, within eight years, to request that Congress lift virtually all of the sanctions that will be suspended under the JCPA. The JCPA requires all U.N. sanctions to terminate after ten years of adoption of the JCPA.

- The JCPA does not commit the United States to suspend U.S. sanctions on Iran for terrorism, human rights abuses, and on proliferation-sensitive technology. As an example, the U.S. Administration has not pledged to revisit, as a direct consequence of a nuclear accord, Iran's designation as a state sponsor of terrorism. That designation triggers numerous U.S. sanctions, including a ban on any U.S. foreign aid to Iran and on U.S. exportation to Iran of controlled goods and services, and a prohibition on U.S. support for international lending to Iran.

- Other U.S. sanctions that are not required to be suspended, according to the JCPA, include: (1) E.O. 13224 sanctioning terrorism entities (not specific to Iran); (2) the Iran-Iraq Arms Non-Proliferation Act that sanctions foreign firms that sell arms and weapons of mass destruction-related technology to Iran; (3) the Iran-North Korea-Syria Non-Proliferation Act (INKSNA);[20] and (4) the Executive Orders and the provisions of CISADA and the Iran Threat Reduction and Syria Human Rights Act that pertain to human rights or democratic change in Iran. Iran also will be remaining on the "terrorism list" and all sanctions triggered by that designation will remain in place, at least for now.

- One issue that arose after the April 2, 2015 framework accord was the suspension of U.N. sanctions on Iran's development of nuclear-capable ballistic missiles and on Iran's importation or exportation of conventional weaponry. The April 2 framework accord indicated that these sanctions would remain in place in the JCPA. However, as subsequently negotiated, according to President Obama, the ban on Iran's development of nuclear-capable ballistic missiles might be lifted within eight years of the JCPA and the ban on conventional arms sales to Iran might be lifted in five years.[21]

Automatic Re-imposition of Sanctions ("Snap-Back")

In the course of negotiating the JCPA, President Obama reportedly directed U.S. negotiators to try to focus on ways to put sanctions back in place ("snap back") if Iran

[20] The JCPA does commit the United States to terminate sanctions with respect to some entities designated for sanctions under INKSNA.
[21] White House. Office of the Press Secretary. Statement by the President on Iran. July 14, 2015.

violates the terms of the deal, rather than focus on delaying sanctions relief.[22] According to the April 2 framework agreement, if a dispute over Iran's compliance with the accord cannot be resolved through a specified dispute resolution mechanism, all U.N. sanctions "could" be re-imposed. Treasury Secretary Lew said on April 29, 2015 that this provision for a "snap back" of U.N. Security Council sanctions would not be subject to a veto by any permanent member of the U.N. Security Council.[23]

The JCPA (paragraph 36 and 37) contains a mechanism for the "snap back" of U.N. sanctions if Iran does not satisfactorily resolve a dispute over its compliance. According to the JCPA, the United States (or any veto-wielding member of the U.N. Security Council) would be able to block a U.N. Security Council resolution that would continue the lifting of U.N. sanctions despite Iran's refusal to resolve the dispute. In that case, "the provisions of the old U.N. Security Council resolutions would be re-imposed, unless the U.N. Security Council decides otherwise."

Even if the sanctions are re-imposed through the "snap back" process, a related question is whether the same degree of international compliance with the sanctions would obtain. The effect of the sanctions has depended largely on the substantial degree of international compliance and cooperation with the sanctions regime that has taken place since 2010. A wide range of countries depend on energy and other trade with Iran and might be reluctant to restore cooperation with U.S. sanctions unless Iran commits clear and egregious violations of its commitments.

Other Provisions[24]

Verification

According to the JCPA, the IAEA will monitor Iranian compliance with the provisions concerning its enrichment program and the Arak program. The IAEA will increase its number of inspectors in Iran and use modern verification technologies. In addition, Tehran "has agreed to implement" the Additional Protocol to its safeguards agreement. Iran is also to implement the modified code 3.1 of the subsidiary arrangements to its IAEA safeguards agreement. It is worth noting that Iran's IAEA safeguards obligations last for an indefinite duration. Potential nuclear-related exports to Iran would remain subject to the Nuclear Suppliers Group's export guidelines.[25]

The JCPA also describes other monitoring and inspections. For 15 years, the IAEA

[22] Peter Baker. "President Favors Way to Give Iran Political Cover." *New York Times*, April 18, 2015.
[23] Department of the Treasury. Remarks of Secretary Jacob J. Lew at the Washington Institute for Near East Policy 30th Anniversary Gala. April 29, 2015.
[24] The section entitled "Other Provisions" is derived verbatim from Kenneth Katzman et. al, "Iran Nuclear Agreement," *CRS Report R43333* (July 16, 2015), *available at* http://www.crs.gov/pdfloader/R43333.
[25] For information about the Nuclear Suppliers Group, see CRS Report RL 33865, *Arms Control and Nonproliferation: A Catalog of Treaties and Agreements*, by Amy F. Woolf, Paul K. Kerr, and Mary Beth D. Nikitin.

will monitor the stored Iranian centrifuges and related infrastructure. During this time, Iran will also permit the IAEA "daily access" to "relevant buildings" at the Natanz facilities. For 20 years, Tehran will allow the agency to verify Iran's inventory of certain centrifuge components and the manufacturing facilities for such components. Additionally, Iran is to allow the IAEA to monitor the country's uranium mills for 25 years and to monitor Iran's plant for producing heavy water.[26] IAEA Director General Yukiya Amano told reporters on July 14, 2015, that the agency's "workload will increase" under the JCPA. Amano intends to request additional resources from the agency's Board of Governors.[27]

Access to Other Sites. The JCPA also describes arrangements for the IAEA to gain access to Iranian sites other than those Tehran declares to the agency "if the IAEA has concerns regarding undeclared nuclear materials or activities, or activities inconsistent with" the JCPA. If the IAEA has "concerns regarding undeclared nuclear materials or activities, or activities inconsistent with the JCPOA" at one of these sites, the agency "will provide Iran the basis for such concerns and request clarification." The IAEA could request access to the site if Iran's explanation did not provide such clarification. Tehran may respond to such a request by proposing "alternative means of resolving the IAEA's concerns." If such means did not resolve the IAEA's concerns or the two sides did not "reach satisfactory arrangements... within 14 days of the IAEA's original request for access," Iran "would resolve the IAEA's concerns through necessary means agreed between Iran and the IAEA." Tehran would make such a decision "in consultation with the members of the Joint Commission" provided for by the JCPA. If the two sides could not reach agreement, the Commission "would advise on the necessary means to resolve the IAEA's concerns" if at least a majority of the Commission's members agreed to do so. The Joint Commission would have 7 days to reach a decision; "Iran would implement the necessary means within 3 additional days."

The JCPA contains several provisions apparently designed to address Iranian concerns that IAEA inspectors may try to obtain information unrelated to the country's nuclear program. For example, the IAEA may only request access to the types of facilities described above "for the sole reason to verify the absence of undeclared nuclear materials and activities or activities inconsistent with the JCPOA." In addition, the agency would provide Iran with written "reasons for access" and "make available relevant information."

Procurement Channel to Be Established. The U.N. Security Council resolution endorsing the JCPA is to establish a "procurement channel" for Iran's nuclear program. The Joint Commission established by the JCPA will monitor and approve transfers made via the channel. IAEA officials will have access to information about, and may participate in meetings regarding, proposed such transfers.

The JCPA also indicates that the IAEA will pursue drawing a "Broader Conclusion that all nuclear material in Iran remains in peaceful activities" According to the IAEA, the

[26] This plant is currently not under IAEA safeguards.
[27] "IAEA Director General Amano's Remarks to the Press on Agreements with Iran," July 14, 2015.

agency can draw such a conclusion for states with comprehensive safeguards agreements and additional protocols in force. According to the IAEA,

> The conclusion of the absence of undeclared nuclear material and activities is drawn when the activities performed under an additional protocol have been completed, when relevant questions and inconsistencies have been addressed, and when no indications have been found by the IAEA that, in its judgement [sic], would constitute a safeguards concern.[28]

Formal Congressional Review[29]

Legislation providing for congressional review was enacted as the Iran Nuclear Agreement Review Act of 2015 (P.L. 114-17). Because the agreement was reached after July 10, the congressional review period is 60 days from the date of submission to Congress, which is to be within five days of finalization of the accord. The transmission is to include a report assessing the degree to which the United States will be able to verify Iranian compliance, as well as all annexes. No statutory sanctions can be waived for the review period. If a resolution of disapproval is passed by both chambers, President Obama could not waive sanctions for another 12 days during which he would presumably exercise his threat, stated on July 14, to veto a resolution of disapproval. Congress would have 10 days to try to override the veto, during which sanctions could not be waived. So, the maximum period during which statutory sanctions could not be waived is 82 days after receipt of the agreement. For other provisions of that law, please see CRS Report RS20871, *Iran Sanctions*, by Kenneth Katzman.

Congressional Oversight of an Agreement with Iran[30]

Although Congress may potentially exercise oversight of any agreement reached with Iran, the nature of legislative involvement may depend upon whether the agreement is intended to operate as controlling domestic law and supersede existing statutory requirements.[31] On March 11, 2015, Secretary of State John Kerry indicated that a nuclear agreement with Iran might not be legally binding in nature.[32] If Congress disagrees with any commitments made by the executive branch to Iran that do not modify U.S. law, it

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[28] *2001 IAEA Safeguards Glossary.*

[29] The section entitled "Formal Congressional" and subsequent sections are derived verbatim from Kenneth Katzman et. al, "Iran Nuclear Agreement," *CRS Report R43333* (July 16, 2015), *available at* http://www.crs.gov/pdfloader/R43333.

[30] This section was contributed by Michael John Garcia, Legislative Attorney.

[31] The U.S. sanctions regime against Iran is primarily a creature of statute. In some cases, federal statutes directly require the imposition of sanctions against Iranian entities, but may provide the Executive with authority to waive certain sanction requirements in specified circumstances. In other instances, Congress has delegated broad authority to the Executive to impose sanctions against foreign entities in order to protect U.S. interests, and the Executive has exercised this statutorily delegated authority to impose sanctions against Iranian entities. For further discussion, see CRS Report R43311, *Iran: U.S. Economic Sanctions and the Authority to Lift Restrictions*, by Dianne E. Rennack.

[32] See Felicia Schwartz, "Iran Nuclear Deal, If Reached, Wouldn't Be 'Legally Binding,' Kerry Says," *Wall Street Journal,* March 11, 2015.

would likely need to pass legislation (potentially with sufficient support to override a presidential veto) to limit U.S. adherence to the agreement. However, if the Obama Administration (or a future administration) seeks to conclude a legally binding agreement with Iran intended to have the force of domestic law, such as an agreement intended to modify existing sanctions laws applicable to Iran, congressional action would likely be required.

Congressional Oversight of Arrangements That Do Not Modify U.S. Law

The Obama Administration did not seek legislative approval of the JPA, and the Administration has opined that legislative action would not be constitutionally required to enter any future arrangement with Iran that did not impose legal obligations upon the United States.[33] The JPA is not crafted as a legally binding agreement, but instead as a political commitment among the participants.[34] The agreement does not modify the participants' existing domestic legal authorities or obligations. Moreover, by its terms, commitments made by JPA participants are understood to be voluntary.[35] Nonetheless, adherence to these commitments may carry significant moral and political weight with the United States, Iran, and other JPA participants. Pursuant to the JPA, the Obama Administration has pledged to exercise its existing statutory authority to waive the application of certain sanctions against Iran, provided that the Iranian government freezes aspects of its nuclear program and allows inspections. The JPA does not purport to confer U.S. agencies with authority to waive sanctions against Iran that cannot be waived under current statute.

The Executive's authority to enter political arrangements like the JPA, without first obtaining the approval of Congress, has been the subject of long-standing dispute between the political branches.[36] Nonetheless, the executive branch has long claimed the authority to make such commitments on behalf of the United States without congressional authorization, asserting that the Executive is not subject to the same constitutional constraints in making political commitments to foreign countries as is the case when

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[33] White House, Letter from Denis McDonough, Asst. to President and Chief of Staff, to Senator Bob Corker, March 14, 2015, available at http://images.politico.com/global/2015/03/15/mcdonoughletter.html (noting several examples when the Executive has entered political commitments concerning nuclear issues without congressional authorization).

[34] For further background on nonlegal agreements, see CRS Report RL32528, *International Law and Agreements: Their Effect upon U.S. Law*, by Michael John Garcia.

[35] See Joint Plan of Action, Nov. 24, 2013, at pp. 1-2 (describing the "voluntary measures" agreed upon by the JPA participants), available at http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf. For discussion of common features distinguishing the wording and format of legal and nonlegal international agreements, see State Department Office of the Legal Adviser, *Guidance on Non-Binding Documents*, at http://www.state.gov/s/l/treaty/guidance/.

[36] See S.REPT. 91-129 (1969) (Senate Committee on Foreign Relations report in favor of the National Commitments Resolution, S.Res. 85, criticizing the undertaking of "national commitments" by the Executive, either through international agreements or unilateral pledges to other countries, without congressional involvement).

entering legally binding international agreements.[37]

If Congress seeks to modify U.S. adherence to an agreement with Iran that did not seek to modify U.S. law, it would likely need to pass legislation to that effect. For example, Congress could potentially pass legislation to bar the Executive from waiving applicable sanctions against Iran unless the Executive certified to Congress that Iran had complied with the terms of the agreement. Congress might also, if it deemed such action appropriate, enact legislation that statutorily barred certain sanctions against Iran from being lifted, notwithstanding the terms of any agreement reached with Iran. Conversely, Congress could pass legislation to facilitate the implementation of the JPA or future agreements (whether legal or political in nature) negotiated by the Executive with respect to Iran's nuclear program.

Congressional Oversight Concerning a Legal Agreement with Iran

A comprehensive agreement reached with Iran could contemplate a modification of U.S. sanctions laws. Any agreement that seeks to supersede existing U.S. law would likely require legislative action to be given effect. Indeed, in a letter to Senator Bob Corker on March 14, 2015, the White House indicated that

> We agree that Congress will have a role to play—and will have to take a vote—on any comprehensive deal that the United States and our international partners reach with Iran. As we have repeatedly said, only Congress can terminate the existing Iran statutory sanctions.[38]

There are a number of possible methods by which a legally binding agreement may be entered by the United States. As a matter of historical practice, some types of international agreements have traditionally been entered as treaties, while others are typically done as executive agreements, which may take different forms. There is not an extensive body of legally binding international agreements concluded by the United States in which it has pledged to modify its sanctions laws in exchange for another party to the agreement freezing its nuclear program.[39]

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[37] See generally Robert E. Dalton, Asst. Legal Adviser for Treaty Affairs, *International Documents of a Non-Legally Binding Character*, State Department, Memorandum, March 18, 1994, available at http://www.state.gov/documents/organization/65728.pdf (discussing U.S. and international practice with respect to nonlegal, political agreements); Duncan B. Hollis and Joshua J. Newcomer, *"Political" Commitments and the Constitution*, 49 VA. J. INT'L L. 507 (2009) (discussing U.S. political commitments made to foreign States and the constitutional implications of the practice).

[38] White House Letter to Senator Corker, *supra* footnote 33.

[39] Indeed, perhaps the most relevant precedent for U.S.-Iran negotiations is the 1994 Agreed Framework with North Korea, a multilateral arrangement under which North Korea agreed to freeze its plutonium-based nuclear program, in exchange for the provision of light water reactors and other energy alternatives. The text of the agreement may be viewed at http://www.armscontrol.org/documents/af. The State Department characterized it as a nonlegal arrangement which did not pose legal commitments upon its participants. Contemporary State Department correspondence to Congress concerning the nonlegal nature of the arrangement is on file with the authors of this report.

A comprehensive, legally binding agreement with Iran could potentially take the form of a treaty, ratified by the President after obtaining the approval of a two-thirds majority of the Senate, or a congressional-executive agreement, which is a particular type of executive agreement that is authorized by legislation passed by both houses of Congress and enacted into law. If a legal agreement with Iran were entered as a treaty, it would need to be approved by a two-thirds majority of the Senate and thereafter ratified by the President before it would have the force of law. Moreover, the Senate could potentially condition its consent on certain reservations, understandings, and declarations concerning the treaty's meaning and application. Such conditions may potentially limit and/or clarify U.S. obligations under the agreement.[40] For example, the Senate could condition its approval of a treaty with Iran upon the agreement being deemed "non-self-executing" under U.S. law. Such a condition would mean that the ratified treaty would be understood not to have immediate domestic legal effect, and Congress would need to pass legislation to implement the treaty's requirements.[41]

A legal compact with Iran concerning that country's nuclear program would not necessarily have to take the form of a treaty. The United States has frequently undertaken international legal obligations by means of congressional-executive agreements,[42] and the constitutionality of this practice appears well established. Congressional-executive agreements have been made for a wide variety of topics, such as lessening trade restrictions between parties or allowing the transfer of nuclear materials.[43] Typically, a

[40] Certain conditions to Senate approval of treaty ratification, such as a reservation purporting to limit acceptance of a particular treaty provision, would require the consent of the other parties to the treaty. The Senate may also propose to amend the text of the treaty itself. The other parties to the agreement would have to consent to these changes in order for them to take effect. If such proposed conditions or alterations are not accepted by the other parties to the treaty, then the ratification process cannot be completed and the treaty will not enter into force for the United States. For further discussion of the Senate role in the treaty-making process, see TREATIES AND OTHER INTERNATIONAL AGREEMENTS: THE ROLE OF THE UNITED STATES SENATE, A STUDY PREPARED FOR THE SENATE COMM. ON FOREIGN RELATIONS 6-14 (Comm. Print 2001).

[41] See, e.g., Medellin v. Texas, 552 U.S. 491, at 505 (2008) ("In sum, while treaties may comprise international commitments ... they are not domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be 'self-executing' and is ratified on these terms.") (internal citations and quotations omitted).

[42] While there is some scholarly debate as to whether a congressional-executive agreement may always serve as an alternative to a treaty, it does not appear that a congressional-executive agreement that had the primary legal effect of modifying an existing federal statutory regime concerning commerce with Iran would raise significant constitutional questions.

[43] Some policymakers have identified the process by which Congress has approved bilateral agreements authorizing the transfer of nuclear materials to a foreign country (commonly referred to as "123 agreements") as a potentially relevant precedent for congressional involvement in approving any agreement concerning Iran's nuclear program. See, e.g., Senate Committee on Foreign Relations, *Hearing on Iranian Nuclear Negotiations: Status of Talks and the Role of Congress*, January 15, 2015 (opening statement of Chairman Bob Corker, suggesting that 123 agreements may serve as a useful model for patterning legislation approving or disapproving of a final agreement concerning Iran's nuclear program). The relevance of this precedent can be subject to debate, in the sense that 123 agreements typically concern the transfer of nuclear materials between parties for peaceful energy-related purposes, while an agreement with Iran could potentially turn on that country halting its nuclear program in exchange for a reduction or elimination in U.S.

congressional-executive agreement both authorizes a particular agreement (or type of agreement) and also provides any necessary implementing authorities to executive agencies.

It should be noted that executive agreements may sometimes be entered into by the United States that do not take the form of a congressional-executive agreement, but these other categories of agreements do not seem applicable here. For example, the United States does not appear to be a party to any treaty that would give the Executive the authority to enter an agreement with Iran that has the effect of superseding the requirements of existing federal sanctions laws. Additionally, while the Executive is recognized as being able to enter legally binding agreements concerning matters falling under his independent constitutional authority (a category referred to as sole executive agreements), the weight of judicial and scholarly opinion recognizes that the President may not, by way of an executive agreement based solely upon his constitutional authority, supersede or modify a federal statute.[44] Accordingly, it appears that Congress would need to authorize and implement any executive agreement intended to modify or supersede existing U.S. statutes regarding Iran.[45]

There might be some question (and possibly debate) over whether a legally binding nuclear agreement with Iran should take the form of a treaty or a congressional-executive

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trade sanctions.

[44] See, e.g., United States v. Guy W. Capps, Inc., 204 F.2d 655 (4th Cir. 1953) (finding that executive agreement contravening provisions of import statute was unenforceable), affirmed on other grounds, 348 U.S. 296 (1955); RESTATEMENT (THIRD) OF FOREIGN RELATIONS §115 reporters' n.5 (1987). In limited circumstances, an exception to this rule might exist on matters where Congress has historically acquiesced to the President. See Dames & Moore v. Regan, 453 U.S. 654 (1981) (upholding sole executive agreement concerning the handling of Iranian assets in the United States, despite the existence of a potentially conflicting statute, given Congress's historical acquiescence to sole executive agreements concerning claims settlement). See *Medellin*, 552 U.S. at 531-532 (suggesting that *Dames & Moore* analysis regarding significance of congressional acquiescence might be relevant only to a "narrow set of circumstances," where presidential action is supported by a "particularly longstanding practice" of congressional acquiescence). However, there has not been a consistent or longstanding practice of legislative acquiescence to the Executive entering legal agreements with foreign nations pursuant to his independent constitutional authority which override existing U.S. laws barring or limiting trade with a particular country.

[45] Indeed, even if an arrangement obligated the President to waive a particular sanction that he is already permitted to waive under current U.S. laws, such an arrangement would arguably require congressional approval if it was understood to obligate the United States not to modify its sanctions laws in the future in a manner that would limit applicable waiver authority. On the other hand, an arrangement under which the President pledged to waive application of sanctions against Iran, only *to the extent that such waiver was authorized by U.S. laws in effect at the time the waiver was issued*, arguably would not require congressional approval. On March 9, 2015, forty-seven Senators signed an open letter to Iranian leaders indicating the Senators' position that any agreement with Iran would need to take the form of a treaty or congressional-executive agreement to be considered binding upon the United States. The letter further observed that adherence to an arrangement entered as a sole executive agreement could be modified at any time by either a legislative enactment or through "the stroke of a pen" of a future President. See Senator Tom Cotton et al., Open Letter to the Leaders of the Islamic Republic of Iran, March 9, 2015, *available at* http://www.cotton.senate.gov/sites/default/files/150309%20Cotton%20Open%20Letter%20to%20Iranian%20Leaders.pdf.

agreement. Some observers and policymakers have argued that such an agreement should take the form of a treaty due to the perceived significance of the obligations taken by the parties.[46] Others have suggested that such an agreement could be authorized by an act of Congress, similar to the process used to approve agreements (commonly referred to as "123 agreements")[47] concerning the sharing of nuclear material with other countries for energy purposes.[48] More broadly, the Senate may prefer that significant international commitments be entered as treaties, and fear that reliance on executive agreements will lead to an erosion of the treaty power. The House may want an international compact to take the form of a congressional-executive agreement, so that it may play a greater role in its consideration.

State Department regulations prescribing the process for coordination and approval of international agreements (commonly known as the "Circular 175 procedure")[49] include criteria for determining whether an international agreement should take the form of a treaty or an executive agreement. Congressional preference is one of several factors considered when determining the form that an international agreement should take.[50]

[46] See David B. Rivkin Jr. and Lee A. Casey, "How Congress Can Use Its Leverage on Iran," *Wall Street Journal*, January 20, 2015. It should be noted that arms control and reduction agreements entered by the United States have historically been entered as treaties. However, an agreement in which the United States commits to reduce sanctions in exchange for another country freezing its nuclear program is arguably not analogous to the kind of compacts typically considered arms control agreements.

[47] For further discussion of 123 agreements, including the statutory framework authorizing their adoption, see CRS Report R41910, *Nuclear Energy Cooperation with Foreign Countries: Issues for Congress*, by Paul K. Kerr, Mary Beth D. Nikitin, and Mark Holt.

[48] See, e.g., Senate Committee on Foreign Relations, *Hearing on Iranian Nuclear Negotiations: Status of Talks and the Role of Congress*, January 15, 2015 (opening statement of Chairman Bob Corker, suggesting that 123 agreements may serve as a useful model for patterning legislation approving or disapproving of a final agreement concerning Iran's nuclear program). The relevance of this precedent can be subject to debate, in the sense that 123 agreements typically concern the transfer of nuclear materials between parties for peaceful energy-related purposes, while an agreement with Iran could potentially turn on that country halting its nuclear program in exchange for a reduction or elimination in U.S. trade sanctions.

[49] Circular 175 initially referred to a 1955 Department of State Circular that established a process for the coordination and approval of international agreements. These procedures, as modified, are now found in 22 C.F.R. Part 181 and 11 Foreign Affairs Manual (F.A.M.) chapter 720.

[50] 11 F.A.M. §723.3 (2006).

Witness Biographies

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Ilan Berman is Vice President of the American Foreign Policy Council in Washington, DC. An expert on regional security in the Middle East, Central Asia, and the Russian Federation, he has consulted for both the U.S. Central Intelligence Agency and the U.S. Department of Defense, and provided assistance on foreign policy and national security issues to a range of governmental agencies and congressional offices. He has been called one of America's "leading experts on the Middle East and Iran" by CNN.

Mr. Berman is a member of the Associated Faculty at Missouri State University's Department of Defense and Strategic Studies. He also serves as a columnist for Forbes.com and the *Washington Times*, and as the Editor of *The Journal of International Security Affairs*.

Mr. Berman is the editor of two books - *Dismantling Tyranny: Transitioning Beyond Totalitarian Regimes* (Rowman & Littlefield, 2005), co-edited with J. Michael Waller, and *Taking on Tehran: Strategies for Confronting the Islamic Republic* (Rowman & Littlefield, 2007) - and the author of three others: *Tehran Rising: Iran's Challenge to the United States* (Rowman & Littlefield, 2005), *Winning the Long War: Retaking the Offensive Against Radical Islam* (Rowman & Littlefield, 2009) and, most recently, *Implosion: The End of Russia and What It Means for America* (Regnery Publishing, 2013).

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Mark Dubowitz is executive director of the Foundation for Defense of Democracies, a Washington, D.C.-based nonpartisan policy institute, where he leads projects on Iran, sanctions, and nonproliferation.

Mark is an expert on sanctions and has testified before Congress and advised the U.S. administration, Congress, and numerous foreign governments on Iran and sanctions issues.
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Before joining FDD in 2003, Mark worked in venture capital, technology management and law. He has a masters in international public policy from Johns Hopkins University's School of Advanced International Studies, and law and MBA degrees from the University of Toronto.
- See more at: http://www.defenddemocracy.org/about-fdd/team-overview/dubowitz-mark/#sthash.lMKIszXW.dpuf

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After graduating from law school, Mr. Perles worked on Capitol Hill for several years. Mr. Perles began his private practice in 1981, after serving as chief legislative assistant and staff attorney for Senator Ted Stevens (R-Alaska), the former president pro tem of the Senate and chairman of the Senate Commerce Committee who sadly passed away in a aircraft accident in 2010.

Mr. Perles has handled a number of cases before Supreme Court of the United States, United States courts of appeals and district courts across the country. His litigation practice has included important cases in the field of Foreign Sovereign Immunities Act litigation, particularly cases involving claims against or the defense of foreign governments before United States federal courts and administrative agencies. He has represented foreign and domestic clients under the Administrative Procedure Act in matters before the United States Departments of Commerce and Interior, the Environmental Protection Agency and the Foreign Claims Settlement Commission of the United States.

Mr. Perles also has extensive experience in foreign commercial negotiations in Africa, Asia and Latin America. He has performed legal risk assessments for United States companies planning international ventures, arbitration proceedings and settlement negotiations in a multi-forum contract disputes.

Mr. Perles frequently lectures at law schools and to groups of lawyers about his practice. He has lectured to law students and lawyers at the University of Chicago, American University, Harvard University, University of California at Hastings, the University of Michigan, Stanford University, and business schools at the Sophia International University School of Business in Tokyo Japan and Stanford University. Most recently, Mr. Perles has given several lectures on the evolution of anti-terrorism civil litigation at several conferences for national crime victims' groups.

Mr. Perles is actively involved in a charitable foundation established by his family and in terrorist victim issues. He was honored with the Rabbinical Alliance of America's Humanitarian Award of 1997, the 1976 Recipient of the Symbol of Hokaido Medal, in Sapporo, Japan and the Brandeis Award from the American Jewish Congress in 2003.

Olli Heinonen, Senior Fellow, Belfer Center for Science and International Affairs, John F. Kennedy School of Government

Olli Heinonen is a Senior Fellow at the Harvard Kennedy School of Government's Belfer Center for Science and International Affairs. His research and teachings include: nuclear non-proliferation and disarmament, verification of treaty compliance, enhancement of the verification work of international organizations, and transfer and control of peaceful uses of nuclear energy.

Before joining the Belfer Center in September 2010, Olli Heinonen served 27 years at the International Atomic Energy Agency in Vienna. Heinonen was the Deputy Director General of the IAEA, and head of its Department of Safeguards. Prior to that, he was Director at the Agency's various Operational Divisions, and as inspector including at the IAEA's overseas office in Tokyo, Japan.

Heinonen led teams of international investigators to examine nuclear programmes of concern around the world and inspected nuclear facilities in South Africa, Iraq, North Korea, Syria, Libya and elsewhere, seeking to ensure that nuclear materials were not diverted for military purposes. He also spearheaded efforts to implement an analytical culture to guide and complement traditional verification activities. He led the Agency's efforts to identify and dismantle nuclear proliferation networks, including the one led by Pakistani scientist A.Q. Khan, and he oversaw its efforts to monitor and contain Iran's nuclear programme.

Prior to joining IAEA, he was a Senior Research Officer at the Technical Research Centre of Finland Reactor Laboratory in charge of research and development related to nuclear waste solidification and disposal. He is co-author of several patents on radioactive waste solidification.

Heinonen is the author of several articles, chapters of books, books, in publications ranging from the IAEA and nuclear non-proliferation issues, to regional nuclear developments. His writings and interviews have be published in various newspapers and magazines including: Foreign Policy, The Wall Street Journal, the Guardian, the Bulleting of the Atomic Scientists, Arms Control Today, Der Spiegel, Le Monde, the Helsingin Sanomat, the New York Times, the Mehr news, Die Stern, the Haaretz, the New Statesman, the Washington Post, the BBC, and the Time. His policy briefings have been published by the Belfer Center, the Atlantic Council, the Nautilus Institute, the Institute for Science and International Security, the Nonproliferation Policy Education Center, the Washington Institute for Near East Policy, and the Carnegie Endowment.

Olli Heinonen studied radiochemistry and completed his PhD dissertation in nuclear material analysis at the University of Helsinki.

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Richard Nephew joined the Center on Global Energy Policy on February 1, 2015 directly from his role as Principal Deputy Coordinator for Sanctions Policy at the Department of State, a position he held since February 2013. Nephew also served as the lead sanctions expert for the U.S. team negotiating with Iran. From May 2011 to January 2013 Nephew served as the Director for Iran on the National Security Staff where he was responsible for managing a period of intense expansion of U.S. sanctions on Iran.

Earlier in his career he served in the Bureau of International Security and Nonproliferation at the State Department and in the Office of Nonproliferation and International Security at the Department of Energy. Nephew holds a Masters in Security Policy Studies and a Bachelors in International Affairs, both from The George Washington University.