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## **For Now, President Obama Can Continue to Negotiate with Iran**

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The Corker-Cardin bill approved unanimously by the Senate Foreign Relations Committee on April 14, 2015 is a compromise that will allow President Barack Obama to continue negotiating with Iran and even conclude an agreement on the Iranian nuclear program. The bill also postpones the confrontation between the President and Congress – where both houses are currently controlled by the Republicans – to the day after an agreement. The compromise reflects both the Republican willingness to allow the executive branch to engage in diplomacy vis-à-vis Iran, and the President's willingness to recognize the role of the legislative branch, as defined by the "Advice and Consent" clause in Article II, Section 2 (Clause 2) of the Constitution concerning treaties between foreign nations and the United States. President Obama had claimed that an agreement with Iran is not a treaty, but changed his mind, primarily as a result of pressure by Democratic senators, who realized that in so charged a public debate it is unreasonable that the US Congress would have no say whatsoever.

Against this background, the President is free to conduct negotiations with Iran for the duration of the talks; the problems he could face would emerge only once the final agreement is in place. The proposal formulated to date (S.615) sets a precise schedule for the process of ratifying the agreement: the President has five days to present the agreement to Congress; Congress can debate the agreement for 30 days (unless it is brought to Congress during recess, whereupon this period will be extended to 60 days); if within 12 days Congress decides not to approve the agreement, the President may cast his veto; Congress has 10 days to decide whether or not to override the veto.

The presidential veto is the key to understanding the change in the president's posture. For the agreement to be approved by both the legislative and executive branches of government, both houses of Congress must endorse it. If Congress decides to reject the agreement, the Constitution lets the President ignore Congress but reserves the Senate the right to override the veto if done a two-thirds majority vote of voting senators. Assuming that all one hundred of the senators would rally for so important a vote, the President would need thirty-four of the forty-six Democratic senators to block an override of his veto. In other words, should the Republican majority decide unanimously to reject the

agreement with Iran, all the President needs is the loyalty of thirty-four members of his own party. President Obama is convinced that if he cannot rely on his own political colleagues in the Senate, his condition would be so precarious that the United States would not be able to fulfill its part of any agreement.

In exchange for the concession by the Republicans in the Senate Foreign Relations Committee, the administration is obligated on two levels. At the ratification stage – a period lasting, as noted, up to 52 days – the administration will not lift any statutory sanctions, i.e., sanctions imposed on Iran by Congress. The second concession by the administration concerns notification and reporting. From its initial submission of the agreement to Congress and throughout the timetable stipulated, the administration agrees to report to Congress on all items related to verification and implementation, including any Iranian violations of the agreement and nuclear advances by Iran in light of the violations.

Already in the first report on the agreement the Secretary of State will be asked to include a verification assessment report on Iran's obligation and what sanctions should be lifted, whether by the United States or other nations and the UN. The assessment is also to include a presidential statement that the agreement is in keeping with the national objectives of the United States when it comes to nonproliferation of nuclear arms, and that whatever Iran is allowed to do in its nuclear program will not be exploited by Iran to military nuclear ends. The Secretary of State's report will also relate to the capabilities of the International Atomic Energy Agency to implement the required verification and ensure access to all suspect nuclear development sites in Iran. The Secretary will be required to take into account the almost certain possibility that Iran will exploit anything not explicitly forbidden by the agreement to hide activity that violates its commitments.

Within 10 days of receiving reliable information that Iran is significantly violating the agreement, the President will report this to the relevant committees in Congress; within 20 days, the President will report if the situation has been rectified. Furthermore, every 180 days, the President will report on the state of the Iranian nuclear program and Iran's upholding of its commitments, and report on Iran's rejections of any IAEA demands, purchases of materials liable to help it advance military nuclear capabilities, and centrifuge activity not approved by the agreement that could shorten the breakout time to the bomb. The President will assess whether or not Iranian financial institutions can be linked to money laundering for the purpose of terrorism and activity in the Iranian ballistic missile program. The President will also be required to report on human rights violations in Iran.

By means of these various reports required of the President, the Secretary of State, and other branches of the administration, Congress will try to maintain its position on implementation of the agreement if reached and approved. Undoubtedly, the Republican

majority wanted much greater freedom of action that would have allowed it to undermine the agreement. Even the obligation to report on Iranian financing of terrorism and human rights violations will have little effect on undercutting the agreement once it has been approved and set into motion. If the President does in fact report on incriminating information in these areas, Congress can only cancel the lifting of the specific sanctions imposed on Iran in these two areas.

Israel is mentioned in the current bill: “The President should determine the agreement in no way compromises the commitment of the United States to Israel’s security, nor its support for Israel’s right to exist.” This is a highly innocuous statement, which in no way adds anything of significance to the circumstances liable to develop from the very fact that an agreement is achieved, and certainly should Iran violate it and continue its military nuclear program. The President and the other branches of the administration will have to report on a string of issues, including such that will apparently not appear in the agreement, e.g., Iran’s development of ballistic missiles. But the very fact of the reporting, no matter how meticulous or stringent, is far from making an operative decision that could relieve the threat to Israel.

Israel, then, finds itself in a situation in which it cannot try to change the agreement formulated between the Republicans and Democrats in the Senate Foreign Relations Committee in any fundamental way without at least the tacit support of the White House. Any criticism of the Corker-Cardin bill on the part of senior Israeli figures will be met with antagonism by both parties. Moreover, if the bill is passed and if Iran is not found in flagrant, serial violation of the agreement, the Iranian issue will lose the weight it might have had in the next US presidential election, a race that has already started. The close bipartisan cooperation in the Senate Foreign Relations Committee, indirectly involving the White House, and the fact that two Republican senators – Paul and Rubio – supported the proposed legislation in the committee vote, will make it difficult for other Republican senators to criticize the President for his conduct on the Iranian nuclear issue in its intra-US aspects.

Nonetheless, the Israeli government and Israel’s friends in Washington would do well to examine the possibility of separate legislation, *or at least* the formulation of understandings between Israel and the administration that would, to the extent possible, be enshrined in a Congressional act even if not through binding law. One may assume that this, with Israel as the only country aside from the US and Israel mentioned by name in the bill, would involve a lifted eyebrow or two, perhaps even a harsh, albeit discreet, diplomatic response on the part of US allies in the Middle East, likewise worried about Iran’s conduct in the region in general and its nuclear ambitions in particular. For this reason too, it may be that both the administration and Congress could be interested in the United States guaranteeing the security of certain of its allies in case of flagrant Iranian

violations of the agreement, and especially an Iranian attempt to break out to nuclear arms. In any case, such a discussion with the administration and Congress should begin only after the bill receives final approval and is signed into law by the President, so that Israel cannot be accused of derailing the legislative process.

