

**Testimony before the
Foreign Relations Committee
United States Senate**

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Chairman Corker and distinguished Members of this Committee:

Thank you for inviting me to submit my views concerning the Joint Comprehensive Plan of Action (JCPOA) reached between the P5+1 and Iran and submitted to Congress on Sunday, July 19, 2015, pursuant to the Iran Nuclear Agreement Review Act of 2015. Both Houses are studying the Agreement in depth, recognizing that it will have major consequences to US and international security regardless of how Congress acts. Rather than adding to the voluminous record on how the JCPOA is supposed to work, and calling attention to Iran's opportunities to evade its provisions, I will summarize my conclusions and then provide a description of the premises on which these conclusions are based, derived specifically from my experience representing the United States in negotiations with Iran for five years, and my study of US/Iranian relations from 1979 to 2013, described in my book, *"Taking On Iran"*.

Mr. Chairman, I am not among those opposed to negotiating with Iran. I negotiated constructively with Iran for five years, and I have repeatedly criticized both Republican and Democratic administrations for failing to engage Iran. The evil things that Iran has done since the start of the Islamic Revolution, beginning with taking US diplomats hostage, are no more a basis for refusing to negotiate with Iran than the evil conduct of the Soviet Union was a basis for refusing to negotiate with that government. I commend the Obama Administration for negotiating directly with Iran.

US negotiations with the Soviets were based, however, on strength and well-established principles of effective diplomacy. This Administration, by contrast, like those of all prior administrations, has failed to respond to Iranian policies with strength, and to negotiate with Iran in accordance with the principles successfully used in negotiating with the Soviets. This history is covered in detail in my book, but the one point that bears emphasis here is that the threat of war was not part of the US strategy that succeeded with the Soviets, and is not the path I would propose in dealing with Iran.

I agree with President Obama that the possibility of war must be retained, but that an attack on Iran's nuclear facilities would be complex, harmful to US interests in many ways, and likely ultimately to fail in preventing Iran from developing a nuclear weapon. The President is unfair when he accuses those who oppose the JCPOA as favoring war over diplomacy.

I believe that Congress should disapprove the JCPOA and vote to override any veto, because the Plan is inadequate in limiting Iran's nuclear program and makes no effort to curb its other illegal conduct. While the President speaks of Congress' potential vote of disapproval as "blocking" or "killing" the JCPOA, he has already secured the JCPOA's implementation through UN Security Council resolution 2231, a maneuver undoubtedly intended to lift the UN nuclear sanctions through a process that a Resolution of Disapproval could not possibly affect. Congressional disapproval cannot prevent the JCPOA from going into effect to the extent it is implemented by resolution 2231. But it would convey Congress' view that the Plan is inadequate, and limit the damage the Plan is certain to cause.

- Weaknesses of the JCPOA. The JCPOA contains some significant limitations on Iran's nuclear program worth supporting, including the reductions in enrichment capacity and modification of the heavy water reactor at Arak. The weaknesses in the Plan, however, its limited duration, and the long history of Iranian evasion, undermine the President's claim that the Plan blocks every path Iran has to obtaining a nuclear weapon. Particularly misleading is the assertion that the Plan "permanently" prohibits Iran from developing a nuclear weapon. The JCPOA is not the source of any such prohibition; Iran has agreed it will never develop a nuclear weapon because it does not want one, not because of the JCPOA, or even the NPT.
- The JCPOA will also have a detrimental impact on nuclear weapons activities in the Middle East. It legitimizes Iran's nuclear program and could set into motion a nuclear arms race in the most volatile area of the world.
- The Administration's defense of these weaknesses is that the only option to the JCPOA is war. This is the sort of scare tactic President Reagan faced when he pushed back against illegal Soviet interventions and inhumane treatment of its nationals. And it is no less false. Iran respects strength and scorns weakness. War is more likely to result if the JCPOA is approved. It is inherently unstable because of what it allows Iran to continue doing.
- Effect of Resolution 2231. The Administration also argues Congress should approve the JCPOA, because the sanctions will become ineffective anyway. What the Administration means by this is that the UN sanctions will end pursuant to Security Council resolution 2231 (20 July 2015) regardless of what Congress does. This argument, Mr. Chairman, seems correct. Congress has in fact been prevented from voting on lifting the UN nuclear sanctions, since they will "terminate" upon receipt of the report from the IAEA certifying Iranian compliance with its JCPOA commitments listed in paragraphs 15.1-15.11 of the Plan's Annex V. This resolution is now established international law, and the

other parties to the JCPOA are moving ahead with plans to resume business with Iran irrespective of Congress' potential action.

- Congress should carefully consider the separation-of-powers implications of the President's promising to allow Congress to review an international "Plan" and then voting in the Security Council to negate Congress' power to review and stop the Plan's implementation. The important issue now, however, is the effect of Security Council resolution 2231.
- By making implementation of the Plan dependent wholly on the condition stated in resolution 2231, namely the IAEA's acceptance of Iran's compliance, the Administration has also enabled Congress to disapprove the JCPOA without altering its termination of the nuclear resolutions if Iran complies. If Iran wants the nuclear-related Security Council resolutions lifted, and its frozen funds returned, it must comply with its undertakings in the Plan to the IAEA's satisfaction, regardless of whether Congress approves or disapproves the JCPOA. Furthermore, in order to prevent the nuclear-related resolutions from coming back into effect, Iran must continue to comply with its obligations under the JCPOA, or else it could trigger the process provided for in Security Council resolution 2231, paragraphs 11 and 12. Again, this process is independent of whether Congress approves or disapproves the JCPOA.
- I acknowledge, Mr. Chairman, that this is an extraordinary proposition. But it flows from the extraordinary form of understanding that the JCPOA represents, and the unprecedented action by the Security Council, deliberately orchestrated, that appears to immunize resolution 2231 and to that extent the JCPOA from any impact based on a Resolution of Disapproval. Congress no doubt has the power to prevent the Executive from cooperating with an international legal requirement. But even a legislative instruction to that effect would not undo the vote to "terminate" the Security Council's nuclear resolutions on the conditions it provides.
- Benefits of Disapproval. What effect, then, would Congress' vote to approve or disapprove the JCPOA have on US obligations or otherwise? Approval would signify Congress' support for the Plan. Disapproval, on the other hand, would convey the position that Congress believes the Plan does too little to control Iran's nuclear and non-nuclear activities, and that US policy should support additional measures for both purposes.
- In my view, therefore, Mr. Chairman, any Member of Congress who supports doing *more* to curb Iran than done by the JCPOA can vote to convey that message without "blocking" or "killing" what the Administration has achieved. For example, the US has under its control some \$2 billion in Iranian assets. Approving the JCPOA could lead the Administration to release some or all those funds, whereas disapproval will allow only funds frozen pursuant to the terminated UNSC resolutions to be released. Also, the US has in place unilateral sanctions based on Iranian support for terrorism that threaten banks with restrictions if they do business with Iran, such as the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Those sanctions will not

be subject to Executive discretionary non-enforcement if Congress votes to disapprove.

- The Administration has assured Congress and the public that it will continue to press Iran to stop its illegal activities in non-nuclear areas. The President has also said, however, in his speech at American University, that unilateral US sanctions will not work. The Ayatollah has triumphantly declared that the JCPOA places no limitation on Iran's continuing to help President Assad stay in office and to expand Shiite power. He would undoubtedly object, and Iran has reserved the right to stop complying with the JCPOA, if the US imposes new sanctions to freeze Iranian funds based on these non-nuclear activities. By voting for disapproval, Congress would put the US on record as committed to ending Iran's non-nuclear related policies that undermine peace and security abroad, and oppress its people at home.
- Disapproval will also have the important effect of signaling Congress' support for confronting Iran, and for making it pay as dearly as possible for its international adventures. It would signal Congress' support for going beyond the imposition of sanctions in pressuring Iran, without war, as the US did in confronting the Soviet Union. Iran is overstretched and vulnerable economically and politically. Disapproval would reflect a determination by Congress to apply enhanced strength in order to force a more effective and comprehensive diplomacy, a policy more likely to lead to a genuine and lasting peace.

This summarizes my view, Mr. Chairman, of why Congress should vote to disapprove the JCPOA. My conclusion that disapproval cannot prevent Security Council resolution 2231 from taking effect may displease some who would like to prevent that consequence, but it seems unavoidable given the President's power to renounce international agreements, including the nuclear-related resolutions potentially terminated by resolution 2231. This circumstance does permit Congress, however, to vote disapproval on a basis that preserves the elements of the JCPOA that Iran will be required to perform, while making clear that Congress insists that more be done to confront Iran's conduct in general. What follows are the experiences and historical data which have led me to reach this set of recommendations.

I. Negotiating With Iran: Lessons Since the Revolution

I had the privilege, Mr. Chairman, as Legal Adviser to Secretaries of State George P. Shultz and James Baker, to lead negotiations for the US with Iranian representatives in The Hague from 1985 to 1990. After a slow start, I was able with the help of a superb staff, including Bob Clarke, a Farsi speaking professional from the Iran Desk, to settle many thousands of claims between Americans, US companies, and the US government, who we represented, and Iran and its agencies. As the pace of settlement picked up in The Hague, the Iranians sent a Member of its Council of Guardians to lead their team. We made good progress, and under instructions from our governments we settled some interesting law-related issues

with political significance. Perhaps most important, we settled the claims of Iranian families for their lost ones in the tragic shoot-down of Iran Air 655.

This experience convinced me that negotiating with Iran, though difficult and frustrating, is worthwhile. Iran routinely initiated each round of talks with preposterous demands, but its sophisticated negotiators reacted reasonably after equally tough responses. It also became obvious, though, that the US and Iran remained unwilling to deal openly with each other. Every major settlement at the Tribunal was met with the suspicion that it had something to do with getting Iran to release US hostages. Many huge claims remain unresolved some 35 years after the Tribunal was created.

Our approach in dealing with the Soviet Union during the Reagan and H.W. Bush Administrations differed from our approach in dealing with Iran. With the Soviets, we firmly pushed back against their every initiative, in Europe, Central America, Africa, and Afghanistan. At the same time we engaged them on every issue that divided our societies, in every possible forum, and with a robust and effective diplomacy. With Iran, we responded weakly to their aggressive actions, even to their responsibility for killing our Marines in Lebanon, and our Airmen in Saudi Arabia. As a substitute for real strength, we refused to negotiate with Iran in any forum other than at The Hague. Under both Presidents Reagan and H.W. Bush, strength plus diplomacy produced positive results with regard to the Soviet Union, while weakness and the absence of diplomatic engagement failed to contribute to reducing US/Iranian alienation.

The absence of conventional methods for dealing with Iran led, under Reagan, to Iran/Contra, a humiliating and unsuccessful effort to shortcut the process of restoring relations. Subsequent administrations have tried appealing directly to Iran for a change in its positions, with equally ineffectual results. President Clinton deliberately disregarded Iran's responsibility for the Khobar Towers bombing in an effort to establish a new relationship with President Khatami. President Obama has, like some others before him, laced his speeches with deferential remarks, showing respect for Iran, accepting partial responsibility for the situation, and calling for better relations.

The JCPOA should be seen as the latest of a series of efforts to engage Iran that attempt to bypass the tried and true requirements of strength and effective diplomacy, for which no substitute exists when it comes to convincing a radical regime to change its ways. As Henry Kissinger has explained, convincing such regimes is not a matter of using reason to resolve disagreements through compromise, but rather the creation of an "'objective' situation [that] is ratified by the settlement."

The other lesson learned from my experience in the Reagan and Bush Administrations, and that has been confirmed by more recent events, is that strength is no less effective in dealing with Iran than it was in dealing with the

Soviets. In the one confrontation we had with Iran during that period, the 1988 Operation Praying Mantis after IRGC missile attacks on US flagged vessels and its mining of Gulf waters, the US Navy sank several IRGC boats, and destroyed or damaged naval warships and military planes. The IRGC ran for cover, and has never again fired missiles at US flagged vessels or laid mines in the Gulf.

Iran handled the US Navy attack in a manner that reflected its respect for strength. When I sought to cancel a meeting scheduled with my Iranian counterpart in The Hague, the day after we sank an Iranian mine-laying ship as part of that operation, he responded that we should meet as scheduled rather than “burn the only bridge between our countries.” This lesson has come through loud and clear on several subsequent occasions: after President George H.W. Bush pushed Iraq out of Kuwait, President Rafsanjani arranged the release of the hostages held in Lebanon; after President George W. Bush drove Al Qaeda and the Taliban from Afghanistan, Iran cooperated in establishing a new government there; and after he drove Saddam Hussein from power in Iraq, Iran offered to negotiate with the US on all issues. After each of these displays of US strength, Iran was more, not less, open to dealing with the US, though regrettably we did not accept any of these opportunities to engage.

It has been a grave error, in my view, that the US has failed to settle or complete all the claims now pending in The Hague for some 35 years, and has failed to take advantage of the opportunities that have occasionally presented themselves to attempt to deal with all of our serious differences with Iran. The problem with this Administration’s effort is not that it engaged in negotiations; rather it is that it gave up the increasingly apparent benefits of pressuring Iran and settled for an agreement that deals exclusively with nuclear related issues, allowing Iran to continue supporting terrorism and engaging in other conduct that undermines international peace and security.

II. An Alternative Agenda Short of War.

President Obama has belittled the contention that any option exists short of war that could serve US interests more effectively than the JCPOA. He is wrong. A program of increased pressure on Iran, combined with broader-purposed, more effective diplomacy, can be devised that could force Iran to accept established norms of international conduct.

First, the JCPOA could be improved. The Administration has exaggerated the JCPOA’s advantages, claiming that it blocks every path Iran has to obtaining a nuclear weapon, and that its “unprecedented” inspection rights and other means will allow the US and its allies about a year to prevent Iran from acquiring a nuclear weapon. In fact, the JCPOA allows Iran to conduct important R&D and to engage in other activities (such as developing sophisticated enrichment equipment) that will put it in the position to break out rapidly, especially after the JCPOA is no longer in effect. Increasing the amount of time Iran will need to obtain a nuclear weapon will

have real value, moreover, only if the US is simultaneously seeking results that reflect a more far-reaching impact on Iran's conduct and aims.

Second, it is naïve to think that lifting sanctions and reaching out to Iran will lead its present government to respond positively. Every such effort has failed in the past. The Administration hopes that the JCPOA will lead to a better relationship and a reduction in Iranian militancy. More likely, Iran's success in getting economic sanctions lifted in exchange for limited concessions related to a weapon it claims it does not want will increase the influence of its most militant factions. The IRGC have proved repeatedly that their strategy of disregarding US warnings has worked.

The safer policy is to continue vigorously to enforce non-nuclear sanctions now, in order to deter Iran's policies of supporting terrorism and other illegal and inhumane activities. It would be more dangerous to wait, as we did after the Algiers Accords of 1981, allowing Iranian and Iranian-sponsored misconduct to resume in the form of hostage taking and terrorist attacks. To have to re-impose sanctions years into the process, as will be inevitable if Iran continues its policies, risks giving Iran an excuse to free itself of all the JCPOA's constraints, and the motive to go further with its nuclear weapons program than it otherwise might have gone.

Another, obvious element of a sound US strategy would be, simply, to enforce the many, non-nuclear Security Council resolutions that Iran has ignored. Many concern terrorism. Some prohibit the arming of groups in specific countries, such as Lebanon. Others prohibit giving sanctuary to terrorists. Several specifically order Iran to stop depriving individuals of their human rights. And Iran should be compelled to release Americans illegally held without due process, as recently confirmed by the UN Special Rapporteur for Human Rights. These are just the types of objectives which the US, in every administration, worked hard to obtain in the face of Soviet obstinacy.

Finally, the US should go beyond sanctions in responding to Iranian behavior. The JCPOA could not have been more poorly timed. It takes the pressure off Iran, and legitimizes its nuclear program, at a moment in time when pressure is likely to succeed. Iran faces a situation much like the Soviet Union did in the late 1980s. Its economy is in shambles. It has lost over \$160 billion in oil revenues and 20% of its GDP. Its foreign interventions have proved costly. Syria alone has cost some \$6 billion per year. Hezbollah, which Iran supports to the tune of \$100 to \$200 million per year, has lost thousands of fighters in Syria. Many IRGC fighters have been killed, including some high-ranking individuals. Iran is also supporting, with money, equipment, and manpower, the Shiite militias in Iraq, the Houthis in Yemen, Hamas and other terrorist groups in Gaza, pro-Iranian groups in Afghanistan, and others. These activities drain limited Iranian resources and exacerbate Iran's economic problems. Its overwhelmingly young population is tired and oppressed by the IRGC's domestic Basij Force.

The US should be doing more to increase these pressures instead of relieving Iran from their consequences. Helping Turkey to implement its aims in Syria would increase the pressure on Assad and his Iranian sponsors. The Administration should long ago have assisted in creating a zone along Turkey's border in which Syrian refugees can safely be assisted, and in which anti-Assad forces can be supported. The US should make Iran pay as great a price as possible for its support for that murderous regime. The US should long ago also have provided more support to the Kurds in both Syria and Iraq. Helping the Kurds more robustly would increase US influence in convincing them to refrain from threatening Turkey, while allowing them to do as they please in Iran. We should understand full well why Iran's 10% Kurdish population chafes under the control of a religious autocracy that murders Kurdish leaders. We should welcome and support any other legitimate resistance to a government that kills people because of their religion, sexual orientation, or beliefs.

While President Obama claims he is implementing a Reaganite policy in dealing with Iran, his Administration has done everything possible to allay Iran's concerns rather than to use the excesses of its ambitions and ideology as vehicles for its demise, as Reagan did with the Soviets. President Obama's policy is much more like the failed Reagan policy regarding Iran than the successful one in confronting the Soviet Union.

IV. Conclusion.

Mr. Chairman, the negotiation with Iran has grabbed the world's attention. The Administration has made a monumental effort to secure agreement. Great drama has accompanied each stage of the process. The technical nature of many of the issues has diverted attention from the strategic consequences of its overall terms. This has led much of the criticism to focus on this or that weakness, as though an improvement here or there would really matter.

In fact, if the JCPOA were one aspect of an overall effort to force Iran to bring its conduct and policies in line with international law and human decency, a deficiency here or there would not matter. But it is not. It is deliberately limited rather than "comprehensive," and it gives Iran huge benefits in the nuclear arena and essentially an implied promise to back off from seeking vigorously to curb the rest of its heinous activities.

The attention the JCPOA has garnered, however, and the hopes it has raised, are as ephemeral as any other diplomatic initiative based on flawed assumptions. One need only to remember Secretary of State Kerry's dramatic promise to negotiate a complete peace between Israel and the Palestinians in nine months. Then, too, the press was filled with the drama of diplomacy at the highest levels of importance. People took the effort seriously, although it was hopeless from the start. So is the JCPOA, as we will learn in due course, unless it is rapidly supplemented with greater strength and more effective diplomacy.

Moreover, lost in the drama of meetings, shuttles and press conferences is the lesson, repeatedly played out but quickly forgotten, that ill-considered diplomacy not only fails, but also exacts a price. The price for the failed Middle East effort was a new wave of bitterness and alienation, and a setback to the hopes for steady progress towards peace through economic development and cooperation on terrorism and other aspects of coexistence.

The price for negotiating and signing the JCPOA will be even more substantial. But Congress has an opportunity to limit the damage. Congress has the power to insist, Mr. Chairman, that the US not accept as legitimate an Iranian nuclear program having the capacities required to develop nuclear weapons, so long as Iran's government is committed to achieving criminal aims, spews racist rhetoric, and engages in wrongful conduct. Congress should insist that the President move the US to a truly effective engagement with Iran, that extends to all issues between the two States, but that is based on the inexorable reality that Iran will give up its radical aims and improper conduct only if it sees that as required by its own interests. And that outcome is only possible through pressure. Not war, but substantial, unrelenting pressure.

Every administration since 1979 has failed to take on Iran with strength and effective diplomacy. Each, in its own way, opted instead for policies regarding Iran that fluctuated wildly between refusing to negotiate at all, to direct pleas and hopeless plans to convince Iran through gestures of kindness and humanity to change its policies and practices. Unless properly augmented, the JCPOA will take its place among the hopeless plans. And the consequences will be especially unfortunate, because the US is missing an opportunity to press Iran for change at a time Iran is economically weak, militarily overextended, and politically vulnerable. Congress should vote disapproval to force the JCPOA to be augmented with a truly comprehensive, potentially effective strategy.