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# Meddling with the Mullahs: An Analysis of the Iran and Libya Sanctions Act of 1996

## Keywords

Sanctions, International Trade, Politics

# MEDDLING WITH THE MULLAHS: AN ANALYSIS OF THE IRAN AND LIBYA SANCTIONS ACT OF 1996

LUCIEN J. DHOOGHE\*

“As the dominant power, [the United States] can afford to add the legitimizing carrot of negotiations to the punitive stick of sanctions.”<sup>1</sup>

## I. INTRODUCTION

On August 5, 1996, President William J. Clinton signed the Iran and Libya Sanctions Act of 1996 into law.<sup>2</sup> This statute, dubbed by some as the D'Amato-Kennedy Act after its two chief legislative sponsors,<sup>3</sup> was introduced in the United States (U.S.) Senate as Senate Bill 1228 on September 8, 1995 and in the U.S. House of Representatives as House Bill 3107 on March 19, 1996.<sup>4</sup> The bill received little attention until the summer of 1996 when two events combined to bring its enactment to fruition. On June 25, 1996, a truck bomb was detonated outside of Khobar Towers, a U.S. military housing compound located near Dhahran, Saudi Arabia, resulting in the death of nineteen American servicemen.<sup>5</sup> One month later, on July 17, 1996, Trans-World Airlines

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1. Richard W. Murphy, *It's Time to Reconsider the Shunning of Iran*, WASH. POST, July 20, 1997, at C1. Murphy served as U.S. Ambassador to Syria and Saudi Arabia and as Assistant Secretary of State for Near Eastern and South Asian Affairs from 1983 to 1989.

2. Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, 110 Stat. 1541 (1996) [hereinafter ILSA].

3. The chief legislative sponsor of ILSA was United States Senator Alfonse M. D'Amato (Republican, New York). See Clay Chandler, *U.S. Expects Furor Over Trade Sanctions at Summit*, WASH. POST, June 27, 1996, at A20. See also *Urgent Paris Warns Washington over Sanctions Law*, AGENCE FR.-PRESSE, Sept. 29, 1997, available in 1997 WL 13404030.

4. H.R. REP. NO. 104-523(I), at 13-14 (1996).

5. See *Saudis Finish Bomb Probe*, CHI. TRIB., Mar. 31, 1998, at 7, available in 1998 WL 2840770. See also Chandler, *supra* note 3, at A20. Initial optimism that responsibility for the bombing could be attributed to Iranian-sponsored terrorists based in Saudi Arabia has faded as the investigation has proceeded. See Toni Locy, *Informant in Bombing has a Change of Heart*, HOUS. CHRON., July 31, 1997, at 5, available in 1997 WL 6570713. Saudi Arabia closed its investigation of the attack on March 30, 1998. See *Saudis Finish Bomb Probe*, *supra* at 7. The U.S. Military now doubts whether it will ever be able to “establish a ‘solid line’ tying Iran to the terror attack.” Charles J. Hanley, *Un-*

Flight 800 inexplicably exploded in mid-air and crashed off the coast of Long Island, New York resulting in the loss of 230 lives.<sup>6</sup> In the atmosphere of outrage and panic over the perceived threat of international terrorism stirred by these incidents, the bill was quickly passed by the Senate on July 16, 1996 and the House of Representatives on July 23, 1996.<sup>7</sup> In response to the national outcry for retaliatory action - and perhaps not wishing to appear weak on the issue of international terrorism in an election year - President Clinton endorsed its provisions two weeks later.<sup>8</sup> The U.S. trade embargo against Iran escalated to a new level at the stroke of the President's pen.

At its core, the Act has four purposes. Initially, ILSA purports to address the threat to U.S. national security and foreign policy objectives posed by Iranian and Libyan attempts to acquire weapons of mass destruction and sponsorship of acts of international terrorism.<sup>9</sup> However, the sponsors of ILSA acknowledged that unilateral efforts by the United States were insufficient to adequately address these threats.<sup>10</sup> As a result, ILSA attempts to multilateralize U.S. efforts to isolate Iran. Initially, ILSA urges the President to commence diplomatic efforts through the United Nations and consultation with U.S. allies in order to establish a multilateral sanctions regime against Iran, including provisions limiting the development of its petroleum resources.<sup>11</sup> ILSA also authorizes the imposition of economic sanctions upon persons determined by the President to have made investments in Iran of at least \$40 million in any one year that directly contributed to Iran's ability to develop its petroleum resources.<sup>12</sup> Persons subject to sanctions must have actual knowledge or reason to know that their investment would

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*answered Questions, Unending Delays in Saudi Bombing Investigation*, ASSOC. PRESS, Mar. 1, 1997, available in 1997 WL 4857484. Responsibility for the attack remains undetermined as of the time of preparation of this article.

6. Michele Salcedo, *Tape Shows Other Pilots Saw TWA 800 Explode*, AUSTIN AM.-STATESMAN, Jan. 15, 1998, at A10, available in 1998 WL 3593269. See Paul Blustein, *House Passes Measure Against Foreign Firms Investing in Iranian, Libyan Oil*, WASH. POST, July 24, 1996, at A25. Despite initial speculation that a terrorist bomb brought the airliner down, an exhaustive investigation by several U.S. agencies including the Federal Bureau of Investigation and the National Transportation Safety Board eliminated this possibility. See *TWA Flight 800 Explained*, WASH. TIMES, Dec. 9, 1997, at A18, available in 1997 WL 164. The investigation is now focused on mechanical explanations for the explosion. *Id.* The cause of the explosion remains undetermined as of the time of preparation of this article.

7. H.R. REP. NO. 104-523(I), at 1.

8. See Eric Pianin, *Clinton Approves Sanctions for Investors in Iran, Libya*, WASH. POST, Aug. 6, 1996, at A8, available in 1996 WL 10724877.

9. See ILSA, Pub. L. No. 104-172, § 2(1), 110 Stat. 1541, 1541 (1996). See also H.R. REP. NO. 104-523(II), at 3 (1996).

10. See H.R. REP. NO. 104-523(I), at 3. See also H.R. REP. NO. 104-523(II), at 2.

11. See ILSA § 4(a). See also H.R. REP. NO. 104-523(II), at 3.

12. See ILSA § 5(a). See also H.R. REP. NO. 104-523(I), at 12.

directly contribute to Iran's ability to develop its petroleum resources.<sup>13</sup> The President is required to impose at least two sanctions from a list set forth in ILSA against persons deemed to have violated the investment prohibition.<sup>14</sup> This sanctions regime is designed to discourage foreign investment in Iran's petroleum industry, thereby denying it the financial means to sustain its nuclear, chemical, biological and missile weapons programs and sponsorship of international terrorism.<sup>15</sup> Finally, ILSA purports to place additional pressure upon the Libyan government to comply with United Nations Security Council Resolutions 731, 748, and 883 by demanding the cessation of Libyan sponsorship of international terrorism and efforts to acquire weapons of mass destruction,<sup>16</sup> and by demanding the surrender of two Libyan intelligence agents implicated in the bombing of Pan Am Flight 103 on December 21, 1988.<sup>17</sup> Furthermore, all provisions of ILSA applicable to Iran are equally applicable to investments in Libya.<sup>18</sup> The President must report to Congress on a regular basis on his efforts to accomplish the purposes set forth in ILSA.<sup>19</sup>

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13. *See id.*

14. *See* ILSA § 5(a). *See also* H.R. REP. NO. 104-523(I), at 2.

15. *See* ILSA § 2(2). *See also* H.R. REP. NO. 104-523(II), at 3.

16. *See* S.C. Res. 731, S/RES/731 (1992). *See also* S.C. Res. 748, S/RES/748 (1992).

17. *See* S.C. Res. 883, S/RES/883 (1993). Flight 103 exploded over Lockerbie, Scotland on December 21, 1988, killing all 259 people on board as well as eleven people on the ground. *See Khomeini Ordered Bombing Over Lockerbie, Report Says*, DALLAS MORNING NEWS, July 6, 1997, at 17A, available in 1997 WL 11502927.

18. *See* ILSA § 5(1)(B). *See also* H.R. REP. NO. 104-523(I), at 7. The effects of ILSA upon Iran and its trading partners are more controversial than those relating to Libya due to the prior imposition of economic sanctions upon Libya by the Security Council and the pledge of United Nations members to enforce those sanctions. *See* Thomas W. Lippman, *Panel Approves Sanctions for Foreign Firms Investing in Iran*, WASH. POST, June 14, 1996, at A1. As a result, this article will focus on the effects of ILSA upon Iran and its trading partners. For its part, Libya's official news agency JANA condemned ILSA as a "flagrant injustice" arising from "satanic designs . . . designed as a veto on the independence, freedom and development of nations." *Agency Editor Comments on Renewal of Sanctions Against Libya*, BRITISH BROAD. CORP., Jan. 26, 1996.

19. *See* ILSA §§ 4(b), 4(d)(2), 4(e), 9(a)(4), 9(c)(1), 10(a) and 10(b). *See also* H.R. REP. NO. 104-523(I), at 7; H.R. REP. NO. 104-523(II), at 3. The summary of the purposes set forth in the text are those of the U.S. Congress. In signing ILSA into law, President Clinton described Iran and Libya as "two of the most dangerous supporters of terrorism in the world." Pianin, *supra* note 8, at A8. According to President Clinton, the legislation was designed to accomplish two purposes with regard to the terrorist threats posed by Iran and Libya. Initially, ILSA would deny Iran and Libya resources necessary to finance international terrorism and the acquisition of weapons of mass destruction. *Id.* Secondly, ILSA would place the issue of international terrorism upon the agenda of every state engaging in trade with Iran and Libya by requiring "every advanced country . . . to make up its mind whether it can do business with people by day who turn around and fuel attacks on their innocent civilians by night." *Id.* *See also* Muriel Dobbin, *Clinton Signs Libya, Iran Sanction Bill*, ORANGE COUNTY REG., Aug. 6, 1996, at A3, available in 1996 WL 7042186. President Clinton may also have been motivated by U.S. outrage over the execution of a contract between the Iranian government and the French petrochemicals firm Total SA for the development of two large Iranian oil and gas fields located in the

The Act attempts to accomplish its purposes with three specific methods. Initially, Section 4(a) of the Act urges the President to immediately commence diplomatic efforts in appropriate international forums and in bilateral negotiations to establish a multilateral sanctions regime against Iran including limitations upon foreign investments in Iran's petrochemicals industry.<sup>20</sup>

The second method by which the Act accomplishes its purposes is through increased consultation between the President and Congress regarding U.S. policy toward Iran. Sections 4(b) and 10(a)(1) require the President to report to Congress on a periodic basis regarding his efforts to establish a multilateral sanctions regime against Iran.<sup>21</sup> ILSA also requires the President to report to Congress on whether the European Union, the Republic of Korea, Australia, Israel and Japan have legislative or administrative standards providing for the imposition of trade sanctions against persons doing business or having investments in Iran.<sup>22</sup> The President is additionally required to report to Congress on Iran's military capabilities and support of international terrorism including the extent to which the International Atomic Energy Agency has established regular inspections of all nuclear facilities in Iran and Iran's use of its diplomats and representatives to promote acts of terrorism.<sup>23</sup>

Finally, ILSA provides for the imposition of economic sanctions upon persons who, with actual knowledge, make an investment of \$40 million or more in any twelve month period which directly and significantly contributes to the enhancement of Iran's ability to develop its petroleum resources.<sup>24</sup> These sanctions include prohibitions upon transactions between the sanctioned person, U.S. financial institutions and the Export-Import Bank of the United States, procurement sanctions, and import and export sanctions.<sup>25</sup> Sections 4(c), 5(f), 9(a) and 9(c) grant the President broad authority to grant exceptions and waivers as well as delays in the imposition of sanctions.<sup>26</sup> In any event, sanctions imposed pursuant to ILSA must remain in effect for a period of two years or until either Iran or the sanctioned person modifies their objectionable be-

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Persian Gulf. This contract was executed on July 13, 1995, four months after President Clinton barred Conoco and other American companies from participating in the project. *See* Exec. Order No. 12,957, 3 C.F.R. § 332 (1995). Executive Order No. 12,957 prohibited the financing, management or supervision by U.S. persons of the development of Iranian petroleum resources. *See id.* at § 1(a)-(c). *See also* International Emergency Economic Powers Act, 50 U.S.C. § 1702(a)(1)(A) and (B)(1994) [hereinafter IIEEPA].

20. *See* ILSA § 4(a).

21. *See id.* §§ 4(b) and 10(a)(1).

22. *See id.* § 4(e).

23. *See id.* §§ 10(a)(3)-(4) and 10(b)(1)-(2).

24. *See id.* § 5(a).

25. *See id.* § 6(1)-(6).

26. *See id.* §§ 4(c), 5(f), 9(a), and 9(c).

havior.<sup>27</sup>

International reaction to the adoption of ILSA was universal, immediate and unequivocally hostile. Canada, the largest trading partner of the United States, amended its Foreign Extraterritoriality Act to provide for fines and prison terms for company managers who comply with orders entered pursuant to the Act.<sup>28</sup> The European Union filed a formal protest to ILSA with the United States on August 8, 1996.<sup>29</sup> European Union officials objected to ILSA as "an extreme case of extraterritorial legislation"<sup>30</sup> and an inappropriate and ineffective means of combating international terrorism.<sup>31</sup> European Union officials warned the United States that the imposition of sanctions against European firms transacting business in Iran would seriously damage relations and would lead to the enactment and enforcement of retaliatory measures against American business interests.<sup>32</sup> The European Union also threatened to initiate a challenge to ILSA before the World Trade Organization (WTO) as a violation of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT).<sup>33</sup>

Even U.S. Persian Gulf allies living directly under the threat of Iranian expansionism expressed doubts about further American attempts to isolate Iran as exemplified by ILSA. A statement issued at the conclusion of the eighth summit of the Organization of the Islamic Conference,<sup>34</sup> held in Tehran in December 1997, criticized U.S. attempts to penalize countries doing business with Iran.<sup>35</sup> This criticism was ech-

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27. See *id.* §§ 8(a) and 9(b).

28. See Foreign Extraterritorial Measures Act, R.S.C., ch. F-29, §§ 5, 7 (1984) (Can.).

29. See *EU Protests Law on Iran, Libya Sanctions*, HOUS. CHRON., Aug. 9, 1996, at 30, available in 1996 WL 11558085.

30. Blustein, *supra* note 6, at A25. See also *France Defends Firm's Gas Pact with Iran*, BUFF. NEWS, Sept. 30, 1997, at A2, available in 1997 WL 6464384; *U.S. Frustrated Over French-Iranian Gas Deal*, XINHUA ENG. NEWSWIRE, Oct. 1, 1997, available in 1997 WL 11202513; *U.S. Investigating Iranian Gas Deal*, ASSOC. PRESS, Sept. 29, 1997, available in 1997 WL 4885712.

31. See *EU Protests Law on Iran*, *supra* note 29, at 30.

32. Blustein, *supra* note 6, at A25. See also Raf Casert, *EU Warns U.S. Relations Will Suffer if French Iran Deal Challenged*, ASSOC. PRESS, Sept. 30, 1997, available in 1997 WL 4885966; Bill Mintz, *EU Tells Washington not to Meddle*, HOUS. CHRON., Oct. 1, 1997, at 3, available in 1997 WL 13071837; *Urgent Paris Warns Washington Over Sanctions Law*, *supra* note 3.

33. Raf Casert, *EU Nations "100 Percent" Behind France in Iran Oil Deal*, ASSOC. PRESS, Oct. 6, 1997, available in 1997 WL 4886682. See also Jana Byron, *Sanctions Corner, France's Total Ignores ILSA*, EXPORT PRACTITIONER, Oct. 15, 1997, at 13, available in 1997 WL 8530724; *EU Protests Law on Iran, Libya Sanctions*, *supra* note 29, at 30; *U.S. to Investigate Total's Deal with Iran*, XINHUA ENG. NEWSWIRE, Oct. 6, 1997, available in 1997 WL 11203425.

34. See John Lancaster, *Iran Seeks New Image at Summit*, WASH. POST, Dec. 22, 1997, at A23. The Organization of the Islamic Conference was created in 1969 and meets every three years. See *id.* The Conference consists of representatives of Islamic countries located in Europe, the Middle East and Africa. The eighth summit was the first hosted by Iran and drew representatives from fifty-five Islamic countries. See *id.*

35. See Phil Chetwynd, *Moslem Leaders Condemn Terrorism, Israel as Summit Ends*,

oed in a statement issued at the end of the annual summit of the Gulf Cooperation Council<sup>36</sup> in December 1997 welcoming Iranian overtures to lessen tensions in the Persian Gulf.<sup>37</sup> The leader of one of the U.S. closest Gulf allies, Sheik Hamad bin Khalifa Al-Thani of Qatar, called for dialogue between Iran and the U.S.,<sup>38</sup> and Saudi Arabian Crown Prince Abdullah offered to act as an intermediary in such discussions.<sup>39</sup>

This article examines the provisions of ILSA and its consistency with the U.S. international and national interests. This article first examines in detail the history preceding the adoption of ILSA with specific concentration on diplomatic and economic relations between the U.S. and Iran since 1979 and the resultant imposition of U.S. trade sanctions against Iran. It then examines the specific provisions of ILSA with emphasis on its most controversial element - the imposition of unilateral economic sanctions upon persons who invest in Iran's petrochemicals industries. Finally, this article analyzes ILSA in light of the U.S. international and national interests. This article concludes that ILSA is inconsistent with the promotion of the international and national interests of the United States.

## II. HISTORICAL BACKGROUND OF THE IRAN AND LIBYA SANCTIONS ACT

Although a complete history of the volatile relationship between the United States and Iran is beyond the scope of this article, a brief review of the recent highlights of this relationship is in order to place ILSA in its proper context. Modern Iranian history began in 1921 when Reza Khan, an Iranian officer of the Persian Cossack Brigade, engineered a coup d'état against the government of Ahmad Shah of the Qajar dynasty.<sup>40</sup> Reza Khan ousted Ahmad Shah and gained complete control of the government in 1925.<sup>41</sup> Reza Khan subsequently declared himself Shah, ruling as Reza Shah Pahlavi until his forced abdication following

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AGENCE FR.-PRESSE, Dec. 11, 1997, available in 1997 WL 13452786.

36. The Gulf Cooperation Council consists of the leaders of Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Oman and Bahrain. See Ashraf Fouad, *Gulf Arabs Cautiously Positive Toward Iran*, WASH. POST, Dec. 22, 1997, at A23.

37. See *id.*

38. See *Rejecting Advice, U.S. Stands Firm on Iran*, ASSOC. PRESS, June 12, 1997, available in 1997 WL 4870452.

39. See Anthony Shadid, *Despite Hope for Moderation, Iran's Leader Blasts West, Israel*, ASSOC. PRESS, Dec. 9, 1997, available in 1997 WL 4895949.

40. U.S. DEP'T OF STATE, BACKGROUND NOTES: IRAN 2 (1994), (visited Sept. 12, 1998) <[http://www.state.gov/www/background\\_notes/iran\\_794\\_bgn.html](http://www.state.gov/www/background_notes/iran_794_bgn.html)> [hereinafter IRAN: STATE DEP'T NOTES]. Reza Khan became minister of war as a result of the 1921 coup d'état. *Iran's History in Brief*, at 10 (visited Sept. 12, 1998) <<http://www.salamiran.org/IranInfo/General/History.html>> [hereinafter *Iran's History*].

41. *Iran's History*, *supra* note 40, at 9.

the occupation of Iran by British and Soviet forces in September 1941.<sup>42</sup> Reza Shah Pahlavi was succeeded by his son, Mohammad Reza Pahlavi, who ruled Iran until January 1979.<sup>43</sup>

Mohammad Reza Pahlavi's regime faced two serious threats to its existence during its thirty-eight year tenure. The first threat occurred in 1951 when Premier Mohammed Mossadeq, an advocate of the nationalization of British petroleum interests in Iran,<sup>44</sup> briefly assumed power and forced the Shah to flee the country.<sup>45</sup> The Shah returned to Iran after his supporters succeeded in ousting Mossadeq in a coup d'état in August 1953.<sup>46</sup> Mossadeq's ouster remains a contentious issue in present-day American-Iranian relations due to the role of the Central Intelligence Agency in leading and financing the coup.<sup>47</sup> Shortly after his return to power, the Shah agreed to a new charter that granted American and British oil interests forty percent each of Iranian oil revenues.<sup>48</sup> The Shah also received \$85 million in American economic aid.<sup>49</sup>

In 1978, domestic turmoil swept Iran as a result of religious and political opposition to the Shah's increasingly autocratic rule. One example of the Shah's tendencies in this regard was his utilization of SAVAK - the internal security and intelligence service - which conducted operations against political dissidents utilizing summary execution, disappearance, torture and other human rights violations.<sup>50</sup> Mass demonstrations against the Shah's regime occurred throughout Iran, and strikes became more widespread and frequent.<sup>51</sup> The Shah fled Iran on January 16, 1979 as confrontations between his supporters and demonstrators became more violent.<sup>52</sup> On February 10, 1979, Shapur Bakhtiar, the Shah's last prime minister, declared martial law in an attempt to maintain order until a provisional government could be

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42. IRAN: STATE DEP'T NOTES, *supra* note 40, at 3. Reza Shah Pahlavi was forced to abdicate by the British military force occupying Iran due to his refusal to permit the Allies to supply the Soviet Union through his country. See *Iran's History*, *supra* note 40, at 9. Reza Shah Pahlavi died in exile in South Africa in 1944. *Id.*

43. IRAN: STATE DEP'T NOTES, *supra* note 40, at 3. See also *Iran's History*, *supra* note 40, at 10.

44. Under Mossadeq's leadership as prime minister, the Iranian government expropriated the Anglo-Iranian Oil Company and formed the National Iranian Oil Company [hereinafter NIOC] to operate the industry. See *The Oil and Gas Industry in Iran* (visited Sept. 12, 1998) <<http://www.salamiran.org/IranInfo/State/Government/Energy/index.html>>.

45. IRAN: STATE DEP'T NOTES, *supra* note 40, at 3.

46. See *id.*

47. JAMES T. PATTERSON, *GRAND EXPECTATIONS* 284 (1996).

48. See *id.* at 284-85.

49. See *id.*

50. IRAN: STATE DEP'T NOTES, *supra* note 40, at 3.

51. *Iran's History*, *supra* note 40, at 10.

52. See *id.* The Shah subsequently went into exile in Panama, and later Egypt where he died in July 1980. See *Key Dates in Iran's History and Dealings With the United States*, ASSOC. PRESS, Feb. 9, 1998, available in 1998 WL 6641041.

formed.<sup>53</sup> However, Bakhtiar's attempt failed in the rising tide of Islamic fervor which swept the country upon the return of its spiritual leader, the Ayatollah Ruhollah Khomeini.

On February 1, 1979, Ayatollah Khomeini returned to Iran from exile in France.<sup>54</sup> Khomeini's opposition to the Shah's regime had resulted in his arrest in June 1963 and exile in April 1964.<sup>55</sup> While in exile in Turkey, Iraq and France, Khomeini continued to actively oppose the Shah's regime and developed the principles of Islamic governance which were to sweep Iran upon the Shah's abdication.<sup>56</sup> Upon his return, Khomeini quickly assumed leadership of the revolutionary movement and replaced the Bakhtiar regime with a new theocratic republic guided by Islamic principles.<sup>57</sup> A new constitution enshrining the principles of Islamic governance was approved in a general referendum in December 1979,<sup>58</sup> and Khomeini assumed the role of national religious leader and titular head of state.<sup>59</sup> The president of the Islamic republic, Ayatollah Sayyed Ali Khamenei, succeeded Khomeini as national religious leader upon Khomeini's death on June 3, 1989.<sup>60</sup> The speaker of the national assembly, Ali Akbar-Hashemi Rafsanjani, was elected to the presidency in August 1989 to replace the outgoing Khamenei.<sup>61</sup> Rafsanjani was subsequently re-elected in June 1993.<sup>62</sup>

The December 1979 constitution defines Iran's political, economic and social order. The constitution declares Shi'a Islam of the Twelver Ja'fari sect as Iran's official religion.<sup>63</sup> Governance in Iran is based upon "[d]ivine revelation and its fundamental role in setting forth the laws."<sup>64</sup> As a result, all laws, regulations and constitutional interpretations must be based upon Islamic criteria.<sup>65</sup> These criteria include the elimination of imperialism and prevention of foreign influence in Iran<sup>66</sup> as well as the political, economic and cultural unification of all Moslems in a single nation.<sup>67</sup>

Political power in post-revolutionary Iran is divided amongst four branches of government. The highest authority is the leader who exer-

53. See *Iran's History*, *supra* note 40, at 11.

54. IRAN: STATE DEP'T NOTES, *supra* note 40, at 4.

55. *Biography of Ayatollah Ruhollah Khomeini* (visited Sept. 12, 1998) <<http://www.salamiran.org/IranInfo/State/Leadership/Imam/ImamBiography.html>>.

56. See *id.* at 2-3.

57. IRAN: STATE DEP'T NOTES, *supra* note 40, at 4.

58. *Iran's History*, *supra* note 40, at 11.

59. IRAN: STATE DEP'T NOTES, *supra* note 40, at 4.

60. See *id.*

61. See *id.* See also *Iran's History*, *supra* note 40, at 10.

62. IRAN: STATE DEP'T NOTES, *supra* note 40, at 4.

63. IRAN CONST. § 1, art. 12 (1992). Zoroastrianism, Judaism and Christianity are the only other religions permitted to be practiced in Iran. *Id.* § 1, art. 13.

64. *Id.* § 1, art. 2(2).

65. See *id.* § 1, art. 4.

66. See *id.* §§ 1, art. 3(5) and 10, art. 152.

67. See *id.* § 2, art. 11.

cises the combined supreme political and religious power.<sup>68</sup> The position of leader embodies the doctrine of vali-efaqih which provides that the leader is God's vice-regent on Earth.<sup>69</sup> The leader is selected by the Assembly of Experts whose members are selected by universal suffrage.<sup>70</sup> The leader is responsible for delineation of the general policies of the country, appointment of the Guardian Council, the supreme judicial authority, commanders of the armed forces, and resolution of disputes between the other branches of government.<sup>71</sup> The leader is also the commander-in-chief of the armed forces and retains control over foreign policy and the interior and intelligence ministries.<sup>72</sup>

After the leader, the president is the highest official in the country.<sup>73</sup> The president is elected by universal suffrage to a four year term and may be reelected once.<sup>74</sup> The president appoints and supervises the Council of Ministers which acts as his cabinet and is responsible for national planning and budgetary matters.<sup>75</sup> Additionally, the president prepares and submits legislation to the legislative branch through the Council of Ministers.<sup>76</sup> The president is also empowered to execute treaties and contracts on behalf of the Iranian government and is obliged to sign legislation approved by the Islamic Consultative Assembly.<sup>77</sup>

Legislative power is exercised through the Islamic Consultative Assembly.<sup>78</sup> Members of the Assembly are elected to four year terms by universal suffrage.<sup>79</sup> The Assembly is competent to establish laws on all matters as long as such laws are not contrary to Islam or the constitution.<sup>80</sup> Most legislation is submitted to the Assembly by the Council of Ministers although bills sponsored by at least fifteen members may be introduced independent of the Council.<sup>81</sup> All legislation passed by the Assembly must be submitted to the Guardian Council to ensure its compatibility with Islamic teachings and the constitution.<sup>82</sup> All legisla-

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68. *See id.* §§ 5, art. 60, 8, art. 107 and 9.1, art. 113.

69. *See id.* § 1, art. 5.

70. *See id.* § 8, art. 107. The qualifications for selection as leader are scholarship, justice, piety and "adequate capability for leadership." *Id.* § 8, art. 109.

71. *See id.* § 8, arts. 110(2),(6) and (8).

72. *See id.* § 8, arts. 110(3) and (4).

73. *See id.* § 9.1, art. 113.

74. *See id.* § 9.1, art. 114. In order to be eligible for election, a presidential candidate must possess Iranian origin and nationality, administrative capacity and resourcefulness, a good past record of accomplishments, trustworthiness, piety and belief in the fundamental principles of Islamic governance as manifested in Iran. *Id.* § 9.1, art. 115.

75. *See id.* §§ 9.1, art. 126 and 9.2, arts. 133-34.

76. *See id.* § 6.2, art. 74.

77. *See id.* § 9.1, arts. 123 and 125.

78. *See id.* § 5, art. 58.

79. *See id.*

80. *See id.* § 6, arts. 71-72.

81. *See id.* § 6, art. 74.

82. *See id.* § 6.2, art. 94. The Guardian Council consists of twelve members. Six of the Council members are lawyers selected by the Islamic Consultative Assembly from nominations submitted by the head of the judicial branch. These members determine the

tion approved by the Guardian Council is fully enforceable and must be submitted to the president for signature.<sup>83</sup> The Assembly also has the right to investigate the affairs of the country and must approve all international treaties, contracts and agreements.<sup>84</sup>

Judicial authority is constitutionally vested in the Supreme Court, the head of the judicial branch and the minister of justice.<sup>85</sup> The Supreme Court's primary responsibility is supervision of the lower courts.<sup>86</sup> The chief judicial officer of the Supreme Court is nominated by the head of the judicial branch for a period of five years in consultation with the Court's judges.<sup>87</sup> The head of the judicial branch is appointed to a five year term by the leader and is responsible for the appointment and dismissal of lower court judges.<sup>88</sup> The Minister of Justice is selected by the president from candidates proposed by the head of the judicial branch.<sup>89</sup> The Minister's primary responsibility is the coordination of relations between the executive, legislative and judicial branches.<sup>90</sup> The constitution guarantees the independence of the judiciary, due process, the right to counsel, the presumption of innocence in criminal cases and the right to a public trial before a jury.<sup>91</sup> In any event, all judicial decisions must conform with Islamic principles.<sup>92</sup>

The conflict created by the Iranian constitution between the offices of national religious leader and president has resulted in considerable political ferment.<sup>93</sup> Ayatollah Khamenei remains the national religious leader. A former student of Khomeini and president under his regime, Khamenei remains hostile to the United States and opposes to any resumption of dialogue between the countries. In recent speeches, Khamenei has castigated the United States for its "global arrogance"<sup>94</sup> and accused it of seeking to destabilize the Iranian government at the

constitutionality of proposed legislation. The remaining six members of the Council are religious scholars selected by the leader to consider the conformity of all proposed legislation to Islamic principles. *Id.* § 6.2, art. 91.

83. *See id.* §§ 6.2, art. 94 and 9.1, art. 123.

84. *See id.* § 6.1, arts. 76-77.

85. *See id.* § 11, arts. 157, 160 and 161.

86. *See id.* § 11, art. 161.

87. *See id.* § 11, art. 162.

88. *See id.* § 11, arts. 157-58.

89. *See id.* § 11, art. 160.

90. *See id.*

91. *See id.* §§ 3, arts. 32, 35 and 11, arts. 156, 165 and 168.

92. *See id.* § 5, art. 61.

93. *See* John Rossant, *The Stakes are Huge as President Khatami Wages a Bitter Battle Against Hardline Mullahs for the Soul of Iran*, BUS. WK., Dec. 8, 1997, at 16, available in 1997 WL 14814621. *See also* *Iran: Pro-Khatami Backers Clash with Vigilantes*, DOW JONES INT'L NEWS SERV., Mar. 2, 1998.

94. *See* *Iran Opens Summit with a Vengeance: 'Poisonous Breath' of U.S. Threatens Gulf Security and Islamic Values, Khamenei Charges*, GLOBE & MAIL, Dec. 10, 1997, at A15.

behest of a "Zionist network" controlled by Israel.<sup>95</sup> According to Khamenei, such measures have only served to strengthen Iranian resolve to actively oppose American policies in the Middle East.<sup>96</sup> Khamenei is strongly supported by the speaker of the parliament, Ali Akbar Nateq-Nouri, and the head of the judicial branch, Ayatollah Mohammad Yazdi.<sup>97</sup> Khamenei also has strong support from most of Iran's major institutions such as the military, the media, the intelligence community and religious foundations which remain firmly under the control of religious conservatives.<sup>98</sup>

However, the grip of religious conservatives upon the reins of power in Iran have not gone unchallenged. In an unprecedented statement in December 1997, former Khomeini ally Ayatollah Hossein Ali Montazeri openly questioned the legitimacy of Khamenei's role in the government as national religious leader.<sup>99</sup> Of particular concern to Montazeri was Khamenei's paramount role in governmental affairs in the absence of popular election by the Iranian citizenry.<sup>100</sup> Montazeri's statement led to accusations of treason and a crackdown against his supporters by religious conservatives.<sup>101</sup>

A greater threat to the conservative's grip upon power was the selection of a religious moderate as president in Iran's recent elections. Moderate cleric Seyyed Mohammad Khatami, the former Minister of Culture and Islamic Guidance from 1982 until his ouster in 1992,<sup>102</sup> swept to an overwhelming victory in Iran's May 23, 1997 presidential election. Running on a platform of economic centralization and relaxation of the rigid Islamic social code,<sup>103</sup> Khatami easily defeated three

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95. See Afshin Valinejad, *Hardline Cleric Says U.S. is Intent on Destabilizing Iran*, ASSOC. PRESS, Jan. 2, 1998, available in 1998 WL 6635779. See also Afshin Valinejad, *Iran Cleric Opposes U.S. Ties: Ayatollah's Sermon Contrasts Sharply with Tone of Nation's President*, PEORIA J. STAR, Jan. 3, 1998, at A3, available in 1998 WL 5749472; *Iran's Khamenei Says U.S. Gov't Controlled by Zionists*, DOW JONES INT'L NEWS SERV., Dec. 24, 1997.

96. See *Khamenei Carps at Idea of Iran-U.S. Talks*, FLA. TIMES UNION, Jan. 17, 1998, available in 1998 WL 6180823

97. See Rossant, *supra* note 93, at 17.

98. *Id.*

99. See John Lancaster, *Iranian Cleric Disputes Ayatollah's Right to Rule*, WASH. POST, Dec. 23, 1997, at A10. Montazeri served as deputy religious leader and Khomeini's heir apparent until his resignation in 1989 in protest of the perceived despotic tendencies of the regime. See Rossant, *supra* note 93, at 17.

100. See Lancaster, *supra* note 99, at A10.

101. See *id.* See also *Iranian Leader Asserts His Authority to End Political Unrest*, AGENCE FR.-PRESSE, Nov. 27, 1997, available in 1997 WL 13442988.

102. Khatami is a hojatoleslam or middle-ranking cleric. Khatami was removed as minister by conservative clerics in 1992 for lifting strict state controls on entertainment such as the prohibition upon live concerts and women singing in public. See *President-Elect of Iran Not Your Typical Mullah*, TAMPA TRIB., May 25, 1997, available in 1997 WL 10788898. See also John Daniszewski, *Moderate Wins by a Landslide in Iran's Presidential Race*, PORTLAND OREGONIAN, May 24, 1997, available in 1997 WL 4175518.

103. See Anwar Faruqi, *Iran's Election Shaping Up as a Real Contest*, ASSOC. PRESS,

other candidates by capturing 20.7 million of the 29.7 million votes cast.<sup>104</sup> Khatami's chief rival, Nateq-Nouri, running on a platform of economic decentralization and strict enforcement of the Islamic social code,<sup>105</sup> was able to garner 7.2 million votes.<sup>106</sup> The ease and size of Khatami's victory constituted a shocking and firm rejection of the stifling rule of the conservative clerics.<sup>107</sup>

Khatami was inaugurated on August 3, 1997 and immediately began to steer a moderate course for the Iranian presidency.<sup>108</sup> Instructive in this regard was his selection of candidates for his twenty-two person cabinet. Included in the new president's selections was Kamal Kharrazi, Iran's ambassador to the United Nations, as the new foreign minister.<sup>109</sup> Kharrazi was educated in the United States and was instrumental in securing the release of foreign hostages by pro-Iranian militias in Lebanon in the early 1990s.<sup>110</sup> At the intelligence ministry, Khatami replaced Ali Fallahian, who had been linked to anti-Western attacks,

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Apr. 20, 1997, available in 1997 WL 4862793.

104. See John Lancaster, *Iranians Voted for New Ideas, Not a New System*, WASH. POST, May 26, 1997, at A1. See also John Lancaster, *Moderate Iranian Wins; Khatami Swamps Hardliner, Captures Presidency*, WASH. POST, May 25, 1997. Two-hundred thirty-eight candidates registered to run for the presidency including nine women. See *Iran Selects 4 Candidates for Election*, CHINA DAILY, May 9, 1997, available in 1997 WL 8259214. However, the Guardian Council certified only four candidates for inclusion on the ballot as recognized statesmen committed to the Islamic principles underlying the Iranian constitution. See *Council Sets Guidelines for Iranian Presidential Candidates*, ASSOC. PRESS, Apr. 28, 1997, available in 1997 WL 4863995. All women candidates were eliminated as the Iranian constitution does not permit women to run for the presidency. *Id.* Ninety percent of the 33 million eligible voters cast ballots in the general election. See Anwar Faruqi, *Moderate Cleric Wins Iranian Presidency: The New President's Supporters Hope He Can Restrain the Conservative Faction Within the Clergy*, FT. WORTH STAR TELEGRAM, May 25, 1997, available in 1997 WL 4843997. See also Khatami Promises More Democracy, AGENCE FR.-PRESSE, May 25, 1997, available in 1997 WL 2121502.. Men and women over the age of fifteen years are eligible to vote in Iran. See *Facts, Figures on Iran's Elections*, ASSOC. PRESS, May 22, 1997, available in 1997 WL 486 7865.

105. See Faruqi, *supra* note 103.

106. See Faruqi, *supra* note 104. The other two candidates, former intelligence minister Mohammad Mohammadi Reyshahri and deputy head of the judiciary Syed Reza Zavareie, garnered less than one million votes apiece. *Id.*

107. See Faruqi, *supra* note 104, at A1. See also *Iran's Khatami Proclaims New Era for Islamic Nation*, ASSOC. PRESS, May 26, 1997, available in 1997 WL 4844415. Iranian dissident Abdolkarim Soroush characterized Khatami's electoral victory as "a flood [against clergy rule] that has been released after years of building up." *Iran's Vote Sends Unusual Message for Political Islam*, ASSOC. PRESS, May 25, 1997, available in 1997 WL 2528506.

108. *Iran Swears in New President*, ASSOC. PRESS, Aug. 4, 1997, available in 1997 WL 2164293.

109. *Iran Set to Debate Cabinet: Leader's Picks Draw Ire of Hard-Liners*, BOSTON GLOBE, Aug. 13, 1997, at A2, available in 1997 WL 6265411. See *Iran's President Faces Hard-liner Opposition*, GLOBE & MAIL, Aug. 15, 1997, at A12.

110. *Iran's President Faces Hard-liner Opposition*, *supra* note 109, at A12.

with the less ideological Qorbanali Dorri Najafabadi.<sup>111</sup> Most controversial of all, Khatami named Ayatollah Mohajerani as head of the Cultural and Islamic Guidance Ministry.<sup>112</sup> Mohajerani ignited a firestorm of criticism in 1991 when he called for the restoration of diplomatic relations with the United States.<sup>113</sup>

Under Khatami's leadership, Iran's dismal human rights record has improved slightly. Khatami advocates equal rights for women<sup>114</sup> and has appointed women to the judiciary as well as his cabinet.<sup>115</sup> Khatami has also called for the loosening of strict governmental controls on individual liberty including freedom of speech and the press.<sup>116</sup> Khatami's election improved the United Nations' most recent assessment of human rights in Iran which had noted slight improvements in its report completed immediately before the presidential election.<sup>117</sup>

Of perhaps greater concern to religious conservatives is Khatami's proposed resumption of dialogue with the United States. At the eighth summit of the Organization of the Islamic Conference, Khatami called for understanding of western civilization which he characterized as the preponderant culture of the late twentieth century.<sup>118</sup> Khatami also

111. *Id.*

112. *Id.* See *Iranian President Loads Cabinet with Pragmatists, Moderates: Some U.S. Experts See Chance for Warmer Relations*, L.A. TIMES, Aug. 13, 1997, available in 1997 WL 2237614.

113. See *Iran Set to Debate Cabinet: Leader's Picks Draw Ire of Hard-Liners*, *supra* note 109, at A2.

114. *Iran Leader Backs Women's Rights*, COM. APPEAL, Dec. 1, 1997, at A2, available in 1997 WL 14521183. See *President Backs Women*, SACRAMENTO BEE, Dec. 1, 1997, at A13, available in 1997 WL 15807433.

115. See *Iran Appoints Women Judge, Its First Since '79*, SEATTLE POST INTELLIGENCE, Dec. 26, 1997, at A10, available in 1997 WL 15960953. See also *First Woman Appointed to Iranian Cabinet*, WASH. POST, Aug. 24, 1997, at A20. Appointed to the office of vice president for environmental protection, Masoumeh Ebekar is the first woman to serve in an Iranian cabinet position since the Islamic revolution.

116. See Faruqi, *supra* note 104, at A1. See also Carla Hall, *Iranians Are Going Against the Old System*, L.A. TIMES, Mar. 23, 1998, at B1, available in 1998 WL 2410998; *Iranians Go to Polls Today to Choose President: Race Pits Hard-line Cleric Against Moderate*, PATRIOT LEDGER, May 23, 1997, at 3, available in 1997 WL 8178738; *Journalists Criticize Senior Iranian Official in Rare Protest*, ASSOC. PRESS, Jan. 5, 1998, available in 1998 WL 6636160; *President Backs Women*, *supra* note 114, at A2.

117. See *U.N. Commission Censures Iran*, AGENCE FR.-PRESSE, Apr. 22, 1998, available in 1998 WL 2266925. Khatami's dedication to improving human rights protections has earned him the title of "Ayatollah Gorbachev" amongst some Iranians. See John Lancaster, *Khatami: Iran's 'Ayatollah Gorbachev'*; *Election Winner Schooled in Islamic Revolution*, *Western Culture*, WASH. POST, May 25, 1997, at A29.

118. See John Lancaster, *Iran's Top Leaders Differ on Relations with West; Clashing Views Air as Islamic Summit Opens*, WASH. POST, Dec. 10, 1997, at A1. By contrast, at the same summit meeting, Khamenei characterized western civilization as "directing everyone toward materialism, while money, gluttony, and carnal desires are made the greatest aspirations." *Excerpts of Speeches by Khamenei, Khatami*, ASSOC. PRESS, Dec. 9, 1997, available in 1997 WL 4895959.

called for "thoughtful dialogue" with the American people.<sup>119</sup> Although Khatami called only for dialogue amongst the American and Iranian peoples rather than their governments, his remarks suggested that it was a matter of when rather than if relations between the two governments would be restored.<sup>120</sup> The United States welcomed Khatami's calls for dialogue although it preferred public discussions between authorized governmental representatives.<sup>121</sup> Additionally, the United States called for positive action in support of Khatami's conciliatory statements such as discontinuation of Iranian support for terrorism and efforts to acquire weapons of mass destruction as well as its opposition to the Middle East peace process.<sup>122</sup>

President Khatami's overtures progressed further in televised remarks addressed to the American people on January 8, 1998. In an extraordinary interview, Khatami "declared his solidarity with the 'essence of American civilization'"<sup>123</sup> and expressed hope that Iran and the United States could eliminate the causes of the estrangement existing between the countries.<sup>124</sup> Furthermore, Khatami expressed regret for the "unorthodox" seizure of American hostages in 1979 which stemmed from excessive "revolutionary zeal" and American provocation.<sup>125</sup> However, Khatami stopped short of calling for diplomatic dialogue and only endorsed unofficial contacts between educators, writers, artists and tourists.<sup>126</sup> The Clinton Administration accepted Khatami's offer of un-

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119. See John Lancaster, *Khatami Seeks U.S. Dialogue; Iranian Leader Takes Conciliatory Tone, Praises American People*, WASH. POST, Dec. 15, 1997, at A1. See also Anwar Faruqi, *Iranian President Calls for Dialogue with Americans*, ASSOC. PRESS, Dec. 14, 1997, available in 1997 WL 4896721. By contrast, in his address to the summit, Khomeini characterized the United States as "the political designers of arrogance . . . breathing their poisonous breath to make our neighbors in the Persian Gulf fearful of Islamic Iran which holds the banner of unity and brotherhood." Anthony Shadid, *Despite Hope for Moderation, Iran's Leader Blasts West, Israel*, ASSOC. PRESS, Dec. 9, 1997, available in 1997 WL 4895949. Khatami has not referred to the United States as "the Great Satan" since he assumed office in August 1997. See *Iran President Seeks U.S. Dialogue*, COLUMBIAN, Dec. 15, 1997, available in 1997 WL 16400146.

120. See *Iranian Leader Opens Door*, CHI. SUN TIMES, Jan. 8, 1998, available in 1998 WL 5560892.

121. See Lancaster, *supra* note 119, at A1. See also *U.S. Warming to Dialogue*, SEATTLE TIMES, Dec. 10, 1997, available in 1997 WL 1650638.

122. See *Iran Gets Clinton's Attention: President Welcomes Call for Dialogue; Clinton Would Welcome Talks with Iran*, SALT LAKE TRIB., Dec. 16, 1997, at A1, available in 1997 WL 15241930. See also *Iran Says Clinton Statement May Signal Change in U.S. Position*, ASSOC. PRESS, May 31, 1997, available in 1997 WL 2528985.

123. *Iranian Leader Urges Exchanges with U.S.; Khatami Expresses Regret for 1979 Hostage Taking, Suggests Negotiations*, WASH. POST, Jan. 8, 1998, at A1.

124. See *Journalists Criticize Senior Iranian Official in Rare Protest*, *supra* note 116.

125. See *Iran's Leader Backs Closer Ties to U.S.*, ASSOC. PRESS, Jan. 8, 1998, available in 1998 WL 6165601. See also *Iran's New President Extends Olive Branch*, SEATTLE POST INTELLIGENCER, Aug. 4, 1997, at A2, available in 1997 WL 3203372.

126. See *Iranian Leader Urges Exchanges with U.S.*, *supra* note 123, at A1; see also *Iran's Leader Backs Closer Ties to U.S.*, *supra* note 125; *Iranian Leader Opens Door*, *supra* note 120, at A12. By contrast, Ayatollah Khomeini branded the United States as an

official contacts<sup>127</sup> but also reiterated its call for government-to-government dialogue.<sup>128</sup> The United States also announced it would review its visa process for Iranians as a means of encouraging further dialogue between the countries.<sup>129</sup> Perhaps most importantly, Under-Secretary of State Stuart Eizenstat announced the creation of a committee to review the Clinton Administration's sanctions policies on Iran.<sup>130</sup>

Regardless of these recent hopeful developments, relations between

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enemy of Iran and Islam. See *Iranian Leaders Denounce U.S., Urge Closer Ties With Europe*, ASSOC. PRESS, Apr. 5, 1998, available in 1998 WL 6649257. See also John Lancaster, *Head Iranian Cleric Rejects Talks with U.S.*, WASH. POST, Jan. 17, 1998, at A18; *Iran Spiritual Leader Condemns U.S., Rejects Dialogue*, DOW JONES NEWS SERV., Jan. 16, 1998. Khamenei ruled out any resumption of dialogue with the United States. *Id.* See also *Ayatollah Rejects Proposal For Talks With U.S.*, ASSOC. PRESS, Jan. 17, 1998, available in 1998 WL 4115665. Khamenei also defended the seizure of the American Embassy and subsequent hostage crisis as necessary to eliminate American conspiracies to defeat the Islamic revolution. See *Iran Leader Condemns U.S.*, DOW JONES NEWS SERV., Jan. 16, 1998. Perhaps in response to pressure from conservative clerics, Khatami subsequently accused the United States of having "damaged [Iranian] freedom, independence, interests and glory." *U.S. Brushes Aside Critical Comments By Iran's President*, DOW JONES NEWS SERV., Jan. 20, 1998. The U.S. State Department chose to ignore these remarks and renewed its call for government-to-government dialogue. *Id.* For its part, Foreign Minister Kharrazi stated that Khatami's remarks did not constitute a repudiation of his previous positive statements and that Iran still seeks "relations [with the United States] based on détente and mutual interests." *Iranian Official Says Khatami Still Wants Détente with U.S.*, DOW JONES INT'L NEWS, Jan. 24, 1998. However, Kharrazi emphasized that the resumption of relations between the two countries is dependent upon "positive deeds and a change of behavior by the United States." *Iran Minister: "Positive Deeds" Needed For U.S. Opening*, ASSOC. PRESS, Jan. 31, 1998, available in 1998 WL 6639595. See also *Iranian Says the Ball is in U.S. Court*, WASH. POST, Feb. 25, 1998, at A20.

127. See Thomas W. Lippman, *More Signs of Thaw in Icy U.S.-Iran Relations*, WASH. POST, Mar. 27, 1998, at A28. See also *Clinton Backs More Contact with Iranians*, WASH. POST, Jan. 30, 1998, at A28; *Clinton Makes Holiday Overture to Iranian People*, ASSOC. PRESS, Jan. 29, 1998, available in 1998 WL 6639463; *U.S., Iran Move Cautiously Toward Better Relations*, DOW JONES NEWS SERV., Mar. 27, 1998; *With People-to-People Exchanges, U.S.-Iranian Ties Improving*, ASSOC. PRESS, Mar. 25, 1998, available in 1998 WL 6647772.

128. See Ben Barber, *Iranian Overture Is Met With Doubt, State Dept. Urges Government Dialogue*, WASH. TIMES, Jan. 9, 1998, at A11. See also *Mending Ties With U.S., Iranian President Calls For Dialogue*, ASSOC. PRESS, Jan. 7, 1998, available in 1998 WL 6179987; *U.S. Looking for Deeds To Back Up Conciliatory Words from Iran*, ASSOC. PRESS, Jan. 8, 1998, available in 1998 WL 7374756.

129. See *U.S. to Review Visa Process for Iranians*, ASSOC. PRESS, Jan. 12, 1998, available in 1998 WL 2461535.

130. See David S. Cloud, *U.S. Uncertain How To Respond to Khatami's Overture*, PITTSBURGH POST-GAZETTE, Jan. 10, 1998, available in 1998 WL 5224974. Citing the moderate tone of President Khatami's remarks, the European Union called upon the United States to abandon its unilateral sanctions policy with regard to Iran. See *EU To Press For Less Rigid U.S. Stance On Iran*, ASSOC. PRESS, Jan. 12, 1998, available in 1998 WL 6637201.

the United States and Iran have been confrontational since the Islamic revolution. On November 4, 1979, Islamic militants occupied the U.S. embassy in Tehran and held fifty-two Americans hostage until January 20, 1981.<sup>131</sup> Ten days after the seizure of the Embassy, President Jimmy Carter declared a national emergency with respect to Iran which has been renewed every year since 1979.<sup>132</sup> On April 7, 1980, the United States broke diplomatic relations with Iran, and, on April 24, 1981, the Swiss government assumed representation of U.S. interests in Iran.<sup>133</sup> Iranian interests in the United States are represented by the Pakistani government.<sup>134</sup>

U.S.-Iranian relations have also been strained as a result of other events. Iran remains on the list of countries which, according to the United States, sponsor international terrorism.<sup>135</sup> Iran was first placed on the list of state sponsors of international terrorism on January 19, 1984 after the Reagan administration determined the existence of Iranian complicity in the October 1983 bombing of the Marine barracks in Beirut, Lebanon.<sup>136</sup> Iran has also been implicated in the bombing of Pan Am Flight 103 in December 1988,<sup>137</sup> and the attacks upon the U.S. military housing complex in Dhahran, Saudi Arabia in June 1996<sup>138</sup> and

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131. IRAN: STATE DEP'T NOTES, *supra* note 40, at 8.

132. See Exec. Order No. 12,170, 3 C.F.R. 457 (1980). See also H.R. REP. NO. 104-523(I), at 9 (1996).

133. See IRAN: STATE DEP'T NOTES, *supra* note 40, at 8-9.

134. See *id.* at 9.

135. See U.S. DEP'T OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL, TERRORISM 1 (1996) (visited Oct. 18, 1998) <<http://www.treas.gov/ofac/t11ter.pdf>> [hereinafter TERRORISM]. The list is compiled pursuant to Section 2405(o) of the Export Administration Act of 1979. Section 2405(o) provides, in part, that "[t]he Secretary [of Commerce] shall establish and maintain . . . a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply." Export Administration Act of 1979, 50 U.S.C. app. § 2405(o) (1998). The countries currently designated as supporting international terrorism are Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. See TERRORISM, *supra*, at 1.

136. See H.R. REP. NO. 104-523(I), at 9. Placement upon this list disqualified Iran from receiving U.S. foreign aid, goods on the U.S. munitions list, Export-Import Bank credits and U.S. support for foreign loans and required strict licensing requirements for any U.S. exports of controlled goods or technology. See *id.* The bombing of the Marine barracks resulted in the death of 298 members of the American/French multinational force in Lebanon.

137. See *Khomeini Ordered Bombing Over Lockerbie, Report Says*, *supra* note 17. According to the German magazine Der Spiegel, Abolghassem Mesbahi, the co-founder of the Iranian intelligence service, informed the German Federal Criminal Police Office and the Frankfurt prosecutor's office that Khomeini ordered the bombing as retaliation for the downing of an Iranian passenger jet over the Strait of Hormuz by a U.S. warship in July 1988. See *id.* The explosion of Flight 103 over Lockerbie, Scotland on December 21, 1988 killed all 259 people on board and 11 on the ground. See *id.*

138. See *Suspects in Saudi Bombing Belong To Iran-Inspired Group*, ASSOC. PRESS, Nov. 2, 1996, available in 1996 WL 4447279. The alleged mastermind of the bombing, Ahmed Ibrahim Ahmad Mughassil, is believed to have fled to Iran after the attack. See *Iran Denied Saturday It Was Harboring Bombing Suspect*, ASSOC. PRESS, Mar. 29, 1997, available in 1997 WL 4859695. Iran was directly implicated by Hani Abdel Rahim al-

foreign tourists in Egypt in November 1997.<sup>139</sup> Additionally, Iran is alleged to be the principal supplier of armaments, money and logistical support to terrorist groups such as Hizballah, Hamas, the Palestinian Islamic Jihad and the Popular Front for the Liberation of Palestine.<sup>140</sup> Iran is further believed to have supported attempts to destabilize the governments of its Arab neighbors including a failed 1981 coup d'état in Bahrain and the attempted assassination of Egyptian President Hosni Mubarak in Addis Ababa, Ethiopia in June 1995.<sup>141</sup> Finally, Iran has been accused of attacks upon Iranian dissidents abroad including the assassination of Iranian Kurdish leader Sadiq Sarafkindi in Berlin,

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Sayegh who allegedly conducted surveillance on the target, drove the bomb to the housing complex and assisted in the bombers' escape. See Pierre Thomas, *Saudi Suspect May Cooperate in Bomb Probe*, WASH. POST, June 17, 1997, at A10. See also *Canada To Deport Suspect In Saudi Terror Blast*, SAN DIEGO UNION-TRIB., May 6, 1997, at A18, available in 1997 WL 3131680. However, despite initial optimism that responsibility for the bombing could be quickly determined, as of the time of the preparation of this article, attribution of the attack to Iran remains unresolved. See *Saudis Still Stymie FBI*, WASH. POST, May 1, 1997, at A26. Iran has denied any involvement in the attack. See *Iranian Minister: U.S. Can't 'Divide and Rule'*, WASH. POST, Oct. 5, 1997, at C4. The June 25, 1996 bombing resulted in the death of 19 U.S. military personnel. See Howard Schneider & Pierre Thomas, *Canada Ties Hezbollah to Saudi Attack*, WASH. POST, Mar. 28, 1997, at A1.

139. See *Report: U.S. Envoy Says Iran Behind Luxor Massacre*, ASSOC. PRESS, Dec. 24, 1997, available in 1997 WL 4898297. Edward Walker, the U.S. ambassador to Israel, accused Iran of responsibility for the November 17, 1997 attack which resulted in the death of 58 tourists in Luxor, Egypt. *Id.*

140. See IRAN: STATE DEPT NOTES, *supra* note 40, at 8. See also John Lancaster, *Iran Has Strong Links to Anti-West Terror*, WASH. POST, Nov. 1, 1996, at A28; *Iranian Arms Shipments to Allies Reported On Rise*, SACRAMENTO BEE, Dec. 13, 1996, at A25, available in 1996 WL 14032467. Iran claims only to provide humanitarian support to such groups. See *Iranian Minister: U.S. Can't 'Divide and Rule'*, *supra* note 138, at C4. Iran also joined in the statement issued at the conclusion of the eighth summit of the Organization of the Islamic Conference in December 1997 condemning terrorism and denying asylum to suspected terrorists. See Chetwynd, *supra* note 35. See also *Conferees Lash Out At Terrorists Extremists*, ROCKY MTN. NEWS, Dec. 10, 1997, at 52A, available in 1997 WL 14975038. Khatami reiterated Iran's condemnation of terrorism in his address to the American people on January 8, 1998. See *Iran's Leader Backs Closer Ties to U.S.*, *supra* note 125. See also *Mending Ties With U.S. Iranian President Calls For Dialogues*, *supra* note 128. However, it bears noting that Iran excludes from its definition of terrorists those groups "supporting peoples who fight for the liberation of their land" such as the Palestinians. *Iranian Leader Urges Exchanges with U.S.; Khatemi Expresses Regret for 1979 Hostage Taking, Suggests Negotiations*, *supra* note 123, at A1. Additionally, the U.S. Department of State identified Iran as the most active state sponsor of terrorism in the world in its annual report on international terrorism in 1997. See Stanley Meisler, *Iran Top Terrorist Nation, U.S. Says*, SACRAMENTO BEE, May 1, 1998, at A17, available in 1998 WL 8820737. Nevertheless, Iran's statements condemning acts of international terrorism led Central Intelligence Agency Director George J. Tenet to recently conclude that the Khatami administration is "sincerely lobbying for an end to government support of terrorism." R. Jeffrey Smith, *Khatami Wants to End Terrorism, Officials Say*, WASH. POST, May 5, 1998, at A9.

141. See IRAN: STATE DEPT NOTES, *supra* note 40, at 8. See also Lancaster, *supra* note 140, at A28.

Germany in September 1992.<sup>142</sup>

Relations have also been strained as a result of Iranian attempts to acquire weapons of mass destruction. Iran is alleged to be actively pursuing development of nuclear weapons primarily with equipment and technology supplied by the Peoples' Republic of China.<sup>143</sup> Iran's first nuclear power plant, located in Bushehr in southern Iran and constructed with Russian assistance, is nearing completion.<sup>144</sup> Iran is also alleged to have purchased chemical weapons technology and materials from China.<sup>145</sup> Finally, Iran has purchased billions of dollars of conventional

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142. See *Iranian Students Clash with Troops*, ASSOC. PRESS, Apr. 14, 1997, available in 1997 WL 6519887. The U.S. State Department estimates that Iran is responsible for more than fifty murders of political dissidents overseas since 1979. See *State Department Again Lists Iran as Chief Terrorism Sponsor*, WASH. POST, May 1, 1997, at A26. A German court convicted four men of the assassination of Sarafkandi and specifically found that the Iranian leadership ordered the murder. See *Court Says Iran's Leaders Ordered Killings*, ASSOC. PRESS, Apr. 10, 1997, available in 1997 WL 4861347. See also *German Court: Tehran Ordered Exile Killings*, WASH. POST, Apr. 11, 1997, at A1.

143. See Edward J. Markey, et al., *China and Nuclear Trafficking*, WASH. POST, Oct. 29, 1997, at A23. See also *Leaders Reach Accord To Clear U.S. Reactors Sales*, ASSOC. PRESS, Oct. 29, 1997, available in 1997 WL 2558503. Chinese President Jiang Zemin pledged to terminate assistance to Iran's nuclear program in October 1997. See R. Jeffrey Smith, *China's Pledge to End Iran Nuclear Aid Yields U.S. Help*, WASH. POST, Oct. 30, 1997, at A15. See also *China Ready to End NuHelp for Iran*, ASSOC. PRESS, Oct. 25, 1997, available in 1997 WL 7129734. Iran also reportedly attempted to purchase nuclear technology from South Africa and Kazakhstan. See *Report: Iran Trying to Buy South African Nuclear Technology*, ASSOC. PRESS, Nov. 24, 1997, available in 1997 WL 4893813. See also *Pentagon: Iran Has No Soviet Nukes*, ASSOC. PRESS, Apr. 9, 1998, available in 1998 WL 7184550; *Pentagon: No Evidence To Support Report Iran Got Soviet Nukes*, ASSOC. PRESS, Apr. 9, 1998, available in 1997 WL 6650352; *Report: Iran Has Nuclear Warheads*, ASSOC. PRESS, Apr. 9, 1998.

144. See *Iran to Begin Operating First Nuclear Power Plant*, ASSOC. PRESS, July 7, 1997, available in 1997 WL 4873948. See also *Ukraine Vows Not to Sell Turbines For Iranian Reactor*, ASSOC. PRESS, Apr. 15, 1997, available in 1997 WL 4862194. The contract for the construction of the nuclear power plant is estimated to be worth \$800 million to Russia. See *Iran May Purchase Russia Missiles*, ASSOC. PRESS, Feb. 25, 1998, available in 1997 WL 8151007. See also *Ukraine Bows to U.S. Pressure*, WASH. POST, Mar. 7, 1998, at A.15. The United States opposed construction of the plant, maintaining that training and technology supplied for it could be used to build nuclear weapons. *Iran to Begin Operating First Nuclear Power Plant*, *supra*. See also *U.S. Still Opposed To Russian Role In Iran Project*, ASSOC. PRESS, Feb. 23, 1998, available in 1997 WL 6642670; *U.S. Wins Ukrainian Pledge On Nuclear Export Controls*, DOW JONES NEWS SERV., Mar. 6, 1998. Iran has denied allegations that is developing nuclear weapons, pointing to its status as a signatory to the Nuclear Non-Proliferation Treaty. See *Iranian Leader Urges Exchanges with U.S.*, *supra* note 123, at A1. See also Murphy, *supra* note 1, at C1.; *U.S. Can't Divide and Rule*, *supra* note 138, at C4. However, John Holum, the director of the U.S. Arms Control and Disarmament Agency, has estimated that Iran will be able to deploy nuclear weapons by 2007. See *Iran Running Into Difficulties In Push For Nuclear Capability*, ASSOC. PRESS, May 4, 1997, available in 1997 WL 4864763.

145. See Thomas W. Lippman, *U.S. Imposes Sanctions On China Firms*, WASH. POST, May 23, 1997, at A1. See also *U.S. To Punish Chinese For Chemical Weapons Shipments to Iran*, ASSOC. PRESS, May 22, 1997, available in 1997 WL 4867904. Iran has denied that it is attempting to produce chemical weapons and has ratified the Chemical Weapons Convention. See *Iran Signs Pact On Nerve Gas*, ASSOC. PRESS, Nov. 10, 1997, available in

weapons including anti-ship cruise missiles from China<sup>146</sup> and missiles, missile technology, tanks, helicopters and submarines from Russia.<sup>147</sup>

Finally, Iran's hostility to the Middle East peace process has thwarted improvement in its relations with the United States. At the recent summit of the Organization of the Islamic Conference, Khamenei derided the Middle East peace process as "unjust, arrogant, contemptuous and illogical."<sup>148</sup> These sentiments were echoed by Foreign Minister Kharrazi who condemned the peace process for its purported failure to adequately address issues concerning Palestinian self-determination, repatriation of refugees and liberation of occupied territories.<sup>149</sup> However, Khatami recently indicated that, although he believes that peace in the Middle East is not attainable without adequately addressing the rights and aspirations of the Palestinians, Iran would not interfere in the peace process and would "leave the Palestinians to decide their fate."<sup>150</sup> U.S. foreign policy analysts have chosen to focus on Khatami's

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1997 WL 8406504.

146. See Thomas W. Lippman, *U.S. Confirms China Missile Sale to Iran*, WASH. POST, May 31, 1997, at A15. Chinese President Jiang Zemin pledged to discontinue sales of such missiles to Iran in October 1997. See *China Promises To Halt Missile Sales To Iran*, ASSOC. PRESS., Oct. 18, 1997, available in 1997 WL 2556113. China reaffirmed this pledge in January 1998. See *Cohen Says China Hardens Promise To End Missile Sales To Iran*, ASSOC. PRESS, Jan. 20, 1998, available in 1997 WL 6637990. See also *Cohen Warns China On Iranian Threat to Gulf Shipping*, ASSOC. PRESS, Jan. 19, 1998, available in 1997 WL 7377515.

147. Russia reportedly sold Iran the technology necessary to produce SS-4 missiles which have a range of 1250 miles and carry a standard warhead equivalent to 3000 pounds of dynamite. See *Russia Government Aids Iran In Missile Manufacture*, DOW JONES TELETYPE ENERGY SERV., Aug. 25, 1997. See also *Moscow Has Received A Diplomatic Warning*, ASSOC. PRESS, Feb. 12, 1997, available in 1997 WL 2499834. Russia also reportedly transferred technology to Iran to permit it to develop a smaller liquid-fuel missile with a range of eight hundred miles and a payload of 1550 pounds. See *Iran Said to be Building Missile*, ASSOC. PRESS, Jan. 7, 1998, available in 1997 WL 6636433. See also *Russia Helping Iran Get Missile To Hit Israel*, DOW JONES NEWS SERV., Sept. 21, 1997; *Russia Security Service: Iran Failed To Get Missile Know-How*, DOW JONES NEWS SERV., Oct. 2, 1997. Russia agreed to restrict the transfer of ballistic missile technology to Iran in January 1998. See *U.S. Keeps After Russia To Halt Flow Of Missile Technology to Iran*, WASH. POST, Jan. 18, 1998, at A9. See also *U.S., Russia to Step Up Efforts Against Iran Missile Program*, DOW JONES COMMODITIES SERV., Jan. 17, 1998. Iran has also purchased three submarines, tanks, helicopters and hundreds of anti-aircraft missiles from Russia in recent years. See *Russia Arms Merchants Selling Missiles To Iran*, ASSOC. PRESS, Apr. 16, 1997, available in 1997 WL 2517553.

148. Lancaster, *supra* note 118, at A1. See also Anton LaGuardia, *Iran Shows Deep Splits over the West at Islamic Summit*, DAILY TELEGRAPH (LONDON), Dec. 10, 1997, at 13, available in 1997 WL 2357745.

149. See *Iranian Minister: U.S. Can't 'Divide and Rule,' supra* note 138, at C4.

150. *Iran Pres.-Elect Policy Change, 'No Sign Of U.S. Change,' DOW JONES NEWS SERV.*, May 27, 1997. See also *Iranian President Takes Plea For Rapprochement To American Public*, ASSOC. PRESS, Jan. 7, 1998, available in 1997 WL 6636549; *Iran's Leader Backs Closer Ties to U.S., supra* note 125; *Mending Ties With U.S., Iranian President Calls For Dialogue, supra* note 128.

conciliatory remarks rather than Khamenei's inflammatory statements and have characterized such remarks as "a nuanced change in a positive direction."<sup>151</sup>

In response to these events and perceived Iranian intransigence, the United States imposed numerous economic sanctions upon Iran prior to the enactment of ILSA. As previously noted, President Jimmy Carter declared a national emergency with respect to Iran pursuant to IEEPA on November 14, 1979.<sup>152</sup> As a result of President Carter's Order, approximately \$12 billion in Iranian government bank deposits, gold and other properties in the United States were blocked, including \$5.6 billion in deposits and securities held by overseas branches of U.S. banks.<sup>153</sup> The assets freeze was subsequently expanded to a full trade embargo, which remained in effect until the signing of the Algiers Accords on January 19, 1981.<sup>154</sup> Pursuant to the Accords, most Iranian assets in the United States were freed from future blockage, the trade embargo was rescinded<sup>155</sup> and attachments that U.S. persons had secured against Iranian assets in the United States were canceled in order that said assets could be returned to Iran.<sup>156</sup> Claims of U.S. nationals against Iran or Iranian entities for products shipped or services rendered prior to the imposition of the embargo and for uncompensated

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151. *Washington Has Muted Praise For Iran Leader On Mideast Peace*, DOW JONES INT'L NEWS SERV., Dec. 17, 1997. The cited characterization of Khatami's remarks was that of deputy State Department spokesman James Foley. *See also U.S. Encouraged by Iran's Overture*, ASSOC. PRESS, Feb. 2, 1998, available in 1997 WL 7382079.

152. *See* Exec. Order No. 12,170, *supra* note 132. Sections 1702(a)(1)(A) and (B) of IEEPA provide as follows:

At the times and to the extent specified in section 1701 of this title [unusual and extraordinary threats to the national security, foreign policy or economy of the United States], the President may . . . investigate, regulate or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof, the importing or exporting of currency or securities; and investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest; by any person, or with respect to any property, subject to the jurisdiction of the United States.

IEEPA, 50 U.S.C. § 1702(a)(1)(A)-(B) (1994).

153. *See* U.S. DEP'T OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL, IRAN: WHAT YOU NEED TO KNOW ABOUT U.S. ECONOMIC SANCTIONS 3 (1998) (visited Oct. 18, 1998) <<http://www.treas.gov/ofac/t11iran.pdf>> [hereinafter IRAN: WHAT YOU NEED TO KNOW].

154. *See* Exec. Order No. 12,205, 3 C.F.R. 248 (1981) *as amended by* Exec. Order No. 12,211, 3 C.F.R. 253 (1981).

155. *See* Exec. Order No. 12,282, 3 C.F.R. 113 (1982).

156. *See* Exec. Order No. 12,276, 3 C.F.R. 104 (1982). *See also* Exec. Order No. 12,277, 3 C.F.R. 105 (1982); Exec. Order No. 12,278, 3 C.F.R. 107 (1982); Exec. Order No. 12,279, 3 C.F.R. 109 (1982); Exec. Order No. 12,280, 3 C.F.R. 110 (1982); Exec. Order No. 12,281, 3 C.F.R. 112 (1982).

expropriation of property within Iran were to be resolved in the Iran-United States Claims Tribunal established pursuant to the Accords.<sup>157</sup>

Economic sanctions upon Iran were re-imposed by the Reagan Administration. As a result of Iran's continued sponsorship of terrorist groups, on October 29, 1987, President Ronald Reagan issued Executive Order 12,613 imposing an import embargo on Iranian-origin goods and services.<sup>158</sup> This Order prohibited the importation of Iranian-origin goods and services either directly or through third countries.<sup>159</sup> Furthermore, U.S. persons were prohibited from providing financing for prohibited import transactions<sup>160</sup> and engaging in any transactions related to goods or services of Iranian origin.<sup>161</sup>

Further economic sanctions were imposed by the Clinton Administration. In response to Conoco, Inc.'s execution of a \$550 million contract to develop Iran's offshore Sirri A and E oil and gas fields, President Clinton issued Executive Order 12,957 on March 15, 1995.<sup>162</sup> This Order declared a national emergency with respect to Iran pursuant to IEEPA<sup>163</sup> and prohibited the financing, management or supervision by U.S. persons of the development of Iranian petroleum resources.<sup>164</sup> Conoco was thereby forced to abrogate its development contract with Iran.<sup>165</sup>

The Clinton Administration imposed tighter restrictions upon Iran two months later after determining that Iran was persisting in its support of international terrorism and attempts to acquire weapons of mass destruction and presented a threat to the continuation of the Middle East peace process. As a result, President Clinton issued Executive

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157. See Exec. Order No. 12,283, 3 C.F.R. 114 (1982). See also Exec. Order No. 12,294, 3 C.F.R. 139 (1982). Thirty-four of the 3,952 cases filed with the Iran-United States Claims Tribunal remain pending as of the time of preparation of this article. See *Iran-Money Claims Against U.S. Still Unresolved*, PERISCOPE-DAILY DEF. NEWS CAPSULES, Apr. 20, 1998, available in 1998 WL 8152041.

158. See Exec. Order No. 12,613, 3 C.F.R. 256 (1988). See also Iranian Transactions Regulations, 31 C.F.R. §§ 560.101-807 (1997). The statutory basis for President Reagan's Order was Section 505 of the International Security and Development Cooperation Act of 1985 which provides, in part, that "[t]he President may ban the importation into the United States of any good or service from any country which supports terrorism or terrorist organizations or harbors terrorists or terrorist organizations." International Security and Development Cooperation Act, 22 U.S.C. § 2349aa-9(a) (1994).

159. See Exec. Order No. 12,613, *supra* note 158, § 1. See also Iranian Transactions Regulations, *supra* note 158, § 560.201. Materials utilized in news publications and petroleum products refined from Iranian crude oil in a third country were exempted from the Order's import prohibition. See Exec. Order, *supra* note 158, § 2(a)-(b).

160. See Iranian Transactions Regulations, *supra* note 158, § 560.201.

161. See *id.* § 560.206.

162. See Exec. Order No. 12,957, *supra* note 19.

163. See IEEPA, 50 U.S.C. § 1703(c). See also IRAN: WHAT YOU NEED TO KNOW, *supra* note 153, at 1.

164. See Exec. Order No. 12,957, *supra* note 19, § 1. See also Iranian Transactions Regulations, *supra* note 158, §§ 560.206, 209(a)(1) and (b)(1).

165. See H.R. REP. NO. 104-523(I) at 9 (1996).

Order 12,959 on May 6, 1995.<sup>166</sup> This Order prohibited the export of goods and services to Iran<sup>167</sup> as well as continuing the prohibition upon the import of goods and services of Iranian origin.<sup>168</sup> U.S. persons, including foreign branches of U.S. banks and trading companies, were also prohibited from engaging in any transactions, including those involving purchases, sales, transportation, financing or brokering, related to goods or services of Iranian origin.<sup>169</sup> New investments by U.S. persons in Iran or in property owned or controlled by the Government of Iran were also prohibited.<sup>170</sup> Additionally, the Order prohibited U.S. banks, including foreign branches, from servicing accounts of the Iranian government, including banks owned or controlled by the government or persons in Iran.<sup>171</sup> Finally, the Executive Order also closed the

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166. See Exec. Order No. 12,959, 3 C.F.R. 356 (1995).

167. See *id.* § 1(b). See also Iranian Transactions Regulations, *supra* note 158, § 560.204. Excepted from this prohibition were feed grains, rice, wheat, cotton, peanuts, tobacco, dairy products and oilseeds provided that the underlying contracts for their exportation to Iran were in existence prior to May 7, 1995 and delivery occurred prior to February 2, 1996. See Iranian Transactions Regulations, *supra* note 158, § 560.520(a)-(c). Additionally, gifts valued at less than one hundred dollars, donations of articles intended to alleviate human suffering and informational materials were excepted from the export prohibition. See *id.* §§ 560.506, 210(b), 210(c) and 523. Services provided by nonresident U.S. persons outside of the United States were also excepted from the export ban. See *id.* § 560.410(d). However, services provided by a foreign branch of a U.S.-incorporated firm were deemed to be exported from the corporation's home office in the United States. See *id.* § 560.410(a)(3).

168. See Exec. Order No. 12,959, *supra* note 166, § 1(a). See also Iranian Transactions Regulations, *supra* note 158, § 560.201.

169. See Exec. Order No. 12,959, *supra* note 166, § 1(f). See also Iranian Transactions Regulations, *supra* note 158, § 560.206. These prohibitions also applied to transactions by U.S. persons in locations outside of the United States with respect to goods or services which the U.S. person knew, or had reason to know, were of Iranian origin or controlled by the government of Iran. See Iranian Transactions Regulations, *supra* note 158, § 560.411(a)-(b). However, U.S. persons could engage in transactions in third countries necessary to sell, store or maintain goods located in a third country which were legally acquired by the U.S. person prior to the issuance of the Order on the condition that the transactions did not result in an importation into the United States. See *id.* § 560.518(b)(1)-(2).

170. See Exec. Order No. 12,959, *supra* note 166, § 1(e). See also Iranian Transactions Regulations, *supra* note 158, § 560.207. Included within this prohibition were commitments of funds or other assets, loans and extensions of credit. See Iranian Transactions Regulations, *supra* note 158, §§ 560.316 (a)-(b) and 560.317. Letters of credit and other financing arrangements with respect to trade contracts in force and effect as of May 6, 1995 were excepted from this prohibition provided that the transactions contemplated therein were completed prior to June 6, 1995. See *id.* § 560.210(e). However, standby letters of credit which served as security for services rendered after June 6, 1995 could not be renewed nor payment made after that date without the authorization of the Department of Treasury, Office of Foreign Assets Control. See *id.*

171. See Iranian Transactions Regulations, *supra* note 158, § 560.517(a). However, U.S. banks were authorized to pay interest, deduct reasonable and customary service charges and process transfers related to exempt transactions. See *id.* § 560.517(a)(1)-(2). U.S. banks could also handle so-called "u-turn" transactions which were defined as transactions to cover payments involving Iran that were by order of a third country bank for payment to another third country bank provided they did not directly credit or debit an

loophole by which foreign affiliates of U.S. oil companies purchased approximately twenty-five percent of Iran's oil exports for overseas trade.<sup>172</sup>

Under the Shah's regime, Iran's economy rapidly industrialized and experienced high rates of growth.<sup>173</sup> However, Iran's post-revolutionary economy is under the strict control of the government. The Iranian Constitution requires the creation and implementation of "a correct and just economic system in accordance with Islamic criteria in order to create welfare, eliminate poverty and abolish all forms of deprivation with respect to food, housing, work, health care and the provision of social insurance."<sup>174</sup> In order to achieve these goals, the Iranian Constitution creates private and cooperative economic sectors in the fields of agriculture, small industry, trade and services.<sup>175</sup> Additionally, despite its recognition of private property rights,<sup>176</sup> the Constitution provides for state ownership of all economic sectors deemed vital to state security.<sup>177</sup> As a result, Iran annulled all pre-revolution contracts in the oil, gas and petrochemicals industries and placed these industries under state supervision.<sup>178</sup> The Iranian government also nationalized the banking and insurance industries as well as all enterprises having more than one thousand employees.<sup>179</sup>

The Iranian economy which emerged from the revolution and the eight year war with Iraq suffered from several serious problems.<sup>180</sup> Despite its high literacy rate,<sup>181</sup> the population is plagued by high levels of

Iranian account. *See id.* § 560.516(a)(1). U.S. banks were also permitted to handle non-commercial family remittances involving Iran provided that the transfers were routed to or from non-U.S. non-Iranian offshore banks. *See id.* § 560.516(a)(4).

172. *See* Exec. Order No. 12,959, *supra* note 166, § 5. *See also* Iranian Transactions Regulations, *supra* note 158, at § 560.513.

173. *See* IRAN: STATE DEP'T NOTES, *supra* note 40, at 6.

174. IRAN CONST., § 1, art. 3.

175. *See id.* § 4, art. 44.

176. *See id.* § 4, art. 47.

177. *See id.* Included in these designated economic sectors are foreign trade, power generation, radio, television, telegraph and telephone services and transportation. *See id.*

178. *See Oil and Gas*, at 1 (visited Sept. 20, 1998) <<http://www.salamiran.org/iraninfo/state/government/energy/oilgas/html>>.

179. *See Iran Economic Overview* 1, (visited Sept. 20, 1998) <<http://www.salamiran.org/iraninfo/economy/overview/html>>.

180. *See An Air of Optimism in Iran*, WASH. POST, Dec. 15, 1997, at A1. *See also* IRAN: STATE DEP'T NOTES, *supra* note 40, at 6. The Iran-Iraq war commenced in September 1980 with Iraq's invasion of Iran and ended with the implementation of a cease-fire in August 1988.

181. An estimated 79.3 percent of Iran's 62.4 million citizens are literate. *See Iran's Key Economic Indicators* 1, (visited Sept. 20, 1998) <<http://www.salamiran.org/iraninfo/economy/trends/key.html>>. *See also* U.S. ENERGY INFORMATION ADMINISTRATION, IRAN REPORT (April 1997) <<http://www.eia.doe.gov/emu/cabs/iran.html>> (on file with author) [hereinafter IRAN: EIA REPORT].

unemployment estimated at thirty to forty percent.<sup>182</sup> Estimates regarding the rate of inflation range from twenty-four percent to thirty-five percent.<sup>183</sup> These deficiencies, when combined with the weakened state of the economy, have resulted in more than twenty billion dollars of external foreign debt.<sup>184</sup>

Iran's largest economic sector and source of foreign revenue are the oil, gas and petrochemicals industries. Iran is the second largest oil producer in the Organization of Petroleum Exporting Countries (OPEC) and accounts for approximately five percent of global oil output.<sup>185</sup> Iran's oil reserves account for nine percent of global reserves<sup>186</sup> and are the third largest in the world.<sup>187</sup> Although production of oil is less than seventy percent of its former total during the Shah's regime,<sup>188</sup> Iran still produces 3.76 million barrels of oil per day, of which 3.65 million barrels per day are crude oil.<sup>189</sup> Iran's onshore fields produce approximately 3.2 million barrels per day<sup>190</sup> while its offshore fields produce 550,000

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182. See Peter W. Rodman, *Dialogue with Iran?*, WASH. POST, Dec. 24, 1997, at A13. See also IRAN: STATE DEP'T NOTES, *supra* note 40, at 6.

183. See *Khatami Promises More Democracy*, *supra* note 104. See also Faruqi, *supra* note 104. Recent estimates by the Iranian Government place the annual rate of inflation at twenty-five percent. See *Iran's Key Economic Indicators*, *supra* note 181, at 1. However, the U.S. Energy Information Administration estimated the annual rate of inflation to be 35.6 percent for fiscal year 1996. See IRAN: EIA REPORT, *supra* note 181, at 1.

184. Iran's total external foreign debt is estimated at \$20.3 billion. See Iran: EIA Report, *supra* note 181, at 1. In March 1998, the Iranian Central Bank placed Iran's foreign debt at \$16.8 billion. See *Khatami: Iran Bracing For Lower Revenues From Tumbling Oil Prices*, ASSOC. PRESS, Mar. 15, 1998, available in 1998 WL 6645526. In late 1996, Iran rescheduled ten billion dollars of this debt which eased its repayment schedule estimated at in excess of four billion dollars annually. See *id.*

185. See IRAN: EIA REPORT, *supra* note 181, at 1 and 4. OPEC consists of Iran, Algeria, Indonesia, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates and Venezuela. See *Iran Hopes to Hold Back Increase in OPEC Oil-Production Quota*, DOW JONES ONLINE NEWS, Nov. 27, 1997.

186. See IRAN: EIA REPORT, *supra* note 181, at 1, 4. Iran's proven oil reserves are 88 billion barrels. See *id.* Proven and possible reserves total 140 billion barrels. See *id.* at 4. Most of Iran's reserves are located in onshore fields in the Khuzestan region and beneath the Persian Gulf. See *id.*

187. See IRAN: STATE DEP'T NOTES, *supra* note 40, at 3.

188. See *Diplomacy with Iran*, WASH. POST, Apr. 7, 1997, at A16. Iran's crude oil production capacity in the mid-1970s was in excess of 7 million barrels per day. See IRAN: EIA REPORT, *supra* note 181, at 5.

189. See IRAN: EIA REPORT, *supra* note 181, at 5. Iran's OPEC crude oil production quota for the first half of 1997 was 3.6 million barrels per day. *Id.* This quota was increased to 3.942 million barrels per day for the first half of 1998. See *OPEC Dec Output-3: Table Of Output Estimates*, DOW JONES ENERGY SERV., Jan. 9, 1998. Iran's present sustainable production capacity is 3.9 million barrels per day. See IRAN: EIA REPORT, *supra* note 181, at 5. The Iranian Government has forecast that crude oil production will grow by 3.7 percent annually. See *Oil and Gas*, *supra* note 178, at 1. However, industry observers estimate Iran's sustainable production capacity will not be able to rise above four million barrels per day. See IRAN: EIA REPORT, *supra* note 181, at 5. Current daily world output of oil is 70 million barrels. See Greg Myre, *Companies Scramble In New Rush For Oil In Caspian Sea*, ASSOC. PRESS, Oct. 13, 1997, available in 1997 WL 14397544.

190. See IRAN: EIA REPORT, *supra* note 181, at 5. Approximately 2 million barrels per

barrels per day.<sup>191</sup> Iran has the capacity of processing 1.2 million barrels per day through its eight operational refineries.<sup>192</sup> In addition, Iran exports 2.6 million barrels of oil per day.<sup>193</sup> Iranian oil export revenues were approximately \$18 billion in 1996<sup>194</sup> which constituted eighty-one percent of Iran's total export revenues.<sup>195</sup>

Iran's natural gas and petrochemicals industries are also worthy of note. Exceeded only by Russia, Iran possesses an estimated 742 trillion cubic feet of natural gas reserves, fifteen percent of the world's entire reserves.<sup>196</sup> Iran produces approximately 2.8 trillion cubic feet of natural gas annually, 1.3 trillion cubic feet of which is marketed.<sup>197</sup> Iran's production of natural gas is expected to rise sharply in the near future as additional reserves are discovered and the 328 trillion cubic foot South Pars gas field is further developed.<sup>198</sup> Iran's petrochemicals industry is the second largest in the Middle East after Saudi Arabia.<sup>199</sup> Iran's eleven petrochemical complexes have a capacity of ten million tons per year with plans to expand to sixteen million tons by 2000 and thirty million tons by 2020.<sup>200</sup>

Despite its internal difficulties and tightening U.S. sanctions, Iran's economy showed improved performance in 1995 and 1996. Gross domestic product for both years grew in excess of four percent annually.<sup>201</sup> Additionally, Iran acquired \$5 billion in credits and loans from

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day of onshore production was exported by Iran in 1996. *See id.*

191. *See id.* at 6. Offshore production has grown considerably since 1989 when such capacity was 202,000 barrels per day. *See Oil and Gas, supra* note 178, at 1. This rapid increase is due, in part, to foreign investment which Iran permits in its offshore oil sector. Iran's onshore oil sector remains closed to foreign investment. *See IRAN: EIA REPORT, supra* note 181, at 6. Iran hopes to raise its offshore production to one million barrels per day by 2000. *See id.*

192. *See IRAN: EIA REPORT, supra* note 181, at 8. Iran has imported refined products since 1982. *See id.* However, the new Bandar Abbas refinery located near the Strait of Hormuz is expected to generate annual refined product exports totaling \$1.75 billion annually in the near future. *See id.*

193. *See id.* at 1. The remaining 1.2 million barrels of daily production are consumed domestically. *See id.* Iran's major crude oil customers in 1997 were Japan (35%), South Korea (10%), the United Kingdom (10%), Turkey (3%), the Republic of China (3%), India (2%), Brazil (2%), Thailand (1%), Malaysia (1%) and Pakistan (1%). *See id.*

194. *See id.* at 1-2.

195. *See id.* at 1-2.

196. *See id.* at 1, 9. *See also Iran Says Gas Project Opposed by U.S. Will Earn \$45 Billion*, ASSOC. PRESS, Oct. 12, 1997, available in 1997 WL 4887770; *U.S. Investigating Iranian Gas Deal, supra* note 30. NIOC estimates Iran's natural gas reserves at 900 trillion cubic feet. *See IRAN: EIA REPORT, supra* note 181, at 9.

197. *See IRAN: EIA REPORT, supra* note 181, at 1, 9.

198. *See id.* at 9.

199. *See id.*

200. *See id.*

201. According to U.S. Government sources, Iran's gross domestic product grew an estimated 4.1 percent in 1996. *See IRAN: EIA REPORT: supra* note 181, at 1. However, the

European countries that have been utilized to finance much-needed improvements to Iran's economic infrastructure.<sup>202</sup> Furthermore, U.S. efforts to persuade its allies to economically isolate Iran met with failure. U.S. allies did not join the trade and investment ban or abandon their policy of constructive engagement through the maintenance of the so-called "critical dialogue."<sup>203</sup> Iranian trade with Europe, the Middle East and Asia continued to flourish despite the imposition of U.S. sanctions.<sup>204</sup> Of particular irritation to the United States was the growing trade between Iran and members of the European Union. Thirty-three percent of Iran's foreign trade is with Germany, Italy and France and accounts for more than three billion dollars annually.<sup>205</sup> Increasing trade and export revenues, especially in the oil, gas and petrochemical industries, allowed Iran to post a trade surplus in excess of \$8 billion in 1996.<sup>206</sup> These developments led the U.S. Congress to conclude that the existing sanctions regime failed to adequately isolate Iran from the global economy and modify the behavior of U.S. allies.<sup>207</sup>

As a result of these perceived failures, ILSA was introduced in the U.S. Senate as Senate Bill 1228 on September 8, 1995 and in the U.S. House of Representatives as House Bill 3107 on March 19, 1996.<sup>208</sup> As

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Iranian Government claimed a six percent growth rate for 1996. See *Iran's Key Economic Indicators*, *supra* note 181, at 1. Iran's gross domestic product for 1996 was an estimated \$710.4 billion. See IRAN: EIA REPORT, *supra* note 181, at 1.

202. See IRAN: EIA REPORT, *supra* note 181, at 2.

203. See H.R. REP. NO. 104-523(I) at 10 (1996). See also Robert Wierlaard, *Ties Won't Stop*, DAYTON DAILY NEWS, Apr. 29, 1997, available in 1997 WL 3936437. The European Union's policy of "critical dialogue" is contrary to U.S. policy in the Persian Gulf which is based upon the "dual containment" of Iran and Iraq through economic isolation and the threat of military deterrence. See William Drozdiak, *EU Nations' Envoys Going Back to Iran; Vote Spurns U.S. Appeal For Firm Stand On Iran*, WASH. POST, Apr. 30, 1997, at A15.

204. Iran's major trading partners are Germany, Italy, France, the United Kingdom, the Netherlands, Spain, Japan and Turkey. See IRAN: EIA REPORT, *supra* note 181, at 1. Iran's major export products are petroleum and related products, carpets (which account for forty percent of non-oil export revenues) and pistachio nuts. See *id.* at 1-2. See also Nora Boustany, *EU Nut Ban Irks Iran*, WASH. POST, Sept. 12, 1997, at A31. Iran's major imported products consist of machinery, military equipment, metals, foodstuffs, pharmaceuticals and technical services. See IRAN: EIA REPORT, *supra* note 181, at 1.

205. See *Iran Ignoring U.S. Trade Sanctions*, *supra* note 33. Germany is Iran's largest Western trading partner with trade between the two countries valued at \$1.8 billion. See Drozdiak, *supra* note 203, at A15, available in 1997 WL 3670417. See also Wierlaard, *supra* note 203; *Iraqis Wish Saddam A Happy Birthday . . .*, WASH. TIMES, Apr. 29, 1997, at A15. Germany is also one of Iran's leading creditors with loans totaling in excess of \$2.9 billion. See *EU to Send Ambassadors Back to Iran*, CHI. TRIB., Apr. 30, 1997, available in 1997 WL 3543986.

206. See IRAN: EIA REPORT, *supra* note 181, at 2.

207. See *id.* However, a NIOC executive admitted that U.S. sanctions have had a detrimental effect upon the Iranian economy especially in the area of foreign investment in the oil and gas industries. See *id.* at 2.

208. See H.R. REP. NO. 104-523(I), at 13-14 (1996); see also *supra* text accompanying

set forth above, the bills received little publicity until the June 25, 1996 bombing of the U.S. military housing complex in Dhahran, Saudi Arabia and the July 17, 1996 explosion of Trans-World Airlines Flight 800 off the coast of Long Island, New York.<sup>209</sup> In the aftermath of these events, the bill proceeded quickly through the U.S. Congress which rejected concerns regarding its extraterritorial reach and economic cost.<sup>210</sup> The bill was approved by the Senate on July 16, 1996 and by the House of Representatives on July 23, 1996.<sup>211</sup> President Clinton signed ILSA into law on August 5, 1996.<sup>212</sup>

As previously noted, international reaction to the adoption of ILSA was universal, immediate and hostile.<sup>213</sup> Most of the opposition centered around the provision requiring the President to impose economic sanctions upon persons whose investments in Iran exceed \$40 million in any twelve month period and directly and significantly contribute to the enhancement of Iran's ability to develop its petroleum resources. Responses to ILSA included the issuance of condemnations and threats to enact retaliatory legislation and initiate dispute resolution proceedings pursuant to GATT.<sup>214</sup>

The reaction of private industry to ILSA was more divided. Some private enterprises took notice of the Act's provisions and moved to bring their policies into compliance. For example, in August 1996, Australian industrial conglomerate Broken Hill withdrew from a \$3 billion pipeline project to transport Iranian natural gas to Pakistan and India.<sup>215</sup> The Japanese construction firm JGC withdrew from onshore natural gas projects in Iran.<sup>216</sup> According to the U.S. State Department, the threat of sanctions set forth in ILSA has discouraged foreign investment in eleven oil and gas projects in Iran.<sup>217</sup> ILSA has also sharply curtailed Iran's ability to obtain long-term capital to finance expansion of its oil, gas and petrochemicals industries.<sup>218</sup>

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note 4.

209. See *supra* notes 5-6 and accompanying text.

210. See H.R. REP. NO. 104-523(I), at 20-22. These concerns were expressed by Representative Lee H. Hamilton (Democrat, Indiana) and James P. Moran (Democrat, Virginia). Despite the rejection of their concerns by Congress, Representatives Hamilton and Moran voted in favor of ILSA. See *id.* at 22.

211. See H.R. REP. NO. 104-523(I), at 11.

212. See Pianin, *supra* note 8, at A8.

213. See *supra* notes 28-33 and accompanying text.

214. See *id.*

215. See IRAN: EIA REPORT, *supra* note 181, at 3. See also *U.S. Economic Offensive Against Iran's Energy Industry is Bearing Fruit*, WASH. POST, Mar. 3, 1997, at A8.

216. See *U.S. Economic Offensive Against Iran's Energy Industry is Bearing Fruit*, *supra* note 215, at A8.

217. See *U.S. Won't Bar Pipeline Across Iran*, WASH. POST, July 27, 1997, at A1.

218. See *U.S. Economic Offensive Against Iran's Energy Industry is Bearing Fruit*, *supra* note 215, at A8. British Petroleum executive John Browne has stated that the threat

Conversely, the vast majority of private enterprises chose to ignore ILSA and risk the imposition of sanctions. Several European companies registered their disapproval of ILSA by proceeding with investments in Iran's petrochemicals industries. In May 1997, the British petroleum firm Pell Frischmann, in conjunction with the Canadian petroleum firm Bow Valley, was awarded a \$140 million contract to develop Iran's Balal oil field located in the Persian Gulf.<sup>219</sup> On September 28, 1997, Total SA of France announced the creation of an international consortium with Russia's natural gas monopoly, Gazprom,<sup>220</sup> and Malaysia's Petronas<sup>221</sup> to develop Iran's South Pars natural gas field.<sup>222</sup> The consortium's total investment in the project is expected to exceed two billion dollars.<sup>223</sup> Total also entered into negotiations to develop Iranian oil

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of U.S. sanctions has "definitely limited investments" in Iran. *Id.* Mohsen Yahyavi of the Iranian parliament's oil committee has admitted that ILSA is partially responsible for decreased foreign interest in Iran's oil and gas industries. *See id.*

219. The Iranian Oil Ministry awarded the development contract on May 10, 1997. *See U.S. Ponders Sanctions for Oil Deal in Iran*, WASH. POST, May 14, 1997, at A9. Until the imposition of U.S. sanctions, ARCO had been negotiating for the development rights to the 120 million barrel Balal field. *See IRAN: EIA REPORT*, *supra* note 181, at 6.

220. Gazprom is the leading producer of natural gas in the world and is Russia's largest company. *See Russia's Gazprom Cancels Loan Deal Over Criticism Of Iran Venture*, DOW JONES NEWS SERV., Dec. 18, 1997. Gazprom produces twenty-five percent of the world's natural gas and accounts for six to eight percent of Russia's gross domestic product. *See id.* The Russian government maintains a forty percent stake in Gazprom's ownership. *See U.S. Investigating Iranian Gas Deal*, *supra* note 30.

221. Petronas is Malaysia's national oil company. *See Malaysian Company Says Work In Iran Will Go Despite U.S. Protests*, ASSOC. PRESS, Nov. 17, 1997, available in 1997 WL 4892905. Petronas' President Hassan Marican has characterized the sanctions set forth in ILSA as an affront and interference in Petronas' internal affairs. *See id.*

222. *See Harry Dunphy, U.S. Opposes Pipeline*, ASSOC. PRESS, Oct. 23, 1997, available in 1997 WL 4889311. *See also Iran Gas Deal Defies U.S. Sanctions*, PITT. POST-GAZETTE, Sept. 30, 1997, at A4, available in 1997 WL 11849331; *Iran Says Gas Project Opposed by U.S. Will Earn \$45 Billion*, *supra* note 196. Iranian officials have estimated that the South Pars field can produce as much as two billion cubic feet of natural gas and 75,000 barrels of liquefied gas worth \$1.5 billion annually by 2002. *See Iran's Oil Minister in Moscow To Boost Ties*, ASSOC. PRESS, Nov. 13, 1997, available in 1997 WL 4892439. *See also Iran Says Gas Project Opposed by U.S. Will Earn \$45 Billion*, *supra* note 196. Iran's deputy oil minister Hadi Nejad-Hosseini has estimated that gas sales revenues will exceed \$45 billion over the life of the field. *See id.*

223. *See Russia, Iran Sign Gas Project Pact*, WASH. POST, Nov. 16, 1997, at A27. Total maintains a forty percent interest in the consortium while Gazprom and Petronas each maintain a thirty percent ownership interest. *See Iran Says Gas Project Opposed by U.S. Will Earn \$45 Billion*, *supra* note 196. The consortium has encountered some difficulty in obtaining financing for the project. The French government has refused to provide official credits to finance the project. *See H.R. REP. NO. 104-523(I)*, at 10 (1996). However, some financial assistance from the French government will undoubtedly be forthcoming through its .9 percent ownership interest in Total. *See U.S. Investigating Iranian Gas Deal*, *supra* note 30. Gazprom has also had difficulty in obtaining financing. In November 1997, Gazprom postponed a \$3 billion bond offering designed to raise capital for its Iranian ventures. *See Russian Gas Deal With Iran Is Put On Hold*, ST. LOUIS-DISPATCH,

fields in partnership with NIOC.<sup>224</sup> On October 1, 1997, another French oil company, Elf Aquitaine, announced that it was negotiating with the Iranian government for the acquisition of production rights to the Doroud oil field located in the Persian Gulf.<sup>225</sup> Additionally, in November 1997, Germany's Siemens Corporation was commissioned by the Iranian government to study the feasibility of an oil pipeline between Kazakhstan and Iran.<sup>226</sup>

Several non-European firms also chose to ignore the threat of sanctions pursuant to ILSA. On September 24, 1997, the Chinese National Petroleum Company, the state oil company of the Peoples' Republic of China, purchased a controlling interest in the second largest oil field in the newly-independent Central Asian republic of Kazakhstan.<sup>227</sup> China's \$9.5 billion bid proved more attractive to the government of Kazakhstan than those submitted by American companies such as Amoco, Unocal, Texaco and Exxon in part because China promised to construct an oil pipeline from Kazakhstan to refineries in northern Iran.<sup>228</sup> Additionally, Chinese oil officials have agreed to form a joint venture with NIOC to explore offshore deposits in Iran and China and to upgrade Chinese refineries in order to process more Iranian oil.<sup>229</sup>

Turkey also ignored ILSA's call for further isolation of Iran by agreeing in August 1996 to purchase 140 billion cubic feet of Iranian natural gas annually commencing in 1998.<sup>230</sup> The agreement called for

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Nov. 12, 1997, at A10, *available in* 1997 WL 3377730. Gazprom cited unfavorable market conditions as the reason for the postponement. *See id.* However, the participation of U.S. investment bank Goldman, Sachs as lead underwriter for the transaction which could in turn trigger sanctions under ILSA may have played a role in the postponement. *See id.*

224. *See Total Chairman Says He's Negotiating With Iraq And Iran*, ASSOC. PRESS, July 2, 1997, *available in* 1997 WL 4873315. The development contract presently under negotiation has a purported value of \$3.5 billion dollars. *See id.*

225. *See Avoiding Brawl? U.S. And EU Cautious Over Gas Deal With Iran*, ASSOC. PRESS, Oct. 5, 1997, *available in* 1997 WL 4886567. *See also Elf Aquitaine Exploring Oil Deals With Iran And Iraq*, ASSOC. PRESS, Oct. 1, 1997, *available in* 1997 WL 4886125. The Doroud field currently produces 170,000 barrels of oil per day. *See IRAN: EIA REPORT*, *supra* note 181, at 7. NIOC hopes to reinject natural gas into the field to increase its recoverable reserves by 600 million barrels and raise daily oil output to 290,000 barrels per day. *See id.* The estimated cost of the project is \$530 million. *See id.*

226. *See David B. Ottaway & Dan Morgan, U.S. Backs Non-Iranian, 'Eurasian' Corridor West for Caspian Sea Oil*, WASH. POST, Nov. 20, 1997, at A37.

227. *See David B. Ottaway & Dan Morgan, China Pursues Ambitious Role in Oil Market*, WASH. POST, Dec. 26, 1997, at A1.

228. *See id.* *See also* David B. Ottaway & Dan Morgan, *Deal Tests U.S. Policy on Tehran*, WASH. POST, Oct. 12, 1997, at A1. The Chinese National Petroleum Company's bid also included a promise to construct a \$3.5 billion, 1800 mile pipeline from Kazakhstan to China. *See Ottaway & Morgan, supra* note 227, at A1.

229. *See Ottaway & Morgan, supra* note 227, at A1.

230. *See Thomas W. Lippman, U.S. Decries Turkey's Gas Deal with Tehran*, WASH. POST, Aug. 13, 1996, at A1. *See also Iran Signs \$20 Billion Gas Deal*, ASSOC. PRESS, Aug. 12, 1996, *available in* 1996 WL 2175459.

the joint construction of a 328 mile pipeline from Tabriz in western Iran to Erzurum in eastern Turkey at a cost of \$400 million to be divided equally between the countries.<sup>231</sup> The total value of Turkish purchases of Iranian gas throughout the twenty-two year term of the agreement is estimated at \$23 billion.<sup>232</sup> Turkey and Iran also signed numerous accords in December 1996 granting each other most favored nation trading status and promoting bilateral investment.<sup>233</sup> In addition, Iran and Pakistan continued to discuss the construction of a gas pipeline from the South Pars gas field in Iran to Karachi,<sup>234</sup> and construction commenced on a \$135 million gas pipeline from Iran to Armenia.<sup>235</sup>

The resource-rich fledging republics of Central Asia also ignored ILSA's prohibitions.<sup>236</sup> Kazakhstan concluded an agreement for crude

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231. See *Turkey To Receive Iranian Natural Gas In 1998*, AGENCE FR.-PRESSE, Nov. 5, 1996, available in 1996 WL 12173021. Plans called for the pipeline to reach an ultimate length of 680 miles to the Turkish coast at an additional cost of one billion dollars. See *Iran Signs \$20 Billion Gas Deal*, *supra* note 230. Botas, the state-owned Turkish oil company, opened the bidding process for construction of the pipeline in early 1997. See IRAN: EIA REPORT, *supra* note 181, at 11.

232. See Lippman, *supra* note 230, at A1. Pursuant to the agreement, Iran was scheduled to begin shipping 105 billion cubic feet of natural gas a year through the pipeline by 1998 with deliveries rising to 350 billion cubic feet in 2005. See *id.* However, construction of the proposed pipeline had not yet commenced, and substantial obstacles remained to the completion of the project as of the time of the preparation of this article. See Kelly Couturier, *Turkey Aims To Satisfy Its Fuel Needs*, WASH. POST, Oct. 20, 1997, at A17.

233. See *Ignoring U.S., Turkey and Iran Sign Trade Accords*, WASH. POST, Dec. 22, 1996, at A31.

234. See IRAN: EIA REPORT, *supra* note 181, at 11. Construction of the \$3 billion, 1.6 billion cubic feet per day pipeline was proposed in an January 1995 agreement between the countries dated January 1995. See *id.* However, a final agreement had not been negotiated at the time of the preparation of this article. See *id.*

235. See *id.* In mid-1995, Iran and Armenia signed a renewable fifteen year contract whereby Iran agreed to supply 100 million cubic feet of natural gas per day to Armenia. See *id.* Construction of the pipeline necessary to accomplish these deliveries is underway, and shipments of gas are expected to commence in 1999. See *id.*

236. The oil and gas deposits located in the newly-independent republics of Azerbaijan, Kazakhstan, Turkmenistan and Uzbekistan rival those of the Middle East. Current industry estimates place oil reserves in the region at 200 billion barrels worth \$4 trillion at current market prices. See Myre, *supra* note 189. The Persian Gulf contains approximately 670 billion barrels of oil. See *id.* Bordering the western shore of the oil-rich Caspian Sea and possessing the enormous Azeri-Chirag-Guneshli oil field, Azerbaijan has proven crude oil reserves of 3 billion barrels with estimates of ultimate reserves as high as 40 billion barrels. See U.S. DEP'T OF COMMERCE, AZERBAIJAN: ECONOMIC AND TRADE OVERVIEW 2 (visited Oct. 13, 1998) <<http://www.itaiep.doc.gov/bisnis/country/azecon.html>>. Bordering the northern and eastern shores of the Caspian Sea and possessing the lucrative Tenghiz oil field, Kazakhstan produced 27 million tons of crude oil in 1997. See U.S. DEP'T OF COMMERCE, COUNTRY COMMERCIAL GUIDE: KAZAKHSTAN 1 (visited Oct. 13, 1998) <<http://www.itaiep.doc.gov/bisnis/country/kzccg.html>>. Turkmenistan also borders the eastern shore of the Caspian Sea and possesses the fourth largest natural gas reserves in the world estimated at 98 to 155 trillion cubic feet, 1.2 trillion cubic feet of which was produced in 1996. See U.S. ENERGY INFORMATION ADMINISTRATION: TURKMENISTAN REPORT 3, 5 (visited Oct. 13, 1998) <<http://www.eia.doe.gov/emeu/cabs/turkmen.html>>.

oil exchanges with Iran in May 1996.<sup>237</sup> In May 1997, Turkmenistan signed an agreement to sell three billion cubic feet per day of natural gas to Turkey.<sup>238</sup> Gas will be transported through a two thousand mile long pipeline between the two countries including a 788 mile section through northern Iran.<sup>239</sup> The pipeline will be constructed at a cost of \$1.6 billion.<sup>240</sup> The initial 125 mile segment carrying natural gas from Korpedzhe, Turkmenistan to Kord Kuy in northeastern Iran was activated on December 29, 1997.<sup>241</sup> Future expansion of the pipeline to Europe is anticipated in the next several years.<sup>242</sup>

Faced with international furor and confusion, the Clinton administration investigated several of these transactions in order to determine their compliance with ILSA. However, despite promises to "fully and completely" enforce ILSA, the Clinton administration has failed to impose sanctions upon a single foreign firm maintaining or proposing investments in Iran.<sup>243</sup> The United States failed to sanction Pell Frischmann or Bow Valley for their contract with NIOC to develop the

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Turkmenistan also possesses 1.5 billion barrels of proven oil reserves with crude oil production of 88,000 barrels per day. *Id.* Landlocked Uzbekistan is among the world's top ten producers of natural gas and produced more than 8 million tons of crude oil in 1995. See U.S. DEP'T OF COMMERCE, UZBEKISTAN: ECONOMIC OVERVIEW 3 (visited Oct. 13, 1998) <<http://www.itaiep.doc.gov/bisnis/country/uzecon.html>>.

237. See *Kazakhstan Starts Shipping Oil Through Iran*, AGENCE FR.-PRESSE, Jan. 18, 1997, available in 1997 WL 2042671. See also IRAN: EIA REPORT, *supra* note 181, at 4. Under the ten year term of the agreement, Kazakhstan agreed to ship oil by tanker to Iranian refineries on the coast of the Caspian Sea in exchange for the option of lifting either Iranian light or heavy blend crude oil at Iran's Kharg Island facility in the Persian Gulf. Shipments were to total two million to six million tons annually. See *Report Says Kazakhstan, Iran Temporarily Cease Oil Swap*, DOW JONES ONLINE NEWS, Oct. 22, 1997. However, the agreement was suspended by Iran in October 1997 due to concerns about the quality of the oil received by Iran from Kazakhstan. See *id.*

238. See *U.S. Won't Bar Pipeline Across Iran*, *supra* note 217, at A1.

239. See *id.* The transaction involves a "gas swap" whereby Turkmenistan would pump gas into Iran, and Iran would send an equal amount of Iranian gas to Turkey. *Id.* Iran would reap transit fees for allowing gas to flow through its territory. *Id.*

240. *Id.* See also *Clinton Won't Oppose Pipeline Through Iran*, ASSOC. PRESS, July 27, 1997, available in 1997 WL 3504218.

241. See Alexander Vershinin, *Iran-Turkmenistan Gas Line Opens 125 Mile Line*, ASSOC. PRESS, Dec. 30, 1997, available in 1997 WL 14978140. The \$200 million cost of the initial 125 mile segment was financed by NIOC (80%) and the Turkmen government (20%). See IRAN: EIA REPORT, *supra* note 181, at 11.

242. See *Turkmenistan, Iran and Turkey Reach Caspian Gas Agreements*, ASSOC. PRESS, Dec. 28, 1997, available in 1997 WL 4898580. Iran, Turkey and Turkmenistan executed an agreement providing for the extension of the pipeline to Europe on December 28, 1997. See *id.* The leading candidate to construct the pipeline is a consortium comprised of Italy's Snamprogetti, Gas de France and the British-Dutch energy conglomerate Royal Dutch Shell. See *U.S. Won't Bar Pipeline Across Iran*, *supra* note 217, at A1.

243. See *Iran-France Pact Viewed as Affront to U.S. Sanctions*, ASSOC. PRESS, Oct. 6, 1997, available in 1997 WL 2485305.

Balal oil field.<sup>244</sup> After receiving threats of retaliation from the European Union,<sup>245</sup> President Clinton elected not to impose sanctions upon Total for its participation in the consortium to develop Iran's South Pars natural gas field.<sup>246</sup> The United States also failed to sanction Gazprom for its role in the South Pars consortium after receiving protests from the Russian government<sup>247</sup> and Gazprom's cancellation of a November 1994 agreement with the Export-Import Bank that guaranteed \$750 million in financing for purchases of equipment and services from American companies.<sup>248</sup> Additionally, after condemning Turkey's agreement to purchase Iranian natural gas,<sup>249</sup> the United States refused to sanction the proposed alternate Turkmenistan-Turkey pipeline route through Iran on the bases that the agreement predated the enactment of ILSA,<sup>250</sup> the project did not facilitate Iranian gas production<sup>251</sup> and Iran was paying for the portion of the pipeline passing through its territory.<sup>252</sup> Rather, the Clinton administration praised the project as delivering "Central Asian energy resources to the market in a way that minimizes assistance to Iran."<sup>253</sup> The Clinton Administration subsequently condemned the project based upon the benefits that the pipeline could confer on Iran.<sup>254</sup> However, the Administration again re-

244. See *U.S. Ponders Sanctions for Oil Deal in Iran*, *supra* note 219, at A9.

245. See Casert, *supra* note 33. Sir Leon Brittan, the European Union's foreign trade minister, stated that Total was "fully entitled" to enter into the agreement, and any interference by the United States would "set in motion a chain of events which could seriously damage the wider relationship." Casert, *supra* note 32. The French government condemned the purported extraterritorial reach of ILSA and issued a statement that application of the law to Total "would have serious consequences on international trade." *France Cautions U.S. Against Sanctions Over Natural Gas Deal With Iran*, ASSOC. PRESS, Sept. 29, 1997, available in 1997 WL 4885627.

246. See Dan Balz, *U.S. Eases Stand on Cuba, Iran Sanctions; Helms Condemns, Europe Hails Move*, WASH. POST, May 19, 1998, at A15. The Clinton Administration elected to exert more pressure on the European Union to condemn Iranian acts of terrorism. See *U.S. Not Eager to Enforce Sanctions Over Iran Gas Deal*, ASSOC. PRESS, Oct. 3, 1997, available in 1997 WL 4886537. U.S. State Department spokesman James Rubin rationalized this decision by stating that "[t]he objective of the legislation is not to impose sanctions . . . [but rather] to get other countries, in Europe in particular, to work with us on the subject of tightening up the pressure on Iran." Thomas W. Lippman, *U.S. Defers Sanctions on Iran Gas Deal*, WASH. POST, Oct. 4, 1997, at A1.

247. See *Iran's Oil Minister in Moscow To Boost Ties*, *supra* note 222. Boris Nemtsov, Russia's first deputy prime minister, stated that the Russian government would fully support Gazprom's participation in the South Pars consortium. See *id.*

248. See *Russia's Gazprom Cancels Loan Deal Over Criticism Of Iran Venture*, *supra* note 220.

249. See Lippman, *supra* note 230, at A1.

250. See *U.S. Closely Watches Plan For Natural Gas Pipeline Through Iran*, AGENCE FR.-PRESSE, Dec. 29, 1997, available in 1997 WL 13462550.

251. See Ottaway & Morgan, *supra* note 228, at A1.

252. See Thomas W. Lippman, *New Iran Leader Provides Opportunity for Change; But Khatami Indicates No Muting of Hostility*, WASH. POST, Aug. 3, 1997, at A23.

253. See *Clinton Won't Oppose Pipeline Through Iran*, *supra* note 240.

254. See *U.S. Affirms Opposition to Energy Pipelines Crossing Iran*, DOW JONES INT'L NEWS, Jan. 19, 1998.

fused to sanction any of the parties to the project. Additionally, the Clinton administration expressed support for a multi-billion dollar pipeline stretching westward from Kazakhstan across the Caspian Sea to Azerbaijan and Georgia.<sup>255</sup>

Domestic reaction to the Clinton administration's failure to impose sanctions pursuant to ILSA has been mixed. Several members of Congress expressed disappointment and outrage at President Clinton's reluctance to impose sanctions. The chief Congressional critic was one of ILSA's namesakes, Senator Alfonse M. D'Amato of New York. Senator D'Amato condemned Turkey's contract to purchase natural gas from Iran as clearly within ILSA's parameters and "a direct challenge to [U.S.] policy of economically isolating Iran."<sup>256</sup> Senator D'Amato also criticized the Clinton Administration's refusal to sanction the Turkmeni-Turkish pipeline agreement as "send[ing] a message of weakness to Iran," and undermining U.S. efforts to persuade its European allies to join the economic embargo on Iran.<sup>257</sup> Additionally, Senator D'Amato demanded the imposition of sanctions against Total for its investment in the South Pars gas field stating that the Administration's failure to take "decisive action . . . undercut long-standing policy against Iranian terrorism" and opened the floodgates for foreign investment in Iran's oil and gas industries.<sup>258</sup> The Clinton Administration was also condemned as overly sensitive to the negative reaction of U.S. allies regarding ILSA.<sup>259</sup> Finally, the decisions not to vigorously implement ILSA were further condemned as failing to force Iran and its leaders to "actually pay a real economic price for their sponsorship of international terrorism."<sup>260</sup> According to the Clinton Administration's critics, the Khatami administration in Tehran had not yet earned a reprieve from U.S. economic sanctions.<sup>261</sup>

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255. See Ottaway & Morgan, *supra* note 226, at A37. See also Thomas W. Lippman, *Clinton Meets with Turkmen President*, WASH. POST, Apr. 24, 1998, at A14.

256. Lippman, *supra* note 230, at A1.

257. Lippman, *supra* note 252, at A23.

258. Thomas W. Lippman, *U.S. Defers Sanctions on Iran Gas Deal*, WASH. POST, Oct. 4, 1997, at A1. See also *Sanctions On France*, WASH. POST, Oct. 1, 1997, at A24, characterizing the failure to impose sanctions on Total as inviting "a painful blow to [U.S.] interest and pride." See also John Lancaster, *Tehran Reacts Coolly to Sanctions Waiver*, WASH. POST, May 20, 1998, at A19; Thomas W. Lippman, *Senators Ask Sanctions Over Iranian Gas Deal*, WASH. POST, May 9, 1998, at A20; Thomas W. Lippman, *U.S. Aides Still Divided Over Sanctions on Foreign Investors in Iran*, WASH. POST, Mar. 6, 1998, at A33.

259. See Stephen S. Rosenfeld, *Bridging the Atlantic Divide*, WASH. POST, Aug. 9, 1996, at A17. Rosenfeld concludes that "a little tension with the allies over something extremely important where the United States has a strong position and has showed patience may not be such a bad thing after all . . . [s]uch [tension] can be justified in the face of a clear and politically uncluttered terrorist menace." *Id.* See also *U.S. Aides Still Divided Over Sanctions on Foreign Investors in Iran*, *supra* note 258, at A33.

260. *U.S. Ponders Sanctions for Oil Deal in Iran*, *supra* note 219, at A9 (quoting Hillary Mann, an analyst employed by the Washington Institute for Near East Policy).

261. See Peter W. Rodman, *Why Ease Up on Iran?*, WASH. POST, Dec. 11, 1996, at A25.

However, the Clinton administration's decision was not subject to universal condemnation. Richard N. Haass, the director of foreign policy studies at the Brookings Institution, praised President Clinton's failure to impose sanctions as a prudent decision designed not to send "a hostile signal to the new leadership in Tehran at a time when the United States might usefully explore establishing a dialogue."<sup>262</sup> The Administration's decision was also praised as a recognition of the general ineffectiveness of unilateral economic sanctions as well as Iran's ability to escape the harshest consequences of such sanctions.<sup>263</sup> Additionally, the imposition of sanctions were also condemned as harmful to the interests of American businesses operating overseas as well as relations between the United States and its European and Asian allies.<sup>264</sup> Regardless of their bases for praising the Clinton administration's restraint in refusing to implement ILSA, all of the commentators agreed that a reassessment of U.S. policy towards Iran is long overdue.<sup>265</sup>

### III. PROVISIONS OF THE IRAN AND LIBYA SANCTIONS ACT OF 1996

ILSA provides for three specific methods for accomplishment of the purposes set forth in Section I of this article.<sup>266</sup> Initially, Section 4(a) urges the President to immediately commence diplomatic efforts in appropriate international forums and in bilateral negotiations to establish a multilateral sanctions regime against Iran including limitations upon foreign investments in Iran's oil, gas and petrochemicals industries.<sup>267</sup> ILSA provides that the President's efforts in this regard be consistent with U.S. policy towards Iran which, according to Congress, includes the retardation of the development of "Iran's ability to explore for, extract, refine or transport by pipeline [its] petroleum resources."<sup>268</sup> Section 2 sets forth four goals which should underlie the President's multilateral and bilateral efforts. Initially, the President's efforts should be designed to inhibit Iran's development of weapons of mass destruction and associated delivery systems.<sup>269</sup> Secondly, the President's efforts

Rodman is director of national security programs at the Nixon Center for Peace and Freedom.

262. Richard N. Haass, *Sanctions-With Care*, WASH. POST, July 27, 1997, at C9.

263. See Shaul Bakhsh, *From Iran, an Understated Overture*, WASH. POST, Dec. 18, 1997, at A27.

264. See Thomas W. Lippman, *Politicians at Odds on Sanctions Policy*, WASH. POST, May 19, 1998, at A17. See also Robin Wright, *U.S. Losing Support in 'Containing' Iraq and Iran*, L.A. TIMES, Oct. 26, 1997, at A1.

265. See Haass, *supra* note 262, at C9. See also Bakhsh, *supra* note 263, at A27; Wright, *supra* note 264, at A1.

266. See *supra* notes 9-19 and accompanying text.

267. See ILSA, Pub. L. No. 104-172, § 4(a), 110 Stat. 1541, 1542-43 (1996).

268. See *id.* § 3(a). Section 14(15) defines "petroleum resources" as "petroleum and natural gas resources." See *id.* § 14(15).

269. See *id.* § 2(1).

should attempt to inhibit the Iranian Government's support of acts of international terrorism.<sup>270</sup> Congress specifically determined that Iranian sponsorship of such acts endanger the national security and foreign policy interests of the United States and those members of the international community which share U.S. strategic and foreign policy interests.<sup>271</sup> Thirdly, Congress urged the President to strive to deny Iran the financial resources necessary to sustain its nuclear, chemical, biological and ballistic missile weapons programs as well as its support for international terrorism.<sup>272</sup> Finally, ILSA calls upon the President to endeavor to terminate the continuing use of diplomatic facilities and quasi-governmental institutions by the government of Iran to promote acts of international terrorism and assist in its nuclear, chemical, biological and ballistic missile weapons programs.<sup>273</sup> Other than the United Nations, ILSA does not identify the international forums in which such efforts are to occur and leaves the means by which its goals are to be accomplished to presidential discretion.<sup>274</sup>

The second method by which ILSA seeks to accomplish its purposes is through increased consultation between the President and Congress regarding U.S. policy towards Iran. ILSA requires four separate consul-

270. *See id.* § 14(1) defines an "act of international terrorism" as follows:

Act of International Terrorism - The term "act of international terrorism" means an act which is violent or dangerous to human life and that is a violation of the criminal laws of the United States or of any State or that would be a criminal violation if committed within the jurisdiction of the United States or any State; and which appears to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by assassination or kidnapping.

*See id.* § 14(1).

271. *See id.* § 2(1).

272. *See id.* § 2(2). Congress was particularly concerned about Iran's efforts to develop nuclear weapons. *See supra* notes 143-44 and accompanying text. Section 14(13) defines a "nuclear explosive device" as follows:

Nuclear Explosive Device - The term "nuclear explosive device" means any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material (as defined in Section 11(aa) of the Atomic Energy Act of 1954) that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT).

*See ILSA*, Pub. L. No. 104-172, § 14(13), 110 Stat. 1541, 1550 (1996).

273. *See ILSA*, § 2(3). Section 14(10) defines "Iran" as the Iranian Government as well as any of its agencies or instrumentalities. *See id.* § 14(10).

'Iranian diplomats, representatives and quasi-governmental institutions' are defined as including 'employees, representatives or affiliates of Iran's Foreign Ministry, Ministry of Intelligence and Security, Revolutionary Guard Corps, Crusade for Reconstruction, Qods (Jerusalem) Forces, Interior Ministry, Foundation for the Oppressed and Disabled, Prophet's Foundation, June 5<sup>th</sup> Foundation, Martyr's Foundation, Islamic Propagation Organization and the Ministry of Islamic Guidance.'

*See id.* § 14(11).

274. *See id.* § 4(a).

tations between the executive and legislative branches regarding U.S. policy towards Iran. Initially, Section 4(b) requires the President to report to appropriate Congressional committees on the success of his bilateral and multilateral efforts to economically isolate Iran pursuant to Section 4(a).<sup>275</sup> The initial report must be filed with Congress no later than one year from the date of ILSA's enactment with subsequent reports to be filed on a periodic basis.<sup>276</sup> Each report must identify those countries which have undertaken measures to deter Iranian support for international terrorism, its acquisition of weapons of mass destruction and development of its petroleum resources.<sup>277</sup> The report must include a description of each listed countries' anti-Iranian measures.<sup>278</sup> Additionally, the report must include a list of those countries which have not adopted such measures and the President's recommended course of action with respect to such countries.<sup>279</sup>

Additionally, the President was required to file an interim report on multilateral sanctions against Iran with appropriate Congressional committees no later than ninety days after ILSA's enactment.<sup>280</sup> This report was required to address three separate issues. Initially, the report was required to determine the existence of "legislative or administrative standards providing for the imposition of trade sanctions on persons or their affiliates doing business or having investments in Iran" in the member states of the European Union, the Republic of Korea, Australia, Israel and Japan.<sup>281</sup> Secondly, the report was required to determine the extent and duration of the application of sanctions against Iran by any of the above-listed countries.<sup>282</sup> Decisions of the World Trade Organization or its predecessor organization regarding the compatibility of such sanctions with the dictates of international trade as set forth in GATT was the third and final topic for inclusion within the report required by Section 4(e).<sup>283</sup>

The third instance of legislatively-mandated consultation between the President and Congress concerns the imposition, delay and waiver of sanctions. Section 9(a)(4) of ILSA requires the President to report to Congress no later than ninety days after electing to impose sanctions

275. *See id.* § 4(b). "Appropriate Congressional Committees" are defined as "the Committee on Finance, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Foreign Relations of the Senate and the Committee on Ways and Means, the Committee on Banking and Financial Services, and the Committee on International Relations of the House of Representatives." *See id.* § 14(2).

276. *See id.* § 4(b).

277. *See id.* § 4(b)(1).

278. *See id.*

279. *See id.* § 4(b)(2).

280. *See id.* § 4(e).

281. *See id.* § 4(e)(1). Noticeable by its absence was any reference to legislative and administrative standards providing for the imposition of trade sanctions against Iran by Canada, the U.S. largest trading partner.

282. *See id.* § 4(e)(2).

283. *See id.* § 4(e)(3).

pursuant to Section 5.<sup>284</sup> This report must disclose the status of consultations with the foreign government possessing primary jurisdiction over the sanctioned person and the reasons supporting any delays in the actual enforcement of sanctions.<sup>285</sup> Additionally, Section 9(c)(1) requires the President to submit a report to the appropriate Congressional committees prior to waiving the initial or continued imposition of sanctions.<sup>286</sup> A waiver of sanctions pursuant to this section become effective no less than thirty days after the President determines and reports to Congress that the waiver is necessary to serve the national interests of the United States.<sup>287</sup> The report must contain “a specific and detailed rationale” for the waiver including a description of the conduct that resulted in the threatened or actual imposition of sanctions.<sup>288</sup> In the case of a foreign person, the report must also contain an explanation of the President’s efforts “to secure the cooperation of the government with primary jurisdiction over the sanctioned person to terminate or, as appropriate, penalize the activities that resulted in the [actual or threatened imposition of sanctions].”<sup>289</sup>

The final instance when consultations are required between the executive and legislative branches concerns the President’s initiatives to further isolate Iran in the international community. In order to “contribute to [Congress]’ ability to evaluate the effectiveness of [ILSA],”<sup>290</sup> the President is required to transmit a report to Congress no later than six months after the enactment of ILSA and every six months thereafter describing his efforts to initiate a multilateral campaign to pressure Iran to cease its support of acts of international terrorism and develop-

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284. *See id.* § 9(a)(4).

285. *See id.*

286. *See id.* § 9(c)(1).

287. *See id.* According to Congress, the national interests of the United States include: cases in which imposition of sanctions would threaten U.S. intelligence sources and methods, where a particular sanction would raise significant issues under the international obligations of the U.S., and where international cooperation in pursuit of the goals of the bill could be jeopardized, rather than assisted, through unilateral U.S. action, or where sanctions would lead to unacceptable costs to U.S. economic interests.

*See* H.R. REP. NO. 104-523(II), at 18 (1996).

288. *See* ILSA, § 9(c)(2)(A).

289. *Id.* § 9(c)(2)(B). Section 14 defines “persons” to include natural person, corporations, business associations, partnerships, societies, trusts, nongovernmental entities, organizations or groups, governmental entities operating as business enterprises and any of their successors. *See id.* § 14(A)-(C). “U.S. persons” are defined as U.S. citizens in the case of natural persons and corporations or other legal entities organized pursuant to the laws of the United States or any of its States or territories if U.S. citizens “own, directly or indirectly, more than fifty percent of the outstanding capital stock or other beneficial interest” in the entity. *See id.* § 14(17)(A)-(B). “Foreign persons” are defined as all persons who do not meet the requirements set forth in the definition of U.S. persons. *See id.* § 14(7)(A)-(B).

290. H.R. REP. NO. 104-523(II), at 18.

ment of weapons of mass destruction.<sup>291</sup> Additionally, the President's report is required to detail his efforts to persuade other countries to reduce the presence of Iranian diplomats and representatives within their respective jurisdictions and expel any such persons who participated in the seizure of the U.S. embassy and ensuing hostage crisis.<sup>292</sup> The President's report must also describe the extent to which the International Atomic Energy Agency has established regular inspections of all nuclear facilities in Iran<sup>293</sup> and Iran's use of its diplomats and representatives to promote acts of international terrorism and further its development of weapons of mass destruction.<sup>294</sup> Finally, this section requires the President to ensure the continued transmittal to Congress of reports concerning Iran's military capabilities<sup>295</sup> and its support for acts of international terrorism as part of the State Department's annual report on terrorism.<sup>296</sup>

The third method by which ILSA seeks to accomplish its objectives is clearly the most controversial. Section 5(a) provides for the imposition of economic sanctions upon persons who, with actual knowledge, make an investment of \$40 million or more in any twelve month period which directly and significantly contributes to the enhancement of Iran's ability to develop its petroleum resources. Recognizing the President's primary responsibility for the conduct of U.S. foreign affairs, this section grants "broad latitude" to the President in determining under what circumstances sanctions would be appropriate and their ultimate form and implementation.<sup>297</sup> Nevertheless, Congress fully expected the complete and timely implementation of sanctions having a "demonstrable impact" upon all persons engaging in conduct in violation of ILSA.<sup>298</sup>

Section 5(a) requires the imposition of two or more sanctions enumerated in Section 6 if the President determines that a person has, with actual knowledge, made an investment<sup>299</sup> of \$40 million or more

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291. See ILSA, § 10(a)(1).

292. See *id.* § 10(a)(2).

293. See *id.* § 10(a)(3).

294. See *id.* § 10(a)(4).

295. See *id.* § 10(b)(1). This report is required by Section 601(a) of the Nuclear Non-Proliferation Act of 1978 and Section 1607 of the National Defense Authorization Act for Fiscal Year 1993. See 22 U.S.C. § 3281 (1994) and Pub. L. No. 102-484, 106 Stat. 2571 (1992).

296. See ILSA, § 10(b)(2).

297. H.R. REP. NO. 104-523(I), at 14 (1996).

298. *Id.* at 15, 17.

299. The term "investment" is defined as:

any of the following activities if such activity is undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Government of Iran or a nongovernmental entity in Iran . . . on or after the date of enactment of this Act: The entry into a contract that includes responsibility for the development of petroleum resources located in Iran . . . or the entry into a contract providing for the general supervision and guarantee of another person's performance of such a

that directly and significantly contributed to the enhancement of Iran's ability to develop<sup>300</sup> its petroleum resources.<sup>301</sup> The prohibited investment may be in one lump sum or may consist of any combination of investments of at least \$10 million each which in the aggregate equal or exceed \$40 million in any twelve month period.<sup>302</sup> In order to qualify as sanctionable conduct, the investment must have occurred on or after the date of ILSA's enactment.<sup>303</sup> The amount of the \$40 million "investment trigger" is lowered to \$20 million dollars in any twelve month period with respect to the nationals of all countries other than those designated by the President pursuant to Section 4(c)<sup>304</sup> at any time after the President has submitted his initial report to Congress as required by Section 4(b).<sup>305</sup> This \$20 million investment may also be in one lump sum or may consist of a combination of investments of at least \$5 million each which in the aggregate equal or exceed \$20 million in any twelve month period.<sup>306</sup>

Section 5(c) identifies two classifications of persons subject to the imposition of sanctions. Initially, sanctions must be imposed against any person the President determines to have engaged in an investment in Iran prohibited by Section 5(a).<sup>307</sup> The President may also impose sanctions upon any person he determines to be a successor entity, parent, subsidiary or affiliate of a sanctioned person.<sup>308</sup> However, prior to imposing sanctions against a parent or subsidiary, the President must find that the parent or subsidiary, with actual knowledge, made a prohibited investment in violation of Section 5(a).<sup>309</sup> With regard to affiliates, the President must not only find the existence of a prohibited investment made with actual knowledge but must also conclude that the

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contract; The purchase of a share of ownership, including an equity interest, in that development; The entry into a contract providing for the participation in royalties, earnings or profits in that development, without regard to the form of the participation. The term "investment" does not include the entry into, performance or financing of a contract to sell or purchase goods, services or technology.

See ILSA, § 14(9).

300. The terms "develop" and "development" of petroleum resources are defined as "the exploration for, or the extraction, refining or transportation by pipeline of, petroleum resources." See *id.* § 14(4).

301. See *id.* § 5(a).

302. See *id.*

303. See *id.*

304. See *infra* notes 338-40 and accompanying text. The President must identify for Congress all countries which are exempt from the lowered "investment trigger" established by Section 4(d)(1). See ILSA, § 4(d)(1).

305. See ILSA, § 4(d)(1). See also *supra* notes 295-99 and accompanying text.

306. See ILSA, § 4(d)(1).

307. See *id.* § 5(c)(1).

308. See *id.* § 5(c)(2)(A)-(C).

309. See *id.* § 5(c)(2)(B).

affiliate is controlled by the sanctioned person.<sup>310</sup> A list of such sanctioned persons and prohibited investments must be published on a periodic basis in the *Federal Register*.<sup>311</sup> Additionally, concerned persons may request an advisory opinion from the Secretary of State as to whether a proposed investment violates ILSA's prohibitions.<sup>312</sup> Good faith reliance upon an opinion which determines that the proposed investment does not violate ILSA exempts the requesting party from sanctions based upon its subsequent participation in the investment.<sup>313</sup> The President's decision to impose sanctions is not subject to judicial review.<sup>314</sup>

Once the President determines that the imposition of sanctions is appropriate, he must impose two of the six sanctions listed in Section 6. The actual sanctions selected are subject to the President's exercise of discretion.<sup>315</sup> The available sanctions may be categorized in four separate classifications. The first and largest classification consists of prohibitions involving financial institutions.<sup>316</sup> Initially, the President may instruct the Export-Import Bank of the United States to reject any guarantee, insurance, extension of credit or participation in the extension of credit in connection with the export of any goods or services to any sanctioned person.<sup>317</sup> Additionally, the U.S. Government may prohibit any U.S. financial institution<sup>318</sup> from making loans or providing credits to sanctioned persons totaling more than \$10 million in any twelve month period.<sup>319</sup> Loans or credits to persons engaged in activities to relieve human suffering are exempted from this prohibition if such loans or credits are to be utilized for such humanitarian purposes.<sup>320</sup>

If the sanctioned person is a financial institution, the U.S. Government may impose one or both of two available sanctions. Initially, the U.S. Government may bar the Federal Reserve System and the Federal

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310. *See id.* § 5(c)(2)(C).

311. *See id.* § 5(d)-(e).

312. *See id.* § 7.

313. *See id.*

314. *See id.* § 11. Congress did not believe judicial review to be prudent given the careful and deliberate fashion in which sanctions are imposed pursuant to the Act and the necessity of timely implementation given the serious national security risk posed by Iran. *See H.R. REP. NO. 104-523(I)*, at 17 (1996).

315. *See H.R. REP. NO. 104-523(II)*, at 17.

316. *See ILSA*, § 6 (1), (3) and (4).

317. *See id.* § 6(1).

318. The term "financial institution" is defined to include:

- (A) a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act), including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);
- (B) a credit union;
- (C) a securities firm, including a broker or dealer;
- (D) an insurance company, including an agency or underwriter; and
- (E) any other company that provides financial services.

*See id.* § 14(5).

319. *See id.* § 6(3).

320. *See id.*

Reserve Bank of New York from designating or permitting the continuation of a sanctioned financial institution as a primary dealer in U.S. Government debt instruments.<sup>321</sup> In addition, a sanctioned financial institution may not serve as an agent of the U.S. Government or serve as a repository for U.S. Government funds.<sup>322</sup> The imposition of both of these sanctions against a financial institution constitutes two separate sanctions.<sup>323</sup>

The second, third and fourth classifications consist of procurement and trade sanctions. The U.S. Government may be prohibited from procuring, or entering into any contract for the procurement of, any goods or services from a sanctioned person.<sup>324</sup> Additionally, the President may order the U.S. Government to deny permission, authority or a license to export any goods or technology to a sanctioned person pursuant to the Export Administration Act of 1979,<sup>325</sup> the Arms Export Control Act<sup>326</sup> and the Atomic Energy Act of 1954.<sup>327</sup> The U.S. Government may also refuse to grant a license for the export of any goods or services to a sanctioned person pursuant to any other federal statute that requires its prior review and approval.<sup>328</sup> Finally, the President may impose sanctions, as appropriate, to restrict imports with respect to a sanctioned person in accordance with IEEPA.<sup>329</sup>

ILSA provides the President with considerable discretion to waive, delay or grant exceptions to the imposition of sanctions. Section 5(f) of ILSA sets forth numerous instances when the President may except persons from the imposition of sanctions on the basis of national security. Specifically, the President is not required to apply or maintain sanctions in the case of existing procurement contracts, subcontracts and options for goods and services utilized for national defense and essential to U.S. national security.<sup>330</sup> Government procurement contracts, subcontracts and options are also immune from sanctions if the President determines that the person subject to sanctions is the sole source supplier of essential goods or services and there are no readily or rea-

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321. *See id.* § 6(4)(A).

322. *See id.* § 6(4)(B).

323. *See id.* § 6(4).

324. *See id.* § 6(5).

325. *See id.* § 6(2)(i). *See also* Export Administration Act of 1979, 50 U.S.C. app. § 2405 (1998).

326. *See* ILSA, § 6(2)(ii). *See also* Arms Export Control Act, 22 U.S.C. §§ 2751-2756 (1994).

327. *See* ILSA, § 6(2)(iii). *See also* Atomic Energy Act of 1954, 42 U.S.C. §§ 2011-2023 (1994).

328. *See* ILSA, § 6(2)(iv).

329. *See id.* § 6(6). In order to invoke sanctions pursuant to this section of ILSA, a national economic emergency must be declared by the President pursuant to sections § 1702(a)(1)(A)-(B) of IEEPA, 50 U.S.C. (1998). *See also* H.R. REP. NO. 104-523(II), at 17 (1996).

330. *See* ILSA, § 5(f)(1)(A).

sonably available alternate sources.<sup>331</sup> Additionally, the President may provide an exception for goods and services essential to national security under defense co-production agreements.<sup>332</sup>

Section 5(f) sets forth numerous other grounds for Presidential exceptions from the imposition of sanctions. In the case of government procurement of non-defense related products, the President may provide for an exception for goods of any foreign country or instrumentality as provided pursuant to the Trade Agreements Act of 1979.<sup>333</sup> Products, technology and services provided under contracts entered into prior to the date of publication of the name of the sanctioned person in the *Federal Register* are also excepted from the application of sanctions.<sup>334</sup> Sanctions also may not be applied to contracts for spare and components parts, information and technology essential to U.S. products or production.<sup>335</sup> Additionally, sanctions are not required to be imposed upon contracts for the routine servicing and maintenance of products to the extent that alternative sources are not readily or reasonably available.<sup>336</sup> Finally, contracts for medicines, medical supplies and other humanitarian items are exempt from the imposition of sanctions.<sup>337</sup>

Two separate sections of ILSA grant authority to the President to waive the application of sanctions. Section 4(c)(1) provides for the waiver of sanctions by the President with respect to nationals of a country that has agreed to undertake substantial measures that will inhibit Iran's support of international terrorism, development and acquisition of weapons of mass destruction and utilization of its diplomats and representatives to achieve these objectives.<sup>338</sup> The President must notify all appropriate Congressional committees of his intention to grant such a waiver thirty days prior to its effective date.<sup>339</sup> The granting of a waiver pursuant to Section 4(c)(1) also exempts nationals of such countries from application of the enhanced sanctions regime set forth in Section 4(d).<sup>340</sup> The President may also waive the initial or continued imposition of sanctions thirty days or more after determining and certifying to Congress that the waiver is in the national interest of the United States.<sup>341</sup> The President must provide "a specific and detailed rationale" for this waiver.<sup>342</sup> In this regard, the President's certification to Con-

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331. See *id.* § 5(f)(1)(B).

332. See *id.* § 5(f)(1)(C).

333. See *id.* § 5(f)(2). See also Trade Agreements Act of 1979, 19 U.S.C. §§ 2518(4)(A)-(D), 2511 (b)(1)-(4) (1994).

334. See ILSA, § 5(f)(3).

335. See *id.* § 5(f)(4)-(6).

336. See *id.* § 5(f)(4)(C).

337. See *id.* § 5(f)(7).

338. See *id.* § 4(c)(1).

339. See *id.* § 4(c)(2).

340. See *id.* § 4(d)(1). See also *supra* notes 304-06 and accompanying text.

341. See ILSA, § 9(c)(1).

342. See *id.* § 9(c)(2).

gress must contain a description of the conduct at issue and U.S. efforts to obtain the cooperation of the government exercising jurisdiction in the case of a foreign person.<sup>343</sup> In addition, the report must provide an estimate as to the significance of the conduct at issue to Iran's ability to develop its petroleum resources and contain a statement as to the likely U.S. response to future conduct by the sanctioned person in contravention of the Act.<sup>344</sup>

Finally, Section 9(a) of ILSA establishes circumstances when the President may delay the imposition of sanctions. If the President determines that sanctions are appropriate pursuant to Section 5(a), he is instructed to immediately initiate consultations with the government exercising primary jurisdiction over the sanctioned person regarding the basis for his decision.<sup>345</sup> In order to increase the likelihood of a successful conclusion to these consultations, the President may delay the imposition of sanctions for up to ninety days.<sup>346</sup> Following the conclusion of such consultations, the President must immediately impose sanctions unless he determines and certifies to Congress that the government possessing primary jurisdiction over the sanctioned person has taken "specific and effective actions" to resolve U.S. concerns.<sup>347</sup> These actions may include the imposition of appropriate sanctions by the foreign government in order to terminate the prohibited involvement of the sanctioned person in Iran.<sup>348</sup> If the foreign government initiates such "specific and effective actions," the President may suspend the implementation of sanctions for an additional ninety days upon further certification to Congress.<sup>349</sup> In any event, the President is required to submit a report to the appropriate Congressional committees on the status of consultations with foreign governments and the basis for any delays within ninety days of the decision to impose sanctions pursuant to Section 5(a).<sup>350</sup>

Sanctions may also terminate as a result of Iran's actions or by operation of law. Section 8(a) provides for the termination of sanctions when ILSA's objectives are met. Two separate determinations must be made in order for ILSA's objectives to be deemed to have been met. First, the President must determine and certify to Congress that Iran has ceased its efforts to manufacture or acquire weapons of mass destruction.<sup>351</sup> Second, the President must certify to Congress that Iran

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343. *See id.* § 9(c)(2)(A)-(B).

344. *See id.* § 9(c)(2)(C)-(D).

345. *See id.* § 9(a)(1).

346. *See id.* § 9(a)(2).

347. *See id.*

348. *See id.*

349. *See id.* § 9(a)(3).

350. *See id.* § 9(a)(4).

351. *See id.* § 8(a)(1)(A)-(C). Included within the term "weapons of mass destruction" are nuclear, chemical and biological weapons as well as ballistic missiles and related launch technology. *Id.*

has been removed from the list of countries providing sponsorship and support for international terrorism compiled pursuant to Section 6(j) of the Export Administration Act of 1979.<sup>352</sup> If these two conditions are satisfied, the President is released from his obligation to impose sanctions.

Sanctions may also terminate by operation of law. Section 9(b)(1) provides that sanctions shall remain in effect for a period of not less than two years from the date of their imposition.<sup>353</sup> Alternatively, sanctions may be lifted if the President certifies to Congress that the sanctioned person has ceased to engage in the activities which led to their imposition.<sup>354</sup> However, the President must receive "reliable assurances" that the sanctioned person will not knowingly make prohibited investments in Iran in the future.<sup>355</sup> Even if the President makes these determinations, the sanctions must remain in effect for at least one year.<sup>356</sup> In any event, Section 13(b) provides that ILSA shall cease to be effective five years from the date of its enactment.<sup>357</sup>

#### IV. THE IRAN AND LIBYA SANCTIONS ACT: SERVING U.S. INTERESTS?

Despite its purported purposes of serving the national security interests of the United States and moderating Iranian behavior through multilateral political pressure and unilateral economic sanctions, ILSA does not serve U.S. international and national interests. The Act is inconsistent with the U.S.'s long-standing opposition to secondary boycotts and jeopardizes the leadership role of the United States in international affairs. Further, the isolationist policy toward Iran expressed in the Act will fail without the cooperation of the international community. In addition, the Act serves to exclude American companies from significant portions of the lucrative Middle Eastern oil and gas industries and subjects such companies to the threat of foreign retaliation. The Act may also serve to discourage reform in Iran by fostering continued hostility toward the United States and stoking Iranian nationalism. Finally, the Act minimizes potential American influence upon future events in Iran.

Initially, ILSA is inconsistent with the long-standing opposition of the United States to secondary boycotts.<sup>358</sup> For example, in 1950, the

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352. *See id.* § 8(a)(2). *See also* Export Administration Act of 1979, 50 U.S.C. app. § 2405(o) (1998).

353. *See* ILSA, § 9(b)(1).

354. *See id.* § 9(b)(2).

355. *See id.*

356. *See id.*

357. *See id.* § 13(b). Congress concluded that "[f]ive years is adequate time to gauge its effectiveness at achieving [Congress'] objectives." H.R. REP. NO. 104-523(II), at 19 (1996). Congress will reevaluate ILSA's provisions at the end of five years based upon Iran's behavior and ILSA's perceived effectiveness. *See id.*

358. A "secondary boycott" consists of restrictions upon international trade directed at

Arab League Council, the executive branch of the Arab League,<sup>359</sup> recommended that member states compile a blacklist of third country ships that carried Jewish immigrants or military cargo to Israel.<sup>360</sup> The boycott was subsequently expanded to include all firms making a "material contribution to the strength of Israel."<sup>361</sup> "Material contributions" were defined as the establishment of plants in Israel, the use of an agent or principal office located in Israel and actions taken to develop Israel's natural resources.<sup>362</sup> Entry into a partnership with an Israeli company, holding shares of an Israeli company, supplying advice or technical assistance to Israeli manufacturing plants and permitting an Israeli company to use the name or trademarks of a foreign company were also defined as "material contributions."<sup>363</sup> The armaments, tourist, petroleum, insurance and banking industries were excepted from the boycott.<sup>364</sup> Non-Israeli companies engaging in these activities were prohibited from doing business with members of the Arab League or companies located therein.<sup>365</sup> The United States opposed the boycott on the bases that it targeted an important ally and violated international law.<sup>366</sup> ILSA is completely contrary to this policy of active opposition to secondary boycotts.

ILSA also jeopardizes the leadership role of the United States in international affairs and institutions. For example, in 1993, the United States implemented the North American Free Trade Agreement (NAFTA) with two of its largest trading partners, Canada and Mexico.<sup>367</sup> Article 301 of Chapter Three of NAFTA requires the United States, Canada and Mexico to accord national treatment to each other's

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one country as well as other countries and businesses located therein doing business and maintaining relations with the primary target of the boycott. See JOHN H. JACKSON & WILLIAM J. DAVEY, *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS* 951-52 (2d ed. 1986).

359. The Arab League was organized in 1945 by Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, Syria and Yemen.

360. See NORMAN VANDER CLUTE, *LEGAL ASPECTS OF THE ARAB BOYCOTT* 12 (1977).

361. *Id.* at 16. See also EDWARD HOTALING, *THE ARAB BLACKLIST UNVEILED* 18-26 (1977).

362. See VANDER CLUTE, *supra* note 360, at 16-17.

363. See *id.* at 16.

364. See *id.* at 17. Exceptions to the boycott are permitted where the "higher interests of an Arab state require them." *Id.*

365. The resolutions of the Arab League have no legal force and effect until League member states adopt internal laws and procedures implementing the resolutions. As such, there is considerable variance among Arab states with regard to the boycott, and each state maintains its own rules with regard to the enforcement of the boycott within its territory.

366. See HOTALING, *supra* note 361, at 18-26. See also Lippman, *supra* note 18, at A1.

367. See North American Free Trade Agreement Implementation Act, 19 U.S.C. §§ 3301-473 (1994).

goods in accordance with Article III of GATT.<sup>368</sup> In this regard, Article 301 of NAFTA incorporates by reference GATT's national treatment provisions.<sup>369</sup> NAFTA defines "national treatment" as "treatment no less favorable than the most favorable treatment accorded by such state or province to any like, directly competitive or substitutable goods, as the case may be, of the Party which it forms a part."<sup>370</sup>

Exceptions to the requirement of national treatment are governed by Chapters Eight and Twenty-One of NAFTA. Article 802 of Chapter Eight of NAFTA incorporates the emergency actions provisions of Article XIX of GATT.<sup>371</sup> Chapter Twenty-One of NAFTA incorporates Article XX of GATT setting forth general exceptions to the contracting parties' obligations. Specifically, Article 2101(1) of NAFTA provides, in part, that "[f]or purposes of . . . [t]rade in [g]oods . . . GATT Article XX and its interpretive notes . . . are incorporated into and made a part of this Agreement."<sup>372</sup> Additionally, Article 2102(1) of NAFTA provides for an

368. See North American Free Trade Agreement, Dec. 8-Dec. 17, 1992, ch. 3, art. 303(1), 107 Stat. 2057, 32 I.L.M. 289 [hereinafter NAFTA]. Article 303(1) specifically provides, in part, that "[e]ach Party shall accord national treatment to the goods of another Party in accordance with Article III of the General Agreement on Tariffs and Trade (GATT), including its interpretive notes." See *id.*

369. See *id.* Article III, § 2 of the General Agreement on Tariffs and Trade provides in part that, "[t]he products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products." General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, A-18, 62 U.N.T.S. 82 [hereinafter GATT]. In addition, Article III, § 4 of GATT provides in part that:

[t]he products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

*Id.* art. III, § 4.

370. NAFTA, *supra* note 368, ch. 3, art. 301, § 2.

371. Article 802, § 1 of NAFTA provides in part that, "[e]ach Party retains its rights and obligations under Article XIX of GATT." *Id.* ch. 8, art. 802, § 1. Article XIX, § 1, cl. a of GATT provides in part that:

[i]f, as a result of unforeseen developments . . . any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free . . . to suspend the obligation in whole or in part or to withdraw or modify the concession.

GATT, *supra* note 369.

372. NAFTA, *supra* note 368, ch. 21, art. 2101, § 1. Article XX of GATT provides in part that:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries . . . or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: necessary to protect public morals; necessary to protect human, animal or plant life or health; relating

exception for the maintenance of national security.<sup>373</sup>

However, Section 6(6) of ILSA provides that one of the penalties which the President may impose is a restriction upon imports.<sup>374</sup> This penalty violates the national treatment provisions of Article 301 of NAFTA. Goods originating from foreign persons deemed by the President to have knowingly made investments in excess of \$40 million in any twelve month period that directly and significantly contributed to Iran's ability to develop its petroleum resources may be absolutely and completely excluded from the U.S. marketplace. Although U.S. companies are subject to broad prohibitions upon conducting business with Iran, they are not subject to the same punishment as foreign firms deemed to have improperly invested in Iran, specifically, the absolute exclusion of their products from the U.S. marketplace. As a result, ILSA violates the national treatment provisions of NAFTA by granting an unfair advantage to U.S. goods through the exclusion of goods originating from sanctioned persons.

Section 6(6) requires that any restriction which the President places upon imports must comply with the provisions of IEEPA. In order to invoke this Act, the President must find that there exist "unusual and extraordinary threats to the national security, foreign policy or economy of the United States."<sup>375</sup> Any restriction upon imports imposed by the President pursuant to ILSA must also comply with Article 2102 of NAFTA which relates to national security exceptions. However, all

to the importation or exportation of gold or silver; necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement . . . ; relating to the products of prison labour; imposed for the protection of national treasures of artistic, historic or archaeological value; relating to the conservation of exhaustible natural resources . . . ; involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry . . . as part of a governmental stabilization plan . . . ; essential to the acquisition or distribution of products in general or local short supply. . . .

GATT, *supra* note 369.

373. See NAFTA, *supra* note 368, ch. 21, art. 2102. Article 2102 provides in part that: nothing in this Agreement shall be construed :

to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests relating to . . . transactions in . . . goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or security establishment, taken in time of war or other emergency in international relations, or relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

NAFTA, *supra* note 368.

374. See ILSA, Pub. L. No. 104-172, § 6(6), 110 Stat. 1541, 1546 (1996).

375. IEEPA, 50 U.S.C. § 1702(a) (1998).

but two of the national security exceptions set forth in Article 2102 are inapplicable to import restrictions which may be imposed pursuant to ILSA. Specifically, the import restrictions which may be imposed pursuant to ILSA do not relate to trafficking in armaments<sup>376</sup> and nuclear weapons.<sup>377</sup> Additionally, any such restrictions would not be designed to prevent Canada or Mexico from violating their obligations to maintain international peace and security pursuant to the United Nations Charter.<sup>378</sup>

Such import restrictions may come within the exception permitting restrictions to prohibit the direct or indirect supplying of military or other security establishments.<sup>379</sup> However, utilization of this provision to support restrictions imposed upon imports as a result of investments by foreign persons in Iran's oil and gas industries is weak absent overwhelming evidence that revenues derived by Iran from these industries are flowing directly to the military or other related institutions. Sanctions imposed in the absence of such evidence serve to criminalize all economic activity which results in revenues which may be used by the Iranian government for military purposes.

The other NAFTA provision which may support import restrictions imposed pursuant to ILSA permits restrictions imposed in time of an "emergency in international relations."<sup>380</sup> However, it is unclear whether the definition of "international emergency" contained within NAFTA is identical to that contained within IEEPA such that all "international emergencies" declared pursuant to IEEPA would automatically constitute emergencies pursuant to NAFTA. In any event, it cannot be argued in good faith that NAFTA's national security exception was intended to permit a declaration of emergency lasting nineteen years as has been the case regarding U.S.-Iranian relations. Such an interpretation by the United States would constitute a perversion of the intended meaning of the term "international emergency" and would permit the national security exception to swallow NAFTA's free trade provisions wholesale.

NAFTA also contains provisions regarding government procurement. Specifically, the United States, Canada and Mexico granted national treatment to each other's goods and service suppliers in matters of government procurement pursuant to Article 1003.<sup>381</sup> In addition to

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376. See NAFTA, *supra* note 368, ch. 21, art. 2102, § 1, cl. b(i).

377. See *id.* ch. 21, art. 2102, § 1, cl. b(iii).

378. See *id.* ch. 21, art. 2102 § 1, cl. c.

379. See *id.* ch. 21, art. 2102, § 1, cl. b(i).

380. *Id.* ch. 21, art. 2102, § 1, cl. b(ii).

381. See *id.* ch. 10, art. 1003, § 1, cl. a-b. Article 1003 provides in part that:

[w]ith respect to [government procurement] . . . each Party shall accord to the goods of another Party, to the suppliers of such goods and to service suppliers of another Party, treatment no less favorable than the most favorable treatment that the Party accords to: (a) its own goods and suppliers; and (b) goods and suppliers of another Party.

the national emergency exception set forth in Article 2102(1), Article 1018 provides for exceptions to national treatment in the field of government procurement on the bases of essential security interests<sup>382</sup> and the protection of public safety and morals, human, animal or plant life or health and intellectual property.<sup>383</sup> However, Section 6(5) of ILSA permits the President to prohibit the U.S. Government from procuring, or entering into any contract for the procurement of, any goods or services from a sanctioned person.<sup>384</sup> There are no factual or procedural requirements which the President must meet prior to the imposition of this sanction other than a determination that the sanctioned person knowingly made an investment in Iran's oil and gas industries in an amount in excess of that permitted by law. Section 6(5) of ILSA violates Article 1003(1) as it fails to treat sanctioned foreign persons in the same manner as U.S. persons who would be subject to the procedures and protections afforded in a federal debarment proceeding prior to the imposition of such a penalty.<sup>385</sup>

Furthermore, the exceptions set forth in Articles 1018(1) and 2102(1) are inapplicable. Initially, the essential security interests exception contained within Article 1018(1) is inapplicable as it only grants an exception for government procurement of goods essential for national security or defense purposes. Procurement sanctions imposed pursuant to Section 6(5) of ILSA are not imposed to protect domestic producers of goods essential to the defense of the United States but, rather, are imposed in retaliation for investments by foreign persons in a long-standing enemy of the United States. The national emergency exception set forth in Article 2102(1) is equally inapplicable as it is unclear whether an international emergency deemed to exist under U.S. law is sufficient to support the adoption of emergency measures pursuant to NAFTA. In any event, as set forth above, it can not be contended in good faith that the national security exceptions contained within

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*See id.* This national treatment requirement applies to contracts with federal governmental entities in excess of \$50,000 for goods and services and \$6.5 million for construction services. *See id.* ch. 10, art. 1001, § 1, cl. c(i). For governmental enterprises, these amounts are \$250,000 and \$8 million respectively. *See id.* ch. 10, art. 1001, § 1, cl. c(ii).

382. *See id.* ch. 10, art. 1018, § 1. Article 1018(1) provides, in part, that a party may deviate from NAFTA's government procurement requirements when it is "necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defense purposes." *See id.*

383. *See id.* ch. 10, art. 1018, § 2, cl. a-c. Article 1018, § 2 also provides for an exception to NAFTA's government procurement requirements for goods and services of handicapped persons, philanthropic institutions and prison labor. *See id.* ch. 10, art. 1018, § 2, cl. d.

384. *See* ILSA, Pub. L. No. 104-172, § 6(5), 110 Stat. 1541, 1546 (1996).

385. *See* 31 U.S.C. §§ 6101-6106 (1994). *See also* Exec. Order No. 12, 549, 3 C.F.R. 189 (1987); Exec. Order No. 12, 689, 3 C.F.R. 235 (1989), *reprinted in* 31 U.S.C. § 6106.

NAFTA may be interpreted to encompass an international emergency declared by only one country in the entire world for an unbroken nineteen year period.

ILSA also poses a threat to U.S. leadership in GATT and the WTO. In 1994, the United States ratified the Uruguay Round of multilateral trade negotiations pursuant to GATT. Among its many provisions, the Uruguay Round created the WTO. The Uruguay Round delegated to the WTO the duty of enforcement of member states' obligations pursuant to GATT.<sup>386</sup> With regard to imports, these obligations include those set forth in Article III which requires that contracting parties accord national treatment to each other's goods.<sup>387</sup> Exceptions to national treatment are set forth in Articles XIX, XX and XXI. Article XIX permits the implementation of temporary emergency measures in the event of unforeseeable import surges which cause or threaten to cause serious injury to domestic producers.<sup>388</sup> Article XX sets forth a wide range of circumstances which justify the imposition of measures in deviation from the requirements of GATT.<sup>389</sup> Finally, Article XXI provides for an exception to GATT for national security purposes.<sup>390</sup>

The import sanction provided for in Section 6(6) of ILSA violates Article III of GATT for the same reason it violates Article 301 of NAFTA. Furthermore, none of the exceptions provided in Article XXI of GATT are applicable. Article XXI's exceptions for confidential information, fissionable materials, armaments and compliance with the United Nations Charter do not provide justification for ILSA's import sanction.<sup>391</sup> The only possibly applicable exception is that provided for actions taken in times of an emergency in international relations.<sup>392</sup> However, it is unclear whether the definition of "international emergency" contained within GATT is identical to that contained within the IEEPA. Furthermore, as stated above, Article XXI's national security exception

386. See Agreement Establishing the World Trade Organization, Apr. 15, 1994, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, reprinted in 33 I.L.M. 1125, 1144 (1994).

387. See *supra* note 369 and accompanying text.

388. See *supra* note 371 and accompanying text.

389. See *supra* note 372 and accompanying text.

390. Article XXI of GATT provides in part that:

[n]othing in this Agreement shall be construed (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests (i) relating to fissionable materials . . . (ii) relating to the traffic in arms . . . (iii) taken in time of war or other emergency in international relations; or (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

GATT, *supra* note 369, art. XXI.

391. See *id.*

392. See *id.* art. XXI(b)(iii).

was not intended to support a unilateral declaration of an international emergency lasting nineteen years.

U.S. obligations pursuant to GATT also include those set forth in the Agreement on Government Procurement.<sup>393</sup> The provisions of GATT's Agreement on Government Procurement is almost identical to that set forth in the previously-cited sections of NAFTA. Article III of this Agreement requires that contracting parties grant national treatment to products, services and suppliers originating from all other contracting parties.<sup>394</sup> Article XXIII of the Agreement creates exceptions to its national treatment requirement for essential security purposes<sup>395</sup> and the protection of public morals and safety, human, animal and plant life and health and intellectual property.<sup>396</sup> The procurement sanction set forth in Section 6(5) of ILSA violates the Agreement on Government Procurement for the identical reason it violates Article 1003(1) of NAFTA.<sup>397</sup> Furthermore, the national security exception set forth in Article XXIII of the Agreement on Government Procurement

393. See Agreement on Government Procurement (1994) (visited Sept. 17, 1998) <<http://www.wto.org/wto/govt/agreem.html>>.

394. Article III(1) of the Agreement on Government Procurement provides in part that: [w]ith respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favourable than: that accorded to domestic products, services and suppliers; and that accorded to products, services and suppliers of any other Party.

*Id.* art. III(1)(a)-(b). This national treatment requirement applies to contracts with U.S. federal governmental entities in excess of 130,000 Special Drawing Rights (SDR) for goods and services and five million SDR for construction services. See *id.* Annex 1. These amounts are 355,000 and five million SDR for sub-central governmental entities and 250,000 and five million SDR for all other public enterprises or authorities which procure in accordance with the Agreement. See *id.* Annexes 2 and 3. Special Drawing Rights are an international reserve asset used as the International Monetary Fund's official unit of account. Its value is based on a trade-weighted basket of major currencies. See U.S. GENERAL ACCOUNTING OFFICE, 2 THE GENERAL AGREEMENT ON TARIFFS AND TRADE: URUGUAY ROUND FINAL ACT SHOULD PRODUCE OVERALL U.S. ECONOMIC GAINS 155, n. 29 (1994). One SDR was equal to U.S.\$1.37 at the time of preparation of this article. See Agreement on Government Procurement, *supra* note 393, at Annex 1.

395. Article XXIII(1) of the Agreement on Government Procurement provides that: [n]othing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or national defense purposes.

Agreement on Government Procurement, *supra* note 393, art. XXIII(1).

396. Article XXIII(2) of the Agreement on Government Procurement provides, in part, that "nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property." *Id.* art. XXIII(2). Article XXIII also permits exceptions to national treatment for products or services of handicapped persons, philanthropic institutions and prison labor. See *id.*

397. See *supra* note 385 and accompanying text.

does not provide justification for ILSA's procurement sanction for the same reasons set forth with regard to Articles 1018(1) and 2102(1) of NAFTA.

The United States received negative reactions to these potential violations of NAFTA and GATT from Canada and the European Union. As previously noted, Canada amended its Foreign Extraterritoriality Act to provide for fines or prison terms for company managers who comply with orders entered pursuant to ILSA.<sup>398</sup> The European Union filed a formal protest to ILSA with the United States on August 8, 1996.<sup>399</sup> European Union officials warned the United States that the imposition of sanctions against European firms transacting business in Iran would seriously damage relations and could lead to the enactment and enforcement of retaliatory measures against American business interests.<sup>400</sup> The European Union also threatened to initiate a challenge to ILSA before the WTO.<sup>401</sup> Representatives of the United States and the European Union immediately entered into discussions to resolve their dispute regarding the compatibility of ILSA with GATT.<sup>402</sup> Although the negotiators failed to meet their self-imposed deadline of October 15, 1997 for resolution of the dispute, the parties agreed to continue discussions.<sup>403</sup> As part of this agreement, the European Union agreed to refrain from filing a complaint with the WTO as long as the United States refrained from imposing sanctions upon European firms pursuant to ILSA.<sup>404</sup> Discussions between the United States and the European Union are ongoing at the time of preparation of this article.<sup>405</sup>

The very existence of the dispute over the compatibility of ILSA with GATT is not in and of itself troubling.<sup>406</sup> Trade disputes between countries arise and are resolved on a routine basis in this era of global commerce. The troubling aspect of this dispute is the potential Ameri-

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398. See *supra* note 28 and accompanying text.

399. See *U.S. Law Punishing Foreign Firms Draws Fire from EU*, CHI. TRIB., Aug. 9, 1996, available in 1996 WL 2698903.

400. See Blustein, *supra* note 6.

401. See Casert, *supra* note 33.

402. See Raf Casert, *EU, U.S. Fail to Settle Trade Dispute Over Cuba, Libya, Iran*, ASSOC. PRESS, Oct. 15, 1997, available in 1997 WL 2555359.

403. See *id.*

404. See *id.*

405. U.S. representatives have indicated that exemptions could be granted to companies based in European Union countries if such countries adopted measures demonstrating support for U.S. efforts to contain Iran other than ILSA. See Lippman, *supra* note 246, at A1.

406. But see Casert, *supra* note 32, wherein Sir Leon Brittan, the European Union's chief trade negotiator, warned that ILSA "creates tension between Europe and the United States which makes it more difficult to work together to achieve shared political objectives in Iran." *Id.* See also Archie M. Bolster, *The Way to Win in Iran*, WASH. POST, Nov. 10, 1997, at A20, wherein the author states that "continued emphasis on sanctions against Iran involving punishment of foreign firms that trade there . . . would bring about [unfortunate] 'tensions with allies and strategic partners.'"

can reaction to any complaint which the European Union may file with the WTO challenging ILSA. In response to a complaint filed by the European Union challenging the compatibility of the Cuban Liberty and Democratic Solidarity Act of 1996<sup>407</sup> with GATT, the Clinton Administration stated that the WTO was an inappropriate forum for the resolution of political disputes such as exist with regard to U.S. policy toward Cuba,<sup>408</sup> and the decision to proceed with such a case would pose "serious risks" for the future of the WTO.<sup>409</sup> As such, the Clinton Administration announced its intention to boycott any hearing held upon the European Union's complaint.<sup>410</sup>

As noted by the WTO Director-General Renato Ruggiero, the WTO dispute panel procedure is "the only rules-based system with enforcement capacity" in the field of international trade.<sup>411</sup> An American decision not to comply with an adverse decision of a dispute panel which may be formed to review ILSA could undermine the effectiveness of the WTO.<sup>412</sup> A potential U.S. challenge to the formation of such a panel could undermine GATT's dispute resolution procedures, deny the WTO institutional credibility and render the institution moribund.

The inconsistent use and application of boycotts by the United States also threatens its leadership role in international affairs. For example, the United States maintains an embargo against North Korea but nevertheless has provided it with aid in the form of food.<sup>413</sup> Further, the United States has, in the past, imposed or threatened to impose sanctions against countries engaged in human rights violations but, at the same time, has ignored equally egregious violations in other countries. For example, the United States imposed sanctions against South Africa in protest of its policy of apartheid but elected to ignore human rights violations in Guatemala, the Dominican Republic and South Ko-

407. See Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, 22 U.S.C. §§ 6021-6091 (1996). Otherwise known as the Helms-Burton Act after its chief legislative sponsors, the Act imposes numerous sanctions upon foreign companies transacting business in Cuba utilizing personal and real property expropriated from Americans by the Castro regime including civil liability in U.S. federal courts and the exclusion of such persons from the United States. See *id.* §§ 6082, 6091.

408. See Slobodan Lekic, *U.S. Refuses to Recognize Trade Dispute Panel on Cuba*, ASSOC. PRESS, Feb. 20, 1997, available in 1997 WL 4856941.

409. *Id.*

410. See Paul Blustein & Anne Swardson, *U.S. Vows to Boycott WTO Panel; Move Escalates Fight with European Union Over Cuba Sanctions*, WASH. POST, Feb. 21, 1997, at A1, available in 1997 WL 9335994.

411. See Elizabeth Wise, *EU Plans New Attack on U.S. Laws*, USA TODAY, Oct. 17, 1996, available in 1996 WL 2072282.

412. See *id.* Julius Katz, a former deputy U.S. trade representative, has characterized the U.S. announced position to boycott the dispute resolution panel proceeding as one which "runs a major risk of tearing down the WTO." See Blustein & Swardson, *supra* note 410.

413. See Donald L. Losman, *A Look at . . . The Case Against Sanctions: Good Intentions Gone Bad; Punitive Trade Embargoes are Appealing But They Don't Achieve our Goals*, WASH. POST, Oct. 6, 1996, at C3.

rea.<sup>414</sup> The abandonment of sanctions against the Peoples' Republic of China imposed after the Tienanmen Square massacre in favor of a policy of "critical dialogue" is another example of the inconsistency of U.S. sanctions policy.<sup>415</sup>

The use of sanctions by the United States in the Middle East has also been plagued by inconsistency. Perhaps the best recent example of this inconsistency is U.S. policy towards Sudan. In April 1996, President Clinton signed the Antiterrorism Act of 1996 into law.<sup>416</sup> Section 321(a) of the Act bars Americans from engaging in financial transactions with governments on the U.S. list of states accused of supporting international terrorism.<sup>417</sup> Sudan is included on this list due to its active support of Islamic extremist groups and harboring of terrorists.<sup>418</sup> Nevertheless, on August 23, 1996, the Treasury Department granted an exemption to Occidental Petroleum Corporation permitting it to join Canada's Arakis Energy Corporation in the development of fields in southern Sudan containing an estimated 3.5 billion barrels of oil.<sup>419</sup> The Clinton Administration's attempt to distinguish between the exemption granted to Occidental and U.S. policy toward Iran was factually deficient.<sup>420</sup> Although Occidental was subsequently excluded from partici-

414. See *id.* Other potential targets of unilateral American sanctions include Indonesia, Nigeria, Pakistan and Turkey based primarily on these countries' abysmal human rights records. See Paul Blustein, *Burma Campaign Has Business Fighting Trend Toward Sanctions*, WASH. POST, Mar. 4, 1997, at C1, available in 1997 WL 9337742. The United States presently maintains a trade embargo, export or import restrictions or other forms of economic sanctions on seventy-three countries. This proliferating use of economic sanctions has been credited with "creating regulatory chaos, confusion about objectives, strains in relations with allies and sometimes counterproductive responses - often without achieving the purpose for which the sanctions were designed." *U.S. Rethinking Economic Sanctions; State Dept. Team Weighs Costs, Impact of Trade Restrictions*, WASH. POST, Jan. 26, 1998, at A6, available in 1998 WL 2464160.

415. See Losman, *supra* note 413, at C3. See also Barry Schweid, *Albright Asks EU to Curb Trade*, ASSOC. PRESS, Apr. 28, 1997, available in 1997 WL 4863925.

416. See Antiterrorism and Effective Death Penalty Act of 1996, 18 U.S.C. § 2332 (1994).

417. Section 321(a) of the Antiterrorism and Effective Death Penalty Act of 1996 provides in part that:

[e]xcept as provided in regulations issued by the Secretary of Treasury, in consultation with the Secretary of State, whoever, being a United States person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act . . . as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under this title, imprisoned for not more than 10 years or both.

Antiterrorism and Effective Death Penalty Act of 1996, 18 U.S.C. § 2332d(a) (1994).

418. Sudan has been described as trailing only Iran as a training ground for Islamic extremists involved in attacks upon pro-U.S. interests in the Middle East such as the attempted assassination of Egyptian president Hosni Mubarak in Addis Ababa, Ethiopia in June 1995. See David B. Ottaway, *U.S. Eased Law on Terrorism to Aid Oil Firm; Exemption Let Occidental Seek Major Deal in Sudan*, WASH. POST, Jan. 23, 1997, at A1.

419. See *id.*

420. State Department officials defended the exemption on the existence of relations

pation in this project by the Sudanese Government in November 1996, the Treasury Department's waiver may establish a precedent for U.S. companies seeking to conduct business in similarly-listed countries in the future.<sup>421</sup>

Recent U.S. policy toward Iran is plagued with this same inconsistency. Despite the characterization of current Iranian policies as a serious threat to U.S. national security interests, ILSA fails to sanction existing investments in Iran<sup>422</sup> and requires artificially high levels of investment before penalties may be triggered.<sup>423</sup> ILSA is also rife with provisions granting exceptions, waivers and delays from the imposition of penalties.<sup>424</sup> Perhaps most instructive is the complete failure of the Clinton Administration to utilize ILSA against a single foreign firm. Furthermore, despite the existence of ILSA's sanctions regime and growing American concerns about Iran's influence in Europe, the Middle East and central Asia, the United States failed to condemn Iranian violations of the Bosnian arms embargo<sup>425</sup> and welcomed Iranian efforts to negotiate an end to ongoing hostilities in Afghanistan.<sup>426</sup>

The use of sanctions similar to those contained within ILSA presents a "slippery slope" for the current and future administrations. At the time of his signature of ILSA, President Clinton failed to clearly articulate when sanctions are a legitimate tool of U.S. foreign policy.<sup>427</sup> In

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between the United States and Sudan and the absence of such relations with Iran. *See id.* However, Sudan is a close ally of Iran, actively supports Islamic extremist causes and, according to a spokesman for the State Department's Office of Counter-Terrorism, has not ceased its support of acts of international terrorism since the enactment of the Antiterrorism and Effective Death Penalty Act of 1996. *See id.*

421. *See id.* Representative William McCollum (Republican, Florida) characterized the exemption as a violation of Congress' intent in enacting the Antiterrorism and Effective Death Penalty Act of 1996 and a potential precedent for American companies seeking exemptions from future administrations. *See id.*

422. *See* ILSA, Pub. L. No. 104-172, § 5(a), 110 Stat. 1541, 1546 (1996).

423. *See id.* §§ 4(d)(1), 5(a).

424. *See id.* §§ 4(c), 5(f), 9(a), 9(c).

425. *See U.S. Warned of Iran Efforts to Build Influence in Bosnia*, CHI. TRIB., Nov. 28, 1997, at 11, available in 1997 WL 3615309. Iran is alleged to have supplied hundreds of millions of dollars of weapons to Bosnia during its war with Serbia. *Id.*

426. *See Busy are the Peacemakers*, WASH. POST, Jan. 9, 1998, at A27. Iran is part of the so-called "Six Plus Two" seeking to broker a peace agreement amongst the warring factions in Afghanistan. The other members of the group are the United States, Russia, Pakistan, Turkmenistan, Uzbekistan, Tajikistan and the Peoples' Republic of China. *Id.* *See also* Barbara Crosette, *U.S., Iran Talk Relations Show Signs of Thaw; Washington Works with Tehran to End Afghans' Civil War*, CHI. TRIB., Dec. 15, 1997, at 3, available in 1997 WL 16808162. State Department official Karl Inderfurth stated that "[the United States is] hopeful that the Iranians will play a constructive role in bringing their influence to bear to see the fighting stop and negotiations begin for the establishment of a broad-based government in Afghanistan." *Id.*

427. *See* Clay Chandler, *U.S. Expects Furor Over Trade Sanctions at Summit*, WASH. POST, June 27, 1996, at A20.

order to address this uncertainty, on January 7, 1998, the Clinton Administration announced guidelines governing the utilization of economic sanctions by the United States.<sup>428</sup> These guidelines provided, in part, that the United States should only resort to sanctions after the failure of other diplomatic options.<sup>429</sup> Additionally, international support and participation should be sought prior to undertaking unilateral measures.<sup>430</sup> Finally, the guidelines provide that sanctions should be carefully designed to avoid unnecessary hardships to innocent parties.<sup>431</sup>

ILSA violates several of these guidelines. Initially, although the Clinton Administration as well as its predecessors attempted to persuade U.S. allies such as the member states of the European Union to discontinue their policy of "critical dialogue" with the Iranian government, there is no evidence that the United States discussed the specific provisions of ILSA with its European allies prior to its enactment. Rather, ILSA provided for such dialogue only after its enactment and prior to the actual imposition of penalties upon foreign firms.<sup>432</sup> There is also no evidence that the Clinton Administration tried the most direct diplomatic option of all prior to the enactment of ILSA - specifically the initiation of dialogue with Iran. Rather, the Clinton Administration and Congress rushed ILSA through the legislative process after the terrorist attack in Dhahran, Saudi Arabia and the downing of Trans-World Airlines Flight 800.<sup>433</sup> Additionally, as previously noted, there is a complete lack of support for ILSA in the community of nations.<sup>434</sup> This lack of support is echoed in the international business community which has continued to conduct business with Iran in a largely unfettered fashion.<sup>435</sup> Finally, the sanctions imposed by ILSA place unnecessary hardships upon innocent third parties. NIOC's qualifications as an innocent third party may be questioned due to the role of the Iranian Government in its ownership and operations. However, foreign persons engaging in good faith business transactions in Iran in strict compliance with their national laws may qualify as innocent third parties.

The U.S. leadership role in international affairs is threatened through the appearance of weakness if the Clinton Administration continues in its failure to impose sanctions pursuant to ILSA. Despite as-

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428. See Stuart E. Eizenstat, Undersecretary for Economic, Agricultural and Business Affairs, *Remarks before the North American Committee of the National Policy Association* (Jan. 7, 1998) (visited Sept. 13, 1998) <[http://www.state.gov/www/policy\\_remarks/980107\\_eizen\\_policyassoc.html](http://www.state.gov/www/policy_remarks/980107_eizen_policyassoc.html)>. See also *Sanctions Policy Review*, WASH. POST, Jan. 8, 1998, at A22.

429. Eizenstat, *supra* note 428.

430. See *id.*

431. See *id.*

432. See *supra* notes 267, 345-47 and accompanying text.

433. See *supra* notes 5-7 and accompanying text.

434. See *supra* notes 28-39 and accompanying text.

435. See *supra* notes 219-42 and accompanying text.

surances that it would fully and completely implement ILSA,<sup>436</sup> the Clinton Administration failed to impose sanctions against numerous companies from throughout the world which have invested or agreed to invest billions of dollars in the Iranian oil, gas and petrochemicals industries.<sup>437</sup> These failures, when combined with the Administration's apparent willingness to waive other sanctions legislation as evidenced by its conduct in relation to the Sudan,<sup>438</sup> do not indicate an active enforcement policy during ILSA's remaining three-year term. Every new investment in Iran's oil and gas industries constitutes a "direct challenge" to the policy of Iranian isolation,<sup>439</sup> and every concomitant U.S. failure to impose sanctions "sends a message of weakness to Iran."<sup>440</sup> While the Clinton Administration continues to give lip service to sanctions, Iran continues to develop its oil and gas industries and expand its influence in the Middle East and central Asia.<sup>441</sup> In this regard, Iranian actions speak louder than idle American threats.<sup>442</sup> An effective sanctions policy should grant the executive branch considerable latitude and not have the imposition of sanctions as its sole focus.<sup>443</sup> However, a policy which contains severe penalties that are never imposed is no deterrent at all. The net effect of such a policy is to undermine the credibility of the policymaker.<sup>444</sup>

ILSA also fails to serve the U.S. international interests as it bases American foreign policy on the further isolation of Iran which will fail without the support of the international community. Initially, although politically popular,<sup>445</sup> economic sanctions are generally ineffective as a weapon against unpopular regimes. For example, the United Nations imposed numerous economic sanctions on Saddam Hussein's Iraq subsequent to its invasion of Kuwait in August 1990, but none of these sanctions achieved the goal of forcing an Iraqi withdrawal. Indeed, it has been noted that had the sanctions been given six to twelve months to achieve effectiveness, the Gulf War and the plunder of Kuwait may have been prolonged, Iraqi military positions would have been rein-

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436. See *U.S. Sanctions may Backfire on Russia-Iran Oil Deal*, DOW JONES ENERGY SERV., Oct. 16, 1997.

437. See *supra* notes 243-55 and accompanying text.

438. See *supra* notes 416-21 and accompanying text.

439. Lippman, *supra* note 230, at A1.

440. Lippman, *supra* note 252, at A23.

441. See IRAN: EIA REPORT, *supra* note 181, at 2, 4 and 11. See also *Iran Economic Overview*, *supra* note 179, at 2.

442. See *Iran Fights Back at U.S. Moves to Isolate It*, WASH. POST, Aug. 9, 1996, at A24.

443. See Haass, *supra* note 262, at C9. See also Lippman, *supra* note 246, at A1.

444. See *U.S. Ponders Sanctions for Oil Deal in Iran*, *supra* note 219, at A9. See also *U.S. Aides Still Divided Over Sanctions on Foreign Investors in Iran*, *supra* note 258, at A33.

445. Richard N. Haass characterized sanctions as offering "U.S. policymakers and members of Congress an attractive compromise between doing nothing and sending in the Marines." Haass, *supra* note 262, at C9.

forced, and the coalition may have fallen apart.<sup>446</sup> Further, Saddam Hussein remains firmly entrenched in power seven years after the end of the Gulf War. Other examples demonstrating the general ineffectiveness of economic sanctions include North Korea and Cuba where dictatorial Communist regimes remain in power despite over forty-six and thirty-six years of U.S. sanctions respectively.<sup>447</sup> The U.S. military, rather than economic sanctions, brought down the dictatorships of Manuel Noriega in Panama and Rauol Cedras in Haiti. Economic sanctions have proven to be "an imprecise and expectably ineffective tool" of American foreign policy.<sup>448</sup>

As specifically applied to Iran, U.S. economic sanctions have an inconsistent record of effectiveness. Although the U.S. sanctions regime has tightened the availability of credit to Iran,<sup>449</sup> depressed the value of its currency<sup>450</sup> and discouraged some foreign investment,<sup>451</sup> it has not achieved the desired effect of wholesale modification of Iranian behavior.<sup>452</sup> Furthermore, it bears to note that other factors such as the absence of favorable terms and the availability of projects in other countries posing fewer risks have contributed to difficulties Iran has experienced in obtaining credit and attracting investments in its oil and gas industries.<sup>453</sup> Despite these difficulties, Iran has "managed to blunt

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446. See Losman, *supra* note 413, at C3.

447. According to former U.S. Trade Representative Carla A. Hills, unilateral trade sanctions against dictatorial regimes serve only to "impoverish people [without affecting] the tyrant [who] doesn't care about the people." *U.S. Rethinking Economic Sanctions; State Dept. Team Weighs Costs, Impact of Trade Restrictions*, *supra* note 414, at A6.

448. Georgie Anne Geyer, *Castro Owes Clinton a Thank-You Letter*, CHI. TRIB., Nov. 22, 1996, at 31, available in 1996 WL 2729273. See also Panel Approves Sanctions for Foreign Firms Investing in Iran, *supra* note 18, at A1. Lawrence S. Eagleburger, who served as Secretary of State under President George Bush, characterized secondary boycotts as "nuts . . . an exercise in American imperialism . . . [serving only to] get our allies mad at us." Chandler, *supra* note 3, at A20. Additionally, President Clinton recently noted that "automatic sanctions legislation" such as ILSA and the Cuban Liberty and Democratic Solidarity Act of 1996 predicates American foreign policy upon dishonesty by placing "enormous pressure on whoever is in the executive branch to fudge an evaluation of the facts" in order to support a decision to avoid the imposition of sanctions which do not enjoy support in the international community. Michael Kelly, *Foreign Affairs Fudge Factor*, WASH. POST, May 6, 1998, at A19.

449. See *Diplomacy with Iran*, *supra* note 188, at A16.

450. See Rodman, *supra* note 261, at A25.

451. See *supra* notes 215-18 and accompanying text. See also IRAN: EIA REPORT, *supra* note 181, at 3.

452. See Thomas W. Lippman, *Critics Want U.S. to Reevaluate 'Dual Containment' Policy on Iran and Iraq*, WASH. POST, Dec. 7, 1997, at A33. See also *U.S. Economic Offensive Against Iran's Energy Industry is Bearing Fruit*, *supra* note 216, at A8. According to the State Department's 1996 report entitled "Patterns of Global Terrorism," Iran remains "the premier state sponsor of international terrorism and is deeply involved in the planning and execution of terrorist acts." David B. Ottaway, *U.S. Considers Slugging it out with International Terrorism*, WASH. POST, Oct. 17, 1996, at A25.

453. See *U.S. Economic Offensive Against Iran's Energy Industry is Bearing Fruit*, *supra* note 216, at A8.

the worst effects of American sanctions.”<sup>454</sup> Iran’s gross domestic product and international trade continue to grow, and foreign credit remains available.<sup>455</sup> Additionally, as previously noted, investment in Iran’s oil and gas industries is booming.<sup>456</sup> These transactions are substantial with potential investments and revenues totaling several billion dollars. Perhaps most importantly, these investments have emanated from throughout the world, from friend and foe alike as far afield as Europe, Asia and North America.<sup>457</sup> U.S. prospects for blocking future investments and inflicting further damage upon the Iranian economy appear “bleak.”<sup>458</sup> As a result, several respected figures in U.S. foreign policy including Zbigniew Brzezinski, Brent Scowcroft and Richard Murphy have called for ILSA’s scrapping and gradual reconciliation through the forging of economic ties.<sup>459</sup>

Current U.S. policy also fails to recognize the geopolitical significance of Iran. Encompassing over 600,000 square miles, Iran’s location casts it as an important player in Near Eastern affairs.<sup>460</sup> To the north, Iran borders upon the oil-laden Caspian Sea, the new frontier in international petroleum exploration.<sup>461</sup> Iran’s northern boundaries also touch upon the central Asian republics of Azerbaijan and Turkmenistan, a contentious area in which the West, Iran and Russia are all jostling for influence.<sup>462</sup> Western attempts to remove these largely landlocked fledgling republics from Russia’s sphere of influence will not meet with success if they are denied ties to Iran and the Persian Gulf.<sup>463</sup> To the west, Iran borders upon Turkey, a staunch U.S. ally plagued with political unrest and economic upheaval.<sup>464</sup> Iran also shares its western border with Saddam Hussein’s Iraq, an international pariah with continuing dreams of expansion to which Iran may serve as a valuable counterweight.<sup>465</sup> Iran’s proximity to the Strait of Hormuz to its south grants it a potential chokehold on oil shipments originating in the Per-

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454. Bakhsh, *supra* note 263, at A27.

455. See *supra* notes 201-06 and accompanying text.

456. See *supra* notes 219-42 and accompanying text.

457. Stuart E. Eizenstat acknowledged that the conflict in policies between the United States and the rest of the world on Iran has created “great complexities in implementing an appropriate sanctions policy.” Wright, *supra* note 264, at A1.

458. *U.S. Isolated in Iran Policy*, ASSOC. PRESS, Dec. 6, 1997, available in 1997 WL 11923607.

459. See Lippman, *supra* note 452, at A33.

460. See *EU Returns Envoys to Iran--with Conditions*, SACRAMENTO BEE, Apr. 30, 1997, available in 1997 WL 3285650.

461. See James Meek, *China Joins Scramble for Black Gold*, GUARDIAN, Sept. 29, 1997, available in 1997 WL 2402872.

462. See Ottaway & Morgan, *supra* note 226, at A37.

463. See Drozdiak, *supra* note 203, at A15.

464. See Couturier *supra* note 232, at A17; Lippman, *supra* note 230, at A1.

465. See *Mr. Khatami’s Speech*, WASH. POST, Jan. 17, 1998, at A24. See also Thomas L. Friedman, *New U.S. Ties With Iran Would Rattle Saddam*, DENVER POST, Jan. 7, 1998, available in 1998 WL 6098418.

sian Gulf.<sup>466</sup> Iran's southern boundaries also place it in uncomfortable proximity to vital U.S. allies in the Gulf such as Saudi Arabia, Kuwait, Bahrain, Qatar and Oman.<sup>467</sup> Finally, Iran's eastern boundaries with Pakistan and Afghanistan provide it with the potential to influence the discordant voices of Islam emanating from these countries as well as blunt growing Chinese efforts to extend its sphere of influence in central Asia.<sup>468</sup> Those countries which choose to overlook or disregard Iran's strategic role in Near Eastern affairs do so at their own peril. In this regard, current U.S. policy on Iran could use a healthy dose of "realpolitik."

In any event, ILSA will not succeed without international cooperation which has not been forthcoming. The State Department has conceded that the response of U.S. allies to ILSA has been "disappointing and lukewarm."<sup>469</sup> The U.S. drive to further isolate Iran is widely perceived by the international community as originating not from concerns regarding terrorism or opposition to the Middle East peace process but, rather, from wounded American pride resulting from the Iranian hostage crisis nineteen years ago.<sup>470</sup> As a result, American efforts to isolate Iran are crumbling. U.S. allies have condemned ILSA<sup>471</sup> while private industry has ignored American pleas to refrain from investing in Iran's oil and gas industries.<sup>472</sup> These policies and U.S. failure to impose sanctions are likely to result in further investment in Iran's oil and gas industries as other foreign companies scramble to avoid exclusion from the market.<sup>473</sup> Such defections, and their likely continuation in the future, have left the United States alone in its attempts to isolate Iran. Tensions arising from these defections may make it more difficult for the United States to work with its allies to attain their shared political objectives in Iran. Ultimately, this tension may also prove fatal to ILSA's success.

International opposition to ILSA is primarily based upon the perceived extraterritorial application of U.S. law.<sup>474</sup> Although they ac-

466. The Persian Gulf and the surrounding countries account for approximately thirty-one percent of the world's total oil production and have sixty-three percent of the world's proven resources. See *Iran Physical Background: Location* (visited Sept. 16, 1998) <<http://www.salamiran.org/Iraninfo/General/Geography>>.

467. See Fouad, *supra* note 36.

468. See Ottaway & Morgan, *supra* note 227, at A1. See also *Deal Tests U.S. Policy on Tehran*, *supra* note 228, at A1.

469. See Rosenfeld, *supra* note 259, at A17. Assistant Secretary of State Martin Indyk conceded that the lack of international support and cooperation with regard to ILSA could prove fatal to the accomplishment of its purposes. See *U.S. Decision on Total Sanctions "Imminent,"* AGENCE FR.-PRESSE, May 14, 1998, available in 1998 WL 2281135.

470. See *Sanctions on France*, *supra* note 258, at A24.

471. See *supra* notes 28-39 and accompanying text.

472. See *supra* notes 219-42 and accompanying text.

473. See Christopher Burns, *U.S., E.U. Use Caution Over Total-Iran Natural Gas Deal*, DOW JONES NEWS SERV., Oct. 5, 1997.

474. Hugo Paemen, the European Commission ambassador to the United States, char-

knowledge that the United States is entitled to disagree with their attempts to engage Iran, the international community has balked at ILSA's perceived imposition of American foreign policy on a global scale.<sup>475</sup> This imposition of American will is particularly irksome as it penalizes foreign firms for engaging in commercial activities which are lawful in their home countries.<sup>476</sup> As a result, ILSA has been subject to sharp criticism from U.S. allies. Lionel Jospin, the French foreign minister, scoffed at ILSA's purported extraterritorial reach stating that "[n]obody accepts that the United States can pass a law on a global scale."<sup>477</sup> Germany's foreign minister Klaus Kinkel characterized ILSA as a "reproach [of the European Union] for following its economic interests."<sup>478</sup> Hassan Marican, the President of Malaysia's state-owned oil company Petronas, criticized the Act as an attempt to interfere with his company's right to choose with whom to transact business.<sup>479</sup> Leveling perhaps the strongest criticism of ILSA outside of Iran, South African President Nelson Mandela condemned the United States for its "arrogance [in] dictat[ing] where [the international community] should go or which countries should be our friends."<sup>480</sup> It has been aptly noted that the symbolism which the United States attempts to project through the use of secondary boycotts such as ILSA - "that of a nation standing for high moral principles - is regularly transmuted . . . [into a foreign] view [of the United States] as a bully who insists on getting its way."<sup>481</sup> As the German newsmagazine *Der Spiegel* noted in a recent cover story:

[as] American idols and icons are shaping the world from Katmandu to Kinshasa, from Cairo to Caracas . . . [t]he Americans are acting, in the absence of limits put to them by anybody or anything, as if they own a blank check in their 'McWorld.' Strengthened by the end of communism and an economic boom, Washington seems to have abandoned its self-doubts from the Vietnam trauma. America is now the Schwarzenegger of international politics: showing off its muscles, obtrusive, intimidating.<sup>482</sup>

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acterized ILSA as "an extreme case of extraterritorial legislation." Blustein, *supra* note 6, at A25.

475. See *EU Protests Law on Iran, Libya Sanctions*, *supra* note 29.

476. See H.R. REP. NO. 104-523(I), at 20 (1996).

477. *U.S. Must Grin and Bear it When Allies Dance with Foes*, ROCKY MTN. NEWS, Oct. 2, 1997, available in 1997 WL 6859439. Jospin further stated that, "American laws apply only in the United States. They do not apply in France." *Id.*

478. Drozdiak, *supra* note 203, at A15. See also *EU to Send Ambassadors Back to Iran*, *supra* note 205.

479. See *Petronas says Iran Venture with Total, Gazprom to Continue*, AFX, Nov. 16, 1997, available in 1997 WL 18133501.

480. William Drozdiak, *Even Allies Resent U.S. Dominance*, WASH. POST, Nov. 4, 1997, at A1.

481. Losman, *supra* note 413, at C3.

482. Drozdiak, *supra* note 480, at A1.

Such perceptions serve to create international resistance to American foreign policy objectives. Such a perception clearly does not further U.S. international interests.

The response of other countries to ILSA also sets dangerous precedents for their future relations with the United States.<sup>483</sup> A unanimous European Union expressed "deep concern" regarding ILSA's enactment and reserved the right to retaliate against the United States in defense of its economic interests in Iran.<sup>484</sup> Subsequent to the issuance of these threats, the European Union prepared and studied measures for economic retaliation against the United States to be imposed in the event of ILSA's implementation.<sup>485</sup> These measures would bar European companies from complying with American legislation deemed to have an improper extraterritorial effect and place restrictions upon the import of American goods and services.<sup>486</sup> Perhaps more troubling is the possibility of "quiet, carefully targeted reprisals" against American companies.<sup>487</sup> Such retaliation could consist of unofficial attempts to discourage consumption of American imports or the awarding of government contracts to American businesses. These concerns led the European-American Chamber of Commerce to denounce ILSA as "antithetical to U.S. economic interests" and serving to increase the risk of European retaliation which commenced with the enactment of the Helms-Burton Act sanctioning trade with Cuba.<sup>488</sup> Indeed, as Lee H. Hamilton, the ranking Democrat on the House International Relations Committee has noted, the United States has "opened a whole new ball game here . . . [which] could easily come back to bite us."<sup>489</sup>

ILSA also encourages American trading partners to enact similar legislation and, in so doing, perhaps reopen old wounds relating to perceived past injustices. In addition to the previously-noted Arab boycott of Israel,<sup>490</sup> there are several other instances when sanctions similar to

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483. In response to the Clinton Administration's announcement that it would investigate Total's investment in Iran's South Pars natural gas field in September 1997, French Foreign Ministry spokesman Jacques Rummelhardt stated that "the application of [ILSA] would have serious consequences on international trade." *U.S. Investigating Iranian Gas Deal*, *supra* note 30. See also *U.S. Aides Still Divided Over Sanctions on Foreign Investors in Iran*, *supra* note 258, at A33.

484. See Rick Atkinson, *Divergent Policies Toward Iran Strain U.S.-German Relations*, WASH. POST, June 27, 1996, at A21. See also *U.S. to Investigate Total's Deal with Iran*, *supra* note 33.

485. See *supra* notes 32-33 and accompanying text.

486. See H.R. REP. NO. 104-523(I), at 20 (1996). See also *IRAN: EIA REPORT*, *supra* note 181, at 3.

487. Chandler, *supra* note 3, at A20.

488. Blustein, *supra* note 6, at A25.

489. Chandler, *supra* note 3, at A20. Representative Hamilton called for the resumption of diplomatic relations and initiation of American-Iranian exchange programs in April 1998. Afshin Valinejad, *Tehran's Top Moderate Mayor Freed from Jail by Iran's Top Cleric*, BOSTON GLOBE, Apr. 16, 1998, available in 1998 WL 9129233.

490. See *supra* notes 359-66 and accompanying text.

those contained in ILSA could be utilized by other countries to the potential detriment of the United States. For example, the Peoples' Republic of China could place restrictions upon imports, investments and government purchases from countries which maintain commercial relations with Taiwan. These restrictions could be justified on the basis that commercial relations with Taiwan serve to strengthen its economic infrastructure and defense capabilities. Such a result could strengthen Taiwan's status as a "renegade province,"<sup>491</sup> thereby thwarting reunification and presenting a national security risk to the Peoples' Republic of China.

Such legislation could have severe consequences for American industry which trades over \$57 billion of goods and services with the Peoples' Republic of China annually.<sup>492</sup> In addition to the loss of current markets, such legislation could also serve to exclude American companies from future business opportunities in the burgeoning Chinese economy.<sup>493</sup> From a political standpoint, the exclusion of the United States from the Chinese economy would greatly reduce any influence the United States could exercise over a government in Beijing eager to flex its growing economic and military might. Such restrictions could also exacerbate the U.S. trade deficit with the Peoples' Republic of China which grew to \$33.8 billion in 1995.<sup>494</sup> Nor is such a scenario limited to relations between the Peoples' Republic of China and Taiwan. Any countries with political, economic or military axes to grind such as India and Pakistan could impose such restrictions to discourage trade with its enemies and retard their economic development.

In addition to the threat posed to American business interests by the adoption of retaliatory measures by its trading partners, ILSA also serves to exclude American companies from pursuit of lucrative opportunities in the Middle Eastern oil and gas industries. American companies are not only prohibited from pursuing opportunities worth billions of dollars within Iran but are also excluded from opportunities which

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491. The Peoples' Republic of China has never recognized the independence of Taiwan. Rather, the government in Beijing deems Taiwan to be a "breakaway renegade province." U.S. DEPARTMENT OF STATE, TAIWAN: STATE DEPARTMENT NOTES (1995) (visited Sept. 16, 1998) <[http://www.state.gov/www/background\\_notes/taiwan\\_971100\\_bgn.html](http://www.state.gov/www/background_notes/taiwan_971100_bgn.html)> [hereinafter TAIWAN: STATE DEPARTMENT NOTES].

492. See U.S. DEPARTMENT OF STATE, CHINA: STATE DEPARTMENT NOTES (1996) (visited Sept. 16, 1998) <[http://www.state.gov/www/background\\_notes/china\\_1196\\_bgn.html](http://www.state.gov/www/background_notes/china_1196_bgn.html)> [hereinafter CHINA: STATE DEPARTMENT NOTES]. By contrast, United States-Taiwan trade totaled \$48 billion in 1996. See TAIWAN: STATE DEPARTMENT NOTES, *supra* note 491, at 3.

493. The World Bank estimates that China's economic output will experience an annual growth rate of eight to ten percent by the year 2000 and will equal \$10 trillion annually by the middle of the next century. See CHINA: STATE DEPARTMENT NOTES, *supra* note 492, at 3. China's gross domestic product was estimated at \$3.39 trillion in 1996 with an annual growth rate of 9.7%. See *World Factbook*, <<http://www.washingtonpost.com/worldref/country/china.html>>.

494. See CHINA: STATE DEPARTMENT NOTES, *supra* note 492, at 3.

have Iranian connections. Furthermore, the sanctions required to be imposed by the President and any retaliation in response thereto may result in lost sales, profits and jobs for American companies. These concerns were noted but ultimately disregarded by Congress in its rush to address concerns regarding international terrorism in the wake of the Khobar Towers bombing and the crash of Trans-World Airlines Flight 800.<sup>495</sup> Indeed, U.S. use of secondary boycotts and stringent economic sanctions such as those contained in ILSA has become "[i]ncreasingly . . . cavalier with scant regard to their actual impact on American interests."<sup>496</sup> Rather, the best chance of modifying Iranian behavior while protecting American business interests abroad may be "to resume arms-length commercial dealings with firms [in Iran] saving demands for the international policy changes by [the Iranian] government for the day when political dialogue can begin."<sup>497</sup>

Furthermore, attempting to fortify the failing policy of economic isolation with extraterritorial penalties which primarily harm our allies will only serve to place American businesses at a greater disadvantage in penetrating the marketplace in a more moderate Iran in the future. Commercial relations simply will not spring up overnight upon the inevitable resumption of diplomatic relations between the United States and Iran. American businesses will find themselves engaged in fierce competition with well-established foreign industries deeply rooted in the Iranian economy. As in Vietnam, American industry will enter the Iranian marketplace with a multiyear competitive disadvantage.

The current American policy towards Iran also fails to recognize the positive influence that private businesses may exert toward encouraging the kinds of behavior that the United States deems appropriate. Although no one would argue that the presence of American businesses in Moscow or Beijing have had a quantifiable positive effect upon international relations and the state of human rights protections in these countries, it remains inescapable that commercial relations bring people of differing cultural and political backgrounds together. This fact has been recognized in diplomatic circles for years, hence the inclusion of

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495. See H.R. REP. NO. 104-523(I), at 21 (1996).

496. Haass, *supra* note 262, at C9. See also Losman, *supra* note 413, at C3. For example, in April 1998, Mobil Corporation requested that the Clinton administration grant it a license to trade one million barrels of crude oil generated from its operations in the Burun oil field in Turkmenistan for crude oil located in Iranian facilities on the Persian Gulf. See *Mobil Seeks License for Oil Swap with Iran*, WASH. POST, Apr. 24, 1998, at F1. Mobil's partners in the operation, Monument Oil and Gas PLC of the United Kingdom and Burren/VSTT of Bermuda, have utilized such trades with Iran to get crude oil produced from the field to market while Mobil has been required to ship its product by barge across the Caspian Sea at considerable expense. *Id.* Economist Gary Hufbauer estimates that sanctions cost U.S. businesses in excess of \$20 billion per year on a global basis. See *A Case for Restraint on Trade Sanctions*, S.F. CHRON., Mar. 8, 1998, available in 1998 WL 3908611.

497. Bolster, *supra* note 406, at A20.

trade agreements and commercial exchanges in the process of normalization of relations between countries. Such is the approach toward Iran taken by the more-forward thinking U.S. allies such as the European Union. Although it is unduly optimistic to conclude that an American policy of commercial engagement would instantly abrogate almost twenty years of innate suspicion and overt hostility, it most certainly bodes better for the future of American-Iranian relations than the present policy of stringent economic isolationism.

ILSA may also discourage reform by presenting the Iranian Government with expanded opportunities to appeal to Iranian nationalism through renewed attacks upon the United States. Despite President Khatami's proclamation of a new era for Iran upon his election, the true meaning and implications of his surprising victory remain to be determined.<sup>498</sup> Some analysts hailed Khatami's victory as evidence of an imminent collapse of Iran's particular blend of Islam and politics<sup>499</sup> while others concluded that it raised questions about individual freedom, the rule of law and the role of Islam in daily life.<sup>500</sup> Less idealistic observers noted that Khatami's election was merely a reflection of social realities in a country where fifty percent of the population was born after the Islamic revolution and has a lesser degree of devotion to its tenets.<sup>501</sup> Outwardly, the Clinton Administration exercised great restraint and characterized Khatami's election as a "hopeful development" which it would monitor with "a great deal of interest."<sup>502</sup> What can be concluded with some degree of certainty is that Khatami's election represented a crushing blow to the previously-unchallenged power of the conservative mullahs and their hard-line supporters.<sup>503</sup>

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498. See Anwar Faruqi, *Khatami's Victory a New Stage in Battle of Moderate, Hardliners*, ASSOC. PRESS, May 25, 1997, available in 1997 WL 4868019.

499. See *Islam's Political Football*, ECONOMIST, Dec. 13, 1997, available in 1997 WL 17832709.

500. See *Iran's Vote Sends Unusual Message*, *supra* note 107.

501. See Darius, Bazargan, *Iran: Regime Must Win Over the Youth to Survive*, INTER PRESS SERV., Apr. 15, 1997, available in 1997 WL 7074812.

502. See John F. Harris, *Clinton 'Hopeful' But Skeptical on New Iranian Leader*, WASH. POST, May 30, 1997, at A27. However, it bears to note that, in August 1997, the Clinton Administration relayed a message to Iran through Swiss diplomatic channels proposing face-to-face discussions between the U.S. and Iranian Governments. See *U.S. Proposed Direct Talks in Overture to Iran*, WASH. POST, Jan. 9, 1998, at A1.

503. See Anwar Faruqi, *President-Elect Visits Shrine of Khomeini*, ORANGE COUNTY REGISTER, May 27, 1997, available in 1997 WL 7425325. However, other commentators are less optimistic about the Khatami Administration and its purported moderate tendencies. Achraf Pahlavi, the twin sister of Mohammed Reza Pahlavi, the last Shah of Iran, stated that "it is a mistake to see [Khatami's] election [as] a promise of imminent change in Iran." Achraf Pahlavi, *Engaging with Iran is not the Answer*, WASH. POST, Aug. 7, 1997, at A22. Khatami remains an advocate of the Islamic revolution, albeit a more broad-minded advocate than his predecessors. See Lancaster, *supra* note 117, at A29. As a result, some commentators have concluded that Iran will not modify its behavior in any significant manner thereby providing justification for the lifting of U.S. economic sanctions. See also *A 'Moderate' in Tehran*, WASH. POST, May 26, 1997, at A18.

Although Iran's conservative clergy have suffered a string of defeats culminating in Khatami's call for dialogue with the United States and the questioning of its legitimacy in governmental affairs, they remain a powerful force.<sup>504</sup> As a result, "a now-scarcely concealed struggle for the future of the Iranian revolution" is occurring between the arch-conservative clerical establishment and moderate supporters of President Khatami.<sup>505</sup> Despite the overwhelming nature of his electoral victory, Khatami's triumph in this struggle is far from assured. The Islamic Consultative Assembly remains firmly in the control of religious conservatives<sup>506</sup> and Khatami's political allies have been subject to attack.<sup>507</sup> Most importantly, Ayatollah Khamenei, the supreme religious leader and highest ranking government official, has strongly rejected Khatami's calls for dialogue with the United States.<sup>508</sup> Iran's media reflect this division of opinion as conservative newspapers condemned any resumption of relations with the United States while other publications characterized Khatami's remarks as a precursor to the resumption of diplomatic relations.<sup>509</sup>

The outcome of President Khatami's initiative defies easy prediction. At the very least, such a dialogue would be a major setback to the conservative clergy and could alter the balance of power in favor of

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504. For example, conservative opponents of President Khatami made gains in parliamentary by-elections held in March 1998. See *Opposition Candidates Gain in Iran*, S.F. CHRON., Mar. 15, 1998, at A-13. See also Lancaster, *supra* note 99, at A10; *Iran's New President Breaks Taboo by Re-examining Policy on U.S.*, DES MOINES REGISTER, Jan. 7, 1998, available in 1998 WL 3187022.

505. *Mr. Khatami's Speech*, *supra* note 465, at A24. See also *Iran President Backs Tolerance*, ASSOC. PRESS, Apr. 22, 1998, available in 1998 WL 6654118; Rossant, *supra* note 93; *Iran: Pro-Khatami Backers Clash With Vigilantes*, *supra* note 93.

506. See *A Leading Hard-line Opponent of Iran's...*, ASSOC. PRESS, May 31, 1998, available in 1998 WL 7418612. Ali Akbar Nateq-Nouri, Khatami's major opposition in the presidential election, was re-elected to the speakership of the Assembly by a vote of 211 to 32. See *id.*

507. See *An Air of Optimism in Iran*, *supra* note 180, at A1. In December 1997, the Islamic Consultative Assembly initiated the filing of corruption charges against Gholam Hossein Karbaschi, the mayor of Tehran and a close political ally of Khatami. See *id.* Karbaschi was subsequently detained upon orders from Ayatollah Mohammed Yazdi, the conservative head of the judicial branch. See *Hard-Liners Back Off on Tehran Mayor*, WASH. POST, Apr. 16, 1998, at A23. Karbaschi was released upon bail by order of Ayatollah Khamenei after thousands of his supporters clashed with Iranian riot police in the streets of Tehran in April 1998. See *Ex-Iran Leader Defends Tehran Mayor*, ASSOC. PRESS, Apr. 18, 1998, available in 1998 WL 6652839. See also *Tehran Mayor Returns to Work*, ASSOC. PRESS, Apr. 15, 1998, available in 1998 WL 6653197.

508. See *supra* note 126 and accompanying text.

509. The conservative newspaper *Jomhuri Islami* rejected any basis for the resumption of dialogue with the United States stating that "[a]ny hands that reach out to America should be cut off." *Iran's New President Breaks Taboo by Re-examining Policy on U.S.*, *supra* note 504. However, the conservative *Tehran Times* spoke favorably about the "resumption of diplomatic ties." See *Iranians React Cautiously to Khatami's Offer of Contacts with Americans*, ASSOC. PRESS, Jan. 8, 1998, available in 1998 WL 6636633. See also *Iran's Hard-line Press Speaks on Dialogue with Washington*, ASSOC. PRESS, Dec. 17, 1997, available in 1997 WL 4897177.

moderate voices in Iran.<sup>510</sup> On the other hand, tougher economic sanctions, including the actual implementation of ILSA, will send a hostile signal to the Khatami Administration, strengthen the position of its opponents and further radicalize Iranian behavior.<sup>511</sup> Such a policy will provide the Iranian Government with further opportunities to demonize the United States and may re-ignite the strident anti-American passions prevalent in the years immediately following the Islamic revolution.<sup>512</sup>

At the very least, ILSA discourages the United States from successfully exercising future influence in Iran. Current U.S. policy towards Iran and in the Middle East in general has limited the U.S. role in future political dialogue in the region.<sup>513</sup> Several other countries, some of which are not welcome by the United States, are anxious to fill the vacuum created by the absence of American influence in Iran. The U.S. diplomatic quarantine of Iran runs the risk forging closer ties between Tehran and Moscow and increasing Russian influence in the region.<sup>514</sup> Such a result is clearly contrary to American objectives of denying Russian access to the Persian Gulf and fostering separation between Russia and its former satellite states in central Asia.<sup>515</sup> This vacuum could also be filled by the Peoples' Republic of China. Although Chinese influence in Iran may present a less likely scenario than that of Russia due to geographic, cultural and political distance, Chinese efforts to advance its objectives in central Asia through ambitious investments in Iran's oil and gas industries should not be discounted.<sup>516</sup>

The European Union also stands willing to fill the void created by the absence of American influence in Iran. Despite increased tensions regarding Iranian complicity in terrorist attacks occurring in Europe, the European Union recognized Iran's geopolitical importance and thus refused to sever diplomatic relations.<sup>517</sup> As a result, the European Union has maintained its influence in Iran. Hoping to expand this influence in the coming year, the European Union declared a "new begin-

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510. See Rodman, *supra* note 182, at A13.

511. See Bolster, *supra* note 406, at A20. See also Haass, *supra* note 262, at C9; Atkinson, *supra* note 484, at A21; Lippman, *U.S. Aides Still Divided Over Sanctions on Foreign Investors in Iran*, *supra* note 258, at A33.

512. See Losman, *supra* note 413, at C3.

513. See Josef Federman, *Momentum Gathering for Changes in U.S. Policy Toward Iran*, ASSOC. PRESS, Jan. 24, 1997, available in 1997 WL 4853210.

514. See Drozdiak, *supra* note 203, at A15. See also *EU Returns Envoys to Iran--with Conditions*, *supra* note 460.

515. See *supra* notes 475 and 476 and accompanying text. Tsalik Nayberg, the chief representative of the U.S. oil company Unocal in Turkmenistan, has aptly noted in this regard that "Russia's desire to control central Asia can be seen by a blind man." Myre, *supra* note 189.

516. See *supra* note 448 and accompanying text.

517. See Afshin Valinejad, *Iran Says German, Danish Ambassadors Not Welcome to Return*, ASSOC. PRESS, Apr. 30, 1997, available in 1997 WL 4864238. See also *EU Returns Envoys to Iran--with Conditions*, *supra* note 460.

ning" in its relations with Iran in 1998 consisting of "substantial dialogue" concerning "critical topics."<sup>518</sup> Although the ultimate success of such efforts remain to be seen, the absence of American voices in this dialogue can only serve to further isolate U.S. policy on Iran and erode American influence in the region.

Additionally, ILSA could weaken the United States in the eyes of the Iranian government if the Clinton Administration fails to follow through on its threats to impose sanctions. As previously noted, the Clinton Administration has failed to impose sanctions on a single person since the enactment of ILSA two years ago.<sup>519</sup> However, the threat of sanctions never to be imposed loses credence and constitutes no penalty or restraint upon future conduct at all.<sup>520</sup> The repeated failure of the United States to enforce ILSA may result in the loss of its restraining effect upon foreign investment in Iran's oil and gas industries and Iranian behavior and diminution of American willpower in the eyes of the regime in Tehran.<sup>521</sup> The non-implementation of the severe penalties contained within Section 6 by a reluctant administration does little more than make the United States appear indecisive and conflicted. Such an appearance can hardly be expected to dissuade foreign businesses seeking to invest in Iran's oil and gas industries especially given the enormous potential revenues at stake.

Finally, ILSA is an overreaction to the Islamic regime in Tehran. This overreaction is most apparent in comparing the sanctions imposed upon Iran with those imposed upon the Soviet Union during the Cold War. For example, during the 1970s, American-Soviet relations were under considerable strain as a result of the provision of Soviet weaponry to the Egyptian army during the 1973 Middle East War, the Soviet intervention in the Angolan civil war, rising Soviet military expenditures and human rights concerns. As a result, in 1975, the Soviet Union was prohibited from receiving more than three hundred million dollars in new credits from the Export-Import Bank without presidential and congressional determinations that such new credits were in the national interest of the United States.<sup>522</sup> On August 1, 1978, President Jimmy Carter placed all exports of oil and gas exploration and production equipment to the Soviet Union on the Commodity Control List, thereby requiring that all such exports receive a validated license from the U.S.

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518. See *Germany Wants "New Beginning" in Ties with Iran*, ASSOC. PRESS, Jan. 9, 1998, available in 1998 WL 6636994. See also *Seeing More "Constructive" Leadership, EU Upgrades Iran Relations*, ASSOC. PRESS, Feb. 23, 1998, available in 1998 WL 7389330.

519. See notes 243-55 and accompanying text.

520. See notes 436-44 and accompanying text.

521. See notes 436-44 and 456-58 and accompanying text.

522. See Stanley J. Marcuss, *New Light on the Export-Import Bank*, in UNITED STATES FINANCING OF EAST-WEST TRADE 266 (Paul Marer ed., 1975). The restriction also included a total prohibition upon financing for fossil fuel production and a forty million dollar limit upon credits for fossil fuel research and exploration while the three hundred million dollar ceiling remained in force and effect. See *id.*

Department of Commerce.<sup>523</sup> The Soviet invasion of Afghanistan on December 27, 1979 resulted in the imposition of further restrictions upon trade with the Soviet Union. President Carter suspended all shipments of grain to the Soviet Union beyond the eight million tons provided for in the 1975 U.S.-Soviet Union grain trade agreement, thereby blocking the sale of seventeen million tons of corn and wheat.<sup>524</sup> President Carter also suspended the issuance of validated licenses for export of high-technology products pending the drafting of new guidelines and invalidated all outstanding licenses.<sup>525</sup> Additionally, President Carter imposed a quota upon American imports of Soviet ammonia and banned the export of phosphates and related fertilizer products to the Soviet Union.<sup>526</sup> Finally, Aeroflot flights to the United States were severely limited, and the Soviet fishing quota in American waters was reduced by 350,000 tons.<sup>527</sup> As a result, American-Soviet trade declined from 3.2 billion dollars in January through November 1979 to 1.2 billion dollars during the same period in 1980.<sup>528</sup>

However, those sanctions pale when compared to the sanctions currently in place against Iran. As previously noted, these sanctions include complete prohibitions upon the import of Iranian-origin goods and services into the United States as well the export of U.S.-origin goods and services to Iran.<sup>529</sup> U.S. persons are prohibited from making new investments in Iran.<sup>530</sup> The involvement of a U.S. person in any transaction to develop Iran's petroleum resources is prohibited regardless of its date of origin.<sup>531</sup> U.S. financial institutions are prohibited from engaging in any transaction related to goods or services of Iranian origin<sup>532</sup> and servicing accounts controlled by the Iranian Government.<sup>533</sup> These penalties are in addition to those imposed upon third persons pursuant to ILSA.

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523. See ERIK P. LINDELL, UNITED STATES REGULATION OF AMERICAN MULTINATIONAL INVOLVEMENT WITH THE SOVIET UNION DURING DÉTENTE 95-6 (1982). Despite these restrictions, U.S. exports to the Soviet Union reached record levels in 1979 totaling in excess of three and one half billion dollars. Additionally, in October 1975, the United States and the Soviet Union signed a grain trade agreement whereby the Soviet Union agreed to purchase a minimum of six million tons of corn and wheat from the United States annually and an additional two million tons without prior consultation with the U.S. Government. In September 1979, the Department of Agriculture approved the sale of up to twenty-five million metric tons of corn and wheat to the Soviet Union, the largest single grain purchase in American history. See *id.* at 98.

524. See SHAHEEN AYUBI ET AL., ECONOMIC SANCTIONS IN UNITED STATES FOREIGN POLICY 21 (1982).

525. See *id.* at 22.

526. See *id.*

527. See *id.*

528. See LINDELL, *supra* note 523, at 99.

529. See *supra* notes 158-61 and 167-68 and accompanying text.

530. See *supra* note 170 and accompanying text.

531. See *supra* note 164 and accompanying text.

532. See *supra* notes 160 and 169 and accompanying text.

533. See *supra* note 171 and accompanying text.

The charges against the government in Tehran are serious. Iran's sponsorship of terrorist groups,<sup>534</sup> efforts to acquire weapons of mass destruction<sup>535</sup> and hostility to the Arab-Israeli peace process<sup>536</sup> are major impediments to achieving peace and security in the Middle East and fostering cordial relations amongst all peoples. As the sole remaining superpower, the United States must accept the challenge to firmly address and overcome these obstacles. However, a "head-in-the-sand" policy which fails to engage the cause of these impediments and alienates U.S. allies is unrealistic and arrogant. For example, despite fighting an eight year war which cost the lives of more than 58,000 Americans, the United States recently began the process of normalization of diplomatic and economic relations with Vietnam.<sup>537</sup> Furthermore, the United States maintained diplomatic and economic dialogue with the former Soviet Union even while relations were contentious, nuclear weapons remained pointed at one another and each country pursued policies designed to thwart the other in the international arena.<sup>538</sup> Despite the serious nature of Iran's aberrant behavior, it cannot be convincingly argued that the threat to world peace and global security posed by it exceeds the one posed by the Soviet Union during the Cold War.

#### V. CONCLUSION

The Islamic regime in Iran has been the bane of every U.S. president for the last nineteen years. With the blessing of the Iranian Government, Islamic militants seized the American Embassy in Tehran and held fifty-two Americans, as well as the Carter Administration, hostage for 444 days. The hostage crisis humiliated the United States on an international scale at a time when Cold War hostilities with the Soviet Union were reaching new and dangerous levels. The hostage crisis also polarized American opinions of Iran, and perhaps Islam in general, as Americans were confronted with the nightly specter of burning flags and chants of "Death to America." More than any other event, the hostage crisis epitomized the alleged impotence of the United States during the Carter years and succeeded in returning a Republican to the White House.

However, the Reagan and Bush Administrations found themselves equally incapable of quelling abhorrent Iranian behavior. Iranian sponsorship of acts of international terrorism continued unabated and included alleged complicity in the bombings of the Marine barracks in

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534. See *supra* notes 135-42 and accompanying text.

535. See *supra* notes 143-47 and accompanying text.

536. See *supra* notes 148-51 and accompanying text.

537. See *Clinton to Open Full Economic Relations with Vietnam*, AGENCE FRANCE-PRESSE, Dec. 18, 1997, available in 1997 WL 13456917. See also *Clinton Waives Major Curb on Trade with Vietnam*, WALL ST. J., Mar. 11, 1998, at A6, available in 1998 WL-WSJ 3485800.

538. See Rodman, *supra* note 182, at A13. See also Rodman, *supra* note 261, at A25.

Beirut in October 1983 and Pan Am Flight 103 in December 1988 as well as the seizure and protracted holding of Americans as hostages in Lebanon. The Iranian military continued to grow in strength and posed a threat to its weaker neighbors and shipping in the Persian Gulf.<sup>539</sup> The Iranian Government expressed no reservations about flexing its military might as evidenced by its cataclysmic eight year war with Iraq. The Iranian Government also continued its efforts to export its revolutionary blend of Islam and politics throughout the Middle East as evidenced by its sponsorship of a failed coup d'état in Bahrain in 1981 and its efforts to topple the ruling monarchy in Saudi Arabia. American humiliation at the hands of the Iranians also continued as attempts to circumvent prohibitions upon armament shipments to Central America through Iran by the Reagan Administration erupted into the Iran-Contra affair. The scandal occupied much of President Reagan's time and effort during his second term and left a permanent blemish upon his record of achievement. Furthermore, the scandal badly damaged the reputation of then-Vice President George Bush who incredulously insisted he was "out of the loop" with regard to the American initiative to Iran.

Although he has been able to avoid humiliation at the hands of the Iranian Government, President Clinton has had little success in modifying Iranian behavior. Iranian sponsorship of groups deemed to be terrorist in nature by the United States is believed to be ongoing. Such groups have been implicated in suicide bombings in Israel, assassinations throughout Europe and the attack upon the U.S. military complex in Dhahran, Saudi Arabia. Iranian efforts to develop chemical, nuclear and biological weapons are ongoing, and the country is on the verge of operating its first nuclear power plant. Iranian opposition to the Arab-Israeli peace process has encouraged resistance to the process by extremist groups as well as many Palestinians. The Clinton Administration has managed to avoid the pitfalls which ensnared its predecessors largely by eliminating dialogue, isolating the United States from contact with Iran and adopting policies which operate as if the two countries exist in a vacuum.

Despite the best efforts of four U.S. administrations to bring about the collapse of the Iranian Government through threats, sanctions and economic isolation, the Islamic regime remains firmly in control in Tehran. The regime has outlasted three presidents and is well on its way to outlasting a fourth president. The world has changed dramatically during this period of time. The Soviet colossus to Iran's north has collapsed into a rabble of fledging states vying for foreign aid on their uneven courses to free market economies and democratic capitalism. Ira-

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539. Iran's military consists of the Army (345,000 personnel), the Revolutionary Guard (120,000 personnel), the Navy (18,000 personnel), the Air Force (30,000 personnel) and the army reserves (350,000 personnel). Iranian defense spending totaled \$4.7 billion in fiscal year 1997. See IRAN: EIA REPORT, *supra* note 181, at 3.

nian influence in the region in the absence of the deterrence of Soviet military might will undoubtedly grow even as Russia scrambles to reassert its regional dominance. The stakes mount when the region's fabulous wealth of natural resources is added to the equation. In the nineteen years since the Islamic revolution, wars in Lebanon and Iraq have been fought, previously unheard of alliances (such as Syrian participation in the Gulf War coalition) have been formed, Jordan, Israel and the Palestinians have agreed to make peace (although implementation remains problematic) and American influence and popularity have fluctuated wildly. Yet, despite these occurrences, current U.S. policies toward Iran remain rooted in the denial, exclusion and isolation of previous administrations.<sup>540</sup>

The time has come for the United States to reevaluate its policies toward Iran - including its use of economic sanctions - in light of current political and economic realities in the Middle East.<sup>541</sup> It is time for the United States to consign the anger and frustration arising from the hostage crisis and the Iran-Contra affair to the scrap heap of history. After all, as noted by Richard Haass, "[f]oreign policy is not about poses nor is it a form of therapy . . . [but rather it] is about promoting this nation's interests."<sup>542</sup> How best to reorient U.S. policy remains problematic and beyond the scope of this article. However, at the very least, this reorientation should consist of three specific initiatives by the United States.

Initially, the United States should actively pursue dialogue with the Khatami Administration.<sup>543</sup> This dialogue should be initiated at the lower echelon of the diplomatic corps such as at the deputy or undersecretary of state levels.<sup>544</sup> This dialogue should address all Iranian concerns including past U.S. involvement in Iranian affairs, Iranian security concerns and the U.S. sanctions regime. This dialogue should also address American concerns regarding Iranian sponsorship of acts of international terrorism, efforts to acquire weapons of mass destruction, opposition to the Arab-Israeli peace process and regional security con-

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540. See Wright, *supra* note 264, at A1.

541. See Murphy, *supra* note 1, at C1. In this regard, Bruce Laingen, the senior U.S. diplomat held during the hostage crisis, recently stated that "[I]f I had been told that [Iranian-American relations] would be the same sixteen years later, I would have said, 'Don't be ridiculous.'" Federman, *supra* note 513. See also Laura Myers, *Former Hostages Say it is Past Time to Patch Up Relations with Iran*, ASSOC. PRESS, Feb. 9, 1998, available in 1998 WL 6641040.

542. Haass, *supra* note 262, at C9.

543. See Robert S. Greenberger, *Iran and the U.S. Could be Engaged in Early Stage of a Change in Relations*, WALL ST. J., Dec. 16, 1997, at A4, available in 1997 WL-WSJ 14177598. See also *A Moderate Cleric's Stunning Victory in Iran*, S.F. CHRON., May 28, 1997, at A18, available in 1997 WL 6698299. In this regard, U.S. Representative Lee H. Hamilton stated that "the United States and Iran need to cool the rhetoric, end mutual demonization, explore better ties and gradually establish a reliable and authoritative dialogue." Lippman, *supra* note 452, at A33.

544. See Murphy, *supra* note 1, at C1.

cerns.<sup>545</sup>

Secondly, the United States should reorient its policy toward Iran from one of unilateral action to one of multilateral cooperation by commencing efforts to forge a consensus on policy toward Iran with its allies, especially the European Union.<sup>546</sup> This consensus should "relate diplomacy to reasonable pressures against Iran"<sup>547</sup> by "setting concrete standards for judging the actual efficacy of . . . dialogue [with Iran] and . . . adopting a common policy based upon results."<sup>548</sup> If Iranian policies change during the course of this dialogue, the United States and its allies should respond in accordance with the dictates of their common policy.<sup>549</sup> In the case of the United States, these steps could include "reducing sanctions, permitting nonmilitary trade and allowing U.S. firms into Iran."<sup>550</sup> The United States could offer assurances that it would not enforce ILSA as an incentive to the European Union to enter into discussions to forge a common policy on Iran.<sup>551</sup> The United States should make it clear to its allies that it reserves the right to enforce ILSA in the event that the parties fail to reach agreement on common principles governing their relations with Iran.

Finally, there must be strict adherence to the principles contained in any common policy. This policy must not reward Iran in the absence of substantive behavioral alterations nor be subject to manipulation by Iranian intransigence.<sup>552</sup> This is not to advocate the adoption of an inflexible common policy. The diplomatic realities of negotiation and compromise make the likelihood of achieving absolute agreement on all aspects of a common policy toward Iran most unlikely. Furthermore, an inflexible policy toward Iran serves only to repeat the mistakes of recent

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545. See *A 'Moderate' in Tehran*, *supra* note 503, at A18.

546. See Federman, *supra* note 513.

547. Henry A. Kissinger, *No Deals with Iran*, HOUS. CHRON., Oct. 26, 1997, available in 1997 WL 13067455.

548. Stephen S. Rosenfeld, *What 'Dialogue' With Iran?*, WASH. POST, Mar. 28, 1997, at A29.

549. See Federman, *supra* note 513.

550. Lippman, *supra* note 452, at A33.

551. Such an assurance has been criticized as an abandonment of the U.S. policy of isolation of Iran and a tacit admission of its failure. Such an admission would have the effect of opening the floodgates as firms which may have been deterred by ILSA would proceed with investments in the absence of penalties. See Rodman, *supra* note 182, at A13. See also *New Day Coming?*, TIME, Jan. 19, 1998, at 35, available in 1998 WL 7694174; Lippman, *U.S. Aides Still Divided Over Sanctions Against Foreign Investors in Iran*, *supra* note 258, at A33. However, such a result could be avoided by requiring U.S. allies to temporarily suspend investments by their nationals in Iran during negotiations to develop a common policy. Additionally, any U.S. assurance that ILSA would not be enforced during negotiations is different from a legislative repeal as it would allow subsequent prosecution against persons violating the Act during negotiations in the event of their failure to generate a common policy. In any event, the floodgates are already open as evidenced by the multibillion dollar investments which have flowed into Iran's oil and gas industries due, in part, to the Clinton Administration's failure to enforce ILSA.

552. See Rodman, *supra* note 182, at A13.

U.S. policies. However, once agreed upon, the parties to the common policy must implement its dictates without question in order to avoid the mistakes of the European Union's flabby policy of "constructive dialogue."<sup>553</sup>

Nineteen years of hostility cannot be undone or healed overnight, but efforts to reconcile the United States and Iran should commence immediately. The results of these efforts cannot be predicted with any degree of certainty. Dialogue may resolve U.S. differences with its allies and restore opportunities for U.S. companies to participate in the Iranian economy including the oil and gas industries.<sup>554</sup> The initiation of dialogue may also serve to legitimize the moderate tone of the Khatami administration and undercut the influence of Iranian hard-liners.<sup>555</sup> On the other hand, full diplomatic relations may not be restored for years. Economic relations may never be fully restored nor reach current levels existing between Iran and the rest of the world. Iranian behavior may never fully conform to international models of acceptable behavior let alone U.S. models of such behavior. What is certain is that eventually, either by design or as a result of an international crisis, the United States and Iran will have to engage in direct dialogue.<sup>556</sup> Obviously, it would be in the best interests of the United States to commence this dialogue by design rather than in exigent circumstances thrust upon it by the calamity of an international emergency. Until the United States demonstrates the courage and fortitude to initiate such dialogue, it cannot accurately determine the meaning of Khatami's election, evaluate the discordant voices emanating from his government, gauge the mood of the Iranian people or seek normalized relations.<sup>557</sup> Efforts to commence this dialogue at the present time may fail, but it bears to note that "even a hugely ambitious mission must begin with a first step."<sup>558</sup>

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553. See *EU To Press For Less Rigid Stance On Iran*, *supra* note 130.

554. See Rodman, *supra* note 182, at A13.

555. See *id.*

556. See Bakhsh, *supra* note 263, at A27.

557. See Murphy, *supra* note 1, at C1.

558. Bakhsh, *supra* note 263, at A27.