

Senate Finance Committee

“S970: The Iran Counter-Proliferation Act of 2007”

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Testimony by Philip H. Gordon

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to testify today on the critical issue of U.S. efforts to prevent nuclear proliferation to Iran. An Iranian nuclear weapons capability could embolden Iran as a destabilizing regional actor, threaten U.S. interests in the region, and stimulate further nuclear proliferation throughout the Middle East – increasing the risk of nuclear war and terrorism. I therefore applaud Congress’s efforts to increase the costs on Iran for pursuing this course, in violation of four Chapter VII UN Security Council resolutions. Iran’s development of a nuclear enrichment capability will, in all honesty, be difficult to prevent. But I believe the only way to halt or even limit it involves presenting Iran with an enhanced set of incentives and disincentives to change its cost-benefit analysis of the issue. Some of the measures in the Iran Counter-Proliferation Act (S970) help to advance this goal in constructive ways. I do have reservations, however, about some aspects of the bill (addressed below) and would urge Congress to be particularly careful about measures that could divide the international community or lead to legal challenges from U.S. allies or partners. A major legal clash with allies – at the World Trade Organization or elsewhere – over efforts to contain Iran would divide the international community and undermine, rather than bolster, the recent progress made towards strengthening multilateral sanctions. We must keep in mind that isolating, and thereby influencing, Iran will require broadly supported international efforts.

Responding to Iran’s nuclear weapons program

There can be little doubt that Iran is actively working toward a nuclear weapons capability, even if final decisions on whether to build an actual weapon may not have been made. In this sense the conclusion of the December 2007 National Intelligence Estimate (NIE) that Iran had “halted its nuclear weapons program” was highly misleading. By defining “nuclear weapons program” only in terms of weapons-design and covert uranium enrichment programs, the NIE gave the impression that Iran had ceased to move toward a nuclear weapons capability when in reality the international community’s greatest concern has been Iran’s declared uranium enrichment program. The production of fissile material – not weapons-design – is the most challenging part of the process of building a nuclear weapon. Even using its narrow definition of a nuclear weapons program, the NIE still reported that until just a few years ago (2003) Iran was secretly working on the military aspects of a nuclear weapons program in violation of its Nuclear Nonproliferation Treaty commitments, and that it could accumulate enough enriched uranium for a nuclear weapon within a few years.

Despite UN Security Council resolutions demanding that Iran suspend its uranium enrichment program because of its efforts to hide that program for nearly two decades, Iran continues to enrich uranium. Iran is operating a pilot-scale enrichment plant of some 3,000 P-1 centrifuges (an older, Pakistani model) at Natanz, which, if operated efficiently – no easy task – could generate enough highly enriched uranium (HEU) for a nuclear weapon in about a year. According to recent reports from the International Atomic Energy Agency (IAEA), Iran has also started operating 300 more efficient centrifuges at Natanz (possibly domestically produced IR2s), which could accelerate the process once enough of these centrifuges are installed. Iran is also building an industrial-scale enrichment facility of around 54,000 centrifuges, which, when completed, would be capable of producing enough HEU for several nuclear weapons within weeks. In addition, Iran is building a heavy-water nuclear reactor at Arak, which could give it another path to nuclear-weapons capability through plutonium reprocessing. The lack of transparency, the scale of the projects in the absence of a large-scale nuclear energy program, the willingness to absorb the costs of international isolation, and the historical insecurity that gives Iran a strong incentive to seek a nuclear deterrent all suggest that the Iranian enrichment program is not designed for civil purposes alone but rather to give Tehran a real nuclear weapons option.

Efforts to increase the price Iran must pay for pursuing this program – which is the worthy objective of S970 – remain the best option, largely because all the other options are so bad. Acquiescing to Iran’s activities without responding would tilt Iran’s cost-benefit analysis of building a nuclear weapon in favor of doing so. It would suggest that Chapter VII UN Security Council resolutions are meaningless and undermine the value of international law. It would send a message to all potential nuclear proliferators that they may violate the NPT without consequences. The likely result – an overt Iranian nuclear weapons capability and further nuclear proliferation in the Middle East – would increase the prospect that a nuclear weapon will one day be used or that nuclear material or a weapon could fall into terrorists’ hands.

The policy option at the other end of the spectrum – military force – is equally unpalatable. Targeted U.S. air strikes probably could destroy many of Iran’s critical nuclear facilities and set back the program for a number of months or years. But U.S. intelligence about Iran is far from perfect, and even the known elements of the Iranian program are dispersed at multiple sites around the country, protected by extensive air defenses, often located near civilian areas, and sometimes buried under thirty feet of dirt and reinforced concrete. Air strikes against the nuclear program, therefore, would not be “surgical” but rather widespread, sustained, and likely to kill a number of Iranian civilians. Even more important, a military attack would also have the probable consequence of generating strong public support within Iran for an otherwise unpopular regime – and the Iranian population would then become even more determined to develop a nuclear weapons program, possibly even overtly. Finally, Iran would be certain to retaliate “asymmetrically” against U.S. interests, most likely through its Shiite partners in Iraq and Afghanistan. The costs of a U.S. attempt to thwart Iran’s nuclear program with military force could thus be very high, without necessarily being effective.

Therefore the best approach to the Iranian nuclear issue remains one that uses all possible political, diplomatic, and economic leverage to convince the Iranian leadership that the costs of defying the international community are greater than the benefits of a nuclear-weapons capability. Iran's current president, Mahmoud Ahmadinejad, seems determined to pursue the nuclear course and is unlikely to be deterred through international diplomacy; some in Iran, like the leaders of the Iranian Revolutionary Guards Corps, may actually have an interest in confrontation with the West, which validates their position as protectors of the Iranian revolution. But Iran is a diverse, vibrant, and dynamic society, very different from Saddam Hussein's Iraq. While anti-Western conservatives currently dominate Iranian politics, public discontent with their leadership and the results of their confrontational policies could conceivably lead to significant political change and a more accommodating stance on the nuclear issue. Serious Western offers to respect Iranian sovereignty and security interests, guarantee its access to civil nuclear energy, and integrate Iran economically and politically in the international community to help it meet the needs of its growing youth population, combined with costly penalties for Iranian defiance, create the best prospects for stopping or containing the Iranian nuclear program.

Pros and Cons of S970

The merit of the Iran Counter-Proliferation Act is that it is designed to tighten U.S. sanctions on Iran for refusing reasonable compromises over the nuclear issue and to encourage other major international players to do the same. The bill recognizes the reality that only a broad set of diplomatic, political and economic measures – imposed by a wide coalition of states – has any hope of changing Iranian behavior.

Thus I support many of the measures in the bill, including calling on the United States to restrict Iran's ability to conduct international financial transactions; encouraging foreign governments to cease investment in Iran's energy sector and trade with Iran; closing the loophole that allows U.S. firms to do business in Iran via a foreign-based but U.S.-owned subsidiary; increasing funding for the Office of Terrorism and Financial Intelligence of the Department of the Treasury; encouraging U.S. states to divest investments from pension funds in companies that invest in Iran's energy sector; requiring that the Treasury Secretary report any foreign investments in Iran's energy sector and that the President determine whether these investments constitute offenses under the Iran Sanctions Act; calling for expansion of U.S. exchange programs with the people of Iran and additional news broadcasting into Iran; and providing additional funding to be used for the creation of a nuclear fuel bank to guarantee reliable access to nuclear fuel. I believe all of these targeted measures would constructively increase pressure on Iran and encourage political change there and that they would encourage other important international players to do so as well.

At the same time, I have concerns that some measures in the bill may be such blunt instruments that they risk undermining rather than contributing to the goal of increasing international pressure on Iran. The most important of these concern measures – such as the imposition of sanctions on U.S. subsidiaries of foreign companies – that could lead

the countries in which those companies are based to challenge the legislation at the WTO. As we have discovered over the past decade with various challenges to the Iran Sanctions Act, most countries, even among our closest allies, reject the extraterritorial application of U.S. sanctions and they are willing to act to defend the principle that countries may not impose their own foreign policy priorities on other countries by taking action against their firms. Thus any measure in S970 deemed to provide for mandatory secondary sanctions, especially if they limited the President's authority to waive those sanctions, could turn out to be counterproductive. As Deputy Secretary of Treasury Robert Kimmit said to Anti-Defamation League leaders in February 2008, we have learned over the years that sanctions "have their most comprehensive impact when applied cooperatively and collectively."

This is particularly true at a time when the international community has – for a range of reasons that include U.S. pressure but also growing concerns about the Iranian nuclear program and impatience with Tehran's refusal to cooperate – been acting to increase Iran's political and economic isolation. Since July 2006 the United Nations Security Council has passed, almost always unanimously, four Chapter VII resolutions on Iran, the first requiring Iran to suspend nuclear enrichment and the next three imposing sanctions for its unwillingness to do so. Those sanctions have been limited in scope but include bans on the supply of nuclear-related materials and technology; freezes on the assets of companies and individuals related to Iran's nuclear program (specifically named); calls for restraints on arms sales to Iran; bans on dealings with certain Iranian banks involved in proliferation or terrorism (Melli and Saderat); travel bans on certain Iranian officials; and the prohibition of the sale of certain dual-use items.

Bolstered by these UN resolutions, and dismayed by Iranian behavior – its refusal to cooperate on the nuclear issue and the provocations of President Ahmadinejad – a number of countries are taking action against Iran. European banks – including Deutsche Bank, HSBC, Commerzbank and BNP Paribas – have largely stopped doing business with Iran. New German export credit guarantees to Iran have fallen from \$3.3 billion in 2004 to \$732 million in 2007, and German exports to Iran fell by 18 percent in the first half of 2007. Major investments in the Iranian energy sector – such as those planned by France's Total, Spain's Repsol, and the Anglo-Dutch group Royal Dutch Shell – have been delayed repeatedly. Banks in Bahrain, the United Arab Emirates, and Dubai have also begun to limit business dealings with Iran and to stop issuing the letters of credit Iranian companies need to do business. In late 2007, the Financial Action Task Force (FATF), the world's main global organization to deal with money laundering and terrorist financing, confirmed the risk of involvement in proliferation finance represented by Iranian entities and issued guidance to its members on how to implement the financial provisions of the UN resolutions on Iran. These new constraints are having an effect on Iran's already troubled economy and particularly on its ability to make badly needed investments in its energy sector. It is true that in some cases Russian and Chinese firms are stepping in to invest in Iran when other firms step out. Yet Iran has signed only about \$20 billion of energy contracts with foreign companies since 2003, far less than it needs to develop its energy resources.

These positive trends should be reinforced by U.S. diplomatic pressure on other countries, reporting requirements that “name and shame” countries and companies that contribute to Iran’s proliferation activities, and efforts to promote U.S. divestment from Iran and companies that invest in Iran. But we should keep in mind that broad-based international sanctions are more effective than unilateral steps and that legislative as opposed to political efforts to influence other countries can backfire.

The value of some other measures in the bill can also be questioned.

Russia Nuclear Cooperation. The bill would prohibit a nuclear cooperation agreement with Russia under section 123 of the Atomic Energy Act unless the President could certify that Iran had ceased all nuclear enrichment-related activities or that Russia had suspended all nuclear assistance and transfers of advanced conventional weapons to Iran. While it makes sense to leverage a 123 agreement with Russia to press it to further isolate Iran, it would be a mistake to take away all the administration’s flexibility in this area. For example, under certain circumstances it might be appropriate to reach a 123 agreement with Russia even while Russia continues to cooperate with Iran over the Bushehr nuclear reactor. The Bush administration has already pointed to that cooperation as an example of how Iran can rely on foreign fuel supplies for energy purposes, and insisting that Russia renege on its agreements at Bushehr would substantiate Iran’s argument that it needs an autonomous enrichment program.

World Bank Loans. The bill would require the President to reduce U.S. contributions to the World Bank based on the amount the World Bank disburses to Iran. Especially as the World Bank has not made a new loan to Iran for over two years, such a broad sanction would have very little impact on Iran yet would set a bad precedent that other countries might use to promote their own foreign policy priorities.

Iranian Revolutionary Guards Corps. In October 2007, in part in response to pressure from Congress, the Bush administration designated the IRGC under Executive Order 13382 for its proliferation activities. It also designated the IRGC Quds Force a Specially Designated Global Terrorist Organization under Executive Order 13224. S970 calls on the administration to designate the entire IRGC a Specially Designated Terrorist Organization. This designation would have no further policy effect, but the act of deeming all the more than one hundred thousand members of the IRGC part of a terrorist organization might cause an unnecessarily nationalistic backlash in Iran, and inadvertently strengthen the regime.

Banning all trade with Iran. In an effort to show good will to the Iranian people, the United States in the 1990s agreed to end its total trade ban with Iran and allow the import of certain foodstuffs (mostly pistachios) and carpets. S970 proposes to re-impose the total trade ban with Iran. With U.S. imports from Iran amounting to less than \$175 million in 2007, this will not have a major impact on the overall Iranian economy yet would impact some Iranian farmers and textile workers. When considering marginal trade sanctions on Iran it is important to remember that energy production accounts for approximately 85 percent of Iranian exports and that high oil prices vastly limit the

relative importance of other trade. With Iran exporting 2.5 million barrels per day of oil, each \$10 per barrel rise in the price of oil provides Iran with over \$9 billion per year. With oil prices up nearly \$80 per barrel since 2000, Iran is earning more than \$72 billion per year more from oil exports than it did eight years ago.

In addition to these concerns, I believe S970 could be strengthened with elements to make clear not only that Iran must pay a price for its refusal to cooperate but that more flexibility on its part would be rewarded. Just as the bill proposes to increase IAEA funding for the creation of a nuclear fuel bank that would help assure countries like Iran that they would have reliable access to enriched uranium for nuclear energy reactors, it would do well to reiterate support for the measures in the August 2006 “EU3+3” (Britain, France, Germany, the United States, Russia and China) revised proposals to Iran. These include the reaffirmation of Iran’s right to develop nuclear energy for peaceful purposes in conformity with its NPT obligations, the commitment to give legally binding, multi-layered fuel assurance to Iran based on partnership in an international fuel facility in Russia; a buffer stock of at least five years of fuel, and reliable access to a potential international fuel bank.

I also believe Congress should express support for direct negotiations between the United States and Iran over the nuclear program – or any other issue. Making such talks conditional on Iran’s suspension of nuclear enrichment has not worked and is unlikely to work. The success of direct talks with Iran is hardly guaranteed either, but such talks should not be seen as a “concession” to Iran, nor would they constitute acceptance of its enrichment program. Any potential benefit to Iran would only come as a result of agreement at the talks, not in the form of the talks themselves.

Pressure from Congress can play a constructive role in making sure that foreign governments and companies uphold their responsibility to help contain the nuclear risk from Iran and in giving the administration leverage to help persuade them to do so. I believe that S970 adds to that pressure in some useful ways, but also that we must take great care not to provoke divisions within the international coalition that has been forming to contain Iran. I hope Members of Congress will keep that principle in mind as they consider how and when to take this bill forward.

Thank you for the opportunity to share my perspectives with you today.