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Letter from the President

Nema Milaninia¹

There is an oft-quoted eighth century poem written by the renowned Iranian poet, Sa'adi, that was inscribed into the entrance of the Hall of Nations at the United Nations. The poem, depicting the universality of mankind, states in Farsi:

بنی آدم اعضاء یکدیگرند
که در آفرینش یک گوهرند
چو عضو ببرد آذو روزگار
در عضوها را مانند دستار
تو که نعمت دیگران بی عنی
نشاید که نامت نهد آدمی

Symbolically, Sa'adi's poem does three things. First, it demonstrates the presence and impact Iranians have historically made in this world and in the United States. Second, and more paradoxically, it captures the idea that we are both different and similar to other communities and cultures. Lastly, Sa'adi emphasizes the importance of serving those who are less advantaged than us by noting that we are all part and parcel of one another, and that by neglecting those in need, we become affected as a whole.

Sa'adi's poem, in many ways, captures the very reason in which the Iranian American Bar Association (IABA) was created. As Iranian-Americans, we are both distinct and similar to the community around us. Distinct in the sense that we share a different cultural history, as evidenced by our special traditions, language, and cultural practices. Similar, in that, at its core, we are in no respect different than any other person who lives in this country. As noted by a respected colleague of mine, "we are no worse, and also no better, but continue to be different."

The creation of a bar association, that is designed to serve the interests of Iranian-Americans and also the community at large, is precisely a response to that genuine philosophy. The growth of the Iranian-American community over the past decade necessitated the creation of a bar association to both connect legal scholars, advocates and students of Iranian descent, and to collaborate together in order to improve and advance the interests of the Iranian-American community. It is for this reason that the IABA was formed in 2000 and that it continues to grow exponentially each year and has chapters and members all over the country, including Chicago, Houston, New York City, Los Angeles, San Francisco, Washington, D.C. and San Diego.

As judges, lawyers, and law students, we possess specific skills, knowledge, talents and attributes which make us vital assets to each other and our community. Because of these traits, the IABA is dedicated toward three principal aims: 1) to educate each other and the Iranian-American community; 2) to provide community outreach; and 3) to enable and encourage business and social networking. As part of these aims, we provide you with the *IABA Review*, a peer publication on insights into legal issues affecting our community. We hope that you enjoy this publication and help us work together to fulfill IABA's goals.

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The Iran Counter-Proliferation Act of 2007: An Analysis

Emily Blout²

I. INTRODUCTION

The House of Representatives passed the Iran Counter-Proliferation Act³ to impose additional U.S. economic sanctions and trade regulations on Iran.⁴ The Senate is in the process of passing a parallel version.⁵ Both bills include several critical measures, outlined here, which would directly impact Iranian Americans and could have significant implications for the future of U.S. policy toward Iran. Part I of this article introduces the Iran Counter-Proliferation Act of 2007. Part II analyzes the various components of the Iran Counter-Proliferation Act of 2007, the various sanction laws passed by the U.S. in the recent years, and their potential effects on the Iranian-American community. Part III discusses legislation recently introduced as alternatives to the Iran Counter-Proliferation Act of 2007: the Iran Sanctions Act of 2008 and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2008. Part IV concludes that U.S. economic sanctions alone do not guarantee a change in the Iranian government's behavior rather a comprehensive strategy of engagement, combined with targeted international sanctions and economic incentives, is required to resolve the present stand-off and permanently reduce the likelihood of war.

II. ANALYSIS: VARIOUS COMPONENTS OF THE IRAN COUNTER-PROLIFERATION ACT OF 2007

When the long title of the Iran Counter-Proliferation Act cleverly reads, "An Act to enhance United States diplomatic efforts with respect to Iran,"⁶ one is inclined to believe that passage would be a victory for diplomacy. But this bill would do nothing to enhance U.S. diplomacy with Iran or its allies. It would do little to address Congress' legitimate concerns about Iran's nuclear development, backing of destabilizing groups, and reckless threats against Israel. Instead, this bill would continue to bind the hands of the current administration and every administration thereafter in resolving the stand-off with Iran. This section will provide a point by point analysis of the central provisions of the bill.

A. Removal of the Presidential Waiver

Under current law, the President of the United States may waive the application of sanctions to nationals of a country if that country has agreed to impose independent economic sanctions on Iran or if the President determines that doing so would serve the "national interest." The presidential waiver authority is a key provision in existing sanction laws and was critical to the passage of the Iran and Libya Sanctions Act ("ILSA") in 1996.⁷

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³ Iran Counter-Proliferation Act of 2007, H.R. 1400, 110th Cong. (2007) (as passed by House of Representatives, Sept. 25, 2007).

⁴ *Id.* The purpose of H.R. 1400 is to "enhance United States diplomatic efforts with respect to Iran by imposing additional economic sanctions against Iran, and for other purposes."

⁵ Iran Counter-Proliferation Act of 2007, S. 970, 110th Cong. (Mar. 22, 2007).

⁶ *Id.*

⁷ Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, § 7, 110 Stat. 1541, 1546 (1996). "An Act to impose sanctions on persons making certain investments directly and significantly contributing to



In an apparent bow to the Administration's pressure and acknowledgement of the President's constitutionally mandated power over foreign policy, Congress fashioned ILSA, now the Iran Sanctions Act ("ISA"), with a trap door built in: it places the burden of enforcing its provisions on the shoulders of the President. In carefully crafted language, ILSA directs the President to investigate cases of foreign investment in Iran's petroleum infrastructure. It is left to the President's discretion when, or if, such investigation is concluded, thus allowing the investigative stage to be carried on indefinitely.

All amendments and revisions since the ISA's inception have upheld this built in flexibility, and the presidential waiver authority has been exercised by both the Clinton and Bush administrations. As a result, no firms have been sanctioned under ISA since its inception.⁸ But the threat of sanctions, the State Department argues, is often enough. Secretary of State Condoleezza Rice told Congress that sanction laws can serve as a symbolic tool to signal how seriously the U.S. takes Iran's proliferations and terrorism financing activities. Such laws can also be used to persuade countries to pull out of Iran voluntarily. The prospect of extensive penalties such as denial of export licenses and ineligibility for loans from the Export-Import Bank of the U.S. and of being added to U.S. black list of terrorist financing entities via the *Federal Registrar* may force businesses to think twice before dealing with Iran.⁹

The House version of the bill contains a provision that would do away with the presidential waiver authority.¹⁰ Rep. Brad Sherman, a California republican, and many of the 325 House members that sponsored the bill believe the President is not doing enough to penalize foreign entities that aid in the development of Iran's weapons and nuclear program.¹¹ The California republican criticized the President for failing to enforce existing sanction laws arguing "Bush violates American laws in order to protect Iran's business partners."¹²

B. Targeting Foreign Subsidiaries and Corporate Officers

Passage of the bill could have sweeping implications for U.S. corporations with foreign subsidiaries. The bill would sanction U.S. companies with subsidiaries directed or formed to trade with Iran.¹³ Currently, foreign companies or persons that engage in proliferation related trade may be subject to U.S. State Department sanctions under the Iran Nonproliferation Act of

the enhancement of the ability of Iran or Libya to develop its petroleum resources, and on persons exporting certain items that enhance Libya's weapons or aviation capabilities or enhance Libya's ability to develop its petroleum resources, and for other purposes." *Id.*

⁸ Kenneth Katzman, CSR Report for Cong., Iran: U.S. Concerns and Policy Responses, Order Code RS20871, at Summary (updated Dec. 26, 2007), available at <http://www.fas.org/sgp/crs/mideast/RS20871.pdf>.

⁹ United States Government Accountability Office, *Iran Sanctions: Impact in Furthering U.S. Objectives Is Unclear and Should Be Reviewed*, at 22 (2007), available at <http://www.gao.gov/new.items/d0858.pdf> ("U.S. officials have stated that publicly identifying entities and listing them in the *Federal Register* may deter other firms from engaging in business with sanctioned entities.").

¹⁰ See H.R. 1400.

¹¹ See *id.*

¹² Nathan Guttman, *Bid To Toughen Iran Sanctions Faces Obstacles On Capitol Hill*, *The Jewish Daily Forward*, Jan. 23, 2008, at 1.

¹³ See H.R. 1400. An amendment to the house bill would provide an exception to parent companies that acquire a subsidiary without knowledge of its business dealings with Iran. *Id.*



2000.¹⁴ In a dramatic departure from current sanctions policy, the bill would target corporate officers of companies investing in Iran.¹⁵ It would give the President authority to freeze the assets of any corporate officer whose company invested more than \$40 million in Iran's oil and natural gas industry.¹⁶

The international community has strongly opposed such measures in the past. Indeed, U.S. trading partners have used various blocking measures to resist what they see as the extraterritorial application of U.S. laws. In November 1996, the European Union (E.U.) issued European Council Resolution 2271/96¹⁷ in response to ILSA and other U.S. sanction laws. The said regulation, *inter alia*, forbids E.U. businesses from recognizing U.S. sanction laws and related trade regulations.¹⁸ Current sanction laws have created a sort of double jeopardy. Foreign companies find themselves trapped between reciprocal statutes, with their home countries prohibiting them from doing what is being mandated by the U.S. "If this bill passed [in its current form]," said Simon Weber of the Organization for International Investment, "we would see a major outcry from our European allies."¹⁹

C. Penalizing Russia and "Calling Iran's Bluff"

Congress has historically relied on foreign aid appropriations to penalize Russia for its dealings with Iran. For Fiscal Year (FY) 2006, Congress withheld 60% of U.S. foreign aid assistance to Russia when it failed to terminate technical assistance to Iran's nuclear and ballistic missiles programs. The foreign aid appropriation for FY 2007 contained similar measures. The bill would continue this tradition, restricting nuclear cooperation with Russia, if it continues to support Iran's nuclear or advanced conventional weapons programs.

Over the years, Russia has indicated a desire to serve as a repository for U.S.-origin spent nuclear fuel from countries such as South Korea, Switzerland, and Taiwan, estimating that it could earn as much as \$20 billion from the enterprise²⁰ The Bush Administration, like its predecessor, has attempted to use the prospect of a civilian nuclear cooperation accord as leverage in its effort to force Russia to abandon its nuclear and weapons dealings with Tehran. The current bill would take away the President's bargaining chip by rendering illegal all nuclear cooperation under Section 123 of the Atomic Energy Act²¹ with Russia.

¹⁴ See Iran Nonproliferation Act of 2000, 50 USC § 1701 note (2000). The Iran Nonproliferation Act of 2000 was amended to include Syria in 2005 (the Iran and Syria Nonproliferation Act, or ISNA), and North Korea in 2006, and is now known as the Iran, North Korea, and Syria Nonproliferation Act ("INKSNA"). *Id.*

¹⁵ See H.R. 1400.

¹⁶ See *id.* "[T]he President may block the property of any person described in paragraph (1), and prohibit transactions in such property, to the same extent as the property of a foreign person determined to have committed acts of terrorism for purposes of Executive Order No. 13224 of September 23, 2001 (50 U.S.C. 1701 note)."

¹⁷ Council Regulation 2271/96, 1996 O.J. (L 309) 1 (EC).

¹⁸ See *id.*

¹⁹ Emily Blout, National Iranian American Council, *Analysis: Sanctions bill challenges White House's control of foreign policy* (Jul. 12, 2007), http://www.niacouncil.org/index.php?option=com_content&task=view&id=836&Itemid=2.

²⁰ See Wade Boesse, Arms Control Today, *Arms Issues Divide U.S. and Russia* (Sept. 2007), http://www.armscontrol.org/act/2007_09/USRussiaArms.asp.

²¹ See Atomic Energy Act of 1954, Pub. L. No. 68-703, § 123, 68 Stat. 921, 940 (codified as amended at 42 U.S.C. § 2153 (1994)).



The bill would also provide for the creation of an “international fuel bank” to supply nuclear energy to select non-nuclear powers under the watch of the International Atomic Energy Agency.²² The project has been framed as an attempt to “call Iran’s bluff” on its professed peaceful nuclear energy ambitions. “If Tehran is true to its word, it would welcome the chance to secure a stable supply of nuclear fuel and halt its enrichment activities,” said the late Congressman Tom Lantos, who oversaw the passage of similar bill in the House last June.²³ While this provision may be aimed at undercutting Iran’s need for enrichment, it precludes Iran, as a country on the State Department’s list of state sponsors of terror, from accessing the fuel bank.

D. U.S. Imports, Aviation Exports, World Bank Development Assistance Targeted

The bill would eliminate all imports from Iran.²⁴ Since the easing of trade restrictions in 2000, a handful of goods have been eligible for importation (with tariffs) including carpets, nuts, dried fruits, carpets, and caviar. U.S. imports for such items totaled \$143 million in 2006.²⁵ The bill would do away with these rare exceptions, effectively barring all import of Iranian goods. The senate bill provides an exception for the export of some U.S. food and medicines.²⁶

The bill would also end critical U.S. exports. Under current trade regulations, some goods related to the safe operation of civilian aircraft may be licensed for export to Iran. Consecutive administrations have rejected measures that would impinge on Iran’s ability to repair its existing fleet of commercial airliners, arguing that the export of spare parts to Iran’s aging, American-made commercial airplanes is a humanitarian and safety issue. “[I]n December 1999, the Clinton administration allowed the repair of engine mountings on seven Iran Air 747s (Boeings).”²⁷ Similarly, in September 2006, the Bush administration permitted General Electric to sell Airbus engine spare parts to be installed on several Iran Air passenger aircraft by European contractors. “We do not want to be in a position of threatening civil aviation,” State Department spokesman Sean McCormack said at the time.²⁸

The current bill would do away with such humanitarian exceptions. It would bar the issuance of future licenses, revoke previously issued licenses, and generally prohibit the export or re-export of all goods and services relating to civil aviation. The bill would also pressure the World Bank to end its development assistance to Iran.²⁹ A provision of the bill would reduce U.S. contributions each year by a percentage equal to the amount that the bank loaned to Iran in the previous fiscal year.³⁰ A similar measure, in the FY 1994 – FY 1996 budget, contributed to

²² See H.R. 1400.

²³ Andrew Clayton, *Lantos: World Nuclear Fuel Bank would Call Iran’s Bluff*, National Iranian American Council Newsletter, Jun. 19, 2007, at 1.

²⁴ See H.R. 1400.

²⁵ See GovTrack.us, Budget Report: H.R. 1400: Iran Counter-Proliferation Act of 2007, <http://www.govtrack.us/congress/billreport.xpd?bill=h110-1400&type=cbo> (last visited Feb. 28, 2008).

²⁶ See Iran Counter-Proliferation Act of 2007, S. 970, 110th Cong. (Mar. 22, 2007).

²⁷ Kenneth Katzman, Issue Brief for Cong., Iran: Current Developments and U.S. Policy, Order Code IB93033, at CRS-9 (updated Jan. 29, 2003), available at <http://www.fpc.state.gov/documents/organization/17326.pdf>.

²⁸ GlobalSecurity.org, US Approves Sale of Jetliner Engine Spare Parts to Iran, <http://www.globalsecurity.org/wmd/library/news/iran/2006/iran-061011-voa01.htm> (last visited Feb. 28, 2008).

²⁹ See Iran Counter-Proliferation Act of 2007, H.R. 1400, 110th Cong. (2007) (as passed by House of Representatives, Sept. 25, 2007).

³⁰ See *id.*



the temporary halt to new World Bank lending to Iran. The bill would also provide a temporary, nominal increase in processing fees for immigrant visas, border crossing IDs and non-immigrant visas for persons from Iran.³¹

At the same time, the bill includes a provision expressly intended to reflect Congress's good will toward the people of Iran. "The American people have feelings of friendship for the Iranian people [and] regret that developments of recent decades have created impediments to that friendship."³² The bill authorizes the President to carry out exchanges with the people of Iran, particularly by identifying young people to come to the U.S. under the U.S. exchange programs.³³ Further, it allocates \$10 million of State Department funding for cultural and academic exchanges with Iran.³⁴

III. RECENT LEGISLATIVE PROPOSALS: IRAN SANCTIONS ACT OF 2008, AND THE COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT OF 2008

In June 2008, Chairman of the Senate Finance Committee, Senator Max Baucus replaced S. 970 with an original bill, the Iran Sanctions Act of 2008 (S. 3227).³⁵ The Baucus bill includes many of the same measures of S. 970, but with a few key differences. S. 3227 preserves the presidential waiver, thus allowing the President flexibility to waive the proscribed sanctions if deemed in the "national interest."³⁶ It amends the export ban by providing an exception for items of "humanitarian assistance provided to relieve human suffering" and informational materials,³⁷ whereas under S. 970, food and medicine were the only exceptions.³⁸ The bill also increases the funding for exchanges with the people of Iran from \$10 million to \$15 million and adds a sunset clause of five years. However, similar to S. 970, the Baucus bill bars all imports from Iran and prohibits the U.S. from entering into a civilian nuclear cooperation agreement with Russia until it has "suspended all nuclear assistance to Iran."³⁹

Instead of being referred to the Banking committee or the Foreign Relations committee, both of which claimed jurisdiction over part or the entirety of S. 3227, it was placed on the Senate calendar. A jurisdictional battle ensued, with Banking Committee chairman Senator Chris Dodd introducing his own alternative to the Baucus proposal, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2008.⁴⁰

Similar to S. 3227, the Dodd bill preserves presidential waiver authority.⁴¹ The Dodd bill also provides the same exceptions to the U.S. export ban as included in S. 3227 for food, medicine, and items of humanitarian assistance.⁴² A notable difference is that the Dodd bill also

³¹ *See id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Iran Sanctions Act of 2008, S. 3227, 110th Cong. (July 7, 2008).

³⁶ *See id.*

³⁷ *See id.*

³⁸ *See* Iran Counter-Proliferation Act of 2007, S. 970, 110th Cong. (Mar. 22, 2007).

³⁹ *See* Iran Sanctions Act of 2008

⁴⁰ Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2008, 110th Cong. (July 17, 2008).

⁴¹ *See id.*

⁴² *See id.*



provides an exception of U.S. export of civilian aircraft parts.⁴³ Unlike S. 970 and S. 3227, the Dodd bill also provides an exception to the US import ban, specifically for informational materials.⁴⁴ It makes no mention of a U.S.-Russia nuclear cooperation agreement, which both the Iran Counter-Proliferation Act and the Iran Sanctions Act had sought to prohibit.

Now that both Senate sanctions bills have passed their respective committees, Senators Dodd, Baucus, and others will likely confer to produce a compromise bill. However, with Congress due to adjourn in mid-September, it is unlikely that there will be enough time to debate and pass a compromised version. If the bills are not voted upon in this Congressional session, they must be re-introduced in the next Congress.

IV. CONCLUSION

More than 12 sanctions bills have been introduced in the 110th Congress. All of them share the same objective and implementation strategy: to put an end to Iran's nuclear enrichment by exacting a cost on Iran's leaders for its continued nuclear enrichment.⁴⁵ While the most recent legislation, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2008 does the most to rectify several of the flaws of its predecessors, it falls short of providing real solutions.

To be clear, unilateral economic sanctions are far from diplomacy. U.S. sanctions alone do not guarantee a change in the Iranian government's behavior. While the United States wastes time pushing unilateral sanctions policy of dubious success, Iran's nuclear program continues. A comprehensive strategy of engagement, combined with targeted international sanctions and economic incentives, is required to resolve the present stand-off and permanently reduce the likelihood of war. Passage of additional sanctions this year will make it much harder for the next administration to steer this country clear of its present collision course with Iran.

⁴³ *See id.*

⁴⁴ *See id.*

⁴⁵ *See e.g.*, Iran Counter-Proliferation Act of 2007, S. 970, 110th Cong. (Mar. 22, 2007); Iran Sanctions Act of 2008, S. 3227, 110th Cong. (July 7, 2008); Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2008, 110th Cong. (July 17, 2008)..



IRAN AND UNITED STATES: *United States Breach of the Treaty of Amity Justified?*

Alén Takhsh & Elizabeth Mirza Al-Dajani⁴⁶

I. INTRODUCTION

Relations, particularly trade relations, between the Islamic Republic of Iran⁴⁷ (“Iran”) and the United States have been fraught with mistrust and animosity for more than two and half decades.⁴⁸ The root of the jagged relationship dates back to the British and American-backed coup d’état that ousted Iran’s democratically elected Prime Minister, Mohammed Mossadegh, in 1953.⁴⁹ Relations between the two countries were especially strained following the Islamic Revolution of 1979, which forced the Shah (i.e., King) of Iran to flee and led to the infamous 444-day Iran hostage crisis.⁵⁰ Following the revolution, Ayatollah Ruhollah Khomeini, the once-exiled Shiite religious leader, reigned supreme and laid the foundation upon which present-day Iran’s anti-West stance is built.⁵¹

Iran-U.S. relations were not always strained, however, as evidenced by the 1955 *Treaty of Amity, Economic and Consular Relations between the United States and Iran* (“Treaty of Amity”). The Treaty of Amity is a self-executing treaty that was passed by two thirds majority vote of the U.S. Senate and was signed into law by President Dwight D. Eisenhower in 1957.⁵² Nevertheless, following the Iran hostage crisis, the United States invoked the statutory provisions of the International Emergency Economic Powers Act (“IEEPA”) to restrict trade with Iran under the pretext of an “emergency.”⁵³

The U.S.’s noncompliance with the Treaty of Amity has been criticized by, most notably, Abolala Soudavar, an Iranian scholar whose articles have appeared in the New York Times and the Washington Post.⁵⁴ In fact, Mr. Soudavar filed suit against the U.S. government in federal court in 2001, praying for both injunctive relief and monetary damages, essentially arguing that: 1) the Treaty of Amity constitutes “Supreme Law of the Land” under Article II and Article IV of the U.S. Constitution; 2) invocation of the IEEPA requires the existence of an “emergency;” 3) a national emergency does not exist with respect to Iran, because “‘emergency’...refers to a short

⁴⁶ Mr. Takhsh is a recent graduate of The John Marshall Law School (Chicago, Illinois) and a former member of the Executive Board of the John Marshall Journal of Computer and Information Law. Mrs. Al-Dajani is a recent graduate of The John Marshall Law School (Chicago, Illinois) and a former President of the John Marshall Middle Eastern Law Student Association. Mr. Takhsh and Mrs. Al-Dajani are both members of the IABA.

⁴⁷ CIA, *The World Factbook*, <http://www.geoplance.com/hottopics/CIawfb/factbook/geos/ir.html> (last visited Feb. 18, 2007).

⁴⁸ See Layla Nourae, *Reassessing U.S. Policy Toward Iran: Stimulating Reform Through Economic Means*, 25 SUFFOLK TRANSNAT’L L. REV. 535, 543–44 (2002).

⁴⁹ See Britannica, *Mohammed Mossadegh*, http://en.wikipedia.org/wiki/Mohammed_Mossadegh (last visited Feb. 18, 2007).

⁵⁰ Iran Chamber Society, *Historic Personalities, Mohammad Reza Shah Pahlavi*, http://www.iranchamber.com/history/mohammad_rezashah/mohammad_rezashah.

⁵¹ Encyclopedia, infoplease, *Ayatollah Ruhollah Khomeini*, <http://www.infoplease.com/ce6/people/A0827559.html> (last visited Feb. 18, 2007).

⁵² Treaty of Amity, Economic Relations and Consular Rights, U.S.-Iran, Aug. 15, 1955, 8 U.S.T. 899.

⁵³ International Emergency Economic Powers Act, 50 U.S.C. 35 § 1701(2000).

⁵⁴ Abolala Soudavar Website, <http://www.soudavar.com/page2.html> (last visited Feb. 18, 2007).



term situation that by no stretch of the imagination can go on for nineteen years;”⁵⁵ and 4) the U.S. is consequently in violation of the Treaty of Amity. The U.S. District Court for the Southern District of Texas, Houston Division, dismissed Mr. Soudavar’s complaint (discussed *infra*).⁵⁶

Notwithstanding the federal district court’s threshold inquiries that dismissed Mr. Soudavar’s cause of action, however, this article takes a closer look at the Treaty of Amity and finds that, while it does constitute Supreme Law of the Land, the U.S.’s noncompliance is justified under the IEEPA’s “emergency” provision.

II. BACKGROUND

A. *Treaty of Amity: A Contractual Agreement*

A contract is a legal agreement between two or more parties. A treaty is defined as a contract in writing between two or more political authorities (as states or sovereigns) formally signed by representatives duly authorized and usually ratified by the lawmaking authority of the parties involved.⁵⁷ Moreover, a party to a treaty that fails to live up to its end of the bargain can be held liable under international law for that breach.⁵⁸ The Latin maxim *pacta sunt servanda*, meaning “pacts must be respected,” essentially states the salient principle of the law of treaties.⁵⁹ To that end, the Treaty of Amity between the U.S. and Iran emphasizes, in relevant part, “the friendly relations which have long prevailed between [the people of the two states, while]...encouraging mutually beneficial trade and investments and closer economic intercourse generally between their peoples....”⁶⁰ Simply stated, the Treaty of Amity recognizes the long standing cultural and economic relationship between Iranians and Americans and contemplates greater exchange in the future.

B. *IEEPA’s “National Emergency” Provision Broadly Applied*

The IEEPA states in pertinent part that, “[t]he authorities granted to the President by section 1702 of this title may only be exercised to deal with an *unusual* and *extraordinary* threat with respect to which a *national emergency* has been declared.”⁶¹ An “unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States,” would be covered under the IEEPA.⁶² The IEEPA was first invoked by President Jimmy Carter against Iran in response to the infamous 444-day hostage crisis of 1979 under the pretext of a “national emergency.”⁶³ Consequently,

⁵⁵ Abolala Soudavar, *Mr. President Will You Honor the Supreme Law of the Land: The 1955 Treaty of Amity Between the United States of America and Iran?*, N. Y. TIMES (May 3, 2006), available at <http://www.soudavar.com/NYT-Treaty%20of%20Amity-1.pdf> (last visited Feb. 18, 2007).

⁵⁶ Soudavar v. President of the United States, *Memorandum and Order of Dismissal* (“Order of Dismissal”), available at <http://www.soudavar.com/SanctionJdgmnt.PDF> (last visited Aug. 9, 2007).

⁵⁷ Merriam-Webster OnLine Dictionary, *Treaty*, <http://www.merriam-webster.com/dictionary/treaties> (last visited July 13, 2008).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ International Emergency Economic Powers Act, 50 U.S.C. 35 § 1701 (2000).

⁶¹ *Id.* at 1701(b) (emphases added).

⁶² *Id.* at § 1701(a).

⁶³ Michael P. Malloy, *Economic Sanctions and Retention of Counsel*, 9 ADMIN. L.J. AM. U. 515, 536 (1995).



President Carter imposed trade sanctions on exports to and imports from Iran,⁶⁴ which were nevertheless lifted following the Algiers accord in 1981.⁶⁵ In 1987, President Ronald Reagan reinstated trade sanctions against Iran following the Iran-Contra Affair, which have been extended by each subsequent President, including President Bill Clinton and George W. Bush. By way of comparison, other “national emergency” designations under the IEEPA have included the apartheid government of South Africa, and Libya for its alleged role in the 1988 bombing of Pan Am Flight 103 over Lockerbie, Scotland.⁶⁶

C. Soudavar’s Cause of Action Meritless According to Federal District Court

The U.S. District Court for the Southern District of Texas, Houston Division, dismissed Mr. Soudavar’s 2001 complaint with prejudice.⁶⁷ As previously noted, Mr. Soudavar mainly argues that: 1) The Treaty of Amity constitutes “Supreme Law of the Land” under Article II and Article IV of the U.S. Constitution; 2) invocation of the IEEPA requires the existence of an “emergency;” 3) a national emergency does not exist with respect to Iran, because “‘emergency’...refers to a short term situation that by no stretch of the imagination can go on for nineteen years;”⁶⁸ and 4) the U.S. is consequently in violation of the Treaty of Amity.

The district court did not reach the merits of Mr. Soudavar’s main contentions however, instead finding that, *inter alia*: 1) the President enjoys absolute immunity from liability for damages arising out of his official acts; 2) Mr. Soudavar lacks standing in that he has failed to produce evidence of any economic injury in fact and any actual harm other than that “shared in substantially equal measure by all or a large class of citizens;” and, last but not least, 3) the existence or non-existence of a national emergency as it relates to the imposition of sanctions against Iran is a nonjusticiable political question.⁶⁹ Notwithstanding these threshold inquiries, however, the question remains as to whether the U.S.’s noncompliance with the Treaty of Amity constitutes a breach of the bilateral agreement.

III. ANALYSIS

A. The Treaty of Amity Is Self-Executing

The Treaty of Amity is a self-executing treaty. Self-execution is one of the two requisite components of a law constituting Supreme Law of the Land, with the other requirement being

⁶⁴ Exec. Ords. nos. 12205 and 12211, Apr. 17, 1980, 45 F.R. 26685; *see also* Soudavar v. President of the United States, *Plaintiff Soudavar’s Original Complaint* (“Soudavar’s Original Complaint”), p. 5, available at <http://www.soudavar.com/OrigComplSactions.doc> (last visited Aug. 09, 2007).

⁶⁵ Exec. Ord. no. 12282; *see also* Soudavar’s Original Complaint, p. 5, available at <http://www.soudavar.com/OrigComplSactions.doc> (last visited Aug. 09, 2007).

⁶⁶ Malloy, *Economic Sanctions and Retention of Counsel*, 9 ADMIN. L.J. AM. U. at 536; *see also* Wikipedia, *Pan Am Flight 103*, http://en.wikipedia.org/wiki/Pan_Am_Flight_103 (last visited Feb. 18, 2007).

⁶⁷ Soudavar v. President of the United States, *Order of Dismissal*, available at <http://www.soudavar.com/SanctionJdgmnt.PDF> (last visited Aug. 9, 2007).

⁶⁸ Abolala Soudavar, *Mr. President Will You Honor the Supreme Law of the Land: The 1955 Treaty of Amity Between the United States of America and Iran?*, N. Y. TIMES (May 3, 2006), available at <http://www.soudavar.com/NYT-Treaty%20of%20Amity-1.pdf> (last visited Feb. 18, 2007).

⁶⁹ Soudavar v. President of the United States, *Order of Dismissal*, available at <http://www.soudavar.com/SanctionJdgmnt.PDF> (last visited Aug. 9, 2007).



ratification by two-thirds of the U.S. Senate.⁷⁰ The phrase “self-executing” means that the particular treaty in question is enforceable on its own merits, requiring no other post-ratification action by the legislature. *Id.* Contrarily, a non-self-executing treaty does not impose any obligations on the parties. In other words, it is aspirational in nature. *Id.* Furthermore, the terms of a non-self-executing treaty can only be enforced if, in addition to ratification, its requisite elements are satisfied.⁷¹ In *Sanchez-Llamas v. Oregon*, the U.S. Supreme Court recently reiterated the fact that if a treaty is non-self-executing in nature, it cannot be the Supreme Law of the Land through mere ratification.⁷²

The Universal Declaration of Human Rights is, by way of example, a non-self-executing treaty.⁷³ It has earned this designation because its language does not impose firm obligations, instead merely encouraging signatories to aspire to create an environment that honors human rights.⁷⁴ On the other hand, the Vienna Convention on Consular Relations⁷⁵ (“Vienna Convention”) is self-executing because the parties specifically agree to the terms contained therein.⁷⁶ Here, the Treaty of Amity is self-executing because, much like the Vienna Convention, it contains such phrases as “shall have,” “shall provide” or “shall receive” throughout, signifying its binding nature.⁷⁷ The obligatory language of the Treaty of Amity’s provisions evidence an intent on the part of the parties to be legally bound through mere ratification. Therefore, the Treaty of Amity is a self-executing treaty.

B. The Treaty of Amity Is Supreme Law of the Land

Article VI, Paragraph 2 of the U.S. Constitution states in pertinent part that, “all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.”⁷⁸ The Treaty of Amity, having been signed by President Dwight D. Eisenhower in his official capacity and having been ratified by two-thirds of the U.S. Senate, while also being self-executing in nature, constitutes Supreme Law of the Land. The Treaty of Amity remains enforceable, unless a showing is made that either Iran or the U.S. no longer intends to be bound by its terms, one or both of the parties withdraw pursuant to the Vienna Convention on the Law of Treaties, or the U.S., as in here, elects to invoke the IEEPA and facially violate its obligations under the Treaty of Amity.⁷⁹ Therefore, the deciding factor is whether the U.S. breach is justified under the circumstances.

⁷⁰ See generally, Howard S. Schiffman, “Breard and Beyond, Consular Notification and Access Under the Vienna Convention,” 8 *Cardozo Journal of International and Comparative Law* 27 (2000).

⁷¹ Carlos Manuel Vasquez, *The Four Doctrines of Self Executing Treaties*, 895 *A.J.I.L.* 695, 712 (1995).

⁷² See generally *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669 (2006).

⁷³ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc A/810 (Dec. 12, 1948).

⁷⁴ *Id.* at art. 1.

⁷⁵ Vienna Convention on Consular Relations, April 24, 1963, 21 UST 77, 596 U.N.T.S. 261.

⁷⁶ *Breard v. Pruett*, 134 F.3d 615, 622 (4th Cir. 1998) (Butzner, J. concurring).

⁷⁷ See Treaty of Amity, *supra* note 52.

⁷⁸ U.S. CONST. art. VI, cl. 2.

⁷⁹ See generally, Vienna Convention on the Law of Treaties, Part IV.



C. Iran's Behavior Justifies "Emergency" Designation

The U.S. believes that Iran poses an imminent threat to its interests in the Middle East.⁸⁰ Nearly six years after the terrorists killed more than 3,000 civilians on American soil,⁸¹ it is but a matter of course that the Iranian regime's support of international terrorism, rejection of Israel's existence and its pursuit of a nuclear weapon remain formidable concerns to the U.S.⁸² In 2002, President George W. Bush famously branded Iran (along with Iraq and North Korea) as part of the "Axis of Evil" for its role in sponsoring international terrorism.⁸³

Iran has in recent years seen the emergence of yet another hard-line, conservative leader in Mahmoud Ahmadinejad.⁸⁴ Ahmadinejad has unnerved the world by pledging to wipe Israel off the map⁸⁵ and by resuming Iran's nuclear fuel cycle research.⁸⁶ Iran's pursuit of nuclear energy has become a matter of national pride, while alarming Western experts who believe that this pursuit will lead to an Iranian nuclear bomb in the near future.⁸⁷ Ahmadinejad continues to marginalize the Iranian people's stance within the international community by insisting that the Holocaust was and continues to be mere propaganda on the part of Israel, while also promising a "world without America."⁸⁸ Ahmadinejad's comments and ideology evince his intent to "conquer all the mountaintops of the world" under the pretense of Islam.⁸⁹ This ideology was succinctly expressed by Hassan Abbassi, Ahmadinejad's Intelligence Adviser, who recently stated that, "[w]e have a strategy drawn up for the destruction of Anglo-Saxon civilization . . . [w]e must make use of everything we have at hand to strike at this front by means of our suicide operations or by means of our missiles."⁹⁰

IV. CONCLUSION

In 1957, when President Eisenhower signed the Treaty of Amity into law, the U.S. entered into a contract with a markedly different Iran than the present-day Islamic Republic of Iran. The U.S. foreign policy since the Iran-Contra affair and, more specifically, in light of the horrific events of September 11, 2001, requires that no American citizen, much less the country as a whole, have exchanges with a party that either directly or indirectly engages in activities that jeopardize the security and interests of the U.S. This fact, coupled with the allegations that Iran is

⁸⁰ See Alan B. Krueger, *The Cost of Invading Iraq: Imponderables Meet Uncertainties*, N.Y. TIMES, Mar. 30, 2006, at Sec. C, Column 1, p.3.

⁸¹ Clifford D. May, *Avoiding nuclear-armed terrorists*, THE SAN DIEGO UNION-TRIBUNE, Jan. 19, 2006, available at http://www.signonsandiego.com/uniontrib/20060119/news_lz7e19avoid.html. Mr. May is the President of the Foundation for the Defense of Democracies, which is a policy institute that focuses on terrorism. *Id.*

⁸² Warren P. Strobe Knight, *Feisty Iran proving ever more exasperating to U.S., world*, DESERET MORNING NEWS, Jan. 22, 2006, available at http://www.findarticles.com/p/articles/mi_qn4188/is_20060122/ai_n16018469.

⁸³ Noah Peters, *Bush's empty promise*, U. VIRGINIA CAVALIER DAILY, Feb. 6, 2006 available at <http://www.cavalierdaily.com/CVArticle.asp?ID=25723&pid=1390>.

⁸⁴ Peters, *supra* note 83.

⁸⁵ *Id.*

⁸⁶ Hugo Miller and Marc Wolfensberger, *UBS breaks ties with Iran; It's about business, not politics, firm says*, The International Herald Tribune, Jan. 23, 2006 available at <http://www.ihf.com/articles/2006/01/22/business/bxubs.php>.

⁸⁷ Knight, *supra* note 82.

⁸⁸ May, *supra* note 81.

⁸⁹ *Id.*

⁹⁰ *Id.*



supporting the insurgents in Iraq and its refusal to acquiesce to the calls by the United Nations to halt its nuclear regime, do not fair well for arguments calling for the implementation of the Treaty of Amity. In light of the drastic transformation that Iran has undergone over the years, the “national emergency” designation under the IEEPA justifies the U.S. breach of the Treaty of Amity. Significantly, however, the fact that the U.S. has not entirely withdrawn from the Treaty of Amity is a testament to its hopes that the once blissful courtship will be rekindled and Iran will rejoin the international community as a responsible cultural and economic partner.



Are U.S. Sanctions Working?

Oversight Report Reveals that Government Agencies Do Not Know

Emily Blout⁹¹

I. INTRODUCTION

In January 2008, the Government Accountability Office, which is the investigative arm of the United States Congress,⁹² published with an alarming report. The U.S. government does not know, the report concluded, whether or not sanctions on Iran are working.⁹³ Commissioned by Representative Chris Shays (R-CT) to determine the efficacy of the current U.S. sanctions on Iran, the Government Accountability Office (GAO) found that “the overall impact of sanctions, and the extent to which these sanctions further U.S. objectives, is unclear.”⁹⁴

II. ANALYSIS

Despite the sanctions, the Iranian government’s incompetence, and the ever-present corruption that haunts the Iranian economy,⁹⁵ records indicate that Iran’s economy has experienced consistent growth.⁹⁶ Iranian exports, which totaled \$8.5 billion in 1987 when U.S. sanctions began, grew to \$70 billion in 2006 and imports grew from \$7 billion to \$46 billion in the same period.⁹⁷ The government agencies charged with executing the various sanctions regimes over the last 20 years told GAO investigators they lacked the data and data collection tools necessary to determine the effects of U.S. sanctions policy on Iran.⁹⁸

Still, the U.S. Departments of State and U.S. Department of Treasury contend the sanctions have created the desired economic squeeze.⁹⁹ While none would go so far as to say they have achieved their ultimate goal of changing the Iranian government’s behavior, the U.S.

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⁹² See U.S. Government Accountability Office, available at <http://www.gao.gov> (last visited July 13, 2008). “The U.S. Government Accountability Office (GAO) is known as “the investigative arm of Congress” and “the congressional watchdog.” GAO supports the Congress in meeting its constitutional responsibilities and helps improve the performance and accountability of the federal government for the benefit of the American people.” *Id.*

⁹³ U. S. Government Accountability Office, *Iran Sanctions: Impact in Furthuring U.S. Objectivies Is Unclear and Should Be Reviewed*, at 28 (Dec. 2007), available at <http://www.gao.gov/new.items/d0858.pdf> (Hereinafter GAO Report) (nothing that U.S. Agencies do not assess impact of sanctions and lack data on the direct effect of sanctions).

⁹⁴ *Id.* at 35.

⁹⁵ “Iran’s Economic Woes Its Biggest Problem,” BBC Monitoring Middle East, Jan. 28 2008 (“[t]he government’s strong presence in the economy and its unscientific and inefficient interference in all the affairs of the people have created economic corruption and devastation for the country, and have brought about much damage. The huge administrative bureaucracy it has created does not benefit the country or the nation in any way; rather it has a detrimental and destructive effect.”)

⁹⁶ See GAO Report, at 33 (finding Iran has seen “strong growth” in non-oil exports).

⁹⁷ *Id.* at 27.

⁹⁸ *Id.* at 18 (stating that, with some exception for the Treasury Department, U.S. agencies “do not assess the impact of sanctions in helping achieve U.S. objectives...”). See also *id.* at 24 (nothing that U.S. agencies report difficulty in measuring deterrent impact of sanctions).

⁹⁹ See e.g. *id.* at 4 (noting that Treasury Department at least has stated Iran is experiencing “increasing isolation from the global community”).



officials argue sanctions have had other broad impacts. For example, sanction laws can serve as a symbolic tool to signal how seriously the U.S. takes Iran's proliferation and terrorism financing activities.¹⁰⁰ The prospect of ever steepening penalties and being added to the U.S. black list of terrorist financing entities via the *Federal Registrar* may also force businesses to think twice before dealing with Iran. But the deterrent power of U.S. sanction laws like ILSA, which specifically targets Iran's petroleum sector,¹⁰¹ is far from clear.

While State Department officials stated to the GAO investigators that there had been no new final oil and gas investment deals in Iran since 2004, the recent multi-billion dollar Swiss gas deal raises questions about America's continued ability to stave off such investments.¹⁰² In its 1998 decision to wave ILSA sanctions on the French Total, the Russian Gazprom and the Malaysian Petronas for the development of Iran's South Pars gas field, the State Department noted the companies were unlikely to abandon their investments because they were insulated from any practical effect of U.S. sanctions. The State Department also cited the possibility that the European Union would bring the issue before the World Trade Organization as extraterritorial application of US law.¹⁰³

With energy prices climbing, the Swiss may not be the last U.S. ally to overlook the U.S.-Iran policy for economic interests. Desperate to diversify energy supplies and reduce dependence on Russia and its "pipeline diplomacy," other European countries may follow suit. The GAO recommended that the National Security Council work with the Departments of Commerce, Treasury, State and Energy to perform a baseline assessment of the impact of sanctions, both unilaterally and internationally, on Iranian behavior.¹⁰⁴

Rep. Shays has since introduced legislation that would require the State Department to report annually on the efficacy of U.S. sanctions.¹⁰⁵ At a budget hearing in February 2008, Secretary of State Condoleezza Rice admitted she had not read the GAO report.¹⁰⁶ Despite the

¹⁰⁰ U.S. Dept. of State Office of the Spokesman, Remarks By Secretary of State Condoleezza Rice And Secretary of the Treasury Henry M. Paulson, available at http://iranlegislation.wikispaces.com/State_Department (see Paulson's remarks). See also, GAO Report, at 21-22. "State officials stressed that U.S. sanctions serve as a clear symbolic statement to the rest of the world of U.S. concerns regarding Iran's proliferation and terrorism-related activities. State officials also noted that sanction laws can be used as a vehicle for dialogue with foreign companies or countries, and the prospect of sanctions can encourage foreign parties to end their interactions with Iran." *Id.*

¹⁰¹ Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, § 7, 110 Stat. 1541, 1546 (1996). "An Act to impose sanctions on persons making certain investments directly and significantly contributing to the enhancement of the ability of Iran or Libya to develop its petroleum resources, and on persons exporting certain items that enhance Libya's weapons or aviation capabilities or enhance Libya's ability to develop its petroleum resources, and for other purposes." *Id.*

¹⁰² Kenneth Katzman, CSR Report for Cong., Iran: U.S. Concerns and Policy Responses, Order Code RS20871, at Summary (updated Dec. 26, 2007), available at <http://www.fas.org/sgp/crs/mideast/RS20871.pdf>. According to the CSR Report, definition of "investment" in the Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, § 7, 110 Stat. 1541, 1546 (1996) does not specifically include long-term oil or gas purchases from Iran, or the building of energy transit routes to or through Iran. *Id.*

¹⁰³ See GAO Report, at 15-16.

¹⁰⁴ GAO Report, at 35-36.

¹⁰⁵ H.R. 5084, 110th Cong. (2008).

¹⁰⁶ Full Committee Hearing: Committee on Foreign Affairs. International Relations Budget for Fiscal Year 2009. Witnesses: Secretary of State Condoleezza Rice (February 13, 2008), available at <http://foreignaffairs.house.gov/testimony.asp?pg=2> (starting 1hr:42min/2:03). Representative Brad Sherman (D-CA-27) criticized the State Department for not abiding by the letter of the law: "It chagrins me



GAO report's findings, sanctions proponents press on. Impassioned lawmakers,¹⁰⁷ neo-con think tanks,¹⁰⁸ and pro-Israel groups¹⁰⁹ hope to get additional sanctions legislation passed in the near future, and it appears that their chances look good.¹¹⁰

III. CONCLUSION

The GAO's report to the Congress concluding that the U.S. government does not know whether or not sanctions on Iran are working should be of great concern to the U.S. government and the Iranian-American community. Although there is a lack of thorough studies on the effects of U.S. sanction laws on Iran, the public records indicate that the Iranian economy is seeing a steady growth despite the Iranian government's incompetence and the U.S. sanction laws. On the surface, it appears unilateral U.S. sanction laws are not achieving their intended goals. However, it is evident that a thorough assessment of the impact of sanctions, both unilaterally and internationally, on Iranian behavior must be conducted before any additional sanction laws are enacted by the Congress.

to think that when you see a statue that requires one course of action and you advocate another course of action..." and also, "It seems to me that the administration is well aware of these particular investments and has taken the view that at least this particular act of Congress is not a statute, it's just advice." *Id.*

¹⁰⁷ In the Senate: Gordon Smith, Sam Brownback, Charles Schumer, Jeff Sessions, Joseph Lieberman, Dick Durbin, In the House: Brad Sherman, Tom Lantos, Illeana Ros-Lehtinen.

¹⁰⁸ *American Enterprise Institute*: See Daniel Pletka "Congress' Ill-timed Iran bills" *Center for Security Policy. Divest* <http://www.centerforsecuritypolicy.org/Home.aspx?SID=56&SubCategoryID=57> *Washington Institute for Near East Policy*. For example, Mathew Levitt: Policy Watch #1297. "Iran Sanctions: Can they be effective?" (October 25, 2007). Also see Patrick Clawson, who has spoken extensively in favor of sanctions in public panels and hearings (slated to do so again at April 8 Senate Finance Committee hearing).

¹⁰⁹ *AIPAC*, See *AIPAC* Memo (January 24, 2008) "US-International Sanctions Having an Impact."; See also "Implementing Tough Sanctions Key to Countering Iran." (March 14, 2008) ; *Anti-Defamation League*, "No Nuclear Iran" campaign; *Christians United For Israel*. Mass email (see attached): "Christians United for Israel will lobby for a U.S. law aimed at isolating Iran: CUFIs delegates lobby to sanction Iran." (July 17, 2007) Also, author's notes from interview with CUFIs, July 23, 2007. Christians United for Israel Lobby Congress on Iran.

¹¹⁰ Iran Counter-Proliferation Act of 2007, H.R. 1400, 110th Cong. (2007) (as passed by House of Representatives, Sept. 25, 2007).



Persian Artifacts Case: An Insider's Perspective

Babback Sabahi¹¹¹

"Persian Artifacts Case" is an umbrella caption referring to two series of cases pending before federal district courts in Illinois and Massachusetts (both designated *Rubin v. The Islamic Republic of Iran*). In both cases, relatives of victims of terrorism in the Middle East won default judgments for damages in U.S. federal courts against the Iranian government and are seeking to satisfy their judgments from the sale of certain archeological artifacts of Iranian origin held by various museums in Chicago and Boston.

The plaintiffs in these cases claim that these artifacts belong to Iran, and are therefore subject to attachment and execution in satisfaction of the judgments that they hold against Iran. Further, the plaintiffs claim that under the relevant provisions of the Foreign Sovereign Immunities Act of 1976¹¹² ("FSIA") and the Terrorism Risk Insurance Act of 2002,¹¹³ sovereign immunity does not attach to these artifacts. The Islamic Republic of Iran ("Iran") has only acknowledged the ownership of the artifacts held by the Oriental Institute of the University of Chicago, also known as the Persepolis Collection, and has appeared in the relevant proceedings to assert its sovereign immunity, and defend the case on merits.

The proceedings involving the Persepolis Collection are currently in the discovery stage. Assuming no extensions will be granted, Iran is required to produce by August 30, 2008 various documents that the plaintiffs allege would help them prove their arguments regarding non-applicability of sovereign immunity. The struggle over the scope of discovery still continues. Recently, Iran filed an appeal to the Seventh Circuit Court of Appeals in Chicago from the federal district court's grant of plaintiffs' motion for general asset discovery.

In another terrorism-related case, *Peterson v. The Islamic Republic of Iran*,¹¹⁴ the Plaintiffs-Judgment Creditors obtained a default judgment in excess of \$2 billion. The creditors recently registered their judgment with the U.S. District Court for the Northern District of Illinois hearing the Persian Artifacts case, seeking to share in the proceeds from the potential sale of the artifacts to satisfy their judgment. This case has been consolidated with the *Rubin* action and is now before Judge Blanche Manning of that court. The new plaintiffs, however, still follow their own separate strategy and have appealed to the Seventh Circuit Court of Appeals from the District Court's denial of their motion to appoint a receiver for the Artifacts.

After discovery, the parties will brief the court on their arguments, and the court will then be able to rule on Iran's Motion to Declare Property Exempt (treated by the court as a motion to dismiss), which will almost certainly be appealed by the losing party. The court's ruling on the motion to dismiss will be a seminal decision on the immunity of cultural property belonging to foreign states from attachment or execution in civil judgments. As such the court's ruling would

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¹¹² See 28 U.S.C. § 1602.

¹¹³ See Pub. L. No. 107-297, 116 Stat. 2322 (codified at 15 U.S.C. § 6701 note) (2002).

¹¹⁴ See 515 F. Supp. 2d 25 (D.D.C. 2007).



be of utmost significance to foreign countries which traditionally have been the source countries of archeological artifacts, as well as to U.S. museums and cultural institutes which hold such property on loan from foreign states.

Mayer Brown, LLP will file an amicus brief in this case on behalf of the National Iranian American Council (NIAC) encouraging the court to uphold the exempt status of the Iranian artifacts under the FSIA. Such ruling would be consistent with contemporary trends in the protection of cultural property as demonstrated by U.S. federal and state laws, and international treaties.



About the Iranian American Bar Association: The Iranian American Bar Association ("IABA") was formed in 2000 in the District of Columbia and is a tax-exempt, non-profit organization under section 501(c)(3) of the Internal Revenue Code. IABA is organized for charitable, educational, and professional purposes, including promoting the social, economic, professional and educational advancement of the Iranian American community, and the community at large. While headquartered in Washington D.C., IABA is a national organization seeking to expand professional and community relationships by establishing local chapters throughout the United States. Starting with four founding members, IABA's membership has grown to over 600 attorneys and law students nationally, with a particularly strong presence in Washington D.C., New York City, and California, but with members also from many other states. IABA recruits the most distinguished members of the Iranian American legal community as its Directors and Officers, and upholds the highest levels of professional integrity and excellence. For more information please visit <http://www.iaba.us>.