



المركز العربي للأبحاث ودراسة السياسات
Arab Center for Research & Policy Studies

ASSESSMENT REPORT

Can Congress Thwart a Nuclear Deal between the US and Iran?

Policy Analysis Unit - ACRPS | Mar 2015

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Series: Assessment Report

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Introduction

Forty-seven Republican members of Congress have signed an open letter to the Iranian government, warning that any agreement with the United States over Tehran's nuclear program might not outlive Obama's presidency, which ends in 2016. Drafted by Senator Tom Cotton (Arkansas), the letter stated that any foreign treaty not ratified by Congress would be a "mere executive agreement", in other words non-binding. Any such agreement, the letter continued, could be revoked by a future president "at the stroke of a pen", or be modified by Congress¹. The letter was an unusual example of partisanship in foreign relations and led to a broader debate about the capability of Congress, both houses of which are presently dominated by Republicans, to foil attempts by the Obama administration to secure a deal with Iran. The road map for the current negotiations assumes that a framework agreement will be reached by the end of March, with a final agreement expected by the end of June 2015.

The Republican Stance

Congressional Republicans, alongside some of their Democrat colleagues, are skeptical of the value of any agreement with Iran over the latter's nuclear program. Sen. Cotton's open letter was the second step taken in a week as part of efforts to disrupt the Obama administration's talks with Iran, following the invitation to Israeli Prime Minister Benjamin Netanyahu to address a joint session of Congress on the "risks" a nuclear agreement would bring. Opponents of a deal adopted two of Netanyahu's arguments in particular, with regards to the significant concessions that would be granted to Iran in the event of an agreement. These were: firstly, that any agreement allowing Iran to main a vast nuclear infrastructure would mean Tehran could build a nuclear bomb at short notice, regardless of the stringency of any monitoring procedures; and secondly,

¹ See, "An Open Letter to the Leaders of the Islamic Republic of Iran", from the website of Senator Tom Cotton, <http://www.cotton.senate.gov/sites/default/files/150309%20Cotton%20Open%20Letter%20to%20Iranian%20Leaders.pdf>

that the sanctions the Obama administration proposed to place on Iran's nuclear program would expire within ten years².

According to Sen. Cotton, the open letter aimed to send a clear message to the Iranian government that the US legislature demanded a say in the nuclear negotiations³. According to the signatories' reading of the US Constitution, no international agreement could be effective without ratification by the Senate. Republican Mitch McConnell, Senate Majority Leader, declined to describe the open letter as a mistake, retorting that the Obama administration was on the verge of "a very bad deal with one of the worst regimes in the world,"⁴ one which would leave Iran with an extensive nuclear infrastructure. McConnell added that the Senate would support draft legislation, known as the Corker-Menendez bill, giving the Senate 60 days to uphold or reject any prospective agreement between the administration and Iran, a potential move which Obama has threatened to veto.

The White House Position

The Obama administration regarded the Cotton letter as an unprecedented violation of political protocol in the United States, one which was "calculated to weaken a president in the midst of sensitive international discussions", in the words of Secretary of State John Kerry^{5,6}. Obama also added that the letter could strengthen Iranian hardliners⁷,

² Transcript of Netanyahu's Speech to Congress," *The New York Times*, March 3, 2015, http://www.nytimes.com/2015/03/04/us/politics/transcript-of-netanyahus-remarks-to-congress.html?_r=1

³ Reena Flores, "Sen. Tom Cotton has "no regrets at all" over GOP letter to Iran," *CBS News*, March 15, 2015, <http://www.cbsnews.com/news/sen-tom-cotton-has-no-regrets-at-all-over-gop-letter-to-iran>

⁴ Jeremy Diamond, "Mitch McConnell rebukes Iran letter criticism," *CNN*, March 15, 2015, <http://www.cnn.com/2015/03/15/politics/mitch-mcconnell-iran-letter-john-kerry/>

⁵ Fredreka Schouten, "Kerry: Iran letter 'calculated' to interfere with talks," *USA TODAY*, March 15, 2015, <http://www.usatoday.com/story/news/politics/2015/03/15/john-kerry-iran-nuclear-negotiations-tom-cotton/24805947/>

⁶ Maggie Haberman, "Biden Condemns Republicans' Letter to Iran on Nuclear Talks," *The New York Times*, March 9, 2015, <http://goo.gl/HQITZh>.

⁷ "Remarks by President Obama and European Council President Donald Tusk before Bilateral Meeting," *The White House*, Office of the Press Secretary, March 09, 2015, <http://goo.gl/JWnFDE>.

and have a “very negative impact” on the negotiations over the nuclear program, thereby giving Tehran the chance to blame the US over any possible failure⁸.

Other administration officials have added that the letter, as an explicit intervention in the nuclear negotiations with Iran, might hinder the ability of future presidents to negotiate on behalf of the United States with foreign countries. The administration’s argument hinges on the idea that the executive branch of the US government has the right to conclude “Executive Agreements” or “Non-Binding Agreements”, without bringing these before the Senate for ratification. While stating that Congress had no right to amend Executive Agreements, Secretary of State Kerry did concede that such accords remained non-binding and could thus be revoked by future presidents⁹.

Jen Psaki, official State Department spokeswoman, added that any possible deal with Iran over its nuclear program would follow:

“the same kind of arrangement as many of our previous international security initiatives, which I think everybody feels were worthwhile in making – so such as the framework negotiated with Russia to destroy Syria’s chemical weapons, the Proliferation Security Initiative, the Missile Technology Control Regime, and non-security initiatives such as the recent U.S-China joint announcement on climate change”¹⁰.

According to administration officials, the decision not to bring the draft agreement before Congress and making it a legally binding treaty is designed to give Obama the greatest possible degree of flexibility and maneuverability, including the ability to renew sanctions on Iran in the event of its non-compliance with the terms of the agreement. Other observers, in contrast, believe that Obama declines to bring the draft agreement before Congress so as to avoid legislative oversight.

⁸ Sam Stein & Jessica Schulberg, “White House Issues Saturday Night Iran Deal Warning To Senate,” *The Huffington Post*, March 14, 2015, <http://www.huffingtonpost.com/2015/03/14/white-house-iran-deal- n 6870992.html>

⁹ Tim Mak, “Obama Administration Falls Into GOP’s Iran Letter Trap,” *The Daily Beast*, March 11, 2015, <http://goo.gl/28X19J>.

¹⁰ Jen Psaki, “US State Department Daily Press Briefing”, The U.S. Department of State, March 12, 2015, <http://www.state.gov/r/pa/prs/dpb/2015/03/238840.htm>

Who has the Upper Hand?

Both politically and legally, the executive branch has the prerogative to conclude an agreement with Iran. This did not prevent the Senate, however, from discussing the Corker-Menendez bill, which would compel the president to present any prospective deal with Iran to Congress' Upper House before a final agreement. In such circumstances, the president could resort to his use of the presidential veto, which he has threatened to do in this case. To overturn a presidential veto, opponents of the nuclear agreement would require two-thirds of the votes in both houses of Congress. As it stands, the support of 11 Democrats in addition to the Senate's 54 Republicans makes this act of defiance a likely prospect¹¹.

However even this situation is more complex than it first appears. With most Senate Republicans signed on to Sen. Cotton's open letter, many in the Republican Party now fear that Democrats might no longer support the Corker-Menendez bill. In addition, seven Senate Republicans declined to sign the open letter, most notably Bob Corker, Chairman of the Senate Foreign Relations Committee and co-sponsor of the Corker-Menendez bill. In his capacity as Foreign Relations Committee Chair, Crocker could be vital in deciding whether or not the Corker-Menendez bill will come before the Senate.

Senator Corker has thus far refused to comply with a request made by White House Chief of Staff Denis McDonough to postpone any discussion of the Corker-Menendez bill until after June 30, 2015, the deadline for a comprehensive agreement with Iran over its nuclear program. At the time of writing, Corker insisted on debating the bill in April. If passed, Corker-Menendez could curtail the president's right to suspend congressional sanctions placed on Iran¹². The congressional resolutions which initially passed those sanctions included the right of the president to suspend them through executive orders if doing so was deemed to be in the US' interests. In other words, congressional support for strengthened sanctions and the possible overturn of a veto could cost Obama vital room for maneuver in his dealings with Iran.

¹¹ Burgess Everett, "Democrats prepared to buck White House on Iran nuclear deal," *Politico*, March 15, 2015, <http://goo.gl/Dj06lr>

¹² Stein and Schulberg

In response to developments in Congress, the Obama administration has begun coordinating with the other P5+1 countries engaged in nuclear talks with Iran, and may be able to guarantee a lifting of UN Security Council sanctions on Iran, in the event of an agreement over its nuclear program. Congress would have no recourse if the UN Security Council were to lift such sanctions. Yet, as explained by the US State Department, such a lifting of UN sanctions has no bearing on the measures which the US has previously and unilaterally taken against Iran, or any such measures which it may take in the future.

Conclusion

Given that the president continues to enjoy the prerogative of making Executive Agreements with foreign powers, the White House will likely be able to conclude a framework agreement with Iran over the latter's nuclear program, assuming this process can be completed before the end of March. Turning such a deal into a binding, legal agreement requires obtaining the Senate's approval for an agreement it does not want, and this still appears unlikely. While Congress can still add new sanctions or tighten pre-existing ones, if it can overturn a presidential veto, it remains powerless to stop the Obama administration's efforts to lift European and UN sanctions placed on Iran.

While a new president will assume office in 2017, the revocation of a potential Executive Agreement with Iran would not be a straightforward matter. The next US president, even if an opponent of such a deal, will be faced with a new set of realities, and will find it difficult to withdraw from obligations undertaken by the current Commander-in-Chief. Indeed, while any future president, or Congress, may choose to renew or expand the US sanctions regime on Iran, renewing international sanctions imposed on Tehran would be impossible without the support of international allies, both within and outside of the Security Council. The Obama Administration, in other words, maintains the upper hand.