



**When Inaction is the Best Policy:
Voting Against the Iranian Leadership Asset Transparency Act**

By Richard Nephew

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In early September, my colleague Matthew Robinson and I released a [commentary note](#) about the common sense and advisability of sometimes, when faced even with particularly horrible events, doing nothing. The focus of that piece was on Venezuela and, in it, we suggested that notwithstanding the temptation of acting in support of opposition forces in that country, it was far more prudent and in keeping with the interests of the United States for Washington to sit on its hands. The historical legacy of U.S. involvement in the politics of Latin America, combined with the already weakened state of the Venezuelan economy, argued in favor of letting the situation unfold naturally, without U.S. intervention.

I still believe that is the sensible approach in Venezuela, though of course the situation merits monitoring. In response to a few isolated comments in social media suggesting this wisdom actually constituted dereliction of duty and an abdication of moral responsibility in Venezuela, I began to consider whether there are other cases that can help prove my point.

One bill presently going through the U.S. House of Representatives leapt out to me: [H.R. 5461, the Iranian Leadership Asset Transparency Act](#). As the title implies, this bill is intended to shed some light on the assets and their source of the leadership of the Iranian government. It requires the Department of the Treasury to issue a report twice over the next three years that describes the foreign held assets of Iran's leadership, defined by a list of 18 individually-held positions and 2 organizations. Given some overlap in the constituency of the two organizations, this would involve reporting on some 60-80 people, though the report also requires information on assets "indirectly" held by these individuals, which probably would require information being provided on an unknown additional number of targets. The purpose of the legislation is to help uncover the secret ownership structures that likely exist inside of Iran and between some of its economic actors (perhaps including some that remain on U.S. and European sanctions lists) and its political and security forces. Presumably, once uncovered, opponents of corruption inside of Iran will be bolstered in their opposition and – from a foreign sanctions enforcement perspective – action can be taken to punish those involved in such activities.

The purpose of this legislation is noble and reasonable. Moreover, by not requiring the immediate imposition of sanctions on those identified, Executive Branch enforcement discretion is preserved, something that I think is useful (especially as a former Executive Branch enforcement official).



But, this legislation has a number of logical flaws and inconsistencies that, upon deeper consideration, argue against its passage. Here are four:

- 1) A public U.S. government report on Iranian leadership assets will not facilitate anti-corruption efforts inside of Iran.

There is a profound trust gap between the United States and Iran, and with respect to the governments of both countries by the other's populations. In fact, critics of the Iran nuclear deal on both sides have made quite a bit of noise about the degree to which – nuclear deal or not – the relationship between the two countries has yet to get better because the negative perceptions that surround the parties. Put simply, neither people trusts the government of the other and current events have not helped matters.

This in mind, what exactly is the scenario in which a U.S. government report – by the hated U.S. Treasury, no less – contributes positively to the discussion of corruption inside of Iran. Those flagged in the report for particular scrutiny – such as members of the Iran Revolutionary Guard Corps (IRGC) – will argue that the report is merely intended to continue the economic war against Iran and its guardians. They will say that it is fabricated, regardless of how much evidence is actually gathered and presented. And, in the Iranian media game, this will carry some currency.

For reform-minded forces inside of Iran, the report will be even more damaging. Any charges of corruption that they levy that correspond with information in the report can be thrown back at them as demonstrating the degree to which they are lapdogs of the American government. The very real corruption and manipulation of Iran's economy that exists will be transformed from an internal argument to one that has the hallmarks of American interventionism. And, ultimately, that is counter to U.S. interests both for reform to happen in Iran for the benefit of its people and for those who have taken advantage of the system – particularly hardliners and security forces – to be put under pressure.

The same applies to the legislation's call for information about how sanctions evasion and illicit conduct is practiced, and potential countermeasures. Not to put too fine a point on it, but giving tips to the adversary about how we learn about their misconduct and our plan to respond is far from prudent. Sensibly, Treasury drafters will probably shy away from being detailed in their presentation but, as discussed below, that is not itself a comfort.

- 2) A comprehensive report will endanger U.S. intelligence collection; a thin report will prompt allegations of misconduct.

Financial intelligence collection is one of the most sensitive aspects of the U.S. intelligence gathering apparatus. As Juan Zarate outlined in his very good book Treasury's War, collection takes time to build and sources of information can be fragile. At the same time, because of the damage that can be done to the reputation of the U.S. Treasury with false allegations, making a case concerning financial



misconduct on the part of a foreign entity requires careful investigation, assembly of facts, and presentation of them both in prosecutions and in sanctions findings. Treasury takes this seriously and deservedly so. Consequently, they will insist that any report being issued under their cover be as comprehensive and accurate as possible. This presents a very problematic “catch-22” situation for Treasury: it can work to provide a comprehensive and thorough report for Congressional review, running the risk of source exposure, or it can play it safe and then be faced with intense criticism for either not finding or not providing the facts.

Proponents of the legislation would doubtless respond that the bill explicitly permits the provision of a classified annex to the mandatory unclassified report. This would, in theory, permit sensitive details to be obscured. But, recent experience shows that – with regard to Iran, anyway – this is not actually an option. Critics of the Obama Administration’s approach to the Iran nuclear deal recently focused sharply on decisions made confidentially by the Joint Commission of the deal were unacceptable because they were not announced publicly. [One organization](#) dismissed as insufficient the fact that Congress, in its oversight role on behalf of the American people, was briefed on these details, arguing that excessive secrecy was being practiced. It would be foolish to suggest that, notwithstanding legislation that explicitly permits classified reporting to Congress, the actual exercise of this prudent prerogative would go unchallenged by those inclined to be hostile to an Administration that is anything less than extremely hawkish with Iran.

Some proponents of this legislation might argue that, since the legislation authorizes the use of credible information outside of government channels, this challenge can be mitigated by adequate use of unclassified, open sources. It is certainly true that open sources have their place in all manner of investigations and, in the past, I have been a firm advocate of their use including as a way of handling classification problems. But, this is not itself a panacea for two reasons.

The first is straightforward: by confirming public information, the Treasury Department could reveal classified facts. This is a frustrating and not uncommon conundrum, the reason why press reports are sometimes treated as classified by intelligence agencies and why – to this day – I do not consult Wikileaks cables from my time at the State Department in my writing. But, it is a very real problem and one which intelligence analysts tasked to write this report will have to grapple.

The second issue is that, regardless of the source, Treasury has a responsibility to ensure that anything it provides to Congress under official cover is as accurate as possible. (And to ensure that any allegations, which are potentially actionable in court, can stand up to scrutiny.) This means that it will need to corroborate any public reporting used with other sources or analysis, and this is sometimes impossible. For this reason, the inclusion of language that permits use of open source information (which is unnecessary in any event, as open source documentation is already part of the analysis process) will actually make this report harder to draft. Treasury officials will have to consider carefully whether to lay out facts that are publicly alleged, but for which only very sensitive intelligence sourcing exists to confirm, balanced against the high likelihood of being asked to testify in open session why



they ignored hundreds of pages of information prepared by interested NGOs and think tanks. This will create a very real strain within the Treasury Department and the Intelligence Community with, as has already been asserted, little direct impact on the bad guys.

- 3) This report will be a nightmare to draft, absorbing real work hours from people who are stretched.

Notwithstanding the fact that many Executive Branch reports may not be read or [found useful](#) by Congress, they are taken seriously by the civil servants tasked to write them. They consume hundreds of worker hours and, depending on the content, may require senior level review and scrutiny to ensure accuracy. Worse, reports like this cannot just be written by anyone: they will require the effort of the very financial investigators who are tasked with uncovering illicit conduct across the globe. These officers are stretched and tasked with too much, but – in the current budgetary climate – it seems unlikely that they will get much more staffing assistance without taking away from other, crucial functions.

- 4) The reporting requirement is duplicative of other authorities and mandates in some ways, while confusing those lines in others.

Beyond shining a light on the webs of corruption that probably exist inside of Iran, the reporting requirement appears intended to galvanize action against the IRGC from a sanctions enforcement perspective. By requiring Treasury to report who and what companies are IRGC-affiliated, sanctions will be tightened because they are mandatory under the still extant Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), as amended. But, this suggests that Treasury isn't already doing so, which is a meritless charge. I helped to supervise the imposition of sanctions against IRGC elements and affiliates for around 6 years. Treasury was relentless in following up on credible, actionable reporting of linkages of substance and the list of IRGC-related targets grew accordingly. Nowhere in the Iran nuclear deal is there an obligation for the United States to remove its sanctions on the IRGC and I highly doubt it will be offered to Iran in the near term absent a major change in Iranian behavior.

Some may argue that, while Treasury may wish to impose sanctions against these targets, the White House or State Department is preventing it from doing so. Not being in government any more, I'm not in a position to offer an authoritative denial of this allegation. But, I can say that – on more than one occasion – it was the State Department or White House that advocated on the behalf of additional designations, including of IRGC affiliates. Treasury is relentless, but it was – and I believe still is – a whole-of-government endeavor to go after illicit conduct in Iran, including by the IRGC. This legislation is not needed to prompt this response.

But, the fact that it is being pursued – in combination with the insistence that non-government information be treated favorably in the development of this report – suggests that the motivation



behind this legislation is far less the appropriate execution of U.S. sanctions authorities and far more politically minded.

For this reason, I believe that this legislation – and other pieces like it – ought to be reconsidered by its sponsors and set aside. It is well intentioned. It may even point the way to different sanctions authorities and responses that could be useful (such as global authorities to target corruption, though this would come with its own complications). But, ultimately, because of circumstances on the ground in Iran, the workload and intelligence-management burdens at home, and the duplicative nature of its function, I believe it would not advance U.S. interests.

Stepping back to the larger point of this piece, it is here that I must reiterate my concern that, far from only imposing sanctions or sanctions-like authorities when U.S. interests are directly impinged, sanctions are increasingly being used as a substitute for more effective action, to avoid taking more risky (but probably necessary) action, and to address domestic political needs in the United States. Sanctions are a powerful tool but, like [all instruments of statecraft, should be handled carefully to preserve their utility for future generations of American policymakers and legislators.](#)