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PROTECTING THE PLAYGROUND: OPTIONS FOR CONFRONTING THE IRANIAN REGIME

Bryan P. Schwartz & Christopher C. Donaldson***

INTRODUCTION

The situation facing the United States in its relations with the Iranian regime is reminiscent of schoolyard politics.¹ Imagine you are the biggest and toughest kid on the playground. All the other kids respect you out of fear of your size and strength. Now imagine you learn that your best friend is cornered by a bully across the yard near the swings. The bully has threatened your friend with violence, and rumor has it that the bully has been trying—perhaps successfully—to acquire or construct powerful weapons to make good on that threat. There is a chance the bully may wipe your best friend and many others clear off the face of the playground. What do you do?

After years of hurling threats and physical abuse by proxy at Israel, Iran is now coming closer than ever to obtaining nuclear weapons.² Some commentators believe the Iranians would use these weapons to get what they want, via threat or actual attack.³ Time is running out for the United States (and the rest of the kids on the playground) to take action to prevent a catastrophe.⁴

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1. See discussion *infra* Part I.

2. THÉRÈSE DELPECH, *IRAN AND THE BOMB: THE ABDICATION OF INTERNATIONAL RESPONSIBILITY* 10 (Ros Schwartz trans., Columbia University Press 2007) (2006).

3. See Middle East Media Res. Inst., Former Iranian President Rafsanjani on Using a Nuclear Bomb Against Israel, <http://www.memri.org/report/en/0/0/0/0/0/582.htm>.

4. For the comments of Israel's President Shimon Peres, see generally Mark Lavie, *Israeli President Takes Swipe at Iran's Nuclear Program*, *THE BOSTON GLOBE*, Apr. 30, 2008, http://www.boston.com/news/world/middleeast/articles/2008/04/30/israeli_president_takes_swipe_at_irans_nuclear_program/.

An international body like the United Nations—or, an individual country like the United States—can choose to intervene⁵ diplomatically, economically, or militaristically,⁶ and can then choose from at least two different angles (positive or negative) from which to pursue any one of these approaches. All in all, there are at least six distinct courses of action worth considering.

In Part I of this Article, for background, we briefly explore the origins of the current global tensions Iran is fueling. In Part II, we discuss the various options available to the U.S. and its allies in dealing with Iran. Finally, in Part III, we offer suggestions as to which route is best given the current environment, and we argue that the lessons of World War II might beneficially inform the approach to Iran.

Ultimately, in laying out the available options, our primary hope is that the confrontation can be resolved effectively and without cost to human life. Also, we hope the forthcoming analysis may shed some light on similar problems in the future.

I. THE ISSUES

The current Iranian regime is problematic for two main reasons. First, they have actively supported terrorism both in the Middle East and in other areas of the world.⁷ Second, they have continued to press on with their nuclear program despite the United Nations' resolutions expressing international consensus that they must end it.⁸ The current regime has taken the role of a bully, using force (violent and otherwise) to get what it wants regardless of the consequences for the rest of the world.⁹ It is this egocentrism and lack of concern for larger global society that worries observers and has led to the calls for action.¹⁰

A. Terrorism

The current Iranian regime has a history of providing financial and ideological support to violent organizations. In Lebanon, the regime has funded Hezbollah since its inception.¹¹ In Gaza, the regime provides

5. See discussion *infra* Part II.

6. See discussion *infra* Part II.

7. See discussion *infra* Part I.A.

8. See discussion *infra* Part I.B.

9. See discussion *infra* Part II.A–B.

10. For an example of a call to action, see S.C. Res.1835, U.N. Doc. S/RES/1835 (Sept. 27, 2008).

11. See Andrea Levin, *Death and Destruction are Hezbollah's Goals*, THE BOSTON GLOBE, Aug. 8, 2006, http://www.boston.com/news/world/middleeast/articles/2006/08/08/death_and_destruction_are_hezbollahs_goals/.

support to both Hamas and Palestinian Islamic Jihad (“PIJ”).¹² In supporting these groups, the Iranian regime has had a direct or indirect hand in the deaths of thousands around the world.

In the early 1980s, Hezbollah was created by the Iranian Revolutionary Guard—the regime’s militant wing under the control of the Iranian Supreme Leader.¹³ Iran reportedly injects \$120 million into Hezbollah annually¹⁴ and allegedly also provides periodic shipments of missiles.¹⁵ The fact that Iran has supported a group whose avowed goal is to destroy Israel¹⁶ has raised eyebrows around the world.¹⁷ Meanwhile, Hezbollah’s violence has reached other nations beyond Israel as well.¹⁸

In 1983, as one of its first organized acts, Hezbollah orchestrated a truck bomb attack at the U.S. Marine barracks in Beirut that killed 241 people.¹⁹ Until September 11, 2001, Hezbollah had killed more Americans than any other terrorist group.²⁰ In 1994, with Iranian funding, Hezbollah bombed the Jewish-Argentine Mutual Association building in Buenos Aires, Argentina, killing 85 and wounding 300 others.²¹ With Iran’s help, Hezbollah has spread its particular brand of violence to several corners of the globe.

But Hezbollah is not the only terrorist group that benefits from Iranian patronage. Hamas, before it became the ruling party of the Palestinian Authority, was receiving funding from Iran as well.²² And this funding increased when Hamas gained power.²³ Iran also supplies rockets²⁴ to

12. Dore Gold, *Introduction*, in JERUSALEM CTR. FOR PUB. AFFAIRS, IRAN, HIZBULLAH, HAMAS AND THE GLOBAL JIHAD 7, 7 (2007).

13. Don Mills, *Hezbollah’s Hate, Made in Iran*, NAT’L POST, July 28, 2006, at A12.

14. *Id.*

15. Amos Harel & Yoav Stern, *Iranian Official Admits Tehran Supplied Missiles to Hezbollah*, HAARETZ, Aug. 5, 2006, available at <http://www.haaretz.com/hasen/pages/ShArt.jhtml>.

16. Levin, *supra* note 11.

17. Mills, *supra* note 13.

18. See discussion *infra* Part I.A.

19. Levin, *supra* note 11.

20. *Id.*

21. *Iran Charged over Argentina Bomb*, BBC NEWS, Oct. 25, 2006, <http://news.bbc.co.uk/2/hi/americas/6085768.stm> [hereinafter *Iran Charged*].

22. See Council on Foreign Relations, *Hamas: Backgrounder*, <http://www.cfr.org/publication/8968/> (last visited Apr. 4, 2010).

23. *Hamas Secures More Iranian Funding*, AL JAZEERA, Mar. 6, 2007, available at <http://english.aljazeera.net/NR/exeres/2A62C583-E1C7-454E-B0B3-16DB56E3C4FD.htm>.

24. See Rory McCarthy, *Hamas Rockets Bring Israeli City in Range*, THE GUARDIAN, Mar. 5, 2008, available at <http://www.guardian.co.uk/world/2008/mar/05/israelandthe-palestinians>.

Hamas, a group that believes, "In the face of the Jews' usurpation of Palestine, it is compulsory that the banner of Jihad be raised."²⁵

While Hamas does not have a history of violence as extensive as Hezbollah, Iran's support for Hamas certainly raised substantial concern.²⁶ Iran has also provided a bounty to the Gaza-based Palestinian Islamic Jihad group for the rockets they fired into Israel.²⁷

The link between all three of these terrorist organizations is their anti-Semitism.²⁸ It is no secret that the Iranian regime wants to see the Israeli state removed from the Middle East.²⁹ It is the regime's avowed disdain for Israel that also drives global concern over its nuclear program. Although the Iranian regime consistently insists that it is only pursuing nuclear energy for civilian use, it has failed to convince the world of its peaceful intentions.³⁰

B. Nuclear Dispute

Iran's civilian nuclear program began with the help of the United States in 1959, but the few installations that were in place by 1980 were heavily bombed during the Iran-Iraq war.³¹ Iran's American-funded civilian nuclear program had been decimated by the time the fighting ended in 1988.³² After the war, the Iranian regime secretly began constructing a new nuclear program.³³ While it was suspected that Iran was trying to

25. THE COVENANT OF THE ISLAMIC RESISTANCE MOVEMENT art. 15, available at http://avalon.law.yale.edu/20th_century/hamas.asp.

26. See, for example, the comments of former U.S. Treasury Secretary John Snow. Press Release, U.S. Dep't of the Treasury, U.S. Designates Five Charities Funding Hamas and Six Senior Hamas Leaders as Terrorist Entities (Aug. 22, 2003), available at <http://www.treas.gov/press/releases/js672.htm>.

27. Uzi Mahnaimi, *Tehran 'Bounty' for Attack on Israel*, TIMES ONLINE, Oct. 30, 2005, available at <http://www.timesonline.co.uk/tol/news/world/article584462.eec>.

28. See *supra* text accompanying notes 22–27.

29. There are too many quotes about Israel being a "cancer" to cite.

30. See *IAEA Report Raises Concerns about Iranian Nuclear Facilities*, CNN, Nov. 16, 2009, <http://www.cnn.com/2009/WORLD/meast/11/16/iran.iaea.nuclear.facility/index.html>.

31. FRANK BARNABY, *WOULD AIR STRIKES WORK?* sec. 1.1 (Oxford Research Group, Briefing Paper) (2007), http://www.oxfordresearchgroup.org.uk/sites/default/files/would_airstrikeswork.pdf.

32. See Anti-Defamation League, *Iran's President Mahmoud Ahmadinejad in His Own Words*, Sept. 18, 2009, http://www.adl.org/main_Anti_Semitism_International/ahmadinejad_words.htm.

33. See ALIREZA JAFARZADEH, *THE IRAN THREAT: PRESIDENT AHMADINEJAD AND THE COMING NUCLEAR CRISIS* 158 (2007).

acquire nuclear weapons as early as the mid-1990s,³⁴ their strides toward developing their own devices were kept secret.³⁵ With the aid of nations such as Pakistan, China, and Russia, as well as the notorious black-market nuclear network of A.Q. Khan, Iran developed enough knowledge to master the process of uranium enrichment.³⁶ By the turn of the millennium, Iran had come a long way in developing a dual-use program.³⁷ Iran was mastering the technology necessary for building nuclear power generators, but with that ability came the knowledge needed to make nuclear weapons.³⁸

In 2002, the National Council of Resistance of Iran—an Iranian political opposition group that many accuse of being a terrorist organization—revealed these nuclear research activities to the world.³⁹ The International Atomic Energy Agency (“IAEA”) demanded inspection of the alleged nuclear research sites and discovered that Iran had been hiding significant amounts of undeclared nuclear materials.⁴⁰ Since this revelation, there has been widespread concern about the Iranian regime’s motivations.⁴¹

Attempting to assuage the concerns of the global community, the Iranian regime has denied that the program will have any military application.⁴² G. Ali Koshroo, Iran’s former Deputy Foreign Minister for Legal and International Affairs, has said that the Iranian regime believes that “the acqui[sition], development, and use of nuclear weapons [is] inhuman, immoral, illegal and against our basic principles. They have no place in Iran’s defense doctrine.”⁴³ Iran’s Supreme Leader, Ayatollah

34. For example, President Clinton’s Letter to Congress on March 14, 1997, highlighted that Executive Order 12957 was issued “in response to actions and policies of the Government of Iran, including support for international terrorism, efforts to undermine the Middle East peace process, and the acquisition of weapons of mass destruction and the means to deliver them.” Letter from William Clinton, President of the United States, to U.S. Congress (Mar. 14, 1997), *available at* <http://www.fas.org/news/iran/1997/wh97031701.htm>.

35. *See* JAFARZADEH, *supra* note 33, at 158.

36. IRAN WATCH, IRAN’S NUCLEAR PROGRAM (2004), <http://www.iranwatch.org/wmd/wponac-nuclearhistory-0904.htm>.

37. *See* JAFARZADEH, *supra* note 33, at 158.

38. *See id.*

39. SHARON SQUASSONI, CONGRESSIONAL RESEARCH SERVICE, IRAN’S NUCLEAR PROGRAM: RECENT DEVELOPMENTS 1 (2006), *available at* <http://www.fas.org/sgp/crs/nuke/RS21592.pdf>.

40. *Id.* at 2.

41. This is evidenced by the United Nations Security Council Resolutions, *infra* Part II.C.

42. *See infra* text accompanying note 43.

43. BARNABY, *supra* note 31, at sec. 1.2.

Khamenei, has also issued a religious decree saying that the production and use of nuclear weapons are forbidden under Islam.⁴⁴ Despite these statements, however, doubts persist. These doubts are probably best captured by Abbas Maleki, former Iranian Deputy Foreign Minister, who said that Iran's alleged need for peaceful nuclear power is "akin to raising cows in your house to provide you with your daily glass of milk."⁴⁵ The United States, Israel, and the U.N. Security Council obviously believe that the Iranian regime is raising its cows for a more sinister purpose.

One of the reasons for these doubts is the Iranian regime's lack of credibility.⁴⁶ In 2003, a complex web of lies regarding the conversion activities of Iranian scientists at the Tehran Nuclear Research Center was finally untangled. Confronted with its conflicting statements, the regime was forced to admit that it had lied to the IAEA.⁴⁷ It has also been revealed that the regime made false statements about their uranium metal stocks,⁴⁸ the P-2 Centrifuge program,⁴⁹ the extent of the laser enrichment program,⁵⁰ and covert experiments involving reprocessed fuel.⁵¹ It is quite understandable that, at this point, very little that the regime says about its program can be taken at face value.

To make matters worse, the Iranians have been going to great lengths to build hidden, underground facilities that are immune to conventional aerial attacks. The facilities at Natanz, for example, are buried beneath 23 meters of concrete and earth.⁵² Satellite imagery shows tunneling near some existing nuclear sites, leading some to believe that even more secret facilities are being built.⁵³ Further, international inspectors have identified nuclear activities on military-controlled sites to which they

44. *Leader's Fatwa Forbids Nukes*, IRAN DAILY, Aug. 11, 2005, <http://www.irandaily.com/1384/2347/html/index.htm>.

45. Sepehr Shahshahani, Note, *Politics Under the Cover of Law: Can International Law Help Resolve the Iran Nuclear Crisis?*, 25 B.U. INT'L L.J. 369, 417 (2007).

46. See *infra* text accompanying note 47.

47. See JAFARZADEH, *supra* note 33, at 158.

48. See *id.* at 158–59.

49. See *id.* at 162.

50. See *id.* at 165–66.

51. See *id.* at 170.

52. Whitney Raas & Austin Long, *Osirak Redux? Assessing Israeli Capabilities to Destroy Iranian Nuclear Facilities*, INT'L SECURITY, Spring 2007, at 7, 17 (2007).

53. Philip Sherwell, *Defiant Iran Insists There's No Secret as Inspectors Invited to Qom Nuclear Site*, TELEGRAPH.CO.UK, Sep. 26, 2009, <http://www.telegraph.co.uk/news/worldnews/middleeast/iran/6235547/Defiant-Iran-insists-theres-no-secret-as-inspectors-invited-to-Qom-nuclear-site.html>.

have been denied access for inspection.⁵⁴ Given the amount of circumstantial evidence, the global community is finding it hard to believe that Iran's intentions are peaceful. Some in Israel and the U.S. think that the Iranian regime is plotting a catastrophe.⁵⁵ With its contempt for the Israeli state, its long-standing support for terrorism, and its undercover nuclear operations, such concerns certainly have an air of validity. Thus, the international community must find a way to confront Iran effectively.

II. THE OPTIONS IN CONTEXT

A. Diplomacy

Diplomacy remains a viable tool for persuading the Iranian regime to change its behavior. One positive diplomatic option is to entice the regime with an offer of regional power sharing in exchange for full engagement with the international community. A negative diplomatic option is to continue to try to delegitimize the Iranian regime. As will be argued below, neither of these options is particularly attractive. Given the history of Iran's principled belligerence, other options must remain on the table.

President Ahmadinejad has caused a stir by making remarks that have been construed as denying the Holocaust.⁵⁶ Most famously, President Ahmadinejad commented in 2005 about Israel being "wiped off the map."⁵⁷ For these remarks, he has received condemnation from the U.N.,⁵⁸ mock indictments for genocide,⁵⁹ and a criminal indictment *in absentia* in Germany for Holocaust denial.⁶⁰ These are not the only con-

54. DELPECH, *supra* note 2, at 10.

55. See generally *id.*

56. See Anti-Defamation League, *supra* note 32.

57. While translations may vary, his remarks were, at least, something to that effect. For possible alternative translations, see Ethan Bronner, *Just How Far Did They Go, Those Words Against Israel?*, N.Y. TIMES, June 11, 2006, at 4.4.

58. See Press Release, Security Council, *Security Council Press Statement on Iran* (Oct. 28, 2005), available at <http://www.un.org/News/Press/docs/2005/sc8542.doc.htm>.

59. JUSTUS REID WEINER, JERUSALEM CTR. FOR PUB. AFFAIRS, REFERRAL OF IRANIAN PRESIDENT AHMADINEJAD ON THE CHARGE OF INCITEMENT TO COMMIT GENOCIDE (2006), available at <http://www.jcpa.org/text/ahmadinejad-incitement.pdf>; DAVID MATAS, INST. FOR INT'L AFFAIRS OF B'NAI BRITH CANADA, INDICTMENT OF IRANIAN PRESIDENT MAHMOUD AHMADINEJAD FOR INCITEMENT TO GENOCIDE AGAINST THE JEWISH PEOPLE 1 (2007), available at <http://www.bnaibrith.ca/pdf/institute/IndictmentIranianPresidentMarch07.pdf>.

60. Anthony David Marks, *Israeli Lawyer Registers Criminal Indictment Against Ahmadinejad in German Court*, IHC NEWS, May 14, 2006, available at <http://www.infoisrael.net/images/articles/140520061.pdf>.

troversial statements that the President has made,⁶¹ nor is this the only activity for which the Iranian regime has been the subject of criticism. In 1994, the Iranian regime funded an attack on the Jewish-Argentine Mutual Association building in Buenos Aires, which led the Argentinean authorities to indict various Iranian political figures.⁶²

The Iranian regime has consistently denied aiding the insurgencies in Iraq and Afghanistan despite evidence that they are doing just that.⁶³ The regime has shown a desire to be a regional leader when the U.S. and its coalition forces withdraw from the area.⁶⁴ This is consistent with Iranian philosophy regarding foreign relations; the traditional Islamic doctrine of *Dar al-Islam* says that lands once subjugated by Muslims should remain under Muslim control.⁶⁵ The occupation of Iraq and Afghanistan disrupts this concept of the Islamic house.⁶⁶ Of course, the Iranian regime would like to see itself playing a large role in ridding these areas of Western influence and bringing them back under Islamic control.⁶⁷

The Iranian constitution implicitly enshrines the traditional philosophy of *Dar al-Islam* by advocating the export of Islamic government throughout the world.⁶⁸ In furtherance of this goal, Iran has meddled in the affairs of Palestine,⁶⁹ Lebanon,⁷⁰ Algeria,⁷¹ Sudan,⁷² Afghanistan,⁷³

61. See Anti-Defamation League, *supra* note 32.

62. *Iran Charged*, *supra* note 21.

63. See Lionel Beehner, Council on Foreign Relations, Iran's Involvement in Iraq, <http://www.cfr.org/publication/12521/> (last visited Apr. 4, 2010); *Document: Iran Caught Red-Handed Shipping Arms to Taliban*, ABC NEWS, June 6, 2007, http://blogs.abcnews.com/theblotter/2007/06/document_iran_c.html.

64. Interview by Fletcher Forum of World Affairs with Vali Nasr, *Iran: The New Claimant to Regional Power?*, FLETCHER F. WORLD AFF., Summer 2007, at 9, 17 (2007) [hereinafter Interview with Vali Nasr].

65. BAT YE'OR, ISLAM AND DHIMMITUDE 59 (Miriam Kochan & David Littman trans., Associated Univ. Presses, 2002).

66. *Id.*

67. See, e.g., Beehner, *supra* note 63.

68. Qanuni Assassi Jumhuri'i Isla'mai Iran [The Constitution of the Islamic Republic of Iran] pmb. [1980]; see also International Constitutional Law, Iranian Constitution, http://www.servat.unibe.ch/law/icl/ir00000_.html (last visited Feb. 2, 2010).

69. See Ron Synovitz, *Middle East: Palestinian Official Accuses Iran of Orchestrating Gaza Seizure*, RADIO FREE EUROPE RADIO LIBERTY, June 25, 2007, <http://www.rferl.org/featuresarticle/2007/06/e8d6e2ff-adbb-4d20-b9b3-900f9b02afce.html>.

70. See Middle East Media Res. Inst., *Saudi Columnist in Scathing Criticism of Hiz-bullah and Syria: They are Trying to Destroy Lebanon Down to the Last Man*, June 14, 2007, <http://memri.org/bin/latestnews.cgi?ID=SD162007>.

71. Peter St. John, *Commentary No. 65: Insurgency, Legitimacy & Intervention in Algeria*, COMMENT., Jan. 1996, available at <http://www.csis-scrs.gc.ca/pblctns/cmmnt/cm65-eng.asp>.

Yemen,⁷⁴ Iraq,⁷⁵ and Somalia,⁷⁶ among other nations.⁷⁷ The Iranian regime has tried desperately to elevate itself to the level of a regional power by spending money to create and then solve problems in countries based in traditional Muslim lands.⁷⁸ The offer of a power-sharing structure in the region could perhaps prove an effective incentive for Iran to conform its behavior.

B. Economic Sanctions

The negative economic incentive is, of course, economic sanctions.⁷⁹ Kofi Annan, the former Secretary-General of the U.N., has called economic sanctions “a necessary middle ground between war and words.”⁸⁰ At the same time, there is no shortage of detractors who feel that sanctions do not work.⁸¹ Meanwhile, sanctions can produce tremendously negative humanitarian consequences not only for the citizens of the targeted state, but also for citizens of neighboring states. Even the state im-

72. *Iran Accused of Promoting Shiitism in Sudan*, SUDAN TRIB., Dec. 24, 2006, <http://www.sudantribune.com/spip.php?article19431>.

73. See Muhammad Tahir, *Iranian Involvement in Afghanistan*, TERRORISM MONITOR, Feb. 21, 2007, available at <http://www.jamestown.org/programs/gta/archivesgta/gta2007/> (follow “Volume 5 Issue 1” hyperlink, then follow “Iranian Involvement in Afghanistan” hyperlink).

74. Reuters, *Yemen Accuses Iran of Backing Shi'ite Rebels*, IRAN FOCUS, May 24, 2007, <http://www.alertnet.org/thenews/newsdesk/L24560705.htm>.

75. *Iran Spent over \$1 Billion on Meddling in Iraq: Defence Minister*, IRAN FOCUS Jan. 17, 2005, <http://www.iranfocus.com/en/iraq/iran-spent-over-1-billion-on-meddling-in-iraq-defence-minister-01258.html>.

76. The Chairman of the Monitoring Group on Somalia, *Report of the Monitoring Group on Somalia*, ¶¶ 87–94, delivered to the Chairman of the Security Council Committee, U.N. Doc. S/2006/913 (Oct. 16, 2006).

77. Yaakov Katz, *10 Israelis Recruited as Spies By Iran*, THE JERUSALEM POST, Apr. 17, 2007, <http://www.jpost.com/servlet/Satellite?pagename=JPost%2FJPArticle%2FshowFull&cid=117615281494>.

78. See Mark Tran, *Ahmadinejad: Iran ready to fill Iraq power vacuum* *Guardian Unlimited*, THE GUARDIAN, Aug. 28, 2007, <http://www.guardian.co.uk/world/2007/aug/28/usa.iraq>.

79. See Yochi J. Dreazen, *Israel Lobbies Beijing for Iran Sanctions*, WALL ST. J. (ONLINE), Feb. 26, 2010, <http://online.wsj.com/article/SB10001424052748703940704575089731976340748.html>.

80. Chantal de Jonge Oudraat, *Economic Sanctions and International Peace and Security*, in LEASHING THE DOGS OF WAR 335, 335 (Chester A. Crocker, Fen Osler Hampson & Pamela Aall eds., 2007).

81. See generally Robert A. Page, *Why Economic Sanctions Do Not Work*, INT'L SECURITY, Fall 1997, at 90, 90 (1997); Robert A. Page, *Why Economic Sanctions Still Do Not Work*, 23 INT'L SECURITY, Summer 1998, at 66, 66 (1998).

posing sanctions can be negatively affected.⁸² At the very least, economic sanctions require careful implementation in order to avoid serious unintended effects.

Now consider the positive economic incentive: aid. This can take many forms, such as direct funding from national governments or the International Monetary Fund.⁸³ Economic Aid can also be geared toward enabling a state to engage in self-help in the future—one example would be aiding Iran's push to become a member of the World Trade Organization.⁸⁴ By holding this carrot out for the regime, the world may be able to influence its behavior without imposing the negative consequences of sanctions.

Once upon a time, the U.S. had very cordial relations with Iran. These soured with the 1979 Islamic Revolution and the hostage crisis at the American Embassy in Tehran. In response to this turn of events,⁸⁵ the U.S. created the Iranian Assets Control Regulations.⁸⁶ These regulations instituted an asset freeze on the assets of the Iranian government in the U.S. and were subsequently expanded to include a full trade embargo.⁸⁷ Upon the signing of the Algiers Accords in 1981, the trade embargo was lifted and most of the frozen assets were released.⁸⁸ While these regulations still partially remain in place,⁸⁹ they are of little practical effect for the relations between the two countries today.

In 1987, a second set of sanctions came into force. President Ronald Reagan issued an executive order prohibiting all imports of goods and services from Iran into the U.S.⁹⁰ He did so “[t]o ensure that United States imports of Iranian goods and services will not contribute financial support to terrorism or to further aggressive actions against non-belligerent shipping.”⁹¹ Eventually, the Reagan Executive Order gave

82. See De Jonge Ondraat, *supra* note 80 at 335.

83. Mike Bagully, *The Iranian Dilemma*, 11 GEO. PUBLIC POL'Y REV. 111, 116 (2005).

84. *Id.*

85. OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEP'T OF THE TREASURY, WHAT YOU NEED TO KNOW ABOUT U.S. ECONOMIC SANCTIONS: AN OVERVIEW OF O.F.A.C REGULATIONS INVOLVING SANCTIONS AGAINST IRAN 4 (2009), <http://www.treas.gov/offices/enforcement/ofac/programs/iran/iran.pdf> [hereinafter U.S. ECONOMIC SANCTIONS: IRAN].

86. 31 C.F.R. § 535 (2009).

87. U.S. ECONOMIC SANCTIONS: IRAN, *supra* note 85, at 4.

88. *Id.* at 4.

89. *Id.*

90. Exec. Order No. 12613, 52 Fed. Reg. 41940 (Oct. 30, 1987).

91. *Id.*

rise to the Iranian Transactions Regulations,⁹² which codified the U.S. embargo on trade in goods and services and are still in effect today.⁹³ The Iranian Transactions Regulations, however, go further than the Reagan Executive Order as they prohibit not only the importation of Iranian goods and services, but also the exportation and re-exportation of U.S. goods, technology, and services to Iran.⁹⁴

In 1995, President Clinton's Executive Orders 12957⁹⁵ and 12959⁹⁶ tightened the sanctions against Iran even further. This time, however, the sanctions did not focus on flows of goods, services, and technology. Rather, these two executive orders prohibited flows of money from the U.S. to Iran.⁹⁷ In particular, they prohibited: new investments in Iranian property,⁹⁸ the financing of imports of goods and services, the financing of exports of goods, services, and technology,⁹⁹ and the financing, supervising, and managing of the development of petroleum resources located in Iran.¹⁰⁰ All of these provisions were also later included in the Iranian Transactions Regulations.¹⁰¹ Violations of the Iranian Transactions Regulations could be criminally punished with up to \$1 million in fines and, for natural persons, up to 20 years in jail.¹⁰²

Suspecting that the restrictions on its own citizens were not enough, the U.S. enacted the Iran and Libya Sanctions Act ("ILSA") a year later in 1996.¹⁰³ According to one American author, the act was "born out of frustration that our allies and friends were unwilling to restrict investment into Iran's petroleum sector as did the U.S. in 1995."¹⁰⁴ The purpose of the ILSA was, in effect, to bar access to American markets—essentially, to create a secondary boycott—of non-U.S. companies that

92. 31 C.F.R. § 535 (1988).

93. In 2000, the *Iranian Transactions Regulations* were eased slightly. They were amended to incorporate §560.534, which was added to allow Iranian carpets and certain food products to be imported into the United States. 31 C.F.R. § 560 (1995).

94. 31 C.F.R. §§ 560.201, 560.204, 560.205 (1995).

95. Exec. Order No. 12957, 60 Fed. Reg. 14615 (Mar. 15, 1995) [hereinafter Clinton Executive Order 12957].

96. Exec. Order No. 12959, 60 Fed. Reg. 24755 (May 6, 1995) [hereinafter Clinton Executive Order 12959].

97. See *infra* text accompanying notes 99–98.

98. Clinton Executive Order 12957, *supra* note 95, at sec. 1(e).

99. *Id.* at sec. 1(a)–1(b).

100. *Id.*

101. Iranian Assets Control Regulations, 31 C.F.R. §§560.207–560.209.

102. U.S. ECONOMIC SANCTIONS: IRAN, *supra* note 85, at 1.

103. Iran and Libya Sanctions Act of 1996, Pub. L. No. 104–172, 110 Stat. 1541 (1996).

104. Arthur T. Downey, *Extraterritorial Sanctions in the Canada/U.S. Context – A U.S. Perspective*, 24 CAN. – U.S. L.J. 215, 221 (1998).

invest in Iranian petroleum development.¹⁰⁵ While the ILSA sanctions have yet to be imposed on a foreign company,¹⁰⁶ the threat has induced non-U.S. firms to join their American counterparts and avoid investments in Iran.

The economic sanctions imposed on Iran by the United States are heavy. They include embargoes on goods, services, technology, and investment flows.¹⁰⁷ On the other hand, the sanctions are unilateral.¹⁰⁸ Although the U.S. has used the ILSA to try to influence companies in other nations to comply with the sanctions, they have no jurisdiction aside from denying access to American markets. The price of U.S. sanctions may be steep for Iran, but in the end, the application of the sanctions is quite narrow.

By 2006, the U.N. Security Council had seen several IAEA reports expressing concern over Iran's nuclear program and the Iranian regime's lack of cooperation in providing information about it. In its Resolution 1696,¹⁰⁹ the Security Council issued an ultimatum to the Iranian regime: either cease nuclear enrichment and reprocessing activities, and comply with the IAEA's transparency procedures or become the target of U.N. sanctions.¹¹⁰ The resolution gave the Iranian regime one month to comply before sanctions would take effect.¹¹¹ Needless to say, Iran refused.

On December 23, 2006, nearly four months after the deadline for compliance, the U.N. Security Council passed Resolution 1737,¹¹² marking the first round of sanctions. Among other things, this resolution prohibited the supply, sale, or transfer of goods which could aid Iran's nuclear program,¹¹³ prohibited the financing of the acquisition of such goods,¹¹⁴ limited Iran's ability to export goods related to its nuclear activities or ballistic missiles;¹¹⁵ restricted the mobility of those named persons in-

105. Lynn R. Coleman & Thomas R. Graham, *The Stars and Stripes Wherever: The Impact of Unilateral U.S. Economic Sanctions on the International Petroleum Industry*, 35 ALTA. L. REV. 334, 345 (1997).

106. DEAN A. DEROSA & GARY CLYDE HUFBAUER, *NORMALIZATION OF ECONOMIC RELATIONS: CONSEQUENCES FOR IRAN'S ECONOMY AND THE UNITED STATES* (2008), available at <http://www.nftc.org/default/trade/NFTC%20Iran%20Normalizaton%20Book.pdf>.

107. See discussion *infra* Part I.C.

108. Coleman & Graham, *supra* note 105, at 345.

109. S.C. Res. 1696, ¶ 8, U.N. Doc. S/RES/1696 (July 31, 2006).

110. *Id.* at ¶ 9.

111. *Id.* at ¶ 7.

112. See S.C. Res. 1737, U.N. Doc. S/RES/1737 (Dec. 27, 2006).

113. *Id.* ¶ 3.

114. *Id.* ¶ 6.

115. *Id.* ¶ 7.

volved with Iran's nuclear program;¹¹⁶ and also froze the assets of these persons and entities.¹¹⁷ These sanctions were subject to review after a period of 60 days.¹¹⁸ In the event that Iran did not comply with the Security Council's demands, the U.N. reserved the right to toughen the sanctions in a further resolution.¹¹⁹

When the Iranian regime failed to comply, the Security Council indeed toughened the sanctions. In Resolution 1747,¹²⁰ the Security Council broadened the list of named persons and entities that were subject to the mobility¹²¹ and asset-freezing¹²² sanctions. In addition, the Security Council restricted Iran's ability to sell and transfer arms,¹²³ and called on U.N. member nations to restrict grants, financial assistance, and concessional loans to the Government of Iran except for humanitarian or development purposes.¹²⁴ These sanctions were also subject to review after 60 days.¹²⁵ Again, Iran failed to comply.

The the third set of sanctions arrived with Resolution 1803.¹²⁶ Once more, the Security Council expanded the list of persons and entities subject to the mobility¹²⁷ and asset-freezing¹²⁸ provisions. Furthermore, the Security Council called on "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 and entities,"¹²⁹ and to "exercise vigilance over the activities in their territories with all banks domiciled in Iran"¹³⁰ This round of sanctions, however, was given an expanded 90-day period before review.¹³¹

To date, Iran has yet to comply with the Security Council's demands. At the time of this writing, a fourth round of sanctions is being contem-

116. *Id.* ¶ 10. Exceptions are made for nationals of other countries and humanitarian considerations. *See id.* at ¶ 11.

117. S.C. Res. 1737, *supra* note 112, at ¶ 12. Exceptions are made for basic necessities, among other things. *Id.* at ¶¶ 13–15.

118. S.C. Res. 1737, *supra* note 112, at ¶ 24.

119. *Id.* at ¶ 24(c).

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

121. *Id.* at ¶ 2.

122. *Id.* at ¶ 4.

123. *Id.* at ¶ 5.

124. *Id.* at ¶ 7.

125. *Id.* at ¶ 13.

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

127. *Id.* at ¶ 3.

128. *Id.* at ¶ 7.

129. *Id.* at ¶ 9.

130. *Id.* at ¶ 3.

131. *Id.* at ¶ 3.

plated which would target the assets of the Iranian Revolutionary Guards.¹³² While the Security Council does not appear to be supportive of a strong fourth round of sanctions,¹³³ other international organizations—particularly the G8 group of nations—appear poised to push for sanctions.¹³⁴ Sanctions on the assets of the Revolutionary Guards will not be as strong as those that were previously contemplated against the Iranian oil sector¹³⁵ (an embargo on refined petroleum products would be particularly painful for Iran, as 40% of the country's domestic oil consumption is refined outside of the country);¹³⁶ still, they are a step in the right direction.

In contrast to sanctions imposed by the United States, those imposed by the U.N. Security Council have very broad application. In theory, the prescribed measures are adhered to by all of the U.N. member-states. Meanwhile, the impact of U.S. sanctions is limited—the number of states joining the U.S. is limited even though the U.S. is broader in scope.¹³⁷ If sanctions as serious as an embargo on petroleum exportation to Iran are to have an immediate effect, they must be adopted by the Security Council rather than unilaterally by the U.S.¹³⁸

C. The Military Option

Many have urged the exercise of military options before Iran develops a nuclear weapon. A similar nuclear threat in 1981 resulted in the Israeli Air Force flying into Iraq and bombing the Osiraq nuclear reactor.¹³⁹ The attack was quite successful in that it slowed down the Iraqi nuclear weapons program to the point where Iraq was no longer a nuclear threat to

132. Cambell Clark, *As Frustrations Over Inaction Mount, PM Vows to Turn Screw on Iran*, THE GLOBE AND MAIL, Feb. 10, 2010, <http://www.theglobeandmail.com/news/politics/pm-backs-tougher-sanctions-on-iran/article1463356/>.

133. Joseph Nasr, *Netanyahu to lobby in Russia for Iran Sanctions*, REUTERS, Feb 14, 2010, <http://www.reuters.com/article/idUSTRE61D0WA20100214>.

134. Clark, *supra* note 132.

135. See Paul Reynolds, *Iran: New Confrontation Looms*, BBC NEWS, Aug. 3, 2009, <http://news.bbc.co.uk/2/hi/8180999.stm>; Merle David Kellerhals Jr., *United States, Allies Exploring Further Sanctions Against Iran*, AMERICA.GOV, Jan. 12, 2010, <http://www.america.gov/st/peacesec-english/2010/January/20100112141741dmslahrellek0.6837122.html>.

136. DELPECH, *supra* note 2, at 103.

137. See *supra* notes 113–115, 123 and accompanying text.

138. See Harry Wolff, Note, *Unilateral Economic Sanctions: Necessary Foreign Policy Tool or Ineffective Hindrance on American Business?*, 6 HOUS. BUS. & TAX L.J. 329, 358–59 (2006).

139. Peter Scott Ford, *Israel's Attack on Osiraq: A Model for Future Preventative Strikes?* 1 (Sept. 2004) (unpublished M.A. Thesis, Naval Postgraduate School), available at <http://www.fas.org/man/eprint/ford.pdf>.

Israel's existence.¹⁴⁰ Could a similar preemptive attack be launched against Iran? If yes, should it be launched? There are many difficulties in planning a strike on Iranian nuclear facilities. First, there is the sheer number of potential targets. In 2007, it was estimated that a strike inside Iran would present some 400 potential targets in order to have a relatively high certainty of success.¹⁴¹ Without hitting all of these targets, the Iranian nuclear program would be able to continue unfettered in some capacity until the destroyed facilities come back online.¹⁴²

Among the 400 potential targets, roughly 75 would require some sort of penetrating warhead.¹⁴³ After witnessing Iraq's experience with its Osiraq reactor, Iran took pains to hide its facilities both in underground installations and near heavily populated areas.¹⁴⁴ The facility at Natanz, for example, is covered by nearly 23 meters of concrete and earth.¹⁴⁵ Additionally, there is no guarantee that all of the 400 targets are still functioning facilities. Any type of bombing exercise would likely destroy facilities that are no longer affiliated with the nuclear program. In a heavily populated area, this is a serious concern. Further, even if all the facilities could be destroyed with minimal civilian casualties, the program might continue nonetheless. As Mohamed El Baradei, the head of the International Atomic Energy Agency, is fond of saying: "you cannot bomb knowledge."¹⁴⁶ Facilities can easily be rebuilt. Equipment can be repurchased and smuggled into the country through a variety of means regardless of the ongoing sanctions. It is the knowledge of the nuclear fuel cycle—knowledge that can survive any amount of bombing—that will keep the Iranian nuclear program alive. At this point, it seems as if it will only be a matter of time before Iran obtains the technological knowledge required to build a nuclear weapon.¹⁴⁷

140. *Id.* at 2.

141. Sam Gardiner, *Et Maintenant En Avant: Preemption and the Planning for Iran*, 57 SYRACUSE L. REV. 443, 446 (2007)

142. *See id.*

143. *See id.*

144. Bagully, *supra* note 843 at 115.

145. Raas & Long, *supra* note 52, at 17–18.

146. Interview by Daniel Dombey, Financial Times, with Mohamed ElBaradei, Head of the International Atomic Energy Agency (Feb. 19, 2007), *available at* <http://www.iaea.org/NewsCenter/Transcripts/2007/ft190207.html>.

147. If a preemptive strike is carried out, there is no doubt that the Iranian regime will translate its technological knowledge into a nuclear arsenal at the first opportunity. Such strikes also increase the likelihood that the regime will actually use those weapons, rather than simply hold them as threats. A preemptive strike could escalate the diplomatic standoff beyond the point that any amount of diplomacy could control it. Such a situation is not in anyone's interest.

There is another option—a military strike *after* the Iranian regime has obtained the materials and knowledge required to build a nuclear bomb. This, of course, would have to take a much different form. During the Second World War, the British employed tripwires for the Germans and Italians when they finally decided that appeasement was no longer possible. On March 31, 1939, the British announced that any aggression against Polish independence would bring a military response from both the United Kingdom and France.¹⁴⁸ This was followed by both governments issuing similar guarantees for the independence of Greece and Romania in April of 1939.¹⁴⁹ Hitler was infuriated watching the British engage in what he called “the policy of encirclement.”¹⁵⁰ Despite the guarantees, of course, Hitler went ahead with his plans to invade Poland on September 1, 1939, and started World War II.

In speaking about the British guarantees against Hitler’s aggressive plan, Lord Halifax said, “[I]t might still be possible to deter him from its execution if, as we had failed to do in 1914, we made it unmistakably clear that the particular acts of aggression which he was believed to have in mind would result in a general war.”¹⁵¹ Obviously, Hitler was not deterred. On the other hand, his aggression was finally unmasked and eventually his reign of terror was brought to an end. The tripwires may have encouraged the eruption of violence, but, in the end, they solved the underlying problem.

Tripwires may also be effective for the Iranian situation. Clearly, however, the hope is that they would prevent a war rather than start one. By having guidelines with a clear set of serious consequences, rational leaders would seek to confine their activities to avoid the tripwires.¹⁵² If the leaders of Iran choose to follow in the footsteps of Hitler and flagrantly violate the tripwire provisions, perhaps war is the only way to prevent them from committing atrocities against Israel. If the Iranian regime turns out to be as aggressive as Hitler was, it is probably in the world’s best interest to address the problem early on.

The positive side of military intervention is military aid, though it is not necessarily worth considering in this situation. Military aid serves its greatest purpose when the intervening party and the target regime share a mutual interest in resolving an ongoing dispute between the target regime

148. See Telford Taylor, *The Guarantee to Poland—and After*, in *BRITISH APPEASEMENT AND THE ORIGINS OF WORLD WAR II* 119, 122–23 (R.J.Q. Adams ed., 1994).

149. *Id.* at 129.

150. *Id.*

151. *Id.* at 124.

152. Interview with Vali Nasr, *supra* note 64, at 13–15.

and a third party.¹⁵³ The Iranian regime's only dispute in this case is with Israel.¹⁵⁴ Providing the Iranian regime with weapons in exchange for dropping their aggressive stance toward the Israelis is simply illogical. If military intervention is to take place, it can only be in the negative form in this situation.

II. SUGGESTIONS

A. Diplomacy

What was left of the Iranian regime's credibility has vanished after the controversial 2009 Iranian Presidential election. The recent election fiasco¹⁵⁵ appears to have eroded a large portion of the regime's power base.¹⁵⁶ The Iranian youth has become very disenchanted with Iran's political system.¹⁵⁷ The recurrent demonstrations and clashes between the opposition and the regime's security forces throughout Iran are growing increasingly violent.¹⁵⁸ Losing legitimacy and facing shrinking domestic support, the regime has been relegated to violence to suppress the opposition. It is said that domestic politics determine foreign policy.¹⁵⁹ Iran's domestic "insurrection" should give pause to the U.S. as a lead negotiator. The U.S. simply does not know whether the regime will still be in power or be replaced. The regime itself is constrained in negotiations because of the domestic situation. Also, if the regime has its hands full dealing with the domestic situation, it is unlikely to launch aggression against anyone.

153. Examples include the military aid given to Afghanistan by the United States in the early 1980s to support that regime's fight against the U.S.S.R. The U.S.S.R., of course, was the United States' main competition for global political dominance at the time. See Eric S. O'Malley, *Destabilization Policy: Lessons from Reagan on International Law, Revolutions and Dealing with Pariah Nations*, 43 VA. J. INT'L L. 319, 352-55 (2003) (discussing the United States' involvement in Afghanistan as part of a campaign to erode the authority and influence of the U.S.S.R.).

154. See generally Benjamin M. Greenblum, *The Iranian Nuclear Threat: Israel's Options Under International Law*, 29 HOUS. J. INT'L L. 55 (2006).

155. See *Iran Loser Blasts 'Illegal' Poll*, BBC NEWS, June 25, 2005, http://news.bbc.co.uk/2/hi/middle_east/4622955.stm.

156. See *Iran Rises Up*, THE ECONOMIST, June 20, 2009, at 11.

157. Sanam Vakil, *War with Iran: Avoidable or Inevitable?*, 20 FLA. J. INT'L L. 15, 16 (2008).

158. See *The Beginning of the End?: Iran in Turmoil*, THE ECONOMIST, Jan. 1, 2010, at 8.

159. Raymond Hinnebusch, *Introduction: The Analytical Framework*, in THE FOREIGN POLICIES OF MIDDLE EAST STATES 2 (Raymond Hinnebusch & Anoushiravan Ehteshami eds., Lynne Reinner Publishers 2002).

On the other hand, the regime has a habit of blaming others for its own problems. The protesters' deaths following the election demonstrations were blamed on Britain and other Western countries.¹⁶⁰ It is not outside the realm of possibility that the regime would use Israel as a distraction or scapegoat for its own internal problems. That being said, the regime seems to be aware of the potential ramifications of a preemptive attack.¹⁶¹ It would be sheer insanity to attempt any sort of violence without solidified domestic unity. Domestic turmoil and shattered credibility have left the regime politically weak and vulnerable. This situation continues to provide uncertainty with respect to plans for diplomatic engagement.

From the positive standpoint, regional power sharing also does not make much sense at the present. Given the domestic troubles currently facing the regime, Iran is in no position to assuage the civil unrest in Iraq and Afghanistan. If the regime is offered diplomatic engagement, there is no telling what lengths it may go to in order to quell the rebellious voices in the country. Further, the democratic governments of the West will not want to be seen holding hands with an unstable regime, particularly an authoritarian one.¹⁶² Given the current political environment in Iran, it is best to refrain from any sort of diplomatic measures altogether.

B. It's the Economy, Afterall

The environment is optimal, however, for further economic measures—both positive and negative. With the current political unrest, the Iranian regime may be desperate to complete its nuclear quest and reestablish its legitimacy. If this is the case, it will sink as much money as is feasible into the program to finish it as quickly as possible. If sanctions are stepped up now, they will reduce the amount of money available for the nuclear program. If the government makes cuts to social programs, hospitals, and schools in order to redirect money toward nuclear science,

160. See *Iran Blames Foreign Countries for Protester Deaths*, USA TODAY, July 31, 2009, http://www.usatoday.com/news/world/2009-07-31-iran-protester-deaths_N.htm.

161. This is evident from its discussions of its ability to attack Israel in retaliation, but not preemptively. See Nazila Fathi, *General Says Iran Can Strike Back at Israel*, THE N.Y. TIMES, Sept. 20 2007, at A12, available at <http://www.nytimes.com/2007/09/20/world/middleeast/20iran.html>.

162. See, e.g., Hubertus Hoffman, *Obama's new Foreign Policy needs a Double Strategy of Power and Diplomacy*, INTERNATIONAL ANALYST NETWORK, Nov. 23, 2008, http://www.analyst-network.com/article.php?art_id=2583 ("There are still many unstable authoritarian regimes and terrorists out there that must be contained with power, not paper. Washington must strengthen the understaffed U.S. Army and invest in new equipment and security.").

the political unrest in the country will likely boil over. Stepping up sanctions now has the prospect of suffocating Iran's nuclear program.

The population in Iran is young and growing increasingly desperate.¹⁶³ If sanctions are upgraded and the regime does nothing to offset them, the ensuing unemployment and inflation will further antagonize the population. There will be a breaking point when the Iranian population will refuse to endure the country's persisting economic problems. Such a breaking point was reached in 1979 when the Iranian people could no longer put up with the Shah's economic mismanagement.¹⁶⁴ The Iranians are a proud people, and, if the situation gets much worse, they will rise to the occasion. A strengthening of the sanctions in place could, at least theoretically, give them the final push that they need to overthrow the regime and install the democracy that the people have wanted for so long.¹⁶⁵ Sanctions and selective military force proved effective in Libya because of the country's domestic pressure at the time.¹⁶⁶

Positive economic measures might also have a drastic impact in the current environment. The regime is facing a great deal of adversity and is searching for some form of accomplishment to latch onto in order to recapture some of its legitimacy.¹⁶⁷ If the global powers were to offer the regime increased trade or a place in the World Trade Organization, for example, in exchange for an end to their nuclear activities, the regime is unlikely to forgo an opportunity to increase its legitimacy and improve its economic plight. Of course, we must also keep in mind that the regime has been duplicitous in similar situations.¹⁶⁸ If such an agreement were to be reached, there would have to be some serious—possibly military—consequences should the regime renege on the agreement and take the carrot while continuing its nuclear activities. In the event such an agreement does occur, the Iranian regime should be tied down with tripwires to the greatest extent possible.

C. The Military Option

In the current environment, if an assault is to take place on Iran before it builds a nuclear weapon, the assault must either be in response to an

163. See Vakil, *supra* note 157, at 16.

164. Jamie Lang, Note, *International Sanctions: The Pressure on Iran to Abandon Nuclear Proliferation*, 6 J. INT'L BUS. & L. 141, 148 (2007).

165. *But see* Interview with Vali Nasr, *supra* note 64, at 7–8.

166. YEHUDIT RONEN, QADDAFI'S LIBYA IN WORLD POLITICS 42, 48 (2008).

167. Vakil, *supra* note 157, at 19.

168. See JAFARZADEH, *supra* note 33, at 158–70.

attack by Iran or be in accordance with a Security Council agreement.¹⁶⁹ A Security Council agreement is highly unlikely, given the stances of Russia and China on the issue.¹⁷⁰ If Israel, or the U.S., finds a pretext that is short of full blown aggression by Iran, international support would not be behind such a retributive attack.¹⁷¹ Thus, a preemptive attack on Iran is not, at this moment, militarily, politically, *or* legally feasible. Putting tripwires in place, however, remains an attractive option.¹⁷² But, with regard to the Iranian situation, what should the tripwires be? In keeping with the historical precedent, an attack or attempted attack on another country using nuclear material should be the first red line. Traditional attacks on other countries by Iran can be dealt with in the traditional fashion—treating the act as a *causus belli* and engaging in war. Relations between states have worked under this rule for countless years and there is no reason to change now.¹⁷³

Iran usually does not engage in conventional warfare. They use proxies, such as Hezbollah or Hamas, to carry out aggression for them. The individual target countries of such attacks have done enough to deter them so far and have allies they can call on should the attacks get any worse. If Iran were to cross the threshold and ship nuclear material to these groups¹⁷⁴—whether the materials are used or not—a tripwire should be activated and the international community should step in. While a dirty bomb may not be as destructive as a conventional terrorist attack, the psychological and economic effects on the target country would be devastating.¹⁷⁵ Not only that, but dirty bomb attacks are unner-

169. Mary Ellen O'Connell, *Preserving the Peace: The Continuing Ban on War Between States*, 38 CAL. W. INT'L L.J. 41, 41 (2007).

170. Russia and China are generally opposed to sanctions. See Helene Cooper & William J. Broad, *Russia and China Endorse Agency's Rebuke of Iran*, N.Y. TIMES, Nov. 27, 2009, <http://www.nytimes.com/2009/11/28/world/28nuke.html>.

171. For example, Israel may argue that Iran's ongoing support of terror attacks against Israel constitutes a *causus belli*, and the U.S. could point to Iran's naval activities in the Strait of Hormuz. See Barbara Starr, *Iranian Boats 'Harass' U.S. Navy, Officials Say*, CNN, Jan. 7 2008, available at <http://www.cnn.com/2008/WORLD/meast/01/07/iran.us.navy/index.html>.

172. Similar suggestions have been made by other scholars. See Interview by Fletcher Forum of World Affairs with Martin Indyk, *This New Struggle for Power: Assessing American Foreign Policy in the Middle East*, FLETCHER F. WORLD AFF., Winter 2007, at 51, 57.

173. See generally James Thuo Gathii, *Assessing Claims of a New Doctrine of Pre-emptive War Under the Doctrine of Sources*, 43 OSGOODE HALL L.J. 67, 67 (2005).

174. For a discussion of Iran arming terrorists with "dirty bombs," see Greenblum, *supra* note 154, at 81.

175. Chairman of the High Level Panel on Threats, Challenges and Changes, *Report of the High Level Panel on Threats, Challenges and Change, A More Secure World: Our*

vingly simple to carry out.¹⁷⁶ Therefore, the possession or use of dirty bombs should not be tolerated. The nuclear material is likely to be fingerprinted and traced back to Iran.¹⁷⁷ If such material is used or is found in the possession of one of Iran's proxies, the international community should step in to forcibly change the regime.

Evidence that Iran is enriching uranium beyond the needs of a civilian electricity generation program should be a second tripwire. To be used in a civilian electricity generation program, uranium need only be enriched to a level of 2% to 6%.¹⁷⁸ To be used in a nuclear weapon, uranium is enriched to over 90%.¹⁷⁹ This discrepancy leaves plenty of room for a line to be drawn as to an acceptable level of enrichment. If it were discovered that the Iranians were enriching uranium past a certain point—say, 20%, for example—that could be deemed a clear sign that there are military intentions for the program. Once such evidence is established, the international community should step in and put an end to Iran's uranium enrichment. Unfortunately, given the regime's secrecy regarding its program, such evidence will likely be difficult to discover.¹⁸⁰

As a final tripwire, Iran should not be allowed to manufacture, develop, purchase, or possess any nuclear-capable warheads. Accumulation of such weapons shows a lack of good faith on behalf of the Iranian regime. Even if the regime's enrichment remains at the civilian level, the accumulation of warheads is a clear sign of a military intent. With the civilian technology already in place, it would only be a matter of months before weapons-grade uranium could be manufactured. If the warhead delivery mechanism is kept out of the Iranian regime's hands, the civilian program presents less of a threat.

The point of the tripwires is to strike a compromise between the two positions. The Iranians say they only want peaceful electricity generation, but the U.N. Security Council is concerned that they want nuclear weapons.¹⁸¹ The aim of the tripwires is to allow for a peaceful *legitimate* civilian energy program while providing guarantees that the military po-

Shared Responsibility, ¶ 113, delivered to the General Assembly, U.N. Doc. A/59/565 (Dec. 2, 2004).

176. James C. Kraska, *Averting Nuclear Terrorism: Building a Global Regime of Cooperative Threat Reduction*, 20 AM. U. INT'L L. REV. 703, 725 (2005).

177. Kristen E. Eichensehr, Comment, *Targeting Tehran: Assessing the Lawfulness of Preemptive Strikes Against Nuclear Facilities*, 11 UCLA J. INT'L L. & FOREIGN AFF. 59, 69 (2006).

178. JOSEPH CIRINCIONE, BOMB SCARE: THE HISTORY AND FUTURE OF NUCLEAR WEAPONS 163 (2007).

179. *Id.* at 162.

180. See DELPECH, *supra* note 2, at 13–15.

181. See discussion *supra* Part II.C.

tential of the program will not be realized. If the Iranian regime restricts its activities to accord with its claimed intentions, the conflict will dissipate and a war, which seems almost inevitable to some,¹⁸² will surely be avoided.

Ideally, these tripwires would be put in place by the U.N. Security Council as a supplement to economic measures. If the Iranian regime violates the terms of the tripwires, all of the nations within the international community will be free to respond in accordance with the previously agreed-upon consequences. There is the possibility, however, that either Russia or China will prevent such tripwires from being enacted.¹⁸³ Political squabbling could remove the U.N. Security Council's role as an option, but the U.N. should not be the only means of putting the tripwires in place. As an alternative, these tripwires could be enacted unilaterally by the United States and Israel. The message to the Iranian regime may not be as forceful as it would be if coming from the Security Council, but the measures could still be successful nonetheless. The key will be the enacting nation's or organization's ability to follow through with the outlined consequences.

CONCLUSION

In sum, there are three ways to approach the current problem with the Iranian regime: diplomatically, economically, or militarily. To date, the international community has taken diplomatic and economic positions and has only threatened military action. Given the current political environment in Iran, it is time to step up the economic approach and put military tripwire measures in place in the event that the economic steps prove ineffective. It is also time to consider providing the regime with some economic carrots to coax them out of their aggressive stance. Such incentives could provide the regime with a path that allows them to save face while acceding to global demands to halt their nuclear program. If something as mutually beneficial as increased trade can be given to the regime in exchange for more acceptable behavior, the option should certainly be canvassed.

On the other hand, there is always the threat that the regime will backtrack. Furthermore, other regimes may see this compromise as a green light to act like rogue states for a few years and hold global security hostage in exchange for economic benefits. To address both situations, any benefits package should be accompanied by as many restrictions and

182. See, e.g., Vakil, *supra* note 157.

183. Both nations have obstructed the passage of the three previous rounds of sanctions.

tripwires as possible. The regime needs to know that it cannot renege on its commitments, and other regimes need to see that the regime has not been completely enriched by its deviance from international norms.

As a broader point, this situation should act as a testing ground for methods of dealing with state funders of terrorism in the post-9/11 world. Whatever approach is taken by the United Nations, the United States, and the global community at large, it should be analyzed for its possible effectiveness in other situations. Of course, no two threats are the same. Nor is it viable to devise a “one-size-fits-all” approach in an international arena that is so diverse. General principles, however, should be transferable among such situations. The foreign policy toolbox contains numerous tools that should be deployed judiciously, each at the right time in light of the specific context. However, one thing is certain: Iran is not the only country that acts aggressively on the global playground. Also, Israel is not the only victim. The rest of the kids on the playground must band together to find a solution that will keep the aggressors at bay in the interest of peace, order, and mutual wellbeing.