Looking to a Comprehensive Nuclear Agreement with Iran Assessing Claims and Counter Claims over New Sanctions

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A Short Report by The Iran Project

Americans are now engaged in one of the most important foreign policy debates in a generation. This debate has a number of vitally important elements: how best to stop the proliferation of nuclear weapons; how to shape the future of American policy in the Middle East; how best to protect the security of its closest friends in the region; and the possibility of a changed relationship with one its most distrusted adversaries.

The formal negotiations between Iran and the P5+1 begin on February 18 to determine whether a comprehensive nuclear agreement can be reached.

In order to contribute to this vital debate The Iran Project plans to issue four short reports over the coming months to help in the understanding of the different sides of this national discussion: This first Short Report, "Looking to a Comprehensive Nuclear Agreement with Iran: Assessing Claims and Counterclaims Over New Sanctions" deals with what we have already learned about this important debate over the past two months from the claims and counter claims over S.1881 (The Menendez/Kirk bill).

Subsequent Short Reports will deal with the debates over: what The Joint Plan of Action achieves and what it does not achieve; the issues that must be addressed in a comprehensive agreement; and finally the challenges of lifting sanctions should a comprehensive agreement be achieved.

While The Iran Project has been a proponent of a negotiated agreement with Iran, we will continue to seek objectivity in the hope that we can contribute constructively to this important debate.

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American diplomacy now has three major tasks...to define a level of Iranian nuclear capacity limited to plausible civilian uses and to achieve safeguards that ensure that this level is not exceeded; to leave open the possibility of a genuinely constructive relationship with Iran; [and] to design a Middle East policy adjusted to new circumstances.

Former US Secretaries of State, George Schultz and Henry Kissinger

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I have long thought of this as a bipartisan national security issue – not a partisan political issue. And...a national security issue that we must approach in a spirit of bipartisanship and unity, which has been the spirit for which we have worked together on this matter.

Senate Foreign Relations Committee Chaiman, Senator Robert Menendez

Introduction

Recent efforts in the U.S. Senate to impose additional sanctions on Iran have stalled in the face of mounting opposition yet the arguments that emerged during the intense debate in the Senate over new sanctions have not gone away. This polarizing political discourse revealed the shape of the American domestic debate for and against the Obama administration's intentions to reach a comprehensive nuclear agreement with Iran.

Continuing this debate will be essential to prepare Americans and their elected representatives either for a new era in U.S.–Iran relations or for what failure to achieve a diplomatic solution might mean for future U.S. policy in the Middle East, including renewed conflict. Understanding this debate also is important in enabling Americans to assess any final agreement that emerges from the negotiations. For this reason The Iran Project has sought to outline in this short report the issues that have been raised in the most recent phase of American domestic political debate about Iran.

Proponents of the Menendez/Kirk bill (S. 1881: Nuclear Weapon Free Iran Act of 2013) have claimed that new sanctions are needed to put pressure on Iran during nuclear negotiations. Opponents assert that additional sanctions would undermine the negotiations and pave the way to war with Iran. This debate became more intense since the Joint Plan of Action (JPOA) was signed on November 24, 2013, establishing a framework for formal negotiations between Iran and the P5+1 (United States, Britain, France, China, Russia, and Germany). This analysis inventories the claims made by both sides of the debate.

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II.
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Claims by Supporters of New Sanctions

1. ADDITIONAL SANCTIONS ARE INTENDED TO SUPPORT NEGOTIATIONS.

Supporters contend that the threat of new sanctions will help the President and U.S. negotiating team. By using a "good cop, bad cop" strategy that threatens Iran with more sanctions during negotiations, U.S. negotiators will be able to extract greater concessions from Iran, and Iran will be deterred from violating the agreement.

Counter-claim: Opponents point out that this is "help" that no one is asking for. The President has vigorously and vocally opposed new sanctions legislation, and America's European allies have publically stated that they wish to see no additional U.S. sanctions and will not seek more sanctions themselves.¹ Critics also point out that many who now support a new sanctions bill have for years publicly opposed diplomacy with Iran and instead have argued for the use of military force, and that the idea that they want to help the negotiations is disingenuous at best.

Assessment: It is difficult to argue that a new sanctions bill is intended to support the negotiations when all the countries doing the negotiating oppose it. Critics' claims that supporters are putting on a false face and really want to kill negotiations are likely true of some sanctions bill supporters, particularly those in think tanks and lobbies, but it probably misstates the intentions of many of the senators who have cosponsored bills such as S 1881 (Nuclear Weapon Free Iran Act).

2. NEW SANCTIONS, SUCH AS THE S. 1881 BILL, ARE CONDITIONAL.

Supporters of new sanctions have repeatedly stated that in S. 1881 for example, sanctions are conditional. In Section 2 of S. 1881, "Sense of Congress on Nuclear Weapon Capabilities of Iran" (pp 2–6), the bill states that "the imposition of sanctions...is triggered by violations by Iran of any interim or final agreement... failure to reach a final agreement in a discernible time frame, or the breach of other conditions".² Supporters also point out that under the terms of the bill, the President can delay the imposition of those sanctions.

Counter-claim: Critics charge that this is among the most misleading claims by the bill's supporters. They point out that the language in Section 2 regarding triggers is nonbinding and hortatory, whereas the

actionable provisions of the bill, beginning with Title 1, make immediate changes to existing sanctions laws. They make the additional point that the imposition of the sanctions can be delayed only if the President seeks temporary suspension and can meet the onerous certification requirements.

Assessment: After carefully reading the bill line by line and consulting with both current and retired Senate staff of the relevant committees, it appears that the critics are correct: the change in sanctions law takes effect upon passage. Supporters are correct in saying that the imposition of different sanctions occurs along different timelines, and that the President can seek suspension, but that is a suspension of a newly imposed sanction. Indeed, the language on suspension points to the fact that passage of S. 1881 imposes new sanctions during the period of negotiation. If there were not new sanctions, there would be no need to seek suspension during this period. This is an important distinction, because new sanctions during the negotiating period would be viewed as direct violation of the JPOA agreement.

3. SANCTIONS BROUGHT IRAN TO THE TABLE, SO IF SANCTIONS ARE GOOD, MORE SANCTIONS ARE BETTER.

Advocates of additional sanctions maintain that sanctions forced Iran back to the negotiating table, and that if pressure got them to the table, then more pressure will force them to do accede to more of our demands during the negotiations.

Counter-claim: Skeptics maintain that the reasons for Iran's return to the bargaining table were more complex than supporters suggest, and that domestic economic mismanagement and Iranian politics played a crucial role.³

Detractors of new sanctions insist that the "if some is good, more is better" logic as dangerously simplistic. Any doctor, for example, would object to the same reasoning if applied to prescription medicine. Medicine administered at a certain dosage can improve the health of a patient, but if that patient turns around and doubles it, they might poison themselves. Imposing new sanctions in the middle of a negotiation, critics claim, will poison the negotiations. As the top intelligence official in the United States told Congress, new sanctions "would undermine the prospects for a successful comprehensive nuclear agreement with Iran."⁴

More broadly, a "punishment only" approach is likely to fail. If countries make concessions, as Iran did in the JPOA, responding with additional punishments reduces their incentive to make further concessions for a final agreement.⁵ In addition, Iran has demonstrated a very high capacity to endure pain. Recent sanctions have imposed large costs on the Iranian economy, but Iran suffered greater economic pain from

the sanctions imposed during the Iran–Iraq War and endured more than 200,000 casualties. Sanctions alone will not force Iran to capitulate.

Assessment: Both proponents and opponents are partly right. Sanctions did contribute to Iran returning to the negotiations, though it has to be said that the outcome was not automatic. If the hardline candidate, Saeed Jalili, had won the election, he certainly would not have resumed negotiations or agreed to the JPOA—something he opposed as Iran's nuclear negotiator and as a presidential candidate. Whether more is better would seem to depend very much on context. Should Iran fail to comply with its obligations under the JPOA or clearly put off indefinitely reaching a final settlement, additional sanctions might be useful, but imposing them in the middle of a negotiation and confidence-building phase does not, on its face, appear to be the right time to do so.

4. PROPOSALS FOR ADDITIONAL SANCTIONS LIKE S. 1881 HAVE STRONG BIPARTISAN SUPPORT.

Those backing new sanctions against Iran point out that they have strong bipartisan support, and that legislation such as S. 1881 is sponsored by the Chair of the Senate Foreign Relations Committee, Senator Robert Menendez (D-NJ). In addition, Senator Charles Schumer (D-NY) has been a major proponent, and 14 other Democratic senators have signed on as co-sponsors. The total number of senators on record in support of S. 1881 is 59—a majority of the Senate.

Counter-claim: Critics point out that 73% of the 59 co-sponsors are Republicans. All but two Republican senators support the bill and 71% of the Democratic senators have refused to co-sponsor despite intense pressure from lobbying groups. In addition, virtually of all the Senate Committee Chairs (who are Democrats) have come out publically against S. 1881.⁶ A number of Democratic senators who co-sponsored the bill have subsequently suggested that the bill should not come to a vote during this negotiating period.

Assessment: This claim is difficult to assess because it is hard to say what bipartisan means anymore. The support of Senators Menendez and Schumer is not trivial, but they do not appear solidly behind bringing the bill to a vote. The number of Democratic senators coming out in favor of the bill all but ended as the contents of the bill became more widely understood, and once the President came out against it.

5. "IRAN HAS CONTINUED ELEMENTS OF CONSTRUCTION AT ARAK, A HEAVY-WATER NUCLEAR REACTOR SITE." 7

SEN. MENENDEZ OP ED, WASHINGTON POST, JANUARY 9, 2014

Supporters of additional sanctions claim that since the agreement reached on November 24th, Iran has continued work on the Arak reactor site. If the heavy-water reactor is completed, it could represent a second path to the bomb via plutonium production. This continued progress on Iran's nuclear program demonstrates the need to threaten further sanctions.

Counter-claim: The suggestion that there is "continued work" at the Arak site is misleading. Under the terms of the JPOA, Iran has agreed not to install any reactor components at the site; not to test fuel components, transfer fuel, add fuel, or start the plant; and not to construct a reprocessing plant for the reactor. Without a reprocessing facility, Iran cannot use the reactor for a weapons program, since reprocessing is required to extract the plutonium from the spent nuclear waste. Even before the November agreement, the International Atomic Energy Agency (IAEA) reported in its quarterly report that the reactor was substantially behind schedule and that Iran had pushed back its start-up date. Any additional work at the site will be cosmetic (e.g., building roads or administrative offices) and would not advance the construction of the reactor itself.

Assessment: The critics of increased sanctions are correct on this one. The JPOA is quite specific about the Arak reactor. During this period, Iran is obliged to do nothing that advances the start-up date of the reactor itself, including the production of fuel. Even more important is the commitment not to build a reprocessing facility. No country can make a plutonium bomb using a heavy-water reactor without reprocessing capacities. To do so would be like trying to build a car without an engine.

6. "IRAN ANNOUNCED THAT IT IS BUILDING A NEW GENERATION OF CENTRIFUGES FOR URANIUM ENRICHMENT AND CONCEDED THAT IT HAS 19,000 CENTRIFUGES, A THOUSAND MORE THAN PREVIOUSLY DISCLOSED." ⁸

SEN. MENENDEZ OP ED, WASHINGTON POST, JANUARY 9, 2014

Advocates of additional sanctions argue that Iran is building more centrifuges and working on advanced centrifuges that might shorten the time required to make a dash for the bomb. As with the Arak reactor, this continued activity provides reason to threaten more sanctions.

Counter-claim: Critics complain that advocates of new sanctions are mischaracterizing the situation, in this case, by making it sound as if Iran withheld information on its centrifuge production or only recently announced plans for advanced centrifuges. Neither is true. Over time, Iran has built more centrifuges each year and has reported the number to the IAEA, which the agency has confirmed in every quarterly report. There is no "disclosure" issue, as anyone who has read the IAEA reports knows. In addition, Iran has been working on advanced centrifuge designs for years and has publically stated so. Indeed, Iran installed roughly 1,000 "advanced" (IR2-m) centrifuges in the spring of 2013, but according to the IAEA and to the surprise of many, it did not start the newly installed centrifuges. And under the JPOA, it has formally agreed not to operate these new centrifuges. In addition, under the JPOA, Iran has agreed to limit its centrifuge production to only those centrifuges needed to replace damaged centrifuges from the current inventory.

Assessment: Opponents of new sanctions are correct to say that any suggestion that Iran has withheld information about its centrifuges is simply not true. Advocates of more sanctions are right in stating that the JPOA allows Iran to continue research and development on new centrifuge designs, but critics are also correct that the JPOA prohibits the use of the presently installed inventory of advanced centrifuges and limits new centrifuge production to replacement of damaged centrifuges. In an ideal world, one would prefer no additional research and development work on centrifuges, but limits on the production and installation of new centrifuges, and more importantly, preventing the start-up of the already installed IR-2ms is a major win. Absent the agreement, Iran could easily begin use of these centrifuges. (By way of context, many arms-control treaties limit deployment of particular technologies but allow research and development, a principle that the United States has insisted on for decades.)

7. MANY WHO OPPOSE NEW SANCTIONS HAVE "LARGELY OPPOSED ALL OF THE SANCTIONS THAT WE LED AGAINST [IRAN] FOR QUITE SOME TIME." ⁹

SEN. MENENDEZ, MSNBC, JANUARY 7, 2014

Proponents of S. 1881, for example, maintain that critics have opposed all the prior sanctions, and that those sanctions worked by bringing Iran to the table. The critics were wrong before and should be ignored now.

Counter-claim: The bill's supporters are correct that there have been vocal opponents of the sanctions regime and there still are. But few of those opponents have been in position of authority in the executive or congressional branches of the U.S. government. While the Obama administration has opposed

some sanctions in the past in order to get the Iranians to the table, the President has signed all the bills sanctioning Iran and enforced them with notable effectiveness. The bill's supporters fail to acknowledge that one of the most enduring bipartisan foreign policies over two decades has been the pursuit of a two-track approach to Iran that combines ever-stronger sanctions with an offer of diplomatic solution should Iran be ready to talk. The President of the United States, a critic of S. 1881, is the person who, with the strong support of both Republicans and Democrats, helped build over the past 5 years, the unprecedented international sanctions regime against Iran. American presidents for decades have worked with the Congress to build pressure on Iran. The fact that this policy might have been a chance for success should be a source of pride for both political parties.

Assessment: Advocates of S. 1881 are correct that there have been strong critics of the sanctions against Iran but few of those critics have been in any position of power in the U.S. government.

III.

Claims by Opponents of New Sanctions

1. NEW SANCTIONS WILL KILL THE NEGOTIATIONS, AND THUS PUT THE UNITED STATES ON A DIRECT PATH TO WAR WITH IRAN.

Critics of new sanctions insist that a new sanctions bill would be a poison pill that will cause Iran to walk out of the negotiations, and that if the negotiations collapse, the choice will be to either accept an Iran with nuclear weapons or to engage in war. Since the current Washington consensus rejects containment as an option, the only option left would eventually be the use of military force. This argument has been offered by presidential spokesman Jay Carney and more recently by the spokeswoman for the National Security Council.¹⁰ Iranian Foreign Minister Javad Zarif said that if Congress were to pass more sanctions "the entire deal is off."

Counter-claim: Supporters of new sanctions have reacted strongly to this claim, in some cases objecting to what they perceive as being labeled warmongers. They insist that a new bill would support negotiations, and that the Iranians are so desperate for sanctions relief that they will not leave the negotiations.

Assessment: It would seem that both sides are too confident in their claims—that a new sanctions bill will lead directly to war or that the Iranians will never walk away, even if they perceive the United States as having directly violated the JPOA. In one scenario, for example, the negotiations might collapse but reconvene later. Alternatively, Washington's rejection of containment might soften in the face of new realities. That said, it is difficult to escape the conclusion that a new sanctions bill would increase the probability of war, even if it does not guarantee such an outcome. It also seems problematic that many S. 1881 supporters insist that Iran is not serious about negotiations and yet assert that Iran would not use the opportunity that S. 1881, or any new sanctions, would present them, namely an excuse to walk away while placing the blame for failed negotiations squarely on the United States. That incentive would seem particularly strong if there is a perception that it was the United States that unilaterally undermined the talks.

2. NEW SANCTIONS WILL UNDERMINE THE INTERNATIONAL SANCTIONS REGIME.

Critics of additional sanctions argue that a new sanctions bill now would have the opposite effect than it intends, that is, it will undercut the international sanctions regime and reduce pressure on Iran. According to this view, unilaterally imposed sanctions by the U.S. Congress in contravention to the JPOA will cause the negotiations to collapse, and the United States will be blamed for the result. This is in part due to the fact that the negotiating partners within the P5+1 including the US, agreed in JPOA that new sanctions applied during the negotiating period would be in direct violation of the agreement. As a consequence, support for the U.S. position will decline, and countries will use this opportunity to defect from the international sanctions regime, thus reducing the incentive for Iran to accept new limits on its nuclear program.

Counter-claim: To date, supporters of additional sanctions have not offered a direct answer to this claim, but one would imagine that the a new sanctions bill's proponents would argue that Iran will not walk away from the negotiations (See Claim #1 above) or that at least with respect to the financial sanctions, the United States has the power to deter foreign banks from doing business with Iran.

Assessment: If the talks fall apart, and if the United States is blamed, then critics of new sanctions would appear to have a strong argument, but those outcomes represent probabilities not certainties. Even if this scenario were to take place, some countries would continue to honor some sanctions. Still, it would seem that on balance, the net result would be less pressure on Iran. Interestingly, many of the proponents of new sanctions are also critics of the JPOA, and they argue that the JPOA itself runs the risk of having sanctions unravel. If their logic is true, then it would bolster the position of this claim against additional sanctions, insofar as it suggests that the sanctions regime is fragile and that countries are just waiting for an excuse to do business with Iran. Under those conditions, new sanctions would seem to provide the very excuse the sanctions busters seek. In any case, additional sanctions now would threaten the entire JPOA agreement.

3. THE UNITED STATES WOULD BE BREAKING ITS COMMITMENTS TO ITS INTERNATIONAL ALLIES AND NEGOTIATING PARTNERS, E.G., BRITAIN, FRANCE, AND GERMANY, AND BREAKING THE JOINT PLAN OF ACTION AGREEMENT.

Opponents of new sanctions make the point that, contrary to most discussions in the United States, the JPOA is not a U.S.–Iran deal. Rather, it is an international agreement brokered by the United States and key allies (Britain, France, Germany), as well as Russia and China, with Iran. The JPOA represents an American promise to our allies, and new sanctions would violate that commitment. Simply put, the United States should not go back on its word.

Counter-claim: Again, defenders of new sanctions have not responded directly to this claim, but one would imagine that they might respond that it is not a violation of American promises, insofar as the sanctions are conditional.

Assessment: Our negotiating partners have made it clear that they oppose any new sanctions bills like S. 1881. And whatever the legal standing of conditionality, perception will matter, and there is certainly the possibility that U.S. allies will view unilateral action by the Congress as a failure of Washington to live up to its promises or evidence that the United States is an unreliable partner. It is unlikely that the damage done to America's reputation would be catastrophic or permanent, but it would feed an unwelcome narrative that could undermine American leadership and perceptions of integrity.

4. A NEW SANCTIONS BILL IS UNNECESSARY.

Opponents of new sanctions maintain that the bill is unnecessary, first because Congress has passed an almost endless number of sanctions bills over the years, and Iran is fully aware of the Congress's willingness to enact sanctions legislation. Second, in the event that the JPOA collapses, Congress can quickly pass a new sanctions bill. Senate Banking Chairman Tim Johnson (D-SD) has said that the Congress could pass new legislation in 24 hours if needed.¹¹

Counter-claim: Defenders of new sanctions acknowledge that Congress could quickly pass new sanctions legislation but point out that the mechanics of implementing that legislation could take months.

Assessment: This is another exchange where both sides seem to be correct. Congress could pass new legislation quickly and, as backers of S. 1881 suggest, it would take time to fully implement the legislation. What is not clear is why the added implementation time would matter. To use an analogy, if a missile

is coming towards you, it might arrive sooner or a few seconds later, but it will arrive and it will cause damage regardless of the timing. If Iran willing violates the agreement, they surely know sanctions are coming and have already factored that into their decision making. Speed would seem to be a secondary issue if one at all.

5. A NEW SANCTIONS BILL COULD INTRODUCE CONDITIONS UNRELATED TO THE NUCLEAR ISSUE THAT COULD TRIGGER THE IMPOSITION OF SANCTIONS, THUS KILLING THE AGREEMENT.

S. 1881, for example, stipulates areas of Iranian behavior that might trigger sanctions and thus an end to the JPOA. These include an act of terrorism by groups "linked" to Iran and missile tests beyond 500km. While everyone opposes terrorism and missiles, the number one national security issue for the United States, Israel, and other allies is nuclear weapons. This is not a terrorism agreement or a missile agreement, and by including extraneous items, the bill sets up a situation where actions in other areas, in some cases even actions not supported by Iran, would terminate the agreement on our number-one priority, Iran's nuclear program. It also invites Iran to respond in turn and begin making demands of the United States that are unrelated to nuclear sanctions, for example regarding National Security Agency surveillance or other unpopular American activities. This is a nuclear agreement; it needs to remain a nuclear agreement.

Counter-claim: Supporters of the bill say that missiles are relevant, because they can be used to deliver nuclear weapons.

Assessment: Opponents of the bill are certainly correct that it makes little or no sense to mix in issues of terrorism in a nuclear agreement, even if one sets aside the vague wording of the provision. Supporters might be able to make an argument that missiles are relevant (even though nuclear weapons could easily be delivered by bombers or other methods), but the 500km threshold is difficult to understand. Iran has tested space-launch vehicles but has never flight-tested an intercontinental ballistic missile (ICBM) or even an intermediate range ballistic missile (IRBM). A 500km range is insufficient to reach Israel, let alone the United States.

6. PASSAGE OF A NEW SANCTIONS BILL WILL HELP IRANIAN HARDLINERS WHO OPPOSE NEGOTIATING A NUCLEAR AGREEMENT AND OPPOSE IRANIAN PRESIDENT ROUHANI'S REFORM AGENDA MORE GENERALLY.

Opponents maintain that new sanctions legislation bolsters the position of the Iranian hardliners who oppose Rouhani, allowing them to repeat their claims that the United States cannot be trusted, that Washington is interested in regime change not a nuclear agreement, and that Rouhani is a patsy who has naively sold out Iranian interests. A weakened Rouhani will find it more difficult to negotiate and deliver a nuclear agreement; and his domestic agenda for reform would also likely suffer. This is one reason groups and individuals who support human rights in Iran, including exiled Iranians, have come out against the new sanctions at this time.

Counter-claim: Supporters of additional sanctions have not yet addressed this claim. Conceivably, they could try to argue that Rouhani does not matter, that only the Supreme Leader counts, or alternatively, that Rouhani is not serious about either his foreign policy goals or his domestic agenda.

Assessment: Opponents are correct in suggesting that domestic politics and factions in Iran matter, as was clearly demonstrated (yet again) in the last presidential election. It is very difficult to imagine that the sanctions bill would do anything but undermine Rouhani, as he attempts to steer Iran on a different path. This is an assessment shared not only by Iran experts, and Iranian expats who have opposed the regime, but also by Israeli military intelligence, which has concluded that Rouhani may represent a fundamental shift in Iranian politics.¹²

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