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Good Grief! Iran Sanctions and the Expansion of American Corporate Liability for Non-U.S. Subsidiary Violations Under the Iran Threat Reduction and Syria Human Rights Act of 2012

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Good Grief! Iran Sanctions and the Expansion of American Corporate Liability for Non-U.S. Subsidiary Violations Under the Iran Threat Reduction and Syria Human Rights Act of 2012

*By Alexandra L. Anderson**

Abstract: Following a watershed of suspected covert proliferation in Iran, legislators and scholars have searched for more effective ways to isolate Iran from the global energy market and financial systems. Prior sanctions played a crucial role in the international anti-proliferation architecture, but unilateral and non-comprehensive multilateral embargoes failed to achieve their desired deterrent effect. Now, with the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA), the Obama Administration expands extraterritorial sanctions to hold U.S. parent corporations liable for the sanctionable activity of their foreign subsidiaries. While the ITRA marks a turning point in the sanctions game between the United States and Iran, the Act is unlikely to deter Iranian leaders from their nuclear program. This Note sets out key risks of the ITRA's economic, enforcement, and diplomatic approach, and argues that the United States, if serious about talking Iran down from the nuclear cliff, must look beyond its unilateral measures and engage the international community in a realistic and timely way.

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TABLE OF CONTENTS

I. Introduction	126
II. Background: Changing Approaches to Anti-Proliferation.....	127
A. Early International Efforts	128
B. The Birth of an American Framework	133
1. Foundations: The 1996 Sanctions Act and the 2010 Comprehensive Sanctions Act	133
2. New Restrictions Under the ITRA.....	136
III. Practical and Political Troubles of the ITRA	138
A. Exceptionalism and the Extraterritoriality of American Sanctions Law	138
B. Reporting Challenges and the Difficulty with Unilateral Enforcement	143
C. The Impact of Sanctions on Iran’s Domestic Economy.....	144
IV. Multilateral Sanctions: The Comprehensive Solution to a Unilateral Dilemma.....	146
A. Enhanced Compliance Through International Agreements	147
B. Improved Reporting and Enforcement Mechanisms.....	149
C. A Stimulus for Diplomatic Negotiations.....	149
V. Conclusion.....	150

I. INTRODUCTION

After three decades of escalating sanctions, some compare the history of Iranian proliferation to the much-loved Sunday comic strip “Peanuts.”¹ The storyline is an American classic—Lucy invites Charlie Brown to kick the football. When he refuses, Lucy promises to hold the ball steady, telling him: “This time, you can trust me.” The reader knows that Charlie Brown will never kick her football, but he keeps trying as Lucy finds new ways to play him for a fool. Since the dawn of the atomic age, such has been the relationship between Tehran and the West. The allure of security and the prospect of reaching those nations that remain impervious to international cooperation encouraged the United States, much like Charlie Brown, to choose optimism over experience. But as Iran’s nuclear ambitions grow dangerously close to fruition, the United States has devised a new way to kick Iran’s proverbial football. With the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA),² the Obama Administration expands

¹ See, e.g., *Islamic Republic Pulls the Football Away from IAEA*, IRAN TIMES (June 14, 2012, 4:04 PM), http://iran-times.com/english/index.php?option=com_content&view=article&id=4235:islamic-republic-pulls-the-football-away-from-iaea&catid=100:whats-right&Itemid=425; Rick Moran, *West Plays Charlie Brown to Iran’s Lucy*, AM. THINKER (May 27, 2012), http://www.americanthinker.com/blog/2012/05/west_plays_charlie_brown_to_irans_lucy.html.

² Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905, 112th Cong. § 101

extraterritorial sanctions to hold U.S. parent corporations liable for the sanctionable activity of their foreign subsidiaries. In doing so, the ITRA places extraordinary pressure on those who still conduct business with Iran, however indirectly, to limit their activity.

Following a watershed of suspected covert proliferation in Iran, legislators and scholars have searched for more effective ways to isolate Iran from the global energy market and financial systems. Prior sanctions played a crucial role in the international anti-proliferation architecture, but unilateral and non-comprehensive multilateral embargoes failed to achieve their desired deterrent effect. While the ITRA marks a turning point in the sanctions game between the United States and Iran, the Act is unlikely to deter Iranian leaders from their nuclear program as “inflexibly imposed, escalating [American] sanctions begin to lose their value as leverage to elicit changes in Iranian policy.”³ The United States must now look beyond unilateral measures and engage the international community to develop multilateral sanctions that can be applied and enforced uniformly.

This Note proceeds as follows: Part II recounts a brief history of the United Nations’ attempts to stifle proliferation threats through international arms limitations and disarmament agreements. It also provides the background information necessary to understand the United States’ early efforts to sanction Iran beginning with the Reagan Administration. This part explores the preexisting framework for individual and business liability created by the United States’ Iran and Libya Sanctions Act of 1996 and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Part III sets out key risks and, specifically, the legal, economic, and political implications of the ITRA’s unilateral approach. In Part IV, this Note examines the virtue of engaging the international community as an alternative to the ITRA. Finally, Part V argues that the imposition of multilateral sanctions would better serve the economic, enforcement, and diplomatic goals that Iran sanctions need in order to be truly effective.

II. BACKGROUND: CHANGING APPROACHES TO ANTI-PROLIFERATION

In many ways, the United Nations’ early efforts to curb nuclear proliferation in Iran through international arms limitations and disarmament agreements provided the United States with a preliminary framework for its own sanctions regime. As a careful review of the Iran

(2012) (describing Congress’s intent to “compel[] Iran to abandon efforts to acquire a nuclear weapons capability and other threatening activities . . . through a comprehensive policy that includes economic sanctions, diplomacy, and military planning, capabilities and options”).

³ WILLIAM LUERS ET AL., *THE IRAN PROJECT, WEIGHING BENEFITS AND COSTS OF INTERNATIONAL SANCTIONS AGAINST IRAN* 29 (2012).

and Libya Sanctions Act of 1996 and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 reveals, however, even as U.S. sanctions flowed with increasing severity, each program proved vulnerable to evasion and non-compliance.

A. Early International Efforts

The use of sanctions dates back to ancient Greece. As early as 432 B.C., Pericles issued the Megarian Decree—an order restricting the entry of Megara products into the Athenian marketplace.⁴ This peacetime embargo brought Megara to the brink of starvation, placed significant pressure on Sparta to invade Athens, and ultimately triggered the Peloponnesian War.⁵ Since then, sanctions continued to play an important role in military and diplomatic endeavors. Often described as “collective action against a state considered to be violating international law,” sanctions are executed to “compel that state to conform [to the law].”⁶ These measures can be symbolic in nature—a boycott of international events, the refusal to extend diplomatic recognition—or economic-based.

Over the last hundred years, restrictions on international trade and capital flows have found particular favor as international cooperatives sought to legitimate a more effective way to undermine the leadership of rogue nations.⁷ While economic sanctions often accompanied military action during the nineteenth century, following World War I these tools were seen as a low-risk alternative to armed conflict.⁸ Woodrow Wilson firmly believed that “[a] nation that is boycotted is a nation that is in sight of surrender. Apply this economic, peaceful, silent, deadly remedy and there will be no need for force.”⁹ Such was the underlying rationale for several U.N. resolutions inspired by World War II’s new “language of atomic warfare”¹⁰—measures that began to outline the collective

⁴ Chen-yuan Tung, *China’s Economic Leverage and Taiwan’s Security Concerns with Respect to Cross-Strait Economic Relations* 93 (May 2002) (unpublished Ph.D. dissertation, Johns Hopkins University).

⁵ THUCYDIDES, *HISTORY OF THE PELOPONNESIAN WAR* 72–73, 118 (M. I. Finley ed., Rex Warner trans., 1972).

⁶ M. S. DAUDI & M. S. DAJANI, *ECONOMIC SANCTIONS, IDEALS AND EXPERIENCE* 5–8 (1983).

⁷ GARY CLYDE HUFBAUER, JEFFREY J. SCHOTT & KIMBERLY ANN ELLIOTT, *ECONOMIC SANCTIONS RECONSIDERED* 11 (1990); see also Lance Davis & Stanley Engerman, *Sanctions: Neither War nor Peace*, 17 *J. OF ECON. PERSP.* 187, 189 (2003) (“Formal legal discussion of the legitimacy of pacific blockades, or sanctions more generally, did not occur until the twentieth century with the formation of the League of Nations and then later of the United Nations.”).

⁸ Kimberly Ann Elliott, Gary Clyde Hufbauer & Barbara Oegg, *Sanctions*, *THE CONCISE ENCYCLOPEDIA OF ECONOMICS* (2008), <http://www.econlib.org/library/Enc/Sanctions.html>.

⁹ WOODROW WILSON & SAUL K. PADOVER, *WILSON’S IDEALS* 108 (1942).

¹⁰ Dwight D. Eisenhower, *Address Before the General Assembly of the United Nations on Peaceful Uses of Atomic Energy*, New York City (Dec. 8, 1953), in *PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: DWIGHT D. EISENHOWER*, 1953, 813, 815 (1960) [hereinafter *Eisenhower Address*].

obligations of nuclear-weapon and non-nuclear-weapon states.

In 1970, the United Nations' Treaty on the Non-Proliferation of Nuclear Weapons (NPT) became the first binding, multilateral treaty aimed at arms limitation and disarmament by nuclear-weapon states.¹¹ At its core, the treaty sought to "prevent the spread of nuclear weapons and weapons technology, to promote cooperation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament and general and complete disarmament."¹² Article II of the NPT imposed important restrictions on non-nuclear-weapon states as well:

Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.¹³

With only a few confirmed and suspected nuclear-weapon states refusing to sign the treaty or withdrawing from it entirely,¹⁴ the NPT's regime created an international norm against nuclear-weapon proliferation.

Still, one provision of the NPT created a conspicuous opportunity for circumvention: Article IV affirmed the "inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes."¹⁵ For non-nuclear states, this caveat allowed for the enrichment of "natural uranium (0.7 percent U-235) to fuel grade (~3 percent U-235)" for the peaceful use of nuclear energy.¹⁶ Article IV also encouraged "the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy" between nuclear and non-nuclear states.¹⁷ As one observer noted: "From there it is a short step to weapons-grade highly enriched uranium

¹¹ See Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 [hereinafter NPT], available at <http://www.un.org/disarmament/WMD/Nuclear/NPTtext.shtml>.

¹² *Treaty on the Non-Proliferation of Nuclear Weapons (NPT)*, UNODA, <http://www.un.org/disarmament/WMD/Nuclear/NPT.shtml> (last visited Nov. 17, 2012).

¹³ NPT, *supra* note 11, art. II.

¹⁴ Non-signatory states include Israel, India, and Pakistan. North Korea withdrew from the NPT in 2003. See *Signatories to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)*, JEWISH VIRTUAL LIBRARY, http://www.jewishvirtuallibrary.org/jsourc/Threats_to_Israel/nptsigners.html (last updated Feb. 2012).

¹⁵ NPT, *supra* note 11, art. IV.

¹⁶ THOMAS C. REED & DANNY B. STILLMAN, *THE NUCLEAR EXPRESS: A POLITICAL HISTORY OF THE BOMB AND ITS PROLIFERATION* 144 (2009).

¹⁷ NPT, *supra* note 11, art. IV.

(HEU: over 90 percent U-235).¹⁸ Even with nuclear states sharing technology and material in compliance with the NPT, an unconditional right to the peaceful application of nuclear energy brought non-nuclear states one step closer toward advanced bomb capability. The “Atoms for Peace” program illustrates this dangerous tradeoff well.

In 1953, President Dwight Eisenhower announced to the General Assembly of the United Nations a plan to harness the constructive, rather than the destructive, use of atomic energy with a proposed International Atomic Energy Agency (IAEA) at the helm.¹⁹ He promised that “[e]xperts would be mobilized to apply atomic energy to the needs of agriculture, medicine and other peaceful activities . . . to provide abundant electrical energy in the power-starved areas of the world.”²⁰ Under the program, countries like China, Indonesia, Pakistan, Hungary, and Cuba pledged to forgo their development of nuclear weapons in exchange for the atomic equipment, facilities, and information necessary to develop and operate nuclear power plants.²¹ Iran was also a beneficiary of the IAEA’s nuclear transfer program subject to certain transparency and verification safeguards,²² and between 1986 and 1996, it was the seventh largest recipient of overall technical assistance.²³ During its early energy development days, it was the United States that supplied Iran with highly enriched uranium and a 5-megawatt nuclear reactor.²⁴ Iran continued to sign non-proliferation agreements in exchange for an American supply of uranium, and this continued until Iran’s Islamic Revolution in 1979 when the United States terminated the arrangement under President Carter.²⁵

¹⁸ REED & STILLMAN, *supra* note 16, at 144. Highly enriched uranium (HEU) is considered weapons-grade when enriched to 90 percent U-235 or higher. See *Uranium Production*, FED’N OF AM. SCIENTISTS, http://www.fas.org/programs/ssp/nukes/fuelcycle/centrifuges/U_production.html (last visited Aug. 20, 2013).

¹⁹ Eisenhower Address, *supra* note 10, at 821; see also DAVID FISCHER, HISTORY OF THE INTERNATIONAL ATOMIC ENERGY AGENCY: THE FIRST FORTY YEARS 9 (1997), available at http://www-pub.iaea.org/mtcd/publications/pdf/pub1032_web.pdf. Under the Statute of the International Atomic Energy Agency, which came into force on July 29, 1957, any member state could “request the assistance of the Agency in securing special fissionable and other materials, services, equipment, and facilities” for peaceful atomic energy projects. Statute of the International Atomic Energy Agency, July 29, 1957, 8 U.S.T. 1093, 273 U.N.T.S. 3, 6 [hereinafter IAEA Statute], available at <http://www.iaea.org/About/statute.html>. To ensure the peaceful use of these nuclear resources, the United States implemented a system of safeguards and inspections through bilateral treaties. See LAWRENCE SCHEINMAN, INTERNATIONAL ATOMIC ENERGY AGENCY AND WORLD NUCLEAR ORDER 36 (1987).

²⁰ Eisenhower Address, *supra* note 10, at 821.

²¹ IAEA Statute, *supra* note 19; FISCHER, *supra* note 19, at 326.

²² See Int’l Atomic Energy Agency, *Agreement Between Iran and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*, at 2, IAEA Doc. INFCIRC/214 (Dec. 13, 1974).

²³ FISCHER, *supra* note 19, at 326.

²⁴ Semira N. Nikou, *Timeline on Iran’s Nuclear Activities*, U.S. INST. OF PEACE: THE IRAN PRIMER, <http://iranprimer.usip.org/resource/timeline-irans-nuclear-activities> (last visited Oct. 17, 2012).

²⁵ *Id.*

By 1998, the Clinton Administration openly announced its opposition to Iran's continued nuclear energy program and the construction of light water power reactors despite Tehran's insistence that its goal was energy production.²⁶ While "[n]uclear technology, materials, and know-how are dual use in nature, meaning they have peaceful and military applications,"²⁷ separating a country's peaceful intent from proliferation ambitions remained difficult. With limited opportunities to police violations, the "Atoms for Peace" program threatened to become "atoms for war"²⁸ and a focus on enforcement mechanisms soon took priority.

Of course, the United States was not alone in its efforts. As early as the mid-1970s, proliferation worries triggered the U.N. General Assembly to adopt formal texts like Resolution 3472, a comprehensive study on nuclear-weapon-free zones.²⁹ Mindful that "nuclear-weapon-free zones constitute one of the most effective means of preventing the proliferation, both horizontal and vertical, of nuclear weapons and for contributing to the elimination of the danger of nuclear holocaust," the United Nations created "[a]n international system of verification and control" for disarmament norms and global nuclear non-proliferation.³⁰ But even with regional zone prohibitions, inspection requirements, fact-finding mandates, and special enforcement protocol,³¹ suspected proliferation in the 1990s by countries like North Korea, Syria, and Iraq continued to threaten international peace and security.³² Both the United Nations and individual states turned to economic sanctions as a means of forcing non-proliferation compliance amidst the growing sense that the NPT and other collective security systems had failed.³³

To reach these new threats, targeted sanctions emerged as one of "the twenty-first century's most effective and important new counterterrorism and counterproliferation tools" for obstructing illegitimate nuclear

²⁶ *Id.*

²⁷ MATTHEW FUHRMANN, ATOMIC ASSISTANCE: HOW "ATOMS FOR PEACE" PROGRAMS CAUSE NUCLEAR INSECURITY 2 (2012).

²⁸ *Id.* at 1.

²⁹ G.A. Res. 3472, U.N. Doc. A/RES/3472(XXX) [A-B] (Dec. 11, 1975).

³⁰ *Id.* For a list of U.N. treaties related to nuclear-weapon-free zones including the Treaty of Tlatelolco, the Treaty of Rarotonga, the Treaty of Bangkok, the Treaty of Pelindaba, and the Treaty on a Nuclear-Weapon-Free Zone in Central Asia, see *Nuclear-Weapon-Free Zones*, UNODA, <http://www.un.org/disarmament/WMD/Nuclear/NWFZ.shtml> (last visited Nov. 17, 2012).

³¹ *Nuclear-Weapons-Free Zones: Comparative Chart*, CTR. FOR NONPROLIFERATION STUD., cns.miiis.edu/inventory/pdfs/apmnwfcz.pdf (last updated May 5, 2011).

³² *The Global Nuclear Nonproliferation Regime*, COUNCIL ON FOREIGN REL. (Mar. 22, 2013), <http://www.cfr.org/proliferation/global-nuclear-nonproliferation-regime/p18984>.

³³ See, e.g., Steve H. Hanke, *On the Failure of the Iranian Sanctions*, CATO INST., <http://www.cato.org/publications/commentary/failure-iranian-sanctions> (last visited July 24, 2013) (noting that "sanctions have failed to force Tehran to abandon its nuclear program" and that "sanctions have a long history of failure").

programs.³⁴ With the United Nations' ongoing focus on curbing zones of proliferation, the case for harsher economic sanctions against Iran gained momentum following a string of reports issued by IAEA and the Secretary-General's High-Level Panel on Threats, Challenges, and Change.³⁵ By 2011, few could deny that Iran had continued to pursue an illicit nuclear program despite unilateral and multilateral regulation.³⁶ Based on credible evidence provided by Iran, Member States, and the IAEA's own research, an Annex to the Director General's November 2011 Report concluded, for the first time and with unprecedented certainty, that Iran has pursued activities "that are relevant to the development of a nuclear explosive device"³⁷ On September 13, 2012, the IAEA passed a resolution expressing "serious concerns" about Iran's nuclear program and scolded the country for defying U.N. Security Council resolutions that required the suspension of all uranium enrichment.³⁸

Given this growing body of evidence, some argue that "Iran has yet to be meaningfully sanctioned" for any of these violations³⁹ and "that the price the international community has exacted from this regime for its violations has thus far been remarkably low."⁴⁰ Some blame the absence of strict sanctions on Iran's economic relationship with countries like China and India,⁴¹ while others cite a lack of "superpower" initiative and cooperation with the IAEA.⁴² As the following section explains, however, the United

³⁴ Orde F. Kittrie, *New Sanctions for a New Century: Treasury's Innovative Use of Financial Sanctions*, 30 U. PA. J. INT'L L. 789, 819 (2009).

³⁵ U.N. Secretary-General's High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, U.N. Doc. A/59/565 (Dec. 2, 2004).

³⁶ Director General, Atoms for Peace, *Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions in the Islamic Republic of Iran*, IAEA, GOV/2011/65, para. 43 (Nov. 8, 2011) (citing evidence of Iran's efforts to "procure nuclear related and dual use equipment and materials by military related individuals and entities," to "develop undeclared pathways for the production of nuclear material," to acquire "nuclear weapons development information and documentation from a clandestine nuclear supply network," and to create "an indigenous design of a nuclear weapon including the testing of components").

³⁷ *Id.* para. 43.

³⁸ Steve Hunegs & Pirouz Irani, *Setting the Record Straight After Ahmadinejad's U.N. Speech*, MINNPOST (Sept. 26, 2012), <http://www.minnpost.com/community-voices/2012/09/setting-record-straight-after-ahmadinejads-un-speech>.

³⁹ Orde F. Kittrie, *Emboldened by Impunity: The History and Consequences of Failure to Enforce Iranian Violations of International Law*, 57 SYRACUSE L. REV. 519, 520 (2007).

⁴⁰ *Id.* at 548.

⁴¹ Timothy Gardner & Roberta Rampton, *U.S. Extends Waivers on Iran Sanctions to China and India*, REUTERS (DEC. 8, 2012), <http://in.reuters.com/article/2012/12/07/usa-iran-sanctions-india-idINDEE8B60DB20121207>; Timothy Gardner, *U.S. Extends Waivers on Iran Sanctions to 11 Countries*, REUTERS (Mar. 13, 2013), <http://www.reuters.com/article/2013/03/14/us-usa-iran-sanctions-idUSBRE92C0YQ20130314>; Flynt Leverett & Hillary Mann, *The Coming Collapse of Iran Sanctions*, HUFFINGTON POST (Feb. 25, 2013), http://www.huffingtonpost.com/flynt-and-hillary-mann-leverett/iran-sanctions_b_2758738.html.

⁴² Jamie Lang, *International Sanctions: The Pressure on Iran to Abandon Nuclear Proliferation*, 6 J. INT'L BUS. & L. 141, 166 (2007).

States began levying transaction regulations on Iran for a number of reasons, including Iran's active pursuit of nuclear capability, as early as the Reagan Administration.

B. The Birth of an American Framework

1. *Foundations: The 1996 Sanctions Act and 2010 Comprehensive Sanctions Act*

The U.S. government has implemented several programs aimed at restricting market access for individuals and companies engaged in Iranian commercial transactions. For example, under Executive Order 12613, President Reagan issued an import embargo on Iranian goods and services pursuant to Section 505 of the International Security and Development Cooperation Act of 1985.⁴³ In 1995, President Clinton tightened sanctions with Executive Order 12957⁴⁴ and Executive Order 12959.⁴⁵ Pursuant to the statutory authority of the International Security and Development Cooperation Act of 1981⁴⁶ and the International Emergency Economic Powers Act of 1977,⁴⁷ all U.S. persons were prohibited from participating in Iranian petroleum development.⁴⁸

Congress soon passed the Iran and Libya Sanctions Act of 1996 (1996 Sanctions Act), a measure that authorized the President to impose sanctions on individuals and foreign financial institutions knowingly engaged in new economic transactions valued in excess of \$40,000,000 “that directly and significantly contributed to the enhancement of Iran’s ability to develop petroleum resources of Iran.”⁴⁹ For the first time, the U.S. government targeted specific industries in the Iranian marketplace under the assumption that “limiting the development of Iran’s and Libya’s petroleum resources would deny them the revenues produced by such resources and thereby deprive them of the financial means to support acts of international

⁴³ Exec. Order No. 12613, 52 Fed. Reg. 41,940 (Oct. 29, 1987) (applying to all goods or services of Iranian origin except “(a) Iranian-origin publications and materials imported for news publications or news broadcast dissemination; (b) petroleum products refined from Iranian crude oil in a third country; [and] (c) articles imported directly from Iran into the United States that were exported from Iran prior to the effective date of [Executive Order 12613]”).

⁴⁴ Exec. Order No. 12957, 60 Fed. Reg. 14,615 (Mar. 15, 1995) (prohibiting any U.S. person or entity from developing petroleum resources in Iran).

⁴⁵ Exec. Order No. 12959, 60 Fed. Reg. 24,757 (May 6, 1995) (expanding previous sanctions on Iran to include a total investment and trade embargo).

⁴⁶ International Security and Development Cooperation Act of 1981, Pub. L. No. 97-113, 95 Stat. 1519 (1981).

⁴⁷ International Emergency Economic Powers Act, 50 U.S.C. §§ 1701–1706 (1977).

⁴⁸ *An Overview of O.F.A.C. Regulations Involving Sanctions Against Iran*, U.S. DEP’T OF THE TREASURY (Jan. 23, 2012), <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran.txt>.

⁴⁹ Iran and Libya Sanctions Act of 1996, H.R. 3107, 104th Cong. § 5 (1996).

terrorism.”⁵⁰ By 1997, the Clinton Administration’s sanction regime banned virtually all investment and commercial activity with Iran.⁵¹

In light of Iran’s suspected clandestine nuclear program, Congress amended the 1996 Sanctions Act to impose economic sanctions in September of 2010. With the Comprehensive Iran Sanctions, Accountability, and Divestment Act (2010 Comprehensive Sanctions Act), Congress banned investments of \$20,000,000 or more that supported the development of petroleum resources in Iran.⁵² Restrictions also included the selling, leasing, or provision of “goods, services, technology, information, or support” that contributed to “the maintenance or expansion of Iran’s domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries.”⁵³ Finally, the 2010 Comprehensive Sanctions Act authorized the President to impose sanctions on any individual or entity for selling or providing Iran with refined petroleum products over a certain value.⁵⁴ There was still a prohibition on the importation of all goods, services, and technologies of Iranian origin, with few exceptions.⁵⁵

The United States’ current sanctions policy was born out of the 1996 and 2010 Acts, where, for the first time, individuals and businesses could be held liable for a very specific class of commercial transactions with Iran. These new restrictions marked an aggressive attempt to persuade Tehran to address growing concerns about its prohibited nuclear activities, and the State Department believed that the imposition of sanctions on non-American companies for supporting Iran’s energy sector “sen[t] a stern and clear message to companies around the world” about the consequence of non-compliance.⁵⁶ By 2010, foreign companies had a choice: sever business ties with Iran or lose access to the American financial and commercial marketplace. The U.S. government based this new foreign policy tool on three primary objectives:

- (1) [T]o block the transfer of weapons, components, technology, and dual-use items to Iran’s prohibited nuclear and missile programs;
- (2) to target select sectors of the Iranian economy

⁵⁰ Richard G. Alexander, Note, *Iran and Libya Sanctions Act of 1996: Congress Exceeds Its Jurisdiction to Prescribe Law*, 54 WASH. & LEE L. REV. 1601, 1602 (1997).

⁵¹ Exec. Order No. 13059, 62 Fed. Reg. 44,531 (Aug. 19, 1997).

⁵² Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, H.R. 2194, 111th Cong. § 102 (2010).

⁵³ *Id.* (applying to “goods, services, technology, information, or support” with a “fair market value of \$1,000,000 or more”).

⁵⁴ *Id.* § 102(a)(3)(A)(i).

⁵⁵ *Id.* § 103 (information materials, humanitarian aid, transactions incidental to travel).

⁵⁶ *Seven Companies Sanctioned Under the Amended Iran Sanctions Act*, U.S. DEP’T OF STATE (May 24, 2011), <http://www.state.gov/r/pa/prs/ps/2011/05/164132.htm>.

relevant to its proliferation activities; and (3) to induce Iran to engage constructively, through discussions with the United States, China, France, Germany, the United Kingdom, and Russia . . . to fulfill its nonproliferation obligations.⁵⁷

While prior sanction programs reflected “a cumulative effort by the United States to prevent money laundering and illicit transactions that endanger United States national security,”⁵⁸ there was a growing sense that “[d]ue diligence and audits for correspondent banking with foreign financial institutions [might] not be sufficient to protect against industrious Iranian actors.”⁵⁹ The 2010 Comprehensive Sanctions Act relied “heavily on self-reporting, including user certifications based on the best knowledge of United States financial institutions, which [could] be deceived by ever-shifting front companies and evasive measures by Iran.”⁶⁰

Furthermore, American corporations escaped liability for the Iranian transactions of their foreign affiliates if neither the American firm nor a United States citizen was involved in the prohibited activity. For example, following a May 2011 determination that *Petróleos de Venezuela (PDVSA)* had violated the 2010 Comprehensive Sanctions Act by delivering “at least two cargoes of reformato to Iran . . . worth approximately \$50 million,”⁶¹ the Obama Administration clarified that 2010 Act restrictions did not apply to U.S.-based subsidiaries (like *CITGO*, an American affiliate operated by *PDVSA*).⁶²

Section 102(g) further narrowed the economic impact of the Act, which included a “special rule” giving the President discretion over all sanction determinations.⁶³ To avoid liability under the 2010 Comprehensive Sanctions Act, a firm need only take “significant verifiable steps toward stopping the activity” and provide “reliable assurances” that they will not engage in any future prohibited activity.⁶⁴ A number of energy investment

⁵⁷ *Iran Sanctions*, U.S. DEP’T OF STATE, <http://www.state.gov/e/eb/tfs/spi/iran/index.htm> (last visited Nov. 3, 2012).

⁵⁸ Jennifer M. Kline, Comment, *When Comprehensive Falls Short: The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010*, 3 *GEO. MASON J. INT’L COM. L.* 219, 252 (2011).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Seven Companies Sanctioned Under the Amended Iran Sanctions Act*, *supra* note 56. Venezuela subsequently branded *PDVSA*’s designation under the Comprehensive Sanctions Act as a violation of international law and an “imperialistic aggression” by the United States. See *Posición del Gobierno Bolivariano ante Sanciones de EE.UU. Contra PDVSA*, PARTIDO SOCIALISTA UNIDO DE VENEZUELA (May 25, 2011), <http://www.psu.org.ve/temas/comunicados/posicion-gobierno-bolivariano-ante-sanciones-eeuu-contra-pdvsa/>.

⁶² *Briefing on the Latest Sanctions on Iran*, U.S. DEP’T OF STATE (May 24, 2011), <http://www.state.gov/pa/prs/ps/2011/05/164170.htm>.

⁶³ Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, H.R. 2194, 111th Cong. § 102(g) (2010).

⁶⁴ *Id.*

companies also received exemptions under this “special rule,” including Total of France, Statoil of Norway, ENI of Italy, Royal Dutch Shell of Britain and the Netherlands, and Inpex of Japan.⁶⁵ Consequently, policymakers realized that the 1996 Sanctions Act and the 2010 Comprehensive Sanctions Act were anything but ironclad, and several members of the 112th Congress began to advocate for new methods of enforcement.⁶⁶ President Obama also made security interests, including Iran’s nuclear program, a central theme in his 2012 State of the Union Address.⁶⁷ New sanctions on Iran soon followed.

2. *New Restrictions Under the ITRA*

On August 10, 2012, President Obama signed the ITRA, a bipartisan bill that expands the scope and severity of prohibitions against Iran while increasing the number of companies that are now subject to those sanctions.⁶⁸ Unlike its predecessors’ inability to tie non-U.S. subsidiary violations back to an American parent company, the ITRA authorizes the President to take action against the parent corporation of a foreign firm that engages in any of the following transactions with Iran: (1) joint ventures related to the development of petroleum resources or the mining, production, or transportation of uranium, (2) the transportation of Iranian crude oil, (3) the concealment of crude oil or refined petroleum products of Iranian origin, (4) the provision of underwriting or insurance or reinsurance services, or (5) the purchase, subscription to, or facilitation of the issuance of Iranian debt.⁶⁹ The ITRA also amends Section 13 of the Securities and

⁶⁵ KENNETH KATZMAN, CONG. RESEARCH SERV., RS20871, IRAN SANCTIONS 15 (2013).

⁶⁶ See, e.g., Chris Strohm, *Congress Clears New Sanctions on Doing Business with Iran*, BUS. WK. (Aug. 2, 2012), <http://www.businessweek.com/news/2012-08-01/congress-clears-new-sanctions-on-doing-business-with-iran> (quoting comments by Chairwoman of the House Foreign Affairs Committee, Ileana Ros-Lehtinen, declaring the Iranian energy sector “off limits” and urging Congress to “stop Iran before it’s too late”); *Congress Takes Aim at Iran’s Nuclear Program, Oil Income with New Sanctions*, ASSOCIATED PRESS (Aug. 2, 2012), http://www.cbsnews.com/8301-202_162-57485099/congress-takes-aim-at-irans-nuclear-program-oil-income-with-new-sanctions/ (referencing comments by Senator Tim Johnson, chairman of the Senate Banking Committee, about faltering “negotiations between the West and Iran over its uranium enrichment”).

⁶⁷ See President Barack Obama, Remarks by the President in State of the Union Address (Jan. 25, 2012), transcript available at <http://www.whitehouse.gov/photos-and-video/video/2012/01/25/2012-state-union-address-enhanced-version#transcript> (“And we will safeguard America’s own security against those who threaten our citizens, our friends, and our interests. Look at Iran. Through the power of our diplomacy, a world that was once divided about how to deal with Iran’s nuclear program now stands as one. The regime is more isolated than ever before; its leaders are faced with crippling sanctions, and as long as they shirk their responsibilities, this pressure will not relent. Let there be no doubt: America is determined to prevent Iran from getting a nuclear weapon, and I will take no options off the table to achieve that goal.”).

⁶⁸ See generally Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905, 112th Cong. (2012).

⁶⁹ *Id.*

Exchange Act of 1934 to require issuers of stock traded on U.S. exchanges to disclose any activity by it or an affiliate that violates the new sanctions law.⁷⁰ Companies must now report on an annual or quarterly basis any instance of prohibited activity by it or any of its affiliates, and these disclosures must contain a “detailed description of each such activity, including—(A) the nature and extent of the activity; (B) the gross revenues and net profits, if any, attributable to the activity; and (C) whether the issuer or the affiliate of the issuer (as the case may be) intends to continue the activity.”⁷¹ Furthermore, while an entity must “knowingly” engage in prohibited activity in order to trigger a violation under the ITRA, an unwitting U.S. parent company can potentially be liable for its failure to report any violations by a foreign subsidiary or affiliate that it owns or controls.⁷² Following the SEC’s periodic reporting and public disclosure of any sanctionable activities, the President is then required to complete a sanctions determination within 180 days after beginning an investigation.⁷³

Elsewhere, the ITRA modifies the President’s authority to issue compliance waivers or suspensions. Under Section 9(c) of the 1996 Sanctions Act, the President could waive sanctions when it was “important” to the United States’ national interest.⁷⁴ Under Section 102(c) of the 2010 Comprehensive Sanctions Act, waivers were reserved for instances deemed “necessary” to preserve the national interest.⁷⁵ After the ITRA, however, waiver authority for energy-related sanctions includes only those instances “essential to national security interests.”⁷⁶ The “weapons of mass destruction” standard has also been limited to only those

⁷⁰ *Id.* § 219. The ITRA specifically amends Section 13 of the Securities Exchange Act of 1934 by adding a new subsection outlining 10-K and 10-Q form disclosure requirements for “certain activities relating to Iran.” Notably, Section 13(r) of the 1934 Act contains no materiality threshold or de minimis exceptions.

⁷¹ *Id.*

⁷² *Id.* Under Section 218, a parent company’s ownership over “a partnership, association, trust, joint venture, corporation, or other organization” is deemed sufficient for the purposes of the ITRA if it holds “more than 50 percent of the equity interest by vote or value,” it maintains “a majority of seats on the board of directors,” or it exercises significant “control [over] the actions, policies, or personnel decisions of the entity.” *Id.* § 218(a). The ITRA defers to the 2010 Comprehensive Sanctions Act’s definition of “knowingly,” which finds actual knowledge, or knowledge that a person *should have known*, sufficient for parent company liability. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, H.R. 2194, 111th Cong. § 101(6) (2010).

⁷³ Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905, 112th Cong. § 219 (2012).

⁷⁴ Iran and Libya Sanctions Act of 1996, H.R. 3107, 104th Cong. § 9(c)(1) (1996) (“The President may waive the requirement in [S]ection 5 to impose a sanction or sanctions on a person . . . 30 days or more after the President determines and so reports to the appropriate congressional committees that it is important to the national interest of the United States to exercise such waiver authority.”). The President was required to include a “specific and detailed rationale for [his] determination” in any Section 9(c)(1) report. *Id.* § 9(c)(2).

⁷⁵ Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 § 102(c).

⁷⁶ Iran Threat Reduction and Syria Human Rights Act of 2012 § 205.

waivers that are “vital to the national security interests.”⁷⁷ These restrictions, coupled with new SEC disclosure requirements under Section 219 of the ITRA, signal a substantial broadening of the United States’ sanctions regime.⁷⁸

The ITRA threatens to restrict a non-compliant company’s access to the U.S. market, but it also exposes principals and corporate officers to sanctions and direct civil penalties in their individual capacity.⁷⁹ Under the Emergency Economic Powers Act, it is “unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition issued.”⁸⁰ Such violations can result in a civil penalty of \$250,000 or “an amount that is twice the amount of the transaction that is the basis of the violation.”⁸¹ These new penalties surely incentivize institutional and individual compliance, but as Part III explains, the corresponding legal, economic, and diplomatic implications of the ITRA cast a dark shadow on its efficacy.

III. PRACTICAL AND POLITICAL TROUBLES OF THE ITRA

A. Exceptionalism and the Extraterritoriality of American Sanctions Law

Before the ITRA’s practical implications for corporate liability, compliance, and social externalities can be determined, one must first examine the Act’s extraterritorial application. Often, the United States’ ambitious attempt to direct the actions of foreign actors and impose sanctions for non-compliance is accompanied by questions of legitimacy.⁸² When the government began regulating individuals and entities with no connection to the United States under the 1996 Sanctions Act, some viewed the government’s expanded view of extraterritorial jurisdiction as “unreasonable and a contradiction of the central precept of international law that all nations are of equal status.”⁸³ Just as the 1996 Sanctions Act

⁷⁷ *Id.*

⁷⁸ See, e.g., *What Public Companies Need to Know About Broadened Sanctions and New SEC Reporting Requirements Under the Iran Threat Reduction and Syria Human Rights Act*, GIBSON DUNN (Dec. 19, 2012), <http://www.gibsondunn.com/publications/Documents/BroadenedSanctions-NewSEC-Reporting-Requirements-Iran-Syria.pdf>.

⁷⁹ Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905, 112th Cong. § 218.

⁸⁰ International Emergency Economic Powers Act, 50 U.S.C. § 1705(a) (1977).

⁸¹ *Id.* § 1705(b).

⁸² See, e.g., Barry E. Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime*, 75 CALIF. L. REV. 1159 (1987); Ray Takeyh & Suzanne Maloney, *The Self-Limiting Success of Iran Sanctions*, 87 INT’L AFF. 1297, 1301–05 (2011).

⁸³ Alexander, *supra* note 50, at 1634. See also IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 287 (4th ed. 1990) (emphasizing the fundamental importance of sovereign equality in international law precepts).

and 2010 Comprehensive Sanctions Act found validity under domestic law, however, so too might the ITRA.

Although Congress has the power to regulate the conduct of U.S. citizens, both inside the territorial boundaries of the United States and abroad, there remains a general assumption that Congress legislates with a presumption against the extraterritorial application of U.S. law.⁸⁴ This canon concerns the undesirable conflict between American domestic law and that of other sovereign states, but the presumption is overcome where Congress has expressed an intent to extend the application of federal law beyond its territorial jurisdiction.⁸⁵ Unlike other securities-related law where the Supreme Court has found statutory language insufficient to overcome this presumption against extraterritorial application,⁸⁶ economic sanctions like the 1996 Sanctions Act and 2010 Comprehensive Sanctions Act invoke the authority of the Emergency Economic Powers Act or rely on direct congressional authorization to justify their extraterritoriality. Both Acts included express extraterritorial provisions, and both statutes track a growing trend toward the extraterritorial application of U.S. sanction law that began, perhaps most notably, with the Foreign Corrupt Practices Act of 1977.⁸⁷

As for the Emergency Economic Powers Act, the President of the United States has the power to “deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.”⁸⁸ This authority includes the ability to regulate or prohibit financial transactions or transfers in the United States.⁸⁹ Furthermore, when the extraterritoriality of the Emergency Economic Powers Act was subsequently challenged in 1981, the Supreme Court affirmed the President’s broad authority to act in *Dames & Moore v. Regan*.⁹⁰ There, Justice Rehnquist interpreted the statute to include “congressional acceptance of a broad scope for executive action” during national security, foreign policy, or

⁸⁴ See *United States v. Bowman*, 260 U.S. 94, 102 (1922); see also *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) (“We assume that Congress legislates against the backdrop of the presumption against extraterritoriality.”).

⁸⁵ *Bowman*, 260 U.S. at 102; *Blackmer v. United States*, 284 U.S. 421, 437 (1932).

⁸⁶ See, e.g., *Morrison v. Nat’l Austl. Bank Ltd.*, 130 S. Ct. 2869, 2883 (2010) (noting that “there is no affirmative indication in the Exchange Act that § 10(b) applies extraterritorially” and thus finding no extraterritorial jurisdiction).

⁸⁷ Austen L. Parrish, *Reclaiming International Law from Extraterritoriality*, 93 MINN. L. REV. 815, 818 (2009) (“[T]he number of U.S. lawsuits where American laws are applied extraterritorially to solve global problems has grown. This trend, however, is not peculiar to the United States. Increasingly other countries are also applying their laws extraterritorially to exert international influence and solve transboundary challenges.”).

⁸⁸ International Emergency Economic Powers Act, 50 U.S.C. § 1701 (1977).

⁸⁹ *Id.* § 1702.

⁹⁰ *Dames & Moore v. Regan*, 453 U.S. 654 (1981).

economic emergencies.⁹¹

In the case of Iran, the U.S. government has frequently used the Emergency Economic Powers Act's extraterritorial reach to levy sanctions on Tehran via executive order.⁹² This began after the 1979 Iran hostage crisis, when the country was named a threat to national security and more than \$12 billion in Iranian government assets—assets that were under the control of U.S. individuals or entities—were cut off under the Carter Administration.⁹³ Since then, Presidents have used their emergency power to impose targeted economic sanctions and block Iranian assets that flow through American financial institutions and their subsidiaries. Analogous legislation usually followed.⁹⁴ A prominent example of the expanding application of authority under the Emergency Economic Powers Act came soon after September 11, 2001. When President Bush signed Executive Order 13224, he authorized a bar on U.S. transactions with entities found to be supporting international acts of terrorism.⁹⁵ The order also named and sanctioned certain Iranian-linked financial institutions connected with Tehran's nuclear program.⁹⁶ By 2005, the President had the authority to freeze the assets of weapons of mass destruction proliferators and their supporters via the Emergency Economic Powers Act and other related statutes.⁹⁷

With the seeds of extraterritorial sanctions sown, the gradual expansion of jurisdiction continued in other areas of federal law as well. Under the Foreign Corrupt Practices Act, American corporations and their officers were prohibited from making bribes to foreign officials.⁹⁸ In 1998, amendments to the Act extended its jurisdiction beyond the territorial United States, and for the first time, subjected foreign nationals and entities to prosecution.⁹⁹ Over the years, the Department of Justice has been relatively successful in its efforts to target foreign corporations under the Foreign Corrupt Practices Act. For instance, in 2008 the Department of Justice reached an \$800 million settlement with German company Siemens for the \$1.7 billion in kickbacks that four of its subsidiaries paid to Iraqi

⁹¹ *Id.* at 656. This decision, though several decades before *Morrison*, underscores the difference in Court deference when it comes to issues of national security (rather than mere securities regulation).

⁹² *See, e.g.*, Exec. Order No. 12170, 44 Fed. Reg. 65,729 (Nov. 14, 1979) (President Jimmy Carter); Exec. Order No. 12957, 60 Fed. Reg. 14,615 (Mar. 15, 1995) (President William J. Clinton); Exec. Order No. 12959, 60 Fed. Reg. 24,757 (May 6, 1995) (President William J. Clinton); Exec. Order No. 13224, 66 Fed. Reg. 49,079 (Sept. 23, 2001) (President George W. Bush); Exec. Order No. 13574, 76 Fed. Reg. 30,505 (May 23, 2011) (President Barack Obama).

⁹³ Robert Carswell, *Economic Sanctions and the Iran Experience*, 60 FOREIGN AFF. 247 (1981).

⁹⁴ For example, the enactment of 1996 sanctions under President Clinton followed Executive Orders 12957 and 12959.

⁹⁵ Exec. Order No. 13224, 66 Fed. Reg. 49,079 § 1 (Sept. 23, 2001).

⁹⁶ *Id.*

⁹⁷ Exec. Order No. 13382, 70 Fed. Reg. 38,567 § 1 (June 28, 2001).

⁹⁸ Foreign Corrupt Practices Act, 15 U.S.C. § 78 (2006).

⁹⁹ *Id.* § 78dd-3.

officials in exchange for contracts.¹⁰⁰ In 2010, the Department of Justice similarly accused British defense contractor BAE Systems PLC of misreporting compliance and creating shell companies to conceal the bribes it made to Saudi officials in exchange for a profitable fighter jet contract.¹⁰¹ BAE paid the United States \$400 million over the charges.¹⁰² More recently, Pfizer agreed to pay \$60.2 million in fines after the multinational pharmaceutical giant was charged with bribing officials in eight countries—including China, Italy, Croatia, Bulgaria, and Russia—to approve and use its drugs.¹⁰³ In all of these instances, the U.S. government fortified its position that the Foreign Corrupt Practices Act applies to non-U.S. entities for bribes made anywhere, even when there has been no participation by a U.S. affiliate. From the Justice Department’s perspective, all that Congress requires is *some* connection with the United States.¹⁰⁴ A comparable justification for extraterritorial jurisdiction has been applied to sanctions law, and the ITRA appears to sit comfortably among these invocations of extraterritorial legal authority even if it stretches foreign jurisdiction to new limits.

Not surprisingly, however, the extraterritorial application of economic sanctions has long caused tension between international law and the United States’ counter-proliferation efforts.¹⁰⁵ While the U.N. Charter does authorize the Security Council to call upon member states to use the “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations”¹⁰⁶ to quell “any threat to the peace, breach of the peace, or act of aggression,”¹⁰⁷ the Charter itself is rooted in

¹⁰⁰ Erin Fuchs, *The Largest-Ever Corporate Payouts to the US Over Foreign Bribery Charges*, BUS. INSIDER (Aug. 14, 2012 6:59 PM), <http://www.businessinsider.com/the-largest-fcpa-settlements-2012-8?op=1>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *SEC Charges Pfizer with FCPA Violations*, U.S. SEC. & EXCH. COMM’N (Aug. 7, 2012), <http://www.sec.gov/news/press/2012/2012-152.htm>; Pratap Chatterjee, *Pfizer Admits Bribery in Eight Countries*, CORPWATCH (Aug. 8, 2012), <http://www.corpwatch.org/article.php?id=15765>.

¹⁰⁴ This interpretation is not unfounded. See 15 U.S.C. § 78dd-1(g) (making it “unlawful for any issuer organized under the laws of the United States . . . or for any United States person that is an officer, director, employee, or agent of such issuer or a stockholder thereof acting on behalf of such issuer, to corruptly do any act outside the United States”). The Act prohibits issuers from making offers or payments to *any* foreign official for influence or inducement purposes. *Id.* § 78dd-1.

¹⁰⁵ Sarah H. Cleveland, *Norm Internalization and U.S. Economic Sanctions*, 26 YALE J. INT’L L. 1, 56-57 (2001) (arguing that extraterritorial measures “have long been criticized as violating [traditional public international law] principles, since they purport to exercise authority over foreign states and entities for engaging in conduct (business with third countries) that has no jurisdictional nexus with the sanctioning state”); *Developments in the Law—Extraterritoriality*, 124 HARV. L. REV. 1226, 1249 (2011) (citing protests and WTO proceedings initiated by the European Union following the passage of the United States’ 1996 Sanctions Act).

¹⁰⁶ U.N. Charter art. 41.

¹⁰⁷ *Id.* art. 39.

principles of sovereign equality.¹⁰⁸ Under this theory of nation-state autonomy, the 1996 Sanctions Act was met with overwhelming condemnation and characterization as an encroachment on customary international law.¹⁰⁹ Prior to the ITRA, the U.S. government appeared more sensitive to these claims: due to heavy protest by the European Union, for example, the government refrained from imposing 1996 sanctions on European firms that conducted business in Iran and Libya.¹¹⁰ Given further limitations on presidential discretion under the ITRA,¹¹¹ however, future waivers will likely be less forthcoming.

Now, even amidst heavy disapproval from countries like China and Russia, the United States has wholeheartedly embraced the extraterritorial application of the ITRA.¹¹² Leaders in Tehran condemn the Act's coercive penalties,¹¹³ of course, but it remains unlikely that the United Nations or any other international authority will mount a successful anti-sanctions campaign against the legitimacy of the ITRA. Even the European Union, once strongly opposed to the United States' extraterritorial regulations, has taken a similar maximalist approach after recently expressing "serious and deepening concerns over Iran's nuclear programme."¹¹⁴ In October of 2012, the Foreign Affairs Council of the European Union placed "additional restrictive measures in the financial, trade, energy, and transport sectors" and "prohibit[ed] all transactions between European and Iranian banks."¹¹⁵ At first blush, this development and others appear to be good news for the United States' broad economic isolation strategy. But with the emergence of separate U.S., European, and U.N. sanction frameworks, many firms find themselves caught between conflicting standards of compliance.¹¹⁶

¹⁰⁸ *Id.* art. 2, para. 1.

¹⁰⁹ Jeffrey A. Meyer, *Second Thoughts on Secondary Sanctions*, 30 U. PA. J. INT'L L. 905, 929 (2009) (noting that the 1996 sanctions "were vehemently condemned as 'extraterritorially' illegal by the U.S.'s major trading partners, some of whom enacted their own retaliatory laws to block or offset any damage to their companies' business interests").

¹¹⁰ See KENNETH KATZMAN, CONG. RESEARCH SERV., RS20871, IRAN SANCTIONS (2013); Charles Tait Graves, *Extraterritoriality and Its Limits: The Iran and Libya Sanctions Act of 1996*, 21 HASTINGS INT'L & COMP. L. REV. 715, 722 (1998).

¹¹¹ See *supra* notes 76–77 and accompanying text.

¹¹² Stephen Lendman, *U.S. Sanctions on Iran Mockery of Rule of Law*, TEHRAN TIMES (Aug. 4, 2012 3:21 PM), <http://www.tehrantimes.com/component/content/article/100281> (arguing that the ITRA imposes "illegitimate sanctions on Iran" and "mocks rule of law legitimacy").

¹¹³ *Id.*

¹¹⁴ COUNCIL CONCLUSIONS ON IRAN, FOREIGN AFFAIRS COUNCIL OF THE EUROPEAN UNION (Oct. 15, 2012), available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/132833.pdf.

¹¹⁵ *Id.*

¹¹⁶ *E.g.*, S.C. Res. 1929, U.N. Doc. S/RES/1929 (June 9, 2010) (banning the provision of military-related materials, training, financing, and other assistance but giving member states considerable latitude in the implementation and exercise of various asset control, inspection, and seizure activities); *Security Council Adopts Fourth Round of Iranian Sanctions*, 104 AM. J. INT'L L. 517, 518 (2010) (citations omitted) (The United Nations Security Council Resolution 1929 requires "arduous negotiations, [but] its sanctions are weaker than those initially sought by the United States and some

This uncertainty, coupled with the ITRA's new monitoring and reporting costs, places a tremendous burden on American parent companies.

B. Reporting Challenges and the Difficulty with Unilateral Enforcement

Although financial reporting requirements are not new in the United States, Section 219 of the ITRA does pose significant challenges for companies that conduct business in the Middle East, especially banking institutions, shippers, and insurers.¹¹⁷ Of particular concern is the Act's "knowingly" requirement. Not only does knowing engagement in prohibited activities under the 1996 Sanctions Act and the 2010 Comprehensive Sanctions Act trigger a violation under the ITRA, Section 219 requires that corporations report instance of prohibited activity by any of its affiliates as well.¹¹⁸ The trouble with this disclosure requirement, however, is that the term "knowingly" as defined by the ITRA, 2010 Comprehensive Sanctions Act, and 1996 Sanctions Act "with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result."¹¹⁹ The test for what a parent company "should have known" has been left intentionally vague by Congress, and the unresolved question of what precisely creates liability (management oversight, control flaws, etc.) encourages cautious over-reporting. Intuitively, an entity's best defense is massive due diligence—an endeavor that requires companies to "check their ability to produce, maintain and retrieve evidence of such due diligence."¹²⁰

Companies must also implement and maintain internal detection and reporting systems that build on those already required for various securities laws. In circumstances where the capacity to track certain transactions for both a parent company and its affiliates is lacking, the ITRA requires immediate compliance regardless of burden or cost. But a firm's ability to

like-minded European allies (notably France, Germany, and the United Kingdom)."). The European Union imposes its own sanctions on Iran, but those restrictions still allow Iran to use foreign-held euros. *U.S. Senators Call on EU to Tighten Iran Sanctions on Eve of Talks*, PRESSTV (Feb. 26, 2013, 6:15 AM), <http://www.presstv.ir/detail/2013/02/26/290849/us-urges-eu-to-tighten-iran-sanctions/> ("In a letter to President of the European Council Herman Van Rompuy on [February 25, 2013], 36 US senators urged the union to close 'a significant loophole in US-EU sanctions policy' in order to increase pressure on Iran.")

¹¹⁷ See Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905, 112th Cong. § 219 (2012).

¹¹⁸ *Id.*

¹¹⁹ Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, H.R. 2194, 111th Cong. § 101 (2010).

¹²⁰ David Savage & Kate Hill, *The Iran Threat Reduction Act—Insurers and Reinsurers Beware*, LEXOLOGY (Sept. 27, 2012), <http://www.lexology.com/library/detail.aspx?g=5b232505-d27a-48d3-b5b3-1805b09d180d>.

obtain and disclose information about its foreign affiliates can be incredibly difficult, especially when a parent corporation has technical ownership over a distant, third-party affiliate entity but no actual control.¹²¹ No matter how the issue is framed, liability exposure for multinational corporations and international business executives is vast, even amid good-faith vigilance and compliance efforts. At bottom, the most any firm can do is review its internal monitoring and reporting system to ensure that it captures all Iran-related activities, and do it quickly. The ITRA's safe harbor period (which allowed entities or individuals to avoid civil penalties if they terminated ITRA-prohibited transactions within 180 days after its enactment) ended on February 6, 2013.¹²²

Finally, an increase in the number of entities covered by the ITRA, coupled with a surge in the volume of new reporting, forces the government rely heavily on the information supplied to it. This is especially true with respect to foreign firms, where the U.S. government's access to financial information and evidence sufficient to initiate an enforcement action remains limited.¹²³ On this basis, many foreign firms have an incentive to under-report. Thus, the ITRA appears to overstep the U.S. government's capacity to monitor and fully enforce the statute's terms in an even-handed way. Given the regulatory scheme and the high cost of compliance, the question remains: are the ITRA's unilateral restrictions worth it? The next section considers the Act's corresponding effect on Iran's currency, food staples, and low-income families.

C. The Impact of Sanctions on Iran's Domestic Economy

Also present in the ITRA debate—apart from extraterritorial issues and the challenges faced by private firms amidst broadening liability and reporting requirements—is an agenda that undervalues the impact of these new economic restrictions on ordinary Iranian citizens.¹²⁴ While it is too early to determine whether the ITRA will finally curb Iran's nuclear program, history suggests that regardless of their cost, Tehran will not be

¹²¹ *New Requirements for SEC Reporting Companies to Disclose Certain Iran-Related Activities and Transactions*, SKADDEN SEC. REGULATION & COMPLIANCE ALERT (Oct. 5, 2012), available at <http://www.jdsupra.com/legalnews/new-requirements-for-sec-reporting-comp-53312/>.

¹²² Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905, 112th Cong. § 218(d) (specifying that civil penalties do not apply if a United States person or entity “divests or terminates its business with the entity not later than the date that is 180 days after the date of the enactment of this Act”).

¹²³ Michael Volkov, *Sanctions Violations*, CORRUPTION, CRIME & COMPLIANCE (Sept. 12, 2012), <http://corruptioncrimecompliance.com/2012/09/sanctions-violations.html>.

¹²⁴ Amir Salehzadeh, *A View from Inside Iran: What Sanctions Do to Real People*, POLICYMIC (Aug. 22, 2013), <http://www.policymic.com/articles/60541/a-view-from-inside-iran-what-sanctions-do-to-real-people>.

discouraged from its nuclear ambitions.¹²⁵ Still, the new prohibitions strike at the heart of Iran's vital energy sector, which provides approximately 80% of the country's export revenues.¹²⁶ At the beginning of October 2012, Iran's rial lost more than 25% of its value against the dollar.¹²⁷ Since the end of last year, Iranian currency has depreciated by over 80% as the price of staples like vegetables, milk, and bread has doubled.¹²⁸ Pervasive unemployment, essential medicine shortages, and even food riots have also been reported.¹²⁹ As one commentator notes, "[o]rdinary Iranians completely unconnected to the government have had their lives effectively ground to a halt as the sudden and unprecedented collapse of the financial system has rendered any meaningful form of commerce effectively impossible."¹³⁰

This begs the question of whether, as a policy matter, the ITRA's implications for human suffering can and should be justified. Former Secretary of State Madeleine Albright was asked this question in 1996 (when similar financial sanctions were imposed on Iraq), and she concluded: "I think this is a very hard choice, but the price, we think the price is worth it."¹³¹ The growing threat of a nuclear-armed Iran likely engenders a similar attitude from within the Obama Administration. For example, just as the rial began to lose much of its value in the fall of 2012, then Secretary of State Hillary Clinton blamed Iran's financial struggles on the choices of its own government, not ITRA sanctions.¹³² Secretary Clinton also eluded to a remedy "in short order" if Iran backed down from its disputed nuclear program, but made no mention of whether a severe dip in the Iranian standard of living could also trigger some kind of alleviation.¹³³

Additionally, the misery of an entire population, while limited in its direct effect on Iranian political leaders, poses another challenge by stifling

¹²⁵ *A Red Line and a Reeling Rial: Sanctions May be Taking Their Toll as Israel's Prime Minister Tries to Set a New Red Line to Block Iran's Nuclear Plans*, ECONOMIST (Oct. 6, 2012) [hereafter *A Red Line and a Reeling Rial*], <http://www.economist.com/node/21564229>; BIJAN KHAJEHPUR ET AL., NAT'L IRANIAN AM. COUNCIL, "NEVER GIVE IN AND NEVER GIVE UP": THE IMPACT OF SANCTIONS ON TEHRAN'S NUCLEAR CALCULATIONS 26 (Mar. 26, 2013), available at http://www.niacouncil.org/site/DocServer/Never_give_in__never_give_up.pdf?docID=1941 ("No data suggests that Iran's nuclear program overall has slowed down over the course of the past four years. Iran's stockpile of low enriched uranium (LEU) has grown from 839kg in November 2008 to 8271kg in February 2013 . . .").

¹²⁶ *A Red Line and a Reeling Rial*, *supra* note 125.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Murtaza Hussain, *Sanctioning Society: From Iraq to Iran*, AL JAZEERA (Oct. 3, 2012), <http://www.aljazeera.com/indepth/opinion/2012/10/201210373854792889.html>.

¹³¹ *60 Minutes: Punishing Saddam* (CBS television broadcast May 12, 1996).

¹³² *Clinton: Sanctions Can be Eased if Iran Cooperates*, REUTERS (Oct. 3, 2012), <http://www.jpost.com/IranianThreat/News/Article.aspx?id=286514>.

¹³³ *Id.*

resources for societal change.¹³⁴ According to a report from the International Civil Society Action Network, “[t]he urban middle class that has historically played a central role in creating change and promoting progress in Iran are key casualties of the sanctions regime.”¹³⁵ If one goal of the ITRA is to force political change by making Iran’s economic environment unbearable, perhaps the harsh regulation’s “unintended” consequences are anything but accidental.¹³⁶ Unfortunately, an absence of market stability may have the undesirable consequence of limiting activities related to, or driving ordinary Iranian citizens away from, the democratic movement.¹³⁷ This is especially true if the events in Iran unfold as Israel’s former Minister of Finance, Yuval Steinitz, predicts.¹³⁸ By the end of the year, he believes that the ITRA and other sanctions will cause the Iranian government to lose a minimum of \$45 billion in oil revenues,¹³⁹ a significant hit for an industry that brought in \$69 billion in net estimated export revenue in 2012. If this brings the Iranian economy to the verge of collapse and Tehran still refuses to comply with international non-proliferation mandates, alternative diplomatic solutions may be foreclosed as nations like Israel grow increasingly impatient and threaten imminent military action.

IV. MULTILATERAL SANCTIONS: THE COMPREHENSIVE SOLUTION TO A UNILATERAL DILEMMA

With major economic powers now determined to squeeze the air out of the Iranian economy, the underlying objective—to maintain peace and security in the atomic age—remains a legitimate one. The threat of nuclear proliferation, like other conspicuous struggles in American and world history, is “not the concern of a day, a year, or an age; posterity are

¹³⁴ Mohammad Sadeghi Esfahlani & Jamal Abdi, *Sanctions Cripple Iran’s Middle Class, Not the Regime*, FOREIGN POLICY (Aug. 2, 2012), http://mideast.foreignpolicy.com/posts/2012/08/02/sanctions_cripple_irans_middle_class_not_the_regime.

¹³⁵ ICAN, KILLING THEM SOFTLY: THE STARK IMPACT OF SANCTIONS ON THE LIVES OF ORDINARY IRANIANS 6 (2012).

¹³⁶ In a recent interview with Charlie Rose, for example, Madeleine Albright said that she believed the ITRA sanctions were “working because we hear an awful lot about problems within the Iranian economy.” This suggests that “problems” are precisely the aim of the United States’ coercive economic strategy. See Press Release, CBS News, Former Secretary of State Madeleine Albright Says Sanctions Against Iran “Are Working” – on “CBS This Morning” (Feb. 19, 2013), <http://www.cbspressexpress.com/cbs-news/releases/view?id=34652>. But see KHAJEHPUR ET AL., *supra* note 125, at 14 (“Supreme Leader Khamenei has remained steadfast in his approach to sanctions. The escalating sanctions regime has enabled him to strengthen a powerful pre-existing narrative that portrays Western powers as a brutal, immoral group of governments out to ‘get’ Iran, and that their core interest is to keep Iran underdeveloped and dependent.”).

¹³⁷ Esfahlani & Abdi, *supra* note 134.

¹³⁸ *A Red Line and a Reeling Rial*, *supra* note 125.

¹³⁹ *Id.*

virtually involved in the contest, and will be more or less affected, even to the end of time, by the proceedings now.”¹⁴⁰ Thus, the need for an immediate, non-violent resolution to Iran’s runaway nuclear program will likely take precedent over general claims of sovereign equality and independence. The following section explores the virtue of engaging the international community as an alternative to the ITRA or similar sanctions, highlighting opportunities for enhanced compliance, improved reporting and enforcement, and the reinvigoration of diplomatic negotiations.

A. Enhanced Compliance Through International Agreements

It remains true that the ITRA’s broad extraterritorial application creates a strong disincentive for firms to provide energy-related services, insurance, and shipping assistance to Iran. But China, India, and Russia have long expressed dismay over the imposition of unilateral sanctions.¹⁴¹ Even before the ITRA became law, each pushed for, and received, temporary exemptions based on their own economic interests.¹⁴² This trend continues as the ITRA’s all-inclusive approach makes compliance unworkable in the face of some countries’ refusal to accept them. In the absence of an exemption or temporary reprieve, foreign firms are left to weigh the relative payoff between evasion and acquiescence. Early indications suggest that some entities have already chosen non-compliance. For instance, nearly three months after the ITRA became law, the China Classification Society continued to provide certification services to sanctioned Iranian maritime vessels.¹⁴³ Some Russian shipping companies have also sustained certification services for Iranian vessels in defiance of the ITRA.¹⁴⁴ The trouble with this kind of non-cooperation, of course, is that these countries are “directly facilitating the ability of the Iranian regime to circumvent multilateral sanctions that have been imposed to

¹⁴⁰ THOMAS PAINE, *COMMON SENSE* 82 (Isaac Kramnick ed., Penguin Classics 1986) (1776).

¹⁴¹ See, e.g., *China Defends Iran Oil Purchases After U.S. Sanctions*, AL ARABIYA NEWS (June 12, 2012), <http://www.alarabiya.net/articles/2012/06/12/220202.html> (quoting Chinese Foreign Ministry Spokesman Liu Weimin emphasizing that “China is opposed to one country imposing unilateral sanctions on another country in accordance with domestic law, let alone imposing sanctions on a third country”).

¹⁴² In June of 2012, for example, China received a six-month reprieve from sanctions against financial transactions related to the purchase of Iranian oil. See *US Grants China Six-month Iran Oil Sanctions Reprieve*, BBC NEWS (June 28, 2012 11:23 PM), <http://www.bbc.co.uk/news/world-asia-china-18639255>.

¹⁴³ *UANI Calls on China Classification Society to Stop Certifying Iranian Vessels*, BUS. WIRE (Oct. 3, 2012, 5:44 PM), <http://www.businesswire.com/news/home/20121003006617/en/UANI-Calls-China-Classification-Society-Stop-Certifying>.

¹⁴⁴ *UANI Calls on Russian Maritime Register of Shipping to Stop Certifying Iranian Vessels*, BUS. WIRE (Aug. 15, 2012, 6:20 PM), <http://www.businesswire.com/news/home/20120815006317/en/UANI-Calls-Russian-Maritime-Register-Shipping-Stop>.

prevent it from further developing its illegal nuclear weapons program.”¹⁴⁵

The payoff for evasion, especially when it comes to oil sanctions, can be significant, and this can have important behavioral and predictive consequences. In particular, “the existence of short-term capacity limitations, reservoir engineering constraints, and the finite resource base in the petroleum industry substantially attenuate the incentive to cheat.”¹⁴⁶ Markets arise wherever there is market demand, and through the broad extraterritorial application of the ITRA, the United States sought to prevent foreign entities from filling the commercial voids created by an exodus of American firms from the Iranian economy following the 1996 Sanctions Act and 2010 Comprehensive Sanctions Act.¹⁴⁷ But the failure of the ITRA with respect to compliance reflects a polarized discourse between the United States and the rest of the world. While the United Nations and many member states support some form of sanctions against Iran, enforcement norms differ.¹⁴⁸ For the ITRA to achieve its intended effect of isolating the Iranian economy and compelling Tehran to abandon their nuclear ambitions, compliance must be universal. A multilateral approach that captures the cooperation of many powerful states within one international system would, in a sense, better “punish defections from the rules of the game.”¹⁴⁹ With more nations in an enforcement coalition, fewer are left to circumvent Iran sanctions.¹⁵⁰ Economic theory also suggests that sanctions imposed by allies, rather than adversaries, are often more effective.¹⁵¹

Similarly, a significant part of this quest for uniformity will require the United States to enforce its sanctions without exception—something that it has yet to do. A greater willingness to punish major U.S. trading partners for violations, including China, would also contribute to the cogency of the ITRA. This is not to suggest that the economic sanctions on

¹⁴⁵ *Id.*

¹⁴⁶ James M. Griffin & Wiewen Xiong, *Incentive to Cheat: An Empirical Analysis of OPEC*, 40 J.L. & ECON. 289, 313 (1997).

¹⁴⁷ See, e.g., ANTHONY H. CORDESMAN, BRYAN GOLD, SAM KHAZAI & BRADLEY BOSSERMAN, CTR. FOR STRATEGIC & INT’L STUD., U.S. AND IRANIAN STRATEGIC COMPETITION: SANCTIONS, ENERGY, ARMS CONTROL, AND REGIME CHANGE 82 (Apr. 19, 2013), available at http://csis.org/files/publication/120124_Iran_Sanctions.pdf.

¹⁴⁸ See Lendman, *supra* note 112 and accompanying text.

¹⁴⁹ Daniel W. Drezner, *Bargaining, Enforcement, and Multilateral Sanctions: When is Cooperation Counterproductive?*, 54 INT’L ORG. 73, 74 (2000).

¹⁵⁰ Davis & Engerman, *supra* note 7, at 195.

¹⁵¹ *Id.* Using a conflict expectation model to predict the effectiveness of economic coercion in international relations, Professor Drezner concludes: “The target’s conflict expectations determine the magnitude of concessions. Facing an adversarial sender, the target will be worried about the long-run implications of acquiescing. Because it expects frequent conflicts, the target will be concerned about any concessions in the present undercutting its bargaining position in future interactions *Ceteris paribus*, targets will concede more to allies than adversaries.” DANIEL W. DREZNER, *THE SANCTIONS PARADOX: ECONOMIC STATECRAFT AND INTERNATIONAL RELATIONS* 4–5 (1999).

Iran are not stringent enough. If anything, the ITRA's blunt, unilateral approach threatens to alienate allies, corrode the cooperative framework, and invite "interstate rivalries."¹⁵² Rather than make it more difficult for foreign countries to comply with the ITRA, a better approach would be to create "conditions for a return to good faith participation in the international monitoring system."¹⁵³ The United Nations is the most obvious forum for establishing a universal enforcement norm, and through mutuality of promise, any non-compliant actors or fringe markets can be more effectively regulated rather than unilaterally policed.¹⁵⁴

B. Improved Reporting and Enforcement Mechanisms

The ITRA's unilateral approach also creates major problems for global commodity producers, bankers, insurers, and intermediaries. Many foreign firms understand the broad contours of Sections 208 and 209, but few agree on the specifics.¹⁵⁵ Accordingly, internal reporting standards for many independent foreign subsidiaries reflect consistency and quality issues. With the ITRA and its accompanying surge in new reporting, however, the U.S. government will have even more difficulty verifying and following through on all of the information it receives. This means that "the enforcement of violations is both variable and unpredictable."¹⁵⁶ By contrast, a coordinated international reporting system, one that uniformly collects and reviews financial information at the state level, would harmonize conflicting standards of compliance, increase monitoring capacity, and improve enforcement.

C. A Stimulus for Diplomatic Negotiations

With major trading partners and buyers of Iranian crude in lockstep with the United States, the effect of sanctions on Iran's economy could

¹⁵² Cristian DeFrancia, *Enforcing the Nuclear Nonproliferation Regime: The Legality of Preventive Measures*, 45 VAND. J. TRANSNAT'L L. 705, 782–83 (2012).

¹⁵³ *Id.*

¹⁵⁴ *But see* Brandeis Institute for International Judges, *Toward an International Rule of Law / 2010 Report*, 24 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 201, 231 (2011) (finding that one "weakness in the U.N. system is that a permanent member of the Security Council can veto sanctions for non-compliance—an option not open to a less powerful state").

¹⁵⁵ Ben Knowles, *How ITRA is Changing the Global Financial Landscape*, TFR BLOG (Jan. 7, 2013), <http://www.tfreview.com/blog/how-itra-changing-global-financial-landscape>. For example, the ITRA's definition of "own or control" with respect to foreign affiliates includes U.S. entities that actually or "otherwise control the actions, policies, or personnel decisions of the [foreign] entity." Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905, 112th Cong. § 218(a)(2)(C) (2012). The statute fails to define "otherwise control" and leaves a standard that appears highly fact-specific and open to competing interpretation.

¹⁵⁶ Knowles, *supra* note 155.

worsen. Even if the country's citizenry suffers, however, little suggests that those in power feel pressured to reconsider their nuclear weapons program. For example, in February of 2013 and just six months after the ITRA became law, Iran announced that it was marching forward with its nuclear program by installing 180 new advanced centrifuges, a move that accelerates the process for uranium refinement.¹⁵⁷ Not surprisingly, the White House responded by threatening "further pressure and isolation."¹⁵⁸ Such discourse reflects a cycle of mistrust and escalation that foreshadows the United States' drawn-out, and ineffective, unilateral strategy. While Iran's Ambassador to the United Nations, Mohammad Khazaee, suggests that any successful negotiation between the two countries must include "mutual respect, respect for Iran's national sovereignty, non-intervention in Iran's domestic affairs, and [the] discarding [of a] two-track policy of pressure and engagement,"¹⁵⁹ economic sanctions remain one of the last alternatives to direct military action. As a necessary but insufficient means of achieving Iranian non-proliferation goals, the concern moving forward should be on the length, rather than the severity, of these restrictions. By sealing off opportunities for evasion and non-compliance via a new, more rigorous multilateral agreement, vital industries in Iran will lose revenue more quickly. The rial will depreciate, and inflation will drive the price of imports, foodstuffs, and other commodities through the roof. If the Iranian government could find ways to temper the impact of sanctions before,¹⁶⁰ a swift and exacting imposition of universal restraints could bring its economy to the brink of collapse sooner rather than later. This, in turn, may force Iranian leadership to rethink its refusal to engage in serious diplomatic negotiations with both the United States and the United Nations.

V. CONCLUSION

This Note has examined some of the legal and practical challenges that American sanctions regimes will face as the point of Iranian nuclear proliferation draws closer. At present, the international community finds itself at a critical juncture where new diplomatic and coercive methods are necessary to punish Iran and some emboldened market actors.¹⁶¹ While the ITRA was intended to defy the disappointing history of non-proliferation policy and sanctions practice, the Act fails to achieve the uniform

¹⁵⁷ *IAEA: Iran Installing Advanced Centrifuges*, AL JAZEERA (Feb. 22, 2013), <http://www.aljazeera.com/news/middleeast/2013/02/2013221224353882956.html>.

¹⁵⁸ *Id.*

¹⁵⁹ Johan Kharabi, 'Unprecedented' Conversation Yields Proposals for US-Iran Negotiations, ASIA SOCIETY (Feb. 21, 2013), <http://asiasociety.org/blog/asia/unprecedented-conversation-yields-proposals-us-iran-negotiations>.

¹⁶⁰ Andrew Torchia, *Analysis: Iran Economy Far From Collapse as Sanctions Tighten*, REUTERS (Feb. 20, 2013), <http://www.reuters.com/assets/print?aid=USBRE91J0SM20130220>.

¹⁶¹ *See supra* Part III.B.

application and enforcement that it needs in order to be truly effective. Issues of international legitimacy, early non-compliance and potential retaliatory action, increased exposure for non-U.S. subsidiaries, complications in parent corporation control and oversight, and severe economic harm to the Iranian populace only magnify an underlying truth—that the ITRA ultimately fails because it is neither targeted nor cooperative.¹⁶² Even if the prospect of reaching international consensus for stringent, multilateral sanctions remains remote, the United States, if serious about talking Iran down from the nuclear cliff, must look beyond its unilateral measures and engage the international community in a realistic and timely way.

¹⁶² KHAJEHPUR ET AL., *supra* note 125, at 31 (concluding that a “pressure strategy that lacks the sophistication and flexibility to help unravel the dominant narrative in the sanctioned state and entice stakeholders to push for policy changes is unlikely to succeed and [is] potentially counter-productive”).