

PolicyWatch #1324

## Raising the Costs for Tehran

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In the wake of the National Intelligence Estimate (NIE) on Iran, questions are being raised as to whether sanctions and financial pressure remain a viable approach to changing Tehran's decisionmaking on its nuclear program. As evidence of this strategy's demise, critics point to the foundering attempts to negotiate a third round of UN sanctions against Iran -- sanctions that appeared imminent before the NIE's publication. While additional punitive measures by the UN are important and necessary, better enforcement of the various sanctions regimes already in place could have an equally significant impact.

### Multiple Sanctions Regimes

There are three separate, but often overlapping, sets of sanctions in place against Iran. The UN Security Council has passed two resolutions against Iran -- Resolutions 1737 and 1747 -- that blacklisted a number of Iranian officials and entities. Of these, the most significant designations were of Bank Sepah, a large state-owned bank, and a number of entities tied to the Islamic Revolutionary Guard Corps (IRGC). The UN also designated the IRGC's then head, Maj. Gen. Yahya Rahim Safavi.

The European Union (EU) has followed the UN with two rounds of its own sanctions, in many areas going well beyond what was required by the UN. For example, in addition to freezing the assets of the fifty individuals and entities listed in the two Security Council resolutions, the EU has added more than twenty others to its own blacklist. The EU has also enacted a more comprehensive arms embargo and travel ban against Iran and its officials than required by the UN.

The United States has its own list of designated Iranian officials and entities, some of whom have been named by the UN and EU as well. For example, Washington designated Bank Sepah unilaterally for its proliferation-related activity before it was blacklisted by the UN. On the other hand, the UN and the EU have yet to follow Washington's lead in designating the Iranian financial institutions Bank Melli, Bank Saderat and Bank Mellat, and the entire IRGC -- unilateral actions the United States took in October based on these organizations' involvement in Tehran's terrorism and proliferation-related activities. In addition to these targeted sanctions, the United States also has in place more comprehensive trade sanctions against Iran as a whole, dating from the mid-1990s. Notably, however, while the United States maintains the most robust sanctions against Iran, it has not yet designated all of the individuals listed by the UN.

### Too Little Focus on Implementation

To date, most of the focus on the Iran sanctions regime has been on which entities were added to these various blacklists and which were left off. There has been far too little attention paid to how effectively the measures are being implemented. Far more could be done on this front.

The UN sanctions are a particularly glaring example of implementation is falling short of intentions. Each member state is responsible for assessing its own compliance with the two UN resolutions -- and then providing this analysis to the UN. Not surprisingly, these reports are often less than thorough, and many

countries missed the UN's submission deadline with no apparent consequence. This arrangement is far less robust than the UN has used for many of its other sanctions programs, where it has established independent monitoring teams to ensure compliance. These teams were created to track compliance with sanctions targeting Sudan, Somalia, Liberia, and al-Qaeda and the Taliban, among others.

For example, the monitoring group for the sanctions regime against al-Qaeda and the Taliban -- comprised of terrorist financing experts operating with considerable autonomy -- released detailed reports outlining where countries were falling short. In 2003, the group criticized Italy, Switzerland, and Lichtenstein for allowing designated individuals to run large-scale businesses in their countries. This type of "naming and shaming" -- used frequently by the group -- was often an effective tool in pressuring countries to act.

While the EU itself has gone further than the UN required, its member states' implementation has been uneven, for a number of reasons. First, the EU's ability to monitor sanctions compliance is limited, as it only has oversight jurisdiction over its member states and not individual European companies. The EU also does not have the resources necessary to conduct audits or to bring enforcement actions. As a result, the EU will generally only take action in this area when an obvious violation by a member state is brought to its attention.

Resource constraints and a lack of political will also affect individual European countries' efforts to crack down on illicit trade with Iran. For example, Italy has less than fifteen people working in its export-control office; of these, only eight are investigators. Given Italy's status as one of Iran's most important European trading partners, this represents a glaring deficiency -- one that could easily be remedied.

While Germany devotes far more resources to investigating these types of violations, one of its public prosecutors recently stated that Berlin has only uncovered "the tip of the iceberg" of black market activity involving Iran's nuclear program. The Germans have also been critical of how others have implemented the sanctions. According to press reports, Germany's foreign minister charged that French companies had not scaled down their Iranian business and that a number of American companies illegally continued to do business with Iran as well.

### **Increased Authority for the United States**

Whether or not the German foreign minister's contention regarding U.S. business is accurate, until recently Washington's ability to crack down on sanctions violators was limited by the severity of the penalties it could impose. Congress recently changed the law in this area, dramatically increasing the possible fines for violations of U.S. sanctions regulations. In October 2007, Congress passed a measure enhancing the International Emergency Economic Powers Act (IEEPA), which raised the possible civil fines for violating this statute from \$50,000 to \$250,000 or twice the value of the transaction (whichever figure is higher), and the criminal penalties from \$50,000 to \$1 million. IEEPA remains the primary statutory basis for the U.S. sanctions regimes, including those targeting Iran. (Though Washington also has the power to take enforcement action against inadequate compliance under the Bank Secrecy Act of 1970.)

If Washington steps up its enforcement efforts, it would be more risky for companies to treat the prospect of fines as the "cost of doing business." In recent testimony to the Senate Banking Committee on Banking, Housing, and Urban Affairs, Office of Foreign Asset Control director Adam Szubin seemed to indicate that the United States plans to take more aggressive action with its new authorities. Szubin testified that "the passage of [the IEEPA enhancement measure] will provide a strong tool to make our sanctions effective," noting that the U.S. government had faced "impediments to obtaining meaningful enforcement of our sanctions against Sudan." While Szubin's comments were in the context of Sudan sanctions, they are equally applicable to the Iran sanctions regime, and presumably indicate that Washington intends to ramp up enforcement across the board.

### **The Potential Promise of Financial Pressure**

The recent NIE concluded that Iran makes its nuclear-related decisions using a "cost-benefit approach rather than a rush to a weapon irrespective of the political, economic and military costs." In fact, according to the estimate, Iran's decision to halt its covert nuclear weapons program in 2003 was in response to "increasing international scrutiny," which suggested that "Iran may be more vulnerable to influence on the issue that we judged previously." Blacklisting Iranian entities and officials involved in illicit activity is an important part of the effort to ratchet up the pressure, but ensuring that those designated are actually cut off from the international economy is equally critical. As the NIE suggests, if the international community is able to make Iran pay a high enough cost for its activities, persuading the regime to abandon all of its nuclear ambitions is a goal within reach.

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