

American Foreign Policy: International Law and Iran

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Honors Thesis

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Abstract

Why does it appear that the United States and Iran are on a crash course for conflict with one another and how can the United States craft legal foreign policies to deal with provocative Iranian actions moving forward?

The United States and Iran are on a crash course for conflict with one another because of the state actions associated with Iran's pursuit of regional hegemony in the Persian Gulf. These provocative policies, i.e. the state's nuclear program, support of international terrorism, and human rights violations may align with the regional aspirations, but elements of each are inconsistent with international law. While condemnation of Iranian breaches of its international legal obligations is sometimes present in American political discourse, discussion of the applicability of international law in crafting foreign policy responses has been irresponsibly minimal. In order to make informed policy choices, the international legal responsibilities of the United States must play a larger role in debate on the "Iran Question" moving forward. Once these obligations are considered, potential American responses are significantly limited. Currently, I argue, that only American sanctions and cyber attacks on Iranian nuclear infrastructure are legal under international law, but other responses, including the uses of force, (e.g. preemptive military strikes) are not.

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Introduction

In 2003 the Iraq War drastically changed the composition of both the Persian Gulf and Middle East, sending geopolitical reverberations through both regions and the world at large. That war, in conjunction with the war in Afghanistan, installed the United States as a neo-imperial power in the Persian Gulf and reconfigured the traditional power dynamics in what is considered one of the most strategically important regions of the world (Janowski, 2004, p.56). The political-security developments of the last decade have created many new realities for the Persian Gulf states, most notably a leadership vacuum among regional powers. Today, it is clear that Iran is the one state poised and ready to fill this gap, and it has already begun the process of pursuing a number of policies aimed at increasing regional power. A number of these actions, including the perpetuation of Iran's nuclear program and the state's support of international terrorism, however, have been met with condemnation from the United States placing the two states on a crash course for conflict with one another.

Although the United States and Iran currently have no formal diplomatic ties, indirect interactions between the two states have increased in recent years due to American concern with the policies alluded to above. These provocative actions, which are deemed illegitimate by much of the Western World, have increased calls across the globe to intervene in the domestic affairs of the Islamic Republic in order to prevent a large-scale conflict. In the United States specifically, few, if any, issues have come to dominate foreign policy discourse like the "Iranian Question." With particular emphasis on the Iranian nuclear program, many American political leaders have called for more active foreign policy responses—options ranging from further diplomatic/economic isolation of Iran internationally, to a preemptive strike and/or overthrow of the current Iranian regime.

The importance of a careful analysis of the dynamic relationship between the United States and Iran cannot be overstated and this paper spends a great deal of time in Part 2 exploring these current geopolitical circumstances. Foreign policy decisions made with only geopolitical considerations in mind, however, are shortsighted and incomplete. As the United States has painfully experienced since the start of the Iraq War in 2003, the consequences of entering into a conflict perceived by the international community to be illegal and illegitimate can be devastating to the image and future international objectives of any state. For this reason it is extremely concerning that applicable international law has been relatively absent from political discourse and there has been little academic work on the relationship between international legal commitments (both Iranian and American) and potential American foreign policy actions. The crux of my thesis, therefore, sets out to fill in this essential piece of the puzzle—utilizing the current geopolitical picture to inform an integral discussion of how potential foreign policy actions conform to international law.

By using international legal obligations of both the United States and the Islamic Republic as a lens for understanding the current relations between the two states, my thesis aims to answer the following, intertwined, research questions: *Why does it appear that the United States and Iran are on a crash course for conflict with one another and how can the United States craft legal foreign policies to deal with provocative Iranian actions moving forward?* By using international law as the framework of analysis and reference point for this study, I am able to paint a full picture of the current dynamics between the two states and explore how this relationship might move forward. Ultimately, I argue that the United States and Iran are on a crash course for conflict with one another because of the internationally provocative Iranian policies associated with the state's pursuit of regional hegemony. Specifically I identify the

state's nuclear program, human rights violations, and support of international terrorism as cause for concern in the United States. These actions, many aspects of which are violations of international law, provide a legal justification for the United States to pursue certain foreign policy responses. At this point, I argue that the United States sanctions and cyber attacks on Iranian nuclear infrastructure are legal under international law, but other uses of force (e.g. preemptive military strikes) are not. Additionally, I contend that international law must play a much greater role in American political discourse on the subject of Iran.

In the next section I outline my research methodology for this study, explaining how the legality of American foreign policy responses to Iran can *only* be understood in light of the geopolitical dynamics of the Persian Gulf and examination of Iranian breeches of international law. Next, in Part 2, I detail some of the most important "relevant geopolitical facts" that explain why the United States and Iran appear to be on a crash course for conflict with one another. This analysis includes some prerequisite information, including a definition of the region of study and exploration of Iranian regional aspirations necessary to contextualize the remainder of the paper. In Part 2 I also explore Iran's pursuit of regional hegemony in three areas; (1) the state's attempt to build a security umbrella, (2) its treatment of its civil and political societies, and (3) its regional power politics. In Part 3, my attention shifts to the subject of international law, arguing that the legal obligations of the United States must play a greater role in foreign policy discourse moving forward. Subsequently, in Part 4, I explore Iran's policy manifestations of the pursuit of regional hegemony in the context of international law, enumerating current Iranian violations that provide the justification for American responses. Finally, in Parts 5 and 6, I turn my attention to the two primary areas of these responses, the use of force and sanctions, exploring

each in the context of American international legal obligations and making the case for which specific policies are currently legal for the U.S. to employ.

Research Methodology

Unlike other studies that rely exclusively on geopolitical dynamics examine the current relationship between the United States and Iran; this study focuses on the additional dimension of international law. As alluded to in the introduction, the methodology that will be employed in this paper is inextricably linked to geopolitics, since it is geopolitical conditions that inform how international law can be applied to both states. The addition of legal analysis also allows for a more comprehensive study capable of examining not only the current relations, but also potential future interactions between the two states. This study is not prescriptive in nature; i.e. it does not argue which foreign policies should ultimately be employed by the United States with regard to Iran. I do, however, make the argument that international law must play a greater role in American foreign policy discourse on the “Iranian Question” and that it behooves the United States to exclusively utilize actions that conform to the state’s international legal obligations. While this underlying argument is relevant throughout, the crux of this paper is devoted to identify which specific American foreign policy actions towards Iran are currently legal under international law.

The end goal of finding what, if any, legal justification exists for American interventionist policies towards Iran is predicated on a thorough examination of how current Iranian policies conform to international law. To accomplish this task it is necessary to zoom out even further and examine the context for provocative Iranian policies such as the state’s support of international terrorism. These “relevant facts” or geopolitical circumstances provide a necessary perspective for understanding why Iranian leadership has decided to pursue specific policies that have placed the state on a crash course for conflict with the U.S. After these policies are contextualized, I move on to an investigation of how specific Iranian actions conform to the

international legal obligations of the Islamic Republic. I use this analysis, in turn, to identify what legal responses the United States has at its disposal; since it is Iranian violations of international law that provide the legal justification for American intervention. In the end, I argue that the United States is left with a very limited set of legal foreign policy actions, but as is always the case when examining questions of international law, the legality of all actions has the potential to change in the future in light of new geopolitical circumstances.



Part 1: Relevant Geopolitical Facts

1.1—Defining the Region of Study

The Persian Gulf, literally, is the body of water located in Southwest Asia between Iran and the Arabian Peninsula. The term “Persian Gulf” refers primarily to that body of water, but in a geographical and political context it has also come to denote the region of surrounding countries. The Persian Gulf region is comprised of eight states: Iran, Iraq, Kuwait, Bahrain, Oman, Qatar, the United Arab Emirates, and Saudi Arabia. Also a part of the larger “Middle East” system, the security dynamics of that Gulf are not independent of the Levant to the west. Though the Persian Gulf remains a part of that larger area, simply folding the Gulf into the larger Middle East in the context of discussion runs the risk of having other issues (e.g. the Arab-Israeli conflict) drive the analysis of the Gulf’s own

dynamic regional politics (Gause, 2010, p.5).

Thus, while events in the Levant affect the regional politics of the Persian Gulf, the region does retain its own political and security independence, as well as an international importance that sets it apart as its own sub-system (Gause, 2010, p.3). The



Persian Gulf has been the target of high levels of foreign intervention throughout history (explained below), but within the region itself the Gulf’s major powers have been the most important entities vying for influence. This competition became especially important to the world at large following the discovery of oil there in 1908. Subsequently, as the world’s use of fossil fuels has increased, the region’s importance has grown exponentially.

1.11—Geopolitical Importance of the Persian Gulf

The modern importance of the Persian Gulf cannot be overstated. To many scholars of international relations, the Gulf has become the most important region of the world because of its geostrategic placement and its fossil energy deposits (Milani, 2009, p.349). Geographically, the Persian Gulf links the three continents of Asia, Europe and Africa, and four bodies of water: the Mediterranean Sea, the Red Sea, the Indian Ocean and the Pacific Ocean (Sajedi, 2009, p.77). In this regard, the region has for centuries been integral to both global trade and business. The primary importance of the Persian Gulf in the modern world, however, is its natural resource deposits, principally oil and natural gas. These resource endowments have allowed the region to assume a special status in the national security strategy of developed and developing countries across the globe (Sajedi, 2009, p.83). According to the United States Energy Information Administration, upwards of 56% of the world's remaining convention crude oil, are found in the Persian Gulf (CIA World Factbook, 2011). Because of its low cost of production and high prices, the resource provides massive revenues to the Gulf States. It is estimated that the total oil wealth in the Gulf today is on the order of \$75 trillion (Chapman & Khanna, 2004, p.9).

1.2—The United States and the Persian Gulf

American intervention in the Persian Gulf dates back to the discovery of oil in the region in 1908. As the developed world increased its reliance on oil over the 20th Century, the geo-strategic importance of the region to the United States became even more significant. For this reason the U.S. became progressively more involved in regional politics. In 1979, following the overthrow of the American backed Shah, President Carter articulated the American commitment to securing its interests in the region; "Let our position be absolutely clear: an attempt by any outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital

interests of the United States of America, and such assault will be repelled by any means necessary, including military force” (Sajedi, 2009, p.85). From that point forward, U.S. involvement has primarily taken the form of military engagement, in an effort to ensure regional stability and protect energy resources (Sajedi, 2009, p.83-86).

Unlike American intervention in the Persian Gulf in the 20th Century, the invasion of Iraq in 2003 represented a departure from previous foreign policy objectives. The Bush administration fundamentally shifted the purpose of American foreign policy in the region away from promoting stability towards an ambitious neoliberal effort to reshape the international and domestic politics of the region (Gause, 2010, p.14). As noted below, this decision upset the traditional balance of power in the region, creating a leadership vacuum that now defines regional security politics. Today the Persian Gulf remains as important as ever to the industrialized world, which remains dependent on fossil fuel energy exports from the region. Increased terrorism and the potential spread of weapons of mass destruction to the region, however, have made the industrial world very worried about the safety of energy resources (Sajedi, 2009, p.78). While the Bush administration provided a variety of justifications the invasion of Iraq in 2003, there is no question that the desire to exert influence over Gulf oil played a part in the decision to continue the U.S. record of intervention in the region.

1.3—Power Dynamics and Leadership in the Persian Gulf

While the importance of the Persian Gulf to global powers, like the U.S. (who are large oil consumers) has led to substantial foreign intervention, the region’s historical power dynamics have always prevented one state from achieving geopolitical dominance in the region. The Persian Gulf’s internal power dynamics have traditionally been defined by internecine conflicts among rival nations (Sajedi, 2009, p.78). For the most part, these conflicts have occurred

between two of the three most powerful nations in the region: Iran and Iraq. Saudi Arabia is also one of, if not the most, powerful states in the Gulf, but it has not been a major player the attempt to take a regional leadership role (see below). In this regard, the geopolitical history of the Persian Gulf has been dominated by Iran and Iraq jostling for regional status. The inability of either of those two states to take the primary leadership role, however, became arguably the most important geopolitical condition in the region. Even the eight-year war that the two countries fought with one another produced no clear winner, as each failed to achieve regional predominance. At times each has been able to utilize its economic, diplomatic, or military power to exert some influence over other members of the Gulf system, but neither has been powerful enough to be able to control the politics and policies of the other (Gause, 2010, p.6). In this regard, the condition of constant competition created a bipolar stability in which neither state was able to assume the leadership role.

Because the foreign policies and regional objectives of Iran and Iraq have been concerned with preventing their rival from achieving dominance in the region, the geopolitical power balance in the Persian Gulf prior to 2003 was defined as bipolar (Mearsheimer, 2001, p. 272). In this regard, the power competition between the two states was a zero-sum game. Iranian gains in terms of its regional security and power projections served as Iraqi losses, and vice versa. The invasion of Iraq, however, altered the geopolitical composition of the region, quickly removing Iraq from the position of an external balancer to Iran and elevating the state's regional status immediately.

1.31—The Case of Saudi Arabia: Ambivalence to Regional Leadership

From a historical perspective many scholars consider the Persian Gulf's traditional power dynamics to be tri-polar, with Iran, Iraq and Saudi Arabia contending for leadership. Today,

however, following the Iraq War, Saudi Arabia is the only Gulf state that rivals Iran in terms of hard power. The Saudi armed forces total 229,000 men and the Saudi air force is considered to be the strongest in the region (Cordesman, 2004, p.325 and 333). The state, however, has major deficiencies in terms of its naval power (which is especially significant in the Gulf) and does not rival Iran in terms of asymmetric power since it lacks a nuclear weapon (Cordesman, 2004, p. 334). The Saudi Arabian military is also heavily reliant on equipment from the United States, but military cooperation between the two countries became somewhat strained because of tensions over the events of September 11, 2001 and the subsequent war on terrorism (Cordesman, 2004, p.312 and 326).

Today, while Saudi Arabia certainly holds a hard power advantage in the Southern Gulf, it has not utilized its military strength to exercise leadership in the region. Increases in Saudi influence in the Gulf have been hampered by three main factors: pressure from international actors (e.g. the United States), a preoccupation with the politics of the Levant, and a general ambivalence regarding the leadership dynamics of the Persian Gulf. In terms of foreign pressure, the close association between Saudi Arabia and the United States has strained the state's relations with other Muslim countries and challenged the kingdom's ability to portray itself as the leader of the Islamic cause (Metz, 1992). In this regard, Saudi Arabia has been unable to capitalize on the crosscutting cleavage of Sunni Islam, in order to build support throughout the region, an essential component of regional hegemony.

The second factor that has prevented Saudi Arabia from pursuing regional leadership in the Persian Gulf is the state's preoccupation with the politics and security dynamics of the Levant. While Saudi Arabia's foreign policy goals include Arab nationalism, rhetoric has been

dominated by the plight of the Palestinians, and the conflict with Israel, rather than goals relative to the Persian Gulf sub-system (Metz, 1992).

The final factor preventing Saudi Arabia from pursuing regional leadership has been the state's general attitude toward the eastern half of the Middle East. While Riyadh has never ignored the international politics of the region, their policies reflect ambivalence toward the power dynamics of the Gulf. Saudi Arabia has at times supported the regime in power in Iraq (e.g. during the Iran-Iraq War), but it has also supported Iran at various points in history (e.g. during the Persian Gulf War). These shifts in support reflect the general Saudi position to favor the strong side in regional conflicts, preferring to bandwagon with the more powerful party, rather than become vulnerable to confrontation (Amidror, 2007, p. 4). Overall it is this inconsistent foreign policy towards the regional Gulf states that illustrates Saudi Arabia's ambivalent attitude, and lack of desire to challenge for, regional leadership in the Persian Gulf.

1.32—A Leadership Vacuum: Iran's New Regional Position

In the aftermath of the wars in Iraq and Afghanistan the United States once again firmly entrenched its interests in the Persian Gulf region. At the same time, the internal politics of the region remained in constant flux. The overthrow of Saddam Hussein's regime in Iraq quickly altered the balance of power that defined the region for decades. As explained above, because of Saudi Arabian ambivalence to the political and security dynamics of the Persian Gulf, the attempt to achieve regional leadership has been defined as a contest between Iran and Iraq. While the two states fought the longest conventional war of the 20th Century against one another, the bipolarity between them prevented either state from achieving regional predominance and created some regional stability (Hiro, 1991, p. 1). Today, however, following the Iraq War and the total decimation of Iraqi power, the security dynamics of the Gulf appear much different.

These changes to the security composition of the Persian Gulf are most evident and important to Iran, which now faces new opportunities for expanding its regional power. According to Kayhan Barzegar, the geopolitical changes in the Middle East prompted by the wars in Iran and Afghanistan have created new opportunities for Iran by placing the state at the center of the region's political and security developments (Barzegar, 2010, p.175). On the regional playing new developments continue to elevate Iran's regional status and make the state the likely candidate to fill the leadership vacuum.

While the physical presence of the United States in the Gulf fundamentally altered the traditional power breakdown of the region, today American plans for large troop withdrawals from both Afghanistan and Iraq continue to elevated Iran's regional position (Miliani, 2009, p.350). In August 2010, President Obama announced the end of combat operations in Iraq and subsequently established plans for a near total troop withdrawal from Iraq, completed at the end of 2011 (Pollack, 2010 and CNN, 2010). Additionally, in July 2011 the Obama administration set out plans to remove the remaining 55,000 troops from Afghanistan by September 2012 (CNN, 2011). If current plans remain unchanged, the United States will remove over 90,000 military personal from the Persian Gulf over the next two years (CNN, 2011).

More recently, the Arab Spring continued to alter the geopolitical map of the Persian Gulf and larger Middle East region, also contributing to Iran's newfound powerful regional position. While it is difficult to predict the long-term implications the Arab Spring will have in the region, the removal of traditional regimes from power in strong states like Egypt as well as the wave of political unrest that has occurred in even the most autocratic states like Saudi Arabia, also elevate the status of Islamic Republic. Regime changes in Egypt, Libya, Tunisia, and Yemen present Iran with the opportunity to improve its relations with new governments (Barzegar,

2011). Egypt, for example, was a leading voice of anti-Iranian sentiment in the Arab world under the leadership former President Hosni Mubarak (Barzegar, 2011). Today, however, the establishment of a new government has allowed for a resurgence of groups like the Muslim Brotherhood, who could potentially be more interest in increasing bilateral ties with the Islamic Republic (Barzegar, 2011). Although, like the Egyptian population, the Muslim Brotherhood is predominantly Sunni, Iran hopes to capitalize on similar goals and work towards increased cooperation (Barzegar, 2011). Overall, while the long-term developments of the Arab Spring remain unclear, developments have contributed to Iran's increasing regional role. By advocating Islamic unity and working to forge good relations with Arab countries throughout the region, Iran can capitalize on the Arab Spring.

Each of these security developments have drastically altered the geopolitical map of the Persian Gulf and today it is clear that no state is in a better position to elevate its regional role than Iran. Iran is already one of the two most powerful nations in the Persian Gulf, and so long as Saudi Arabia maintains its ambivalent position to the region, Iran is the only state strong enough to fill the leadership vacuum in the region. The 2003 war, both overthrew the Sunni regime in Iraq that had been a perpetual barrier to increased Iranian influence in the Gulf; liberating and energizing the Shi'a population there (Milani, 2009, p.350). The United States continues to disengage from Iraq and the Shi'a majority provides a foundation for Iran to begin to increase its sphere of influence and potentially become the regional hegemon in the Persian Gulf (Milani, 2009, p.360).

A regional hegemon is defined as the leading power that dominates in a subordinate state system that sets the rules and utilizes its influence and/or power projections to accomplish its foreign policy goals and objectives (Mearsheimer, 2001, p.40, and Myers, 1991, p.5). Because of

the geopolitical circumstances detailed above, the stage has been set for Iran is poised to pursue this foreign policy goal in an effort to finally achieve regional predominance and work towards a number of other national objectives detailed in the next section.

1.4—Understanding Iranian Regional Aspirations

Simply because a state is faced with the geopolitical condition that coincide with a particular foreign policy strategy does not necessarily mean the state will pursue that foreign policy path. In this regard, it is essential to enumerate the reasons why Iran will pursue the foreign policy path of attempting to achieve regional hegemony and subsequently place the state on a crash course for conflict with the U.S. Although many scholars contend that every state desires to expand its power and influence internationally, in this section I explore three of the primary motivations modern Iran will engage in this pursuit: (1) threat perception, (2) domestic politics, and (3) foreign policy aspirations (Reut Institute, 2007).

1.4.1—Threat Perception

The first category of reasons why Iran will pursue regional hegemony is based on its threat perception. Threats to the Iranian regime follow largely on Iran's new geopolitical position within the leadership vacuum of the modern Persian Gulf. Iran's historic enemy, Iraq, has been destroyed, and although the United States is militarily disengaging from the region, the Islamic Republic remains a target of international pressure. The threat that Iran's sovereignty will be encroached upon by imperial powers is an entrenched fear amongst the Islamic Republic's political elite (Milani, 2009, p.351). Since its inception, the Islamic Republic has considered American global-hegemony as a very real danger and until the troop pullout is totally complete the United States remains in prime position to utilize its physical power against Iran. Also, because of the United States' sheer power advantage throughout the globe, even after troop

concentrations in the region are decreased, the existential threat posed by the United States will remain a clear and present danger. This problem is compounded by the abundance of natural resources present in the region. Iran itself is in control of vast quantities of oil and natural gas, but increased regional power would allow Iran to take charge of the energy resources in the region as a whole (Reut Institute, 2007). Finally, as the Arab Spring continues to alter the geopolitical map of the Middle East, completely restructuring some powerful states and forcing many others to turn their attention to their domestic politics, Iran finds itself in a prime position to expand its regional influence by building alliances with new regional governments.

A second aspect of Iran's threat perception is the fact that the state lacks any true allies in the region (with the exception of Syria in the Levant). The Islamic Republic is in the process of attempting to building better relationships with other Middle Eastern states and will continue to do so in the aftermath of the Arab Spring, but it does not have an established formal alliance with any other state (Milani, 2009, p.351). In this regard, Iran is currently forced to rely exclusively on its own foreign policy to accomplish international objectives. Iran is currently, for example, pursuing its own nuclear program to counter the atomic threats from Israel and to a lesser extent Pakistan (Milani, 2009, p.351). Overall, Iran's desire to protect its territorial integrity and natural resources, are one aspect of the state's desire to pursue regional hegemony (Reut Institute, 2007).

1.42—Domestic Politics

Next, in terms of domestic politics, Iran seeks to pursue a foreign policy that increases legitimacy for the current Iranian regime. By pursuing an active foreign policy in the Persian Gulf, Iran can both divert public attention from domestic problems and promote regime legitimacy. Since the rise of revolutionary Iran, elites within the Islamic Republic have placed national unity above the protection of individual human rights and regime strength over

protections of the society from state abuses (Afshari, 1994, p.235). While Iran claims to be semi-democratic and does include certain elements of democracy (e.g. the election of a president with universal suffrage), ultimate authority is left in the hands of unelected and often oppressive individuals and rigid institutions (e.g. the Supreme Leader and the Guardian Council) (Hauss, 2006, p.370-399). Additionally, the few democratic elements of the Iranian government have recently come under fire. The 2009 reelection of President Mahmoud Ahmadinejad, for example, was affected by significant fraud, showing that supreme authority in the state is well outside of the people's control (Mebane, 2009, p.21). Today the majority political opinion of the Iranian population favors fundamental changes to governance and the introduction of some democratic and free market social reforms (Clawson, 2004, p.16). Members of one reform party in the Iranian parliament have gone as far as to proclaim that they are "unwilling to be present in a parliament that is not capable of defending the rights of the people and which is unable to prevent elections in which the people cannot choose their representatives" (Adib-Moghaddam, 2006, p.666). These injustices are compounded by the fact that people are inherently blocked from changing the government of their own state, due to the unelected elements.

Inherent illegitimacies in government and constant calls for reform force the current regime to divert public attention in order to build support and maintain power. The process of attempting to achieve regional hegemony provides the Iranian government the opportunity to divert domestic attention to international issues such as a confrontation with the United States. It is important for Iran to avoid a large conflict with the United States, but it is also beneficial for Iran to enact policies that are somewhat antagonistic and prompt rhetorical responses. By emphasizing the perceived illegitimacy of American action in the region, the regime is able to build nationalism and support. Specific policies manifestations of the pursuit of regional

hegemony (e.g. supporting terrorist organizations such as Hizballah and Hamas) prompt international responses, which have mainly taken the form of economic sanctions and threats of military force. These policies have some negative implications for the Islamic Republic, but the regime is also able to capitalize on international pressures in the attempt to create the “us vs. them” mentality within the society (Bennis, 2009). This mentality capitalizes on the proud nature of Iranian citizens, building support for the regime and reinforcing their ultimate goal to remain in power (Majd, 2009). According to Reza Afshari, indifferent-to-hostile discourse and overall attitude of the West has always added urgency to the nationalistic rhetoric, playing into the hand of Iranian leadership, perpetuating their power as well as their policies (Afshari, 1994, p.235). Even the possibility of future talks between Iran and the West on issues such as the nuclear program, which would appear to show elements of cooperation, are counterproductive, deflecting attention away from Iran’s domestic problems and giving Iranian leadership a free hand in suppressing domestic opposition (e.g. the ‘green movement’) (Takeyh, Los Angeles Times, 12/5/2010). Overall, international attempts to diplomatically attack Iran have been futile as they hurt innocent Iranian civilians and inflame public opinion, uniting the country behind the illegitimate regime (Landler, New York Times, 9/27/2009). As the Iranian government portrays international pressure as anti-Iranian (rather than simply anti-government), they are able to create a “rally-around-the-flag” (i.e. support for the country’s leadership in a time of trouble) mentality amongst its citizens (Mueller, 1973, p.58). The pursuit of regional hegemony may be seen as a manifestation of the diversionary politics in which the current regime utilizes to deflect attention away from its inherent illegitimacy.

1.43—Foreign Policy Objectives

Finally, Iran has a number of other foreign policy objectives that help to explain the state's pursuit of regional hegemony. These aspirations include a desire to protect the Shi'a Muslims of the Persian Gulf (and Middle East at large), to influence the regional process, to export the revolution, and to achieve recognition of Iran's power internationally. All of these objectives, enumerated below, push Iran to pursue regional hegemony in the Persian Gulf.

One of the most important aspects of Iran's desire to achieve regional hegemony stems from its demographic status as a Shi'a state. There are nearly 58 million Shi'a currently living in Iran, accounting for 81% of its total population and upwards of 35% of the total Shi'i population worldwide (CIA World Factbook, 2010). Iran is one of only three states with a Shi'i majority (the others are Iraq and Bahrain), but is the only state with a Shi'i controlled government. Since the Islamic Revolution of 1979 a foreign policy priority of the regime has been a desire to protect Shi'a interests in the Persian Gulf and world at large. Other Persian Gulf states have significant Shi'a populations, but Iran is the only state in which power resided exclusively with Shi'a Muslims. As Shi'a Muslims living elsewhere in the Persian Gulf have faced persecution Iran has become the de-facto "Big Brother Shi" state; similar to the position of Russia as the "Big Brother Slav" prior to World War I (The Economist, September/October 2009, p.60). In both instances, the most powerful state that shares a common identity bond with large populations of individuals elsewhere within the region looks after the interests of those individuals. Modern tensions between Sunni governments and the Shi'a populations living within their states can be traced back to the Islamic Revolution, which inspired unrest among fellow Shi'a populations elsewhere in the Gulf (The Economist, September/October 2009, p.60). To calm these sectarian pressures Sunni leaders gave their Shi'a subjects some basic rights with the promise that they would

receive more in the future. In turn, Iran reduced its attempts to export revolutionary fervor to rhetoric meant only to keep the long-term foreign policy goal alive (The Economist, September/October 2009, p.60). The return to aggressive Iranian discourse under President Mahmoud Ahmadinejad, however, has once again triggered some outbreaks of Shi'a persecution throughout the Gulf. This increase in religious tension coincides with Iran's growing regional influence, providing Iran with large support bases throughout the region. "The more recent rise of Shi'a influence in Iraq and the success of Hizballah, the Shi'a party-cum-militia in Lebanon, have caused similar waves, made stronger by Iran's bid to become the dominant—and perhaps nuclear-armed—regional power" (The Economist, September/October 2009, p.60). Overall, Iran's desire to protect the Shi'a interest throughout the Persian Gulf, and Middle East at large, serves as one of the most important foreign policy aspirations pushing Iran toward the pursuit of regional hegemony.

Iran has often reduced its desire to export the revolution to rhetoric designed to set the Islamic Republic apart from the other Muslim states, but today the current regime has reasserted the objective as a foreign policy goal. The concept of "exporting the revolution" derives from the feeling prevalent in the Islamic world that Muslims should liberate themselves from the oppression of imperialist foreign powers (Metz, 1987). The concept also extends to non-Muslim states and communities across the globe that feel subjugated by the dominance of the United States (Metz, 1987). Since the U.S. has once again asserted its power in the Persian Gulf, the concept of exporting the revolution has also experienced a resurgence with Iranian leadership, bringing revolutionary rhetoric back to the forefront of their foreign policy discourse. Today, the concept is utilized in many of the same ways it was following the revolution of 1979. First, it is used as a way to intimidate the Arab states into refraining from siding with the United States

(Milani, 2009, p.351). Next, to facilitate and invigorate Shi'a support and train a new generation of Shi'a activists (Milani, 2009, p.351). Most importantly, however, it is utilized to elevate Iran to the position of ideological hegemon of the region (Milani, 2009, p.351). By asserting its role as the counterpoint to the United States in the Persian Gulf, Iran is able to create a similar "us vs. them" mentality in the international system that is perceived by many to be unjust towards Muslims (Reut Institute, 2007). Exporting the revolution will protect the interest of Muslims worldwide and allow Iran to expand its political influence (Reut Institute, 2007). In this regard, states are forced to choose between becoming a stooge of American imperialism and aligning their position with the one state willing to stand up to U.S. hegemony (Fuller, 2006, p.146). New Iranian attempts to export the revolution and take its place as the ideological hegemon have taken root both inside and outside the Persian Gulf region. Internally in Bahrain and Kuwait, for example, pro-Iranian groups have emerged in response to perceived American injustice in the Gulf (Milani, 2009, p.353). In addition, while they may comply with international policies of the U.S. (e.g. sanctions against Iran), many Gulf States have increased their economic and military cooperation with the Islamic Republic (Farrar-Wellman, 2010). Externally, the ongoing struggle against the state of Israel has provided Iran with a base of groups who feel directly affected by the unjust action of the United States within the Middle East. The plight of the Palestinians in the Gaza strip as well as the Shi'a living in Southern Lebanon led to the birth of Hamas and Hizballah respectively; two groups whose interests coincide with Iran's goal of exporting the revolution directly. In addition, Iran has also increased its relations with other states that feel victimized by American hegemony international. President Ahmadinejad has reached out to and formed alliances with other "rogue states" such as Venezuela and North Korea (Karmon, 2009, p.3). Iran's goal to export the revolution has not always been one of the state's most important

foreign policy objectives, but today it has once again become a primary goal of the regime in its pursuit of regional hegemony.

Iran's attempt to achieve regional hegemony is also based on status, i.e. the state's desire to be recognized as a global power. While Iran has always been one of the most powerful states in the Middle East, it has been faced with constant attempts by the United States to undermine its national stability and the Islamic regime's legitimacy. These antagonistic policies have prevented Iran from achieving what it believes to be its rightful position as a world power (Reut Institute, 2007). Following on the Persian tradition as one of the world's oldest and richest civilizations, modern Iran desires to restore itself to the prominent global position it once possessed (Juneau, 2009, p.6). In this regard, Iran's attempt to achieve regional hegemony coincides with its desire to be recognized as a legitimate regime by the international community and prevent further attempts to undermine current leadership (Reut Institute, 2007). While the United States reserves a status of immunity for select powerful states that it is ideologically opposed to such as Russia and China (i.e. they are legitimate in the eyes of the U.S. even though they may be criticized for a variety of reasons), Iran has been constantly subjected to antagonistic American policies (Reut Institute, 2007). In the eyes of Iranian leadership, there is no reason why it should not be taken seriously as a leading global state based on its history, resource endowment, current status as a powerful regional state and future objectives in the region and world at large (Reut Institute, 2007). One integral component of global power, however, is a state's ability to influence the geopolitical dynamics of its home region (Russett, et al., 2006, p. 98-99). Therefore, in order to achieve the global status it desires, Iran must first be able to overcome obstacles and influence outcomes within its own region (Russett, et al., 2006 p. 98-99). This logic illuminates the reasoning behind many of Iran's other political/security endeavors. The goal of Iran's nuclear

program, for example, is not simply to acquire a nuclear weapon, but a means to achieve the influence associated with an asymmetric power advantage; i.e. achieving great-power status (Juneau, 2009, p.27). Once again this foreign policy objective coincides directly with the pursuit of regional hegemony. By building its sphere of influence within the Persian Gulf, Iran will be able to increase international community's perception of its power. Overall, Iran's goals follow on its desire to be recognized as a legitimate regional power and limit the role of other powers in its own region (Juneau, 2009, p.27).

The final foreign policy objective that is pushing the Iranian regime towards the pursuit of regional hegemony is predicated on its desire to influence the political and security developments of the Persian Gulf. In this area Iran's focus is to promote an ideology that is able to capture broad regional support while still maintaining its position as a counterweight to the United States. Currently, Iran is expanding its political, economic, diplomatic, and military ties to its neighboring states as well as other regions with specific attention focused on the other Persian Gulf States, strategic actors in the Middle East, and other global powers who are ideologically opposed to the United States (Reut Institute, 2007). Overall, Iran is concerned with protecting both territorial sovereignty as well as its economic resources (i.e. oil and natural gas) from imperial exploitation. By pursuing regional hegemony Iran can entrench itself as the region's leader, concerned not only with its own political developments, but also the dynamics of the region at large.

1.5—Policy Manifestations of the Pursuit of Regional Hegemony

Each of the desires presented above lead Iran to their ultimate foreign policy path of pursuing regional hegemony but the desires, in and of themselves, do not explain how it will achieve the end goal. Although this paper does not detail in depth each of the specific policies

Iran will employ in their attempt to achieve their regional aspirations, it is important to consider how new policies create conflict between Iran and other international actors, in this case the United States. The new regional strategy of the Islamic Republic threatens a variety of American international interests within the Middle East, but aspirations alone do not justify intervention in Iranian affairs. In this regard, it is important to consider the specific policy manifestations of attempting to gain regional hegemony. Subsequently, these actions can be examined in the context of applicable international law, to identify what, if any, legal justification exists for responses by the U.S.

1.6—Fact Area One: Building An Iranian Security Umbrella

One area of Iranian policy directly associated with the state's fill the Gulf's leadership vacuum is the state's attempt to gain an asymmetric power advantage in the region. A security umbrella over its own sovereign territory and other regional states is an essential component of Iran's hegemonic aspirations. Because Iran is somewhat deficient in terms of its conventional forces, Saudi Arabia has a larger military with more modern capabilities; the state has focused instead on building an asymmetric power advantage through a nuclear weapons program (Cordesman, 2004, p.325 and 333). Although the Iranian regime publicly maintains that the reason the state is "developing a nuclear program is to generate electricity without dipping into its oil supply...and to provide fuel for medical reactors," there is general consensus throughout the international community that the program's underlying goal is to develop weapons of mass destruction (NYT, 2011).

1.61—Overview of the Program

Iran's current nuclear infrastructure can be credited primarily to Ayatollah Ali Khamenei, Iran's current supreme leader (i.e. head of the religious institutions within the Islamic Republic,

and de-facto head of government/state). Since becoming Iran's Supreme Leader in 1989, Ayatollah Khamenei has held a favorable view of the potential benefits (i.e. energy and military technology) of a strong nuclear program; working to increase research and development of nuclear technology, and expand the network of nations willing to support Iran in its nuclear pursuit. Specifically, Khamenei has fostered relationships with the governments of Russia, China, Pakistan and North Korea for nuclear assistance. Russia, for example, completed the construction of two 950-megawatt light-water reactors at Bushehr in 2009, and continues to supply the fuel that powers the nuclear reactors (Bruno, 2010, p.2)

Iran's nuclear program extends throughout the large country with a vast network of "uranium mines, enrichment plants, conversion sites, and research reactors" (about twelve of which are considered major nuclear sites) (Bruno, 2010, p.3) Each of the major sites employs as many as 3000 nuclear scientists and is one link in the complex chain of facilities Iran is currently utilizing to pursue its nuclear ambitions. Some of the most important of these sites are enumerated below.

1.62—Nuclear Facilities

The Isfahan Nuclear Technology Center is the headquarters of Iran's uranium-conversion efforts, "where approximately 366 tons of uranium hexafluoride has been produced since March 2004" (Bruno, 2010, p.3) This "feedstock" is fed into centrifuges at the next important nuclear site: the Natanz enrichment facility where centrifuges purchased from Pakistan spin uranium hexafluoride at great speeds to increase the percentage of Uranium-235 (Bruno, 2010, p.3). Uranium-235, the principle component for nuclear power production (meeting Iran's energy objectives), is also the main ingredient for weapons capability, subsequently used to produce weapons-grade uranium; uranium with a concentration of the uranium-235 isotope above 90

percent (Bruno, 2010, p.3) According to the International Atomic Energy Agency, Iran is not currently capable of enriching uranium to this level (i.e. the state is only able to produce low-enriched uranium), but Mark Fitzpatrick, a senior fellow for nonproliferation at the International Institute for Strategic Studies in London, says “if Iran were to stockpile sufficient LEU [low-enriched uranium] they would be able to produce 25 kg of weapons-grade uranium for production of a single bomb ‘within a couple of months’” (Bruno, 2010, p.3). In addition to the Natanz enrichment facility, a second (substantially smaller) facility is now under construction near Qom. The capacity of this facility is only about 3000 centrifuge machines (Bruno, 2010, p.1). Senior American officials in the Obama Administration described the facility in this way: “[It is] not a large enough number to make any



sense from a commercial standpoint...but if you want to use the facility in order to produce a small amount of weapons-grade uranium, enough for a bomb or two a year, it's the right size” (The White House, 2009). In addition to these three facilities, the Iranian network of nuclear sites includes a number of other locations that range from uranium mines to weapons testing centers (e.g. Bushehr), and heavy water plants (e.g. Arak) (BBC, 2012). The network stretches across the country from major cities to remote outposts, and while each facility has vastly different duties each is an essential part of the supply chain necessary to build a bomb.

1.63—International Opinion

Today Iran's nuclear program is characterized primarily by international skepticism regarding its overarching intentions (i.e. energy objectives or military goals). From the perspective of most Western states including the U.S., intelligence already demonstrates that Iran's nuclear ambitions are not peaceful. According to State Department spokesman Richard Boucher, "[the United States] believes Iran's true intent is to develop the capability to produce fissile material for nuclear weapons" (Bruno, 2010, p.3). Other members of the international community have also expressed concern over the Iranian admission that it has hidden aspects of the program from IAEA inspections, specifically the construction of the enrichment facility in Qom (IAEA, 2003, p.1-3). According to IAEA Director General Mohamed El Baradei, "Iran has not cooperated with the Agency in connection with the remaining issues...which need to be clarified in order to exclude the possibility of there being military dimensions to Iran's nuclear program" (IAEA, 2003, p.1) While, the IAEA inspectors have never discovered concrete evidence of a nuclear weapon, the IAEA has concluded that Iran has failed to meet its obligations under the Safeguards Agreement of 1974 and other specific applications of the NPT (Bruno, 2010, p.3-4).

1.64—Context within Regional Aspirations

Iran's nuclear program fits directly into its regional aspirations in an attempt to increase the state's hard power advantage, build an international support base for its regional efforts, and divert attention away from domestic problems. First, in terms of hard power, Iran already holds a conventional advantage relative to most of the other Gulf States (Saudi Arabia has similar capabilities), but the potential acquisition of a nuclear weapon would cement Iran's position as the most powerful state in the region (Cordesman, 2004, p.255-278). A nuclear weapon would

also mitigate (to some extent) the existential threat posed by both Israel and the United States. Next, Iran's nuclear program depicts the willingness of other developed states to assist Iran in their pursuit of a nuclear weapon as well as their attempt to gain regional hegemony. Iran has received nuclear training and support as well as advanced weapons systems technology from global powers such as China, North Korea, and Russia (Cordesman, et al., 2010, p.5). Finally, as Iran's nuclear program continues to receive immense backlash from the West, the Iranian government is able to divert public pressure away from domestic problems. As explained above, international condemnation of Iran's domestic affairs create an "us vs. them" mentality, bolstering the current regime's legitimacy. Overall, Iran's growing nuclear program plays a key role in the state's regional aspirations.

1.7—Fact Area Two: Iranian Treatment of Civil and Political Society

1.71—Civil and Political Society in Iran

A second area of state action that coincides with Iran's new regional strategy is the regime's treatment of its citizens in the context of civil and political society. It may seem that this fact area is very different from the other two examined in this paper, i.e. unlike the state's attempt to build a nuclear weapon and support of international terrorism, the Iranian regime's treatment of civil and political society seems to have only an indirect correlation with regional aspirations. The regime's suppression of dissidence, however, is entirely linked to its pursuit of regional hegemony and subsequent tendency to promote international conflict. According to Andrew Moravcsik, regimes that crackdown on the fundamental freedoms of their citizens are able to avoid policies that reflect the beliefs of domestic groups (Moravcsik, 1995, p.158). In this regard, authoritarian regimes that violate human rights, are less vulnerable to being constrained by internal demands for cooperation and are much more likely to engage in international

hostility. In this case of Iran, crackdowns on human right enable the regime to avoid working to better the situation of citizens by participating in an increasingly globalized world. Instead the regime engages in hostile policies that further the goal of regional hegemony, but increases the chance that Iran will be involved in a large-scale international conflict (Moravcsik, 1995, p.158).

For over a decade, Iran's domestic politics have been characterized by an internal struggle between reformers and those loyal to the revolutionary regime (BBC, 2011). Flashpoints in this ongoing clash include pro-democracy demonstrations in 1999 at Tehran University, protests against the clerical regime in 2003, and the Green Movement's response to the reelection of President Ahmadinejad in 2009 (BBC, 2011). Each of these instances illustrates the underlying conditions of governance within the Islamic Republic, namely a constant threat to the power of the current regime. To shut down this internal dissidence, the revolutionary government often employs tactics that are condemned by other nations as well as international law.

Iran is most often criticized for its treatment of nationals with regard to each of the following areas: (1) torture and cruel, inhuman or degrading treatment or punishment including flogging and amputations; (2) widespread use of the death penalty, public executions, execution of juvenile offenders, and stoning as a method of execution; (3) woman's rights; (4) rights of minorities (including freedom of religion for religious minorities); (5) freedom of peaceful assembly and association and freedom of opinion and expression (e.g. protests following the illegitimate reelection of President Mahmoud Ahmadinejad in 2009); (6) lack of due process rights including arbitrary arrest, detention and unfair trials (HRC, 2011, p. 3-14 and Clinton, 2011). An interim report to the Secretary-General the UN Human Rights Council presented a bleak portrait of the situation of human rights in Iran, and any prospects for improvement, claiming that "the human rights situation in Iran has been marked by an intensified crackdown

on human rights defenders, women's rights activists, journalists and government opponents" (HRC, 2011, p.1).

1.72—Context within Regional Aspirations

While it is more difficult to directly connect Iran's human rights violations to its regional aspirations than other policies like the nuclear program, the often-inhumane treatment of nationals is directly tied to the revolutionary government's attempt to maintain its power. Utilizing "torture, cruel, or degrading treatment of detainees, [and] the imposition of the death penalty in the absence of proper judicial safeguards" the regime actively works to crackdown on internal challenges and suppress dissidence (Charbonneau, 2011 & Clinton, 2011). In response to the illegitimate reelection of President Ahmadinejad in 2009, for example, between forty and eighty people were killed and as many as four thousand jailed in crackdowns on protests organized by Iran's pro-reform Green Movement (Anderson, 2010, p.1 and HRW, 2010, p.8). It is also important to note that these harsh governmental responses prompt the use of diversionary international politics (as explained above).

1.8—Fact Area Three: Iranian Power Politics

A third area of Iranian policy that benefits Iran's new regional objectives is the attempt to build a base of state's, groups, and individuals that are ideologically aligned with the Islamic Republic. In order to achieve its goal of hegemony in the Persian Gulf system, Iran must seek external backing and support. In this regard, Iran's pursuit of regional hegemony has manifestations within the Persian Gulf and beyond. While Iran is also in the process of building alliances with other states ideologically opposed to the United States throughout the world (e.g. Venezuela, North Korea, and China), the state has primarily utilized a projection of its power through the support of international terrorism to build this external support. This section

specifically explores two instances of Iran's connection to international terrorism within the Middle East; the state's participation in the Iran-Syria-Hizballah triangle and its support of Hamas. Additionally, I identify one new example of Iran's support of terrorism outside of the Middle East.

1.81—Regional Power Politics

Despite the regional schisms between Iran and the Arab states, nearly all of the Muslim countries in the Middle East (and world at large) have found common ground in their opposition to the state of Israel. While each state differs in its rhetoric and policy towards Israel, there is broad agreement that that state is illegitimate and guilty of crimes against the Muslim world. Rejection of policies and the right of the Jewish State to exist, therefore, provides Iran with an issue capable of invoking pan-Islamic support (Fuller, 2007, p.144). By supporting states and organizations working to perpetually antagonize Israel, Iran can entrench itself as a modern leader in the long fight against the Jewish State. This position allows Iran to bridge the gaps of regional cleavages (e.g. Sunni-Shi'a and Arab-Persian), by promoting cooperation through a common enemy (Amidror, 2007, p.3-4).

Since its inception in the early 1980's, Iran has utilized Hizballah as its primary mechanism for antagonizing Israel. Iran's support of Hizballah, also involves Syria, which serves as the physical bridge between Iran and Lebanon for weapons, fighters, and money. The Iran-Syria-Hizballah triangle formed on the basis of three crosscutting interests shared by the three actors. First, all three have fear of internal and external delegitimization (Amidror, 2007, p.3). By participating in the triangle, each is able to expand its regional power and influence and subsequent importance to the Middle East system. Second, each fears that external entities will prevent them from achieving their regional interests (Amidror, 2007, p.3). By taking the lead in

the modern fight against Israel (along with Hamas and other Palestinian organizations), all three align their goals with other powerful Middle Eastern states, preventing world powers from subjugating them individually. Finally, there is shared understanding among the three actors that by working together they can achieve many more of their goals than they can alone (Amidror, 2007, p.3). All three remain involved in the triangle as a means of achieving the objectives presented above, but they also receive external benefits on the basis of their individual positions.

Since Hizballah was founded, Iran has provided for the organization's financial, training, and weapons needs (Cordesman, 2006, p.2). It is important to note that Hizballah is not an Iranian proxy (it is for the most part politically independent from Iran). Nevertheless, there is no question that the party-cum-militia would not have been able to achieve its current power without Iranian assistance. On an annual basis, Iran provides \$25-50 million in financial and military support to Hizballah. According to Daniel Byman, the Iran-Hizballah relationship is the strongest and most effective relationship between a state sponsor and a terrorist group in history (Cordesman, 2006, p.3 and Byman, 2008, 172). Syria has also played a part in the triangle in an effort to boost its power and subsequent regional position. A fellow member of the Bush administration's "axis of evil" with Iran, Syria boosted its alliance with the Islamic Republic, building up its long-term military capabilities through the acquisition of Iranian weapons and placing itself under Iran's security umbrella. While the alliance greatly benefits the long-term goals of both Hizballah and Syria, for the purpose of this paper, the triangle is most important as a manifestation of Iran's pursuit of regional hegemony, allowing the Islamic Republic to take a leadership role antagonizing Israel.

Beyond Iran's participation in the Iran-Syria-Hizballah triangle the Islamic Republic also supports Hamas, the Sunni-Palestinian socio-political organization currently controlling the Gaza

Strip. Like Iran's support of Hizballah, support of Hamas helps Iran to cultivate the pan-Islamic support for its regional objectives based on the idea that resisting the state of Israel is a pan-Islamic source of pride (Haaretz, 12/9/2008). President Ahmadinejad has publicly pledged Iranian support of Hamas, telling its leader Ismail Haniyeh that Iran will stand behind the Palestinian people until the collapse of the Zionist regime (Haaretz, 12/9/2008). Support for Hamas from Iran has taken the form of humanitarian aid (e.g. food, medical equipment, and construction supplies), financial assistance, and arms transfers to support militant operations against Israel (Adkins et al., 2010). According to the Council on Foreign Relations, Iran provides Hamas with between \$20-30 million worth of assistance annually (Council on Foreign Relations, 2009, p.3). Iranian ties to Hamas differ from its ties to Hizballah, however, because Hamas is a Sunni organization. While Iran shares inherent cultural ties to Hizballah, Iran's relationship with Hamas places Iran at the heart of a traditionally Sunni struggle (the plight of the Palestinians). In this regard, Iran's connection to Hamas may be the most important connection Iran has in the Middle East, in terms of proving that it is capable of leadership across cultural cleavages. In Iran's view, a positive relationship with Hamas has the potential to draw in other Sunni movements (Kramer, 2007, p.16).

1.82—International Power Politics

Beyond the support of external terrorist organizations within the Middle East, Iran has also participated in direct state-sponsored international terrorism elsewhere in the world. On October 13th, 2011 American intelligence uncovered a plot to kill the Saudi Arabian ambassador to the United States. In a statement the same day, President Obama said the U.S. had significant evidence that high ranking Iranian officials were complicit in the scheme that involved Iran conspiring with a Mexican Drug cartel to kill the ambassador (Cooper, 2011, p.1). Although this

direct involvement in a terror plot is less common than the indirect support Iran provided groups like Hizballah and Hamas, it nonetheless serves the same foreign policy objectives on an international level (explained below).

1.83—Context within Regional Aspirations

For decades, Israel has been considered a proxy of the United States by nearly all of the Muslim regimes in the Middle East. While the inability of the Arab states to coalesce into a unified front against the Jewish state has allowed Israel to strengthen its regional position, it has also opened the door for Iran to step in. In order to achieve its goal of regional hegemony, Iran seeks to take a leadership role in the struggle against Israel and rejection to the imperial presence of the United States (the most unifying Islamic causes within the region). The support of terrorist organizations plays a vital role in the Islamic Republic's attempt to demonstrate to its regional counterparts that it is capable of bridging cultural cleavages (between Sunni and Shi'a Muslims) and take a pan-Islamic leadership role. Since he took office, President Ahmadinejad has made anti-Israel discourse a central tenet of Iranian foreign policy. It is highly unlikely that Iran would ever actually pursue militarily the destruction of the state of Israel, but support of Hizballah and Hamas allows Iran to maintain a low level of pressure on Israel at all times painting Iran as a leader against the Zionist entity (Cordesman, 2006, p.2). This foreign policy path is strengthened through Iran's support of Hamas, not just because the organization provides Iran a support base for attacks against Israel, but also because it shows that the Islamic Republic's actions are not exclusively Shi'ite nor are they anti-Sunni (Fuller, 2007, p.148). In addition, new international terrorism, like the plot against the Saudi Ambassador to the United States, allows Iran to more directly target the United States. In the words of President Ahmadinejad "rather than responding passively to the U.S. attempt to isolate Iran politically and economically and become the

dominant player in the Middle East region, Iran's backyard, Iran should move aggressively in the U.S.'s own backyard as a means to rattle it or at least make a point" (Karmon, 2009, p.2).

Overall, Iran's support of international terrorism illustrates the state's ability to take a leadership role against the U.S. on both regional and ideological playing fields.

1.9—The United States and Iran

1.91—A Crash Course for Conflict

While the current geopolitical situation in the Persian Gulf may seem to present promising conditions for Iran's desire to fill the region's leadership vacuum, each of the policy manifestations of the state's pursuit of regional hegemony are extremely concerning United States. As the global hegemon, the U.S. is state most equipped to stand in the way of Iran's regional aspirations and poised to do so in light of provocative Iranian policies. The Iranian nuclear program, for instance, threatens American global security and energy interests in the Middle East (Bruno, 2010). Iran's support of international terrorism is equally concerning as military, financial, and logistical support funneled to the Levant are used against the principal American ally in the region, Israel, on a daily basis. Finally, while they do not directly impact the United States, Iran's offensive treatment of its civil and political societies flies in the face of many foundational American values (State Department, 2012). At this point it is clear that if Iranian policy in each of these areas maintains its current trajectory, the two states will position themselves on a crash course for conflict with one another, if they have not already.

1.92—American Domestic Political Debate and the "Iranian Question"

In terms of American domestic politics, there is quite possibly no more divisive and prevalent foreign policy topic than how the United States should deal with the "Iranian Question." The hot-button issue has dominated the Republican presidential primary season,

surpassing the American presence in Iraq and Afghanistan. The nuclear issue, in particular, has consumed much of this discussion as academics and politicians alike debate the geopolitical implications of an Iranian state with an atomic bomb at its disposal. Although both Republicans and Democrats are opposed to the current trajectory of the Iranian nuclear program (i.e. the pursuit of a bomb), debate on the Iranian Question breaks down along party lines.

On one side of the Iranian question are Republicans, who have taken a hawkish hard-line stance, arguing that sanctions and diplomacy will be unsuccessful in an American effort to prevent Iran from acquiring a nuclear weapon. Republican presidential candidate and current frontrunner, Governor Mitt Romney, argues that the message of American willingness to use military action against the Islamic Republic should be demonstrated through action; “The United States should restore the regular presence of aircraft carrier task forces in both the Eastern Mediterranean and the Persian Gulf region simultaneously.... increase military coordination, assistance and enhance intelligence sharing [with Israel].... and increase military coordination with our Arab allies” to demonstrate that Iran’s nuclear-weapons program is “unacceptable” (Romney for President, 2012). Democrats, on the other hand, have taken a less militaristic approach stressing the need to exhaust all other foreign policy options before resorting to force. While President Obama has refused to take the strike scenario off the table, he and his administration argue “sustained and aggressive diplomacy combined with tough sanctions should be our primary means to prevent Iran from building nuclear weapons” (Elsner et al., 2008).

1.10—Concluding Remarks

Although party leaders differ in what they see as the best strategy for dealing with Iran’s regional hegemonic aspirations moving forward, there are almost no American politicians calling for decreased foreign policy engagement with the Islamic Republic. It is clear that today the two

states are on a crash course for conflict with one another as Iranian policy manifestations of their regional goals continue to be met with American condemnation and pressure. In this regard, there is no more pertinent foreign policy discussion than one dealing with potential foreign policy actions the U.S. has at its disposal to respond to these provocative Iranian policies. Before these actions can be examined, however, it is necessary to turn our attention to the one crosscutting lens capable of analyzing and justifying state action, international law. In the next Part of this paper, I explain why international law must play a larger role in American foreign policy discourse surrounding Iran. Subsequently, in Part 3, I discuss the Iranian violations of international law that give rise to legal American foreign policy responses. Finally, in Part 4 and 5, I provide a much more detailed account of each of these potential foreign policy strategies and their context within American domestic political debate as well as an analysis of their legality.

Part 2: International Law—A New Framework of Analysis

2.1—International Law and the “Iranian Question”

While the prevalence of the “Iranian Question” in political debate continues to increase, debate on American foreign policy responses to Iranian hostility has lacked serious discussion of international law. Strike scenarios (which will be examined in great detail in Part 4), for instance, are most often examined in terms of military readiness, i.e. What type of bunker-busting missile is needed? Will the strike succeed? What type of Iranian response would be expected? Blatantly ignored in public discussion, however, is the context of how this type of drastic action conforms to American international legal obligations. Although it is sometimes rhetorically noted that Iranian actions are illegal under international law, e.g. calling Iranian treatment of civil and political society “human rights violations,” legality is almost never considered when discussing how the United States will respond. This lack of legal perspective, while ultimately detrimental (for a number of reasons explored below), can be traced to a number of legitimate concerns with international law that permeate many foreign policy debates. These concerns do not, however, mitigate the benefits of allowing international law to take a much more predominate role in American foreign policy discourse on Iran.

2.2—Perceived Shortcomings of International Law

When compared to domestic law, “international law has long been viewed with suspicion in Anglo-American legal thought” (Goldsmith & Levinson, 2009, p.1792). Since international law governs the relationship between individually sovereign entities (i.e. states), it is a voluntary system in which states must consent before they are bound (Goldsmith & Levinson, 2009, p.1793). Constitutional law (the American domestic legal system), by contrast, is an “overarching framework” with all of the necessary institutions to create, enforce, and

reevaluate legal principles. This dichotomy allows critics of international law to ask whether it is even possible for a body of laws to exist that governs the relations between sovereign states.

Beyond this existential question, international law also lacks three legal structures that allow laws to function in most societies making the system seem deficient. First, there is no true international legislature/law-making authority (Goldsmith & Levinson, 2009, p.1792).

International law is the product of treaties, statutes and customary/general principles, none of which are the direct result of any all-inclusive legislative body. Second, there is no international executive/centralized enforcement agency (Goldsmith & Levinson, 2009, p.1792). Rather than an umbrella organization responsible for policing wrongdoing, enforcement of international law falls to the member states who seek reparations for wrongs of which they were the targets.

Finally, there is no effective international judiciary with compulsory/binding jurisdiction to settle disputes between states (Goldsmith & Levinson, 2009, p.1792). Although two international courts exist, the International Court of Justice (which deals with state on state disputes) and the more recent International Criminal Court (which prosecutes individuals for international crimes), states only come under the jurisdiction of the courts after they have given consent. In this regard, states can avoid prosecution for international wrongdoing by not submitting to the authority of the court. When it is measured against these three benchmarks, international law appears deficient in each dimension and is, therefore, often ignored in political debate (Goldsmith & Levinson, 2009, p.1792).

2.3—The Role of International Law: A Framework of Analysis

Although international law certainly has its shortcomings, there are a number of important reasons it should still play a primary role in the American political debate on the “Iranian Question.” International law remains the most effective framework to examine the

relations between the two states, serving as a lens through which foreign policy responses to the hostile/inflammatory policies (enumerated above) can be evaluated in terms of their legality, necessity, and even chances of success. In this section, I explore three of the primary reasons for utilizing international law as the primary framework for this paper and argue that legal commitments must play a larger role in the American political debate on Iran. This discussion sets the stage for the remainder of the paper that empirically deals with how current Iranian policies conform to the state's international obligations and subsequently the legality of American responses.

2.31—International Law and American Global Public Relations

One of the most important reasons the United States must consider international law in crafting foreign policy towards Iran is derived from a lesson the United States has learned from previous international action—action deemed by the international community to be illegal. The connection between the image of the United States and international law is difficult to explicitly determine, but there is no doubt that the perception of the U.S. has taken a substantial hit since September 11th, 2001. Without question, one of the most influential policies in accounting for this decline in popularity is the War in Iraq, which was official condemned by over 50 UN member states (BBC, 2003).

Prior to the U.S. invasion of Iraq, UN Secretary-General Kofi Annan warned that the “United States would undermine international law and order if it decide[d] to attack Iraqi President Saddam Hussein without United Nations approval [i.e. authorization making the use of force a legal foreign policy action],” denouncing the Bush administrations’ “go-it-alone” approach to global affairs (Witt, 2002). Although this paper will not offer an analysis of whether or not the invasion of Iraq in 2003 was legal under international law, President Bush’s decision

to invade without first receiving UNSC authorization led many critics to condemn the war as a blatant violation of American international obligations (Burkeman & Borger, 2003). Ultimately, the war contributed to a serious decline in the international image of the United States, the effects of which are still being felt today. According to the Pew Research Center, although the global image of the U.S. has improved slightly since the Obama administration assumed office in 2009, America's favorability rating today is as low as 17% in Middle Eastern States such as Turkey, Egypt and Pakistan (PRC, 2010). Even in Western European nations that are traditional allies, the U.S. took a significant public relations hit between 2000-2010. In the United Kingdom, favorability decreased from 83% to 65%, with the most significant drop (15%) coming in the immediate aftermath of the start of the Iraq War, 2003-2004. Germany shares similar statistics, with an overall decrease from 78% to 63% and favorability dropping all the way to 30% in the final year of the Bush administration (PRC, 2010).

The United States may not have suffered legal repercussions for the invasion of Iraq to date, but the state's decision to pursue a foreign policy action that many states perceived as illegal has had many negative consequences. By defying their opinions, the Bush administration alienated many American allies and demonstrated its belief that American national interests would take precedence over international law (Ikenberry, 2003, p.533). This was subsequently detrimental to any attempt at multilateralism in Iraq, and the United States was essentially left to overthrow Saddam Hussein and rebuild the state on its own. The choice to act unilaterally, i.e. without waiting for international backing, undermined the credibility of the United States from the Middle East to Western Europe (PRC, 2004). A number of traditional American allies in Europe even expressed a desire for "foreign policy and security arrangements independent from the United States" (PRC, 2004). Acting without UNSC approval also contributed to international

sentiment that the United States was fighting a “War on Islam” in the post-9/11 world. The invasion of Iraq casts doubts about the true American motives behind the “War on Terrorism,” especially as time passed and the U.S. forces searched in vain for WMDs, boosting anti-American sentiment in the Middle East (PRC, 2004). According to the Pew Research Center, majorities of Muslims in Pakistan, Jordan, Morocco, and Turkey (all of the nations surveyed), doubted the sincerity of the War on Terrorism. Most instead saw the Iraq War as another attempt by the United States to seize control of oil resources and “dominate the world” (PRC, 2004). Ultimately it is clear that U.S. unilateral action without legal authorization by the United Nations was extremely detrimental to American international image. While it may seem, on face, to be only a public relations issue, the actions that sparked international anti-American sentiment also contributed to the fracturing of relationships with traditional allies, sparked distrust of American international objectives, and made future multilateral action more difficult.

2.32—Reevaluating the Perceived “Deficiencies” of International Law

Despite the perceived inadequacies of international law, in reality the development of an international legal system has radically changed the way states interact with one another. Although the international legal system is made up of dynamic, bottom-up contracts that are constantly being created between states, the end product governs behavior in the same way as its top-down domestic counterpart. While international law lacks a legislature, executive, and judiciary, in the traditional senses of the terms, it has other mechanisms that guide, restrain, and regulate the behavior of states (just as domestic laws act upon citizens) (Damrosch, et al., 2009, p.7). Treaties between states, for instance, take the place of legislation as states submit themselves to certain standards governing their action henceforth. Just as a citizen of any state enters into a social contract that restricts their personal sovereignty (i.e. a citizen of the United

States is legal obligated to refrain from killing another person, except in certain circumstances), treaties restrict some of the sovereignty of the signatory (Damrosch, et al., 2009, p.10).

Additionally, since international law cannot be viewed in a vacuum independent of international politics, an enforcement mechanism is derived from the desire for states to maintain a good reputation, protect national interests, and/or avoid security repercussions. While, like any other legal system, international law is not effective one hundred percent of the time, as Louis Hankin famously said, “almost all nations observe almost all principles of international law almost and all of their obligations almost all of the time” (Damrosch, et al., 2009, p.7). Even if, however, American policymakers question the existential legitimacy of international law, so long as much of the international order continues to utilize its institutions and develop its principles, U.S. action will be evaluated through a “legal” lens. In this regard, if international law is perceived only as a moral code, illegal/immoral action will continue to be met with international condemnation and the same difficulties for the United States illustrated above.

2.33—International Law and American Values

A final reason that it is beneficial to the United States to consider foreign policy in the context of international law is the promotion of American ideals. Whereas many policymakers, including the neoliberal Bush administration, believed that the United States could assert its values through force, others have argued that it is in fact an adherence to American international obligations that is the best mechanism to promote those principles Americans hold dear.

According to Mary Ellen O’Connell of Notre Dame Law School, a recommitment to the international legal responsibilities of the United States in both political discourse and foreign policy action is the best way to spread American ideals globally. In O’Connell’s view, international law, which embraces American values of democracy, freedom, and justice, is “the

right vehicle to advance these values for a rule-of-law-based nation like the United States” (IHT, 2007). A foreign policy, therefore, that includes “a recommitment to the means and ends of international law would pay enormous dividends for our nation [the U.S.] and our world” (IHT, 2007). Additionally, in terms of American Exceptionalism, so long as the United States continues to evaluate the hostile/inflammatory actions of other states through a legal lens (e.g. condemning Iranian treatment of civil/political society as human rights violations), the United States must hold its own action to the same standard. Although international law has been largely ignored when examining the Iranian Question, when it has surfaced, it has been utilized exclusively to condemn Iranian action. Following the thwarted November 2011 assassination plot, for instance, President Obama called the Saudi Ambassador to express his solidarity and articulate the American position that the scheme constituted a “flagrant violation of U.S. and international law” (Savage & Shane, 2011). In this regard, if the United States intends to utilize Iranian “breaches of its international obligations” as a justification for future intervention, potential American responses must conform to international law as well.

2.4—Concluding Remarks

Like any other nation, the U.S. will no doubt make mistakes when it comes to acting within the confines of its international legal obligations. The United States should still, however, do everything in its power to act within international law moving forward. Specifically, international law must play a much greater role in the American foreign policy discourse on the “Iranian Question,” if the United States wants to build multilateral support for action and avoid a public relations debacle similar to the aftermath of the invasion of Iraq. Later in this paper, I present the relevant international law necessary for this debate and explore how the U.S. can go about crafting, legal foreign action towards provocative Iranian policies. Before we can examine

the legal foreign policy responses the United States has at its disposal to respond to provocative Iranian action, however, it is necessary to explore how current Iranian policies conform to the state's own international legal obligations. This analysis provides a foundation for analyzing the legality of potential American responses; since legal obligations are dependant on the specific circumstances a state finds itself in.

Part 3: Iranian Violations of International Law

4.1—Introduction of Violations

Although they fit into Iran's current national objectives on both the domestic and international levels, many of the policies enumerated in Part 1 do not conform to the state's obligations under international law. In this section, I consider each of the four policy areas above in the applied context of international law. Although this section will only provide in depth analysis for Iran's most egregious breaches of international law, a comprehensive list of all violations can be found in the appendices A-E of this paper.

4.2—Nuclear Program

Iran's primary breaches of its international obligations with regard to the state's nuclear program come in violation of the Nuclear Non-proliferation Treaty (NPT) and its adjoining Safeguards Agreement (the state-specific addendum to the NPT in accordance with Art. 3(1)). The NPT is "a landmark international treaty whose objective is to prevent the spread of nuclear weapons and weapons technology, to promote co-operation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament and general and complete disarmament" (UN, 2002). Opened for signature on July 1st, 1968, the treaty was signed by Iran the same day, and entered into force on March 5th, 1970 (UN, 2002). Today the NPT is the only binding commitment in the form of a multilateral treaty aimed at nuclear disarmament and future acquisition of nuclear weapons by signatories. Under the NPT, all signatories have the "inalienable right" to pursue nuclear technology for civilian energy production, but states may not utilize fissile material for weapons of any kind (UN, 2002).

Overall, the NPT advances three essential pillars with regard to the future of nuclear energy and weapons—non-proliferation, disarmament and peaceful use of nuclear energy—each

of which is violated by the current Iranian nuclear program (UN, 2002). Iran's violations of the NPT are primarily based on Article 3(1), which states that parties to the convention will not divert the production of nuclear energy for peaceful uses to nuclear weapons or other explosive devices. As explained in Part 1 of this paper, it is clear that Iran's current nuclear program extends beyond the production of peaceful energy, as the state continues to engage in practices that are exclusively useful in the production of atomic weaponry such as uranium enrichment (conversion), laser isotope enrichment experiments, and plutonium experiments (White House, 2009). In addition, Iran's failure to cooperate with the International Atomic Energy Agency (IAEA) violates both the NPT and its Safeguards Agreement. Also in breach of Article 3(1), Iran has failed to report the existence of several nuclear sites to the IAEA (e.g. an enrichment facility at the Kalaye Electric Company Workshop and laser enrichment plants at the Tehran Nuclear Research Center and at Lashkar Ab'ad) as well as the construction of new facilities (e.g. Qom) (Shire & Albright, 2006, p.2). Finally, in violation of Iran's Safeguards Agreement, the state has failed to declare and report a number of other nuclear related activities including uranium imports and transfer, processing and use of uranium, reactor information, uranium conversion experiments, importation and use of other nuclear materials and design information of nuclear-related facilities to the IAEA (Kerr, 2011, p.12).

Beyond the NPT and Safeguards Agreement, Iran is also a party to four other multilateral agreements that provide legal regulations on the state's nuclear program. Iran is currently not in violation of three of these treaties; the Agreement on the Privileges and Immunities of the IAEA (P&I), the Convention on Early Notification of a Nuclear Accident (NOT), and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (ASSIST). Iran is, however, in violation of the Revised Supplemental Agreement Concerning Provisions of

Technical Assistance by the IAEA (RSA). Article 3(1) of the RSA, which reaffirms Article 3(2) of the NPT, stipulates that states may not utilize nuclear energy research and development for the production of nuclear weapon. As stated above and confirmed in the most recent IAEA report on Iran's nuclear activities, Iran has carried out a number of activities exclusively related to the development of a nuclear weapon and explosive devices (IAEA, 2011, p.8). Ultimately, it is clear that Iran's current nuclear program is in violation of international law and the state is not attempting to conform to its international legal obligations. For a comprehensive list of all Iranian violations of the NPT, Safeguards Agreement, and RSA see Appendix A.

4.3—Human Rights Violations

In terms of human rights, Iran is currently engaged in a number of practices that violate international law. In this area, Iran's legal obligations are derived primarily from the International Covenant of Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Universal Declaration of Human Rights (UDHR). Together these three accords make up an unofficial "international bill of rights" intended to protect "fundamental freedoms" and "human rights" for all, in accordance with the United Nations Charter (which is binding on all states) (UN, 2007). Major Iranian violations in this area include, but are not limited to: cruel and unusual punishments, death sentences imposed on minors, arbitrary detention, persecution of minority religions/cultures/ethnicities and restrictions on freedom of association/speech/expression/privacy/information (NEPR, 2011, p.5-18). For a comprehensive list of Iran's human rights violations of international law see Appendix B. In addition to these breaches, however, it is important to call special attention to Iran's treatment of women as well as its illegitimate manipulation of the political sphere, which both account for further infractions of international law.

In modern Iran women are regarded as second-class citizens and are codified in law as the “inferior sex” (NEPR, 2011, p.5). Both treaties mentioned above, as well as the UDHR have special provisions concerned exclusively with the equality of women (ICCPR—Art. 3, ICESCR—Art. 3, and UDHR—Art. 2), but the current Iranian regime has simply ignored these obligations and continues to oppress females throughout the country. For this reason, I have devoted a separate appendix of this paper, Appendix E, exclusively to the official laws against women in the Iranian Constitution, Penal Code, and Civil Code. Article 209 of the Constitution, for instance, states that a women’s life is valued as only half as much as a man’s (if a man is convicted of murdering a women his only punishment is to pay the women’s family a ‘dayeh’ or stipulated sum of money). According to the Penal Code, penalties for women convicted of crimes are harsher than men convicted of the same offence. Moreover, the code stipulates that health care is to be entirely segregated on the basis of gender, which seriously compromises the health of women and girls since there are not enough health professionals trained in female issues (WFAFI, 2008, p.1-2). Overall, the treatment of women in Iran represents one of the state’s most egregious violations of its international obligations.

Finally, because of its strategic importance in terms of U.S. foreign policy responses to Iran (explained later), it is important to note the particular human rights violations that allow the current Iranian regime to maintain its power. According to Article 21(3) of the UDHR “the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.” Although Iran does afford its citizens universal suffrage, recent national elections have demonstrated that the will of the Iranian people is not adequately reflected in the state’s governance. As alluded to above, the 2009 reelection of

President Mahmoud Ahmadinejad was affected by significant fraud (Mebane, 2009, p.21). By ensuring that the people are unable to exercise supreme control over the state, the regime maintains its power allows for the perpetuation of human rights violations.

4.4—Support of International Terrorism

The final policy area explored in this paper, Iran's support of international terrorism, is also rife with violations of Iran's obligations under international law. Before I endeavor to enumerate Iran's breaches, however, it is important to consider how the international community defines "terrorism." Although, terrorism (specifically international terrorism) has become one of, if not the most, dominant form of global conflict in the 21st century, currently there is no universally agreed upon definition of the term that is codified in international law. There are, however, two conventions on terrorism that carry broad support in the international community. Both the Comprehensive Convention on International Terrorism (CCIT—proposed in 1996) and International Convention for the Suppression of the Financing of Terrorism (ICSFT—proposed in 1999) offer very similar definitions of the term. Both of these definitions can be viewed in their entirety in Appendix D. For the purpose of this paper, however, terrorism will be defined using the definition found in Art. 2(1)(b) of the ICSFT: *to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act*. Although Iran is not, there are 176 parties to the ICSFT and 132 states have ratified the convention (including the United States), giving the treaty the support of 70% of United Nations member states and making the conventions definition applicable in considering whether Iranian action constitutes international terrorism (i.e. as a customary principle). A third

source applicable in defining “international terrorism” for the purpose this paper, comes from the U.S. legal code, specifically Title 18-2331. This definition, which can also be viewed in its entirety in Appendix C, will be explored more in Part 4 of this paper.

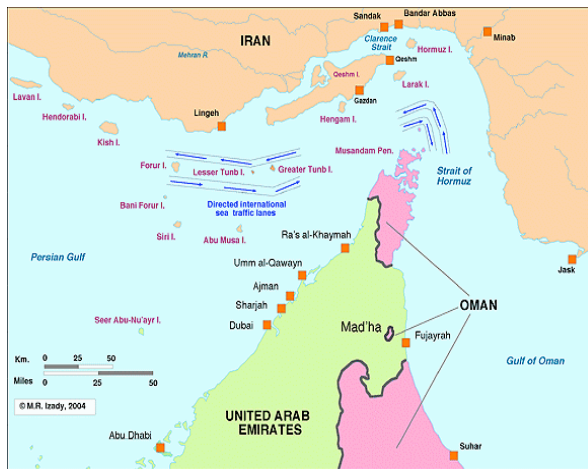
Regardless of which of the three major definitions of “international terrorism” one applies to Iran’s current activities, it is clear that the state’s actions currently violate its international obligations. Most notably, Iran’s policy towards Hizballah and Hamas constitute egregious violations of Article 2 of the ICSFT and Article 1 of UN Security Council Resolution 1373. As explained above, Iran is the primary financial backer Hizballah, providing the organization between \$25-50 annually (Byman, 2008, p.172). Additionally, the state contributes between \$20-30 million to Hamas each year (Byman, 2008, p.172). Both of these groups are considered to be “foreign terrorist organizations” by the United States State Department, and both engage in actions that violate the ICSFT definition of terrorism (Department of State, 1999). Hizballah has on numerous occasions been condemned by members of the international community for intentionally targeting citizens in its attacks on Northern Israel (Byman, 2003, p.58). Hamas has been similarly criticized for its attacks (based in the Gaza Strip) on Southern Israeli townships (Adkins et al., 2010).

A final aspect of Iran’s violations of international law in the sphere of international terrorism comes in the October 2011 commissioned plot to kill the Saudi Arabian ambassador to the United States by conspiring with a Mexican Drug cartel (Cooper, 2011, p.1). This action, which is in violation of Articles 1(a) and 2(a) of UNSC Res. 1373, differs from other Iranian support, in that it constituted a direct threat against the United States that was to be carried out on American soil. As will be explored later in the paper, this incident (and potential future incidents like it) provide the United States a deeper international legal backing for retaliatory actions

against the Islamic Republic since recent Iranian acts have been specifically aimed at the U.S. rather than its allies. For a comprehensive list of Iranian violations of international law with regard to the state's support of international terrorism see Appendix C.

4.5—Hostile Trade Policy

Beyond the three policy areas of current Iranian violations explored above, it is also important to note a fourth area of potential future violations; the state's hostile trade policy.



Although Iran is currently not in violation of international law with regard to the state's control of the strategic Strait of Hormuz, hostile national rhetoric—threats to close the waterway to international energy commerce—has increased. As explained above, Iran's extremely powerful position on the North bank of the Strait

affords the state the opportunity to regulate the flow of oil and natural gas in and out of the Gulf region. While Iran has not yet utilized this strategic position to prevent other nations from engaging in energy commerce in the region, the state has made threats to close the “choke-point” to Western nations (Breverton, 2010, p. 169). In December 2011, the Iranian navy participated in a ten-day set of war games in international waters near the Strait of Hormuz; a show of force intended to demonstrate Iran's capability to close the strategic passage. Following the exercise, Iranian Vice-President Mohammad Reza Rahimi “warned that ‘not a drop of oil will pass through the Strait of Hormuz’ if sanctions [against Iran] are widened” (BBC, 2011). Although it has not yet done so, closing the Strait to Western commerce would constitute another policy

manifestation of Iran's pursuit of regional hegemony in the Persian Gulf, as the state retaliates against sanctions and demonstrates its control over the valuable resources of oil and natural gas.

Differing from the other policy areas explored in this paper Iran's obligations under international law with regard to trade policy are derived exclusively from customary international law, i.e. "rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way," rather than multilateral treaties and/or conventions (Rosenne, 1984, p. 55). Iran, like the U.S., has signed, but not ratified, the United Nations Convention on the Law of the Seas (UNCLOS), the preeminent international agreement governing the world's waterways. In addition, the state currently holds only observer status at the World Trade Organization. Although Iran submitted its application for official membership to the WTO in 1996 and the General Council established a working party to examine the application in 2005, the Working Party has not yet met (WTO, 2011). Since Iran has yet to illegally prevent commercial or navigational ship traffic through the strait, it is not in violation of customary international law in this area and is subsequently immune to legal retaliatory action by the U.S (or any other state) in this area. For more information on Iran and the Law of the Seas and WTO see Appendix D.

4.6—Concluding Remarks

Today, Iran's pursuit of regional hegemony has translated into a number of egregious violations of the state's international legal obligations. Elements of the state's nuclear program, treatment of civil and political society, and attempt to project its power are inconsistent with the legal responsibilities of the Islamic Republic providing a legal basis justifying some American foreign policy responses. In the next two sections I turn my attention to these potential actions

and, in the context of both Iranian violations of and American obligations, identify which policies are currently legal under international law.

Part 4: American Use of Force

4.1—Overview of the Use of Force

The first category of potential American foreign policy responses to the inflammatory Iranian policies and violations of international law is the use of force. Although there is no comprehensive definition of the “use of force” codified in international law, the modern conception of has come to mean the “broadest category related to war” (O’Connell, 2009). Although the term was understood somewhat more narrowly in drafting the United Nations Charter, including only physical violence between states, today the definition has expanded to include more modern manifestations of hostility. In *Nicaragua v. United States*, the ICJ redefined use of force to encompass economic coercion, political coercion, physical force not including arms, and computer attacks (O’Connell, 2009, p.14). In this section I will enumerate the current international law dealing with the use of force and explain how potential uses of force against Iran align with the international legal obligations of the United States. Economic and political coercion, however, will be covered in Part 5 of this paper, which deals exclusively with American sanctions policy towards Iran. In the end, I argue that although Iran is currently engaged in a number of policies that breach its international obligations, the only use of force by the United States that is currently legal under international law is cyber-attacks against Iranian nuclear infrastructure.

4.2—Context within American Domestic Politics

As explained above, few issues dominate current political discourse as much as the question of how the United States should deal with the inflammatory policies perpetuated by the current Iranian regime. Perhaps no element of this modern political debate divides policymakers more than the questions of if and how the United States should use force against the Islamic

Republic. This paper will not make an argument regarding whether force should be utilized, but before answering the question of whether or not American force would be legally justified, it is important (for the practical purposes of this paper) to establish the context of the issue within American domestic politics.

Debate over whether or not the United States should use force against Iran can be broken down into two essential camps, like most other political issues, along party lines. While both Democrats and Republicans publicly agree that military force should be used only as a last resort, the two sides disagree on whether that point has been reached. It is important to note that while all of the Iranian policies explored in Parts 1 and 3 contribute to the discussion of whether or not the United States should use force against Iran (e.g. the state's human rights violations, support of international terrorism, and potential trade hostility), current political discourse within the United States centers primarily around Iran's pursuit of a nuclear weapon. For this reason, my discussion below utilizes Iran's nuclear program as the primary frame for exploring American domestic political debate.

On one side of the debate, the Obama Administration and most congressional Democrats see military action as "on the table, but not preferred," believing we have not yet exhausted our non-military options in confronting the Iranian threat and force is not yet justified (Katzman, 2011, p.57 and ProCon.org, 2007). While the Obama administration has not ruled out military options against Iran, it has repeatedly stressed the potential adverse consequences of force. Admiral Mike Mullen, former chairman of the Joint Chiefs of Staff, reaffirmed the concerns of the President, stressing the dangers to American forces and potential retaliation that would be caused by a preemptive strike (Katzman, 2011, p.58). Other members of the administration have stressed that force against Iran will not prevent Iran from pursuing a WMD, and may in fact

bolster the current regime's legitimacy. According to former Secretary of Defense Robert Gates, "a military attack will only buy us time and send the [Iranian nuclear program] deeper and more covert" (AFPP, 2009). Additionally, opponents of force claim that bombing Iranian nuclear sites has the potential to cause mass civilian casualties, which will only reentrench the regime's ability to foster the "rally-around-the-flag" effect presented in Part 1 (AFPP, 2009). Beyond concerns of the consequences of a strike against Iran, Democrats also believe that current American policies, like sanctions, have not been given enough time to run their course. They argue that sanctions against Iran, which will be discussed in detail in Part 5, have been updated as recently as November 2011 and need more time to achieve their desired goals (Landler & Sanger, 2012 and U.S. Department of State, 2011). Finally, many Democrats stress that the use of force against Iran now would constitute a lawless act of aggression under international law that would further isolate the United States and its allies rather than Iran (Landler & Sanger, 2012).

On the other side of the debate, most Republicans believe that the window in which Iran's nuclear program can be stopped is rapidly closing, and the U.S. must therefore utilize a preemptive strike against the Islamic Republic's nuclear infrastructure. Proponents of the use of force stress the high probability that a mission now would cripple Iran's nuclear program or at least set it back significantly. They argue that there are a limited number of key targets, and these targets are known and vulnerable (even those that are hardened or buried) to U.S. planners, so a strike would likely be comprehensive and successful (Katzman, 2011, p.58). In this view, time is of the essence, since it is highly likely that Iran will choose to move its most important nuclear operations to more secure locations and nuclear sites will become less feasible targets (Kroenig, 2011, p.79). According to the IAEA, for example, a new fortified enrichment site with the capability to produce weapons grade uranium deep inside the mountain at Fordo (southwest of

Tehran) will be ready in the near future (Reuters, 2012). Advocates of the “force now” option also claim that Iranian acquisition of a nuclear weapon would devastate American foreign policy objectives in the Middle East, threatening political and military policies goals in the region (Kroenig, 2011, p.78). Among the loudest voices calling for military action against Iran now are high-ranking congressional Republicans and former members of the Bush administration. In a July 2011 House Committee on Foreign Affairs hearing entitled “Iran and Syria: Next Steps,” Chairwomen Ileana Ros-Lehtinen (R-FL) articulated a belief prevalent amongst her GOP colleagues; that the Obama administration is “not doing enough to prevent Iran from getting a [nuclear] bomb” (HCFA, 2011). In the same hearing, Former Ambassador to the UN under President Bush, John Bolton stressed that Iran’s nuclear weapons program is the single greatest national security crisis currently faced by the United States. In the ambassador’s opinion, sanctions against Iran have not worked and without the use of force by the U.S. in the immediate future the Islamic Republic will undoubtedly acquire a nuclear weapon. This, he claimed, would subsequently spark nuclear proliferation throughout the Middle East, as states like Saudi Arabia feel threatened under an Iranian nuclear umbrella. For this reason the Ambassador argued that the Obama Administration is currently faced with two options. In Ambassador Bolton’s words: either “Iran gets the bomb or the U.S. acts with a preemptive military strike against Iranian nuclear capabilities” (HCFA, 2011). The potential Republican candidates for President have taken an equally hard-line stance. Mitt Romney, Rick Santorum, and Newt Gingrich have all stated publicly that they would go to war with Iran to prevent the state from acquiring a WMD (Montopoli, 2011 and Bradley, 2012). Overall, proponents of American use of force against Iran now argue that a preemptive strike is the least bad option that would spare the region and the world of a dangerous threat, while improving the national security of the United States (Kroenig,

2011, p.77)

Public opinion regarding the use of force, like any issue in American national politics is split, but polling indicates that most of the American public sees force as a foreign policy of last resort that is not yet necessary. A CNN/ORC International poll released February 15th, 2012 indicated that only 17% of the public thinks that the U.S. should use force against Iran at this time, with 60% responding that diplomatic or economic action against Islamic Republic was the right response, and 22% saying no action should be taken at this time (CNN/ORC, 2012). A Rasmussen poll conducted in November 2011 placed the percentage of Americans in support of military force as high as 38%, although respondents also stressed that the option should be utilized only if diplomacy fails (Bolduc, 2011). While public opinion is dynamic and it is ultimately unclear what the foreign policy direction the United States will choose to take, it is apparent that there are few, if any, international issue that are more dominant or divisive in American political discourse today.

4.3—International Law and the Use of Force

The legality of the potential uses of force by the United States against the Islamic Republic can be evaluated the same way Iran's breaches of international law were observed in Part 3. In Appendix F, I identify each of the primary sources of international law relating to the use of force and explore the most important provisions in detail. As stated above, the term "use of force" has come to denote "the broadest category relating to war," encompassing attacks that range from military to cyber in nature (O'Connell, 2009, p.14). The most pervasive and important piece of international law relating to the use of force comes from Article 2(4) of the United Nations Charter, which explicitly states; "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence

of any state, or in any other manner inconsistent with the Purposes of the United Nations” (UN, 1945). Although Art. 2(4) seemingly prohibits the use of force in any circumstance, in modern international law there are three ways in which use force against another state can become legal: (1) self defense, (2) countermeasures, and (3) authorization by the United Nations Security Council. For this reason, I have subdivided this section, and the corresponding appendix, into three subsections that each deal with one of the principles for force legalization.

4.31—Self-Defense

The first way a state may legally become authorized to utilize force against another is through self-defense. Article 51 of the United Nations Charter modifies Art. 2(4), carving out this first exception to the prohibition of force in cases of individual and collective self-defense. Art. 51 states; “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security” (UN, 1945). Art. 51 represents the principle’s current manifestation, but the concept of self-defense dates back to at least the 17th Century and philosopher Hugo Grotius (SEP, 2005). A more modern interpretation was defined in the Caroline Affair of 1837. In a letter to Henry Fox, the British minister in Washington, Daniel Webster, the United States Secretary of State, argued that “the use of self-defense should be confined to situations in which a government can show the ‘necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation’” (Kearley, 1999, p.325). The exchange left a profound impact on the development of international law and subsequently outlined the Caroline Doctrine, which served as a test of whether preemptive/anticipatory self-defense was justified in a given situation. Under this doctrine, the use of force in self-defense must meet two criteria. First the action must

be necessary because the threat is imminent and thus peaceful alternatives are not an option (Kearley, 1999, p.325). Second, the action must be proportional, i.e. the response must be equal in scope to the threat (Tait, 2005, p.111). The principles outlined in the Caroline Doctrine remain as pillars of the doctrine of self-defense that today forms basis of customary international law dealing with the use of force.

In addition to the aspects that define self-defense, new elements of international law introduced in the aftermath of September 11th, have altered the use of force in the context of international terrorism. On September 12th, 2001 the United Nations Security Council passed Resolution 1386, which called for terrorists to be brought to justice stating; “organizers and sponsors of those terrorist attacks and stressed that those responsible for aiding, supporting or harboring them would be held accountable” (UNSC, 2001). In addition, the discussion surrounding Res. 1386 tied terrorism to human rights. The UN High Commissioner for Human Rights Mary Robinson said attacks like those committed on 9/11 "strike at the fundamental human rights of every person and are totally unacceptable" (UN News Centre, 2001). Weeks later the Security Council also passed Resolution 1373, which called on “States to work together urgently to prevent and suppress terrorist acts” (UNSC, 2001). While they are vague in their discussion of what responses become legal to states in the event of, or an attempt to prevent a terrorist attack, both resolutions illustrate the legality of member states to hold the perpetrators of terrorist attacks accountable for their actions in individual and collective self defense. For a comprehensive list of the international law explored in this section see Appendix F Subsection 1.

Overall, the international legal standard of self-defense is well established and effective at legally prohibiting the use of force in many cases. For this reason, states often turn to a much

more contemporary area of international law, countermeasures, in an effort to legally justify force against other states.

4.32—*Countermeasures*

The second way in which a state may legally become authorized to utilize force against another state is through countermeasures. Countermeasures are defined as “non-violent acts, which are illegal in themselves, but become legal when executed by one state in response to an earlier illegal act by another state towards the former” (Schachter, 1994, p.471). Ranging in scope from the suspension of treaty obligations to the use of force, countermeasures would be in breach of international obligations if they were not taken in response to an internationally wrongful act (ILC, 2001, p.128). In essence, countermeasures cover the area of international law between reprisals (forcible action, taken by way of self-help in response to a breach, i.e. actions in self-defense) and retorsion (“unfriendly” conduct that is consistent with the international obligation of the State engaging in it, i.e. cession of diplomatic relations). Although they are non-violent in nature, countermeasures may still involve the use of force, which as explained above, includes political/economic coercion (covered in the following section), physical force not involving arms, and computer attacks. In other words “countermeasures covers that part of the subject of reprisals not associated with armed conflict,” and that part of the subject of retorsion once those acts breach international obligations (ILC, 2001, p.128). It is also important to note that countermeasures are “temporary measures, taken to achieve a specified end, whose justification terminates once the end is achieved” (ILC, 2001, p.129).

The legality of countermeasures is articulated in the International Law Commission (ILC) Draft Articles on State Responsibility. Article 22 of the Draft Articles states; “The wrongfulness of an act of a State not in conformity with an international obligation towards another State is

precluded to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of Part Three” (ILC, 2001, p.129). This legal principle was reiterated by the International Court of Justice in the 1997 case between Hungary and Slovakia concerning the Gabčíkovo-Nagymaros Project. In its decision the court stated: “In order to be justifiable, a countermeasure must meet certain conditions...In the first place it must be taken in response to a previous international wrongful act of another State and must be directed against that State” (Janis & Noyes, 2011, p.80). In Articles 49-53 of the Draft Articles the ILC expanded on Article 22, outlining five primary criteria that must be satisfied for countermeasures to be considered legal under international law: (1) The act constituting countermeasure must be taken in response to a previous intentional wrongful act (i.e. the breach of international obligation) of another state and must be directed against that state (Art. 49); (2) The injured state must have already called upon the state committing the wrongful act to discontinue its wrongful conduct or to make reparation, but the request was refused (Art. 52(1)(a)); (3) The countermeasure must be commensurate (i.e. proportional) with the injury suffered, taking into account the rights in question (Art. 51); (4) The purpose behind evoking the countermeasure is to induce the wrongdoing state to comply with its obligations under international law, and therefore the measure must be reversible (Art. 49(2)); (5) Countermeasures must be terminated once the responsible state has complied with its obligations in relation to the wrongful act (Art. 53) (ILC, 2001, p.129). Although, under Article 54 of the Draft Articles only the injured state may lawfully take measures against the responsible state, the commentary for Article 42 extends the term “injured” to include States entitled to evoke responsibility for a wrongful act based on a breach of an obligation to the international community as a whole (ILC, 2001, p. 138). Commentary for Article 48 subsequently stipulates that measures may be taken by third party states for the

protection of the collective interest of the group. For a comprehensive list of the international law explored in this section, see Appendix F Subsection 2.

While countermeasures also have a narrow range of applicability, they do constitute a second set of principles that can potentially justify the use of force. As will be explored in the next sections, it is countermeasures that provide the United States with a legal basis for some actions used to respond to Iranian hostility.

4.33—United Nations Security Council Authorization

The final way in which a state may legally use force against another under international law is through authorization by the United Nations Security Council. According to Article 39 of the United Nations Charter; “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken...to maintain or restore international peace and security” (UN, 1945). Although they may call for the compliance of the parties involved (Article 40) and/or utilize non-force measures (Article 41), ultimately the Security Council can authorize the use of force. According to Article 42; “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security...Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations” (UN, 1945). In 2004, the criteria for UNSC force authorization were explained in detail in the Report of the High-Level Panel on Threats Challenges and Change (U.N. Doc. A/59/565: 2004). According to the report, the Security Council uses five criteria in determining whether or not to authorize force; (1) seriousness of threat, (2) proper purpose, (3) last resort, (4) proportional means, and (5) balance of

consequences. As stated above, the final two principles follow directly from the Caroline Doctrine. For a comprehensive list of the international law explored in this section, see Appendix F Subsection 3.

Like the other two principles that provide a legal justification for the use of force, United Nations Security Council authorization, is extremely difficult to attain. Since the UNSC is composed of a group of states with different interests and objectives, it is challenging for any state to make the case for potential force scenarios. Although the United Nations has followed the lead of the United States and introduced sanctions against the Islamic Republic, the authorization of the use of force remains a pipedream for hawkish American politicians.

4.4—American Force Capability

As the undisputed global hegemon with military and intelligence capabilities that far surpass any other country in the world, there are many potential force options the United States has at its disposal to respond to Iran's inflammatory policies and breaches of international law. In this section I outline the most probable American force scenarios in the context of the three areas of Iranian international law violations examined in Part 3 of this paper; (1) Iran's nuclear program, (2) human rights violations, and (3) support for international terrorism. Since Iran has only threatened blocking the Strait of Hormuz, but has not yet violated international law, hostile trade policy is not examined in detail. Subsequently I examine how each option conforms to the America obligations under international law explored above.

4.5—Force Against the Iranian Nuclear Program

In terms of the Iranian nuclear program, there are currently three likely ways in which the United States could utilize force to thwart the Islamic Republic's attempt to acquire a WMD; (1) American military strikes, (2) proxy strikes, and (3) computer attacks. While the first two of

these options would probably involve the same type of military action, strikes on key Iranian nuclear sites, the state actor carrying out the operation is variable.

4.51a—Force Scenario One: American Air Strikes

In the first scenario, the United States military would be solely responsible for destroying Iranian nuclear facilities through air strikes. Although there are nearly twenty-five nuclear facilities in Iran, a potentially crippling strike against Iran's nuclear program would need only to target the most strategically important sites. In this regard, the United States would minimize the cost, time, and collateral damage of the attack. Potential attack sites include the following (some of which were explained in detail in Part 1 of this paper): (1) Isfahan Nuclear Technology Center—headquarters of Iran's uranium-conversion efforts into hexafluoride gas (used in centrifuges), uranium oxide (used to fuel reactors), and metal (used in the core of nuclear bombs); (2) Gachin Uranium Mine—production of uranium ore concentrate, i.e. yellowcake, for enrichment; (3) Natanz Uranium Enrichment Plant—home to 3000 centrifuges responsible for enrichment of uranium at high levels; (4) Parchin Weapons Testing Center—munitions center and possible nuclear weapons testing site; (5) Bushehr Nuclear Power Station—houses a 1000-megawatt reactor, the spent fuel from which, according to the Nonproliferation Policy Education Center, would be capable of producing 50-75 bombs; (6) Arak Heavy Water Plant—production of heavy water used to moderate nuclear fission chain reactions and produce weapons grade plutonium; (7) Qom Uranium Enrichment Plant—production of Highly Enriched Uranium (concentration of 20% or more) needed to build nuclear weapons (BBC, 2012 and Pike, 2012). Although it is highly speculative how exactly the United States would carry out air strikes against these sites, a potential attack would probably resemble the beginning of the 2003 air campaign against Iraq, utilizing B-2 stealth bombers and/or F-117 stealth fighters. In addition to

attack forces, which would most likely be minimal, the United States would also mobilize both conventional and unconventional forces to be used in the event of a counterattack (Pike, 2012).

4.51b—Force Scenario One—Legal Assessment

In terms of legality, although Iran has blatantly ignored many of its obligations under the Nuclear Non-Proliferation Treaty and its IAEA Safeguards Agreement (see Part 3 and Appendix A), the type of attack explained above would be in breach of current U.S. obligations under international law. A preemptive strike at this time would not constitute self-defense, since in this scenario there would have been no prior attack by the Islamic Republic and because it would not pass the Caroline Doctrine's principle of "necessity" required to justify an anticipatory use of force (Kearley, 1999, p.325). The newest rounds of sanctions imposed by the Obama Administration in November 2011, have clearly not been given ample time to achieve their goals, illustrating the fact that the U.S. has not yet exhausted all peaceful alternatives to force. This type of preemptive force is also not justified by countermeasures, since strikes would constitute a violent act (Schachter, 1994, p.471). Finally, while the United Nations Security Council has called on Iran to comply with its obligations under the NPT and even imposed its own set of sanctions targeting the Iranian nuclear program, at this time the UNSC has not authorized the use of force. For these reasons, American use of force against Iran is currently in breach of international law.

4.52a—Force Scenario Two—Proxy Air Strikes

A secondary option in which the United State could potentially facilitate the use of force against Iran is through an indirect proxy attack. Similar in scope and range of targets to the potential American air strike explained above, a proxy strike would utilize the Israeli military as the primary actor, albeit with substantial support from American intelligence and hardware.

Many experts, including former CENTCOM Commander General David Petraeus, believe an Israeli attack is currently the most likely military scenario since “Israeli officials view a nuclear-armed Iran as an existential threat and have repeatedly refused to rule out the possibility that Israel might strike Iran’s nuclear infrastructure”(Katzman, 2011, p.58). In many ways the current Israeli administration has taken militaristic stance against the Iranian nuclear program similar to the attitude of Republicans in the United States. In April 2009, Prime Minister Benjamin Netanyahu expressed his hard-stance stating; “You don’t want a messianic apocalyptic cult controlling atomic bombs” (Katzman, 2011, p.63). Israel has also already illustrated its ability to carry out these types of strategic air strikes. In 1981, under the orders of Prime Minister Menachem Begin, Israel used F-15 interceptors and F-16 bombers to destroy a nuclear reactor at Osirak, 18 miles south of Baghdad (BBC, 1981). The United States already provides Israel with the defensive capabilities necessary to carry out strategic air strikes; for FY2012 the U.S. will provide Israel \$3 billion in military aid, 75% of which Israel will use to purchase American defensive equipment (Sharp, 2009, p.4). Additionally, the strategic alliance between the two nations also includes substantial intelligence sharing that has been stepped up recently in response to the growing threat Iran’s nuclear program poses to the two nations (NYT, 2012). While the United States can not directly order Israel to take military action against Iranian nuclear infrastructure, prodding of Israel’s top defense officials could be very effective given Israel’s reliance on the United States political and military support. Divisions between the Obama White House and Netanyahu administration make this option less likely today, but this type of strategy would become much more likely with a Republican win in the November presidential election, realigning the sentiment of Washington and Jerusalem with regard to Iran.

4.52b—Force Scenario Two—Legal Assessment

It is not the intent of this paper to argue whether Israel is currently justified under international law to launch a preemptive strike (under anticipatory self-defense or any other legal principle that justifies the use of force), therefore the legality of this type of attack will be considered from a purely American perspective (Kearley, 1999, p.325). The international legal responsibilities of the United States surrounding this type of strategy to thwart Iran's attempt to produce a nuclear weapon are, however, somewhat ambiguous, since the U.S. would play only a secondary role. While military support and intelligence sharing are not illegal under international law, many "U.S. military leaders believe...that an Israeli strike would inevitably draw the United States into a conflict with Iran" (Katzman, 2011, p.59). In the event this scenario became reality, the United States would be faced with the same international legal obligations discussed in the previous section. In this regard, support for an Israeli attack is legal so long as U.S. forces do not become involved. Ultimately, while an Israeli preemptive strike does not violate international law, the use of force by the United States remains illegal under American obligations.

4.53a—Force Scenario Three—Cyber Attacks

The third and final probable option for the United States to use force against Iran is through computer attacks. Unlike the previous two options discussed in this paper, computer attacks have already been used against Iranian nuclear facilities. In late 2010, Iranian officials discovered that computer hacking operation targeting the nation's uranium enrichment infrastructure. The worm, named "Stuxnet," spread through Microsoft Windows targeting Siemens software and equipment (which Iran procured on the black market to avoid sanctions) controlling the centrifuges at a number of Iranian nuclear sites. Unlike previous worms, which were built only to spy, Stuxnet was revolutionary in its ability to reprogram industrial systems

(McMillan, 2010). In September-October 2010 the tactical computer virus “target[ed] Iranian nuclear facility computers by altering the spin rate [of centrifuges], causing Iran to take about 1,000 centrifuges out of service” (Katzman, 2011, p.32). The worm temporarily disrupted Tehran’s enrichment efforts, but a report by the IAEA in May 2011 revealed, “the targeted plants have fully recovered” (Kroenig, 2011, p.77). Although no country has officially taken responsibility for the Stuxnet attack, it is speculated that the United States and/or Israel deployed the virus. In May 2011, Gary Samore, White House Coordinator for Arms Control and Weapons of Mass Destruction indirectly outlined the position of the United States to the Stuxnet attack stating; “we’re glad they [the Iranians] are having trouble with their centrifuge machine and that we—the U.S. and its allies—are doing everything we can to make sure that we complicate matters for them” (Chapman & Rosenfeld, 2011). The official Israeli position is equally vague, but top Israeli Officials have hinted that Israel is actively pursuing cyber warfare capabilities. In 2010, military intelligence chief, Major-General Amos Yadlin disclosed a new intelligence unit set up to incorporate high-tech hacking tactics, which could have been used to deploy the Stuxnet virus (Williams, 2010).

4.53b—Force Scenario Three—Legal Assessment

As explained above, in *Nicaragua v. United States* the ICJ expanded the traditional definition of force to include more modern mechanisms of attacking other states, such as computer attacks. For this reason, cyber-warfare must meet the same criteria as armed attacks to be considered legal under international law. Like the law applied to air strikes in the previous section, preemptive computer strikes are also not justified through the legal principle of self defense since, at this time, there has been no prior use of force (military or otherwise) by the Islamic Republic against the United States. Similarly, since the United Nations Security Council

has not yet authorized force (military, cyber, or otherwise) against Iran. Because computer attacks are non-violent, however, they firmly fit under the definition of a countermeasure and upon a closer examination are legal under American international obligations. According to Article 3 of the Draft Articles on State Responsibility, “there is an internationally wrongful act of a State when: (a) conduct consisting of an action or omission is attributable to the State under international law; and (b) that conduct constitutes a breach of an international obligation of the State” (ILC, 2001, p. 36). As explained in Part 3 and Appendix A of this paper it is abundantly clear that Iran is in violation of its international obligations of the Non-Proliferation Treaty and the state’s Safeguards Agreement. These Iranian violations, while not directed at any one state specifically can be considered to be directed at any other state that is also a signatory to the NPT, since the security of those state’s who remain in compliance with their obligations is threatened when another signatory (in this case Iran), is in breach (see Art. 54 and Art. 33 of the ILC Draft Articles—Appendix F Subsection 2) (ILC, 2001, p. 138). In this regard, cyber-attacks against Iranian nuclear infrastructure meet the first criteria for a legal countermeasure stipulated by Art. 49 of the Draft Articles. As explained above, for countermeasure to be considered legal under international law, they must meet four additional criteria. First, in accordance with Art. 52(1)(a) the United States, along with the other nations that comprise the Security Council, have called on Iran numerous times to halt its pursuit of nuclear weapons since the initial imposition of UNSC sanctions in 2006. Second, in compliance with Art. 51, cyber-attacks against Iran have (or will) only targeted nuclear infrastructure that aids in the state’s breaches of the NPT and are therefore commensurate (i.e. proportional) with the injury suffered by the U.S. Finally, fulfilling Art. 49(2) and Art. 53, computer viruses have (or would) only be used to induce Iranian compliance with the NPT, i.e. halting any current violation of state obligations under the treaty, and can be

programmed to desist once the goal is achieved (ILC, 2001, p.129). For example, cyber-attacks that target centrifuges could be programmed to cease once the machines are spinning exclusively at speeds that will produce safe enrichment levels. Overall, it is clear that while any other potential use of force by the United States against the Iranian nuclear program today would be considered counter to American international obligations, cyber-attacks constitute a legal countermeasure and are therefore justified under international law.

4.7—Force Against Iranian Human Rights Violations

The second area of inflammatory policy that the United States could potential respond to with the use of force, Iranian human rights violations, is also the area that would be the most difficult to justify an intervention under international law. The United States has publicly condemned human rights violations in Iran dating back to the Islamic Revolution of 1979. According to the State Department, however, the state's most egregious violations have occurred more recently, under President Ahmadinejad (State Department, 2012). While the United States has yet to use force to prevent additional violations, American diplomatic discourse has been increasingly supportive of resistance movements over time.

4.71a—Human Rights Force Scenario

The use of force in this area would most likely take the form of support to Iranian resistance groups, the so-called Green Movement, in the hope of pushing Iranian citizens to pursue large-scale government reforms. The Iranian Green Movement, which traces its roots to the presidential campaign of Mir Hossein Mousavi, the opposition candidate to President Ahmadinejad, picked up steam in political protests against perceived fraud in the Presidential election of 2009 (Mebane, 2009). Comprised of a number of smaller official and unofficial organizations within the Iranian civil society, including the Confederation of Iranian Students,

the Islamic Iran Participation Front, the Mojahedin of the Islamic Revolution Organization, labor unions and other prominent dissidents, the Green Movement came to stand for democratic reforms to the current government (Katzman, 2011, p.11). Today, however, the movement's message has become more extreme, calling for a new revolution and overthrow of the Islamic Republic. Reformers have also become fragmented by a lack of clear leadership and increased efforts by the government to suppress their activities (perhaps in an effort to prevent the Arab Spring from reaching Tehran) (Katzman, 2011, p.13-14).

The U.S. government connection to the Green Movement to date has been only vocal in nature. While the Obama Administration has been publicly supportive of the movement's efforts, the President has come under fire for missing a potentially monumental opportunity in the summer of 2009 (Katzman, 2011, p.1 and Ward, 2011). Following the fraudulent reelection of Ahmadinejad the Obama administration was heavily criticized for not providing the Green Movement with the necessary military, logistical, and humanitarian support to achieve its objectives and overthrow the current regime. Instead, violent crackdowns on the street protests in Tehran and other major cities produced more human rights violations (see Appendix B). A use of force today, would most likely take the form of supporting dissidence in an effort to reform the current Iranian regime and subsequently prevent future violations. At this time there is no indication that the Obama Administration has plans to provide the Movement with direct material support, but this type of intervention would become much more likely if Iranian domestic protests ramped up again in the future (Katzman, 2011, p.2).

4.71b—Human Rights Force Scenario—Legal Assessment

Although material and/or logistical support to a dissident population that has been subject to countless human rights violations may not seem, on face, to be a use of force, because

American efforts would most certainly carry a Western agenda, they would be classified as political coercion under the definition laid out in the Nicaragua Case (O'Connell, 2009, p.14). For this reason the prohibition on the use of force articulated in Article 2(4) of the U.N. charter, which explicitly states, "all Members shall refrain...from the use of force against the...political independence of any state," is equally applicable. Unlike the other two areas of inflammatory Iranian policy examined in this section, however, Iran's human rights violations are domestic in nature, i.e. they do not directly impact the United States. In this regard, it is much more difficult for the U.S. to justify a use of force. Human rights violations do not constitute an attack against the United States nor do they threaten American security, eliminating a justification of the use of force through self-defense. Additionally, while the violations do constitute an internationally wrongful act of a state (see Appendix F Subsection 1), the act is not directed at the United States and therefore does not justify the use of countermeasures in response (ILC, 2001, p.36). For this reason, the only legal justification for the use of force against Iranian human rights violations can come from authorization by the United Nations Security Council. The UNSC has not given permission for member states to intervene in this area to date and it is therefore not legal for the U.S. to use force now. The Council has, however, authorized similar uses of force to prevent human rights atrocities in the past. Most recently the UNSC adopted Resolution 1973, authorizing "all necessary measures to protect civilians" (i.e. the use of force), in Libya (UNSC, 2011). While current conditions in Iran will most likely not spur the Security Council to take similar action, if circumstances became dire as they did in the summer of 2009, the authorization of force would be more likely. Overall, although an American intervention may significantly benefit the current condition of the Iranian people, the use of force with regard to Iranian human rights violations is currently not justified under international law.

6.6—Force Against Iranian Support of International Terrorism

The final area of provocative Iranian policy that could prompt the U.S. to use of force is the state's support of international terrorism. Like Iran's nuclear program, the Islamic Republic's support of international terrorism only indirectly impacted the United States from the Iranian Revolution of 1979 until 2011. During this time, while Iranian support of Hizballah and Hamas targeted the United State's most important ally in the Middle East, Israel, Iran did not engage in explicit efforts to harm Americans. The plot to kill the Saudi ambassador to the U.S. uncovered last October, however, forced the United States to reconsider the likelihood of a state-sponsored terrorist attack on American soil (Cooper, 2011, p.1).

6.61a—Terrorism Force Scenario

Although the Obama administration has been unclear in exactly how the United States would go about utilizing force to respond to Iranian state sponsored terrorism by Iran in the future, American action would most likely employ targeted strikes against key government officials with ties to terrorism and/or supply lines funneling military aid to terrorist groups (Amidror, 2007, p.3-4). Unlike the scope of a preemptive strike against the Iranian nuclear program, the force responses to Iranian support of international terrorism very greatly based on the specific geopolitical circumstances at the time of an attack. In this regard, rather than explaining how a specific force scenario (i.e. assassination plots of key Iranian government officials) conforms to international law, in this area I take the opposite approach and outline the key elements of American international obligations that must be considered in the event of a Iranian-sponsored terrorist attack.

6.61b—Terrorism Force Scenario—Legal Assessment

Prior to turning to the traditional elements of international law governing the use of force it is first important to consider the case of state-sponsored Iranian terrorist attacks in light of updates to international law that emerged following September 11th, and answer the question; do new sources of international law change the way states may respond to a terrorist attack or a perceived threat? As explained above, in the immediate aftermath of 9/11 the United Nations Security Council adopted Resolutions 1368 and 1373 reaffirming the commitment of the international community to prevent future terrorist activities. While both resolutions strongly condemn those who support international terrorist activities, neither explicitly specifies what retributive actions become legal in the wake of terrorist attacks on member states nor steps states may take to prevent an attack. The vagueness of these resolutions do, however, illustrate the fact that although the United States has already been a target of state-sponsored terrorism by Iran, American action must conform to same legal principles that justify any other use of force. For this reason, a discussion of the legality of potential force by the United States can be broken down into two essential questions: (1) may the United States use force now with regard to Iran's support of international terrorism? And (2) how may the United States use force in response to a future Iranian-sponsored terrorist strike? To answer both of these questions we must turn our attention to the same sources of international law governing the use of force.

In terms of self-defense, the United States is not legally justified in using of force against Iran for its support for international terrorism at this time. Although the United States has already been the target of Iranian state terrorism, since the plot to kill the Saudi ambassador was thwarted the action does not justify a force response at this time (Kearley, 1999, p.325). Even when considered as a justification for anticipatory self-defense (i.e. as proof that Iran is engaged

with terrorist organizations in plots against the U.S.), preemptive force does not pass the Caroline Doctrine's test of necessity since the United States has proven its ability to mitigate terrorist threats through peaceful means (Kearley, 1999, p.325). In other words, the ability of the United States to successfully prevent the terrorist action proves that the use of force is not justified at this time. Additionally, while the United States, Israel, and many other Western nations have classified Hezbollah and Hamas as terrorist organizations, conflict confined to the Middle East (i.e. violent disputes with the state of Israel) are territorial in nature and do not involve third parties, making a strike against Iran extremely difficult to justify under Art. 51 of the UN Charter. The United States may be able to effectively argue that attacks by the two organizations against Israel constitute terrorism and subsequently justify a legal use of force against Hezbollah and/or Hamas. Force action against Iran directly, however, would certainly do more harm than good in maintaining international peace and security and is therefore contrary to the provision of collective self-defense (UN, 1945). Similarly, since no wrongful act against the United States has actually occurred, countermeasures do not justify the use of force against the Islamic Republic at this time. Finally, while the United Nations General Assembly did adopt a Saudi-sponsored resolution condemning the plot to kill the state's ambassador to the U.S. by a vote of 106-9-40, the UNSC did not take action in authorizing retaliatory force (RASE, 2011).

While the United States may not be authorized under international law to respond with force to the thwarted plot against the Saudi ambassador last October, a successful attack by Iran in the future would provide the U.S. with ample legal ground for retaliation. In terms of self-defense, a terrorist attack would clearly constitute an armed attack and, so long as the United States has sufficient proof implicating the Iranian regime in the incident, the U.S. would be justified in using force. Similarly, in the event that American intelligence showed an

immediately credible threat that could not be prevented using peaceful means, the U.S. would also be justified in launching a proportional anticipatory strike against the Islamic Republic (Tait, 2005, p.111). Additionally, in terms of countermeasures, the U.S. would be justified in utilizing non-violent commensurate reprisals, in order to pressure Iran to comply with its international obligation to refrain from the use of terrorism. While it is impossible to determine whether or not the UNSC would authorize action against the Islamic Republic (depending on the specific attack and the other geopolitical forces at the time), the United States could be justified in using force against Iran in the event of a future state-sponsored terrorist attack.

6.8—Concluding Remarks and the Future Application of the Use of Force

It is not the intent of this paper to make an argument dealing with whether or not the use of force would be successful in achieving American foreign policy objectives, but as explained in Part 2, it is still necessary to examine how international law aligns with potential action toward the provocative policies of the Islamic republic now and in the future (see Part 2). While cyber attacks on nuclear facilities are currently the only American use of force that would be legal under international law (proxy attacks do not constitute an American action), the scope of potential future action is extremely wide. Since the legality of the use of force against Iran is totally dependent on the future policies of the Islamic Republic, it is conceivable that any of the force scenario examined in this paper could become legal under international law. Additionally, it is important to note that force against hostile Iranian trade policy, which is not examined in this section, since Iran has not yet blocked international commerce from passing through the Strait of Hormuz, could also become legal. In this regard the trajectory of legal American policy follows directly on changes in Iranian policy, especially in the event that Iranian policies directly impact the United States (e.g. a successful terrorist attack on American soil or against American

citizens). Overall, while only one element of the use of force is currently justified under international law, if other policy options (see below) are ultimately unsuccessful, the use of force may become a likely alternative.

Part 5: American Sanctions

5.1—Overview of Sanctions

Unlike potential American uses of force against the Islamic Republic examined in Part 4 of this paper, sanctions are already being utilized by the United States to counter some of Iran's inflammatory policies and breaches of international law. Although they are not explicitly defined in the United Nation's Charter, sanctions are a foreign policy tool that most often includes the interruption of economic relations, communications and/or the severance of diplomatic relations (Kondoch, 2001, p.269). Following the Iranian Hostage Crisis of 1979, the United States suspended all formal diplomatic ties with Iran and today the states have no diplomatic relations (BBC, 2011). Because comprehensive sanctions in this realm already exist (and are justified independent of legal analysis), this section focuses instead on the legality of sanctions that permeate the dynamic economic relationship between the two states. I explore current sanction policy towards Iran discussing why sanctions were implemented, their current place within the domestic politics of the United States and finally their legality as a foreign policy tool moving forward. Since sanctions are already being utilized I observe their legality on a holistic level, rather than separating the discussion into the specific applications in response to the inflammatory Iranian policies presented in Part 1 of this paper.

5.2—Context Within American Domestic Politics

The modern manifestations of sanctions against Iran are noteworthy, first and foremost, for the bipartisan support they enjoy as a foreign policy tool. Sanctions against the Islamic Republic have held broad congressional support since they were introduced and have crosscut three republican (Ronald Reagan, George H. W. Bush, and George W. Bush) and two democratic (Bill Clinton and Barack Obama) presidential administrations. The most recent update to

sanctions against Iran, the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), for example, passed 408-8 in the House of Representatives, 98-0-2 in the Senate (Iran Watch, 2011). Although there remains a vigorous debate regarding the effectiveness of unilateral American sanctions, there is broad agreement that the U.S. should utilize sanctions to prevent Iran from attaining a nuclear weapon, committing human rights violations, and supporting international terrorism (Clawson, 2011). Additionally there is bipartisan agreement that “to target the regime rather than the Iranian people, to encourage Iran to engage and compromise, and to urge other governments to join a coordinated approach towards Iran” i.e. ensure that sanctions conform to American international obligations and are multilateral whenever possible (see Sec. 114 of CISADA below). While they have drawn external criticism for their effectiveness and ethicality since they were introduced, sanctions have intensified through five presidential administrations “indicating a broad bipartisan consensus that, for all their faults, sanctions are an important part of the U.S. policy mix towards Iran” (Clawson, 2011).

5.3—The Imposition of Sanctions

The United States has utilized sanctions against Iran since 1987 for the same four primary policy areas enumerated in Part 1 of this paper. According to the United States Department of the Treasury, one of the three principle agencies responsible for maintaining international sanctions, Iran’s support for international terrorism and its aggressive actions against non-belligerent shipping in the Persian Gulf were the initial driving force for implementing sanctions (U.S. Department of the Treasury, 2011, p.1). While these two elements of motivation remain important, today the American rationale for sanctions against Iran has grown to include nuclear proliferation and human rights violations (Clawson, 2011). The United States has traditionally

not utilized Iran's violations of its international obligations as a justification for sanctions policy (i.e. protecting American international interests have been the primary incentive), but at this current juncture American national interest and international law coincide.

In response to Iran's support for terrorist organizations, its threatening trade policy, its nuclear program, and its human rights violations, the United States has imposed a series of harsh economic sanctions against the current regime. As explained below, these policies bar all banking transactions between the two states, any imports from Iran, any exports to Iran, any financial dealings with Iran, as well as many aid programs to Iranian citizens (Overview of Sanctions, 2009). Although they will not be explored in detail in this paper (since they are not directly an American foreign) the United States has also endorsed further sanctions implemented by the United Nations Security Council in response to Iran's violations of the NPT. These sanctions, which are loose in comparison to the ones levied by the United States, contribute to the perceived legitimacy of American action against Iran by providing some multilateral backing (United Nations Security Council, 2008).

5.4—History of Sanctions

Sanctions have been a preferred foreign policy tool by the United States since World War II, "standing between statements and soldiers," i.e. providing a middle road between diplomacy and military action (Schott, 1998 and Chesterman & Pouligny, 2003, p.503). Today, the U.S. is engaged in over 30 cases of sanctions, more than at any other point in the country's history. These sanctions differ in the states they target, international backing, and specific foreign policy objectives they seek to accomplish (e.g prevention military advances, arms proliferation, international terrorism, drug trafficking, and human rights abuses) (Schott, 1998).

Sanctions have been utilized by the United States against Iran for over 20 years; the product of a number of policy actions by the executive branch of government (to a lesser extent the legislative branch has also contributed). Sanctions were originally created by Executive Order 12613 issued by President Ronald Reagan on October 29, 1987 (U.S. Department of the Treasury, 2011, p.1). President Reagan's original sanctions imposed a trade embargo against Iran-originated goods and services, but did not cut off all trade ties with the Islamic Republic. These sanctions still serve as the foundation for American sanctions towards Iran, but subsequent administrations have altered and expanded the policy. In 1995, President Bill Clinton issued Executive Order 12957, which prohibited U.S. involvement with petroleum development in Iran (U.S. Department of the Treasury, 2011, p.1). In 1997, the Clinton administration further expanded the scope of sanctions with Executive Orders 12959 and 13059 prohibiting "virtually all trade and investment activities with Iran by U.S. persons" (U.S. Department of the Treasury, 2011, p.1). In 2010, President Obama altered the sanctions slightly by clarifying American policy regarding financial transfers to and from Iran, provisions on certain goods, and penalties for violating the Iranian Transaction Regulations. In an attempt to "increase pressure on Iran to comply with the full range of its international obligations" the Obama Administration again increased the scope of American sanctions imposed against the Islamic Republic in November 2011. The administration introduced Executive Orders 13590 and 13382, and a new classification of Iran under the PATRIOT Act, in an effort to further restrict financial transactions that could potentially benefit Iranian nuclear program. Today, though, the most important elements of sanctions remain President Clinton's additions (U.S. Department of the Treasury, 2011, p.1 and U.S. Department of State, 2011).

5.5—Current Sanctions

Current sanctions imposed by the United States against Iran are facilitated through joint action of the U.S. Treasury Department, U.S. State Department, and Office of Terrorism Finance and Economic Sanctions Policy. The most important aspects of current sanctions, those originally imposed by the Clinton administration, can be broken down into five principle categories explained below:

5.51—Primary Sanction Categories

1) Imports from Iran (U.S. Department of the Treasury, 2011, p.1)

- Goods and services of Iranian origin may not be imported into the United States either directly or through third party countries
- U.S. citizens are prohibited from providing financing for prohibited import transactions

2) Exports to Iran (U.S. Department of the Treasury, 2011, p.1-2)

- Unless licensed by the Office of Foreign Assets Control, goods, technology, or services may not be exported (directly or indirectly) from the United States (i.e. any person acting within the U.S.) to Iran or the Government of Iran
- Exports are prohibited if the person acting knows or has reason to know that such items are intended for supply, transshipment, or re-exportation to Iran
- Donations, gifts, and humanitarian effects (e.g. agricultural commodities, medicine, and medical devices, and “information and informational materials) valued at \$100 or less are permitted

3) Dealing in Iranian-Originated Goods and Services (U.S. Department of the Treasury, 2011, p.2)

- U.S. citizens are prohibited from engaging in any transactions, including purchase, sale, transportation, swap, financing, or brokering related to goods or services of Iranian origin or goods or services owned or controlled by the Government of Iran
- U.S. citizens are prohibited from engaging in any transaction or dealing in property or interests in property of Iranian banks

4) Financial Dealings with Iran (U.S. Department of the Treasury, 2011, p.2)

- New investments by U.S. citizens including commitments of funds or other assets, loans or any other extensions of credit, in Iran or in property (including entities) owned or controlled by the Government of Iran are prohibited

5) Dealings with Iranian Petroleum Industry (U.S. Department of the Treasury, 2011, p.3)

- U.S. citizens may not trade in Iranian oil or petroleum products refined in Iran, nor may they finance such trading
- U.S. persons may not perform services, including financing, or supply goods or technology that would benefit the Iranian oil industry

5.52—Obama Administration Sanction Updates

In addition to a categorization of current sanctions imposed by the United States against Iran it is also worth noting the four major Obama administration updates to sanction policy. First, in June 2010, President Obama signed the Comprehensive Iran Sanctions, Accountability, and

Divestment Act (CISADA), which overwhelmingly passed both houses of Congress (408-8 in the House, 98-0 in the Senate) (Iran Watch, 2011). CISADA was the Obama administration's first action aimed at broadly tightening American sanctions against Iran and revising numerous legal restrictions against the Islamic Republic made under previous presidential executive orders (Clawson, 2011). Second, in November 2011 President Obama signed Executive Order 13590, which updated existing regulations on dealings with the Iranian petroleum industry adding value restrictions on transactions. Third, in a revision to Executive Order 13382 also signed in November 2011, the Obama administration updated corporation-specific sanctions targeting companies that "support a variety of Iran's proscribed nuclear procurement activities, including centrifuge development, heavy water research reactor activities, and uranium enrichment." Additionally, E.O. 13382 introduced new sanctions targeting companies that deal with the Atomic Energy Organization of Iran (AEOI), "main Iranian organization for research and development activities in the field of nuclear technology, including Iran's centrifuge enrichment program and experimental laser enrichment of uranium program." Finally, the new set of sanctions included a classification of Iran as a "primary money laundering concern" of the United States, under Section 311 of the PATRIOT Act. This classification, for the first time, creates a clear public record of the scope and depth of Iran's breaches of its international obligations, implicating the entire Iranian financial sector (i.e. Iran's Central Bank, private Iranian banks, and branches, and subsidiaries of Iranian banks operating outside of Iran) as complicit in the state's support of terrorism, pursuit of weapons of mass destruction, attempt to facilitate WMD proliferation, and illicit and deceptive financial (U.S. Department of State, 2011). For a comprehensive list of the updates to American sanctions under the Obama Administration, see Appendix G.

5.6—Goals and Targets of Sanctions

The broad economic sanctions explained above are predicated on American interest to prevent the perpetuation of the policies presented in Part 1 of this paper. Limitations on financial dealings with Iran and its oil industry, for example, are aimed at decreasing state revenue, which can subsequently be used to finance any of the Islamic Republic's other inflammatory policies (e.g. its nuclear program or providing support to terrorist allies) (Clawson, 2011). The use of sanctions, therefore, specifically targets the Iranian government as well as those Iranian companies/individuals explicitly engaged in the provocative Iranian policies that have placed the two states on a crash course for conflict with one another.

5.7—Legality Assessment of Current Sanctions

Similar to the evaluation of the potential use of force by the United States in the previous section, current American sanctions levied against the Islamic Republic should also be considered in terms of how they align with American international legal obligations. In Appendix H, I identify each of the primary sources of international law relating to sanctions as a foreign policy tool and explore the most important provisions in some detail. In this section I identify “coercive action” and “starvation of civilians” as the two primary determinants of the legality of modern international sanctions, concepts laid out in a number of international and domestic agreements that I enumerate in detail. I subsequently make the argument that since American sanctions do not violate either of these two principles, they are legal under international law and the domestic legal code of the United States.

The first provision of international law important in identifying the legality of American sanctions levied against Iran is a ban on “coercive action” used against another state. This principle was originally articulated in the Charter of Economic Rights & Duties of States

(CERDS), a resolution adopted by the General Assembly of the United Nations in 1974. Article 32 of CERDS stipulates that “no state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind” (U.N. Doc. A/RES/29/3281, 1974). The principle of coercive action was expanded upon in United Nations General Assembly Resolution 44/215 of 1989, which called specifically upon developed countries to refrain from utilizing economic instruments (e.g. trade and financial restrictions, blockades, embargoes, and other economic sanctions) for the purpose of inducing changes in the domestic policies of developing states (U.N. Doc. A/RES/44/215, 1989). While current American sanctions may appear on face to violate one or both of these international agreements, it is important to consider key terminology as well as all aspects of these provisions in order to make a determination on the legality of sanctions as a whole. Most importantly, while sanctions do intend to change some of the current policies of the Islamic Republic, the sovereign rights of Iran do not include human rights violations and/or support of international terrorism—two of the primary reasons sanctions were levied in the first place. The same analysis applies to the goal of American sanctions to thwart Iran’s attempt to acquire a nuclear weapon. In this case it is Article 1 of the NPT that clearly articulates the principle that becoming a nuclear power is not a universal sovereign (NPT, 1970). Additionally, Article 5 of Resolution 44/215 stipulates that developed nations should refrain from sanctions that are “incompatible with the provisions of the charter of the United Nations,” but in this case it is actually the sanctions themselves that are encouraging compliance with the Charter’s provisions. Article 1(1), for example, expresses the primary purpose of the Charter as a whole; the maintenance of international peace and security (UN, 1945). Any number of the Iranian policies enumerated in Part 1 of this paper, which are the

target of American economic sanctions, are certainly contrary to this objective. For these reasons current American sanctions levied against Iran do not violate the international legal principle prohibiting coercive action against another state.

The final aspect of law that is important in determining coercive action is found in the same provision of the U.S. legal code used to define international terrorism in Part 3 of this paper. Just as U.S. action is held to the standards of international law that it has either signed on to or have become customary, the state is also perceived as responsible for its own domestic legal obligations. U.S. Legal Code Title 18–2331(b)(2) defines international terrorism as an act that “appears to be intended to influence the policy of a government by intimidation or coercion” (U.S. Legal Code Title 18-2331, 2011). Differing from the Charter of Economic Rights & Duties of States’ prohibition on sanctions as a form of coercive action (explained above), Title 18-2331 does not limit the prohibition against sanctions to attempts to secure advantages from another state, but includes acts of intimidation. In this regard, it is important to evaluate the provision separate from CERDS.

As explained above, it is certainly the case that the goal of current American sanctions is to influence policies of the Iranian government; sanctions are levied against Iran because of its violation of a number of other elements of the same legal code. For example, Title 18-2331(a) defines terrorism as “involving violent acts or acts dangerous to human life” (U.S. Legal Code Title 18-2331, 2011). As explained in Part 3 of this paper, Iran is clearly guilty of this type of violent action against its citizens and, since it is a stated goal of American sanctions policy that efforts are predicated on a concerted effort to end these human rights violations, an American violation of Title 18-2331 does not make sanctions illegal. In other words, sanctions against Iran are levied as a response to egregious violations of the same legal code (some of which have the

potential to directly harm the United States, e.g. the plot to kill the Saudi Ambassador), and it would, therefore, be difficult for Iran or any other nation to use the code as a basis for claiming American sanctions are illegal or illegitimate.

In addition to the established norm of a prohibition against coercive action, international law also stipulates that sanctions may not utilize food resources in an attempt to accomplish their objectives. Originally articulated Article 54 of 1977's Protocol 1 Additional to the Geneva Convention, all objects that are indispensable to the survival of civilian populations may not be used as a means of applying political pressure. Most notably these "objects" refer to food, as stipulated in Art. 54(1); "starvation of civilians as a method of warfare is prohibited" (Geneva Convention, 1977). Art. 54(2) expands on this regulation by making it illegal to attack or destroy objects "indispensable to the agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works" (Geneva Convention, 1977). This international norm was reaffirmed in the 1993 World Conference on Human Rights. Article 31 of the WCHR "affirms that food should not be used as a tool for political pressure" (U.N. Doc. A/CONF.157/23, 1993). Based on these two sources it is clear that regardless of their goals/purpose, legal sanctions may not target the sustenance of any civilian population. Once again, as explained above, while American sanctions certainly hope to put political stress to the current Iranian regime, they do not use food or water as the mechanism to apply that pressure. Sanctions against Iran are purely financial and diplomatic in nature and although they include substantial trade barriers, the United States has gone out of its way to ensure that sanctions do not restrict the flow of food to the Iranian people. In fact, the United States deliberately did not include restrictions on the trade of food in sanctions and today the U.S. still engages in agricultural trade with Iran (Clawson, 2011). According to Patrick Clawson, the Director of

Research at the Washington Center for Near East Policy, Iran is still a large food importer from the United States, in some years buying as much as \$200 million of U.S. wheat (Clawson, 2011). Ultimately, it is clear that American sanctions do not violate the international legal norm prohibiting the use of food as political pressure. This evaluation, in conjunction with the determination that sanctions do not represent coercive actions, makes current American sanctions legal under international law.

5.8—Concluding Remarks and the Future Applications of Sanctions

As in the previous section dealing with the use of force, this paper does not make an argument that sanctions have or have not been successful in achieving American foreign policy objectives with regard to Iran. It is still important, however, to explore the possible future application of the policy. Legally, as long as the United States continues to refrain from infringing on sovereign rights and using food as political pressure, sanctions will remain a permissible foreign policy tool under international law. Beyond the legality of the policy, however, the future of American sanctions against Iran is strong, especially when considered in light of growing international backing that provides an additional layer of legitimacy for the policy. “U.S. sanctions were widely criticized in the 1990s for being unilateral, yet U.S. action was eventually a spur to a broad international consensus, including a series of U.N. sanctions since 2007. By 2010, European governments that had long criticized U.S. sanctions policy had adopted much the same approach, imposing restrictions on wide swatches of the Iranian economy” (Clawson, 2011). Sanctions have also received support from multinational corporations who no longer see doing business in Iran as worth the trouble. American companies including Caterpillar and GE (which were not restricted under American sanctions) and foreign firms such as Siemens and Toyota, have pulled out of the Iranian market voluntarily. Today, the

American policy is no longer an international outlier, and there is broad agreement that sanctions are necessary in the attempt to pressure Iran to comply with its international obligations (Clawson, 2011). While the future for sanctions under international law seems bright, it is ultimately unclear how much change in provocative policies they will create. For this reason, the question of at what point the United States and other members of the international community should turn to more hostile foreign policy action remains central to political debate.

Conclusion

With over 50% of the world's remaining oil resources, many scholars consider the Persian Gulf to be the most geo-strategically important region in the modern world (Milani, 2009, p.349). Because of its resource endowment and identity cleavages, however, the Gulf has also been plagued by internal and external conflict as different actors attempt to exert influence in the region. The Persian Gulf has a long history of foreign intervention on the part of many imperial actors whose primary interest was promoting stability to ensure secure energy exports. In 2003, however, the United States departed from traditional goals and instead embarked on an ambitious effort to reshape the international and domestic politics of the region (Gause, 2010, p.14) By overthrowing Saddam Hussein and his Sunni government in Iraq, the United States both reentrenched its interests and drastically changed the geopolitical composition of the Persian Gulf. The implication of these political and security developments have been the creation of many new realities for the region, the most important of which is a leadership vacuum amongst regional powers.

Considered by the Western World to be an international pariah, Iran has emerged as the likely candidate to fill the regional leadership gap in the Persian Gulf, expanding its regional and international influence. In pursuit of becoming that regional hegemon, the leading power that dominates in a subordinate state system sets the rules and utilizes its influence and power projections to accomplish its foreign policy objectives, Iran has attempted to take advantage of the new opportunities it faces in the region (Mearsheimer, 2001, p.40, and Myers, 1991, p.5). Iran's hegemonic aspirations are based on three broad factors: threat perception, domestic politics, and foreign policy goals. In terms of threat perception, the pursuit of regional hegemony allows Iran to confront the United States on the ideological playing field (rather than through

military conflict) and attempt to unify the Gulf States against perceived American imperialism. The pursuit of regional hegemony also benefits Iran's domestic politics as increased regional influence allows the leadership of the Islamic Republic to increase its legitimacy by diverting attention away from internal problems. Finally, achieving regional hegemony would also help Iran accomplish its foreign policy goals that include the protection of Shi'i interests worldwide, exporting the Islamic revolution, and achieving recognition as a global power. In order to realize this regional goal, however, Iran has employed a number of actions that have created controversy throughout the international world.

Manifestations of the Iran's pursuit of regional hegemony include the state's attempt to build a security umbrella, treatment of civil/political society, and power politics. Policies in each of these areas enable the current Iranian regime to remain in power and project influence throughout the region. The actions also, however, threaten the geopolitical interests of the United States, and have placed the two states on a crash course for conflict with one another. Today, the "Iranian Question" rivals U.S. led wars in Iraq and Afghanistan as the dominant topic in American foreign policy debate. Although subtleties within this debate break down along party lines, there is broad agreement that the current trajectory of provocative Iranian policies, most notably the state's nuclear program, could dramatically harm American interests and are worthy of American foreign policy action. Taking a backseat in this political debate, however, is the question of how international law influences a potential justification for action. As the United States experienced in the aftermath of the Iraq War, this irresponsible omission in public discourse could lead to serious consequences for future American multilateral action. Additionally, if international law took a more prominent place in American foreign policy action, it would be easier for the United States to work towards global objectives, such as inspiring

freedom and justice for all people. For these reasons, international law is the perfect framework for painting a comprehensive picture of the “Iranian Question”.

In order to understand what potential American actions towards Iran are legal, it is necessary to begin with a discussion of how current Iranian policies align with international law. Today, elements of Iran’s nuclear program, human rights violations, and support of international terrorism constitute egregious violations of international law and legitimate grounds for anger on behalf on many other states. These policies do not necessarily, however, afford powerful actors a legal justification for any interventionist action in Iranian domestic and foreign politics. For this reason, it is important to turn back to international law and reexamine its applicability from the perspective of those states that are poised to take a pro-active approach to the hostile Iranian regime.

Potential American foreign policy responses to provocative Iranian actions could take the form of diplomatic, economic, and even military action as the U.S. attempts to pressure Iran to comply with its international obligations and decrease hostility. Currently, however, the U.S. is restricted to a very limited set of foreign policies that are legal under international law. In terms of the use of force, because the United States has not yet been impacted directly by Iranian hostility, only cyber-attacks that targeting Iranian nuclear infrastructure are legal under international law. Computer attacks, which have already been used against Iran in an American and/or Israeli action, represent a lawful countermeasure against Iranian breeches of the Nuclear Non-Proliferation Treaty and the state’s Safeguards Agreement. Additionally, American sanctions, which have been the primary foreign policy tool used against Iran since the Islamic Revolution, are not contrary to the international legal obligations of the United States. Originally deployed by Ronald Reagan and updated to more restrictive manifestations by each subsequent

presidential administration, sanctions derive their modern legality from two primary principles. First, they do not do not violate the international legal norm prohibiting the use of food as political pressure. Second, they are aimed at forcing Iranian compliance with international legal obligations to which the United States is also party and therefore do not represent unlawful coercive action.

With respect to future research, so long as Iran and the United States continue on their foreign policy trajectories, international law will continue to be an important lens through which potential American action must be evaluated. As geopolitical circumstances are always changing, legal analysis of U.S.—Iran relations will be in constant need of reevaluation. In this regard, while some American foreign policy responses are illegal under international law today, it is only through future analysis that potential justifications for those responses can be explored.

The dynamic relationship between the United States and the Islamic Republic of Iran today seems to place the policies of the two states on a crash course for one another. A careful consideration of how international law plays into this predicament has, however, been recklessly absent from public political discourse, often making it seem like American politicians are not adequately considering the international responsibilities of the U.S. In order to make informed foreign policy decisions moving forward, the United States must consider potential action in light of both current Iranian geopolitical aspirations and violations of its international obligations. Perhaps more importantly, however, American action must be considered in the context of the state's own international legal commitments. Although the ultimate foreign policy path of the United States may not totally conform to international law, any analysis that ignores this crucial piece of the puzzle is overwhelmingly and dangerously incomplete.

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Appendix

Key Terms

Acronyms:

EIF—Entry Into Force

NPT—Non-Proliferation Treaty of Nuclear Weapons

Safeguards—IAEA Safeguards Agreement

P&I—Agreement on the Privileges and Immunities of the IAEA

NOT—Convention on Early Notification of a Nuclear Accident

ASSIST—Convention on Assistance in the Case of a Nuclear Accident or Radiological
Emergency

RSA—Revised Supplemental Agreement Concerning Provisions of Technical Assistance by the
IAEA

ICCPR—International Covenant of Civil and Political Rights

ICESCR—International Covenant on Economic, Social and Cultural Rights

Rights of the Child—Convention on the Rights of the Child

CEAFRD—Convention on the Elimination of All Forms of Racial Discrimination

ICSFT—International Convention for the Suppression of the Financing of Terrorism

CCIT—Comprehensive Convention on International Terrorism

CERDS—Charter of Economic Rights and Duties of States

UNGA—United Nations General Assembly

UNSC—United Nations Security Council

ICJ—International Court of Justice (Case)

Terms:

Cross-Apply—Violations of the specific article are the same as those that violate the a different
article of another treaty referenced in the Appendix (cross-applications are followed by direction
to other(s) applicable sources)

Signature—Denotes Iranian signature to specific convention/treaty

Appendix A—Nuclear Program: Violations of Iran’s International Obligations

a. NPT: Treaty on the Non-Proliferation of Nuclear Weapons (Signature: 1968, EIF: 1970)

- 1) Uranium Imports—Art. 3(1-2)
 - Iran failed to report its purchase of uranium (1,000 kg of UF₆, 400 kg of UF₄, and 400 kg of UO₂) from China in 1991 (Shire & Albright, 2006, p.2)
- 2) Uranium Conversion—Art. 3(1)
 - Iran failed to report its use of imported uranium in uranium conversion processes to the IAEA (Shire & Albright, 2006, p.2)
 - Uranium uses included “uranium dissolution, purification using pulse columns, and the production of uranium metal, and the associated production and loss of nuclear material” (IAEA, 2003)
- 3) Uranium Enrichment—Art. 3(1)
 - Iran failed to report its use of 1.9 kg of imported UF₆ in testing of a centrifuge in 1999 and several centrifuges in 2002 (Shire & Albright, 2006, p.2)
 - Iran also failed to declare its production (and processing) of enriched and depleted uranium, in violation to its Safeguard Agreement of 1947 (Bruno, 2010 and IAEA, 2003 and Shire & Albright, 2006, p.2)
- 4) Hidden Sites—Art. 3(1)
 - Iran failed to report the existence of several nuclear sites to the IAEA (including an enrichment facility at the Kalaye Electric Company Workshop and laser enrichment plants at the Tehran Nuclear Research center and at Lashkar Ab’ad) (Shire & Albright, 2006, p.2)
 - Since these sites housed nuclear material and equipment used in experimentation, Iran was required to report them to the IAEA (Shire & Albright, 2006, p.3)
 - Iran also failed to report its construction and design details of new facilities in violation of its Safeguard Agreement of 1974 (e.g. the newly constructed facility at Qom) (Bruno, 2010 and IAEA, 2003)
- 5) Laser Isotope Enrichment Experiments—Art. 3(1)
 - Iran failed to report its importation of 50 kg of natural uranium metal in 1993 that it used for atomic vapor isotope separation and experimentation between 1999-2003 (Shire & Albright, 2006, p.3)
- 6) Plutonium Experiments—Art. 3(1)
 - Iran failed to report its production of uranium dioxide (UO₂) targets, and its subsequent plutonium separation from the irradiated targets between 1988-1993 (Shire & Albright, 2006, p.3)
 - Iran also failed to report the production and transfer of waste associated with these activities (Shire & Albright, 2006, p.3)
- 7) Potential Violation of Art. 2 and Art. 4
 - “The treaty articles in question are Article II, in which non-nuclear-weapon parties undertake ‘not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices,’ and Article IV, which provides that nothing in the Treaty is to be interpreted as affecting the right of all Parties to the Treaty ‘to

develop research, production and use of nuclear energy for peaceful purposes...in conformity with Articles I and II of this Treaty.” (Kerr, 2011, p.17)

b. IAEA Safeguards Agreement (Signature: 1968, EIF: 1970) and Application (Signature: 1973, EIF: 1974)

Note: The Safeguards Agreement comes in accordance with Art. 3(1) of the NPT

- 1) Failure to Declare Uranium Imports and Transfer to the IAEA
 - Iran failed to report its purchase of uranium (1,000 kg of UF₆, 400 kg of UF₄, and 400 kg of UO₂) from China in 1991 (Shire & Albright, 2006, p.2 and Kerr, 2011, p.12)
- 2) Failure to Declare Processing and Use of Uranium to the IAEA
 - Iran has failed to report the “processing and use of the imported natural uranium, including the production and loss of nuclear material, and the production and transfer of resulting waste” (Kerr, 2011, p.12)
- 3) Failure to Declare Nuclear Facilities to the IAEA
 - Nuclear facilities house and process nuclear material and waste (Kerr, 2011, p.12)
- 4) Failure to Provide Reactor Information to the IAEA
 - Iran failed to provide information regarding its research reactor in Tehran and on two waste storage sites in a timely manner (Kerr, 2011, p.12)
- 5) Failure to Report Uranium Conversion Experiments to the IAEA
- 6) Failure to Report Importation and Use of Other Nuclear Materials to the IAEA
 - Use of uranium hexafluoride for testing centrifuges, and the production of enriched and depleted uranium (Kerr, 2011, p.12)
 - Import of natural uranium metal, and transfer for use in laser enrichment experiments (Kerr, 2011, p.12)
 - Production of enriched uranium and resulting waste (Kerr, 2011, p.12)
 - Production of many nuclear compounds from imported materials and the production/transfer of resulting waste (Kerr, 2011, p.12)
 - Production, irradiation and processing of uranium targets in the Tehran Research Reactor (including separation of plutonium) (Kerr, 2011, p.12)
- 7) Failure to Provide Design Information of Nuclear-Related Facilities to the IAEA
 - A centrifuge testing facility (Kerr, 2011, p.12)
 - Two laser laboratories and locations where resulting wastes were processed (Kerr, 2011, p.12)
 - Facilities involved in the production of a variety of nuclear compounds (Kerr, 2011, p.12)
 - The Tehran Research Reactor, the hot cell facility where the plutonium separation took place, as well as the relevant waste handling facility (Kerr, 2011, p.12)
- 8) Failure to Cooperate with the IAEA
 - Iran’s “failure on many occasions to co-operate to facilitate the implementation of safeguards, through concealment” of its nuclear activities (Kerr, 2011, p.12)

c. IAEA Multilateral Agreements

- 1) P&I: Agreement on the Privileges and Immunities of the IAEA (Accepted: 1974, EIF: 1974)

–No current violations

2) NOT: Convention on Early Notification of a Nuclear Accident (Signature: 1986, Ratification: 2000, EIF: 2000)

–No current violations

3) ASSIST: Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Signature: 1986, Ratification 2000, EIF: 2000)

–No current violations

4) RSA: Revised Supplemental Agreement Concerning Provisions of Technical Assistance by the IAEA (Signature 1990, EIF: 1990)

–Peaceful Application of Atomic Energy (No Nuclear Weapons Production)—
Art. 3(1)

·The most recent IAEA report on Iran's nuclear activities indicates that Iran has carried out a number of activities specifically related to the development of a nuclear weapon and explosive devices (IAEA, 2011, p.8)

·Efforts, some successful, to procure nuclear related and dual use equipment and materials by military related individuals and entities (IAEA, 2011, p.8)

·Efforts to develop undeclared pathways for the production of nuclear material (IAEA, 2011, p.8)

·The acquisition of nuclear weapons development information and documentation from a clandestine nuclear supply network(IAEA, 2011, p.8)

·Work on the development of an indigenous design of a nuclear weapon including the testing of components (IAEA, 2011, p.8)

d. Convention on Nuclear Safety

Note: Iran is not a signatory to the Convention on Nuclear Safety and is the only nuclear power outside the CNS

Appendix B—Human Rights: Violations of Iran’s International Obligations

a. International Covenant of Civil and Political Rights (Signature: 1968, Ratification: 1975, EIF: 1976)

1) Discrimination Against Women—Art. 3

- Codification in law of women as the “inferior sex” (NEPR, 2011, p.5)
- Inequality of women in inheritance, marriage, divorce, and family life (NEPR, 2011, p. 5)
- Arrest, imprisonment, and execution (also violations of Art. 7)
 - Extremely harsh punishments for women (NEPR, 2011, p.6)
 - Systematic rape of female prisoners (NEPR, 2011, p.6)
- Social restrictions
 - E.g. forced veiling (NEPR, 2011, p.7)
- The unequal treatment of women in the political realm is codified in three different sources of Iranian law: the state’s Constitution, penal code, and civil code
 - Cross-apply list of violations against women in Appendix E

2) Right to Life—Art. 6(2)

- Death penalty
 - Cruel sentences (cross-apply Art.7) such as public hangings and the stoning of women (cross-apply Art. 3) (NEPR, 2011, p.7)
 - For petty crimes such as theft, drug trafficking, adultery, and expression of political or religious thought (NEPR, 2011, p.7)
 - Excessive use; between 66-83 people were executed in January 2011 alone (NEPR, 2011, p.7)
- Arbitrary killings
 - Most often carried out as sentences for political prisoners accused of Moharebeh (enmity against God, that has come to include any action that is anti-regime) (NEPR, 2011, p.9)
 - Often take place inside Iranian jails/prisons (NEPR, 2011, p.10)
- Excessive use of force by law enforcement and armed forces
 - Against unarmed and peaceful protestors (e.g. Summer 2009) (NEPR, 2011, p.11)

3) Death Penalty for Children Under the Age of Eighteen—Art. 6(5)

- According to Amnesty International, Iran is the only state that officially executes children under the age of eighteen who are accused of crimes (NEPR, 2011, p.11 and Amnesty International, 2007, p.2-4)
- Since 1990 Iran has executed 23 children for crimes committed before the age of eighteen (Amnesty International, 2007, p.31-32)
- There are currently 71 children on death row in Iran (Amnesty International, 2007, p.33-38)

4) Torture—Art. 7

- Against dissidents in prisons

- E.g. Prisoners kept in solitary confinement, breaking bones, beatings with electric batons, deliberate denial of medical treatment, rape, other violations of physical/mental dignity/integrity, etc. (NEPR, 2011, p.11-13)
- Forced confessions to political crimes against the regime (Glass, 2007)
- 5) Arbitrary Detention—Art. 9
 - According to Amnesty International flaws in the Penal Code and Code of Criminal Procedure allow for the practice of arbitrary arrest and detention (NEPR, 2011, p. 13)
- 6) Conditions of Detention—Art. 10
 - Inhumane conditions in prisons and detention centers throughout the country (NEPR, 2011, p. 14)
 - Cross-apply violations of Art. 7 for specific examples
 - Families and lawyers are routinely denied access to their relatives and clients being held in prisons (NEPR, 2011, p. 15)
- 7) Lack of Respect for Religious Faiths—Art. 18(4)
 - Religious worship locations of minority faiths are often ransacked or destroyed by regime forces
- 8) Freedom of Thought, Consciousness, and Religion—Art. 18(1)
 - According to Article 13 of the Iranian Constitution only members of three religious minorities are recognized under the law (Zoroastrians, Jews, and Christians) (CERD, 2003, p.11)
 - All other religions are not allowed to exercise their faith freely, or exist as organized religious communities (CERD, 2003, p.11)
- 8) Freedom of Association—Art. 22(1)
 - Prohibited certain organizations
 - Restrictions on opposition political parties, trade unions, etc. (NEPR, 2011, p.15)
- 9) Restrictions on Association—Art. 22(2-3)
 - Article 186 of the Islamic Punishment Act states that “All members or supporters of an organized group or association which has opposed the Islamic State with arms shall be regarded as enemies of God” (NEPR, 2011, p.15)
 - The regime considers the chanting of slogans and distribution of opposition information as capital offenses (NEPR, 2011, p.16)
 - Murder of opposition leadership
- 10) Religious Minorities—Art. 27
 - Arrest of those practicing minority faiths (NEPR, 2011, p.17)
 - Disruption of religious ceremonies, meetings, and events (NEPR, 2011, p.17-18)

b. International Covenant on Economic, Social and Cultural Rights (Signature: 1968, Ratification 1975, EIF: 1976)

- 1) Discrimination—Art. 2(2)
 - Discriminatory laws against women, religious minorities, and political opposition (cross-apply violations of the ICCPR Art. 3, Art. 18, and Art. 22), permeate many other aspects of Iranian society protected under the ICESCR
 - Many companies recruit and employ Muslims only (Omidvar & Ebrahim, 2006, p.2)

- Many companies consider creed and/or origin of the applicant in their selection criteria (Omidvar & Ebrahim, 2006, p.2)
- A total of only 3.5 million women in Iran are salaried employees, compared to 23.5 million men (Omidvar & Ebrahim, 2006, p.2)
- For a comprehensive list of official state laws against women see Appendix E

2) Equal Rights of Men and Women—Art. 3

- The unequal treatment of women in the economic/social/cultural realm is codified in three different sources of Iranian law: the state’s Constitution, penal code, and civil code

- For a comprehensive list of official state laws against women see Appendix E

3) Right to Work—Art. 6

- Women's rights activists repeatedly complain that the Iranian authorities target their employment and right to work because of their activities (IHRDC, 2011)
- Authorities strip benefits and pressured employers to fire their employees (IHRDC, 2011)
- Female professors have been stripped of their teaching posts at universities for advocating women and children’s rights (IHRDC, 2011)

4) Labor Associations—Art. 8(2)

- Many large companies have banned the formation of labor unions (Omidvar & Ebrahim, 2006, p.2)
- Associations are subject to disbandment by the government, and leaders are often subject to arrest (Omidvar & Ebrahim, 2006, p.3)

5) Child Labor—Art. 10(3)

- Many small Iranian business (mostly those operating in rural areas) utilize children to reduce their human resource cost (Omidvar & Ebrahim, 2006, p.2)
- Estimates suggest that between three million and five million Iranian children currently live under the poverty line and between 750,000 and 1,250,000 children are working (Omidvar & Ebrahim, 2006, p.2)
- Although Iran has not ratified any international convention defining a minimum age for work, domestic law stipulates that children must be over the age of fifteen to be employed (Omidvar & Ebrahim, 2006, p.2)
- Numerous loopholes in law, however, allow for children younger than fifteen to work in domestic workshops and homes without legal protection (Omidvar & Ebrahim, 2006, p.2)

7) Cultural Persecution—Art. 15(1)(a)

- Restrictions of freedom of religion
- Poor treatment of religious minorities, most notably Baha’is and Sunni Muslims, who are not recognized by the Iranian Constitution (Hassan, 2008, p.7-8)
- Sunni Muslims complain that there is not one Sunni mosque in the country and that the government has banned public displays of Sunni religion and culture

- Baha'is are barred from teaching and/or practicing their faith within Iran and are not allowed to maintain relationships with co-religionists abroad (Hassan, 2008, p.7-8)
- Christians and Jews also receive sub-equal treatment (Hassan, 2008, p.7-8)
- Poor treatment of major ethnic minority groups (Hassan, 2008, p.7-8)
 - Azeris, Kurds, Arabs, and Baluchis (the four major ethnic minority groups in Iran) do not receive equal treatment by the Iranian government and all have been involved with violent clashes with Iran's revolutionary guards (Hassan, 2008, p. 5-6)

c. Universal Declaration of Human Rights

Note (1): Although the UDHR is not a treaty in and of itself, its purpose was to define the terms “fundamental freedoms” and “human rights” appearing in the United Nations Charter and is therefore binding on all states

Note (2): The Empire of Iran (i.e. Iran under the reign of the Shah) voted for the declaration when it was initially adopted

- 1) Rights Endowed Without Distinction—Art. 2
 - Race/Color/Religion/National Origin
 - Cross-apply violations of Art. 15(1)(a) ICESCR
 - Sex
 - Cross-apply violations of Art. 3 ICCPR and Art. 3 ICESCR
 - Political or Other Opinion
 - Cross-apply violations of Art. 5(d)(vii) CEAFRD
- 2) Life, Liberty, Security of Person—Art. 3
 - Cross apply all violations ICCPR and ICESCR
- 3) Cruel, Inhumane, or Degrading Punishment—Art. 5
 - Cross-apply violations Art. 7 ICCPR
- 4) Equality Before the Law—Art. 7
 - Cross-apply violations Art. 15(1)(a) ICESCR and Appendix E
- 5) Arbitrary Arrest/Detention—Art. 9
 - Cross-apply violations of Art. 9 ICCPR
- 6) Privacy—Art. 12
 - Cross-apply violations Art. 17 Rights of the Child
- 7) Thought/Consciousness/Religion—Art. 18
 - Cross-apply violations Art. 18(1), Art. 18(4), and Art. 27 ICCPR
- 8) Opinion and Expression—Art. 19
 - Cross-apply violations Art. 5(d)(vii) CEAFRD
- 9) Peaceful Assembly/Association—Art. 20
 - Cross-apply violations of Art. 22(1) and Art. 2-3 ICCPR and Art. 15 Rights of the Child
- 10) Equal Access to Public Service—Art. 21(2)
 - Cross-apply Art. 115 and Art. 162 of the Iranian Constitution
 - Women may not hold the office of Iranian President nor the office of Attorney General respectively
- 11) Will of the People Shall Be the Basis of the Authority of Government—Art. 21(3)

–The 2009 reelection of President Mahmoud Ahmadinejad was affected by significant fraud showing that supreme authority in the state is well outside of the people’s control (Mebane, 2009, p.21).

12) Employment without Discrimination—Art. 23(2)

–Cross-apply violations Art. 6 ICESCR

13) Right to Join trade Unions—Art. 23(4)

–Cross-apply violations Art. 22(1) ICCPR

15) Cultural Life

–Cross-apply violations of Art. 15(1)(a) ICESCR

d. Convention on the Rights of the Child (Signature: 1991, Ratification: 1994, EIF: 1990)

Note: In its ratification of the convention on July 13, 1994 the Iran made the following reservation; “If the text of the Convention is or becomes incompatible with the domestic laws and Islamic standards at any time or in any case, the Government of the Islamic Republic shall not abide by it” (LLC, 2011).

1) Discrimination—Art. 2(1–2)

–Children in Iran are persecuted on the same cultural, ethnic, religious, and sexual basis as their parents

–For violating examples of discrimination see Art.3 ICCPR, Art. 2(2) ICESCR, and Art. 15(1)(a) ICESCR

2) Preservation of Identity—Art.8(1)

–Because of the institutionalized discrimination of women and minorities in Iran it is impossible for children to preserve their identity free from persecution

3) Freedom of Expression—Art. 13

–Cross-apply violations of Art. 5(d)(vii) CEAFRD

4) Freedom of Thought/Conscious/Religion—Art. 14

–For violating examples of freedom of thought/conscious/expression see Art. 15(1)(a) ICESCR

5) Freedom of Association—Art. 15

–Government restrictions placed on the freedom of peaceful association (e.g. political demonstrations, rallies for the rights of women/minorities, etc.) (UNGA, 2009, p.14)

6) Privacy—Art. 16

–Many Iranian families (particularly those who engage in activism) are subject to unlawful surveillance and communication harassment (IHRDC, 2011)

7) Freedom of Information—Art. 17

–Since the protests following the Presidential election of 2009, Iranian authorities have waged an active campaign against freedom of information, specifically on the internet (RDC, 2011)

·“As of December 2010, all the major international social–networking and media sharing websites like Facebook, YouTube, and Flickr were blocked” (RDC, 2011)

8) Freedom of Religious Practice—Art. 30

–Cross-apply violations of Art. 15(1)(a) ICESCR

9) Child Labor—Art. 32

–Cross-apply violations of Art. 10(3) ICESCR

10) Death Penalty for Children Under the Age of Eighteen—Art. 37(a)

–Cross–apply violations of Art. 6(5) ICCPR

e. Convention on the Elimination of All Forms of Racial Discrimination (Signature: 1967, Ratification: 1968, EIF: 1969)

Note: Art. 1(1) of the convention states that the term “racial discrimination” shall mean any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and freedoms in the political, economic, cultural, or any other field of life.

1) State Practice, Promotion, and Support of Racial Discrimination—Art. 2(1)(a) and Art. 2(1)(b)

–Cross–apply Art. 3 ICCPR,

2) Political Rights—Art. 5(c)

–Cross–apply all violations ICCPR

3) Right to Nationality—Art 5(d)(iii)

–Cross–apply violations of Art. 15(1)(a) ICESCR

4) Right to Freedom of Thought/Conscious/Religion—Art. 5(d)(vii)

–Cross–apply violations of Art. 18(1), Art. 18(4), and Art. 27 ICCPR, 2(2) and Art. 15(1)(a) ICESCR, and rights against women in Appendix E

5) Right to Freedom of Opinion and Expression—Art. 5(d)(vii)

–By violently putting down demonstrations against the current regime and jailing those who speak out against its policies, Iran has effectively criminalized legitimate peaceful expression for all Amnesty International, 2009 and UNGA, 2009, p.13–14)

6) Right of Freedom of Peaceful Assembly and Association

–Cross–apply violations of Art. 22(1) and Art. 2–3 ICCPR and Art. 15 Rights of the Child

7) Right to Work—Art. 5(e)(i)

–Cross–apply violations of Art.5 ICCSCR

8) Participation in Cultural Activities Art. 5(e)(iv)

–Cross–apply violations of Art. 15(1)(a) ICESCR

9) Adoption of Measures—Art. 7

–The UN condemned the failure of the Iranian government to implement the principles of the CEAFRD in Resolution A/RES/62/168

·The General Assembly expressed “*its deep concern* at the ongoing systematic violations of human rights and fundamental freedoms of the people of the Islamic Republic of Iran, as described in the above–referenced resolutions (ICCPR, ICESCR, and CEAFRD), and at the failure of the Islamic Republic of Iran to implement the steps called for in these resolutions

Appendix C—Support of International Terrorism: Violations of Iran’s International Obligations

a. Defining Terrorism

Note: There is no agreed upon/codified international definition of terrorism (a proposed definition from the Comprehensive Convention on International Terrorism that holds broad international agreement can be viewed below)

1) Comprehensive Convention on International Terrorism—Proposed Treaty

—Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

- (a) Death or serious bodily injury to any person; or
- (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or
- (c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act

2) International Convention for the Suppression of the Financing of Terrorism

Note: Although the convention does not define “terrorism” explicitly, Art.

2(1)(a–b) outlaws specific offences, providing a de facto definition for terrorism (see below)

—Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
- (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act

Note: For a comprehensive list of Iran’s violations of the ICSFT

3) U.S. Legal Code Title 18–2331—(1) “International Terrorism”

—(a) involve violent acts or acts dangerous to human life that are 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 of any State;

—(b) appear to be intended—

- (i) to intimidate or coerce a civilian population;
- (ii) to influence the policy of a government by intimidation or coercion;
- or
- (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

—(c) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are

accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum

b. UN Security Council Resolution 1373 (EIF: 2001)

- 1) Prevent and Suppress the Financing of Terrorism—Art. 1(a)
 - Iran provides Hizballah with \$25–50 million dollars worth of assistance annually
 - Iran provides Hamas with \$20–\$30 million dollars worth of assistance annually
- 2) Support of Terrorist Acts—Art. 2(a)
 - Cross-apply violations Res. 1373 Art. 1(a)
 - Support to Hizballah and Hamas takes the form of direct financial transfers, military hardware, safe haven for leadership, and training of fighters (Cordesman, 2006, p.3 and Byman, 2008, 172)
 - October 2011 commissioned plot to kill the Saudi Arabian ambassador to the United States by conspiring with a Mexican Drug cartel (Cooper, 2011, p.1)
- 3) Necessary Steps to Thwart Terrorist Activity—Art 2(b–g)
 - Iran has not taken steps to deny safe haven, prevent from operating within national borders, bring to justice, assist other nations in investigations/criminal proceedings, or prevent the movement of the terrorist groups it supports
- 4) Cooperation with Other Nations Art. 3(a–g)
 - Iran has not cooperated with any other nations in order to prevent terrorist activities

c. UN Security Council Resolution 1377 (EIF: 2001)

- 1) Call Upon All States to Intensify Efforts to Eliminate International Terrorism
 - Cross-apply violations of Res. 1373

Appendix D—Trade Policy: Violations of Iran’s International Obligations

a. UN Law of the Seas (Signature: 1982, Ratification: Pending EIF: 1994)

Note (1): The United States has signed but not ratified the UN Law of the Seas

Note (2): Iran has signed but not ratified the UN Law of the Seas

—No current violations

b. World Trade Organization Status

Note: Iran is not a member, but currently holds observer status at the World Trade Organization (its application for official membership is pending) (WTO, 2011)

·Application submitted July 19, 1996 (WTO, 2011)

·The General Council established a Working Party to examine the application of the Islamic Republic of Iran on May 26, 2005 (WTO, 2011)

·The Islamic Republic of Iran submitted its Memorandum on the Foreign Trade Regime November 24, 2009 (WTO, 2011)

·The Working Party has not yet met (WTO, 2011)

Appendix E—Women’s Rights: Violations of Iran’s International Obligations

Violations of ICCPR Art. 3 and the ICESCR Art. 2(2) and Art. 3

1) Iranian Passport Law (WFAFI, 2008, p.1–2)

–Art. 18

- Married women are required to have their husband’s permission to apply for a passport

2) Iranian Constitution (WFAFI, 2008, p.1–2)

–Art. 21

- The government must ensure that the rights of women conform to Islamic criteria (clergy are the final arbiters to interpret laws pertaining to women)

–Art. 102

- By penalty of flogging, women must appear in public (i.e. on the streets) with the prescribed Islamic hejab

–Art. 115

- Women may not hold the office of Iranian President

–Art. 162

- Women may not hold the office of Attorney General

–Art. 167

- In the absence of codified law, judges are required to defer to traditional Islamic sources (i.e. authentic fatwa) when making legal rulings/judgments

–Art. 209

- A women’s life is valued as only half as much as a man’s (if a man is convicted of murdering a women his only punishment is to pay the women’s family a ‘dayeh’ or stipulated sum of money)

3) Iranian Penal Code (WFAFI, 2008, p.1–2)

–Art. 83

- The penalty for fornication is flogging for unmarried female offenders

–Art. 102

- There are different (more harmful) methods of stoning for female offenders

–Art. 300

- The ‘dayeh’ of a women is half that of a man
- A women’s share of an inheritance is half that of a man’s
- Health care is entirely segregated on the basis of gender (seriously compromising the health of women and girls since there are not enough health professionals trained in female issues)

4) Iranian Civil Code (WFAFI, 2008, p.1–2)

–Art. 105

- Men are designated as “the head of the family” in all relationships
- Women may not leave their home under any circumstances without their husband’s permission

–Art. 114

- Stipulates that men sentenced to stoning will be buried in a pit up to his waist, while female offenders will be buried up to their neck to avoid escape

–Art. 1117

- A husband may disallow his wife from pursuing any profession he deems in conflict with her character

–Art. 1133

- A man can divorce his wife whenever he chooses (he does not need to give her any advanced notice)

Appendix F—Use of Force: Applicable International Law

a. **Nicaragua v. United States (ICJ: 1984)**

- 1) Defining the Use of Force (O’Connell, 2009, p.14)
 - The use of force encompasses more than armed attacks and includes:
 - Economic Coercion
 - Political Coercion
 - Physical Force Not Involving Arms
 - Computer Attacks

Applicable International Law—Subsection I: Self Defense

b. **United Nations Charter (EIF: 1945)**

- 1) Prohibition of the Use of Force—Article 2(4) (UN, 1945)
 - Article 2—The Organization and its Member, in the pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:
 - (4) All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations
- 2) Exception: Individual and Collective Self-Defense—Article 51 (UN, 1945)
 - Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security

c. **The Caroline Doctrine (The Caroline Affair/Case: 1837)**

- 1) Defining Self-Defense (Letter to Henry Fox, British minister in Washington D.C. from Daniel Webster, United States Secretary of State)
 - “The use of self-defense should be confined to situations in which a government can show the ‘necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation.’” (Kearley, 1999, p.325)
- 2) Preemptive/Anticipatory Self-Defense (Customary International Law, affirmation Nuremberg Trials)
 - The Caroline Test (Kearley, 1999, p.325)
 - Necessary: The use of force must be necessary because the threat is imminent and thus pursuing peaceful alternatives is not an option
 - Proportionality: The response must be proportionate to the threat (Tait, 2005, p.111)

d. **UN Security Council Resolution 1368 (EIF: 2001)***

- 1) Condemnation for 9/11 Attacks
 - In condemnation for the terrorist attacks of September 11th, 2001 the Security Council unanimously adopted this resolution (UNSC, 2001)
- 2) Call for Terrorists to Be “Brought to Justice”

–“Called on all States to work together urgently to *bring to justice* the perpetrators, organizers and sponsors of those terrorist attacks and stressed that those responsible for aiding, supporting or harboring them would be held accountable” (UNSC, 2001)

·Does not specify scope of legal retributive actions

3) Terrorism as a Human Rights Violation

–Tied acts of terrorism to Human Rights Violations

·The UN High Commissioner for Human Rights, Mary Robinson said the actions "strike at the fundamental human rights of every person and are totally unacceptable" (UN News Centre, 2001)

e. UN Security Council Resolution 1373 (EIF: 2001)*

1) Reaffirmation of Condemnation for 9/11 Attacks

–Reaffirmed condemnation for the terrorist attacks of September 11th, 2001 expressed in UNSC Res. 1368 and unanimously adopted this resolution (UNSC, 2001)

2) Calls Upon Member States to Prevent/Suppress Terrorist Attacks

–Called on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism (UNSC, 2001)

·Does not specify what retributive actions become legal in the wake of terrorist attacks on member states (UNSC, 2001)

*—Denotes International Law is Specific to Responses to Terrorism

Applicable International Law—Subsection 2: Countermeasures

f. International Law Commission (ILC) Draft Articles on the Responsibility of States for Internationally Wrongful Act

1) Defining Wrongful Acts—Article 3 (ILC, 2001, p.36)

–Elements of an internationally wrongful act of a State

·There is an internationally wrongful act of a State when:

→(a) conduct consisting of an action or omission is attributable to the State under international law; and

→(b) that conduct constitutes a breach of an international obligation of the State.

2) Defining Countermeasures

–Non-violent retaliatory acts traditionally known as reprisals

·Non-violent acts which are illegal in themselves, but become legal when executed by one state in response to an earlier illegal act by another state towards the former (Schachter, 1994, p.471)

→“Measures that would otherwise be contrary to the international obligations of an injured State vis-à-vis the responsible State, if they were not taken by the former in response to an internationally wrongful act by the latter in order to procure cessation and reparation” (ILC, 2001, p.128)

–Legality of Countermeasures—Article 22 (ILC, 2001, p.75)

·Countermeasures in respect of an internationally wrongful act

→“The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of Part Three”

·Reiteration by the ICJ—Gabčíkovo-Nagymaros Project Case (Janis & Noyes, 2011, p.80)

→“In order to be justifiable, a countermeasure must meet certain conditions ...In the first place it must be taken in response to a previous international wrongful act of another State and must be directed against that State”

–Legal Criterion for Countermeasures

·The act constituting countermeasure must be taken in response to a previous intentional wrongful act of another state and must be directed against that state (see Art. 49)

·The injured state must have already called upon the state committing the wrongful act to discontinue its wrongful conduct or to make reparation, but the request was refused (see Art. 52(1)(a))

·The countermeasure must be commensurate with the injury suffered, taking into account the rights in question (see Art. 51)

·The purpose behind evoking the countermeasure is to induce the wrongdoing state to comply with its obligations under international law (see Art. 49(2))

→Therefore, the measure must be reversible

2) Scope of International Obligations—Article 33 (ILC, 2001, p. 94)

–(1) The obligations of the responsible State set out in this Part may be owed to another State, to several States, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.

–(2) This Part is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State

3) Object and Limits of Countermeasures—Article 49 (ILC, 2001, p.129)

–(1) An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations under Part Two

–(2) Countermeasures are limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State

–(3) Countermeasures shall, as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question

4) Obligations Not Affected by Countermeasures—Article 50 (ILC, 2001, p. 131)

–(1) Countermeasures shall not affect:

·(a) The obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations

·(b) Obligations for the protection of fundamental human rights

·(c) Obligations of a humanitarian character prohibiting reprisals

- (d) Other obligations under peremptory norms of general international law
- (2) A State taking countermeasures is not relieved from fulfilling its obligations
 - (a) Under any dispute settlement procedure applicable between it and the responsible State
 - (b) To respect the inviolability of diplomatic or consular agents, premises, archives and document
- 5) Proportionality—Article 51 (ILC, 2001, p. 134)
 - Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question
- 6) Conditions Relating to Resort to Countermeasures—Article 52
 - (1) Before taking countermeasures, an injured State shall:
 - (a) Call upon the responsible State, in accordance with article 3, to fulfill its obligations under Part Two
 - (b) Notify the responsible State of any decision to take countermeasures and offer to negotiate with that State
 - (2) Notwithstanding paragraph 1 (b), the injured State may take such urgent countermeasures as are necessary to preserve its rights
 - (3) Countermeasures may not be taken, and if already taken must be suspended without undue delay if:
 - (a) The internationally wrongful act has ceased; and
 - (b) The dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties
 - (4) Paragraph 3 does not apply if the responsible State fails to implement the dispute settlement procedures in good faith
- 7) Termination of Countermeasures—Article 53 (ILC, 2001, p. 137)
 - Countermeasures shall be terminated as soon as the responsible State has complied with its obligations under Part Two in relation to the internationally wrongful act
- 8) Measures Taken by States Other than an Injured State—Article 54 (ILC, 2001, p. 138)
 - This chapter does not prejudice the right of any State, entitled under article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached
 - Commentary: “injured” States, as defined in article 42, are not the only States entitled to invoke the responsibility of a State for an internationally wrongful act under chapter I of this Part. Article 48 allows such invocation by any State, in the case of the breach of an obligation to the international community as a whole, or by any member of a group of States, in the case of other obligations established for the protection of the collective interest of the group

Applicable International Law—Subsection 3: Authorization of Force

g. United Nations Charter (EIF: 1945)

- 1) Determination—Article 39 (UN, 1945)

–The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security

2) Call for Compliance—Article 40 (UN, 1945)

–In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures, as it deems necessary or desirable

–Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures

3) Non-Force Measures—Article 41 (UN, 1945)

–The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures

–These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations

4) Authorization of Force—Article 42

–Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security

–Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations

h. Report of the High-Level Panel on Threats Challenges and Change (U.N. Doc. A/59/565: 2004)

1) UNSC Criteria for Force Authorization (Janis & Noyes, 2011, p. 684)

–Article 207

·(a) Seriousness of Threat: Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force?

·(b) Proper Purpose: Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?

·(c) Last Resort: Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed

·(d) Proportional Means: Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question? (cross-apply Caroline Test principle of “proportionality”)

·(e) Balance of Consequences: Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of the action not likely to be worse than the consequences of inaction? (cross-apply Caroline Test principle of “proportionality”)

Appendix G—Sanctions: Applicable International Law

a. United Nations Charter (EIF: 1945)

1) Defining Sanctions

–The UN Charter does not explicitly define sanctions, but “‘sanctions’ are cited in it as measures that the Security Council may take under Chapter VII against a state in order to restore or maintain international peace and security” (Kondoch, 2001, p.269)

–“Sanctions may not include the use of armed force but may include the interruption of economic relations and communications as well as the severance of diplomatic relations” (Kondoch, 2001, p.269)

2) Types of Sanctions (Janis & Noyes, 2011, p. 970):

–Diplomatic Sanctions

·Complete or partial interruption or severance of diplomatic relations between states

–Economic Sanctions

·Complete or partial interruption of economic relations between states (e.g. import/export duties/bans,

–Transportation/Telecommunication Sanctions

·Complete or partial interruption of transportation and/or telecommunication connection between states

–Other Types of Sanctions

·Military sanctions (e.g. arms embargos)

·Sport sanctions (i.e. boycott of sporting events)

3) United Nations Sanctions—Article 41 (Janis & Noyes, 2011, p. 970)

–“The Security Council may decide what measures not involving the use of armed forces are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and rail, sea, air, postal, telegraphic, and other means of communication, and the severance of diplomatic relations.”

·UNSC sanctions are multilateral and are binding on UN members states

b. Charter of Economic Rights & Duties of States (U.N. Doc. A/RES/29/3281, 1974)

1) Coercive Action—Article 32

–“No state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind.”

(U.N. Doc. A/RES/29/3281, 1974)

c. Protocol 1 Additional to the Geneva Convention (EIF: 1977)

1) Protection of Objects Indispensable to the Survival of the Civilian Population—Article 54

–(1) “Starvation of civilians as a method of warfare is prohibited.” (Geneva Convention, 1977)

–(2) “It is prohibited to attack, destroy, remove or render useless objects indispensable to the agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works, for the

specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for an other motive.” (Geneva Convention, 1977)

d. UN General Assembly Resolution 44/215 (U.N. Doc. A/RES/44/215, 1989)

1) Coercive Action

–(4) “Calls upon the developed countries to refrain from exercising political coercion through the application of economic instruments with the purpose of inducing changes in the economic or social systems, as well as in the domestic or foreign policies of other countries” (U.N. Doc. A/RES/44/215, 1989)

·Cross-apply Art. 32 CERDS

–(5) “Reaffirms that developed countries should refrain from threatening or applying trade and financial restrictions, blockades, embargoes, and other economic sanctions, incompatible with the provisions of the charter of the United Nations and in violation of the undertakings contracted multilaterally and bilaterally against developing countries as a form of political and economic coercion that affects their political, economic and social development.” (U.N. Doc. A/RES/44/215, 1989)

·Cross-apply Art. 32 CERDS

e. World Conference on Human Rights (U.N. Doc. A/CONF.157/23, 1993)

1) Prohibition on Food as Political Pressure—Article 31

–“The World Conference on Human Rights affirms that food should not be used as a tool for political pressure.” (U.N. Doc. A/CONF.157/23, 1993)

·Cross-apply Geneva Convention Art. 54

f. U.S. Legal Code Title 18–2331

1) “International Terrorism” (U.S. Legal Code Title 18-2331, 2011)

–(a) involve violent acts or acts dangerous to human life that are 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 of any State;

–(b) appear to be intended—

·(i) to intimidate or coerce a civilian population;

·(ii) to influence the policy of a government by intimidation or coercion;

or

·(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

–(c) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum

Appendix H—American Sanctions Against Iran: Obama Administration Updates

a. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010

- 1) Sec. 102—Expansion of sanctions under the Iran Sanctions Act of 1996 (CISADA, 2010, p.15)
 - See principle categories of sanctions against Iran imposed by the Clinton administration above)
- 2) Sec. 103—Economic sanctions relating to Iran (CISADA, 2010, p.53)
 - See principle categories 1-5 (in text)
- 3) Sec. 104—Mandatory sanctions with respect to financial institutions that engage in certain transactions (CISADA, 2010, p.63)
 - Of or relating to the financing of international terrorism and/or money laundering (see 2011 update to Sec. 311 of the PATRIOT Act below)
- 4) Sec. 105—Imposition of sanctions on certain persons who are responsible for or complicit in human rights abuses committed against citizens of Iran or their family members after the June 12, 2009, elections in Iran (CISADA, 2010, p.76)
 - Note: Difference to individual/corporation specific sanctions imposed by E.O. 13382 (see below)
- 6) Sec. 106—Prohibition on procurement contracts with persons that export sensitive technology to Iran (CISADA, 2010, p.80)
- 7) Sec. 107—Harmonization of criminal penalties for violations of sanctions
 - Violations occurring within the United States (CISADA, 2010, p.81)
- 8)Sec. 108—Authority to implement United Nations Security Council resolutions imposing sanctions with respect to Iran (CISADA, 2010, p.84)
- 9) Sec. 109—Increased capacity for efforts to combat unlawful or terrorist financing (CISADA, 2010, p.84)
 - Sec. 113 details the sense of Congress regarding Iran and Hezbollah (CISADA, 2010, p.90)
- 10) Sec. 114—Sense of Congress regarding the imposition of multilateral sanctions with respect to Iran (CISADA, 2010, p.91)
 - Sec. 114(1): in general, effective multilateral sanctions are preferable to unilateral sanctions in order to achieve desired results from countries such as Iran

b. Executive Order 13590: Dealings with Iranian Petroleum Industry Updates (U.S. Department of State, 2011)

- 1) Update Provision
 - The sale, lease, or provision of goods, services, technology, or support to Iran that could directly and significantly contribute to the enhancement of Iran’s ability to develop petroleum resources located in Iran could trigger sanctions if a single transaction has a fair market value of \$1 million or more, or if a series of transactions from the same entity have a fair market value of \$5 million or more in a 12-month period

c. Executive Order 13382: Company/Individual Specific Sanctions (U.S. Department of State, 2011)

- 1) Nuclear Procurement Sanctions

- Companies specifically targeted by sanctions because of their role in Iran’s nuclear procurement networks)
 - Nuclear Reactors Fuel Company
 - Noor Afzar Gostar Company
 - Fulmen Group
 - Yasa Part
- Atomic Energy Organization of Iran (AEOI) Sanctions
 - Javad Rahiqi
 - Modern Industries Technique Company (MITEC)
 - Neka Novin
 - Parto Sanat
 - Paya Partov
 - Simatic
 - Iran Centrifuge Technology Company (TESA)
- E.O. 13382 blocks the assets under U.S. jurisdiction of the designated persons and prohibits U.S. persons from engaging in transactions involving the above companies

d. Section 311 of the USA PATRIOT Act

1) Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concern (FinCEN, 2001)

–This Section allows for identifying customers using correspondent accounts, including obtaining information comparable to information obtained on domestic customers and prohibiting or imposing conditions on the opening or maintaining in the U.S. of correspondent or payable-through accounts for a foreign banking institution

2) Identification of the Entire Iranian Financial Sector

–Including Iran’s Central Bank, private Iranian banks, and branches, and subsidiaries of Iranian banks operating outside of Iran as posing illicit finance risks for the global financial system (U.S. Department of State, 2011)

3) Parallel to International Action

–Action reinforces U.S. and international sanctions already in place against Iran and provides greater certainty that the U.S. financial system is protected from Iranian illicit activity (U.S. Department of State, 2011)