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**TOWARD INTERNATIONAL PEACE AND SECURITY
ADDRESSING THE CHALLENGE OF NUCLEAR
PROLIFERATION IN A GLOBALIZED WORLD**

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TOWARD INTERNATIONAL PEACE AND SECURITY
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Both the European Union (EU) and the United States (US) have indicated that addressing the proliferation of weapons of mass destruction (WMD) and the need for further disarmament are key features of their respective security strategies. The United Nations Security Council, in a recent debate chaired by President Obama, has reaffirmed that the proliferation of WMD constitutes a threat to international peace and security, and called upon all states to further work toward disarmament. State parties recently reviewed one of the pillars of the global non-proliferation regime, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), in May 2010. In addition, a new Treaty on the Reduction and Limitation of Strategic Offensive Arms was revised this year and is scheduled for votes in Russia and the United States in the coming months. Still, recent developments concerning the Islamic Republic of Iran and the Democratic People's Republic of Korea (North Korea) have highlighted the importance of strengthening the current non-proliferation regime and the need for new and more effective means of enforcement.

The Obama Administration has announced a number of key initiatives to advance this objective, and the EU has indicated that it wishes to promote and give effect to its security strategy, including through the continued development of dialogue, coordination and cooperation with the United States. Moreover, the international community has demonstrated a willingness to support such measures through affirmative votes in the United Nations Security Council (UNSC) on Resolution 1540¹, which was intended to

¹ See UN Security Council Resolution 1540 (2004).

prevent proliferation to non-state actors and states of proliferation concern. In addition, Resolutions 1718 and 1929 have targeted specific violations made by North Korea and Iran respectively. Finally, international summits that promote dialogue and cooperation among states have grown in frequency and scope². These events and subsequent agreements encourage governments to maintain their focus on the issue of non-proliferation among the myriad challenges they face. In addition to the aforementioned resolutions and other international legal measures, the international community and state governments alike must also consider alternative methods at countering WMD proliferation, which has been identified as fundamental to peace and security in the Twenty-First Century.

With a growing number of threats to governance in the international system that result from globalization and technological innovation, it is no surprise that states have come to rely more heavily on each other and the global community for support. While the EU is partially constrained by the ultimate outcome of its own integration process, limited knowledge on this issue, and the national interests of its Member States, other governments are also experiencing difficulty in domestic implementation of international resolutions. To better understand the impact of the most recent sanctioning efforts, this paper will explore the development of the non-proliferation regime, examine implementation mechanisms of non-proliferation agreements, and analyze the impact of increased cooperation among states to thwart the spread of WMD technology and material. Case studies of unilateral measures undertaken by the US and EU against Iran will provide insight into the political and economic implications of economic sanctions

² Mace, Gordon and Hugo Loiseau. "Cooperative Hegemony and Summitry in the Americas" in *Latin American Politics and Society*, Vol. 47, No. 4 (Winter, 2005), pp. 107-134.

from individual governments. New and emerging methods for limiting rogue states and non-state actors from acquiring the means to develop WMD will also be discussed in an effort to further discussion for future policy debates on this critical topic.

HISTORICAL OVERVIEW

The core of the non-proliferation regime can be found in the Treaty on the Non-Proliferation of Nuclear Weapons, which went into force on 5 March 1970³. After decades of negotiation among the five nuclear powers and the international community, the treaty set out eleven provisions that are designed to limit the spread and use of nuclear weapons while providing the necessary research support to those states who seek to harness nuclear energy for peaceful means. This binding agreement also created the International Atomic Energy Agency (IAEA), which acts as an oversight mechanism for state parties and may conduct investigations of alleged violations to the treaty as well as provide guidance for safeguarding nuclear material. As signatories to the treaty, states with nuclear weapons are called upon to decrease the size of their arsenals while those states that do not have weapons are asked not to develop them⁴. Although this grand compromise appealed to all parties to the convention during the time of ratification, several states have either subsequently withdrawn from or refused to sign the NPT in order to pursue weapons programs that fit their national interests. North Korea is the only state to have withdrawn from the treaty regime⁵ while India, Israel, and Pakistan

³ See "Brief Background on Non-proliferation Treaty" accessed from <<http://www.un.org/Depts/dda/WMD/treaty/>>

⁴ See the Treaty on the Non-Proliferation of Nuclear Weapons. Accessed from <http://www.un.org/disarmament/WMD/Nuclear/pdf/NPTEnglish_Text.pdf>

⁵ Chafee, Devon. "North Korea's Withdrawal from Non-Proliferation Treaty Official" from *Nuclear Age Peace Foundation*. 10 April 2003. Accessed from <http://www.wagingpeace.org/articles/2003/04/10_chafee_korea-npt.htm>

never added their names to the list of state parties⁶. Despite this alarming behavior, the NPT has been ratified by former nuclear weapons states as well. These include countries like South Africa and the former Soviet states of Ukraine, Belarus, and Kazakhstan⁷. Such responsible actions by governments ought to encourage the global community to continue its pursuit of a world free of nuclear weapons.

A variety of international relations theories define interactions among states as reflective of the interest of individual governments and their need for survival in the Westphalian system⁸. While withdrawal from the NPT is often seen as a threat to international and regional stability, this act is not outside the customary bounds of acceptable behavior given that states may act in their own self-interest. In fact, the United States has been known to “unsign” or refuse to ratify international agreements on a variety of issues out of alleged concern for its national security or fundamental values⁹. Still, there have been states that do act in violation of nuclear treaty obligations without taking the necessary steps to withdraw from the NPT. The IAEA has conducted investigations over alleged nuclear weapons programs and research facilities in Iraq, North Korea, and Iran at the urging of member states and international organizations. Demonstrating the resolve of the international community to thwart the spread of nuclear weapons, the United Nations Security Council has authorized inspections of scientific

⁶ “World Leaders Urge Non-signatories to Sign NPT” in *Times of India*. 4 May 2010. Accessed from <<http://timesofindia.indiatimes.com/world/rest-of-world/World-leaders-urge-non-signatories-to-sign-NPT/articleshow/5888287.cms>>

⁷ Federation of American Scientists. “The Nuclear Information Project.” 2009. Accessed from <<http://timesofindia.indiatimes.com/world/rest-of-world/World-leaders-urge-non-signatories-to-sign-NPT/articleshow/5888287.cms>>

⁸ Wendt, AE. “The agent-structure problem in international relations theory.” *International Organization*. 2009, Cambridge Press.

⁹ See status of Rome Statute and Kyoto Protocol.

facilities through the support of state parties to the NPT. As technology and globalization increase their respective roles in the global community, the international non-proliferation regime will require a renewed commitment from governments, academia, and military personnel to work together in order to ensure effective monitoring of critical materials and production.

While the non-proliferation regime relies heavily on international agreements to limit states from using or obtaining nuclear weapons, individual governments may also take steps on their own to encourage international actors to comply with these standards. Short of military force, the most common form of coercion to change state behavior is found in diplomatic and/or economic sanctions. These tools are implemented in order to deter a state from acting against the will of another state without resort to armed conflict. As mentioned previously, Iran is the only state that is currently acting in violation of its NPT obligations. Beginning in November 2003, the international community cited numerous reports from watchdog organizations that report Iran acting counter to the IAEA Safeguards Agreement¹⁰, which it signed in 1974. Four years later, the EU and US have imposed a number of sanctions on the Iranian government due to its non-compliance with the NPT and recommendations made by the IAEA. These sanctions follow mostly from UNSC resolutions, which began threatening action against Iran for its nuclear activities as early as 2006¹¹. The most recent of these resolutions is UNSC Resolution 1929, adopted on 9 June 2010. With Tehran recently announcing construction

¹⁰See "Statement by the Iranian Government and Visiting EU Foreign Ministers." 21 October 2003. Accessed from <http://www.iaea.org/NewsCenter/Focus/iaeaIran/statement_iran21102003.shtml>

¹¹ IAEA Director General. "Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran." 27 February 2006. Accessed from <<http://www.iaea.org/Publications/Documents/Board/2006/gov2006-15.pdf>>

of ten new nuclear enrichment facilities¹², the international community will need to act quickly in order to prevent the growth and possible weaponization of Iran's program. To this end, the US and EU announced their own unilateral sanctions that were designed to target specific sectors of the offending state while giving deference to the IAEA and UN Security Council. These measures will be discussed in greater detail in following section of this paper.

CASE STUDY: RESPONSE TO IRANIAN NUCLEAR AMBITIONS

International Legal Framework

A number of legally binding international agreements is focused on the threat of WMD proliferation. In addition to those safeguards implemented under the NPT, the United Nations Security Council has passed several resolutions targeting emerging nuclear programs. Resolution 1540, passed in 2004, called upon states to refrain from providing any form of support to international actors that attempt to "develop, acquire, manufacture, possess, transport, transfer, or use" weapons of mass destruction and directs member states to "adopt and enforce appropriate and effective laws" in their domestic systems¹³. UNSC Resolutions 1696, 1737, 1747, and 1803 subsequently set the framework for sanctions that specifically targeted the Iranian nuclear program specifically. Resolution 1696 was adopted in 2006 by the UNSC following more than three years of Iranian non-compliance with the NPT and failure to cooperate with the

¹² Erdbrink, Thomas. "Ahmedinejad vows dramatic expansion of Iran's nuclear program" in *The Washington Post*. 30 November 2009. Accessed from <<http://www.washingtonpost.com/wp-dyn/content/article/2009/11/29/AR2009112900992.html>>

¹³ United Nations Security Council Resolution 1540. 28 April 2004. Accessed from <<http://www.state.gov/t/isn/73519.htm>>

IAEA¹⁴. Four months earlier, the UNSC President had issued a statement calling on Iran to suspend its nuclear program. After failing to bring its program in line with accepted standards, Resolution 1696 gave Iran thirty days to suspend all “enrichment-related and reprocessing activities” or else face UNSC sanctions¹⁵. Following Iran’s prolonged failure to comply, the UNSC adopted Resolution 1737 in the same year. This resolution called upon all member states to prevent Iran from obtaining “all items, materials, equipment, goods and technology which could contribute to Iran’s enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems.” Furthermore, the resolution prohibited states from providing technical or financial assistance, including investment, to people or entities related to Iran’s nuclear activities. The resolution also limited the travel and froze the funds of certain Iranian nationals and entities. Finally, it gave Iran sixty days to either comply with the NPT regulations and UNSC Resolutions 1696 and 1737 or face further sanctions¹⁶. After Iran failed once again to comply with UNSC resolutions, the Security Council adopted Resolution 1747 in 2007. This added an arms embargo to the existing sanctions on Iran. The resolution also imposed yet another sixty-day deadline for Iran to suspend prohibited nuclear activities or be confronted with another round of sanctions¹⁷.

¹⁴ See United Nations Security Council Resolution 1696 (2006).

¹⁵ UN Department of Public Information. “Security Council Demands Iran Suspend Uranium Enrichment by 31 August, or Face Possible Economic, Diplomatic Sanctions” 31 July 2006. Accessed from <<http://www.un.org/News/Press/docs/2006/sc8792.doc.htm>>

¹⁶ UN Department of Public Information. “Security Council Imposes Sanctions on Iran for Failure to Halt Uranium Enrichment, Unanimously Adopting Resolution 1737.” 23 December 2006. Accessed from <<http://www.un.org/News/Press/docs/2006/sc8928.doc.htm>>

¹⁷ UN Department of Public Information. “Security Council Toughens Sanctions Against Iran, Adds Arms Embargo with Unanimous Adoption of Resolution 1747. 24 March 2007. Accessed from <<http://www.un.org/News/Press/docs/2007/sc8980.doc.htm>>

Due to continued non-compliance with Security Council resolutions, the UNSC adopted Resolution 1803 in 2008. This resolution expanded the list of people and entities subject to travel restrictions and funds freezes. Furthermore, it called upon states to monitor the activity of subsidiaries and branches of “all banks domiciled in Iran” for potential links to the nuclear program. The resolution also required states to inspect cargoes going in and out of Iran on airplanes and boats owned by Iran Air Cargo and Islamic Republic of Iran Shipping Line when they reach member states’ airports and seaports and to report the results of these inspections to the UNSC. Finally, the resolution set a deadline of ninety days from its adoption for Iran to cooperate with the IAEA and to suspend its enrichment and reprocessing activities while leaving the door open for further sanctions in the event of Iran’s sustained failure to comply¹⁸.

The most recent set of sanctions on Iran was created by the adoption of UNSC Resolution 1929 on 9 June 2010. While it maintains the arms embargo and the asset freezes on Iranian nationals and entities, and bans Iranian investment in “sensitive nuclear activities abroad,” the resolution also prohibits Iran from taking any action in connection with ballistic missiles that could carry nuclear weapons. Furthermore, the resolution expands the cargo inspection regime by calling for inspections not only in the territorial waters of member states, but also on the high seas, and by requiring states to seize and destroy prohibited items found during inspections. The text broadens the sanctions on Iranian banks by prohibiting states from entering into “new banking relationships with Iran” or allowing Iranian banks to open new branches abroad.

Resolution 1929 also targets the Islamic Revolutionary Guard Corps (IRGC) by freezing

¹⁸ UN Department of Public Information. “Security Council Tightens Restrictions on Iran’s Proliferation-Sensitive Nuclear Activities, Increases Vigilance Over Iranian Banks, Has States Inspects Cargo.” March 2008. Accessed from <<http://www.un.org/News/Press/docs/2008/sc9268.doc.htm>>

the assets of businesses related to the IRGC and by calling upon states to require their businesses to monitor all transactions that involve the IRGC. Finally, the resolution establishes a panel of experts to oversee the implementation of sanctions, report violations of sanctions, and work on improving enforcement of the sanctions regime on Iran¹⁹.

The vote on Resolution 1929 represents how states in the global community currently perceive the threat to international peace and security posed by Iran. The twelve members voting in favor of the document reflect the intentions of a majority of governments, including the five permanent members of the Security Council, to thwart Iran's progression toward nuclear weapon status. To them, Iran has resisted all efforts at diplomatic resolutions and will continue to do so as demonstrated through its reluctance to comply with IAEA regulations. Still, a handful of states including Brazil, Turkey, and Lebanon wish to pursue alternative options with regard to Iran's nuclear program. They believe that providing support for civilian nuclear power will keep Iran from advancing down the path toward highly enriched uranium and benefit the broader population²⁰. The passage of Resolution 1929 signifies a renewed commitment by the international community to halt Iran's uranium enrichment, limit its acquisition of a variety of weapons, and increase financial and travel restrictions on the Islamic Revolutionary Guard, defense officials, scientists, bankers, and other trade officials. Thus, when it comes to enforcing sanctions on Iran, the global community can employ a number of measures that seek to limit the growth of an illicit nuclear weapons program.

¹⁹ Remarks by UN Ambassador Susan Rice. "New UN Security Council Sanctions on Iran." 9 June 2010. Accessed from <<http://www.state.gov/p/nea/rls/142882.htm>>

²⁰ United Nations Security Council Resolution 1540. 28 April 2004. Accessed from <<http://www.state.gov/t/isn/73519.htm>>

US Strategy Toward Iran

Since the removal of the Shah in the 1979 Iranian Revolution, the United States has maintained a strained relationship with Iran given the two countries' perspective of its role in the Middle East. Nearly every administration since President Carter has seen Iran as a threat to US interests in the region while Tehran has sought to exert greater influence over its neighbors through proxy wars and financial support for likeminded political organizations. The Iranian Revolutionary Guard Corp and the theocratic leadership of the country, which were direct results of the Iranian Revolution and currently exert power over the country, are sources of great tension between Washington and Tehran²¹. While the IRGC did, in fact, limit its research into enrichment of fissile material following the Revolution, it has since empowered the existing program infrastructure that was in place since the 1960s Atoms for Peace Program²². Many scholars and regional experts believe that Iran actually renewed its pursuit of a strong nuclear program in the early 1990s as a result of Russian expertise. Evidence of such an effort can be found in IAEA reports released in 1992²³.

Due to American goals of nuclear disarmament and compliance with international legal obligations such as the NPT, the US government has taken a number of steps to thwart Iran's ambitions to become a nuclear power. Beginning in 1995, President Clinton signed several executive orders that reinforced the terms of the International

²¹ Daugherty, William. "Jimmy Carter and the 1979 Decision to Admit the Shah into the United States" from *American Diplomacy*. 2003. Accessed from <http://www.unc.edu/depts/diplomat/archives_roll/2003_01-03/dauherty_shah/dauherty_shah.html>

²² Roe, Sam. "An atomic threat made in America" in *Chicago Tribune*. 28 January 2007. Accessed from <<http://www.chicagotribune.com/news/nationworld/chi-061209atoms-day1-story,0,2034260.htmlstory>>

²³ Lunev, Stanislav. *Through the Eyes of the Enemy*. Regnery Publishing, Inc., 1998

Emergency Economic Powers Act and exerted greater pressure on the Iranian government to halt research on or production of nuclear material²⁴. While the United States had maintained diplomatic sanctions on the government through the absence of an embassy and freezing of certain assets, this marked the first time in which the US resorted to severe economic restrictions on the government.

Despite the fact that these measures demonstrated greater resolve by the US government to enforce the terms of the NPT, export restrictions remained lax and allowed for agricultural and medical goods to be exchanged between the two countries. In other words, little was actually being done to press the Iranian government where it was most vulnerable to internal pressure from citizens and external pressure from trade. Still, such enforcement mechanisms promoted a broader appreciation and expectation among government agencies and private companies that violations would be investigated and action would be taken to punish the guilty party²⁵. This action has led to a customary understanding by corporations that financial transactions with rogue states may come under scrutiny by the international community and terminated through legal agreements or other forms of coercion.

Since the passage of Security Council Resolution 1929, the United States has taken additional steps to reinforce international efforts at curbing Iran's nuclear ambitions. For example, President Obama signed the Comprehensive Iran Sanctions, Accountability, and Divestment Act on 1 July 2010, which banned all imports from Iran, banned all exports to Iran except those protected by existing trade law, and gave the

²⁴ See Executive Order 12959 (1995).

²⁵ *Ibid.*

President broad authority to apply specific sanctions based on circumstances.

Specifically, the act provided for mandatory financial sanctions, tougher human rights penalties for Iranian abusers, and restrictions on the sale of repressive technology with provisions that compel the government to investigate violators of the law²⁶.

In addition to economic limitations, Congress also incorporated the Iran Refined Petroleum Sanctions Act into the new law, which sought to limit companies incorporated in the United States from supplying refined petroleum to Iran. The sanctions now include a ban on all imports from Iran except for “informational materials” and those that are protected by trade law. The new law is also broader in the sense that it covers “investment” in the energy sector as well, which includes finance, insurance, shipping, and other industries. This means that financial institutions as well as energy firms will be targets trade restrictions and may be prohibited from conducting business and banking or property transactions can be subject to penalty. In order to promote sound business practices and incentivize compliance with the new statute, the President may now waive investigation of a company or may terminate investigation once commenced, if the company terminates illegal activity or has taken “significant verifiable steps toward stopping the activity.” The corporation must also provide the government with “reliable assurances” that it will not engage in prohibited business transactions in the future²⁷. Thus, by including more robust trade limitations on a critical section of Iran’s economy, the United States is sending a clear message to the government and international

²⁶ Comprehensive Iran Sanctions, Accountability, and Divestment Act. 24 June 2010. Accessed from <<http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.2194>>

²⁷ *Ibid.*

community regarding its commitment to thwart Iran's efforts at expanding its nuclear program.

Another approach that the United States is taking involves opening a dialogue with the Iranian government to encourage it join multiparty talks as a way for both states to maintain their domestic legitimacy and work toward a comprehensive solution. The P5+1 was established and consists of the five permanent members of the UN Security Council (US, UK, Russia, China, and Japan) and Germany. Negotiations carried out under this format take a "dual track strategy" to address Iran's nuclear program. Track one of the discussions consists of several comprehensive proposals made by the P5+1 to encourage the Iranian government to limit operations at its key nuclear facilities and implement transparency measures for its nuclear activities. The second track consists of Security Council resolutions, which impose sanctions on Iran and demand that it suspend all uranium enrichment-related and reprocessing activities, as well as construction of a heavy water reactor. The group is essential to improving communication between the states because the US and Iran only operate "interest sections" in proxy governments' embassies to correspond to their current cut off in diplomatic relations. In this case, Tehran's interests are represented by Pakistan while Washington maintains its section within the Swiss embassy. Thus far, the P5+1 has produced a number of proposals including provisions to encourage Iran to comply with international agreements including the prospect of WTO membership, a nuclear R&D program, as well as technological and financial assistance²⁸. As of this writing, Tehran has been unwilling to adopt any measures that would satisfy the six-country group, although it often submits alternatives

²⁸ Crail, Peter. "History of Official Proposals on the Iranian Nuclear Issue" in *Arms Control Association*. June 2010. Accessed from <http://www.armscontrol.org/factsheets/Iran_Nuclear_Proposals>

to the P5+1 in an effort to demonstrate good faith or to avoid direct confrontation with the international community.

With the status of the group in jeopardy due to continued renegotiation, the United States may consider alternative strategies for confronting Tehran and exerting its influence on the government through expanded sanctions or military action. To date, government officials have discussed a range of options to keep Iran from reaching its perceived goal of highly enriched uranium. One proposal includes targeted strikes on Iran's suspected nuclear enrichment facilities. General Michael Hayden, former Director of the CIA, believes that such a move may be necessary because diplomacy is failing. According to the Washington Post, General Hayden points to the fact that "We engage. They continue to move forward. We vote for sanctions. They continue to move forward. We try to deter, to dissuade. They continue to move forward."²⁹ In other words, a military strike may be the only option left in the US arsenal to persuade Iran to abandon its nuclear ambitions. Another course of action calls for neighboring states like the UAE and Saudi Arabia to increase their engagement with Iran. This would entail the formation or support of blockades as well as military buildups by multinational forces on their borders with Iran. Recent reports indicate acute patience among Tehran's neighbors in the Middle East, which may provide an opportunity for the United States to exert greater pressure on the government beyond economic or diplomatic sanctions³⁰.

²⁹ Simon, Steven and Ray Takeyh. "If Iran came close to getting a nuclear weapon, would Obama use force?" in *The Washington Post*. 1 August 2010. Accessed from <<http://www.washingtonpost.com/wp-dyn/content/article/2010/07/30/AR2010073002672.html>>

³⁰ Black, Ian. "UAE Ambassador backs strike on Iran's nuclear sites" in *The Guardian*. 7 July 2010. Accessed from <<http://www.guardian.co.uk/world/2010/jul/07/uae-envoy-iran-nuclear-sites>>

Although a military option has always been “on the table,” according to government officials, many hold reservations about the capability of US armed forces who are continuing to engage in conflicts in Iraq and Afghanistan during a period of extended domestic economic downturn. Still, others suggest that if the United States does not take such action into its own hands, neighboring states like Israel or Saudi Arabia may preempt the US and engulf the region in a conflict of potentially catastrophic proportions³¹. Both the gravity and complexity of this situation puts even greater pressure on the P5+1 talks and existing economic sanctions to move Iran into compliance with the NPT and improved relations with the international community.

A third strategy, undertaken by the Obama Administration, involves ratification of the Treaty on the Reduction and Limitation of Strategic Offensive Arms. Although the terms of the agreement do not involve the Iranian nuclear program, the treaty does reinforce the need to reduce nuclear stockpiles and take further steps toward a world without nuclear weapons. The New START treaty requires that the US and Russia be limited to significantly fewer strategic arms within seven years from the date that the treaty enters into force. Each Party will have the flexibility to determine the structure of its strategic forces within the proscribed limits of the treaty³². Achieving this goal is not only important to the broader goal of “global zero,” it also strengthens the relationship between the United States and Russia, which has played a major role in the development of Iran’s nuclear program and economic growth. Moscow has expressed some concern over the absence of any constraints on testing, development or deployment of current or

³¹ Bolton, John. “What if Israel strikes Iran?” in *The Wall Street Journal*. 12 June 2009. Accessed from <http://online.wsj.com/article/NA_WSJ_PUB:SB124467678369503997.html>

³² Office of the White House Press Secretary. “Key Facts about the New START Treaty.” 26 March 2010. Accessed from <<http://www.whitehouse.gov/the-press-office/key-facts-about-new-start-treaty>>

planned missile defense programs or current or planned US long-range conventional strike capabilities³³. Some officials in the US government have worked to delay ratification of the treaty due to fears that the US will diminish its strategic advantage by weakening its nuclear arsenal in a time of great uncertainty. However, plans are in place to ratify the treaty by both parties within the coming year³⁴. By overcoming such reservations, Russia and the United States send a forceful message to Iran that this bilateral relationship is ongoing, effective, and influential in the global community.

The American approach to the Iranian nuclear program is, indeed, multidisciplinary and extremely complex. Still, the Obama Administration has made compliance with the NPT a core element of its national security strategy as reflected in renewed sanctions, increased dialogue and summitry, and commitment to its own reduction in the US nuclear arsenal. While these components may not ultimately keep Iran from further developing its nuclear program or even attaining a nuclear weapon, such steps must be taken in order to keep the NPT relevant and demonstrate that the international community will not be complacent in enforcing its provisions.

EU Strategy Toward Iran

Given the short existence of the European Union as a governing body charged with making policy for a continent known for historic conflicts. Despite playing host to two world wars and countless border disputes, the continent has spoken largely with one voice when it comes to the potential for proliferation of WMD, especially in the case of Iran. The organization has enacted several pieces of legislation implementing UNSC

³³ Ford, Christopher. "New START and Missile Defense" from *The Hudson Institute*. 26 July 2010. Accessed from <http://www.hudson.org/index.cfm?fuseaction=publication_details&id=7207>

³⁴ Statement from President Barack Obama 8 April 2010. Accessed from <<http://www.whitehouse.gov/blog/2010/04/08/new-start-treaty-and-protocol>>

resolutions including 1737, 1747, and 1803.³⁵ Council Common Position 2007/140/CFSP of 27 February 2007 laid the foundation for the implementation of the sanctions in UNSC Resolution 1737 by means of Council Regulation (EC) No 423/2007 of 20 April 2007.³⁶ The Council Common Position was amended by Council Common Position 2007/246/CFSP of 23 April 2007 in order to incorporate UNSC Resolution 1747 into the EU sanctions regime on Iran, which was subsequently codified with the enactment of Council Regulation (EC) No 618/2007 of 5 June 2007.³⁷ Finally, Council Common Position 2008/652/CFSP of 7 August 2008 sought to give force to UNSC Resolution 1803, which was accomplished with the passage of Council Regulation (EC) No 1110/2008 of 10 November 2008.³⁸

In addition to implementing the sanctions contained in the aforementioned UNSC Resolutions, some member states of the EU have imposed broader, unilateral sanctions on Iran in recent years. Although the US began imposing harsher unilateral sanctions on Iran beginning in 1992, the EU chose instead to adopt a policy of “critical dialogue” with Iran and declined to participate in a US-led trade and investment ban with Iran in 1995. However, since 2005 the EU has been more inclined toward sanctioning the Iranian regime, even choosing to impose sanctions beyond those mandated by the UNSC. One

³⁵ European Commission. “Restrictive Measures (Sanctions) in Force.” Accessed from <http://ec.europa.eu/external_relations/cfsp/sanctions/docs/measures_en.pdf>

³⁶ Official Journal of the European Union. “Council Common Position 2007/140/CFSP.” 28 February 2007. Accessed from <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:061:0049:0055:EN:PDF>>

³⁷ Official Journal of the European Union. “Council Common Position 2007/246/CFSP.” 23 April 2007. Accessed from <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:106:0067:0075:EN:PDF>>

³⁸ Official Journal of the European Union. “Council Common Position 2008/652/CFSP.” 7 August 2008. Accessed from <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:213:0058:0070:EN:PDF>>

such example is the discouragement of domestic companies from engaging in business with or investments in Iran.³⁹

The UK, for example, has been particularly aggressive in its unilateral sanctions on Iran. According to the UK, it had frozen \$1.59 billion of Iranian assets pursuant to EU and UN sanctions as of June 2009. Along with the other EU countries, it has continued to enforce visa bans on senior Iranian officials connected to the nuclear program. In October 2009, the UK took further steps to require its financial firms cease doing any business with Bank Mellat and Islamic Republic of Iran Shipping Lines—entities which had been previously sanctioned by the US—due to their suspected involvement in Iran’s development of nuclear weapons.⁴⁰ Due to the fact that Britain remains the closest US ally in Europe, it is often the greatest supporter of US non-proliferation policy proposals as the two countries is often interlinked on other aspects of their security relationship. However, with growing costs from joint efforts in Afghanistan, as well as other fiscal challenges facing the new coalition government, it will remain to be seen what measures will be promoted on behalf of the United States.

The European Council set the stage for a more active EU sanctions regime on Iran near the end of its 2009 session. In the “Declaration on Iran,” the Council articulated its policy toward country as falling under the “dual track approach” of diplomacy and sanctions. It expressed a desire for diplomatic engagement and negotiation, but also affirmed its willingness to pursue sanctions if Iran is unwilling to negotiate and fails to abide by past UN resolutions regarding its nuclear program. Most significantly, the

³⁹ Katzman, Kenneth. “Iran: US Concerns and Policy Responses” found in the Congressional Research Service. 6 August 2009. Accessed from <http://assets.opencrs.com/rpts/RL32048_20090806.pdf> p. 50

⁴⁰ Reuters News Service. “Fact Box: Sanctions Against Iran.” 13 October 2009. Accessed from <<http://www.reuters.com/article/idUSTRE59C22020091013>>

Council stated that it is prepared not only to support further UNSC sanctions, but also to “take the necessary steps to accompany this UNSC process.”⁴¹ This declaration demonstrates a signal of a more aggressive approach on the part of the EU toward the nuclear threat posed by Iran.

Most recently, the EU has expressed a commitment to sanctions that go beyond those instituted by UNSC Resolution 1929. On 17 June 2010, the Council released another “Declaration on Iran,” outlining new sanctions. In this document, the Council called upon the Foreign Affairs Council to implement the sanctions in UNSC Resolution 1929 as well as additional sanctions regarding the restriction of the trade of “dual use goods” and of trade insurance. The Declaration also called for further restrictions on Iranian banks and on Iranian transport companies, including the Islamic Republic of Iran Shipping Line. Furthermore, the document promoted sanctions that target the Iranian oil and gas industry by preventing “new investment, technical assistance and transfers of technologies, equipment and services related to these areas, in particular related to refining, liquefaction and LNG technology.” Finally, the Council recommended expanding the system of visa bans and asset freezes in order to specifically target the IRGC.⁴² On 26 July 2010, the European Union finalized the measures discussed above, which will reinforce both international efforts as well as those of its allies and member states.

One perspective on the EU sanctions is that they help to fill in the most glaring gaps in UNSC Resolution 1929 and reinforce steps taken by the United States to restrict

⁴¹ General Secretariat of the Council. “Conclusions: 10/11 December 2009.” Accessed from <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111877.pdf> p.16

⁴² Reuters News Service. “European Union statement on Iran sanctions.” 17 June 2010. Accessed from <<http://in.reuters.com/article/idINLDE65G1OP20100617>>

Iran's access to technology and funding sources for its nuclear program. Following the adoption of this resolution, many Western commentators declared the sanctions to be ineffective as a result of negotiations with Russia and China, who oppose any sanctions on Iran's oil and gas industries due to their significant economic interest in those areas. Some claim that the UN's failure to target Iran's oil and gas industries has been a significant factor in the ineffectiveness of past sanctions, as they are among Iran's "vital economic interests." The energy sector is of particular relevance for Iran because it not only benefits from its sale of unrefined oil, but it also does not have the capability to refine enough oil for use in its own country and therefore must import "finished petroleum products."⁴³ The oil industry alone brings in tens of billions of dollars in revenue to Iran each year. Thus, critics of Resolution 1929 have deemed it as weak since it creates only a minor inconvenience for Iran and is clearly insufficient in applying real pressure on the government to reconsider its nuclear policy.⁴⁴

The proposed EU sanctions target the Iranian oil and gas industries in several ways. First, the EU intends to prohibit new investment by its companies in the Iranian oil and gas industry, which has been established as a major source of revenue for Iran. Second, the EU will ban "transfers of technologies, equipment and services" that would allow Iran to refine its own oil, as it is currently dependent on imports of refined oil products.⁴⁵ However, it is uncertain how effective these sanctions will be in placing

⁴³ Reynolds, Paul. "New UN Sanctions Will Not Deter Iran." 9 June 2010. Accessed from <http://news.bbc.co.uk/2/hi/world/middle_east/10276100.stm>

⁴⁴ Takeyh, Ray. "Sanctions Will Not Curb Iran's Nuclear Ambitions" from the Council on Foreign Relations. 10 June 2010. Accessed from <http://www.cfr.org/publication/22414/sanctions_will_not_curb_irans_nuclear_ambitions.html>

⁴⁵ Reuters News Service. "European Union statement on Iran Sanctions." 17 June 2010. Accessed from <<http://in.reuters.com/article/idINLDE65G1OP20100617>>

pressure on the Iranian regime. Although the sanctions prohibit new investment, the EU is Iran's top trading partner and a number of companies, particularly in Denmark, Spain, Italy and Austria, already have significant investments in Iran.⁴⁶ Furthermore, there is a "longstanding practice" among German companies that have major trade ties with Iran, of exporting products through Dubai in order to avoid admitting business ventures with Iran. This practice allows EU companies to circumvent the restrictions imposed upon their business dealings with Iran by the proposed sanctions.⁴⁷ Enforcement by both the EU and the member states will be critical in monitoring divestment and ensuring that corporations comply with existing statutes. Still, it is significant that China and Russia do not support the oil and gas sanctions and therefore could lessen the pressure on Iran by filling in the gaps in investment and imports left by the EU sanctions.⁴⁸ While a present challenge, this situation demonstrates that continued dialogue and partnership among the international community will be necessary in order to limit the proliferation of WMD technology in an increasingly interconnected and globalized world.

Despite the strength of recent EU sanctions, it is important to consider their feasibility in light of clashing interests and opinions among the various EU members. The four countries that seem to pose the greatest threat to a uniform EU sanctions regime

⁴⁶ Ottolenghi, Emanuele. "Iran and the European Moment" in *The Wall Street Journal*. 21 June 2010. Accessed from <http://online.wsj.com/article/SB10001424052748704122904575314880833508458.html?mod=googlenews_wsj>

⁴⁷ Schultz, Teri. "EU Sanctions Target Iran Investments" in *Global Post*. 20 June 2010. Accessed from <<http://www.globalpost.com/dispatch/european-union/100619/eu-sanctions-iran-un-nuclear-weapons?page=0,0>>

⁴⁸ Hafezi, Parisa. "Iran Says it is Undeterred by EU Sanctions Plan" from Reuters News Service. 15 June 2010. Accessed from <<http://www.reuters.com/article/idUSTRE65E18820100615>>

are Germany, Sweden, Cyprus, and Spain.⁴⁹ Germany is the number one trading partner with Iran in the EU, with exports to Iran totaling nearly four billion euro in 2008. There is fear among many that, given German companies' historic reluctance to reduce trade with Iran and their common practice of sending exports to Iran through other ports to hide their trade with Iran, Germany will pose a problem for the uniformity of EU sanctions. In addition, Sweden maintains that sanctions are less effective than engagement and therefore is likely to attempt to constrain the scope of EU sanctions.⁵⁰ This opposition to sanctions generally can be seen not only in its rhetoric but also by its refusal, during its time as president of the EU, to endorse any sanctions against Iran after it arrested the British embassy's non-diplomatic personnel in Tehran. The Swedish foreign minister has already criticized the sanctions contained in UNSC Resolution 1929, which are milder than those proposed by the EU.⁵¹ Furthermore, Sweden, like Germany, has a number of companies that are involved in the Iranian oil and gas industries and is said to be most strongly opposed to the unilateral sanctions.⁵² While the sanctions measured was ultimately adopted, a significant responsibility will be placed on member states to ensure compliance with sanctioning regimes that are passed by the EU and Security Council.

⁴⁹ Traynor, Ian. "EU to Introduce New Iran Sanctions" in *The Guardian*. 15 June 2010. Accessed from <<http://www.guardian.co.uk/world/2010/jun/15/eu-sanctions-iran-nuclear-programme>>

⁵⁰ Castle, Stephen. "EU Signals New Sanctions Against Iran Over Nuclear Program" in *The New York Times*. 14 June 2010. Accessed from <<http://www.nytimes.com/2010/06/15/world/europe/15iht-sanctions.html>>

⁵¹ Ottolenghi, Emanuele. "Iran and the European Moment" in *The Wall Street Journal*. 21 June 2010. Accessed from <http://online.wsj.com/article/SB10001424052748704122904575314880833508458.html?mod=googlenews_wsj>

⁵² Rettman, Andrew. "EU Diplomat: No Details on Iran Sanctions Until July" in *EU Observer*. 17 June 2010. Accessed from <<http://euobserver.com/9/30309>>

Cyprus and Spain have expressed opposition to the proposed EU sanctions as well. Along with Greece and Malta, Cyprus is concerned over the lost income from Iranian shipping lines that will result from the sanctions.⁵³ On the other hand, Spain, which currently holds the EU presidency, has national energy companies with significant interests in Iran. This renders it unlikely to support enforcement of stringent sanctions that target the Iranian oil and gas industries.⁵⁴ In light of Spain's faltering economy, the downfall of which would have a severely negative impact on the rest of the EU, such cooperation will be difficult to achieve and may require innovative solutions for collaboration.⁵⁵

The effectiveness of the EU sanctions must be evaluated in light of the fact that they are unilateral. Although the US is also pursuing unilateral sanctions against Iran, the nation does not face the same level of pressure from the rest of the world. The lack of international consensus on the appropriate content of sanctions lessens their effect on Iran. Russia has repeatedly criticized the sanctions proposed by the EU and by the US and has stated that it considers these unilateral measures to amount to a dismissal of Russia's opinion on the matter.⁵⁶ Some observers warn that the unilateral sanctions undertaken by the EU, along with the perceived insult to Russia and China as permanent

⁵³Ottolenghi, Emanuele. "Iran and the European Moment" in *The Wall Street Journal*. 21 June 2010. Accessed from <http://online.wsj.com/article/SB10001424052748704122904575314880833508458.html?mod=googlenews_wsj>

⁵⁴Ottolenghi, Emanuele. "Iran and the European Moment" in *The Wall Street Journal*. 21 June 2010. Accessed from <http://online.wsj.com/article/SB10001424052748704122904575314880833508458.html?mod=googlenews_wsj>

⁵⁵ *Ibid.*

⁵⁶ "Financial Impact of EU Sanctions on Russia and Iran" in *Forbes Magazine*. Accessed from <http://www.forbes.com/feeds/ap/2010/06/17/business-financial-impact-eu-russia-iran_7698584.html?boxes=Homepagebusinessnews>

members of the UNSC, could lead to greater cooperation between Russia, China, and Iran.⁵⁷ This would severely undermine the objectives of the sanctions and further polarize the UNSC, hindering its ability to act effectively against the Iranian nuclear threat. Continued dialogue in the international community will thus be essential if a world without nuclear weapons is to be achieved, as expressed by the heads of state present in Washington in 2010.

POTENTIAL FOR COOPERATION AND COLLABORATION

In a globalized world, states must take proactive measures to combat illegal activity that pose risks to the entire human family. Through coordination, collaboration, and innovation, all states parties to multilateral agreements can work together to prevent the spread of dangerous materials throughout the international system. In just the past decade alone, the global community has developed a broad framework from which governments from around the world can play an integral role in eliminating the threat posed by WMD. Although a number of concrete programs have been discussed or introduced, several stand out as the most promising for the global community to adopt. Such partnerships include Cooperative Threat Reduction (CTR), the Proliferation Security Initiative (PSI), the Joint Data Exchange Center (JDEC), and innovative ways to restrict financial transactions to belligerent states. While these programs seek to counter the proliferation of WMD and its relevant technology, each comes with its own set of legal issues for the international community to address.

⁵⁷ Hafezi, Parisa . "Iran Says it is Undeterred by EU Sanctions Plan" from Reuters News Service. 15 June 2010. Accessed from <<http://www.reuters.com/article/idUSTRE65E18820100615>>

Cooperative Threat Reduction

The end of the Cold War brought many challenges and opportunities to the international community and the new superpower: the United States. In order to secure and dismantle left over weapons of mass destruction and their associated infrastructure in former Soviet Union states, US Senators Sam Nunn and Richard Lugar proposed what is today referred to as the Comprehensive Threat Reduction Program (CTR), housed under the Department of Defense⁵⁸. While a multilateral agreement endorsing CTR may not be attainable even though it enjoys broad international support, there are other legal agreements that are applicable to such efforts. CTR required the implementation of umbrella agreements, under which individual contracts for specific subprograms were developed. These initial agreements covered four difficult issues: taxation, liability, inspection and audit, and privileges and immunities⁵⁹.

During the first phase of the effort, the United focused on the four states of the former Soviet Union with nuclear weapons on their soil, Russia, Belarus, Kazakhstan, and Ukraine. Originally the program was seen as a stopgap initiative to keep WMD from getting into the wrong hands. Under Phase 2 of the CTR, the program was permitted to create lasting structures and multiyear projects. Given that contracts often took three years to get into place, the inability to transfer funds to meet new contingencies was a significant constraint on program flexibility. This also meant the expansion of the program from a simply defense-based enterprise to one that included both the Department of Energy and Department of State. Today, the CTR program has entered a state of

⁵⁸ See Title 22 of the United States Code, § 68a concerning foreign relations.

⁵⁹ *Ibid.*

maturity and has enjoyed a great deal of success. It has met nearly all of its objectives in the partner states including dismantling WMD infrastructure, securing technology and materials, increasing transparency, and supporting military cooperation⁶⁰. With these successes in mind, new agreements will now be needed to address emerging challenges.

Applied to current threats like North Korea and Iran, as well as to some non-state actors, the CTR has the potential to not only foster cooperation among states without infringing on other's right to peace and security. By working with governments in pursuit of WMD for security-enhancing reasons, this program provides financial and technical support for acceptable defense mechanisms. Meanwhile, a state that partners with CTR demonstrates its willingness to comply with accepted norms of behavior within the international system. The results of existing partnerships with former Soviet states illustrate the potential for success with other actors once they agree that possession of WMD is not in their interest. A combination of incentives, technology, and recognition can work to coerce a state like Iran or North Korea to renew their commitment to the NPT and more fully engage with the global community.

The Proliferation Security Initiative

In order to increase international cooperation in interdicting shipments of WMD, their delivery systems, and related materials, the United States first proposed the PSI in the spring of 2003⁶¹. While the PSI does not create a new international legal framework on its own, it does seek to use existing national authorities and international law to achieve its goals. Existing membership in the PSI stands at 95 countries as of August

⁶⁰ See Nunn-Lugar Scorecard found at <<http://lugar.senate.gov/nunnlugar/scorecard.html>>

⁶¹ Remarks by the President to the People of Poland, May 31, 2003. <http://georgewbush-whitehouse.archives.gov/news/releases/2003/05/20030531-3.html>

2009⁶². Through coordinated training activities and shared resources governed by the Operational Experts Group, this network of states is committed to providing information that might contribute to PSI efforts through intelligence and other national means⁶³. To date, the PSI has been responsible for dozens of interdictions as reported by government officials at liberty to comment on intelligence activities⁶⁴. Still, challenges related to “flags of convenience” as well as noncompliance by key states make success of the program more difficult to achieve and further legal action more necessary.

A number of multilateral, bilateral, and domestic agreements comprise the existing legal framework necessary to thwart the trafficking, smuggling, and spread of illicit material around the globe. The United Nations Convention on the Law of the Seas can act as a guide in determining the capabilities and limits on states to protect their interest in the global commons. In the case of the PSI, these guidelines can be found in measures pertaining to the boarding of vessels on the high seas, navigation of international waters and those within a state’s jurisdiction, as well as the appropriate use of force for interdicting suspect ships⁶⁵. As previously mentioned, the United Nations recently endorsed parts of the PSI in Security Council Resolution 1540, which calls upon states to “refrain from providing any form of support to non-state actors that attempt to develop, acquire, manufacture, possess, transport, transfer, or use” WMD and directs member states to “adopt and enforce appropriate and effective laws” that forbid non-state actors from

⁶² For a current list, see <http://www.state.gov/t/isn/c27732.htm>

⁶³ The 20 members of the OEG are: Argentina, Australia, Canada, Denmark, France, Germany, Greece, Italy, Japan, the Netherlands, New Zealand, Norway, Poland, Portugal, Russia, Singapore, Spain, Turkey, United Kingdom and the United States. <http://www.state.gov/t/isn/115491.htm>

⁶⁴ Under Secretary for Arms Control and International Security Robert Joseph, Warsaw, Poland, June 23, 2006. Available at <http://www.state.gov/t/us/rm/68269.htm>.

⁶⁵ See UN Nations Convention on the Law of the Sea (1982)

doing so⁶⁶. This measure has been implemented to enforce UNSC Resolution 1874, which requires interdiction of WMD and other weapons going to and from North Korea,⁶⁷ and more recently in Resolution 1929 that impacts nonproliferation efforts related to Iran⁶⁸. Furthermore, the 2005 Protocol for the Convention on Suppression of Unlawful Acts Against the Safety of Maritime Navigation “creates a ship boarding regime based on flag state consent similar to agreements that the United States has concluded bilaterally as part of the Proliferation Security Initiative”⁶⁹. Together, these agreements promote the mission of the PSI by demonstrating international support for the interdiction of shipments suspected to be carrying technology or materials designated for WMD construction.

In addition to those agreements promoted by the United Nations, other international organizations also work to strengthen the nonproliferation regime through the development of norms of behavior designed to limit the spread of illicit material. Organizations like NATO, the IAEA, and INTERPOL require strong coordination among intelligence agencies from contributing states. While the sharing of information may seem counterproductive to a state’s security interests, the broader goals of nonproliferation overcome many country differences. The United States has made it part of its national security doctrine to combat the spread of WMD and related technology and materials as stated in actions taken by each branch of government. President Bush’s

⁶⁶ See UN Security Council Resolution 1540 (2004)

⁶⁷ See UN Security Council Resolution 1874 (2009)

⁶⁸ See UN Security Council Resolution 1929 (2010)

⁶⁹ Protocol for the Convention on Suppression of Unlawful Acts Against the Safety of Maritime Navigation (2005)

Executive Order 13382 prohibits U.S. persons from doing business with entities designated because of their proliferation activities⁷⁰. The US Treasury took steps to weaken the capabilities of those who seek nuclear weapons and illicit materials through strict controls on exports and financial transactions. Even the United States Supreme Court handed down a decision in June 2010, which outlawed any material support to non-state actors that are designated as threats to US national security⁷¹. From these mandates and a clear legal roadmap, the US intelligence community is equipped to work toward the goal of stopping the spread of weapons technology and other dangerous materials.

Joint Data Exchange Center

Another venture established between the US and Russia may also apply to emerging threats to international peace and security. The Joint Data Exchange Center (JDEC), which is intended to sit in Moscow, was designed to promote exchange of information derived from each side's missile launch warning systems on the launches of ballistic missiles and space launch vehicles. It will also serve as the repository for the notifications to be provided as part of an agreed system for exchanging pre-launch notifications as well. While planning for such an entity began in 1998 between US President Clinton and Russian President Yeltsin, little has been executed over the past two administrations to carry out the proposed project. Still, both governments continued to profess strong support for the center as it promotes safety and security in a volatile geopolitical environment. In July 2005, US officials announced that terms had been reached on what was considered the most troublesome aspect of the project: an

⁷⁰ See Executive Order 13382 (June 2005)

⁷¹ See *Holder v. Humanitarian Law Project* (2010)

agreement for both sides to dispose of 34 metric tons of weapons-usable plutonium. Yet the deal has yet to take effect because Moscow has not given its formal approval. In fact, American officials repeatedly describe the delay as merely a product of the bureaucratic process⁷².

The JDEC would allow parties to exchange information in real time and across more than just offensive weapons. The purpose of sharing such data is to mitigate the possibility that benign activities are misinterpreted as an attack, similar to the 1963 Hotline Agreement between the US and Soviet Union. As the first bilateral agreement between adversaries, this type of partnership may act as a guide for future collaboration with more states⁷³. In an age in which WMD and missile technology are available on black markets and sold as dual use goods, early-warning systems may be the most realistic solution to concerns over rogue governments and non-state actors in possession of such material. Countries may also use the center to examine strategies related to missile defense, defensive weapons, and space sensors. A number of misunderstandings and disagreements have occurred since the introduction of the Strategic Defense Initiative, or Star Wars, by President Reagan in 1983⁷⁴. The establishment of an open forum in which data and proposals are exchanged may enhance cooperation in this area and further limit states that wish to develop WMD with the intention of threatening regional or international security.

⁷² Remarks from interview with General James E. Cartwright on "Joint Data Exchange Center Hold." June 2006. Accessed from <http://www.armscontrol.org/act/2006_06/CartwrightInterview>

⁷³ "Memorandum of Understanding Between the United States of America and Union of the Soviet Socialist Republics Regarding the Establishment of a Direct Communications Link (Annex)" from the Department of State. 20 June 1963. Accessed from <<http://www.state.gov/www/global/arms/treaties/hotline1.html>>

⁷⁴ Baucom, Donald. "Missile Defense Milestones" from *Federation of American Scientists*. 1997. Accessed from <http://www.fas.org/spp/starwars/program/milestone.htm>>

Restrictions on Financial Transactions

The United States, European Union, and other members of the international community may also exert significant pressure on rogue actors in the form of financial restrictions. The US statute known as the Foreign Corrupt Practices Act of 1977 (FCPA) and the International Anti-Bribery Act of 1998 have been used in a number of instances to prevent capital from flowing toward states that align themselves against American interests. Furthermore, international agreements including several specific treaties under the Organization for Economic Cooperation and Development (OECD) were designed to impose penalties on actors who support corrupt governments including Iran. Ultimately, these measures give teeth to sanctions that are designed to limit illegal activity of corrupt governments. The global community, through cooperation with multinational corporations, has the ability to severely restrict Iran's nuclear ambitions through firm economic constraints. Given the history of the FCPA and its impact on foreign policy, the US government is well equipped to enforce sanctions against states that are found in violation of international agreements through such legal mechanisms.

The FCPA as well as other statutes and treaties provide the US government and international community with a legal framework to stop corruption. Signed into law in 1977, the FCPA was originally designed to meet transparency requirements for the Securities and Exchange Commission (SEC) and to prohibit bribery of foreign officials. The statute permits the United States to have extraterritorial jurisdiction over corporations and individuals that file reports with the SEC or have their principal place of business in the United States. Two provisions of the 1977 Act also provide criminal penalties for American businesses that use "interstate commerce" to further a transaction

offer or “anything of value” to a foreign official or to a political party as a way of influencing the individual’s decision-making. Criminal penalties for violations of the FCPA range from \$100,000 fines and/or five years imprisonment for individuals to \$2 million for corporations. Furthermore, a civil penalty of \$10,000 for corporations can be incurred when the Attorney General takes appropriate action in district court by placing limits on corrupt activity⁷⁵.

The international community has developed its own mechanisms for fighting bribery between states and businesses. In 1997, the OECD adopted a Convention on Bribery of Foreign Public Officials in International Business Transactions. This document, signed by all member states and five others, provided a means for controlling financial investments by legal persons that aid corruption⁷⁶. The following year, the United States adopted implementing legislation known as the International Anti-Bribery Act to bring itself into compliance with the treaty. As a result, the new legislation included a “knowing” standard that explicitly defined levels of disregard and “willful blindness” which includes a “conscious purpose to avoid learning the truth.” Thus, the statute’s primary focus was not on the amount of the financial transaction, but rather the intent of individual or corporation in entering corrupt contracts⁷⁷.

The FCPA has had a significant impact on business practices around the world. The first major case involving the FCPA and a non-US company took place in October 2006. In its proceedings against the Norwegian company, the United States government asserted that it had jurisdiction over Statoil on the basis of its listing on the U.S. stock

⁷⁵ See Title 15 of the United States Code §78dd-1

⁷⁶ See International Anti-Bribery and Fair Competition Act of 1998. Pub.L. 105-366, 112 Stat. 3302.

⁷⁷ *Ibid.*

exchange. Although the case was eventually dismissed, it demonstrated the extent to which the US was willing to go to curb corruption and bribery especially when involving Iran⁷⁸. The largest fine incurred for a violation of the FCPA took place in December 2008, in which the German company Siemens was fined \$800 million for bribes to foreign officials including those in Iraq, Nigeria, China, and Vietnam. To further remedy the situation, Siemens was forced to replace senior management and hire an American lawyer as its first compliance director. These, and other measures, were implemented in order to not only legally rectify its actions, but also to improve its image and reputation with shareholders and consumers around the world⁷⁹. Efforts to prosecute corporations and individuals under the FCPA have increased over the past year as a result of growing pressure on government officials in the United States to crack down on foreign investments in rogue states like Iran. In fact, the Justice Department has prosecuted over 20 companies and individuals in recent months for sending a range of sensitive technology to Iran, including missile guidance systems, military aircraft parts and components for improvised explosive devices⁸⁰.

The aforementioned examples highlight the utility of the FCPA as a policy tool for the United States to use against states that violate international agreements when lacking a firm resolution from the UN Security Council. Despite the obvious benefits the

⁷⁸ US Department of Justice. "U.S. Resolves Probe Against Oil Company that Bribed Iranian Official." 13 October 2006. Accessed from <http://www.justice.gov/opa/pr/2006/October/06_crm_700.html>

⁷⁹ Ewing, Jack. "Siemens Braces for Slap from Uncle Sam" in *Businessweek*. 15 November 2007. Accessed from <http://www.businessweek.com/globalbiz/content/nov2007/gb20071115_063908.htm?chan=top+news_top+news+index_global+business>

⁸⁰ Foroohar, Kambiz. "Dubai helps Iran evade sanctions as smugglers ignore US laws" in *Bloomberg News*. 25 January 2010. Accessed from <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=av5smtYe_DDA>

statute provides to the US government, it may result in unintended consequences for the private sector. The impact on multinational corporations could include a loss of potential revenue as a result of contract termination and increased costs to businesses due to expensive legal compliance. Moreover, the vague nature of the “knowing” requirements force industry to choose between missed business opportunities or severe penalties depending on whether or not it elects to engage with a state that may be subject to sanctions.

As a result of increased pressure from shareholders and corporate boards, many more companies are now voluntarily pulling their business ventures out of rogue states in order to avoid entanglements with the law. In fact, both Royal Dutch Shell and Ingersoll-Rand cut back on their business operations in Iran as recently as May 2010 due to mounting efforts by the US and European governments as well as continued sanctions from the Security Council⁸¹. From here, governments have the opportunity to build on current practices with more robust solutions for tackling corruption.

On the international level, the OECD conventions provide a clear framework for states to confront bribery. Still, the US and its allies may be able to expand on the simple text of the agreement to develop an information-sharing mechanism that supports these efforts by combining resources and maximizing impact on multinational corporations. The resulting fines could be used to further encourage companies and individuals to disengage with rogue states or to support diplomatic channels to increase cooperation at little additional cost to the United States government.

⁸¹ Nixon, Ron. “2 Multinationals Pull Back From Iran” in *New York Times*. 10 March 2010; Accessed from <<http://www.nytimes.com/2010/03/11/world/middleeast/11iran.html>>

A second set of proposals that would augment the effectiveness of the FCPA and other statutes is the training of arbitrators who would work within the legal frameworks of the law to enforce its provisions. This class of litigators would require knowledge of both the legal constraints as well as the specific nature of the business transaction in question. In the case of Iran, this group would need schooling in nuclear science in order to best understand which industries or parts are applicable under the law. This tribunal would provide oversight, legitimacy, and transparency for economic sanctions that stand to benefit the US government and its allies while detracting from the rogue state's ability to be seen as a victim of worldwide oppression.

Finally, a method for enforcing continued compliance under both the FCPA and OECD treaties is essential for effective sanctions against corrupt governments like Iran. A monitoring mechanism such as the International Atomic Energy Agency could be applied to the business sector to provide credibility and accountability for governments and consumers in their efforts to limit dangerous practices such as nuclear proliferation. This body would have an obligation to member states to report breaches and identify specific sectors of industry most affected by economic sanctions. States that violate their obligations under the framework will likely incur harsher penalties due to increased exposure of breaches to the international business community. The United States and others would be supported in their efforts to persuade actors like Iran to limit illegal activity through collaboration with private entities that influence international trade.

CONCLUSION

Decisive action taken today stands to impact the course of international peace and security as the global community becomes more closely connected through globalization and technological innovation. In the case of Iran, some view the proposed sanctions on as a means of strengthening and complementing the actions taken by the UN Security Council, which failed to target Tehran's energy sector, a leading source of income for Iran. Yet, despite the ambitious language of both the United States and European Union, it remains to be seen whether these restrictions will be taken up by other states and whether the sanctions will shape Iranian incentives regarding its nuclear program. One must always consider the possible repercussions of unilateral sanctions that go beyond those imposed by the UNSC, including the likely strengthening of ties between China, Russia, and Iran and the potential polarization of the UNSC over the issue of the Iranian nuclear program. To mitigate this potential strain on multilateral efforts to thwart proliferation of WMD in a globalized world, partnerships among allies and adversaries should be formed now to bring consensus and cooperation in the globalized world of the Twenty-First Century.