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The Emerging Investment Landscape of Post-Sanctions Iran: Opportunities, Risks, and Implications on US Foreign Policy

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NOTE

THE EMERGING INVESTMENT LANDSCAPE OF POST-SANCTIONS IRAN: OPPORTUNITIES, RISKS, AND IMPLICATIONS ON US FOREIGN POLICY

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"*[N]ot only should all friendships be safeguarded with the greatest devotion and good faith, but especially those which have been restored to goodwill after enmity*."[1]

INTRODUCTION

On September 28, 2015, in his address before the United Nations General Assembly, Iranian President Hassan Rouhani declared, "a new chapter has started in Iran's relations with the world."[2] This development emerges from the conclusion of over a year of negotiating efforts concerning the Islamic Republic of Iran's nuclear program with the P5+1, which resulted in the Joint Comprehensive Plan of Action ("JCPOA").[3] By relaxing decades of trade and investment sanctions in exchange for the imposition of strict limitations on the development of Iran's civil nuclear program, the JCPOA, according to Rouhani, "showcased the potential for constructive dialogue."[4]

Within the United States, the terms and details of the JCPOA have been—like the sanctions regime that preceded it—

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1. HUGO GROTIUS, ON THE LAW OF WAR AND PEACE 476 (Stephen C. Neff ed., 2012) (1625).

2. Hassan Rouhani, President of the Islamic Republic of Iran, Statement at the General Debate of the General Assembly of the United Nations (Sept. 28, 2015), http://gadebate.un.org/sites/default/files/gastatements/70/70_Iran_en.pdf [hereinafter Rouhani Statement at the General Assembly].

3. The P5+1 refers to the five permanent members of the United Nations Security Council—the United States, Russia, China, Great Britain, and France—as well as Germany. In European parlance, the P5+1 is alternatively called the EU+3. *See* Joshua Keating, *You Say P5+1, I Say E3+3*, FOREIGN POL'Y (Sept. 30, 2009), http://foreignpolicy.com/2009/09/30/you-say-p51-i-say-e33/; *see also* Michael R. Gordon & David E. Sanger, *Deal Reached on Iran Nuclear Program; Limits on Fuel Would Lesson With Time*, N.Y. TIMES, July 14, 2015, http://www.nytimes.com/2015/07/15/world/middleeast/iran-nuclear-deal-is-reached-after-long-negotiations.html; *Joint Comprehensive Plan of Action*, U.S. DEP'T OF STATE, http://www.state.gov/e/eb/tfs/spi/iran/jcpoa/ (last visited Apr. 9, 2016) (providing a basic overview of the JCPOA).

4. Rouhani Statement at the General Assembly*, supra* note 2; *see also* John Mecklin, *The Experts Assess the Iran Agreement of 2015*, BULL. ATOMIC SCI. (July 14, 2015), http://thebulletin.org/experts-assess-iran-agreement-20158507 (summarizing how the JCPOA works).

controversial.[5] The days and months following the signing of the JCPOA in Vienna on July 14, 2015 witnessed a deeply polarized array of high-profile comments and criticisms, from a wide variety of official and unofficial commentators.[6] One way of explaining this controversy is the sizeable diversity of JCPOA stakeholders, each with uniquely situated interests and expectations concerning the deal's aftermath. For the Obama Administration, which purportedly sought to halt Iran's nuclear program in a way that would avoid another US war in the Middle East, the JCPOA was envisioned as bringing "extraordinary benefits to our national security and the peace and security of the world."[7] For the State of Israel, which has long considered Iran to be its most threatening regional rival, the JCPOA consisted of a "very bad deal," representing a victory for "death, tyranny and the pursuit of jihad."[8]

Lost in this simplistic dichotomy of "for the deal" or "against the deal" are the contours of those various interests, and how their architecture might influence, or be strategically used to influence, the post-sanctions environment emerging with the JCPOA's implementation.[9] The purpose of this Note is to explore the body of interests that comprise one such stakeholder group: international

5. *See* Daniel R. DePetris, *A Frustrating Iran Deal for Republicans*, THE HILL (Sept. 24, 2015), http://thehill.com/blogs/pundits-blog/international/254756-a-frustrating-iran-deal-for-republicans (elucidating Republican opposition to the JCPOA); *see also* Peter Beinart et al., *Is There a Viable Alternative to the Iran Deal?*, ATLANTIC (July 17, 2015), http://www.theatlantic.com/international/archive/2015/07/iran-nuclear-deal-goldberg-frum-beinart/398816/ (debating the merits of the JCPOA).

6. *See* Beinart et al., *supra* note 5 (exploring differing opinions surrounding the JCPOA).

7. President Barak Obama, Statement by the President on the Adoption of the Joint Comprehensive Plan of Action at American University (Oct. 18, 2015), https://www.whitehouse.gov/the-press-office/2015/10/18/statement-president-adoption-joint-comprehensive-plan-action; *see also* Krishnadev Calamur, *Obama on the Iran Deal: The "Strongest Nonproliferation Agreement Ever Negotiated*," ATLANTIC (Aug. 5, 2015), http://www.theatlantic.com/politics/archive/2015/08/obama-and-the-iran-deal/400535/ (presenting the White House's logic behind the JCPOA).

8. Krishnadev Calamur, *In Speech to Congress, Netanyahu Blasts "A Very Bad Deal" with Iran*, NPR (Mar. 3, 2015), http://www.npr.org/sections/thetwo-way/2015/03/03/390250986/netanyahu-to-outline-iran-threats-in-much-anticipated-speech-to-congress; *see also* Michael Herzog, *Contextualizing Israeli Concerns about the Iran Nuclear Deal*, WASH. INST. FOR NEAR E. POL'Y (2015), https://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyNote26_Herzog.pdf (" . . . Israel views Iran as its most serious and direct strategic threat. Specifically, Israel considers Iran a regional power that expresses its revolutionary ideology—an ideology that negates Israel's right to exist—in both nuclear and hegemonic ambitions.").

9. *Cf. supra* notes 5-8 and accompanying text (sampling banal positions "for" and "against" the JCPOA, in the absence of their functionalist meaning or usefulness).

investors, particularly US investors, now theoretically posed to begin operations in the Islamic Republic of Iran.

Reduced to its simplest, the term "investment" can be defined as "the commitment of resources by a physical or legal person to a specific purpose in order to earn a profit or to gain a return."[10] Thus, the primary interests of investors may be defined as those factors that contribute toward their desire to enrich themselves, financially and otherwise.[11] Yet, as the historical investment experience in Iran itself demonstrates, there are (or should be) subtler nuances inherent in the calculi that drive international investor behavior.[12] While even among the international business community investors are not the only players that will be influenced by the JCPOA, by its very nature investment implies a set of increased stakes and long-term commitments that will heighten the intensity of investor interaction with the JCPOA.[13] As such, the emerging legal and economic horizons in Iran pose a lightly trodden territory, within which to explore challenges and insights related to international investment law generally.[14] Key among these is not only the obvious tensions between investors and host States, but also the complex relationship

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10. JESWALD W. SALACUSE, THE THREE LAWS OF INTERNATIONAL INVESTMENT: NATIONAL, CONTRACTUAL, AND INTERNATIONAL FRAMEWORKS FOR FOREIGN CAPITAL 3 (2013).

11. *See id.*

12. Specifically, the returns generated by investors in pre-revolutionary Iran mattered little in the face of eventual government expropriation following 1979. *See generally* Sebastian Lopez Escarcena, *Expropriations and Other Measures Affecting Property Rights in the Case Law of the Iran-United States Claims Tribunal*, 31 WIS. INT'L L. J. 177 (2013) (overviewing expropriation resulting from Iran's 1979 revolution). Indeed, Iran's larger economic backdrop prior to the revolution helped facilitate the fall of the investment-friendly Pahlavi regime. *See* Suzanne Maloney, *The Revolutionary Economy*, *in* THE IRAN PRIMER: POWER, POLITICS, AND U.S. POLICY 95 (Robin Wright ed., 2010) ("The Pahlavi economic program generated rapid growth, but the reforms also alienated influential constituencies, including the clergy, landlords and merchants or bazaaris . . . Economic grievances helped galvanize opposition to the monarchy, and revolutionary leaders such as Ayatollah Ruhollah Khomeini appealed to Iran's poor and its increasingly squeezed middle class."); Stephen McGlinchey, *How the Shah Entangled America*, NAT'L INTEREST (Aug. 2, 2013), http://nationalinterest.org/commentary/how-the-shah-entangled-america-8821(" . . . the disproportionate extent of the military investment in the Shah's regime is partially responsible for the tide of anti-American sentiment that endures in Iran to this day.").

13. *See* SALACUSE, *supra* note 10, at 23 (contrasting the differing stakes between international investment and international trade); Raymond Vernon, *International Investment and International Trade in the Product Cycle*, 80 Q. J. ECON. 190, 196-207 (1966) (theorizing the decision-making process that encourages international investors to "take the risks of pioneering with production in a new area").

14. *See infra* notes 1118-28 and accompanying text.

between investors and their own home States.[15] In the case of Iran, the United States has an interest in the way international investors conduct their operations following the relaxation of sanctions.[16]

The JCPOA will be the primary framework within which all parties operate going forward.[17] Probably the most monumental foreign policy achievement of the Obama presidency, the JCPOA is also likely to retain ongoing political support throughout the foreseeable future, at least among most US Democrats.[18] The question then becomes how the United States might use the deal, and international investment, as a means of furthering US foreign policy interests within both Iran and the wider Middle East region.[19] From nuclear non-proliferation to counterterrorism, human rights to reform and/or regime change within the Islamic Republic, the JCPOA elevates international investors to a position of heightened influence over various longstanding US foreign policy goals.[20]

Although the Obama Administration has responded to this development by limiting the new freedoms that would otherwise be provided to US investors under the JCPOA, a wiser foreign policy strategy would be to channel the powerful incentives born of international investment as a means of furthering US-Iran relations

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15. *See generally* SALACUSE, *supra* note 10, at 18-19 (articulating host country interests in international investment), 22-23 (considering home country interests); *see also* Robert E. Lipsey, *Home- and Host-Country Effects of Foreign Direct Investment*, *in* CHALLENGES TO GLOBALIZATION: ANALYZING THE ECONOMICS 333-72 (Robert E. Baldwin & L. Alan Winters eds., 2004) (surveying the effects of international investment on home and host states).

16. *See generally infra* Part III.D (considering an array of US foreign policy interests as they relate to post-sanctions Iran).

17. *See* Sunny Mann et al., *Iran: Overview and Significance of the Joint Comprehensive Plan of Action*, GLOBAL COMPLIANCE NEWS (Apr. 9, 2015), http://globalcompliancenews.com/iran-overview-and-significance-of-the-joint-comprehensive-plan-of-action-20150409/; John B. Bellinger III & Zachary Laub, *How Binding Is the Iran Deal?*, COUNCIL ON FOREIGN RELATIONS (July 23, 2015), http://www.cfr.org/iran/binding-iran-deal/p36828 (discussing Congress' review of JCPOA); *see also infra* Part II.A.

18. *Cf.* Tal Kopan, *Senate Democrats Deliver Obama's Iran Nuclear Deal Support*, CNN (Sept. 8, 2015), http://www.cnn.com/2015/09/08/politics/iran-nuclear-deal-richard-blumenthal-ron-wyden-gary-peters-obama-democrats/; Jennifer Steinhauer, *Democrats Hand Victory to Obama on Iran Nuclear Deal*, N.Y. TIMES, Sept. 10, 2015, http://www.nytimes.com/2015/09/11/us/politics/iran-nuclear-deal-senate.html.

19. *See infra* Part III.D (illustrating how increased foreign investment in Iran could be used to secure various US foreign policy interests).

20. *See infra* Part III.D.

and wider regional US policy goals.[21] In doing so, the United States would have a strong partner in the international investment community, and vice versa.[22] If the United States believes that the "new chapter" in Iran's global relations evoked by President Rouhani is a development it would like to see in the world, then international investment will play a key role in securing this change.[23] By liberalizing Washington's JCPOA guidance to the fullest extent possible, the United States should seek to encourage US participation in international investment in Iran, and play an active role in shaping the interests and incentives that investment creates there.[24]

Structurally, this Note is comprised of three movements. Part I traces the evolution of the sanctions regime, shedding light on the historical experiences that will shape Iran's future behavior as a host State, as well as the consequences of past US sanctions policies. Part II looks to Iran's post-sanctions transition, emphasizing what the JCPOA means for US investors, contrasted with international investors more broadly. Furthermore, by looking to the opportunities, risks, and legal frameworks concerning international investment in Iran, Part II also demonstrates Iran's current capacity for foreign investment, and why dramatic capital inflows are likely to return to Iran whether the United States likes it or not. Finally, Part III turns to US foreign policy interests, and how these interests would be best served by revising Washington's policies in a manner that allows broad economic engagement and greater US investment in Iran. By taking a proactive role in facilitating the way that US investment reaches Iran, the United States holds the potential to inspire important innovations within international investment law as a whole.

I. IRAN UNDER THE SANCTIONS REGIME

In order to understand the significance of the JCPOA and what it will mean for international investors, a larger understanding of Iran's

21. *See infra* Part II.A.2 (analyzing remaining limitations on US investment in Iran); *infra* Part III.D (demonstrating the potential positive impacts investment-based engagement on an array of US foreign policy goals).

22. *See infra* Part III.

23. Rouhani Statement at the General Assembly, *supra* note 2. *See generally infra* Part III.

24. *See generally infra* Part III. Throughout this Note, national capitals will be interchangeably used—via synecdoche—to stand in for their respective States and/or governments. Thus, one should read "Washington" here as referring to policymakers within the US Government.

history, as well as that of the sanctions regime, is required. By then looking to the costs of the sanctions regime—both on Iran and other stake-holding parties—one can finally appreciate the profundity of Iran's post-sanctions transition. For both US investors and US policymakers, the history of the sanctions regime provides numerous political and economic insights concerning the future of both Tehran and Washington going forward. The focus of this Part is to provide that contextual background.

A. Background & Historical Overview

The United States and Iran share a contentious relationship.[25] While this has not always been the case, the Islamic Republic has held a great deal of negative US foreign policy attention since the Islamic Revolution of 1979.[26] Throughout this era, US-drafted international trade and investment sanctions have played the central role in guiding how the United States deals with Iran.[27] While sanctions as a distinct tool of foreign policy have existed at least since the ancient Greek city-states, the US sanctions strategy toward Iran has, since its inception, fallen under a two-track strategy, which sought to influence Iranian behavior by imposing economic pressure and simultaneously extending incentives for certain Iranian concessions.[28] The utility of these sanctions as a tool of US foreign

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25. *See generally* JAMES G. BLIGHT ET AL., BECOMING ENEMIES: US-IRAN RELATIONS AND THE IRAN-IRAQ WAR, 1979-1988 (2012) (tracing the evolution of US-Iran relations throughout the Cold War); KENNETH M. POLLACK, THE PERSIAN PUZZLE: THE CONFLICT BETWEEN IRAN AND AMERICA (2005) (recalling the antagonistic history of the United States and Iran).

26. *See* McGlinchey, *supra* note 12 (outlining US-Iran relations before 1979); JOHN J. MEARSHEIMER & STEPHEN M. WALT, THE ISRAEL LOBBY AND U.S. FOREIGN POLICY 280-82 (2007) (introducing the "adversarial relationship" between Washington and Tehran since 1979). Throughout this Note, the "Islamic Revolution," the "Iranian Revolution," or simply the "Revolution" are all used interchangeably to refer to the Iranian political upheaval of 1979.

27. *See* Raj Bhala, *Fighting Iran with Trade Sanctions*, 31 ARIZ. J. INT'L & COMP. L. 251, 256 (2014) ("Simply put, for nearly forty years, America has had a sanctions-based trade policy toward Iran."); Patrick Clawson, *U.S. Sanctions*, *in* THE IRAN PRIMER, *supra* note 12, at 115 ("The United States has had sanctions on Iran for most of the period since the 1979 Islamic revolution. . . .").

28. Thucydides' description of the Megarian decrees represents trade sanctions that directly contributed to the Peloponnesian War. THUCYDIDES, THE PELOPONNESIAN WAR 68 (Martin Hammond trans., 2009) ("Above all, and in the clearest possible terms, they repeated that there would be no war if the Athenians repealed the decree which had denied the Megarians access to the ports in the Athenian empire and to the Athenian market itself."); *see also* Farshad Ghodoosi, *Combatting Economic Sanctions: Investment Disputes in Times of Political Hostility, a Case Study of Iran*, 37 FORDHAM INT'L L.J. 1731, 1765 (2014)

policy has been widely debated.[29] However one categorizes it, the JCPOA represents a landmark shift in how the United States deals with Iran.[30] By moving away from almost forty years of near-continuous sanctions policies, the JCPOA represents the end of an era.[31] The following Sections will examine this time period, and trace the history of US-Iran relations up to the lifting of sanctions.[32]

("International sanctions are a reality in international affairs and can be traced back to ancient Greece."). For the logic behind US-Iran sanctions, *see* SUZANNE MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION 429 (2015) (articulating Washington's two-track strategy); *see also* Suzanne Maloney & Ray Takeyh, *The Self-Limiting Success of Iran Sanctions*, INT'L AFF. (Nov. 2011), http://www.brookings.edu/research/articles/2011/11/iran-sanctions-maloney-takeyh (further defining Washington's two-track sanctions logic).

29. *See* Nicholas Colby Watson Wolfe, *Nuclear Chain Reaction: Why Economic Sanctions Are Not Worth the Public Costs*, 27 FLA. J. INT'L L. 1, 2 (2015) (questioning the efficacy of Washington's sanctions regime); Clawson, *supra* note 27, at 115 ("U.S. sanctions have been controversial on many scores, with vigorous debates about their impact and their negative side effects."). Many argue that decades of US economic coercion continuously undermined sympathetic parties within Iran and further radicalized the Islamic Republic away from international cooperation. *See, e.g.*, Steve H. Hanke, *On the Failure of the Iranian Sanctions*, GLOBE ASIA (Feb. 2013), http://www.cato.org/publications/commentary/failure-iranian-sanctions ("[The sanctions regime] has ultimately failed to deter the Iranian regime from developing nuclear capacity. Instead, it has generated a great deal of resentment."); *see also* Wolfe, *supra*, at 19 (claiming that US sanctions emboldened Iran's "ultra-conservative factions"). In contrast, supporters of the sanctions regime cite its importance as a nonviolent policy tool in combating, or at least constraining, problematic Iranian policies. *See, e.g.*, Suzanne Maloney, *Why "Iran Style" Sanctions Worked Against Tehran (and Why They Might Not Succeed with Moscow)*, BROOKINGS (Mar. 21, 2014), http://www.brookings.edu/blogs/markaz/posts/2014/03/21-iran-sanctions-russia-crimea-nuclear [hereinafter *Why "Iran Style" Sanctions Worked Against Tehran*] ("Now that Iran has become the exemplar of successful sanctions, the long experience in deploying economic pressure against the Islamic Republic offers a wealth of lessons for those seeking to apply this model elsewhere."); *see also* Wolfe, *supra*, at 2-3 (asserting that US sanctions are often misattributed to Iran's cooperation on negotiating the JCPOA). Paradoxically, the JCPOA itself has been cited as supporting both sides. *Compare* Jeffrey Goldberg, *White House Official: Nuclear Deal is Best Way to Avoid War with Iran*, ATLANTIC (Mar. 4, 2015), http://www.theatlantic.com/international/archive/2015/03/white-house-official-nuclear-deal-is-best-way-to-avoid-war-with-iran/386806/ (arguing that the JCPOA is the best way to avoid war with Iran), *with* Leslie H. Gelb, *The Real Reason Obama Did the Iran Deal*, DAILY BEAST (July 14, 2015), http://www.thedailybeast.com/articles/2015/07/14/the-iran-deal-s-missing-ingredient.html ("no nation, including those far weaker economically than Iran, has ever capitulated after economic sanctions.").

30. *Compare infra* Parts I.A.1-4, *with* Part I.A.5.

31. *See supra* note 27 and accompanying text.

32. *See infra* Parts I.A.1-5.

1. Pre-Revolutionary Iran

Various contemporary trends within the investment climate of Iran trace their roots to the period before the Islamic Republic, when Persia was still ruled by the Pahlavi dynasty.[33] This era set many investment precedents, as well as popular Iranian attitudes concerning both the United States and foreign investment that remain largely unchanged today.[34] The unique interplay between US investment and Iran as it developed over the twentieth century traces back to the very beginning of US-Iran relations, which essentially began with an investment dispute: Iranian Prime Minister Mohammad Mossadegh's nationalization of the Anglo-Iranian Oil Company ("AIOC") in 1951.[35] Initially, Persia's brief experiment with democracy under Mossadegh was of little concern to the United States, and Britain's monopoly on the post-war Iranian oil market gave Washington little reason to care about nationalization.[36] However, as Britain and Persia's relationship deteriorated over the nationalization of the AIOC, economic turmoil and popular unrest sparked US fears that Iran would fall into the global communist camp and become a Soviet protectorate.[37] These fears led to Washington's intervention in Iran,

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33. *See infra* notes 34-47 and accompanying text.

34. *See* McGlinchey, *supra* note 12 (explicating the enduring legacy of Washington's pre-revolutionary policies in Iran); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 53 (observing the impact of Western intervention on Iran's future attitude regarding foreign oil concessions).

35. *See* Ghodoosi, *supra* note 28, at 1735-39 (summarizing Mossadegh's nationalization of the AIOC); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 46-53 (recounting the Mossadegh affair). Although physical US presence in Iran extends back to military operations in World War II, it was not until after the War, during a period of British imperial decline and budding global Cold War tensions, that Washington took a direct interest in the affairs of the country. *See id.* at 42 (mentioning the US and British military intervention in Iran during World War II); *id.* at 49 (noting the diversion of Britain's mercantile interests in Iran and US fears of Soviet expansionism); *see also* IRENE L. GENDZIER, NOTES FROM THE MINEFIELD: UNITED STATES INTERVENTION IN LEBANON AND THE MIDDLE EAST 1945-1958, 34-35 (2006) (highlighting budding Anglo-American tensions as Britain's colonial hegemony began to unravel).

36. Indeed, US firms actually benefited in the immediate wake of Mossadegh's nationalization policy. *See* GENDZIER, *supra* note 35, at 35 ("Not only did the State Department disagree with British rejectionism, but U.S. international oil interests were among the beneficiaries of the concessionary arrangements that followed nationalization."); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 49 ("Even late in the crisis, President Eisenhower pressed the British to accept Iranian terms and briefly contemplated reviving direct assistance to a beleaguered Tehran.").

37. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 52 (explaining the growing US fears that brought Washington onboard Britain's interventionist policy); *A Short Account of 1953 Coup*, IRAN CHAMBER SOCIETY,

ousting the Prime Minister in the jointly orchestrated British-US coup remembered today as Operation Ajax.[38] In Mossadegh's place, Washington and London imposed the young Shah Mohammad Reza Pahlavi as an autocrat, who would go on to rule the country until 1979.[39]

Having placed Shah Pahlavi on the throne, Washington committed itself to ongoing patronage of the young monarch in the form of investment and support for the Shah's State-centered development policies.[40] Although much of the Iranian economy remained locked up in centrally planned development strategies throughout the Shah's tenure, US investors found a welcome destination for their capital in pre-Revolutionary Iran.[41] By 1978, US investment in Iran stood at approximately US$700 million, with 50,000 US expatriates living there.[42] Within the energy sector, US oil companies owned 40 percent of the consortium that purchased Iranian oil.[43] The surge in global oil prices after the Arab Oil Embargo in

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http://www.iranchamber.com/history/coup53/coup53p1.php (last visited Apr. 9, 2016) (portraying the US view that only an "economically sound and financially solvent" Iran would be able to fend off Soviet expansion).

38. *See A Short Account of 1953 Coup*, *supra* note 37; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 52-53 (summarizing the Anglo-American coup that ousted Mossadegh).

39. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 52-53; GENDZIER, *supra* note 35, at 35 (noting the reinstating of the Pahlavi dynasty under the new shah).

40. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 52-53; McGlinchey, *supra* note 12 (addressing Washington's economic and military support for the Shah's modernization programs). In terms of investment, The Iranian Majles (parliament) adopted the Law for the Attraction and Protection of Foreign Investment in 1955, the same year that Iran and the United States formally signed a Friendship, Commerce, and Navigation ("FCN") treaty. *See* Ghodoosi, *supra* note 28, at 1744 (identifying the Law for the Attraction and Protection of Foreign Investment); *id*. at 1757 (examining the Iran-US FCN); *see also* Law of the Attraction and Protection of Foreign Investment of 1955 (Iran), https://track.unodc.org/LegalLibrary/LegalResources/Iran/Laws/Law%20of%20the%20Attraction%20and%20Protection%20of%20Foreign%20Investment%20(1956).pdf; Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, Aug. 15, 1955, 284 U.N.T.S. 93, http://www.parstimes.com/law/iran_us_treaty.html.

41. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 53-54 (discussing the growing role of international oil consortiums by the 1960s); MELANI CAMMETT ET AL., A POLITICAL ECONOMY OF THE MIDDLE EAST 251 (4th ed., 2015) (reviewing Iran's economy under the Shah).

42. *See* Kate Gillespie, *US Corporations and Iran at the Hague*, 44 MIDDLE EAST J. 18, 19 (1990).

43. *Id*. at 19; Khosrow Fatemi, *The Iranian Revolution: Its Impact on Economic Relations with the United States*, 12 INT'L J. MIDDLE EAST STUD. 303, 303-04 (1980) (highlighting US participation in Iran's pre-revolutionary economy).

1973 brought unprecedented revenues to the Pahlavi regime, with lucrative investor profits being made in the process.[44] A second prong of Washington's patronage involved massive military aid to Iran, in hopes of creating a strong regional ally committed to the fight against communism.[45] In the wider region, intelligence sharing and military cooperation between Iran, Turkey, and Israel—what became known as the Trident Alliance—also had major US backing, committed to the fight against both communism and Arab nationalist movements.[46] Ironically, during this period, the United States also played a direct role in facilitating the birth of Iran's nuclear development program.[47]

2. The Islamic Revolution & Regional Turmoil

Decades of US-Iranian cooperation came to an abrupt end following the Islamic Revolution of 1979.[48] While foreign investors and Iran's political elite had made a fortune during the Pahlavi years, this wealth was widely perceived as occurring at the expense of the

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44. *See* CAMMETT ET AL., *supra* note 41, at 251 ("With the first great surge in petroleum prices in 1973, the shah's state had at its disposal a tremendous volume of rents."); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 66 (restating Iran's embargo era opportunism); *id*. at 70 ("Culturally and financially jarring foreign enclaves expanded like sponges, soaking up vast sums for the salaries of skilled workers fro outside Iran.").

45. By 1977, US military sales to Iran were approximately US$6 billion annually. *See* Gillespie, *supra* note 42, at 19; McGlinchey, *supra* note 12 (considering US military aid to the Pahlavi regime). The United States also played a leading role in the development the Shah's brutal intelligence agency, *Sazeman-i Ettelaat va Amniyat-i Keshvar* ("SAVAK"), or the National Organization for Intelligence and Security. Used both to fight communism and intimidate Iranian citizens out of voicing dissent, SAVAK became a notoriously feared and hated source of domestic Iranian oppression. *See Ministry of Security SAVAK*, GLOBALSECURITY, http://www.globalsecurity.org/intell/world/iran/savak.htm (last visited Apr. 9, 2016) [hereinafter *Ministry of Security SAVAK*] (providing an overview of SAVAK); *see also* ROBERT FISK, THE GREAT WAR FOR CIVILISATION: THE CONQUEST OF THE MIDDLE EAST 99 (2005) (illustrating SAVAK's brutality).

46. *See* Yossi Alpher, *Trident's Forgotten Legacy: When Iran, Israel, and Turkey Worked Together,* FOREIGN AFF. (May 7, 2015), https://www.foreignaffairs.com/articles/turkey/2015-05-07/trident-s-forgotten-legacy (outlining the Trident Alliance); *see also* FISK, *supra* note 45, at 100 (acknowledging wide Iranian-Israeli cooperation before the revolution).

47. *See* Alexandra L. Anderson, *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*, 34 NW. J. INT'L L. & BUS. 125, 130 (2013) [hereinafter Anderson, *Good Grief!*]; *see also* Michael Adler, *Iran and the IAEA*, *in* THE IRAN PRIMER, *supra* note 12, at 89.

48. *See infra* notes 76-78 and accompanying text (noting the reversal in US-Iran relations following the storming of the US Embassy in November, 1979).

Iranian people.[49] The Shah's form of State capitalism had troubling effects on Iran's traditional merchant class.[50] While the national coffers enriched, the Bezaari—Iran's traditional merchant class—remained confined to their small-scale operations, upsetting their traditional balance of economic power.[51] Furthermore, State revenues were diverted to the exact foreign powers responsible for engineering the overthrow of Mossadegh and reversing the people's 1950s nationalization efforts.[52] Additionally, SAVAK's increasingly brutal surveillance and intimidation techniques infringed on the rights of all Iranians: especially students, leftists, and those advocating for increased political freedoms.[53] The regular torture and disappearances of Iranian citizens were unpopular among the citizens of Iran, and these sentiments were left unconsoled as the Pahlavi elite held decadent parties and lavish international galas.[54]

Along with economic modernization policies, the Shah's social development platform included initiatives antagonistic of the religious and cultural practices of ordinary Iranians.[55] By imposing Western

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49. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 75 (presenting the "conviction among key political constituencies that the government had betrayed the nation, squandered its resources, and subjugated the population to foreign interests."); *see also* CAMMETT ET AL., *supra* note 41, at 251 (noting the absence of the Iranian private sector from the state's economic advances).

50. *See* CAMMETT ET AL., *supra* note 41; *see also* Kevan Harris, *The Bazaar*, *in* THE IRAN PRIMER, *supra* note 12, at 109 (explaining Bazaari—Iran's traditional merchant class—disenfranchisement under the Shah).

51. *See* Harris, *The Bazaar*, *supra* note 50; *see also* FISK, *supra* note 45, at 110 (asserting the role of the middle class in Iran's revolution); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 62 ("The expansion of state banks and their generous provision of credit to the nascent private sector effectively muscled out two of the most important historical functions of the *bazaar*.").

52. *See* FISK, *supra* note 45, at 98 (following Operation Ajax, "[t]he Shah would henceforth always be seen as a tool of the United States and Britain."); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 81 ("In [Khomeini's] telling, the blame for Iran's poverty and oppression fell at the feet of Washington and its allies."); *id*. at 82 ("This depiction of a foreign conspiracy centered on the exploitation of Iran's resources, both human and natural, in a way that echoed the Mosaddeq era debates and appealed to the leftist and nationalist elements of the revolutionary coalition.").

53. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 54 (positing SAVAK's role in enforcing loyalty to the regime); FISK, *supra* note 45, at 99 (recounting SAVAK's terrorizing methodologies).

54. *See* FISK*, supra* note 45, at 100-01 (contrasting the Shah's lavish lifestyle with the oppression faced by ordinary Iranians); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 73-75 (presenting an extended look at the regime's decadence).

55. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 70; FISK, *supra* note 45, at 100 (observing the cultural and religious alienation of the

values on his subjects and marginalizing the nation's traditional social bases, the Shah drew open criticism from Iran's Ulema—its religious clerical class—which retained significant popular power through even the most repressive years of the autocracy.[56] In this light, the explosion of State revenues following the 1973 oil crisis actually undermined the Pahlavi regime.[57] With increased resources to fuel these unpopular modernization policies, the Shah expedited his own demise.[58]

To call the 1979 Revolution in Iran an "Islamic Revolution" is somewhat of a historical misnomer.[59] However, the Revolution's various non-Islamist movements had been gutted internally by decades of political repression and SAVAK's operations.[60] The Ulema, by contrast, was both organized and well resourced, and had earned a longstanding popular authority for its history of calling out

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Iranian population); *see also* CAMMETT ET AL., *supra* note 41, at 73-74 (" . . . one could argue that the downfall of the shah in Iran in 1979 and the proclamation of the Islamic republic came as the result of rapid and profound social change in Iran in the 1960s and 1970s").

56. *See* FISK, *supra* note 45, at 100 (citing social alienation as a result of the Shah's reform efforts); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 85-86 (emphasizing the religious establishment's retained authority in the face of state autocracy).

57. *See infra* note 58 and accompanying text.

58. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 69; CAMMETT ET AL., *supra* note 41, at 251 (linking increased oil revenue with the disastrous policies that ultimately mobilized the public against the Shah).

59. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 75-84 (distinguishing the ideological diversity of the Shah's opposition); *see also* CAMMETT ET AL., *supra* note 41, at 312 ("At the time of the revolution, the opposition to the shah seems to have been as widespread as Polish opposition to Communist rule . . . the initial coalition led by Khomeini was very broad indeed."). In reality the events that began with student demonstrations in 1977 and evolved into the eviction of the Pahlavi dynasty in 1979 were both populist and representative of a wide spectrum of political ideologies. *See id.*; *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 73-94 (portraying an overview of the revolution). In particular, Iran's Marxists and communists played an important role in bringing down the regime. *See id.* at 76 (identifying the importance of the Marxist Sharikha-ye Fedayin-e Khalq and Mojahedin-e Khalq movements); Dr. Zayar, *The Iranian Revolution: Past, Present and Future, Chapter Three: The Communist Party of Iran*, IN DEFENSE OF MARXISM (July 9, 2006), http://www.marxist.com/the-iranian-revolution-past-present-future/page-5.htm (providing a wider synopsis of Marxism's contribution to the revolution).

60. SAVAK's raison d'être, at least in the eyes of its benefactors in Washington, was always the fight against communism. *See* FISK, *supra* note 45, at 99; *Ministry of Security SAVAK*, *supra* note 45. While guerilla groups like Sharikha-ye Fedayin-e Khalq and Mojahedin-e Khalq were important, Iran's larger and traditional communist Tudeh Party had been largely "incapacitated and sidelined by the 1970s." MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 75.

the Pahlavi government.[61] Thus, while the Revolution was comprised of diverse, often antithetical ideologies, it coalesced around the charismatic leadership of Ayatollah Ruhollah Khomeini.[62] This placed Khomeini and the Ulema in a unique, powerful position after the Shah fled Iran and escaped to the United States.[63] Only after the Iranian Constitution formally adopted the structure of an Islamic Republic did the theocratic aims of the Ulema become undeniable.[64]

For Washington's part, the ousting of the Shah was not in itself a game-changer.[65] Recognizing the strategic importance of Iran, the United States initially hoped that it could retain influence with the Islamic Republic.[66] Such hopes were reinforced by the fact that the Iranian Revolution had not been a full social or economic revolution of the Bolshevik type.[67] State expropriations had not yet occurred and many US investors adopted a wait-and-see attitude.[68] That said, even before expropriations began, the international investment community in Iran faced significant disruptions to its operations, stemming from

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61. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 85-86. *See generally* Nikki R. Keddie, *The Roots of the Ulama's Power in Modern Iran*, 29 STUDIA ISLAMICA 31 (1969) (providing a pre-revolutionary account of the lasting power of the Ulema—Iran's clerical class—in Iran).

62. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 79-84 (describing Khomeini's politically contrived appeal to broad opposition factions); FISK, *supra* note 45, at 120-21 (characterizing initial revolutionary cooperation between the Ulema and Iran's leftists).

63. *See* FISK, *supra* note 45, at 120-21; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 99-107 (assessing the trends that facilitated Khomeini's consolidation of power). Indeed, some of Khomeini's most formative post-Shah initiatives were to clamp down on the left and eradicate his co-revolutionaries. *See Iran After the Victory of 1979's Revolution*, IRAN CHAMBER SOCIETY (Nov. 29, 2015), http://www.iranchamber.com/history/islamic_revolution/revolution_and_iran_after1979_2.php [hereinafter *Iran After the Victory*]; FISK, *supra* note 45, at 121-22 (showing Khomeini's eventual turning on his co-revolutionaries).

64. *See* QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980]; *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, 129-35 (outlining the drafting processes and consequences of the Islamic Republic's constitution).

65. *See infra* note 66 and accompanying text.

66. *See* Clawson, *supra* note 27, at 115; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 429 n.1 ("Iran's non-oil exports to the U.S. actually increased in the months immediately following the revolution.").

67. *See* CAMMETT ET AL., *supra* note 41, at 113; FISK, *supra* note 45, at 110 (contrasting the Iranian Revolution with other historical revolutionary models).

68. *See* Gillespie, *supra* note 42, at 19 ("The immediate implications of the Iranian Revolution for US corporations operating in Iran were unclear."); *Iran After the Victory*, *supra* note 63 (inferring gradual phases of state expropriation of property).

the popular unrest of 1978 and 1979.[69] Fifteen percent of the five hundred US firms operating in Iran had already shut down, and US banks found themselves exposed to the potential default of US$2.3 billion of previously negotiated loans to Iran.[70] As a result, the US Comptroller of the Currency began appraising Iranian assets held in the United States in order to prepare.[71] Perhaps sensing this financial squeeze, the Islamic Republic enacted its first expropriation on June 8, 1979, nationalizing Iranian banks.[72] This was followed by the June 25 nationalization of the insurance sector, and the first wave of mass nationalization throughout the month of July.[73] The Islamic Republic justified these actions by claiming that "economic stagnation had brought the nation to the brink of disaster and that broader State involvement was necessary."[74] Still, the Islamic Republic made promises to compensate foreign investors sometime in the future, and many investors delayed taking action.[75]

For both US investors and the US government, the equation changed with the storming of the US Embassy on November 4, 1979.[76] The US Embassy seizure and subsequent hostage standoff pressed President Carter to issue Executive Order 12170, which froze over US$12 billion of Iranian government assets under US

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69. *See* Gillespie, *supra* note 42, at 19 ("US corporations had already experienced losses due to the general disruptions of the revolution . . . "); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 91 ("During the monarchy's final eighteen months, labor activism emerged as a major factor . . . with strikes shutting down most major industries for months.").

70. *See* Gillespie, *supra* note 42, at 19-20 (citing US closures and bank exposure); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 101 (" . . . businesses and universities ground to a halt as a result of violence and lack of any real authority.").

71. *See* Gillespie, *supra* note 42, at 20 (noting the OCC's assessment of Iranian assets); Fatemi, *supra* note 43, at 310-11 (pointing out Iran's eventual default on these loans on November 23, 1979).

72. *See* Gillespie, *supra* note 42, at 20; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 117 (mentioning the nationalization of Iranian banks).

73. *See* Gillespie, supra note 42, at 20; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 117-18 (presenting post-revolutionary Iran's first wave of mass expropriations).

74. Gillespie, *supra* note 42, at 20.

75. *See id.* at 20 (noting Iran's promises to compensate and investor inaction). *But see* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 116 (arguing that many foreign firms had already exited).

76. *See* Bhala, *supra* note 27, at 256; Gillespie, *supra* note 42, at 20 (establishing the impact of the Iran hostage crisis).

jurisdiction.[77] By the following April, President Carter had issued the first round of US sanctions targeting Iran.[78] Meanwhile, US investors began a wave of contract breach and expropriation litigation within the US court system.[79] By the end of 1980, US economic pressure and the depletion of spare parts in the Iranian economy (along with the start of the Iran-Iraq War) finally brought Iran to the negotiating table.[80] The Algiers Accords of January 15, 1981 secured the freedom of the United States Embassy hostages in exchange for the release of Iran's frozen assets and the lifting of Carter-era US sanctions.[81] Additionally, the Algiers Accords facilitated the creation of the Iran-United States Claims Tribunal ("IUSCT"), set up to sort out investment disputes resulting from Iran's revolution.[82]

Following the Algiers Accords, the United States retained a sizeable amount of trade with Iran.[83] Still, this was not enough to prevent a devastating post-Revolution decline in the Iranian economy,

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77. *See* Exec. Order No. 12,170, 44 Fed. Reg. 65,729 (Nov. 14, 1979); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 126-27 (addressing the US response to the hostage crisis).

78. *See* Gillespie, *supra* note 42, at 20-21; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 429-32 (explaining the first round of US economic measures).

79. *See*, *e.g.*, Dames & Moore v. Regan, 453 U.S. 654, 660-69 (1981) (offering an example of a domestic US claim against Iran that was later usurped by the Algiers Accords); *see also* Gillespie, *supra* note 42, at 21 (highlighting the wave of US litigation preceding the Algiers Accords).

80. *See* Gillespie, *supra* note 42, at 21; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 433 (analyzing Iran's cooperation in Algiers).

81. *See* Gillespie, *supra* note 42, at 21-22; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 438 (introducing the Algiers Accords).

82. *See* Gillespie, *supra* note 42, at 22; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 438 (presenting the Iran-United States Claims Tribunal ("IUSCT")). While the IUSCT has often been criticized for its excruciatingly slow proceedings, the Tribunal's successes have left a significant mark on international investment law. *See* John J. Chung, *The United Nations Compensation Commission and the Balancing of Rights Between Individual Claimants and the Government of Iraq*, 10 UCLA J. INT'L L. & FOREIGN AFF. 141, 173-75 (2005) (critiquing the slow methodologies of the IUSCT); *see also* Ghodoosi, *supra* note 28, at 1739 (noting the influence of the IUSCT on other arbitration mechanisms). The IUSCT has influenced the arbitral proceedings of the International Centre for Settlement of Investment Disputes ("ICSID"), and by the 1990s, the experience of the IUSCT led many US investors to consider bringing their investments back to Iran. *See id.*; *see also* Gillespie, *supra* note 42, at 35-36 (rationalizing US investors' renewed interest in Iran, following the IUSCT).

83. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 439 (pointing out Iran's US wheat imports following the release of the Embassy hostages); *see also* Clawson, *supra* note 27, at 115 (mentioning the end of trade restrictions upon the release of the hostages).

which had been hit hard by stagflation, economic mismanagement, and the regime's injuries to international investor confidence.[84] From September 1980, Iran was also forced to cope with the Iran-Iraq War: a bloody existential war for both States that resulted in more than a million deaths, over 100 thousand civilian casualties, and the longest conventional war of the twentieth-century.[85] Few governments had more cause for alarm over Iran's 1979 Revolution than Saddam Hussein's Ba'athist regime in Iraq.[86] Hussein's Sunni dictatorship over Iraq's majority Shi'ite population made his government especially vulnerable to Iranian promises to export its Revolution, and with Iran still in the shambles of revolutionary transition, he launched a full-scale invasion of Iran on September 22, 1980.[87]

The Iranian experience under the Iran-Iraq War left a lasting impression on modern Iran—perhaps one more formative than the Islamic Revolution itself.[88] While this existential conflict also inflicted deep social and political consequences, the war's impact on Iran's economy left a lasting mark on the nation's treatment of foreign investment.[89] Iran's wartime economy was marked by internal ideological tensions between socialism and conservatism.[90] The

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84. *See* Kamran M. Dadkhah, *Iran and Global Financial Markets: Foreign Investment vs. Borrowing*, 19 MIDDLE EAST EXECUTIVE REP. 8, 9 (1996); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 118-19, 439 (surveying the economic consequences of Iran's revolution).

85. *See* Ghodoosi, *supra* note 28, at 1744; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 141; Michael Eisenstadt, *Iran and Iraq*, *in* THE IRAN PRIMER, *supra* note 12, at 151 (assessing the magnitude of the Iran-Iraq War).

86. *See* Will D. Swearingen, *Geopolitical Origins of the Iran-Iraq War*, 78 GEOGRAPHICAL REV. 405, 414 (1988); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 141 (citing Iran's promise to export their revolution).

87. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 141; Swearingen, *supra* note 86, at 405-06 (summarizing the start of the Iran-Iraq War).

88. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 142 ("[w]henever the Islamic Republic's obituary is written, the war will stand as its most consequential chapter."); Claudia Wright, *Implications of the Iraq-Iran War*, FOREIGN AFF. (Winter 1980/81), https://www.foreignaffairs.com/articles/iran/1980-12-01/implications-iraq-iran-war (offering an early prediction of the war's long term impact on Middle East stability).

89. *See infra* notes 90-95 and accompanying text.

90. *See* Maloney, *The Revolutionary Economy*, *supra* note 12, at 96; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 157-61 (addressing Iran's wartime economy). While the Revolution had promised to put Iran's petroleum wealth in the hands of the Iranian people, the total devotion of the economy to the war effort also underscored a need for economic pragmatism. *See id.* This pragmatism extended well beyond economics. The Iran-Contra Affair is just one example where tough times mandated some level of cooperation with the "Great Satan" in Washington. *See generally* Robert Busby, *The*

Revolution and subsequent war also had a decimating effect on Iran's national economy.[91] Adding to these complications, US support for Saddam Hussein, as well as direct military confrontation between the United States and Iran in the 1987 Tanker War, evidenced intensifying distrust between Washington and Tehran.[92] The US State Department's recognition of Iran as a State sponsor of terrorism and new US sanctions under President Ronald Reagan also had a "catastrophic impact" on Iran's war effort against Iraq.[93] Yet, in what would foreshadow a future trend throughout the sanctions regime, Washington's traditional allies refused to take part in US economic coercion policies.[94] Even after a particularly tough round of US

Scandal That Almost Destroyed Ronald Reagan, SALON (Feb. 3, 2011), http://www.salon.com/2011/02/04/busby_iran_contra/; Stephen R. Shalom, *The United States and Iran-Iraq War 1980-1988*, IRAN CHAMBER SOCIETY, http://www.iranchamber.com/history/articles/united_states_iran_iraq_war1.php (last visited Apr. 9, 2016) (reviewing the Iran-Contra scandal).

91. *See* Maloney, *The Revolutionary Economy*, *supra* note 12, at 96; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 442 (assessing the impact of the war on Iran's economy). During this period, Iranian industrial goods fell from twenty-eight percent of non-oil exports in 1976 to just 2.2% in 1985. *See id.*; HOOSHANG AMIRAHMADI, REVOLUTION AND ECONOMIC TRANSITION: THE IRANIAN EXPERIENCE 226 (1990) (citing the decline in industrial goods). Likewise, Iran's foreign direct investment ("FDI") stock made a steady decline from US$2.99 billion in 1981 to US$2.04 billion in 1990. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra*, at 442 (stating the fall of Iran's FDI stock); *see also* Maloney, *The Revolutionary Economy*, *supra*, at 96 (discussing wider economic consequences of the Iran-Iraq War).

92. *See* Shane Harris & Matthew M. Aid, *Exclusive: CIA Files Prove America Helped Saddam as He Gassed Iran*, FOREIGN POL'Y (Aug. 26, 2013), http://foreignpolicy.com/2013/08/26/exclusive-cia-files-prove-america-helped-saddam-as-he-gassed-iran/ (examining US support for Iraq); Shalom, *supra* note 90; *see also* James A. Green, *The Oil Platforms Case: An Error in Judgment?*, 9 J. CONFLICT & SECURITY L. 357, 358 (2004); Elaine Sciolino, *From and Sea, Iran-Iraq "Tanker War" Heats Up*, N.Y. TIMES, Sept. 3, 1987, http://www.nytimes.com/1987/09/03/world/from-air-and-sea-iran-iraq-tanker-war-heats-up.html (addressing the Tanker War). At the same time, Iran's ties to regional terrorism, extending back to Imad Munighyeh's 1983 proto-Hezbollah attack on US Marine barracks in Lebanon, shortened Washington's patience with the Islamic Republic. *See generally* Matthew Levitt, *The Origins of Hezbollah*, ATLANTIC (Oct. 23, 2013), http://www.theatlantic.com/international/archive/2013/10/the-origins-of-hezbollah/280809/; *Beirut Marine Barracks Bombing Fast Facts*, CNN (Oct. 19, 2015), http://www.cnn.com/2013/06/13/world/meast/beirut-marine-barracks-bombing-fast-facts/ (detailing the 1983 Marine barracks bombing).

93. MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 431.

94. *See id.* at 433-34; Johannes Reissner, *Europe and Iran*, *in* HONEY AND VINEGAR: INCENTIVES, SANCTIONS, AND FOREIGN POLICY 33, 41 (Richard N. Haass & Meghan L. O'Sullivan eds., 2000) (noting Europe's reluctance to join US sanctions, in particular).

sanctions in 1987, Washington's closest allies were more concerned with facilitating an end to the Iran-Iraq War than joining sanctions.[95]

3. Reconstruction & Reform

The conclusion of the Iran-Iraq war in 1988 marked a radical shift in Iran, both in terms of the nation's politics and its economy.[96] The devastation unleashed by the war fueled pragmatic reconstruction efforts, which increasingly looked to foreign investment to rebuild Iran's crippled economy.[97] The election of Iranian President Akbar Hashemi Rafsanjani in August 1989 unlocked the first phase of what became known as Iran's Reform Era.[98] This first phase, almost entirely concerned with the nation's economic policies, led to numerous economic reforms championed throughout Rafsanjani's two terms.[99] Under his tenure, Iran abandoned the "Islamic economics" marked by the war years, moved toward integration with global economic institutions like the World Bank and the International Monetary Fund ("IMF"), slashed the national deficit, and reduced State interference with imports.[100] Additionally, key

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95. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 445 (identifying reasons that Washington's allies failed to join US sanctions); Reissner, *supra* note 94, at 36 (illustrating German diplomacy with Iran through the war years). Notably, President Reagan's successor, George H. W. Bush, did witness some initial improvements to US-Iran relations. President Bush's extension of "goodwill" to Iran represents one of the few meaningful US attempts at engagement throughout the entirety of the sanctions regime. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 446-47 (examining the policy shift under Bush); Richard N. Haass, *The George H.W. Bush Administration*, *in* THE IRAN PRIMER, *supra* note 12, at 136-37 (addressing the new president's goodwill policies toward Iran). In fact, with civil war raging in nearby Lebanon, this short window of cooperation did yield some breakthroughs, such as the negotiated release of Hezbollah's Western hostages. *See id.* at 137; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 447 (exploring Iran's role in the release of the hostages).

96. *See infra* notes 97-141 and accompanying text.

97. *See* Ghodoosi, *supra* note 28, at 1744; Maloney, *The Revolutionary Economy*, *supra* note 12, at 96; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 386 (characterizing Iran's post-war reconstruction needs).

98. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 192-93 (situating Rafsanjani's reconstruction efforts against wider reformist social and political trends); Shaul Bakhash, *The Six Presidents*, *in* THE IRAN PRIMER, *supra* note 12, at 16-17 (recounting Rafsanjani's presidency).

99. *See* Bakhash, *supra* note 98; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 194-96 (summarizing Rafsanjani's reconstruction efforts throughout his two terms).

100. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 194-96; Daniel Pipes & Patrick Clawson, *Ambitious Iran, Troubled Neighbors*, FOREIGN

changes were made within the Iranian energy sector.[101] The appointment of Bijan Namdar Zangeneh as Iran's Energy Minister facilitated the rise of various capable technocrats within the energy industry, and created an effective bureaucracy to advocate for economic liberalization.[102] These economic shifts led to a twenty percent increase in real per capita Iranian incomes between 1989 and 1992, along with other economic benefits to the Islamic Republic.[103]

Although Rafsanjani's economic pragmatism managed to attract much needed foreign investment from Europe and elsewhere, politically, Iran's resource wealth was still wrapped up in sensitive notions of national sovereignty.[104] Ayatollah Ali Khamenei, who had succeeded Khomeini as Iran's Supreme Leader in 1989, became a constant thorn in the side of Rafsanjani's economic reform efforts.[105] Whatever changes were made within Iran's domestic economy, the country sustained its confrontational foreign policy practices: continuing to support regional Islamic revolutionaries and terrorist movements, complicating the Israeli-Palestinian peace process, and rhetorically antagonizing Sunni neighbors in the Gulf.[106] Additionally, one downside of Rafsanjani's economic platform was that—like other nations affected by the global wave of liberalization in the 1990s—privatization tended to concentrate economic power among those with close ties to the political elite.[107] This trend was manifest in Iran's energy sector, resulting in what became unpopularly known as the

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AFF. (1992), https://www.foreignaffairs.com/articles/turkey/1993-02-01/ambitious-iran-troubled-neighbors (considering Rafsanjani's reform initiatives).

101. *See infra* note 102 and accompanying text.

102. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 194-96, 400; Bakhash, *supra* note 98, at 16 (assessing Rafsanjani's attempts at liberalization).

103. *See* Pipes & Clawson, *supra* note 100, at 2-3; Maloney, *The Revolutionary Economy*, *supra* note 12, at 97 (recalling the economic growth in Iran following liberalization).

104. *See* Maloney, *The Revolutionary Economy*, *supra* note 12, at 97; Ghodoosi, *supra* note 28, at 1734 (noting the rise of foreign investment); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 193 (drawing connections between economic livelihoods and the Islamic Republic's legitimacy).

105. *See* Abbas Milani, *The Green Movement*, *in* THE IRAN PRIMER, *supra* note 12, at 42 (citing Khamenei's succession of Khomeini); *see also* Bakhash, *supra* note 98, at 17; Reissner, *supra* note 94, at 38 (presenting Khamenei's eventual opposition to Rafsanjani's reforms).

106. *See* Bakhash, *supra* note 98, at 17 (noting the continuation of Iran's antagonistic foreign policy initiatives, from a US point of view); Pipes & Clawson, *supra* note 100, at 3-5.

107. *See generally* SALACUSE, *supra* note 10, at 116; Paul Starr, *The Meaning of Privatization*, 6 YALE L. & POL. REV. 6, 34-35 (1988) (highlighting privatization's potential for abuse).

"Oil Mafia:" Rafsanjani elites perceived as privately usurping Iran's national wealth.[108]

President Rafsanjani's economic reforms, while popular among global investors, had not achieved a softening of the Islamic Republic, nor anything close to an advancement of Washington's various regional policy interests.[109] Adding to this, new forces were at work in the United States that would push Washington further from any sort of rapprochement with Tehran.[110] Following the crushing multilateral expulsion of Saddam Hussein's forces from Kuwait in 1990-91, there was a growing belief in some policy circles that Iran remained the greatest threat to US regional interests.[111] Such viewpoints gained strength in the early administration of President Bill Clinton, as proposals began circulating from the American Israel Public Affairs Committee ("AIPAC") advocating for Washington to adopt a comprehensive and concurrent Middle East strategy that exerted simultaneous pressure on both Iraq and Iran.[112] Israeli in origin, President Clinton's "Dual Containment" strategy would go on to govern Washington's dealings with Iran for the next decade, until US forces returned to Iraq to remove the Ba'ath Party from power in 2003.[113]

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108. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 401-04; Fareed Mohamedi, *The Oil and Gas Industry*, *in* THE IRAN PRIMER, *supra* note 12, at 102 (explaining Iran's "oil mafia").

109. *See* Bakhash, *supra* note 98, at 17 (contending that economic reconstruction failed to foster meaningful Iranian foreign policy changes); Pipes & Clawson, *supra* note 100, at 5.

110. *See infra* notes 111-13 and accompanying text.

111. *See* MEARSHEIMER & WALT, *supra* note 26, at 286 (examining the rise of Iran as Washington's primary perceived foreign policy threat); Pipes & Clawson, *supra* note 100, at 2.

112. *See* MEARSHEIMER & WALT, *supra* note 26, at 286-87; Leon T. Hadar, *Pax Americana's Four Pillars of Folly*, 27 J. PALESTINE STUD. 49, 52-53 (1998) (identifying AIPAC's role in the Clinton administration's Iran policies). Dual Containment as a strategy made sense for Israel, which had witnessed great benefits from its two greatest regional rivals being preoccupied with each other throughout the Iran-Iraq War. *See* Tritia Parsi, TREACHEROUS ALLIANCE: THE SECRET DEALINGS OF ISRAEL, IRAN, AND THE UNITED STATES 112 (2008) (addressing Israel's interest in an Iran-Iraq stalemate); Sasan Fayazmanesh, *On the US Policy of Dual Containment of Iran and Iraq*, PAYVAND IRAN NEWS (Mar. 18, 2008), http://www.payvand.com/news/08/mar/1200.html.

113. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 449 (summarizing Dual Containment); *see also* F. Gregory Gause III, *The Illogic of Dual Containment*, FOREIGN AFF. (Mar./Apr. 1994), https://www.foreignaffairs.com/articles/iran/1994-03-01/illogic-dual-containment (detailing the flaws of Dual Containment, including the exact flaw that manifested upon the removal of Saddam Hussein in 2003).

Dual Containment imposed real complications on the United States' international business community.[114] By 1994, partially as a result of Rafsanjani's reform efforts, roughly twenty-five percent of Iran's exports were being purchased by US firms.[115] But that same year, the US State Department intervened in a proposed sale of Boeing 747s to Iran, foreshadowing a new era of US policy on Iran.[116] The economic frustrations of Dual Containment were most severe for the US oil industry, which soon found operations restricted from two of the most oil-rich States in the entire world.[117]

The clash between international investment and Dual Containment is poignantly illustrated in the 1995 Conoco episode.[118] In March of that year, the Iranian energy sector awarded its first US upstream oil deal to the US firm Conoco, in the form of a USD$1 billion contract to develop the Sirri oil fields.[119] Facing outrage from AIPAC and members of Congress, President Clinton signed

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114. *See infra* notes 115-22 and accompanying text.

115. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 450; *Iran's Central Bank Says U.S. Imported $1B in Iran Goods*, DOW JONES NEWS SERVICE (Jan. 12, 1994) (describing US imports of Iranian goods at the time).

116. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 450 (recounting the blocked Boeing sale); James A. Phillips, *Containing Iran*, HERITAGE FOUNDATION (Mar. 19, 1994), http://www.heritage.org/research/reports/1994/03/containing-iran. This deal eventually went to Airbus. *See also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, supra note 28, at 464 ("Washington undermined Iranian efforts to reschedule debts, blocked loans by the World Bank and International Monetary Fund, reversed Japanese plans for a several hundred million dollar aid project in southern Iran, swayed Moscow to restrict its arms sales to defensive weaponry, and otherwise increased the costs and inconveniences to the Iranian economy at a time when Iran was still struggling to recover from the war and the aftereffects of revolutionary turmoil and mismanagement.").

117. In 1997, then-Halliburton CEO Dick Cheney inveighed against the "sanction-happy" US government, noting that "the good Lord didn't see fit to always put oil and gas resources where there are democratic governments." Peter Waldman, *Pipeline Project in Myanmar Puts Cheney in the Spotlight*, WALL STREET J., Oct. 27, 2000, http://www.wsj.com/articles/SB972608941928577211; *see also* Stephen M. Walt, *Accentuate the Positive: Why Undervaluing the Potential Upsides to a Deal with Iran is Just Bad Business*, FOREIGN POL'Y (Jan. 21, 2014), http://foreignpolicy.com/2014/01/21/accentuate-the-positive/ (also quoting Cheney's comments).

118. *See infra* note 119 and accompanying text.

119. *See* MEARSHEIMER & WALT, *supra* note 26, at 288; Clawson, *supra* note 27, at 116; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 452 (recalling the Conoco debacle); *cf.* Charles Breckinridge, Note, *Sanctions First, Ask Questions Later: The Shortsighted Treatment of Iran Under the Iran and Libya Sanctions Act of 1996*, 88 GEO. L. J. 2439, 2444 (2000); *see also* M. McCary, *End Run on Sanctions (A Case Study on Contemporary Energy Investment in Iran)*, 12 FLA. J. INT'L L. 263, 265 (1998) (describing the loss of "lucrative profits").

Executive Order 12957 on March 15, 1995, blocking the Conoco deal and prohibiting US investors from investing in the Iranian oil sector.[120] Two months later, Clinton followed up with Executive Order 12959, sanctioning all investment and exports of goods and services to Iran by US firms and their subsidiaries.[121] In Conoco's place, the French firm Total S.A. was awarded the Iranian contract.[122]

The Clinton executive orders marked the beginning of an increasingly complex, increasingly encompassing sanctions regime.[123] Yet, concerned with the President's discretionary waiver authority under the International Emergency Economic Powers Act ("IEEPA"), upon which the Clinton orders were based, both AIPAC and Congress pushed for a more permanent resolution in the form of the Iran-Libya Sanctions Act ("ILSA"), which passed by unanimous consent in both the House and the Senate in 1996.[124]

Meanwhile, Rafsanjani's Iran continued to strike deals with Europe, often leading to rhetorical flare-ups between Washington and its European allies.[125] Although European enthusiasm for its ongoing "Critical Dialogue" with Iran waned following the 1997 verdict of the Mykonos Trial, it soon picked up again with the Iranian election of

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120. *See* Exec. Order No. 12,957, 60 Fed. Reg. 14,615 (Mar. 17, 1995); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 452 (citing Clinton's signing of Executive Order 12957). For the role of the American Israel Public Affairs Committee ("AIPAC") in this process, *see* MEARSHEIMER & WALT, *supra* note 26, at 288.

121. *See* Exec. Order No. 12,959, 60 Fed. Reg. 24,757 (May 9, 1995); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 452 (explaining Executive Order 12959).

122. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28*,* at 391; Breckinridge, *supra* note 119, at 2444 (noting Total's inheritance of the blocked Conoco deal).

123. *See infra* note 124 and accompanying text.

124. *See* MEARSHEIMER & WALT, *supra* note 26, at 288-89 (explaining the legislative pressures that produced the Iran-Libya Sanctions Act ("ILSA")); *see also* Iran and Lybya Sanctions Act of 1996, *infra* note 236; *infra* notes 236-44 and accompanying text.

125. *See* MEARSHEIMER & WALT, *supra* note 26, at 289; Reissner, *supra* note 94, at 41 (addressing Iran-based tensions between the US and Europe). As just one example, the passing of the ILSA in 1996 caused the EU to prepare a formal World Trade Organization ("WTO") complaint against the United States, which was staved off only via direct US-EU negotiations. *See* KENNETH KATZMAN, CONG. RESEARCH SERV., RS20871, THE IRAN-LIBYA SANCTIONS ACT (ILSA) 3 (2006), http://fpc.state.gov/documents/organization/66441.pdf; ROBERT J. GRAVES, JONES DAY, EXTRATERRITORIAL APPLICATION OF THE USA PATRIOT ACT 13, http://www.jonesday.com/files/News/2df0b605-1cc3-4729-ae61-a0305551bbe5/Presentation/NewsAttachment/742ac421-2ea3-4f3f-b275-a25219eb8eee/Foreign%20Bank%20Compliance%20with%20PATRIOT%20Act.pdf (last visited Apr. 9, 2016).

President Mohammad Khatami later that year.[126] Indeed, this period witnessed approximately fifty Bilateral Trade Agreements ("BITs") between Iran and other States, as well as the passing of the Foreign Investment Promotion and Protection Act ("FIPPA") in the Majles (parliament): the first Iranian investment-based legislation in almost five decades.[127]

President Khatami's tenure represented the second phase and high water mark of Iran's Reform Era.[128] Elected on promises to expand domestic civil and political liberties, his focus shifted national attention from Iran's economy to primarily social issues.[129] This was part of the President's larger pragmatic reform strategy, which sought to mobilize Iranian people-power to change the Islamic Republic, without taking a direct shot at the regime's—or Ayatollah Khamenei's—legitimacy.[130] However, Khatami's exclusive focus on

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126. Critical Dialogue represented Europe's (failed) 1990s strategy of economically engaging Iran. *See infra* Part III.B. For the impact of the Mykonos Trial, see MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 454; Reissner, *supra* note 94, at 34. The trial found Iran directly responsible for the political assassination of dissident Kurds living in Berlin. *See* Roya Hakakian, *Looking Back at the Mykonos Trial: The End of the Dispensable Iranian*, DER SPIEGEL (Apr. 10, 2007), http://www.spiegel.de/international/looking-back-at-the-mykonos-trial-the-end-of-the-dispensable-iranian-a-476369.html; *Murder at Mykonos: Anatomy of a Political Assassination*, IRAN HUM. RIGHTS DOCUMENTATION CTR. (Mar. 2007), http://www.iranhrdc.org/english/publications/reports/3150-murder-at-mykonos-anatomy-of-a-political-assassination.html?p=4 (summarizing the Mykonos assassination).

127. *See* Ardeshir Atai, *Iranian Bilateral Investment Treaties: Substantive Principles and Standards*, 14 J. WORLD INV. & TRADE 397, 398 (2013); Ghodoosi, *supra* note 28, at 1734 (commenting on Iranian treatification during this period); *see also* Ghodoosi, *supra*, at 1744-45 (discussing the Foreign Investment Promotion and Protection Act ("FIPPA")); Foreign Investment Promotion and Protection Act of Mar. 10, 2002.

128. *See* Bakhash, *supra* note 98, at 17-18; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 258 (assessing Khatami's place amongst Iran's Reform Movement).

129. *See* Bakhash, *supra* note 98, at 17; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 258 ("The president's agenda was centered on a campaign that advanced the concepts of moderation, tolerance, accountability, and the supremacy of man-made law."); *see also id.* at 263-66; Maloney, *The Revolutionary Economy*, *supra* note 12, at 97 (indicating Khatami's social, as opposed to economic, reform preferences). Initially, Khatami's efforts met with some success, notably within the areas of freedom of the press and freedom of expression. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra*, at 261; Maloney, *The Revolutionary Economy*, *supra*, at 97 (identifying Khatami's early successes).

130. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 260-62; Ahmad Siddiqi, *Khatami and the Search for Reform in Iran*, 6 STANFORD J. INT'L REL. (Winter 2005), https://web.stanford.edu/group/sjir/6.1.04_siddiqi.html (detailing Khatami's reform strategy).

Iranian social issues posed serious credibility problems, as world oil prices declined and Iran entered an economic recession.[131] Not helping the matter, US sanctions on Iran continued to intensify throughout the late Clinton years.[132]

In spite of these US pressures, the traumatic events of September 11, 2001 inspired increased Iranian outreach toward President George W. Bush, notably centered on common security interests.[133] Indeed, Iran played a major role in the early phases of the subsequent US war in Afghanistan, even conducting joint military operations alongside US Special Forces in the liberation of Herat.[134] Even after Iran was vilified in President Bush's "Axis of Evil" speech on January 29, 2002, President Khatami pushed for normalization with Washington, especially following the quick US overthrow of Saddam Hussein in 2003. [135] Signing onto a Swiss-brokered "Grand Bargain" that would open direct negotiations with Washington on a comprehensive range of topics—from Iran's nuclear program to its support for Hezbollah and Hamas—Khatami was spurned by a hubristic Bush

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131. *See* Maloney, *The Revolutionary Economy*, *supra* note 12, at 97; CAMMETT ET AL., *supra* note 41, at 312 (considering the declining economy during Khatami's presidency).

132. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 457-58 (articulating the intensification of legislative sanctions against Iran); *see also* Iran Nonproliferation Act of 2000, Pub. L. No. 106-178, 114 Stat. 38 (2000).

133. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 459; Stephen J. Hadley, *The George W. Bush Administration*, *in* THE IRAN PRIMER, *supra* note 12, at 142-43 (noting post-9/11 cooperation between the United States and Iran). While not lacking a sectarian dimension, the Iranians had been warning of the threat posed by Sunni Wahhabi extremism since the time of Khomeini, and already Tehran had been playing an active role supporting various elements of the Afghan Northern Alliance in their long civil war against the Taliban government. *See* FISK, *supra* note 45, at 125 (highlighting Khomeini's warnings against Wahhabi extremism); Najat Fawzy Al-Saied, *The War of Ideologies in the Arab World*, GATESTONE INST. (Feb. 25, 2013), http://www.gatestoneinstitute.org/3600/arab-ideologies (juxtaposing Khomeini's views with various Sunni Salafist ideologies); *see also* Barbara Slavin, *Iran Helped Overthrow Taliban, Candidate Says*, USA TODAY (June 9, 2005), http://usatoday30.usatoday.com/news/world/2005-06-09-iran-taliban_x.htm; Hadley, *supra*, at 142-43 (citing Iran's role in ousting the Taliban).

134. *See supra* note 133 and accompanying text (highlighting US-Iran cooperation following 9/11).

135. For the Axis of Evil speech, see President George W. Bush, State of the Union Address (Jan. 29, 2002), http://georgewbush-whitehouse.archives.gov/news/releases/2002/01/print/20020129-11.html. For Bush era efforts at US-Iran normalization, see Hadley, *supra* note 133, at 143 (" . . . the speech did not prevent the subsequent constructive cooperation between the United States and Iran on Afghanistan"); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 308-10 (discussing reconciliation potential under the late Khatami administration).

Administration at the height of its regional military power.[136] As the security situations deteriorated in both Iraq and Afghanistan, US negotiating leverage from there only diminished.[137]

Increasing economic difficulties, the hardening US stance on Iran, and internal political deadlock all contributed to widespread disenchantment with President Khatami's Reform Movement.[138] Blocked at every turn, Khatami's initiatives failed to maintain public support.[139] From ongoing US sanctions to policymaking on behalf of special interests, the United States played a sizeable role in undermining Khatami's reform efforts.[140] In his place, from 2005-13, Washington would be forced to contend with a very different type of Iranian President in former Tehran Mayor Mahmoud Ahmadinejad.[141]

4. The Ahmadinejad Years

United States hostility to Iranian détente efforts helped fuel the radicalization and populist impulses that brought Mahmoud Ahmadinejad to power in 2005.[142] Ahmadinejad's presidential campaign reflected broad populist promises concerning a return to revolutionary economics and breaking up Rafsanjani's surviving Oil

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136. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 460; Ghodoosi, *supra* note 28, at 1769 (considering the Swiss-brokered Grand Bargain); *see also* Meir Javedanfar, *The Grand Bargain with Tehran*, GUARDIAN (Mar. 3, 2009), http://www.theguardian.com/commentisfree/2009/mar/03/iran-nuclear-weapons (noting Vice President Cheney's distaste for dialogue with Iran: "We don't talk to evil.").

137. *See* Ghodoosi, *supra* note 28, at 1769; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 326 (showing Washington's obsolescing bargaining power as the Iraq War devolved into a quagmire).

138. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 262; Bakhash, *supra* note 98, at 18 (extrapolating the popular disenfranchisement under Khatami that empowered his hardliner opponents).

139. *See* Bakhash, *supra* note 98, at 18; Maloney, *The Revolutionary Economy*, *supra* note 12, at 97 (citing the hardliner obstructionism that eroded popular belief in Khatami).

140. For the Israeli lobbying role in blocking US-Iran détente, see MEARSHEIMER & WALT, *supra* note 26, at 282, 286. For the influence of Iran's economy on disenchantment with Khatami, see *The Revolutionary Economy*, *supra* note 12, at 97; *see also* Simon Tisdall, *US Targets "Rogue Nation" Iran*, GUARDIAN (May 10, 2001), http://www.theguardian.com/world/2001/may/10/iran (correctly predicting the danger of US sanctions empowering Iranian hardliners).

141. *See infra* Part I.A.4.

142. *See* Hossein Mousavian, *How to Engage Iran: What Went Wrong Last Time – And How to Fix It*, FOREIGN AFF. (Feb. 9, 2012), https://www.foreignaffairs.com/articles/iran/2012-02-09/how-engage-iran (pointing out the role of US policies on the election of Ahmadinejad); Bakhash, *supra* note 98, at 18 (exploring the populism that fostered Ahmadinejad's election).

Mafia—initiatives popular among the poor and regime hardliners.[143] In both form and substance, Ahmadinejad was the polar opposite of his immediate predecessor.[144] Controversial from the start, one of President Ahmadinejad's first moves was to resume the nation's dormant nuclear program, breaking the UN seals on its uranium enrichment facilities at Isfahan and Natanz in early August of 2005.[145] This move encouraged Washington to apply many of its new post-September 11 expanded executive powers to Iran for the first time, including the antiterrorism provisions under Executive Order 13224.[146] The result was an effective financial innovation that would be used throughout the later sanctions regime: extraterritorially closing the loophole of U-turn transactions, and using the unique global power of the US dollar to force third parties to choose between conducting business with Iran or conducting business with the United States.[147]

143. *See* Mousavian, *How to Engage Iran*, *supra* note 142; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 316; Maloney, *The Revolutionary Economy*, *supra* note 12, at 97 (further assessing Ahmadinejad's populist appeal).

144. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 315 ("Khatami, a genteel and literary cleric who valued dignity, respect, and rule of law, found himself replaced by a provocateur from the security forces, who reveled in political strife."); Bakhash, *supra* note 98, at 18-19 (asserting Ahmadinejad's political style).

145. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 460; Ian Traynor, *EU Warns Iran: No Talks if Nuclear Freeze Ends*, GUARDIAN (Aug. 2, 2005), http://www.theguardian.com/world/2005/aug/03/eu.iran; SaraBeth Egle, *The Learning Curve of Sanctions—Have Three Decades of Sanctions Reform Taught Us Anything?*, 19 CURRENTS: INT'L TRADE L. J. 34, 42 (2011) (examining the restart Iran's nuclear program).

146. Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 461 (explaining Executive Order 13224). Essentially targeting terrorist financial support channels, the Office of Foreign Assets Control ("OFAC") within the US Treasury added Bank-e Saderat and Iran's Quds Force to Executive Order 13224's list of institutions funding terrorism in September 2006. *See* Exec. Order No. 13,224, *supra*; *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra*, at 461 (specifying the impact of OFAC's designations).

147. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 462; Matthew Levitt, *Financial Sanctions*, *in* THE IRAN Primer, *supra* note 12, at 124 [hereinafter Levitt, *Financial Sanctions*] (outlining U-turn transactions, and US efforts to prevent them); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra*, at 462 (acknowledging Washington's success at closing the U-turn transaction loophole). U-turn transactions involve the transfer of funds between two non-US parties, which are nonetheless momentarily serviced by a US financial institution, primarily by the means of correspondent banking. *See* U.S. DEPARTMENT OF THE TREASURY FINANCIAL CRIMES ENFORCEMENT NETWORK, FEASIBILITY OF A CROSS-BORDER ELECTRONIC FUNDS TRANSFER REPORTING SYSTEM UNDER THE BANK SECRECY ACT, 67 (Oct. 2006),

Within Iran, the Ahmadinejad years were marked by gross economic mismanagement and waste.[148] Despite record State revenues from skyrocketing international oil prices, Ahmadinejad proved a spendthrift.[149] He racked up massive budget deficits and depleted key reserve funds set up by his predecessors to provide for future government investment in the oil sector.[150] These policies drew

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https://www.fincen.gov/news_room/rp/files/CBFTFS_Complete.pdf; Steven R. Weisman, *U.S. Puts the Squeeze on Financing in Iran and North Korea*, N.Y. TIMES, Oct. 16, 2006, http://www.nytimes.com/2006/10/16/world/americas/16iht-sanctions.3173938.html?_r=0 ("[s]uch a transaction permits, for example, Iran to sell oil to a German customer, who in turn directs a European bank to deposit dollars obtained from an U.S. bank into an Iranian bank account located in Europe. The phrase 'U-turn' applies because the funds are transferred to a U.S. bank and instantly turned back as dollars to a European bank."). For a closer examination of subsequent loophole closing efforts, see the treatment of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA"), *infra* notes 256-70. In addition to this administrative action, Washington also launched an informal public relations campaign against investment in Iran and shifted toward increased enforcement efforts against sanctions violators. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra*, at 461-62; Adam J. Szubin, Director, Office of Foreign Assets Control, US Department of Treasury, Testimony before the Senate Committee on Banking, Housing, and Urban Affairs (Sept. 12, 2006), https://www.treasury.gov/press-center/press-releases/Pages/hp92.aspx (reviewing Washington's informal efforts against investment in Iran); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra*, at 463 (explaining that Chinese companies faced at least 62 enforcement actions for sanctions violations under the Bush years).

148. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 330; Maloney, *The Revolutionary Economy*, *supra* note 12, at 98 (establishing the economic waste under Ahmadinejad).

149. *See* Afshin Molavi, *Iran and the Gulf States*, *in* THE IRAN PRIMER, *supra* note 12, at 161; CAMMETT ET AL., *supra* note 41, at 313 (citing the explosion of oil prices under Ahmadinejad's tenure); *see also* Maloney, *The Revolutionary Economy*, *supra* note 12, at 98; Hashem Kalantari, *Iran's Unemployment Falls to 10.3 Pct –Minister*, REUTERS (Mar. 31, 2008), http://www.reuters.com/article/iran-unemployment-idINDAH13987520080331 (acknowledging the reckless spending under Ahmadinejad).

150. *See* Interview by Bernard Gwertzman with Farideh Farhi, Adjunct Professor, University of Hawaii (Mar. 18, 2008), http://www.cfr.org/iran/farhi-new-iranian-majlis-critical-ahmadinejad-domestic-issues/p15747 [hereinafter Gwertzman interview with Farhi]; Muhammad Sahimi, *An Administration Plagued by Fraud and Corruption,* FRONTLINE (Mar. 30, 2010), http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2010/03/ahmadinejad-and-his-men-embodiments-of-fraud-and-corruption.html (surveying the economic mismanagement under Ahmadinejad). The raiding of Iran's oil fund for consumption purposes instead of investment became especially problematic as more and more Iranian banks fell under the umbrella of US financial sanctions, thereby lacking access to the foreign exchange needed for capital expenditures within Iran's aging oil fields. *See* Bhala, *supra* note 27, at 295-96; Ida A. Mirzaie, *Government Policy, Inflation, and Exchange Rates in the Era of Sanctions: The Case of Contemporary Iran*, HARV. ECON. REV. (Mar. 27, 2014), http://harvardecon.org/?p=3106 (explaining the impact of sanctions on accessing foreign currency); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 413; Mohamedi, *supra* note 108, at 102 (characterizing Iran's old, capital-intensive oil infrastructure).

sharp criticism from both pragmatists and Ahmadinejad's own conservative camp.[151] To stymie such criticism, and to make good on his campaign promises to break up the Oil Mafia, Ahmadinejad replaced many of the nation's qualified technocrats with his own loyalists and sycophants.[152] Throughout all of these disastrous economic policies, the economic pressures of foreign-imposed international sanctions provided President Ahmadinejad with a convenient scapegoat to mask his own blatant mismanagement.[153]

However, two areas where Ahmadinejad made theoretical improvements to Iran's economy involved efforts aimed at privatization and weaning the nation off crippling food and energy subsidies.[154] While both of these areas were in dire need of internal reform, the specific initiatives pressed by President Ahmadinejad were shaped by his populist, hardliner politics.[155] Past efforts in privatizing Iran's expansive and inefficient State-owned enterprises ("SOEs") failed under Khatami, in the face of accusations of private enrichment.[156] Yet, Ahmadinejad managed to push the New Privatization Act of 2008 through the Majles: a law that promised to cede eighty percent of the share value of particular economic activities to non-State actors by the end of Iran's fourth five-year development plan in 2009-10.[157] Yet, much of the privatization that

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151. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 330; Maloney, *The Revolutionary Economy*, *supra* note 12, at 98; Gwertzman interview with Farhi, *supra* note 150 (pointing out domestic criticism for Ahmadinejad's wasteful policies).

152. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 404; Maloney, *The Revolutionary Economy*, *supra* note 12, at 98; Mohamedi, *supra* note 108, at 100 (specifying Ahmadinejad's preference for loyalists over technocrats).

153. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 366; Breckinridge, *supra* note 119, at 2457 (commenting on the foreign scapegoat provided by US sanctions).

154. *See infra* notes 156-69 and accompanying text.

155. *See infra* notes 156-69 and accompanying text.

156. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 402; Shirzad Azad, *The Politics of Privatization in Iran*, RUBIN CTR. RES. INT'L AFF. (Dec. 5, 2010), http://www.rubincenter.org/2010/12/azad-2010-12-05/ (assessing Khatami's failed efforts at privatization).

157. *See* Ardeshir Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *in* BANKR. L. CLIENT STRATEGIES IN THE MIDDLE EAST AND AFRICA 1, 3 (2011); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 333 (overviewing Ahmadinejad's privatization program). Basically, these targeted economic sectors represented the category of economic activities allowed to the private sector under Article 44 of Iran's Constitution. *See infra* notes 626-30 and accompanying text; *see also* Atai, *supra*, at 3; PRS

occurred under Ahmadinejad transferred SOEs to State-affiliated parties and quasi-State entities via noncompetitive no-bid contracting processes.[158]

Another result of Ahmadinejad's privatization was a dangerous concentration of the State's economy within the Iranian Revolutionary Guard Corps ("IRGC")—the 125,000-member branch of Iran's armed forces under the direct control of the Supreme Leader and tasked with protecting the Islamic system of government.[159] Composed of some of Iran's most pitched hardliners, the IRGC was awarded major operations within Iran's energy, construction, telecommunications, and automobile sectors.[160] Analysts estimate that by 2015, the IRGC had acquired control of up to thirty percent of Iran's total economy.[161]

President Ahmadinejad's attempts to reform Iran's subsidy system, while populist-oriented, had a more positive outcome.[162] Born of the sensitive interplay between Iran's oil reserves and notions of national sovereignty, the Iranian Revolution fostered numerous policies aimed at bringing Iran's natural resource wealth to the tables of ordinary Iranian citizens.[163] Indeed, the subsidies paid by the

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GROUP, IRAN COUNTRY FORECAST 20 (Mar. 31, 2014) (on file with author) (further exploring the New Privatization Act).

158. *See* IRAN COUNTRY FORECAST, *supra* note 157, at 20-21; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 342 (characterizing privatization under Ahmadinejad). Privatization in Iran has often been compared to the rise of post-Soviet oligarchies in Russia. *See* Yaldaz Sadakova, *The Promise and Peril of Iranian Stocks*, 37 BENEFITS CAN. 31 (Oct. 19, 2015); Najmeh Bozorgmehr, *"State" Bodies Stymie Iran Privatisations*, FINANCIAL TIMES (May 30, 2012), http://www.ft.com/intl/cms/s/0/1a092ed4-aa38-11e1-8b9d-00144feabdc0.html#axzz3usB0orCL (noting Iranian privatization's resulting in an oligarchy).

159. *See* IRAN COUNTRY FORECAST, *supra* note 157, at 21; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 342; Maloney, *The Revolutionary Economy*, *supra* note 12, at 98 (documenting privatization's empowerment of the IRGC).

160. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 405-06 (highlighting IRGC involvement in the energy sector); Sadakova, *supra* note 158 (identifying IRGC involvement in the telecomm and automotive sectors).

161. *See* BUSINESS MONITOR INTERNATIONAL, IRAN: COUNTRY RISK REPORT 10 (Q2 2015); Elliott Abrams et al., *The JCPOA's Economic Benefits for Iran's Revolutionary Guards*, IRAN TASK FORCE, 1 (Dec. 2015), http://taskforceoniran.org/pdf/The_JCPOA%E2%80%99s_Economic_Benefits_for_Iran%E2%80%99s_Revolutionary_Guards.pdf (estimating the extent of the IRGC's grip on Iran's economy).

162. See *infra* notes 163-69 and accompanying text.

163. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 368-69; Semira N. Nikou, *The Subsidies Conundrum*, *in* THE IRAN PRIMER, *supra* note

Islamic Republic on domestic food and energy consumption evolved to become a cornerstone of Iranian economic life and the regime's long-term legitimacy.[164] Such programs, however, resulted in massive structural inefficiencies.[165] Paying little attention to energy costs, the moral hazards of the State's subsidy program turned Iran into one of the most energy inefficient economies in the entire world.[166] With limited oil production and even more limited refining capacity, Iran was consistently forced to rely on imports to satisfy the nation's massive energy consumption, despite its own resources.[167] Representing the first real reforms of the subsidy program, President Ahmadinejad implemented a phased, partial rationalization of these commodity prices, in exchange for cash payment "justice shares" being issued to poor Iranians dependent on such artificially low

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12, at 104 (considering the interplay between resource wealth, social justice, and the regime's legitimacy).

164. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 503 ("[b]y creating expectations of economic windfalls, greater egalitarianism, and an improvement in the plight of *mostazafan*, Iranian leaders effectively undercut the theocratic basis of their authority and bolstered a competing rationale based on delivery of a better life."); Nikou, *supra* note 163, at 104 ("[p]oliticians in both the executive and the legislative branches have been reluctant to make badly-needed reforms for fear of political backlash.").

165. As late as 2010, Iranians paid approximately US$0.38 per gallon of gasoline, a fact that led to both illegal gas smuggling to neighboring countries and unchecked, runaway domestic consumption. *See* Nikou, *supra* note 163, at 105; Mohamedi, *supra* note 108, at 101 (noting the costs of subsidized goods paid by Iranian consumers); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 421 (pointing out Iran's smuggling problem); *id*. at 393 (dealing with the impact of subsidies on Iranian consumption behavior); Mohamedi, *supra* note 108, at 101 (restating Iran's wasteful consumption).

166. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 419; Nikou, *supra* note 163, at 105; Saeed Moshiri, *Energy Price Reform and Energy Efficiency in Iran*, INT'L ASSOC. ENERGY ECON. 33, 34 (2013), http://www.iaee.org/en/publications/newsletterdl.aspx?id=197 (assessing Iran's dismal energy efficiency).

167. *See* Moshiri, *supra* note 166, at 34; Mohamedi, *supra* note 108, at 101 (stating Iran's reliance on energy imports). In 2010, these imports reflected forty percent of Iran's refined oil needs, comprising approximately twenty percent of Iran's whole GDP. *See id*.; Djavad Salehi-Ishfahani, *Iran: Subsidy Reform amid Regional Turmoil,* BROOKINGS (Mar. 3, 2011), http://www.brookings.edu/research/opinions/2011/03/03-iran-salehi-isfahani (showing the extent of Iran's GDP diverted to subsidies). In this light, whatever the actual military intentions of Iran's long-desired nuclear program, the economic logic behind civil nuclear power generation actually made a lot of theoretical sense. *See id*. Such trends were also mirrored in Iran's food subsidy programs, with roughly thirty percent of subsidized bread being thrown away or smuggled to neighboring states. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 350 (citing the above waste figures); Soazic Heslot, *Iran's Food Security*, FUTURE DIRECTIONS INT'L (Aug. 14, 2014), http://www.futuredirections.org.au/publications/food-and-water-crises/1858-iran-s-food-security.html (further emphasizing Iranian food waste).

prices.[168] Although subsidy reform continues to rank high on the Islamic Republic's agenda, early signs indicated that Ahmadinejad's reforms represented a silver lining to an otherwise disastrous overall economic policy.[169]

In the United States, meanwhile, the 2008 election of President Barack Obama was notable in Obama's campaign promises to negotiate with Iran over its ongoing nuclear program.[170] However, Iran's own presidential elections in 2009 provided Obama little political space to try such initiatives.[171] The contested and allegedly fraudulent reelection of Ahmadinejad over his reformist rival Mir-Hossein Mousavi ushered a crisis of legitimacy for the Islamic Republic, consisting of street demonstrations and the rise of Iran's short-lived Green Movement.[172] The State's brutal crackdown on protestors, along with subsequent arrests and human rights abuses, provided renewed vigor to Washington's sanctions regime.[173] The passing of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") intensified targeted sanctions against Iran's energy sector and oil-refining capacity, and broadened the trade embargo against Iran by closing prior exceptions for Iranian caviar, carpets, and pistachios.[174] Against the backdrop of CISADA, a

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168. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 351; COUNTRYWATCH, IRAN: 2015 COUNTRY REVIEW 329 (Denise Youngblood Coleman, ed., 2015); IMF, ISLAMIC REPUBLIC OF IRAN, IMF COUNTRY REPORT NO. 14/93, 2 (Apr. 2014) (explaining Ahmadinejad's subsidy reforms).

169. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 352; IMF COUNTRY REPORT NO. 14/93, *supra* note 168, at 17 (emphasizing the initial promise of Ahmadinejad's subsidy reforms).

170. *See* David E. Sanger et al., *Election 2008 – On the Issues: Iran*, N.Y. TIMES, May 23, 2012, http://elections.nytimes.com/2008/president/issues/iran.html; Michael R. Gordon & Jeff Zeleny, *Obama Envisions New Iran Approach*, N.Y. TIMES, Nov. 2, 2007, http://www.nytimes.com/2007/11/02/us/politics/02obama.html?hp&_r=0 (presenting Obama's 2008 Iran campaign platform).

171. See *infra* notes 172-77 and accompanying text.

172. *See* Milani, *The Green Movement*, *supra* note 105, at 41; Hooman Majd, *Think Again: Iran's Green Movement*, FOREIGN POL'Y (Jan. 6, 2010), http://foreignpolicy.com/2010/01/06/think-again-irans-green-movement/ (overviewing Iran's Green Movement).

173. *See* Ahmed Shaheed (Special Rapporteur), *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran to the Seventieth Session of the General Assembly*, U.N. Doc. A/70/411 (Oct. 6, 2015); Hamid Dabashi, *What Happened to the Green Movement in Iran?*, AL JAZEERA (June 12, 2013), http://www.aljazeera.com/indepth/opinion/2013/05/201351661225981675.html (illustrating the state's crackdown on Green Movement protestors).

174. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 466 (evaluating CISADA); *see also* Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. No. 111-195, 124 Stat. 1312 (2010).

wider shift in Iran's access to international investment was also evident.[175] The regime's crackdown on protesters following the reelection of Ahmadinejad in 2009 sparked new concerns over the state of human rights in Iran, both in Europe and throughout the world, helping to intensify the successes of multilateral sanctions.[176] With the world signed on to sanctions policies, Ahmadinejad's second term was marked by a gradual strengthening of the sanctions regime and the ramping up of pressure against the Iranian economy.[177]

5. Climax of Sanctions: Rouhani, Obama, & the JCPOA

By the end of President Ahmadinejad's second term, the international sanctions regime had reached its apex.[178] This, combined with Ahmadinejad's disastrous economic policies (including a wave of massive corruption scandals in which the President was personally implicated) led Supreme Leader Khamenei to step in and sideline Ahmadinejad during the last two years of his presidency, usurping his control over Iran's economy.[179] The election of President Hassan Rouhani in 2013 was premised on a platform promising better relations with the world and the reintegration of Iran into the global economy.[180] This allowed for renewed international negotiations with

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175. See *infra* notes 176-77 and accompanying text.

176. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 349; Jon Lee Anderson, *After the Crackdown*, NEW YORKER, Aug. 16, 2010 (commenting on sanctioning efforts in the wake of the Green Movement).

177. *See infra* notes 266-93 and accompanying text (tracing the intensification of the sanctions regime during the Ahmadinejad presidency). Concerted efforts between Washington's furtherance of unilateral sanctions—culminating in the Iran Threat Reduction and Syria Human Rights Act of 2012 ("ITRSHRA") and the Iran Freedom Counter-Proliferation Act of 2012 ("IFCA")—along with the UN Security Council's own wave of multilateral sanctions resolutions brought increased devastation to Iran's national economy. *See* IMF COUNTRY REPORT NO. 14/93, *supra* note 168, at 7; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 264-73 (describing the impact of the late sanctions regime); *see also* Iran Threat Reduction and Syria Human Rights Act of 2012, *infra* note 275; Iran Freedom and Counter-Proliferation Act of 2012, Pub. L. No. 112-239, 126 Stat. 2,004 (2012).

178. *See infra* Part II.B (tracing the cumulative advancement of the sanctions regime).

179. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 362; Geneive Abdo, *Iran: Ahmadinejad vs Khamenei*, AL JAZEERA (July 6, 2011), http://www.aljazeera.com/indepth/opinion/2011/06/201162994514399969.html (discussing the Supreme Leader's marginalization of Ahmadinejad).

180. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 492-93; Hamidreza Gholamzadeh, *The Rouhani Metre: a Mix of Broken Promises and Hope*, AL JAZEERA (Nov. 11, 2013), http://www.aljazeera.

Iran, including the dialogue with the Islamic Republic initially promised by President Obama during his campaign.[181] Starting in February 2013, secret negotiations between Iran and the P5+1 were conducted in Oman, which eventually resulted in the preliminary and non-binding Joint Plan of Action ("JPA") of November 24, 2013.[182] The deal promised a six-month pause in the development of Iran's nuclear program, in exchange for limited sanctions relief and the release of unspecified frozen assets.[183] During this six-month window, both sides made a further voluntary commitment to resume negotiation efforts in hopes of reaching a final nuclear deal.[184] After numerous deadline extensions, Iran and the P5+1 finally reached a framework agreement in Lausanne on April 2, 2015, which was finalized in the JCPOA on July 14, 2015.[185] Six days later, the UN

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com/indepth/opinion/2013/11/rouhani-metere-mix-broken-promises-hope-201311412256389452.html (exploring Rouhani's campaign platform).

181. *See supra* note 170 and accompanying text (referencing Obama's 2008 outreach promises); *see also* Kristina Daugirdas & Julian Davis Mortenson, *United States and Six Other States Reach Interim Agreement on Iranian Nuclear Program*, 108 AM. J. INT'L L. 109, 109 (2014); Dan Roberts & Julian Borger, *Obama Holds Historic Phone Call with Rouhani and Hints at End to Sanctions*, GUARDIAN (Sept. 28, 2013), http://www.theguardian.com/world/2013/sep/27/obama-phone-call-iranian-president-rouhani (marking the opening of direct dialogue between Washington and Tehran). These negotiations were needed internally for Iran: President Rouhani had inherited an economic catastrophe, with the near eradication of all international investment and Iranian trade largely reduced to the barter system. *See* Golnaz Esfandiari, *Former Iranian Minister Says New President to Inherit Economic Challenges*, RADIO FREE EUROPE (July 10, 2013); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 475 (evaluating Iran's economy at the outset of Rouhani's presidency). Iran's reliance on barter stemmed from the nation's inability to access foreign currency transactions, including energy commodity sales denoted in petrodollars. Such barter transactions had painful destabilizing consequences, such as the sudden influx of cheap Chinese goods into Iran's economy. *See id.* at 359; Christopher Harmer, *Iranian Efforts to Bypass Oil Sanctions*, INST. STUD OF WAR (Apr. 16, 2012), http://www.understandingwar.org/sites/default/files/Backgrounder_IranSanctions.pdf (surveying the costs of Iranian barter transactions).

182. *See* Joint Plan of Action, Iran-P5+1, Nov. 24, 2013, http://www.state.gov/e/eb/tfs/spi/iran/jcpoa/index.htm [hereinafter JPA]; *see also* Daugirdas & Mortenson, *supra* note 181, at 109; Arshad Mohammed & Parisa Hafezi, *U.S., Iran Held Secret Talks on March to Nuclear Deal*, REUTERS (Nov. 24, 2013), http://www.reuters.com/article/us-iran-nuclear-bilateral-idUSBRE9AN0FB20131124 (describing the negotiating process up to the JPA).

183. *See* JPA, *supra* note 182; *see also* Daugirdas & Mortenson, *supra* note 181, at 110 (summarizing the JPA).

184. *See supra* note 183 and accompanying text.

185. *See* Joint Comprehensive Plan of Action, Iran-P5+1, July 14, 2015, https://assets.documentcloud.org/documents/2165399/full-text-of-the-iran-nuclear-deal.pdf [hereinafter JCPOA]; *see also* Kelsey Davenport, *Timeline of Nuclear Diplomacy With Iran*, ARMS CONTROL ASSOC. (Sept. 28, 2015), https://www.armscontrol.org/factsheet/Timeline-of-Nuclear-Diplomacy-With-Iran (providing a helpful timeline of the JCPOA negotiating

Security Council unanimously approved Security Council Resolution 2231, making the JCPOA binding international law and—at least officially—drawing a conclusion to the international sanctions regime targeting Iran's nuclear program.[186]

The above traces a broad trajectory of the sanctions regime's development, from the era preceding it through its unwinding with the formation of JCPOA.[187] In such broad brushstrokes, this history mirrors that of wider US-Iran relations.[188] Upon closer inspection, it becomes clear that as a matter of policy, US sanctions targeting Iran were often misaligned with the economic and political developments within domestic Iranian history.[189] Whatever might be said for missed opportunities, this history set the operating parameters that steered the behavior of the United States, Iran, and a broad class of international investors.[190]

For international investors in particular, however, the rules and regulations that made up the sanctions regime were of equal importance to these historical trends.[191] To truly understand today's international investment landscape in Iran, one should look also to the evolution of the legal framework that actually comprised the sanctions regime.[192] This legal framework is the focus of the next Part.[193]

B. Legal Framework of the Iran Sanctions Regime

The sanctions regime targeting Iran has been described as "arguably the most complex the United States and the international

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process); Jonathan Tirone et al., *Iran Nuclear Talks on Verge of Another Missed Deadline*, BLOOMBERG BUSINESS (July 6, 2015), http://www.bloomberg.com/news/articles/2015-07-06/iran-nuclear-talks-on-verge-of-another-missed-deadline-in-vienna (noting the JPA's series of deadline extensions).

186. *See* S.C. Res. 2231 (July 20, 2015); *see also* IRAN: 2015 COUNTRY REV., *supra* note 168, at 308; Colum Lynch & John Hudson, *Obama Turns to U.N. to Outmaneuver Congress*, FOREIGN POL'Y (July 15, 2015), http://foreignpolicy.com/2015/07/15/obama-turns-to-u-n-to-outmaneuver-congress-iran-nuclear-deal/ (explaining how Security Council adoption makes the deal binding).

187. *See supra* notes 33-186 and accompanying text (summarizing the history of the sanctions regime, and wider US-Iran relations).

188. *See id.*

189. *Cf. id.*

190. *See id.*

191. *See infra* Part I.B.

192. *See id.*

193. *See id.*

community have ever imposed on a rogue State."[194] Because the gradual expansion of these restrictions was comprised of a cumulative network of laws, executive orders, and other administrative actions, spanning over nearly four decades, a comprehensive review of the entire sanctions regime is not realistic, nor especially helpful. However, a limited review of key sanctions developments in both the United States and the international community provides a sufficient glimpse at how the sanctions regime advanced through the decades. In examining the expansive restrictions faced by investors seeking to operate in Iran over time, the magnitude of changes represented by the JCPOA becomes evident.[195]

1. The US Sanctions Regime Targeting Iran

For the majority of the sanctions regime, the United States was essentially alone in placing trade and investment restrictions against the Islamic Republic of Iran.[196] First adopted by President Carter as a direct response to the US Embassy hostage crisis, the proliferation of the US sanctions regime has progressed through phases of various justifications.[197] Given this diversity of rationale, it is no surprise that the application of US sanctions has been at times inconsistent.[198] Such inconsistencies, combined with the cumulative nature of US unilateral

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194. DIANNE RENNACK, CONG. RESEARCH SERV., R43311, IRAN: US ECONOMIC SANCTIONS AND THE AUTHORITY TO LIFT RESTRICTIONS 1 (2015); *cf.* Bhala, *supra* note 27, at 254 (" . . . American trade rules against Iran are complex. Navigating them is not for the faint-hearted, but doing so is essential in the everyday practice of international trade law around the globe. The sanctions cover not only trade in goods and services, but also foreign direct investment, transportation, banking, securities, and insurance").

195. *See infra* Parts I.B.1-2.

196. *See supra* note 95 and accompanying text (discussing US disagreements with allies over Iran sanctions).

197. *See* RENNACK, *supra* note 194, at *Summary* (" . . . in an effort to change the government of that country's support of acts of international terrorism, poor human rights record, weapons and missile development and acquisition, role in regional instability, and development of a nuclear program"); Clawson, *supra* note 27, at 116-17 (listing the various rationales for sanctions).

198. *See* Clawson, *supra* note 27, at 115 (" . . . analysts and policymakers do not agree about how to use unilateral U.S. sanctions to help achieve [US] goals"); Bhala, *supra* note 27, at 255-56 (" . . . they were not systematic or seamless from inception. Instead, they were a confusing array of haphazard measures, mostly targeted at the Iranian energy sector, but with plenty of gaps that later needed plugging").

efforts, make disentangling the US sanctions regime especially difficult.[199]

To start, the primary bulk of US sanctions against Iran are domestically authorized under the International Emergency Economic Powers Act of 1977.[200] Under the IEEPA, the President is given broad economic coercive powers 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."[201] The President delegates IEEPA authority to the Office of Foreign Asset Controls ("OFAC") to administer these decisions.[202] As a subdivision of the US Department of the Treasury, OFAC is "entrusted with considerable policy, enforcement, and regulatory operational responsibilities."[203] By working with other branches of US foreign policy agencies, as well as with federal law enforcement, OFAC is the primary developer,

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199. *See* Bhala, *supra* note 27, at 264 ("[i]n reviewing [US sanctions], it is important to note, as a practical matter, that all the sanctions apply. That is, the evolution is cumulative: one set of sanctions does not substitute another, but rather supplements all previous sanctions."); Kenneth Katzman, *Easing US Sanctions on Iran*, ATLANTIC COUNCIL, 1-8 (June 2014), http://www.atlanticcouncil.org/images/publications/Easing_US_Sanctions_on_Iran.pdf [hereinafter Katzman, *Easing US Sanctions*] (parsing out the sanctions regime's complex interplay between legislative and executive authority).

200. *See generally* International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1708 (2012). As a matter of background, the International Emergency Economic Powers Act ("IEEPA") was an attempt to reinstate some of the executive coercive powers that had been originally contained in the Trading with the Enemy Act of 1917 ("TWEA"), but later stripped by the National Emergency Act of 1976. *See* Trading with the Enemy Act, 50 U.S.C. App. §§ 1-44 (2012); National Emergencies Act, 50 U.S.C. §§ 1601-1651 (2015); *see also* Kian Arash Meshkat, *The Burden of Economic Sanctions on Iranian-Americans*, 44 GEO. J. INT'L L. 915, 918-22 (2013) (providing an overview of the history of US sanctioning authority). An additional source of sanctioning authority exists under the International Security and Development Cooperation Act of 1985 ("ISDCA"), under more specific criteria. *See* International Security and Development Cooperation Act of 1985, 22 U.S.C. § 2151 (2012); *see also* Meshkat, *supra*, at 922 (discussing the ISDCA as a basis for sanctions).

201. 50 U.S.C. § 1701(a) (2012). For the sanctioning powers granted to the President, see § 1702; *see also* Kristie Xian, Note, *The Price of Justice: Deferred Prosecution Agreements in the Context of Iranian Sanctions*, 28 NOTRE DAME J. L. ETHICS & PUB. POL'Y 631, 637-38 (2014) (explaining how the IEEPA works); United States v. Amirnazmi, 645 F.3d 564, 576 (3d Cir. 2011) (holding these IEEPA powers to be constitutional).

202. *See supra* note 201 and accompanying text.

203. Meshkat, *supra* note 200, at 926; *see also Basic Information on OFAC and Sanctions*, OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEPARTMENT OF TREASURY, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#basic (last visited Apr. 9, 2016) (stating OFAC's role in the administration and enforcement of sanctions).

implementer, administrator, and enforcer of US sanctions policy.[204] One of OFAC's main roles is to update and administer the Specially Designated Nationals and Blocked Persons list ("the SDN list"), which contains the names of individuals and entities subject to sanctions.[205] The SDN list provides an important tool for private sector actors to ensure that they do not engage in transactions with Specially Designated Nationals ("SDNs"), which would violate sanctions.[206]

Following the terrorist attacks of September 11, 2001, the President's IEEPA powers were expanded by a series of developments that provided additional tools to OFAC's arsenal.[207] First, Executive Order 13224, originally meant to target Al Qaeda, applied to any actors "who commit, threaten to commit, or support terrorism," effectively declaring such terrorist movements to be an ongoing "unusual and extraordinary threat" subject to IEEPA sanctions.[208] This provided streamlined authority to classify these entities as "Specially Designated Global Terrorists" ("SDGTs"), a sub-branch of SDNs subject to immediate blocking and asset seizure.[209] Importantly, the SDGT designation also immediately blocks or freezes any US-based assets that engage with such designated entities, and may attach civil or criminal liability for any

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204. *See Basic Information on OFAC and Sanctions*, *supra* note 203; Meshkat, *supra* note 200, at 927-30 (providing an overview on OFAC's role within US sanctions policy).

205. *See* Barry E. Carter & Ryan Farha, *Overview and Operation of U.S. Financial Sanctions, Including the Example of Iran*, 44 GEO. J. INT'L L. 903, 905 (2013) (explaining OFAC's responsibilities concerning the SDN list).

206. *See id.*

207. *See id.* at 903; *see also infra* notes 208-17 and accompanying text.

208. *See* Exec. Order No. 13,224, *supra* note 146; *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 459 (explaining the evolution of Executive Order 13224's application toward Al Qaeda to its application toward nation-states like Iran).

209. *See* Kindhearts v. Geithner, 647 F. Supp. 2d 857, 866 (N.D. Ohio 2009) ("The [USA PATRIOT Act] permitted the Treasury Secretary to impose all the blocking effects of a designation, including freezing an organization's assets indefinitely and criminalizing all its transactions, without designating the organization a SDGT. The Treasury only needs to assert that it is investigating whether the entity should be designated."); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 459 (looking at the impact of Executive Order 13224 and the USA PATRIOT Act); *Foreign Terrorist Organization Designation*, U.S. DEPARTMENT OF STATE (Sept. 1, 2010), http://www.state.gov/r/pa/prs/ps/2010/09/146554.htm (explaining the significance of SDGT designation).

transactions that violate these automatic prohibitions.[210] This would later be used in 2005 as the model for Executive Order 13382, which applied the same treatment to proliferators of weapons of mass destruction and their supporters.[211]

The other powerful tool provided to OFAC following 9/11 arrived with the passing of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act").[212] Title III of the USA PATRIOT Act contains a number of instruments to enhance US anti-money laundering ("AML") and counter terrorist financing ("CTF") efforts.[213] Specifically, Section 311 of the USA PATRIOT Act authorizes the US Secretary of the Treasury to designate specific entities or jurisdictions as "primary money laundering concerns."[214] Such classification subjects entities to potentially severe penalties: "the institution may be prohibited from maintaining correspondent accounts with U.S. financial institutions, thereby cutting off access to U.S. dollar payment systems and business in the United States generally."[215] Furthermore, Section 319 (a) of the USA PATRIOT Act also contains an enhanced jurisdictional mechanism, which effectively extends US seizure power over non-US financial institutions holding any assets under US jurisdiction.[216] By employing a legal fiction that deems funds deposited in a non-US account to be pooled with funds in US accounts, authorities are empowered to seize

210. *See Foreign Terrorist Organization Designation*, *supra* note 209*;* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 459-61 (assessing the consequences of SDGT designation).

211. *See* Exec. Order No. 13,382, 3 C.F.R 38,567 (2005); Ari Kattan, *Fact Sheet: Iran Sanctions*, CTR. FOR ARMS CONTROL AND NON-PROLIFERATION (Mar. 19, 2013), http://armscontrolcenter.org/fact-sheet-iran-sanctions/ (summarizing Executive Order 13382).

212. *See* Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001) (codified in scattered titles of the United States Code); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28*,* at 459; Levitt, *Financial Sanctions*, *supra* note 147, at 126 (clarifying OFAC's post-9/11 authority).

213. *See* USA PATRIOT Act §§ 301-77.

214. *See* USA PATRIOT Act § 311; *see also* Carter & Farha, *supra* note 205, at 910; Press Release, U.S. Dep't Treasury, Fact Sheet: Overview of Section 311 of the USA PATRIOT Act (Feb. 10, 2011), https://www.treasury.gov/press-center/press-releases/Pages/tg1056.aspx (providing an overview of section 311).

215. Carter & Farha, *supra* note 205, at 910.

216. *See* GRAVES, *supra* note 125, at 9; Michael Gruson, *The U.S. Jurisdiction Over Transfers of U.S. Dollars Between Foreigners and Ownership of U.S. Dollar Accounts in Foreign Banks*, 2004 COLUM. BUS. L. REV. 721, 747-48 (2004) (explaining section 319(a) of the USA PATRIOT Act).

an entity's assets in the United States, even if such assets are entirely unrelated to those suspected of violating US sanctions policy overseas.[217]

As the US-Iran sanctions regime evolved over time, this extraterritorial dimension of OFAC's sanctioning policies grew considerable teeth against the Islamic Republic.[218] By specifically targeting international financial institutions, OFAC essentially forced the global banking system to choose between conducting transactions with the United States or with Iran.[219] Because the mere causation of a prohibited transaction was all that was required to trigger sanctions, an institution beyond US jurisdiction could be subject to penalties for transactions as mundane as "dollar clearing" within US jurisdiction.[220] This authorized OFAC to freeze such currency exchanges and seize whatever assets might be however remotely entangled within US jurisdiction.[221] Such financial sanctions had the effect of closing the so-called "U-turn transaction" loophole, which had previously allowed foreign firms engaging in prohibited transactions to indirectly reach US clearing banks and payable-through accounts, via third-party banks or financial institutions, without triggering sanctions.[222]

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217. *See* GRAVES, *supra* note 125, at 9; Gruson, *supra* note 216, at 747-48 (noting section 319(a)'s reliance on a legal fiction).

218. *See generally infra* notes 219-85 and accompanying text.

219. *See* Xian, *supra* note 201, at 638 ("given the complexities of foreign financial institutions, foreign banks that cause their U.S.-based branch to violate OFAC prohibitions are subject to punishment."); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 462 ("[o]ver time, the Bush measures began to achieve precisely what previous authors of sanctions legislation had sought but largely failed to do: to present firms from all over the world with a choice of trading with Iran or with the United States.").

220. Dollar clearing involves overseas transactions in a foreign currency that momentarily enter US jurisdiction (usually via correspondent banking) in order to facilitate payments converted into US dollars. *See generally* Michael Gruson, *supra* note 216, at 724-31; Andrew Johnson, *5 Things on Dollar Clearing and BNP Paribas*, WALL STREET J. BLOG (June 30, 2014, 4:40 PM), http://blogs.wsj.com/briefly/2014/06/30/5-things-on-dollar-clearing-and-bnp-paribas/.

221. *See* Xian, *supra* note 201, at 641-42 (discussing the extraterritoriality of OFAC's financial sanctions); *id*. at 638 ("[m]oreover, parties are not excluded from IEEPA just because their co-conspirators do not fall within the territorial jurisdiction of the United States. If at least some physical component of their property, whether it is computer equipment or actual cash, is stored in the United States, a defendant may still be liable for conspiring to defraud the United States."); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 461. For an explanation of U-turn transactions, see *supra* note 147.

222. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 461 ("[OFAC's revised prohibitions] extended to the exceptionally tangential contacts that characterize the movement of capital in the modern international financial system, including what are referred to as 'U-turn' transactions, which entail only indirect interaction

Because of the global reach of the US financial system, the closing of the U-turn loophole made it almost impossible for Iran to internationally finance any activities OFAC deemed sanctionable.[223]

Finally, as one last background matter, both the US President and OFAC are provided some degree of waiver power under the foundational sanctioning authorities like the IEEPA.[224] In the case of US-Iran sanctions, this waiver authority is complicated by cumulative waves of congressional legislation that have imposed additional requirements upon the lifting of sanctions.[225] These restrictions operate by forcing the President or OFAC to report certain findings to Congress, such as the determination that relaxing sanctions will be in the national interest of the United States.[226] While it is not yet established whether Congress may legally oppose the President's determinations and stop the relaxation of sanctions, such determination requirements are primarily focused on forcing political pressure upon the executive branch.[227] At the same time, much of Congress' Iran sanctions legislation is also populated with sunset clauses, which, if not renewed, would eventually force the expiration

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involving a third-party bank or financial institution."); Levitt, *Financial Sanctions, supra* note 147, at 124 ("[The U-turn loophole previously] applied as long as no U.S. bank directly debited or credited an account of an Iranian party.").

223. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 461. This was particularly powerful given that oil—Iran's primary revenue source—trades on international markets in US-denominated petrodollars. *See id.;* Levitt, *Financial Sanctions*, *supra* note 147, at 124 (emphasizing the efficacy of Washington's financial coercion).

224. *See, e.g.*, 50 U.S.C. § 1706(a)(1) (2012) ("[IEEPA sanctions] may continue to be so exercised to prohibit transactions involving that property *if the President determines* that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.") (emphasis added); *see also* RENNACK, *supra* note 194, at 4 ("[i]n the collection of laws that are the statutory basis for the U.S. economic sanctions regime on Iran, the President retains, in varying degrees, the authority to tighten and relax restrictions.").

225. *See infra* notes 226-29 and accompanying text. *See generally* Katzman, *Easing US Sanctions*, *supra* note 199 (clarifying legislative barriers to sanctions suspension/termination).

226. *See, e.g.*, National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 1245(d)(4)(D), 125 Stat. 1,298 (2012) (containing determination requirements for waiving sanctions on financial institutions); *see also* Larry Hannauer, *The Days After a Deal With Iran: Congress's Role in Implementing a Nuclear Agreement*, RAND CORP. (2015), http://www.rand.org/pubs/perspectives/PE139.html.

227. *See generally* Hannauer, *supra* note 226; Katzman, *Easing US Sanctions*, *supra* note 199 (exploring the balance between executive and legislative authority in lifting or waiving Iran sanctions). For example, if the President wanted to lift sanctions against a terrorist organization, being forced to justify this decision before Congress would likely prove too politically controversial to carry out such an action. *See* Hannauer, *supra*, at 8.

of sanctions.[228] Likewise, there is the question of whether US domestic courts would actually consent to review challenges related to Presidential waiver actions, which theoretically might fall under the Political Question Doctrine.[229] Finally, OFAC is also authorized to issue and monitor licenses that allow a firm's engagement in otherwise prohibited transactions, which could be used and renewed indefinitely to circumvent sanctions.[230]

Turning more directly to US sanctions targeting Iran, President Carter's initial asset freeze following the US Embassy seizure in 1979 under Executive Order 12170 was the first example of any presidential invocation of IEEPA powers.[231] The start of the modern sanctions regime under President Clinton's Executive Orders 12957 and 12959 were also "pure" IEEPA actions.[232] Since declaring a US "state of emergency" vis-à-vis Iran under the IEEPA in Executive Order 12957, Washington has annually renewed this emergency classification.[233] As a direct response to the Conoco debacle, Executive Order 12957 prohibited US firms from participating in the

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228. *See* Hannauer, *supra* note 226, at 5; KENNETH KATZMAN, CONG. RESEARCH SERV., RS20871, IRAN SANCTIONS 17 (2015) [hereinafter KATZMAN, IRAN SANCTIONS] (evaluating sanction sunset provisions).

229. *See* Bhala, *supra* note 27, at 274 ("[p]resumably, a court might decline jurisdiction under the political question doctrine . . . "); *cf.* Mark A. Chinen, *Presidential Certifications in U.S. Foreign Policy Legislation*, 31 N.Y.U. J. INT'L L. & POL. 217, 255-57 (1999) (exploring the Political Question Doctrine within the analogous subject matter of Presidential certifications). The Political Question Doctrine refers to the refusal of US federal courts to adjudicate political controversies that should be best left to the executive or legislative branches. *See generally* JARED P. COLE, CONG. RESEARCH SERV., R43834, THE POLITICAL QUESTION DOCTRINE: JUSTICIABILITY AND THE SEPARATION OF POWERS (2014); Louis Michael Seidman, *The Secret Life of the Political Question Doctrine*, 37 J. MARSHALL L. REV. 441 (2004). That said, in today's polarized environment of partisan politics in every branch of the United States Government, declining jurisdiction here seems especially unlikely.

230. *See* Meshkat, *supra* note 200, at 928 (explaining OFAC's general and specific licenses); *Basic Information on OFAC and Sanctions, supra* note 203 (further clarifying OFAC's licensing authority). Indeed, such OFAC licenses play an important role within the schema of the JCPOA, presumably allowing the foreign subsidiaries of US firms to indirectly access Iran. *See infra* note 438 and accompanying text.

231. *See* Exec. Order No. 12,170, 44 Fed. Reg. 65,729 (Jan. 19, 1981); Meshkat, *supra* note 200, at 922-23 (pointing out that Executive Order 12170 was the first invocation of IEEPA powers).

232. *See* Exec. Order No. 12,957, *supra* note 120; Exec. Order No. 12,959, *supra* note 121; *see also* Meshkat, *supra* note 200, at 924 (recognizing the Clinton orders' reliance on IEEPA powers).

233. *See* Katzman, *Easing US Sanctions*, *supra* note 199, at 2 ("President Bill Clinton declared a 'state of emergency' with respect to Iran in March 1995, and that declaration has been renewed each year since."); Breckinridge, *supra* note 119, at 2443.

development or investment in Iranian projects related to the State's petroleum sector.[234] This was reinforced by Executive Order 12959, which placed a US trade embargo on Iran and further sought to sanction foreign firms from facilitating sensitive US goods and technologies to Iran.[235]

One of the most significant milestones of the sanctions regime came with the Iran-Libya Sanctions Act of 1996, which marked a shift from unadulterated IEEPA-based executive authority to the legislative authority of Congress.[236] The stated targets of the ILSA were similar to the previous executive sanctions, seeking to target investment in Iran's petroleum sector and to block sensitive weapons technologies from reaching the Islamic Republic.[237] In effect, the ILSA served as a baseline for various future legislative sanctions, which tweaked US sanction levers by amending provisions and adding additional layers to this original law.[238] The ILSA was also aspirationally multilateral, seeking to impose sanctions on "foreign persons" investing more than US$40 million in Iran's energy sector.[239]

In terms of mechanics, the ILSA worked by forcing the President to impose at least two options from a menu of six different sanctioning methods upon entities that violated the ILSA's triggering thresholds.[240] These options included: limitations on US Export-Import Bank assistance; export sanctions prohibiting the licensing or granting of permission to export goods or services to any sanctioned

234. *See* Exec. Order 12,957, *supra* note 120; Breckinridge, *supra* note 119, at 2443-44 (discussing Executive Order 12957 and the Conoco episode).

235. *See* Exec. Order No. 12,959, *supra* note 121; Breckinridge, *supra* note 119, at 2444 (elucidating on further measures under Executive Order 12959).

236. *See* Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, 110 Stat. 1541 (1996); *see also* Bhala, *supra* note 27, at 267 (describing the shift of sanctions policies from the executive branch to the legislative branch).

237. *See* Bhala, *supra* note 27, at 268; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 453 (addressing the purpose of the ILSA).

238. *See* Bhala, *supra* note 27, at 265 ("Overall, Congress strengthened the baseline 1996 statute no fewer than six times. . . . "); Clawson, *supra* note 27, at 166 (outlining the subsequent modifications of the ILSA).

239. *See* Clawson, *supra* note 27, at 166; Bhala, *supra* note 27, at 269 (identifying the multilateral ambitions of the ILSA). The law also required various presidential reporting mechanisms related to the White House's efforts to spread Iran sanctioning policies at the international level. *See* Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, §§ 10(a)(1) and 4(e), 110 Stat. 1541 (1996).

240. *See* Iran and Libya Sanctions Act § 5(a); Bhala, *supra* note 27, at 272 (analyzing the ILSA sanctioning "menu").

person; restrictions against non-humanitarian loans from US lenders; blocking violators from dealing in US government debt instruments or serving as a repository of US government funds; blocking violators from contracting with the US government; and finally, any additional sanctions under the original executive sanctioning authority of the IEEPA.[241] The ILSA also sought to partially constrain the President's waiver authority, requiring that waivers satisfy two criteria when terminating Iran's liability: the determination that Iran has ceased efforts to acquire nuclear, chemical and biological, and missile technologies; and the determination that Iran is no longer supporting acts of international terrorism.[242] Along similar lines, the ILSA also provided incentivizing waivers for US allies and other third parties, which allowed for sanction non-enforcement toward citizens of governments that agreed to join Washington's sanctioning efforts.[243] The ILSA also contained a five-year sunset clause, which was originally set to expire on August 5, 2001.[244]

By 1997, almost all US investment was banned from reaching Iran, and Washington was often clashing with European allies who continued to maintain significant business relationships with Iran despite US sanctioning policy.[245] During the height of Khatami's reform efforts, Congress pushed for further sanctions in the Iran Nonproliferation Act of 2000, which authorized the President to impose additional sanctions on non-US persons identified as passing various nuclear, missile, and dual-use goods or technologies to Iran.[246] This legislation also forced the President to provide written justification for not applying measures to sanctionable entities, and

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241. *See* Iran and Libya Sanctions Act §§ 6(1)-(6) (listing sanctions options); Bhala, *supra* note 27, at 272-74 (providing an overview of these different sanctions options).

242. *See* Iran and Libya Sanctions Act § 8(a); Bhala, *supra* note 27, at 275 (observing the ILSA's waiver restrictions).

243. *See* Iran and Libya Sanctions Act § 4(c)(1).

244. *See id.* § 13(b); Bhala, *supra* note 27, at 278 (noting the ILSA sunset clause).

245. *See* Anderson, *Good Grief!*, *supra* note 47, at 134 (discussing the end of US investment in Iran); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 454 (detailing the strain on US-European relationships in the aftermath of the ILSA).

246. *See* Iran Nonproliferation Act of 2000, Pub. L. No. 106-178, 114 Stat. 38 (2000). More specifically, see *id.* § 2(a) (providing categories of transactions triggering sanctions); *id.* § 3(b) (listing sanctioning measures).

aimed at targeting Russia for its role in proliferating sensitive technologies to Iran.[247]

Before the expiration of the ILSA, Congress extended its lifespan for another five years with the ILSA Extension Act of 2001.[248] In addition to renewing the ILSA, this legislation also further entrenched the US sanctions regime with both a reduced triggering threshold (from US$40 million transactions to US$20 million transactions), as well as more intensely amending the President's reporting obligations.[249] In particular, the President was now required to report to Congress the extent to which sanctions were achieving their goals, the humanitarian impact of sanctions, and, most interestingly, the impact of sanctions on other US national security, economic, and foreign policy interests, "including relations with countries friendly to the United States, and on the United States economy."[250] In effect, within the intense lobbying environment that fostered the sanctions regime, these stipulations on relations with countries friendly to the United States "allowed for sanctions to be evaluated according to Israeli and Gulf Arab interests," even while the effects of sanctions on Washington's more strategic European partnerships went disregarded by Congress.[251] As highlighted above, 2001 also saw the President's signing of Executive Order 13224, which, although premised on post-9/11 counterterrorism efforts, would later prove to be a powerful measure against the government of Iran.[252]

The next significant intensification of the US sanctions regime followed the reinstatement of Iran's nuclear program, with the Iran Freedom Support Act of 2006 ("IFSA").[253] Notably, the IFSA

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247. *See id.* § 4 (detailing procedures for non-application of sanctions); *id.* § 6 (limiting US participation in Russia's space program unless Iran-related conditions are met).

248. *See* ILSA Extension Act of 2001, Pub. L. No. 107-24, 115 Stat 199 (2001).

249. *See id.* § 2(a) (reducing the sanctionable triggering threshold); *id.* § 3 (updating the President's reporting requirements).

250. *Id.* § 3(b); *see* Bhala, *supra* note 27, at 278 (assessing the significance of this statutory language).

251. Bhala, *supra* note 27, at 278-79; *see supra* note 125 (illustrating the US sanction regime's alienation of the United States' European allies).

252. *See supra* note 208 and accompanying text; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 461 (stipulating the importance of Bush's post-9/11 expansions of executive sanctioning power).

253. *See* Iran Freedom Support Act of 2006, Pub. L. No. 109-293, 120 Stat. 1344 (2006); *see also* Bhala, *supra* note 27, at 280-83 (providing an overview of the Iran Freedom Support Act ("IFSA")).

dropped Libya from the ILSA, renaming it the Iran Sanctions Act, and extended its provisions for another five years until 2011.[254] The IFSA also added heightened stipulations for the termination of sanctions against Iran, requiring the President to report that Iran "poses no significant threat to United States national security, interest, or allies" in order for ILSA sanctions to be lifted.[255]

The sanctions regime entered a new chapter with the passing of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.[256] Citing numerous Congressional findings—Iran's ongoing nuclear program, the threat to the safety of Israel, human rights in Iran, and so on—CISADA attempted to aggressively expand the sanctions originally imposed on Iran by the ILSA.[257] In particular, economic sanctions were broadened to resemble a complete embargo on the US importation of Iranian goods, as well as the complete prohibition of non-humanitarian US goods from even indirectly reaching Iran.[258] Similarly, sanctions on the development of Iran's petroleum sector were broadened to specifically target Iran's access to refined gasoline.[259] Bans on transfers of goods, services, technologies, or information that might contribute toward Iran's ability to refine petroleum included a lowered triggering threshold of just US$1

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254. *See* Iran Freedom Support Act § 205 (dropping all ILSA Libya provisions); *id.* § 204 (extending the ILSA's sunset provision to December 31, 2011).

255. *See id.* § 203(3). This provision provided further entanglement of US-Iran policy vis-à-vis Israel. *See* Bhala, *supra* note 27, at 282-83 ("[i]n sum, the third criterion for termination of sanctions added by IFSA nearly sub-contracted American policy on Iran to Israel. As a practical matter, given the overwhelming influence of Israel through the American Israel Political Action Committee (AIPAC) in Congress, it would be difficult to get sanctions lifted without Israeli support—and that support looked well nigh impossible."); Press Release, AIPAC, AIPAC Applauds the House Passage of H.R. 282, The Iran Freedom Support Act (Apr. 26, 2006), http://www.aipac.org/~/media/Publications/Policy%20and%20Politics/Press/AIPAC%20Statements/2006/04/IFSA_House_Passage.pdf (AIPAC's celebrating the passing of IFSA).

256. *See* Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. No. 111-195, 124 Stat. 1312 (2010).

257. *See id.* § 2 (listing Congressional findings justifying enhanced sanctions against Iran); Bhala, *supra* note 27, at 285 ("CISADA 'expanded significantly' the original ILSA sanctions.").

258. *See* Comprehensive Iran Sanctions, Accountability, and Divestment Act § 103 (providing expanded economic sanctions); Bhala, *supra* note 27, at 286-87 (overviewing CISADA's trade intensifications).

259. *See* Comprehensive Iran Sanctions, Accountability, and Divestment Act § 102(a)(1) (amending previous ILSA petroleum sanctions); Bhala, *supra* note 27, at 288-92 (detailing measures to restrict Iran's access to refined petroleum).

million valued transactions.[260] Meanwhile, restrictions were further imposed against exporting refined petroleum to Iran, including restrictions on shipping and insurance underwriting that might be used in relation to Iran's import of refined petroleum.[261]

CISADA also required US financial institutions to report to OFAC any assets falling within the President's freezing authority under the IEEPA, specifically mentioning the Iranian Revolutionary Guard as an entity possessing freezable assets.[262] Likewise, non-US financial institutions were cut off from accessing the US financial industry if found to have engaged in prohibited transactions concerning Iran.[263] Any domestic financial institution maintaining a US correspondent account or payable-through account on behalf of a non-US financial institution was also subject to enhanced reporting requirements involving transactions with Iran.[264] The effects of CISADA's financial sanctions were dramatic, eventually persuading more than 80 international financial institutions to cut ties with Iran.[265]

Enacted in the aftermath of President Ahmadinejad's contested reelection of 2009, CISADA also included a new category of sanctions related to human rights violators in Iran.[266] Targeting individual human rights violators, these sanctions allowed for new categories of individualized sanctions, such as the blocking of visas to

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260. *See* Comprehensive Iran Sanctions, Accountability, and Divestment Act § 102(a)(1) (amending ILSA § 5(a) to include measures targeting Iran's refining capabilities at § (a)(2)); *see also* Bhala, *supra* note 27, at 288-92 (outlining these changes).

261. *See* Comprehensive Iran Sanctions, Accountability, and Divestment Act § 102(a)(1) (amending ILSA § 5(a) to include measures targeting Iran's ability to import refined petroleum, as well as sanctions upon shipping and insurance underwriting at § (a)(3)).

262. *See id*. § 103(b)(3); Bhala, *supra* note 27, at 292-93 (overviewing the updated financial reporting requirements).

263. *See* Comprehensive Iran Sanctions, Accountability, and Divestment Act § 104 (targeting foreign financial institutions involved in Iran). For many banks, the loss of correspondent banking and US dollar clearing services within the US banking system would have meant an impossibility of conducting transactions in dollars. *See* Johnson, *supra* note 220; Cynthia O'Murchu et al., *Standard Chartered: The Iranian Connection*, CNBC (Sept. 21, 2015, 9:25 PM), http://www.cnbc.com/2015/09/21/standard-chartered-the-iranian-connection.html.

264. *See* Comprehensive Iran Sanctions, Accountability, and Divestment Act § 104(e) (adding new reporting requirements).

265. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 466 (noting CISADA's fallout on the world banking industry); *cf.* KATZMAN, IRAN SANCTIONS, *supra* note 228, at 26-27 (stating CISADA's impact on Iranian banks).

266. *See* Comprehensive Iran Sanctions, Accountability, and Divestment Act § 105 (adopting human rights sanctions).

enter the United States.[267] Finally, CISADA further expanded the ILSA by adding three new measures to the "menu" of sanctions discussed above, including: foreign exchange sanctions; banking transaction sanctions; and property transaction sanctions.[268] If a sanctioned entity was found to have "any interest" in transactions occurring in these categories, and such transactions were within US jurisdiction, then the President could select these sanctions to block them.[269] Furthermore, whereas under previous legislation the President was required to deal with violators by selecting two of the six sanctions measures, CISADA now required the President to apply at least three of the nine sanction options.[270]

With pressure mounting on Iran under the Obama Administration and with multilateral sanctions also proliferating, 2012 brought three additional US congressional measures aimed at perfecting the US sanctions regime.[271] First, within the National Defense Authorization Act for Fiscal Year 2012 ("2012 Defense Act"), crippling additional sanctions were imposed on Iran's financial sector.[272] Specifically, Congress designated Iran as a "primary money laundering concern," which allowed for special monitoring measures and the triggering of money laundering provisions of the USA PATRIOT Act of 2001.[273] By including Iran's Central Bank among the institutions falling under US sanctions, the 2012 Defense Act broadened sanctions against Iran's energy sector to include basically all sectors coming into contact with Iranian finance.[274]

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267. *See id.* § 105(c) (describing sanctions against human rights violators).

268. *See id.* § 102(b)(2)(B) (amending the ILSA to include these new sanctions).

269. *See id.*; Bhala, *supra* note 27, at 295-97 (exploring these new sanction measures).

270. *See* Comprehensive Iran Sanctions, Accountability, and Divestment Act § 102(a)(2)(C); Bhala, *supra* note 27, at 294 ("the 2010 legislation expanded the ILSA list of sanctions from six to nine and increased the number of sanctions the President had to impose from at least two to three.").

271. *See* National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, 125 Stat. 1,298 (2012); Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, 126 Stat. 1,214 (2012); Iran Freedom and Counter-Proliferation Act of 2012, Pub. L. No. 112-239, 126 Stat. 2,004 (2012).

272. *See* National Defense Authorization Act for Fiscal Year 2012 § 1245.

273. *See id.* § 1245 (creating measures against such designated entities); 31 U.S.C. § 5318A (2012) (containing the USA PATRIOT Act's § 311 money laundering provisions); *see also* Bhala, *supra* note 27, at 300 (explaining the designation process); Levitt, *Financial Sanctions*, *supra* note 147, at 126 (noting the impact of § 311 measures).

274. *See* Bhala, *supra* note 27, at 305 ("[o]f significance was that the prohibition vastly expanded the architecture of measures against Iran from the energy sector to all sectors. Whether payments were made in connection with petroleum or petroleum products did not

In August of 2012, Congress further enacted the Iran Threat Reduction and Syria Human Rights Act of 2012 ("ITRSHRA"), which provided for enhanced enforcement and gap-filling measures to address the shortcomings of the existing sanctions regime.[275] In addition to strengthening each of the various sanctions categories discussed above, the ITRSHRA placed increased emphasis on the human rights situation in Iran and the government's censorship efforts.[276] The targeting of Iran's financial sector was also supplemented with sanctions against any party that knowingly "purchases, subscribes to, or facilitates the issuance of" Iranian sovereign debt.[277] Additionally, the ITRSHRA created three more options within the ILSA's "menu" of sanctions, including: equity or debt investment sanctions; corporate officer exclusion sanctions; and principle executive officer sanctions.[278] Under the equity or debt investment sanctions, the US President was given the authority to block any US person's investment participation in a sanctioned entity, such as an international bank determined to have violated US restrictions.[279] Likewise, the corporate officer sanction allowed the President to block any officers of a sanctioned entity from entering the United States, while the principal executive officers sanction permitted the President to impose any of the approved sanctioning measures on officers of a sanctioned entity.[280] Like previous upshifts in the US sanctions regime, the ITRSHRA also increased the number of sanctions the President was required to impose on a violator, jumping from three out of nine to five out of twelve measures.[281]

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matter . . . "); Levitt, *Financial Sanctions*, *supra* note 147, at 124 (indicating the power of these financial measures).

275. *See generally* Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, 126 Stat. 1,214 (2012); Bhala, *supra* note 27, at 312-13 ("[s]uccinctly put, America dubbed more activities with Iran illegal, closed loopholes to behavior it previously identified as unlawful, set additional sanctions for transgressions, and increased the difficulty of obtaining a waiver of penalties.").

276. *See* Iran Threat Reduction and Syria Human Rights Act § 402 (imposing sanctions based on the transfer of goods or technologies likely to be used to commit human rights abuses); *see also* Bhala, *supra* note 27, at 332-34 (discussing ITRSHRA's human rights amendments to CISADA).

277. *See* Iran Threat Reduction and Syria Human Rights Act § 213; Bhala, *supra* note 27, at 328-29 (commenting on ITRSHRA's new sovereign debt restrictions).

278. *See* Iran Threat Reduction and Syria Human Rights Act § 204(a)(2) (amending the ILSA to include these three new measures).

279. *See id.* (implementing new presidential powers).

280. *See id.* (incorporating these new sanctions options).

281. *See id.* § 201(2)(A) (amending the previous sanctions menu).

Finally, the Iran Freedom and Counter-Proliferation Act of 2012 ("IFCA") represents the final substantive US sanctions development before the conclusion of the interim Joint Plan of Action between Iran and the P5+1.[282] Another expansive revision buried in a defense appropriations bill, IFCA went even further than the ITRSHRA in stressing the importance of Iranian human rights, stating that Iran's human rights situation threatened US interests and incorporating various human rights rationales within the very purpose of US sanctions.[283] IFCA also sought to plug holes in the existing sanctions regime by horizontally expanding to new sectors that reinforced already prohibited acts.[284] Notably, IFCA placed restrictions on: Iranian shipping and shipbuilding; Iran's access to precious metals; insurance and underwriting for prohibited activities; Iran's State media; and the use of Iranian ports.[285]

Representing the high water mark of the US sanctions regime, IFCA was the last substantive sanctions action adopted before the signing of the JPA and the moratorium on some sanctions.[286] However, as negotiations intensified between Iran and world powers on the eve of the JCPOA, Congress also managed to pass one last legislative act aimed at increasing its reviewing powers over any final nuclear deal.[287] The Iran Nuclear Agreement Review Act of 2015 added new procedural requirements to the Atomic Energy Act of 1954, specifically concerning the lifting of sanctions that target Iran.[288] By requiring the President to report to Congress upon the conclusion of any final nuclear deal and jump through other

282. *See* Iran Freedom and Counter-Proliferation Act of 2012, Pub. L. No. 112-239, 126 Stat. 2,004 (2012); *see also* Katzman, *Easing US Sanctions on Iran*, *supra* note 199, at 12; Bhala, *supra* note 27, at 339 ("[t]he Iran Freedom and Counter-Proliferation Act of 2012 was the final legislation against Iran before the November 2013 to January 2014 preliminary nuclear agreement.").

283. *See* Iran Freedom and Counter-Proliferation Act §§ 1241-95. On the subject of human rights in Iran, IFCA specifically cited government oppression, the people's struggle for democracy, access to information, and government censorship. *See id.* § 1243(a)-(b).

284. *See infra* note 285 and accompanying text.

285. *See* Iran Freedom and Counter-Proliferation Act § 1244 (adding restrictions on Iranian shipping); § 1245 (precious metals); § 1246 (insurance and underwriting services); § 1248 (state broadcasting); § 1252 (Iranian ports).

286. *See supra* note 282.

287. *See infra* notes 288-93 and accompanying text.

288. *See* Iran Nuclear Agreement Review Act of 2015, Pub. L. No. 114-17, 129 Stat. 201 (2015); *see also* The Atomic Energy Act of 1954, Pub. L. No. 83-703, 68 Stat. 919 (1954) (codified as amended in 42 U.S.C. §§ 2011-2297 (2012)). The Iran Nuclear Agreement Review Act of 2015 added § 135 to the Atomic Energy Act.

procedural hoops, Congress made clear its intent not to be sidestepped in the lifting of sanctions.[289] The Iran Nuclear Agreement Review Act devised a system where Congress would be given the final say on any negotiated agreement modifying the statutory sanctions already targeting Iran, while the failure to obtain Congressional approval would trigger automatic legislation placing an immediate freeze on "any action by the United States Government to facilitate the release of funds or assets to Iran pursuant to such agreement, or provide any further waiver, suspension, reduction, or other relief pursuant to such agreement."[290] Additionally, the Iran Nuclear Agreement Review Act clarified that even in the event of a nuclear deal breakthrough, "United States sanctions on Iran for terrorism, human rights abuses, and ballistic missiles will remain in place . . . ."[291] In sum, the Iran Nuclear Agreement Review Act, like much of the wider US statutory sanctions regime, sought to create a tangled legal framework that would limit the executive's ability to terminate sanctions at will.[292] However, because the review procedure devised by the Iran Nuclear Agreement Review Act still required a veto-proof majority in both congressional chambers to actually block the JCPOA, the legislation ultimately failed to obstruct the deal with Iran.[293]

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289. In particular, the Iran Nuclear Agreement Review Act notes, "because the sanctions regime was imposed by Congress and only Congress can permanently modify or eliminate that regime, it is critically important that Congress have the opportunity, in an orderly and deliberative manner, to consider and, as appropriate, take action affecting the statutory sanctions regime imposed by Congress." Atomic Energy Act of 1954 § 135(c)(1)(E) (as amended).

290. Atomic Energy Act of 1954 § 135(e)(2) (as amended) (containing Congress' automatic legislation in the event of an agreement beyond its approval); *see also id*. § 135(c)(2) (creating Congress' approval mechanism in the event of any negotiated nuclear deal); RENNACK, *supra* note 194, at 3 (providing a broad overview of the Congressional approval mechanism under the Iran Nuclear Agreement Review Act of 2015).

291. Atomic Energy Act of 1954 § 135(d)(7)(A) (as amended).

292. *See supra* notes 196-291 and accompanying text (tracing the proliferation of the Iran sanctions regime).

293. *See* Robert Satloff, *Clarifying a "No" Vote on the Iran Nuclear Agreement*, WASH. INST. NEAR E. POL'Y (Aug. 10, 2015), http://www.washingtoninstitute.org/policy-analysis/view/clarifying-a-no-vote-on-the-iran-nuclear-agreement; Jennifer Steinhauer, *Democrats Hand Victory to Obama on Iran Nuclear Deal*, N.Y. TIMES, Sept. 10, 2015, http://www.nytimes.com/2015/09/11/us/politics/iran-nuclear-deal-senate.html?_r=0 (recalling the workings and failure of the Iran Nuclear Agreement Review Act).

2. International Sanctions: Multilateral Resolutions

There is no question that the United States was the world leader in sanctioning Iran, spawning a rich unilateral sanctions regime that existed in some form for the majority of four decades.[294] However, unilateral sanctions—even controversial extraterritorial unilateral sanctions—packed little punch in comparison to comprehensive multilateral sanctions.[295] While even some of Washington's closest allies were hesitant to sanction Iran through much of the US sanctions regime, European attitudes soured over the course of the Ahmadinejad presidency, especially following the reignition of the nation's nuclear program and the deterioration of Iranian human rights in the aftermath of Ahmadinejad's contested reelection.[296]

The first truly multilateral resolution concerning Iran occurred as a response to its resumption of uranium enrichment in 2005, related to the government's nuclear development program.[297] UN Security Council Resolution 1696 provided a basis for future rounds of multilateral sanctions, promising that the Security Council would adopt "appropriate measures" if Iran failed to cease its uranium enrichment operations.[298] Although Resolution 1696 included no sanctions itself, it set a one-month deadline for Iran to comply or be subject to further action.[299] Such further action came in the form Security Council Resolution 1737, passing unanimously in the Security Council in late 2006.[300] Resolution 1737 advised all UN Member States to raise sanctions targeting the transfer of nuclear-related materials to Iran, including ballistic missile technologies.[301] Additionally, Resolution 1737 demanded Member States freeze the

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294. *See supra* Part I.B.1 (discussing US sanctions against Iran).

295. *See generally* Egle, *supra* note 145 (arguing the inefficacy of unilateral sanctions); Clawson, *supra* note 27, at 116 (questioning whether unilateral sanctions were successful).

296. *See* Clawson*, supra* note 27, at 117; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 349 (asserting the global sanctions consensus by late 2010).

297. *See* Jason Starr, *The U.N. Resolutions*, *in* THE IRAN PRIMER, *supra* note 12, at 119; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 463 (identifying the origins of multilateral sanctions against Iran).

298. *See* S.C. Res. 1696 (July 31, 2006); Starr, *supra* note 297, at 119 (overviewing Resolution 1696).

299. *See* S.C. Res. 1696; Starr, *supra* note 297, at 119 (noting Resolution 1696's one-month compliance deadline).

300. *See* S.C. Res. 1737 (Dec. 23, 2006); Starr, *supra* note 297, at 120 (observing the adoption of Resolution 1737).

301. *See* S.C. Res. 1737; Starr, *supra* note 297, at 120 (explaining Resolution 1737).

assets of 22 entities involved in the Iranian nuclear program or the IRGC, and urged Member States to limit the travel of anybody connected to Iran's nuclear program.[302] Three months later, the Security Council followed up with Resolution 1747, another unanimous proposal that placed multilateral limitations upon Iran's access to military equipment and purchases.[303] In addition to this military angle, Security Council Resolution 1747 also targeted Iran's access to international financial institutions, suggesting that States limit financial commitments involving Iran to mere humanitarian-related transactions.[304] Additional names and businesses with ties to Iran's nuclear program and/or the IRGC were included on Resolution 1747's list of sanctionable entities, and the Resolution further stipulated international reporting requirements when any individual with ties to Iran's nuclear program traveled or entered Member State territory.[305]

Following this first round of multilateral sanctions, there were some positive signs that Iran was beginning to comply with its International Atomic Energy Agency ("IAEA") obligations.[306] Still, encouraged by the United States and some European allies, the UN Security Council further adopted Resolution 1803 in March 2008.[307] While Resolution 1803 was comprised primarily of non-binding recommendations, it strongly urged UN Member States to cease any involvement with Iranian financial institutions suspected of serving Iran's nuclear program and/or overseas terrorism.[308] Fifteen additional

302. *See* S.C. Res. 1737; Starr, *supra* note 297, at 120 (identifying Resolution 1737's sanction provisions).

303. *See* S.C. Res. 1747 (Mar. 24, 2007); Starr, *supra* note 297, at 120 (introducing Resolution 1747).

304. *See* S.C. Res. 1747; Starr, *supra* note 297, at 120 (highlighting the financial sanctions within Resolution 1747).

305. *See* S.C. Res. 1747; Starr, *supra* note 297, at 120 (pointing out Resolution 1747's expanded list of sanctioned Iranian entities).

306. *See* Starr, *supra* note 297, at 120 (" . . . several council members initially questions the need for further sanctions against Iran. Libya, South Africa, Indonesia, and Vietnam were especially hesitant to pursue new punitive measures, arguing that Iran had begun to cooperate with IAEA inspections."); Walter Isaacson, *A Way Out for Iran's Nuclear Impassse?*, TIME, Mar. 14, 2007, http://content.time.com/time/magazine/article/0,9171,1599725,00.html (acknowledging initial hopes for Iranian nuclear compliance).

307. *See* S.C. Res. 1803 (Mar. 3, 2008); Starr, *supra* note 297, at 120-21 (presenting Resolution 1803).

308. *See* S.C. Res. 1803; Starr, *supra* note 297, at 120-21; William Maclean & Andrew Quinn, *Analysis: Iran Sanctions Push is Test for West Diplomacy*, REUTERS (Jan. 5, 2012), http://www.reuters.com/article/us-iran-sanctions-analysis-idUSTRE80415Q20120105 (articulating the financial measures of Resolution 1803).

entities were subjected to asset freezes, and Member States were authorized to seize and inspect any cargo traveling to or from Iran if there were "reasonable grounds" to believe that the cargo contained previously-banned materials.[309] Later that year, the Security Council also adopted Resolution 1835, which simply reaffirmed the existing multilateral sanctions in light of new evidence related to Iran's ongoing nuclear noncompliance.[310] Although the Security Council unanimously passed Resolution 1835, growing tensions between Washington and Moscow related to further sanctions began to show the limitations of the multilateral sanctions regime.[311] At the same time, however, Iran's stark noncompliance in the face of both IAEA and UN demands helped bring individual European States toward adopting their own unilateral measures to target Iran.[312]

In response to another major negotiating impasse as well as the discovery of Iran's secret uranium enrichment site at Qom, the UN Security Council passed Resolution 1929 in June 2010.[313] The Resolution demanded that States adopt measures to keep sensitive technologies from reaching Iran.[314] Likewise, it blocked all Iranian commercial access to uranium mining operations and other nuclear material production operations outside Iran.[315] Further targeted

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309. *See* S.C. Res. 1803. Importantly, the language of Resolution 1803 provided no definition or guidance as to what constituted "reasonable grounds," thereby leaving enforcement to the discretion of individual member states. *See id.*; *see also* Starr, *supra* note 297, at 121 (further expounding on the suggestions under Resolution 1803).

310. *See* S.C. Res. 1835 (Sept. 27, 2008); Starr, *supra* note 297, at 121 (explaining Resolution 1835).

311. *See* Starr, *supra* note 297, at 121 ("[i]n its final U.N. measure on Iran before leaving office, the Bush administration was forced to accept a compromise resolution after Russia balked at more sanctions."); Egle, *supra* note 145, at 45 (noting Russian and other nations' resistance to Washington's call for intensified sanctions).

312. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 463 ("the Bush administration began to reap the rewards of a new coordination with Europe on Iran, in the form of incipient European and multilateral actions to penalize Tehran."); DINA ESFANDIARY, ASSESSING THE EUROPEAN UNION'S SANCTIONS POLICY: IRAN AS A CASE STUDY, 34 EU NON-PROLIFERATION CONSORTIUM, 7-10 (December 2013), http://www.nonproliferation.eu/web/documents/nonprolif
erationpapers/dinaesfandiary52b41ff5cbaf6.pdf (identifying European unilateral sanctions against Iran).

313. *See* S.C. Res. 1929 (June 9, 2010); Starr, *supra* note 297, at 121 (introducing Resolution 1929); *see also* Meshkat, *supra* note 200, at 44 (detailing Iran's NPT noncompliance on the eve of Resolution 1929).

314. *See* S.C. Res. 1929; Starr, *supra* note 297, at 121 (explaining Resolution 1929).

315. *See* S.C. Res. 1929; Starr, *supra* note 297, at 121 (detailing the further restrictions of Resolution 1929).

sanctions were aimed at the IRGC, as well as the Islamic Republic of Iran Shipping Lines ("IRISL"), which was suspected of importing goods related to Iran's nuclear program.[316] Perhaps most importantly, in light of the simultaneous US efforts under CISADA, Security Council Resolution 1929 adopted new sanctions on Iran's finance sector, calling on Member States to block the expansion of Iranian banks into their jurisdiction and to require that a State's domestic banks cut all ties to Iran.[317] The passage of Resolution 1929 along with the United States' diplomatic resurgence following the election of President Obama allowed for even greater proliferation of commonly focused unilateral sanctions, which had a major impact on Iran's international image and its domestic economy.[318]

In combination with US and other unilateral sanctioning efforts, these UN Security Council measures contributed to the most complex and aggressive international sanctions regime that the world has ever witnessed.[319] By the election of President Rouhani in 2013, the Islamic Republic was drowning in international coercive pressures.[320] The next Part of this Note will focus on what these pressures actually looked like.

C. The Costs of Sanctioning Iran

The US and international sanctions regime targeting Iran inflicted various costs on Iran and other parties, some of them unanticipated.[321] As a general matter, these costs may be broken down into three categories: economic, political, and humanitarian.[322]

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316. *See* S.C. Res. 1929; Starr, *supra* note 297, at 121 (noting Resolution 1929's new sanction targets).

317. *See* S.C. Res. 1929; Starr, *supra* note 297, at 121 (emphasizing the importance of Resolution 1929's financial measures).

318. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 465 ("in many ways those subsequent unilateral sanctions are far more significant than the UN measure itself. Washington took other steps to encourage cooperation among 'like-minded states' in Europe and Asia, notably by utilizing sanctions policy to highlight human rights abuses in Iran and to restrict the government's access to technology used to control the free flow of information."); *see also* John R. Crook, *Security Council Adopts Fourth Round of Iranian Sanctions*, 104 AM. J. INT'L L. 517, 518 (2010); ESFANDIARY, *supra* note 312 (documenting the proliferation of unilateral sanctions against Iran).

319. *See supra* note 194 and accompanying text.

320. *See* infra Part I.C.

321. *See infra* Parts I.C.1-3.

322. *See id.*

Examining these costs in greater detail provides a glimpse at the effectiveness of the sanctions regime, along with its shortcomings.

1. Economic Costs

As intended, the sanctions regime wreaked havoc on Iran's national economy.[323] The Iranian rial has never recovered its value preceding the intensification of sanctions under President Clinton's 1995 executive orders, and in total, some estimates suggest that the overall Iranian economy is twenty-five percent smaller than it would have been in the absence of the sanctions regime.[324] This economic loss has been most severe since the passing of CISADA in 2010 and the intensification of multilateral sanctioning efforts, with the Iranian State losing an estimated US$133 million daily in revenues throughout 2012.[325] This period witnessed negative economic growth and inflation consistently upwards of thirty percent.[326] The Iranian rial also plummeted throughout 2012, approximately halving its value and dropping as much as fifteen percent on October 1 of that year.[327] The

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323. *See* Bhala, *supra* note 27, at 353; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 467 (observing the economic damage imposed on Iran by the sanctions regime).

324. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 452; INT'L CAMPAIGN FOR HUM. RTS. IN IRAN, A GROWING CRISIS: THE IMPACT OF SANCTIONS AND REGIME POLICIES ON IRANIANS' ECONOMIC AND SOCIAL RIGHTS 54 (2013), http://www.iranhumanrights.org/wp-content/uploads/A-Growing-Crisis.pdf [hereinafter A GROWING CRISIS] (citing the failure of the Iranian rial to recover since Clinton-era sanctions); *see also* COUNTRYWATCH, IRAN, *supra* note 168, at 316; Indira A.R. Lakshmanan, *Iran Reaps Less Ready Cash From Eased Sanctions Than Predicted*, BLOOMBERG (Nov. 25, 2014), http://www.bloomberg.com/news/articles/2014-11-25/iran-reaps-less-ready-cash-from-eased-sanctions-than-predicted (citing the missing quarter of Iran's economy due to sanctions).

325. *See* Ghodoosi, *supra* note 28, at 1767; A GROWING CRISIS, *supra* note 324, at 91-92 (addressing the particular intensity of the late sanctions regime); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 470; Anthony DiPaola & Isaac Arnsdorf, *Iran Loses $133 Million a Day on Embargo, Buoying Obama*, BLOOMBERG (Aug. 2, 2012), http://www.bloomberg.com/news/articles/2012-08-01/iran-loses-133-million-a-day-from-sanctions-as-oil-buoys-obama (noting Iran's daily revenue losses).

326. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 359; Sabrina M. Peterson, *Iran's Deteriorating Economy: An Analysis of the Economic Impact of Western Sanctions*, INT'L AFF. REV., http://www.iar-gwu.org/node/428 (last visited Apr. 9, 2016) (evaluating Iran's high inflation under sanctions). In fact, US estimates placed Iran's actual inflation rate at approximately 70 percent in 2013. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra*, at 359; COUNTRYWATCH, IRAN, *supra* note 168, at 316.

327. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 471; Steven Plaut, *The Collapse of Iran's Rial*, GATESTONE INST. (Feb. 21, 2013, 5:00

additional layer of 2012 sanctions sunk Iran's economy another ten percent by March 2014, compounded by the already staggering harm to the State oil sector.[328] Whereas Iran had sold its oil to 21 different markets prior to 2012, this last wave of sanctions left only six international purchasers.[329] Some measures show a decline in national oil sales from US$100 billion in 2011 to just US$35 billion in 2013, while others indicate oil losses of US$1 billion per day after Washington's 2012 sanctions.[330]

The sanctions regime also had a devastating impact on development in Iran, including the opportunity costs of forsaken foreign direct investment ("FDI"), as well as the very real costs of international divestment, whereby mounting financial, legal, and reputational hazards persuaded non-Iranian firms to exit Iran.[331] Iran was blacklisted from new World Bank loans since 2005, and was denied the benefits of other international economic institutions.[332] The country's exclusion from the Society for Worldwide Interbank Financial Telecommunications ("SWIFT") international clearing

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AM), http://www.gatestoneinstitute.org/3597/iran-rial-collpase (explaining that this crash was associated with Washington's sanctioning of the Iranian Central Bank).

328. *See* Matthew Philips & Golnar Motevalli, *Iran Gets Ready to Sell To Sell to the World,* BLOOMBERG (Sep 10, 2015), http://www.bloomberg.com/news/articles/2015-09-10/iran-gets-ready-to-sell-oil-to-the-world (establishing Iran's ten percent decline over fiscal year 2013); *Iran's Economy, By the Numbers,* IRAN PRIMER (May 11, 2015), http://iranprimer.usip.org/blog/2015/may/11/irans-economy-numbers (establishing Iran's one-tenth GDP decline between 2012 and 2014).

329. *See* Philips & Motevalli, *supra* note 328, at 21; Zachary Keck, *Asia is Purchasing Nearly all of Iran's Oil*, DIPLOMAT (Jan. 05, 2013) (emphasizing the decline of Iranian petroleum importing nations).

330. COUNTRYWATCH, IRAN, *supra* note 168, at 316 (observing Iran's shrinking oil revenue). In volume terms, oil sales dropped from 2.5 to 1.0 million barrels per day during this period. Ghodoosi, *supra* note 28, at 1767; *see also* Leah McGrath Goodman, *Iran is (Almost) Open for Business: When Sanctions End, Big Oil Will Pounce*, NEWSWEEK, 12 (May 8, 2015) (estimating Iran's oil losses to approach US$1 billion daily).

331. *See* Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 1; Najmeh Bozorgmehr & Monavar Khalaj, *Businesses Eye Huge Opportunities in Iran*, FINANCIAL TIMES (July 14, 2015), http://www.ft.com/intl/cms/s/0/654cbd28-2a2a-11e5-8613-e7aedbb7bdb7.html#axzz3usB0orCL (mentioning missed FDI opportunities and underinvestment under the sanctions regime); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 462; Levitt, *Financial Sanctions*, *supra* note 147, at 125 (assessing international divestment from Iran).

332. *See* Egle, *supra* note 145, at 44; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 458; Clawson, *supra* note 27, at 115 (noting Iran's being cut off from the World Bank lending). Iran was also prevented from accessing International Bank for Reconstruction and Development ("IBRD") loans and Multilateral Investment Guarantee Agency ("MIGA") guarantee dispersals. *See* Meshkat, *supra* note 200, at 44-45.

system eviscerated Iran's ability to issue bonds overseas or transfer money in or out of the national economy, causing a severe credit crunch.[333] Meanwhile, Iran's trade balance declined by approximately 30.1% from 2010 to 2014, and the State's increasing reliance on barter flooded domestic markets with cheap Chinese goods.[334] Combined, these trends took a major toll on Iran's private sector.[335] Additionally, smuggling ran rampant throughout the late sanction years, with US$25 billion of commodities and consumer goods illegally entering the country in 2013, while State-subsidized gasoline was illegally exported.[336] There were also other problematic economic distortions: from the concentration of wealth in the IRGC, to the necessity-born development of an entire domestic weapons industry.[337]

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333. *See* Najmeh Bozorgmehr & Martin Arnold, *French Banks Notably Absent From Business Delegation to Iran*, FINANCIAL TIMES (Sept. 22, 2015), http://www.ft.com/intl/cms/s/0/45ac01a8-611c-11e5-9846-de406ccb37f2.html?siteedition=intl#axzz3swvAUDuL; Morteza Ramezanpour, *Iran's Troubled Bond Market*, AL-MONITOR (Aug. 12, 2015), http://www.al-monitor.com/pulse/originals/2015/08/iran-bond-market.html; PRS GROUP, IRAN COUNTRY UPDATE 6 (Aug. 27, 2014) (on file with author) (explaining Iran's credit crunch). The Society for Worldwide Interbank Financial Telecommunications ("SWIFT") banking system is a Belgium-based secure communication system used by banks to send and receive payment requests. Although SWIFT does not technically provide clearing services, it is the primary international communication mechanism to request transaction settlements via correspondent banking or national payment systems. *See* Carter & Farha, *supra* note 205, at 907; *Introduction to SWIFT*, SWIFT, https://www.swift.com/about-us/discover-swift (last visited Apr. 9, 2016).

334. *See* COUNTRYWATCH, IRAN, *supra* note 168, at 320; *Iran Balance of Trade*, TRADING ECONOMICS, http://www.tradingeconomics.com/iran/balance-of-trade (last visited Apr. 9, 2016) (documenting the massive decline in Iran's balance of trade); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 359; *China Floods Iran with Cheap Consumer Goods in Exchange for Oil*, GUARDIAN (Feb. 20, 2013), http://www.theguardian.com/world/iran-blog/2013/feb/20/china-floods-iran-cheap-consumer-goods (considering the consequences of Iran's resorting to barter).

335. Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 5; A GROWING CRISIS, *supra* note 324, at 129-41 (elucidating the impact of sanctions on Iran's private sector).

336. *See* Correspondent in Tehran, *Billion Dollar Smuggling Industry Drains Iran's Economy*, AL-MONITOR (Feb. 13, 2015), http://www.al-monitor.com/pulse/originals/2015/02/iran-smuggling-trafficing.html; Harris, *The Bazaar*, *supra* note 50, at 110 (characterizing Iran's smuggling woes); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 421; Hamdan Albaloshi, *Iran Sanctions Spur Boom for Pakistani Diesel Smugglers*, REUTERS (Mar. 31, 2013), http://www.reuters.com/article/us-pakistan-iran-smugglers-idUSBRE92U08X20130401 (explaining how sanctions compounded Iran's subsidy-driven, illicit diesel export problems).

337. For the sanction regime's empowerment of the IRGC, see *infra* notes 359-64 and accompanying text. For Iran's domestic weapons industry, see MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 476; *Iran: Defense Industry*,

Of course, the sanctions regime also incurred economic costs beyond the borders of Iran. Within the United States, economic self-harm from sanctioning Iran totaled billions of dollars annually.[338] Private US firms were required to develop various reporting mechanisms and sanctions compliance systems irrespective of costs, and the tangled web of the sanctions regime carried severe penalties for noncompliance, with billions of dollars in fines accumulating from sometimes-unintentional violators.[339] Numerous business sectors also faced cumbersome artificial costs, such as US airlines being required to shell out millions a year for air traffic control services when flying over Iran.[340] Additionally, US firms racked up a growing list of opportunity costs, sometimes bypassing deals valued in billions of dollars and losing such projects to European competitors.[341] Despite the clear competitive advantage congressionally granted to Europe, US companies routinely indicated their desire to open up shop and/or

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GLOBALSECURITY, http://www.globalsecurity.org/military/world/iran/industry.htm (last visited Apr. 9, 2016).

338. *See* Wolfe, *supra* note 29, at 10; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 484 (assessing the US costs of the sanctions regime).

339. *See* Anderson, *Good Grief!*, *supra* note 47, at 143-44; Alexei Monsaat, *Encouraging Public-Private Partnerships to Fight Financial Crime*, ATLANTIC COUNCIL, 8 (Oct. 2012), https://risk.thomsonreuters.com/sites/default/files/1210-Public-Private-Partnership-Fin-Crime-TR-Atl-Council.pdf (noting reporting costs absorbed by US firms); *see also* Eric Lorber & Elizabeth Rosenberg, *Dollar Diplomacy in Tehran: How Promoting Business in Iran Boosts the Nuclear Agreement*, FOREIGN AFF. (July 15, 2015), https://www.foreignaffairs.com/articles/iran/2015-07-15/dollar-diplomacy-tehran; Xian, *supra* note 201, at 633-34 (addressing the civil liabilities and fines faced by US firms). For example, Lloyd's Banking Group was fined US$350 million in 2009, and Credit Suisse was charged US$536 million later that year. *See* Levitt, *Financial Sanctions*, *supra* note 147, at 125; BMI RESEARCH, IRAN COMMERCIAL BANKING REPORT Q3 2015 36 (2015). Even minor transactions entailed steep punishment. In 2015, PayPal and OFAC reached a US$7.7 million settlement for 131 transactions amounting to a value of US$7,091. *See* Roland L. Trope, *Surprise in the Package Deal with Iran*, BUS. L. TODAY, 4 (Aug. 2015).

340. *See* Clawson, *supra* note 27, at 117; *Regime Wants More Planes Flying Over Iran (& Paying)*, INT'L IRAN TIMES (Aug. 8, 2014), http://iran-times.com/regime-wants-more-planes-flying-over-iran-paying/ (discussing sanctions' impact on international airline costs). Payments to Iran for air traffic control services were specifically allowed by OFAC. *See OFAC FAQs: Iran Sanctions*, US DEP'T TREASURY, ¶ 417 (2015), https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#aviation.

341. *See* Breckinridge, *supra* note 119, at 2460-63 ("Iran remains largely unaffected by ILSA because the country's investment needs are met by the myriad of non-American companies eager to do business there. Meanwhile, American companies suffer the sanctions' impact acutely."). Conoco's loss of its Sirri oil field contract to Total S.A. represents only one major example. *See supra* note 119 and accompanying text.

find a way to return to Iran.[342] In the end, such proposals were usually outweighed by the legality risks that sanctions implied.[343] Finally, beyond the United States, the sanctions regime inflicted broad and obvious damage to global oil supplies as well as global free trade.[344]

2. Political Costs

The sanctions regime also carried numerous political costs, both in Iran and elsewhere.[345] First, at the outset, it merits recognition that sanctions were never inevitable or preordained: rather, sanctioning policy was always itself a political choice.[346] Furthermore, for the United States, adopting such policies often entailed a problematic one-way road: while sanctions could be easily made, they could not be easily unmade.[347] Thus, in employing sanctions toward Iran, there was always a real risk of Washington painting itself into a political

342. *See* Layla Nouraee, *Reassessing US Policy Toward Iran: Stimulating Reform Through Economic Means*, 25 SUFFOLK TRANSNAT'L L. REV. 535, 560 (2002) (arguing that sanctions granted European nations a competitive advantage over US firms); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 397-99 (pointing out Conoco's continuing desire to enter Iran, after being blocked by the Clinton administration). Indeed, Conoco made various unsuccessful lobbying attempts to ease sanctions throughout the late 1990s, and was actually considering an expansion of Iranian operations through a British subsidiary in 2001. *See id.* at 399.

343. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 399; *see also supra* notes 339-42 and accompanying text (highlighting the costs associated with doing business in Iran).

344. *See* Breckinridge, *supra* note 119, at 2459; McCary, *supra* note 119, at n.16 (exploring the sanctions regime's impact on global oil supplies). However, this trend was mitigated by rapid increases in US shale production throughout the late sanctions regime. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 463. *See also* Breckinridge, *supra*, at 2445 (assessing the costs to global trade). These trends had a major impact on developing economies in particular. *See* Bhala, *supra* note 27, at 279.

345. *See infra* notes 346-72 and accompanying text.

346. *See* Bhala, *supra* note 27, at 258-59 ("American officials tended to respond to the worst of Iranian rhetoric . . . Rather than rising above the ugliness emanating from some quarters in Tehran and Qom, the officials forged a trade sanctions policy in response to it."); *cf.* Walt, *Accentuate the Positive*, *supra* note 117 ("[a] striking feature of recent exchanges on [the prospects of a nuclear deal with Iran] is the tendency for both sides to focus almost entirely on various negative outcomes and to devote little attention to the potential upside of a deal.").

347. *See* INT'L CRISIS GROUP, SPIDER WEB: THE MAKING AND UNMAKING OF IRAN SANCTIONS, MIDDLE EAST REPORT NO. 138 (Feb. 25, 2013), http://www.crisisgroup.org/~/media/Files/Middle%20East%20North%20Africa/Iran%20Gulf/Iran/138-spider-web-the-making-and-unmaking-of-iran-sanctions.pdf; Peter D. Feaver & Eric Lorber, *Penalty Box: How Sanctions Trap Policymakers*, FOREIGN AFF. (June 6, 2014), https://www.foreignaffairs.com/articles/united-states/2014-06-06/penalty-box (describing the difficulty of unwinding sanctinos once they are imposed).

corner, unable to shift course as circumstances changed.[348] Sanctions also often had an obfuscating effect on US foreign policy, resulting in Washington's allowing tactical economic pressure to stand in the place of actual strategy—whether concerning Iran's nuclear program or other foreign policy issues.[349] Such an absence of strategy often led to confusing results.[350] Thus, while sanctions toward the Islamic Republic were usually premised on targeting the Iranian government and helping the people of Iran, a Gallup poll from 2013 found that forty-seven percent of Iranians blamed the United States for their nation's economic turmoil, against just ten percent who blamed the regime in Tehran.[351]

Such polling is indicative of a wider political cost of the sanctions regime: the "rally around the flag" mentality that resulted from sanctions.[352] With a history extending back to numerous pre-Islamic Persian empires, Iranians are often described as a "notoriously proud" people.[353] To think that they might have surrendered their

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348. *See* Feaver & Lorber, *supra* note 347; *see also* SPIDER WEB: THE MAKING AND UNMAKING OF IRAN SANCTIONS, *supra* note 347, at 4 ("[u]ltimately, sanctions as a tool of coercive diplomacy are only as effective as the prospect of relieving them in exchange for policy shifts is real; the measure of efficacy lies in what can be obtained when they are removed, not what happens when they are imposed . . . in the Iranian case, the situation at best is murky in this regard."). While it amounts to mere speculation, one might question whether Washington's relationship with President Khatami could have been different, were it not for the preexisting sanctions already in place against Iran.

349. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 471–72 (reporting on the cumbersome nature of sanctions); Clawson, *supra* note 27, at 115–16 (inferring the strategic confusion that resulted from US sanctions against Iran).

350. *See infra* note 351 and accompanying text.

351. *See* Clawson, *supra* note 27, at 116-17; Wolfe, *supra* note 29, at 12 (explaining the sanction's regime intended purpose of targeting the regime, but not the population of Iran); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 483; Mohamed Younis, *Iranians Feel Bite of Sanctions, Blame U.S., Not Own Leaders*, GALLUP (Feb. 7, 2013), http://www.gallup.com/poll/160358/iranians-feel-bite-sanctions-blame-not-own-leaders.aspx (assessing Iranian attitudes toward the sanctions regime).

352. *See* Bhala, *supra* note 27, at 356; *see also* SPIDER WEB: THE MAKING AND UNMAKING OF IRAN SANCTIONS, *supra* note 347, at i ("the one thing considered more perilous than suffering from sanctions is surrendering to them; persuaded the West is intent on toppling the regime, the leadership views economic steps as just one in a panoply of measures designed to destabilise it. Its strategy, rooted in the experience of diplomatic isolation and the war with Iraq, can be summed up in two words: resist and survive, the former being the prerequisite to the latter.").

353. *See* Robin Wright, *The Challenge of Iran*, *in* THE IRAN PRIMER, *supra* note 12, at 5; *see also* Barbara Slavin, *Iranian People Act More Resigned Than Revolutionary These Days*, AL-MONITOR (Sept. 2, 2012), http://www.al-monitor.com/pulse/originals/2012/al-monitor/iran-beyond-the-slogans-a-nation.html# ("Iranians remain a proud people who bristle at the negative stereotypes about them so often propagated in the West.").

sovereignty to the economic coercion of foreigners seems somewhat disingenuous.[354] Ayatollah Khamenei often met Washington's threats with his own nationalist retorts.[355] Likewise, US sanctions were often used as a scapegoat to undermine the regime's own genuine problems, such as the economic mismanagement under Ahmadinejad.[356] It is probably also true that sanctions left Iran feeling threatened and cornered, a trend hardly constructive toward dissuading it from seeking nuclear weapons.[357] There is also ample evidence to suggest that international coercion undermined moderates like President Khatami within Iranian domestic politics.[358]

Another political consequence of the sanctions regime has been the gradual empowerment of Iran's Revolutionary Guard, which has played an increasing role in Iran's economy throughout the past decade.[359] With close ties to Khamenei and an important economic player since Iran's post-Iraq War reconstruction, the IRGC has been strengthened by Washington's sanction policies.[360] Increased business

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354. *See* Jim Walsh, *Ten Days in Tehran: Nuclear Weapons, Policy, and Theory*, MIT SEC. STUD. PROGRAM SEMINAR (May 3, 2006), http://web.mit.edu/ssp/seminars/wed_archives06spring/walsh.htm ("I believe that domestic political dynamics are critical in the formulation of Iranian nuclear policy . . . national pride is the main driver in [Iran's nuclear ambitions]."); David J. Lynch, *Nuclear program a source of Pride for Iranians*, USA TODAY (Aug. 28, 2006, 1:32 AM), http://usatoday30.usatoday.com/news/world/2006-08-28-iran-cover_x.htm (contextualizing the role of national pride in the Iranian nuclear program).

355. MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 473–74 ("[t]oday the Iranian nation has achieved some capabilities which have caused those who imposed sanctions on us to become agitated and worried about the Iranian nation becoming the number one military power in the region. Well, this was the result of your sanctions. These sanctions didn't work to our detriment. We were able to create an opportunity out of this threat. It's the same today. We are not afraid of Western sanctions. With the blessing of God, the Iranian nation, in the face of any sanction or economic embargo, will demonstrate an effort which will double or increase its progress by many folds.").

356. *See* Breckinridge, *supra* note 119, at 2457; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 366 (positing the regime's tendency to use sanctions as a scapegoat for internal problems).

357. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 479; Ray Takeyh, *Time for Détente With Iran*, FOREIGN AFF. (Mar/Apr, 2007), https://www.foreignaffairs.com/articles/iran/2007-03-01/time-d-tente-iran (connecting Iran's national security fears to the desire for nuclear weapons).

358. *See* Breckinridge, *supra* note 119, at 2457–58; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 479 (evaluating the impact of sanctions on Iran's domestic politics).

359. *See* IRAN: COUNTRY RISK REPORT, *supra* note 161, at 10; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 342 (theorizing on the rise of the IRGC).

360. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 479; Alireza Nader, *The Revolutionary Guards*, *in* THE IRAN PRIMER, *supra* note 12, at

costs for their local and foreign competitors resulting from sanctions have presented the IRGC with a strong upper hand within the domestic economy.[361] At the same time, the award of massive energy development contracts to the IRGC's construction arm represent projects that likely would have gone to international players, were it not for the limitations of sanctions.[362] While privatization efforts benefiting the IRGC under President Ahmadinejad were in part politically motivated, here too sanctions weighed heavy, as the government later admitted that numerous spin-offs to IRGC-affiliated firms were inspired out of the need to shore up confidence in the nation's sanctions-straddled economy.[363] In this light, much of the shadow economy awarded to the IRGC was a direct consequence of Washington's economic coercion.[364]

59; CAMMETT ET AL., *supra* note 41, at 315 (establishing the link between sanctions and the rise of the IRGC). The relationship between Khamenei and the IRGC extends back to his first days as Supreme Leader and his need to establish a domestic powerbase following the death of Khomeini. *See* Milani, *The Green Movement*, *supra* note 105, at 42; Ali Alfoneh, *All the Guard's Men: Iran's Silent Revolution*, WORLD AFF. J. (Sept./Oct. 2010), http://www.worldaffairsjournal.org/article/all-guards-men-irans-silent-revolution. For the IRGC's economic role in the aftermath of the Iran-Iraq War, see Nader, *The Revolutionary Guards*, *supra*, at 60.

361. *See* CAMMETT ET AL., *supra* note 41, at 315; Milani, *The Green Movement*, *supra* note 105, at 42 (noting the competitive advantage within Iran possessed by the IRGC).

362. *See, e.g.*, MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 340 ("[i]n 2009, the fund reportedly disbursed $1 billion to [the IRGC] to help fund projects that the IRGC's construction wing had been awarded in the development of the South Pars gas reservoir."); *see also* CAMMETT ET AL., *supra* note 41, at 315 ("[g]overnment contracts were preferentially allocated to such [IRGC] firms, especially after the US embargo prevented foreign firms from operating in Iran."); FREDERIC WEHREY ET AL., RAND CORPORATION, THE RISE OF THE PASDARAN: ASSESSING THE DOMESTIC ROLES OF IRAN'S ISLAMIC REVOLUTIONARY GUARDS CORPS 71 (2009), http://www.rand.org/content/dam/rand/pubs/monographs/2008/RAND_MG821.pdf ("[a]s an economic organization more interested in monopoly rather than open competition, the IRGC may wish to keep Iran's economy closed off and under its tight control. If this is the case, U.S. and international sanctions may not weaken the IRGC, but instead enhance its formal and illicit economic capabilities").

363. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 347 (classifying some high-profile contract awards as merely "for show"); Bijan Khajehpour, *Iran Shifts to Lower Gear in Privatization*, AL-MONITOR (Oct. 8, 2013), http://www.al-monitor.com/pulse/originals/2013/10/iran-privatization-organization-new-focus.html# ("Assadollah Asgaroladi, a leading businessman, describes the privatization performance in the Ahmadinejad era as a 'farce' and believes that the economy's resources are not at the disposal of the real private sector.").

364. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 343; Nader, *The Revolutionary Guards*, *supra* note 360, at 59 (detailing the extent of the IRGC's role across Iran's economy). It is also relevant that Iran's various smuggling channels were administered and operated by individual members of the IRGC, leading to corrupt private

Additionally, the steady intensification of sanctions provided significant alteration of Iran's political ties over time.[365] In some cases this resulted in the direct empowerment of US adversaries like Russia and China, with China in particular benefiting from the late sanctions regime as European players were pressured to exit the country.[366] Likewise, Iran's turn to "alternative allies" in Africa and South America represents an interesting new challenge for US foreign policy.[367] While such a development is not problematic in itself, the zero-sum nature of sanctions provide for a conflict of influence, whereby future US efforts to cooperate with these States will be required to overcome the Iranian interests that such close friendships have generated.[368] Finally, perhaps one of the most destructive trends of the sanctions regime, US economic coercion has indirectly contributed to wider regional tensions between the Middle East's Sunni and Shi'ite communities.[369] Although from Damascus to Sana'a such conflicts are often couched in sectarian explanations, much of the ongoing proxy wars between Iran and Saudi Arabia can be attributed to the shifting power dynamics and divergent oil politics of these two massive petroleum-exporting governments.[370] This divergence itself has been spurned by international sanctions.[371]

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enrichment. *See* Correspondent in Tehran, *supra* note 336; WEHREY ET AL., *supra* note 362, at 64–66 (suggesting the IRGC's participation in Iran's smuggling networks).

365. *See infra* notes 366–67 and accompanying text.

366. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 407–09; John W. Garver, *China's Iran Policies*, Testimony before the US-China Economic and Security Review Commission on China's Current and Emerging Foreign Policy Priorities (Apr. 13, 2011), http://www.uscc.gov/sites/default/files/4.13.11Garver.pdf, 8–11 (reviewing China's increased economic participation in Iran, following the exit of Europe).

367. *See* Steven Heydemann, *Iran's Alternative Allies*, *in* THE IRAN PRIMER, *supra* note 12, at 193; Joseph Hammond, *Mahmoud Ahmadinejad's African Safari*, DIPLOMAT (June 18, 2013), http://thediplomat.com/2013/06/mahmoud-ahmadinejads-african-safari/; Ely Karmon, *Iran in Latin America: President Rouhani's Era*, INT'L INST. FOR COUNTER-TERRORISM (Oct. 21, 2014), http://www.ict.org.il/Article/1234/Iran-in-Latin-America-President-Rouhanis-Era (considering Iran's refocus to non-traditional economic partners).

368. *See supra* note 367 and accompanying text.

369. *See infra* note 370–72 and accompanying text.

370. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 479; Molavi, *supra* note 149, at 161 (distinguishing the role of oil politics in tensions between Iran and Saudi Arabia).

371. *See* Mohsen M. Milani, *Iran and Saudi Arabia Square Off: The Growing Rivalry Between Tehran and Riyadh*, FOREIGN AFF. (Oct. 11, 2011), https://www.foreignaffairs.com/articles/middle-east/2011-10-11/iran-and-saudi-arabia-square (explaining how the relative elevation of Saudi Arabia has spurned wide Iranian countermeasures); Reza Sanati, *The Saudi Oil War on Iran*, NAT'L INTEREST (Mar. 13, 2013), http://nationalinterest.org/commentary/the-

Furthermore, the isolation of Iran from the international community has both increased the stakes of these proxy conflicts and undermined any possibility of a political solution in brutal crises like the current civil war raging in Syria.[372]

3. Humanitarian Costs

Finally, the costs of sanctions on Iran have also involved a troubling human dimension.[373] At the academic level, sanctions often entail unanticipated humanitarian costs, even when narrowly targeted upon a problematic regime.[374] Under any sanctions policy, access to food, medicine, education, and the prosperity of a target-nation's middle class are all vulnerable grounds for collateral damage.[375] In fact, sanctions toward Iran have witnessed emergencies in each of these categories.[376] Iranian food security was on occasion compromised by sanctions, particularly during periods of high inflation, when the costs of chicken and other meat outpaced Iranians' ability to afford these basic staples.[377] Although approximately ninety percent of Iranian pharmaceutical demand is manufactured domestically, sanctions also restricted the importation of required

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saudi-oil-war-iran-8214 (recounting Saudi Arabia's history of strategic interference with Iran's oil capabilities).

372. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 480 (demonstrating the escalation of Saudi-Iranian tensions in Syria); Laurence Norman, *Saudi Arabia – Iran Talks Needed for Syria Breakthrough, Says United Nations Envoy*, WALL STREET J., Sept. 11, 2015, http://www.wsj.com/articles/saudi-arabia-iran-talks-needed-for-syria-breakthrough-says-united-nations-envoy-1441900196 (citing the need for Iranian cooperation in order to solve the Syria catastrophe).

373. *See infra* notes 374–89 and accompanying text.

374. *See* Wolfe, *supra* note 29, at 12 ("[t]he chain reaction triggered by the imposition of economic sanctions sends shockwaves throughout the target nation's economy causing undesired humanitarian costs. Sanctions are not effective unless they impose costs to the targeted nation, but the effects on the public of the targeted nation are vast, extending far beyond the intended harm."); *see also* David Cortright & George A. Lopez, *Introduction: Assessing Smart Sanctions: Lessons from the 1990s*, *in* SMART SANCTIONS: TARGETING ECONOMIC STATECRAFT 13–14 (2002) (noting the humanitarian costs of even extremely focused travel sanctions).

375. *See* Wolfe, *supra* note 29, at 12–14; MANUEL BESSLER ET AL., SANCTIONS ASSESSMENT HANDBOOK, U.N. INTER-AGENCY STANDING COMMITTEE 63 (2004) (assessing the many ways that sanctions may jeopardize target nation civilians).

376. *See infra* notes 377-81 and accompanying text.

377. The "Chicken Crisis" of 2012 provides a glimpse at one such episode. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 1–4 (illustrating the Chicken Crisis); *cf.* Wolfe, *supra* note 29, at 19 (contextualizing such sanctions-related food shortages).

medicinal ingredients, resulting in drug shortages.[378] As wealthy Iranians faced with market insecurity stockpiled medication, such drug shortages were further compounded.[379] Iranian students studying abroad were particularly affected by Washington's financial sanctions, which created a firewall between them and their bank accounts.[380] Across the wider economy, shortfalls in the availability of spare parts also harmed ordinary Iranian citizens, a trend especially true within Iran's airline industry.[381]

Another disturbing consequence of international sanctions has been the disempowerment of Iran's middle class.[382] Considering the historical role played by this demographic in mobilizing Iranian social and political change, this consequence should strike Washington as counterproductive.[383] Periods of high inflation resulting from sanctions fell especially hard on Iranian wage earners.[384] At the same time, lack of access to credit within Iran's private sector emaciated the ability of small firms to meet their ongoing business needs.[385]

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378. *See* Wolfe, *supra* note 29, at 20; A GROWING CRISIS, *supra* note 324, at 143–51 (emphasizing the costs of sanctions on Iranian medicine).

379. *See* Wolfe, *supra* note 29, at 20; Marcus George & Zahra Hosseinian, *Sanctions, Government Blamed for Iran's Drugs Shortage*, REUTERS (Dec. 5, 2012), http://www.reuters.com/article/us-iran-medicine-idUSBRE8B40NM20121205 (noting the effects of medicine stockpiling consumer behavior).

380. *See generally* Meshkat, *supra* note 200 (assessing the overall impact of sanctions on Iranian-Americans and Iranians within the United States); *see also* Tara Bahrampour, *Sanctions Squeeze Iranian Students Abroad*, WASH. POST, Jan. 26, 2013, https://www.washingtonpost.com/local/sanctions-squeeze-iranian-students-abroad/2013/01/26/f4069604-5f1d-11e2-b05a-605528f6b712_story.html (considering the damage of sanctions on Iranian international students).

381. Whereas Iran Air was rated the second-safest airline in the world before the Revolution, approximately 1,700 Iranians have been killed in aviation disasters since 1979. *See* Maysam Bizær, *Even Without Sanctions, Iranian Aviation Faces Turbulent Future*, AL-MONITOR (Aug. 19, 2015), http://www.al-monitor.com/pulse/originals/2015/08/iran-aviation-revival.html; Thomas Erdbrink, *Iran's Aging Airliner Fleet Seen as Faltering Under U.S. Sanctions*, N.Y. TIMES, July 13, 2012, http://www.nytimes.com/2012/07/14/world/middleeast/irans-airliners-falter-under-sanctions.html (reviewing the death toll from Iranian aviation crashes).

382. *See* Bhala, *supra* note 27, at 261; Wolfe, *supra* note 29, at 14 (asserting the sanctions regime's role in undermining Iran's middle class); *see also* Harris, *The Bazaar*, *supra* note 50, at 109 (examining Iran's Bazaari class in particular).

383. *See* Anderson, *Good Grief!*, *supra* note 47, at 145–46; FISK, *supra* note 45, at 110 (distinguishing the role of Iran's middle class in past movements for social change).

384. *See* CAMMETT ET AL., *supra* note 41, at 114; A GROWING CRISIS, *supra* note 324, at 99 (characterizing the impact of inflation on Iranian wages).

385. *See* Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 5; Abigail Fielding-Smith, *Iran's credit crunch*, NEWSTATESMAN (Apr. 9, 2009), http://www.

And, like in any economy, the idea that targeted sanctions might eviscerate key revenue generating sectors without systemically impacting aggregate demand represents shoddy economics and naïve idealism.[386] In this sense, removing sales from Iran's petroleum sector implied reduced domestic consumption across the economy; the same consumption that comprises the income of ordinary Iranian small-businesses and shopkeepers.[387] Finally, as noted above, the sanctions regime has intensified regional conflict throughout the whole Middle East.[388] Considering the vast humanitarian destruction caused by these regional conflicts, it is apparent that the human costs of sanctioning Iran have extended well beyond the Persian Plateau.[389]

D. The JPA

Considering the costs of the sanctions regime highlighted in Part I.C, it is not surprising that a moderate, perhaps even reform-minded conservative like President Hassan Rouhani was looking for serious change upon his election in 2013.[390] Already in February of that year, negotiations were taking place between the P5+1 and Iran, with secret bilateral talks simultaneously occurring between the United States and Iran.[391] Upon Rouhani's election in July, President Obama shared a rare telephone conversation with the new Iranian President,

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newstatesman.com/asia/2009/04/iran-credit-ahmadinejad-crisis (overviewing Iran's credit crunch).

386. *See generally* DAVID A. MOSS, A CONCISE GUIDE TO MACROECONOMICS 72–83 (2007); *Aggregate Demand*, EXPERIMENTAL ECON. CTR., http://www.econport.org/content/handbook/ADandS/AD.html (last visited Mar. 21, 2016) (explaining aggregate demand's role in a market's wider economy).

387. *See* Wolfe, *supra* note 29, at 13–14; Beheshteh Farshneshani, *In Iran, Sanctions Hurt the Wrong People*, N.Y. TIMES (Jan. 22, 2014), http://www.nytimes.com/roomfordebate/2013/11/19/sanctions-successes-and-failures/in-iran-sanctions-hurt-the-wrong-people (arguing that sanctions have devastated the livelihoods of ordinary Iranians).

388. *See supra* notes 369–71 and accompanying text (noting how sanctions increased regional tensions).

389. *See Islam's Old Schism: Sunnis v Shias, Here and There*, ECONOMIST (June 29, 2013), http://www.economist.com/news/middle-east-and-africa/21580162-sectarian-rivalry-reverberating-region-making-many-muslims; Charlotte Alfred, *Explosions Hurt More Civilians in Yemen than in Syria This Year*, HUFFINGTON POST (Sept. 25, 2015), http://www.huffingtonpost.com/entry/yemen-war-statistics_5605a0e1e4b0af3706dc4104 (assessing the horrific casualties resulting from current sectarian tensions).

390. *See supra* Part I.C (assessing the costs of the sanctions regime).

391. *See* Daugirdas & Mortenson, *supra* note 181, at 109 (providing an overview of the JPA's foundations); *see also* Bradley Klapper et al., *Secret US-Iran Talks Set Stage for Nuke Deal*, ASSOCIATED PRESS (Nov. 24, 2013), http://bigstory.ap.org/article/secret-us-iran-talks-set-stage-nuke-deal (detailing the secret negotiation process between Washington and Tehran).

representing the first direct communication between leaders on both sides since 1979.[392]

Eventually, the result of the ongoing negotiating efforts between the P5+1 and Iran, and the separate bilateral talks between the United States and Iran, was the Joint Plan of Action, signed on November 24, 2013.[393] At its broadest level, the JPA promised a six-month freeze on Iran's nuclear development program, in exchange for limited sanctions relief and voluntary commitments not to seek new sanctions against Iran.[394] Within this six-month window the parties envisioned further negotiations in hopes of achieving a permanent, final-status nuclear deal.[395] Notably, everything agreed upon in the JPA consisted of non-binding "voluntary measures," which allowed for continued good faith negotiations and flexibility in the event that a legal technicality might prohibit a party from fulfilling its obligations under the JPA.[396]

In total, the JPA consisted of approximately US$7 billion of sanctions relief.[397] However, the interim agreement also retained most

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392. Daugirdas & Mortenson, *supra* note 181, at 109; President Barack Obama, Statement by the President, The White House (Sept. 27, 2013), https://www.whitehouse.gov/the-press-office/2013/09/27/statement-president (detailing Obama's phone conversation with Rouhani).

393. *See* JPA, *supra* note 182.

394. *See* JPA, *supra* note 182; *see also* Daugirdas & Mortenson, *supra* note 181, at 110 (providing an overview of the JPA). For a detailed table highlighting the JPA's agreed terms, *see* Bhala, *supra* note 27, at 347–52.

395. *See* JPA, *supra* note 182; Daugirdas & Mortenson, *supra* note 181, at 110 ("The goal for these negotiations is to reach a mutually-agreed long-term comprehensive solution that would ensure Iran's nuclear programme will be exclusively peaceful.").

396. *See* JPA, *supra* note 182; Daugirdas & Mortenson, *supra* note 181, at 112 ("The Joint Plan of Action does not appear to be binding as a matter of international law."). Say, for example, that the US State Department promises to lift all sanctions related to a particular Iranian industry, but then finds that Congressional action has made the executive branch unable to do so without legislative approval. The softness of the JPA's nonbinding measures seem to encourage ongoing negotiations, whereas a more rigid system might have resulted in a deal-killing formal breach. *See id.*

397. Daugirdas & Mortenson, *supra* note 181, at 113. In regards to the sanctions regime, the JPA requested that the P5+1 voluntarily undertake the following measures: to pause all efforts to further reduce Iran's crude oil sales; to suspend sanctions on Iran's petrochemical industry, precious metals and gold, and Iran's auto industry; to license the supply and installation of spare parts related to Iran's civil aviation program; to promise against new nuclear-related sanctions in either the EU or the UN Security Council; to promise against new nuclear-related sanctions in the United States, "acting consistent with the respective roles of the President and the Congress;" to establish a financial channel to allow for humanitarian trade supporting Iran's domestic needs, to be paid from Iranian frozen assets held abroad; and finally, the unfreezing of an unspecified amount of Iranian oil revenues locked up overseas.

of Washington's unilateral sanctions, including its extraterritorial financial sanctions, keeping approximately US$30 billion out of the hands of the Islamic Republic over the course of its six-month negotiating period.[398] Still, in releasing some of the coercive power that had been constructed throughout previous decades, the JPA represented a major shift in the sanctions regime, indicating a new possibility of the end of the sanctions era.[399] After intense and protracted ongoing negotiations, and various extensions of the JPA's initial negotiating deadline, Iran and the P5+1 finally reached a final-status deal on July 14, 2015.[400] Following the signing of the Joint Comprehensive Plan of Action in Vienna, Iran would officially transition into the post-sanctions era.[401] The next Part of this Note will explore this transition, and what it means for international investment within the Islamic Republic of Iran.

II. *IRAN'S POST-SANCTIONS TRANSITION*

After almost forty years of increasingly limited international investment in Iran under the sanctions regime, the signing of the JCPOA in July 2015 opens a new horizon for parties seeking to invest in Iran.[402] To understand the magnitude of this change, one must look first to the JCPOA itself and what it allows, and then to the emerging investment environment in Iran.[403] This Part of the Note will explore these issues.

See JPA, *supra* note 182; *see also* Bhala, *supra* note 27, at 347 (cataloging the sanctions to be lifted under the JPA).

398. David S. Cohen, Under Secretary for Terrorism and Financial Intelligence, Testimony before the Senate Committee on Banking, Housing, and Urban Affairs (Dec. 12, 2013), http://iipdigital.usembassy.gov/st/english/texttrans/2013/12/20131212288869.html#axzz2nO6bGXbS (noting the US$30 billion of sanctions still in effect within the JPA's six-month negotiating period); Daugirdas & Mortenson, *supra* note 181, at 113.

399. *Compare supra* Part I.B, *with supra* notes 393–98.

400. *See* JCPOA, *supra* note 185; *see also* Ishaan Tharoor, *The Historic Nuclear Deal with Iran: How It Works*, WASH. POST, July 14, 2015, https://www.washingtonpost.com/news/worldviews/wp/2015/07/14/the-historic-nuclear-deal-with-iran-how-it-works/ (summarizing the JCPOA).

401. *See* JCPOA, *supra* note 185.

402. *Compare supra* Part I.B (examining the legal framework of the sanctions regime), *with infra* Part II.A (summarizing the JCPOA).

403. *See infra* Parts II.A–B.

A. The JCPOA

As noted above, the JCPOA has been nothing short of controversial, in terms of what the deal means for stake-holding parties concerned with Iran's nuclear capabilities and its wider role in the Middle East region.[404] Although scrutiny of the JCPOA's restrictions on Iran's nuclear development is not the focus of this Note, the deal's sanctions-lifting provisions are crucial to understanding the opportunities and limitations of international investment in post-sanctions Iran.[405] This Part examines the contents of the JCPOA.[406]

1. The Agreement

At its broadest level, the JCPOA, like the JPA preceding it, seeks to impose restrictions upon Iran's nuclear program in exchange for international sanctions relief.[407] In terms of structure, the JCPOA is comprised of a short main body text and five more specific annexes.[408] Annex I deals with nuclear-related provisions, placing monitoring and development restrictions upon Iran's nuclear program.[409] Annex II deals with sanctions-related commitments, detailing the specifics of the lifting of sanctions.[410] Annex III involves civil nuclear cooperation, providing measures related to ongoing international involvement in Iran's domestic nuclear program.[411] Annex IV creates an institutional Joint Commission, which is tasked with overseeing the deal's implementation and ensuring ongoing compliance.[412] Finally, Annex V is procedural, dealing with the JCPOA's implementation plan and how different phases of the agreement will be adopted and triggered.[413]

Under the JCPOA's preamble and general provisions, the deal promises to "produce the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions

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404. *See supra* notes 5–8 and accompanying text.
405. *See infra* notes 407–45 and accompanying text.
406. *Compare infra* notes 408–27, *and* accompanying text, *with supra* Part I.D.
407. *See generally* JCPOA, *supra* note 185; Tharoor, *The Historic Nuclear Deal with Iran: How It Works*, *supra* note 400 (summarizing the JCPOA).
408. *See* JCPOA, *supra* note 185.
409. *See id.* at Annex I.
410. *See id.* at Annex II.
411. *See id.* at Annex III.
412. *See id.* at Annex IV.
413. *See id.* at Annex V.

related to Iran's nuclear programme, including steps on access in areas of trade, technology, finance and energy."[414] As detailed in Annex V, this process is to occur in separate phases.[415] Of note, "Adoption Day" is the date set ninety days after the JCPOA's endorsement by the UN Security Council, at which point all parties "will make necessary arrangements and preparations for the implementation of their JCPOA commitments."[416] Upon the IAEA's determination that Iran is complying with its nuclear commitments, "Implementation Day" triggers the lifting of sanctions by the EU and United States.[417] Eight years after Adoption Day, or upon the IAEA's determination that all of Iran's nuclear program remains exclusively peaceful, "Transition Day" triggers further sanctions relief, requiring the United States to "seek such legislative action as may be appropriate to terminate, or modify to effectuate the termination of" various military-related statutory sanctions, specified within Annex II.[418] Finally, ten years after Adoption Day, "Termination Day" provides further EU sanctions relief, and sunsets the JCPOA thereby freeing Iran and all parties from its provisions.[419]

The terms of the JCPOA were made binding via Security Council ratification on July 20, 2015.[420] In the event that any party deviates from its commitments under the nuclear deal, the JCPOA contains a dispute resolution procedure detailed in Paragraphs 36 and 37 of the main body.[421] In the event that a dispute is not resolved, the JCPOA triggers a "snapback procedure," which forces the Security Council to automatically re-impose the multilateral sanctions initially

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414. *Id.* § v.

415. *See infra* note 416 and accompanying text.

416. JCPOA, *supra* note 185, § 34(ii). Adoption day occurred on October 18, 2015. *See* Press Statement, John Kerry, U.S. Sec'y of State, Adoption of the Joint Comprehensive Plan of Action (Oct. 18, 2015), http://www.state.gov/secretary/remarks/2015/10/248311.htm.

417. JCPOA, *supra* note 185, § 34(iii); *see id.* at Annex V §§ 16-17. Implementation Day officially occurred on January 16, 2016. *See* John Kerry, U.S. Sec'y of State, Remarks on Implementation Day (Jan. 16, 2016), http://www.state.gov/secretary/remarks/2016/01/251336.htm; David E. Sanger, *Iran Complies with Nuclear Deal; Sanctions Are Lifted*, N.Y. TIMES, Jan. 16, 2016, http://www.nytimes.com/2016/01/17/world/middleeast/iran-sanctions-lifted-nuclear-deal.html.

418. JCPOA, *supra* note 185, § 34(iv), at Annex V § 21; *see id.* at Annex II §§ 4.1–.5, .7, .9 (listing the US statutory sanctions that *should* be terminated under the deal).

419. *See id.* § 34(v).

420. *See* S.C. Res. 2231 (July 20, 2015).

421. *See* JCPOA, *supra* note 185, §§ 36–37.

lifted by the JCPOA.[422] This in effect enables any permanent member of the Security Council to block sanctions relief without allowing such members to veto the re-imposition of sanctions.[423]

For international investors that have long been eyeing Iran, the JCPOA's "comprehensive lifting" of sanctions language will likely inspire enthusiasm.[424] However, taking a closer look at what the JCPOA actually accomplishes, for many investors such enthusiasm remains premature.[425] This is especially true for US investors, who may find themselves uniquely bound by the remaining relics of Washington's four-decades unilateral sanctions regime, with no easy escape route in sight.[426] The JCPOA itself anticipates this inability for the United States government to comprehensively lift sanctions, detailing tailored US sanctions-lifting procedures.[427]

2. US Sanctions Lifting Under Section 4 of Annex II of the JCPOA: The "Footnote Six" Issue

Washington's JCPOA sanctions-lifting commitments are spelled out in Section 4 of Annex II.[428] In addition to the limited sanctions relief previously provided under the JPA, the JCPOA mandates that the United States waive specified nuclear-related sanctions concerning Iran's financial and banking sectors; insurance and underwriting; Iran's energy and petrochemicals sectors; shipping, shipbuilding, and Iranian ports; gold and other precious metals; software and metals; and Iran's automotive sector.[429] Additionally, the United States is required to remove specified entities from its lists of blocked persons, curtail extraordinary nuclear non-proliferation measures targeting Iran, and commit itself to granting various trade

422. *See id.*; Tharoor, *The Historic Nuclear Deal with Iran: How It Works*, *supra* note 400 ("If Iran violates any terms of the deal, sanctions could be snapped back within 65 days.").

423. *See* Michele Kelemen, *A Look at How Sanctions Would 'Snap Back' If Iran Violates Nuke Deal*, NAT'L PUB. RADIO (July 21, 2015), http://www.npr.org/2015/07/20/424571368/if-iran-violates-nuke-deal-a-look-at-how-sanctions-would-snap-back (explaining the JCPOA's snapback mechanism); Ankit Panda, *How the Iran Deal's 'Snap Back' Mechanism Will Keep Tehran Compliant*, DIPLOMAT (July 15, 2015), http://thediplomat.com/2015/07/how-the-iran-deals-snap-back-mechanism-will-keep-tehran-compliant/.

424. *See infra* Part II.B.

425. *See infra* Part II.A.2.

426. *See infra* Part II.A.2.

427. *See* JCPOA, *supra* note 185, at Annex II § 4.

428. *See id.*

429. *See id.* at Annex II §§ 4.1–.7.

licenses for US-owned subsidiaries doing business in Iran.[430] Furthermore, the JCPOA commits the United States to end its practice of enforcing secondary nuclear-related sanctions, previously applied to international entities that engage in or indirectly facilitate prohibited transactions with the US sanction regime's direct targets.[431] Indeed, in OFAC's initial guidance following the publication of the JCPOA, the agency stated, "[United States] sanctions relief will be provided through the suspension and eventual termination of nuclear-related secondary sanctions, beginning once the International Atomic Energy Agency (IAEA) verifies that Iran has implemented key nuclear-related measures described in the JCPOA (Implementation Day)."[432]

Foremost, it is crucial for all international investors to realize that the US sanctions being lifted apply only to those related to Iran's nuclear program, and not to sanctions involving Iran's support for terrorism, ballistic missile and conventional arms proliferation, or Iranian human rights abuses.[433] As highlighted above, parsing out the sanctions regime into these distinct categories is a messy endeavor.[434] But perhaps more crucially, investors in the United States need to realize that even under the JCPOA's nuclear-related sanction waivers, US entities will remain bound to the existing US sanctions regime. Buried deep within the JCPOA, footnote six of Annex II provides in part:

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430. *See id.* at Annex II § 4.8 (detailing the delisting of specified entities); *id.* at Annex II § 4.9 (noting nuclear proliferation-related measures); *id.* at Annex II § 5 (dealing with other trade measures, including the US granting of trade licenses).

431. *See id.* at Annex II § 7; *see also* KATZMAN, IRAN SANCTIONS, *supra* note 228, at 59 ("The U.S. sanctions that are to be suspended are primarily those that sanction foreign entities and countries for conducting specified transactions with Iran (so-called 'secondary sanctions').").

432. Trope, *supra* note 339, at 2.

433. *See* Ellie Geranmayeh, *Explainer: The Iran Nuclear Deal*, EUR. COUNCIL FOREIGN REL. (July 17, 2015), http://www.ecfr.eu/article/iran_explainer3070 ("US sanctions on Iran targeting human rights, terrorism and missile activities remain."); *see also* KATZMAN, IRAN SANCTIONS, *supra* note 228, at 60 ("The JCPOA does not commit the United States to suspend U.S. sanctions on Iran for terrorism or human rights abuses, and on proliferation-sensitive technology.").

434. *See supra* notes 196–99 and accompanying text (overviewing the complexity and overlapping rationales for the sanctions regime); *see also* Trope, *supra* note 339, at 3 ("However, the more one rereads the JCPOA (and multiple re-readings are a necessity), the more one realizes that implementation of sanctions relief by the United States will be difficult to map out and challenging to explain."). Fortunately, experts and analysts have provided helpful guidance on this task. *See generally* RENNACK, *supra* note 194; Katzman, *Easing US Sanctions on Iran*, *supra* note 199 (exploring the unwinding of sanctions).

> The sanctions that the United States will cease to apply, and subsequently terminate, or modify to effectuate the termination of, pursuant to its commitment under Section 4 are those directed towards non-U.S. persons . . . U.S. persons and U.S.- owned or -controlled foreign entities will continue to be generally prohibited from conducting transactions of the type permitted pursuant to this JCPOA, unless authori[z]ed to do so by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC).[435]

Thus, footnote six discriminates between US and non-US investors.[436] The same exact rules and enforcement measures being waived for international players are, under footnote six, still in full force for US investors interested in exploring the investment opportunities of post-sanctions Iran.[437] Whereas US-owned or controlled foreign subsidiaries are still provided an alternative path to Iran via waivers in JCPOA Annex II Section 5, US firms lacking foreign subsidiaries appear to remain barred from investing in Iran.[438]

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435. *See* JCPOA, *supra* note 185, at Annex II § 4 n.6.

436. *See id.; see also* Trope, *supra* note 339, at 1 ("Lawyers who have closely analyzed the JCPOA reacted, in many instances, with incredulity on seeing this distinction and understanding its impact on U.S. businesses. Clients informed by counsel of the distinction have responded, 'You can't be serious.'").

437. *See generally* Trope, *supra* note 339.

438. *See* JCPOA, *supra* note 185, at Annex II § 5.1.2 ("[The United States commits to [l]icense non-U.S. entities that are owned or controlled by a U.S. person to engage in activities with Iran that are consistent with this JCPOA"); Trope, *supra* note 339, at 3–4 (noting OFAC's discrimination between US firms and foreign firms in regards to post-sanctions Iran). Indeed, following Implementation Day, OFAC carried out part of this commitment in the form of General License H, which carves a path for US-owned foreign subsidiaries to legally conduct deals in Iran. *See* JOHN E. SMITH, IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS 31 C.F.R. § 560, GENERAL LICENSE H, OFAC (2016), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_glh.pdf. However, even for US-owned foreign subsidiaries, General License H sets extremely limited parameters that will actually shield US parents from sanctions. The license provides US parent companies with a one-time waiver to conduct initial corporate decision-making aimed at directing a US corporation's foreign subsidiaries to set up shop in Iran. Beyond this initial period, General License H requires that fully automated systems are in place between the parent and subsidiary, which do not involve any interaction between US persons and ongoing Iran-related transactions. *See id.*; *see also H Stands for "Holy Moly!": JCPOA Implementation Day and Breaking Down OFAC General License H*, ARENT FOX (Jan. 20, 2016), http://www.arentfox.com/newsroom/alerts/h-stands-%E2%80%9Choly-moly%E2%80%9D-jcpoa-implementation-day-and-breaking-down-ofac-general-license#.VtiVS5MrLdc; Will McAuliffe & Sarah Weber, *Understanding the Changes to the Iran Sanctions Regime: OFAC Issues Guidance, General Licenses on JCPOA Implementation Day*, PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP (Jan. 20, 2016), http://www.paulweiss.com/media/3322106/20jan16alert.pdf (dissecting OFAC's General License H).

The effect of footnote six is to situate OFAC as the primary license-granting gatekeeper for any US-based investment seeking to enter Iran.[439] As an initial matter, this procedural construction is logical.[440] Considering the precarious navigation of somewhat malleable executive sanctions and more rigid legislative sanctions that any US investment in Iran would have to traverse, it makes sense for OFAC to ensure that each business relationship being initiated complies with its own rules as well as the rules beyond the executive's control to manipulate, on a case-by-case basis.[441] Likewise, this license-granting mechanism for US-owned foreign subsidiaries does in theory allow for some semblance of government oversight, ensuring—at least at the contracting phase—that US subsidiaries outside the US enter relationships in Iran consistent with Washington's wider foreign policy interests.[442] However, by limiting US participation in Iran only to multinational corporations with non-US subsidiaries, footnote six bars the participation of a great deal of US investors potentially capable of fostering better US-Iran relations and wider advancements of US foreign policy goals.[443] Whereas the distinction between US entities and non-US entities (in a way that includes US foreign subsidiaries) is artificial in terms of effect, this distinction is bound to ensure the survival of both US reputational hazards involved in Iranian investment, as well as the wider ethos of mistrust existing between both nations and their populations.[444]

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439. *See supra* note 230 (noting OFAC's role in the licensing process). *Compare* JCPOA, *supra* note 185, at Annex II § 4 n.6 (clarifying restrictions against US firms from operating in Iran), *with* Annex II § 5.1.2 (indicating the licensing option that will allow the foreign subsidiaries of US firms to access Iran).

440. *See infra* notes 441–42 and accompanying text.

441. *See supra* notes 224–29 and accompanying text (noting competing waiver authority between the US executive and legislative branches).

442. On this note, OFAC's decision to opt for a general license—as opposed to a specific license—in the form of General License H seems counterproductive. *See* SMITH, *supra* note 438; *see also H Stands for "Holy Moly!"*, *supra* note 438 ("Because [General License] H is a general license it does not require any application for a specific license. In other words, now that [General License] H is in effect, US-owned or -controlled foreign entities can use it BUT must comply with its terms and not engage in any prohibited transactions.").

443. *See infra* Part III.

444. This point is best demonstrated by a hypothetical. If, for example, "US Corporation X" really desires to serve Iranian consumers, nothing in the JCPOA schema prevents the corporation from forming "Foreign Subsidiary Y" and seeking an OFAC license to do so. Economically, there is no material difference between this corporate structure and US Corporation X directly bringing operations to Iran. However assuming such a license is granted, one might ask what is lost in Iranian consumers interacting and forming relationships with this detached subsidiary, as opposed to its US parent company. Likewise, such a schema

Whatever might be said for footnote six and the US sanctions-lifting procedures of the JCPOA, European and other international investors are now, since Implementation Day, largely freed to engage with Iran.[445] To understand the impact of this development, one must first appreciate the investment opportunities present in post-sanctions Iran. The following Part provides a survey of these opportunities.

B. Investor Opportunities

Since the deal's signing in Vienna, the international business community has overwhelmingly welcomed the JCPOA.[446] Despite the fact that the JCPOA falls short of comprehensive sanctions relief, the relaxation of UN and European sanctions, as well as the non-enforcement of US secondary sanctions toward non-US persons, is certain to change the investment landscape of modern Iran. International investors looking to enter the country will be met with a rich panorama of investment opportunities.[447] Indeed, the sanctions regime itself has transformed Iran into a rare untapped investment arena, entailing all the potential awards (and risks) of a frontier FDI destination.[448]

At the macroeconomic level, Iran boasts an economy of approximately US$406 billion, making it the second-largest economy in the region and the twenty-ninth largest in the world.[449] Regionally

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seems to prohibit ongoing US regulation and oversight of Foreign Subsidiary Y's operations, beyond the contracting and license-granting phase, in that ongoing operations will be carried out not by a US corporation but by a foreign subsidiary beyond the direct jurisdiction of US regulators.

445. *See supra* notes 435–38 and accompanying text (dealing with the JCPOA's discrimination between US and other international investors).

446. *See* Ghodoosi, *supra* note 28, at 1732 (noting the international business community's positive reaction to the JCPOA); Everett Rosenfeld et al., *Iran Deal: Corporate Winners from the Nuclear Agreement*, CNBC (July 14, 2015), http://www.cnbc.com/2015/07/14/iran-deal-corporate-winners-from-the-nuclear-agreement.html ("[W]hile U.S. and Iranian leaders have heralded the deal as a victory, the real winners could be corporations across the globe.").

447. *See infra* Parts II.B.1–2.

448. *See infra* Parts II.B.1–2.

449. *See* Vivienne Walt, *Picking Winners in the Race to Iran*, FORTUNE (Aug. 24 2015) (sizing Iran's economy at US$406 billion); *Iran Overview*, WORLD BANK, http://www.worldbank.org/en/country/iran/overview (last visited Mar. 21, 2016) (noting Iran's second largest economy in the Middle East-North Africa region); Jana Marais, *Iran: Opportunity Beckons*, FINWEEK, July 30, 2015, at 12; *Iran to Work with WB at Own Pace*, FIN. TRIB., (Aug. 16, 2015), http://financialtribune.com/archive/2015/09/13/articles/economy-business-

ranking in size behind only Egypt, the country's population of seventy-eight million inhabitants is young, educated, cosmopolitan, and has money to spend.[450] Additionally there is "a sizeable middle class" in Iran, which in spite of the sanctions regime has seen rising per capita incomes and improved standards of living over previous decades.[451] The nation also poses geo-strategic advantages for international investors looking to set up shop in Iran.[452] Existing rail and highway linkages to neighboring States provide potential for Iran to become the "key transit point for East-West trade" on a global scale.[453] Both inflation and unemployment have fallen since the signing of the JCPOA, and international trade is expected to rebound in the absence of multilateral sanctions.[454] As part of the JCPOA, roughly US$120 billion of Iranian assets frozen overseas are in the process of being repatriated.[455] Although there are concerns that this

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and-markets/23474/iran-work-wb-own-pace (ranking the Iranian economy as the 29th largest in the world).

450. *See Iran Overview*, *supra* note 449; Wright, *The Challenge of Iran*, *supra* note 353, at 6 (establishing the size of Iran's population); *see also* Walt, *Picking Winners in the Race to Iran*, *supra* note 449; Maloney, *The Revolutionary Economy*, *supra* note 12, at 95 (characterizing Iran's population).

451. *See* Marais, *supra* note 449, at 12 (noting Iran's "sizeable middle class"); Clara Brandi & Max Büge, *A Cartography of the New Middle Classes in Developing and Emerging Countries* 13 (Deutsches Institut für Entwicklungspoltik, Discussion Paper 35, 2014), https://www.die-gdi.de/uploads/media/DP_35.2014.pdf ("Iran has had a higher share of middle-class citizens than poor ones in its population since 2002"); *see also* IMF COUNTRY REPORT NO. 14/93, *supra* note 168, at 1; CAMMETT ET AL., *supra* note 41, at 311 (recognizing the Iran's "dramatic improvements in a variety of human development indicators" since the 1979 Revolution).

452. *See* McCary, *supra* note 119, at 275–76; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 391 (characterizing Iran as a geostrategic regional market); *see also* Wright, *The Challenge of Iran*, *supra* note 353, at 6 (emphasizing Iran's geostrategic location from the lens of international politics).

453. *See* IRAN COMMERCIAL BANKING REPORT Q3 2015, *supra* note 339, at 13; *see also* IRAN COUNTRY FORECAST, *supra* note 157, at 1–2 (further noting Iran's geostrategic trade significance).

454. *See* Bijan Khajehpour, *How the Nuclear Deal Will Help Iran's Economy*, AL-MONITOR (Apr. 10, 2015), http://www.al-monitor.com/pulse/originals/2015/04/economic-impact-iran-nuclear-deal.html; *With Sanctions Lifting, What's in Store for Iran's Economy?*, KNOWLEDGE@WHARTON (Oct. 27, 2015), http://knowledge.wharton.upenn.edu/article/with-sanctions-lifting-whats-in-store-for-irans-economy/ (predicting a sizeable post-sanctions boost to Iranian trade).

455. *See* Gary Clark et al., *Iran's Golden Loophole*, FOUND. FOR DEF. OF DEMOCRACIES, 5 (May 13, 2013), http://www.defenddemocracy.org/content/uploads/documents/FDD_RGE_Iran_Gol_Report__May_2013_FINAL_2.pdf; Bijan Khajehpour, *What Will Happen Once Iran's Asset's Are Unfrozen?*, AL-MONITOR (May 26, 2015), http://www.al-monitor.com/pulse/originals/2015/05/iran-import-sanctions-investment-consumer-

cash influx may crowd out some foreign investment, in reality Iran will be best served by actively attracting international investment in order to tap into foreign management and technology skill sets.[456]

Still, despite these promising economic trends, there are definite problems in the Iranian economy. The World Bank notes that, "The Iranian State continues to play a key role in the economy with large public and quasi-public enterprises dominating to some extent the manufacturing and commercial sectors."[457] However, the Rouhani Administration appears to recognize these drawbacks, and has directed State efforts at shoring up investor confidence in Iran, notably by fighting internal corruption. [458]

Taken as a whole, there are attractive opportunities in Iran for both market seekers and raw material seekers.[459] Generally speaking, Iran's years under sanctions have created an economy starving for foreign investment, with certain sectors saturated with pent-up demand.[460] Well before Implementation Day, President Rouhani was actively courting international investors.[461] Although Washington continues to talk tough about unilateral US sanctions remaining in place, this is unlikely to prevent the flow of international investment

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foreign-assets.html (valuing Iranian assets to be repatriated at US$120 billion). For comparison, Iran's total trade volume in 2014 was approximately US$160 billion. *Id.*

456. *See* Khajehpour, *What Will Happen Once Iran's Asset's Are Unfrozen?*, *supra* note 455, at 1; Thomas Erdbrink, *Iran Prepares to Lure Foreign Investors After Nuclear Deal*, N.Y. TIMES , Aug. 21, 2015, http://www.nytimes.com/2015/08/22/world/middleeast/after-nuclear-deal-with-west-iran-gears-up-to-cash-in.html?_r=0 (arguing Iran's need for foreign investment).

457. *Iran Overview*, *supra* note 449.

458. *See* Najmeh Bozrogmehr, *Rouhani Confronts Iran's Hardliners on Corruption*, FIN. TIMES (Dec. 8, 2014), http://www.ft.com/intl/cms/s/0/5ae48de4-7edf-11e4-a828-00144feabdc0.html#axzz3v995GkSv; Bijan Khajehpour, *Will Iran's Corruption Fight Attract Private Investors?*, AL-MONITOR (Feb. 17, 2015), http://www.al-monitor.com/pulse/originals/2015/02/iran-escalates-fight-corruption.html (evaluating Rouhani's anticorruption efforts from the perspective of foreign investment attraction).

459. *See* SALACUSE, *supra* note 10, at 9; *Deloitte on Africa: Resource-seeker or Market-seeker?*, DELOITTE, 1-2 (2012), http://www2.deloitte.com/content/dam/Deloitte/au/Documents/international-specialist/deloitte-au-aas-resource-seeker-market-seeker-12.pdf (introducing the investment concepts of market seekers and raw material seekers).

460. *See* IMF COUNTRY REPORT NO. 14/93, *supra* note 168, at 11; Walt, *Picking Winners in the Race to Iran*, *supra* note 449 (pointing out Iran's pent up demand).

461. Even before the signing of the JCPOA, Rouhani made a personal appearance at the World Economic Forum at Davos following the striking of the initial JPA. *See* IRAN COUNTRY FORECAST, *supra* note 157, at 14; Jill Treanor & Larry Elliott, *Davos 2014: Iran Ready to Engage with the World, Says Rouhani*, GUARDIAN (Jan. 23, 2014), http://www.theguardian.com/world/2014/jan/23/davos-iran-ready-engage-world-rouhani (considering Rouhani at Davos).

back to Iran, and will not preclude the interest of US firms seeking to enter Iran via foreign subsidiaries.[462] While footnote six of Annex II of the JCPOA may restrict US participation in Iran's emerging investment landscape, the following key opportunity areas will prove important to the wider international investment community.[463]

1. Key Investment Sectors: Oil, Natural Gas, and Automotive

Some of the most profound destinations for foreign investment in Iran are likely to be among the nation's traditionally dominant economic sectors.[464] These include Iran's massive carbon-based energy sector—both oil and natural gas—as well as the Iran's large automotive sector.[465] Each of these industries stands to gain various benefits from foreign investment, and each holds the potential to reward investors with impressive returns.

Within the carbon-based energy sector, Iran is considered by some accounts to contain the largest combined reserves of oil and natural gas in the entire world.[466] This sector forms the backbone of the Iranian economy, driving an estimated thirty percent of Iran's GDP and eighty-five percent of government revenues.[467] Yet from 1979 through the Iran-Iraq War through the intensification of the sanctions regime, Iran's energy sector has yet to recover its pre-revolution output levels.[468] Meanwhile, the Western exit from Iran's

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462. *See* Ghodoosi, *supra* note 28, at 1732, 1785; Ron Bousso & Timothy Gardner, *Exclusive: U.S. Warns Governments, Bankers Iran Sanctions Still in Place*, REUTERS (Oct. 9, 2015), http://www.reuters.com/article/us-iran-nuclear-usa-idUSKCN0S32O720151010 (repeating government warnings that sanctions are still in effect); Andrew Critchlow, *Iran is a Once in a Lifetime Opportunity for Brave Investors*, TELEGRAPH (July 12, 2015), http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/11732669/Iran-is-a-once-in-a-lifetime-opportunity-for-brave-investors.html (anticipating wide investor return to Iran).

463. *See infra* Part II.B.

464. *See infra* notes 465–517 (highlighting opportunities in Iran's oil, natural gas, and automotive sectors).

465. *See infra* notes 466–82 (looking at Iran's carbon-based energy sector as a whole); *infra* notes 483–89 (oil); *infra* notes 490–506 (natural gas); *infra* notes 507–17 (automotive).

466. *See* Ghodoosi, *supra* note 28, at 1732; Mohsen M. Milani, *Iran's Persian Gulf Policy in the Post-Saddam Era*, *in* CONTEMPORARY IRAN: ECONOMY, SOCIETY, POLITICS 349 (Ali Gheissari ed., 2009) (exploring Iran's combined oil and gas reserves).

467. COUNTRYWATCH, IRAN, *supra* note 168, at 315; IRAN COUNTRY FORECAST, *supra* note 157, at 1 (estimating the extent Iran relies on the state's oil sector). Alternatively, other sources cite figures of 10 percent and 65 percent, respectively. Mohamedi, *supra* note 108, at 100.

468. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 368; Maloney, *The Revolutionary Economy*, *supra* note 12, at 95 (noting that Iranian oil output has yet to recover to its pre-revolution levels).

energy sector through the late sanctions era has largely provided a vacant market for firms considering reentry.[469] With the signing of the JCPOA, Iran is expected to be capable of rehabilitating approximately 400,000 barrels per day within the short term.[470] Yet, Iran will require approximately US$170 billion in development for its oil and gas sectors to reach their output potentials.[471] This investment has to come from somewhere, and there are many reasons for Iran to prefer outside capital.[472] For example, Iran's oil fields are some of the oldest in the world, and the sector's aging technology is limiting current production capacity.[473] FDI would conveniently allow Iran to leverage international technology competencies.[474]

From the other side, investors too should view Iran's energy sector as an attractive location for FDI.[475] Current forecasts indicate

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469. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 412; Parisha Hafezi, *Iran Invites Foreign Firms to Develop its Oil, Gas Industry*, REUTERS (Oct. 1, 2015), http://uk.reuters.com/article/uk-iran-usa-oil-idUKKCN0RV4JL20151001 (recalling the exit of foreign firms under the late sanctions era). *But see* Benoît Faucon & Bill Spindle, *Western Oil Firms Will Find Tough Competition in Iran*, WALL STREET J., July 21, 2015, http://www.wsj.com/articles/western-oil-firms-will-find-tough-competition-in-iran-1437518798 (arguing that sanctions have resulted in a competent domestic industry, at some phases of oil production).

470. *See* Khajehpour, *How the Nuclear Deal Will Help Iran's Economy*, *supra* note 454; *Sanctions Lift to Boost Iran's Oil Sales by 400,000 bpd: IEA*, TEHRAN TIMES (Nov. 15, 2014), http://www.tehrantimes.com/index_View.asp?code=250846 (mentioning Iran's short term capacity to expand oil output).

471. Philips & Motevalli, *supra* note 328, at 21; Anthony H. Cordesman, *The Iran Nuclear Agreement and Iranian Energy Exports, the Iranian Economy, and World Energy Markets*, CTR. STRATEGIC & INT'L STUD. (Aug. 17, 2015), http://csis.org/publication/iran-nuclear-agreement-and-iranian-energy-exports-iranian-economy-and-world-energy-marke (stating the need for US$170 billion for Iran's oil and gas sectors to meet their output potential).

472. *See* Philips & Motevalli, *supra* note 328, at 21 (explaining how reduced Iranian domestic investment and capital shortfalls have resulted in the need to pursue FDI); Cyrus Amir-Mokri & Hamdi Biglari, *A Windfall for Iran?*, FOREIGN AFF. (Nov.–Dec. 2015), https://www.foreignaffairs.com/articles/iran/2015-10-20/windfall-iran (articulating Iran's wider need for foreign investment).

473. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 421; IRAN COMMERCIAL BANKING REPORT Q3 2015, *supra* note 339, at 12 (characterizing Iran's old oil fields).

474. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 422; *Laying Groundwork for FDI*, FIN. TRIB. (Oct. 22, 2015), http://financialtribune.com/articles/economy-business-and-markets/28579/laying-groundwork-fdi (evaluating the role of FDI in infrastructure development).

475. *See* Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 1 (noting Iran's potential for international energy companies); Anjli Raval, *Iran Prepares to Open up to Foreign Oil Companies*, FIN. TIMES (Nov. 1, 2015), http://www.ft.com/intl/cms/s/

that Iranian energy consumption will outpace production capacity, forcing Iran to import much of its refined gasoline needs.[476] Such inefficiencies have fostered a realized need for refinery expansion, which will likely be best served by international investment.[477] Furthermore, the fact that twenty-eight of Iran's oil and gas fields are shared with contiguous States highlights a real sense of urgency as Iran's immediate neighbors exploit these limited resources.[478] Already Iran has invited representatives from various international energy firms to discuss future energy projects.[479] Likewise, the industry's recently revised contractual framework—which allows for adjustable rates of return for investors, as opposed to the fixed rates of Iran's previous buy-back model—serves as another incentive to attract international companies.[480] Furthermore, the reinstatement of Bijan Namdar Zangeneh to Iran's Oil Ministry will be a welcome signal for firms that profited in Iran throughout Rafsanjani's presidency.[481] In sum, although much of the sector is still tangled in State-owned enterprises and their subsidiaries—many of which remain troublingly connected with the IRGC—both privatization demands and a robust

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0/df9f4ef0-71a2-11e5-9b9e-690fdae72044.html#axzz3v995GkSv (commenting that Iran is especially attractive compared to its neighbors, in terms of political stability and risk).

476. *See* IRAN COMMERCIAL BANKING REPORT Q3 2015, *supra* note 339, at 30 (forecasting production); IRAN: COUNTRY RISK REPORT, *supra* note 161, at 17 (highlighting Iran's reliance on energy imports).

477. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 426; Mohamedi, *supra* note 108, at 101 (emphasizing Iran's need for refinery expansion).

478. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 425; Dalga Khatinoglu, *Iran's Gulf Neighbors Devour Joint Fields*, TREND NEWS AGENCY (Jan. 28, 2013), http://en.trend.az/iran/2112759.html (comparing Iran's extraction rates with the nation's neighbors).

479. *See* McGrath Goodman, *supra* note 330, at 14; Hafezi, *supra* note 469, (looking at Iran's outreach to international oil companies).

480. *See* Anthony Dipaola, *Iran Sweetens Terms for Oil Investors Ahead of End of Sanctions*, BLOOMBERG (Nov. 25, 2015), http://www.bloomberg.com/news/articles/2015-11-25/iran-sweetens-terms-for-oil-investors-as-end-of-sanctions-looms; Farshad Kashani, *Iran has High Hopes for Slick New Oil Contract Model*, AL-MONITOR (Nov. 25, 2015), http://www.al-monitor.com/pulse/originals/2015/11/iran-new-petroleum-contract-updating-buyback.html (discussing Iran's revised contractual framework for oil deals).

481. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 423; Bijan Khajehpour, *Iran's Petroleum Industry Welcomes Zanganeh's Return as Minister*, AL-MONITOR (Aug. 19, 2013), http://www.al-monitor.com/pulse/originals/2013/08/iran-petroleum-sector-veterans-zanganeh.html# (discussing the significance of Zanganeh's return).

service-oriented private sector make Iran's energy industry an attractive location for foreign investment.[482]

Within Iran's oil sector, the nation holds an estimated ten percent of the world's petroleum reserves.[483] However, with one of the world's oldest oil sectors and declining developed reserves, Iran will be increasingly forced to rely on undeveloped reserves.[484] Reaching these resources will require massive investment.[485] In fact, Iranian officials will seek billions of dollars in investment in this industry alone..[486] With enough investment, Iran's oil sector is expected to finally outpace its pre-revolutionary output levels at six million barrels per day; comparable, for example, to Saudi Arabia's capacity of roughly 10.5 million barrels per day.[487] In the short term, some estimates forecast Iranian exports to reach 1.8 million barrels

482. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 394; Marketa Hulpachova, *How to Succeed in Iran: Lessons from Russia and China*, GUARDIAN (June 4, 2015), http://www.theguardian.com/world/iran-blog/2015/jun/04/iran-private-businesses-linked-regime-organizations (detailing the state's heavy involvement in Iran's energy sector); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 381 (noting the IRGC's connection to Iran's energy sector); WEHREY ET AL., *supra* note 362, at 56 (covering the IRGC's role in Iran's energy sector); Alireza Aslani & Bo Feng, *Investment Prioritization in Renewable Energy Resources with Consideration to the Investment Criteria in Iran*, 29 DISTRIB. GENERATION & ALT. ENERGY J. 7, 8 (2014) (positing that despite state involvement, Iran's energy sectors are not monopolistic); Atai, *Investor Protection in Iran: A Bankruptcy Approach, supra* note 157, at 1 (stating Iran's attractiveness for FDI).

483. *See* Wright, *The Challenge of Iran*, *supra* note 353, at 6; Clifford Krauss, *A New Stream of Oil for Iran, but Not Right Away*, N.Y. TIMES, July 14, 2015, http://www.nytimes.com/2015/07/15/business/international/iran-nuclear-deal-oil-prices.html?_r=0 (placing Iran's proven reserves at 10 percent of the world's total).

484. *See* Mohamedi, *supra* note 108, at 101; Anthony H. Cordesman et al., *U.S. and Iranian Strategic Competition* 30, CTR. STRATEGIC & INT'L STUD. (Oct. 6, 2011), http://csis.org/files/publication/111006_Iran_Sanctions.pdf (highlighting Iran's need to rely on proven but undeveloped reserves).

485. *See* Cordesman et al., *supra* note 484; Mohamedi, *supra* note 108, at 101 (stating that Iran's turn to undeveloped reserves will require massive investment).

486. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 422 (citing Iran's need to raise massive amounts of capital to service their oil industry); *cf.* Walt, *Picking Winners in the Race to Iran*, *supra* note 449, at 7 ("Iranian officials say they intend to invest billions in upgrading creaky oil and gas facilities, which could mean a windfall for oil-services firms.").

487. *See* McGrath Goodman, *supra* note 330, at 15 (noting Iranian output expectations and comparing them against Saudi output); Umid Niayesh, *Rising Iran oil Export to Push Saudi Output Down*, TREND NEWS AGENCY (June 17, 2015), http://en.trend.az/business/energy/2407192.html (quoting an Iranian official who predicts that "Iran has ambitious capacity build programs that will boost production close to pre-revolution levels").

per day by the end of 2016.[488] Oil Minister Zangeneh has provided an even more optimistic assessment, estimating exports of 3.8 million barrels per day following the lifting of sanctions.[489]

Meanwhile, Iran's natural gas sector is also expected to continue along its impressive historical growth path.[490] Iran possesses the second-largest gas reserves in the world, behind only Russia.[491] However, rising domestic consumption has had a dramatic impact on Iran's ability to export natural gas.[492] This implies the important role gas serves within the State's wider economic strategy: by increasingly using the nation's gas supplies to power the country and meet Iran's domestic energy needs, the government seeks to free up Iranian crude for export, boosting overall revenues.[493] Additionally, natural gas will be increasingly needed for reinjection into Iran's aging oil fields.[494] However, even as Iranian gas consumption rises internally, this sector is posed to gain international importance throughout future

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488. *See* Marais, *supra* note 449, at 13; *Quarterly Oil Market Update – Q3 2015*, SAUDI-US REL. INFO. SERV. (Oct. 20, 2015), http://susris.com/2015/10/20/quarterly-oil-market-update-q3-2015/ (forecasting Iran's 2016 year end output at 1.8 mbpd). However, it is unclear how the more recent world oil glut and rapid decline in petroleum prices might affect these estimates. *See* John W. Schoen, *Global Glut of Crude Oil is Forcing Prices to the Floor*, CNBC (Jan. 12, 2016), http://www.cnbc.com/2016/01/12/global-glut-of-crude-oil-is-forcing-prices-to-the-floor.html; *The Oil Conundrum*, ECONOMIST, Jan. 21, 2016, http://www.economist.com/news/briefing/21688919-plunging-prices-have-neither-halted-oil-production-nor-stimulated-surge-global-growth.

489. *See* Philips & Motevalli, *supra* note 328, at 21; Vadana Hari, *Crude Rallies Past $65/barrel, but Disconnected from Fundamentals*, NATION (May 9, 2015), http://www.nationmultimedia.com/business/Crude-rallies-past-$65barrel-but-disconnected-from-30259672.html (citing Zanganeh's estimates).

490. *See generally* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 378 (highlighting Iran's natural gas success story); McCary, *supra* note 119, at 273–74.

491. *See* Mohamedi, *supra* note 108, at 102; Isis Almeida, *Iran Is No Qatar, Even with World's Second-Biggest Gas Reserves*, BLOOMBERG (July 14, 2015), http://www.bloomberg.com/news/articles/2015-07-14/iran-no-qatar-even-with-the-world-s-second-biggest-gas-reserves (ranking Iran's gas reserves as 2nd largest in the world).

492. *See* Mohamedi, *supra* note 108, at 102; Almeida, *supra* note 491; *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 419 (assessing pressures on Iranian gas exports stemming from domestic consumption).

493. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 419 (commenting on Iran's domestic consumption shift to natural gas); Almeida, *supra* note 491 ("[Iran's] revenue from exporting gas would be lower than what the country gets from injecting the fuel to maintain pressure at oil fields and from feeding its petrochemical industry. . . .").

494. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28,at 413; Mohamedi, *supra* note 108, at 102 (explaining Iran's gas reinjection needs).

decades.[495] Despite rising consumption, Iran managed to achieve a gas surplus in 2012, and more currently, one economic outlook report has stated that the sector "remains underdeveloped despite significant improvements in recent quarters, and there is considerable room to maximize this source of revenue."[496] Indeed, with the needed technology transfers, Iran's gas production could nearly double by 2024.[497] Here, too, urgency is required.[498] An estimated forty-seven percent of Iran's recoverable gas reserves are located offshore in the Gulf within the huge South Pars field, territorially shared with Qatar.[499] Sanctions have placed Iran at a severe disadvantage in comparison to its tiny southern neighbor when it comes to extracting wealth from South Pars.[500] According to former head of the Majles Energy Commission Hamidreza Katouzian, "Twenty years after discovering this gas field, we are behind Qatar in projects, investments, and exploitation . . . While Qatar has completed the building of refineries and drilling, Iran has not even reached halfway

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495. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 417 (citing Iranian forecasts that the nation's resource rents will gradually shift from oil to natural gas)*; cf.* Gabriele Steinhauser & Laurence Norman, *Iran Could Become Major Supplier of Natural Gas to EU*, WALL STREET J., Sept. 13, 2015, http://www.wsj.com/articles/iran-could-become-major-supplier-of-natural-gas-to-eu-1442155324 (evaluating Iran's potential to export natural gas to Europe).

496. IRAN COMMERCIAL BANKING REPORT Q3 2015, *supra* note 339, at 12; *see* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 424; David Ramin Jalilvand, *Iran's Gas Exports: Can Past Failure Become Future Success?*, OXFORD INST. ENERGY STUD. 2 n.1 (June 2013), http://www.oxfordenergy.org/wpcms/wp-content/uploads/2013/06/NG-78.pdf (explaining Iran's 2012 gas surplus in spite of rising domestic consumption).

497. *See* IRAN: COUNTRY RISK REPORT, *supra* note 161, at 25 (estimating Iran's natural gas expansion capacity by 2024); *cf. Iran to Double Gas Output by 2017*, LNG WORLD NEWS (Nov. 10, 2014), http://www.lngworldnews.com/iran-to-double-gas-output-by-2017/ (citing Iranian plans to double capacity by 2017).

498. *See infra* notes 499–501 and accompanying text.

499. U.S. ENERGY INFO. ADMIN., NATURAL GAS EXPORTS FROM IRAN 2 (Oct. 2012), https://www.eia.gov/analysis/requests/ngexports_iran/pdf/full.pdf; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 411 (placing Iran's gas reserves at South Pars at 47%); *see id.* at 378–79,425 (noting Iran's offshore and shared fields); Mohamedi, *supra* note 108, at 102 (noting competition with Qatar).

500. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 413 fig. 8.5; Andrew Critchlow, *Iran to Trigger Natural Gas Race with Qatar in Persian Gulf*, TELEGRAPH (Oct. 8, 2015), http://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/11920043/Andrew-Critchlow-Iran-to-trigger-natural-gas-race-with-Qatar-in-Persian-Gulf.html (comparing Iran and Qatar's extraction capacities).

through its development projects. We are losing because whoever exploits more will gain more."[501]

In addition to the potential at South Pars and wider secular growth trends, international investors will likely also be attracted to the potential of developing liquid natural gas ("LNG") and compressed natural gas ("CNG") projects in Iran.[502] Before the intensification of sanctions in 2010, Iran was on its way to developing massive LNG export programs.[503] However as FDI departed Iran, these projects were shelved.[504] Finally, Iran's natural gas sector may also become crucial for European consumers, who currently depend on Russian gas exports.[505] With recent events in Crimea and Eastern Ukraine raising suspicions over Russia's long-term intentions, Europeans will welcome Iranian pipeline and floating liquid natural gas ("FLNG") projects seeking to reach EU markets.[506]

Beyond the Iranian energy sector, international investors are also bound to find attractive options within Iran's historically large

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501. MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 412.

502. *See* Benoît Faucon, *Iran Seeks Rapid Reboot for Natural Gas Exports*, WALL STREET J., Jan. 26, 2016, http://www.wsj.com/articles/iran-seeks-rapid-reboot-for-natural-gas-exports-1453821547 (concerning efforts to get Iranian gas to market); *see also infra* note 503 and accompanying text.

503. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 416; *Iran Eyes Resuming Huge LNG Project with Germany*, NAT. GAS EUR. (May 7, 2015, 12:05 AM), http://www.naturalgaseurope.com/iran-eyes-resuming-huge-lng-project-with-germany-23582 (pointing out Iran's LNG projects that were set aside via the intensification of sanctions).

504. *See Iran Eyes Resuming Huge LNG Project with Germany*, *supra* note 503; *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, 416–17 ("Without the technology and without firm contracts for purchase, there was little that Tehran could do to advance these projects. A number of the foreign firms involved with the projects had already withdrawn or signaled their disinterest in moving forward and wrote of tens of millions in costs associated with the aborted projects.")

505. *See* Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 1; Steinhauser & Norman, *supra* note 495 (positing Iran's ability to serve European gas markets).

506. *See* Doug Bandow, *Europeans Watch Ukraine and Fear Russia: They Should Take Over NATO and Europe's Defense*, FORBES (Mar. 10, 2014, 7:00 AM), http://www.forbes.com/sites/dougbandow/2014/03/10/europeans-watch-ukraine-and-fear-russia-they-should-take-over-nato-and-europes-defense/; Jeffrey Rathke, *Can NATO Deter Russia in View of the Conventional Military Imbalance in the East?*, CTR. FOR STRATEGIC & INT'L STUD. (Nov. 30, 2015), http://csis.org/publication/can-nato-deter-russia-view-conventional-military-imbalance-east (explaining Europe's fears of Russia); *see also* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 415; Dalga Khatinoglu, *Iran's Gas in EU by 2016?*, NAT. GAS EUR. (July 6, 2015), http://www.naturalgaseurope.com/irans-gas-in-eu-by-2016-24501 (detailing Iran's plans to serve EU markets).

automotive industry.[507] The automobile manufacturing industry represents Iran's second-largest economic sector, following energy.[508] In the years preceding the sanctions regime, Iran was ranked as the eleventh largest automobile producer in the world.[509] However under sanctions, increased parts shortages and rising production costs placed crippling restraints on Iranian automakers.[510] With the lifting of sanctions, Iranian firms will be enabled to serve a booming domestic demand for cars, in a market with few remaining international auto dealers.[511] These conditions have resulted in incredible growth forecasts for Iran's auto sector, which expects approximately seventy-five percent annual growth through 2018.[512]

These trends will be reinforced by President Rouhani's calls to diversify the national economy and to increase the country's non-oil exports.[513] In fact, President Rouhani has highlighted the automotive

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507. *See infra* notes 508–17 and accompanying text.

508. *See* Farahmand Alipour, *Iran Works to Get Auto Industry Back on the Road*, AL-MONITOR (Aug. 17, 2015), http://www.al-monitor.com/pulse/originals/2015/08/iran-car-industry.html; Farahmand Alipour, *Will Boycott Campaign Put the Brakes on Iran's Auto Industry?*, AL-MONITOR (Sept. 21, 2015), http://www.al-monitor.com/pulse/originals/2015/09/iran-carmakers-boycott.html (noting the significance of Iran's automotive sector).

509. *See* Alipour, *Iran Works To Get Auto Industry Back on the Road, supra* note 508; Arash Karami, *Why is Iran's Health Minister Complaining About Domestic-Made Cars?*, AL-MONITOR (Sept. 17, 2015), http://www.al-monitor.com/pulse/originals/2015/09/boycott-iran-cars.html# (citing Iran's former status as the 11th largest automotive manufacturer in the world).

510. *See* Alipour, *Iran Works to Get Auto Industry Back on the Road*, *supra* note 508; Najmeh Bozorgmehr, *Iran's Automobile Sector Faces Slow Revival After Sanctions Lifted*, FIN. TIMES (Feb. 24, 2014, 4:44 PM), http://www.ft.com/intl/cms/s/0/12c7e8b2-998e-11e3-91cd-00144feab7de.html#axzz3vSvjxrhx (assessing the impact of sanctions on Iran's auto industry).

511. *See* IRAN: COUNTRY RISK REPORT, *supra* note 161, at 41; Marketa Hulpachova, *Foreign Carmakers Jostle for Position in Iran*, GUARDIAN (Dec. 13, 2013, 10:35 AM), http://www.theguardian.com/world/iran-blog/2013/dec/13/iran-carmakers-market (explaining the huge Iranian consumer demand for new cars); *see also* Walt, *Picking Winners in the Race to Iran*, *supra* note 449; Andy Sharman, *Carmakers Eye Golden Iranian Opportunity in Wake of Nuclear Deal*, FIN. TIMES (July 15, 2015, 11:25 AM), http://www.ft.com/intl/cms/s/0/31087dae-2642-11e5-9c4e-a775d2b173ca.html#axzz3vSvjxrhx (detailing the virtual absence of international auto dealers in Iran).

512. *See* IRAN: COUNTRY RISK REPORT, *supra* note 161, at 41–43; *Steady Growth Predicted for Auto Industry*, FIN. TRIB. (Oct. 9, 2014, 6:00 AM), http://financialtribune.com/archive/2014/12/08/articles/economy-business-and-markets/2209/steady-growth-predicted-auto-industry (expecting roughly 75 percent year-over-year growth through 2018).

513. *See* Maysam Bizær, *Amid Slump in Oil Prices, Iran Focuses on Mining*, AL-MONITOR (Sept. 25, 2015), http://www.al-monitor.com/pulse/originals/2015/09/iran-mining-industry.html; Garrett Nada, *Economic Trends*, U.S. INST. OF PEACE: IRAN PRIMER (Feb. 25, 2015), http://iranprimer.usip.org/blog/2015/feb/25/economic-trends (citing Rouhani's calls to diversify Iran's economy).

sector as a strategic industry for economic revival, with a push to produce three million cars per year by 2021 and hopes to eventually serve neighboring markets.[514] Beyond Iran's own car manufacturing sector, international carmakers are likely to find a promising market for operations in Iran.[515] Mercedes-Benz, Peugeot, Renault, and others have all declared plans to serve Iran's massive automobile market, and are bound to find success there.[516] For Peugeot specifically, Iran represented the company's largest market outside France until 2011.[517]

2. Alternative Sectors: Aviation, Finance, Consumer Goods, Tourism, and Renewable Energy

Beyond Iran's traditionally dominant industrial sectors, international investors will find unique opportunities across various alternative industries.[518] Domestic economic conditions, combined with the long impact of sanctions, have fostered rare opportunities for international investment.[519] For example, the average commercial aircraft in Iran is currently twenty-three years old, and airliners find themselves in dire need of new fleets.[520] Iran plans to spend approximately US$20 billion on new aircraft purchases over the next ten years.[521] While established aircraft manufacturers will satisfy such

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514. *See* Alipour, *Iran Works to Get Auto Industry Back on the Road*, *supra* note 508 (detailing Rouhani's sector forecasts); *Iran to Export 30% of Domestically Produced Cars*, IRAN DAILY (Sept. 28, 2015, 8:56 PM), http://www.iran-daily.com/News/127857.html (explaining Iranian plans to export cars to neighboring states).

515. *See infra* notes 516–17 and accompanying text.

516. *See* Walt, *Picking Winners in the Race to Iran*, *supra* note 449; Alipour, *Iran Works to Get Auto Industry Back on the Road*, *supra* note 508; IRAN: COUNTRY RISK REPORT, *supra* note 161, at 40 (listing international automakers looking to Iran).

517. *See* Walt, *Picking Winners in the Race to Iran*, *supra* note 449; Alissa J. Rubin, *After Deal, Europeans Are Eager to Do Business in Iran*, N.Y. TIMES, Aug. 1, 2015, http://www.nytimes.com/2015/08/02/world/europe/after-deal-europeans-are-eager-to-do-business-in-iran.html?_r=0 (presenting Peugeot's ties to Iran before the intensification of sanctions).

518. *See infra* notes 519–67 and accompanying text.

519. *See infra* notes 520–67 and accompanying text.

520. *See* Walt, *Picking Winners in the Race to Iran*, *supra* note 449; Kieron Monks, *Iran's Aviation Industry: Back in Business?*, CNN (Sept. 9, 2015), http://www.cnn.com/2015/09/09/travel/irans-aviation-industry/ (articulating Iran's need for new airline fleets).

521. *See* Walt, *Picking Winners in the Race to Iran*, *supra* note 449; Alwyn Scott & Victoria Bryan, *Iran Deal Could Unleash Big Pent-Up Commercial Demand*, REUTERS (July 14, 2015, 12:27 PM), http://www.reuters.com/article/iran-nuclear-airplanes-idINL2N0ZU19020150714 (establishing the average Iranian commercial aircraft at 23 years old); Monks, *supra* note 520 (overviewing Iran's need for new fleets); Bizær, *Even Without*

sales, these new fleets should open a new secondary-servicing market rife with opportunities for foreign investors.[522] Likewise, in the absence of sanctions, pressures are likely to mount toward revising domestic Iranian aviation's inefficient and subsidized price models, which should make passenger airlines operating in the country more profitable.[523]

Another sector posed to rebound upon the lifting of sanctions is Iran's finance industry. As explained above, Iran's banks were crippled through the late sanctions regime.[524] Additionally, government-sponsored lending programs and poor lending practices throughout the Ahmadinejad era distressed Iranian banks, leaving them with poor asset portfolios and uncertain prospects through at least 2017.[525] At the same time, Iranian banks have also been rocked with various high profile corruption scandals in recent years, while some of the largest players have been active participants in Iran's

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Sanctions, Iranian Aviation Faces Turbulent Future, *supra* note 381 (estimating $20 billion in purchases). Indeed, following Implementation Day, the first major international contract with Iran consisted of their purchasing 114 Airbus Jetliners. *See* Clay Dillow, *Iran's First Big Purchase: 114 Airbus Jetliners*, FORTUNE (Jan. 19, 2016), http://fortune.com/2016/01/19/iran-to-purchase-airbus-jetliners/; Asa Fitch & Robert Wall, *Iran Plans to Buy 114 Civilian Aircraft from Airbus*, WALL STREET J., Jan. 16, 2016, http://www.wsj.com/articles/iran-plans-to-buy-114-civilian-aircraft-from-airbus-once-sanctions-removed-1452975657.

522. *See* Bizær, *Even Without Sanctions, Iranian Aviation Faces Turbulent Future, supra* note 381 (proposing second-hand aircraft and leasing opportunities); *Plane Speaking After Iran's Nuclear Deal*, ECONOMIST, July 21, 2015, http://www.economist.com/blogs/gulliver/2015/07/aviation-iran (characterizing the current "black market" conditions faced within Iranian aircraft servicing).

523. *See* Ali Dadpay, *Will Iran Airlines Take Off?*, FIN. TRIB. (Aug. 27, 2015), http://financialtribune.com/articles/24425/will-iran-airlines-take (critiquing the current price system and calling for reform); Bizær, *Even Without Sanctions, Iranian Aviation Faces Turbulent Future, supra* note 381 (citing pressures to reform Iranian airfare pricing); *cf.* Takeshi Kumon, *Nuclear Deal to Bring Winds of Change in Persian Gulf Aviation Market*, NIKKEI ASIAN REV. (July 24, 2015), http://asia.nikkei.com/Business/Trends/Nuclear-deal-to-bring-winds-of-change-in-Persian-Gulf-aviation-market?page=2 (asserting that under sanctions, diminished competition allowed foreign airliners serving Iran to exploit inflated airfare prices that Iran itself was unable to capture).

524. *See supra* note 333 and accompanying text (illustrating Iran's credit crunch under sanctions).

525. *See Iranian Banks on Shaky Ground*, AL-MONITOR (Mar. 4, 2015), http://www.al-monitor.com/pulse/originals/2015/03/iran-bank-deposits-inflation-sanctions.html (providing an overview of the current challenges faced by Iranian banks); *see also* Ramezanpour, *Iran's Troubled Bond Market*, *supra* note 333 (foreshadowing an upcoming non-performing loan crisis); IMF COUNTRY REPORT NO. 14/93, *supra* note 168, at 10; IRAN COMMERCIAL BANKING REPORT Q3 2015, *supra* note 339, at 19.

nuclear development program and regional terrorist financing.[526] With domestic banks still reeling from the Ahmadinejad era, foreign banks could provide an important service to underserved Iranian consumers.[527] Furthermore, despite the current outlook of the local banking scene, analysts predict various post-sanctions benefits to this sector within the short term.[528] President Rouhani has promised to reform Iran's broken finance sector, and there are expectations that this area of the economy will liberalize in upcoming years.[529]

Additionally, the Tehran Stock Exchange ("TSE") provides an attractive equity market for international portfolio investors as Iran climbs out of sanctions.[530] International fund managers are already

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526. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 363; Ben Brumfield & Shirzad Bozorgmehr, *Epic Bank Scandal Investigation Hits Ahmadinejad*, CNN (Oct. 5, 2011, 2:32 PM), http://www.cnn.com/2011/10/05/world /meast/iran-bank-scandal/ (detailing the Bank Arya scandal); *see also* IRAN COMMERCIAL BANKING REPORT Q3 2015, *supra* note 339, at 35 (noting that Bank Melli Iran has been "repeatedly accused . . . of being a secret financial channel for the Iranian government's nuclear weapons programme"); *id.* at 37 (stating that Bank Saderat has been "most often singled out among Iranian banks by the US Treasury Department and the UK for alleged involvement in the Iranian government's nuclear programme and terrorist group financing").

527. *See* IRAN COMMERCIAL BANKING REPORT Q3 2015, *supra* note 339, at 9; *Iranian Banks on Shaky Ground*, *supra* note 525 (noting that Iran's high domestic inflation will continue to eat into banks' deposit growth). Likewise, foreign banks that maintain correspondent accounts in the United States will still need to ensure they comply with US Anti-Money Laundering, Anti-Terrorist Financing, and other compliance requirements. *See generally* Ian Allison, *Iran Economic Explosion: Which Banks Will be First to Take the Plunge?*, INT'L BUS. TIMES (July 14, 2015), http://www.ibtimes.co.uk/iran-economic-explosion-which-banks-will-be-first-take-plunge-1510784 (providing various considerations for international banks returning to Iran); Henry Balani, *Iran Nuclear Agreement's AML Policy Implications*, BANKING EXCH. (Sept. 4, 2015, 3:17 PM), http://www.bankingexchange.com/compliance/bsa-aml/item/5726-iran-nuclear-agreement-s-aml-policy-implications. Additionally, there may be constitutional prohibitions in place that limit any significant participation of foreign banks in Iran. *See infra* Part II.D.1.

528. *See* IRAN COMMERCIAL BANKING REPORT Q3 2015, *supra* note 339, at 15; Shadia Nasralla, *Update 2- Iran Eyes Return to SWIFT System, Foreign Stakes in Privatisations After Sanctions*, REUTERS (July 24, 2015), http://www.reuters.com/article/iran-nuclear-economy-idUSL5N10425C20150724 (highlighting the benefits that will likely occur as Iranian banks reenter the SWIFT banking system).

529. *See* IRAN COMMERCIAL BANKING REPORT Q3 2015, *supra* note 339, at 9; Rachel Williamson, *Iranian Bankers Look to Rouhani Reforms to Save Industry*, MIDDLE EAST MONITOR (Oct. 3, 2013, 12:01 PM), https://www.middleeastmonitor.com/articles/middle-east/7653-iranian-bankers-look-to-rouhani-reforms-to-save-industry (discussing Rouhani's liberalizing reforms to Iranian banking).

530. *See generally* Sadakova, *supra* note 158; Morteza Ramezanpour, *Foreign Firms Prepare to Dive into Iran's Lucrative Private Equity Market*, AL-MONITOR (July 28, 2015), http://www.al-monitor.com/pulse/originals/2015/07/iran-equity-market-deal.html (summarizing Iran's equity markets).

surveying the TSE and will likely embody the first wave of foreign investment to return to Iran.[531] In fact, even before Implementation Day, some international funds had already opened operations in the nearby United Arab Emirates, hoping to get a head start upon the lifting of sanctions.[532] In July, 2015, the TSE traded at a comparatively low average price-to-earnings ratio ("P/E ratio") of 5.3, while less than three percent of TSE trading volume was conducted by international investors.[533] The TSE is forecast to reach new highs as Iranian banks rejoin the SWIFT banking system.[534] While not without risks, the TSE could represent an attractive destination for international investors and capital funds seeking to open up

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531. *See* Sadakova, *supra* note 158 (detailing the international scoping out of Iranian markets); Danielle Myles, *Funds Will be the First to Enter Iran*, INT'L FIN. L. REV. (Aug. 17 2015), http://www.iflr.com/Article/3475365/Funds-will-be-first-to-enter-Iran.html (noting that institutional funds will be among the first to reenter Iran).

532. *See* Stephen Kalin, *Iran Deal Stirs Wary Optimism in Dubai Trading Hub*, REUTERS (Nov. 25, 2013), http://www.reuters.com/article/iran-nuclear-uae-idUSL5N0JA39U20131125 (describing the UAE's role as a staging post for capital seeking to enter Iran).

533. Generally, a low P/E ratio is attractive to investors, as it indicates that a stock or portfolio may be purchased for a low price in comparison to the asset's earnings power, thus indicating the asset is undervalued. *See* BENJAMIN GRAHAM, THE INTELLIGENT INVESTOR 159–60 (2006); *P/E Ratio: An In-Depth Guide*, INVESTOPEDIA, http://www.investopedia.com/university/peratio/ (last visited Mar. 22, 2016) (explaining the role of P/E ratios in portfolio investing); *see also* Ramezanpour, *Foreign Firms Prepare to Dive into Iran's Lucrative Private Equity Market*, *supra* note 530 (listing Iran's P/E ratio at 5.3); *cf.* Sadakova, *supra* note 158 (describing the TSE as "large, liquid and cheap" with less than 3% trading volume stemming from international investors). For sake of comparison, the Saudi Arabian investment company Aljazira Capital calculates the Saudi Tadawul All Shares Index ("TASI") to trade at an eight year average P/E ratio of 17.1. *Exploiting Market Anomalies in the Saudi Stock Market*, AL JAZIRA CAPITAL (Sept. 2014), http://www.aljaziracapital.com.sa/report_file/ess/SPE-176.pdf; *cf.* Judith Evans, *Fund Managers on the Iranian Frontier*, FIN. TIMES (Mar. 1, 2015), http://www.ft.com/intl/cms/s/0/7de6a358-b798-11e4-8807-00144feab7de.html#axzz3vSvjxrhx (favorably comparing the TSE's P/E ratio and dividends yield to the MSCI Frontier Markets index).

534. *See* Ramezanpour, *Foreign Firms Prepare to Dive into Iran's Lucrative Private Equity Market*, *supra* note 530; Adrian Nizzola et al., *Iran: Understanding the Nuclear Deal and its Effect on Sanctions*, SIMMONS & SIMMONS, http://www.simmons-simmons.com/~/media/Files/Corporate/External%20publications%20pdfs/Iran%20%20Understanding%20the%20nuclear%20deal%20and%20its%20effect%20on%20sanctions.pdf (last visited Apr. 9, 2016) (noting the positive influence rejoining SWIFT will have on the TSE). For a description of the SWIFT banking system, see *supra* note 333. Iran began reconnecting to SWIFT in early 2016. *See* Andrew Torchia, *Iranian Banks Reconnected to SWIFT Network After Four Year Hiatus*, REUTERS (Feb. 17, 2016), http://www.reuters.com/article/us-iran-banks-swift-idUSKCN0VQ1FD; *SWIFT Return to International Bank Transfers for Iran's Banks*, EURONEWS (Feb. 1, 2016), http://www.euronews.com/2016/02/01/swift-return-to-international-bank-transfers-for-iran-s-banks/.

operations within Iran.[535] Finally, the lifting of sanctions will open up Iranian firms to various merger and acquisition opportunities likely to be structured by international funds.[536]

Iran's consumer goods sector is also suited to provide numerous international investment opportunities following the lifting of sanctions.[537] As noted above, Iran's population of seventy-eight million is young, educated, and consumer friendly, providing an attractive market for international corporations and retailers.[538] Despite their government's history of pariah-State policies, many Iranians are culturally sophisticated and internationally aware, given that "accessibility to international markets and media outlets such as satellite television, and later the Internet, have buttressed consumerist culture amongst urban Iranians."[539] Such consumerist culture has been growing steadily since the 1990s.[540] Iran is the seventh top consumer of cosmetics in the world, and the nation with the highest per capita number of rhinoplasty procedures.[541] Even during the most restrictive

535. In particular, major risks include poor accounting transparency and archaic equity custodianship methods, partly due to past sanctions and the lack of a global custodian capable of securely managing transactions. However international banks reentering Iran could serve this exact role. *See* Sadakova, *supra* note 158; Bill Spindle & Dan Keeler, *Nuclear Deal Could Drive Foreign Investors to Iranian Stocks*, Wall Street J., Mar. 30, 2015, http://www.wsj.com/articles/nuclear-deal-could-drive-foreign-investors-to-iran-stocks-1427750282. Other risks include cumbersome bureaucratic hurdles, and ongoing legal/reputational risks from equity transactions involving firms still designated by the United States as sponsors of terrorism. *See* Sadakova, *supra* note 158; Myles, *supra* note 531 (assessing risks within the Tehran Stock Exchange).

536. *See* Ramezanpour, *Foreign Firms Prepare to Dive into Iran's Lucrative Private Equity Market*, *supra* note 530; Golnar Motevalli & Matthew Martin, *Iranian Investment Bank Amin Introduces M&A Advisory Service*, BLOOMBERG (Sept. 30, 2014), http://www.bloomberg.com/news/articles/2014-09-30/iranian-investment-bank-amin-plans-mergers-and-acquisitions-unit (evaluating M&A trends in Iran).

537. *See infra* notes 538–44 and accompanying text.

538. *See supra* note 450 and accompanying text; *see also* Myles, *supra* note 531; Harris, *The Bazaar*, *supra* note 50, at 109 (looking at the foundations underlying strong Iranian consumerism).

539. Shima Houshyar & Behzad Sarmadi, *A Fashionable Revolution: Veiling, Morality, and Consumer Culture in Iran*, AJAM MEDIA COLLECTIVE (Mar. 11, 2014), http://ajammc.com/2014/03/11/a-fashionable-revolution/; *see* Harris, *The Bazaar*, *supra* note 50, at 110 (reinforcing the sophistication of Iran's consumer culture).

540. *See* Houshyar & Sarmadi, *supra* note 539; Thomas Erdbrink, *Lavish Malls Sprouting up to Attract Iranian Elite*, N.Y. TIMES, Jan. 18, 2015, http://www.nytimes.com/2015/01/19/world/middleeast/lavish-malls-sprouting-up-to-attract-iranian-elite.html (acknowledging the rise of consumerism in Iran).

541. *See* Correspondent in Tehran, *Billion Dollar Smuggling Industry Drains Iran's Economy supra* note 336; Mehrnaz Samimi, *Cosmetics Boom in Iran*, AL-MONITOR (Dec. 17, 2013), http://www.al-monitor.com/pulse/originals/2013/12/makeup-iran-women-boom-

years of the sanctions regime, Iran was home to approximately 6.5 million banned, authentic iPhones.[542] As in various other sectors, Iranian consumer tastes for Western products have been largely unsatisfied through the late sanctions era, resulting in unusual and potentially lucrative pent-up demand.[543] McDonald's began seeking local Iranian franchise partners in July 2015, exemplifying a symbolic corporate giant recognizing this particularized demand.[544]

The Iranian tourism sector is also staged to attract significant attention from international investors. Iran possesses natural advantages well suited to a dynamic tourism industry, including "natural, religious, cultural and historical attractions."[545] Iran has nineteen current World Heritage Sites, with approximately fifty further sites tentatively listed.[546] Yet, in 2012, tourism accounted for a mere two percent of Iran's GDP.[547] As such, tourism represents one of

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counterfeit-plastic-surgery.html (ranking Iran's cosmetics market at the seventh largest in the world); Sadakova, *supra* note 158 (noting that Iran has the highest per capita number of rhinoplasty); *The Beauty Obsession Feeding Iran's Voracious Cosmetic Surgery Industry*, GUARDIAN (Mar. 1, 2013), http://www.theguardian.com/world/iran-blog/2013/mar/01/beauty-obsession-iran-cosmetic-surgery (noting Iran's unparalleled practice of rhinoplasty).

542. *See* Walt, *Picking Winners in the Race to Iran*, *supra* note 449; Dick Simon, *The Biggest Myths about Doing Business with Iran*, CNBC (July 14, 2015, 1:25 PM), http://www.cnbc.com/2015/07/14/the-biggest-myths-about-doing-business-with-iran.html (pointing out Iran's 6.5 million iPhones). Although these sorts of indicators are often overblown in the West to stand in for everything from Iranian political attitudes to gendered perceptions of Islam, at a more basic level such trends certainly bode well for international businesses seeking to operate within Iran. *See generally* Houshyar & Sarmadi, *supra* note 539 (explaining the oppressive fallacies inherent in attempting to find social meaning in the interpretation of these sorts of consumerist trends).

543. *See* Walt, *Picking Winners in the Race to Iran*, *supra* note 449; Scott & Bryan, *supra* note 521 (explaining wide Iranian pent-up demand).

544. *See* Walt, *Picking Winners in the Race to Iran*, *supra* note 449; Heather Long, *Will Iran Get McDonald's Now?*, CNN MONEY (Jan. 19, 2016), http://money.cnn.com/2016/01/18/investing/iran-sanctions/ (citing McDonalds' interest in serving Iran).

545. Ali Khaksari et al., *Religious Perceptions and Hegemony on Tourism Development: the Case of the Islamic Republic of Iran*, 16 INT'L J. TOURISM RES. 97, 98 (2014); *see* Farahmand Alipour, *Iran's Tourism Industry Scrambles to Catch Up with Demand*, AL-MONITOR (May 1, 2015), http://www.al-monitor.com/pulse/originals/2015/04/iran-hotels-tourism-esfahan-shiraz.html (summarizing the state of Iran's tourism industry).

546. *See World Heritage Sites in Iran*, WORLD HERITAGE SITE, http://www.worldheritagesite.org/worldheritagelist.html (last visited Mar. 24, 2016); *UNESCO Sites*, DESTINATION IRAN, http://www.destinationiran.com/unesco-list (last visited Apr. 9, 2016) (listing Iran's world heritage sites).

547. *See* Marais, *supra* note 449, at 14; Maria Sheahan & Victoria Bryan, *Iran Tourism Sector Aims to Rebuild as International Tensions Thaw*, REUTERS (Mar. 6, 2015, 1:20 PM), http://www.reuters.com/article/us-iran-tourism-idUSKBN0M220L20150306 (assessing Iran's dismal tourism levels).

Iran's most underdeveloped economic sectors, with some optimistically noting its potential to bring in more revenue than the State's oil sector.[548] While the Shah pushed for increased tourism development before his ousting in 1979, the revolution and subsequent Iran-Iraq War stalled further development.[549] Today few international hotels operate in Iran, and there is a shortage of hotel rooms throughout the country.[550] In fact, according to one Iranian travel agent, in the past three decades, only two new hotels have been constructed in the Iranian capital.[551] Concerns over the cultural impact of international tourism have historically prevented the Islamic Republic from formally adopting tourism development as a serious goal for Iran's economy.[552] However in recent years, there are some signs that the regime's attitude may be shifting.[553] Plans are in place to construct between 200 and 400 three- and four-star hotels in the country.[554] The government seeks to quadruple Iran's tourist intake from five million to twenty million visitors per year, translating to a jump from US$6 billion in annual tourism revenue to between US$25-30 billion.[555] The Iranian government has also taken measures

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548. *See* Khaksari et al., *supra* note 545, at 98 (noting the potential for Iranian tourism revenue to outpace that of oil); *cf. Tourism Can Help Iran Move Away From Oil*, FIN. TRIB. (Feb. 15, 2015), http://financialtribune.com/articles/travel/11133/tourism-can-help-iran-move-away-oil (providing a wider assessment of Iran's tourism potential).

549. *See* Khaksari et al., *supra* note 545, at 99–100; Alipour, *Iran's Tourism Industry Scrambles to Catch Up with Demand*, *supra* note 545 (recalling the history of Iran's tourism industry).

550. *See* Walt, *Picking Winners in the Race to Iran*, *supra* note 449; Alipour, *Iran's Tourism Industry Scrambles to Catch Up with Demand*, *supra* note 545 (addressing the insufficient infrastructure comprising Iran's contemporary tourism sector).

551. Alipour, *Iran's Tourism Industry Scrambles to Catch Up with Demand*, *supra* note 545.

552. *See* Khaksari et al., *supra* note 545, at 99 (evaluating the regime's attitude concerning tourism development); *cf.* Steve Inskeep, *'You Are Invited': Isolated Iran Seeks Foreign Tourists*, NAT'L PUB. RADIO (Feb. 18, 2015, 11:39 AM), http://www.npr.org/sections/parallels/2015/02/18/387149018/you-are-invited-isolated-iran-seeks-foreign-tourists ("Since Islamist clerics took power in 1979, they have limited the people's contact with the outside world. The government has controlled information and granted very few visas to would-be visitors.").

553. *See infra* notes 554–57 and accompanying text.

554. *See* Alipour, *Iran's Tourism Industry Scrambles to Catch Up with Demand*, *supra* note 545; COUNTRYWATCH, IRAN, *supra* note 168, at 14 (forecasting new hotel constructions in Iran).

555. *See* Alipour, *Iran's Tourism Industry Scrambles to Catch up with Demand*, *supra* note 545; Maria Gallucci, *Iran Could See a 'Tsunami' of Tourists as Iran Nuclear Deal Takes Hold*, INT'L BUS. TIMES (Oct. 18, 2015, 6:06 PM), http://www.ibtimes.com/iran-could-see-

to open tourism offices abroad in China, Italy, Malaysia, Spain, and Switzerland, with forty-four more offices slated to open in the future.[556] Already, international investors are breaking ground in Iran, with the French hotel chain Accor having opened its first Iranian branch in October, 2015.[557]

Finally, one last interesting frontier sector in post-sanctions Iran could be the nation's budding alternative energy industry.[558] As noted above, Iran faces real challenges related to domestic energy consumption and the erosion of export revenues as both oil and gas are diverted internally.[559] With ninety-seven percent of Iran's energy use coming from carbon-based resources as recently as 2007, the alternative energy space represents an especially strategic focal point for Iran's development goals.[560] Indeed, the expansion of this space could be the primary means of addressing Iran's internal energy consumption.[561] While the State's renewable energy development goals remain unmet, the government has put incentives in place to encourage investment within the renewable energy sector.[562]

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tsunami-tourists-iran-nuclear-deal-takes-hold-ap-report-2145730 (citing future Iranian tourism revenue targets).

556. *See* Alipour, *Iran's Tourism Industry Scrambles to Catch Up with Demand*, *supra* note 545; *Iran to Establish 20 More Tourism Offices Overseas by March 2016,* TEHRAN TIMES (May 18, 2015), http://www.tehrantimes.com/PDF/12271/12271-5.pdf (looking to Iran's 44 slated international tourism offices).

557. *See* Walt, *Picking Winners in the Race to Iran*, *supra* note 449; *Foreign Investment in Iran: France's Accor Hotels Opens Two Hotels in Tehran, Novotel Ikia and Ibis Ikia*, PERSIANESQUE, (Oct. 22, 2015), http://www.persianesquemagazine.com/2015/10/22/foreign-investment-in-iran-accorhotels-opens-two-hotels-in-tehran-novotel-ikia-and-ibis-ikia/ (recognizing Accor's new hotels in Iran).

558. *See infra* notes 559–67 and accompanying text.

559. *See supra* notes 165–67 and accompanying text (examining Iran's subsidy policies and domestic energy consumption).

560. *See* Aslani & Feng, *supra* note 482, at 7; Koen Groot, The Geopolitical Impact of the Increasing Trade and Investment Relations between the National Oil Companies of China, Iran and Russia 62 (July 19, 2010), http://dare.uva.nl/cgi/arno/show.cgi?fid=190628 (unpublished thesis, Universiteit van Amsterdam) (noting that ninety-seven percent of Iran's energy consumption stems from carbon-based sources).

561. *See* Aslani & Feng, *supra* note 482, at 8; Bijan Khajehpour, *Iran's Renewable Energy Sector Poised for Growth*, AL-MONITOR (July 26, 2013), http://www.al-monitor.com/pulse/originals/2013/07/renewable-energy-iran-development.html# (suggesting renewable energy development as a solution to Iran's subsidy crisis).

562. *See* Aslani & Feng, *supra* note 482, at 8 ("only 38% the goals of Iran's fourth national development plan in RE have been achieved [as of 2014]"); *see also Opportunities to Construction Renewable Energy Power Plants in Iran,* MINISTRY OF ENERGY: RENEWABLE ENERGY ORG. IRAN (SUNA), http://www.suna.org.ir/en/opportunitiestoconstruction/opportunities (last visited Apr. 9, 2016); Aslani & Feng, *supra* note 482, at 14 tabl. 1

Meanwhile, according to one study, conditions in Iran are suitably aligned at every stage of renewable energy supply chains.[563] In particular, Iran's vast surface area and sunny climate make the nation an attractive location for solar power generation.[564] Additionally, there are various marketable models for off-plant solar use that could help move Iranians away from internal gas consumption.[565] Hydropower and wind energy present two other viable renewable energy subsectors.[566] International expertise from established renewable energy players would help advance Iran's goals in this industry. In fact, German firms have already signed massive contracts to develop ambitious solar and wind projects within Iran.[567]

C. Investor Risks in Iran

Considering the numerous opportunities that post-sanctions Iran provides for international investors, it is important for foreign entrants to remain cognizant of the many risks of investing in Iran.[568] Broadly, these risks fall within two categories: commercial risks, dealing with economic and market forces that impact a firm's ability to generate

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(summarizing Iran's renewable energy goals and measures currently in place to incentivize renewable energy production).

563. These stages include the resource stage, the generation stage, the transmission stage, distribution, and finally consumption. *See* Aslani & Feng, *supra* note 482, at 13; *see also* Amory B. Lovins, *Iran's Invisible Opportunity*, BULL. ATOMIC SCIENTISTS (Sept. 30, 2015), http://thebulletin.org/iran%E2%80%99s-invisible-opportunity8774 (assessing Iran's favorable conditions for renewable energy).

564. *See* Aslani & Feng, *supra* note 482, at 9; Alok Jha, *Tehran Looks to the Skies for Cheap Power from the Sun*, GUARDIAN (Jan. 6, 2009, 5:15 PM), http://www.theguardian.com/environment/blog/2009/jan/06/alternative-energy-solar-power (pointing out Iran's natural capacity for solar power).

565. *See* Aslani & Feng, *supra* note 482, at 10 ("In addition to power plant-based functions of solar energy, off plant thermal functions are considered as hot water supply by solar water heaters for washing and bathing, heating-cooling and solar air conditioning, solar desalination, solar drier, solar ovens, and solar furnaces."). *See generally Solar Heating & Cooling,* SOLAR ENERGY INDUS. ASSOC. (May 17, 2013), http://www.seia.org/sites/default/files/Solar%20Heating%20and%20Cooling%206.18.13.pdf (providing an overview of solar cooling and heating).

566. *See* Aslani & Feng, *supra* note 482, at 10–11; Lovins, *supra* note 563 (noting Iran's potential for wind and hydropower).

567. *See* Nicholas Brautlecht & Stefan Nicola, *Iran's Thirst for Energy Draws in Wind Developers*, BLOOMBERG (July 29, 2015), http://www.bloomberg.com/news/articles/2015-07-29/nuclear-deal-opens-market-as-big-as-france-for-iran-wind; *German Firm Licensed to Set up Solar Power Plants in Iran*, FARS NEWS AGENCY (Nov. 30, 2015, 9:42 AM), http://en.farsnews.com/newstext.aspx?nn=13940909001551 (summarizing German-Iranian renewable energy deals).

568. *See infra* notes 569–619 (assessing risks to international investors in Iran).

returns; and political risks, which involve the rights of investors and the political forces that effect their investments.[569] Generally speaking, commercial risks faced by investors in Iran are likely to involve conditions beyond the control or influence of the investment community.[570] Therefore, such risks will be best mitigated by sound business judgment and prudent economic decisions.[571] To the contrary, while political risks might also exist beyond the direct control of investors, their pitfalls may be mitigated through the application of established international investment law.[572]

1. Commercial Risks

Throughout the foreseeable future, the Iranian economy will be subject to numerous challenges likely to effect investor returns.[573] The early post-sanctions era will be marked by macroeconomic uncertainties ranging from exchange rate uncertainty to inflation uncertainty.[574] Inflation in particular is a cause for concern.[575] Likewise, the World Bank notes that high unemployment will also continue to plague Iran's economy, especially for young Iranians, for whom unemployment is estimated at approximately thirty-five

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569. *See* SALACUSE, *supra* note 10, at 12; Vladan S. Perišić et al., *Foreign Direct Investment and Non-Commercial Risks*, 23 ANNALS ORADEA U. FASCICLE OF MGMT. & TECH. ENGINEERING 93, 93-96 (Aug. 2014) (differentiating commercial risk and political risk).

570. *See infra* Part II.C.1.

571. *See infra* Part II.C.1; *see also* SALACUSE, *supra* note 10, at 12 (defining commercial risk).

572. *See infra* Part II.C.2; *see also* SALACUSE, *supra* note 10, at 12–13 ("A fundamental purpose of investment treaties and political risk insurance . . . is to provide foreign investors and their investments with a level of protection against political risks.").

573. *See infra* notes 574–89 and accompanying text.

574. *See generally* Z. Rozeei et al., *The Study of the Effective Factors on Investment in Private Sector in Iran (With Emphasis on Uncertainty)*, 6 INT'L J. INDUS. MATHEMATICS 255, 256–57 (2014) (investigating the role of commercial uncertainty on investment in Iran); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 506–07 (evaluating the economic adversity currently faced by Iran).

575. *See* CAMMETT ET AL., *supra* note 41, at 114; Alireza Ramezani, *Is Iran on the Right Track to Managing Inflation?*, AL-MONITOR (June 11, 2015), http://www.al-monitor.com/pulse/originals/2015/06/iran-inflation-management-debt-banking.html# (addressing inflation in Iran). Although inflation has fallen since the signing of the JCPOA it is forecast to remain high, and is likely to be further fueled by the government's ongoing subsidy reforms. *See* Khajehpour, *How the Nuclear Deal Will Help Iran's Economy*, *supra* note 454 (noting the fall of inflation after the JCPOA, but also citing structural inflation concerns within Iran's economy); *see also* IRAN COMMERCIAL BANKING REPORT Q3 2015, *supra* note 339, at 27; IMF COUNTRY REPORT NO. 14/93, *supra* note 168, at 6 (explaining the relationship between inflation rates and the unwinding of Iran's fuel/food subsidies.).

percent.[576] For investors, high unemployment limits the Iranian population's consumption potential, and further reduces the quality of Iran's labor pool as highly skilled Iranians leave the country to seek employment abroad.[577] Domestic labor laws that make it difficult to terminate hired employees further compound these trends.[578] At a more structural level, an inefficient State sector and distortions from government involvement in the economy will also continue to undermine investor-led growth.[579] The State's subsidy programs represent a major area of market distortion, and although these concerns are being addressed, volatility remains likely in this space throughout the immediate future.[580] Additionally, the government demands a burdensome registration and ownership process for firms operating within Iran.[581] Corporate tax rates, on the other hand, stand at twenty-five percent, an improvement from the past tax rate of fifty-four percent.[582]

576. *See Iran Overview*, *supra* note 449 (discussing unemployment in Iran); CAMMETT ET AL., *supra* note 41, at 315 (highlighting unemployment among the Iranian youth). Even before the intensification of the sanctions regime, young Iranians searched for employment for an average of three years before landing a job. Omid Memarian & Tara Nesvaderani, *The Youth*, *in* THE IRAN PRIMER, *supra* note 12, at, 50.

577. *See* PRS GROUP, IRAN COUNTRY CONDITIONS 1 (Aug. 1, 2014) (on file with author) (further exploring the New Privatization Act); Farshad Mohammadi, *Can Iran Convince its Brainiacs to Return?*, AL JAZEERA (Apr. 17, 2014 8:06 AM), http://www.aljazeera.com/indepth/features/2014/04/can-iran-convince-brain-drain-2014415115753960687.html (noting Iran's "brain drain" problem).

578. *See* Ghodoosi, *supra* note 28, at 1749 ("labor law in Iran, generally speaking, makes it difficult for employers to lay-off employees."); *cf.* ROUZNAMEH RASMI [LABOUR CODE] Tehran [1990], §§ 21–33 (Iran), http://www.ilo.org/dyn/natlex/docs/WEBTEXT/21843/64830/E90IRN01.htm.

579. *See* COUNTRYWATCH, IRAN, *supra* note 168, at 329; *Iran Overview*, *supra* note 449 (explaining the public sector's burden on private sector-led growth).

580. *See supra* notes 162–69 and accompanying text*; see also* IMF COUNTRY REPORT NO. 14/93, *supra* note 168, at 17; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 475 (addressing the impact of subsidies on Iran's economy).

581. *See* Ghodoosi, *supra* note 28, at 1749 (summarizing the "special process" involved in foreign nationals owning real property in Iran). The most recent World Bank comparisons rank Iran 118th out of 189 nations in ease of doing business. *See Ease of Doing Business in Iran, Islamic Rep.*, WORLD BANK GRP., http://www.doingbusiness.org/data/exploreeconomies/iran/ (last visited Mar. 24, 2016).

582. *See* Ghodoosi, *supra* note 28, at 1749; *Iran Tax: Country Briefing*, AM. INT'L GRP., http://www.aig.com/_2590_379141.html (last visited Apr. 9, 2016) (placing Iran's corporate tax rate at 25 percent). Additionally, the Iranian government has ushered a series of tax holidays, seeking to attract foreign investment. *See A Review of the Iranian Tax System*, ORG. INV. ECON. & TECH. ASSISTANCE OF IRAN, http://www.investiniran.ir/en/whyiran1/tax (last visited Mar. 24, 2016); Leila Piran, *Iran Releases Plan to Attract Foreign Investment*,

International investors should also remain wary of various accountability risks scattered throughout the Iranian economy.[583] The past practices of Iran's financial institutions leave much to be desired for firms conducting monetary transactions within Iran, and the lack of custodianship safeguards within the Tehran Stock Exchange raises questions concerning wider Iranian accounting practices.[584] Lax intellectual property protections raise further concerns.[585] Iran's massive bureaucracy provides ample threats of government interference, and only recently has the depth of the previous administration's corruption been discovered.[586] Past investors in Iran have undertaken both financial and reputational damage from similar corruption scandals.[587] In light of these discouraging threats to foreign investment, President Rouhani has initiated a major push to combat these practices.[588] Whether his reforms will be effective remains to be seen.[589]

MUFTAH (Sept. 25, 2014), http://muftah.org/iran-releases-plan-attract-foreign-investment/#.VoGvMBorJ-U.

583. *See infra* notes 584–89 and accompanying text.

584. *See supra* note 526 and accompanying text (discussing Iranian bank scandals); *see also supra* note 535 (highlighting custodian issues in the Tehran Stock Exchange).

585. *See* IRAN COMMERCIAL BANKING REPORT Q3 2015, *supra* note 339, at 14; Benoît Faucon, *U.S. Firms Prepare for End to Iran Sanctions*, WALL STREET J., Dec. 23, 2015, http://www.wsj.com/articles/u-s-firms-prepare-for-end-to-iran-sanctions-1450896958 (noting Iran's lax intellectual property protection).

586. *See* Khajehpour, *Will Iran's Corruption Fight Attract Private Investors?*, *supra* note 458; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 363 (discussing Iran's recent corruption scandals).

587. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 388–89 ("The companies considered doing business in Iran's contentious political environment frustrating and several found themselves enmeshed in costly corruption scandals that damaged both their profile within Iran as well as their international reputation."); *see, e.g.*, Guy Chazan, *Total Agrees Penalty to Settle US Bribes Charge Over Iran Deal*, FIN. TIMES (May 29, 2013), https://next.ft.com/content/c372b0d0-c878-11e2-acc6-00144feab7de (recalling Total's entanglement with Iranian corruption).

588. *See supra* note 458 and accompanying text (mentioning Rouhani's current fight against corruption in Iran).

589. *See* Khajehpour, *Will Iran's Corruption Fight Attract Private Investors?*, *supra* note 458 ("the real campaign against corruption will be the one that addresses legal, political and structural issues so that future cases can be prevented. It remains to be seen if the Rouhani administration will generate the political will to approach the issue from this perspective"); IMF COUNTRY REPORT NO. 14/93, *supra* note 168, at 5–6 ("The new administration that took office in August 2013 earned a strong mandate and has already made significant progress in improving the external environment and confidence in the outlook. The administration's 100-day report confirmed how well aware the authorities are of the economic challenges ahead and many of the reforms needed. But the task of advancing reforms ahead will be difficult, not least due to a highly complex institutional set-up and a difficult socio-political context.").

2. Political Risks

Considering the history of international investment in Iran from the 1979 Revolution throughout the Iran-United States Claims Tribunal, the nation holds an intimate relationship with the subject of political risk.[590] However its political risk profile has seen dramatic changes since 1979.[591] In post-sanctions Iran, the primary political risk entails the "snapback" provisions of the JCPOA, which are cocked and loaded to reintroduce sanctions in the event of Iran's (or the P5+1's) noncompliance.[592] Such a development would have a devastating impact on international investors within Iran, complicating the lawfulness of such operations.[593] Furthermore, the weak "advisory" dispute resolution procedures under Section 36 of the JCPOA facilitate the possibility of turning minor interpretive differences into full-blown noncompliance.[594] In the event that any individual party to the JCPOA (except perhaps Germany) seeks the deal's termination, there seem to be no meaningful safeguards in place to prevent the initiation of snapbacks.[595]

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590. *See supra* notes 76-82 and accompanying text (discussing the US investment experience in Iran between the Revolution and the IUSCT).

591. *See infra* notes 592-619 (surveying today's political risk profile in Iran).

592. *See supra* notes 422-423 and accompanying text; JCPOA, *supra* note 185, §§ 36-37; *see also* Tharoor, *The Historic Nuclear Deal with Iran: How It Works*, *supra* note 400; Sadakova, *supra* note 158 (detailing the JCPOA's snapback mechanism).

593. While snapbacks would have no retroactive effect on the lawfulness of most contracts signed within the timeframe of the JCPOA's lifespan, which become grandfathered in, they would raise numerous hurdles to a firm's ability to conduct ongoing operations. *See* JCPOA, *supra* note 185, § 37 ("[Snapback] provisions would not apply with retroactive effect to contracts signed between any party and Iran or Iranian individuals and entities prior to the date of application, provided that the activities contemplated under and execution of such contracts are consistent with this JCPOA and the previous and current UN Security Council resolutions.").

594. *See* JCPOA, *supra* note 185, § 36 (containing the JCPOA's dispute resolution procedures).

595. In fact, this is the very point of the snapback provisions. *See* JCPOA, *supra* note 185, §§ 36-37 ("If Iran believed that *any or all* of the E3/EU+3 were not meeting their commitments under this JCPOA Iran could [initiate dispute resolution procedures]; similarly, if *any* of the E3/Eu+3 believed that Iran was not meeting its commitments under this JCPOA, *any* of the E3/EU+3 could do the same.") (emphasis added). Upon the exhaustion of these dispute resolution mechanisms, snapbacks are triggered via a party's referral to the UN Security Council. The risk here is potentially greater than first meets the eye. Say, for example, that Russia wishes to terminate the JCPOA, not because of actual Iranian noncompliance but because its own national interests mandate such a decision. Moscow jumps through the dispute resolution hoops of Section 36, then refers the claimed breach to the Security Council. The default to sanctions under the snapback provisions of Section 37 would seemingly be automatic (after 30 days), unless the Security Council votes otherwise. But in such a case,

Considering this snapback vulnerability, there are significant risks to foreign investors emanating from domestic politics within the parties of the JCPOA.[596] This is especially true in Iran, where the Islamic Republic is subject to deep and enduring political cleavages.[597] Given the economic challenges highlighted above, both the Rouhani Administration and likeminded reformists face an uphill battle to meet the needs and demands of the Iranian people.[598] Different segments of the population hold differing expectations of post-sanctions conditions.[599] Iran's February 26, 2016 elections, which produced gains for the moderate camp in both the Majles and the Assembly of Experts, were certainly a positive step for Rouhani.[600] However, for this trend to continue, the Iranian

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Russia's permanent member veto in the Security Council would effectively *block the blocking* of sanctions renewal. Thus, in this hypothetical, Russia has weaponized a mere bad faith noncompliance accusation, and essentially hijacked the Security Council to unilaterally recreate binding multilateral sanctions. While there is a vague potential escape hatch from such abuse in Section 36's requirement that states include a "description of the good-faith efforts the participant made to exhaust the dispute resolution process specified in this JCPOA" when handing noncompliance issues over to the Security Council, this seems a flimsy line of defense considering the costs such action could entail across the globe. States could alternatively just refuse to implement the Security Council's new sanctions, but in doing so would seem to undermine the credibility of international law. Presumably, Germany is the one party that would not be enabled to unilaterally trigger multilateral snapbacks, in light of their lack of a veto. *But see* Jeremy Bender & Brett LoGiurato, *The World is Already Weakening One of the Key 'Checks' on the Iran Deal*, BUS. INSIDER (Aug. 16, 2015), http://www.businessinsider.com/snap-back-sanctions-problems-in-iran-deal-2015-8; Jennifer Rubin, *James Baker is Wrong: The Iran Deal Can't Be Fixed*, WASH. POST, Apr. 17, 2015, https://www.washingtonpost.com/blogs/right-turn/wp/2015/04/17/james-baker-is-wrong-the-iran-deal-cant-be-fixed/ (arguing that even with a snapback, sanctions against Iran can never meaningfully be reimposed).

596. *See infra* notes 597-603 and accompanying text.

597. *See* CAMMETT ET AL., *supra* note 41, at 312 ("The regime still rests on an uneasy alliance of two very different sets of interests: populist lower and lower-middle classes and prosperous clergy and business associates."); IRAN: COUNTRY RISK REPORT, *supra* note 161, at 11 (detailing the rifts between Iran's youth and powerful clerics).

598. *See* Arash Karami, *Iranians Look to Post-Deal Economic, Political Changes*, AL-MONITOR (July 6, 2015), http://www.al-monitor.com/pulse/ru/contents/articles/originals/2015/07/iran-economy-and-politics-after-nuclear-deal.html; Saeid Jafari, *Rouhani Faces Ballooning Expectations at Home in Post-Sanctions Era*, AL-MONITOR (Aug. 28, 2015), http://www.al-monitor.com/pulse/originals/2015/08/rouhani-post-sanctions.html (examining Iran's post-sanctions expectations).

599. *See* Karami, *Iranians Look to Post-Deal Economic, Political Changes*, *supra* note 598; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 499–501 (looking at how ideology shapes future Iranian outlooks).

600. *See* Thomas Erdbrink, *Iranian President and Moderates Make Strong Gains in Elections*, N.Y. TIMES, Feb. 29, 2016, http://www.nytimes.com/2016/03/01/world/middleeast/iran-elections.html?_r=0; Ted Regencia, *Moderates Dominate Council of Clerics in*

population will need to see ongoing benefits related to the lifting of sanctions.[601] Otherwise, Rouhani's compliance with the JCPOA could be undercut by a rightward shift in Tehran.[602] Similarly, across the Atlantic, the United States is not without its own partisan struggles. US voters may also need to see some positive results from the nuclear deal in order for the JCPOA to outlive the Obama Presidency's expiration in January 2017, regardless of which party inherits the White House.[603]

Finally, both domestic and regional instability are each significant components of Iran's political risk profile.[604] On the domestic front, international policymakers have long predicted the collapse of the Islamic Republic and subsequent regime change in Iran.[605] While such predictions have yet to materialize, events like the 2009-10 Green Revolution reveal there are at least cracks in the regime's grip on power.[606] Although many Western governments and investors alike would welcome regime change in Iran, any mass

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Iran Elections, AL JAZEERA (Feb. 29, 2016), http://www.aljazeera.com/news/2016/02/moderates-dominate-council-clerics-iran-elections-160229091044340.html (assessing the victory of moderates in Iran's February 2016 elections); *see also* Akbar Ganji, *Iran's Moment of Truth: Don't Worry About the Nuclear Deal, Worry About the Elections*, FOREIGN AFF. (Sept. 24, 2015), https://www.foreignaffairs.com/articles/iran/2015-09-24/irans-moment-truth; Mehdi Khalaji, *Iranian Moderates Face Tall Obstacles in 2016 Elections*, WASH. INST. NEAR E. POL. (Aug. 19, 2015), http://www.washingtoninstitute.org/policy-analysis/view/iranian-moderates-face-tall-obstacles-in-2016-elections (highlighting what was at stake in Iran's 2016 elections).

601. *See* Nader Habibi, *After Sanctions, Rouhani's Economic Agenda Faces Challenges in Iran*, WORLD POL. REV. (Feb. 4, 2016), http://www.worldpoliticsreview.com/articles/17861/after-sanctions-rouhani-s-economic-agenda-faces-challenges-in-iran; Ladane Nasseri & Golnar Motevalli, *Economy Remains No. 1 Focus for Rouhani Emboldened by Polls*, BLOOMBERG (Feb. 28, 2016), http://www.bloomberg.com/news/articles/2016-02-28/economy-remains-no-1-focus-for-rouhani-emboldened-by-iran-polls (detailing the reform challenges ahead for Rouhani).

602. *See* Habibi, *supra* note 601.

603. *See* Peter D. Feaver & Eric Lorber, *Long View on Iran: The Real Work Will Start after the Nuclear Deal is Signed*, FOREIGN AFF. (Nov. 24, 2014), https://www.foreignaffairs.com/articles/middle-east/2014-11-24/long-view-iran; Gerald F. Seib, *Iran Nuclear Deal Lands in the Middle of 2016 Debate*, WALL STREET J., Sept. 14, 2015, http://www.wsj.com/articles/iran-nuclear-deal-lands-in-the-middle-of-2016-debate-1442245305 (exploring the JCPOA within the context of the US presidential race).

604. *See infra* notes 605–14 and accompanying text.

605. *See*, *e.g.*, Benjamin Weinthal, *Analysis: Still Hope for Regime Change in Iran*, JERUSALEM POST (Sept. 21, 2015), http://www.jpost.com/Middle-East/ANALYSIS-Still-hope-for-regime-change-in-Iran-417827; Ray Takeyh, *Islamism: R.I.P.*, WASH. INST. NEAR E. POL'Y (Spring 2001), http://www.washingtoninstitute.org/policy-analysis/view/islamism-r.i.p (anticipating the collapse of the Islamic Republic).

606. *See supra* notes 172-73 (discussing Iran's Green Movement).

uprising would entail severe disruptions to business operations in the country. In fact, even a more Western-friendly government in Tehran would probably be pressured to rescind some contracts previously granted by the outgoing regime.[607] International investors should ensure they have contingency plans in place to respond to these types of scenarios.[608] Furthermore, on the regional side, Iran faces significant threats from its neighbors that could do irreparable damage to the JCPOA.[609] The intensification of proxy conflicts with Iran's Sunni rivals in places like Syria and Yemen holds the inherent potential of escalating into outright war between these regional powers, in some shape or form.[610] Likewise, the Israeli Knesset has made it clear that it is no fan of the nuclear deal.[611] Three-quarters of Jewish Israelis continue to view Iran as an existential threat following the signing of the JCPOA, and Israeli Prime Minister Benjamin Netanyahu has made routine threats of unilateral military action

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607. Periods of sudden political transition, even toward investment-friendly governments, are still often forced to contend with the economic disturbances and the instability of rapid political change. In the short term, such conditions can be bad for investors. To take one recent example: the 2014 Ukrainian Revolution—which pivoted Kiev away from Russia and toward the EU—was still witness to numerous contract breaches, some of which were valued in billions of dollars. *See* Roman Olearchyk, *Chevron Pulls Out of Shale Gas Project in Ukraine*, FIN. TIMES (Dec. 15, 2014), https://next.ft.com/content/76b41d9c-847e-11e4-ba4f-00144feabdc0; Sergei Kuznetsov, *Ukraine Crisis Unsettles Shell and Chevron*, FIN. TIMES (Jun. 24, 2014), http://blogs.ft.com/beyond-brics/2014/06/24/ukraine-crisis-unsettles-shell-and-chevron/.

608. *See*, *e.g.* SALACUSE, *supra* note 10, at 245-73 (providing an overview of political risk insurance, as one method of protecting against potential expropriation).

609. *See infra* notes 610–19 and accompanying text.

610. This is not to minimize the bloodshed of current Iran-Saudi proxy wars, such as Syria (where Saudi Arabia is supporting Sunni insurgents against the Alawite, Iranian backed regime) or Yemen (where Iranian support for Shia Houthi rebels has led Saudi Arabia to conduct a direct military intervention on their own Arabian Peninsula). *See* Diana Alghoul, *Iran and Saudi Arabia Move Beyond Proxy Conflict*, MIDDLE EAST MONITOR (Oct. 8, 2015), https://www.middleeastmonitor.com/articles/middle-east/21528-iran-and-saudi-arabia-move-beyond-proxy-conflict (noting the intensification of Iran and Saudi Arabia's proxy conflicts); Eric Ham, *ISIS v. Iran v. Saudi Arabia: The Worst-Case Scenario*, WASH. TIMES, July 28, 2015, http://www.washingtontimes.com/news/2015/jul/28/isis-v-iran-v-saudi-arabia-worst-case-scenario/ (explaining ISIS' opportunistic goading of Saudi Arabia toward war with Iran).

611. *See*, *e.g.*, Louis Charbonneau & Hugh Bronstein, *Israel's Netanyahu Launches All-Out Assault on Iran Deal at U.N.*, REUTERS (Oct. 1, 2015), http://www.reuters.com/article/2015/10/01/us-un-assembly-israel-idUSKCN0RV57K20151001#8WXeDPKvRMBHrmsJ.97; Joel B. Pollak, *Israeli Opposition Puts Aside Hatred of Netanyahu to Oppose Iran Deal*, BREITBART (July 15, 2015), http://www.breitbart.com/big-government/2015/07/15/israeli-opposition-puts-aside-hatred-of-netanyahu-to-oppose-iran-deal/ (emphasizing Israel's opposition to the JCPOA).

against Iran in the past.[612] In fact, the likelihood of an Israeli strike often makes its way into investment outlook reports concerning Iran.[613] Under such a scenario, Israeli action would "almost certainly disintegrate" the JCPOA, representing a major blow to foreign investors with going concerns in the country.[614]

In addition to these Iran-specific risks, investors should also be mindful of all of the traditional risks of international investment, from expropriation to regulatory hurdles that threaten the profitability of business operations abroad.[615] In light of the investor experience of 1979, the risks of expropriation and nationalization will be at the front of the minds of many investors.[616] However, such forms of political risk are suited to mitigation through legal innovations and the protections of law. Iran's experience since the Islamic Revolution has mandated a shift in attitudes concerning foreign investment, contrary to the widespread suspicions and mistrust of 1979.[617] In fact, Iran's dynamic participation in the Iran-United States Claims Tribunal, combined with the liberalizing forces of globalization, have resulted in a level of Iranian sophistication concerning international investment law.[618] These processes have resulted in a sort of cross-pollination, whereby many of the international norms of investment law have managed to find their way into Iranian law at the national

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612. *See* JTA, *Most Israeli Jews Say Iran Deal 'Existential Threat'*, TIMES OF ISRAEL (Sept. 10, 2015), http://www.timesofisrael.com/most-israeli-jews-say-iran-deal-existential-threat-poll/; *Majority of Jewish-Israelis Agree Iran Deal Poses 'Existential Threat,' Poll Finds*, JEWISH TELEGRAPHIC AGENCY (Sept. 10, 2015), http://www.jta.org/2015/09/10/default/majority-of-jewish-israelis-agree-iran-deal-poses-existential-threat-poll-finds (considering the Israeli view that Iran poses an existential threat); *see also Israeli PM Threatens to Strike Iran*, AL JAZEERA (July 17, 2013), http://www.aljazeera.com/news/middleeast/2013/07/2013714214528446397.html; Jodi Rudoren, *Netanyahu Says He'd Go It Alone on Striking Iran*, N.Y. TIMES, Nov. 5, 2012, http://www.nytimes.com/2012/11/06/world/middleeast/netanyahu-uses-tough-tone-on-possible-iran-strike.html?_r=0 (illustrating Netanyahu's unilateral threats against Iran).

613. *See, e.g.*, IRAN COUNTRY UPDATE, *supra* note 333, at 2; IRAN COMMERCIAL BANKING REPORT Q3 2015, *supra* note 339, at 11 (addressing the risk of an Israeli strike within Iran's economic forecasts).

614. Feaver & Lorber, *supra* note 603; *see* Eric Pianin, *After Obama's Nuke Deal, What Happens If Israel Attacks Iran?*, FISCAL TIMES (July 16, 2015), http://www.thefiscaltimes.com/2015/07/16/After-Obama-s-Nuke-Deal-What-Happens-If-Israel-Attacks-Iran (contemplating the consequences of an Israeli strike against Iran).

615. *See* SALACUSE, *supra* note 10, at 12-13 (summarizing political risk).

616. *See supra* notes 68–82 and accompanying text (discussing expropriation in Iran following the 1979 Revolution).

617. *See infra* Part II.D.

618. *See, e.g.*, *infra* notes 642-67 (FIPPA).

and international level.[619] This legal framework is the focus of the following Part.

D. Iranian Investment Law

The benefits of clear legal rules and procedures governing international investment are that such innovations soften the inherent uncertainties of investment beyond one's own borders.[620] International investment law allows for protections and safeguards in the face of uncertainty, laying the groundwork and boundaries within which investors and States may be expected to operate.[621] International law scholar Jeswald W. Salacuse identifies three layers of international investment law: law at the contractual level, governed by the terms negotiated between parties; law at the national level, ruled by the national legislation of host States; and law at the international level, centered around the international treaties by which, through ratification, a State party agrees to be bound.[622] While a review of Iranian investment contracts will be best left to ad hoc, case-by-case analyses, Iranian investment law at the national and international levels involves important protections with which investors eyeing Iran should familiarize themselves.[623]

1. National Investment Law

Iran's treatment of international investment is grounded foremost in the Islamic Republic's Constitution.[624] Initially drafted in the immediate aftermath of the 1979 Revolution, Iran's Constitution contains many restrictive provisions aimed at preventing the repeat of the economic exploitation experienced under the Pahlavi regime.[625]

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619. *See infra* notes 642–67.

620. *See* SALACUSE, *supra* note 10, at 25–28; Jason Webb Yackee, *Political Risk and International Investment Law*, 24 DUKE J. COMP. & INT'L L. 477, 491–92 (2014) (observing the ability of international investment law to reduce investor uncertainty).

621. *See* Yackee, *supra* note 620, at 491–92.

622. *See generally* SALACUSE, *supra* note 10 (explaining the three layers of international investment law).

623. *See infra* Part II.D.1 (examining Iranian investment law at the national level) and Part II.D.2 (overviewing Iranian investment law at the international level).

624. *See infra* notes 625-26.

625. For a background on the history and ideology behind Iran's constitution, *see Iran After the Victory of 1979's Revolution*, *supra* note 63; Francis Fukuyama, *Iran, Islam and the Rule of Law*, WALL STREET J., July 27, 2009, http://www.wsj.com/articles/SB100014240529 70203946904574300374086282670.

These constitutional underpinnings form a problematic starting point for international investors seeking to enter Iran. Specifically, Article 44 of the Constitution divides the national economy between three sectors: the State sector; the cooperative sector; and the private sector.[626] The State sector includes all State enterprises and an expansive collection of industries presumably deemed to be within Iran's national security interests.[627] The cooperative sector includes "cooperative companies and enterprises concerned with production and distribution, in urban and rural areas;" and finally, the private sector broadly includes, "those activities concerned with agriculture, animal husbandry, industry, trade, and services that supplement the economic activities of the State and cooperative sectors."[628] These provisions in Article 44 make clear that the Constitution envisions a strong, centrally planned economy, where private participation works in tandem with the State's primary role in economic activities.[629] This places limits on both privatization efforts and foreign investment encouragement, which, at least within Iran, seek to liberalize the economy without directly challenging the Islamic Republic.[630]

Article 81 of Iran's constitution also contains problematic language, stating that: "The granting of concessions to foreigners or the formation of companies or institutions dealing with commerce, industry, agriculture, service, or mineral extraction, is absolutely

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626. *See* QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980], art. 44(1) (dividing Iran's economy into three legal categories).

627. *See id*. art. 44(2) ("The state sector is to include all large-scale and mother industries, foreign trade, major minerals, banking, insurance, power generation, dams, and large-scale irrigation networks, radio and television, post, telegraph and telephone services, aviation, shipping, roads, railroads and the like; all these will be publicly owned and administered by the State."). That said, Article 44 was amended in 2004 in order to soften the rigid divisions between the provision's economic categories, thereby allowing, for example, privately owned banks and other privatization efforts. *See* Public Information Notice, Int'l Monetary Fund, IMF Executive Board Concludes 2005 Article IV Consultation with the Islamic Republic of Iran (Mar. 27, 2006); Ghodoosi, *supra* note 28, at 1747.

628. QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980], art. 44 (3)–(4).

629. *See supra* notes 626–28 and accompanying text (assessing Article 44 of Iran's Constitution).

630. *See* Ghodoosi, *supra* note 28, at 1747; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 193 (demonstrating the character of Iranian liberalization efforts)*; see also infra* notes 635–41 and accompanying text (discussing privatization in Iran); *infra* notes 642–67 and accompanying text (summarizing FDI-encouraging national Iranian investment law).

forbidden."[631] On its face such a provision appears especially stifling, however subsequent legislation at the national level has narrowly read "concessions" to mean "special rights, which place the Foreign Investors in a monopolistic position."[632] Another constitutional restriction occurs in Article 139, which seeks to create a State gatekeeping procedure in all disputes involving investor-State arbitration.[633] In the case of a valid arbitration clause between disputing parties, however, it seems unlikely that Article 139 would be enforceable.[634]

Because these constitutional provisions have vested much of the economy within Iran's State sector, ongoing privatization legislation at the national level is also important for international investors exploring future opportunities within Iran.[635] To this day, Iran's private sector is comprised predominately of small firms and family-run operations.[636] As previously discussed in this Note's treatment of Iranian history, past administrations under Khatami and Ahmadinejad have made controversial attempts at further privatizing the economy.[637] The New Privatization Act of 2008 was notable in this regard, as a robust attempt to bring various industries under Article 44

631. QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980], art. 81.

632. Foreign Investment Promotion and Protection Act of Mar. 10, 2002, art. 2(c) (Iran) (narrowly defining "concessions").

633. QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980], art. 139 ("The settlement of claims relating to public and state property or the referral thereof to arbitration is in every case dependent on the approval of the Council of Ministers, and the Assembly must be informed of these matters. In cases where one party to the dispute is a foreigner, as well as in important cases that are purely domestic, the approval of the Assembly must also be obtained."); *see* Ghodoosi, *supra* note 28, at 1748 (describing the gatekeeping procedure); *id*. at 1756–57 (questioning whether such a provision is actually enforceable).

634. *See* Ghodoosi, *supra* note 28, at 1756–57 ("As long as there is an unambiguous consent to arbitration, contrary domestic legal rules cannot constrain it. . . . Therefore, it does not seem that the barrier of Iran's Constitution can hinder the jurisdiction of the arbitration body."). Theoretically, even at the stage of enforcement, Iran's ratification of the New York Convention would seem to mandate domestic recognition of arbitration decisions. *See* Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38; *see also infra* note 678 and accompanying text (discussing Iran's obligations under the New York Convention).

635. *See* SALACUSE, *supra* note 10, at 110–20. *See generally* Ravi Ramamurti, *Why Are Developing Countries Privatizing?*, 23 J. INT'L BUS. STUD. 225 (1992) (exploring privatization's role in attracting FDI).

636. *See* Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 4; IRAN COUNTRY CONDITIONS, *supra* note 577, at 1 (characterizing Iran's private sector).

637. *See supra* Parts I.A.3-4 (providing a history of the Reform and Ahmadinejad eras).

of the Constitution under private control.[638] Yet, to this day, a great deal of this privatization has either fallen short or spun off into the hands of State-affiliated parties like the IRGC.[639] The IMF has noted that the Rouhani Administration recognizes these failures, and is committed to taking steps toward enhanced privatization.[640] It remains to be seen whether effective privatization will finally be implemented under President Rouhani.[641]

More favorable to international investors, Iran's principal legislation governing international investment in the country is the Foreign Investment Promotion and Protection Act of 2002.[642] FIPPA evidences both economic pragmatism and a certain level of sophistication among Iranian parties, who have perhaps learned from decades of international investment disputes.[643] Comprised of twenty-five articles, FIPPA sets the ground rules for all foreign investors in

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638. *See* IRAN COUNTRY FORECAST, *supra* note 157, at 20 ("Specifically, the decree set a target of selling off 80% of state-owned assets (excluding firms in the upstream oil sector, crucial infrastructure, and some banks) over a period of 10 years."); Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 3; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 333–37 (reflecting upon attempts at privatization under Ahmadinejad).

639. *See* IRAN COUNTRY FORECAST, *supra* note 157, at 20–21; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 334 (evaluating the results of the Ahmadinejad era privatization push).

640. *See* IMF COUNTRY REPORT NO. 14/93, *supra* note 168, at 23 ("[Government authorities have] also explained that past privatizations failed to effectively transfer ownership to the private sector and tighten budget constraints, and therefore, have taken steps to improve the privatization process."); *cf. Privatization Shrouded in Controversy*, FIN. TRIB. (Jan. 6, 2015), http://financialtribune.com/articles/domestic-economy/8322/privitization-shrouded-controversy (reinforcing the IMF's assessment of Rouhani's privatization goals).

641. Sam Wilkin, *Iran Must Privatize Car Industry, President Says*, REUTERS (Mar. 1, 2016), http://www.reuters.com/article/us-iran-autos-idUSKCN0W33K1; *Rouhani Says Privatization of Priority for Iran in Post-JCPOA Era*, TREND NEWS AGENCY (Feb. 9, 2016), http://en.trend.az/iran/politics/2492168.html.

642. *See* Foreign Investment Promotion and Protection Act of Mar. 10, 2002; *see also* Ghodoosi, *supra* note 28, at 1744–46; Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 5-13 (discussing FIPPA and its significance to foreign investment in Iran).

643. *See* Bizær, *Amid Slump in Oil Prices, Iran Focuses on Mining*, *supra* note 513 ("[FIPPA] gives foreigners 100% ownership rights, residence visas valid for three years and the opportunity to transfer their profits out of the country in foreign currencies. It also offers a number of tax exemptions that, in some conditions, can rise to 100% of an enterprise's profits. In an effort to reassure investors even further, the act guarantees that the government will pay compensation for any investments in projects that are nationalized or expropriated."); *see also The Set Up*, BUS. YEAR, https://www.thebusinessyear.com/iran-2013/the-set-up/review (last visited Mar. 25, 2016) (reviewing FIPPA's protections).

Iran.[644] All international investment in Iran formally begins with an application to The Organization for Investment, Economic, and Technical Assistance of Iran, which is then reviewed by the Foreign Investment Board.[645] The Foreign Investment Board is allotted one month to review the investment application, before it must submit a final decision in writing.[646] Presumably, this review process should be based around FIPPA Article 2, which provides the scope, goals, and requirements of foreign investment in Iran.[647] More specifically, all investment must: bring specified benefits to the Iranian economy; not pose a threat to the State, population, environment, or economy; not amount to a concession; and not result in more than twenty-five percent of an economic sector or thirty-five percent of an economic subsector falling under foreign control, measured at the start of the investment seeking approval.[648]

Upon approval, international investors are presented a choice concerning how they wish to structure their investment in Iran.[649] The first option, under Article 3(a), involves equity-based FDI within the constitutionally approved private sectors.[650] Because FIPPA places no additional limitations on such equity forms, investors are free to structure their FDI in a manner consistent with Iran's Commercial

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644. *See* Foreign Investment Promotion and Protection Act of Mar. 10, 2002 (introducing the law's general impact on foreign investors). A party's status as a "Foreign Investor" under FIPPA is defined by *either* citizenship or the use of "capital with foreign origin." *See id.* art. 1.

645. *See id.* arts. 5-6 (overviewing the application procedures for foreign investment in Iran); Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 5. Although an investor could hypothetically bypass this application process, such investments will not be protected by FIPPA. *See* Foreign Investment Promotion and Protection Act of Mar. 10, 2002, art. 1 (defining "Foreign Investment" as the "Employment of Foreign Capital in a new or existing economic enterprise after obtaining the Investment License.").

646. *See* Foreign Investment Promotion and Protection Act of Mar. 10, 2002, art. 6 n.1 (establishing the application review process).

647. *See id.* art. 2 (containing rules guiding foreign investment in Iran); *see also* Ghodoosi, *supra* note 28, at 1745; Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 5-6 (further clarifying these rules).

648. *See* Foreign Investment Promotion and Protection Act of Mar. 10, 2002, art. 2 (a)-(d) (listing the obligations of foreign investment in Iran); *see also* Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 6 ("The ceiling on the percentage [within FIPPA Article 2(d)] applies only at the time of the issuance of the investment license, and thereafter no limitations are placed on foreign investors for their market shares.").

649. *See* Foreign Investment Promotion and Protection Act of Mar. 10, 2002, art. 3 (providing a basic choice concerning the structure of foreign investment in Iran).

650. *See id.* art. 3(a) (defining FIPPA's equity-based FDI option); *see also* QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980], art. 44(4) (listing Iran's investment-permitted economic sectors).

Code, broadly including: the incorporation of a new company; the purchase of shares in an existing Iranian company; the opening of an Iran branch or representative office of a multilateral corporation; or participation in a joint venture with an Iranian national.[651] However, other laws and regulations at the national level may place unexpected hardships upon international investors, and should therefore be reviewed and considered when deciding upon an FDI form.[652] The second option for structuring an investment in Iran concerns non-equity contracts, falling under FIPPA Article 3(b).[653] Because the "foreignness" of non-Iranian investment under FIPPA may be measured by the source of capital, all private debt-investment to Iranian firms falls under this subcategory.[654] Additionally, Article 3(b) mentions three frameworks: Civil Partnerships; Buy-Backs; and Build-Operate-Transfer ("BOT") schemes.[655] The lack of ownership rights in these contract-based investment structures allows for

651. *See* Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 7 ("FIPPA guarantees investors the right to set up an Iranian company without any restriction as to the percentages of shareholding. Therefore, investors with an investment license are authorized to establish a company in Iran with majority ownership, management, and control."); Bizær, *Amid Slump in Oil Prices, Iran Focuses on Mining*, *supra* note 513 ("[FIPPA] gives foreigners 100% ownership rights"). *See generally* Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 7-9 (walking through various equity structures permitted under FIPPA Art. 3(a).).

652. *See*, *e.g*., Ghodoosi, *supra* note 28, at 1749 (mentioning restrictions upon a foreign national's ability to own real property in Iran); *On Registration of Branches and Representative Offices of Foreign Companies in Iran*, IRANO-BRITISH CHAMBER COM. INDUS. & MINES, http://www.ibchamber.org/en/useful-information/laws-and-regulations/on-registration-of-branches-and-representative-offices-of-foreign-companies-in-iran/ (last visited Mar. 25, 2016) (detailing additional rules on the registration of foreign branches).

653. *See* Foreign Investment Promotion and Protection Act of Mar. 10, 2002, art. 3(b) (defining FIPPA's non-equity investment option); *see also* Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 9-10.

654. *See supra* note 644 (discussing FIPPA's definition of "foreign investor"); *see also* Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 9.

655. *See* Foreign Investment Promotion and Protection Act of Mar. 10, 2002, art. 3(b). Civil Partnerships involve contractually based (non-equity) partnerships under Iran's Civil Code. *SEE* QANUNI MADANI [CIVIL CODE] Tehran 1314 [1935], arts. 571–606 (Iran). Buy-backs entail "long-term investment agreements providing the exchange of goods or services between parties usually with no monetary exchange." McCary, *supra* note 119, at 302. For example, a foreign oil company might provide exploration and drilling services in exchange for a specified percentage of the oil produced. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 375; Mohamedi, *supra* note 108, at 101. Finally, BOTs involve "construction projects in which a sponsoring foreign investor or consortium of investors and lenders supervises the construction and operation of an infrastructure facility… for a determined length of time, and subsequently transfers ownership and control of the facility to the host government." SALACUSE, *supra* note 10, at 291.

investment in industries reserved to the State sector under Article 44 of the Constitution.[656] Indeed, buy-backs in particular have been used extensively by past investors seeking returns from the State's energy sector.[657] Under Article 3(b), the Iranian government is not permitted to guarantee the returns and profitability of such contracts.[658]

Article 8 of FIPPA entitles international investors to national treatment protection, providing that foreign investments "shall enjoy the same rights, protections and facilities available to domestic investments in a non-discriminatory manner."[659] Article 9 deals with expropriation and nationalization protections, entitling investors to compensation.[660] More specifically, Article 9 prohibits expropriation "unless for the public interest, through a legal process, in a non discriminatory manner, and against payment of appropriate compensation based on the real value of that investment immediately before the expropriation."[661] Investors should be mindful that claims for compensation must be filed within one year of the date of expropriation, and that "appropriate compensation" may not mean full protection, or the actual value of the property taken.[662] At the same time, FIPPA includes no language on regulatory takings, or what level of loss might trigger compensation.[663] Articles 11 through 18 all deal

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656. *See* QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980], art. 44 (dividing the Iranian economy between different legal categories).

657. *See* McCary, *supra* note 119, at 302-04 (highlighting the importance of buy-backs within Iran's oil sector). Historically, foreign firms have received approximately 15 to 20 percent of the oil produced from such contracted projects. *Id.* at 302. However, buy-back contracts involve many downsides to foreign investors, and are thus highly criticized. *See id*. at 305 (explaining buy-back sensitivities to fluctuations in oil price); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 375 (discussing buy-back flaws generally); *id*. at 400 (explaining the high upfront capital costs borne by buy-back investors). In light of the realized need to attract foreign investment, Iran has recently amended its buy-back system. *See supra* note 480 and accompanying text.

658. Foreign Investment Promotion and Protection Act of Mar. 10, 2002, art. 3(b) ("the return of principal and profit . . . does not rely on any guarantee by the government or banks or government companies.").

659. *Id.* art. 8. *See generally* SALACUSE, *supra* note 10, at 391-92 (explaining the importance of national treatment protection).

660. *See infra* notes 661-62 and accompanying text.

661. Foreign Investment Promotion and Protection Act of Mar. 10, 2002, art. 9.

662. *See id.* art. 9 n.1 (stating the one year statute of limitations); Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 12 (noting that appropriate likely means less than full).

663. *See* Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 11 ("[FIPPA] excludes protection against constructive, creeping, indirect, *de facto* and 'measures equivalent and tantamount' to expropriation. Therefore, the foreign investor is not

with the admission, importation, and repatriation of non-Iranian capital, generally providing liberal standards for investors to collect their returns in full after satisfying their tax obligations.[664] Finally, Article 19 provides rules related to dispute resolution.[665] Disputes are referred first to negotiations between the parties, and then to Iran's national courts. However, if the dispute falls within the scope of a Bilateral Investment Treaty between Iran and the investor's home State, then the BIT will control dispute resolution procedures.[666] Although Article 19 provides no language related to arbitration contracted between the parties, for the same reasons discussed above, it is unlikely that Iran could quash a valid arbitration clause agreed at the contractual level.[667]

2. International Investment Law

In addition to Iran's national layer of investment law, the Islamic Republic is also subject to a range of agreements and obligations drafted at the international level.[668] Through the course of the sanctions regime Iran has concluded over 50 BITs with various governments, hailing from both the developed and developing world.[669] Treatification efforts were central to Iran's economic strategy throughout the Reform Era, and could gain popularity once

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entitled to claim compensation for regulatory expropriation."). However, compensation will likely be afforded if changes in national law erode the profitability of non-equity projects under Article 3(b). *See* Foreign Investment Promotion and Protection Act of Mar. 10, 2002, art. 17 n.2, 17(b).

664. *See* Foreign Investment Promotion and Protection Act of Mar. 10, 2002, arts. 11–18; Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 11 (establishing FIPPA's liberal capital controls).

665. *See* Foreign Investment Promotion and Protection Act of Mar. 10, 2002, art. 19 (containing FIPPA's dispute resolution provisions).

666. *See id.* ("[disputes]… which can not be settled through negotiations, shall be examined by domestic courts of law, unless another mode of settlement of disputes has been agreed upon within a law on bilateral investment agreement with the government of the Foreign Investor.").

667. *See supra* note 634 and accompanying text (explaining Iran's obligations under the New York Convention).

668. *See infra* notes 669-81 and accompanying text.

669. *See* Atai, *Iranian Bilateral Investment Treaties*, *supra* note 127, at 398; Ghodoosi, *supra* note 28, at 1733 (noting Iran's prevalent BIT signing). By comparison, according to the Department of State, the United States has signed 47 BITs as of 2015. *See United States Bilateral Investment Treaties*, U.S. DEP'T STATE, http://www.state.gov/e/eb/ifd/bit/117402.htm (last visited Mar. 11, 2016).

more upon the lifting of multilateral sanctions.[670] Pursuant to Article 77 of the Constitution, Iran is a dualist country on the subject of treaty agreements, requiring treaty ratification by Iran's Majles in order for international agreements to become domestically binding.[671] The nation adopted its first model BIT in 2002, which is comprised of 15 articles and a short preamble.[672] Notably, Iran's model BIT contains provisions related to the encouragement and admission of investment, most favored nation provisions, expropriation protections, repatriation and transfer provisions, and dispute resolution agreements.[673] Unlike under FIPPA at the national level, Iran's model BIT provides direct reference to arbitration proceedings.[674] Article 13 lays out arbitration procedures for disputes related to interpretation of the BIT itself, while Article 12 details arbitration obligations stemming from actual investment disputes.[675] Article 12(5) of Iran's model BIT provides default procedures for the selection of arbitrators, and Article 12(6) defaults to the UNCITRAL rules.[676]

At the multilateral level, Iran has demonstrated a scattered participation in different international investment treaties.[677] The country's signing of the Convention on the Recognition of Foreign Arbitral Awards ("New York Convention") in 2001 is a milestone for

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670. *See supra* note 127 and accompanying text (noting the explosion of BITs during Iran's Reform Era).

671. *See* QANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980], art. 77 ("International treaties, protocols, contracts, and agreements must be approved by the Islamic Consultative Assembly."); s*ee also* Ghodoosi, *supra* note 28, at 1755.

672. *See* Iran Model BIT, U.N. CONF. ON TRADE & DEV., http://investmentpolicyhub.unctad.org/Download/TreatyFile/2861 (last visited Mar. 11, 2016) [hereinafter Iran Model BIT]; *see also* Atai, *Investor Protection in Iran: A Bankruptcy Approach*, *supra* note 157, at 13 (discussing the model BIT's origins); Ghodoosi, *supra* note 28, at 1758-61 (explaining the model BIT's structure). Investors should realize, however, that Iran's Model Bit is just that: a model. It has no binding authority by itself, and BITs actually negotiated with other states could deviate significantly from the protections the Model envisions.

673. *See* Iran Model BIT, *supra* note 672, arts. 2-3 (encouragement and admission of investment); *id.* arts. 4-5, 7 (most favored nation provision); *id.* art. 6 (expropriation protections); *id*. art. 8 (repatriation and transfer provisions); *id*. arts. 12-13 (dispute resolution procedures).

674. *See infra* notes 675-76 and accompanying text.

675. *See* Iran Model BIT, *supra* note 672, arts. 12-13 (containing the Model BIT's dispute resolution stipulations).

676. *See id.* art. 12(5)-(6) (further establishing the Model BIT's dispute resolution procedures). For the UNCITRAL Rules, see G.A. Res. 31/98, United Nations Commission on International Trade Law Arbitration Rules (Dec. 15, 1976).

677. *See infra* notes 678-81 and accompanying text.

international investors doing business in Iran, obligating domestic courts to enforce valid arbitration awards issued by non-Iranian tribunals.[678] Iran is also a member of the World Bank Group, the IMF, and the Multilateral Investment Guarantee Agency ("MIGA").[679] Although not a member of the International Centre for Settlement of Investment Disputes ("ICSID"), the government has concluded numerous BITs that list ICSID as an approved method of dispute resolution.[680] Iran is not a member of the World Trade Organization, and is the largest economy in the world not within the WTO.[681]

Taken as a whole, the JCPOA represents a landmark shift for international investment in Iran. The end of multilateral sanctions opens the nation's doors to the international capital that will be crucial in order for Iran to emerge from hardship and reach its economic potential.[682] This presents numerous potentially lucrative investment opportunities across various industry sectors.[683] While not without risks, Iranian investment law at the national and international level has come a long way in protecting investors and moving away

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678. *See Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, UNCITRAL, http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html (last visited Mar. 11, 2016) (noting Iran's ratification of the New York Convention); Ghodoosi, *supra* note 28, at 1749 (explaining the significance of Iran's New York Convention ratification).

679. *See Member Countries*, WORLD BANK, http://www.worldbank.org/en/about/leadership/members (last visited Mar. 11, 2016) (documenting Iran's World Bank membership); *Islamic Republic of Iran and the IMF*, INT'L MONETARY FUND, http://www.imf.org/external/country/IRN/index.htm (last updated Mar. 21, 2016) (establishing Iran's IMF membership); *MIGA Member Countries (181)*, MULTILATERAL INV. GUARANTEE AGENCY, http://www.miga.org/who-we-are/member-countries/ (last updated Aug. 26, 2015) (recognizing Iran's membership within MIGA).

680. *See* Ghodoosi, *supra* note 28, at 1763. Specifically, Iran's BITs with Austria, France, Italy, Greece, and Korea all list ICSID among other methods for arbitration. *Id.*; *see, e.g.*, Agreement on Reciprocal Promotion and Protection of Investments between the Government of the Republic of Austria and the Government of the Islamic Republic of Iran, Austria-Iran, art. 11(2)(d), Feb. 15, 2001, U.N. CONF. ON TRADE & DEV., http://investmentpolicyhub.unctad.org/Download/TreatyFile/193 (last visited Mar. 11, 2016) (listing ICSID as an approved means of dispute resolution).

681. *See generally* Danial Arjomandy, *Iranian Membership in the World Trade Organization: An Unclear Future*, 47 IRANIAN STUD. 933 (2014); Allison Carnegie, *Here's What Will Happen if Iran Joins the WTO*, WASH. POST, Oct. 24, 2015, https://www.washingtonpost.com/news/monkey-cage/wp/2015/10/24/heres-what-will-happen-if-iran-joins-the-wto/ (articulating Iran's status as the world's largest non-WTO member).

682. *See supra* Part II.A (discussing the JCPOA).

683. *See supra* Part II.B (explaining the JCPOA's footnote six issue).

from the restrictive provisions of Iran's constitution.[684] As a broad class of stakeholders with their own goals and interests, international investors are posed to rank among the JCPOA's primary beneficiaries.[685]

However, the ultimate survival of the JCPOA will also depend on the deal's impact on other stake-holding parties, including parties with traditionally diametrical interests such as the governments of the United States and Iran.[686] As such, international investment's role in post-sanctions Iran cannot be isolated from the interests and goals of these sovereign parties.[687] Furthermore, because investment entails an ongoing package of business relationships, aligned interests, economic incentives, and wealth transfers, investment itself might be seen as a catalyst that either advances or weakens the positions of these other stakeholders.[688] For Iran, it seems intuitive that increased investment will benefit the government of the Islamic Republic.[689] But whether this implies a zero-sum blow to the United States and Iran's other traditional adversaries depends in part on *how* investment is put to work there, and *what is done* with its results.[690] Under footnote six of Annex II of the JCPOA, the United States is uniquely situated amongst the rest of the world, in the restrictions remaining in place for US investors.[691] How this might impact the United States' own foreign policy interests is the focus of the final Part of this Note.[692]

III. IMPLICATIONS ON US FOREIGN POLICY

The United States has an interest in future developments involving the Islamic Republic of Iran.[693] How Iran behaves has the

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684. *See supra* Part II.C (exploring investment opportunities in post-sanctions Iran); *supra* notes 620-81 and accompanying text.

685. *See supra* Part II.B (assessing investment law applicable to Iran).

686. *See generally supra* Part I.A (illustrating the different interests that have emerged through the history of investment in Iran).

687. *See generally supra* Part I.A.

688. *See infra* Parts III.A-C. (exploring engagement).

689. *See supra* Part II.B (surveying emerging investment opportunities in Iran).

690. *See infra* Part III (assessing potential implications of increased investment to Iran).

691. *See supra* Part II.A.2 (identifying the envisioned discrimination against US investment under the JCPOA.

692. *See infra* Part III (surveying the potential impact of US-Iran investment on US foreign policy interests).

693. *See generally infra* Part III.D (illustrating various ways Iran's future will interesect with US foreign policy interests).

ability to either advance or impair various US foreign policy interests, and following the JCPOA, international investment will comprise an important component of the rationale that governs the Islamic Republic's behavior.[694] The final Part of this Note advocates for a US investment-based engagement strategy toward Iran as the best means of informing Iran's post-sanctions rationale, thereby securing a broad array of US foreign policy advancements going forward.[695]

As discussed above, post-sanctions opportunities will attract profit-seeking international investors to the Islamic Republic of Iran.[696] However, under footnote six of Annex II of the JCPOA, most US-based investors will be left on the sidelines while other international players enter this competitive space.[697] Until OFAC and other relevant administrative bodies revise the restrictions reflected in footnote six, most US international investors will remain precluded from seizing the JCPOA's wide range of new opportunities.[698]

On the one hand, the Obama Administration's logic behind footnote six likely results in part from the tangled web of statutory and administrative authority that comprised the four-decade sanctions regime.[699] In this sense, the United States executive branch must cautiously ensure that it unwinds sanctions in a manner that does not exceed its constitutional authority, while simultaneously ensuring it does not invite US investors to openly conduct unlawful deals in Iran.[700] From this perspective, some short-term over-caution is prudent.[701] On the other hand, one might explain the approach in footnote six as characteristic of the same decades-long trend in US-Iran relations, which tends to focus exclusively on downside risks without any serious appraisal of upside opportunities.[702] In this light, footnote six represents the same trapped line of pre-JCPOA thinking, incorporating fallacies that underlie much of the sanctions regime: conducting foreign policy toward Iran solely out of Washington's

694. *See generally infra* Part III.D.

695. *See infra* notes 696-1085 and accompanying text (surveying US foreign policy issues that would benefit from increased US investment in Iran).

696. *See supra* Part II.B (identifying the broad investment opportunities that will attract foreign capital).

697. *See supra* Part II.A.2 (summarizing the JCPOA's footnote six issue).

698. *See supra* Part II.A.2.

699. *See supra* Part I.B.1 (tracing an abridged development of the US sanctions regime).

700. *See supra* Part I.B.1.

701. *See supra* Part I.B.1.

702. *See supra* note 346 (highlighting the limited perspective of US sanctioning logic).

fears, without recognizing the shortcomings of isolation as a means of eliciting cooperation.[703] The fact that OFAC has the power to grant exemption licenses to US foreign subsidiaries, but refuses to distribute this power to US investors more broadly, indicates that Washington is still trapped in this exact state of mind.[704]

There are, of course, moral arguments and legitimate policy reasons for keeping US investors from freely exporting capital to Iran.[705] From terrorist financing concerns to the regime's reprehensible human rights record, there is no shortage of reminders that international investment in Iran is likely to reach some of the "bad guys" currently entrenched among the Iranian investment landscape.[706] However the United States government decides to move forward in implementing the JCPOA, individual policymakers—from within OFAC on up—will be forced to contend with these serious moral hesitations.[707] But setting morality aside for a moment and approaching this problem through the harsh lens of realpolitik, it becomes clear that if the United States is truly focused solely on the downside in its dealings with Iran, then the opportunity costs of restricting investment under footnote six might be greater than our moral blinders allow at first glance.[708]

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703. *See supra* note 346*; see also* Ghodoosi, *supra* note 28, at 1765-66; Suzanne Nossel, *It's Time to Kill the Feel-Good Myth of Sanctions*, FOREIGN POL'Y (June 9, 2015), http://foreignpolicy.com/2015/06/09/its-time-to-kill-the-feel-good-myth-of-sanctions-russia-iran/ (questioning the efficacy of isolating coercion as a foreign policy tactic).

704. *See supra* notes 439-44 and accompanying text (examining OFAC's limited licensing under the JCPOA).

705. *See infra* note 706 and accompanying text.

706. *See* Felicia Schwartz, *U.S. Says Iran's Support of Terrorism* 'Undiminished', WALL STREET J., June 19, 2015, 6:45 PM, http://www.wsj.com/articles/u-s-report-finds-35-rise-in-global-terror-attacks-in-2014-1434720328 (noting U.S. concerns over Iran's connections to terrorism); Shaheed, *supra* note 173 (reporting on the human rights situation in Iran).

707. *See generally* Schwartz, *supra* note 706; Shaheed, *supra* note 173.

708. Often colloquially used in a manner synonymous with pure Machiavellianism, *realpolitik* actually refers to a specific methodological approach to international affairs, first theorized in the mid-nineteenth-century by German journalist August Ludwig von Rochau. History and Foreign Policy scholar John Bew provides a helpful, crude definition: "According to Rochau, successful statecraft depended on an appreciation of the historical circumstances in which the statesman operated. Just as important, however, was the ability to anticipate, and adjust oneself to, the changing conditions of modernity. Ideas were important in politics . . . but their importance was to be judged by their political force rather than their purity or elegance." JOHN BEW, REALPOLITIK: A HISTORY 6 (2016). *See generally* I LUDWIG VON ROCHAU, GRUNDSÄTZE DER REALPOLITIK, ANGEWENDET AUF DIE STAATLICHEN ZUSTÄNDE DEUTSCHLANDS [FOUNDATIONS OF REALPOLITIK, APPLIED TO THE CURRENT STATE OF GERMANY] (Karl Göpel ed., 1859).

An alternative strategy, based on a more nuanced balancing of potential risks and rewards, would be for the United States to deal with Iran within the severely underutilized framework of engagement.[709] A broad strategy that reached its apex in the US-Soviet détente of the Cold War, engagement entails "a foreign policy strategy that depends to a significant degree on positive incentives to achieve its objectives."[710] In practice, engagement strategies today are largely centered on "facilitated entry into the global economic arena and the institutions that govern it," whereby international investment plays an obvious role.[711] If the United States could craft a strategic engagement platform targeting Iran, rather than the universal restrictions imposed on US investors under footnote six, the unique investment landscape of post-sanctions Iran would provide a powerful array of ready investors and profit-seeking capital at Washington's disposal.[712] Capitalizing on these pre-existing market forces could demonstrate a potent means of influencing Iranian behavior and even improving US-Iran relations over time.[713]

Engagement always poses certain risks, and in the case of Iran these risks should be weighed seriously.[714] Washington would need to caution that such a strategy would not amount to naked appeasement, nor result in moral hazards that might inspire rogue nation behavior elsewhere in the world.[715] But these risks could be mitigated by the

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709. *See* Richard N. Haass & Meghan L. O'Sullivan, *Introduction*, *in* HONEY AND VINEGAR: INCENTIVES, SANCTIONS, AND FOREIGN POLICY, *supra* note 94, at 1 (explaining engagement as a means of foreign policy); James Dobbins, *Engaging Iran*, *in* THE IRAN PRIMER, *supra* note 12, at 203-05 (overviewing US engagement within the context of Iran).

710. Haass & O'Sullivan, *Introduction*, *supra* note 709, at 1; *see also* EDWARD MCWHINNEY, THE INTERNATIONAL LAW OF DÉTENTE: ARMS CONTROL, EUROPEAN SECURITY, AND EAST-WEST COOPERATION ix (1978); Haass & O'Sullivan, *Introduction*, *supra*, at 8-9 (noting the engagement strategy's prominence during the Cold War).

711. Haass & O'Sullivan, *Introduction*, *supra* note 709, at 11; *see also* SALACUSE, *supra* note 10, at 10 ("The identity of who owns and controls a country's enterprises has important political implications because assets and enterprises endow their owners with both political and economic power.").

712. *See infra* Parts III.C–D.

713. *See* SALACUSE, *supra* note 10, at 22 (emphasizing international investment's ability to foster improved relations between states); Sam Sasan Shoamanesh, *How and Why to Promote US-Iran Rapprochement*, MIT INT'L REV. (June 1, 2009), http://web.mit.edu/mitir/2009/online/us-iran.pdf (assessing the potential benefits of US engagement toward Iran).

714. *See* Haass & O'Sullivan, *Introduction*, *supra* note 709, at 4.

715. *See* Haass & O'Sullivan, *Introduction*, *supra* note 709, at 4; MIROSLAV NINCIC, THE LOGIC OF POSITIVE ENGAGEMENT 40-42 (2011) (summarizing arguments surrounding the dangers of appeasement).

wide variety of tactics available within the engagement toolbox.[716] For example, the United States could strategically employ some composition of both conditional and unconditional engagement policies.[717] The former, which involve a "narrow . . . tit-for-tat process," would contractually premise certain incentives upon specific Iranian behavior.[718] Under such a policy, key Iranian concessions could be strategically highlighted and specifically sought.[719] In contrast, unconditional engagement policies would demand no prerequisite Iranian action for the United States to begin seeking greater influence there.[720]

Foreign policy scholars Richard N. Haass and Meghan L. O'Sullivan identify two branches of unconditional engagement, consisting of reciprocal or nonreciprocal incentive platforms.[721] Reciprocal unconditional engagement would generally amount to broad goodwill gestures offered by the United States, which, if unmet, would be abandoned for their failure to yield meaningful positive results.[722] Nonreciprocal unconditional engagement, on the other hand, would mobilize broad long-term incentives in the absence of any formal expectations of positive counteraction.[723] These incentives would be left on the table for individual Iranian actors including members of civil society, even if little change can be expected from the government.[724] While international investment often plays a major role in each of these engagement categories, it need not be the only or even the primary means of employing engagement.[725] "Funding nongovernmental organizations, facilitating the flow of remittances . . . and promoting the exchange of students, tourists, and other

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716. *See infra* notes 718-27 and accompanying text.

717. *See infra* notes 718-20 and accompanying text.

718. Haass & O'Sullivan, *Introduction*, *supra* note 709, at 5; *see also* Raymond Tanter & Meghan O'Sullivan, *Sanctions and U.S. Foreign Policy*, WASH. INST. NEAR E. POL'Y (Mar. 13, 2001), http://www.washingtoninstitute.org/policy-analysis/view/sanctions-and-u.s.-foreign-policy (further explaining conditional engagement).

719. *See supra* note 718 and accompanying text.

720. *See* Haass & O'Sullivan, *Introduction*, *supra* note 709, at 3; *see also* ROBERT S. LITWAK, REGIME CHANGE: U.S. STRATEGY THROUGH THE PRISM OF 9/11 116–17 (2007) (expounding on the idea of unconditional engagement).

721. *See* Haass & O'Sullivan, *Introduction*, *supra* note 709, at 4 (summarizing reciprocal and nonreciprocal unconditional engagement).

722. *See id.* (discussing reciprocal unconditional engagement).

723. *See id.* (detailing nonreciprocal unconditional engagement).

724. *See id.*; LITWAK, *supra* note 720, at 117 (theorizing on unconditional engagement's interplay with a target-nation's civil society).

725. *See infra* notes 726-27 and accompanying text.

nongovernmental people between the countries are some of the incentives that might be offered under a policy of cultural engagement."[726] By strategically and cautiously assembling some combination of these above tactics, the United States could develop an Iran policy attuned to both engagement's inherent, and Iran's specific, risk profiles.[727]

Considering recent developments, a US-Iran engagement strategy would hardly entail some radical foray into uncharted territory.[728] In fact, footnote six issues aside, various commentators have classified the JCPOA itself as a form of *constructive engagement:* a regrettable term associated with US President Reagan's controversially lenient policies towards apartheid South Africa, which were tangled in all the usual foreign policy knots of the Cold War.[729] Lexicon issues aside, the actual substance of engagement within the JCPOA represents a fertile starting point from which a broader US-Iran engagement strategy might grow.[730] By lifting or licensing around the technical restrictions faced by US investors under footnote six, the United States government could choose to continue in the spirit of the JCPOA, and use engagement with Iran as a means to achieve an array of US foreign policy goals.[731]

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726. Haass & O'Sullivan, *Introduction*, *supra* note 709, at 6.

727. Although consistently outdated, various policy proposals using some combination of the incentive packages discussed *supra* have been produced in the past. *See*, *e.g.*, Shoamanesh, *supra* note 713; Suzanne Maloney & Ray Takeyh, *Engage Iran*, DEMOCRACY (Fall 2007), http://democracyjournal.org/magazine/6/engage-iran/.

728. *See infra* notes 729-31 and accompanying text.

729. *See*, *e.g.*, Rouhani Statement at the General Assembly, *supra* note 2; James Goodby & Kenneth Weisbrode, *A Middle East, Whole and Free*, U.S. NEWS & WORLD REP. (Sept. 3, 2015), http://www.usnews.com/opinion/blogs/world-report/2015/09/03/iran-deal-can-be-the-first-step-toward-a-peaceful-free-middle-east (characterizing the JCPOA as a form of "constructive engagement"); *see also* Haass & O'Sullivan, *Introduction*, *supra* note 709, at 1; Sanford J. Ungar & Peter Vale, *South Africa: Why Constructive Engagement Failed*, FOREIGN AFF. (Winter 1985-1986), https://www.foreignaffairs.com/articles/south-africa/1985-12-01/south-africa-why-constructive-engagement-failed (highlighting the shortcomings of Constructive Engagement in South Africa, against the backdrop of the wider Cold War).

730. *See generally supra* Part II.A (overviewing the JCPOA).

731. *See infra* Part III.D (considering how to steer investment in Iran toward various US foreign policy interests).

A. Engagement Generally: The Post-WWII European Engagement Model

In at least the last century, the most commonly cited and successfully executed engagement strategy is the expansive series of international incentive networks adopted in the aftermath of World War II.[732] The horrors of global war and total economic destruction, particularly amongst countries in war-ravished Europe, momentarily provided a rare alignment of international peace-seeking priorities that has not occurred since.[733] In this light, the entire corpus of contemporary international law is heavily steeped in the logic of engagement.[734] The United Nations, in its organization of the world into sovereign and equal States, is one obvious construct aimed at fostering the principles of dialogue and cooperation in the place of coercive isolation.[735] Likewise, the Bretton Woods Institutions, set up to reconstruct Europe and eventually the rest of the world in the wake of World War II, explicitly prioritized international economic integration as one of the primary preventative means of combating national militarism and the outbreak of conflict between States.[736]

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732. *See* OLAV STOKKE, THE UN AND DEVELOPMENT: FROM AID TO COOPERATION xvii-xviii (2009) (noting the link between peace and security and economic integration, especially following World War II); *see also* NINCIC, *supra* note 715, at 75 (discussing the logic of the United States' post-War Marshall Plan).

733. *See* Rama Mani, *Peaceful Settlement of Disputes and Conflict Prevention*, *in* THE OXFORD HANDBOOK ON THE UNITED NATIONS 300 (Thomas G. Weiss & Sam Daws eds., 2007) ("In the aftermath of the Second World War and the Holocaust, the founders of the United Nations focused on reorienting international affairs away from aggression and unilateralism toward cooperation and multilateralism."); *cf.* G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) ("Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people. . . .").

734. *See supra* note 733 and accompanying text.

735. *See* U.N. Charter art. 1 (introducing the purposes of the United Nations); *see also* STOKKE, *supra* note 732, at 41 ("Both the United Nations and the League of Nations were created with the primary objective of securing and maintaining peace after wars that had originated in Europe but had come to involve most of the world. . . ."); ALISON DUXBURY, THE PARTICIPATION OF STATES IN INTERNATIONAL ORGANIZATIONS, THE ROLE OF HUMAN RIGHTS AND DEMOCRACY 60–63 (2011) (summarizing the initial goals of the UN).

736. *See* BOB REINALDA, ROUTLEDGE HISTORY OF INTERNATIONAL ORGANIZATIONS: FROM 1815 TO THE PRESENT DAY 279–80 (2009) ("[Bretton Woods'] purpose was to provide a new, stable and predictable international monetary regime. . . . The US expected that a decrease in trade tariffs, combined with this monetary regime, would lessen the economic nationalism of the interwar period."); *see also The Bretton Woods Conference, 1944*, U.S. DEP'T STATE, http://2001-2009.state.gov/r/pa/ho/time/wwii/98681.htm (last visited Mar. 27,

These economic engagement strategies were matched by remarkable national policies of engagement, such as the US Marshall Plan, which devoted unprecedented appropriations to the post-War reconstruction and economic development of Europe.[737] This widespread engagement can also be witnessed in the post-war proliferation of international treaties, from international human rights covenants to investment treaties and dispute resolution agreements.[738]

As a whole, these global engagement efforts comprise an outstanding success story.[739] Although not without shortcomings, the postwar international system has proven resilient in preventing massive armed conflicts and the types of large and destabilizing wars that cripple regional and/or the global economy.[740] When economic integration is achieved most successfully, such as among the European Union nations, the idea of war between States today seems farfetched.[741] This is remarkable, considering that less than a century ago it was the conflicts between these exact States that launched globe-spanning destruction.[742] Sixty years of economic engagement between EU Member States has nurtured an astonishing alignment of national interests and common policy objectives.[743] Furthermore, the wealth-building capacity of economic engagement has, across the

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2016) ("[The Great Depression and World War II] led international leaders to conclude that economic cooperation was the only way to achieve both peace and prosperity, at home and abroad.").

737. *See* NINCIC, *supra* note 715, at 75-78; STOKKE, *supra* note 732, at 42 (providing an overview of the Marshall Plan). While the Marshall Plan was undoubtedly inspired out of national US interests in containing the spread of Soviet communism, the point here is that such goals were pursued (and eventually obtained) in Europe through powerful positive incentives, as opposed to intimidation or pressure. *See* NINCIC, *supra* note 715, at 75. .

738. *See* SALACUSE, *supra* note 10, at 338-41; LOUIS HENKIN, THE AGE OF RIGHTS 13-20 (1990) (examining post-World War II treatification).

739. *See infra* notes 740-48 and accompanying text.

740. *See* Steven Pinker, *Violence Vanquished*, WALL STREET J., Sept. 24, 2011, http://www.wsj.com/articles/SB10001424053111904106704576583203589408180 (elucidating on the global decline in world violence).

741. *See generally* John S. Duffield, *Explaining the Long Peace in Europe: The Contributions of Regional Security Regimes*, 20 REV. INT'L STUD. 369 (Oct. 1994); *Peace in Our Time*, ECONOMIST, Sept. 23, 2004, http://www.economist.com/node/3194365 (assessing peace in Europe since World War II).

742. *See supra* note 741 and accompanying text.

743. *See* Duffield, *supra* note 741; REINALDA, *supra* note 736, at 406-35 (summarizing the process of Europe's post-World War II integration).

world, resulted in inspiring leaps in global living standards.[744] The postwar international system has also provided a foundational forum for States to pursue and negotiate extended engagement policies.[745] One might seriously question how differently the world could have fared through the Cold War, had it not been for the nuclear non-proliferation efforts and arms control treaties born out of the institutional engagement platforms within the UN and elsewhere.[746] As alluded to above, the US-Soviet détente of the 1970s might represent the most important bilateral engagement policy, which resulted in positive consequences that rippled throughout the world.[747] Since the close of the Cold War, the United Nations Security Council has also provided an effective (if structurally flawed) means of curbing the behavior of individual bad actors.[748] Broadly, all of this background bodes well for an investment-based US engagement platform targeting Iran.[749]

Yet despite these successes of the postwar international system, it is important to also recognize the limitations in transferring their lessons to any alternative fact pattern.[750] As mentioned, these global engagement policies were born out of an unreplicated alignment of global priorities and international interests, specific to the aftermath of World War II's large-scale destruction.[751] Furthermore, the total victory over fascism at the end of the War provided an imperial means of imposing this international system, and literally forcing engagement policies from States that might have otherwise remained

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744. *See* Daniel Griswold, *The Blessings and Challenges of Globalization*, CATO INST. (Sept. 1, 2000), http://www.cato.org/publications/commentary/blessings-challenges-globalization (noting globalization's impact on rising standards of living); STOKKE, *supra* note 732, at 40–41 (explaining the importance of the UN as an international platform for development goals).

745. *See infra* notes 746-47 and accompanying text.

746. *See* REINALDA, *supra* note 736, at 373-87; *Disarmament Treaties Timeline*, U.N. OFF. FOR DISARMAMENT AFF., http://www.un.org/disarmament/content/timeline/ (last visited Mar. 27, 2016) (providing an overview of the UN's role in peaceful coexistence and nuclear arms control throughout the Cold War).

747. *See supra* note 710 and accompanying text (mentioning engagement in the form of US-Soviet détente).

748. *See* Mani, *supra* note 733, at 308-09; Martin Sieff, *Why the UN Security Council Still Matters*, GLOBALIST (Sept. 25, 2013), http://www.theglobalist.com/un-security-council-still-matters/ (noting the effectiveness of the Security Council, despite its criticisms).

749. *Cf. supra* notes 732-48 and accompanying text (noting the promise of the postwar engagement model).

750. *See infra* notes 751-54 and accompanying text.

751. *See supra* note 733 and accompanying text.

noncompliant.[752] From this it stands to reason that post-World War II engagement, while ideal, might not provide the best model for twenty-first century engagement policymaking concerning Iran.[753] Fortunately, more recent history provides an insightful alternative model: Europe's Critical Dialogue with Iran throughout the 1990s.[754]

B. Engaging Iran: Europe's Model of Critical Dialogue

While the unique circumstances that inspired engagement at the end of World War II provide an imperfect lens for developing US-Iran engagement policies, the European experience of engaging Iran though the 1990s contains more direct lessons for US policymakers.[755] For approximately a decade following 1992, European States implemented a variety of engagement policies aimed at positively inducing changes in Iranian behavior, under the umbrella label of Critical Dialogue.[756] Like the postwar global engagement policies discussed above, Critical Dialogue was also born out of particular facts and circumstances that merit the attention of policymakers.[757] First, the strategy was grounded in the expansive pre-existing European trade relationships with Iran, which following the Iran-Iraq War were posed to grow significantly as Iran transitioned to a peacetime economy.[758] Then, like now, Europe also had a more immediate interest in the regional stability of the Middle East, which made influence through trade there a sensible strategy.[759]

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752. *See* REINALDA, *supra* note 736, at 269-346 (running through the role of US hegemony on the post-World War II international system); Dan Reiter, *How War Will End in Afghanistan—Even If Conflict Does Not*, FOREIGN POL'Y (Oct. 6, 2009), http://foreignpolicy.com/2009/10/06/how-war-will-end-in-afghanistan-even-if-conflict-does-not/ (discussing the significance of World War II's total victory).

753. *See supra* note 752 and accompanying text.

754. *See infra* Part III.B.

755. *Compare* Part III.A (considering post-War War II engagement), *with* Part III.B (explaining Europe's Critical Dialogue with Iran through the 1990s).

756. *See* Reissner, *supra* note 94, at 33-50; Patrick Clawson, *Europe's 'Critical Dialogue' with Iran: Pressure for Change*, WASH. INST. NEAR E. POL'Y (Apr. 9, 1997), http://www.washingtoninstitute.org/policy-analysis/view/europes-critical-dialogue-with-iran-pressure-for-change (summarizing Critical Dialogue).

757. *See infra* notes 758-64 and accompanying text.

758. *See* Reissner, *supra* note 94. at 35-36; Walter Posch, *Iran and the European Union*, *in* THE IRAN PRIMER, *supra* note 12, at 190-91 (mentioning the economic foundations of Europe's stance on Iran).

759. While reckless isolation policies grounded in narrow special interests might have been permissible across the Atlantic, Europe's close proximity to the wars, terrorist movements, and refugee crises that sprung from Middle East instability demanded an approach

In 1992, at the start of Critical Dialogue, it was also relevant that the United States was largely silent on the issue of Iran. President Clinton's policy of Dual Containment had not come into existence until 1993, and this silence provided Europe the freedom to initiate policies without attracting criticism from its North American ally.[760] Third, Iran's domestic political climate was particularly suited to policies of engagement with Europe.[761] The reconstruction years under President Rafsanjani positioned the nation in a search for international capital, European hostages in Lebanon had just been freed with Iranian cooperation, and the reform platform pursued later under President Khatami gave Critical Dialogue advocates a renewed surge of optimism that their strategy was actually working.[762] Finally, the last major factor was Europe's own investment climate throughout the 1990s.[763] Intra-European engagement and economic integration via the EU had created new wealth and surplus capital seeking new horizons for productive use, and given all the above, Iran seemed an ideal destination for this foreign investment.[764]

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to Iran grounded in realism. *See* Ellie Geranmayeh, *Europe's Edge: By Engaging with Iran, Europe Can Assert Its Power*, FOREIGN AFF. (July 19, 2015), https://www.foreignaffairs.com/articles/western-europe/2015-07-19/europes-edge ("[Europe] is closer to the Middle East, and is more vulnerable to conflicts on its doorstep, from refugee inflows, to internal radicalization, to Islamophobic backlash."); Leon Hadar, *Europe's Mission in the Middle East*, AM. CONSERVATIVE (Nov. 25, 2015), http://www.theamericanconservative.com/articles/europes-mission-in-the-middle-east/ (comparing US and European interests in the Middle East). The current Syrian refugee crisis and the Paris terrorist attacks of November 13, 2015 emphasize just how exposed Europe is to Middle East turmoil. *See generally Paris Attacks: What Happened on the Night*, BBC NEWS (Dec. 9, 2015), http://www.bbc.com/news/world-europe-34818994; Eleanor Steafel et al., *Paris Terror Attack: Everything We Know on Saturday Afternoon*, TELEGRAPH (Nov. 21, 2015), http://www.telegraph.co.uk/news/worldnews/europe/france/11995246/Paris-shooting-What-we-know-so-far.html (summarizing the Paris terror attacks); *see also Migrant Crisis: Migration to Europe Explained in Seven Charts*, BBC NEWS (Feb. 18, 2016), http://www.bbc.com/news/world-europe-34131911; Heather Horn, *Can the Welfare State Survive the Refugee Crisis?*, ATLANTIC (Feb. 18, 2016), http://www.theatlantic.com/international/archive/2016/02/welfare-state-refugees-europe/463272/ (overviewing the current refugee crisis' impact on Europe).

760. *See supra* notes 111-13 and accompanying text (noting the beginning of Dual Containment).

761. *See infra* note 762 and accompanying text.

762. *See supra* note 95; Reissner, *supra* note 94, at 37 (discussing the goodwill following Iran's role in releasing European hostages held in Lebanon); *see also supra* Part I.A.3 (overviewing the Reconstruction and Reform periods of Iranian history); Geranmayeh, *Europe's Edge*, *supra* note 759 (asserting the influence of the Rafsanjani and Khatami eras on Iran-European relations).

763. *See* Reissner, *supra* note 94, at 36; Posch, *supra* note 758, at 190-91 (observing the role of Europe's investment climate in the adoption of Critical Dialogue).

764. *See supra* note 763 and accompanying text.

However, as history and the multilateral spread of the sanctions regime demonstrate, these policies ultimately failed to achieve meaningful political changes in Iran.[765] In short, Critical Dialogue did not work.[766] International affairs scholar Johannes Reissner identifies five main reasons for this failure, which should raise red flags for future policymakers.[767] These factors resulted in a hollow engagement policy, which in time became seen as an "immoral cover for maintaining lucrative commercial relations with Iran that ignored Iranian behavior concerning human rights, terrorism, the Arab-Israeli peace process, and weapons of mass destruction."[768] These straying policies thus devolved into a one-sided platform, "too obviously in the interest of the European side to be considered by Iran as an incentive."[769] In this sense, the failure of Critical Dialogue mirrors a common pitfall of international investment more generally, where both investors and investor home States forget that investment implies a partnership or at least common interest with investor host States.[770] Following the failures of Critical Dialogue at the policy level, European investors were eventually made losers as well, being ultimately forced to exit Iran with the rise of multilateral sanctions.[771]

These failures, however, provide instructive lessons for future policymakers, also noted by Reissner.[772] These include: Critical Dialogue's failure to manifest an actual strategy, as opposed to a

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765. *See supra* Parts I.A-B (dealing with the history and legal framework throughout the sanctions regime).

766. *See infra* notes 767-71 and accompanying text.

767. These include: the failure to appreciate Iran's internal political divisions; the failure to overcome economic challenges and Europe's own economic self-interest; the failure to meaningfully use European economic leverage to alter Iran's behavior; the failure of European States at the national level to coordinate policies with other European States; and the failure to bring Washington onboard, thereby bridging the rift in policies between Europe and the United States. *See* Reissner, *supra* note 94, at 37–42 (identifying the reasons Critical Dialogue failed).

768. *Id.* at 34.

769. *Id.* at 39.

770. *See, e.g.*, SALACUSE, *supra* note 10, at 359 ("Lawyers, arbitrators, government officials, and corporate executives sometimes view investment treaties solely as being about foreign investors and foreign investment. That view may lead to distortions in understanding and interpreting investment treaty texts."); *cf.* Leyla Davarnejad, *Strengthening the Social Dimension of International Investment Agreements by Integrating Codes of Conduct for Multinational Enterprises* 2-3, ORG. ECON. COOPERATION & DEV. (Mar. 27, 2008), http://www.oecd.org/investment/globalforum/40352144.pdf (advocating for socially conscious international investment).

771. *See supra* notes 176, 296 and accompanying text (addressing Europe's eventual arrival at sanctions targeting Iran).

772. *See infra* note 773 and accompanying text.

common political stance shared by individual European States; its extensive delay to meet the expectations of reform-minded Iranians; its failure to engage with Iranian civil society, preferring to deal exclusively with the Iranian government; its lack of specific guidelines, which provided no tangible positive or negative incentives; and finally, its failure to connect the dots and convey its importance to Europe's own populations, who came to see engagement with Iran as an artificially polarized choice between being for multinational corporations or for human rights.[773]

Ultimately, these lessons provide some insights regarding how the United States might structure its own engagement policies toward Iran on the back of the JCPOA.[774] Any US engagement policy seeking to move past the restrictions of footnote six of the JCPOA needs to steer clear of these pitfalls.[775] Unfortunately, it is a product of history that these insights must be indirectly inherited, since the United States played no constructive role in Europe's Critical Dialogue.[776] During the Khatami years in particular, such US absence is commonly cited as a historic missed opportunity.[777] But none of this should be taken to mean that Europe's engagement efforts were entirely futile. On the contrary, engagement may sometimes be viewed as playing the strategic long-game, making tactical moves in the present that "strive to maintain momentum" for better relations in the future.[778] Nobody possesses a realistic assessment of how Critical Dialogue might have impacted Iran's social fabric or the political and economic forces that comprise the Islamic Republic.[779] While one might question whether any of the momentum of Critical Dialogue could have possibly survived the long Ahmadinejad years, it is no small development that President Rouhani was elected on a platform

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773. *See* Reissner, *supra* note 94, at 42-45 (highlighting Critical Dialogue's perceived dichotomy between business and human rights); Posch, *supra* note 758, at 190 ("The main complaint was that the diplomatic dialogue was cheap cover for booming European business relations with the oil-rich Islamic Republic.").

774. *See infra* notes 776-83 and accompanying text.

775. *See supra* notes 773-74 and accompanying text.

776. *See supra* Part I.A.3 (providing a history of Iran-US relations through the Rafsanjani and Khatami presidencies).

777. *See* Mousavian, *How to Engage Iran*, *supra* note 142; Takeyh, *Time for Détente With Iran*, *supra* note 357 (observing the missed opportunity for US-Iran engagement throughout the Reform Era).

778. Richard N. Haass & Meghan L. O'Sullivan, *Conclusion*, *in* HONEY AND VINEGAR: INCENTIVES, SANCTIONS, AND FOREIGN POLICY, *supra* note 94, at 187.

779. *See supra* note 778 and accompanying text.

promising a return to the internationalism of Iran through the 1990s.[780] If the United States neglected a historical opening the first time around with Khatami, then perhaps Rouhani and the JCPOA provide a second shot at that missed opportunity.[781] If so, US foreign investment will be a crucial component of seizing it and recalibrating Washington's relationship with Tehran.[782]

C. Engagement Today: Can the United States Engage with Iran?

One of the critical arguments often raised against a US policy of engagement toward Iran is that, in its current form, the Islamic Republic is simply too irrational or theocratically zealous for any engagement policy to result in meaningful change.[783] A similar criticism often raises moral objections to engagement, out of Iran's regional conduct, which in places like post-2003 Iraq has directly cost US lives.[784] Such behavior is problematic, but it is hardly irrational or preclusive to successful engagement between the US and Iran. In fact, this sort of behavior is not unusual to situations that strategically call for increased engagement.[785] International relations theorist Stephen M. Walt and others commonly cite Kennedy and Johnson-era Secretary of State Dean Rusk's bombastic criticism of US-Chinese engagement, in comparisons to the pervasive contemporary rhetoric

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780. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 492-93; Suzanne Maloney, *Prudence And Hope Prevail: Iran Election Reflects Desire For Change*, Brookings Inst. (June 16, 2013), http://www.brookings.edu/blogs/markaz/posts/2013/06/15-rouhani-iran-president (characterizing Rouhani's 2013 election campaign).

781. *See supra* Part I.A.3 (exploring Iran's Reform Era).

782. *See generally infra* Part III.D (surveying how international investment could be used to bring Iran within the fold of US foreign policy).

783. *See* Jennifer Rubin, *An irrational regime*, WASH. POST, May 26, 2015, https://www.washingtonpost.com/blogs/right-turn/wp/2015/05/26/an-irrational-regime/ (" . . . President Obama's notion that a revolutionary Islamic, virulently anti-Semitic regime can nevertheless be rational or is "moderating" is wrong-headed and dangerous."); MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 452 (quoting President Clinton's Reform Era arguments against US-Iran engagement).

784. *See* Jeffrey Goldberg, *Iran Killing American Troops in Iraq and Afghanistan*, ATLANTIC (July 6, 2011), http://www.theatlantic.com/international/archive/2011/07/iran-killing-american-troops-in-iraq-and-afghanistan/241486/; Richard Kemp & Chris Driver-Williams, *Killing Americans and their Allies: Iran's Continuing War against the U.S. and the West*, JERUSALEM CTR. FOR PUBLIC AFF. (Mar. 2015), http://jcpa.org/killing-americans-allies-irans-war/ (condemning Iran's conduct in the region).

785. *See infra* notes 786-89 and accompanying text.

lobbed at Tehran.[786] History showed such commentary to be severely misguided, as Nixon and Kissinger's later efforts at engagement with China helped wind down the Vietnam War, even at a time when China was providing direct military support to the Viet Cong.[787] Advocates of US-Soviet détente faced similar outcries.[788] Whether or not some of the fear-mongering criticisms in the Iranian case amount to mobilization by Islamophobia, they are at the very least a problematic basis upon which to formulate sound US policy.[789]

This is not to say that Iranian State practices are anything less than reprehensible.[790] The Islamic Republic's support for civilian-targeting terrorist groups, its draconian crackdown on internal dissent, and its blatant violations of international human rights norms are each grossly unpalatable.[791] But from a realist's perspective, it would be

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786. Testifying before the Senate Subcommittee on Far Eastern Affairs in 1966, Secretary Rusk declared: "Peking's present state of mind is a combination of aggressive arrogance and obsessions of its own making. . . . I would be inclined . . . to advance the view that a country whose behavior is as violent, irascible, unyielding, and hostile as that of Communist China is led by leaders whose view of the world and of life itself is unreal. . . . They seem to be immune to agreement or persuasion by anyone, including their own allies." *Quoted in* Stephen M. Walt, *Is Iran the Next China?*, FOREIGN POL'Y (Oct. 7, 2013), http://foreignpolicy.com/2013/10/07/is-iran-the-next-china/; *see also* MEARSHEIMER & WALT, *supra* note 26, at 73 (further contextualizing Rusk's comments).

787. *See* Takeyh, *Time for Détente With Iran*, *supra* note 357. *See generally Moments in U.S. Diplomatic History: Nixon Goes to China*, ASSOCIATION FOR DIPLOMATIC STUD. & TRAINING, http://adst.org/2013/02/nixon-goes-to-china/ (last visited Apr. 9, 2016) (overviewing President Nixon's engagement with Communist China).

788. *See* MEARSHEIMER & WALT, *supra* note 26, at 294; *Détente and Arms Control, 1969-1979*, U.S. DEPARTMENT OF STATE, https://history.state.gov/milestones/1969-1976/detente (last visited Apr. 9, 2016) (acknowledging US-Soviet cooperation on key strategic issues, even while war raged in Vietnam).

789. *See* Hugh Gusterson, *A Double Standard on Nuclear Weapons?*, MIT CTR. INT'L STUD. (Apr. 2006), http://web.mit.edu/cis/pdf/gusterson_audit.pdf; Robert Naiman, *The U.S. and Iran are talking. Why is the New York Times peddling Iran Islamophobia?*, Daily Kos (Apr. 19, 2012), http://www.dailykos.com/story/2012/4/19/1084743/-The-U-S-and-Iran-are-talking-Why-is-the-New-York-Times-peddling-Iran-Islamophobia (identifying common Orientalist tropes within some criticisms of US-Iran engagement).

790. *See infra* note 791 and accompanying text.

791. *See* Ryan Mauro, *Fact Sheet, Iranian Support for Terrorism*, CLARION PROJECT NATIONAL SECURITY, http://www.clarionproject.org/sites/default/files/Iranian-Support-For-Terrorism.pdf (last visited Apr. 9, 2016); *Chapter 3, State Sponsors of Terrorism Overview, Bureau of Counterterrorism, Country Reports on Terrorism 2014*, U.S. DEPT. OF STATE, http://www.state.gov/j/ct/rls/crt/2014/239410.htm (last visited Apr. 9, 2016) (terrorism); Stephanie Nebehay, *Rouhani has not stopped Iran suppressing human rights: U.N. envoy*, REUTERS (Mar. 14, 2014), http://www.reuters.com/article/us-iran-un-rights-idUSBREA2D175 20140314; Saeed Kamali Dehghan, *Iran steps up campaign against activists and lawyers*, GUARDIAN (Sept. 6, 2010), http://www.theguardian.com/world/2010/sep/06/iran-human-rights-activists-lawyers (suppressing civil and political rights); *Annual Report: Iran*

foolish for the United States to deny that Iran is capable of behavioral change, and equally foolish to fail recognizing that both Iran and the world *have* changed in various ways since the era of Critical Dialogue.[792] The election of President Rouhani provides some indication of Iranian distaste toward the confrontational foreign policies and wasteful economic policies intensified under Ahmadinejad.[793] The fact that Iranians have gone down this path, experienced its undesirable consequences, and managed to collectively correct their direction cannot be a bad thing from the perspective of future engagement.[794] Although Rouhani is unlikely to prove a human rights champion anytime soon, his political momentum post-JCPOA provides an interesting window through which to examine Iran's internal developments. [795] Concerning the potential efficacy of international investment as a tool of engagement, the official Iranian attitude on capitalism provides a more promising evolution. Compare President Khatami's 1997 comments, "we definitely do not want capitalism. But we respect the value of capital,"[796] to Supreme Leader Khamenei's more recent declaration:

> The mere possession of capital and its investment in the progress of the country is not a bad thing. It is an admired thing. It is not contemptible at all. What is contemptible is that capital and capitalism form the basis of all the major decisions made in the

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2015/2016, AMNESTY INT'L. (2016), https://www.amnesty.org/en/countries/middle-east-and-north-africa/iran/report-iran/ (last visited Apr. 9, 2016); *World Report 2015: Iran Events of 2014*, HUM. RIGHTS WATCH (2015), https://www.hrw.org/world-report/2015/country-chapters/iran (last visited Apr. 9, 2016).

792. *See infra* notes 793-811 and accompanying text.

793. *See supra* Part I.A.4 (outlining the Ahmadinejad presidency); *cf. supra* note 600 and accompanying text (examining the most recent moderate gains, in Iran's 2016 elections).

794. *Compare supra* Part I.A.4, *with* Part I.A.5 (contrasting the presidencies of Ahmadinejad and Rouhani).

795. *See* Saeed Kamali Dehghan, *Rouhani's credibility under scrutiny at UN as Iran's hardliners block reforms*, GUARDIAN (Sept. 23, 2014), http://www.theguardian.com/world/2014/sep/23/rouhani-credibility-scrutiny-united-nations-iran-hardliners-block-reforms; Nicholas Vinocur, *Iranian dissidents warn human rights worse under Rouhani*, POLITICO (Oct. 10, 2015), http://www.politico.eu/article/iranian-dissidents-human-rights-worse-rouhani/ (pointing out the continuation of Iran's past human rights practices under Rouhani); *see also* Alireza Nader, *Post Deal, Can Rouhani Deliver on Promises of Reform?*, AL-MONITOR (July 24, 2015), http://www.al-monitor.com/pulse/originals/2015/07/rouhani-iran-reform-nuclear-deal.html (evaluating Rouhani's political capital in the aftermath of the JCPOA). In this sense, the outcome of Iran's February 2016 elections should also be read positively. *See supra* note 600 and accompanying text.

796. MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 263.

> country and drag everything towards themselves… This is contemptible capitalism. But if some people have capital and they use it to help the country develop – and of course they will also make some profit in this process – then that act [investment] is good, and the profit made is halal.[797]

Such a development looks especially encouraging for a future engagement policy heavily grounded in foreign investment.[798]

Stepping away from Iran, international law has also undergone drastic changes since the era of Critical Dialogue.[799] The early twenty-first century has been marked by a proliferation of international investment treaties, and a clarification of international customs and principles related to both international investment and dispute resolution procedures.[800] Khamenei's comments aside, these factors indicate that future international investment in Iran would likely be far more institutionally protected than throughout most of Europe's Critical Dialogue.[801] Other developments in the business world, like the explosion of corporate social responsibility ("CSR") principles, provide additional tools that could be utilized for the purpose of bringing investment-induced change to Iran.[802] Likewise, the rise of innovative international human rights mechanisms, such as the Special Procedures of the Human Rights Council and the Universal Periodic Review ("UPR"), offer an additional means of

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797. *Id.* at 500.

798. *See infra* Part III.D.

799. *See infra* note 800-04 and accompanying text.

800. *See* SALACUSE, *supra* note 10, at 345 ("In 2001 alone, a total of 97 countries concluded some 158 BITs, a numerical record for any single year since the BIT movement began in 1959. The cumulative result of this effort has been the creation of an increasingly dense BIT network linking over 179 different countries by the end of 2011."). Concerning Iran, some 29 BITs have been signed since 2001, consisting of agreements with some of Europe's largest economies. *See International Investment Agreements Navigator: Islamic Republic of Iran,* INVESTMENT POLICY HUB, http://investmentpolicyhub.unctad.org/IIA/CountryBits/98#iiaInnerMenu (last visited Apr. 11, 2016) (listing Iran's BITs); *see also Recent Developments in Investor-State Dispute Settlement (ISDS)*, UNITED NATIONS CONF. TRADE & DEV., 2 (Apr. 2014), http://unctad.org/en/PublicationsLibrary/webdiaepcb2014d3_en.pdf (noting the proliferation of investor-state arbitration in recent years).

801. *See supra* notes 779-800 and accompanying text. *See generally supra* Part II.D.

802. *See* Alexander Chernev & Sean Blair, *Doing Well by Doing Good: The Benevolent Halo of Corporate Social Responsibility*, 41 J. CONSUMER RES. 1412, 1412 (2015); Larry Catá Backer, *From Moral Obligation to International Law: Disclosure Systems, Markets and the Regulation of Multinational Corporations*, 39 GEO. J. INT'L L. 101, 111-15 (2008) (establishing the rise of CSR mechanisms).

gradually influencing Iran's internal behavior.[803] Taking these developments as a unified whole, there is reason to believe that the United States could now utilize engagement strategies toward Iran more effectively than at any time prior in history.[804]

Finally, the ultimate strategic blunder for the United States would be failure to recognize that the United States too has changed since the era of Critical Dialogue.[805] The US role in the Middle East, along with US interests there, have undergone serious transformations in the past twenty years.[806] From 9/11 and the rise of international terrorism, to the US experiences in Afghanistan and Iraq, to the complete collapse of the Israeli-Palestinian peace process, to the Arab Spring and subsequent civil wars, to the ascent of ISIS and increased Chinese-Russian great power posturing, no region of the world has moved as fast in past decades as the landmass stretching from Pakistan to the Maghreb.[807] With these various developments, US interests have also evolved.[808] While Iran has played a prime adversary in US thinking on the Middle East since 1979, today Washington's actual interests in the region are largely indistinguishable from those in the immediate aftermath of the Shah's ousting.[809] After decades spent trapped in unceasing sanctions inertia,

803. *See generally Special Procedures of the Human Rights Council,* OHCHR, http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx (last visited Apr. 11, 2016); Ted Piccone, *Why are Human Rights Special Procedures so Special?*, BROOKINGS, 59-61 (2011-2012), http://www.brookings.edu/~/media/research/files/articles/2011/9/human-rights-piccone/09_human_rights_piccone.pdf (introducing the UN's Special Procedures); *see also* Dr. Elvira Domínguez-Redondo, *The Universal Periodic Review – Is There Life Beyond Naming and Shaming in Human Rights Implementation?*, 4 NEW ZEALAND L. REV. 673 (2012); John Carey, *The U.N. Human Rights Council: What Would Eleanor Roosevelt Say?*, 15 ILSA J. INT'L & COMP. L. 459, 460-61 (2009) (discussing the UPR process).

804. *See supra* notes 800-03 and accompanying text.

805. *See infra* notes 806-11 and accompanying text.

806. *See* Adam Garfinkle, *Redefining U.S. Interests in the Middle East*, FOREIGN POL'Y RES. INST. (Oct. 9, 2008), http://blogs.harvard.edu/mesh/files/2008/10/interests_garfinkle.pdf; Stephen M. Walt, *U.S. Middle East Strategy: Back to Balancing*, FOREIGN POL'Y (Nov. 21, 2013), http://foreignpolicy.com/2013/11/21/u-s-middle-east-strategy-back-to-balancing/ (tracing the evolution of US interests in the Middle East).

807. *See* Walt, *U.S. Middle East Strategy*, *supra* note 806 ("The Greater Middle East is in the midst of a profound upheaval whose future course is still uncertain and that is unlikely to be resolved anytime soon."). *See generally International Relations Theory and a Changing Middle East*, PROJECT MIDDLE E. POL. SCI. (Sept. 17, 2015), http://pomeps.org/wp-content/uploads/2015/09/POMEPS_Studies_16_IR_Web1.pdf (exploring the Middle East's rapid changes from the perspective of international relations).

808. *See infra* notes 809-11 and accompanying text.

809. *See supra* Part I.A (providing a history of US-Iran relations).

the JCPOA now frees Washington to take stock and honestly evaluate where the United States stands on the region generally, and on Iran in particular.[810] In doing so through the lens of engagement, there are many reasons to believe that US interests in the region will be best served through an investment-rich engagement strategy that is mutually beneficial to both the United States and Iran.[811]

D. Steering Engagement Toward US Foreign Policy Interests

A broad and comprehensive US-Iran engagement strategy would have a positive impact on a variety of Washington's Iran-specific and wider Middle East foreign policy interests.[812] In order to explore how these developments might potentially manifest, the following provides a survey of Washington's largest and most commonly cited regional foreign policy interests, and how international investment and other engagement tools might be used to achieve positive results within each of them.[813] While these opportunities exist at present only as status quo opportunity costs, a liberalizing of OFAC's footnote six guidance and the encouragement of US investment to Iran could provide a means of transforming them into reality.[814]

1. Limiting Iran's Nuclear Capacity & Regional Non-Proliferation

The primary impetus for the JCPOA was to curb Iran's nuclear development program.[815] Fears of a nuclear-armed Iran concerned not only the behavior of the Islamic Republic, but also the regional response to such a development.[816] The logic, often reduced to catch phrases like "an arms race in the Middle East," was that if Iran acquired a bomb, then its regional rivals like Saudi Arabia would be pressed to develop their own nuclear weapons programs, thereby proliferating nuclear arsenals in one of the world's most volatile regions.[817] As discussed above, the JCPOA limits Iran's nuclear

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810. *See supra* Part I.B (summarizing the sanctions regime); *supra* Part II.A (overviewing the JCPOA).
811. *See infra* Part III.D.
812. *See infra* notes 815-1085 and accompanying text.
813. *See infra* Part III.D.
814. *See supra* note 230 (noting OFAC's license-granting authority); *infra* Part III.D (asserting how increased investment in Iran may be used to secure US foreign policy interests).
815. *See supra* Part II.A.1 (overviewing the JCPOA).
816. *See infra* note 817.
817. *See, e.g.,* Seth Mandel, *The Iran Deal Ensures a Mideast Arms Race – Nukes and All*, N.Y. POST, Aug. 21, 2015, http://nypost.com/2015/08/21/the-iran-deal-ensures-a-mideast-

development program by placing severe restrictions and oversight mechanisms over their development process.[818] While the effectiveness of these provisions has been widely debated, a more interesting question for the purposes of this Note is how engagement and increased international investment to Iran might influence Iran's nuclear development logic.[819] The JCPOA aside, engagement by itself is likely to result in greater Iranian compliance with IAEA regulations and other international standards.[820] One reason for this is that engagement naturally implies increased leverage over Iranian actions.[821] The more Iran's economy comes to depend on foreign capital, the more it will seek to safeguard this capital, acting in a way that ensures its continued integration within the international economy.[822] In this regard, the JCPOA's snapback provisions are only as effective as the magnitude of engagement.[823] The more Iran has to lose in terms of international investment and trading partners, the greater the fear of sanctions will become in the Islamic Republic.[824] At the same time, a reinterpretation of footnote six to allow US investment to flow to Iran would make it more difficult for Iran to ever argue that the United States has violated its terms of the deal.[825]

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arms-race-nukes-and-all/ (arguing that the JCPOA will result in a Middle East arms race); Tobin Harshaw, *Iran Deal Didn't Trigger the Middle East Arms Race*, BLOOMBERG VIEW (Aug. 6, 2015), http://www.bloombergview.com/articles/2015-08-06/iran-deal-didn-t-trigger-the-middle-east-arms-race (rejecting the JCPOA's role in a Middle East arms race).

818. *See* JCPOA, *supra* note 185, at Annex I (containing the agreement's nuclear development restrictions).

819. *See infra* notes 820-824 and accompanying text.

820. *See* Haass & O'Sullivan, *Introduction*, *supra* note 709, at 165 (articulating the connection between economic engagement and compliance); NINCIC, *supra* note 715, at 80-82 (establishing the impact of commercial activity on constructing key interests within a target society).

821. *See* Lorber & Rosenberg, *supra* note 339 (addressing the "dollar diplomacy" of the JCPOA); David M. Anderson & David G. Alpher, *We gain more than we lose in the Iran nuclear deal*, BALTIMORE SUN (Dec. 24, 2013), http://articles.baltimoresun.com/2013-12-24/news/bs-ed-iran-leverage-20131223_1_leverage-iran-nuclear-deal-great-deal ("In the case at hand, increasing resource leverage doesn't just ease the pressing nuclear issue but builds the networks that will be necessary to eventually shift the relationship with Iran to a peace footing. Increasing resource leverage builds relationships, reduces overall threat and reluctance to negotiate and in so doing creates an amplifying effect.").

822. *See supra* note 821 and accompanying text (noting that increased economic engagement leads to increased leverage).

823. *See supra* notes 422-23 and accompanying text (snapbacks); *see also supra* notes 821-22 and accompanying text (leverage).

824. *See supra* notes 821-23 and accompanying text.

825. *See* Lorber & Rosenberg, *supra* note 339 (suggesting the importance of demonstrated goodwill, in terms of building future coalitions). Even in the event of a breach

A show of US goodwill in the form of increased US investment to Iran would make it all the more domestically unpopular for any individual Iranian hardliner to renege on the JCPOA.[826] Likewise, if the JCPOA were to fail and the United States were ever forced to rebuild an international coalition aimed at containing Iran, this goodwill could prove important in securing the cooperation of Washington's allies.[827]

Considering that the United States and Israel have made it explicitly clear that they will not accept a nuclear-armed Iran, and that all options are on the table to prevent Tehran from acquiring a bomb, there are also many reasons to believe that some form of détente will be a far more effective bargaining tactic than resorts to threats and military action.[828] Many analysts raise compelling arguments that threatening Iran is counterproductive, in that it convinces the government that it actually needs a nuclear arsenal.[829] Between the United States' unrivaled military power, and Israel's own nuclear weapons capabilities, the use of threatening rhetoric convinces the Islamic Republic that the possession of nuclear weapons is vital to deterring US or Israeli military action, and is thus a legitimate interest to Iran's national security.[830] By this logic, the presence of a rich layer of international investment in Iran would not only serve as a "carrot," but the threat of yanking FDI from Iran would provide the United States and its allies a more credible "stick" to influence Iranian behavior, short of counterproductive threats.[831]

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and the triggering of the JCPOA's snapbacks, renewing a coalition against Iran is likely to require a great deal of international political capital. *See generally* Rubin, *James Baker is Wrong*, supra note 595 (attacking the JCPOA's snapback mechanism).

826. *See supra* note 825 and accompanying text (asserting the political importance of good faith compliance with the JCPOA).

827. *See supra* notes 825-26 and accompanying text.

828. *See* MEARSHEIMER & WALT, *supra* note 26, at 285; Stephen M. Walt, *On Iran, Try Backscratching, Not Blackmail*, FOREIGN POL'Y (Feb. 22, 2013), http://foreignpolicy.com/2013/02/22/on-iran-try-backscratching-not-blackmail/ (critiquing military threats as a form of nuclear non-proliferation leverage).

829. *See* Walt, *On Iran, Try Backscratching*, *supra* note 828; MEARSHEIMER & WALT, *supra* note 26, at 285 (arguing the role of US and Israeli military threats within Iran's nuclear logic).

830. *See supra* note 829 and accompanying text.

831. *See supra* notes 829-830 and accompanying text.

2. Encouraging Reform Within the Islamic Republic and/or Regime Change

Another often-cited US goal in Iran is to see transformative changes to the Islamic Republic itself.[832] In reality, this goal exists as a sort of conglomerated shortcut to various other US regional interests, such as the state of human rights for ordinary Iranians, counterterrorism efforts, regional cooperation, and so on.[833] The idea is that a more moderate government in Tehran would prove easier to work with on these various issues.[834] At its most extreme, this goal manifests in calls for outright regime change.[835] However, whether one hopes for gradual changes to the Islamic Republic, or an abrupt regime change, there are reasons to believe that both goals will be best served by US engagement and increased investment.[836] A peaceful transition away from Iran's theocratic state is not beyond the realm of possibility.[837] One of the usual products of international investment is the formation of narrow alliances with local elites, which, through the normal conduct of business, come to share common interests.[838] In Iran, such alliances could prove a meaningful way of infiltrating Tehran's government and influencing its shape and

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832. *See, e.g.*, John Hannah, *It's Time to Pursue Regime Change in Iran*, FOREIGN POL'Y (Jan. 5, 2015), http://foreignpolicy.com/2015/01/05/its-time-to-pursue-regime-change-in-iran/; Jamie M. Fly & Gary Schmitt, *The Case For Regime Change in Iran*, FOREIGN AFF. (Jan. 17, 2012), https://www.foreignaffairs.com/articles/iran/2012-01-17/case-regime-change-iran (proposing Washington's interests in fostering regime change in Iran).

833. *Cf.* Michael Gerson, *To gain leverage in Iran, the U.S. Needs to Go Green,* WASH. POST, Dec. 2, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/12/01/AR2009120103283.html; James A. Lyons, *Regime Change Needs to be Endgame in Iran*, WASH. POST, July 20, 2012, http://www.washingtontimes.com/news/2012/jul/20/regime-change-needsto-be-endgame-for-iran/.

834. *See* Gerson, *supra* note 833.

835. *See, e.g.*, *supra* note 832.

836. *See infra* notes 837-90.

837. CAMMETT ET AL., *supra* note 41, at 115 ("There are possibilities for a peaceful transition to a post mullocracy, though these tendencies are unlikely to be fostered should there be a military confrontation with the West, since in Iran, as elsewhere, the 'nationalist card' may easily trump all others."); Ray Takeyh, *How to Squeeze Iran on the Nuclear Issue*, WASH. POST, Nov. 12, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/11/11/AR2010111106147.html ("By linking its diplomacy to human rights behavior, the United States could mitigate Iran's nuclear ambitions and pave the way for a peaceful transition from clerical autocracy to a more responsible and humane government.").

838. *See* SALACUSE, *supra* note 10, at 55; NINCIC, *supra* note 715, at 80-82 (analyzing the common interests formed by investment and similar commercial activity).

its functions.[839] The issue here, of course, is whether these sorts of alliances (and the post-sanctions inflow of FDI generally) will entrench the current regime, or lead to new stakeholders that erode the government's current monopoly of authority.[840] Naturally, who owns Iran's resources is important, as such ownership carries political weight in the country.[841] Unfortunately, under the status quo, much of the Iranian economy is run by State-owned or semi-State-owned enterprises, making it difficult for investment to reach or create alternative stakeholders.[842] It is also safe to assume that current elites will be watching international investment closely, in order to safeguard their control of the national economy.[843] However, all things held constant, international investment tends to give rise to an increasingly developed host-State private sector.[844] In Iran, such a development could have a positive impact on the country's overall governance.[845]

One of the chief criticisms of the sanctions regime was that the traditional US negotiating style "failed to provide Iranian moderates with an alternative narrative to use against hardliners like Ayatollah

839. *Cf. supra* note 838 and accompanying text (noting general political consequences of international investment).

840. *See* Robert Jarvis, *Turn Down for What? The Iran Deal and What Will Follow*, FOREIGN AFF. (July 15, 2015), https://www.foreignaffairs.com/articles/iran/2015-07-15/turn-down-what; Laurence Norman, *Iran's Economy Stands to Get Boost If Nuclear Deal Reached*, WALL STREET J., Apr. 2, 2015, http://www.wsj.com/articles/irans-economy-stands-to-get-boost-if-nuclear-deal-reached-1428019653 (presenting the debate on whether the JCPOA will entrench the regime or foster moderation).

841. *See* SALACUSE, *supra* note 10, at 10; NINCIC, *supra* note 715, at 80-81 (noting the link between economic empowerment and political power).

842. *See supra* notes 635-41 and accompanying text (dealing with privatization in Iran).

843. *See* Haass & O'Sullivan, *Conclusion*, *supra* note 778, at 164 (addressing the resistance of established elites); *cf. supra* notes 359-64 and accompanying text (examining the IRGC's presence in Iran's economy). Indeed, IRGC opposition to the JCPOA demonstrates this exact trend. *See* David Patrikarakos, *Iran's Revolutionary Guards Loved the Sanctions*, DAILY BEAST (Jul. 16, 2015), http://www.thedailybeast.com/articles/2015/07/16/iran-s-revolutionary-guards-loved-the-sanctions.html; Mahan Abedin, *Iran Hardliners Mobilise Against Nuclear Deal*, MIDDLE EAST EYE (Jul. 25, 2015), http://www.middleeasteye.net/columns/iran-hardliners-mobilise-against-nuclear-deal-601933816.

844. *See generally* SALACUSE, *supra* note 10, at 112-14 (exploring why states turn to privatization); Seyed Reza Miraskari et al., *Analyzing Impacts of Foreign Direct Investment on Private Sector in Economic Growth of Iran*, 4 INT'L J. ACADEMIC RES. BUSINESS & SOC. SCI. 223, 235 (2014) (examining the impact of FDI on Iran's private sector).

845. *Cf. supra* note 844 and accompanying text (noting the general trend toward increased privatization, as a result of international investment).

Khamenei."[846] Such an approach always failed to recognize the political strategy of Iranian moderates, who, having their hands structurally tied by the Supreme Leader, always attempted to gradually reform the system without overthrowing it or challenging its legitimacy.[847] Like Khatami and Rafsanjani before him, President Rouhani is now shifting Iranian politics toward the system's moderate center.[848] However, his success in this endeavor will require the help of international investment and demonstrated improvements in Iran's standard of living.[849] International investment provides a powerful means of incentivizing specific stakeholders, though different packages of incentives.[850] By crafting a smart engagement policy, the United States could seize on Iran's current political situation and actually empower moderate pragmatists.[851]

One of the primary failures of Europe's Critical Dialogue was its exclusive focus on government-to-government incentive platforms, without seeking to influence key segments of Iran's social fabric.[852] At the same time, the failure to monitor internal Iranian political developments precluded Europe from identifying key targets of increased engagement.[853] But things have changed since the 1990s.[854]

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846. Stephen M. Walt, *Our Myopic Approach to Iran*, FOREIGN POL'Y (Mar. 26, 2013), http://foreignpolicy.com/2013/03/26/our-myopic-approach-to-iran/.

847. *See* IRAN COUNTRY FORECAST, *supra* note 157, at 18; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 260-62 (clarifying the methodologies of Iran's reform movement under Khatami).

848. *See* Mohsen Milani, *Rouhani's Foreign Policy: How to Work with Iran's Pragmatic New President*, FOREIGN AFF. (June 25, 2013), https://www.foreignaffairs.com/articles/iran/2013-06-25/rouhanis-foreign-policy; Sayed Hossein Mousavian, *The Rise of the Iranian Moderates*, AL-MONITOR (July 5, 2013), http://www.al-monitor.com/pulse/originals/2013/07/rise-iranian-moderates.html (presenting the moderation of the Rouhani administration). Here too, the recent February 2016 elections evidence that Rouhani's strategy is working. *See supra* note 600.

849. *See* IRAN COUNTRY FORECAST, *supra* note 157, at 18; Ganji, *supra* note 600 (assessing Rouhani's prospects for bringing meaningful change to Iran).

850. Haass & O'Sullivan, *Conclusion*, *supra* note 778, at 168; NINCIC, *supra* note 715, at 80-81 (emphasizing the ability for economic engagement to reach specific stakeholders).

851. *See* Takeyh, *Time for Détente With Iran*, *supra* note 357 (positing Rouhani's potential of sidelining Iranian hardliners); Ganji, *supra* note 600 (suggesting Rouhani's need to demonstrate tangible improvements to Iranian livelihoods, following the JCPOA).

852. *See* Reissner, *supra* note 94, at 43 (identifying Critical Dialogue's failure to reach Iranian civil society); *cf.* Posch, *supra* note 758, at 191 (illustrating the state-to-state focus of Critical Dialogue).

853. *See* Reissner, *supra* note 94, at 45 (pointing out Critical Dialogue's failure to monitor Iran's internal politics); *see also* Michael Rubin, *Europe's Critical Dialogue with Iran: An Assessment*, WASH. INST. NEAR E. POL'Y (Jan. 10, 2000), http://www.washington institute.org/policy-analysis/view/europes-critical-dialogue-with-iran-an-assessment

As was made explicitly clear in the short-lived rise of the Green Movement, today the international community has come to recognize that there are important divisions within Iranian society.[855] There is no reason to believe that continuing to isolate the Iranian regime demands international isolation of Iran's population.[856] More specifically, the world has noticed that a struggling middle class exists in Iran, and it is these Iranian stakeholders that the United States should seek to empower.[857] Indeed, according to some analysts, the future of Iran will largely boil down to how this middle class fares in Iranian society.[858]

Iran's Bezaari—its urban commercial class—has played a meaningful historical role in the nation's political currents.[859] As opposed to its traditional reliance on urban marketplaces, today's Bezaari is highly connected with the global economy.[860] Naturally, international sanctions and economic mismanagement created severe frustrations within the Bezaari during the height of the sanctions regime.[861] Yet, these frustrations never manifested into outright political mobilization.[862] Notably, the Bezaari's absence from the 2009-10 Green Movement protests partly explains why that movement failed to take flight.[863] This failure to mobilize the Bezaari

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(identifying Critical Dialogue's failure to seriously address Iranian domestic reform and political stability).

854. *See infra* notes 855-78 and accompanying text.

855. *See supra* notes 172-73 and accompanying text (discussing Iran's Green Movement).

856. *See* Haass & O'Sullivan, *Conclusion*, *supra* note 778, at 173-74 (positing the fallacy of isolating Iran's population); *cf.* Bill Spindle, *Iran's Legions of Weary Young People Push Against the Old Ways*, WALL STREET J., July 7, 2015, http://www.wsj.com/articles/irans-legions-of-weary-young-people-push-against-the-old-ways-1436323115 (showing Iranian youth's distaste with international isolation).

857. *See* Reissner, *supra* note 94, at 46; Marais, *supra* note 449, at 12 (noting the potential of Iran's middle class).

858. *See* Reissner, *supra* note 94, at 46; CAMMETT ET AL., *supra* note 41, at 115 (establishing the Iranian middle class' importance to the future of Iran).

859. *See* Harris, *The Bazaar*, *supra* note 50, at 108; FISK, *supra* note 45, at 110 (illustrating the political importance of Iran's Bazaari).

860. *See* Harris, *The Bazaar*, *supra* note 50, at 108 (identifying the ties of Iran's Bazaari to world markets); *cf.* A GROWING CRISIS, *supra* note 324, at 129-141 (assessing the impact of sanctions on Iran's Bazaari and wider middle class).

861. *See* A GROWING CRISIS, *supra* note 324, at 129-141; Harris, *The Bazaar*, *supra* note 50, at 109 (exploring how sanctions have harmed Iran's Bazaari).

862. Harris, *The Bazaar*, *supra* note 50, at 109.

863. *See id.*; Kevan Harris, *Iran: Why Workers Aren't Joining the Protests*, TIME, Feb. 22, 2011, http://content.time.com/time/world/article/0,8599,2053157,00.html (pointing out the rift between the Bazaari and Iran's youth during the Green Revolution).

is a result of ongoing political cleavages, which have made this segment of Iranian society extremely difficult to publically mobilize.[864] While the Bezaari should not be rendered exactly synonymous with Iran's wider middle class, which today extends well beyond the traditional marketplace, its shared economic interests with the middle class generally provides insight into how a US engagement strategy might identify key destinations of US trade and investment capital.[865] Where negative incentives like sanctions tend to get drowned out in political divisions, the positive inducements of trade and investment might be used to broadly inspire middle class support for moderate government policies, effectively pressuring the regime from below.[866] In his coverage of Iran's 1979 Revolution, journalist and historian Robert Fisk notes, "while the physical power behind the revolution lay in those colossal street demonstrations by the urban poor and Islamic revivalists, it was the middle class from the bazaar . . . that provided economic backing for Khomeini's return. It was this merchant class and its alliance with the mullahs that emerged as the critical combination of secular and religious opposition."[867] Given international investment's potential alignment with host country private sectors, a US engagement policy could be crafted to specifically target these powerful agents of change in Iran.[868] In doing so, international investment and economic integration more broadly might undermine the alliance so crucial to the Islamic Republic's survival since 1979.[869]

Another strategic Iranian target of US engagement would be the nation's large youth population.[870] As explained above, there are some existing sympathies between the West and Iran's youth, stemming in large part from cultural overlap and consumerist

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864. *See* Harris, *The Bazaar*, *supra* note 50, at 109; Arang Keshavarzian, *Back to the Future: Bazaar Strikes, Three Decades after the Revolution*, MIDDLE E. INST. (Jan. 29, 2009), http://www.mei.edu/content/back-future-bazaar-strikes-three-decades-after-revolution (noting the political divisions within Iran's modern Bazaar).

865. *See infra* notes 866-69.

866. *See* NINCIC, *supra* note 715, at 80-82; Haass & O'Sullivan, *Conclusion*, *supra* note 778, at 165 (articulating engagement's ability to influence target-state politics).

867. FISK, *supra* note 45, at 110.

868. *See supra* note 838 and accompanying text.

869. *Cf. supra* note 838 and accompanying text (noting general political consequences of international investment).

870. *See* Memarian & Nesvaderani, *supra* note 576, at 49-50; Spindle, *supra* note 856 (characterizing Iran's youth).

preferences.[871] During the sanctions era, Iran's youth openly called for better relations with the rest of the world.[872] The youth population is also a key vulnerability for the government in Tehran, which faces serious challenges in meeting this segment's growing socioeconomic needs.[873] Although increased FDI to Iran might have the unintended consequence of partially insulating the regime from these vulnerabilities, such investment could occur in a manner that actually strengthens the youth within Iranian society, making the government more vulnerable to their future demands.[874] Iranian youth face the highest rate of unemployment in the country today.[875] By targeting the flow of international investment in ways that provide young Iranians with jobs, the United States could create common interests between Iranian youth and the global economy.[876] Furthermore, by revising Washington's guidance on footnote six and allowing development, the United States could empower Iran's youth and "promot[e] positive changes in Iran."[877] Put another way, "[if] we really believe in the transformative power of markets, Hollywood, hip-hop, the Internet, democracy, and free speech, let's turn 'em loose on Tehran. If your goal is a more moderate Iran, that approach is likely to work a lot better than ostracism, covert action, and repeated threats of military force, which merely galvanize Iranian nationalism and help justify continued repression by hardliners."[878]

Of course, even in targeting these key segments of Iranian society, the problem that a large percent of the national economy is held in the hands of regime loyalists still remains.[879] In particular, the IRGC's expansive hold of the private sector following President

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871. *See* Houshyar & Sarmadi, *supra* note 539; Harris, *The Bazaar*, *supra* note 50, at 110 (identifying Western sympathies among Iran's youth).

872. *See* McGrath Goodman, *supra* note 330, at 15; Spindle, *supra* note 856 (noting the youth's open resistance to regime hardliners).

873. *See* Memarian & Nesvaderani, *supra* note 576, at 49; CAMMETT ET AL., *supra* note 41, at 315 (discussing the regime challenges of meeting the expectations of Iran's youth).

874. *See infra* notes 875-78.

875. *See supra* note 576 and accompanying text (looking at youth unemployment in Iran).

876. Theoretically, emerging technologies that are most likely to employ recent graduates, such as the renewable energy sector, could provide the best means of channeling international investment toward Iran's youth. *Cf. supra* notes 558-67 and accompanying text (discussing the potential of a renewable energy industry in Iran).

877. Lorber & Rosenberg, *supra* note 339.

878. Walt, *Accentuate the Positive*, *supra* note 117.

879. *See supra* notes 359-64 and accompanying text (exploring the role of the IRGC in the Iranian economy).

Ahmadinejad's privatization decrees is especially troubling.[880] No matter how strategically specialized the United States' incentive platforms, a downside of engagement is that any improvement in Iran's economy is likely to put money in the pockets of the IRGC.[881] However, without belittling this risk, one should at least recognize that the mainstream US conception of the IRGC is commonly misguided.[882] First, the IRGC does not possess broad public support in Iran, and its concentrated hold of the private sector has been highly controversial.[883] In fact, during the Ahmadinejad years, future President Rouhani was a crucial critic of its growing grip on the private sector.[884] From this, it is likely that future privatization under Rouhani will seek to dilute the economic power of the IRGC.[885] At the same time, the IRGC itself is not a monolithic establishment.[886] While most guardsmen have some form of existing or past ties to the military, they are in fact "ordinary people," comprised of a wide variety of individual motivations and interests.[887] Furthermore, despite their broad ties to Khamenei, internal divisions do exist within the IRGC.[888] It is not beyond reason that the ordinary self-interests and profit motives of capitalism may exacerbate these divisions, were Iran's private sector to grow alongside capital inflows to Iran's

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880. *See supra* notes 359-64 and accompanying text.

881. *See* Haass & O'Sullivan, *Introduction*, *supra* note 709, at 165 and 168 (conceding the impossibility of an entirely targeted engagement platform); *see also* Elliott Abrams et al., *supra* note 161; Babak Dehghanpisheh & Yeganeh Torbati, *Firms Linked to Revolutionary Guards to Win Sanctions Relief Under Iran Deal*, REUTERS (Aug. 10, 2015), http://www.reuters.com/article/iran-nuclear-sanctions-idUSL5N10I3N320150810 (revealing that some firms linked to the IRGC will benefit from the JCPOA).

882. *See infra* notes 883-90 and accompanying text.

883. *See* WEHREY ET AL, *supra* note 362; Nader, *The Revolutionary Guards*, *supra* note 360 (exploring the widely held middle class perception that, before his death, Khomeini actually banned the IRGC.)

884. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 285 (citing Rouhani's criticism of the IRGC's role in the economy before being elected); *cf.* Arash Karami, *Rouhani Criticizes Consolidation of Power in Government*, AL-MONITOR (Dec. 9, 2014), http://www.al-monitor.com/pulse/originals/2014/12/rouhani-criticizes-revolutionary-guard-power.html# (offering more recent Rouhani criticisms of the IRGC).

885. *See* Karami, *Rouhani Criticizes Consolidation of Power in Government*, *supra* note 884; Mehdi Khalaji, *President Rouhani and the IRGC*, WASH. INST. NEAR E. POL'Y (Jan. 8, 2014), http://www.washingtoninstitute.org/policy-analysis/view/president-rouhani-and-the-irgc (assessing Rouhani's contentious relationship with the IRGC).

886. *See* Nader, *The Revolutionary Guards*, *supra* note 360, at 61; WEHREY ET AL, *supra* note 362, at 81 (pointing out an unexpected degree of factionalism within the IRGC).

887. Sadakova, *supra* note 158.

888. *See supra* note 886.

broader economy.[889] Were further splinterings to occur, such a development would represent a remarkable achievement of US foreign policy. However remote the likelihood of this actually happening, the larger purpose of a US engagement strategy would be to empower alternative stakeholders in Iran, capable of bringing positive changes to Tehran's political establishment. Empowering such agents of change should not be precluded on account of the regime accruing some unintentional benefits.[890]

3. Enhancing Regional Counterterrorism

Another key US foreign policy interest, both in the Middle East and globally, is the need to combat terrorism and prevent the growth of terrorist movements targeting the United States and its allies.[891] Iran's continued support for movements like Hezbollah, Hamas, and Islamic Jihad is in opposition to Washington's counterterrorism efforts.[892] However reprehensible, Tehran's support for these terrorist organizations is not irrational, nor entirely born of religious or ideological zealotry.[893] In the same way that Iran's nuclear ambitions might be explained by their seeking a meaningful deterrent to US or Israeli military action, maintaining their influence with groups

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889. *See* WEHREY ET AL, *supra* note 362, at 93 ("[The IRGC's] vested and increasing interests in the country's economy make it an increasingly conservative force rather than a radical one."); *cf*. Meir Javedanfar, *Leaked Video May Signal Cracks in Iranian Leadership*, AL-MONITOR (Jun. 4, 2014), http://www.al-monitor.com/pulse/originals/2014/06/iran-irgc-2009-elections-violations-leaked-video-reformists.html# (hypothesizing emerging cracks within the IRGC).

890. *See* Haass & O'Sullivan, *Introduction*, *supra* note 709, at 172; Takeyh, *Time for Détente With Iran*, *supra* note 357 (asserting the benefits of engaging Iran, despite some potential gains to Iran's hardliners).

891. NATIONAL STRATEGY FOR COUNTERTERRORISM, WHITE HOUSE (June 2011), https://www.whitehouse.gov/sites/default/files/counterterrorism_strategy.pdf; Linda Robinson, *The Future of Counterterrorism: Fewer Drones, More Partnerships*, WASH. POST , Oct. 18, 2013, https://www.washingtonpost.com/opinions/the-future-of-counterterrorism-fewer-drones-more-partnerships/2013/10/18/47e49f02-35cc-11e3-8a0e-4e2cf80831fc_story.html.

892. U.S. Dep't of State, Bureau of Counterterrosim, Chapter 3: State Sponsors of Terrorism Overview, http://www.state.gov/j/ct/rls/crt/2014/239410.htm (last visited Apr. 11, 2016); Robert Baer, *Who's a Terrorist?*, FRONTLINE, http://www.pbs.org/wgbh/pages/frontline/shows/tehran/axis/terror.html (last visited Apr. 11, 2016).

893. *See* MEARSHEIMER & WALT, *supra* note 26, at 283-84 and 294; Walt, *Accentuate the Positive*, *supra* note 117 (analyzing Iran's motives for supporting regional terrorist movements). Indeed, if Iran's Twelver Shi'ite ideology is the primary lens to understand Tehran's behavior, the regime's support for Sunni Palestinian movements such as Hamas is confounding.

situated along the borders of Israel traces a similar reasoning.[894] In the event of a US or Israeli strike on Iran, it makes sense for the Islamic Republic to seek influence over movements capable of inflicting direct damage on Washington's closest regional ally.[895] This Machiavellian logic aside, the United States should not stand for Iran's continued support of violent non-State actors that seek to harm noncombatants.[896] Yet contrary to much JCPOA criticism, enhanced engagement between Washington and Tehran could be the best means of curtailing Iran's support for regional terrorist movements.[897]

For example, the incentive of massive international investment could provide a reason for Tehran to question its ongoing support for terrorist movements.[898] Up until the present, supporting such terrorists has been a relatively cheap way of harassing US regional interests, and Iran has had little reason to question such policies.[899] This calculus would look very different if the risk of precluding investment made Iran's actions far more expensive.[900] Similarly, the United States has a strategic interest in co-opting Iran's influence over these terrorist movements.[901] In the 1980s, Iran's cooperation was vital to the safe release of Western hostages held by Hezbollah in Lebanon, and future US-Iran cooperation could have a constructive influence

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894. *Cf. supra* notes 828-31 and accompanying text (citing Iran's security interests in a nuclear weapons program).

895. *Cf. supra* notes 828-31 and accompanying text.

896. *See supra* note 892.

897. *See*, *e.g.*, Jonathan Schanzer & Mark Dubowitz, *It Just Got Easier for Iran to Fund Terrorism*, FOREIGN POL'Y (Jul. 17, 2015), http://foreignpolicy.com/2015/07/17/it-just-got-easier-for-iran-to-fund-terrorism-swift-bank/; James Phillips, *The Iran Nuclear Deal: What the Next President Should Do*, HERITAGE FOUNDATION (Oct. 2, 2015), http://www.heritage.org/research/reports/2015/10/the-iran-nuclear-deal-what-the-next-president-should-do (stipulating that the JCPOA will empower regional terrorism). *But see infra* notes 898-914 (arguing that, to the contrary, broad engagement following the JCPOA may provide the best means of reigning in Iran's support for regional terrorist movements).

898. *See* Walt, *Accentuate the Positive*, *supra* note 117 (noting that under the status quo, Iran has no reason to meaningfully question its support for regional terrorist movements); Takeyh, *Time for Détente With Iran supra*, note 357 (further arguing that under the status quo, Iran has nothing to lose by supporting movements targeting Israel).

899. FACT SHEET IRANIAN SUPPORT FOR TERRORISM, CLARION PROJECT, https://www.clarionproject.org/sites/default/files/Iranian-Support-For-Terrorism.pdf (last visited Apr. 11, 2016); Marisa Sullivan, *Middle East Security Report 19: Hezbollah In Syria,* INST. ON THE STUDY OF WAR (Apr. 2014), http://www.understandingwar.org/sites/default/files/Hezbollah_Sullivan_FINAL.pdf.

900. *See supra* note 898. *Cf. supra* notes 819-24 and accompanying text (illustrating the leverage created by international investment, within the context of Iran's nuclear program).

901. *See infra* notes 902-05.

on Lebanon's political stability.[902] Likewise, in the event of any resumption of the Israeli-Palestinian peace process, Iran's sway over Hamas and Islamic Jihad could prove vital to concluding that decades-long conflict.[903] Israel's own past negotiations with Hamas indicate that these movements are not incommensurable with the negotiating table, and Iranian cooperation could result in a more pliant negotiating position of Israel's enemies.[904] In the absence of peace talks, such influence could be similarly used to heal the rift between Fatah and Hamas, which has been partially responsible for both a humanitarian catastrophe in Gaza and the complete paralysis of Palestinian development within the West Bank: trends that foster regional extremism.[905]

Finally, as repugnant as Iran's support for terrorism may be, it would behoove US policymakers to recognize that the movements receiving Iranian funding and arms supplies are hardly the same breed of Wahhabi extremists bent on striking the United States.[906] While

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902. *See supra* note 95; Mousavian, *How to Engage Iran, supra* note 142 (exploring Iran's role in releasing Western hostages in Lebanon); *see also* Takeyh, *Time for Détente With Iran*, *supra* note 357; MEARSHEIMER & WALT, *supra* note 26, at 303 (contending that Iran's influence could be used to reign in movements like Hezbollah).

903. *See* Walt, *Accentuate the Positive*, *supra* note 117; Shlomi Eldar, *Without Hamas, Israelis and Palestinians Can Find Peace*, AL-MONITOR (Aug. 12, 2014), http://www.al-monitor.com/pulse/originals/2014/08/hamas-gaza-peace-oslo-accords-terror-palestinians.html# (looking at how Hamas has complicated the Israeli-Palestinian peace process).

904. *See* Daniel Sobelman, *Israel and Hamas Appear to Be Advancing Towards Ending the Siege on the Gaza Strip*, HUFFINGTON POST (Aug. 26, 2015), http://www.huffingtonpost.com/daniel-sobelman/israel-hamas-gaza_b_8037888.html; Uri Savir, *Israel, Hamas Negotiate, but Truce Still Far Off*, AL-MONITOR (Jun. 30, 2015), http://www.al-monitor.com/pulse/originals/2015/06/israel-hamas-truce-negotiations-egypt-netanyahu.html (discussing Israel-Hamas negotiations); *see also* Takeyh, *Time for Détente With Iran*, *supra* note 357; Yoav Zeitun, *IDF Intelligence: Deal Could Help Rein in Iran's Terrorist Activities*, YNET NEWS (Jul. 17, 2015), http://www.ynetnews.com/articles/0,7340,L-4691689,00.html (presenting the argument that engaging Iran could help tame movements like Hezbollah).

905. *See* Ahmad Melhem, *The Deepening Rift Between Fatah, Hamas*, AL-MONITOR (Mar. 20, 2015), http://www.al-monitor.com/pulse/originals/2015/03/palestine-hamas-fatah-plo-accusations.html#; Adnan Abu Amer, *Gaza Bombings Deepen Hamas-Fatah Rift*, AL-MONITOR (Jan. 21, 2015), http://www.al-monitor.com/pulse/originals/2015/01/gaza-explosions-hamas-fatah-division.html# (exploring the Fatah-Hamas rift). Within the West Bank, fears of a Hamas victory have prevented elections within the Palestinian Authority. *See* Khaled Abu Toameh, *Palestinians Need Reforms, Not Elections*, GATESTONE INST. (May 4, 2015), http://www.gatestoneinstitute.org/5686/palestinians-reforms.

906. Although a comprehensive and nuanced treatment of Wahhabism and Islamic extremism is beyond the scope of this Note, as a general matter Wahhabism refers to a specific conservative sect of Sunni Islam that originated among 18th century Najdi Bedouins, in rejection of the tomb and shrine worship that adherents perceived to amount to polytheism. At its core, Wahhabism advocates a return to *Tawhid*, the principle of Islamic monotheism. In

nothing justifies the intentional targeting of civilians, it is worth noting that Hezbollah, Hamas, and Islamic Jihad all conceive themselves as legitimate resistance movements combating Israeli occupation.[907] The same cannot be said for movements like Al Qaeda and ISIS.[908] Noting the rise of groups like Al Qaeda, shortly before his death, Ayatollah Khomeini himself decried "'the anti-Koranic ideas propagating the baseless and superstitious cult of

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doing so, it rejects a host of worldly institutions as impure additions to Islam (*bid'ah*), from secular music and dance to the contemporary nation-state. Originally a narrow and parochial school of Islam, Wahhabism gained fortuitous significance with its adoption by Mohammed Ibn Saud in 1733, whose ancestors would later establish the Kingdom of Saudi Arabia after World War I and the collapse of the Ottoman Empire. As the monarchy's oil wealth, the threat of pan-Arab nationalism, the threat of communism, and other political developments all evolved over the course of the 20th century, strains of Saudi Wahhabism were cross-pollinated with other Salafist political writings, such as those of Sayyed Qutb, whose own scholarship was deeply informed by his personal experiences in the United States and in Egyptian prisons. The combination of Wahhabi puritanism and Qutb's jihadist-takfiri calls to redeem the *Ummah* (Islamic community) from modern vices (more specifically, *Jahiliyya*, or the Ummah's current state of godless ignorance) directly provided an intellectual foundation for movements like Al Qaeda, and more recently, ISIS. *See generally* ROBERT LACEY, INSIDE THE KINGDOM: KINGS, CLERICS, MODERNISTS, TERRORISTS, AND THE STRUGGLE FOR SAUDI ARABIA 10-11 (2009); LAWRENCE WRIGHT, THE LOOMING TOWER: AL QAEDA AND THE ROAD TO 9/11 (2006); Yousaf Butt, *How Saudi Wahhabism is the Fountainhead of Islamic Terrorism*, WORLD POST (Jan. 20, 2015), http://www.huffingtonpost.com/dr-yousaf-butt-/saudi-wahhabism-islam-terrorism_b_6501916.html; Trevor Stanley, *Understanding the Origins of Wahhabism and Salafism*, JAMESTOWN FOUNDATION (Jul. 15, 2005), http://www.jamestown.org/programs/tm/single/?tx_ttnews%5Btt_news%5D=528#.VoR4lhorJ-U; Samer Abboud, *The Only Way to Take on ISIS is to Take on Wahhabi Doctrine*, MONDOWEISS (Nov. 23, 2015), http://mondoweiss.net/2015/11/isis-wahhabi-doctrine.

907. *See Profile: Hamas Palestinian movement*, BBC NEWS (Jul. 11, 2014), http://www.bbc.com/news/world-middle-east-13331522; Borzou Daragahi, *Lebanon's Hezbollah savors increasing legitimacy*, L.A. TIMES, Apr. 13, 2009, http://articles.latimes.com/2009/apr/13/world/fg-lebanon-hezbollah13; *Islamic Jihad Urges Factions to Escalate Resistance After Arson Attack*, MA'AN NEWS AGENCY (Aug. 1, 2015), https://www.maannews.com/Content.aspx?id=766804 (revealing how these organizations conceive of themselves). The point is not that such differentiation morally exonerates these groups' tactics, but that from a perspective of accurate US threat assessment, the threat posed by terrorist organizations supported by Iran pail in comparison to the threats posed by groups like Al Qaeda and ISIS. *See* Daniel Benjamin, *Is Iran About to Unleash a Wave of Terrorism Against the United States?*, FOREIGN POL'Y (Aug. 13, 2015), http://foreignpolicy.com/2015/08/13/is-iran-about-to-unleash-a-wave-of-terrorism-against-the-united-states-iran-hezbollah-assad/ ("Since the 1996 attack, a small number of Americans have been caught up and killed in Iranian-backed terror attacks directed against Israelis, but specifically American targets have not been struck.").

908. Tom Quiggan, *Understanding al-Qaeda's Ideology for Counter-Narrative Work*, TERRORISM RESEARCH INITIATIVE (2009), http://www.terrorismanalysts.com/pt/index.php/pot/article/view/67/html; http://www.protect.expert/ideology-al-qaeda-prof-matthew-ogilvie/.

Wahhabism'."[909] The amount of blood and treasure Iran has recently spent combating Sunni insurgents like ISIS and Al-Nusra Front (and defending Bashar al-Assad) in Syria and Iraq indicates that the Islamic Republic's position on Wahhabi terrorism has not strayed too far from the days of Khomeini.[910] In this light, Iran is committed to an all too familiar war against terrorism, when it comes to the terrorists actually seeking to target the United States and its most strategically valuable allies in Europe.[911] Engagement could lead to positive breakthroughs in this arena.[912] While the United States cannot realistically abandon its ally Israel to groups like Hezbollah and Hamas, it should at least nuance its designation of Iran as a State sponsor of terrorism, and realistically explore whether the positive incentives of engagement might be used to reign in the terrorist movements that make their home in South Lebanon and the Occupied Territories.[913] In fact, if Iran were to alter its conduct and allow the United States to lift it from lists of designated sponsors of terrorism, many of the administrative-legislative knots that restrict the lifting of sanctions could theoretically be circumvented.[914]

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909. FISK, *supra* note 45, at 125. That said, these comments should not be taken out of the political context of Iran's rivalry with Saudi Arabia. *See supra* notes 369-72 and accompanying text (discussing Iran-Saudi tensions).

910. *See* Will Fulton et al., *Iranian Strategy in Syria,* INSTITUTE FOR THE STUDY OF WAR (May 2013), http://www.understandingwar.org/sites/default/files/IranianStrategyinSyria-1MAY.pdf; Eli Lake, *Iran Spends Billions to Prop Up Assad*, BLOOMBERG VIEW (June 9, 2015), http://www.bloombergview.com/articles/2015-06-09/iran-spends-billions-to-prop-up-assad (assessing the costs of Iran's operations in Syria). While countering Wahhabi terrorism is unquestionably less important to Iran than retaining their geostrategic influence in Syria, the ultimate result is still an alignment of US and Iranian interests.

911. *See* MEARSHEIMER & WALT, *supra* note 26, at 63 ("We may believe that all terrorist acts are morally wrong, but from the perspective of U.S. strategic interests, not all terrorists are alike."); Thomas F. Lynch III, S*unni and Shi'a Terrorism: Differences that Matter*, COMBATING TERRORISM CTR. (Dec. 29, 2008), http://www.brookings.edu/research/papers/2008/12/29-terrorism-lynch (juxtaposing trends within Sunni and Shi'a terrorism).

912. *See supra* notes 891-911.

913. At least on a rhetorical level, Iran has offered to stop supporting these groups in the past. *See* MEARSHEIMER & WALT, *supra* note 26, at 303; David Coghlan, *Timing Iran: Broaching the U.S.-Iran Divide Would Have Been Easier Ten Years Ago*, GEO. J. INT'L AFF. (Nov. 20, 2013) (noting Khatami's offers to cease terrorist funding in exchange for US concessions).

914. However such a development would only apply to US terrorism-based sanctions, and not sanctions pertaining to human rights, ballistic missiles proliferation, and so on. *See supra* notes 196-99 and accompanying text.

4. Protecting Traditional US Allies: Saudi Arabia & Israel

Overlapping with the United States' counterterrorism interests, perhaps the most sensitive criticisms of the JCPOA have concerned what the deal means for the United States' traditional Middle East allies.[915] Any massive flow of US capital to Iran would likely amplify such criticisms.[916] Even when sanctioning Iran had run contrary to the United States' direct interests, Washington's ties with Israel and the Sunni Gulf States (most notably Saudi Arabia) were perceived to have merited a continuation of the sanctions regime.[917] Considering the intractable divisions between these two camps, it is unsurprising that Washington's Middle East policies have at times been incoherent.[918] This, ironically, has helped fuel the rise of Iran, especially since the US removal of Saddam Hussein's Ba'ath Party from Iraq in 2003.[919] Both Israel and Saudi Arabia do have legitimate reasons to be concerned about Iran's rise to Middle East dominance: Iran boasts the most sizeable armed forces of any State in the region, and its geostrategic location provides many natural military advantages.[920] Furthermore, for the Gulf States especially, Iran's ability to foster cross-border alliances with sizable pockets of Shi'a believers is a

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915. *See, e.g.,* Teresa Welsh, *Iran Nuclear Deal Makes Middle East Allies Nervous*, U.S. NEWS & WORLD REPORT (Jul. 14, 2015), http://www.usnews.com/news/articles/2015/07/14/iran-nuclear-deal-makes-middle-east-allies-nervous; Sam Dagher, *Iran Deal Worries Mideast Neighbors,* WALL STREET J., July 15, 2015, http://www.wsj.com/articles/iran-deal-worries-mideast-neighbors-1436900286.

916. *Cf. supra* note 915 and accompanying text (citing the uneasiness of traditional US allies with the JCPOA, which would likely intensify in any future improvement of US-Iran relations).

917. *See* Bhala, *supra* note 27, at 255; MEARSHEIMER & WALT, *supra* note 26, at 282 (arguing that foreign interests propelled the US sanctions regime, even when it ran contrary to US interests).

918. *See* MEARSHEIMER & WALT, *supra* note 26, at 299; Gideon Rachman, *America's Middle East Alliances are Cracking*, FIN. TIMES (Aug. 26, 2013), https://next.ft.com/content/5f907980-0a8b-11e3-aeab-00144feabdc0 (noting the often problematic incoherencies of Washington's alliances with both Israel and Saudi Arabia).

919. *See* Molavi, *supra* note 149, at 161 (citing Saudi disapproval for US policies that have empowered Iran); Conor Friedersdorf, *How Foreign-Policy Hawks Empowered Iran*, ATLANTIC (Jan. 14, 2015), http://www.theatlantic.com/international/archive/2015/01/how-foreign-policy-hawks-empowered-iran/384500/ (demonstrating how the US invasion of Iraq in 2003 strengthened Iran).

920. *See* Wright, *The Challenge of Iran*, *supra* note 353, at 6; Ben Piven, *Iran and Israel: Comparing military machines*, AL JAZEERA (Apr. 24, 2012), http://www.aljazeera.com/indepth/features/2012/03/2012326131343853636.html (assessing Iran's military strengths).

notable cause for concern.[921] However, allowing Washington's allies to dictate the official US position on Iran over the past four decades has undercut the United States' own foreign policy interests.[922] The problem is that Washington's one-sided approach to the region has prevented the establishment of any sustainable semblance of a regional balance of power.[923] At the same time, this blind devotion to Washington's regional allies has tied the United States' hands and kept Washington from playing regional powers against one-another, at times when it would have been in the United States' best interests to do so.[924]

a. Ensuring the Interests of Saudi Arabia

The United States' ties with Saudi Arabia extend back to the Kingdom's first oil concession granted to Standard Oil of California in the spring of 1933.[925] Today, however, Saudi Arabia's relationship with Iran has managed to destabilize much of the entire Middle East region, which has caused serious problems for the United States' interests there.[926] From Iraq and Syria to Yemen, many of the region's most fever-pitched conflicts are commonly cited as proxy wars between Iran and Saudi Arabia.[927] Overall, these Saudi-Iranian tensions are often described exclusively in religious terminology, even to the extent that today's Middle East is habitually compared to Europe's seventeenth century Catholic-Protestant Thirty Years'

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921. *See* Molavi, *supra* note 149, at 161; *The Shia Crescendo*, ECONOMIST, Mar. 28, 2015, http://www.economist.com/news/middle-east-and-africa/21647367-shia-militias-are-proliferating-middle-east-shia-crescendo (noting the sectarian reach of Iran and Gulf fears of a rising Shia Crescent).

922. *See infra* notes 923-24 and accompanying text.

923. *See* Walt, *Accentuate the Positive*, *supra* note 117 (calling for Washington to use the Iran Deal as a means of establishing a more sustainable balance of power in the Middle East); Mohsen M. Milani, *Iranian Politics After the Deal: Why it is Time for Optimism*, FOREIGN AFF. (July 15, 2015), https://www.foreignaffairs.com/articles/iran/2015-07-15/iranian-politics-after-deal (proposing a more balanced US approach toward Saudi Arabia).

924. *See supra* note 923 and accompanying text.

925. *See* LACEY, *supra* note 906, at 68; Newsteam Staff, *CFR Backgrounders: U.S.-Saudi Relations*, COUNCIL ON FOREIGN RELATIONS (Oct. 1, 2015), http://www.cfr.org/saudi-arabia/us-saudi-relations/p36524 (documenting the origin of US-Saudi relations).

926. *See supra* notes 369-72 (discussing today's regionally destabilizing Saudi-Iranian rivalry).

927. Molavi, *supra* note 149, at 161; Takeyh, *Time for Détente With Iran*, *supra* note 357 (articulating upon Iran's ongoing proxy war with Saudi Arabia).

War.[928] However, such an analysis ignores the fact that, during Iran's Reform Era, the Islamic Republic and the House of Saud were perfectly capable of dealing amicably toward one another.[929] In fact, despite religious tensions that might have existed at the time, President Rafsanjani viewed Iran's Sunni Gulf neighbors as a lucrative economic and investment opportunity, and an important destination for Iranian investing capital.[930] To this day, the Sunni Emirate of Dubai remains an important offshore Iranian commercial hub, and as a general matter, analysts and policymakers should not forget that Sunnis and Shi'ites managed to live in relative peace for entire centuries of Ottoman rule, and throughout most of the region's history.[931]

In reality, much of the Saudi-Iranian conflict today stems from the regionally destabilizing US invasion of Iraq in 2003, and the divergent oil policies between Iran and Saudi Arabia.[932] While US sanctions targeting Iran's petroleum sector had disincentivized any harmonization of oil policies between these two rivals, today, the recognition that regional tensions require urgent mitigation could infer a US need to get tough on its Saudi ally, encouraging it to

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928. *See* Richard N. Haass, *The New Thirty Years' War*, COUNCIL ON FOREIGN RELATIONS (July 21, 2014), http://www.cfr.org/middle-east-and-north-africa/new-thirty-years-war/p33267; Sarwar Kashmeri, *Leave the Middle East Be*, U.S. NEWS & WORLD REPORT (Apr. 24, 2015), http://www.nytimes.com/2015/10/30/world/middleeast/syria-saudi-arabia-iran-peace-talks.html?_r=0 (comparing today's Middle East to the Thirty Years' War).

929. *See* Molavi, *supra* note 149, at 159; Kim Ghattas, *The Blood Feud That Drives the Middle East*, FOREIGN POL'Y (Nov. 13, 2015), http://foreignpolicy.com/2015/11/13/the-blood-feud-that-drives-the-middle-east-saudi-arabia-iran/ (noting past cooperation between Saudi Arabia and Iran, particularly between Desert Storm and the US invasion of Iraq in 2003).

930. *See* Molavi, *supra* note 149, at 160 (considering Rafsanjani's approach to Saudi Arabia); *cf.* Abdulrahman al-Rashed, *Rafsanjani and his Views on Cooperation with Saudi Arabia*, AL ARABIYA NEWS (May 3, 2014), http://english.alarabiya.net/en/views/news/middle-east/2014/05/03/Rafsanjani-and-his-views-on-cooperation-with-Saudi-Arabia.html (observing Rafsanjani's more recent calls for Iranian cooperation with Saudi Arabia).

931. *See* Molavi, *supra* note 149, at 161; Karim Sadjadpour, *The Battle of Dubai: The United Arab Emirates and the U.S.-Iran Cold War*, CARNEGIE ENDOWMENT INT'L PEACE (July 2011), http://carnegieendowment.org/files/dubai_iran.pdf at 21-22 (pointing out Iran's commercial ties with Dubai); *see also* Shireen Hunter, *Sunni-Shia Tensions are More About Politics, Power and Privilege than Theology*, GEORGETOWN U. SCH. OF FOREIGN SERV., https://acmcu.georgetown.edu/sunni-shia-tensions (last visited July 11, 2016); Murtaza Hussain, *The Myth of the 1,400 Year Sunni-Shia War*, AL JAZEERA (July 9, 2013), http://www.aljazeera.com/indepth/opinion/2013/07/2013719220768151.html (recognizing the role of contemporary politics in today's Sunni-Shia tensions).

932. *See* Molavi, *supra* note 149, at 161; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 385, 479 (exploring the origins of today's Saudi-Iranian hostility).

negotiate toward more reasonable oil politics.[933] Such harmonized oil policies could represent a first step toward broader, perhaps even US-brokered, Saudi-Iranian cooperation.[934] Although controversial, numerous commentators have noted that today, Iran likely represents a more strategic ally than Washington's traditional Gulf partners.[935] This very perception has likely contributed to Saudi Arabia's complete refusal to cooperate with Tehran on regional issues.[936] However, as the recent upswing of terrorist attacks inside Saudi Arabia might imply, such a strategy is likely undermining the Kingdom's own national security interests, whether they realize it or not.[937]

On this last point, a word should be noted on the Saudi relationship with Wahhabi extremism.[938] The blunt truth is that Islamic terrorism, as the world has come to experience it, would not exist today without the unique role Saudi Arabia has played.[939] The

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933. *See* Milani, *Iran and Saudi Arabia Square Off*, *supra* note 371; Madawi Al-Rasheed, *Tough Choices Ahead for US-Saudi Relationship*, AL-MONITOR (Feb. 2, 2015), http://www.al-monitor.com/pulse/originals/2015/02/abdullah-us-saudi-relations.html# (inferring a shift in US-Saudi relations).

934. In fact, falling oil prices in early 2016 have already forced some degree of limited compromise. *See* Ian Black & Terry Macalister, *Plunging Oil Price Brings Saudi Arabia and Iran Together In Alliance Of Enemies*, GUARDIAN (Feb. 20, 2016), http://www.theguardian.com/business/2016/feb/20/oil-price-plunging-saudi-arabia-iran-alliance-enemies; Summer Said & Benoit Faucon, *Saudi Arabia, Russia, Qatar, Venezuela Agree to Freeze Oil Output,* WALL STREET J., Feb. 16, 2016, http://www.wsj.com/articles/saudi-russia-qatar-venezuela-agree-to-freeze-oil-output-at-januarys-levels-1455615900.

935. *See, e.g.*, Milani, *Iranian Politics After the Deal*, *supra* note 923; Michael Axworthy, *Is it Time to Make Iran our Friend and Saudi Arabia our Enemy?*, GUARDIAN (Jan. 28, 2015), http://www.theguardian.com/commentisfree/2015/jan/28/iran-saudi-arabia-middle-east-stability-peace (declaring Iran to be a more strategic ally to the United States than Saudi Arabia).

936. Jennifer Williams, *Why Saudi Leaders Keep Making Bad Decisions: They're Scared*, VOX (Jan. 7, 2016), http://www.vox.com/2016/1/7/10725896/saudi-insecurity-iran; Kenneth Pollack, *Fear and Loathing in Saudi Arabia*, FOREIGN POL'Y (Jan. 7, 2016), http://foreignpolicy.com/2016/01/07/fear-and-loathing-in-saudi-arabia/.

937. *See* The Associated Press, *Timeline: Al-Qaeda and ISIS Attacks in Saudi Arabia*, AL ARABIYA NEWS (Aug. 6, 2015), http://english.alarabiya.net/en/News/middle-east/2015/11/30/Iraq-tells-civilians-of-ISIS-held-Ramadi-to-leave.html; Lizzie Dearden, *Isis Takes Aim at Saudi Arabia with Series of Gory Propaganda Videos in Revenge for New 'Islamic Alliance'*, INDEPENDENT (Dec. 18, 2015), http://www.independent.co.uk/news/world/middle-east/isis-takes-aim-at-saudi-arabia-with-series-of-gory-propaganda-videos-in-revenge-for-new-islamic-a6778876.html (addressing the intensification of Sunni terrorism against Saudi Arabia); *see also* Milani, *Iranian Politics After the Deal*, *supra* note 923 ("Such a tactical [US-Iran] cooperation should worry moderate Sunnis far less than ISIS does.)

938. *See infra* notes 939-44 and accompanying text.

939. *See supra* note 906 (summarizing the origins of Wahhabi extremism).

eighteenth-century alliance between Abdul Wahhab and Ibn Saud remains at the heart of the Kingdom today, and even as the United States' closest Arab ally, the House of Saud still perceives it in the national interest to cultivate radical Wahhabism and export its teachings into neighboring territories.[940] In addition to spreading these extremist doctrines, various swaths of Saudi society continue to provide clerical and financial support to Wahhabist militant movements.[941] Despite its close relations with Washington, Saudi Arabia has yet to meaningfully address this concern.[942] Worse, Saudi Arabia has demonstrated it has little control over such movements once they develop and metastasize, often turning against their own patrons and seeking to liberate the Hedjaz from the Kingdom's wealthy, pro-United States monarchy.[943] Such passive tolerance of Wahhabi extremism is surprising, until one considers Saudi Arabia's own perception of its relationship with Washington over past decades: that "as long as the United States remained dependent on imported oil and was antagonistic toward Iran, Riyadh could count on Washington's unconditional support to pursue its regional ambitions."[944]

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940. *See* LACEY, *supra* note 906, at 11; Alastair Crooke, *You Can't Understand ISIS If You Don't Know the History of Wahhabism in Saudi Arabia*, WORLD POST (Oct. 27, 2014), http://www.huffingtonpost.com/alastair-crooke/isis-wahhabism-saudi-arabia_b_5717157.html (explaining Saudi Arabia's ties to Wahhabism); *see also* BUTT, *supra* note 906; Owen Jones, *To Really Combat Terror, End Support for Saudi Arabia*, GUARDIAN (Aug. 31, 2014), http://www.theguardian.com/commentisfree/2014/aug/31/combat-terror-end-support-saudi-arabia-dictatorships-fundamentalism (emphasizing the role of Saudi Arabia in the proliferation of Wahhabism).

941. *See* Milani, *Iranian Politics After the Deal*, *supra* note 923; BUTT, *supra* note 906 (noting the role of Saudi private channels in materially supporting groups like ISIS).

942. *See* Telegram from Secretary of State Hillary Clinton to Kuwait Department of Treasury et al., Terrorist Finance: Action Request for Senior Level Engagement (Dec. 30, 20019, 13:28), *in* Public Library of US Diplomacy, WIKILEAKS, https://wikileaks.org/plusd/cables/09STATE131801_a.html (last visited Apr. 17, 2016) ("While the Kingdom of Saudi Arabia (KSA) takes seriously the threat of terrorism within Saudi Arabia, it has been an ongoing challenge to persuade Saudi officials to treat terrorist financing emanating from Saudi Arabia as a strategic priority. . . . donors in Saudi Arabia constitute the most significant source of funding to Sunni terrorist groups worldwide."); *Wikileaks: Saudis 'Chief Funders of Sunni Militants'*, BBC NEWS (Dec. 5, 2010), http://www.bbc.com/news/world-middle-east-11923176.

943. *See* Steven Stalinsky, *Muslim Reformers Condemn Saudi Wahhabism*, NATIONAL REV. (June 28, 2004), http://www.nationalreview.com/article/211297/speaking-out-steven-stalinsky (illustrating Saudi Arabia's lack of control over sponsored Wahhabi movements); *cf. supra* note 739 and accompanying text (examining the upswing of Wahhabi terrorism against Saudi Arabia).

944. Milani, *Iranian Politics After the Deal*, *supra* note 923.

The Saudi carte blanche has existed for too long now in Washington.[945] Saudi Arabia should be held accountable for its regional conduct, in the same way that a revised US relation with Iran would still hold Tehran accountable for its actions.[946] By taking a more evenhanded approach to the region, Washington could seek to influence more sensible and cooperative regional politics, that take seriously the interests and concerns of all parties involved.[947] Furthermore, if US passivity toward Saudi misconduct is in fact a result of the United States' reliance on Saudi oil, then engagement and increased international investment with OPEC's second-largest producer might prove a sensible "stick" to shore up Riyadh's behavior.[948] Again, by more evenly balancing US interaction with regional power bases, Washington can play powers upon each other to further US policy interests.[949] In fact, such a shift might already be naturally evident.[950] US imports from Saudi Arabia have fallen a shocking sixty-six percent in the period from 1973 to 2014, and other rifts in the US-Saudi relationship are equally manifest.[951] While Washington should remain cautious not to needlessly alienate the

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945. *See supra* notes 933-44 and accompanying text.

946. On the contrary, current US cooperation with Saudi Arabia in Yemen demonstrates just how one-sided the relationship has become. Joint US-Saudi Arabian efforts to combat Iranian-backed Houthi Rebels have resulted in much of Yemen now being effectively controlled by Al Qaeda. *See* Nancy A. Youssef, *The U.S.-Backed War in Yemen Is Strengthening al Qaeda*, THE DAILY BEAST (Aug. 25, 2015), http://www.thedailybeast.com/articles/2015/08/25/the-u-s-backed-war-in-yemen-is-strengthening-al-qaeda.html; *Yemen's Al-Qaeda Branch now in Control of Several Aden Neighborhoods,* MIDDLE EAST EYE (Oct. 22, 2015), http://www.middleeasteye.net/news/yemens-al-qaeda-branch-now-control-several-aden-neighbourhoods-1633114488.

947. *See supra* notes 923-24.

948. *Compare* Matt Schiavenza, *Why the U.S. Is Stuck With Saudi Arabia,* ATLANTIC (Jan. 24, 2015), *http*://www.theatlantic.com/international/archive/2015/01/why-the-us-is-stuck-with-saudi-arabia/384805/, *with supra* notes 466-89.

949. *See* Walt, *Accentuate the Positive*, *supra* note 117; Milani, *Iranian Politics After the Deal*, *supra* note 923 (suggesting the beneficial prospects of a more even-handed US Middle East policy).

950. *See infra* note 951 and accompanying text.

951. *See* McGrath Goodman, *supra* note 330, at 15; Herman Franssen, *Obama and Declining U.S. Dependence on Imported Oil and Gas*, MIDDLE E. INST. (Nov. 25, 2014), http://www.mei.edu/content/article/obama-and-declining-us-dependence-imported-oil-and-gas (noting the decline of Saudi imports to the United States). That said, this trend is primarily driven by the rise in US domestic energy production, which has offset the need for Saudi oil. *See id.* For other US-Saudi tensions, *see* LACEY, *supra* note 906, at 292-302.

Kingdom and other Gulf allies, the US should at least reassess Saudi Arabia's input in guiding Washington's Iran policies.[952]

b. Ensuring the Interests of Israel

A more difficult challenge of US engagement with Iran concerns Washington's "special relationship" with the State of Israel.[953] Since the mid-Cold War, Israel has undoubtedly played the role of the United States' closest ally in the Middle East, and the ties between Washington and the Jewish State have proven resilient.[954] In fact, perhaps the largest rift the special relationship has ever encountered was the controversy surrounding the JCPOA itself, which placed President Obama and Prime Minister Netanyahu in a rare position of public contest.[955] Although both the US legislature and the executive branch were always careful to pay homage to the special relationship, the fact that the JCPOA was adopted at all atop Israel's protests is a marked deviation from Washington's standard operating procedure in the region.[956] To turn now and liberalize US investment in Iran would certainly be controversial.[957]

Many factors however suggest that it is actually in Israel's long-term interests for the United States to sensibly engage with Iran.[958] Nuclear weapons or not, Iran boasts a population of approximately

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952. *See supra* notes 925-51 and accompanying text (providing reasons to reassess the US-Saudi relationship).

953. *See generally* Douglas Little, *The Making of a Special Relationship: The United States and Israel,* 25 INT'L J. OF MIDDLE E. STUD. 563 (Nov. 1993); Mitchell G. Bard & Daniel Piples, *How Special Is the U.S.-Israel Relationship?*, 4 MIDDLE E. Q. 41 (1997) (overviewing the US-Israel special relationship).

954. *See generally* MEARSHEIMER & WALT, *supra* note 26; Daniel Feith, *The Costs of U.S. Aid to Israel*, HARVARD ISRAEL REV. (2006), http://www.hcs.harvard.edu/~hireview/content.php?type=article&issue=spring04/&name=feith.

955. Roberts and Siddiqui, *Does Obama's Iran deal Victory Mark Turning Point in US-Israel Relations?,* GUARDIAN (Sept. 3, 2015), http://www.theguardian.com/us-news/2015/sep/03/obama-iran-deal-victory-turning-point-us-israel-relations; Adam Entous, *Spy vs. Spy: Inside the Fraying U.S.-Israel Ties,* WALL STREET J., Oct. 22, 2015, *http*://www.wsj.com/articles/spy-vs-spy-inside-the-fraying-u-s-israel-ties-1445562074.

956. Teresa Welsh, *Obama: Iran Deal Won't Break Bond between U.S. and Israel,* U.S. NEWS AND WORLD REPORT (Aug. 28, 2015), http://www.usnews.com/news/articles/2015/08/28/obama-iran-deal-wont-break-bond-between-us-and-israel; Jessica Schulberg, *In Last-Ditch Ploy, Mitch McConnell Ties Iran Deal To Recognition of Israel,* HUFFINGTON POST (Sept. 16, 2015), http://www.huffingtonpost.com/entry/senate-iran-nuclear-deal-vote_us_55f88337e4b0d6492d6350b4. *See generally* MEARSHEIMER & WALT, *supra* note 26.

957. *Cf. supra* notes 954-57 and accompanying text (considering the controversy that the JCPOA caused between the United States and Israel).

958. *See infra* notes 959-87 and accompanying text.

seventy-eight million, and recent reports from Israel's own intelligence community suggest that the Islamic Republic is rapidly closing in on Israel's levels of military technology.[959] While Israel has consistently blocked US efforts at détente with Iran in the past, it might be time for the Jewish State to seriously consider the upsides of easing tensions with the Islamic Republic.[960] In fact, Israel would accrue many benefits from a US engagement policy toward Iran.[961] As discussed above, Iran's influence over various terrorist movements along Israel's borders could prove a sensible means of (privately, if not publically) securing enhanced security for the State of Israel, effectively reigning in the conduct of these groups to resemble something closer to Palestinian/Lebanese political parties, as opposed to openly militarist movements.[962] Likewise, having the Iranians on board any future Israeli-Palestinian peace deal would be a sensible way of avoiding Israel's past experiences that partially yielded the attrition of the Oslo Accords.[963] If Israel's own voice carries little weight in the political corridors of Tehran, the increased weight of Washington's voice there could help secure Israel's interests.[964]

Furthermore, as in the case of Saudi Arabia, the special relationship between Israel and the United States has itself occasionally undermined US foreign policy interests.[965] Foremost, it is unsurprising that sixty years of Washington's pro-Israel policies have resulted in problematic anti-US sentiments, shared by both regional regimes and regional population bases.[966] This has not only

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959. *See Iran Overview*, *supra* note 449; Maloney, *The Revolutionary Economy*, *supra* note 12, at 95 (estimating Iran's population); *see also* Barak Ravid, *Iran Closing Technology Gap with Israel, Military Intelligence Chief Warns,* HAARETZ (Nov. 1, 2015), http://www.haaretz.com/israel-news/.premium-1.683442 (citing concerns within Israeli intelligence regarding the rapid technological advancement of Iran's military).

960. *See* MEARSHEIMER & WALT, *supra* note 26, at 8; Trita Parsi, *Can Washington Separate Its Iran Policy From Israel?*, NAT'L INTEREST (Dec. 2, 2015), http://nationalinterest.org/feature/can-washington-separate-its-iran-policy-israel-14485 (exploring Israel's historic role in US Iran policy).

961. *See infra* notes 962-87 and accompanying text.

962. *See supra* notes 892-99 and accompanying text (addressing Iran's support for Palestinian/Lebanese terrorist movements).

963. *See supra* notes 903-04 and accompanying text (considering the importance of Iran to the Israeli-Palestinian peace process).

964. *See supra* notes 959-63 and accompanying text.

965. *See infra* notes 965-87 and accompanying text.

966. *See generally* Lenore G. Martin, *Assessing the Impact of U.S.-Israeli Relations on the Arab World*, STRATEGIC STUD. INST. (2003), http://www.globalsecurity.org/military/library/report/2003/ssi_martin.pdf; MEARSHEIMER & WALT, *supra* note 26, at 64 (exploring the impact of US-Israeli relations on other Middle East stakeholders); *see also The Posture of*

undermined US security cooperation with local governments, but has also placed the United States in the direct crosshairs of Sunni-Arab terrorist organizations.[967] Groups like Al Qaeda and ISIS strategically use the special relationship as a powerful means of recruiting supporters and combatants to their causes.[968] Public rhetoric aside, while the plight of the Palestinians has been largely forgotten by the region's Arab governments, this injustice remains emotionally potent among regional populations and Islamic communities across the world.[969] If the United States is serious about eroding support for these terrorist movements, then, at least in the long-term, some semblance of a more nuanced Israel policy is certainly in order.[970] In the case of Iran specifically, the issue of Palestine has proved a consistent means for the Islamic Republic to undermine US interests in the region.[971] Throughout the sanctions regime, mass domestic

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U.S. Central Command: Hearing Before the S. Armed Services Comm., 111th Cong. (2010) (statement of General David H. Petraeus, U.S. Army Commander of U.S. Central Command) [hereinafter Petraeus] ("The enduring hostilities between Israel and some of its neighbors present distinct challenges to our ability to advance our interests in [CENTCOM's Area-of-Responsibility ("AOR")]. Israeli-Palestinian tensions often flare into violence and large-scale armed confrontations. The conflict foments anti-American sentiment, due to a perception of U.S. favoritism for Israel. Arab anger over the Palestinian question limits the strength and depth of U.S. partnerships with governments and peoples in the AOR and weakens the legitimacy of moderate regimes in the Arab world. Meanwhile, al-Qaeda and other militant groups exploit that anger to mobilize support. The conflict also gives Iran influence in the Arab world through its clients, Lebanese Hizballah and Hamas.").

967. *See supra* note 966.

968. *See* Petraeus, *supra* note 966; MEARSHEIMER & WALT, *supra* note 26, at 64; Samar Batrawi, *What ISIS Talks About When It Talks About Palestine*, FOREIGN AFF. (Oct. 28, 2015), https://www.foreignaffairs.com/articles/israel/2015-10-28/what-isis-talks-about-when-it-talks-about-palestine (identifying the opportunistic power of Israel's ongoing occupation for purposes of terrorist recruitment).

969. *See* Ziad Abu-Amr, *The Significance of Jerusalem: A Muslim Perspective*, 2 PALESTINE-ISRAEL J. (1995), http://www.pij.org/details.php?id=646; Frank Newport, *Gallup Poll of the Islamic World*, GALLUP (Feb. 26, 2002), http://www.gallup.com/poll/5380/gallup-poll-islamic-world.aspx (reporting on widely held Islamic conceptions of the Israeli-Palestinian conflict).

970. *See* MEARSHEIMER & WALT, *supra* note 26, at 60-61; *U.S. General: Israel-Palestinian Conflict Foments anti-U.S. Sentiment*, HAARETZ (March 17, 2010), http://www.haaretz.com/news/u-s-general-israel-palestinian-conflict-foments-anti-u-s-sentiment-1.264910.

971. *See* Majid Rafizadeh, *Does Iran Genuinely Support Hamas and the Palestinians?*, AL ARABIYA NEWS (July 25, 2014), http://english.alarabiya.net/en/views/news/middle-east/2014/07/25/Does-the-Islamic-Republic-genuinely-support-Hamas-for-the-Palestinian-cause-.html; F. Gregory Gause III, *The Return of the Old Middle East: How to Win at Balance-of-Power Politics*, FOREIGN AFF. (Mar. 12, 2009), https://www.foreignaffairs.com/articles/middle-east/2009-03-12/return-old-middle-east (exploring Iran's logic for supporting Palestinian terrorist organizations).

opinion on Palestine also checked Arab governments from ever forming a meaningful alliance or synchronized effort against the rise of their Iranian rival.[972] As long as Iran was popularly perceived as the only regional power looking out for oppressed Palestinians, Arab governments risked alienating their own populations in raising too much noise about Iran's troubling conduct.[973]

Beyond the Palestinian issue, Israel's past actions have revealed other large rifts in the overlap between Israeli and US regional policy interests.[974] The Knesset's encouragement for the removal of Saddam Hussein from Iraq in 2003 helped contribute to one of the largest US strategic blunders of the past century, and many credible policymakers see the JCPOA as the only thing currently standing between a repeat of history and the same mistakes being made in regards to Iran.[975] Furthermore, from the 1954 "Lavon Affair" to more recent unauthorized military technology transfers to US adversaries like China, the State of Israel has often demonstrated little regard for Washington's policy interests when conducting its own affairs.[976] This, of course, is perfectly reasonable. In a global system of sovereign and equal nations, there is nothing surprising nor reprehensible in a nation-State's pursuit of its own foreign policy

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972. MEARSHEIMER & WALT, *supra* note 26, at 283 (arguing that Iran's support for Palestinians has undermined the ability of Arab states to meaningfully stand up to Iran); *cf.* Rafizadeh, *supra* note 971 (quoting an Iranian newspaper that writes, "The Islamic Republic of Iran is the only country in which a consensus on the Palestinian issue exists between the regime and its people.").

973. *See supra* note 972 and accompanying text; *see also* Kareem Fahim, *Palestinians Find Show of Support Lacking From Arab Leaders Amid Offensive*, N.Y. Times, July 19, 2014, http://www.nytimes.com/2014/07/20/world/middleeast/palestinians-find-show-of-support-lacking-from-arab-nations-amid-offensive.html?_r=0. Theoretically, this was likely amplified after the Arab Spring, precisely at the peak of the sanctions regime. *See supra* Part I.B (tracing the gradual development of the sanctions regime).

974. *See infra* notes 975-87 and accompanying text.

975. *See* MEARSHEIMER & WALT, *supra* note 26, at 229-62; *Israel's Intelligence Failure & The Iraq War,* CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Dec. 11, 2003), http://carnegieendowment.org/2003/12/11/israel-s-intelligence-failure-iraq-war; Suzanne Nossel, *This Is What Will Happen if Congress Blows Up the Iran Nuclear Deal,* FOREIGN POL'Y (July 30, 2015), http://foreignpolicy.com/2015/07/30/congress-iran-nuclear-deal-obama-veto-kerry-mccain/; Trita Parsi, *Iran talks: Do we want a deal or a war?* CNN (Nov. 6, 2013), http://www.cnn.com/2013/11/06/opinion/parsi-iran-talks/.

976. *See* MEARSHEIMER & WALT, *supra* note 26, at 75-76; Scott McConnell, *The Special Relationship with Israel: Is It Worth the Costs?*, 17 MIDDLE E. POL'Y 67 (2010) (considering often overlooked periods of self-interest within the US-Israeli special relationship).

interests at the expense of the interests of others.[977] But in the case of Israel and the United States, nothing prevents this logic from being equally applied in the opposite direction.[978] From a normative standpoint, protests from the Knesset are hardly a reason for the United States to abandon the foreign policy opportunities posed by engaging Iran.[979]

All of the above has led some US policymakers, and even notable Israeli policymakers, to question whether the State of Israel has transformed from a strategic asset of the United States to a strategic liability.[980] However one answers this question, it is unlikely that, at least in the short-term, Washington will cease to perceive of itself as strategically and even morally committed to the defense of the Jewish State.[981] In regards to Iran, there are certainly red flags to consider.[982] President Ahmadinejad's bombastic threats against Israel, along with his revolting displays of Holocaust denial, lend considerable credibility to Israel's concern over the rise of Iran.[983] However, the entire purpose of a US-Iran engagement strategy would be to prevent figures like Ahmadinejad from taking the helm of the Islamic Republic.[984] Whereas isolation and the economy of resistance

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977. Robert "Robin" H. Dorff, *Some Basic Concepts and Approaches in the Study of International Relations*, AIR U. (2004), http://www.au.af.mil/au/awc/awcgate/army-usawc/strategy2004/01dorff.pdf; Rajesh Sampath, *The Idea of the Nation-State as an Obstacle to the Right to Global Development*, 3 IAFOR J. OF ARTS AND HUMAN. 17 (2015), http://iafor.org/wp-content/uploads/2015/10/3-The-Idea-of-the-Nation-State-as-an-Obstacle-to-the-Right-to-Global-Development-.pdf.

978. Sampath, *supra* note 977.

979. *See supra* note 977.

980. *See* MEARSHEIMER & WALT, *supra* note 26, at 5; Petraeus, *supra* note 966; Jonathan Lis, *Mossad Chief: Israel Gradually Becoming Burden on U.S.*, HAARETZ (Jan. 6, 2010), http://www.haaretz.com/israel-news/mossad-chief-israel-gradually-becoming-burden-on-u-s-1.293540 (questioning Israel's strategic value to the United States).

981. Michal Lando, *Kissinger: US Public still committed to* Israel, JERUSALEM POST (Mar. 30, 2008), http://www.jpost.com/International/Kissinger-US-public-still-committed-to-Israel; Kristina Wong, *Pentagon chief says the US commitment to Israel is 'ironclad'*, THE HILL (July 29, 2015), http://thehill.com/policy/defense/249600-pentagon-chief-says-us-remains-committed-to-israel-amid-iran-deal; Amos Harel, *When It Comes to Obama and Israel, Military Aid Is One Thing, Disagreements Are Another,* HAARETZ (Nov. 10, 2015), http://www.haaretz.com/israel-news/.premium-1.685135.

982. *See infra* note 983 and accompanying text.

983. *See* Bakhash, *supra* note 98, at 19; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 325-26 (recalling Ahmadinejad's routine anti-Semitism).

984. *See infra* notes 985-87 and accompanying text. While the Islamic Republic is structured so that the Supreme Leader ultimately has control over the President, the results of Iran's February 2016 elections bode well for engagement's ability to empower moderates

have historically resulted in populist and nationalist rallying behind Iranian hardliners, an investment-focused US engagement strategy would provide a powerful way of assembling incentives to empower Iranian moderates, much more open to a manageable, if indirect, relationship with Israel.[985] While one might question the authenticity of their underlying sentiment, the "Happy Rosh Hashanah" messages emanating out of President Rouhani's Twitter account certainly stand in stark contrast to the lambasts of his immediate predecessor.[986] If increased US investment in Iran has the ability of propagating these sentiments, then whether it is appreciated or not, Israel stands to benefit from US-Iran engagement initiatives.[987]

5. International Cooperation & Collective Security Across Today's Middle East Conflicts

Increased engagement with Iran would also likely have a dramatic impact on wider US security interests. Considering the Islamic Republic's reach in the region, as well as the Middle East's current prevalence of sectarian crises, many US policymakers have noted the need to enhance US-Iranian concerted security measures, even declaring that "cooperation has never been more important."[988] In fact, President Obama himself has echoed these sentiments.[989] Whether one likes it or not, Iran's influence makes it an "indispensible partner" in stabilizing Iraq.[990] Likewise, the Iranians and the United States are natural partners in stabilizing Afghanistan

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within all levels of government and throughout wider society. *See supra* note 600 and accompanying text.

985. *See supra* notes 352-64 (discussing how sanctions empowered Iran's hardliners); *see also supra* note 600 and accompanying text (recalling widespread moderate gains in Iran's February 2016 elections).

986. *See* Tanya Basu, *Iran's President Wishes Jews a Happy Rosh Hashana*, TIME, Sept. 13, 2015, http://time.com/4032762/iran-tweet-rosh-hashana/; Eliza Collins, *Iranian president tweets Rosh Hashanah greeting*, POLITICO (Sept. 14, 2015), http://www.politico.com/story/2015/09/iran-president-hassan-rouhani-tweet-jews-new-year-213603 (reporting on the Rouhani Rosh Hashanah tweet).

987. Bernard Avishai, *How the Nuclear Deal Can Benefit Both Iran and Israel*, HAARETZ (Sept. 28, 2015), http://www.haaretz.com/opinion/.premium-1.677786; Ron Ben-Yishai, *Benefits of US-Iran Reconciliation*, YNET NEWS (Oct. 25, 2013), http://www.ynetnews.com/articles/0,7340,L-4445381,00.html.

988. Geranmayeh, *Europe's Edge*, *supra* note 759.

989. *See id.*; Jessica Schulberg, *Obama: No End To War In Syria Without 'Buy-In' From Iran*, HUFFINGTON POST (July 15, 2015), http://www.huffingtonpost.com/2015/07/15/obama-iran-deal_n_7802768.html (highlighting Obama's realism concerning Iran).

990. Takeyh, *Time for Détente With Iran*, *supra* note 357.

and stemming narcotics trafficking throughout Central Asia.[991] Further arenas of cooperation could involve bringing an end to the Syrian Civil War, sorting out a compromise between warring factions in Yemen, and, as discussed above, combatting extremism and terrorism throughout the whole region.[992]

Given the particular brutality of the current conflict in Syria, Iran's interests there merit highlighted attention. As Iran's only recognized Arab ally and an important geostrategic corridor to the Levant and Mediterranean Sea, Syria is crucially important to Iran.[993] The Islamic Republic has a direct interest in retaining its influence in Damascus, and the Alawi offshoot of Shi'ism practiced by Syrian President Bashar al-Assad and much of the Syrian government provides further impetus for Iran's pro-regime strategies there.[994] Although Washington's demands for al-Assad to step down have fluctuated, Iranian influence could prove vital in negotiating his eventual exit, while retaining the cooperation of powerful Alawi elites in Syria's post-conflict transition.[995] One of the central flaws of the United States' experience in Iraq was the post-Saddam policy of de-Baathification—a process that alienated that nation's military-trained and well armed traditional Sunni power wielders, and eventually fueled their return to combat under the black flags of ISIS.[996] Whether

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991. *See* Walt, *Accentuate the Positive*, *supra* note 117; Mir H. Sadat & James P. Hughnes, *U.S.-Iran Engagement Through Afghanistan*, 17 MIDDLE E. POL'Y. 31, (2010) (noting US-Iran shared interests in Afghanistan).

992. *See* Walt, *Accentuate the Positive*, *supra* note 117; Seyed Hossein Mousavian, *After Nuclear Deal, What's Next for Iran?*, AL-MONITOR (Apr. 14, 2015), http://www.al-monitor.com/pulse/originals/2015/04/iran-nuclear-sanctions-deal-us-iraq-syria-is.html (examining the scope of potential US-Iran regional cooperation).

993. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 354; Fulton et al., *supra* note 910 (defining Iran's interests in Syria).

994. *See* Fulton et al., *supra* note 910, at 9. *But see* Jubin M. Goodarzi, *Syria and Iran: Alliance Cooperation in a Changing Regional Environment*, 4 ORTADOĞU ETÜTLERI 31, 39 (2013) (clarifying that Iran's support for Syria's Alawites is more political than theocratic).

995. *Compare* Colleeen McCain Nelson, *Obama Says Syrian Leader Bashar al-Assad Must Go,* WALL STREET J., Nov. 19, 2015, http://www.wsj.com/articles/obama-says-syrian-leader-bashar-al-assad-must-go-1447925671, *with* Taresa Welsh, *Obama Backs Off Demand for Assad to Step Down*, U.S. NEWS & WORLD REPORT (Dec. 18, 2015), http://www.usnews.com/news/articles/2015-12-18/obama-backs-off-demand-for-assad-to-step-down (revealing the evolution of the Obama administration's position on Assad).

996. *See* John Hay, *The Deciders*, AMERICAN CONSERVATIVE (Oct. 27, 2015), http://www.theamericanconservative.com/articles/the-deciders/; Shane Harris, *The Re-Baathification of Iraq*, FOREIGN POL'Y (Aug. 21, 2014), http://foreignpolicy.com/2014/08/21/the-re-baathification-of-iraq/ (elucidating the direct relationship between de-Baathification policies and Iraq's current turmoil).

President al-Assad stays or goes, a similar process of comprehensively gutting the regime from Syria's post-conflict political landscape would likely yield a similar Alawi backlash.[997] In this sense, Iranian cooperation could play a major role in convincing Syria's Alawites that they will share in the prosperity and security of any brokered end to hostilities.[998]

Furthermore, despite the differences between Washington and Tehran concerning al-Assad, both nations share an equally compelling interest in defeating ISIS.[999] Unlike the United States, where over a decade of failed wars in the Middle East have nearly eradicated political support for renewed military intervention, the Iranians have proven themselves willing and capable of taking on ISIS.[1000] The Iranian military is probably the most capable regional force, behind Israel.[1001] The Iranians have also expended significant blood and resources in their own fight against ISIS: a fight that has inflicted detrimental casualties on their allies in Hezbollah, and efforts they continued to fund even through the debilitating economic turmoil of the worst sanctions years.[1002] If the United States is serious about "degrading and destroying" the Islamic State, then its most effective partner for doing so could very well be the Islamic Republic.[1003]

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997. *Cf. supra* note 996 (providing lessons via the experience of de-Baathification in Iraq).

998. Massoumeh Torfeh, *The US Had no Choice but to Involve Iran in Syria Talks*, AL JAZEERA (Oct. 29, 2015), http://www.aljazeera.com/indepth/opinion/2015/10/choice-involve-iran-syria-talks-isil-russia-151028123305678.html; Alessandria Masi, *Why Iran's Influence In Syria Is Likely To Outlive President Bashar Assad's Rule*, INT'L BUS. TIMES (Dec. 19, 2014), http://www.ibtimes.com/why-irans-influence-syria-likely-outlive-president-bashar-assads-rule-1763257; Ellie Geranmayeh, *Iran Hedges its Bets in Syria*, AL-MONITOR (Nov. 20, 2015), http://www.al-monitor.com/pulse/originals/2015/11/iran-syria-strategy-hedging-national-defense-force.html.

999. *See infra* notes 1000-02 and accompanying text.

1000. *See* Dina Esfandiary & Ariane Tabatabai, *Iran's ISIS Policy*, 91 INT'L AFF. 1, 5-10 (2015); Mohamad Bazzi, *Iran Will do What it Takes to Fight ISIS*, CNN (Jan. 3, 2015), http://www.cnn.com/2015/01/03/opinion/bazzi-iran-iraq/; Ben Fernandes, *Failure to Cooperate with Iran Against ISIS Will Open the Door to Greater Risk*, COUNCIL ON FOREIGN RELATIONS (Sept. 17, 2014), http://blogs.cfr.org/davidson/2014/09/17/failure-to-cooperate-with-iran-against-isis-will-open-the-door-to-greater-risk/ (asserting Iran's commitment to the fight against ISIS).

1001. *See* MEARSHEIMER & WALT, *supra* note 26, at 281; Wright, *The Challenge of Iran*, *supra* note 353, at 1 (pointing out Iran's military strength).

1002. *See supra* note 910 and accompanying text (noting the costs of Iran's operations in Syria and Iraq).

1003. *See supra* notes 1000-02 and accompanying text.

Far from being farfetched or unrealistic, significant security cooperation between the United States and Iran is not without precedent.[1004] Under President Khatami, Iranians played a sizeable role in US military efforts both in Afghanistan and Iraq.[1005] In 2001, Iran fought alongside US forces in ousting the Taliban, and went on to play a major role in supplying and training the Afghan National Army.[1006] Afghanistan's post-Taliban constitution resembled a democracy upon Iranian insistence, and on at least one occasion following the Taliban's ousting, Iran pledged more aid to Afghan reconstruction than even the United States.[1007] Years later, when the United States turned its sights on Iraq, the Iranians initially showed up a second time, helping to curtail a rising insurgency.[1008] More recently, when the tarnished credibility of Iraq's democratically elected Prime Minister Nouri al-Maliki sparked increased sectarian tensions, Iran joined the United States in asking al-Maliki to step down from high office, avoiding what could have been an ugly showdown considering Iran's patronage of the Shi'ite Prime Minister.[1009] In all of these events, history reveals a surprising capacity for cooperation when US and Iranian interests overlap.[1010] Increased engagement with Iran would not only facilitate this cooperation, but would likely foster new common interests and areas of potential cooperation between Tehran and Washington.[1011]

1004. *See infra* notes 1005-13 and accompanying text.

1005. *See* Mousavian, *The Rise of the Iranian Moderates*, *supra* note 848; Hadley, *supra* note 133, at 142-43 (recalling past US-Iran security cooperation in Afghanistan and Iraq).

1006. MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 459; MEARSHEIMER & WALT, *supra* note 26, at 302-03 (looking at past constructive Iranian efforts in Afghanistan).

1007. *See* Dobbins, *supra* note 709, at 203-04; C. Christine Fair, *When It Comes to Afghanistan, America Should Ditch Pakistan for Iran*, NAT'L INTEREST (Sept. 7, 2015), http://nationalinterest.org/feature/when-it-comes-afghanistan-america-should-ditch-pakistan-iran-13788 (showing the extent of Iranian cooperation in Afghanistan following the ousting of the Taliban).

1008. *See* Dobbins, *supra* note 709, at 204; Hadley, *supra* note 133, at 143 (presenting Iran's initial cooperation with the United States in post-2003 Iraq).

1009. *See* Julian Borger et al., *Iran Puts Support Behind Maliki's Successor as Iraqi Prime Minister*, GUARDIAN (Aug. 12, 2014), http://www.theguardian.com/world/2014/aug/12/iran-supports-successor-nouri-al-maliki-iraq; Policy Analysis Unit, *The US and Iran Concur: Maliki Had to Go*, ARAB CTR. RES. & POL'Y STUD. (Aug. 28, 2014), http://english.dohainstitute.org/release/fb23c714-097b-45b4-904a-78c3f61192fa (emphasizing Iran's role in getting Maliki to step down).

1010. *See supra* notes 1005-09 and accompanying text.

1011. Roman Muzalevsky, *From Frozen Ties to Strategic Engagement: U.S.-Iranian Relationship in 2030*, STRATEGIC STUD. INST. (2015), http://www.strategicstudiesinstitute.

Ayatollah Khamenei himself has publically stated that the nuclear negotiations provided a chance of testing the ability for Iran and the US to discuss other issues.[1012] Security cooperation is an important and especially sensible field for this to occur.[1013] In this light, Washington's recent invitation to Iran concerning Syria peace talks is a healthy development.[1014]

6. Old Friends & Old Enemies: Bolstering Europe and Curtailing the Regional Influence of Russia and China

A US engagement strategy toward Iran would not be strictly bilateral.[1015] In fact, improved relations between these two countries would have a positive ripple effect for the United States across the whole world.[1016] Foremost, the United States has its European allies to consider, who still represent Washington's most obvious foreign policy asset.[1017] Washington's stance on Iran has historically differed from these various allies, and as discussed above, these differences seriously undercut Europe's Critical Dialogue policies.[1018] But like in the 1990s, Europe still has too much to gain from investment in Iran, and the presence of US investment there, while competitive, would

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army.mil/pubs/display.cfm?pubID=1265; Maimuna Ashraf, *Iran nuclear deal and future prospects,* FOREIGN POL'Y NEWS (July 30, 2015), http://foreignpolicynews.org/2015/07/30/iran-nuclear-deal-and-future-prospects/.

1012. *See* Mousavian, *The Rise of the Iranian Moderates*, *supra* note 848; *Khamenei: Nuclear Deal Could Allow Ralks 'On Other Issues'*, AL-MONITOR (Apr. 12, 2015), http://www.al-monitor.com/pulse/originals/2015/04/khamenei-iran-deal-engagement-west.html (citing Khamenei's comments on the future potential of cooperation with Washington).

1013. *See supra* notes 988-89 and accompanying text.

1014. *See* Thomas Erdbrink et al., *After a U.S. Shift, Iran Has a Seat at Talks on War in Syria*, N.Y. TIMES, Oct. 28, 2015, http://www.nytimes.com/2015/10/29/world/middleeast/syria-talks-vienna-iran.html; Ian Black, *Iran's Invitation to Syria Talks Marks Significant Shift for US and Allies*, GUARDIAN (Oct. 27, 2015), http://www.theguardian.com/world/2015/oct/27/irans-invitation-to-syria-talks-marks-significant-shift-for-us-and-allies (explaining the significance of Iran's participation in international Syria talks).

1015. *See infra* notes 1016-41 and accompanying text.

1016. *See infra* notes 1017-41 and accompanying text.

1017. Joseph S. Nye*, Europe Remains America's Most Powerful Ally*, ATLANTIC COUNCIL (Jun. 10, 2010), http://www.atlanticcouncil.org/blogs/natosource/europe-remains-americas-most-powerful-ally; Luke Coffey, *Keeping America Safe; Why U.S. Bases in Europe Remain Vital*, THE HERITAGE FOUNDATION, http://www.heritage.org/research/reports/2012/07/keeping-america-safe-why-us-bases-in-europe-remain-vital (last visited Apr. 11, 2016); Donna Miles, *Europe Remains Strategically Vital*, IIP DIGITAL (Mar. 18, 2013), http://iipdigital.usembassy.gov/st/english/article/2013/03/20130318144377.html#axzz41y42zq2f.

1018. *See supra* note 767 and accompanying text (listing the reasons Critical Dialogue failed as a strategy).

provide at least some sign of security that Washington is not going to complicate Europe's long-term operations. In particular, Europe's current reliance on Russian natural gas to meet its massive domestic energy needs would be mitigated, were it to increase imports from Iran.[1019] Although this development is likely to occur whether or not the US chooses to further engage Iran, any future US action targeting or limiting Iran's gas sector would come at the expense of indirectly harming the United States' allies. If, in the event of JCPOA noncompliance, the US were forced to take action against the Islamic Republic, then doing so after a genuine and good faith effort at attempting engagement would at least soften the blow inflicted on Washington's traditional friend base.[1020]

At the same time, perhaps a more damning consequence of a future US failure to engage with Iran concerns Washington's traditional adversaries.[1021] This cuts at one of the fundamental flaws of the entire sanctions regime: where the United States and its allies choose policies of isolation, somebody else is always standing on deck, ready to seize opportunities.[1022] While internally sanctions against Iran tended to empower hardliner elements like the IRGC, on the international stage, China and Russia directly benefited from US-imposed sanctions against Iran.[1023] Throughout the sanctions regime, Iran "explicitly sought to utilize China as a bulwark against Western pressure, deliberating privileging Chinese companies with major deals," while Beijing was of the mindset that "commercial arrangements should have no bearing on security issues, and vice versa."[1024] Sure enough, from 2010 onward, Chinese FDI was the only significant player left within Iran's energy sector, with firms like China National Petroleum Company ("CNPC") and Sinopec landing

1019. *See How Much Europe Depends on Russian Energy*, N.Y. TIMES, Sept. 2, 2014, http://www.nytimes.com/interactive/2014/03/21/world/europe/how-much-europe-depends-on-russian-energy.html?_r=0 (calculating the extent of Europe's reliance on Russian natural gas); Steinhauser & Norman, *supra* note 495 (exploring Iran's potential of meeting Europe's gas needs).

1020. *See supra* note 826 and accompanying text (anticipating the importance of goodwill with Washington's European partners, if the United States ever needs to reimpose sanctions against Iran)*; see also* Haass & O'Sullivan, *Conclusion*, *supra* note 778, at 162.

1021. *See infra* notes 1022-41 and accompanying text.

1022. *See infra* notes 1023-31 and accompanying text.

1023. *See supra* note 366 and accompanying text (discussing Russia and China's enrichment under the sanctions regime).

1024. MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 407.

major deals there.[1025] By consistently ducking under sanction-triggering thresholds and resorting to US dollar-avoiding buybacks and bartering, China positioned itself as a powerful competitor in Iran's post-sanctions future.[1026]

Meanwhile, Russia has also gained from the United States' past anti-Iran policies.[1027] Although for centuries Moscow and Tehran have shared (and in fact, still do share) a turbulent relationship, US policies on Iran have provided ample posturing opportunities for Russian President Vladimir Putin to expand his role in the region.[1028] This is most evident in the Kremlin's recent intervention in Syria: an intervention that, while premised on combating ISIS and Sunni extremists, was debuted with targeted airstrikes on moderate US-backed Syrian rebels.[1029] The trouble with Russia's Syrian intervention is that it need not be confined to Syria's borders.[1030] If

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1025. *See id.* at 408-10; Chen Aizhu, *Exclusive: China Slows Iran Oil Work as U.S. Energy Ties Warm*, REUTERS (Oct. 28, 2010), http://www.reuters.com/article/us-china-iran-oil-idUSTRE69R1L120101028 (detailing Iranian participation in Iran's oil sector through the late sanctions regime).

1026. *See* Michael Lelyveld, *China Faces Challenge Dodging US Sanctions Over Iranian Oil Imports*, RADIO FREE ASIA, (Sept. 2, 2013), http://www.rfa.org/english/commentaries/energy_watch/oil-09022013111150.html; Wayne Ma, *Sanctions Gap Allows China to Import Iranian Oil*, WALL ST. J., Aug. 21, 2013, http://www.wsj.com/articles/SB10001424127887324619504579026333611696094 (explaining how China dodged sanctions against Iran); *see also* John S. Park, *Iran and China*, *in* THE IRAN PRIMER, *supra* note 12, at 184 ("Gaps left by Western and other Asian firms forced out by sanctions present Chinese companies with strategic opportunities to enlarge their share of key sectors amid reduced competition.").

1027. *See infra* notes 1028-31 and accompanying text.

1028. *See* Mark N. Katz, *Iran and Russia*, *in* THE IRAN PRIMER, *supra* note 12, at 186-89; Alexander A. Pikayev, *Why Russia Supported Sanctions Against Iran?*, JAMES MARTIN CTR. NONPROLIFERATION STUD. (June 23, 2010), http://cns.miis.edu/stories/100623_russia_iran_pikayev.htm (tracing the evolution of Iran's relationship with Russia). Though much has been made of Russian-Iranian cooperation and their shared mistrust of the West, the depth of this friendship is probably limited. *See* Samuel Ramani, *So Are Russia and Iran Best buddies Now? Um, Maybe Not*, WASH. POST (Nov. 12, 2015), https://www.washingtonpost.com/news/monkey-cage/wp/2015/11/12/so-are-russia-and-iran-best-buddies-now-um-maybe-not/; Kambiz Foroohar, *Gifts and Praise Can't Obscure Limits to Iran-Russia Relations*, BLOOMBERG (Dec. 18, 2015), http://www.bloomberg.com/news/articles/2015-12-18/gifts-and-praise-can-t-obscure-limits-to-iran-russia-relations.

1029. *See* Nancy A. Youssef, *Putin Hits West's Rebels Instead of ISIS*, THE DAILY BEAST (Sept. 30, 2015), http://www.thedailybeast.com/articles/2015/09/30/putin-orders-u-s-jets-out-of-syria.html; Ian Johnston, *Russia in Syria: Over 90% of air strikes not targeting Isis, says US*, INDEPENDENT (Oct. 7, 2015), http://www.independent.co.uk/news/world/middle-east/russia-in-syria-us-and-turkey-claim-russian-warplanes-hitting-moderate-syrian-rebel-groups-a6685496.html (critiquing Russia's conduct in Syria).

1030. *See infra* note 1031 and accompanying text.

Iran were to fall entirely into the Russian sphere of influence, then from Lebanon to Iraq to Yemen, Moscow will find no shortage of theaters to severely frustrate US regional interests.[1031]

Nations like Russia and China represent much larger potential hazards to Washington than Iran or any other State (or non-State actor) in the Middle East region.[1032] If the United States fails to engage Iran, it is likely that the Islamic Republic will fall even further under the influence of these globe-spanning rivals.[1033] The head start in Iran that Russia and China secured through the sanctions regime places the United States and its allies at a comparative disadvantage.[1034] In its current form, footnote six of the JCPOA provides little hope of outpacing the growing influence of these rival States.[1035] While troubling in itself, this influence would also cripple any future multilateral efforts at pressuring or constraining Iran.[1036] Russia and China's permanent-member vetoes in the UN Security Council could effectively shield Iran from future multilateral action, were their partnerships with Tehran to grow in the absence of US competition.[1037] This could look very different, however, were the United States to abandon its commitment to footnote six and facilitate

1031. *Russian Cooperation with Iran and Iraq has Broader Consequences Than Saving Assad,* THE CONVERSATION (Oct. 15, 2015), http://theconversation.com/russian-cooperation-with-iran-and-iraq-has-broader-consequences-than-saving-assad-49164; Stephen Pitt-Walker, *Russia and Iran: The Implications of a Reactionary Alliance*, INT'L POL'Y DIG. (Feb. 14, 2015), http://intpolicydigest.org/2015/02/14/russia-iran-implications-reactionary-alliance/;

1032. *See Russia and China Pose Largest Security Threats, Says US military Report*, GUARDIAN (July 1, 2015), http://www.theguardian.com/us-news/2015/jul/01/russia-china-us-mlitary-national-security; Jonathan Adelman, *Why Are We Treating Iran as a Great Power?*, WORLD POST (July 6, 2015), http://www.huffingtonpost.com/jonathan-adelman/why-are-we-treating-iran_b_7738946.html (assessing the greatest threats to US security).

1033. Alicia Garcia-Herrero, *Europe Risks Losing Iran to China and Russia,* BUS. INSIDER (Aug. 5, 2015), http://www.businessinsider.com/europe-risks-losing-iran-to-china-and-russia-2015-8; *The Shanghai Cooperation Organization Waits for Iran*, AL ARABIYA ENGLISH (July 9, 2015), http://english.alarabiya.net/en/views/news/middle-east/2015/07/09/The-Shanghai-Cooperation-Organization-waits-for-Iran.html.

1034. *See supra* notes 1021-33 and accompanying text.

1035. *See supra* notes 1021-33 and accompanying text; *see also* supra Part II.A.2.

1036. *See infra* note 1037 and accompanying text.

1037. *Cf.* Neil Macfarquhar, *With Rare Double U.N. Veto on Syria, Russia and China Try to Shield Friend*, N.Y. TIMES, Oct. 5, 2011 http://www.nytimes.com/2011/10/06/world/middleeast/with-united-nations-veto-russia-and-china-help-syria.html (Syria); Mark N. Katz, *The Russia and China Factors in Sanctions*, THE IRAN PRIMER (Nov, 28, 2011), http://iranprimer.usip.org/blog/2011/nov/28/russia-and-china-factors-sanctions (examining Russia and China's conduct through the sanctions regime).

broad US investment back to Iran.[1038] The Conoco episode from the 1990s, as well as Iranian consumerist tastes for US goods, show that Washington does have many competitive advantages over its rivals, were it to change course and actually exploit them.[1039] In fact, as its desperation softened with the signing of the interim JPA in 2013, Iran was quick to cancel a US$2.5 billion development contract to Chinese firm CNPC.[1040] This is a healthy sign for quality-differentiated US firms, should investment be allowed back to Iran. In time, the awards of such contracts to US firms could gravitate Tehran away from the troubling sway of Moscow and Beijing.[1041]

7. Advancing US Economic Interests

The most obvious benefit of US engagement concerns the sheer amount of money at stake in post-sanctions Iran. The World Bank estimates that if all sanctions had been lifted by 2016, real GDP in Iran would grow by 5.8% in 2016 and 6.7% in 2017.[1042] As discussed above, such a trend would represent a major investment opportunity for US capital.[1043] While such lucrative profit potential alone should not guide US policy, it would certainly be an added perk of engaging Iran. Under the sanctions regime, US economic harm was tallied at billions of dollars annually.[1044] Some firms paid billions of dollars in fines, while US airliners paid millions each year for Iranian air traffic control services.[1045] These sanctions also had a negative effect on

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1038. More specifically, this could entail either broad OFAC license granting or the actual nullification of sanctions. *See generally supra* Part II.A.2 (presenting the framework of the JCPOA's footnote six issue).

1039. *See supra* notes 118-22 and accompanying text (detailing the Conoco episode); *supra* notes 537-44 and accompanying text (emphasizing Iran's consumer preferences); *see also* Mohammad Davari, *Why China Loses Out If Sanctions On Iran Are Lifted*, BUS. INSIDER (May 09, 2014), http://www.businessinsider.com/why-china-loses-out-if-sanctions-on-iran-are-lifted-2014-5 (identifying Iranian concerns with Chinese products and services).

1040. *See* Benoît Faucon, *Iran Cancels $2.5 Billion Contract with Chinese Oil Company*, WALL STREET J., Apr. 29, 2014, http://www.wsj.com/articles/SB100014240527023 03939404579531111999051656; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 469 (exploring the Iranian rescission of contracts with China).

1041. *See* SALACUSE, *supra* note 10, at 22-23.

1042. *Iran Overview*, *supra* note 449.

1043. *See supra* Part II.B (considering the investment opportunities in post-sanctions Iran).

1044. *See* Wolfe, *supra* note 29, at 10; MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 484 (pointing out the US costs of sanctioning Iran).

1045. *See supra* notes 338-43 and accompanying text (looking at costs absorbed by US firms stemming from Iran sanctions).

global free trade, as well as on global oil supplies.[1046] None of this accounts for the opportunity costs involved in isolating Iran: from Conoco onward, US firms lost billions of dollars in contracts to European and non-European competitors.[1047]

Considering the investment opportunities highlighted above in Part II.B, there is surely money to be made in the Islamic Republic.[1048] The repatriation of profits from US investment activities in Iran would present a dividend to US companies, thereby contributing to the US economy.[1049] A strong domestic economy advances *all* US policy efforts.[1050] Furthermore, because engagement in general tends to foster liberalization, US investment in Iran would likely give rise to new investment opportunities, creating a multiplier effect on the economic benefits the US would obtain.[1051] "Bottom line: A better relationship with Iran would be good for the U.S. economy."[1052] Not only does engagement make foreign policy sense; it makes economic sense, too.[1053]

8. Protecting Human Rights in Iran and Abroad

Finally, the state of human rights in Iran is an often-quoted US foreign policy interest, and one that has occasionally made its way into the legislative purpose of US-imposed sanctions.[1054] Indeed, while the JCPOA is intended to partially lift sanctions related to Iran's nuclear activities, human rights-based sanctions remain in full

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1046. *See supra* note 344 and accompanying text (identifying the impact of sanctions on global free trade and oil supplies).

1047. *See supra* note 342 and accompanying text (assessing the extent of lost opportunities to foreign competitors under the sanctions regime).

1048. *See supra* Part II.B (exploring post-sanctions investment opportunities in Iran).

1049. *See id.*

1050. *See* Peter Morici, *A Strong Foreign Policy Requires a Robust Economy, Credible* Military, NEWSMAZ (May 30, 2014), http://www.newsmax.com/Finance/Peter-Morici/Obama-Foreign-Policy-Economy-Military/2014/05/30/id/574150/; DICK K. NANTO, CONG. RESEARCH SERV., R41589, ECONOMICS AND NATIONAL SECURITY: ISSUES AND IMPLICATIONS FOR U.S. POLICY (2011), https://www.fas.org/sgp/crs/natsec/R41589.pdf.

1051. *See* SALACUSE, *supra* note 10, at 357-58 (highlighting the relationship between foreign investment and liberalization); *see also supra* notes 101-03 and accompanying text (examining past liberalization in Iran following President Rafsanjani's search for FDI inflows).

1052. Walt, *Accentuate the Positive*, *supra* note 117.

1053. *See supra* notes 1042-52 and accompanying text.

1054. *See*, *e.g.*, *supra* notes 266-67 and accompanying text (noting CISADA's human rights provisions).

effect against the Islamic Republic.[1055] The human rights question poses some of the hardest issues for any future US engagement strategy.[1056] Put simply, the emerging post-sanctions Iranian investment landscape will likely channel significant revenues to a regime that has demonstrated no qualms in brutally suppressing dissent; limiting the expression and freedoms of its nationals; actively discriminating on the basis of religion, ethnicity, gender, and sexual orientation; and subjecting its population to a harsh and draconian judicial system with little semblance of due process.[1057] With more annual per capita executions than any other nation, the stakes of these human rights violations are immense.[1058] Unfortunately, there are no easy solutions to addressing these issues.[1059]

International investment has historically held an uneasy relationship with international human rights.[1060] From the Calvo Doctrine to Dependency Theory, Classical Marxism to today's anti-globalization movement, various critical vantage points have provided well-reasoned critiques regarding international capitalism's impact on human rights issues.[1061] These critiques should not be ignored. In fact,

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1055. *See supra* note 291 and accompanying text (clarifying within the Iran Nuclear Agreement Review Act that sanctions against Iran for issues other than Iran's nuclear program will remain in effect following the implementation of the JCPOA).

1056. *See infra* notes 1057-85 and accompanying text.

1057. *See generally* Shaheed, *supra* note 173; *The State of the World's Human Rights*: *Iran*, AMNESTY INT'L, 186-191 (2015), https://www.amnestyusa.org/pdfs/AIR15_English.PDF (overviewing the state of human rights in Iran).

1058. *See* Colum Lynch, *Iran Wins World Record for Most Executions Per Capita*, FOREIGN POL'Y (Oct. 27, 2015), http://foreignpolicy.com/2015/10/27/rouhani-zarif-state-department-human-rightsiran-wins-world-record-for-most-executions-per-capita/; Edith M. Lederer, *UN Investigator: Executions in Iran Could Top 1,000 in 2015*, ASSOCIATED PRESS (Oct. 27, 2015) (establishing Iran's unrivalled use of capital punishment).

1059. *But see infra* notes 1063-85 (proposing the potential benefits that US engagement could have on human rights in Iran).

1060. *See generally* SALACUSE, *supra* note 10, at 54-55; George K. Foster, *Investors, States, and Stakeholders: Power Asymmetries in International Investment and the Stabilizing Potential of Investment Treaties*, 17 LEWIS & CLARK L. REV. 361, 355-56 (2013) (introducing the conflicts between international investment and human rights).

1061. Each of these schools possesses its own historically situated criticisms of international investment, and a detailed exegesis is beyond the scope here. Crudely, the Calvo Doctrine refers to 19th and early 20th century, primarily Latin American resistance to international investor protections that sought to remove dispute jurisdiction beyond a host state's national courts. *See* SALACUSE, *supra* note 10, at 310-12, 322-24; Manuel R. Garcia-Mora, *The Calvo Clause in Latin American Constitutions and International Law*, 33 MARQUETTE L. REV. 205 (1950). Dependency Theory (or the *dependencia* school) was a mid-century Latin American critique concerned with global inequality and power asymmetries, resulting from the disruptive flow of capital from developing periphery states to developed if the purpose of US engagement with Iran is to target Iranian civil society and empower Iranian moderates, such concerns are absolutely crucial.[1062] If conducted properly and with caution, numerous factors suggest that US investment to Iran could provide a net-positive on that nation's human rights situation.[1063]

First, from a minimal standpoint, the traditional human rights critiques concerning international investment might be partially mitigated through the mere economic power of investment to improve the ordinary Iranian standard of living.[1064] Enriching the livelihoods of the poorest Iranians would benefit human rights.[1065] While this does not exactly address arbitrary detention or the execution of minors, it is surely better than nothing.[1066] Second, and along similar

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core states. *See* SALACUSE, *supra* note 10, at 54-55; Guillermo Emiliano Del Toro, *Foreign Direct Investment in Mexico and the 1994 Crisis: A Legal Perspective*, 20 HOUS. J. INT'L L. 1, 87 (1997). Marxism, following the 19th-century teachings of Karl Marx, broadly considers all capitalist profits to arise from the exploitation of labor by parties with exclusive ownership rights over industrial society's means of production. Marxism was principally internationalized by Lenin, who considered imperialism to be an inherent stage and logical extension of capitalism, whereby international finance capitalism is adopted to wring out additional profits beyond one's own, already fully-exploited national borders. *See generally* 1 KARL MARX, CAPITAL (Penguin Books ed., 1990) (1867); Vladimir Lenin, *Imperialism, the Highest Stage of Capitalism*, *in* THE LENIN ANTHOLOGY 204 (Robert C. Tucker ed., 1975) (1917). The anti-globalization movement is a loose collection of disparate ideologies formed in response to the rise of transnational corporations, critical of everything from corporate pollution to the erosion of indigenous rights. *See generally* Tom Mertes, *Anti-Globalization Movements: From Critiques to Alternatives*, *in* THE ROUTLEDGE INT'L HANDBOOK OF GLOBALIZATION STUDIES 77-94 (Bryan S. Turner ed., 2010); DAVID HARVEY, THE ENIGMA OF CAPITAL AND THE CRISES OF CAPITALISM 215-60 (2010). While some of these critiques are more relevant to international investment today than others, each has contributed important developments to the dialogue between investment and human rights. The larger point here is that such a dialogue is both diverse and profoundly established.

1062. *See supra* note 773 and accompanying text (recalling that one of the primary failures of Critical Dialogue was the perception of prioritizing business above human rights).

1063. *See infra* notes 1064-85 and accompanying text.

1064. *See* Behdad Bordbar, *Will Nuclear Deal Improve Human Rights in Iran?*, AL-MONITOR (Apr. 14, 2015), http://www.al-monitor.com/pulse/originals/2015/04/iran-human-rights-nuclear-lausanne.html (citing the consensus among Iranian activists that the JCPOA would help improve standards of living in Iran); *cf.* A GROWING CRISIS, *supra* note 289 (looking at the sanction regime's impact on socioeconomic rights in Iran).

1065. *See generally* A GROWING CRISIS, *supra* note 324; *Poverty and Human Rights: Demand Dignity*, AMNESTY INT'L, http://www.amnestyusa.org/our-work/issues/poverty-and-human-rights (last visited Apr. 11, 2016). *See also* U.N. Comm. on Econ., Soc. and Cultural Rights, Concluding Observations on the Second Periodic Report of the Islamic Republic of Iran, U.N. Doc. E/C.12/IRN/Co/2 (Jun. 10, 2013).

1066. *See* U.N. Comm. on Econ., Soc. and Cultural Rights, Concluding Observations on the Second Periodic Report of the Islamic Republic of Iran, U.N. Doc. E/C.12/IRN/Co/2 (Jun. 10, 2013).

lines, if the long-term US strategy for dealing with Iran boils down to a choice between engagement and eventual war, then surely human rights advocates should prefer the former as opposed to the latter.[1067] Past US military promises to liberate Afghan women and bring democracy to Iraq have hardly furthered the overall state of human rights in either of those countries, and there is no reason to believe that the same complications would not arise in any military confrontation with Iran.[1068] Third, by aligning incentives and increasing US economic leverage within the Islamic Republic, the typical naming-and-shaming mechanisms of human rights law would likely carry more weight in Iran.[1069] Throughout the sanctions era, Iran had little to lose in failing to comply with the suggestions provided by the UN's Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, or other human rights bodies.[1070] Were the potential costs of Iran's human rights violations to increase, then, out of raw economic logic, Tehran might more seriously consider such suggestions.[1071] Fourth, although not directly related to future engagement policies, past sanctions policies have carried numerous human rights setbacks in their implementation.[1072]

1067. *See* Julie Hirschfeld Davis, *It's Either Iran Nuclear Deal or 'Some Form of War,' Obama Warns*, N.Y. TIMES, Aug. 5, 2015, http://www.nytimes.com/2015/08/06/us/politics/obama-urges-critics-of-iran-deal-to-ignore-drumbeat-of-war.html?_r=0 (reporting on the perceived dichotomy between war and the JCPOA); Ishaan Tharoor, *These Iranian Pro-Democracy Activists Want Congress to Back the Nuclear Deal*, WASH. POST, Aug. 26, 2015, https://www.washingtonpost.com/news/worldviews/wp/2015/08/26/these-iranian-pro-democracy-activists-want-congress-to-back-the-nuclear-deal/ (acknowledging various human rights activists who prefer international engagement with Iran, as opposed to any viable alternatives).

1068. *Compare* Shereena Qazi, *UN Report Highlights Afghan Conflict's Toll on Women*, AL JAZEERA (Aug. 5, 2015), http://www.aljazeera.com/news/2015/08/report-highlights-afghan-conflict-toll-women-150805153732522.html (specifying the costs of ongoing conflict on today's Afghan women), *with* Lila Abu-Lughod, *Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others*, 104 AMERICAN ANTHROPOLOGIST 783 (2002) (observing how the war in Afghanistan was rhetorically premised on protecting the human rights of Afghan women who suffered under the rule of the Taliban).

1069. Essentially, this logic follows the same reasoning as how increased investment in Iran might cause the regime to question its practice of funding terrorist movements. By upping leverage over Iran and making its internal decisions/practices more expensive, the regime would be forced to at least think about amending its behavior. *Cf. supra* note 898.

1070. The logic here follows that of Iran's other problematic practices. *Cf. supra* note 898 and accompanying text (arguing that sanctions resulted in reduced leverage to force Iran to rethink its support for regional terrorist movements).

1071. *See id.*

1072. *See supra* Part I.C.3.

The human costs of sanctions discussed above are worth recalling.[1073] Furthermore, past prohibitions against trade and the restricted export of Internet technologies to Iran actually undercut the democratic ambitions of Iran's Green Movement.[1074] Although Congress later legislatively corrected these prohibitions, the change came too late to impact the young Iranian dissenters being crushed by their government.[1075] The episode provides a lesson on the dangerous ex-ante imperfections of any isolation policy.[1076] In this sense, the more buffer space that the United States can build between relapsing into sanctions, the more likely these human rights costs will be lessened.[1077]

Considering the impact of US sanctions on Iranian human rights, it is no surprise that the JCPOA won wide support among human rights advocates, both within Iran and worldwide.[1078] Among these stakeholders, the general consensus has been that sanctions hurt ordinary Iranians.[1079] Prominent Iranian lawyer and human rights activist Shirin Ebadi has welcomed the JCPOA.[1080] Likewise, Iranian

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1073. *See supra* Part I.C.3 (assessing the human costs of the sanctions regime).

1074. *See generally* N. Kashani & M. Sadra, *Technology in Green: How Removing Sanctions Can Encourage Iranian Democracy*, FOREIGN AFF. (Feb. 26, 2010), https://www.foreignaffairs.com/articles/persian-gulf/2010-02-26/technology-green; Anna Yukhananov, *U.S. Loosens Sanctions on Iran for Mobile Gadgets*, REUTERS (May 30, 2013), http://www.reuters.com/article/uk-usa-iran-sanctions-phone-idUKBRE94T0WA20130530 (noting how sanctions unintentionally undermined the Green Movement).

1075. Yukhananov, *supra* note 1074 (reporting on the relaxation of internet and telecomm sanctions); Muhammad Sahimi, *Victims of Economic Sanctions: The People and the Green Movement*, FRONTLINE (Nov. 23, 2010), http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2010/11/victims-of-economic-sanctions-the-people-and-the-green-movement.html (emphasizing the Green Movement's opposition to sanctions).

1076. *See supra* note 1075 and accompanying text.

1077. *See supra* note 1075 and accompanying text.

1078. *See generally* Tharoor, *These Iranian Pro-Democracy Activists Want Congress to Back the Nuclear Deal*, *supra* note 1067; *74 Prominent Iranians Urge Congress to Support Nuclear Deal with Iran*, INT'L CAMPAIGN FOR HUM. RIGHTS IN IRAN (Aug. 31, 2015), http://www.iranhumanrights.org/2015/08/letter-74-iranians-iran-deal (documenting widespread support for the JCPOA among human rights advocates).

1079. *See* Tharoor, *These Iranian Pro-Democracy Activists Want Congress to Back the Nuclear Deal*, *supra* note 1067; A GROWING CRISIS, *supra* note 324 (presenting the view among human rights advocates that sanctions unintentionally weakened human rights in Iran).

1080. *See* Tharoor, *These Iranian Pro-Democracy Activists Want Congress to Back the Nuclear Deal*, *supra* note 1067*; Interview by Amy Goodman with Shirin Ebadi*, Iranian Peace Prize Laureate, the Hauge (Apr. 28, 2015), http://www.democracynow.org/2015/4/28/iranian_nobel_peace_prize_laureate_shirin (asserting Ebadi's support for the JCPOA); *see also Shirin Ebadi - Biographical*, NOBEL PEACE PRIZE, http://www.nobelprize.org/nobel_prizes/peace/laureates/2003/ebadi-bio.html (last visited Apr. 11, 2016) (providing a biography on Shirin Ebadi).

scholar Forrokh Negahdar has echoed these sentiments, forecasting that the JCPOA "will likely reign in Iran's more hard-line groups."[1081] The fact that engagement in the form of the JCPOA has received such a positive reaction from these direct stakeholders lends support to the view that future engagement would yield positive outcomes for the state of human rights in Iran.[1082] But the JCPOA, as it currently stands, is just the first step in that direction.[1083] As noted by Iranian human rights lawyer Nasrin Sotoudeh, "When a regime can no longer use the excuse of having foreign enemies, it can no longer imprison its own citizens as easily as it can when there is a foreign threat. However, it is wishful thinking to imagine that this nuclear agreement will automatically result in better human rights policies in Iran."[1084] While increased US investment to Iran would not provide a silver bullet against the regime's human rights abuses, perhaps it can at least do some of the work suggested by Sotoudeh.[1085]

CONCLUSION: CONSIDERATIONS FOR A SOUND US-IRAN ENGAGEMENT STRATEGY

As demonstrated above, increased US international investment in Iran could have a meaningful, positive impact upon each of these US foreign policy issues.[1086] In this light, the restrictions faced by US investors under footnote six of the JCPOA delay these potential developments.[1087] Such a delay is even more precarious, given that the momentum of US-Iran goodwill in the wake of the JCPOA cannot last forever. Meanwhile, while the United States waits on the sidelines, European and other investors are already flocking to Iran and sealing long-term investment deals, likely to yield various first-mover advantages.[1088] Read negatively, the United States' loss to

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1081. *See* Tharoor, *These Iranian Pro-Democracy Activists Want Congress to Back the Nuclear Deal*, *supra* note 1067 (stating Negahdar's support for the JCPOA); *see also* Farrokh Negahdar, *Farrokh Negahdar on Mousavi's 17th Statement: Relevance*, KHORDAAD88 (Jan. 19, 2010), http://khordaad88.com/?p=953 (providing a biography of Farrokh Negadhar).

1082. *See supra notes* 1078-81.

1083. *See infra* note 1084 and accompanying text.

1084. Bordbar, *supra* note 1064.

1085. *See supra* notes 1055-84 and accompanying text.

1086. *See supra* Part III.D (surveying the ways US engagement with Iran might be utilized to advance various US foreign policy interests).

1087. *See supra* Part II.A.2 (discussing the footnote six issue).

1088. *See supra* notes 446-48 and accompanying text (identifying the immediate attractiveness of Iran's investment landscape, and international players already laying stakes there).

these global first-movers can be seen as increasing foreign influence in Iran, while US influence there only diminishes.[1089] As under the sanctions regime in the 1990s, the incentives shared by Tehran and other investor home States is likely to frustrate any future US multilateral action targeting the Islamic Republic.[1090] Read positively, many of these first-movers (but by no means all of them) are in fact the United States' traditional friends in the world.[1091] The US and Europe share numerous policy interests, and from this, if engagement does work, then indirect US benefits might be facilitated through the engagement efforts of the EU.[1092]

However, there are two fundamental problems to this latter approach.[1093] First, such a third-party engagement strategy almost identically replicates the problematic scenario of the Clinton years, where divergent US and European approaches to Iran severely strained the United States' European relationships.[1094] In today's demanding world of global counterterrorism cooperation and competitive alternative markets and trading partners, the United States is arguably more vulnerable to diminishing its beneficial relations with Europe than at any time in the 1990s.[1095] Over half a

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1089. *See supra* Part III.D.6.

1090. *See supra* notes 365-68 and accompanying text (examining how US non-participation in Iran throughout the sanctions era opened the door to the increasing influence of others).

1091. *See supra* notes 1017-20 and accompanying text (exploring European investors' interest in post-sanctions Iran.)

1092. *See* Geranmayeh, *Europe's Edge*, *supra* note 759; Tarja Cronberg, *Europe Matters in Iran's Search for its Identity*, EUROPE'S WORLD (Aug. 25, 2015), http://europesworld.org/2015/08/25/europe-matters-irans-search-identity/#.VoXXiBorJ-U; Arshin Adib-Moghaddam, *Europe's Unique Opportunity to Engage with Iran*, EUROPE'S WORLD (July 28, 2015), http://europesworld.org/2015/07/28/europes-unique-opportunity-engage-iran/#.VoXYEBorJ-U (suggesting the positive role Europe can play in post-sanctions Iran).

1093. *See infra* notes 1094-1102.

1094. *See supra* note 245 and accompanying text (pointing out the strain on US-European relations upon the passing of the ILSA).

1095. *See generally* Charles A. Kupchan, *The Fourth Age: The Next Era in Transatlantic Relations*, NAT'L INTERESt 77 (Sept./Oct. 2006), http://www.cfr.org/world/fourth-age-next-era-transatlantic-relations/p11488 (arguing that European and US foreign policy interests are gradually diverging); Sally McNamara, *The EU-U.S. Counterterrorism Relationship: An Agenda for Cooperation*, HERITAGE FOUND. (Mar. 8, 2011), http://www.heritage.org/research/reports/2011/03/the-eu-us-counterterrorism-relationship-an-agenda-for-cooperation (highlighting the important but often conflicted state of US-EU counterterrorism cooperation); Eric Bradner, *Talking Trade Differences*, POLITICO (Oct. 1, 2013), http://www.politico.com/story/2013/10/us-eu-trade-heads-talk-regulatory-differences-097587 (noting regulatory trade conflicts between Europe and the United States); Razeen Sally, *Looking East: The European Union's New FTA Negotiations in Asia*, EUR. CTR. INT'L POL. ECON. (Mar. 2007), http://ecipe.

century of US-European engagement should not be needlessly tested. Second, the experience of Critical Dialogue suggests that it is unlikely Europe can shoulder meaningful engagement with Iran left on its own.[1096] As discussed above, the US rift with Europe in the 1990s concerning Iran seriously undermined Critical Dialogue's efficacy as an engagement strategy.[1097] Additionally, the EU's composition as individual nation-States has not changed since the 1990s.[1098] If anything, in the aftermath of the Euro Crisis, the continent is probably less cohesive as a network of States than it had been throughout the Critical Dialogue.[1099] The problem again is that a collection of self-serving bilateral agreements with Iran removes any semblance of the common rationality or design needed to form an actual unified engagement strategy as opposed to disparate national policies.[1100] Worse, in the 1990s, such disparate investment policies devolved into competitive and nationalistic bare-naked profit chasing.[1101] Repeating this trend today could undermine engagement as a whole, and even yield a resurgence of the populist Iranian impulses that fostered the rise of Ahmadinejad.[1102]

In this sense, the US restrictions exemplified in footnote six of the JCPOA could be described as *exactly the wrong policy*.[1103] An outright ban on US investment in Iran, including that conducted by foreign subsidiaries, would send a clear message to all US-based investors, and raise something resembling a principled stance against

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org/app/uploads/2014/12/looking-east-the-european-union2019s-new-trade-negotiations-in-asia-1.pdf (exploring Europe's growing trade relationships with Asia). That said, recent Russian adventurism in Crimea and Eastern Ukraine, while not a positive development, point US-EU relations in the opposite direction. *See* Anne Applebaum, *Obama's Legacy Could Be a Revitalized NATO*, WASH. POST, Aug. 22, 2014, https://www.washingtonpost.com/opinions/anne-applebaum-obamas-legacy-could-be-a-revitalized-nato/2014/08/22/0f43da78-2a22-11e4-8593-da634b334390_story.html.

1096. *See supra* Part III.B.

1097. *See supra* Part III.B (summarizing Europe's period of Critical Dialogue with Iran).

1098. *See infra* note 1099 and accompanying text.

1099. *See* Jose Ignacio Torreblanca & Mark Leonard, *The Continent-Wide Rise of Euroscepticism*, EUR. COUNCIL FOREIGN REL. (May 2013), http://www.ecfr.eu/page/-/ECFR79_EUROSCEPTICISM_BRIEF_AW.pdf; Allister Heath, *Europe Could be Torn Apart by the Wrong Sort of Eurosceptics*, TELEGRAPH (Feb. 5, 2015), http://www.telegraph.co.uk/news/worldnews/europe/11391092/Europe-could-be-torn-apart-by-the-wrong-sort-of-Eurosceptics.html (reviewing the rise of Euroscepticism across the EU).

1100. *See supra* note 767 and accompanying text.

1101. *See supra* notes 766-71 and accompanying text (assessing the ultimate failures of Europe's Critical Dialogue).

1102. *See supra* Part I.A.4 (summarizing the Ahmadinejad presidency).

1103. *See infra* notes 1104-10 and accompanying text.

Iran's ongoing troublesome behaviors.[1104] While this route would not seize the foreign policy opportunities highlighted above, it would at least protect US investors from self-harm in the future, both in terms of potential capital losses, and in preventing contribution toward Europe's problematic and structurally flawed engagement renewal, which could result in pushing Iran to further recalcitrance.[1105] At the opposite end of the spectrum, a complete liberation of US investors and the full lifting of sanctions (or broad OFAC general licensing) would take advantage of the above opportunities, while likely also inspiring cautious guidance and regulatory oversight aimed at shaping the way investment in Iran is conducted.[1106] Yet, under the status quo, both of these strategies are rejected in exchange for the exclusive allowance of US foreign subsidiary investment: investment by its very nature beyond the US jurisdiction to directly control.[1107] It is dangerously likely that such an approach will result in rogue corporate profit chasing by US foreign subsidiaries licensed to operate in Iran, while also significantly undermining any US efforts at steering international investment toward Washington's foreign policy goals.[1108] If post-JCPOA US investment in Iran is perceived to be an activity occurring in the periphery, only by US foreign subsidiaries, then it is hard to believe that US administrative agencies and other government regulators will devote serious attention to the way US capital reaches Iran, or what it does there.[1109] This approach is not only inefficient in its failure to seize ripe foreign policy opportunities, but it may also be dangerous in its potential to empower the most hardline elements of the Iranian regime.[1110]

1104. *Contra* JCPOA, *supra* note 185, at Annex II n.6 (committing the US to waive nuclear sanctions against US-owned, foreign subsidiaries). *See generally* Part II.A.2.

1105. *See supra* Part III.D (surveying US foreign policy benefits that would be forsaken under this strategy).

1106. *See supra* Part III.D.

1107. *See supra* Part II.A.2 (exploring the footnote six issue).

1108. *Cf. supra* note 773 and accompanying text (citing similar failures under Critical Dialogue).

1109. *Cf. supra* note 438 and accompanying text (discussing OFAC's General License H). Focused primarily on building a firewall between US parent companies and their foreign subsidiaries transacting with Iran, General License H—as opposed to a case-by-case, specific licensing regime—shows that, US regulators do not appear strategically concerned with how *legally compliant* investment impacts Iran. Considering the opportunities highlighted *supra* in Part III.D, this amounts to an unfortunate missed opportunity.

1110. *Cf. supra* Part III.B.

In contrast to this current approach, the United States government—and OFAC in particular—should play an active and supportive role in guiding US investors back to Iran, in a cautious manner consistent with United States policy interests.[1111] Under a broad policy of engagement, the United States should work to remove the remaining barriers to international investment exemplified in footnote six, and instead utilize the power of incentives to achieve Washington's regional foreign policy goals.[1112] Furthermore, Washington's revised guidance concerning footnote six, and subsequent investment policies, should be developed with the careful thinking and creativity that such a rare opportunity merits.[1113]

Although the details and exact composition of such an engagement policy are best left to policymakers, the stakes involved and the potential upsides of a comprehensive US engagement strategy toward Iran should leave no innovation untapped.[1114] For example, the use of investment codes, such as the MacBride Principles and the Sullivan Principles, could provide effective binding or nonbinding methods to channel investment along certain agreed-upon criteria, consistent with US policy goals.[1115] In Iran, such corporate codes of conduct might discourage investment from certain IRGC-heavy

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1111. This could be achieved primarily by issuing specific licenses, on a case-by-case basis. *See supra* note 1108; *see also supra* note 230.

1112. *See generally supra* Part III.D (listing US foreign policy goals that could be secured under such an approach).

1113. *See infra* notes 1114-28 and accompanying text.

1114. *See infra* notes 1115-28 and accompanying text.

1115. Generally, investment codes operate as binding or non-binding codes of conduct, aimed at influencing the way investment is conducted. For example, if the US State Department or Treasury were to draft a set of guidelines related to investment in Iran that Washington determined would advance Iranian human rights or other US foreign policy interests, OFAC could then make these principles effectively binding by conditioning license granting upon their adherence. Alternatively, investment codes could be used to establish less binding, but nonetheless incentive-packed guidelines, which might, for example, condition a firm's access to public pension funds upon their adherence. Historically, the MacBride Principles offered specified standards related to US investment entering Northern Ireland, while the Sullivan Principles provided guidelines for businesses with operations in apartheid South Africa. *See* Haass & O'Sullivan, *Introduction*, *supra* note 709, at 172-173; *see also* Fr. Sean McManus, *MacBride Principles – Genesis and History*, IRISH NAT'L CAUCUS, INC. (Mar. 28, 2013), http://www.irishnationalcaucus.org/principle/macbride-principles-genesis-and-history/ (last visited Apr. 11, 2016) (overviewing the historical implementation of the MacBride Principles); Christopher McCrudden, *Human Rights Codes for Transnational Corporations: What Can the Sullivan and MacBride Principles Tell Us?*, 19 OXFORD J. LEGAL STUD. 167 (1999) (considering the lessons of the Sullivan and MacBride Principles, and investment codes broadly).

industry sectors, or incentivize opening joint ventures with recent Iranian university graduates (the youth) or members of Iranian civil society.[1116] Whether adopted by formal legislation, agency rulemaking, or decentralized shareholder resolutions completely within the private sector, investment codes could help facilitate US capital to the exact strata of Iranian society that the United States would like to see empowered there.[1117]

Another interesting proposition would be to incorporate explicit human rights provisions into a future US-Iran BIT.[1118] While the sparse human rights-mentioning BITs currently in existence tend to couch their commitment to human rights within broad "preambulor wording," a post-sanctions US BIT with Iran could be the ideal grounds to deploy actual substantive human rights provisions.[1119] A drawback to this strategy is that Iranian negotiators might prove unwilling to sign to such provisions.[1120] However, by focusing human rights-based restrictions upon investors, as opposed to States Parties, such provisions could achieve meaningful results while appearing less directly threatening to the Iranian regime.[1121] Such language might condition investment protection upon specified human rights-based

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1116. *See supra* notes 359-64 and accompanying text (IRGC); *see also* notes 870-78 and accompanying text (the youth).

1117. The use of agency and private sector action are particularly attractive, given Congress' prevailing attitudes concerning Iran. *See generally* Kristina Peterson, *Congressional Republicans Signal Deep Resistance to Iran Nuclear Deal*, WALL STREET J., July 14, 2015, http://www.wsj.com/articles/iran-deal-faces-u-s-lawmakers-scrutiny-1436868209; David M. Herszenhorn, *The Iran Nuclear Deal: Congress Has Its Say*, N.Y. TIMES, Sept. 7, 2015, http://www.nytimes.com/2015/09/08/us/politics/the-iran-nuclear-deal-congress-has-its-say.html?_r=0.

1118. *See generally* Marc Jacob, *International Investment Agreements and Human Rights*, INST. FOR DEV. AND PEACE (INEF) (Mar. 2010), http://www.humanrights-business.org/files/international_investment_agreements_and_human_rights.pdf; Patrick Dumberry & Gabrielle Dumas-Aubin, *A Few Pragmatic Observations on How BITs should be Modified to Incorporate Human Rights Obligations*, TRANSNATIONAL DISPUTE MANAGEMENT (Jan. 2014), http://droitcivil.uottawa.ca/sites/droitcivil.uottawa.ca/files/a_few_pragmatic_oberva tion_on_how_bits_should_be_modified_to_incorporate_human_rights_obligations.pdf (exploring the potential of human rights provisions being formally incorporated into BITs).

1119. Jacob, *supra* note 1118, at 10 (recognizing the current weakness of preambulor human rights BIT provisions); *see also* Davarnejad, *supra* note 770, at 11-12 (calling for the formal adoption of human rights clauses in BITs and other international investment agreements).

1120. In light of Iran's current human rights violations, it seems unlikely they would be willing to bind themselves to any instrument that would put them on the hook for such behavior. *Cf. supra* notes 1054-59 and accompanying text (examining the human rights situation in Iran).

1121. *Cf. id.*

investment parameters, or rights-based due diligence requirements.[1122] The effects of such a provision would begin long before actual investor-State arbitration by incentivizing US investors to cautiously choose where to launch their investment operations in Iran, lest they not receive the BIT's substantive investment protections.[1123] Along similar lines, the United States could make use of the institutions at its disposal, such as the Overseas Private Investment Corporation ("OPIC").[1124] By premising access to political risk insurance in Iran upon certain investment guidelines, and perhaps even discounting insurance premiums for specified investment categories, OPIC too could play a direct role in incentivizing the most appealing forms of investment in Iran.[1125]

Further innovations from CSR literature should also be explored in order to craft sensible US-Iran investment policies.[1126] If a common critique of international sanctions is that they tend to be "blunt mechanisms, analogous to blowing up an entire airplane with innocent passengers on board to kill just one terrorist," then the use of these CSR innovations could provide a targeted means of economically incentivizing the same effects of sanctions, while simultaneously allowing for the various positive influences of economic engagement. [1127] In this sense, by bringing human rights concerns directly within the mechanisms of international investment

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1122. *See* Davarnejad, *supra* note 770, at 11-12 ; Dumberry & Dumas-Aubin, *supra* note 1118, at 15 (examining how human rights restrictions could be implemented within international investment agreements).

1123. Dumberry & Dumas-Aubin, *supra* note 1118, at 15.

1124. *See generally* SALACUSE, *supra* note 10, at 250-51; *Who We Are*, OPIC, https://www.opic.gov/who-we-are/overview (last visited Mar. 16, 2016) (introducing OPIC's role in supporting US investment overseas).

1125. In terms of developing specific principles to guide investment, the United States could, as a minimum floor, aim to neutrally impose standards that Iran has already obliged itself to upholding, such as the provisions within the International Covenant on Civil and Political Rights ("ICCPR"). *See generally* International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

1126. *See generally* U.N. Office of the High Commissioner of Human Rights [OHCHR], Guiding Principles on Business and Human Rights HR/PUB/11/04 (2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf; *Corporate Social Responsibility (CSR)*, IISD, https://www.iisd.org/business/issues/sr.aspx (last visited Mar. 16, 2016).

1127. Wolfe, *supra* note 29, at 12; *cf.* Breckinridge, *supra* note 119, at 2441 ("In the words of Secretary of State Stuart Eizenstat, employment of sanctions can be 'like applying a meat-cleaver where laser surgery would be more appropriate.'").

law, future US engagement with Iran could leave a major positive impression on the future of investment law as a whole.[1128]

The key limitation to all of this, of course, is whether such a comprehensive engagement strategy toward Iran is actually politically feasible.[1129] Unfortunately, there are no easy answers here.[1130] A direct bilateral engagement policy would weigh politically heavy on both the United States and Iran.[1131] In the United States, such a radical change in direction would require massive amounts of political will and political capital, which, at the very least, are circumstances unlikely to be realized until a fresh administration takes office in January 2017.[1132] In today's globalized world, the sheer speed of international capital could result in a very different Iranian investment landscape by then.[1133] Additionally, this type of engagement policy would require a meticulous navigation of hypersensitive special interests, both in Congress and among the general population.[1134] It seems few political platforms would strike US voters as more repugnant than cozying up with the Islamic Republic.[1135] Engagement advocates would therefore require great skill and nuance in mobilizing these policies.[1136]

1128. *See supra* note 1127 and accompanying text.

1129. *See infra* notes 1130-52 and accompanying text.

1130. *See infra* notes 1131-52 and accompanying text.

1131. *See* Dobbins, *supra* note 709, at 205; Jonah Shepp, *Hawks on Both Sides Are Trying to Kill the Iran Nuke Deal*, SLATE (June 24, 2015, 2:51 PM), http://www.slate.com/blogs/the_slatest/2015/06/24/iran_nuke_deal_khamenei_and_iran_hawks_look_to_scuttle_nuclear_agreement.html (anticipating the politics of further engagement, in both Iran and the United States).

1132. *Cf. supra* notes 5-8 and accompanying text (noting the controversies surrounding the JCPOA).

1133. Indeed, since Implementation Day, transactions with Iran are already valued are valued in the billions. *See* Jim Boulden, *Iranian President Does Big Business in Europe,* CNN (Jan. 26, 2016, 6:58 AM), http://money.cnn.com/2016/01/26/news/companies/iran-europe-deals-italy-france/; Saeed Kamali Dehghan, *Iran's Dealmaking with Europe: the Seven Biggest Contracts*, GUARDIAN (Jan. 29, 2016, 9:28 EST), http://www.theguardian.com/world/2016/jan/29/irans-dealmaking-europe-seven-biggest-contracts.

1134. *See* Herszenhorn, *supra* note 1117; *see also supra* Part III.D.4 (examining Saudi and Israeli interests in US-Iran policy).

1135. Among the US population, opinions on Iran are unsurprisingly unfavorable. *Iran*, GALLUP, http://www.gallup.com/poll/116236/iran.aspx (last visited Mar. 17, 2016); *Iran*, POLLINGREPORT, http://www.pollingreport.com/iran.htm (last visited Mar. 16, 2016).

1136. *Cf. supra* notes 1131-35 and accompanying text (recognizing the political challenges of enhanced US-Iran engagement).

Likewise, there are no promises that engagement will be viewed as desirable to the clerics and Mujtahids currently running Tehran.[1137] President Rouhani's existing mandate could be quickly eroded by a failure to achieve improvements in Iran's standard of living, including economic improvements.[1138] Investment or no investment, Iran's economy faces real structural problems.[1139] Although Ayatollah Khamenei appears open to foreign investment, and has no reason to want to return to the chaos of the Ahmadinejad years, any perceived lack of goodwill on the world's part has the potential of seriously jeopardizing the JCPOA. [1140] Even under ideal international circumstances, Khamenei is nearly eighty years old, and it is impossible for the world to know who will one day take his place.[1141]

For both sides, today's rare overlap of wide-spanning policy interests is simply too great not to put serious efforts toward trying to make engagement work.[1142] The ability to cooperate on a wide range of common policy goals would serve both US and Iranian interests.[1143] Furthermore, in the same way that international

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1137. *Cf.* Gerald F. Seib, *Will Iran Hard-Liners Buy Economic Opening?*, WALL STREET J. (Nov. 2, 2015), http://www.wsj.com/articles/iran-hard-liners-say-no-thanks-to-economic-opening-1446481974; *Iran Elections: Moderates 'Colluded' with West, Says Hardliner*, BBC (Feb. 28, 2016), http://www.bbc.com/news/world-middle-east-35683881.

1138. *See* IRAN COUNTRY FORECAST, *supra* note 157, at 18; Ganji, *supra* note 600 (noting Rouhani's need to translate the JCPOA into tangible benefits).

1139. *See supra* Part II.C.1 (outlining commercial risks in Iran).

1140. *See* MALONEY, IRAN'S POLITICAL ECONOMY SINCE THE REVOLUTION, *supra* note 28, at 362 (" . . . for the final two years of his second term, Ahmadinejad was effectively sidelined, reduced to playing a convenient foil for intraélite skirmishing while Khamenei publicly mused about simply eliminating the presidency altogether…"); *see also* Thomas Erdbrink, *Ayatollah Khamenei, Backing Iran Negotiators, Endorses Nuclear Deal*, N.Y. TIMES, July 18, 2015, http://www.nytimes.com/2015/07/19/world/middleeast/ayatollah-ali-khamenei-of-iran-backs-negotiators-and-doesnt-criticize-nuclear-deal.html?_r=0 (illustrating Khamenei's approval of the JCPOA).

1141. *Contrast* Milani, *Iranian Politics After the Deal*, *supra* note 923 (predicting that a moderate is likely to replace Khamenei), *with* WEHREY ET AL, *supra* note 362, at 89 (hypothesizing the likelihood of Khamenei being replaced by elements even more beholden to the IRGC). On this note, one of the most significant developments of Iran's February 2016 elections was the resulting majority of moderates seated on the government's Assembly of Experts, the bodily designated to elect the next Supreme Leader. *See Moderates Win A Majority Of Seats In Iran's Clerical Assembly*, NPR (Feb. 29, 2016), http://www.npr.org/2016/02/29/468521874/moderates-win-a-majority-of-seats-in-irans-clerical-assembly; *Iran elections: Moderates Win Most Votes for Assembly of Experts Race*, DEUTSCHE WELLE (Feb. 27, 2016), http://www.dw.com/en/iran-elections-moderates-win-most-votes-for-assembly-of-experts-race/a-19079351.

1142. *See generally supra* Part III.D (identifying overlap across various US foreign policy interests).

1143. *See id.*

investment has the power to create new stakeholders among Iran's youth and middle class, the opening of Iran to US investment would also create a new class of commercial stakeholders and engagement advocates here in the United States, with shared corporate interests, capable of lobbying for these sensible policies.[1144] Whatever its failures related to Iran throughout the 1990s, few would classify the US oil lobby as irrelevant in steering Washington's policies. It is also not beyond reason that these groups might appreciate the opportunity to be seen inducing positive change in Iran.[1145] After chants of "no blood for oil" marked the US invasion of Iraq in 2003, the mere prospect of "oil for human rights" has a more pleasant ring to it.[1146] By arming themselves with the above benefits that engagement would bring to US foreign policy interests, these players could play a major role in constructively shifting the United States political consensus regarding Iran.[1147]

Furthermore, the efforts to mobilize a comprehensive US-Iran engagement strategy would not require starting from scratch. Throughout the entire sanctions regime, various Track II diplomacy efforts were carried out in the absence of official relations.[1148] These efforts "generally have taken a long-term approach geared toward socializing elites with access to and influence on policymakers" and have aimed at "shap[ing] the policy debate by presenting a more

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1144. *See supra* Part III.D.2 (exploring engagement's potential to empower alternative stakeholders in Iran); *see also* Haass & O'Sullivan, *Introduction*, *supra* note 709, at 166 (noting the creation of engagement-supporting constituencies within Washington's Iraq sanctions regime).

1145. *See* Haass & O'Sullivan, *Introduction*, *supra* note 709, at 173 (suggesting that international investors are not just financially motivated, but also interested in promoting US values overseas); David B. Spence, *Corporate Social Responsibility in the Oil and Gas Industry: The Importance of Reputational Risk*, 86 CHI.-KENT L. REV. 59, (2010) (examining CSR within the oil and gas industry).

1146. *See* Greg Muttitt & Ali Issa, *"No Blood for Oil": The Unfinished Story of Iraq's Oil Law*, GLOBAL RES. (July 30, 2012), http://www.globalresearch.ca/no-blood-for-oil-the-unfinished-story-of-iraq-s-oil-law/32129; *Anti-War Protests Span the Globe*, BBC (Mar. 22, 2003), http://news.bbc.co.uk/2/hi/2875555.stm (characterizing opposition to the 2003 US invasion of Iraq).

1147. *See supra* Part III.D (arguing how engagement could be used to advance US foreign policy interests).

1148. *See* Suzanne DiMaggio, *Track II Diplomacy*, *in* THE IRAN PRIMER, *supra* note 12, at 206 ("The term 'track II diplomacy' refers to frank, off-the-record interactions, often between members of adversarial countries outside of official negotiations."); *see also* Charles Homans, *Track II Diplomacy: A Short History*, FOREIGN POL'Y (June 20, 2011), http://foreignpolicy.com/2011/06/20/track-ii-diplomacy-a-short-history/ (providing a general overview of Track II Diplomacy).

nuanced picture of problems and possible options for cooperative solutions."[1149] While the results of these efforts have remained largely confidential, it is known that politically powerful players have often been involved in them.[1150] Although Track II diplomacy is incapable of mobilizing engagement strategies on its own, it is also worth noting that, at least during the George W. Bush Administration, various pockets of both the CIA and the State Department actively supported détente with Iran.[1151] By shoring up these official and unofficial support channels, these political power blocs could align with private sector engagement advocates in order to expand Washington's perspective on engaging Iran.[1152]

Engagement policies in general are always initially a gamble for all parties involved.[1153] Yet, with a little bit of political will, early confidence building measures, and the establishment of mutually agreed-upon and easily traceable roadmaps, the positive results of engagement could open the door to self-perpetuating shared benefits and bring constructive changes within the Islamic Republic.[1154] In 2010, US diplomat James Dobbins predicted that, in engaging Iran, "[a] breakthrough on the nuclear front could expand the room for dialogue on other issues."[1155] While the JCPOA has certainly provided a breakthrough on the Iranian nuclear issue, both the United States and Iran remain in a position where more is now needed. In seeking to sensibly advance its foreign policy goals within Iran specifically and the Middle East generally, the United States should now revise its policies concerning footnote six of the JCPOA,

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1149. DiMaggio, *supra* note 1148, at 208.

1150. *See id.* ("Over 20 influential Americans participated in one or more of these meetings; many were former senior government officials."); *see, e.g.*, Randa M. Slim, *The U.S.-Iran Track II Dialogue* (2002-2008*): Lessons Learned and Implications for the Rockefeller Brothers Fund's Grantmaking Strategy*, ROCKEFELLER BROTHERS FUND (Aug. 3, 2010), http://www.rbf.org/sites/default/files/attachments/iranreport_0.pdf at 11 (illustrating the players involved in one past vein of Track II diplomacy between the United States and Iran).

1151. *See* DiMaggio, *supra* note 1148, at 208 (asserting the limits of Track II efforts). *See also* MEARSHEIMER & WALT, *supra* note 26, at 303; Lauren French, *Former Bush Administration Official to Sell Dems on Iran Deal*, POLITICO (July 27, 2015), http://www.politico.com/story/2015/07/bush-official-nicholas-burns-sell-democrats-iran-deal-120671 (revealing the will for détente shared by past policymakers, outside of their official capacity).

1152. *See supra* notes 1148-51 and accompanying text.

1153. *See* Haass & O'Sullivan, *Conclusion*, *supra* note 778, at 169-70; Chester A. Crocker, *Terms of Engagement*, N.Y. TIMES, Sept. 13, 2009, http://www.nytimes.com/2009/09/14/opinion/14crocker.html (evaluating the risks posed by engagement).

1154. *See supra* Part III.C.

1155. Dobbins, *supra* note 709, at 205.

bringing a formal conclusion to the sanctions regime for US investors and freeing their capital to get to work in Iran.[1156]

1156. *See supra* notes 694-1156 and accompanying text.