

NEW SANCTIONS FOR A NEW CENTURY: TREASURY'S INNOVATIVE USE OF FINANCIAL SANCTIONS

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1. INTRODUCTION

From a sanctions perspective, the first decade of the 21st Century has been dominated by two principal factors: a return by the Security Council to very near its pre-Cold War deadlock, and the search for a “targeted sanction” which will achieve decisive coercive pressure on international wrongdoers while imposing no or minimal collateral damage.¹ While the Holy Grail of a perfect targeted sanction has yet to be found and may unfortunately be unachievable, the new century’s closest approximation of such a Grail is almost certainly the novel breed of financial sanctions designed and implemented since 2005 by the U.S. Department of the Treasury.

Although this novel breed of financial sanctions was designed and first implemented under the administration of George W. Bush, the Obama Administration has already cast a vote of confidence in it by making the extraordinary decision to retain in place Stuart Levey, the Bush-appointed Under Secretary of the Treasury, who is principally known as the leading architect of these financial sanctions. The decision to retain Levey is both a vote of confidence in this novel breed of financial sanctions and an indication that their design is likely to have a strong influence on

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¹ See David Cortright & George A. Lopez, *Introduction: Assessing Smart Sanctions: Lessons from the 1990s*, in *SMART SANCTIONS: TARGETING ECONOMIC STATECRAFT* 1, 2 (David Cortright & George A. Lopez eds., 2002) (describing the characteristics of a smart sanctions policy).

any Obama Administration efforts to increase the range and impact of sanctions on Iran or other rogue states.²

This Article will analyze the motivation, design, implementation, impact, and future prospects for this new breed of financial sanctions. The Article will also identify and analyze several innovative aspects of these sanctions that seem highly likely to be replicated in the design of a wide range of future sanctions against other targets. The most sophisticated and widespread implementation of these sanctions thus far has been against Iran, and so it is Treasury's use against Iran on which this Article will focus, while also periodically referencing their implementation against North Korea, their other principal target thus far.

2. MOTIVATION FOR DEVELOPMENT OF INNOVATIVE FINANCIAL SANCTIONS

2.1. *Historical Background*

During the 1990s, the economic sanctions imposed by the international community reached both a peak in power and a trough in popularity. The first half of that decade saw the highest number of worldwide sanctions episodes since World War II.³ In particular, the United Nations Security Council, which had imposed mandatory economic sanctions on only two targets between 1945 and 1990, imposed economic sanctions on nine target states and comprehensive sanctions on Iraq (1990), the former Yugoslavia (1992), and Haiti (1994) between 1990 and 1995.

Two of these Security Council sanctions regimes—those on Libya and Iraq—addressed proliferation challenges similar to those posed by Iran and North Korea. In both the Libyan and the Iraqi case, sanctions contributed to stopping the progress of the rogue state's nuclear weapons program.⁴ The strong (although less-than-

² See, e.g., Paul Richter, *Bush Official Involved With Iran Sanctions Stays*, L.A. TIMES, Feb. 3, 2009, at A6 ("The Obama administration has decided to retain the official who led the Bush administration's effort to squeeze Iran with economic sanctions, providing an important clue on how it intends to approach the Islamic Republic.").

³ GARY CLYDE HUFBAUER ET AL., *ECONOMIC SANCTIONS RECONSIDERED* 18 tbl.1.1 (3d ed. 2007).

⁴ *Id.* at 12–13. Readers interested in a more detailed discussion of the contribution of sanctions to stopping the Libyan and Iraqi nuclear weapons programs may wish to refer to Orde F. Kittrie, *Averting Catastrophe: Why the*

comprehensive) sanctions imposed by the Security Council on Libya in 1992 and 1993 induced Libya's government, "a regime that had become synonymous with international terrorism,"⁵ to forsake terrorism and completely and verifiably relinquish its nuclear, chemical and biological weapons programs. Libya ceased its support for terrorism following the Security Council's imposition on it of strong sanctions in 1992 and 1993.⁶ In exchange for removal of the Security Council sanctions, Libya, in August 2003, formally accepted responsibility for the bombing of Pan Am Flight 103 and paid \$2.7 billion in compensation.⁷ Furthermore, Libya announced on December 19, 2003 that it had decided "to get rid of [weapons of mass destruction ("WMD")] materials, equipment and programs, and to become totally free of internationally banned weapons."⁸ Libya proceeded to allow a team of British and American government experts to enter the country and completely dismantle Libya's WMD infrastructure by April 2004.⁹

In the meantime, the comprehensive sanctions on Iraq achieved their objective of halting Saddam Hussein's progress toward a nuclear arsenal. However, this accomplishment became clear only after (and was overshadowed by) the Coalition occupation of Iraq in 2003. While the Iraq sanctions were in place, and since then, there has been a widespread perception that comprehensive sanctions on Iraq hurt innocent Iraqis while not commensurately advancing the purposes for which the sanctions had been imposed. This perception, combined with the impact on Security Council decision-making of increased U.S.-Russia tensions, has contributed to the Council, in the fourteen years since 1994, never again imposing comprehensive economic sanctions.

The Iranian and North Korean nuclear programs are currently further along than the Iraqi and Libyan nuclear programs ever

Nuclear Nonproliferation Treaty is Losing its Deterrence Capacity and How to Restore It, 28 MICH J. INT'L L. 337, 400, 406 (2007), from which this discussion is adapted.

⁵ Stephen D. Collins, *Dissuading State Support of Terrorism: Strikes or Sanctions? (An Analysis of Dissuasion Measures Employed Against Libya)*, 27 STUD. CONFLICT & TERRORISM 1, 16 (2004).

⁶ *Id.* at 2, 5, 13-15.

⁷ Felicity Barringer, *Libya Admits Culpability in Crash of Pan Am Plane*, N.Y. TIMES, Aug. 16, 2003, at A6.

⁸ *Libyan Call Against Arms*, N.Y. TIMES, Dec. 20, 2003, at A10 (citing text of the Libyan government statement).

⁹ Judith Miller, *Gadhafi's Leap of Faith*, WALL ST. J., May 17, 2006, at A18.

were. However, the sanctions imposed on Iran and North Korea by the international community thus far are much weaker than the sanctions which stopped the Iraqi and Libyan nuclear weapons programs.¹⁰ Indeed, both the Iran and the North Korea sanctions are thus far weaker than those the Security Council had previously imposed in response to many lesser threats to international peace and security. For example, both sets of sanctions are weaker than those imposed on Liberia and Cote D'Ivoire during their civil wars, Sierra Leone in response to its May 1997 military coup, the Federal Republic of Yugoslavia in 1991-93 during the Bosnian crisis, and Haiti in response to its 1991 military coup. Several factors have contributed to the weakness of the sanctions on Iran and North Korea—including a Security Council more and more deadlocked as a result of Russia-U.S. tensions, the dismal reputation sanctions acquired during their use against Iraq, and the growing unwillingness of the increasingly profit-oriented Russian and Chinese governments to sacrifice short-term profits for the long-term benefits (such as stopping proliferation) that sanctions are intended to achieve. As a result, the sanctions imposed by the Security Council on Iran and North Korea have been too weak to coerce either into giving up, or to contain either's ability to advance, its nuclear program.

Faced with the apparent impossibility of getting strong sanctions through the U.N. Security Council, the relatively weak commitment to nonproliferation sanctions of key European and other allied governments, and the relative paucity of trade between the United States and Iran (most such trade is prohibited by U.S. law), American opponents of Iran's nuclear program have in recent years creatively used law in three key initiatives to step up the economic pressure on Iran. These three initiatives are an effort to divest state and local government pensions from certain companies doing business with Iran,¹¹ an effort to pressure companies

¹⁰ Readers interested in a more detailed analysis of the U.N. Security Council sanctions imposed in response to the Iranian and North Korean nuclear programs—including comparison of those sanctions with other Security Council sanctions and a thorough analysis of the factors contributing to their weakness—may wish to see Kittrie, *supra* note 4, at 371-91, 423-25, from which this discussion is adapted.

¹¹ See, e.g., Julie Kosterlitz, *Squeezing Iran*, NAT'L J., Sept. 1, 2007, at 22, 22-29 (discussing a grassroots campaign advocating divestment of state and local government pensions from companies doing business with Iran).

supplying gasoline to Iran into halting those sales,¹² and the Treasury Department's new breed of financial sanctions. Each of these initiatives seeks to persuade specific third-country companies to stop doing business with the targeted rogue state (Iran), including by putting those third-country companies to a choice between the U.S. market and that of the rogue state.

The most sophisticated and impactful of these innovative sanctions initiatives has thus far been the Treasury Department's deployment of financial sanctions to increase U.S. leverage over Iranian decision-making and to counter Iran's use of the international financial system to achieve its nuclear objectives and finance terrorism. While similar financial sanctions have been used against North Korea, their use against Iran has been more highly developed and wide-ranging (in part because Iran has a much broader and deeper set of relationships with the international financial system), and so it is their use against Iran on which this Article will focus, while also periodically referencing their implementation against North Korea.

2.2. Nature of the Iranian Challenge

Iran currently poses two major challenges to the international community: (1) Iran is persisting with its nuclear program, in violation of the Nuclear Nonproliferation Treaty and United Nations Security Council Resolutions 1737, 1747, and 1803;¹³ and (2) Iran is the world's leading state sponsor of terrorism, providing training, weapons, and hundreds of millions of dollars a year in funding to support various terrorist groups.

¹² See, e.g., Nevin John, *RIL Gives in to US Pressure, Stops Gasoline to Iran*, BUS. STANDARD, Jan. 7, 2009, <http://www.business-standard.com/india/news/ril-gives-in-to-us-pressure-stops-gasoline-to-iran/17/36/345499/> (describing pressure exerted on Reliance Industries, an Indian company, to stop selling gasoline to Iran); Asjylyn Loder, *Business with Iran May Mean None in Florida*, ST. PETERSBURG TIMES, Dec. 7, 2008, at 1A (describing Florida State Senator Ted Deutch's efforts to pressure Swiss company Vitol to stop selling gasoline to Iran).

¹³ Readers interested in a more detailed analysis of the challenges posed by Iran's nuclear program, and of that program's violation of international law, may wish to refer to Kittrie, *supra* note 4, at 344-45, 379-91 and *Iran Counter-Proliferation Act of 2007: Hearing on S. 970 Before the S. Fin. Comm.*, 110th Cong. (2008) (statement of Professor Orde F. Kittrie), available at <http://finance.senate.gov/hearings/testimony/2008test/040808oktest.pdf>, from both of which this discussion is adapted.

2.2.1. *Iran's Pursuit of Nuclear Weapons*

Iran's pursuit of nuclear weapons raises four major concerns. First, the Iranian government is already the world's leading state sponsor of terrorism.¹⁴ An Iranian nuclear arsenal could serve Iran as a "nuclear umbrella," making countries victimized by Iranian-sponsored terrorism even more reluctant to retaliate against Iran. This could make Iran an even more self-confident sponsor of terrorism.

Second, an Iranian nuclear arsenal could spur proliferation by its neighbors. The fear that an Iranian nuclear arsenal will unleash a cascade of proliferation across the Middle East has been heightened by at least twelve Arab states in the last two-and-a-half years announcing plans to pursue nuclear technology.¹⁵ An editorial in the Egyptian government daily newspaper *Al-Ahram* put it as follows: "Iran's nuclear capability . . . will spur many powers in the region to develop a nuclear program."¹⁶ Such a cascade of proliferation in the Middle East would likely lead to the worldwide collapse of the already tottering nuclear non-proliferation treaty ("NPT") regime.¹⁷ In addition, the proliferation

¹⁴ See, e.g., OFFICE OF THE COORDINATOR FOR COUNTERTERRORISM, U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2007, at 172 (2008), available at <http://www.state.gov/documents/organization/105904.pdf> [hereinafter COUNTRY REPORTS] (stating that in 2007 "Iran remained the most active state sponsor of terrorism").

¹⁵ See, e.g., William J. Broad & David E. Sanger, *Fearing Iran, Arab States Seek Nuclear Power*, INT'L HERALD TRIB., April 15, 2007, <http://www.ihrt.com/articles/2007/04/15/news/nuke.php>; Richard Beeston, *Six Arab States Join Rush to Go Nuclear*, TIMES (London), Nov. 4, 2006, at 1; INT'L INS. FOR STRATEGIC STUDIES, NUCLEAR PROGRAMS IN THE MIDDLE EAST: IN THE SHADOW OF IRAN 7 (2008), available at <http://www.iiss.org/publications/strategic-dossiers/nuclear-programmes-in-the-middle-east-in-the-shadow-of-iran/read-the-dossier/>.

¹⁶ Hanna Avraham, Middle East Media Research Inst., *Arab Media Reactions to Iran's Nuclear Project*, INQUIRY & ANALYSIS, May 23, 2006, <http://memri.org/bin/articles.cgi?Page=archives&Area=ia&ID=IA27706>; see also Roe Nahmias, *Mubarak Hints: We'll Develop Nukes*, YNETNEWS, Jan. 5, 2007, <http://www.ynetnews.com/articles/0,7340,L-3348600,00.html> (reporting that Egyptian President Hosni Mubarak has hinted that if Iran proceeds to attain nuclear weapons, Egypt will follow suit).

¹⁷ The U.N. Secretary-General's High-Level Panel on Threats, Challenges and Change warned of "the erosion and possible collapse of the whole [nuclear nonproliferation] Treaty regime," explaining: "[w]e are approaching a point at which the erosion of the non-proliferation regime could become irreversible and result in a cascade of proliferation." High-level Panel on Threats, Challenges & Change, *A More Secure World: Our Shared Responsibility*, ¶¶ 109-11, U.N. Doc. A/59/565 (Dec. 2, 2004).

of nuclear weapons in the Middle East tinderbox, with its border disputes, religious fanaticism, ethnic hatreds, unstable governments, terrorist groups, and tendency for conflicts to spiral out of control, seems likely to result in a devastating nuclear war.

Some have also raised a third set of concerns: that while mutual deterrence kept the United States and the Soviet Union from attacking each other during the Cold War, significant elements of Iran's leadership may, by virtue of their apocalyptic messianism and exaltation of martyrdom, be impossible to deter from using nuclear weapons.

The fourth major concern raised in response to Iran's pursuit of nuclear weapons is that, even if the top echelon of the Iranian government turns out to be deterrable, there would be a considerable risk of rogue elements within Iran taking it upon themselves to transfer nuclear arms to Iran's terrorist allies. As was seen with Pakistan's A.Q. Khan, who proliferated under the comparatively secular and responsible Musharraf government, one key rogue figure can be sufficient to share an insecure country's nuclear technology with others.¹⁸

2.2.2. *Iran's Sponsorship of Terrorism*

Another significant challenge is Iran's provision of funding, training, and weapons to terrorist groups including Hamas, Palestinian Islamic Jihad, and Hezbollah, an organization that has killed more Americans than any terrorist network other than al Qaeda.¹⁹ Iran, a state sponsor of terrorism for decades,²⁰ currently

¹⁸ See, e.g., GORDON CORERA, SHOPPING FOR BOMBS: NUCLEAR PROLIFERATION, GLOBAL INSECURITY, AND THE RISE AND FALL OF THE A.Q. KHAN NETWORK (2006). Readers interested in an overview of the challenges posed by Iran's nuclear program, and of that program's violation of international law, that is more detailed than that provided in this Article may wish to refer to Kittrie, *supra* note 4, at 344-45, 379-91 and *Iran Counter-Proliferation Act of 2007: Hearing on S. 970 Before the S. Fin. Comm.*, 110th Cong. (2008) (statement of Professor Orde F. Kittrie), available at <http://finance.senate.gov/hearings/testimony/2008test/040808oktest.pdf>, from both of which this discussion is adapted.

¹⁹ See, e.g., COUNTRY REPORTS, *supra* note 14, at 172; *Between Feckless and Reckless: U.S. Policy Options to Prevent a Nuclear Iran: Joint Hearing Before the Subcomm. on the Middle East and South Asia, and the Subcomm. on Terrorism, Nonproliferation and Trade of the H. Comm. on Foreign Affairs*, 110th Cong. 24 (2008) [hereinafter Glaser Statement] (statement of Daniel Glaser, Deputy Assistant Secretary for Terrorist Financing and Financial Crimes, U.S. Dep't of Treasury), available at <http://foreignaffairs.house.gov/110/41849.pdf>.

spends hundreds of millions of dollars each year to fund terrorism.²¹

2.2.3. *Iran's Use of the International Financial System to Accomplish Its Nuclear and Terrorism Sponsorship Objectives*

Iran utilizes the international financial system to accomplish both its nuclear and its terrorism sponsorship objectives. Iran's integration into the international financial system both provides the Iranian government with the global financial capability to support its nuclear and terrorism sponsorship activities and exposes elements of the international financial system to a risk of facilitating these activities. In order to avoid suspicion and minimize the risk of detection, Iran's state-owned banks and other entities use an array of deceptive practices when using their global financial ties to advance Iran's nuclear program and sponsorship of terrorism. For example, Iran uses front companies and intermediaries to surreptitiously obtain technology and materials for its nuclear and missile programs from countries that would prohibit such exports to Iran.²²

In addition, Iranian banks ask other financial institutions to remove the Iranian banks' names when processing their transactions through the international financial system.²³ The goal is to allow Iranian banks to remain undetected as they move money through the international financial system to pay for the Iranian government's nuclear and missile related purchases and to fund terrorism.²⁴ The name-removal tactic is intended to evade the controls put in place by responsible financial institutions further down the line and has the effect of potentially involving those institutions in transactions that are illegal, that place their reputations at risk, and that they would never engage in if they knew who was really involved.²⁵ Iran's reliance on deceptive

²⁰ See, e.g., Orde F. Kittrie, *Emboldened by Impunity: The History and Consequences of Failure to Enforce Iranian Violations of International Law*, 57 SYRACUSE L. REV. 519 (2007) (providing a history of Iran's sponsorship of terrorist activities).

²¹ Glaser Statement, *supra* note 19, at 27.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Press Release, U.S. Dep't of the Treasury, Remarks by Treasury Sec'y Paulson on Targeted Fin. Measures to Protect Our Nat'l Sec. (June 14, 2007)

financial transactions to support its nuclear and terrorism sponsorship activities has contributed to its unwillingness to meet international standards for the development and implementation of laws and enforcement capabilities that would allow it to detect and prevent money laundering or terrorist financing.²⁶

3. THE NEW BREED OF FINANCIAL SANCTIONS: IMPACTFUL INNOVATION

The U.S. government has in recent years adopted a remarkably impactful and exceptionally innovative multifaceted strategy for countering Iran's use of financial transactions to support its nuclear and terrorism sponsorship activities. This strategy has significantly complicated Iran's use of financial transactions for these purposes. Even more importantly, the strong impact on Iran's economy of the financial pressure created by this strategy has provided U.S. policymakers with perhaps their greatest current source of leverage over Iran.

3.1. Impact

In response to the new breed of U.S. government financial sanctions on Iran, more than eighty banks around the world, including "[m]ost of the world's top financial institutions,"²⁷ have curtailed business with Iran.²⁸ Some leading financial institutions have dramatically scaled back their Iran-related business, while others have halted it entirely.²⁹ The withdrawal of major global banks from the Iranian market has disrupted key Iranian trading relationships, including those in the energy sector.³⁰ As a result of

[hereinafter Paulson Remarks], available at <http://www.treas.gov/press/releases/hp457.htm>.

²⁶ See Glaser Statement, *supra* note 19, at 28 ("Iran uses its global financial ties to pursue both the threat of terrorism and nuclear program through an array of deceptive practices specifically designed to avoid suspicion and evade detection from the international financial community.").

²⁷ Paulson Remarks, *supra* note 25.

²⁸ See Robin Wright, *Stuart Levey's War*, N.Y. TIMES MAG., Nov. 2, 2008, at 29, 31 (noting that "[s]o far, more than 80 banks have curtailed business with Iran" including several prominent European and Middle Eastern banks).

²⁹ See Glaser Statement, *supra* note 19, at 34 ("Many leading financial institutions have either scaled back dramatically or even terminated their Iran-related business entirely.").

³⁰ See *Bank Jitters Hit Iran Fuel Imports*, PETROLEUM ECONOMIST, Feb. 2008, at 28 (concluding that due to U.S.-led sanctions "Iran is starting to feel the effect of international sanctions on its domestic energy sector"); Paul Sampson, *Iran:*

the financial sanctions, it has reportedly become almost impossible in Europe to arrange for transactions involving Iranian companies utilizing a letter of credit, the standard payment guarantee used in international trade.³¹ For example, Reliance Industries, an Indian company, was forced to halt its gasoline sales to Iran for several months because it could no longer arrange from French banks the letters of credit on which the transactions had depended.³² The sanctions have also affected Iran's ability to finance petroleum development projects, with Iran's Oil Minister admitting that "overseas banks and financiers have decreased their cooperation" on such projects.³³ Overall, the financial sanctions have reportedly increased the cost of imports to Iran by some twenty to thirty percent.³⁴

Also, as a result of the financial sanctions, the number of foreign banks with branches in Iran dropped from forty-six to twenty between 2006 and 2008.³⁵ Meanwhile, the financial sanctions have reportedly contributed to seventeen of Iran's state and privately owned banks "struggling with credit shortages which have brought them close to insolvency."³⁶

Products in Flux, ENERGY COMPASS, Feb. 8, 2008, at 1 (stating that due to the "US-led squeeze on Iran" many financial institutions have ceased to provide credit to Iranian companies); Mark Trevelyan, *More Companies Suspend Business with Iran*, INT'L HERALD TRIB., Jan. 17, 2008, at 15 (discussing the effects of sanctions on "Iran's oil-based economy").

³¹ See Trevelyan, *supra* note 30, at 15 (quoting a senior German banking and finance consultant as stating that "[i]t is today impossible more or less in Europe, with a couple of exceptions, to get a letter of credit" for trade with Iran).

³² See *id.* ("Late last year, the Indian oil refiner Reliance halted sales of gasoline and diesel to Tehran after the French banks BNP Paribas and the Calyon unit of Cr dit Agricole stopped offering letters of credit . . .").

³³ Robin Wright, *Iran Feels Pinch as Major Banks Curtail Business: U.S. Campaign Urges Firms to Cut Ties*, WASH. POST, Mar. 26, 2007, at A10 (quoting Iranian Oil Minister Kazem Vaziri Hamaneh).

³⁴ See David Blair, *Banks Recruited to Wage Financial War on Teheran*, DAILY TELEGRAPH (London), Sept. 18, 2007, at 17 ("One Teheran newspaper recently reported that Iranian companies had seen their import costs rise by 20 or 30 per cent because they had to employ middlemen to evade financial restrictions.").

³⁵ Steven R. Weisman, *World Group Tells Banks to Beware Deals with Iran*, N.Y. TIMES, Feb. 29, 2008, at A10 (citing an American diplomat as noting a drop in the foreign bank branches operating in Iran).

³⁶ *The Iranian Economy Is Imploding*, 71 APS REVIEW DOWNSTREAM TRENDS, Dec. 15, 2008, available at <http://www.allbusiness.com/economy-economic-indicators/economic-conditions-inflation/11731056-1.html>; see also *The Party's Over: Iran's President Ahmadinejad Has Had a Good Run. For How Much Longer?*, ECONOMIST, Nov. 22, 2008, at 59 (noting that the President of Iran's banking policies have pushed many lenders "to the brink of insolvency").

In November 2008, sixty leading Iranian economists called in an open letter for the regime to drastically change course, saying that Iran's "'tension-creating' foreign policy has 'scared off foreign investment and inflicted heavy damage' on the economy."³⁷ The economists said the current sanctions have cost Iran "many billions of dollars" by forcing a "large part" of its imports and exports to be "carried out through middlemen."³⁸

3.2. Innovations

The U.S. government's multifaceted financial sanctions strategy against Iran includes several innovations that seem likely to impact the design of future sanctions against other targets.³⁹ These innovations include: direct outreach to individual foreign private financial institutions, aggressive use of financial authorities to pursue political goals, and effective development and harnessing of intelligence about global financial transactions.

³⁷ Borzou Daragahi, *Economists in Iran Criticize Ahmadinejad*, L.A. TIMES, Nov. 10, 2008, at A3.

³⁸ *Sixty Iranian Economists Write Open Letter to President*, BBC MONITORING WORLDWIDE, Nov. 14, 2008, at 3.

³⁹ The financial measures against Iran were inspired at least in part by the Treasury Department's prior success in using similar financial measures against North Korea. In September 2005, the Treasury Department, acting under section 311 of the USA PATRIOT Act, 31 U.S.C. § 5318A (2006), cited Macau-based Banco Delta Asia as a "primary money laundering concern" for its financial interactions with North Korea. Imposition of Special Measure Against Banco Delta Asia S.A., 70 Fed. Reg. 52,217, 55,219 (Sept. 20, 2005). As a result, many international private financial institutions cut or reduced their ties to North Korea, and the Macau government took over Banco Delta Asia and froze over \$24 million dollars in North Korean funds. Michael Jacobson, *Sanctions Against Iran: A Promising Struggle*, 31 WASH. Q. 69, 72 (2008); Steven R. Weisman, *The Ripples of Punishing One Bank*, N.Y. TIMES, July 3, 2007, at C1 (stating that Macau froze \$25 million of North Korean assets held by fifty-two different holders). Although the amount of money at stake was small, the designation of Banco Delta Asia, in combination with the designation of several North Korean entities as primary money laundering concerns has resulted in "North Korea's virtual isolation from the global financial system." Paulson Remarks, *supra* note 25. This halt in North Korea's access to the international financial system provided very important leverage for the United States in its negotiations with North Korea over the latter's nuclear program. See Jacobson, *supra* note 39, at 73 (stating that financial measures had a "considerable impact" on negotiations with the North Koreans). The North Korean effort drew lessons from earlier, somewhat analogous programs aimed at Colombian narcotics traffickers. See Paulson Remarks, *supra* note 25 ("We have drawn on lessons learned from earlier programs aimed at Colombian drug cartels.").

In developing and implementing its multifaceted financial sanctions strategy, the United States has used the U.N. Security Council where possible, but has also found a way to work outside of it. To maximize its effectiveness operating outside of the Security Council, the United States has worked to persuade not only individual foreign governments but also individual non-American companies to join the effort. Bringing such non-American companies on board was “a particularly daunting challenge given the limits of U.S. jurisdiction over foreign entities.”⁴⁰ However, once private sector financial institutions are on board, they are “able to act much more quickly than governments who often lack the necessary authority or the political will to take action on their own”⁴¹ or may face cumbersome bureaucratic procedures for exercising whatever relevant authority they do have. The strategy’s approach to bringing such non-American companies on board, and its success in doing so—both described in more detail in Section 4.3 of this Article—have been one of the strategy’s most significant innovations.

Another of the strategy’s most innovative aspects is its use of the U.S. Treasury Department’s financial authorities to pursue political goals. “It is certainly a very new and effective tool,” said Robert Einhorn, the State Department’s former Assistant Secretary for Nonproliferation.⁴² “Years ago, people at State would go to Treasury and say, ‘We’ve got a lot of financial muscle, we should use it to pursue political goals.’ But Treasury would always say it didn’t want to mess around with the international financial system.”⁴³ Indicative of Treasury’s novel approach is Bush Administration Treasury Secretary Henry Paulson’s statement that he and his finance ministry counterparts around the world have a “responsibility” to “broaden our role beyond economic stewardship and become valuable contributors to help ensure our countries’ and our citizens’ security.”⁴⁴ James Wilkinson, chief of staff of the Bush Administration Treasury Department, noted that, “[o]ur financial tools are sometimes the most powerful weapons

⁴⁰ Jacobson, *supra* note 39, at 71.

⁴¹ Paulson Remarks, *supra* note 25.

⁴² Bay Fang, *Treasury Wields Financial Sanctions: U.S. Strategy Straddles the Line Between Diplomacy, Military Might*, CHI. TRIB., Apr. 23, 2007, at C1.

⁴³ *Id.* (quoting Robert Einhorn, Former Assistant Sec’y of State for Nonproliferation).

⁴⁴ Paulson Remarks, *supra* note 25.

our government has to help change behavior.”⁴⁵ In the past, sanctions have focused largely on leveraging international trade in goods, for example through the use of trade embargoes. Treasury’s newfound willingness to use its financial muscle to pursue political goals is particularly and increasingly important because “[g]lobal financial flows are growing rapidly and greatly exceed the trade in goods and services.”⁴⁶

The United States’ new financial sanctions have been impactful in part because Treasury has effectively developed and harnessed intelligence about global financial transactions. In an era of globalization, such intelligence is increasingly available, because “technology and integration have made it more difficult for anyone using the financial system to hide.”⁴⁷ In order to be useful for purposes of these sanctions, the intelligence must be accurate.⁴⁸ It also must be shareable, in a way that traditional intelligence, which depends heavily on sources and methods that are themselves secret, is often not. Fortuitously, transactions using the international financial system “typically leave a trail of detailed information . . . [o]pening an account or initiating a funds transfer requires a name, an address, a phone number” that is collected and stored by a financial institution.⁴⁹ Such information can be used to identify key actors and their networks.⁵⁰ In 2004, the U.S. Treasury Department became the world’s first finance ministry to develop in-house expertise in the collection and analysis of such information.⁵¹

One might expect that rogue actors eager to avoid detection would avoid the formal financial system and rely instead on moving money using such methods as *hawala* that can be effectuated without the creation of official financial records. However, Treasury has found that for rogue actors there is sometimes “no good alternative and, in many cases, no alternative

⁴⁵ Weisman, *supra* note 39.

⁴⁶ Paulson Remarks, *supra* note 25.

⁴⁷ *Id.*

⁴⁸ As Treasury Secretary Paulson has stated: “[t]o identify and act against threats, we need specific, current, and reliable intelligence.” *Id.*

⁴⁹ *Id.*

⁵⁰ See *id.* (“Treasury then evaluates this information with an eye towards potential action—be it a designation, an advisory to the private sector, or a conversation to alert other finance ministers to a particular threat or bad actor.”).

⁵¹ *Id.*

at all” to the formal international financial system.⁵² Proliferation networks turn out to require letters of credit and other types of financing for many of their purchases.⁵³ Those otherwise legitimate businessmen or manufacturers who participate in a proliferation transaction because of profit, rather than ideology, may find it harder to turn a blind eye or may be otherwise discomfited by a transaction that avoids the formal financial system.

Rogue states turn out to depend on the global financial system for such functions as holding reserves and financing both their revenue-earning exports and their imports of such strategic commodities as gasoline.⁵⁴ Even terrorist networks still sometimes attempt to move funds through the international financial system, such as when they find the alternatives to be even riskier or too cumbersome.⁵⁵ While individual terrorist attacks have been shown to be relatively inexpensive to carry out, “global terrorist groups need large sums of money to pay operatives, to recruit and train members, to acquire false documents and travel.”⁵⁶

Intelligence about specific financial transactions has proven important to the financial sanctions’ success because it has enabled Treasury to present the sanctions as “specifically targeted against those individuals or entities engaging in illicit conduct.”⁵⁷ Bush Administration Treasury Secretary Henry Paulson said that as a result of the U.S. government’s effective development and harnessing of intelligence about global financial transactions, “[r]ather than grudgingly complying with, or even trying to evade our sanctions, we have seen the banking industry in particular voluntarily go above and beyond their legal requirements because they do not want to do business with terrorist supporters, money launderers or proliferators.”⁵⁸

As a result of these innovations, Treasury’s new financial sanctions have proven an exception to the traditional reputation of

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Thus when Iran could no longer make use of French bank letters of credit for financing its purchases of gasoline from India’s Reliance Industries; Reliance for a time stopped its exports of gasoline to Iran.

⁵⁵ Paulson Remarks, *supra* note 25.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

sanctions as ineffective in putting pressure on rogue regimes, harmful to innocent persons, riddled with cheating by private businesses that evade sanctions while their governments turn a blind eye, or all three.⁵⁹

In sharp contrast to the traditional reputation of sanctions, at least some foreign banks have gone even beyond the letter of the law in implementing the financial sanctions. In addition, the financial sanctions have clearly had a significant impact on the Iranian economy, costing the Iranian government funds that might otherwise have gone towards furthering its nuclear ambitions or supporting terrorism.

However, it is important to note that as of February 2009, there was no sign that the financial sanctions have succeeded in coercing the Iranian government into halting either its nuclear program or its support for terrorism. In part as a result, the two major party Presidential candidates, Barack Obama and John McCain, called during the campaign for increasing sanctions pressure on Iran if it persists in illicit activity.⁶⁰ The implication of both candidates'

⁵⁹ *Id.*

⁶⁰ For example, on June 4, 2008, Senator Obama said at a speech in Washington, D.C.:

We will pursue this diplomacy with no illusions about the Iranian regime. Instead, we will present a clear choice: If you abandon your dangerous nuclear program, your support for terror, and your threats to Israel, there will be meaningful incentives, including the lifting of sanctions and political and economic integration with the international community. If you refuse, we will ratchet up the pressure . . . [w]e should work with Europe, Japan, and the gulf states to find every avenue outside the United Nations to isolate the Iranian regime, from cutting off loan guarantees and expanding financial sanctions, to banning the export of refined petroleum to Iran, to boycotting firms associated with the Iranian Revolutionary Guard, who[se] Quds Forces have rightly been labeled a terrorist organization.

Senator Barack Obama, Remarks at the American Israel Public Affairs Committee Annual Conference (June 4, 2008) (transcript available at <http://media.washingtonpost.com/wp-dyn/content/article/2008/06/04/AR2008060401325.html>). On June 2, 2008, Senator McCain said the following in a speech in Washington, DC:

[W]e must create the real-world pressures that will peacefully but decisively change the path they [Iran] are on. Essential to this strategy is the U.N. Security Council, which should impose progressively tougher political and economic sanctions. Should the Security Council continue to delay in this responsibility, the United States must lead like-minded countries in imposing multilateral sanctions outside the U.N. framework.

positions seemed to be that there is a tipping point at which economic pressures and protests could convince the regime that its "tension-creating" foreign policy poses too great a risk to its grip over the Iranian people, but that the financial sanctions, as efficient and impactful as they have been, have been insufficiently powerful to reach that tipping point. The Obama Administration's extraordinary decision to retain in place Stuart Levey, the Bush-appointed Under Secretary of the Treasury who has been the principal architect of the financial sanctions,⁶¹ is a vote of confidence in the financial sanctions and an indication that their design will have a strong influence on any Obama Administration efforts to increase the range and impact of sanctions on Iran.

4. DELINEATION OF THE U.S. STRATEGY FOR COMBATING IRAN'S MISUSE OF THE INTERNATIONAL FINANCIAL SYSTEM AND APPLYING FINANCIAL PRESSURE TO IRAN

The U.S. government's overall strategy for combating Iran's misuse of the international financial system and for applying financial pressure to Iran consists of the following three interrelated initiatives: (1) direct imposition by the United States of unilateral financial sanctions targeting Iran's nuclear and terrorism sponsorship activities; (2) promoting financial measures against Iran by key international organizations and foreign governments; and (3) direct outreach to key foreign financial institutions.

4.1. *Direct Imposition by the United States of Unilateral Financial Sanctions Targeting Iran's Nuclear and Terrorism Sponsorship Activities*

The United States has had wide-ranging sanctions in place on Iran since shortly after the November 4, 1979 seizure by Iran of American diplomats at the U.S. Embassy in Tehran.⁶² However, the U.S. strategy for countering Iran's use of financial transactions to support its nuclear and terrorism sponsorship activities and for applying financial pressure to Iran relies heavily on two relatively recent Executive Orders.

Senator John McCain, Speech on the Middle East (June 2, 2008) (transcript available at <http://www.cfr.org/publication/16395/>).

⁶¹ Wright, *supra* note 28 (discussing Under Secretary Levey's campaign to promote financial sanctions).

⁶² KENNETH KATZMAN, CONG. RESEARCH SERV., IRAN: U.S. CONCERNS AND POLICY RESPONSES 49 (2008).

4.1.1. Executive Order 13382

Executive Order 13382 of June 28, 2005⁶³ provides for freezing (blocking) the assets of designated persons engaged in proliferation of weapons of mass destruction (and their means of delivery) and their support networks. Designations under Executive Order 13382 prohibit all transactions between the designees and any U.S. person, and freeze any assets the designees may have under U.S. jurisdiction. Executive Order 13382 initially applied to eight organizations in North Korea, Iran, and Syria. However, the Executive Order provides that Treasury and State Departments may designate additional WMD proliferators and their supporters, and they have designated dozens of additional individuals and entities in the last several years,⁶⁴ including over

⁶³ Exec. Order No. 13,382, 70 Fed. Reg. 38,567 (July 1, 2005). In the chapeau of Executive Order 13382, the President specified that he was acting under the authority vested in him "as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code." *Id.* 3 U.S.C. § 301 is the President's general authorization to delegate functions to subordinate officials and 50 U.S.C. § 1601 addresses the termination of existing declared emergencies. The key statutory authority for Executive Order 13382 is IEEPA, a little-known statute which provides the President with extraordinarily powerful authorities "to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat." International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1707 (2006). Once the President has declared such a national emergency, he may pursuant to IEEPA prohibit the following with respect to "any person, or with respect to any property, subject to the jurisdiction of the United States": "transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof." 50 U.S.C. § 1702(a)(1)(A)(ii). Once such a national emergency has been declared, the President may also pursuant to IEEPA block, "nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States." 50 U.S.C. § 1702(a)(1)(B).

⁶⁴ See OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEP'T. TREASURY, WHAT YOU NEED TO KNOW ABOUT TREASURY RESTRICTIONS (Jan. 16, 2009) available at <http://www.treas.gov/offices/enforcement/ofac/programs/wmd/wmd.pdf> (explaining that Executive Order 13382 authorized "Treasury, together with the Department of State" to "designate additional WMD proliferators and their supporters" and providing a list of such entities that have been blocked under this authority).

fifty Iran-related individuals and entities.⁶⁵ Iranian entities designated for their direct involvement in production of weapons of mass destruction and their delivery systems include the Atomic Energy Organization of Iran, Iran's Aerospace Industries Organization, Iran's Islamic Revolutionary Guard Corps (IRGC), and Iran's Ministry of Defense and Armed Forces Logistics.⁶⁶

The U.S. government has also designated under Executive Order 13382 several state-owned Iranian banks, including Bank Sepah, Bank Melli, and Bank Mellat. Bank Sepah was designated in January 2007 for "provid[ing] a variety of critical financial services to Iran's missile industry," including "facilitat[ing] Iran's international purchases of sensitive material for its missile program" through "its role as a financial conduit."⁶⁷ Bank Melli, Iran's largest bank, was designated in October 2007 for providing a range of "banking services to entities involved in Iran's nuclear and ballistic missile programs, including entities listed by the U.N. for their involvement in those programs."⁶⁸ Bank Melli "facilitated numerous purchases of sensitive materials for Iran's nuclear and missile programs."⁶⁹ In the process of "handling financial transactions on behalf of the IRGC, Bank Melli . . . employed deceptive banking practices," such as requesting that its name be removed from financial transactions, to hide its involvement from the international banking system.⁷⁰ Bank Mellat was designated in October 2007 for "provid[ing] banking services in support of Iran's

⁶⁵ See Glaser Statement, *supra* note 19, at 19 (noting that the "Departments of State and Treasury announced the designation of dozens of entities and individuals" in 2007).

⁶⁶ Press Release, U.S. Dep't. of the Treasury, Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism (Oct. 25, 2007), *available at* <http://www.treas.gov/press/releases/hp644.htm>. The designation of the IRGC, which explicitly included a list of companies owned or controlled by the IRGC and its leaders, has a particularly strong impact on the Iranian economy because, as Treasury noted, the "IRGC has significant political and economic power in Iran, with ties to companies controlling billions of dollars in business and construction and a growing presence in Iran's financial and commercial sectors." *Id.* "The IRGC," Treasury noted, "is involved in a diverse array of activities, including petroleum production and major construction projects across the country." *Id.*

⁶⁷ Press Release, U.S. Dep't of the Treasury, Iran's Bank Sepah Designated by Treasury: Sepah Facilitating Iran's Weapons Program (Jan. 9, 2007), *available at* <http://www.treas.gov/press/releases/hp219.htm>.

⁶⁸ Press Release, U.S. Dep't of the Treasury, *supra* note 66.

⁶⁹ *Id.*

⁷⁰ *Id.*

nuclear entities" and "facilitat[ing] the movement of millions of dollars for Iran's nuclear program."⁷¹

4.1.2. Executive Order 13224

Executive Order 13224 of September 23, 2001, authorizes the Treasury Department to designate, and block the assets of, foreign persons determined "to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States."⁷² In addition, the order authorizes Treasury to block the assets of persons that provide support, services, or

⁷¹ *Id.*

⁷² Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001). In the chapeau of Executive Order 13224, President Bush specified that he was acting under the authority vested in him as President "by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution[s]" 1214, 1267, 1333, and 1363. *Id.* IEEPA, the National Emergencies Act, and 3 U.S.C. § 301 are discussed as part of the analysis of Executive Order 13382. *See supra* note 63 and accompanying text. Section 5 of the UNPA, which the President cited in Executive Order 13224, but not Executive Order 13382, provides in relevant part as follows:

Notwithstanding the provisions of any other law, whenever the United States is called upon by the Security Council to apply measures which said Council has decided, pursuant to article 41 of said Charter, are to be employed to give effect to its decisions under said Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules, and regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations or rail, sea, air, postal, telegraphic, radio, and other means of communication between any foreign country or any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof, or involving any property subject to the jurisdiction of the United States.

22 U.S.C. § 287c (2006). The four Security Council Resolutions listed in the chapeau of Executive Order 13224 all focus on the Taliban. However, the designation authority that Treasury draws from the UNPA through Executive Order 13224 is not limited to application of measures required by those four particular, Taliban-oriented Security Council Resolutions. In light of that, while IEEPA is clearly the foundational statutory authority for designation under Executive Order 13224 of Iranian entities for their support of terrorist groups, the UNPA also provides important statutory authority in those cases where Treasury's designation is helping to implement measures required by the Security Council pursuant to article 41 of the U.N. Charter.

assistance to, or are "otherwise associated with" terrorists and terrorist organizations designated under the Order.⁷³

In October 2007, Treasury designated under Executive Order 13224 the Qods Force branch of Iran's Islamic Revolutionary Guard Corps for "provid[ing] material support to the Taliban, Lebanese Hizballah, Hamas, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine-General Command."⁷⁴ In designating the Qods Force under Executive Order 13224, Treasury noted that the "Qods Force provides weapons and financial support to the Taliban to support anti-U.S. and anti-Coalition activity in Afghanistan" in contravention of legally-binding Security Council Resolutions.⁷⁵ Treasury also noted that the Qods Force operates training camps for Hizballah, "provides roughly \$100 to \$200 million in funding a year to Hizballah and has assisted Hizballah in rearming in violation of U.N. Security Council Resolution 1701."⁷⁶ The State Department has elsewhere stated that the Qods Force provides:

Iraqi militants with Iranian-produced advanced rockets, sniper rifles, automatic weapons, mortars that have killed thousands of Coalition and Iraqi Forces, and explosively formed projectiles (EFPs) that have a higher lethality rate than other types of improvised explosive devices (IEDs), and are specially designed to defeat armored vehicles used by Coalition Forces.⁷⁷

Treasury has also designated under Executive Order 13224 Iran's state-owned Bank Saderat.⁷⁸ Bank Saderat was designated in October 2007 for being "used by the Government of Iran to channel funds to terrorist organizations, including Hizballah and EU-designated terrorist groups Hamas, PFLP-GC, and Palestinian Islamic Jihad."⁷⁹ In designating Bank Saderat, Treasury noted that "from 2001 to 2006, Bank Saderat transferred \$50 million from the

⁷³ Exec. Order No. 13,224, 66 Fed. Reg. 49,079, 49,080 (Sept. 23, 2001).

⁷⁴ Press Release, U.S. Dep't of the Treasury, *supra* note 66.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ COUNTRY REPORTS, *supra* note 14, at 173.

⁷⁸ See Press Release, U.S. Dep't of the Treasury, *supra* note 66 (designating Bank Saderat, its branches, and its subsidiaries as supporters of terrorism under Executive Order 13224).

⁷⁹ *Id.*

Central Bank of Iran through its subsidiary in London to its branch in Beirut for the benefit of Hizballah fronts in Lebanon that support acts of violence," that Hamas has "had substantial assets deposited in Bank Saderat," and that "in the past year, Bank Saderat has transferred several million dollars to Hamas."⁸⁰

4.2. *Promoting Financial Measures Against Iran by Key International Organizations and Foreign Countries*

Recognizing that sanctions, including those in the financial arena, are almost always more effective when they are multilateral, the U.S. government's initiative to combat Iran's misuse of the international financial system and to apply financial pressure on Iran has placed considerable emphasis on promoting financial measures against Iran by key international organizations and foreign countries. These efforts have focused on: (1) including financial components in U.N. Security Council Resolutions addressing Iran's nuclear and missile programs, and (2) working within the multinational Financial Action Task Force (FATF).

4.2.1. *Financial Components in U.N. Security Council Resolutions Addressing Iran's Nuclear and Missile Programs*

As of February 2009, the three principal United Nations Security Council Resolutions imposing sanctions on Iran in response to its nuclear program are Resolution 1737 of December 23, 2006,⁸¹ Resolution 1747 of March 24, 2007,⁸² and Resolution 1803 of March 3, 2008.⁸³ These resolutions contain three principal types of financial components: (1) financial sanctions targeting specified key actors associated with Iranian nuclear and missile programs, (2) requirements that member states prohibit certain financial activities relating to Iran's nuclear and missile programs, and (3) a call on member states to exercise vigilance over the activities of financial institutions in their territories with all Iranian financial institutions.

⁸⁰ *Id.*

⁸¹ S.C. Res. 1737, U.N. Doc. S/RES/1737 (Dec. 23, 2006).

⁸² S.C. Res. 1747, U.N. Doc. S/RES/1747 (Mar. 24, 2007).

⁸³ S.C. Res. 1803, U.N. Doc. S/RES/1803 (Mar. 3, 2008).

4.2.1.1. *Financial Sanctions Targeting Specified Key Actors
Associated With Iran's Nuclear and Missile Programs*

Paragraph 12 of U.N. Security Council Resolution 1737 requires all member states to freeze any assets on their territories that are owned or controlled by persons or entities designated by the Security Council or the implementing Committee as "being engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities or the development of nuclear weapon delivery systems."⁸⁴ Paragraph 12 also requires member states to "ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of" designated persons and entities.⁸⁵ Resolution 1737 designated ten entities and twelve individuals.⁸⁶ By doing so, Resolution 1737 required all member states to freeze the designees' assets and effectively deny them access to the international financial system.

Three months later, Resolution 1747 added thirteen additional entities and fifteen additional individuals to the list of designees subject to paragraph 12 of Resolution 1737.⁸⁷ Alongside various military, research, and manufacturing entities and individuals, the list of designees in Resolution 1747 included Bank Sepah, Bank Sepah International, and Ahmad Derakhshandeh, the Chairman and Managing Director of Bank Sepah.⁸⁸ The Iranian and international banking community were thus put on notice that even the relatively cautious United Nations Security Council is willing to put bankers who finance proliferation in the same category of sanctions targets as the military officers, research scientists, and manufacturers who directly handle nuclear components and missile delivery systems.

Eleven months after the passage of Resolution 1747, Resolution 1803 added twelve more entities and thirteen more individuals to the list of designees subject to paragraph 12 of Resolution 1737.⁸⁹ Since several of the designees under Resolutions 1737, 1747, and

⁸⁴ S.C. Res. 1737, *supra* note 81, ¶ 12.

⁸⁵ *Id.*

⁸⁶ *Id.* Annex.

⁸⁷ S.C. Res. 1747, *supra* note 82, ¶ 4, Annex I.

⁸⁸ *Id.* Annex I.

⁸⁹ S.C. Res. 1803, *supra* note 83, ¶ 7, Annexes I, III.

1803 had previously been publicly designated by the U.S. government under Executive Order 13382, the three Security Council Resolutions had the effect of multilateralizing aspects of Treasury's unilateral actions against Iran's proliferation infrastructure.⁹⁰ For example, Bank Sepah was designated by Treasury under Executive Order 13382 in January 2007 and then by the United Nations Security Council in Resolution 1747 of March 2007.

4.2.1.2. *Requirements that Member States Prohibit Certain Financial Activities Relating to Iran's Nuclear and Missile Programs*

U.N. Security Council Resolution 1737 also requires all member states to "prevent the provision to Iran" of any "financial assistance, investment, brokering or other services, and the transfer of financial resources or services, related to the supply, sale, transfer, manufacture or use" of certain specified items, materials, equipment, goods and technology associated with Iran's nuclear and missile programs.⁹¹ This "effectively prohibits the provision of financial services that would allow Iran to procure the prohibited items needed for nuclear or missile programs."⁹²

4.2.1.3. *Call To Exercise Vigilance Over Activities With All Iranian Financial Institutions*

In addition to imposing sanctions on proliferation-related entities and individuals, and requiring member states to prohibit financial activity directly related to Iran's nuclear and missile programs, the Security Council's Iran resolutions recognized the role that a broad range of interactions between the international financial community and a potentially proliferating state can play in facilitating, hindering, encouraging, or discouraging proliferation. Resolution 1747 got the ball rolling by calling upon "all states and international financial institutions not to enter into new commitments for grants, financial assistance, and concessional

⁹⁰ See Glaser Statement, *supra* note 19, at 29-31 (noting that several Iranian financial institutions have been sanctioned both by Executive Order 13382 and U.N. Security Council Resolutions 1737, 1747, and 1803).

⁹¹ S.C. Res. 1737, *supra* note 81, ¶ 6.

⁹² Glaser Statement, *supra* note 19, at 33.

loans, to the Government of the Islamic Republic of Iran, except for humanitarian and developmental purposes.”⁹³

Resolution 1803 goes further. In paragraph nine, it:

[c]alls upon all States to exercise vigilance in entering into new commitments for public provided financial support for trade with Iran, including the granting of export credits, guarantees or insurance, to their nationals or entities involved in such trade, in order to avoid such financial support contributing to the proliferation sensitive nuclear activities, or to the development of nuclear weapon delivery systems⁹⁴

This provision is important because even some of the United States’ closest allies, including France, Germany, and Italy, had been providing their companies with export loan guarantees to encourage and facilitate trade with Iran.⁹⁵ A partial result is that the EU has been Iran’s largest trading partner, accounting for more than a third of Iran’s trade with the world.⁹⁶

Of particular importance for purposes of Treasury’s financial sanctions strategy, Resolution 1803, in paragraph ten:

[c]alls upon all States to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran, in particular with Bank Melli and Bank Saderat, and their branches and subsidiaries abroad, in order to avoid such activities contributing to the proliferation sensitive nuclear activities, or to the development of nuclear weapon delivery systems⁹⁷

As signaled by the “calls upon” formulation with which all three of these provisions begin, none of them is legally binding. The U.S. Department of the Treasury has nevertheless deemed the “all banks domiciled in Iran” provision contained in paragraph 10

⁹³ S.C. Res. 1747, *supra* note 82, ¶ 7.

⁹⁴ S.C. Res. 1803, *supra* note 83, ¶ 9 (emphasis omitted).

⁹⁵ See Jacobson, *supra* note 39, at 70 (noting the EU’s extensive ties to Iran where France, Italy, and Germany each encourage exports to Iran through “extensive export credit guarantees”).

⁹⁶ See Neil King, Jr. & Marc Champion, *Embargo Politics: Nations’ Rich Trade with Iran is Hurdle for Sanctions Plan*, WALL ST. J., Sept. 20, 2006, at A1 (discussing the extent of trade between Europe and Iran and its implications for proposed sanctions).

⁹⁷ S.C. Res. 1803, *supra* note 83, ¶ 10 (emphasis omitted).

of Resolution 1803 to be of “critical importance,” as it “significantly reinforces the concerns Treasury has expressed for many months regarding some Iranian financial institutions’ deceptive financial conduct and terrorism and proliferation support activities.”⁹⁸

4.2.2. *Working Within the Financial Action Task Force*

The Financial Action Task Force (“FATF”) is an inter-governmental body dedicated to developing and promoting policies, both at national and international levels, “to combat money laundering and terrorist financing.”⁹⁹ The FATF currently has thirty-four members, including the five permanent members of the United Nations Security Council, the European Commission, Italy, and Japan.¹⁰⁰ The FATF is the premier inter-governmental body setting standards for anti-money laundering (“AML”) and combating financing of terrorism (“CFT”) policies and laws. The FATF’s AML/CFT standards have been endorsed by the World Bank, the International Monetary Fund and the United Nations and are recognized by more than 175 countries.¹⁰¹

In addition to setting AML/CFT standards, the FATF also identifies jurisdictions with serious vulnerabilities in their AML/CFT legal frameworks. In October 2007, the FATF issued a public statement stating its concern that Iran’s “lack of a comprehensive anti-money laundering/combating the financing of terrorism (AML/CFT) regime represents a significant vulnerability within the international financial system.”¹⁰² FATF noted that its “members are advising their financial institutions to take the risk arising from the deficiencies in Iran’s AML/CFT regime into account for enhanced due diligence.”¹⁰³ Iran thereafter adopted an AML law.¹⁰⁴ However, the FATF concluded that Iran’s AML/CFT

⁹⁸ Glaser Statement, *supra* note 19, at 33.

⁹⁹ Financial Action Task Force, <http://www.fatf-gafi.org> (last visited Mar. 1, 2009).

¹⁰⁰ See FATF Members & Observers, <http://www.fatf-gafi.org> (follow “About the FATF” hyperlink; then follow “Members & Observers” hyperlink) (last visited Mar. 1, 2009) (providing a list of current members and observers of FATF).

¹⁰¹ Glaser Statement, *supra* note 19, at 32.

¹⁰² Fin. Action Task Force [FATF], FATF Statement on Iran (Oct. 11, 2007), <http://www.fatf-gafi.org/dataoecd/1/2/39481684.pdf>.

¹⁰³ *Id.*

¹⁰⁴ Glaser Statement, *supra* note 19, at 28.

regime remained deficient and issued statements of concern about Iran in both February 2008 and October 2008.¹⁰⁵

The October 2008 FATF statement noted Iran's steps towards remedying its AML deficiencies, and urged Iran to "address the remaining weaknesses." In this October 2008 statement, the FATF expressed particular concern that Iran's "lack . . . of effort" to "address the risk of terrorist financing continues to pose a serious threat to the integrity of the international financial system" and declared that "[u]rgent action to address this vulnerability is necessary."¹⁰⁶ The FATF called on its members, and urged all jurisdictions, to "strengthen preventive measures to protect their financial sectors from this risk."¹⁰⁷ In response to these warnings, many major economic powers have warned their financial institutions that choosing to do business with Iran entails significant risks.¹⁰⁸

FATF is also playing a role in promoting effective implementation of the financial measures contained in Security Council resolutions targeting Iran. For example, the FATF issued guidance in June 2007,¹⁰⁹ September 2007,¹¹⁰ and October 2007¹¹¹ on implementation of these measures. This FATF work was recognized in Security Council Resolution 1803, which welcomed the guidance issued by FATF to assist states in implementing the obligations created by these provisions.¹¹²

¹⁰⁵ FATF, FATF Statement (Feb. 28, 2008), <http://www.fatf-gafi.org/dataoecd/16/26/40181037.pdf>; FATF, FATF Statement (Oct. 16, 2008), <http://www.fatf-gafi.org/dataoecd/25/17/41508956.pdf>.

¹⁰⁶ FATF Statement (Oct. 16, 2008), *supra* note 105.

¹⁰⁷ *Id.*

¹⁰⁸ Glaser Statement, *supra* note 19, at 32.

¹⁰⁹ FATF, Guidance Regarding the Implementation of Financial Provisions of United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction (June 29, 2007), <http://www.fatf-gafi.org/dataoecd/28/62/38902632.pdf>. This June 2007 guidance addressed not only the financial measures contained in Resolutions 1737 and 1747 regarding Iran but also the financial measures contained in Resolutions 1695 and 1718 regarding North Korea's WMD and missile programs.

¹¹⁰ FATF, Annex: Financial Sanctions Against a Financial Institution Designated Under United Nations Security Council Resolutions Relating to Prevention of WMD Proliferation (Sept. 5, 2007), <http://www.fatf-gafi.org/dataoecd/23/16/39318680.pdf>.

¹¹¹ FATF, Guidance Regarding the Implementation of Activity-Based Financial Prohibitions of United Nations Security Council Resolution 1737 (Oct. 12, 2007), <http://www.fatf-gafi.org/dataoecd/43/17/39494050.pdf>.

¹¹² S.C. Res. 1803, *supra* note 83, ¶ 2.

4.3. Outreach to Key Foreign Financial Institutions

From 2006 to the end of the Bush Administration, senior Treasury Department officials engaged in an unprecedented initiative of outreach to the international financial private sector, “meeting with more than 40 banks worldwide to discuss the threat Iran poses to the international financial system.”¹¹³ Through this initiative, Treasury “shared information about Iran’s deceptive financial behavior and raised awareness about the high financial and reputational risk associated with doing business with Iran.”¹¹⁴ In response to this campaign, more than 80 banks around the world, including “most of the world’s top financial institutions,”¹¹⁵ have curtailed business with Iran.¹¹⁶ Some leading financial institutions have dramatically scaled back their Iran-related business, while others have halted it entirely.¹¹⁷

Many financial institutions have responded to Treasury’s outreach by cutting off Iranian business in dollars but not other currencies.¹¹⁸ Some of Treasury’s financial measures against Iran may thus contribute to undermining the dollar’s preeminence in global financial markets, thereby rendering such measures less impactful in the future.¹¹⁹ This is a significant concern, and strong consideration should be given as to how to design future financial sanctions to minimize their risk to the dollar’s primacy. However, with Iran speeding towards nuclear weapons capability—a gravely dangerous prospect—and Treasury’s financial measures apparently the most effective existing peaceful means of increasing U.S. leverage over Iran, deploying these measures now is likely worth the risk.

Treasury officials attribute the success of their outreach efforts to their emphasis on Iran being “demonstrably engaged” in illicit financial conduct and the sensitivity of the international financial

¹¹³ Glaser Statement, *supra* note 19, at 34.

¹¹⁴ *Id.*

¹¹⁵ Paulson Remarks, *supra* note 25.

¹¹⁶ See Wright, *supra* note 28, at 31 (noting that over eighty banks have ceased doing business with Iran).

¹¹⁷ Glaser Statement, *supra* note 19, at 34.

¹¹⁸ *Id.*

¹¹⁹ As Bush Administration Treasury Secretary Paulson stated, “Treasury can effectively use these tools largely because the U.S. is the key hub of the global financial system” and that “maintaining this standing . . . makes our strategy possible.” Paulson Remarks, *supra* note 25.

private sector to reputational and business risk.¹²⁰ In its outreach to foreign governments and international private financial institutions, Treasury has tried to emphasize that the issue is not just “conduct that the U.S. doesn’t like politically, but conduct that’s contrary to international law or international standards and norms.”¹²¹

Treasury officials have also raised the prospect of business and reputational risks posed by doing business with Iran. For example, Bush Administration Secretary of the Treasury Henry Paulson cautioned business executives that in light of Iran’s deceptive financial practices, including its use of front companies, and since “[t]he IRGC is so deeply entrenched in Iran’s economy and commercial enterprises, it is increasingly likely that if you are doing business with Iran, you are somehow doing business with the IRGC.”¹²² For international private financial institutions, this is reputationally daunting given the IRGC’s leading role in Iran’s terrorism and proliferation activities,¹²³ and legally daunting in light of the Treasury Department’s designation of the IRGC under Executive Order 13382 and the Security Council’s inclusion of three designated IRGC entities and nine designated IRGC senior officials on the list of designees with respect to which all states must freeze assets and “ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of these persons and entities.”¹²⁴

Stuart Levey, the Under Secretary for Terrorism and Financial Intelligence under President Bush and now President Obama, has also addressed the issue of reputational and business risk. Levey notes that “[f]inancial institutions want to identify and avoid dangerous or risky customers who could harm their reputations

¹²⁰ See Glaser Statement, *supra* note 19, at 34–35 (explaining the importance of involving the private sector in aiding the enforcement of sanctions against countries engaged in illicit conduct).

¹²¹ Fang, *supra* note 42, at C2. (quoting Adam Szubin, director of Treasury’s Office of Foreign Assets Control).

¹²² Paulson Remarks, *supra* note 25.

¹²³ Bush Administration Treasury Secretary Paulson accused the IRGC of being “directly involved in the planning and support of terrorist acts.” *Id.*

¹²⁴ S.C. Res. 1737, *supra* note 81, ¶ 12; see also S.C. Res. 1747, *supra* note 82, ¶ 4, Annex I (reaffirming and applying the measure stated in S.C. Res. 1737, ¶ 12 to the persons and entities in Annex I).

and business.”¹²⁵ Treasury Deputy Assistant Secretary Daniel Glaser concurs, stating that “[r]ather than comply with just the letter of the law, we have seen many in the banking industry voluntarily go beyond their legal requirements because they do not want to handle illicit business.”¹²⁶ Many banks around the world now screen their customers against Treasury’s list of designees, even when they are not required to do so by the laws of the country in which the bank is domiciled.¹²⁷ So cognizant are major U.S. and foreign banks of the risks posed to them by the infiltration of illicit money, that all of them now have offices dedicated to protecting against such infiltration.¹²⁸ Treasury’s designations advise these offices of “who they need to protect against.”¹²⁹

Although Treasury officials tend to downplay it, international private financial institutions have also likely halted Iran-related business in response to Treasury’s outreach because those institutions are concerned that continuation of Iran-related business could result in regulatory penalties such as fines or even loss of access to the U.S. market. The size of the U.S. market, the primacy of the dollar and of U.S. banks in the international financial system, and the powerful impact on Banco Delta Asia from Treasury’s mere threat to cut it off from the U.S. financial system¹³⁰ would presumably make many banks leery of putting their access to the U.S. banking system at risk for the sake of maintaining financial ties to terrorists or proliferators.

Periodic large fines have also sent a message to international private financial institutions that there is a price to be paid for being caught doing business with entities and individuals designated as having links to terrorism and proliferation. For example, in May 2004 the Federal Reserve fined UBS, Switzerland’s largest bank, \$100 million for sending U.S. dollars to Cuba, Iran, Libya and Yugoslavia and intentionally hiding the transactions by

¹²⁵ *Minimizing Potential Threats from Iran: Assessing the Effectiveness of Current US Sanctions on Iran: Hearing Before the Senate Committee on Banking, Housing and Urban Affairs*, 110th Cong. (2007) (statement of Stuart Levey, Under Secretary for Terrorism and Financial Intelligence), available at http://banking.senate.gov/public/_files/ACF44E2.pdf.

¹²⁶ Glaser Statement, *supra* note 19, at 35.

¹²⁷ Paulson Remarks, *supra* note 25.

¹²⁸ *See id.* (discussing the methods taken by reputable banks because they do not want to be associated with terrorists and proliferators).

¹²⁹ *Id.*

¹³⁰ *Id.*

filing false monthly reports to the Federal Reserve.¹³¹ In December 2005, ABN Amro Bank NV, a Dutch firm, was fined \$80 million by U.S. federal and state financial regulators for actions including modification by its branch in Dubai of payment instructions on wire transfers, letters of credit and checks issued by Iran's Bank Melli and a Libyan bank in order to hide their involvement in the transactions and enable access to the U.S. banking system.¹³² As one former Treasury official put it, the Treasury Department's success in persuading foreign banks to curtail transactions with Iran is due in part to those banks' eagerness "to avoid being the 'next ABN AMRO.'" ¹³³

Most recently, in January 2009, Lloyds TSB Bank had to pay \$350 million in fines and forfeiture as a result of a scheme in which Lloyds altered or "stripped" wire-transfer information to hide the identities of Iranian and Sudanese clients in order to deceive American financial institutions and enable the clients to access the U.S. banking system.¹³⁴ The stripping of wire-transfer information "made it appear that the transactions originated at Lloyds TSB Bank" in the United Kingdom rather than in the sanctioned countries.¹³⁵ Screening mechanisms at U.S. banks would have raised an alarm if the actual source of the funds had been evident, but coming from a respected British bank, the transfers were not questioned.¹³⁶ In some cases, the transferred funds "appear to have purchased items within" the United States.¹³⁷ In others, the funds were being channeled through U.S. banks to foreign vendors

¹³¹ UBS Fined \$100 Million Over Trading of Dollars, N.Y. TIMES, May 11, 2004, at C17.

¹³² Paul Blustein, *Dutch Bank Fined for Iran, Libya Transactions: \$80 Million Levied for Foreign Dealings, Money Laundering*, WASH. POST, Dec. 20, 2005, at D1. Treasury stated: "Between December 2001 and April 2004, ABN AMRO's overseas branches removed or revised references to entities in which the Governments of Libya and Iran had an interest before forwarding wire transfers, letters of credit and U.S. dollar checks to ABN AMRO branches in New York, NY and Chicago, IL." OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEP'T. TREASURY, ENFORCEMENT INFORMATION FOR JANUARY 3, 2006 (Jan. 3, 2006), available at <http://www.treas.gov/offices/enforcement/ofac/civpen/penalties/01032006.pdf>.

¹³³ Jacobson, *supra* note 39, at 73.

¹³⁴ Chad Bray, *Lloyds TSB Settles with U.S. Officials*, WALL ST. J., Jan. 9, 2009, at B8.

¹³⁵ *Id.*

¹³⁶ *Tehran's Strip Club: How Lloyds Bank Helped Iran's Global Shopping Spree*, WALL ST. J., Jan. 12, 2009, at A12.

¹³⁷ *Id.*

requesting payment in dollars.¹³⁸ Lloyds admits to “stripping” with respect to Iranian clients until 2004.¹³⁹ As of the writing of this article in January 2009, it was unclear whether Treasury’s invigoration of Iran financial sanctions beginning in 2005 played any role in causing Lloyds to refrain from restarting the wire-transfer information stripping it halted in 2004.

Whatever their motivations, once some international private financial institutions decide to halt business with entities or individuals of concern, “it becomes an even greater reputational risk for others not to follow, and so they often do.”¹⁴⁰ Such voluntary private decisions in turn make it “even more palatable for foreign governments to impose similar measures because their financial institutions have already given up the business, thus creating a mutually-reinforcing cycle of public and private action.”¹⁴¹

Treasury’s financial measures are also seen as more palatable because unlike sanctions of the past that targeted entire countries and were criticized as harming innocent people, Treasury’s measures are perceived as more targeted.¹⁴² In addition, Treasury has imposed these financial sanctions in a graduated manner, providing Iranian entities and individuals with “numerous opportunities to alter their behavior before further measures are imposed.”¹⁴³ This has helped build international support for the sanctions by demonstrating that “the purpose of such measures is not simply to punish the Iranian regime, but also to encourage a change in behavior.”¹⁴⁴

5. CONCLUSION

Treasury’s conduct-based, intelligence-grounded, targeted financial sanctions have thus far proven to be among the twenty-first century’s most effective and important new counterterrorism and counterproliferation tools. The imposition of such sanctions on Iran has resulted in more than eighty banks around the world,

¹³⁸ *Id.*

¹³⁹ Bray, *supra* note 134.

¹⁴⁰ Paulson Remarks, *supra* note 25.

¹⁴¹ Glaser Statement, *supra* note 19, at 35.

¹⁴² Fang, *supra* note 42, at C1.

¹⁴³ Jacobson, *supra* note 39, at 74.

¹⁴⁴ *Id.*

including most of the world's top financial institutions, curtailing business with Iran; has disrupted key Iranian trading relationships; and has decreased Iran's ability to finance vital petroleum development projects. As a result, in November 2008, sixty leading Iranian economists called in an open letter for the regime to drastically change course, saying that Iran's "'tension-creating' foreign policy has 'scared off foreign investment'"¹⁴⁵ and cost the Iranian economy "many billions of dollars."¹⁴⁶

The Treasury Department's financial sanctions strategy against Iran includes several innovations that seem highly likely to impact the design of future sanctions against other targets. These include direct outreach to individual foreign private financial institutions, the aggressive use of financial authorities to pursue political goals, and the effective development and harnessing of intelligence about global financial transactions.

Treasury's outreach to individual foreign private financial institutions has persuaded many—including most of the world's top financial institutions—to take steps against Iran that go beyond what is required of them by their home countries' laws. Treasury has found that its unprecedented direct outreach to a country's key private financial institutions can yield results much more quickly than does outreach to that same country's government, which can lack political will or the necessary authority, or may face cumbersome bureaucratic procedures for exercising whatever relevant authorities it does have. Once some foreign private financial institutions decide to halt business with entities or individuals of concern, the reputational risk for others not to follow is increased, and so they often do follow. Such private sector decisions can in turn make it more politically feasible for foreign governments to impose restrictions because the relevant companies in their jurisdiction have already given up the business. Globalization has inevitably increased the business interests in the United States of many leading foreign companies, leaving them subject to U.S. government regulation and leverage, and reliant on the good will of the U.S. government and consumers. As a result, major foreign companies in sectors beyond finance may also be susceptible to direct outreach by the U.S. government.

¹⁴⁵ Daragahi, *supra* note 37.

¹⁴⁶ *Sixty Iranian Economists Write Open Letter to President*, BBC WORLDWIDE MONITORING, Nov. 14, 2008, at 3.

Another of the financial sanctions strategy's innovations is the U.S. Treasury Department's newfound willingness to use its financial authorities to pursue political goals. Because global financial flows are increasing rapidly and already exceed the worldwide trade in goods and services, Treasury's willingness to use its financial muscle to pursue political goals is going to become increasingly important. This financial muscle seems likely to be applied to additional targets. It will likely also be applied in new ways, as experience, creativity and changes in the financial markets and regulatory regimes lead Treasury to enhance and refine the initial set of financial sanctions tools discussed in this article.

A third innovative element of the financial sanctions has been Treasury's exceptionally effective development and use of intelligence about global financial transactions. The availability of such intelligence has been enhanced by the advance of technology, the increasing integration born of globalization, and most governments' more rigorous regulation of financial transactions as a result of U.S. advocacy at FATF and the U.N. following the September 11 attacks. Technological advances (including the internet and mobile telecommunications) and increasing integration have likely increased the potential transparency of other transnational activities, such as travel and communications. It may be tempting for the U.S. government to enhance its harnessing of intelligence from such activities.

The Obama Administration may decide to try to replicate in other sectors the innovative willingness to use financial sector economic and regulatory muscle to pursue political goals and the Treasury Department's novel tactic of direct outreach to individual foreign private financial institutions. If so, foreign companies in exceptionally globalized, strategic, regulated, and information-rich sectors such as mobile telecommunications, the Internet, aviation, and energy could be next in line. Before the Obama Administration takes such steps, however, it should analyze and weigh very carefully both the risk posed by such measures to U.S. economic and regulatory preeminence in those sectors and the risk that such steps might set problematic precedents that could be used against the United States by current or future adversaries.¹⁴⁷

¹⁴⁷ For example, the United States depends heavily on Chinese purchases of American debt, a dependence which provides China with significant leverage over the United States. See, e.g., Keith Bradsher, *China Losing Taste for Debt From the U.S.*, N.Y. TIMES, Jan. 8, 2009, at A1.

Any such moves into additional sectors should be designed with an eye to minimizing those risks.

In the meantime, there is considerable potential for the application of Treasury's initial set of financial sanctions tools to additional security challenges and to greater worldwide effect. In order for this potential to be achieved, many more nations must (1) adequately outlaw terrorist and proliferation finance and money laundering, and (2) implement laws giving their finance ministries the authority to effectively access and use intelligence and quickly impose sanctions against the financing of terrorism and proliferation. Several key U.S. allies have yet to adequately outlaw money laundering and terrorist finance, and even more countries have yet to develop the authorities and capabilities necessary to apply targeted financial measures to any terrorist group other than Al Qaeda and the Taliban.¹⁴⁸ In addition, and in order to ensure that such financial sanctions do not lead to a counterproductive undermining of the dollar's primacy in international financial transactions, the managers of the leading alternative currency, the Euro, must become full partners in imposing sanctions against financiers of terrorism and proliferation.

¹⁴⁸ Paulson Remarks, *supra* note 25.