



April 6, 2009

To the President of the United States of America
1600 Pennsylvania Ave NW
Washington, DC 20500

Subject: WHAT IS TO BE DONE WITH IRAN

Dear Mr. President,

Pundits, experts and counselors have all expressed opinions on how to deal with Iran. Unfortunately, they all emphasize tactics—mostly myopic in their scopes—and forget principles. The only principled decision is one dictated by the law: by the still valid 1955 Treaty of Amity between the USA and Iran. I do not have to remind a former professor of constitutional law that this bilateral and self-executing treaty, which was approved by a 2/3 majority of the U.S Senate and ratified by the President of the United States in 1957, is qualified as the Supreme Law of the Land, as per articles II and IV of the U.S Constitution. And yet it has been trumped, for more than 22 years, by a presidential decree relying on the International Emergency Economic Powers Act (IEEPA), which by definition, must deal with an emergency, and therefore, *temporary* situation. We are, after all, in the United States of America and not in the Land of Humpty Dumpty where words acquired meanings by the moment, and to the liking of Humpty Dumpty. An “emergency” situation cannot, by any stretch of the imagination, last for so long. If the premises for the treaty were no longer valid, it should have been terminated. Since it was not, *it still is* the Supreme Law of the Land.

Yesterday in Prague, you loftily declared: “Rules must be binding. Violations must be punished. Words must mean something.” That is precisely why all trade sanctions against Iran must be lifted; because the very essence of said treaty is its emphasis on a privileged free-trade agreement between the two countries (art. II.1), and on the prohibition of any “discriminatory” measure (art. IV.1). You have of course the possibility to immediately notify Iran of your intent to terminate the treaty, and to re-impose sanctions, if you so desire, after the 12 months notification period stipulated in article XXIII.3 of the treaty. Whether Iran will be able to acquire one atomic bomb or one hundred, and no matter how much the virulent Israel lobby will chastise such a decision, the Supreme Law of the Land must be treated as *Supreme*.

I have spent time, effort, and money (see attached), trying to give the Treaty of Amity its due respect; to no avail. Fearful and 9/11-struck federal judges seem to be more concerned nowadays with abortion matters than the Supreme Law of the Land. *But the question is*: Will you Mr. President—you, who have taken an oath to uphold the constitution, and pledged to value principles above expedient policies—honor the Supreme of the Land? Will you put an

end to the 22-years “emergency” masquerade and lift the sanctions against Iran, at least for the next 12 months? Should you have the courage and fortitude to do so, I believe there shall be benefits for all:

Domestically – You would set the example for the country as a whole, and the judiciary in particular, that the law is the law and must be respected above all other considerations. The country needs it.

Internationally –The lure of justice, and the ideals that the United States once stood for, brought down the Iron Curtain. People around the world still strive to find the US beacon of hope that beamed from afar. By the stroke of a pen you can reestablish that beacon, and restore the lost prestige of the United States, as a country where the law reigns supreme and one which honors international treaties (think of your upcoming SALT negotiations with Russia). It will also be perceived around the globe as a sign of US self-assurance and strength. The world needs it.

For the people of Iran – Up to now, the real effect of the sanctions has been the strengthening of the hand of the Iranian government against its own people. The people have suffered while the ruling oligarchy has thrived. Once the threat of sanctions and foreign intervention is lifted, the government would be obliged to address the aspirations of its people, especially the youth that accounts for 60% of the population. The foreign scarecrow is no longer there to shield the government from the backlash of its coercive policies. Let the Iranian people settle their problems with their own government free of foreign interference.

For the UN – As any cab driver, from New York to Djakarta, will tell you, Iran has not broken NPT rules, and even if it had, it pales before the illegal situation of US protégés, namely Israel and Pakistan, who have developed bombs—hundreds of them—in defiance of NPT and the international community. When imposing sanctions on Iran, the UN had no leg to stand on, and has lost much credibility as a result. The worst victim of the UN sanctions is the UN itself. Relieve it of this ignominy.

But what about the Nuclear Threat?

Let us suppose, with Adm. Mullen, a worst case scenario through which Iran will produce, by 2015, enough fissile material for 5 atomic bombs, will actually decide to make them, and then sends these bombs over Israel. There is a good chance that one or two of them will misfire, one or two will probably be intercepted, and one or two may actually pass through. If the missiles are accurate, they will hit one or two targets; but the chances are that they will miss their targets, because of low accuracy. All of this to achieve what? To risk a massive retaliation, from Israel and the US, that may annihilate the whole country? One thing is for sure: the leaders of Iran do not operate in a suicidal mode. The Iranian oligarchy has amassed such a fortune in the past 30 years that its only worry is how to survive and savor the fruit of its illicitly obtained riches.

The more worrisome aspect of Adm. Mullen’s assessment of the situation, however, is his lack of understanding for Iran’s military strategy. In a region flanked by fanatical nuclear states, namely Israel and Pakistan, rather than seeking nuclear parity, Iran has astutely opted

for a *low-tech high-number strategy*: it has accumulated thousands of missiles equipped with conventional war heads, as well as deceptive devices. No anti-missile system can effectively stop a massive attack of these. By nature, the capacity to launch a massive missile attack with conventional warheads has the same tactical value attributed to a nuclear force: it is a force of dissuasion, which is there to threaten but never to be used, because it is apocalyptic. Whether Iran decides to add nuclear warheads to its arsenal or not, it already has a dissuasion force that its neighbors must reckon with. Why should it go nuclear? And if it does, what strategic difference does it make?

Thus, the nuclear rhetoric puts an unwarranted straight jacket on US foreign policies, and limits all possible maneuvers in areas where both Iran and the US may have common interests. Israeli paranoia about the Iranian “nuclear threat” must not become a motto for US policy, unless of course one wants to use it as a pretext to attack the Iranian missile system as a whole. And that, I believe, is not a viable option; because a dispersed missile system is not easily wiped out (as shown in Israel’s recent attack on Lebanon). It would be wise to abandon this unnecessary rhetoric.

Assessment period

Once the sanctions are out of the way, a prudent approach may be taken in view of what to do after 12 months. The best approach is one already initiated by Secretary Clinton: a case by case exchange of views, and coordinated efforts, in regional matters of concern to a multitude of nations, as for instance in the Afghan case. Common interests there will certainly provide ample opportunities for common actions.*

A good test for judging Iran’s real stance on the nuclear issue is to accept its offer for foreign participation in its nuclear program. As you may recall, the French company Framatome was initially a full partner to the Iranian project, and got a billion-dollar loan for future cooperation, but pulled out after the Islamic Revolution. The US can become a partner in its stead. Its participation brings capital and expertise to the table; on the other hand, direct involvement in the project provides added monitoring capability, and thus assurance, as to the true objectives of Iran. An expanding worldwide demand for nuclear reactor fuel is a good incentive for both parties to engage in such a cooperative effort.

* The Taliban regime was Iran’s nemesis, and I believe that the latter will cooperate in every possible way to prevent the return of a regime dominated by the former. The following may be considered in this respect:

- It is ludicrous to think that NATO can succeed in Afghanistan by channeling its supply route through the Khyber pass. That pass is a death trap. The only viable supply route is through Iran.
- He who controls the countryside in Afghanistan, wields the ultimate power. If the Taliban have gained power in the countryside it’s because they control the opium trade. It is naïve to think that military control alone, even in a joint Irano-NATO effort, will stop the narco-traffic. It hasn’t succeeded anywhere else; it won’t succeed here either. The key to opium eradication is to provide the farmers with an *alternative* crop. A program needs to be devised, on both sides of the Irano-Afghan border, by which pilot farms would set the example for others to follow after 2 or 3 crop seasons. The success of such a program rests on one main element: an honest channel to distribute the crop seeds and the buy back of the crop, at a price that would yield higher revenues than opium. The danger is the corruption that would certainly creep into this distribution channel (on both sides of the border) and alienate the farmers, who will go back to the Taliban. The NATO countries must provide the control personnel to keep these channels honest.

Ending recriminations

There are many impediments to a quick normalization of the relationship between the two countries as there is much recrimination in the air, as well as legal problems to solve. Apologies won't suffice. Potential anger will linger on, unless finality is reached. When people have differences they go to court to settle. So do nations, except for the fact the International Court of The Hague is so slow that it may take decades before decisions are reached. As odd as it may seem, the following is a mechanism that may pave the way for cooperation, while ushering past problems into a side channel, with finality in sight:

- a- Both parties accept to settle their differences by the verdict of a jury in a US court.
- b- Sovereign immunity will be lifted for both countries and their citizens, but damages and punishments shall only be monetary and will not otherwise penalize any of their citizens. The actual money to be paid shall be the *net sum* of penalties inflicted to both parties, say X.
- c- The process can *only* start when the US returns all the monies owed to Iran, minus an amount Y to be agreed upon, which shall constitute a cap for all penalties accorded to either nation (or its citizens). X shall thus be capped by Y. The US will put Iran's Y in escrow, and will match the same amount from its own treasury, to cover the possibility that it may be the one penalized, rather than Iran.
- d- The fairness of a verdict hinges on the universality of the laws on which it rests. Therefore, only laws and precedents that are equally applicable to Iran and the US shall be considered in this case. For instance, either the Flatow amendment, and all decisions based on it, are rescinded, or Iran and Iranians can sue the US on similar grounds. To wit, Iran may sue the US and the CIA for fomenting the 1953 coup, and seek damages commensurate with the CIA budget; because an emotional federal judge, based on hearsay evidence, speculated that even though the unfortunate death of young Alisa Michelle Flatow was caused by an explosion in Gaza, the financing of the operation "must have" come from Iran's Ministry of Information, whose budget was then taken as a basis for establishing a punitive damage of \$225 million. Same norms should obviously apply to claims against the US and the CIA.

Why should Iran accept such a proposal? Because, the verdict will be that of jurors, i.e., ordinary American people with whom the Iranian government has no quarrel, and jurors can usually transcend their chauvinistic bias; because, Iran will have a wonderful opportunity to lay out its grievances in detail before an attentive jury, and through them to the American people; because, the maximum damage will be the amount Y, but the process also provides a potential gain of Y; and because, it shall bring a finality to all pending lawsuits and claims. I truly believe that Iran may come out ahead in such a process.

Then, why should the US accept such a procedure? Because, there is much to be learned from past mistakes, and such a process can educate the government, as well as the people, to not repeat the same mistakes. And sooner or later the US must return monies confiscated from Iran. Pierre Mauroy, the former odd-minded socialist prime minister of France, adamantly refused to pay back the loan that Iran had extended to Framatome, until French jurists put the pressure on him, and pointed out that such a confiscation undermines French legal ethics. Same is true for the US; it cannot continue to unjustifiably hold Iranian monies, lest it wants to be perceived as a bully, and disrespectful of international law.

Alternatively, the mere specter of such a trial may push the two parties to settle their differences “out of court,” on an equitable and speedy basis.

Following the China policy

Not long ago, China was perceived as a pariah state. Today it is a colossal economic power and very much engaged in international endeavors. The same approach that brought China out of its isolation may help Iran’s further integration into the globalized economy. Because Iran today, has many of the characteristics that China had:

- An educated young population with an entrepreneurial tradition
- A sizeable domestic consumer market
- And more importantly, a large diaspora population ready to create bridges with the local Iranian economy, and to help it to align itself and get integrated into a globalized economy.

A future based on geographical prominence and pragmatism

For years, US policy has insisted on circumventing Iran for Central-Asian gas and crude oil. It has pushed for routes through difficult terrain and inherently unstable areas, at one point even entertaining the idea of having a pipeline through Afghanistan and Pakistan! This has not only added cost for consumers but limited routing diversity, thus increasing disruption possibilities. In comparison to most of its neighbors, Iran has been, is, and will be, a more stable country, offering shorter and easier routes to international seas. Moreover, historically, the Central Asian commerce was linked to Iran. Sanctions on Iran ultimately limit the economic potentials of Iran’s neighbors. It is a matter of geography and historical patterns of trade. US long term policies must recognize the centrality of Iran within Middle and Central Asia.

Furthermore, in an area where religious fanaticism is raising havoc, the US is well advised to worry about its future relationship with countries such as Pakistan, Saudi Arabia and Israel, where fanaticism is on the rise, rather than Iran, where it is receding. Iran has had an overdose of religious fanaticism, and is moving out of it, towards a constructive pragmatism, pushed by its youth, which is notoriously irreligious. The opposite is true for the above mentioned countries, all perceived today as steadfast allies of the US. I have said it before, and I will say it again: only a fool believes that allies of today will remain so forever. Let us hope that the US will put its myopic policies aside, and will adopt long-term views, based on universal principles, as well as geo-political realities.

Respectfully submitted,

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CC: The US Secretary of State
Iran’s Ambassador to the UN