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KEY POLICY CONSIDERATIONS AND RECOMMENDATIONS FOR DEALING WITH IRAN

NSI on the Hill represents the views of a number of the National Security Institute's experts—many with longstanding experience working on Iran-related matters—and it identifies key considerations and recommendations for Congress to consider regarding the Biden Administration's policy of negotiating with Iran to rejoin the Joint Comprehensive Plan of Action (JCPOA) agreement.

OVERVIEW

- Iran presents a significant strategic threat to the United States as demonstrated by their support of terrorism and other malign activities in the region and across the globe and their pursuit of a domestic nuclear capability. In response, the U.S. has imposed significant sanctions on Iran.
- In 2015, the Obama Administration and key allies entered into the Joint Comprehensive Plan of Action (JCPOA) with Iran to help restrict Iran's nuclear capabilities in exchange for sanctions relief.
 - In 2018, the Trump Administration withdrew from the JCPOA and increased sanctions on Iran to obtain a more robust agreement.
 - Since taking office, the Biden Administration has engaged in eight rounds of indirect negotiations with Iran, along with the other JCPOA signatories (China, France, Germany, Russia, and the United Kingdom) in Vienna, Austria.
 - While negotiations are still ongoing, U.S. officials have estimated that Iran may have enough fissile material for a nuclear bomb by the end of March 2022.

KEY RECOMMENDATIONS FOR CONGRESS:

- **Limit Presidential Options:** Make it very hard for President Biden to implement a deal with Iran, including by removing the president's statutory waiver authority on key Iran sanctions or using its control over funding.
- **Impose New or Modified Financial Measures on Iran:** Make some of the current sanctions permanent by statute and potentially without waivers or impose new sanctions under the Global Magnitsky Act or use secondary sanctions more aggressively.
- **Use Trade-Related Measures:** Increase pressure on Iran's trading partners that are also U.S. allies to reduce trade with Iran and increase use of U.S. and allied supplies and resources, as well as impose trade penalties on China for its flouting of U.S. sanctions on Iran.
- **Counter Iranian Political Repression:** Expose and counter Iranian political suppression and regime corruption by increasing access to western social media and news sources, and coordinating other music, social media, and culture campaigns.
- **Respond to Iranian Regional Aggression:** Fund programs to support policy and security responses, such as protection for Israel and Saudi Arabia against drone and rocket strikes, restarting intelligence sharing with allies in the region and considering expanding covert and clandestine programs in the region.



RECOMMENDATIONS FOR CONGRESS

LIMITING PRESIDENTIAL OPTIONS

■ Remove Presidential Statutory Waiver Authority

- Congress could remove the President's statutory waiver authority on key Iran sanctions—like the secondary oil and banking sanctions imposed under CISADA and the 2012 NDAA— and it would be nearly impossible for the President to implement any nuclear deal, including the original JCPOA.
- The political reality, however, is that there is very little chance that the current Congress would engage in such broad-based stripping of Presidential waiver authority, absent a major terrorist or other attack by Iran on Americans or our allies, or the revelation of a major nuclear effort by Iran.

■ Use Control Over Funding

- Congress could also use its control over funding, rooted in the authorization and appropriations process, to enact spending limitations that seek to constrain the President's ability to negotiate or implement any deal or to put in place guidelines or criteria for a new deal.
- While such a provision might be controversial and would almost certainly raise constitutional objections by the Executive Branch, previous appropriations riders have been used successfully, for example, to limit or restrict transfers of detainees from Guantanamo Bay and have generally been complied with by prior administrations.
 - The Executive Branch can seek to simply ignore such restrictions, as President Obama did when releasing multiple senior Taliban detainees as part of the Bowe Bergdahl trade, which the GAO determined did not comply with the law.

■ Consider New Elements of a Deal

- If Congress wanted to put in place specific guidelines for a deal—or to seek to impose required terms on any deal—by leveraging sanctions waivers or use of appropriated funds, it could consider some of the following elements:
 - That certain limitations in the JCPOA on Iranian nuclear developments be made permanent rather than expiring in the near future.
 - That Iran no longer be permitted to enrich uranium domestically.
 - That IAEA inspectors have unfettered and direct access to any Iranian site suspected of having a potential military dimension (e.g., Parchin).
 - That Iran's ballistic missile program be substantially restricted or eliminated going forward.
 - That the U.N. arms embargo on Iran be reinstated for a significant period.
 - That any new deal contain substantive restrictions on Iranian malign activities in the region including their support of proxy forces in Iraq, Syria, and Yemen.
 - That any new deal require Iran to forswear its support of international terrorist groups, including but not limited to Hizballah, Palestinian Islamic Jihad, Kita'b Hizballah, and Ansar al Haq.
 - That Iran unconditionally release all American and western hostages and provide detailed information on Americans and westerners suspected of being kidnapped or killed by Iran.
 - That Iran turn over any al Qaeda or ISIS-affiliated individuals in Iran or in Iranian custody (or under their protection) anywhere in the globe.
 - That Iran disbands the Iranian Revolutionary Guards Corps- Quds Force.



- Congress could require the Executive Branch to obtain and rapidly declassify specific granular details about key elements of the Iranian regime, including:
 - ▣ Information on the regime's financial underpinnings, and the wealth and hidden assets of its senior leaders and members of the IRGC-QF, including money being directed to family members and associates of such individuals.
 - ▣ Information on scale of the Iranian government's funding of its nuclear program.
 - ▣ Details on the historical and current nature and scale of Iranian covert nuclear activities.
 - ▣ The amount and nature of resources used to support of terrorist groups and proxy forces to conduct attacks in the region.
 - ▣ The amount and scope of the Iranian government's foreign influence efforts, including its funding and support of the conflicts Syria, Yemen, Iraq, Lebanon, and elsewhere.

■ Pass Non-Binding Resolution

- Congress also has the option of passing a non-binding resolution to prohibit the United States from entering into another deal with Iran unless there are significant changes in Iranian behavior along the lines of the items above, but the problem with such resolutions is that they are little more than strongly worded letters that have no actual effect other than demonstrating political support for the ideas contained therein.

NEW OR MODIFIED FINANCIAL MEASURES

■ Recent History of U.S.-Iran Sanctions

- Under the JCPOA (signed in July 2015), the United States had agreed to cancel most of its sanctions against Iran over time in return for placing limits on the Iranian nuclear program.
- In November 2018, following the United States' withdrawal from the agreement, it reinstated all sanctions against Iran. These included:
 - ▣ Restrictions on the sale of Iranian oil and other energy exports;
 - ▣ Restrictions on Iranian shipping and shipbuilding;
 - ▣ Restrictions on the Iranian financial sector; and
 - ▣ Targeted more than 700 individuals, entities, aircraft, and vessels.
- Secondary Sanctions
 - ▣ In August 2018, the United States reimposed sanctions and warned that anyone doing business with Iran will face secondary sanctions, with the exception of certain countries and entities that received waivers. For example, Iraq was granted a waiver that allowed the country to continue purchasing gas, energy, and food products from Iran on the condition that the purchases were not paid for in dollars.
- Additional Economic Sanctions against Iran
 - ▣ On September 20, 2019, U.S. sanctions were imposed against the Central Bank of Iran (CBI) and the National Development Fund of Iran (NDF).
 - ▣ On October 8, 2020, the Treasury Department imposed further sanctions against the Iranian financial sector, targeting 18 Iranian banks.
 - ▣ US imposed sanctions on some of the Iranian petroleum industry that was owned by the IRGC on June 7, 2019.



- Sanctions Against the IRGC
 - On October 25, 2017, the State Department designated the Quds Force a terrorist organization as of October 25, 2007.
 - On April 8, 2019, the United States imposed economic and travel restrictions on the entire IRGC, as well as any organizations, companies, and individuals affiliated with it. On April 15, the IRGC was designated a terrorist organization.
- Other Notable Sanctions
 - In June 2019, Trump imposed sanctions on Iranian Supreme Leader Ali Khamenei.
 - In July 2019, the U.S. placed sanctions on Iran's foreign minister, Mohammad Javad Zarif.
- 2022 Sanctions Developments
 - It should be noted that while no U.S. sanctions have been lifted since President Biden took office, U.S. negotiators agreed in early February 2022 to restore a sanctions waiver on Iran's civil nuclear program, which U.S. officials characterized as a technical measure required for negotiations to continue. The waiver allows the other parties to JCPOA to conduct non-proliferation activities at Iranian nuclear sites.

■ Codify Existing Sanctions

- Current sanctions totals (as of February 1, 2022)
 - Connections to U.S. sanctions on Iran (non-Iranian nationalities)
 - 506 individuals
 - 1142 entities
 - 326 maritime vessels
 - 238 aircraft
 - Connections to U.S. sanctions on Iran (Iranian nationality)
 - 275 individuals
 - 815 entities
- A good summary of what sanctions might fall in this category can be found on pages 39-42 of a Congressional Research Service Report report by Ken Katzman titled, *Iran Sanctions* (Apr. 6, 2021).

■ Use Global Magnitsky Act

- Congress could work with the Executive Branch or even legislate to require the Treasury and State Departments to identify and impose human rights sanctions—which are permitted even under the JCPOA—under the Global Magnitsky Act.
 - Though these sanctions have proved extremely effective against other nations and might have some success here, the Executive Branch has raised concerns that Global Magnitsky sanctions are hard to apply in this context against Iran, but there have been only limited details identified to date on whether this is so and if it is accurate why.

■ Apply Secondary Sanctions

- Congress could also consider using secondary sanctions more aggressively, particularly in a targeted manner in the terrorism or human rights context, given their effectiveness in the oil supply context.
- It can often be difficult to find and target the right individuals and organizations for such sanctions and our allies are generally hesitant about applying more sanctions to Iran. As such, there is always the possibility of objections from the Europeans as well as potentially from the democracy and human rights committees who would prefer to see these focused on less controversial targets.



TRADE-RELATED OPTIONS

■ Support U.S.-Allied Trade

- Congress could restrict global trade with Iran by creating a program with budgetary authority within the Department of Commerce or State Department—or perhaps more controversially at the Office of the United States Trade Representative—to specifically support U.S. and allied trade with these countries if they agree to reduce trade with Iran.
 - Such programs might also leverage Ex-Im Bank or Development Finance Corporation authorities.
 - Because much of this trade is oil-related, coordination with other oil-exporting nations and multilateral institutions will also be important and should be part of the mandate of any such program.

■ Trade Penalties on China

- As part of the larger work Congress is doing on China issues, including China human rights abuses and suppression of democracy activities in Hong Kong, Congress could impose significant trade penalties on China for its flouting of U.S. sanctions on Iran and, in the context of such trade measures, consider what type of further restrictions, particularly on Chinese financial sector activities, including potentially restricting the access of the Bank of China to U.S. capital markets, might be appropriate.

COUNTERING IRANIAN POLITICAL SUPPRESSION

■ Expose and Counter Political Suppression and Highlight Regime Corruption

- Congress could increase funding specifically for Internet-circumvention, American broadcasting, and access to western social media and news sources broadly within Iran, particularly targeted on the more Western-influenced youth through a series of overt programs.
 - Such efforts could also include ensuring access to key commercial platforms like Netflix, Apple TV, Amazon Prime, HBO, and American cable news networks and the creation or sponsoring of Farsi-language programming directed into Iran on streaming media platforms.
 - Such technologies should specifically be aimed at increasing access to communication within Iran, free of government influence or monitoring, as well as communication with the west and access to a free press; some of the programming might also focus on the corruption of the Iranian regime and leadership, the real facts on COVID-19, as well as their atrocious record on human rights and political freedom domestically.
- Additional efforts to consider might include a broad-based “American Music, Social Media, and Popular Culture” program creating cultural interactions for Iranian youth with Americans, including online social gatherings with American students, exchange programs, study abroad, student visa programs, and the like, specifically targeted at giving a potentially American-friendly audience access to information, education, and social connections that might not otherwise exist.
 - Caution should be taken to protect such programs against exploitation by foreign intelligence services.
- Congress could also stand up and fund a program to affirmatively identify, call out, and disrupt Iranian misinformation and disinformation campaigns overseas by publicly releasing U.S. government and allied intelligence information to publics in the Middle East on how Iran influences policy in their countries.

■ Support Work of American Institutions in Iran and the Region

- Congress should increase both overt — albeit quietly — the work by key American institutions in Iran and the region and resources to identify (and protect) those who might work with such institutions.



- ❑ Extreme caution should be taken with respect to such overt programs given the repressive record of the Iranian regime and in particular given the potential for China to provide Iran with advanced facial recognition technologies.
- ❑ Various experts raised concerns including that adding resources would not necessarily solve the challenges inherent in working in a hard-target country like Iran and others specifically argued that such an effort could increase, rather than reduce, risk for those involved with little overall impact.

RESPONDING TO IRANIAN REGIONAL AGGRESSION

■ Fund Security Responses

- Congress could fund programs that protect against threats to Israel and Saudi Arabia, particularly from drone and rocket strikes, and to shipping across the key waterways, including the Arabian Gulf, the Straits of Hormuz, the Red Sea, and the Bab al Mandab.
- In particular, the U.S. and our allies need to have a policy and a capability to respond to Iranian deployment of drone mines in their own territorial waters that then can travel into key shipping lanes.
 - ❑ Likewise, the U.S. and its allies need to be prepared to address the potential threats posed by Iranian small boats and submersible devices, including but not limited to Iran's Russian-supplied Kilo-class subs.
- Congress could fund programs that increase security at the Iraq-Syria and Iraq-Iran borders through operations with trusted allies (if such can be found).
- Congress could also incentivize Iraq to restrict the Iranian air-bridge that is supporting the Syrian conflict.
 - ❑ Such an effort could have significant negative ramifications for Iraq, as it would almost certainly evoke a significant political response from Iran's supporters in Iraq, potentially threatening the stability of the Iraqi government.
 - ❑ As such, any incentives provided here would have to be sufficient—if such exist—to encourage the Iraqi regime to take such a significant step.
- Congress could also incentivize various regional powers to help restrict the Iranian sea-bridge to the Houthi rebels in Yemen.
 - ❑ It may be prudent to increase naval assets and the use of other American and allied technical means—in collaboration with allies and partner assets in the region—to better surveil and limit access to the Yemeni coast.
- Congress could fund the restarting intelligence sharing programs with traditional allies in the region, including Saudi Arabia, on issues related to Iran including its support of the Houthi rebels in Yemen.
- Congress may also wish to consider working with the Executive Branch to expand short and long-term covert and clandestine programs in Iran and the region—to the extent any such programs exist—to identify, respond to, and counter Iranian malign efforts.
- Such activities could include counter-messaging, information operations, as well as more aggressive activities as appropriate; this may require additional, clear legal authorities.
 - ❑ Some experts cautioned that Iran may respond to more aggressive activities with increased assertive measures of its own; others agreed but noted that such activities always come with such escalatory risk and further noted that given Iran's already aggressive efforts across the region, it is hard to see what the benefit of being overly cautious.

■ Fund Diplomatic Responses

- Congress may wish to create and fund a Middle East Security and Development Forum that would build off the Abraham Accords to bring together key regional allies, including the Sunni Arab states and Israel, and other important players like the United States and the EU as observer participants to push back on Iranian efforts in the region.



MOVING FORWARD

Congress has long played a key role in creating and maintaining pressure on Iran and, in fact, has often led highly successful efforts—in the face of Executive Branch opposition— to create additional pressure on Iran. As such, as the Biden Administration considers how it might return to some form of a nuclear deal with Iran, it is important that Congress stays actively engaged in this effort, and potentially passes legislation to ensure that any new deal protects American national security objectives.