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# IRAN SANCTIONS AND INDIA

## NAVIGATING THE ROADBLOCKS

**S SAMUEL C RAJIV**

  
INSTITUTE FOR DEFENCE  
STUDIES & ANALYSES

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रक्षा अध्ययन एवं विश्लेषण संस्थान

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S Samuel C Rajiv  
Associate Fellow, IDSA  
New Delhi

# INTRODUCTION

Iran has been under unilateral and multi-lateral sanctions as a result of concerns over the nature of its nuclear programme. This has been so since the aftermath of August 2002 when the existence of the Natanz enrichment facility was 'revealed' by an Iranian opposition group in Washington. Prior to 2002 also, Iran was under US sanctions targeting its sponsorship of terrorism, its pursuit of weapons of mass destruction (WMD) delivery systems, among other indiscretions.

This monograph examines the United Nations Security Council (UNSC), the United States (US), as well as European Union (EU) sanctions targeting Iran in the aftermath of 2002 as a result of concerns emanating from its nuclear efforts, and the implications they have had for India. The sanctions specifically targeting its oil exports significantly affected India, one of Iran's biggest importers.

At the policy level, India expressed its principled opposition to the enactment of unilateral sanctions. However, it had to navigate these roadblocks once these sanctions entered into force. On Iran's nuclear concerns per se, India held a nuclear weapons-capable Iran as negatively affecting regional stability and, therefore, not in its interests, given India's huge stakes in the wider West Asian region. Its opposition to the exercise of a military option (either by the US or Israel) to set back Iranian nuclear capabilities was also conditioned by this strategic framework vis-à-vis the Iranian nuclear imbroglio.

The more the US and the EU privileged enhanced punitive sanctions measures to pressurise Iran, the greater was the negative impact on major Iranian energy importers like India. It could be said, however, that India was better off navigating the sanctions roadblocks (which it did by enhancing and enlarging the scope of its energy sources) rather than dealing with the more consequential after effects of a possible military strike. These could, for instance, have involved evacuating thousands of its citizens who could come in harm's way as a result of

hostilities in the Persian Gulf region. India could also have taken a hit on the volume of remittances, given that the region is the source of over half of such funds it receives globally. India's bilateral trade with its largest trading partner, the Gulf Cooperation Council (GCC) countries, could also have been hit.

## UNSC SANCTIONS

Iran was referred to the UN Security Council (UNSC) in February 2006 due to ‘the absence of confidence that Iran’s nuclear programme is exclusively for peaceful purposes resulting from the history of concealment of Iran’s nuclear activities ...’<sup>1</sup> Four UNSC sanctions resolutions targeting individuals and entities allegedly involved in efforts relating to its nuclear programme are pertinent. These include Resolution 1737 (December 2006), Resolution 1747 (March 2007), Resolution 1803 (March 2008), and Resolution 1929 (June 2010).

All the UNSC sanctions have been adopted under Article 41, Chapter VII of the UN charter, making it mandatory on member states to implement them. These sanctions were primarily enacted to force Iran to halt its uranium enrichment activities, and abide by the resolutions of the International Atomic Energy Agency (IAEA), including the implementation of measures like the IAEA Additional Protocol (AP), among others. Under these UNSC resolutions, about 120 entities and individuals alleged to have been involved in Iran’s WMD activities were subject to asset freezes and travel bans.

The resolutions call upon member states to exercise restraint and vigilance regarding the entry of personnel listed in the Annexes. However, while incorporating asset freezes they allow for interest to be accrued to their frozen accounts. They also prohibit the transfer of dual-use/military/nuclear-related items or their export; prohibit the development of nuclear-capable ballistic missiles; prohibit investments by Iran in nuclear-related activities abroad including uranium mining; call for restraint on transactions with sanctioned Iranian banks like Bank

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<sup>1</sup> GOV/2006/14, February 4, 2006, at <http://www.iaea.org/Publications/Documents/Board/2006/gov2006-14.pdf> (Accessed February 15, 2011).

Melli or Bank Saderat; call on UN member states to inspect cargo carried by Iran Air or Islamic Republic of Iran Shipping Lines (IRISL), among other measures.

UNSCR 1747 imposed an arms embargo prohibiting Iran from selling arms and material while calling upon all member States ‘to exercise vigilance and restraint’ in the ‘supply, sale or transfer’ of ‘battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems’.<sup>2</sup> On the other hand, UNSCR 1929 made it incumbent on the member states to ‘prevent the direct or indirect supply, sale or transfer’ to Iran of the above listed equipment.<sup>3</sup>

While the UN sanctions did not target Iran’s financial institutions, they did contain provisions calling upon states not to enter into new commitments regarding grants, financial assistance or concessional loans except for humanitarian or development purposes. The UN sanctions also did not specifically target Iran’s energy infrastructure—although in its preamble UNSCR 1929 notes ‘the potential connection between Iran’s revenues derived from its energy sector and the funding of Iran’s proliferation-sensitive nuclear activities . . .’<sup>4</sup>

In the aftermath of UNSCR 1929, Iran’s energy infrastructure became a prime target of unilateral US and EU sanctions as well. For instance, on March 2011 while announcing sanctions on a Belarusian energy company under the Comprehensive Iran Sanctions and Divestment Act (CISADA) for its involvement in the Iran petroleum sector, the US State Department notes that ‘a key element of our strategy focuses on Iran’s oil and gas production capacity, which—as UN Security Council Resolution 1929 recognised—Iran uses to fund its proliferation

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<sup>2</sup> S/RES/1747(2007), March 24, 2007, pp. 2-3, at [https://www.iaea.org/sites/default/files/unsc\\_res1747-2007.pdf](https://www.iaea.org/sites/default/files/unsc_res1747-2007.pdf) (Accessed October 12, 2015).

<sup>3</sup> S/RES/1929(2010), June 9, 2010, pp. 4-5, at [https://www.iaea.org/sites/default/files/unsc\\_res1929-2010.pdf](https://www.iaea.org/sites/default/files/unsc_res1929-2010.pdf) (Accessed October 12, 2015).

<sup>4</sup> S/RES/1929(2010), n. 3, p. 3.

activities as well as to mask procurement for the importation of dual-use items'.<sup>5</sup>

## UNSC SANCTIONS AND EXECUTIVE RESPONSES BY INDIA

India has held that while it is bound to follow the UNSC sanctions resolutions, it is under no obligation to follow unilateral sanctions imposed by the US or any other country. When asked about the implications for India as a result of UNSCR 1737 (December 2006) by Jyotiraditya Scindia, the then External Affairs Minister Pranab Mukherjee told the Lok Sabha on March 14, 2007 that there were no implications given that 'there is no nuclear and missile related trade between India and Iran'.<sup>6</sup> However, India took steps to further strengthen the provisions dealing with its foreign trade policy to prevent misuse vis-à-vis Iran in the aftermath of these sanctions measures. For instance, in February 2007, the Directorate General of Foreign Trade (DGFT) issued a notification incorporating changes to the Foreign Trade Policy 2004-09 document stating,

Direct or indirect export and import of all items, materials, equipment, goods and technology which could contribute to Iran's enrichment-related, reprocessing or heavy water related activities, or to the development of nuclear weapon delivery systems, as mentioned below [Para 3 of 1737] whether or not originating in Iran, to/ from Iran is prohibited.<sup>7</sup>

However, even prior to Iran-related UNSC sanctions, India had already taken steps to strength its regulatory and legislative mechanisms for

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<sup>5</sup> US State Department, 'Iran Sanctions Act Announcement', March 29, 2011, at <http://www.state.gov/r/pa/prs/ps/2011/03/159309.htm> (Accessed December 20, 2011).

<sup>6</sup> Lok Sabha, 'UNSC Sanctions on Iran', March 14, 2007, at <http://164.100.47.132/LssNew/psearch/QResult14.aspx?qref=40608> (Accessed May 5, 2015).

<sup>7</sup> 'Notification No. 47 (RE-2006)/2004-2009', February 20, 2007, at <http://dgftcom.nic.in/exim/2000/not/not06/not4706.htm>; UNSCR 1737, at [https://www.iaea.org/sites/default/files/unsc\\_res1737-2006.pdf](https://www.iaea.org/sites/default/files/unsc_res1737-2006.pdf) (Accessed October 12, 2015).

preventing the sale of WMD-related materials and technology into the wrong hands in the aftermath of UNSCR 1540 of April 2004.<sup>8</sup> India enacted the Weapons of Mass Destruction (Prohibition of Unlawful Activities) Act 2005 (WMD Act) in June 2005 prohibiting unlawful activities in relation to WMD, delivery systems, equipment and technology.

In July 2005, India also updated its export control list dealing with the granting of licence for the potential sale of items on the list to prevent possible misuse. The Department of Atomic Energy issued revised guidelines governing nuclear exports in February 2006. Thus, the February 2007 DGFT notification was an executive reinforcement of the already existing strong legislative and regulatory framework. India also supported Resolution 1977 of 2011 which extended the mandate of the 1540 Committee till 2021.<sup>9</sup>

In the aftermath of UNSCR 1929 (June 2010), DGFT issued another notification in March 2011 to harmonise the provisions of the Foreign Trade Policy 2009-14 prohibiting the export or import of all items, materials, and technology which could contribute to Iran's WMD capabilities.<sup>10</sup> In UNSCR 1929, Javad Rahiqi, head of the Atomic Energy Organisation of Iran (AEOI), was the only individual listed in Annex I and subject to a travel ban, apart from 40 other entities. Subsequently, the Ministry of Home Affairs blacklisted Rahiqi in a circular dated November 16, 2010.<sup>11</sup> On April 24, 2007 itself, the EU had designated Rahiqi—that is, after the UN had designated the AEOI on Dec 12,

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<sup>8</sup> Dr.G. Balachandran brought this aspect to my attention.

<sup>9</sup> The Committee established pursuant to UNSC Resolution 1540 (adopted in April 2004), seeks to promote the goals of the resolution (to prevent proliferation of WMD and their means of delivery to non-state armed groups by strengthening state mechanisms), through dialogue, outreach, assistance, and cooperation.

<sup>10</sup> See 'Notification No. 42 (RE-2010)/2009-2014', March 31, 2011, at <http://dgftcom.nic.in/exim/2000/not/not10/not4210.htm> (Accessed May 5, 2015).

<sup>11</sup> See 'National report of India on the implementation of Security Council resolution 1929 (2010)', March 1, 2011, at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/AC.50/2011/6](http://www.un.org/ga/search/view_doc.asp?symbol=S/AC.50/2011/6) (Accessed May 7, 2015).

2006 in UNSCR 1737. He was then head of the Esfahan Nuclear Technology Centre.

### **THE IRAN-O-HIND SHIPPING COMPANY (IHSC)**

While the above were executive actions to conform to UNSC resolutions, the Iran-O-Hind Shipping Company (IHSC), a Joint Venture (JV) founded in 1975 between the Islamic Republic of Iran Shipping Lines (IRISL, with 51 per cent stake) and the Shipping Corporation of India (SCI, with 49 per cent stake) was directly targeted by UNSCR 1929. The company was founded primarily to transfer iron ore from the Kudremukh ores. It was based on an agreement which dated back to the Imperial government of Iran of 1974. Iran partly financed the project to the tune of US\$ 266 million.<sup>12</sup>

UNSCR 1929 designated three affiliates of IRISL in Annex III. These were IRISL Benelux NV, South Shipping Lines, apart from the IHSC. The resolution required that Articles 12-15 of UNSCR 1737 (dealing with restrictions pertaining to designated entities) would also apply to the three entities of IRISL. For instance, Article 12 of 1737 required all member states to ‘freeze the funds, other financial assets and other economic resources’ of designated individuals and entities on their territories.

IRISL itself was not subject to sanctions under UNSCR 1929, though it mandated member States ‘to exercise vigilance when doing business’ with the IRISL, and requested all Member States to communicate to the 1737 Sanctions Committee information regarding the re-naming or re-registering of IRISL vessels or ships. However, Iran’s national maritime carrier was designated by the US Treasury department pursuant to Executive Order (E.O.) 13382 in September 2008 (Blocking Property of Proliferators of WMD and their Supporters) for its provision of logistical services to Iran’s Ministry of Defence and Armed Forces

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<sup>12</sup> Over 13 million tonnes of iron ore was shipped to Iran between 1990 and 2004, and was valued at over Rs. 1000 crore. India earned foreign exchange worth US\$ 280 million. See Lok Sabha, ‘Assistance from Iran for KIOCL project’, August 1, 2005, at <http://164.100.47.132/LssNew/psearch/QResult14.aspx?qref=16105> (Accessed May 5, 2015).

Logistics (MODAFL).<sup>13</sup> IHSC was among the 17 entities owned or controlled by IRISL that was also designated simultaneously by the US Treasury Department.

US Under Secretary for Terrorism and Financial Intelligence Stuart Levey charged that the IRISL

Facilitate[s] the transport of cargo for UN designated proliferators, it also falsifies documents and uses deceptive schemes to shroud its involvement in illicit commerce. IRISL's actions are part of a broader pattern of deception and fabrication that Iran uses to advance its nuclear and missile programs.<sup>14</sup>

On its part, the EU had designated the IRISL in the EU Council Decision 2010/413/CFSP of July 26, 2010 in the aftermath of UNSCR 1929. The IHSC was not mentioned in the EU Council Decision, while the IRISL and its other subsidiaries were listed. It is not clear why the IHSC was left out of designations after it found prior mention in the UNSCR 1929. However, the EU Council Regulation No. 961/2010 of October 25, 2010 included the IHSC, when it mandated in Article 16 that funds or economic resources belonging to entities designated by UNSC shall be frozen. It further stated that it is prohibited

[t]o load and unload cargoes on and from vessels owned or chartered by IRISL or by such entities in ports of [EU] Member States. However, the obligation to freeze the funds and economic resources of IRISL, and of designated entities owned or controlled by IRISL, does not require the impounding or detention of vessels owned by such entities or the cargoes carried by them insofar as such cargoes belong to third parties, nor does it require the detention of the crew contracted by them.<sup>15</sup>

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<sup>13</sup> US Treasury Department, 'Major Iranian shipping company designated for proliferation Activity', September 10, 2008, at <http://www.treasury.gov/press-center/press-releases/Pages/hp1130.aspx> (Accessed September 28, 2015).

<sup>14</sup> Ibid. MODAFL was designated in October 2007 under the same EO (13382).

<sup>15</sup> The EU Council Resolution is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:281:0001:0077:EN:PDF> (Accessed October 12, 2015).

In its July 26, 2010 decision, the EU had stated that the reason for designating IRISL and its subsidiaries was that they were involved in the ‘shipment of military-related cargo, including proscribed cargo from Iran’.<sup>16</sup> These allegations were documented in the 2009 Annual Report of the 1737 Sanctions Committee, established pursuant to UNSCR 1737. The IRISL and its entities were involved in three shipments of arms and ammunition (February, October and November 2009) which were intercepted from Iran to Syria and to the Taliban in Afghanistan.<sup>17</sup>

On September 16, 2013, the EU General Court held that these incidents connected to military-related cargo, which was in contravention of the prohibition on the export of arms and related material by Iran (under Paragraph 5 of UNSCR 1747). However, the Court pointed out that there was no evidence that these arms transfers were related to nuclear-proliferation (as prohibited under Paragraph 7 of 1737). The Court did not accept the assertion of the EU Council that Iran uses such arms exports to fund its proliferation-related activities, in the absence of the submission of specific evidence supporting the charge.<sup>18</sup> However, the EU Council re-listed IRISIL on November 27, 2013 on the charge of violating Para 5 of 1747, which prohibits transport of arms-related cargo.<sup>19</sup>

As for Indian reactions to UNSCR 1929 (which included the designation of IHSC), in reply to a question from Gurudas Das Gupta on August

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<sup>16</sup> The EU Council Decision is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:195:0039:0073:EN:PDF> (Accessed September 28, 2015).

<sup>17</sup> See S/2009/688, ‘Report of the Security Council Committee established pursuant to Resolution 1737 (2006)’, December 31, 2009, pp. 5-6, at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2009/688](http://www.un.org/ga/search/view_doc.asp?symbol=S/2009/688) (Accessed September 28, 2015).

<sup>18</sup> ‘Case T-489/10, Judgment of the General Court’, September 16, 2013, at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=141406&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7459055> (Accessed September 28, 2015).

<sup>19</sup> ‘Council Decision 2013/685/CFSP’, November 26, 2013, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:316:0046:0049:EN:PDF> (Accessed September 28, 2015).

2010, External Affairs Minister S. M. Krishna told the Lok Sabha that it was mandatory for India to follow through on the terms of UNSCR 1929 given that they were Chapter VII designations.<sup>20</sup>

The IHSC JV however was not dissolved immediately. Analysts noted that IHSC vessels shipped oil in the aftermath of UNSCR 1929 to the Indian Oil Corporation Limited (IOCL) refineries.<sup>21</sup> This would not have been in contravention of UNSCR 1929 though if these shipments were in fulfilment of contracts that were entered into prior to being designated. The Managing Director of the SCI was cited as stating in January 2012 that ‘the going has become tough after the sanctions. Despite difficulties, the vessels of the company are gainfully employed.’<sup>22</sup> However, the above statement does not specify whether he was referring to IHSC vessels being ‘gainfully employed’. It is more likely that the MD could have been referring to vessels under SCI control. This is because the article subsequently clearly cites his statement that the SCI ‘is not involved in the day-to-day operations of the Company [IHSC]’, which is headquartered and registered in Tehran.<sup>23</sup>

In the face of tightening US and (especially) EU sanctions regarding the provision of insurance covers for ships transporting Iranian oil, reports noted that the government decided to close down IHSC in mid-2012. In August 2012, the Chairman of SCI was cited as stating that the company was ‘struggling due to sanctions’.<sup>24</sup> The Union Cabinet took a formal decision to shut down the JV almost a year later, on

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<sup>20</sup> Lok Sabha, ‘Sanctions on Indo-Iran JV’, August 4, 2010, at <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=94809> (Accessed May 5, 2015).

<sup>21</sup> Mamuni Das, ‘Shipping Corp to maintain status quo on Iran-o-Hind despite sanctions’, January 17, 2012, at <http://www.thehindubusinessline.com/companies/article2808883.ece> (Accessed May 10, 2015).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Kabir Taneja, ‘Iran-India friendship company is closing down’, August 5, 2010, at <http://www.sunday-guardian.com/news/iran-india-friendship-company-is-closing-down> (Accessed October 13, 2015).

April 2, 2013. SCI agreed to fulfil the JV's loan obligations amounting to US\$ 88 million owed to two German banks. In return, it agreed to get ownership of seven ships.<sup>25</sup>

However, reports in March 2014 noted that the IRISL was still interested in the company, with or without SCI as the JV partner.<sup>26</sup> Other reports indicated that the SCI and IRISL had valued the IHSC assets differently (US\$ 132 million as against US\$ 95 million), and that the SCI was demanding 49 per cent of its valuation of US\$ 132 million.<sup>27</sup> The SCI Annual Report 2014-15 notes that while the Cabinet has taken the decision to dissolve the IHSC and split its assets/liabilities 'as per mutually agreed terms ... the process of this exit is being finalised, awaiting further necessary approvals'.<sup>28</sup>

The SCI Annual Reports note the dilemmas its JV had to face due to UNSC as well as US and EU sanctions. The 2013-14 report noted that the company was 'operating in challenging circumstances'. As on March 20, 2014, the SCI declared an income of INR 2794 lakhs, liabilities of INR 44,674 lakhs, assets of INR 50,301 lakhs, and expenditure of INR 12,843 lakhs for the IHSC.<sup>29</sup> The SCI had declared an income of INR 24,129 lakhs for the IHSC in March 2009—almost 10 times more

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<sup>25</sup> PTI, 'Shipping Corporation to get seven vessels from Iran-o-Hind', April 9, 2013, at [http://articles.economictimes.indiatimes.com/2013-04-09/news/38404576\\_1\\_irano-hind-shipping-company-iran-shipping-lines-irisl](http://articles.economictimes.indiatimes.com/2013-04-09/news/38404576_1_irano-hind-shipping-company-iran-shipping-lines-irisl) (Accessed May 10, 2015). This article notes that while the IHSC was operating seven ships at that time, its assets included four crude oil tankers and four dry bulk carriers.

<sup>26</sup> Ruchika Chitravanshi, 'Iran not keen to dissolve Irano-Hind, India mulls exit routes', March 3, 2014, at [http://www.business-standard.com/article/economy-policy/iran-not-keen-to-dissolve-irano-hind-india-mulls-exit-routes-114030301023\\_1.html](http://www.business-standard.com/article/economy-policy/iran-not-keen-to-dissolve-irano-hind-india-mulls-exit-routes-114030301023_1.html) (Accessed May 10, 2015).

<sup>27</sup> 'Divorce gets messier', *Trade Winds*; Excerpted in 'Collection of Maritime Press Clippings', No. 265, September 29, 2014, at [http://217.26.101.136/mfa/nieuws/pietsinke/2014/2014\\_0922.pdf](http://217.26.101.136/mfa/nieuws/pietsinke/2014/2014_0922.pdf) (Accessed October 15, 2015).

<sup>28</sup> SCI's 65<sup>th</sup> Annual Report 2014-15, p. 32, at <http://www.shipindia.com/investor-relations/performance/annual-reports.aspx> (Accessed October 13, 2015).

<sup>29</sup> *Ibid.* p. 94

than the figure five years hence. The consolidated net loss of the IHSC as of March 2014 was US\$ 37 million.<sup>30</sup>

In Annual Report 2013-14, the Company stated that two of the IHSC vessels were ‘arrested as per court order obtained by bankers’, without mentioning the names of the vessels.<sup>31</sup> In Annual Report 2011-12, the SCI had noted that ‘notice of acceleration’ was issued by two German banks (DVB Bank and Commerze Bank) ‘requiring repayment of all term loans (approximately US\$ 88 Million) along with pending interest immediately’.<sup>32</sup> SCI Annual Reports also lists lack of Protection and Indemnity (P&I) covers, the inability to deal with dollars or Euros as among the other difficulties the IHSC was facing in the aftermath of US and EU sanctions.

Meanwhile, the 1737 Sanctions Committee has kept a close watch on the movement as well as the re-naming of the IHSC ships, as mandated by UNSCR 1929. The UN Panel of Experts (whose term has been extended till June 9, 2016 by the UNSC Resolution 2224) in their report of June 5, 2014 note that two of the three active IHSC ships, *Amin 2* and *Tour 2*, were being used to frequently ship crude to Syria. Therefore, the report notes that despite UNSC sanctions, these ships had ‘few obstacles in sailing through the Suez Canal even while flying the Iranian flag’.<sup>33</sup> The other active IHSC ship *Sinin* delivered crude to Bangladesh and China in 2013. The 2014 report notes the changes in IHSC Fleet since April 2013—three ships owned by Iran (*Amin 2*, *Tour 2*, *Ramin*); two unknown ownership (*Sattar*, *Teen*); one by the United Republic of Tanzania (*Attar*); one by Togo (*Sinin*); and one by India (*Desb Shobha*).<sup>34</sup>

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<sup>30</sup> SCI Annual Report, 2013-14, p. 37.

<sup>31</sup> Ibid.

<sup>32</sup> SCI Annual Report 2011-12, p. 34.

<sup>33</sup> See S/2014/394, ‘Final report of the Panel of Experts established pursuant to Resolution 1929 (2010)’, June 11, 2014, Annex VIII, ‘Changes in Iran-o-Hind Shipping Company fleet since April 2013’, p. 51, at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2014/394](http://www.un.org/ga/search/view_doc.asp?symbol=S/2014/394) (Accessed May 10, 2015).

<sup>34</sup> Ibid.

*Desh Shobha*, built by Hyundai Samho Heavy Industries, was added to the SCI fleet in October 2012, after the South Korean firm declined to give it to IRISL. The ship (initially christened '*Taj Mahal*') was ordered by the IHSC JV for US\$ 84 million, out of which US\$ 60 million had been paid for, prior to designation. Hyundai refused to accept the remaining amount from IRISL for fear of contravening US/UNSC sanctions.<sup>35</sup> Therefore, analysts pointed out that the induction of the *Desh Shobha* was 'forced', given that the SCI already had 21 ships on order, and did not want to take any more new ships due to 'bleak business prospects'.<sup>36</sup>

Meanwhile, the 2015 report of the UN Panel of Experts notes that *Sinin* (which was also the IHSC ship captured by Somali pirates in February 2011) was auctioned off by the Chinese authorities in October 2014. It further notes that *Amin 2* and *Tour 2* 'increased the frequency of their visits to the Syrian military port of Baniyas'.<sup>37</sup> Thus, the report states that the IHSC vessels have 'remained active since the designation without its assets apparently being frozen'.<sup>38</sup> The 2015 report also notes that *Sattar*, *Attar*, and *Teen* continued to be inactive. These three ships have been stationed at Bandar Abbas since February 2013, November 2012, and February 2012 respectively, as per the 2014 UN report.

Thus, as far as India and IHSC ships are concerned, the only IHSC vessel in SCI's possession currently (*Desh Shobha*), was ordered prior to designation, and has been with the SCI (which is of course not under any sanctions) after it was delivered. In the aftermath of Iran and its P5+1 interlocutors agreeing to the Lausanne Framework in April 2015,

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<sup>35</sup> Jayanth Jacob, 'Shipping JV with Iran may sink', *Hindustan Times*, February 12, 2011, at <http://www.hindustantimes.com/delhi/shipping-jv-with-iran-may-sink/story-yUbQheDO5razOGuXcgDMoO.html> (Accessed October 15, 2015).

<sup>36</sup> PTI, 'Sanctions force SCI to take delivery of ship booked by Iranian JV', *The Hindu*, October 9, 2012, at <http://www.thehindubusinessline.com/economy/logistics/article3981723.ece> (Accessed October 15, 2015).

<sup>37</sup> See S/2015/401, June 1, 2015, at [http://www.iranwatch.org/sites/default/files/un-panelofexpertsreport-060215\\_0.pdf](http://www.iranwatch.org/sites/default/files/un-panelofexpertsreport-060215_0.pdf) (Accessed October 15, 2015).

<sup>38</sup> *Ibid.* p. 25.

some analysts noted that the IHSC JV could be revived, given that India was ‘perennially short of tankers’.<sup>39</sup> While the total fleet strength of the SCI as of April 2016 was 69 ships, its total tanker strength was 36.<sup>40</sup> However, there is no indication from the government that it would reconsider its April 2013 decision to dissolve the JV.

As per the reported terms of the JV dissolution in return for the SCI taking on the US\$ 88 million debt, the remaining five IHSC vessels would be transferred to SCI given that the IRISL has been removed from UNSC sanctions post the ‘Implementation Day’ of the Joint Comprehensive Plan of Action (JCPOA), which was January 16, 2016. (See section on JCPOA below for further details).

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<sup>39</sup> Shirish Nadkarni, ‘Revival of Iran-o-Hind Shipping could be symbiotic for both India and Iran’, April 6, 2015, at <http://splash247.com/revival-irano-hind-shipping-symbiotic-india-iran/> (Accessed October 13, 2015).

<sup>40</sup> SCI, ‘Fleet Profile’, March 1, 2016, at <http://www.shipindia.com/fleet/fleet-profile.aspx> (Accessed March 24, 2016).

## **US SANCTIONS**

There have been 10 statutes/public laws passed by the Congress and 26 Executive Orders (E.O.) targeting Iran since 1979. Iran was placed on the list of countries supporting terrorism for the first time in 1984, in the aftermath of the 1983 Beirut bombings that killed nearly 300 US and French soldiers. This section analyses pertinent aspects relating to Executive-Congressional actions targeting Iran. Prior to examining key sanctions measures enacted/passed during the Obama Administration, measures enacted by the Administrations of President Bill Clinton and President George W. Bush are delineated.

### **THE CLINTON ADMINISTRATION (1993-2001)**

President Bill Clinton termed Iran as an ‘extraordinary national security threat’, and declared a ‘state of emergency’ with respect to Iran in March 1995 under EO 12957. This designation triggered the provisions of the International Emergency Economic Powers Act (IEEPA) which entailed a sweeping trade and investment ban on Iran. Subsequently, this designation has been renewed every year since by different US Administrations.

President Clinton issued EO 12938 in November 1994, which banned US procurement and imports from the sanctioned entity/country for having engaged in WMD-related activity vis-à-vis Iran. The Clinton Administration used the terms of this EO to designate four Russian entities in 1998 and 1999 (including space agency Glavkosmos) for cooperating with Iran. These constitute the only Iran-related sanctions designations used by the Clinton Administration. These Russian firms were only exempted from sanctions in 2010.

The foundational sanctions legislation targeting Iran’s petroleum sector was the 1996 Iran and Libya Sanctions Act (ILSA), passed by the Clinton Administration. The ILSA, which later became Iran Sanctions

Act (ISA) in 2006 after Libya was removed from its purview as part of amendments carried out by the Iran Freedom Support Act (IFSA) of September 2006, was passed to deter foreign energy companies from participating in oil and gas development inside Iran.<sup>1</sup>

ILSA threatened ‘to impose sanctions on persons making certain investments directly and significantly contributing to the enhancement of the ability of Iran or Libya to develop its petroleum resources ...’<sup>2</sup> The objective behind the Act was ‘to deny Iran the financial means to sustain’ its WMD programmes.<sup>3</sup> Two or more of the six sanctions described in the Act were reserved against individuals or entities that make an investment of US\$ 40 million that would contribute to the development of Iran’s petroleum resources. These sanctions included the denial of EXIM Bank loans, the denial of export licenses, the denial of loans of US\$ 10 million or more by private US financial institutions, the prohibition on the designation of financial institutions as the primary dealer in US government funds or debt instruments, the ban on US government procurement contracts, and sanctions as appropriate in accordance with the IEEPA.<sup>4</sup>

The critical need to get allies on board for the effectiveness of the sanctions measures was illustrated during the Clinton Administration when the EU opposed the 1996 ILSA as an ‘extra-territorial application’ of US law. The EU even threatened to file a petition at the World Trade Organisation (WTO), and the US and the EU eventually agreed to avoid a trade confrontation over ILSA in April 1997.<sup>5</sup>

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<sup>1</sup> In April 2004, Libya was judged by President George W. Bush to have addressed all relevant UN Security Council resolutions with respect to the downing of the Pan Am flight in December 1988, and was subsequently removed from the State Department list of countries supporting terrorism.

<sup>2</sup> The text of ILSA 1996 is available at <http://www.gpo.gov/fdsys/pkg/BILLS-104hr3107enr/pdf/BILLS-104hr3107enr.pdf> (Accessed June 21, 2014).

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Kenneth Katzman, ‘The Iran-Libya Sanctions Act’, October 11, 2006, at <http://fpc.state.gov/documents/organization/74902.pdf>, p. 3. (Accessed June 21, 2014).

The Clinton Administration subsequently waived ILSA sanctions against French, Russian and Malaysian firms that were determined to be in violation of ILSA due to their US\$ 2 billion agreement in September 1997 to develop Iran's South Pars gas field. The Administration used the 'national interest' waiver in May 1998 after the EU pledged non-proliferation and counter-terrorism cooperation.<sup>6</sup>

Despite the limited actual use of such sanctions by the Clinton Administration, the latter did further enact tough legislations, such as the Iran Non-Proliferation Act (INA) in March 2000. This was to prevent the supply of know-how and material that Iran was allegedly getting from countries like Russia and North Korea on its WMD programmes. The INA authorised punitive action

on entities for the transfer to Iran since January 1, 1999, of equipment and technology controlled under multilateral export control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems.<sup>7</sup>

The only India-related sanctions designations were against two nuclear scientists and three chemical companies under the provisions of the 2000 INA. These were the designations against the following: Dr. Surendar (Sept 2004-Dec 2005) and Y.S.R. Prasad (September 2004-September 2006)—both of the Nuclear Power Corporation of India Limited (NPCIL); Sandhya Organic Chemicals (Dec 2005-Dec 2007); Balaji Amines (July 2006-July 2008); and Prachi Poly Products (July 2006-July 2008)—for sharing of the expertise and sale of such chemicals like phosphorous oxy-chloride and tri-methyl phosphate, among others.<sup>8</sup>

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<sup>6</sup> Ibid.

<sup>7</sup> Federal Register, Vol. 71, No. 150, August 4, 2006, Notices, at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006\\_register&dclid=\[DOCID:fr04au06-119\].pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&dclid=[DOCID:fr04au06-119].pdf) (Accessed January 17, 2012)

<sup>8</sup> US State Department, 'Iran Non-proliferation Act of 2000', at <http://www.state.gov/t/isn/c15234.htm> (Accessed January 17, 2012).

The US contention was that such chemicals could also be used as intermediaries in the manufacture of chemical weapons. The Ministry of External Affairs (MEA) on its part charged that these designations were ‘not justified’, and held that the Indian firms had not acted in ‘violation of our laws or regulations’.<sup>9</sup> However, each of these designations, valid for two years, were not renewed. The designation with respect to Dr. Surrender was removed within 15 months.<sup>10</sup>

### **THE BUSH ADMINISTRATION (2001-2009)**

The policy outlook of the George W. Bush Administration was compounded by harsh rhetoric from both sides—the US being the ‘Great Satan’ in the terminology of the Iranian regime. Thus, there was little scope for any sort of positive engagement. Iranian President Mahmoud Ahmadinejad characterised the Bush Administration period as the ‘dark era’ in the relations between the two countries, and stated, ‘...if some people seek to repeat that experience ... they should know they will face a much worse fate than Bush’s’.<sup>11</sup>

Some analysts have noted that the Bush Administration had a negative influence on Iran’s negotiations with the EU-3 (Germany, United Kingdom and France) over its nuclear concerns, and that it did not engage constructively with the ‘moderate’ regime of President Khatami

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<sup>9</sup> Ministry of External Affairs (MEA), ‘On the visit of President of Sri Lanka, and the reaction to reports about the imposition of sanctions on two Indian firms under the US-Iran Proliferation Act’, December 28, 2005, at <http://www.mea.gov.in/mystart.php?id=530310670> (Accessed January 24, 2012)

<sup>10</sup> Another Indian firm that was later under the radar of Indian and German authorities pertaining to Iran-related transactions was M/S Bell-o-Seal, a manufacturer of high-precision valves for the nuclear industry. It had supplied 856 valves to a Turkish company from 2007-11 which allegedly made their way to Iran for use in the IR-40 Arak reactor. Analysts noted that, after investigation, Indian authorities concluded that the Company was not aware that the goods would be re-exported to Iran. See Daniel Salisbury and Ian J. Stewart, ‘Valves for Arak’, August 22, 2014, at <https://www.acsss.info/proliferation/item/342-valves-for-arak> (Accessed October 10, 2015).

<sup>11</sup> BBC, ‘Iran ready for dialogue with US’, BBC, February 10, 2009, at [http://news.bbc.co.uk/2/hi/middle\\_east/7880647.stm](http://news.bbc.co.uk/2/hi/middle_east/7880647.stm) (Accessed January 27, 2012).

as well.<sup>12</sup> For instance, Ali Parchami notes that Bush's January 2002 State of the Union speech ignored Iran's cooperation in Afghanistan in the aftermath of 9/11. Other analysts argue that geo-political 'structural' factors like the Iranian revolution, US containment strategy in the Middle East, among others have conditioned the mutual hostility.<sup>13</sup>

The Bush Administration followed a muscular counter-proliferation policy aimed at countering concerns generated by Iran, North Korea, and Libya. In his January 2002 speech, President Bush famously clubbed Iran together with Iraq and North Korea as constituting 'an axis of evil, arming to threaten the peace of the world.'<sup>14</sup> The Bush Administration put together multi-lateral measures like the 2003 Proliferation Security Initiative (PSI), and strengthened and expanded existing national non-proliferation sanctions like the ILSA in 2001 as well as in 2006. The INA was expanded in 2005 and 2006, respectively, to become the Iran, Syria and North Korea Non-Proliferation Act (INKSNA).

While being wary of using energy-related sanctions provisions over concerns relating to hurting the business interests of allies, the Bush Administration liberally used WMD-related sanctions provisions—like the INA/INKSNA provisions (as well as EO 12938 of 1994 and EO 13382 of 2005)—to target companies and individuals for allegedly providing WMD-related equipment and expertise to Iran. Nearly 200 entities—including from China, North Korea, Russia, Spain, Ukraine, Cuba, Singapore, Sudan, and Venezuela—were designated between 2000-2008. Some Chinese entities (like Norinco) were sanctioned multiple times.

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<sup>12</sup> Ali Parchami, 'American Culpability: The Bush Administration and the Iranian Nuclear Impasse', *Contemporary Politics*, 20(3), 2014, pp. 315-330.

<sup>13</sup> Reza Senati, 'Beyond the Domestic Picture: The Geopolitical Factors that have formed Contemporary Iran-US Relations', *Global Change, Peace and Security*, 26(2), 2014, pp. 125-140.

<sup>14</sup> Text of the State of the Union speech, available at <http://www.washingtonpost.com/wp-srv/onpolitics/transcripts/sou012902.htm> (Accessed January 24, 2012).

However, analysts have pointed out that the sanctions designations under INA have been ‘too weak’ to influence the behaviour of such companies/individuals as are indulging in WMD-related proliferation. Penalties under INA have included a ban for two years on US government procurement, the denial of US export licenses, among others.

The 2006 ILSA extension (and name-change to ISA) was part of the amended provisions in the IFSA. The IFSA was enacted ‘to support [the] transition to democracy in Iran’, and authorised the President ‘to provide financial and political assistance (including the award of grants) to foreign and domestic individuals, organizations, and entities working for the purpose of supporting and promoting democracy for Iran’.<sup>15</sup> The IFSA also codified EO’s—like 12957 of 1995 (under which ‘State of Emergency’ was declared); 12959 of 1997 (which imposed a comprehensive ban on US trade with Iran); and 13059 of 1997 (which prevents US companies from exporting goods to third countries from where they could be re-exported to Iran).

The Bush Administration—as also the Obama Administration ostensibly did (according to critics) with respect to sanctions against the Central Bank of Iran (CBI) initially—opposed earlier versions of IFSA on the grounds that they would negatively affect diplomatic efforts. In hearings before the Senate House, Banking and the Urban Affairs Committee in June 2006 (co-terminus with the start of the P5+1 process), Under Secretary of State for Political Affairs, Nicholas Burns, insisted that, ‘For over 26 year, sanctions have not had a decisive impact. It’s far preferable to get a larger number of countries involved in sanctions.’<sup>16</sup>

Earlier versions of IFSA (H.R. 282) introduced in the House—for instance, in April 2006—required the President to certify that Iran has ‘verifiably dismantled its weapons of mass destruction programmes’.<sup>17</sup>

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<sup>15</sup> IFSA, at [http://www.treasury.gov/resource-center/sanctions/Documents/pl109\\_293.pdf](http://www.treasury.gov/resource-center/sanctions/Documents/pl109_293.pdf) (Accessed June 20, 2014).

<sup>16</sup> ‘Bush Administration supports ILSA but not ILSA Senate Hearing’, June 26, 2006, at <http://www.niacouncil.org/bush-administration-supports-ilsa-but-not-ifsa-senate-hearing/> (Accessed June 21, 2014).

<sup>17</sup> The text of H.R. 282 is available at <https://www.govtrack.us/congress/bills/109/hr282/text> (Accessed June 21, 2014).

However, the Act as it was eventually passed in September 2006, does not contain such language and requires only that the US should not enter into any agreement with any country assisting the nuclear programme of Iran unless the President determines that Iran has ‘committed to verifiably refrain permanently’ from enrichment-related and reprocessing-related activity.<sup>18</sup>

Among other important financial measures taken by the Bush Administration were its efforts to block ‘U-turn transactions’ involving Iranian banks. These refer to indirect transactions with non-Iranian foreign banks that handle transactions on behalf of Iranian banks. Initially, this measure targeted Bank Saderat for its involvement with Hezbollah in 2006, and was later expanded to include all Iranian banks in November 2008.

Therefore, the broad criticism of US administration sanctions policies prior to Obama has been that not enough was done to curtail Iran’s oil revenues, and to punish entities/companies belonging to allies for conducting business with Iran, though authorities existed for such measures. The only prior designations under ILSA in 1998 against French, Russian and Malaysian firms (as indicated above) were waived due to ‘national interest’ considerations on account of the opposition from the EU. Companies doing business with Iran that violated ISA provisions continued to receive US government contracts worth hundreds of millions of dollars. Former Treasury Undersecretary Stuart E. Eizenstat was quoted as stating that the ISA let Iran ‘exploit divisions between the US and our European allies’.<sup>19</sup>

Further, prior to the Obama Administration, while provisions relating to WMD-related activities were implemented (as in INA/INSKNA/E.O. 12938/E.O. 13382), not much effort was made to directly target Iranian financial institutions like the CBI, either by the US administrations

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<sup>18</sup> IFSA, n. 15.

<sup>19</sup> Jo Becker and Ron Nixon, ‘US Enriches Companies Defying Its Policy on Iran’, March 6, 2010, at [http://www.nytimes.com/2010/03/07/world/middleeast/07sanctions.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/03/07/world/middleeast/07sanctions.html?pagewanted=all&_r=0) (Accessed February 28, 2014).

or by the UNSC—though it is pertinent to note that UNSCR 1929 in its preamble had called for

the need to exercise vigilance over transactions involving Iranian banks, including the Central Bank of Iran, so as to prevent such transactions contributing to proliferation-sensitive nuclear activities, or to the development of nuclear weapon delivery systems.<sup>20</sup>

It has also been pointed out that the 110th session of the US Congress, from January 2007-January 2009, did not even pass any Iran-related sanctions resolutions.<sup>21</sup>

### **THE OBAMA ADMINISTRATION (2009-ONGOING)**

During his election campaign, President Barack Obama remarked that he was willing to sit down with Ahmadinejad for negotiations, prompting criticism from his Republican rival John McCain for ‘inexperience and reckless judgment ...’<sup>22</sup> After taking over, in a press conference in February 2009, while listing out the dangers of a nuclear Iran, Obama acknowledged that ‘there’s the possibility at least of a relationship of mutual respect and progress ... it’s time for Iran to send some signals that it wants to act differently as well.’<sup>23</sup> The Iranian President responded in a positive manner, stating, ‘The Iranian nation

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<sup>20</sup> S/RES/1929(2010), n. 3, p. 3, at [https://www.iaea.org/sites/default/files/unsc\\_res1929-2010.pdf](https://www.iaea.org/sites/default/files/unsc_res1929-2010.pdf) (Accessed October 12, 2015).

<sup>21</sup> Orde F. Kittrie, ‘Iran: Recent Developments and Implications for US Policy’, Testimony before the US House of Representatives Committee on Foreign Affairs, July 22, 2009, at <http://www.iranwatch.org/sites/default/files/hcfa-071509.pdf> (Accessed February 18, 2014).

<sup>22</sup> CNN, ‘McCain, Obama trade jabs over Iran policy’, May 19, 2008, at [http://articles.cnn.com/2008-05-19/politics/mccain.free.trade\\_1\\_obama-trade-jabs-senator-obama-john-mccain?\\_s=PM:POLITICS](http://articles.cnn.com/2008-05-19/politics/mccain.free.trade_1_obama-trade-jabs-senator-obama-john-mccain?_s=PM:POLITICS) (Accessed January 26, 2012).

<sup>23</sup> Transcript of the news conference available at <http://www.presidency.ucsb.edu/ws/index.php?pid=85728#axzz1kdVj29lh> (Accessed January 27, 2012).

is ready to hold talks, but talks in a climate of fairness with mutual respect'.<sup>24</sup>

### **Initial 'Outreach' to Iran**

Obama's Nowruz messages, the invitation extended to Iran to attend the conference on Afghanistan at The Hague in March 31, 2009, and his 'lukewarm' criticism of the post-election violence in June 2009 were his Administration's continuing efforts of 'engagement' with Iran. While analysts termed it 'persuasion' because it included the threat of further sanctions if Iran did not respond,<sup>25</sup> critics charged that the Obama Administration was instead following what they termed as 'free-pass engagement', given that the Iranian response to such offers had not been encouraging.<sup>26</sup> Supreme Leader Ayatollah Khamenei for instance had in response to the March 21, 2009 Nowruz message of President Obama charged that 'if the extended hand is covered with a velvet glove but underneath it, the hand is made of cast iron, this does not have a good meaning at all'.<sup>27</sup>

In a testimony before the Senate Banking, Housing, and Urban Affairs Committee (SBHUAC) in June 2009, US officials like Undersecretary Nicholas Burns insisted that 'Obama has managed to shift global opinion. The US is now in a stronger position to argue convincingly for a more

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<sup>24</sup> Damien McElroy, 'Ahmadinejad's positive response to Obama overtures', February 10, 2009, at <http://www.telegraph.co.uk/news/worldnews/middleeast/iran/4582961/Ahmadinejads-positive-response-to-Obama-overtures.html> (Accessed January 27, 2012).

<sup>25</sup> Kenneth Pollack et al., 'Which Path to Persia? Options for a New American Strategy toward Iran', Analysis Paper 20, Saban Centre for Middle East Policy, June 2009, at [http://www.brookings.edu/~media/research/files/papers/2009/6/iran%20strategy/06\\_iran\\_strategy.pdf](http://www.brookings.edu/~media/research/files/papers/2009/6/iran%20strategy/06_iran_strategy.pdf) (Accessed February 17, 2014).

<sup>26</sup> Danielle Pletka, Senate Committee on Banking, Housing and Urban Affairs, July 30, 2009, at <http://www.iranwatch.org/sites/default/files/sbhua-pletka-iransanctions-073009.pdf> (Accessed February 21, 2014).

<sup>27</sup> Cited in Tim Shipman and Colin Freeman, 'Iran rejects Barack Obama's Hand of Friendship', March 21, 2009, at <http://www.telegraph.co.uk/news/worldnews/middleeast/iran/5026873/Iran-rejects-Barack-Obamas-hand-of-friendship.html> (Accessed February 6, 2016). I am grateful to an External Reviewer for bringing this quote to my attention.

tough-minded international approach to the Iran nuclear issue.<sup>28</sup> Other officials like Deputy Secretary of State James Steinberg stated that there were three purposes of engagement: i) Iran cannot point to the lack of engagement as an excuse for inaction; ii) the possibility of persuading Iran to alter its policies; iii) and allowing to mobilise international action if Iran refuses to change its course.<sup>29</sup>

While the Obama Administration can be credited with following a policy of ‘engagement’ initially, it is pertinent to note that Undersecretary Burns represented the US for the first time at the P5+1 meetings in Geneva in July 2008—that is, when President Bush was still in office. In fact, Republican Senator Richard Lugar alluded to Burns’ participation as the beginning of a shift in US policy.<sup>30</sup> As indicated above, Bush Administration officials also opposed tough versions of Iran sanctions resolutions (like the IFSA) and did not use sanctions provisions as those found in ILSA/ISA for fear of alienating European allies as well as countries like Japan.

There was broad bi-partisan support for Obama’s initial policy of engagement in the US Congress. In hearings before the Senate Foreign Relations Committee (SFRC) in March 2009, Lugar insisted that

direct communication ... may reduce risks of miscalculation, improve our ability to interpret what is going on in Iran, dispel anti-American rumours among the Iranian people, and

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<sup>28</sup> Nicholas Burns, July 30, 2009, at <http://www.iranwatch.org/sites/default/files/sbhuac-burns-iransanctions-073009.pdf> (Accessed February 24, 2014).

<sup>29</sup> James Steinberg, Testimony before the Senate Committee on Banking, Housing, and Urban Affairs, ‘Minimizing Potential Threats from Iran: Administration Perspectives on Economic Sanctions and Other US Policy Options’, October 6, 2009, at <http://www.iranwatch.org/library/government/united-states/congress/hearings-prepared-statements/senate-committee-banking-housing-and-urban-affairs-minimizing-potential-threats> (Accessed February 18, 2014).

<sup>30</sup> Lugar’s statement is available at <http://www.iranwatch.org/sites/default/files/us-sfrc-lugar-iranstrategy-030509.pdf> (Accessed February 18, 2014).

strengthen our efforts to enlist the support of key nations in responding to Iranian threats.<sup>31</sup>

Senator John Kerry, then Chairman of the SFRC, insisted at the same hearings that ‘direct talks’ with Iran was the ‘right first step’ as ‘this is not just an American problem, and it will not be just an American solution’.<sup>32</sup>

### **Pressure for Change in Policy**

Pressure began to build up in the Congress for a shift in US policy in the aftermath of the electoral violence of June 2009, the disclosure on the Qom enrichment facility in September 2009, the failure of the October 2009 offer from the Vienna Group (US, Russia, France, IAEA) on providing nuclear material to the Tehran Research Reactor (TRR) – to prevent Iran from enriching uranium beyond 5 per cent<sup>33</sup>, and the concerns generated by the quarterly reports of the IAEA Director General to the Board of Governors (BOG) which indicated that Iran was continuing to increase its enrichment material and infrastructure, in contravention of the requirements of the BOG and UNSC resolutions.

In testimony before the House Foreign Affairs Committee (HFAC) on April 22, 2009, Secretary of State, Hillary Clinton stated that if Iran did not ‘unclench its fist’ in response to the ‘extended hand’ of the US, the Obama Administration was ‘laying the groundwork for... Crippling sanctions that might be necessary in the event that our offers are either rejected or the process is inconclusive or unsuccessful’.<sup>34</sup>

The inadequacy of extant sanctions was alluded to by Senator John Kerry in hearings at the SFRC on May 6, 2009. Kerry stated that the

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<sup>31</sup> SFRC Hearings, ‘Iranian Political and Nuclear Realities and US Policy Options’, March 3, 2009, at <http://www.iranwatch.org/sites/default/files/us-sfrc-kerry-iranrealities-030309.pdf> (Accessed February 12, 2014).

<sup>32</sup> Ibid.

<sup>33</sup> One of the External Reviewers brought this aspect to my attention.

<sup>34</sup> Clinton’s testimony is available at <http://www.iranwatch.org/library/government/united-states/congress/hearings-prepared-statements/house-committee-foreign-affairs-hearing-new-beginnings-foreign-policy> (Accessed February 18, 2014).

sanctions were a 'blunt instrument with an imperfect track record', and that the 'bottom line [was] they did not prevent [Iran] from acquiring the capacity to enrich uranium on an industrial scale'.<sup>35</sup> In July 2009, the Senate passed a resolution urging the administration to set a deadline of September 2009 (coinciding with the G20 Summit in Pittsburgh) seeking Iranian cooperation, or else ramp up sanctions measures.

While following the policy of engagement, the Obama Administration put its weight behind UNSC efforts to pressure Iran. As indicated above, the UN passed four sanctions resolutions 1736, 1747, 1803 and 1929 in December 2006, March 2007, March 2008 and June 2010, respectively. However, the Administration's view changed in the face of what it alleged was Iranian non-cooperation to its diplomatic outreach as well as UN injunctions.

On June 9, 2010 (on the day 1929 was passed), Undersecretary Burns stated

It's been more than two years since Resolution 1803. ... The President has reached out in ways that are truly unprecedented in the 30 years since the Iranian Revolution. Facts are stubborn things, and the stubborn fact remains that since the 1<sup>st</sup> of October [2009], Iran has refused to engage with the P5+1 with a focus on international concerns about its nuclear program.<sup>36</sup>

Burns termed UNSCR 1929 as 'the most comprehensive international sanctions' in testimony before the SFRC on June 22, 2010. It is, however, pertinent to note that under all UNSC sanctions, a total of 75 entities and 46 individuals were subject to asset freeze and travel ban (as found in Annex to these resolutions), in contrast to the large number of entities and individuals sanctioned for WMD/terrorism/human rights-related

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<sup>35</sup> SFRC Hearings, 'Engaging Iran: Obstacles and Opportunities', May 6, 2009, at <http://www.iranwatch.org/library/government/united-states/congress/hearings-prepared-statements/senate-committee-foreign-relations-hearing-engaging-iran-obstacles-and> (Accessed February 12, 2014).

<sup>36</sup> Undersecretary Burn's statement is available at <http://fpc.state.gov/142910.htm> (Accessed February 12, 2014).

activities under US statutes and EO's. These latter numbered over 400, apart from nearly 150 ships belonging to IRISL and NITC.<sup>37</sup> Experts in testimony before the HFAC in July 2009 further criticised UNSC sanctions as 'far too weak', given that they only deal with 'nuclear and ballistic missile technology; freeze of overseas assets of a couple dozen Iranian officials and institutions; ban on export of arms by Iran; [and] ban on overseas travel of a handful of Iranian officials'.

### **The Two Prongs of Obama's Military Strategy**

In the face of increasing Iranian intransigence to the requirements of the UNSC or the IAEA, President Obama, like his predecessor, kept on insisting that he will 'take no options off the table' to prevent Iran from getting a nuclear weapon.<sup>38</sup> This was generally meant to convey that the US will not desist from using its military might to prevent a nuclear Iran. America's close ally in the region, Israel was more robust in advocating for a military solution. This was especially so in the face of the strident rhetoric adopted by President Ahmadinejad, especially on 'threats' to 'wipe Israel off the map', coupled with his Holocaust denial statements.

While being less than enthusiastic about overtly endorsing the military option, the Obama Administration nevertheless took steps to buttress its military capabilities as well as that of its regional allies in order to face any eventuality. Thus, the political caution vis-à-vis Israel's robust advocacy, coupled with efforts to be militarily ready constituted the 'twin prongs' of Obama's military strategy.

At the UN General Assembly on September 27, 2012, Prime Minister Benjamin Netanyahu asserted that a nuclear Iran cannot be deterred as

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<sup>37</sup> See 'Entities sanctioned under UN Resolutions and US Laws and Executive Orders', pp. 67-76, in Kenneth Katzman, *Iran Sanctions*, August 4, 2015, Congressional Research Service, at <https://www.fas.org/sgp/crs/mideast/RS20871.pdf> (Accessed October 20, 2015).

<sup>38</sup> The White House, 'Remarks by the President in State of the Union Address', January 24, 2012, at <https://www.whitehouse.gov/the-press-office/2012/01/24/remarks-president-state-union-address> (Accessed February 20, 2012).

its leaders were ‘apocalyptic’.<sup>39</sup> However, US officials believed otherwise. In an interview to CNN in February 2012, US Military Chief General Martin Dempsey affirmed that talk of a military strike on Iran was ‘pre-mature’.<sup>40</sup> In testimony before the Senate Select Committee on Intelligence on January 31, 2012, the Director of National Intelligence (DNI) James Clapper stated that Iran’s nuclear decision-making was ‘guided by a cost-benefit approach, which offers the international community opportunities to influence Tehran’.<sup>41</sup> In subsequent years, DNI Clapper has also insisted that while Iran has the ‘scientific, technical, and industrial capacity to eventually produce nuclear weapons’, whether it would do so was contingent on a ‘political’ decision.<sup>42</sup> Thus, by focusing on Iran’s political calculus, he further privileged options like stronger sanctions and the military readiness of the US and its allies that could potentially impinge on such an Iranian decision.

In his address before the premier Israel advocacy group American-Israel Public Affairs Committee (AIPAC) in March 2012, President Obama most pertinently criticised ‘too much loose talk of war’.<sup>43</sup> There

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<sup>39</sup> Ministry of Foreign Affairs (MFA), ‘Prime Minister Netanyahu’s speech at the UNGA’, at <http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2012/PM-Netanyahu-addresses-UN-27-Sep-2012.htm> (Accessed December 18, 2012).

<sup>40</sup> CNN, ‘Talk of Strike on Iran “premature”, Top US General Says’, February 19, 2012, at [http://articles.cnn.com/2012-02-19/middleeast/world\\_meast\\_iran-nuclear\\_1\\_nuclear-watchdog-existential-threat-nuclear-program?s=PM:MIDDLEEAST](http://articles.cnn.com/2012-02-19/middleeast/world_meast_iran-nuclear_1_nuclear-watchdog-existential-threat-nuclear-program?s=PM:MIDDLEEAST) (Accessed March 1, 2012).

<sup>41</sup> Director of National Intelligence (DNI), ‘Unclassified Statement for the Record on the Worldwide Threat Assessment of the US Intelligence Community for the Senate Select Committee on Intelligence’, January 31, 2012, p. 6, at [http://www.dni.gov/files/documents/Newsroom/Testimonies/20120131\\_testimony\\_ata.pdf](http://www.dni.gov/files/documents/Newsroom/Testimonies/20120131_testimony_ata.pdf) (Accessed October 10, 2015).

<sup>42</sup> DNI, ‘Statement for the Record: Worldwide Threat Assessment of the US Intelligence Community’, Senate Select Committee on Intelligence, January 29, 2014, p. 5, at [http://www.dni.gov/files/documents/Intelligence%20Reports/2014%20WWTA%20%20SFR\\_SSCI\\_29\\_Jan.pdf](http://www.dni.gov/files/documents/Intelligence%20Reports/2014%20WWTA%20%20SFR_SSCI_29_Jan.pdf) (Accessed October 10, 2015).

<sup>43</sup> The White House, ‘Remarks by the President at AIPAC Policy Conference’, March 4, 2012, at <http://www.whitehouse.gov/the-press-office/2012/03/04/remarks-president-aipac-policy-conference-0> (Accessed March 5, 2012).

was also a stream of high-level US officials to Jerusalem to dissuade Israel from undertaking a de-stabilising military strike. Meanwhile, the US increased the level of military exercises with allies like Israel and the Gulf Cooperation Council (GCC) countries. The October 2012 'Austere Challenge' exercise was the largest ever missile defence exercise between the US and Israel, which also involved Germany and the United Kingdom. Qatar, UAE, and Kuwait among others hosted crucial US missile defence equipment, like X-band radars and Patriot batteries. The US, on its part, maintained an enhanced military profile in the Persian Gulf, with additional nuclear-powered aircraft carrier battle groups transiting the region, and by deploying advanced fighter jets like the F-22 Raptors at bases in Abu Dhabi and Qatar, as well as advanced anti-mine counter measure (MCM) ships, among other equipment.<sup>44</sup>

### **'Dual-Track' Policy: Sanctions and 'Constructive Engagement'**

The Obama Administration's 'dual-track' policy towards the Iran nuclear issue involved 'applying pressure in pursuit of constructive engagement, and a negotiated solution'.<sup>45</sup> Thus, negotiating with Iran at the P5+1 grouping, on the back of increasingly restrictive sanctions as well as maintaining an enhanced military posture as described above, were essential elements of the two tracks. Such pressure has been held to be primarily responsible for bringing Iran to the negotiating table, as in April 2012 when negotiations resumed in Istanbul after a gap of 15 months and, indeed, also for the November 2013 Joint Plan of Action (JPOA). In November 2012, Secretary Clinton affirmed that the dual-tracks of pressure and engagement constituted a 'policy of prevention',

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<sup>44</sup> For details, see my chapter, 'Options on the Table: Iranian Nuclear Imbroglio and American Military Moves', in S.D. Muni and Vivek Chadha (eds.) *Asian Strategic Review* (New Delhi: IDSA, Pentagon Press, 2013), pp. 295-314.

<sup>45</sup> Hillary Clinton and Timothy Geithner, 'Joint Statement on Iran Sanctions', June 23, 2011, at <http://www.state.gov/r/pa/prs/ps/2011/06/166814.htm> (Accessed January 24, 2012).

and that the US did not have a ‘policy of containment’ while dealing with the Iran nuclear threat.<sup>46</sup>

Among the punitive measures the administration promulgated included the US Department of Treasury designating Iran as a ‘jurisdiction of primary money laundering concern’ in November 2011. This was only the second time (after Myanmar in 2003) that an entire country was designated as such under the terms of the USA Patriot Act. Secretary Clinton stated that the measure was the ‘strongest official warning we can give that any transaction with Iran poses serious risks of deception or diversion’.<sup>47</sup>

US officials insisted that the ‘statutory term of art’, being invoked on a ‘foreign jurisdiction as opposed to a foreign institution’, will ‘ensure that the designated threat does not have any direct or indirect financial access to the United States’.<sup>48</sup> The designation laid the foundation for directly targeting the CBI under the National Defence Authorization Act (NDAA) 2012, which became law in December 2011 (See below for details regarding NDAA 2012).

While following the policy of ‘engagement’ as described earlier, the Obama Administration did not desist from renewing every year the ‘State of Emergency’, which was first declared by President Clinton in March 1995. Renewing the designation on March 9, 2016, Obama contended that despite the JCPOA, ‘certain actions and policies of the Government of Iran continue to pose an unusual and extraordinary

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<sup>46</sup> Hillary Clinton, ‘Remarks at the Saban Center for Middle East Policy 2012: Saban Forum Opening Gala Dinner’, November 30, 2012, at <http://www.state.gov/secretary/20092013clinton/rm/2012/11/201343.htm> (Accessed October 20, 2015).

<sup>47</sup> Hillary Clinton, ‘Measures to Increase Pressure on Iran’, November 21, 2011, at <http://www.state.gov/secretary/20092013clinton/rm/2011/11/177610.htm> (Accessed October 10, 2015).

<sup>48</sup> US State Department, ‘Background Briefing on the Recently Announced Sanctions on Iran’, November 21, 2011, at <http://www.state.gov/r/pa/prs/ps/2011/11/177613.htm> (Accessed October 10, 2015).

threat to the national security, foreign policy, and the economy of the United States.<sup>49</sup>

As part of the sanctions track of the ‘dual-track’ policy, the Obama Administration not only began to enact stringent sanctions measures (more later) but also began to implement available sanctions measures like the ILSA/ISA more vigorously. Despite the Clinton Administration passing it, the Obama Administration used the ISA provisions (as amended periodically including by the Comprehensive Iran Sanctions and Divestment Act, CISADA) in September 2010 to sanction the Swiss-based Naftiran Intertrade Company (NICO). On October 13, 2011, in testimony before the Senate Banking Committee, Undersecretary of State Wendy Sherman stated that this designation was ‘the first sanctions any administration had ever imposed under the Iran Sanctions Act’.<sup>50</sup>

While the above action was the first designation under ISA, Obama Administration officials, like Deputy Secretary of State James Steinberg insisted (in October 2009) that the sanctions provisions of the ISA were a ‘substantial deterrent’, and that ‘it’s not always the case that you can judge the efficacy of the legislation by the number of times the sanctions have been imposed’.<sup>51</sup> Robert J. Einhorn, Special Advisor for Arms Control and International Security, told the House Committee

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<sup>49</sup> The White House, ‘Notice: Continuation of the National Emergency with Respect to Iran’, March 9, 2016, at <https://www.whitehouse.gov/the-press-office/2016/03/09/notice-and-letter-continuation-national-emergency-respect-iran> (Accessed March 24, 2016).

<sup>50</sup> Wendy Sherman, ‘Addressing Potential Threats from Iran: Administration Perspectives on Implementing New Economic Sanctions One Year Later’, October 13, 2011, at <http://www.state.gov/p/us/rm/2011/175436.htm> (Accessed June 23, 2014).

<sup>51</sup> Testimony by J. B. Steinberg before the Senate Committee on Banking, Housing, and Urban Affairs, ‘Minimizing Potential Threats from Iran: Administration Perspectives on Economic Sanctions and Other US Policy Options’, October 6, 2009, at <http://www.iranwatch.org/library/government/united-states/congress/hearings-prepared-statements/senate-committee-banking-housing-and-urban-affairs-minimizing-potential-threats> (Accessed February 23, 2012)

on Oversight and Government Reform (July 29, 2010) that the threat of ISA sanctions has resulted in Iran losing investments worth between '\$50-60 billion' in 'the last few years'. He further added

'US pressure has contributed to the decisions by major international oil companies such as Total, Statoil, ENI, Lukoil, and Repsol not to undertake any new activities in Iran. In addition, major fuel suppliers such as Vitol, Shell, Reliance, IPG, Glencore, and Trafigura have announced that they will no longer sell refined petroleum products to Iran'.<sup>52</sup>

### **India and 'Dual-Track' Policy**

India has consistently privileged the primacy of 'dialogue and diplomacy' to resolve Iranian nuclear contentions.<sup>53</sup> It has also highlighted the importance of international institutions—like the IAEA of which it is a founding member—to be solely responsible for resolving technical issues relating to the contention. When India voted for the third time in favour of an IAEA resolution censuring Iran in November 2009 (after September 2005 and February 2006), its 'Explanation of Vote' states,

The Agency's safeguards system is the bedrock of the international community's confidence that peaceful uses of nuclear energy and non-proliferation objectives can be pursued in a balanced manner. The integrity of this system should be preserved.<sup>54</sup>

This is pertinent given the contentious relationship between Iran and the IAEA, with the former accusing it of not being impartial in its dealings over its nuclear programme, and of being swayed by big

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<sup>52</sup> Testimony by R. J. Einhorn, at <http://www.state.gov/t/isn/rls/rm/145348.htm> (Accessed June 22, 2014).

<sup>53</sup> MEA, 'Official Spokesperson's Response to the P5 plus 1 agreement with Iran on the Iran Nuclear Issue', November 24, 2013, at <http://mea.gov.in> (Accessed November 25, 2013).

<sup>54</sup> Rajya Sabha, 'Vote against Iran', Un-starred Question No. 3122, December 17, 2009, at <http://rsdebate.nic.in/handle/123456789/291324> (Accessed February 14, 2011).

powers—like the US as well as by Washington-based non-governmental organisations (NGO's) like the Institute for Science and International Security (ISIS). Such contentions subsided a bit in the aftermath of the JPOA.

Indian policy makers and analysts have consistently held the possibility of a nuclear-capable Iran to be against its interests as well that of regional stability. India resolutely opposed the pursuit of a possible military solution by the US and/or Israel to deal with Iranian nuclear contentions. The MEA termed the exercise of such an option 'unacceptable international behaviour'. On July 2008, the MEA spokesperson explicitly stated that 'a military strike on Iran would have disastrous consequences for the entire region, affecting the lives and livelihood of five million Indians resident in the Gulf, and the world economy'.<sup>55</sup>

India was principally opposed to the imposition of the unilateral sanctions pursued by the Obama Administration under its 'dual-track' policy. In July 2010, at a bilateral dialogue between IDSA and an Iranian think tank, the then Foreign Secretary Nirupama Rao stated,

We are justifiably concerned that the extra-territorial nature of certain unilateral sanctions recently imposed by individual countries, with their restrictions on investment by third countries in Iran's energy sector, can have a direct and adverse impact on Indian companies and more importantly, on our energy security and our attempts to meet the development needs of our people.<sup>56</sup>

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<sup>55</sup> MEA, 'In Response to Questions about Reports that Suggest the Imminent Use of Military Force against Iran', July 14, 2008, at <http://mea.gov.in/in-focus-article.htm?3244/In+response+to+questions+about+reports+that+suggest+the+imminent+use+of+military+force+against+Iran> (Accessed February 14, 2011).

<sup>56</sup> MEA, 'Speech by Foreign Secretary at IDSA-IPIS "Strategic Dialogue on India and Iran: An Enduring Relationship"', July 5, 2010, at [http://www.idsa.in/KeynoteAddressIndiaandIrananenduringrelationship\\_nirupamaroy](http://www.idsa.in/KeynoteAddressIndiaandIrananenduringrelationship_nirupamaroy) (Accessed February 8, 2011).

However, despite such statements of concern, once the sanctions legislations came into force, India had no option but to navigate the intended consequences. India for instance increased its supply from big suppliers like Saudi Arabia, while also securing supplies from sources as varied as Iraq and Venezuela. (See section on ‘Sanctions challenges for India’ for pertinent details).

### **Key Sanctions Legislations**

The following section briefly describes the key sanctions legislations passed by the US Congress under the Obama Administration, specifically as they impacted the energy security considerations of major Iranian energy importers like India.

#### **CISADA**

CISADA began life as H.R. 2194, the Iran Refined Petroleum Sanctions Act, introduced on April 30, 2009 by Howard Berman, Democrat from California. It was passed by the Congress overwhelmingly on June 25, 2010 (408-8 in the House and 99-0 in the Senate), and signed into law by President Obama on July 1, 2010.

ISA was amended as part of the CISADA. The US\$ 40 million investment limit in a year in Iran’s petroleum sector was halved to US\$ 20 million, as were the limits on single investments (from US\$ 10 million to not more than US\$ 5 million per investment, and not exceeding US\$ 20 million in a year). Restrictions were imposed on the selling of refined petroleum products (US \$5 million over a 12-month period); the restrictions on the provision of loans by US financial institutions (US\$ 10 million in any 12-month period) were continued; visa restrictions were imposed on high-level personnel involved in alleged human rights abuses; providing annual reports on the global trade relating to Iran including in the energy sector became a requirement, among other measures.<sup>57</sup>

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<sup>57</sup> Text of the law available at, <http://www.state.gov/documents/organization/164311.pdf> (Accessed January 24, 2012). See also, CISADA Fact Sheet, May 23, 2011, at <http://www.state.gov/e/eb/esc/iransanctions/docs/160710.htm> (Accessed January 24, 2012).

CISADA also extended the ISA from 2011 to December 31, 2016. If found to be in violation—unlike the threat of imposing two out of the six sanctionable measures listed in ILSA—CISADA threatened three out of the nine sanctions measures. The additional measures included ISA sanctions against foreign banks that facilitate WMD transactions; including transactions relating to support for terrorist activities as well as significant transactions involving the Iranian Revolutionary Guard Corps (IRGC) or its affiliates; transactions with respect to property subject to US jurisdiction; and imports to the US from sanctioned persons.

While introducing these three new restrictions on financial transactions, the US Congress urged the President ‘in the strongest terms ... to impose sanctions on the Central Bank of Iran and any other Iranian financial institution engaged in proliferation activities or support of terrorist groups’. Sanctions on the CBI were eventually imposed as part of the NDAA 2012. Despite being a punitive unilateral measure, CISADA, somewhat paradoxically reinforced the importance of working with allies when it stated that the ‘sense of the Congress’ was that ‘effective multilateral sanctions are preferable to unilateral sanctions in order to achieve desired results’.<sup>58</sup>

CISADA’s Section 104 required the Secretary of the Treasury to ‘prescribe regulations to prohibit, or impose strict conditions on, the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution’ (FFI).<sup>59</sup> Analysts note that such accounts are established by foreign banks that do not have operational presence in the US to access the US financial system.

Section 105 imposed travel bans on persons held to be responsible for human rights abuses in the aftermath of the June 2009 elections. Section 106 banned US government contracts with foreign companies that supply equipment to control internet access to Iran. President Obama affirmed that CISADA, which amended provisions of the ISA and

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

expanded the basket of potential sanctions that could be imposed, was the ‘toughest sanctions against Iran ever passed by the United States Congress ... we are striking at the heart of the Iranian government’s ability to fund and develop its nuclear program’.<sup>60</sup>

In ISA-related designations as amended by CISADA (March 2011), the Obama Administration sanctioned state-owned Belarussian company Belarusneft for having entered into a US \$ 500 million agreement with Naftiran in 2007 to develop oilfields in Iran.<sup>61</sup> Further, in May 2011, seven companies were sanctioned for participating in activities related to Iran’s energy sector including for providing refined petroleum products, providing a tanker to the IRISL, among others.<sup>62</sup>

### **CISADA IMPLICATIONS**

In testimony before the Senate Banking Committee in October 2011, Undersecretary for Political Affairs Wendy Sherman credited CISADA and its limits on the selling of refined petroleum products (US\$ 5 million in a year) as responsible for major energy traders like Russia’s Lukoil, India’s Reliance Industries Limited (RIL), Switzerland’s Vitol, Glencore, and Trafigura, Kuwait’s Independent Petroleum Group (IPG), Turkey’s Tupras, France’s Total, and Royal Dutch Shell for stopping sales of refined petroleum products to Iran. She noted that businesses that stopped all their activities inside Iran included Germany’s Linde (the only supplier of gas liquefaction technology to Iran), South Korea’s GS Engineering and Construction (which cancelled a US\$ 1.2 billion gas processing project). Sherman further added,

Outside of Iran, British Petroleum chose to shut down production from a North Sea platform co-owned with the

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<sup>60</sup> The White House, ‘Remarks by the President at the signing of the Iran Sanctions Act’, July 1, 2010, at <http://www.whitehouse.gov/the-press-office/remarks-president-signing-iran-sanctions-act> (Accessed January 24, 2012).

<sup>61</sup> US State Department, ‘Iran Sanctions Act Announcement’, March 29, 2011, at <http://www.state.gov/r/pa/prs/ps/2011/03/159309.htm> (Accessed June 21, 2014).

<sup>62</sup> US State Department, ‘Seven Companies Sanctioned Under the Amended Iran Sanctions Act’, May 24, 2011, at <http://www.state.gov/r/pa/prs/ps/2011/05/164132.htm> (Accessed June 19, 2014).

Iranian Oil Company ... Trans-Adriatic Pipeline (TAP) partners announced that the pipeline, once constructed, would not be used to transport gas from Iran. Most major fuel providers have terminated some or all of their Iran Air contracts, including British Petroleum, Royal Dutch Shell, Total, OMV, and Q8. ... Other major companies have voluntarily opted out of the Iranian market, including automotive firms Daimler (German), Toyota (Japanese), and Kia (South Korea), as well as Germany's ThyssenKrupp. Caterpillar prohibited its non-U.S. subsidiaries from exporting to Iran. Switzerland's ABB Ltd., Ingersoll-Rand Plc, and Huntsman Corp. have ended business with Iran.<sup>63</sup>

The Italian firm Edison International SPA became the sixth firm to withdraw from the Iranian market (July 2012), apart from Total (France), Royal Dutch Shell (UK/Netherlands), Statoil (Norway), ENI (Italy), INPEX (Japan). These six oil companies were the beneficiaries of the ISA Section 4 'Special Rule' as amended by CISADA, which provided that there would be no investigation of past activities if they did not indulge in sanctionable activities in the future, and provided they withdrew from the Iranian energy sector.<sup>64</sup> Among other ISA-related sanctions designations include those targeting the Chinese (Zhuhai Zhenrong), Singaporean (Kuo Oil), and UAE (Fal Oil) companies (January 2012) as well as the Syrian oil company Sytrol (August 10, 2012) for selling gasoline worth US\$ 36 million—much beyond CISADA limits. The latest sanctions under ISA were imposed on an Italian-based company in August 2014 for supplying goods and services to Iran's petro-chemical industry.<sup>65</sup>

## **NDAA 2012**

Section 1245 (Imposition of Sanctions with Respect to the Financial Sector of Iran) of NDAA 2012 (Public Law 112-81, signed into law

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<sup>63</sup> W. Sherman, 'Addressing Potential Threats from Iran', n. 50.

<sup>64</sup> US State Department, 'Withdrawal of Italian Firm Edison International S.P.A. from Iran's Energy Sector', July 6, 2012, at <http://www.state.gov/r/pa/prs/ps/2012/07/194650.htm> (Accessed June 23, 2014).

<sup>65</sup> 'ISA Sanctions Determinations', in Katzman, *Iran Sanctions*, n. 37, p. 19.

on December 31, 2011) targeted the CBI for the first time on the grounds that it had helped sanctioned Iranian banks like Bank Melli and Bank Saderat ‘transfer billions of dollars’ in 2011 ‘through a variety of payment schemes ... to evade sanctions’, as determined by the US Treasury Secretary while declaring Iran as a ‘territory of primary laundering concern’ on November 21, 2011.<sup>66</sup> Thus, Section 1245 contained provisions preventing a foreign bank from opening an account in the US or ‘impose strict conditions on the maintaining’ of such accounts if that financial institution ‘knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another Iranian financial institution designated by the Secretary of the Treasury’.<sup>67</sup>

1245 defines sanctionable transactions as those involving the sale or purchase of petroleum products undertaken 180 days after the enactment of the Act. Exceptions from sanctions (imposition of strict conditions on the maintenance of correspondent accounts) are to be provided if the President determines ‘that the country with primary jurisdiction over the foreign financial institution has significantly reduced its volume of crude oil purchases from Iran’.

Though the Obama Administration officials argued before the SFRC (early December 2011) that Section 1245 provisions could lead to a rise in oil prices that could benefit Iran as well as hurt global economic recovery, the Administration eventually accepted the provisions.<sup>68</sup> In order to address such concerns, however, the Act provided that sanctions on oil purchases would only apply if the President certified that the oil market is sufficiently supplied from countries other than Iran.

Analysts note that the lack of precise definition of ‘significant reduction’ in the Act was an issue with Senators Mark Kirk and Robert Menendez

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<sup>66</sup> PL 112-81 is available at <http://www.gpo.gov/fdsys/pkg/PLAW-112publ81/pdf/PLAW-112publ81.pdf> (Accessed June 24, 2014).

<sup>67</sup> Ibid.

<sup>68</sup> Arshad Mohammed and Susan Cornwell, ‘US Senate OK’s Sanctions on Iran Central Bank’, December 2, 2011, at <http://in.reuters.com/article/iran-usa-sanctions-idINDEE7B102C20111202> (Accessed June 26, 2014).

who wrote a letter to Treasury Secretary Geithner on January 19, 2012, urging that the term could mean ‘18 per cent purchase reduction based on total price paid’.<sup>69</sup> IIRSHRA 2012 (see below) further clarified that these ‘significant reductions’ have to be ‘both in terms of volume and price’.

## **NDAA 2012 IMPLICATIONS**

Eleven countries (Belgium, the Czech Republic, France, Germany, Greece, Italy, Japan, the Netherlands, Poland, Spain, and the United Kingdom) got the first exemptions for 180 days in March 2012, followed by seven more countries (India, Malaysia, Republic of Korea, South Africa, Sri Lanka, Turkey and Taiwan) on June 11. By June 28, 2012 (180 days after the enactment of the Act), China and Singapore got their first exemptions, taking the tally to 20. Announcing the designations, Secretary Clinton—citing the International Energy Agency (IEA)—stated that ‘Iran’s crude oil exports in 2011 were approximately 2.5 million barrels per day, and have dropped to roughly 1.5 million barrels per day, which in real terms means almost US\$ 8 billion in lost revenues every quarter’.<sup>70</sup>

In the aftermath of July 2012, when the EU ban on purchase of Iranian oil came into effect, 10 EU countries stopped their imports from Iran completely. These were Belgium, the Czech Republic, France, Germany, Greece, Italy, Netherlands, Poland, Spain, and the United Kingdom. By November 2013, Malaysia, South Africa, Singapore, and Sri Lanka had also stopped importing Iranian oil. Iran’s remaining oil importers—China, India, South Korea, Turkey, and Taiwan (apart from Japan)—qualified for exemptions in November 2013. Japan was exempted in September 2013.

(The section on ‘Sanctions challenges for India’ further details the reduction in Iranian oil imports as a result of US sanctions legislations).

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<sup>69</sup> Katzman, *Iran Sanctions*, n. 37, p. 21.

<sup>70</sup> US State Department, ‘Regarding Significant Reductions of Iranian Crude Oil Purchases’, June 28, 2012, at <http://www.state.gov/secretary/20092013clinton/rm/2012/06/194200.htm> (Accessed June 23, 2014).

## **ITRSHRA**

ITRSHRA<sup>71</sup> (PL 112-158) was signed into law by President Obama on August 10, 2012 and its provisions entered into force on February 6, 2013. It was introduced by Representative Ileana Ros-Lehtinen (Republican from Florida) in May 2011 as the Iran Threat Reduction Act 2011. It was passed in the House with 177 Democrats and 233 Republicans voting in favour (410), and 11 opposing it (8 Democrats and 3 Republicans). The Senate passed it by voice vote in May 2012.

Important provisions of the Act included the expansion of sanctions against Iran's energy industry. The Act codified E.O. 13590 of November 2011 which contained provisions sanctioning firms that provide to Iran US\$ 1 million or more or aggregate value of US\$ 5 million or more worth of goods, services, technology or support in a year to its oil sector; provision of US\$ 250,000 or more or aggregate of US\$ 1 million or more for expansion of domestic production of petro-chemical products. It defines activities covered under this ambit to include

[t]he domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries or directly associated infrastructure, including construction of port facilities, railways, and roads, the primary use of which is to support the delivery of refined petroleum products.<sup>72</sup>

Among the sanctions prescribed for those helping Iran in contravention of these provisions included the denial of EXIM Bank loan guarantee as well as the denial of licence for export or re-export of technology. ITRSHRA prescribed sanctions on transactions involving the transport of Iranian crude oil (did not apply to countries that obtained an exemption under PL 112-81); makes sanctionable the provision of

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<sup>71</sup> The text of the Act is available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1905enr/pdf/BILLS-112hr1905enr.pdf> (Accessed June 24, 2014).

<sup>72</sup> Ibid. p. 8.

insurance services to the National Iranian Oil Company (NIOC) or National Iranian Transport Company (NITC); and required determination whether NITC and NIOC are ‘agents or affiliates’ of the IRGC within 45 days of the passing of the Act. The determination was done on September 24, 2012 that they were indeed so, and the Department of Treasury named NIOC as a proliferation entity under E.O. 13382 in November 2012. A FFI therefore dealing directly with such a designated proliferation-entity is prevented from accessing the US financial system under CISADA (Section 104).

The Act expanded the set of sanctions available under ISA from nine to 12 (with the option to impose a least five of the twelve) by adding a ban on investment in equity or debt of sanctioned person, denial of visa to corporate officers or a shareholder with controlling interest in a sanctioned person, and sanctions on the principal executive officers of any sanctioned person. The Act further states that five or more of the ISA sanctions will be imposed on a person if that person ‘knowingly participates in a joint venture with respect to the development of petroleum resources outside of Iran’. Sanctions will not be imposed if such participation is terminated within six months of enactment of the Act.

The Act authorised sanctions (not mandated though) with respect to provision of centralised financial messaging services to the CBI and other Iranian financial institutions. The Act commended the EU Decision of March 15, 2012 which stipulated that ‘no specialised financial messaging shall be provided to those persons and entities subject to an asset freeze’.<sup>73</sup> SWIFT, incorporated under Belgian law, subsequently denied access to Iranian banks on the EU sanctions list on March 17, 2012.<sup>74</sup>

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<sup>73</sup> ‘Council elaborates EU sanctions against Iran’, March 15, 2012, at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/128959.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/128959.pdf) (Accessed October 25, 2015).

<sup>74</sup> ‘SWIFT instructed to disconnect sanctioned Iranian banks following EU Council decision’, March 15, 2012, at [http://www.swift.com/news/press\\_releases/SWIFT\\_disconnect\\_Iranian\\_banks#sthash.XDBW6RrS.dpuf](http://www.swift.com/news/press_releases/SWIFT_disconnect_Iranian_banks#sthash.XDBW6RrS.dpuf) (Accessed October 25, 2015).

## ITRSHRA IMPLICATIONS

Among the most significant provisions of ITRSHA as it affected countries like India was Section 504 expanding sanctions under Section 1245 of NDAA 2012. It mandated that funds owed to Iran as a result of bilateral trade in goods and services ‘are credited to an account located in the country with primary jurisdiction over the foreign financial institution’.<sup>75</sup> Further, it required that countries getting the ‘significant reduction’ exemption could only continue to get it if they did not repatriate the funds back to Iran.

As noted earlier, it defined ‘significant reduction’ to include a ‘reduction in such purchases in terms of price or volume toward a complete cessation of such purchases’. Foreign Financial Institutions (FFIs) that do not adhere to these provisions were threatened with sanctions under CISADA Section (104) (C), including the denial of ‘correspondent-account’ access to US financial system.<sup>76</sup>

Section 504, in addition to the designation of the NIOC as a proliferation entity which made financial transactions with it sanctionable under ISA, led to the creation of ‘escrow’ accounts in countries importing Iranian oil, and severely curtailed Iran’s foreign exchange earnings. Reports noted that these measures led to US\$ 1.5 billion accruing in such accounts every month in 2013, amounting to nearly US\$ 18 billion that Iran was not able to access by the end of that year.<sup>77</sup> Further, as a result of the sanctions targeting Iran, its oil revenues—

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<sup>75</sup> See ‘H.R. 1905’, at <https://www.govtrack.us/congress/bills/112/hr1905/text> (Accessed March 20, 2016).

<sup>76</sup> Also see ‘Frequently asked Questions’, at <http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#254> (Accessed June 23, 2014).

<sup>77</sup> Marjorie Olster, ‘US: Iran Can’t Access Much Oil Income’, AP, August 30, 2013, at <http://bigstory.ap.org/article/apnewsbreak-us-iran-cant-access-much-oil-income> (Accessed June 23, 2014); See also Mark Dubowitz and Rachel Ziemba, ‘When Will Iran Run out of Money? The Impact of Sanctions on Iran’s Foreign Exchange Reserves and Balance of Payments’, October 2, 2013, at [http://www.defenddemocracy.org/stuff/uploads/documents/Iran\\_Report\\_Final\\_2.pdf](http://www.defenddemocracy.org/stuff/uploads/documents/Iran_Report_Final_2.pdf) (Accessed June 23, 2014).

which stood at US\$ 100 billion in 2011—reduced to US\$ 35 billion in 2013. Iran’s oil production fell from 4 million barrels per day (mbpd) in end 2011 to 2.4 mbpd in Nov 2013, when the JPOA was negotiated. Iran’s trade surplus fell from US\$ 70 billion in 2011 to US\$ 44 billion in 2012 to US\$ 38 billion in 2013.<sup>78</sup>

### **Other Pertinent Legislations and E.O.’s under the Obama Administration**

The Iran Freedom and Counter-Proliferation Act (IFCA) was a part of the NDAA 2013. It was enacted on January 2, 2013 and took effect on July 1, 2013. The Act stated that it was the ‘sense of the Congress’ that the US ‘should deny the Government of Iran the ability to continue to oppress the people of Iran’. Its provisions include sanctioning individuals and entities providing significant goods and services to Iran’s energy, shipping and ship building sectors; the sanctioning of insurance providers; requires the President to sanction trade in precious metals or crucial raw materials like graphite or semi-finished metals like steel; requires sanctions on the Islamic Republic of Iran Broadcasting and its Director, among others.<sup>79</sup>

It is pertinent to note that President Obama has issued nine E.O.’s from September 2010 till July 2013, while the previous Iran-related E.O. was issued by President Clinton way back in August 1997. Among the E.O.’s issued by the Obama Administration are E.O. 13645 (June 2013) for implementing sanctions in IFCA as well as imposing additional sanctions with respect to Iran’s automotive sector. The provision required that access to the US financial system should be denied to those FFI’s which facilitated ‘significant financial transactions’ involving the ‘sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran’, after July 1, 2013.<sup>80</sup>

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<sup>78</sup> Olster, ‘US: Iran can’t access much oil income’, n. 77.

<sup>79</sup> The text of IFCA is available at <http://www.state.gov/documents/organization/204023.pdf> (Accessed June 23, 2014).

<sup>80</sup> E.O. 13645 is available at [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran\\_eo\\_06032013.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_eo_06032013.pdf) (Accessed June 23, 2014).

E.O. 13572 of April 29, 2011 identified IRGC-Qods Force (IRGC-QF) as subject to sanctions; E.O. 13382 of June 23, 2011 sanctioned Iran Air for the first time; E.O. 13590 of November 20, 2011 targeted Iran's petrochemical industry for the first time; E.O. 13606 of April 23, 2012 blocked the property as well as denied entry into the US of persons alleged to have been involved in 'grave human rights violations' through the use of information technology; E.O. 13628 of October 9, 2012 contained implementing directives for sanctions contained in ITRSHRA as well as added measures, like blocking the property of persons involved in censorship; among other restrictive measures.

## EU SANCTIONS

The EU decision in July 2010 concerning restrictive measures against Iran was critical vis-à-vis the impact on India's oil trade with Iran. In the EU Council resolution of July 26, 2010 (which came into effect when it became the EU Council Regulation after it was published in the official journal of the EU on October 25, 2010), two articles assume critical importance. These are: Article 10 of Chapter 2 (dealing with Financial Sector) which in Para 3 required prior authorisation for the transfer of funds (above Euros 40,000) to Iran via European-based banks 'from the competent authority of the member state concerned'. Article 12 of same Chapter prohibited

the provision of insurance and re-insurance to the Government of Iran, or to entities incorporated in Iran or subject to Iran's jurisdiction, or to any individuals or entities acting on their behalf or at their direction, or to entities owned or controlled by them.<sup>1</sup>

These two articles subsequently became part of Article 21 and 26 of Regulation 961/2010 of October 25, 2010.

In an explanation in response to a question in the Lok Sabha in March 2011, the Indian Minister of State (Finance) Namo Narain Meena stated that the July 2010 EU decision (which came into effect in October 2010) requiring prior authorisation for payments to listed banking entities of Iran affected the working of the Asian Clearing Union (ACU), given that the 'ACU, being a multilateral net clearing system, did not facilitate such authorization'.<sup>2</sup> ACU payments were being channelled

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<sup>1</sup> The EU Council Decision, July 26, 2010, is available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0413&from=EN> (Accessed October 10, 2015).

<sup>2</sup> Lok Sabha, 'Iranian crude oil', March 4, 2011, <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=104840> (Accessed May 7, 2015).

through the Duestche Bundes Bank (DDB), which declined to process payments unless certification was provided that these payments related to oil. This was intended to ensure that Iran would not be using these oil revenues to fund proliferation-related activities, as was being alleged by the US and as flagged by UNSCR 1929.

In the light of the above, the RBI closed the ACU mechanism in December 2010. In a notice issued on December 27, the RBI stated

In view of the difficulties being experienced by importers/ exporters in payments to/receipts from Iran, the extant provisions have been reviewed and it has been decided that all eligible current account transactions including trade transactions with Iran should be settled in any permitted currency outside the ACU mechanism until further notice.<sup>3</sup>

While MOS (Finance) Meena laid the blame for the un-viability of the ACU due to the EU decision, it is pertinent to note that the problem with the payments actually began after the Office of Foreign Assets Control (OFAC) of the US Treasury Department under the Bush Administration on November 10, 2008 revoked the authorisation for 'U-turn' dollar transactions involving Iran. From that date onwards, US depository institutions were prevented from processing 'dollar transactions of Iran-related payments that originate[d] and end[ed] with non-Iranian foreign banks'. The only permitted transactions were family and travel-related remittances, 'payment for the shipment of a donation of articles to relieve human suffering', and licensed transactions authorised by OFAC.<sup>4</sup> As noted earlier, this measure was initially used to target Bank Saderat for its involvement with Hezbollah in 2006, and was expanded to include all Iranian banks in November 2008.

This measure affected import-export transactions denominated in US dollars, usually settled through correspondent bank accounts in the US.

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<sup>3</sup> The RBI notice is available at <http://rbi.org.in/Scripts/NotificationUser.aspx?Mode=0&Id=6172> (Accessed March 3, 2015).

<sup>4</sup> US Treasury Department, See 'An overview of O.F.A.C. Regulations involving Sanctions against Iran', at <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran.pdf> (Accessed October 11, 2015).

In the aftermath of these OFAC restrictions, India and Iran in January 2009 agreed to operationalize their current account transactions either through the ACU Dollar or the ACU Euro.<sup>5</sup> The proposal for such multi-currency settlement system though was approved by the ACU Board in June 2008 itself and was operationalized six months later.

Thus, European-based banks like the DDB and the EIH were the preferred route for India to process its oil payments. Reports noted that the US pressured India to close the ACU payment mechanism, given that Iran was successfully using the system to skirt sanctions on dollar transactions. Stuart Levey (US Undersecretary for Terrorism and Financial Intelligence) termed the December 2010 RBI move as ‘significant’.<sup>6</sup>

**Table 1: Transactions Channelled through the ACU Mechanism 2009-13 (In USD Million)**

Year	Yearly Transactions		Cleared in the System		Settled in Hard Currency	
	Amount	Percentage Growth	Amount	Percentage Share in Yearly Transactions	Amount	Percentage Share in Yearly Transactions
<b>2010</b>	20,634.21	46.63	8,900.70	43.14	11,733.51	56.86
<b>2011</b>	14,542.39	-29.52	4,974.53	34.21	9,567.86	65.79
<b>2012</b>	9,095.79	-37.45	1,344.15	14.78	7,751.64	85.22
<b>2013</b>	8,411.12	-7.53	1,098.81	13.06	7,312.31	86.94
<b>2014</b>	10,178.31	21.01	1,187.59	11.67	8,990.72	88.33

**Source:** ACU Annual Report 2014, at [www.asianclearingunion.org](http://www.asianclearingunion.org), (Accessed March 25, 2016).

<sup>5</sup> K. Ram Kumar, ‘India, Iran have Asian Clearing Union Option for Transactions’, January 2, 2009, at <http://www.thehindubusinessline.com/todays-paper/india-iran-have-asian-clearing-union-option-for-transactions/article1038814.ece> (Accessed March 21, 2015).

<sup>6</sup> Cited in Jay Solomon and Subhadip Sircar, ‘India Joins US Effort to Stifle Iran Trade’, *The Wall Street Journal*, December 29, 2010, at <http://www.wsj.com/articles/SB10001424052970203513204576046893652486616> (Accessed October 11, 2015).

As is evident from the table above, the pressure of such EU restrictions on European-based banks negatively affected the working of the ACU, which has been described as the ‘oldest institution of regional cooperation in Asia’, having been established in December 1974.<sup>7</sup> While the amount of yearly transactions declined by more than half in 2014 as compared to 2010, the transactions that are cleared within the ACU system reduced by nearly nine times in volume during the corresponding period.

Correspondingly, the amount settled in hard currency (ACU Dollars or ACU Euros) went up to above 88 per cent from below 60 per cent prior to 2010. This is significant given that the ACU was established primarily to overcome foreign exchange resource constraints in settling outstanding payments. Transactions credited to the CBI through the mechanism which stood at US\$ 8.5 billion in 2009 halved in 2011 to US\$ 4.5 billion, and became zero by 2013.<sup>8</sup>

In order to overcome the withdrawal of insurance cover by European-based Protection and Indemnity (P&I) insurers, due to Article 12 prohibitions of the EU Council Regulation of October 25, 2010, Minister of State (Petroleum and Natural Gas) Panabaka Lakshmi told the Lok Sabha on November 23, 2012 that the Department of Financial Services asked the public sector insurers and the re-insurer General Insurance Corporation (GIC) ‘to extend insurance/reinsurance cover to Indian flag ships subject to due diligence of assets and fixing up of premium accordingly as is done in normal course’.<sup>9</sup>

Ms. Lakshmi further stated that ‘the insurance cover has been provided by the public sector insurance companies for US\$ 50 million each for Hull & Machinery (H&M) and Protection & Indemnity (P&I) covers,

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<sup>7</sup> This was the expression used by a former Governor of the Sri Lankan Central Bank, A.R. Jayawardene. It is cited by Bimal Jalan in a Review of the Asian Clearing Union, 32nd ACU Board Meeting, Bangalore, June 16, 2003.

<sup>8</sup> ACU Annual Report 2013, p. 154.

<sup>9</sup> Lok Sabha, ‘Crude oil import from Iran’, Unstarred Question No. 273, November 23, 2012, at <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=130701> (Accessed May 8, 2015).

and Ship Owners have already started availing of the same.<sup>10</sup> She, however, added that

Iranian crude oil could not be imported by the oil PSUs on FOB basis, *as Indian Shipping companies did not offer their vessels for calling Iran* [emphasis added], as some of the issues pertaining to the insurance remained un-resolved with GIC. With a view to assist the oil industry to import Iranian crude on CIF basis, Ministry of Shipping on the request of oil PSUs granted NOC to oil PSUs on a case-to-case basis.<sup>11</sup>

The point of concern between refinery companies and the sole reinsurer General Insurance Corporation of India (GIC Re) reports noted was that Indian refineries processing Iranian crude (like MRPL and Essar Oil) had to deal with the introduction of the ‘Sanctions Limitation and Exclusion Clause’ in the refinery asset insurance cover being provided by insurance companies, after the EU Regulation came into effect in October 2010. The Clause reads as follows:

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under the United Nations resolutions or the trade or economic sanctions, laws or regulations of the EU, UK or USA.<sup>12</sup>

The above report further noted that India had mooted an ‘India Energy Insurance Pool’ worth INR 2,000 crores, going up to a maximum of INR 10,000 crores. While the above proposal did not seem to have taken off, MOS Lakshmi (February 2014 as noted above) indicated US\$ 50 million (about INR 310 crore; then prevalent exchange rate of INR 62 to 1 USD) each as being provided for H&M and P&I covers, respectively.

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Cited in Kabir Taneja, ‘Energy insurance pool planned for Iran oil trade’, August 13, 2013, at <http://www.sunday-guardian.com/business/energy-insurance-pool-planned-for-iran-oil-trade> (Accessed October 19, 2015).

## **SANCTIONS CHALLENGES FOR INDIA**

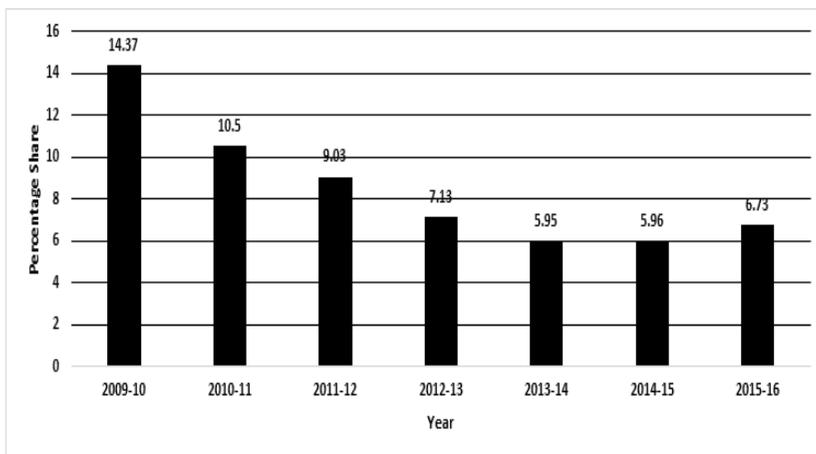
### **ENERGY SECURITY CHALLENGES**

As Table 2 indicates, India's energy imports from Iran more than halved in terms of both value and quantity during 2009-16. Iran slipped from being the second biggest supplier of crude oil to India in 2009-10 to the third position in 2010-11, sixth in 2011-12, seventh from 2012-15 and back to sixth position in 2015-16 (in value terms). Even as oil imports from Iran registered a decline, India was able to secure supply from alternate sources. For instance, Iraq became an important supplier, quickly occupying the second position after Saudi Arabia, having supplied over US\$ 14 billion worth of crude in 2014-15 and US\$ 10.8 billion in 2015-16. Iraq supplied US\$ 18.4 billion in 2013-14; US\$ 19 billion in 2012-13; US\$ 18.8 billion in 2011-12; and almost US\$ 9 billion in 2010-11 (See Table 3). Thus, supplies from Iraq almost doubled during 2010-12. India secured US\$ 10 billion more worth of oil from Saudi Arabia in 2011-12 as compared to 2010-11.

Latin America and Africa also became important suppliers. Energy imports from Africa for instance witnessed a 66 per cent increase in value in 2011-12 as compared to 2009-10, while in 2014-15, it was more than 47 per cent as compared to 2009-10. Imports from Latin America meanwhile increased more than four times in value in 2013-14 as compared to 2009-10. Venezuela became a key supplier. Imports more than doubled during 2009-16 in terms of both value and quantity from the South American country (See Table 3). 2015-16 though saw significant reductions in value in energy imports from both Latin America and Africa.<sup>1</sup>

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<sup>1</sup> Ministry of Commerce and Industry, Export-Import Data Bank, [www.commerce.nic.in](http://www.commerce.nic.in), (Accessed June 20, 2016).

**Graph 1: Reduction in Oil Imports from Iran: 2009-2016**

**Source:** Ministry of Commerce and Industry, Export-Import Data Bank, [www.commerce.nic.in](http://www.commerce.nic.in), (Accessed June 20, 2016).

**Table 2: Crude Oil Imports from Iran vs. Total Imports (HS Code 270900)**

Year	Imports from Iran/Total Imports (Thousand Tonnes)	Imports from Iran/Total Imports (USD Million)	Percentage of Total Imports (Quantity/Value)
<b>2009-10</b>	22,085.77/153,628.4	10,193.27/77,506.56	14.37/13.15
<b>2010-11</b>	16,083.37/153,119.42	9,219.29/92,651.77	10.5/9.95
<b>2011-12</b>	14,980.15/165,711.53	11,633.47/134,154.97	9.03/8.67
<b>2012-13</b>	13,242.05/185,533.08	9,587.7/144,519.72	7.13/6.63
<b>2013-14</b>	11,266.61/189,178.27	8,443.97/ 143,638.53	5.95/5.87
<b>2014-15</b>	11,200.31/187,913.56	7039.69/116,442.86	5.96/6.04
<b>2015-16</b>	13,615.7/202,061.47	4,283.77/65,922.98	6.73/6.49

**Source:** Ministry of Commerce and Industry, Export-Import Data Bank, [www.commerce.nic.in](http://www.commerce.nic.in) (Accessed June 20, 2016).

**Table 3: India's Crude Oil Imports 2009-16 (USD Million)  
(HS Code 270900)**

Arranged a/c to Top 10 suppliers in 2015-16 (Percentage of Imports out of Total Imports within Brackets)

Country	2015-16	2014-15	2013-14	2012-13	2011-12	2010-11	2009-10
<b>Saudi Arabia</b>	13,489.47 (20.46)	21,803.4 (18.72)	30,964.24 (21.55)	28,384.08 (19.64)	26,311.67 (19.61)	16,294.82 (17.58)	14,049.15 (18.6)
<b>Iraq</b>	10,758.45 (16.32)	14,174.33 (12.17)	18,348.42 (12.77)	19,141.11 (13.24)	18,826.19 (14.03)	8,954.66 (9.66)	6,979.59 (9.24)
<b>Nigeria</b>	9,017.85 (13.68)	12,935.05 (11.1)	13,510.42 (9.15)	11,200.59 (7.75)	13,779.56 (10.27)	10,536.92 (11.37)	7,166.48 (9.5)
<b>Venezuela</b>	5,678.63 (8.61)	11,597.91 (9.96)	13,936.55 (9.7)	14,101.16 (9.75)	6,638.01 (4.94)	5,203.62 (5.61)	2,845.43 (3.76)
<b>United Arab Emirates</b>	5,461.49 (8.28)	11,057.33 (9.49)	11,011.98 (7.67)	12,641.64 (8.74)	12,564.31 (9.36)	7,861.38 (8.48)	5,448.84 (7.21)
<b>Iran</b>	4,238.77 (6.43)	7,039.69 (6.04)	8,443.97 (5.87)	9,587.7 (6.63)	11,633.47 (8.67)	9,219.27 (9.95)	10,193.27 (13.5)
<b>Kuwait</b>	3,588.91 (5.44)	11,478.9 (9.85)	15,150.28 (10.54)	14,449.88 (9.99)	14,196.17 (10.58)	8,759.29 (9.45)	7,310.9 (9.68)
<b>Angola</b>	2,659.17 (4.03)	4,418.29 (3.79)	5,935.79 (4.13)	7,088.24 (4.9)	6,547.72 (4.88)	5,089.12 (5.49)	4,236.17 (5.61)
<b>Qatar</b>	1,480.28 (2.24)	2,301.4 (1.97)	4,315.4 (3)	6,668.78 (4.61)	5,224.51 (3.89)	3,075.73 (3.37)	2,398.23 (3.17)
<b>Mexico</b>	1,378.88 (2.09)	2,684.27 (2.3)	2,961.86 (2.06)	3,259.7 (2.25)	1,720.65 (1.28)	610.6 (0.65)	715.3 (0.94)
<b>Total Imports</b>	65,922.98	116,442.85	143,638.53	144,519.72	134,154.97	92,651.77	75,506.56

*Source:* Ministry of Commerce and Industry, Export-Import Data Bank, [www.commerce.nic.in](http://www.commerce.nic.in), (Accessed June 20, 2016).

**Table 4: India's Crude Oil Imports 2009-16 (Quantity in Thousand Tonnes) (HS Code 270900)**

Arranged a/c to Top 10 suppliers in 2015-16 (Percentage of Imports out of Total Imports within Brackets)

Country	2015-16	2014-15	2013-14	2012-13	2011-12	2010-11	2009-10
<b>Saudi Arabia</b>	39,592.34 (19.6)	34,492.35 (18.35)	39,319.11 (20.78)	34,969.55 (18.84)	31,868.8 (19.23)	26,299.8 (17.17)	22,882.66 (14.89)
<b>Iraq</b>	35,694.71 (17.66)	24,017.37 (12.78)	24,576.15 (12.99)	24,240.1 (13.06)	23,769.8 (14.34)	14,767.45 (9.64)	13,883.04 (9.03)
<b>Nigeria</b>	22,970.98 (11.37)	17,928.55 (9.54)	15,877.39 (8.39)	14,974.97 (8.07)	15,477.01 (9.33)	16,258.97 (10.61)	13,020.22 (8.47)
<b>Venezuela</b>	22,543.96 (11.15)	22,751.6 (12.1)	21,304.38 (11.26)	20,728.55 (11.17)	9,416.3 (5.68)	10,147.17 (6.62)	6,237.6 (4.06)
<b>United Arab Emirates</b>	14,805.6 (7.32)	16,262.45 (8.65)	13,649.19 (7.21)	15,591.24 (8.4)	14,974.97 (9.03)	12,657.44 (8.26)	10,433 (6.79)
<b>Iran</b>	13,615.7 (6.73)	11,200.31 (5.96)	11,266.61 (5.95)	13,242.05 (7.13)	14,980.15 (9.03)	16,083.37 (10.5)	22,085.77 (14.37)
<b>Kuwait</b>	11,173.15 (5.53)	18,816.74 (10.01)	20,063.29 (10.6)	18,743.84 (10.1)	17,940 (10.82)	14,383.25 (9.39)	14,611.68 (9.51)
<b>Angola</b>	7,221.69 (3.57)	6,795.94 (3.61)	7,539.21 (3.98)	8,775.21 (4.72)	7,976.25 (4.81)	8,417.73 (5.49)	8,039.33 (5.23)
<b>Qatar</b>	4,434.81 (2.19)	3,439.6 (1.83)	5,116.48 (2.7)	8,072.62 (4.35)	6,136.24 (3.7)	4,836.19 (3.15)	4,614.5 (3)
<b>Mexico</b>	5,681.41 (2.81)	5,126.22 (2.72)	4,407.94 (2.33)	4,596.28 (2.47)	2,364.53 (1.42)	1,058.11 (0.69)	1,474.02 (0.95)
<b>Total Crude Oil Imports</b>	202,061.47	187,913.56	189,178.27	185,533.08	165,711.53	153,119.42	153,628.42

**Source:** Ministry of Commerce and Industry, Export-Import Data Bank, [www.commerce.nic.in](http://www.commerce.nic.in), (Accessed June 20, 2016).

## ALTERNATE PAYMENT MECHANISM CHALLENGES

In the aftermath of the closure of the ACU mechanism by the RBI in December 2010, the outstanding amount payable to Iran as of March 2011 stood at about US\$ 2.24 billion.<sup>2</sup> India and Iran negotiated an alternate payment mechanism in August 2011, agreeing for part payment of Iranian crude imports in Indian Rupee, given the problems being encountered in paying with US Dollars or Euros. When there was a delay in negotiating this agreement, the NIOC on June 27, 2011 conveyed that it would stop the supply of crude from August if outstanding dues were not paid. While some analysts held the possibility as ‘a serious blow to the evolution of a robust geostrategic relationship between New Delhi and Tehran, of which a highly developed energy partnership has to be the core’, Iranian officials, however, indicated that they would not have stopped the oil flow even though the notice was indeed given.<sup>3</sup>

The Madras Refinery and Petrochemicals Limited (MRPL), the largest buyer of Iranian crude, paid the equivalent of US\$ 100 million to NIOC through the state-owned Turkish Halkbank, routed through the Union Bank of India in August 2011. Reports noted that this was the first payment after the US\$ 1.5 billion paid through the German-based bank EIH in February 2011.<sup>4</sup> The amount of money owed by Indian refiners increased to between US\$ 5-7 billion by August 2011 as Iran was supplying oil on credit till the negotiation of the alternative payment mechanism was completed.

While Halkbank—Turkey’s sixth largest bank which also handled payments for Turkish oil company Tupras which imports Iranian oil—

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<sup>2</sup> See Rajya Sabha, ‘Payment for Iranian crude import’, November 22, 2011, at <http://164.100.47.4/newrsquestion/ShowQn.aspx> (Accessed November 30, 2013).

<sup>3</sup> Atul Aneja, ‘Oil payment row and India-Iran ties’, August 1, 2011, at <http://www.thehindu.com/opinion/lead/article2314031.ece?textsize=small&text=2> (Accessed March 21, 2015).

<sup>4</sup> PTI, ‘India Makes First Payment for Iranian Oil in Five Months’, August 1, 2011, at <http://timesofindia.indiatimes.com/business/india-business/India-makes-first-payment-for-Iranian-oil-in-five-months/articleshow/9444371.cms> (Accessed July 2, 2014).

processed MRPL's payment, it refused to open an account for HPCL-Mittal Energy Limited (HMEL) in December 2011. However, Bank officials dismissed suggestions of US pressure behind their decision to open a Euro account for the private refiner.<sup>5</sup>

When asked to give the details of the payment mechanism agreed to in August 2011, Minister of State for Commerce Madhavrao Scindia (in March 2012) described it as a 'confidential commercial agreement' that had been 'worked out due to large trade deficit of India with Iran.'<sup>6</sup> However, MOS (Petroleum and Natural Gas) R.P.N. Singh stated (August 2012) that 45 per cent of the crude oil imported from Iran was being paid for in Indian Rupees, while the remaining was being paid for in Euros through the Turkish bank.

Iranian oil money being transferred to NIOC through Halkbank was halted from February 6, 2013 even as India was trying to boost exports in order to bridge the huge bilateral trade imbalance (See Table 5). This was on account of Section 504 of ITRSHRA, which went into effect on that date. As noted earlier, the provision mandated that funds owed to Iran as a result of bilateral trade in goods and services were to be 'credited to an account located in the country with primary jurisdiction over the foreign financial institution'. The Act further stipulated that countries that were continuing to import Iranian oil would only get the 'significant exemption' for reducing oil imports both in terms of price and value if funds as a result of the bilateral trade were not repatriated back to Iran. These provisions were enacted to further curtail the possible leeway the CBI could have in allegedly funding Iran's WMD activities using Iran's oil money.

Thus, since February 2013, while the 45 per cent owed by Indian oil companies was being deposited in UCO Bank, Kolkata, the remaining

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<sup>5</sup> Jonathon Burch and Ebru Tuncay, 'Halkbank to handle Iran payments so long as legal', *Reuters*, January 26, 2012, at <http://www.reuters.com/article/2012/01/26/us-turkey-iran-halkbank-idUSTRE80P0VS20120126> (Accessed October 11, 2015).

<sup>6</sup> Lok Sabha, 'Payment issues with Iran', March 26, 2012, at <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=117977> (Accessed May 5, 2015).

55 per cent continued to remain with oil firms. Since February 2012, the UCO Bank had been ‘the sole bank to facilitate bi-lateral trade with Iran by agreeing to receive payment in INR for Iranian oil exports to India’.<sup>7</sup> Iranian banks had opened INR accounts in UCO Bank to which Indian oil companies made 45 per cent of the component of payments for their oil imports. These INR accounts were used to finance the payment for export of goods from India to Iran. Apart from the Bank’s willingness to be the conduit for the sanctions-ridden Indo-Iran trade, the crucial factor facilitating this decision was its limited overseas exposure which made it less vulnerable to US sanctions provisions. In 2013 for instance, the Bank only had four overseas branches, two each in Singapore and Hong Kong.<sup>8</sup>

In its Annual Reports, the UCO Bank indicated that it had negotiated export bills worth nearly INR 9500 crores during 2013-15, while the outstanding export credit on account of Iran trade as on March 31, 2015 was INR 385 crore. This export credit reduced to INR 146 crore as of March 31, 2016 while INR 1,221 crores of export bills was negotiated from April 2015 till March 2016.<sup>9</sup> In the aftermath of the JPOA—when Indian oil companies had an important role in JPOA sanctions relief wherein they were allowed to pay in USD for the debt they had accumulated—the UCO Bank’s Iranian Vostro (Italian for ‘your’, signifying Iranian money on deposit at UCO Bank) account deposits registered a decline. For instance, during the first quarter ending June 2015, the Bank noted that there was a ‘sharp fall in the INR component of deposits by Indian oil importing companies’ of more than INR 3,100 crore.<sup>10</sup>

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<sup>7</sup> UCO Bank Annual Report, 2013-14, p. 22, at <https://www.ucobank.com/investors/pdf/annual-report-13-14.pdf> (Accessed October 15, 2015).

<sup>8</sup> UCO Bank Annual Report 2012-13, ‘Branch Network’, p. 10, at [https://www.ucobank.com/investors/pdf/annual-report\\_dt-04-06-13\\_no-10-06-2013.pdf](https://www.ucobank.com/investors/pdf/annual-report_dt-04-06-13_no-10-06-2013.pdf) (Accessed October 15, 2015).

<sup>9</sup> UCO Bank, Annual Report 2015-16, p. 19, at <https://www.ucobank.com/investors/pdf/annual-report-15-16.pdf> (Accessed June 15, 2016). From April 2014-March 2015, INR 3,408 crores worth of export bills were negotiated.

<sup>10</sup> UCO Bank, Results for QE June 2015, at <https://www.ucobank.com/investors/pdf/QFR-PPT-jun-15.pdf> (Accessed October 15, 2015).

Reports noted that once the dollar trade with Iran becomes operational in the aftermath of the sanctions being lifted, the Bank could lose about INR 15,000 crore of interest-free deposits, which was about 8 per cent of its total deposits.<sup>11</sup> As on March 2015, deposits held by Iranian banks in their accounts with UCO Bank was INR 17,895.5 crore (US\$ 2.86 billion), while Indian refiners owed Iran US\$ 5.9 billion as of February 2015.<sup>12</sup> From 2012-May 2015, gross payments (45 per cent component) received by the bank from oil companies was INR 81,858 crore while payments made to Indian exporters by the bank were INR 66,604 crore.<sup>13</sup>

India-Iran bilateral trade facilitated by the UCO Bank had its share of controversy. The Bank came under the scanner of the Enforcement Directorate (ED) after eight foreign nationals (seven Iranians and one from Azerbaijan) apparently came to India on student visas and set up close to 80 fictitious firms to divert export credits being provided for by the UCO Bank to Iranian importers in Dubai and Iran. The volume of the scam has been pegged at between INR 800-INR 20,000 crore. Reports note that most documents deposited with the Bank for receiving money, including invoices for exports and purchases, were fictitious.<sup>14</sup> Analysts noted that it was either a ‘system failure’ at UCO Bank at best, or active collusion with fraudsters at worst, by lower-rung officials who did not quite implement ‘know-your-customer’ (KYC) norms.

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<sup>11</sup> Namrata Acharya, ‘With Iran sanctions set to be lifted, UCO Bank braces up for hit in margin’, September 8, 2015, at [http://www.business-standard.com/article/finance/with-iran-sanctions-set-to-be-lifted-uco-bank-braces-up-for-hit-in-margin-115090800759\\_1.html](http://www.business-standard.com/article/finance/with-iran-sanctions-set-to-be-lifted-uco-bank-braces-up-for-hit-in-margin-115090800759_1.html) (Accessed October 21, 2015).

<sup>12</sup> Jyoti Mukul and Nayanima Basu, ‘Despite deal, India’s payment issues with Iran persist’, April 4, 2015, at [http://www.business-standard.com/article/economy-policy/despite-deal-india-s-payment-issues-with-iran-persist-115040400012\\_1.html](http://www.business-standard.com/article/economy-policy/despite-deal-india-s-payment-issues-with-iran-persist-115040400012_1.html) (Accessed October 21, 2015).

<sup>13</sup> Namrata Acharya, ‘With Iran sanctions set to be lifted, UCO Bank braces up for hit in margin’, n. 11.

<sup>14</sup> Shrimi Choudhary, ‘UCO Bank under ED scanner over Rs 20,000 crore hawala scam’, January 23, 2015, at <http://www.dnaindia.com/money/report-uco-bank-under-ed-scanner-over-rs-20000-crore-hawala-scam-2054921> (Accessed October 20, 2015).

In a clarification issued on February 11, 2015, the Bank stated that no credit was provided to these companies but that advance payments against future exports as permitted by RBI guidelines were issued. While the exporter was under obligation to export within one year from the date of receipt of advance payments, the Bank noted that exports had not taken place with respect to INR 945.91 crores of such payments. It further stated that about INR 375 crores out of the above were received by these companies before one year, thus still laying store in the possibility that the Iranian importers would fulfil their obligations.<sup>15</sup> On February 24, 2015, the Bank issued revised guidelines for Indo-Iran trade as regards advance remittance insisting that export documents should not be directly dispatched to the consignee/buyer but should be routed through the exporter's bank.<sup>16</sup>

Meanwhile, reports in August 2015 noted that the ED was concerned by lack of visible action by the Bank, including not filing first information reports (FIR) even though the names of the eight individuals were known (though their whereabouts have not been known since).<sup>17</sup> In a subsequent clarification on August 20, 2015, the Bank stated that the amount of INR 945 crores constituted just 0.55 per cent of the total amount of payments handled by the Bank under the rupee payment mechanism. It further underlined that no credit facilities were provided, no bank money was involved, and that the ED had not sought any clarification on why FIR's were filed.<sup>18</sup>

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<sup>15</sup> See UCO Bank, 'Clarification on News Item [that] appeared in DNA dated February 2, 2015', February 11, 2015, at [http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/UCO\\_Bank\\_110215.pdf](http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/UCO_Bank_110215.pdf) (Accessed October 19, 2015).

<sup>16</sup> Cited in 'Indo-Iranian Trade Agreement in Indian Rupees: UCO Bank's Role', at <http://eximin.net/NewsDetails.aspx?name=28636> (Accessed October 21, 2015).

<sup>17</sup> Shrimi Choudhary, 'Enforcement Directorate throws Rs 20,000 crore export scam poser at UCO Bank', August 18, 2015, at <http://www.dnaindia.com/money/report-enforcement-directorate-throws-rs-20000-crore-export-scam-poser-at-uco-bank-2115507> (Accessed October 19, 2015).

<sup>18</sup> See UCO Bank, 'Clarification on News Item [that] appeared in DNA dated August 18, 2015', August 20, 2015, at [http://www.moneycontrol.com/livefeed\\_pdf/Aug2015/EE4BDBB4\\_C6D2\\_401A\\_964C\\_9F03CAFCEA57\\_132004.pdf](http://www.moneycontrol.com/livefeed_pdf/Aug2015/EE4BDBB4_C6D2_401A_964C_9F03CAFCEA57_132004.pdf) (Accessed October 19, 2015).

## INDIAN OIL COMPANIES AND IRAN SANCTIONS

Five Indian oil companies—Essar Oil, Hindustan Petroleum Corporation Limited (HPCL), Mangalore Refinery and Petrochemicals Limited (MRPL), Indian Oil Corporation Limited (IOCL), and its subsidiary Chennai Petroleum Corporation Limited (CPCL) have been importing Iranian oil post-2010. As a result of EU and US sanctions, these companies faced difficulties in arranging for insurance cover for ships carrying Iranian crude or had to buy oil from other sources with more stringent economic conditionality's. Reliance stopped the sale of refined gasoline to Iran in May 2009 while it announced in 2010 that it would not buy Iranian oil as well. Given below are pertinent aspects relating to some of the bigger Indian companies importing Iranian oil.

### CPCL

CPCL, in which the Iranian company Naftiran Intertrade Company (NICO) holds a 15.4 per cent stake, had to stop buying Iranian crude in 2012 after the EU sanctions created problems on securing insurance cover for ships transporting Iranian oil. The CPCL Annual Report 2013-14 states

Due to restrictions on oil imports from Iran on account of international factors, CPCL is unable to import crude from Iran, *which is available with a credit period of three months as against one month of credit period offered by other crude exporting nations. As a result, the working capital requirement of the company has increased, resulting in higher interest expenses* [emphasis added] ...<sup>19</sup>

Thus, the Iran sanctions further hurt the difficult financial health of the company which suffered a net loss of INR 1766.84 crores in 2012-13. The other contributing factors the company cited for the loss of revenue included volatility in crude prices, the 'adventitious loss' of crude, the 'unprecedented depreciation' of Indian rupees against the US dollar, among others. The company had started to perform better after suffering a loss of about INR 400 crores in 2008-09.

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<sup>19</sup> The report is available at <http://www.cpcl.co.in/AnnualReports/CPCL%20Annual%20Report%202014.pdf>, p. 59. (Accessed May 8, 2015).

CPCL's performance in 2012-13 was against the performance in the previous three financial years when it registered profit after tax of INR 603 crores in 2009-10, INR 511 crores in 2010-11, and INR 62 crores in 2011-12. In 2013-14, it continued to suffer losses to the tune of about INR 304 crores, though in April-June 2014, it registered a profit of INR 510 crores.<sup>20</sup> The company's net worth, however, decreased from INR 3793 crores in 2011-12 to INR 1722 crores in 2013-14. Given that this was more than 50 per cent depreciation in net worth, the company had to inform the Board of Industrial and Financial Reconstruction (BIFR).<sup>21</sup>

CPCL has been stalled in its efforts to infuse fresh funds due to its NICO connection. Reports in 2008 had noted that the company was looking at a fresh capital infusion of INR 8000 crores. As noted above, NICO was on the US sanctions list since September 2010 while its parent company NIOC was named as a proliferation entity under the terms of the E.O. 13382 in November 2012.

Reports noted that CPCL's efforts in May 2014 to seek a capital infusion of about US\$ 160 million did not fructify after NICO insisted on holding on to its stake and subscribing to the shares.<sup>22</sup> As per the formation agreement of CPCL, an offer is to be made to NICO 'in any issue of the Capital in proportion to the shares held by them, at the time of such issue to enable them to maintain their share holding at the existing percentage'.<sup>23</sup>

As of March 31, 2015, CPCL could not pay NICO a dividend worth INR 3210.61 lakhs 'due to sanctions imposed by US/European Union against Iran', and that these funds were lying in the 'Unpaid Dividend

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<sup>20</sup> PTI, 'Chennai Petroleum Corporation Ltd. reports Rs 510.11 crore Q1 net profit', August 8, 2014, at [http://articles.economicstimes.indiatimes.com/2014-08-08/news/52593967\\_1\\_march-31-crore-total-income](http://articles.economicstimes.indiatimes.com/2014-08-08/news/52593967_1_march-31-crore-total-income) (Accessed May 8, 2015).

<sup>21</sup> CPCL Annual Report 2013-14, p. 12.

<sup>22</sup> Nidhi Verma, 'Iranian stake hurts Chennai Petroleum's revival plan', Reuters, November 13, 2014, at <http://in.reuters.com/article/2014/11/13/india-chennai-petro-idINKCN0IW1NY20141113> (Accessed May 8, 2015).

<sup>23</sup> See [www.cpcl.co.in](http://www.cpcl.co.in)

Account 2010-11 and 2011-2012 – NICO’ with State Bank of India, CAG Branch, Chennai.<sup>24</sup> Reports indicated that CPCL could possibly seek a merger with its parent company and become majority stakeholder the Indian Oil Corporation Limited (IOCL) to improve its financial health.

In December 2014, the company clarified that while this was one of the ‘various options’ being examined for improving the performance of the company, that there was ‘no proposal for a merger of CPCL with IOCL’.<sup>25</sup> Reports in August 2015 stated that the company would get a capital infusion of INR 1000 crore ‘preferential share’ from its parent company IOCL. The company noted that this would augment its net worth to nearly INR 3,600 crore, and allow it to come out of the BIFR ambit.<sup>26</sup> IOCL Chairman B. Ashok in September 2015 stated that there was no proposal to merge CPCL with the parent company.<sup>27</sup>

## **MRPL**

MRPL imported over 91 per cent of its crude oil requirements in 2014-15, which was worth INR 508, 507.75 million. In 2013-14, the figure stood at INR 640,281.06 million for 90 per cent of its imports while in 2012-13, it was valued at INR 574,921.62 million for 88 per cent worth of imports. The company was initially relying solely on term contracts with NIOC. On account of difficulties being faced on sourcing crude from Iran, the company expanded its sources to include contracts with Saudi Aramco, National Oil Company of Dubai

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<sup>24</sup> CPCL Annual Report 2013-14, p. 35, 82; CPCL Annual Report 2014-15, p. 96.

<sup>25</sup> PTI, ‘No proposal to merge with IOCL as of now: Chennai Petroleum Corporation Ltd’, December 1, 2014, at [http://articles.economictimes.indiatimes.com/2014-12-01/news/56614550\\_1\\_cpcl-iocl-chennai-petroleum-corporation-ltd](http://articles.economictimes.indiatimes.com/2014-12-01/news/56614550_1_cpcl-iocl-chennai-petroleum-corporation-ltd) (Accessed May 8, 2015).

<sup>26</sup> ‘CPCL lines up Rs. 1,392 crore capex for 2015-16’, PTI, August 10, 2015, at [http://articles.economictimes.indiatimes.com/2015-08-10/news/65415058\\_1\\_manali-refinery-chennai-petroleum-corporation-oil-pipeline](http://articles.economictimes.indiatimes.com/2015-08-10/news/65415058_1_manali-refinery-chennai-petroleum-corporation-oil-pipeline) (Accessed October 19, 2015).

<sup>27</sup> Business Standard, ‘No proposal to merge CPCL with IOC, says B Ashok’, September 9, 2015, at [http://www.business-standard.com/article/companies/no-proposal-to-merge-cpcl-with-ioc-says-b-ashok-115090801465\\_1.html](http://www.business-standard.com/article/companies/no-proposal-to-merge-cpcl-with-ioc-says-b-ashok-115090801465_1.html) (Accessed June 15, 2016).

(ADNOC), Kuwait Petroleum Corporation, and Sonangol (National Oil Company of Angola).

Among Iran-related sanctions measures that negatively affected MRPL were difficulties in the repayment for Iranian oil due to the closure of the ACU mechanism.<sup>28</sup> Further, in the Company's Annual Report 2012-13—and echoing similar problems as that of CPCL, it pointed out that 'the stoppage of import of crude oil from Iran took away the additional credit period and imposed pressure on working capital borrowings besides involving additional interest cost'. It further noted that problems

[w]ith respect to payment, insurance for cargo, insurance for vessels and availability of vessels to perform Iranian voyages, made it almost impossible to lift crude oil from Iran. Consequently, your Company was not able to import full contractual quantity of crude oil under its term contract with NIOC, Iran, for the year 2012-13.<sup>29</sup>

In its Annual Report 2013-14, MRPL stated that INR 79,141.99 million was the 'overdue amount payable to National Iranian Oil Company (NIOC) pending settlement due to non-finalisation of remittance channel arising out of UN/US/EU-backed sanctions'.<sup>30</sup> In its Annual Report 2014-15, it stated that the overdue amount payable to NIOC had grown to INR 147,854.73 million.<sup>31</sup> In its Annual Report 2014-15, MRPL stated that as the JCPOA

only provided limited sanctions relief relating to certain activities only, many of the problems and issues faced by MRPL in the

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<sup>28</sup> MRPL, Annual Report 2011-12, p. 10, at <http://www.mrpl.co.in/sites/default/files/24TH%20ANNUAL%20REPORT.pdf> (Accessed May 8, 2015).

<sup>29</sup> MRPL, Annual Report 2012-13, p. 11, at [http://www.mrpl.co.in/sites/default/files/MRPL%20AR\\_2012\\_2013.pdf](http://www.mrpl.co.in/sites/default/files/MRPL%20AR_2012_2013.pdf) (Accessed May 8, 2015).

<sup>30</sup> MRPL, Annual Report 2013-14, p. 33, at <http://www.mrpl.co.in/sites/default/files/26TH%20ANNUAL%20REPORT.pdf> (Accessed May 8, 2015).

<sup>31</sup> MRPL Annual Report 2014-15, p. 83, at [http://mrpl.co.in/sites/default/files/Annual%20Report/27%20ANNUAL%20REPORT\\_1436528302.pdf](http://mrpl.co.in/sites/default/files/Annual%20Report/27%20ANNUAL%20REPORT_1436528302.pdf) (Accessed October 19, 2015).

aftermath of the Iran sanctions still continue like non-availability of vessels to perform Iranian voyages, lack of marine insurance for transportation of Iranian cargoes, insertion of exclusion clause by insurance companies in Mega Risk insurance policy of MRPL refinery etc. In view of the same, presently, crude oil import from Iran is being carried out on CIF [cost, insurance, freight] basis.<sup>32</sup>

## **Essar Oil**

Essar Oil processed 20.49 MMT of crude in 2014-15, 20.33 MMT 2013-14, 19.77 in 2012-13, 13.5 in 2011-12, and 14.76 MT in 2010-11 (total crude throughput). With gross revenue of INR 107,190 crore in 2013-14, the company—for the first time ever—had gross revenue exceeding INR 100,000 crore. Profit after tax at over INR 1500 crore was over 12 times the previous financial year.<sup>33</sup>

In its Annual Report 2011-12, the company noted that increased production from Saudi Arabia, recovery in Libyan crude oil production, and the ‘impressive growth’ witnessed in Iraq, ‘have ensured adequate supply of oil in global markets in spite of loss of Sudanese production due to the creation of South Sudan and the declining supplies from Iran due to the tightening of sanctions.’<sup>34</sup>

## **Reliance and the Pressure of US Sanctions**

RIL’s Jamnagar refinery was a key supplier to Iran meeting a significant amount of its gasoline requirements. Eight US Congressmen and two Senators wrote to the Chairman of the US Exim Bank (in October and December 2008) opposing the provision of loans close to US\$ 900 million to RIL (secured in July 2007 and August 2008), for purchasing US equipment and services for oil and gas exploration

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<sup>32</sup> Ibid. p. 38. Under CIF basis, the seller bears the responsibility for the insurance of the shipment as well as for the risk of lost or damaged goods till the port of preferred destination of the buyer.

<sup>33</sup> Essar Oil, Annual Report 2014-15, p. 6, at <http://www.essaroil.co.in/media/15407/Essar-Oil-AR-2014-15.pdf> (Accessed October 19, 2015).

<sup>34</sup> Essar Oil, Annual Report 2011-12, p. 13, at [http://www.essaroil.co.in/media/6392/EOL\\_AR\\_2011-12\\_With\\_Annexures.pdf](http://www.essaroil.co.in/media/6392/EOL_AR_2011-12_With_Annexures.pdf) (Accessed May 8, 2015).

work at the Krishna Godavari Basin in Andhra Pradesh, and to expand capacities at Jamnagar.<sup>35</sup>

In the face of such US pressure, RIL announced in January 2009 that it would stop the sale of refined gasoline after fulfilling its extant contractual obligations. Reliance eventually stopped supplying gasoline to Iran in May 2009. Congressman Brad Sherman welcomed the development, noting that ‘refined petroleum products are an Achilles heel for Iran ... RIL has provided as much as 30 per cent of Iran’s petroleum imports’.<sup>36</sup> In 2010, RIL also announced that it would not import Iranian crude. Iranian oil accounted for 8 per cent of Reliance’s imports in 2009.<sup>37</sup> As noted earlier (in the section on CISADA), US officials on their part credited CISADA and its restrictions on the sale of refined petroleum products as responsible for major energy traders like India’s Reliance halting their Iran-related businesses.

RIL has subsequently been the recipient of Exim Bank loans to the tune of US\$ 2.1 billion (in December 2012) to help fund expansion activities at Jamnagar. In a statement, the Exim Bank noted that the project involving 65 US exporters would support over 12,000 US jobs.<sup>38</sup> It is pertinent to flag another instance of an Indian company seeking US Exim Bank loans to highlight the paradoxical reactions and

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<sup>35</sup> ‘House Introduces Legislation to Limit Iran’s Gasoline Imports’, April 23, 2009, at <http://www.defenddemocracy.org/media-hit/house-introduces-legislation-to-limit-irans-gasoline-imports/#sthash.hkqjUD4r.dpuf> (Accessed October 19, 2015); See also Shayerah Ilias, ‘Export-Import Bank: Background and Legislative Issues’, March 17, 2009, p. 5, at <http://fpc.state.gov/documents/organization/122976.pdf> (Accessed October 19, 2015).

<sup>36</sup> ‘Sherman Issues Statement on Reported RIL Decision to Stop Selling Refined Petroleum to Iran’, January 7, 2009, at <http://sherman.house.gov/media-center/press-releases/sherman-issues-statement-on-reported-ril-decision-to-stop-selling> (Accessed October 19, 2015).

<sup>37</sup> Cited in Nidhi Verma, ‘Reliance set to buy Iran oil after five-year hiatus, source says’, February 18, 2016, at <http://in.reuters.com/article/iran-reliance-idINKCN0VR0UU> (Accessed June 16, 2016).

<sup>38</sup> ‘Ex-Im approves US\$ 2.1 billion to finance export of US petrochemical goods and services to India’, December 4, 2012, at <http://www.exim.gov/newsandevents/releases/2012/ExIm-Approves-2-Billion-to-Finance-Export-of-US-Petrochemical-Goods-and-Services-to-India.cfm> (Accessed June 22, 2014).

responses of the members of the US Congress. In November 2010 for instance, the Anil Ambani-led Reliance power secured a US\$ 600 million Exim Bank loan for the supply of US coal mining equipment for the US\$ 5 billion Sasan coal-fired power plant. Reports in July 2010 had noted that loans were almost denied due to considerations over increasing carbon emissions as a result of the technology being used in the plant.<sup>39</sup> However, several US Congressmen wrote to President Obama urging for the provision of loan guarantees over the prospects of protecting US jobs. In a letter to the Exim Bank Chairman, Representatives Jim Sensenbrenner and Paul Ryan (in a reversal of the advocacy by US Congressmen seen as regards RIL vis-à-vis Iran), urged him to privilege US jobs over environmental activism, given that the national unemployment rate was hovering close to 10 per cent, and provide the loan to the Indian company.<sup>40</sup>

## INDIAN INVESTMENT IN IRAN'S ENERGY INFRASTRUCTURE

The Iran-Pakistan-India (IPI) pipeline could not proceed due to a range of factors, including those relating to project finance, guarantee of supply, the security of the pipeline, and the pricing of gas. Other projects that have been pursued include the Memorandum of Agreement (MoA) signed on December 1, 2009 (prior to CISADA and the US Treasury designation of NICO in September 2010) between Iranian Companies NICO and Petropars Limited (PPL), and Indian companies ONGC Videsh Limited (OVL) and Ashok Leyland Project Services Limited (ALPS), in the presence of NIOC for the development of South Pars Phase-II and the Farzad-B gas field of Farsi Block.<sup>41</sup>

OVL also submitted a draft Master Development Plan (MDP) to the Iranian Offshore Oil Company. While Minister Murli Deora had earlier

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<sup>39</sup> Kushal Pal Singh, 'US bank uses carbon smokescreen', July 31, 2010, at <http://www.downtoearth.org.in/content/us-bank-uses-carbon-smokescreen> (Accessed June 22, 2014).

<sup>40</sup> The June 29, 2010 letter is available at <http://sensenbrenner.house.gov/news/documentsingle.aspx?DocumentID=192723> (Accessed June 22, 2014).

<sup>41</sup> Lok Sabha, 'Investment by ONGC in gas field in Iran', April 29, 2010, at <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=87227> (Accessed May 5, 2015).

indicated (in 2008) that the amount of investment will depend on the approval of the MDP, it was estimated that total investments could total US\$ 5 billion. However, he noted that ‘sanctions against Iran deter foreign investment in the country including in the energy sector’. Reports in early May 2015 noted that Iran withdrew offers to Indian firms regarding the development of the Farzad-B gas field, given the delay in going through with the required investments.<sup>42</sup>

However, during the visit of Dharmendra Pradhan, Minister of State (Petroleum and Natural Gas) to Iran (April 9-10, 2016), both sides ‘expressed confidence on concluding an agreement at the earliest’ regarding Farzad-B.<sup>43</sup> This was the first visit of a Petroleum Minister from India in over 9 years. Iran was also informed that Indian companies could invest up to US\$ 20 billion in setting up petro-chemical and fertiliser plants in the Chahbahar Special Economic Zone (SEZ). Ahead of the visit of Prime Minister Narendra Modi to Iran in end-May 2016, Joint Secretary Gopal Baglay stated that discussions regarding Farzad-B have ‘moved towards commercial conclusion and financial closure’.<sup>44</sup>

IOCL has participating interest in the Farsi Block, wherein it had invested INR 1613.82 lakhs during the 11th Plan period (2008-09 to 2011-12), amounting to about 2.56 per cent of IOCL’s total investments abroad (INR 62,871.76 lakhs).<sup>45</sup> In March 22, 2012, Minister of State (Petroleum and Natural Gas) R.P.N. Singh stated that the US and EU sanctions on Iran ‘make various services, including technical and financial required

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<sup>42</sup> ‘Iran withdraws offer to Indian firms on gas field development project’, May 2, 2015, Fars News Agency website, English, BBC Monitoring, (Accessed May 8, 2015).

<sup>43</sup> PIB, ‘Visit of Shri Dharmendra Pradhan, Minister of State (I/C) for Petroleum and Natural Gas to Iran’, April 11, 2016, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=138769> (Accessed April 20, 2016)

<sup>44</sup> MEA, ‘Transcript of Media Briefing on Prime Minister’s forthcoming visit to Iran’, May 21, 2016, at <http://www.mea.gov.in/outgoing-visit-detail.htm?26836/Transcript+of+Media+Briefing+on+Prime+Ministers+forthcoming+visit+to+Iran+May+20+2016> (Accessed June 20, 2016).

<sup>45</sup> Rajya Sabha, ‘Expansion Plan of Oil India Limited’, Unstarred Question No. 5083, May 22, 2012, at <http://164.100.47.5/qsearch/QResult.aspx> (Accessed May 5, 2015).

for oil exploration, extremely difficult.<sup>46</sup> As for the Sale Purchase Agreement (SPA) of June 2005 entered into by Indian PSU's and the National Iranian Gas Export Corporation (NIGEC) regarding the import of 5 MMT per annum for 25 years, NIGEC's parent organisation (the NIOC) did not give approval for the SPA.

### IMPACT ON INDIA'S EXPORTS TO IRAN

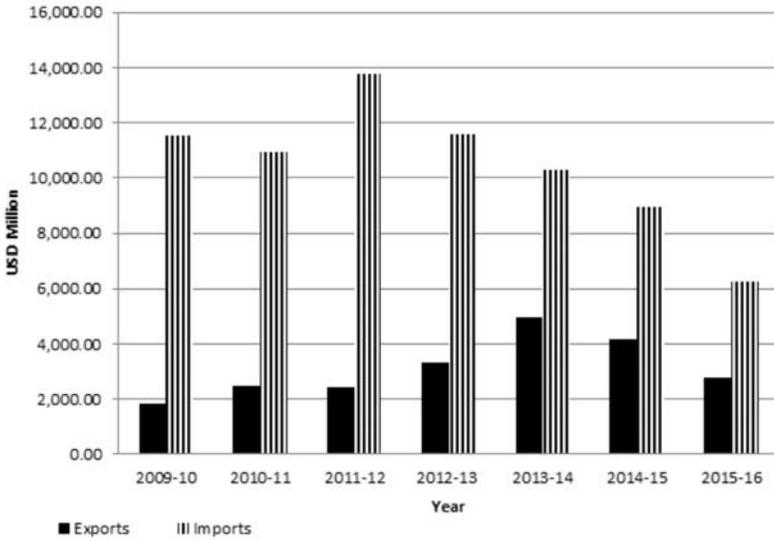
As indicated in Table 5, exports from India during 2015-16 were more than double the corresponding figures for 2009-10. The most significant item of export was 'cereals', which includes basmati rice, among others, as indicated in Table 6. Cereals, which constituted about 23 percent of the total exports from India, jumped to nearly 40 per cent in 2013-14. The availability of money under the rupee payment mechanism allowed Iranian importers to utilise it to buy non-sanctioned Indian goods such as basmati rice. As indicated in Table 6, the export of basmati rice nearly doubled in 2012-13 from the previous year, and more than tripled as compared to 2010-11.

**Table 5: India-Iran Bilateral Trade 2009-15 (USD Million)**

Year	Exports to Iran (USD Million)	Imports from Iran (USD Million)	Total Bilateral Trade (USD Million)
<b>2009-10</b>	1,853.17	11,540.85	13,394.01
<b>2010-11</b>	2,492.90	10,928.21	13,421.12
<b>2011-12</b>	2,411.33	13,790.16	16,201.48
<b>2012-13</b>	3,351.07	11,594.46	14,945.53
<b>2013-14</b>	4,971.35	10,307.16	15,253.52
<b>2014-15</b>	4,175.06	8,955.02	13,130.08
<b>2015-16</b>	<b>2,781.52</b>	<b>6,273.01</b>	9,054.53

**Source:** Ministry of Commerce and Industry, Export-Import Data Bank, [www.commerce.nic.in](http://www.commerce.nic.in), (accessed June 15, 2016).

<sup>46</sup> Lok Sabha, 'Oil exploration in Iran', March 22, 2012, at <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=117758> (Accessed May 5, 2015).

**Graph 2: India-Iran Bilateral Trade 2009-16**

The reduction in export figures of basmati rice for 2014-15 was attributed to the fact that Iran did not issue import permits beginning October 2014, ‘due to oversupply.’<sup>47</sup> Iran again began issuing permits for basmati imports only in December 2015.<sup>48</sup> Consequently, India’s export of basmati rice nearly halved during 2015-16 as compared to the previous year. A report in February 2016 meanwhile revealed that the Directorate of Revenue Intelligence had unearthed a massive scam in the export of basmati rice to Iran, with over two lakh metric tonnes being illegally diverted to Dubai mid-sea instead of being delivered at Bandar Abbas, with the connivance of rice exporters, cargo ship

<sup>47</sup> Dilip Kumar Jha, ‘Basmati rice exports to Iran likely to resume soon’, March 10, 2015, [http://www.business-standard.com/article/markets/basmati-rice-exports-to-iran-likely-to-resume-soon-115031000181\\_1.html](http://www.business-standard.com/article/markets/basmati-rice-exports-to-iran-likely-to-resume-soon-115031000181_1.html) (Accessed October 21, 2015).

<sup>48</sup> Vishwanath Kulkarni, ‘Poor offtake by Iran, Nigeria to dent India’s rice exports’, January 6, 2016, at <http://www.thehindubusinessline.com/economy/agri-business/poor-offtake-by-iran-nigeria-to-dent-indias-rice-exports/article8073384.ece> (Accessed June 20, 2016).

operators as well as Iranian importers. The DRI suspected that the rice could be used as barter and converted to black money to fund illegal activities.<sup>49</sup>

**Table 6: Exports of Cereals and Basmati Rice to Iran 2009-16**

Commodity	Cereals Exports (USD Million)	Total Exports (USD Million)	Cereal Exports (Percentage of Total Exports)	Basmati Rice Exports (USD Million)	Basmati Rice Exports (Percentage of Total Cereal Exports)	India's Total Basmati Exports (USD Million)	Basmati Exports to Iran (Percentage of India's Total Exports)
2009-10	439.15	1,853.17	23.7	427.99	88.4	2,289.35	18.7
2010-11	449.56	2,492.9	18.03	446.2	97.6	2,493.89	17.9
2011-12	600.84	2,411.33	24.9	594.94	98.2	3,216.99	18.5
2012-13	1,247.25	3,351.07	37.2	1,187.23	87.9	3,564.04	33.3
2013-14	1,968.73	4,971.35	39.6	1,864.55	84.9	4,864.89	38.3
2014-15	1,239.72	4,175.06	29.7	1,108.5	73.9	4,518.25	24.5
2015-16	593.1	2,781.52	21.3	571.19	96.3	3,477.35	16.4

**Source:** Ministry of Commerce and Industry, Export-Import Data Bank, [www.commerce.nic.in](http://www.commerce.nic.in); 'Indian Export of Principal Commodities', at [www.apeda.gov.in](http://www.apeda.gov.in), (Accessed June 20, 2016).

<sup>49</sup> PTI, 'Rice Exported to Iran Ends up in Dubai', February 29, 2016, at <http://www.deccanchronicle.com/nation/current-affairs/290216/rice-exported-to-iran-ends-up-in-dubai.html> (Accessed June 20, 2016).

## CHINA AND IRAN SANCTIONS

Apart from India, the remaining Iranian oil-importing nations in the aftermath of unilateral US and EU sanctions were China, Japan, South Korea, Taiwan and Turkey. The following section notes the Chinese positions on Iran-related UNSC sanctions and the implications of the unilateral (limited to US) sanctions measures against Iran on China, Iran's biggest trade partner.

As an UNSC member, China continued to stress the importance of negotiations and the role of the IAEA as the 'main mechanism' to address Iran's concerns.<sup>1</sup> While participating in the debate on UNSCR 1737 in December 2006 (which was passed unanimously), Chinese Representative Wang Guangya insisted that 'sanctions were not the end, but a means to urge Iran to return to negotiations', and that China did not 'wish to see turbulence in the Middle East'.<sup>2</sup> When UNSCR 1929 was voted with 12 in favour, two against (Turkey and Brazil), and one abstention (Lebanon), China's representative Li Baodong echoed his predecessor's statement that the new sanctions resolution reflected 'international concerns'.<sup>3</sup>

However, specific measures in the UNSC sanctions resolutions (like the arms ban imposed by UNSCR 1929) did not negatively affect

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<sup>1</sup> This section draws from my chapter 'Primed to Benefit: China and the Iran Nuclear Deal', in Jagannath Panda (ed.) *China Year Book 2015*, Pentagon Press, New Delhi, pp. 388-402.

<sup>2</sup> 'Security Council Imposes Sanctions on Iran for Failure to Halt Uranium Enrichment, Unanimously Adopting Resolution 1737 (2006)', December 23, 2006, at <http://www.un.org/press/en/2006/sc8928.doc.htm> (Accessed January 20, 2016).

<sup>3</sup> 'Security Council Imposes Additional Sanctions on Iran, Voting 12 in Favour to 2 Against, with 1 Abstention', June 9, 2010, at <http://www.un.org/press/en/2010/sc9948.doc.htm> (Accessed January 20, 2016).

China's arms trade with Iran. Analysts note that Chinese arms sales to Iran 'fell off sharply around 2000 ... to demonstrate to the world that it was not supporting a supposed terrorist state ... also to perhaps to curry favour with conservative Gulf States'.<sup>4</sup> In the aftermath of the JCPOA, there were reports that China's arms trade with Iran was a potential growth area in their bilateral ties as both sides consolidated their security partnership.

As noted earlier, the Chinese company Zhuhai Zhenrong (a state-owned enterprise), was designated under CISADA in January 2012 for supplying oil to Iran beyond CISADA limits. The Chinese Foreign Ministry criticised the designation, stating that the imposition of sanctions based on US domestic law 'is totally unreasonable and does not conform to the spirit or content of the UN Security Council resolutions about the Iran nuclear issue'.<sup>5</sup> These restrictions were removed in the aftermath of JCPOA Implementation Day.

Around the same time that the US State Department was designating Zhengrong, Chinese Prime Minister Wen Jiabao was visiting oil-producing nations in the Arab world, including Saudi Arabia. Wen was cited as stating that it was important for China and Saudi Arabia to keep deepening their cooperation 'in the face of changeable and complicated regional and international trends'.<sup>6</sup>

The Hong Kong Inter-trade Company (HKIC) and its directors were added to the Specially Designated Nationals and Blocked Persons (SDN) list by the Office of Foreign Assets Control (OFAC) of the US

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<sup>4</sup> Cited in Awad Mustafa, 'Iran: Next Battleground for Arms Deals?', *Defence News*, April 20, 2015, <http://www.defensenews.com/story/defense/policy-budget/industry/2015/04/19/arabian-gulf-countries-monitor-iran-arms-deals/25764825/> (Accessed January 25, 2016).

<sup>5</sup> 'China angry at US sanctions on oil firm Zhuhai Zhenrong', BBC, January 15, 2012, at <http://www.bbc.com/news/world-asia-china-16565563> (Accessed January 28, 2016).

<sup>6</sup> 'China's Wen presses Saudi Arabia for oil, gas access', *Al Arabiya*, January 15, 2012, at <http://english.alarabiya.net/articles/2012/01/15/188365.html> (Accessed January 28, 2016).

Treasury Department in July 2012. This was done under Executive Order 13599. HKIC was deemed a ‘front’ company involved in Iran’s oil trade, specifically the National Iranian Oil Company (NIOC), which was designated in November 2012. The inclusion in the SDN List prevented US persons from engaging in any transactions involving such companies or individuals without OFAC authorisation.<sup>7</sup> In the aftermath of JCPOA Implementation Day, HKIC and its directors were not subject to secondary sanctions, though ‘US persons continued to block the property or Interests’ pursuant to EO 13599.<sup>8</sup>

As a result of the tightening of the US and EU sanctions (relating to the provision of insurance services to ships carrying Iranian crude), Iran slipped from its third position in 2010 as a supplier of crude to China to fifth position in 2014 (after Saudi Arabia, Angola, Russian Federation and Oman. See Table 7). China also secured oil supplies from countries like Iraq, with imports witnessing an increase of over 64 per cent (in value) in 2014 as compared to 2012.<sup>9</sup> Reports in late 2009 indicated that China had rejected a joint Saudi-US initiative to compensate for the reduction in its imports of Iranian oil, which both countries had put forward in order to secure Chinese support for the possible ramping up of sanctions targeting its oil exports.<sup>10</sup>

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<sup>7</sup> US Department of State, ‘Increasing Sanctions against Iran’, July 12, 2012, at <http://www.state.gov/r/pa/prs/ps/2012/07/194924.htm> (Accessed January 28, 2016); EO 13599 of February 5, 2012 relates to the ‘Blocking Property of the Government of Iran and Iranian Financial Institutions’.

<sup>8</sup> See US Treasury Department, OFAC, ‘List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599’, January 16, 2016, at <https://www.treasury.gov/ofac/downloads/13599/13599list.pdf> (Accessed January 28, 2016).

<sup>9</sup> World Bank, World Integrated Trade Solution, ‘China’s Fuel Imports’, at <http://wits.worldbank.org> (Accessed February 5, 2016).

<sup>10</sup> Natasha Mozgovaya and Barak Ravid, ‘Obama Told China: “I Can’t Stop Israel Strike on Iran Indefinitely”’, *Haaretz*, December 17, 2009, at <http://www.haaretz.com/obama-told-china-i-can-t-stop-israel-strike-on-iran-indefinitely-1.1936> (Accessed January 30, 2016).

**Table 7: China's Fuel Imports 2010-14 (USD 1000)**

Country	2014	2013	2012	2011	2010
<b>Saudi Arabia</b>	37,888,902.27	43,307,126.12	44,925,752.47	39,473,289.75	25,868,001.67
<b>Angola</b>	31,060,219.21	31,906,807.9	33,430,524.1	24,809,999.28	22,795,735.09
<b>Russia</b>	29,745,959.57	26,880,422.22	29,522,693.08	22,922,759.98	12,848,520.59
<b>Oman</b>	22,781,280.03	19,968,794.2	15,870,932.09	13,866,991.01	9,110,496.44
<b>Iran</b>	21,190,062.25	18,150,190.82	18,425,507.84	23,056,193.58	13,084,877.85

**Source:** World Bank, World Integrated Trade Solution, <http://wits.worldbank.org> (Accessed March 10, 2016).

The China National Petroleum Corporation (CNPC)-owned Bank of Kunlun held close to US\$ 22 billion owed to Iran as of November 2013 (when the JPOA was negotiated), with the NIOC and the CBI having two accounts at Kunlun denominated in Euros and Yuan respectively.<sup>11</sup> The Bank of Kunlun was sanctioned under CISADA in July 2012. Reports noted that, in the aftermath of Section 504 of ITRSHRA going into effect on February 6, 2013, Chinese firms had greater leeway to flood the Iranian market with cheap consumer goods (including automobiles) as well as building infrastructure projects like Tehran's Sadr expressway, which was completely funded by Beijing.<sup>12</sup> Table 8 indicates that China's exports to Iran registered an increase of over 73 per cent in 2014 from the previous year while imports from

<sup>11</sup> See Reuters, 'Fact Box: Iran's Oil Fund Stash in Asia', November 25, 2013, at <http://in.reuters.com/article/iran-oil-asia-idINL4N0JA10S20131125> (Accessed January 30, 2016). The Bank of Kunlun was performing the role similar to India's UCO Bank, which was designated as the franchise to handle Iran oil payments in the aftermath of the tightening of US and EU sanctions.

<sup>12</sup> 'China floods Iran with cheap consumer goods in exchange for oil', *The Guardian*, February 20, 2013, at <http://www.theguardian.com/world/iran-blog/2013/feb/20/china-floods-iran-cheap-consumer-goods> (Accessed January 30, 2016).

Iran registered an increase of just over 8 per cent. The value of the turnover of Chinese contracted projects in Iran in 2014 stood at US\$ 2.2 billion, as against US\$ 2.18 billion (2013), US\$ 1.49 billion (2012) and US\$ 2.15 billion (2011).<sup>13</sup>

**Table 8: China-Iran Bilateral Trade 2010-14 (USD 10,000)**

	2010	2011	2012	2013	2014
<b>Exports</b>	1109199	1476209	1159745	1403665	2433849
<b>Imports</b>	1829908	3034131	2486839	2538986	2750385
<b>Total</b>	2139108	4510340	3646584	3942651	5184234

*Source:* China Statistical Yearbook, Various Years, <http://www.stats.gov.cn/> (Accessed March 10, 2016).

As regards the Iran nuclear deal, analysts like John Garver affirm that ‘China’s role in achieving the JCPOA is not widely understood’.<sup>14</sup> However, this could be a subjective interpretation, given the relatively lesser political capital invested in these negotiations by China in comparison to the extended participation of Secretary Kerry in many key meetings in the run-up to the JCPOA. In the aftermath of the JCPOA, President Xi Jinping made the first bilateral state visit to Tehran in January 2016 (President Vladimir Putin visited Tehran in November

<sup>13</sup> ‘Economic Cooperation with Foreign Countries or Regions: Iran, Contracted Projects (Value of turnover fulfilled)’, *China Statistical Yearbook*, Various Years, at <http://www.stats.gov.cn/tjsj/ndsjsj/2015/html/EN1122.jpg> (Accessed January 30, 2016).

<sup>14</sup> See John Garver, ‘China and Iran: An Emerging Partnership Post Sanctions’, *Middle East Institute*, February 2016, at <http://www.mei.edu/content/china-and-iran-emerging-partnership-post-sanctions>, p. 2 (Accessed March 10, 2016). Garver argues that the Chinese made efforts to convince the Iranians to compromise in the negotiations by holding out the prospect of Chinese economic incentives that would flow into Iran in the aftermath of a deal. However, China’s offers of economic assistance were not the only ones on the table. Most of Iran’s interlocutors dangled the prospects of increased cooperation (including in the nuclear field) in the event of a deal.

2015 to attend the Third Gas Exporting Countries Forum Summit). Tehran was the third stop Xi's itinerary—after Riyadh and Cairo, signifying a big West Asian diplomatic push by Beijing in the aftermath of the JCPOA Implementation Day.

China and Iran agreed to take forward their bilateral trade to US\$ 600 billion over the course of the next decade. As noted in Table 8, bilateral trade stood at about US\$ 52 billion in 2014. Both sides agreed upon a 'Comprehensive Strategic Partnership' for 25 years, and signed a slew of agreements ranging from cooperation in nuclear energy to infrastructure projects—like the One Belt, One Road (OBOR) Initiative. In a significant development, the first train from the Chinese trading hub of Yiwu arrived in Tehran on February 15, 2016, after traversing a distance of over 10,000 kms. According to reports, the journey time was a good 30 days less than that taken by maritime containers to reach Bandar Abbas from Shanghai.

Chinese energy imports will witness a rise since restrictions on sourcing Iranian energy have been lifted. Iran would look to Chinese investments to develop its oil infrastructure, while there are reports that it would seek superior European technological know-how for extracting gas. A senior Iranian oil industry official was cited as stating that Iran had opened up 16 petro-chemical projects worth over US\$ 16 billion for Chinese investments.<sup>15</sup> Clearly, Iran-China ties across the political, military, and economic spectrums are set to witness an upward trajectory post the JCPOA.

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<sup>15</sup> 'China to be Iran's top partner in 2016', *Azernews*, January 7, 2016, at <http://www.azernews.az/analysis/91366.html> (Accessed February 10, 2016).

## JOINT PLAN OF ACTION

On November 24, 2013, Iran and the P5+1 reached an agreement on the 'Joint Plan of Action (JPOA) which set[s] out an approach towards reaching a long-term comprehensive solution', to be achieved within a year of the implementation of the agreement. Under the terms of the JPOA<sup>1</sup>, in the initial six months period, Iran agreed not to enrich uranium beyond 5 per cent; dilute half of its stockpile of 20 per cent enriched UF<sub>6</sub> gas (about 200 kgs) to 'no more than 5 per cent' while converting the other half to uranium oxide powder; not make any additions to its nuclear infrastructure at Natanz and Fordow uranium enrichment plants and the Arak heavy water reactor; not undertake any reprocessing activities or the construction of a reprocessing facility while agreeing for enhanced monitoring of its nuclear activities; among other measures.<sup>2</sup>

As a part of enhanced monitoring, Iran agreed for daily inspector access at Natanz and Fordow (as against once a week prior to 2013), 'managed access' to centrifuge assembly workshops, storage facilities, uranium mines and mills, and to submit an updated Design Information Questionnaire (DIQ) for the Arak reactor, which was submitted on February 12, 2014. The previous instance of Iran submitting a DIQ for Arak was as far back as in January 2007.

The P5+1 agreed not to impose any new nuclear-related UNSC/US/EU sanctions, suspend sanctions relating to Iran's petro-chemical and automobile sectors, 'pause efforts to further reduce Iran's crude oil

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<sup>1</sup> See 'Joint Plan of Action', November 24, 2013, at [http://eeas.europa.eu/statements/docs/2013/131124\\_03\\_en.pdf](http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf) (Accessed April 5, 2015).

<sup>2</sup> For an examination of the JPOA, see G. Balachandran and S. Samuel C. Rajiv, 'Iran Nuclear Deal: The Fine Print', IDSA Issue Brief, December 9, 2013, at [http://www.idsa.in/issuebrief/IranNuclearDeal\\_balaSam\\_091213.html](http://www.idsa.in/issuebrief/IranNuclearDeal_balaSam_091213.html) (Accessed April 8, 2015).

sales', and to enable the repatriation of Iranian oil revenue—'Restricted Funds' (RF) held by FFI—to the tune of US\$ 4.2 billion. When the JPOA was subsequently extended in July and November 2014, Iran was allowed to further access such funds to the tune of US\$ 2.8 billion and US\$ 4.9 billion respectively till June 30, 2015, for a total of US\$ 11.9 billion (US\$ 700 million for each month beginning from February 2014, as the JPOA began to be implemented in January 2014).<sup>3</sup>

The JPOA also helped Iran import humanitarian goods, allowed payment for the medical treatment of Iranians abroad, and payment of tuition assistance for Iranian students studying abroad to the tune of US\$ 400 million. The White House Fact Sheet explaining the JPOA indicated that Iran could gain US\$ 1.5 billion as a result of easing of sanctions on Iran's petro-chemical exports.<sup>4</sup> In testimony before the Senate Banking Committee on January 27, 2015, the US Deputy Secretary of State Anthony Blinken indicated that the total value of sanctions relief to Iran during the JPOA Relief Period (January 2014–June 2015) would be about US\$ 14–15 billion.<sup>5</sup> However, Blinken also asserted that Iran still lost as much as US\$ 40 billion in oil revenue in 2014 itself due to extant sanctions, and was facing further pressure on account of falling oil prices.

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<sup>3</sup> US Treasury Department, 'Guidance relating to the provision of certain temporary sanctions relief in order to implement the Joint Plan of Action reached on November 24, 2013, between the P5 + 1 and the Islamic Republic of Iran, as extended through June 30, 2015', at [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/guidance\\_ext\\_11252004.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/guidance_ext_11252004.pdf) (Accessed April 5, 2015).

<sup>4</sup> The White House, 'Fact Sheet: First Step Understandings Regarding the Islamic Republic of Iran's Nuclear Program', November 23, 2013, at <http://www.whitehouse.gov/the-press-office/2013/11/23/fact-sheet-first-step-understandings-regarding-islamic-republic-iran-s-n> (Accessed April 5, 2015).

<sup>5</sup> Anthony Blinken, 'Perspectives on the Strategic Necessity of Iran Sanctions', Statement Before the Senate Committee on Banking, Housing, and Urban Affairs, January 27, 2015, at <http://www.state.gov/s/d/2015/236784.htm> (Accessed April 9, 2015).

## JPOA AND US CONGRESS

While the sanctions legislation such as CISADA and ITRSHRA obtained overwhelming bi-partisan support, the response in the US Congress to the JPOA was clearly on partisan lines. On November 14, 2013, 65 US Congressmen (52 Republicans, 13 Democrats) wrote a letter to the Senate leadership insisting that ‘tighter sanctions will enhance our leverage ...’<sup>6</sup> On November 26, 2013, 9 senators (all Republican) urged strict Congressional oversight of a potential Iran nuclear deal. They wanted the Secretary of State to give a report on ‘verification assessment’, and to share this report with Senate Committees on Intelligence, Armed Services, and Banking.

In a letter to Obama on November 19, 2013, Representative Ed Royce (R-CA), Chairman of the House Foreign Affairs Committee (HFAC) and Representative Eliot Engel (D-NY)—authors of H.R. 850 Nuclear Iran Prevention Act which passed overwhelmingly in the House (400-20) in July 2013—insisted that Iran had no inherent right to enrichment, and for the need to sustain the economic and political pressure.<sup>7</sup> The then Speaker of the House, Republican John Boehner, stated that ‘the interim deal has been and will continue to be met with healthy scepticism and hard questions’.<sup>8</sup>

In March 2014, House Majority Leader Eric Cantor (who later succumbed to a shock defeat to a Republican challenger in primary elections in early June 2014) along with House Democratic Whip Steny Hoyer insisted that the nuclear negotiations have to be part of a ‘broader strategy’ dealing with issues relating to Iran’s sponsorship of terrorism, its human rights abuses, pursuit of ballistic missiles, efforts to destabilise

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<sup>6</sup> The letter is available at <http://www.iranwatch.org/sites/default/files/us-house-iransanctionsletter-111413.pdf> (Accessed February 20, 2014).

<sup>7</sup> The Royce and Engel letter is available at <http://foreignaffairs.house.gov/press-release/chairman-royce-ranking-member-engel-caution-president-obama-iran-negotiations> (Accessed February 20, 2014).

<sup>8</sup> ‘Speaker Boehner Statement on Obama Administration Deal With Iran’, November 24, 2013, at <http://www.speaker.gov/press-release/speaker-boehner-statement-obama-administration-deal-iran> (Accessed November 30, 2015)

its neighbours, among others.<sup>9</sup> On the other hand, House Minority leader Democrat Nancy Pelosi asserted that the JPOA was ‘an essential step toward meeting our ultimate objective—to prevent Iran from obtaining a nuclear weapon’.<sup>10</sup>

H.R. 850 Nuclear Iran Prevention Act and the S. 1881 Iran Nuclear Weapon Free Act were the two major Iran-related sanctions legislations that the US Congress considered during this period. S. 1881 was introduced on December 19, 2013 with 59 co-sponsors (overwhelmingly Republican with 19 Democrats supporting it). It included provisions requiring countries that obtained ‘significant reduction’ exemption to reduce their imports to ‘*de minimis*’ levels within one year; required the US to ‘provide Israel with diplomatic, military, and economic support’ in case it decided to undertake military action in self-defence, and sanctions to be triggered if Iran failed in its implementation of any interim or final agreement.<sup>11</sup> Among other provisions, H.R. 850 mandated the elimination of the Presidential waiver against persons who in any way aided Iran’s WMD programmes, and directed the Secretary of State to determine if the IRGC meets the criterion of a foreign terrorist organisation.<sup>12</sup>

The effort of the Obama Administration was to stress that the imposition of sanctions would be against the spirit of the JPOA, would hurt the international coalition supporting diplomacy as well as weaken the prospects of a final solution. Obama even threatened to veto new sanctions resolution. At the Saban Forum on December 7, 2013, Obama

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<sup>9</sup> Cantor and Hoyer statement available at <http://majorityleader.gov/newsroom/2014/03/leader-cantor-whip-hoyer-pen-letter-to-president-obama-on-iran.html> (Accessed June 23, 2014).

<sup>10</sup> Pelosi statement available at <http://www.iranwatch.org/library/governments/united-states/congress/members-letters-reports-statements/house-minority-leader-nancy-pelosis-statement-deal-freeze-irans-nuclear> (Accessed June 22, 2014).

<sup>11</sup> Summary of the bill available at <https://beta.congress.gov/bill/113th-congress/senate-bill/1881> (Accessed June 23, 2014).

<sup>12</sup> Summary of H.R. 850 available at <https://beta.congress.gov/bill/113th-congress/house-bill/850> (Accessed June 23, 2014).

insisted that even if there was no deal at the end of the six-month period, the US would 'have greater leverage with the international community to continue to apply sanctions and even strengthen them'.<sup>13</sup>

Obama met with Democratic Senators on January 15, 2014 at the White House, prompting analysts to note the 'Reid-Obama coalition' at work on the Iran nuclear issue.<sup>14</sup> Reports noted that the Senate Majority Leader Harry Reid was blocking efforts to bring legislation like H.R. 850 to vote in the Senate. The May 19, 2014 Statement of Administration Policy on NDAA 2015 (H.R. 4435) expressed concern at the 'sense of the Congress' language on Iran, and stated that 'by spelling out conditions for a final resolution before the conclusion of the negotiations, the bill undermines that vital effort'.<sup>15</sup>

Meanwhile, the Administration continued to bring out new designations based on existing sanctions legislations and E.O.'s as well as imposed tough fines on financial violators. For instance, analysts noted that financial institutions paid fines worth over US\$ 10 billion during the Obama Administration period. These included Credit Suisse, US\$ 536 mn, December 2009; Dutch bank IMG, US \$ 619 mn, June 2012; Standard Chartered, US\$ 340 mn, August 2012; Clearstream Banking, US\$ 152 mn, January 2014; BNP Paribas, US\$9 billion in June 2014.<sup>16</sup>

Ahead of the 'Lausanne Framework' when the 'parameters' of the JCPOA were agreed upon in April 2015, Republicans were also against the administration's purported moves to seek UNSC vote ahead of letting the US Congress having a look at the agreement. Senator Bob Corker (Republican from Tennessee, Chairman of Senate Foreign

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<sup>13</sup> Obama's statement available at <http://www.iranwatch.org/library/governments/united-states/executive-branch/white-house/remarks-president-conversation-saban-forum-excerpts> (Accessed June 20, 2014).

<sup>14</sup> Stacy Kaper, 'Iran Hawks Flounder against Reid-Obama Coalition', January 16, 2014, at <http://www.nationaljournal.com/daily/iran-hawks-flounder-against-reid-obama-coalition-20140116> (Accessed June 20, 2014).

<sup>15</sup> The White House statement is available at [http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr4435r\\_20140519.pdf](http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/113/saphr4435r_20140519.pdf) (June 22, 2014).

<sup>16</sup> Katzman, *Iran Sanctions*, Chapter II, n. 37, p. 26.

Relations Committee) termed such a move ‘a direct affront to the American people [that] seeks to undermine Congress’s appropriate role’.<sup>17</sup>

On their part, Obama Administration officials while accepting the role of the US Congress in terminating existing statutory sanctions insisted that they were negotiating a ‘non-binding’ agreement with Iran, which did not require Congressional approval. In a letter to Corker on March 14, 2015, Obama’s Chief of Staff Dennis McDonough gave examples of previous such agreements, including the one on Syria negotiated in 2013 between the US and Russia on the removal of chemical weapons from Syria as well as numerous other bi-lateral and multi-lateral initiatives dating back to the 1972 Shanghai Communiqué and the 1941 Atlantic Charter to buttress the Administration’s position. McDonough insisted that given that only the UNSC could terminate UNSC sanctions, seeking UNSC approval would increase international legitimacy as well as keep the pressure on Iran to live up to its commitments.<sup>18</sup>

## **JPOA AND INDIAN OIL COMPANIES**

The White House Fact Sheet on the JPOA asserted that ‘Iran will be held to approximately 1 mb/d in sales’ over the course of the initial six months period, while no comparative figure was mentioned in the JPOA. However, given that extant US/EU sanctions on Iranian crude continued to operate, reports noted that it was not feasible for India to dramatically expand oil imports from Iran, other than sourcing ‘current average amounts of crude oil’.<sup>19</sup> However, analysts noted that

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<sup>17</sup> ‘Corker to President Obama: Going Straight to UN on Iran Nuclear Deal would be “Direct Affront to the American People”’, March 12, 2015, at <http://www.corker.senate.gov/public/index.cfm/news-list?ID=fbe5da7f-32d3-45ad-9b71-22767345be4c> (Accessed April 4, 2015).

<sup>18</sup> McDonough’s letter is available at <http://big.assets.huffingtonpost.com/CokerLetter.pdf> (Accessed April 4, 2015). He further pointed out that the administration was engaging vigorously with the US Congress, having briefed it more than 200 times since October 2013.

<sup>19</sup> Ajay Makan, ‘Impact of Iran deal on oil supplies to be limited’, November 25, 2013, at <http://www.ft.com/cms/s/0/ea1cdc7e-554f-11e3-86bc-00144feabdc0.html#axzz2lwBgNS5> (Accessed November 28, 2013).

the JPOA could expand the volume of imports from Iran compared to previous months, given that it contained provisions to suspend sanctions on ‘associated insurance and transportation services’ on ‘such oil sales’ [the undefined current average imports].

Reports noted that HPCL could, for instance, import an additional 50,000 barrels per day (b/d) from December 2013–March 2014—‘a quarter more than the daily average for the first nine months of 2013’—given that ‘insurance hurdles’ (according to a senior HPCL official) were primarily responsible for reduced imports of Iranian crude.<sup>20</sup> Thus, the volume of India’s imports from Iran registered a positive growth from the previous years in the aftermath of the JPOA.

Indian oil companies were a significant part of JPOA sanctions relief. As a result of the ‘escrow’ accounts created in the wake of ITRSHRA (which went into effect on February 6, 2013), about US\$ 3 billion was the amount of money owed to NIOC, as at end of November 2013.<sup>21</sup> India paid to Iran US\$ 1.65 billion (three equal instalments of US\$ 550 million) as part of the JPOA instalments of US\$ 4.2 billion. Therefore, while Iran accessed \$11.9 billion of restricted funds in the aftermath of JPOA till June 30, 2015, \$1.65 billion was paid for by Indian companies. Iran’s Oil Minister Bizhan Namdar-Zanganeh indicated on May 6, 2015 that India owed 7 billion Euros to NIOC.<sup>22</sup>

The following table indicates the amounts of money deposited by Indian companies as part of sanctions relief in the JPOA period and its aftermath, as gleaned from news reports.

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<sup>20</sup> Nidhi Verma, ‘India ready to start Iran oil cash transfer after deal’, November 25, 2013, at <http://in.reuters.com/article/2013/11/25/iran-oil-asia-india-idINDEE9AO08520131125> (Accessed November 28, 2013).

<sup>21</sup> Manoj Kumar and Nidhi Verma, ‘Iran, India meet to discuss oil exports, payments’, Dec 10, 2013, at <http://in.reuters.com/article/2013/12/10/india-iran-oil-idINDEE9B906S20131210> (Accessed May 2, 2015).

<sup>22</sup> See ‘India owes Iran seven billion euros over oil transactions’, May 6, 2015, ISNA website, Tehran, in Persian, BBC Monitoring (Accessed June 12, 2015).

**Table 9: Payments by Indian Oil Companies: JPOA Sanctions Relief and Post JPOA**

<b>Date</b>	<b>Amount of Money Deposited</b>	<b>Indian Oil Companies Contributions</b>
June 26, 2014	US\$ 550 million	MRPL: US\$ 238 mn; Essar Oil: US\$ 232 mn; IOCL: US\$ 57 mn; HPCL: US\$ 8 mn; HMEL: US\$ 15 mn
July 8, 2014	US\$ 550 million	Same as Above
July 23, 2014	US\$ 550 million	Essar Oil: US\$ 240 mn; MRPL: US\$ 236 mn; IOCL: US\$ 67 mn; HPCL: US\$ 7 mn
September 30, 2015 (after JCPOA)	US\$ 700 million MRPL: US\$ 300 mn;	Essar Oil: US\$ 335 mn; HMEL and HPCL: US \$65mn
May 2016 (Ahead of PM Modi's visit to Tehran)	US\$ 750 million	MRPL: \$500 mn IOCL: \$250 mn
Money still owed (as of June 2016)	About US\$ 5.8 billion; To be paid before August 2016	\$2.5 bn owed by MRPL \$3 bn owed by Essar Oil \$280 mn owed by IOCL

**Source:** Reuters; Press TV; Bloomberg; The Times of India

## **LAUSANNE FRAMEWORK**

After nearly 18 months of negotiations and 14 rounds of talks in the aftermath of the JPOA, Iran and its interlocutors ‘reached solutions on [the] key parameters of [the] Joint Comprehensive Plan of Action’ (JCPOA) on April 2, 2015.<sup>1</sup> When the JPOA was negotiated, US officials like Secretary Kerry stated that Iran’s ‘break-out’ time—the time period required for Iran to possess sufficient enriched uranium to make one bomb—was about 2 months.<sup>2</sup> The most important consideration for the P5+1 during the JPOA process was to ensure that this ‘break-out’ capacity gets extended to at least one year.

US Energy Secretary Ernest Moniz, who played a crucial role in the negotiations leading up to the Lausanne Framework, stated that the parameters agreed to at Lausanne ensured this possibility by blocking Iran’s potential pathways to a bomb.<sup>3</sup> The Parameters as put out by the White House and the US State Department indicated that the USA

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<sup>1</sup> The EU-Iran Joint Statement on the ‘Lausanne Framework’ is available at [http://eeas.europa.eu/statements-eeas/2015/150402\\_03\\_en.htm](http://eeas.europa.eu/statements-eeas/2015/150402_03_en.htm) (Accessed April 4, 2015).

<sup>2</sup> ‘National Security and Foreign Policy Priorities in the Fiscal Year 2015 International Affairs Budget’, SFRC Hearings, April 8, 2014, p. 20, at <http://www.foreign.senate.gov/imo/media/doc/04%2008%202014,%20International%20Affairs%20Budget1.pdf> (Accessed April 20, 2015).

<sup>3</sup> The White House, ‘Press Briefing by Press Secretary Josh Earnest and Secretary of Energy Ernest Moniz’, April 6, 2015, at <https://www.whitehouse.gov/the-press-office/2015/04/06/press-briefing-press-secretary-josh-earnest-and-secretary-energy-ernest-> (Accessed April 16, 2015). For an analysis of the Lausanne Framework, see G. Balachandran and S. Samuel C. Rajiv, ‘Iran-P5+1 Lausanne Framework: Issues and Challenges’, IDSA Issue Brief, April 23, 2015, at [http://www.idsa.in/issuebrief/Iran-P5%2B1LausanneFramework\\_sscrajiv.gbalachandran\\_230415](http://www.idsa.in/issuebrief/Iran-P5%2B1LausanneFramework_sscrajiv.gbalachandran_230415) (Accessed October 20, 2015).

and the EU nuclear-related sanctions will be *suspended* [emphasis added] only after the IAEA took certain key nuclear-related steps. It asserted that sanctions could ‘snap-back’ in the ‘event of significant non-performance’.

Meanwhile, UN sanctions would be *lifted* [emphasis added] after Iran completed nuclear-related actions addressing key concerns while a new UNSC resolution would re-instate limitations on the transfer of sensitive technologies, among others. US sanctions on Iran for terrorism, human rights abuses, and ballistic missiles would remain in place.<sup>4</sup>

The Iranian statement on the Lausanne Framework affirmed that all sanctions would be ‘*immediately removed* [emphasis added] after reaching a comprehensive agreement’. At another point in the document, it asserted that ‘all sanctions will be *automatically annulled* [emphasis added] on a single day’ at the ‘start of Iran’s nuclear-related implementation work’.<sup>5</sup>

Meanwhile, the EU-Iran Joint Statement on the Lausanne Framework stated that while the EU will ‘*terminate*’ [emphasis added] all nuclear-related and economic sanctions, the US will ‘*cease application*’ [emphasis added] of sanctions ‘*simultaneously* [emphasis added] with the IAEA-verified implementation by Iran of its key nuclear commitments’.<sup>6</sup> Thus, the seemingly differing interpretations of each other’s commitments added to the uncertainty surrounding the contentious issue of the sequencing of sanctions relief. However, it is pertinent to note that in the JPOA, Iran and its interlocutors agreed that a ‘comprehensive solution’ (read JCPOA) ‘would involve a *reciprocal step-by-step process*, [emphasis added] and would produce the *comprehensive lifting* [emphasis

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<sup>4</sup> US State Department, ‘Parameters for a Joint Comprehensive Plan of Action Regarding the Islamic Republic of Iran’s Nuclear Program’, April 2, 2015, at <http://www.state.gov/r/pa/prs/ps/2015/04/240170.htm>, (Accessed April 4, 2015).

<sup>5</sup> The Iranian translation is available at <http://iranmatters.belfercenter.org/blog/translation-iranian-factsheet-nuclear-negotiations> (Accessed April 9, 2015).

<sup>6</sup> EU-Iran Joint Statement, n. 1.

added] of all UNSC sanctions, as well as multi-lateral and national sanctions ...<sup>7</sup>

When the Lausanne Framework was agreed upon, domestic US reactions included the views of Speaker Boehner who affirmed that ‘it would be naïve to suggest the Iranian regime will not continue to use its nuclear program, and any economic relief, to further destabilize the region’.<sup>8</sup> On the other hand, President Obama reiterated that the issues at stake were ‘bigger than politics’, and that if the Congress killed the deal, the US would be blamed for the failure of diplomacy, the international unity so essential for the success of the sanctions regime would collapse, and the ‘path to conflict will widen’.<sup>9</sup>

The Iran Nuclear Agreement Review Act (INARA) 2015 was introduced on February 24, 2015. It had 66 co-sponsors, including 45 Republicans, 20 Democrats and one Independent. However, the Obama Administration and the SFRC, where the Act was referred to, reached a compromise on April 14 (in the aftermath of the Lausanne Framework) under the terms of which President Obama agreed for the Congressional review of a final agreement; but the time period requiring the President not to provide any sanctions relief while the Congress reviewed the deal was reduced to 30 days (from the original 60 days). Other changes included the removal of language that required the President to certify that Iran has not supported terrorist activity.<sup>10</sup>

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<sup>7</sup> JPOA, Chapter VI, n. 1.

<sup>8</sup> Peter Baker, ‘A Foreign Policy Gamble by Obama at a Moment of Truth’, April 2, 2015, at [http://www.nytimes.com/2015/04/03/world/middleeast/a-foreign-policy-gamble-by-obama-at-a-moment-of-truth.html?\\_r=1](http://www.nytimes.com/2015/04/03/world/middleeast/a-foreign-policy-gamble-by-obama-at-a-moment-of-truth.html?_r=1) (Accessed April 3, 2015).

<sup>9</sup> See The White House, ‘Statement by the President on the Framework to Prevent Iran from Obtaining a Nuclear Weapon’, April 2, 2015, at <https://www.whitehouse.gov/the-press-office/2015/04/02/statement-president-framework-prevent-iran-obtaining-nuclear-weapon> (Accessed April 3, 2015).

<sup>10</sup> The revised bill is available at <https://www.congress.gov/bill/114th-congress/senate-bill/615/text> (Accessed April 17, 2015). See also, Karen DeYoung and Mike DeBonis, ‘Congress and White House strike deal on Iran legislation’, April 14, 2015, at [http://www.washingtonpost.com/politics/congress-prepares-to-flex-its-muscle-on-iran-nuclear-deal-to-obamas-chagrin/2015/04/13/1932c5b2-e219-11e4-81ea-0649268f729e\\_story.html](http://www.washingtonpost.com/politics/congress-prepares-to-flex-its-muscle-on-iran-nuclear-deal-to-obamas-chagrin/2015/04/13/1932c5b2-e219-11e4-81ea-0649268f729e_story.html) (Accessed April 16, 2015).

The newer version of the bill approved overwhelmingly at the SFRC (19"0) garnered 53 co-sponsors, including 37 Republicans and 15 Democrats, apart from one Independent. While both sides claimed victory as a result of the compromise, analysts believed that the administration was the bigger gainer.<sup>11</sup> INARA was eventually approved by the US Senate on May 7, with 98 Senators voting in favour (only the Republican Tom Cotton opposing) and the House of Representatives passed it on May 14, with 400 Representatives approving of it. INARA was signed into law by President Obama on May 22, 2015.

The Act mandated that while a vote by the US Congress was not required for the Iran nuclear deal to commence, the Congress had a crucial role to play to ‘permanently modify or eliminate’ ‘statutory sanctions’. The INARA further required that Obama had to transmit a nuclear deal to the Congress within five days of reaching such an agreement, including details about the sanctions to be waived, suspended or removed by the US, the EU and the UNSC. A certification had to be provided by President Obama that the agreement meets US non-proliferation objectives, while another certification by Secretary Kerry stating that the IAEA had the capacity to verify an agreement. No sanctions would be removed or waived during the period of review. The Administration had also to certify to the Congress every three months that Iran was fully implementing the agreement, and that it had not carried out or supported an act of terrorism against US citizens of the US government.<sup>12</sup>

In the aftermath of the INARA, the relevance of the ‘Nuclear Weapon Free Iran Act of 2015’ (S. 269)—introduced in the Senate and marked

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<sup>11</sup> Yishai Schwartz, ‘Why the Administration is Perfectly Pleased with the Iran Nuclear Agreement Review Act’, April 14, 2015, at <http://www.lawfareblog.com/2015/04/why-the-administration-is-perfectly-pleased-with-the-iran-nuclear-agreement-review-act/> (Accessed April 18, 2015). See also, Michaela Dodge, Steven Groves and James Phillips, ‘Senate’s Iran Nuclear Bill Misses the Point’, April 16, 2015, at <http://www.heritage.org/research/reports/2015/04/senates-iran-nuclear-bill-misses-the-point> (Accessed April 19, 2015).

<sup>12</sup> The Act is available at <http://www.gpo.gov/fdsys/pkg/BILLS-114hr1191enr/pdf/BILLS-114hr1191enr.pdf> (Accessed October 22, 2015).

up by the Senate Banking Committee on January 28, 2015—receded. The legislation had 52 co-sponsors, including 44 Republicans. It had provisions mandating that sanctions that had had been waived or suspended during the JPOA relief period would again go into effect if the President did not transmit the comprehensive agreement to the US Congress by July 6, 2015 (the end of the JPOA extension). It further required that countries importing Iranian oil would reduce their imports by 30 per cent within 8 months beginning September 2015 or ‘de minimis’ levels within two years after that date. Among other provisions, it sought to include the construction, engineering, automotive, and mining sectors of Iran within the scope of sanctions, bringing them within the ambit of ‘strategic’ sectors.<sup>13</sup>

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<sup>13</sup> The legislation is available at <https://www.congress.gov/bill/114th-congress/senate-bill/269> (Accessed October 22, 2015).

## *Chapter VIII*

# JOINT COMPREHENSIVE PLAN OF ACTION

The JCPOA was eventually agreed upon on July 14, 2015. The JCPOA is designed to ensure the ‘exclusively peaceful’ nature of the Iranian nuclear programme, upon successful implementation. It seeks to simultaneously lift all the UNSC and multi-lateral and national sanctions that were imposed to pressurise Iran to conform to the UNSC resolutions as well as those of the IAEA.<sup>1</sup>

The JCPOA began to be implemented from January 16, 2016 (Implementation Day). This was after the IAEA gave a report to the BOG and the UNSC that it has verified Iran’s implementation of key nuclear-related measures. These measures included reduction in stockpile to 300 kgs of UF<sub>6</sub> enriched to 3.67 per cent; reduction in number of centrifuges at Natanz (5060 IR-1, to remain so for 10 years); changes to Arak reactor, including its calandria being made inoperable; among other measures.

Transparency measures Iran agreed to undertake include provisional application of the IAEA AP and the full implementation of the modified Code 3.1 of the Subsidiary Arrangements. Iran agreed not to undertake, including at the R&D level, activities that would contribute to the development of a nuclear explosives device. Iran would also provide access to the IAEA ‘to verify the absence of undeclared nuclear material and activities inconsistent with the JCPOA at such locations’.<sup>2</sup> If the IAEA and Iran cannot agree to a mechanism of access within two weeks of the IAEA’s original request, the JCPOA prescribes consultations with the members of the Joint Commission (JC, made

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<sup>1</sup> For the text of the JCPOA, see ‘S/2015/544, Annex A’, S/RES/2231, UNSC Resolution 2231 (2015), July 20, 2015, at <http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf> (Accessed July 25, 2015).

<sup>2</sup> S/RES/2231, *Ibid.*, p. 33.

up of P5+1 political directors and headed by the EU Foreign Policy Chief or his/her representative) to resolve the issue ‘through necessary means’.<sup>3</sup>

In the absence of a mutually agreed upon solution, the JC would take a majority decision (by a vote of five or more of its eight members) in a process of consultation not exceeding seven days, and Iran will have to implement the decision within three additional days. In effect, Iran, along with Russia and China together, cannot possibly block an IAEA request for access. The JCPOA further affirms that Iran will make the necessary arrangements to allow for a ‘long-term IAEA presence’.<sup>4</sup> Natanz—the sole location for all of Iran’s enrichment-related activities for 15 years—will be the subject of daily inspector access.

As required by the JCPOA, Iran furnished explanations regarding outstanding possible military dimensions (PMD) while the IAEA DG made an assessment on these explanations before December 2015. JCPOA Transition Day is eight years after Adoption Day (October 18, 2015; this being 90 days after the July 20 UNSC Resolution 2231 endorsing the JCPOA was passed) or if IAEA reaches the ‘Broader Conclusion’ (BC) that all nuclear material are in peaceful activities, whichever is earlier. The US and EU nuclear-related sanctions began to be terminated from Implementation Day.

The US further agreed not to impose new nuclear-related sanctions, with Iran making it clear that such a step would be sufficient grounds for not implementing the JCPOA in whole or in part. The JCPOA also envisages the constitution of a ‘Working Group on the Implementation of Sanctions Lifting’, which will assist the JC regarding any issue relating to the issue of sanctions.<sup>5</sup> Ten years after JCPOA Adoption Day, according to UNSCR 2231, the Security Council would have concluded its consideration of the Iranian nuclear issue.

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<sup>3</sup> Ibid..

<sup>4</sup> Ibid. pp. 31-32.

<sup>5</sup> Ibid. p. 92

## JCPOA AND DOMESTIC REACTIONS (US AND IRAN)

In September 2015, the Senate Democrats ensured that President Obama would not have to exercise his veto power to shoot down a possible ‘disapproval resolution’ regarding the JCPOA. Despite four Democrats supporting such a measure (Senators Schumer, Cardin, Menendez, Manchin), the 54 Republican Senators failed to get the necessary 60 votes for the measure to pass muster ahead of the deadline of September 17.<sup>6</sup>

Under INARA 2015, Congress had a 60-day period which ended on this date to pass a resolution disapproving of the Iran nuclear deal. If such a resolution was passed and then mustered enough votes to survive a presidential veto (67), it would have barred Obama from lifting many of the Iran-related sanctions. Despite passing such Congressional hurdles however, some polls indicated that public support for the deal was not that forthcoming. A Washington-ABC News Poll conducted from September 7-10, 2015 (ahead of the Senate considering the disapproval resolution) for instance indicated that over 40 per cent of those polled opposed the deal.<sup>7</sup>

When the Lausanne Framework was agreed upon, Supreme Leader Ayatollah Khamenei was quoted as stating that the development was ‘no guarantee that a final agreement could be negotiated’, and that he was ‘neither for nor against’ the Lausanne framework.<sup>8</sup> His twitter account warned the negotiators to be wary of the ‘disloyal side’ (read

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<sup>6</sup> Patricia Zengerle, ‘Last bid to kill Iran nuclear deal blocked in Senate’, September 17, 2015, at <http://www.reuters.com/article/2015/09/17/us-iran-nuclear-congress-idUSKCN0RF2VX20150917> (Accessed October 22, 2015).

<sup>7</sup> The poll is available at [http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2015/09/16/National-Politics/Polling/question\\_15957.xml?uuid=FuNOOlxiEeWEdXgcyYUWUg](http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2015/09/16/National-Politics/Polling/question_15957.xml?uuid=FuNOOlxiEeWEdXgcyYUWUg) (Accessed October 22, 2015).

<sup>8</sup> ‘Iran’s Khamenei says no guarantee of nuclear deal’, April 9, 2015, at <http://www.afp.com/en/news/irans-khamenei-says-no-guarantee-nuclear-deal> (Accessed April 11, 2015).

US) which ‘may stab Iran in the back over details’.<sup>9</sup> Khamenei continued to be sceptical in the aftermath of the JCPOA.

After an exhaustive process of consultations in the Majlis, the 12-member Guardian Council approved the law allowing for the implementation of the JCPOA on October 14, 2015. This was a day after the Majlis passed the bill, with 161 members voting in favour, 59 against, while 13 abstained.<sup>10</sup> The law prevents access to military sites by the IAEA unless approved by the Supreme National Security Council (SNSC) headed by President Rouhani, and stresses the importance of cooperation and mutual respect while insisting that the pursuit of nuclear weapons was antithetical to Khamenei’s [oral] fatwa against their production or use. Foreign Minister Javed Zarif has to provide a report every three months on the implementation of the JCPOA to the National Security and Foreign Policy Commission of the Majlis which, in turn, will present a report every six months to the Parliament’s ‘Open Plenary’.<sup>11</sup>

In his first major public intervention on the JCPOA in a letter to Rouhani on October 21, 2015, Supreme Leader Khamenei said that while he extended his ‘gratitude’ to the negotiators, he also wanted to remind the Iranian President that the ‘hostile’ approach of the US was unlikely to change in the future. Khamenei asserted that the ‘US’s deceitful involvement in the nuclear negotiations has been done not with the intention of a fair settlement [of the case], but with the ill intention of pushing ahead with its hostile objectives about the Islamic Republic’. He further pointed out that the JCPOA had ‘numerous ambiguities and structural weaknesses that could inflict big damage on the present

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<sup>9</sup> See [https://twitter.com/khamenei\\_ir/status/586103729386053632](https://twitter.com/khamenei_ir/status/586103729386053632) (Accessed April 11, 2015).

<sup>10</sup> ‘Guardian Council approves JCPOA amid stormy Majlis session’, October 16, 2015, at <http://www.irna.ir/en/News/81801135/> (Accessed October 25, 2015).

<sup>11</sup> See ‘Fact Box: Iran’s law approving nuclear deal, Full Translation’, October 18, 2015, at <http://www.reuters.com/article/2015/10/18/us-iran-nuclear-law-factbox-idUSKCN0SC14P20151018?mod=related&channelName=worldNews> (Accessed October 25, 2015).

and the future of the country in the absence of meticulous and constant monitoring?.

However, Khamenei also contended that the bill passed by the Majlis had provisions to counter such tendencies. He further stated that ‘any declaration that the structure of the sanctions will remain in force shall imply non-compliance with the JCPOA’. The Supreme Leader went on to assert that the imposition of new sanctions, even under the ‘fabricated pretexts of terrorism and human rights’, would constitute violation of the JCPOA.<sup>12</sup>

### **JCPOA ADOPTION DAY ACTIONS**

Beginning from Adoption Day, the JCPOA stipulated that the US and the EU would make the necessary administrative arrangements to fulfil their respective commitments to remove all nuclear-related economic and financial sanctions. The White House published a Presidential Memorandum on October 18, 2015 directing the Secretary of the State, Treasury, Commerce and Energy to take the necessary steps to fulfil JCPOA commitments.<sup>13</sup> On his part, Secretary Kerry published a list of ‘JCPOA Contingent Waivers’ on the same day, to be effective only from Implementation Day.<sup>14</sup> For instance, Kerry made use of the ‘national security’ criterion to waive Section 1245 of NDAA 2012 that targeted FFI’s that do business transactions with the CBI; Section 212 of ITRSHRA that threatened five or more of ISA sanctions against individuals providing insurance services to NIOC or NITC, among other waivers.

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<sup>12</sup> See ‘Ayatollah Khamenei sends a letter to President Hassan Rouhani about the JCPOA’, October 21, 2015, at <http://www.leader.ir/langs/en/index.php?p=contentShow&id=13791> (Accessed October 25, 2015).

<sup>13</sup> The Presidential Memorandum is available at <https://www.whitehouse.gov/the-press-office/2015/10/18/presidential-memorandum-preparing-for-implementation-of-the-joint-comprehensive-plan-of-action> (Accessed October 20, 2015).

<sup>14</sup> See ‘JCPOA Contingent Waivers’, October 18, 2015, at <http://www.state.gov/e/eb/rls/othr/2015/248320.htm> (Accessed October 20, 2015).

On its part, on October 18, 2015, the EU published the list of individuals and entities (numbering 331, inclusive of IHSC) that would be de-listed simultaneously with the IAEA-verified implementation of key nuclear-related measures.<sup>15</sup> It simultaneously published Council Decision (CFSP) 2015/1862, amending restrictive measures relating to nuclear-related transfers as contained in Decision 2010/413/CFSP. For instance, the amendments allow for the participation of EU entities in the modernisation of Arak reactor, including the provision of services or equipment, provided they inform the JCPOA JC 10 days in advance, verify effectively its intended end-use, and undertake these activities in conformity with the guidelines of the Nuclear Suppliers Group (NSG).<sup>16</sup>

The EU Council Regulation 2015/1861 published on the same day amended the provisions of Regulation (EU) No 267/2012 of March 23, 2012 (which had amended the October 2010 Regulation noted earlier) concerning restrictions on the transfer of funds and on the provision of financial services—like insurance. The October 18, 2015 Regulation states that the articles dealing with the requirement of authorisation for the transfer of funds and the prohibition on insurance services would be deleted.<sup>17</sup> These would become effective from the JCPOA Implementation Day.

In the aftermath of Secretary Kerry listing ‘contingent waivers’ as part of ‘Adoption Day’ actions, the OFAC reiterated that no other sanctions relief than those prescribed in JPOA will be operative till the JCPOA Implementation Day. It further underlined that entering into contracts with individuals and entities on the OFAC’s list of Specially Designated

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<sup>15</sup> See ‘Council Implementing Resolution (EU), 2015/1862’, October 18, 2015, at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1862&from=EN> (Accessed October 24, 2015).

<sup>16</sup> See ‘Council Decision (CFSP) 2015/1863’, October 18, 2015, at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1863&from=EN> (Accessed October 24, 2015).

<sup>17</sup> See ‘Council Regulation (EU) 2015/1861’, October 18, 2015, at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1861&from=EN> (Accessed October 24, 2015).

Nationals and Blocked Persons List (SDN List) prior to Implementation Day would expose such transactions to sanctions. While the ‘Contingent waivers’ primarily relate to transactions involving ‘non-US persons’ (secondary sanctions), the OFAC reiterated that ‘US persons are prohibited from entering into contracts—contingent or otherwise—involving Iran or its government, including with individuals and entities on the SDN List’.<sup>18</sup>

## JCPOA IMPLEMENTATION DAY

The JCPOA Implementation Day began on January 16, 2016. All EU and US nuclear-related ‘secondary’ sanctions as specified in Section 16 and 17 respectively of Annex V of the JCPOA were waived from that date while UNSC sanctions were also terminated on that day. These included curbs on Iran’s crude oil sales, the limitations on the transfer of Iranian oil revenue held abroad given that designations on NIOC and NITC as ‘proliferation-entities’ were removed, the export, sale or provision of refined petroleum products and petro-chemical products, financial transactions with the CBI relating to Iran’s energy imports, provision of insurance services for ships transporting Iranian oil, among others. Analysts however noted that major US-based insurance providers (International Group of P&I Clubs) were still not willing to provide covers for ships transporting Iranian crude and that the US officials were working to remedy the issue.<sup>19</sup> Article 10 and 12 restrictions of EU council Decision of July 2010 pertaining to authorisation for transfers involving EU-based banks as well as on the provision of insurance services were also removed from Implementation Day. Such restrictions as noted above led to the closure of the ACU mechanism, and were major contributing factors negatively affecting India’s oil imports. Iranian financial institutions re-connected to SWIFT in the aftermath of Implementation Day.

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<sup>18</sup> OFAC, ‘Frequently Asked Questions Relating to Adoption Day under the Joint Comprehensive Plan Of Action’, October 18, 2015, at [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa\\_adoption\\_faqs\\_20151018.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_adoption_faqs_20151018.pdf) (Accessed October 20, 2015).

<sup>19</sup> Kenneth Katzman, *Iran Sanctions*, May 18, 2016, p. 18, at <https://www.fas.org/sgp/crs/mideast/RS20871.pdf> (Accessed June 21, 2016).

While over 400 individuals and entities were removed from the US Treasury Department's SDN List, over 200 still remain on the SDN List (nearly half of them being terrorism-related designations under EO 13224).<sup>20</sup> The EU meanwhile would remove all proliferation-related sanctions designations only eight years after Adoption Day or after the IAEA reaches the Broader Conclusion (BC), whichever is earlier. The US too would treat Iran as a 'normal' NPT-member country only after the IAEA BC.<sup>21</sup> 'Significant non-performance of commitments' by Iran as regards the implementation of the JCPOA provisions would lead to the re-imposition of all UNSC sanctions measures.<sup>22</sup>

While the JCPOA is being implemented, Republican voices in the US Congress as well as the presumptive Republican Presidential candidate continue to express their opposition to the deal. The Iran Terror Finance Transparency Act (H.R. 3662) passed in the House of Representatives in February 2016 is one example. 243 Republicans supported it while 181 Democrats opposed it. The Bill requires the President to provide certification that Iran is no longer engaging in terrorism or pursuing WMD, among other requirements failing which Iran's designation as a 'jurisdiction of primary money laundering concern' should not be removed (the removal of this designation though is not part of JCPOA nuclear-related sanctions relief). It further sought amendment of the CISADA to prohibit FFI's from accessing the US financial system if they engage in activities supportive of the Hezbollah, Hamas or Palestinian Islamic Jihad, all of which are engaged in violent conflict with Israel.<sup>23</sup> Analysts however note that the effort was a 'poorly-

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<sup>20</sup> See JCPOA FAQ's, June 8, 2016, at [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa\\_faqs.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf) (Accessed June 20, 2016); See also Testimony by Under Secretary Thomas A. Shannon, Senate Foreign Relations Committee, Hearing on Iran's Recent Actions and Implementation of the JCPOA, April 5, 2016, at [http://www.foreign.senate.gov/imo/media/doc/040516\\_Shannon\\_Testimony.pdf](http://www.foreign.senate.gov/imo/media/doc/040516_Shannon_Testimony.pdf) (Accessed June 21, 2016).

<sup>21</sup> UNSCR 2231, n. 1, pp. 15-16.

<sup>22</sup> S/RES/2231, n. 1, pp. 3-4.

<sup>23</sup> The summary of H.R. 3662 is available at <https://www.congress.gov/bill/114th-congress/house-bill/3662> (Accessed June 21, 2016).

executed partisan gimmick' as it lacked enough votes to override a presidential veto.<sup>24</sup> Many bills have been introduced in the post-JCPOA period specifically targeting the IRGC, Iran's sponsorship of terrorism, and to prevent US technical assistance to Iran's nuclear programme, among others. The Obama administration has argued that some of these would be against the JCPOA provisions, given that Iran's interlocutors agreed to cooperate with Iran in the nuclear field.<sup>25</sup> Another battle looms ahead for the Obama administration with the Iran Sanctions Act coming up for renewal in December 2016.

Iran's ballistic missile tests in May 2016 and March 2016 (in addition to those conducted in October 2015) have injected a dose of brinkmanship into the matrix. In a letter to the UNSC in end March 2016, the US, the United Kingdom, France and Germany have called the missile tests 'inconsistent' with the JCPOA.<sup>26</sup> It is pertinent to note the two missing names in the list above—Russia and China which are the other two P5+1 interlocutors of Iran. Russian officials were cited as stating that these tests did not violate Resolution 2231 and that no evidence has been provided to support the contention that the missiles tested could carry nuclear warheads.<sup>27</sup> The JCPOA and the UNSC Resolution 2231 of June 20, 2015 'call on Iran' not to undertake such efforts and do not explicitly ban them.

The US on its part designated two missile entities involved in these ballistic missile tests on March 24, 2016, threatening FFI's or individuals that do business with these entities that it would prevent these FFI's

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<sup>24</sup> Kate Gould and Kyle Cristofalo, 'Groundhog Day for the Iran Deal', February 3, 2016, at <http://www.usnews.com/opinion/blogs/world-report/articles/2016-02-03/congress-vote-to-block-the-iran-nuclear-deal-hurts-real-progress> (Accessed June 21, 2016).

<sup>25</sup> Katzman, *Iran Sanctions*, n. 19, pp. 68-70.

<sup>26</sup> Press TV, 'US, three allies urge UN meeting on Iran missile tests', March 20, 2016, at <http://www.presstv.ir/Detail/2016/03/30/458242/Iran-missile-tests-US-Britain-France-Germany-UNSC-meeting/> (Accessed April 20, 2016).

<sup>27</sup> RT, 'Russia says Iran missile tests 'don't violate' UN resolution', March 30, 2016, at <https://www.rt.com/news/337753-iran-missile-tests-un/> (Accessed June 19, 2016).

and individuals from accessing the US financial system or block their property within US jurisdiction. Further, UAE and UK-based aviation companies providing services to Mahan Air were also designated on the same day. Mahan Air is alleged to have provided financial and technological support to the IRGC-QF, which continues to remain under sanctions for its alleged support to terrorism-related activities.<sup>28</sup>

The Iranian Foreign Ministry insisted that the country's ballistic missile programme was 'totally for peaceful purposes and no measure can strip the Islamic Republic of Iran of its legitimate and legal right to boost its defensive capabilities and [safeguard] national security'.<sup>29</sup> An Iranian missile test-fired in March 2016 though had a message threatening Israel's destruction scribbled across it in Hebrew.<sup>30</sup> Israel on its part remains sceptical of the efficacy of the JCPOA to address its concerns vis-à-vis Iran. Israel accuses Iran (specifically the IRGC-QF) of supporting militant organisations like the Palestinian Islamic Jihad even in the aftermath of the JCPOA. Israel and the US are currently engaged in negotiating the terms of their 10 year defence cooperation agreement that would bolster its qualitative military edge (QME) against its regional rivals.<sup>31</sup> The Obama administration has provided to Israel more than \$26 billion as part of foreign military financing (FMF) as well as support to missile defence programmes like the Iron Dome.<sup>32</sup>

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<sup>28</sup> US Treasury Department, 'Treasury Sanctions Supporters of Iran's Ballistic Missile Program and Terrorism-Designated Mahan Air', March 24, 2016, at <https://www.treasury.gov/press-center/press-releases/Pages/jl0395.aspx> (Accessed June 19, 2016).

<sup>29</sup> Cited in 'US imposes more sanctions on Iran for ballistic missile program', March 24, 2016, at <http://www.presstv.com/Detail/2016/03/24/457406/US-sanctions-Iran> (Accessed June 19, 2016).

<sup>30</sup> Jack Moore, 'Iran Tests Ballistic Missiles Carrying the Message 'Israel Must Be Wiped Out'', March 9, 2016, at <http://www.newsweek.com/iran-fires-ballistic-missiles-marked-israel-must-be-wiped-out-434989> (Accessed June 19, 2016).

<sup>31</sup> For an analysis of Israel's take on the JCPOA, see my article 'Deep Disquiet: Israel and the Iran Nuclear Deal', *Contemporary Review of the Middle East* (Sage), 3(1), 2016, pp. 47-61.

<sup>32</sup> Shannon, April 5, 2016, n. 20.

Secretary Kerry told a Jewish advocacy group on April 19, 2016 that Iran has only received about US\$ 3 billion in restricted funds since the JCPOA began to be implemented.<sup>33</sup> On its part, Iran wanted greater American effort to ease restrictions on non-American banks that do business with it. The November 2008 ban on ‘U-turn’ transactions, involving non-Iranian foreign banks that do transactions on behalf of Iranian banks in USD, which is still in effect and not covered by JCPOA sanctions relief, is reportedly hindering European-based banks from doing business with Iran.<sup>34</sup> This also accounts for the delay in establishing banking channels to transmit money owed by Indian oil companies via European-based banks. India’s Oil Minister informed the Lok Sabha (in May 2016) that the Central Bank of Iran (CBI) had requested India to re-join the ACU mechanism. Mr. Pradhan stated that ‘all future trade transactions with Iran would be settled through the ACU’ once the system was re-established.<sup>35</sup>

Iran meanwhile received 22 foreign direct investment (FDI) projects in the first quarter of 2016, as against 17 during the previous two years, signifying an upturn in its economic prospects.<sup>36</sup>

## INDIA AND THE JCPOA AFTERMATH

Analysts noted that in the aftermath of the lifting of sanctions, ‘additional sourcing from Iran would also result in lower freight costs and insurance costs due to proximity with Iran as compared to South America and African crude sources thereby reducing the refinery gate prices of crude

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<sup>33</sup> AFP, ‘Iran has seen only US\$ 3 bn returned since nuke deal: Kerry’, April 19, 2016, at <https://www.yahoo.com/news/iran-seen-only-3-bn-returned-since-nuke-023958350.html> (Accessed April 20, 2016).

<sup>34</sup> Katzman, *Iran Sanctions*, n. 19, pp. 29-30.

<sup>35</sup> Lok Sabha, ‘Payment due from Indian refiners’, May 2, 2016, at <http://164.100.47.192/Loksabha/Questions/QResult15.aspx?qref=33556&lsno=16> (Accessed June 17, 2016).

<sup>36</sup> Cara Lyttle, ‘FDI in Iran soars with sanctions relief’, June 20, 2016, at <http://www.ft.com/cms/s/3/549d0dac-36d6-11e6-9a05-82a9b15a8ee7.html#axzz4CEnhkW6u> (Accessed June 20, 2016).

oil?.<sup>37</sup> Significant forward movement occurred as regards realising the potential of the Chahbahar port. Union Minister for Transport and Shipping Nitin Gadkari signed a deal on Chahbahar in May 2015 for US\$ 195 million to be spent in two phases. India has long believed that the development of the port 'will help promote India's economic interests throughout the region including in Afghanistan, Iran and in the Central Asian region'.<sup>38</sup>

Minister Dharmendra Pradhan visited Chahbahar in April 2016. Foreign Minister Sushma Swaraj closely followed the visit of Mr. Pradhan when she visited on April 16, 2016. Ms. Swaraj met her counterpart Foreign Minister Mohammad Javad Zarif as indeed President Rouhani. India and Iran agreed to renew discussions on a Bilateral Investment Treaty, the Preferential Trade Agreement, and the Double Taxation Avoidance Agreement in order to provide momentum to bilateral trade.<sup>39</sup>

During PM Modi's May 2016 visit to Tehran, a Trilateral Transport and Transit Corridor agreement along with Afghanistan was signed. Among the other agreements relating to Chahbahar included a contract for the development and operation of five berths for a period of 10 years, an MoU for provision of US\$ 150 million, an agreement for provision of INR 3000 crores to cover the import of steel rails, an MoU for provision of US\$ 1.6 billion for the construction of the Chahbahar-Zahedan railway line, among others.<sup>40</sup>

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<sup>37</sup> Nidhi Verma, 'Iran Nuclear Deal and India's Energy Security', Presentation at the Round Table on 'Iran Nuclear Deal: Implications for India', IDSA, July 22, 2015.

<sup>38</sup> Lok Sabha, 'Sanctions on Iran', Unstarred Question No. 840, July 14, 2014, at <http://164.100.47.132/LssNew/psearch/QResult16.aspx?qref=650> (Accessed May 7, 2015).

<sup>39</sup> The Times of India, 'India, Iran closer to Chahbahar deal after Sushma Swaraj's visit', April 18, 2016, at <http://timesofindia.indiatimes.com/india/India-Iran-closer-to-Chahbahar-deal-after-Sushma-Swarajs-visit/articleshow/51871245.cms> (Accessed April 20, 2016).

<sup>40</sup> For the list of the agreements, see <http://www.mea.gov.in/outgoing-visit-detail.htm?26841/List+of+AgreementsMOUs+signed+during+the+visit+of+Prime+Minister+to+Iran+May+23+2016> (Accessed June 20, 2016).

While the Iranian side expressed the desire for the quick settlement of outstanding dues amounting to US\$ 6.5 billion, India during the visit of Minister Pradhan to Iran from April 9<sup>th</sup> 2016 conveyed that it was committed to clearing its oil dues 'as and when banking channels, acceptable to both sides, were available'.<sup>41</sup> Reports in March 2016 pointed to a further complication as regards India's outstanding oil payments. While Iran wanted Indian companies to pay in Euros irrespective of the exchange rate, Indian oil companies were in favour of paying according to exchange rate current at the time when the oil purchases were made. This was significant as the exchange rate which was about INR 53 to 1 USD in 2013, now stood at about INR 67.<sup>42</sup> If the above demand was not feasible, Iran wanted India to pay interest on the money owed to NIOC.<sup>43</sup> Ahead of Mr. Modi's visit in May 2016, Indian oil companies paid US\$ 750 million to NIOC (See Table 9).

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<sup>41</sup> PIB, 'Visit of Shri Dharmendra Pradhan, Minister of State (I/C) for Petroleum and Natural Gas to Iran', Chapter IV, n. 43.

<sup>42</sup> Business Standard, 'Iran central banker visiting India over 6\$ billion of oil dues', March 6, 2016, at [http://www.business-standard.com/article/pti-stories/iran-central-banker-visiting-india-over-oil-dues-116030600196\\_1.html](http://www.business-standard.com/article/pti-stories/iran-central-banker-visiting-india-over-oil-dues-116030600196_1.html) (Accessed April 20, 2016).

<sup>43</sup> PTI, 'Iran seeks interest on \$6.5 bn due from Indian oil refiners', April 27, 2016, at <http://timesofindia.indiatimes.com/business/india-business/Iran-seeks-interest-on-6-5-bn-due-from-Indian-oil-refiners/articleshow/52009933.cms> (Accessed June 21, 2016).

## IN CLOSING

The Iranian nuclear imbroglio has been one regional strategic issue of recent times that has had the most wide-ranging consequences. This has been not only on account of the length of time the issue has occupied international attention (from 2002 onwards), but also due to the negative implications of punitive sanctions measures on a country which is a significant energy supplier. As noted above, almost 15 countries (mostly European) completely stopped their oil imports from Iran as a result of EU sanctions. China, India, Japan, South Korea, Taiwan, and Turkey remained the only Iranian-oil importing countries in the aftermath of 2012.

Joint projects like the India-Pakistan-Iran (IPI) pipeline came under the US scanner, with US officials urging India not to go ahead with it. The project did not fructify though for a variety of reasons intrinsic to it including the price of the gas to be paid by India coupled with security concerns for the pipeline passing through Pakistan, among other issues.

Indian officials also attributed the prevalent sanctions architecture to the lack of progress on decisions pertaining to investments in Iran's oil infrastructure as well as on investments in projects like the port of Chahbahar. It is pertinent to note that the intent to develop Chahbahar was first expressed in 2001 during the visit of Prime Minister A.B. Vajpayee to Tehran. On their part, Iranian officials have often expressed dismay at the lack of progress on such projects, despite assurances to the contrary.<sup>1</sup>

India was not alone in navigating the unilateral sanctions roadblocks. Iran's P5+1 interlocutor China also had to navigate the unilateral

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<sup>1</sup> I had the privilege of being part of the IDSA delegation that visited Chahbahar and Tehran in May 2014, when such views were aired.

sanctions roadblocks. While China continued to be the biggest importer of Iranian oil, it was better placed though to push the growth of its exports as a result of the sanctions restrictions. As seen in Table 8, China's exports to Iran in 2014 increased by nearly 120 per cent over 2010. Iran-China interactions have seen a significant momentum in the aftermath of JCPOA, with President Xi becoming the first foreign dignitary to make a state visit in January 2016. Both the countries have announced grand plans to take the volume of their bilateral trade to US \$ 600 billion over the next decade.

Even as India has had to navigate the challenges thrown up by the punitive US (and EU) sanctions measures, the India-US bilateral relationship has continued to witness significant growth. President Obama's twin trips to India in November 2010 and January 2015 are testimony to this strengthened partnership, as indeed Prime Minister Modi's seven interactions with President Obama within two years of assuming office in May 2014.

Even prior to Mr. Modi taking office, India was among the few countries mentioned in the US Department of Defence's Strategic Guidance of January 2012 titled 'Sustaining US Global Leadership: Priorities for 21st Century Defence'. The Guidance stated that the US was 'investing in a long-term strategic partnership with India to support its ability to serve as a regional economic anchor and provider of security in the broader Indian Ocean region'.<sup>2</sup> The rising India-US defence relationship is another facet of the partnership.

India-Iran relations meanwhile are gaining a natural momentum. While energy security would continue to helm the process, the coming to fruition of connectivity projects like Chahbahar would imbibe the relationship with even more strategic gravitas.

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<sup>2</sup> The Guidance is available at [http://archive.defense.gov/news/Defense\\_Strategic\\_Guidance.pdf](http://archive.defense.gov/news/Defense_Strategic_Guidance.pdf) (Accessed October 25, 2015).

The Iranian nuclear imbroglio has been one regional strategic issue of recent times that has had the most wide-ranging consequences. The monograph examines the UNSC, the US, as well as EU sanctions targeting Iran in the aftermath of 2002 as a result of concerns emanating from its nuclear efforts. While India expressed its principled opposition to the enactment of unilateral sanctions, it had to however navigate these roadblocks once they were enacted. India increased its energy imports from other sources in West Asia, Africa and even Latin America to offset reductions from Iran. In the aftermath of the July 2015 Joint Comprehensive Plan of Action (JCPOA), India-Iran interactions have been on the upward trajectory, capped by the visit of Prime Minister Narendra Modi in May 2016. While energy imports as well as Indian investments in Iran's energy sector would continue to be the prime facets of the relationship, the coming to fruition of connectivity projects like Chahbahar would imbibe the relationship with even more strategic gravitas.



**S. Samuel C. Rajiv** is Associate Fellow at the Institute for Defence Studies and Analyses (IDSA), New Delhi. Prior to joining IDSA in 2006, he was a Visiting Scholar at the BESA Centre for Strategic Studies, Israel from 2005-06 and worked at the book project *India's National Security Annual Review* from 2002-05. His recent publications include *Indian Responses to Israel's Gaza Operations* (BESA Centre, May 2016) and 'Politicised Safeguards: Iran-IAEA Contentions, Drivers, Policy Implications', *Strategic Analysis* (IDSA/Routledge, September 2014), among others.



## Institute for Defence Studies and Analyses

No.1, Development Enclave, Rao Tula Ram Marg,  
Delhi Cantt., New Delhi - 110 010  
Tel.: (91-11) 2671-7983 Fax: (91-11) 2615 4191  
E-mail: [contactus@idsa.in](mailto:contactus@idsa.in) Website: <http://www.idsa.in>

