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**“Implications of a Nuclear Agreement with Iran”
Committee on Foreign Affairs
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Chairman Royce, Ranking Member Engel, and Members of the Committee, thank you for the invitation to appear again before you to discuss the implications of the emerging nuclear agreement with Iran. At the time I prepared this testimony, no final agreement had yet been announced, though the Administration was working very hard to wrap up the negotiations before a self-imposed deadline of this week.

As you know, I’ve previously appeared twice before you to discuss this issue. In my testimony on June 10, 2014, I focused most importantly on the proposed agreement’s so-called sunset clause, which provides for the expiration of almost all the agreed restrictions on Iran’s nuclear program after 10-15 years. My basic point was that *if it is dangerous today for Iran to be able to produce a single nuclear weapon in just two or three months, why won’t it be even more dangerous for them to be able to produce a much larger number of nuclear weapons in a much shorter period of time beginning just ten years from now?*

In my testimony on April 22, 2015, I elaborated on this concern based on the more detailed description of the agreed restrictions contained in the April 2nd State Department fact sheet on the Joint Comprehensive Plan of Action (JCPOA). I pointed out that the emerging agreement will represent acceptance by the international community of Iran as a nuclear weapons threshold state. I noted that even President Obama concedes that beginning by about the 13th year of the agreement, Iran’s nuclear weapons breakout time will have “shrunk down almost to zero.” I also emphasized how the sanctions relief outlined in this document—including the so-called “signing bonus” that by itself could make substantially more than \$100 billion in cash available directly to the Iranian government—is unlikely to induce Iran to moderate its behavior. Rather, I predicted that the combination of a radically reduced breakout time and relieved economic pressure on Iran will likely induce some of Iran’s neighbors, such as Saudi Arabia, to want to match Iran’s nuclear capabilities. The upshot is likely to be a cascade of nuclear proliferation in the Middle East—something experts have long predicted will occur if Iran’s nuclear weapons ambitions are not constrained.

In recent weeks, as the negotiations have come down to the wire, public attention has naturally focused on the remaining issues in dispute. These include, for example, whether international inspectors charged with verifying the agreement will have “anytime, anywhere”

access to relevant sites in Iran, including military facilities. There is also the question whether Iran will be required once and for all to adequately respond to the concerns of the International Atomic Energy Agency (IAEA) about the “possible military dimensions” (PMD) of Iran’s nuclear program. Additionally, important questions remain about the timing of sanctions relief—whether it will become before or after the IAEA has verified that Iran has taken the necessary steps to comply with the agreement—and whether the sanctions snapback mechanism will be automatic in the event of Iranian violations, or will be subject to a veto by Russia, China, or some other body. And just within the last few days Iran has injected the additional demand that existing UN prohibitions on the transfer to or from Iran of ballistic missile technology and conventional arms be lifted as part of any nuclear agreement.

These are important issues, and I will address them in a moment. But we should not let any of these issues obscure our attention to the more fundamental defects of the JCPOA, such as the sunset clause, the likely regional implications of the deal, and the threat that a cascade of nuclear proliferation in the Middle East will pose to the global nuclear nonproliferation regime. *Even if all the issues that reportedly remain in dispute are resolved on favorable terms—and it is unlikely that they will be—the agreement in its current form will remain a very bad deal for the United States, for the reasons outlined in my previous testimony.*

What to Do About the Sunset Clause?

Before leaving the issue of the sunset clause, I want to draw your attention to the treatment of the issue in the “Public Statement on U.S. Policy toward the Iran Nuclear Negotiations” issued on June 24th by the “Bipartisan Group of American Diplomats, Legislators, and Experts” convened by the Washington Institute for Near East Policy, which includes prominent former officials of the Clinton, Bush and Obama Administrations, as well as the distinguished former chairman of this Committee, Howard Berman.

Because of the prominence of its authors, this statement is sure to figure importantly in the congressional debate over any deal that is reached with Iran. It is a very useful statement that identifies a number of problems with the JCPOA as it currently stands, and describes modifications to the agreement that members of the Bipartisan Group say will be necessary before they can support it. The statement also makes clear that they are deeply troubled by the sunset clause. Interestingly, however, they do not call for the sunset clause to be fundamentally renegotiated in the agreement. Rather, they propose what I regard as an even more radical solution.

Here is what they say on the subject:

Most importantly, it is vital for the United States to affirm that it is U.S. policy to prevent Iran from producing sufficient fissile material for a nuclear weapon—or otherwise acquiring or building one—both during the agreement **and after it expires**. Precisely because Iran will be left as a nuclear threshold state (and has clearly preserved the option

of becoming a nuclear weapon state), the United States must go on record now that it is committed to using all means necessary, including military force, to prevent this. The President should declare this to be U.S. policy and Congress should formally endorse it. (Emphasis added)

This is a breathtaking recommendation when one considers that, *by operation of the sunset clause, the United States will be agreeing in the JCPOA that Iran can produce fissile material (specifically highly enriched, weapons-grade uranium) after 15 years, without any agreed limitation on the amount of such material that Iran may produce or possess.* As a reminder, fissile material is, by definition, nuclear material that can be used to build a nuclear weapon.

According to the State Department's April 2nd fact sheet on the JCPOA, "Iran has agreed to not enrich uranium over 3.67 percent for at least 15 years." Implicit in this statement is that after 15 years Iran will be permitted to enrich to higher levels. There is no suggestion in the fact sheet that there will be any limit on the level to which Iran may enrich after 15 years, or the amount of highly enriched material that it may accumulate. To the contrary, the fact sheet implies that Iran will be free to produce fissile material after 15 years. This is crystal clear from a separate sentence in the fact sheet, which states "Iran will not have any fissile material at Fordow for 15 years." Again, the clear implication is that after 15 years Iran may produce and possess highly enriched uranium, certainly at Fordow, and presumably at other locations as well.

All of us would like to believe that a decision by Iran after 15 years to begin producing lots of highly enriched, weapons-grade uranium will universally be seen as clear a decision to begin producing nuclear weapons, thereby justifying the kind of U.S. military action that the Bipartisan Group wants Congress and the President to endorse today. But things are not that simple. The reality is that there are non-weapons related reasons why a country might decide to produce highly enriched uranium, potentially in large quantities. Highly enriched uranium is often used to produce the isotopes used in nuclear medicine, for example. Highly enriched uranium is also used to fuel the nuclear reactors of naval vessels. The American, British and Russian nuclear navies, for example, all run on highly enriched uranium. So all Iran will need to say in 15 years if it begins producing large quantities of highly enriched uranium is that it has decided to build a nuclear navy too.

Will that be a pretext designed to get Iran inches from the goal line in its decades-long quest acquire nuclear weapons? Of course. Will the rest of the international community be prepared to join us in declaring it to be a pretext? Don't count on it. And will Iran be justified as a legal matter in protesting that, by demanding that they not produce such material, we are renegeing on the solemn commitments we made to them under the JCPOA? Sadly, I fear the answer will be yes.

So what does this mean for the recommendation of the Bipartisan Group that, irrespective of the rights we will be conceding to Iran under the JCPOA, we should threaten to use military force if Iran proceeds to exercise some of those rights? I think it means we will be on a very weak legal footing, and probably very much alone, in threatening to use force. It would take a very bold President to actually use military force in such circumstances, meaning that the threat to do so is likely to be seen as a bluff.

It would be far better, in my opinion, not to concede to Iran the right to produce highly enriched uranium after 15 years than to concede that right and then threaten to bomb them if they exercise it. So if the choice before Congress is to approve the JCPOA and also authorize military strikes on Iran if they fully exercise rights the agreement concedes to them, or reject the agreement so long as it concedes such rights, my recommendation would be that you reject the agreement.

The Possible Military Dimensions (PMD) Issue

I have a number of observations about the issues that have emerged as sticking points in the final phases of the negotiation.

With regard to the so-called PMD issue, I disagree with Secretary Kerry's June 16th statement that it is not important for the IAEA to get to the bottom of its suspicions that Iran has, in the past, done research and development work on nuclear weapons. Secretary Kerry stated that the United States has "absolute knowledge" about what Iran has done in this regard, and therefore it is an issue the Obama Administration "is not fixated on."

In fact, this appears to be a bizarre case in which the IAEA's suspicions of Iran run deeper than the officially expressed positions of the U.S. government. To see the difference, one need only compare the findings of the infamous 2007 U.S. National Intelligence Estimate on Iran ("We judge with high confidence that in fall 2003, Tehran halted its nuclear weapons program") with the findings of the IAEA in its November 2011 safeguards report ("There are also indications that some activities relevant to the development of a nuclear explosive device continued after 2003, and that some may still be ongoing").

Perhaps for this reason, the consistent position of the Obama Administration throughout these negotiations has been that the PMD issue is the IAEA's problem, not America's problem, and it is up to the IAEA to resolve its concerns with Iran. Not surprisingly, without the full diplomatic support of the United States, Iran has successfully stonewalled the IAEA on this issue for years, including throughout the ongoing negotiations.

It is not as if the United States doesn't know how to make the provision of benefits to a nuclear proliferator contingent on fully addressing the concerns of the IAEA. The 1994 Agreed Framework with North Korea, for example, did precisely that. That agreement specified that key nuclear components to be provided to North Korea pursuant to the agreement would not be

delivered until North Korea had taken “all steps that may be deemed necessary by the IAEA” to answer the IAEA’s questions about the history of North Korea’s nuclear program. At no point in the current negotiations has the delivery of a concrete benefit to Iran been made conditional on Iran satisfying the IAEA on the PMD issue. That is what happens when our government decides that it “is not fixated on” an issue.

Why does the PMD issue matter? Clearly it sends a very dangerous signal to Iran to allow them to get away with stonewalling the IAEA. It would be only natural for them to conclude that future stonewalling on verification of their compliance with the JCPOA ultimately will be tolerated as well. In that sense, looking the other way now on the PMD issue is an inducement to future cheating.

Moreover, getting to the bottom of the PMD issue is key to knowing what Iran’s nuclear breakout time really is. The Administration’s main selling point for the JCPOA is that it will increase Iran’s breakout time from two or three months to one year. But these are merely estimates. The estimates depend on two variables: the rate at which Iran can produce fissile material, and the amount of fissile material they need to produce a bomb. The first of these variables is measurable, and relatively verifiable by the IAEA. Generally speaking, thanks to the IAEA, we know how many centrifuges Iran is operating, what their production rate is, how much enriched material they already have, and therefore how quickly Iran can produce fissile material.

But the amount of material they need for a bomb depends on assumptions about their bomb design. Depending on their design, and the amount of progress they’ve made on warhead miniaturization, the quantity of material they need could vary widely. To say we don’t need to know more about the PMD issue is to say we would prefer to work off of estimates of Iran’s breakout time than hard facts. Loose numbers may make it easier to sell the agreement to Congress, but that is not a sound basis for making decisions about our national security.

Ballistic Missile and Conventional Arms Sanctions

Just in the last few days, it has emerged that Iran is now demanding that in addition to ending the UN Security Council’s existing nuclear-related sanctions, UN sanctions on the transfer to or from Iran of ballistic missile technology and conventional arms must also be ended. It is important to note that this demand is a departure from the agreement with Iran that was announced in April. According to the State Department’s April 2nd fact sheet, the final JCPOA will be endorsed in a new UN Security Council resolution that will lift the UN’s nuclear-related sanctions on Iran. The statement clarifies, however, that:

core provisions in the UN Security Council resolutions—those that deal with transfers of sensitive technologies and activities—will be re-established by a new UN Security Council resolution that will endorse the JCPOA . . . Important restrictions on conventional arms and ballistic missiles, as well as provisions that allow for related cargo inspections and asset freezes, will also be incorporated by this new resolution.

In view of this explicit language describing the April agreement, it speaks volumes about Iran's respect for the firmness of the P5+1 that they would now be reopening this issue.

Particularly with regard to Iran's ballistic missile program, it would make more sense in the context of the JCPOA to require Iran to suspend its ballistic missile program than to require us to suspend international restrictions on it. Iran has the most robust ballistic missile program in the Middle East, which it has pursued for years in defiance of UN Security Council demands. Iran is believed to already possess medium range missiles capable of striking Europe. It is to defend against this threat that the Obama Administration is proceeding with the European Phased Adaptive Approach (EPAA) to missile defense in Europe. Iran has successfully launched four satellites in recent years, which involves many of the same technologies required to launch ICBMs capable of hitting the United States. Indeed, the Intelligence Community reportedly assess that Iran could, with foreign assistance, test a missile capable of hitting the United States this year. By demanding that UN restrictions on the transfer of ballistic missile technology to Iran be ended, Iran indisputably is asking that it be made eligible to receive such assistance.

It would, of course, be completely illogical for Iran to attack Europe or the United States with conventionally armed missiles. They simply cannot achieve the accuracy necessary for such missiles to achieve military effect at such ranges. Rather, Iran's ballistic missile programs only make sense as an element of Iran's nuclear weapons program. Armed with nuclear warheads, Iranian ballistic missiles would pose a meaningful threat to our European allies and us. The relationship between Iran's nuclear and ballistic missile programs is one of the issues the IAEA wishes to explore as part of the PMD issue. The Obama Administration needs to hold firm on this issue in the ongoing negotiations.

The Larger Problem

The fact that Iran would not hesitate to reopen such an important issue at this late stage in the negotiations demonstrates their confidence that they have the upper hand, and their conviction that the Obama Administration needs this deal more than they do. Thomas Friedman of the New York Times commented eloquently on this phenomenon just last week:

it is stunning to me how well the Iranians, sitting alone on their side of the table, have played a weak hand against the United States, Russia, China, France, Germany and Britain on their side of the table. When the time comes, I'm hiring Ali Khamenei to sell my house. . . . for the past year every time there is a sticking point—like whether Iran should have to ship its enriched uranium out of the country or account for its previous nuclear bomb-making activities—it keeps feeling as if it's always our side looking to accommodate Iran's needs. I wish we had walked out just once. When you signal to the guy on the other side of the table that you're not willing to either blow him up or blow him off—to get up and walk away—you reduce yourself to just an equal and get the best bad deal nonviolence can buy.

Consistent with Friedman's observations, I do not believe a good deal can be achieved with Iran until the Obama Administration displays the same tenacity in the negotiations that Iran has displayed. The reality is that Iran needs this deal more than the United States needs it. They are the weaker party and have much more to lose.

The Obama Administration therefore must insist on America's original red lines. And just as the Iranians have not hesitated to reopen issues that were previously agreed on terms disadvantageous to them, the Obama Administration should reopen some issues that were tentatively agreed on terms disadvantageous to us.

Most importantly, the sunset clause needs to be fixed. Iran has agreed to some indefinite restrictions on its nuclear program. According to the April 2nd fact sheet, for example, "Iran has committed indefinitely to not conduct reprocessing or reprocessing research and development on spent nuclear fuel." This is an important concession that, if adhered to by Iran, will close off one of two possible pathways to the production of fissile material. As suggested by the Washington Institute's Bipartisan Group, a similar, meaningful restriction of indefinite duration needs to be imposed on Iran's second pathway for producing fissile material—uranium enrichment.

I know some will say that we cannot allow this negotiation to fail, because the only alternative to a deal is military conflict. But as the Bipartisan Group's statement makes clear, there is no reason to assume that a deal will preclude the need use force. And ***if the use force were to become necessary—as they say it may—we would certainly be in a stronger position acting in defense of the existing UN Security Council resolutions than in defiance of a badly negotiated JCPOA.***

I thank you for your attention and look forward to your questions.