

Conference Call with Orde Kittrie: "Halts and Progress: Congressional Action on Iran"

Omri Ceren: Thank you everybody for joining us at this late hour. We didn't want to let this issue wait till tomorrow. Of course, you know that this afternoon a bipartisan group of 26 senators announced legislation that would seek to hold, in their language, to hold Iran accountable during and after negotiations for both not cheating during the six-month interim agreement, the so-called Joint Plan of Action, and to attempt to begin to circumscribe what an acceptable deal would look like with Iran. There have been a lot of articles flying back and forth about this. The text of the legislation, of course, leaked last night and was posted with not a little bit of controversy. The reason that we wanted to make sure that we caught you before the day ends is because we now know both what the proponents and the opponents of the legislation are saying and so journalists, policymakers, the public will, of course, begin to start evaluating those arguments against each other and lining them up alongside each other and we wanted to make sure that we could make available somebody who could provide context and kind of an overview of what's going on, but also orient journalists and the broader public toward what issues matter and what issues are tangential. So we're very happy to have and thank you for joining us today Orde Kittrie, he's known I think to everybody on this call, tenured professor, of course, at ASU Law, director of the school's Washington, D.C. program and also wears the hat of the senior fellow at the Foundation for the Defense of Democracies. He has testified on non-proliferation issues before both the House and the Senate, spent a decade at the State Department in that capacity, was lead attorney for nuclear affairs and negotiated U.S.-Russian non-proliferation agreements and a UN agreement on the same issue, on nuclear terrorism. One other thing I will mention before I turn the call over to him is that, he just, this afternoon, published an article that was co-authored by another name that's certainly known to everybody on this call, Olli Heinonen, of course, at Harvard at Belfer up there. Spent literally decades at the IAEA, and that article which is headlined, "Iran Plays Games with the Geneva Deal," if you want to Google it, and of course we'll pass it around after the call; extensively overviews why there is, in many quarters, skepticism toward the Geneva JPA and in addition to the policy implication of that, there is of course the political implication of it, which is that overpromising in the bill, misunderstandings, excuse me of the JPA, misunderstandings of it refract back to Congress and in fact were cited last night by *National Journal* as one of the reasons why this legislation advanced the way that it did. So, with that, I will turn it over to our speaker and after the call, after he delivers his remarks, we will open it up for questions and answers. On that note, thank you Orde and it's all yours.

Orde Kittrie: My pleasure, thank you for inviting me. You have all heard now about the Nuclear Weapon Free Iran Act of 2013 that was introduced a couple hours ago. I'm going to talk a little bit about why Congress is so frustrated. Why is Congress so frustrated? Well, it's been nearly a month since the six-month Joint Plan of Action with Iran was announced in Geneva on November 24th and the deal has yet to go into effect. The two sides have not even agreed on the start date. Meanwhile, Iran says it's continuing to advance its nuclear program. So far, the Joint Plan of Action remains all plan and no action. Iran's Ambassador to the IAEA Reza Najafi has said that Iran will not begin implementing its Joint Plan of Action commitment, including its plans to stop enriching uranium to 20%, until this start date that is yet to be agreed upon. For some this is an indication that history is repeating itself. In the past, Iranian President Hassan Rouhani has boasted again and again of how he used the 2003 set of nuclear negotiations with the West, for which he was Iran's lead negotiator, to buy time to advance Iran's program. So what's happening now with the Joint Plan of Action? Rather than implementing the deal in good faith, Iran is, as Olli Heinonen and I say in our joint article, Iran is playing games, manipulating the

Joint Plan of Action to alter to Tehran's advantage [inaudible] the circumstances on the ground in terms of the deal itself. Both the administration and Congress, both in my opinion and the opinion expressed also by Olli in our paper, both the administration and Congress need to quickly make clear to Iran that it cannot continue to buy time and space for its nuclear program by delaying and by misinterpreting the Joint Plan of Action. European Union officials recently said that they hope negotiations over implementation of the Joint Plan of Action will be concluded in time for the deal to go into effect in late January. Well, late January is going to be two months after the joint plan of action was announced in Geneva. As of November 24th, the day the Joint Plan of Action was announced in Geneva, Iran was estimated to be less than six months away from breakout capability, the point through which it could dash to produce enough weapons grade uranium for one bomb so quickly that the IAEA or Western intelligence services would be unable to detect the dash until it's over. An implementation date of late January will leave Iran's uranium and plutonium production programs significantly closer to breakout capacity than if the Joint Plan of Action had been implemented on November 24th. For instance, at the rates at which Iran was enriching in September and October 2013, the most recent months covered by the IAEA's [inaudible] report, Tehran will by January 24th have created at least an additional 460 kilograms of uranium enriched up to 5% and an additional 30 kilograms of uranium enriched to 20%. In addition, Iran is very likely continuing to produce more centrifuges, and its uranium mines and milling facilities are almost certainly continuing to produce and process uranium ore. Iran may also be continuing to create fuel for the Arak reactor. So as I mentioned, if the deal is only implemented in late January, Iran will be much farther along to breakout capacity. But what if the Joint Plan is never implemented? Then Iran will have succeeded in significantly advancing its uranium and plutonium production programs while negotiating with the P5+1 and won't have to roll any of it back. A delayed start date for the six-month Joint Plan of Action also gives Iran more time to advance key parts of its nuclear weapons program that are not significantly addressed by the Joint Plan of Action, but rather would only be curbed as part of the later comprehensive deal. This includes, most importantly, Iran's nuclear warhead and ballistic missile research and development activities, which are covered barely if at all by the Joint Plan of Action. Any comprehensive deal curbed on these activities are highly unlikely to go into effect before the Joint Plan of Action concludes its six-month duration. The late January start date almost certainly means that Iran will have until July 2014 to continue advancing its nuclear warheads delivery systems [inaudible] and development. At the same time, Iran is declaring itself free of its actual Joint Plan of Action commitment until that start date is set and occurs. Iran has been insisting that the U.S. must not take sanctions-related steps that clearly fall outside the U.S. commitment under the Joint Plan of Action. For example, the Joint Plan of Action states that the U.S. will refrain from imposing new nuclear-related sanctions, but the Iranian foreign minister threatened that the deal is – is dead if there was movement on that Senate bill discussed last week that would not have imposed new sanctions, but merely specified what sanctions would be imposed on Iran if the deal collapses. Then Iran's diplomats stormed out of the negotiations and protested that December 12th action by the Treasury and State Department to designate additional companies and individuals predating existing international sanctions against Iran. But, at the same time Iran is spurning implementation of its nuclear-related commitments under the Joint Plan of Action, it's interesting to note that Iran's economy has already begun to reap the benefits of the Joint Plan of Action. For example, the mere prospect of sanctions relief has already increased Iran's oil exports by 10%, lifted the market value of Iran's petrochemical sector by some 40%, raised the value of the Tehran stock exchange by some 10%, and boosted Iran's currency. So Iran's economy is already benefiting from the Joint Plan of Action. It remains unclear when the national security of the U.S. and its allies will begin to gain from the Joint Plan of Action and how much less their security will benefit than if the deal had gone into effect the day it was announced. That is why both the administration and Congress need to quickly make clear to Iran that it

cannot continue to buy time and space for its nuclear program by delaying and misinterpreting the Joint Plan of Action. And with that, I'd be happy to take any questions.

Omri Ceren: While we wait for folks to queue up, we have a couple of questions that came in by email from folks who couldn't join us on the call. The first, I guess actually fits in very well on were you ended up, which is you outlined a number of policy issues that the JPA either doesn't address or doesn't, arguably doesn't alleviate. How much awareness is there in Congress on these issues? So, putting the policy aside, just the politics, how much of that is intersecting, and how much of that do you perceive is driving the moves that are, that occurred today, and that occurred in the last week?

Orde Kittrie: Well, look, I mean, my, my sense is that there was a lot of dissatisfaction in Congress on November 25th, the date after the Joint Plan of Action was announced. Members like Senator Schumer saying that the deal was disproportionate, Iran got a better deal than we did. I think that is the coloring and feeding the growing frustration now that it's been almost a month, and Iran is playing games with this deal, which was not a great deal from the U.S. national security perspective in the first place. And as I mentioned, the longer time passes without the Joint Plan of Action being implemented, the worse the deal gets.

Omri Ceren: Okay, so we have a couple questions lined up. But there's one more that came in by email that I wanted to get to. It's kind of a wonky question, but there's some policy wonks on the call, which is a question about kind of the framework that the proposed legislation would use. So there have been arguments aired from both proponents and opponents about, you know, how long, the degree to which this piece of legislation came together quickly, how well thought out it was. Could you speak a little bit to what kind of framework this legislation would use? Just, again, it's a bit wonky but there was a very specific question about whether this would use secondary sanctions, whether it's new sanctions, uh, what kind of penalties this, uh, legislation would describe?

Orde Kitrie: Sure, you know I just received a, a copy of the bill a couple hours ago, and am still working through it. But, you know, what the bill does was, is it sets out some new sanctions that would during the first 180 days of negotiations be imposed only if the President of the United States cannot certify that Iran is complying with the interim agreement. For 60 days after that, new nuclear sanctions would only be imposed if the president cannot both certify Iranian compliance and that a final agreement is imminent. If after the first 240 days there's still no final agreement with Iran, the bill's new sanctions come into effect unless the President waves them. And it looks like the president isn't able to...is provided several waiver windows for waiving the sanctions. So this, you know, I would say that you know, people, people are inevitably going to ask: Does this bill violate the Joint Plan of Action? And I would say no. First of all, as the Iranians keep reminding us, the Joint Plan of Action isn't in effect yet – the two sides haven't agreed on a start date. Second of all, the Joint Plan of Action states that, "The U.S. administration will refrain from imposing new nuclear-related sanctions." Even if the Joint Plan of Action were in effect, this bill wouldn't violate it. It's only a bill that has been introduced in Congress, which is far from a law that has been enacted. It's a lot of steps between a bill, and a line introduction is just the first. In addition, even if the bill were to be enacted, it still wouldn't violate the Joint Plan of Action unless the Iranians first violated the Joint Plan of Action. So this bill, it seems to me, sends an important signal to the Iranians that they can't keep dragging out, first implementation of the Joint Plan of Action and then negotiation of a comprehensive deal. It makes crystal clear to them that there is a price and what the price will be for continuing to drag things out, as we know they've done in the past with regard to nuclear negotiations with the West, in which case they've dragged negotiations out while

moving their nuclear program forward. Congress, the 26 senators who have introduced this bill have made it clear that they're not going to stand for that.

Omri Ceren: Uh, on that note we've got a couple of questions in the queue. Operator, if we could just take them in order please.

Margaret Warner (PBS News Hour): Um, sticking with the timeline in Congress, what is anticipated in terms of this being taken up? As you know ten senators, in fact committee chairs, wrote to Harry Reid, saying this was a bad idea, essentially, this afternoon. So, do you have any expectation this would be acted on before the end of the year, acted on even before the end of the session of Congress in January?

Orde Kittrie: Look, I mean all I know is what I am seeing in press reports about that. I'm not, you know, I'm a legal expert. I'm not – I haven't participated in drafting this bill and don't know the details of when it might move forward. But from the press reports I'm seeing, uh, there's talk about maybe moving it forward sometime in January. I think that the bill, um, frankly serves a certain political purpose, even just being introduced, even before it's moved forward in Congress. It sends, it sends a signal, both Iran and the United States are jockeying here in terms of implementation of the agreement and timeline and what the substance of the agreement is gonna be. And this bill, without violating the Joint Plan of Action, sends a signal of Congress's frustration with the current state of play and its seriousness moving forward. So I think it – it sends an important message even before it moves forward.

William Daroff (JFNA): Hi, thank you for the timely call. I wonder if you can talk some more about the waiver provision that you mentioned a little bit, Orde. You know there are, some of these bills, like the Jerusalem Embassy Act, where every six months the President just signs a pro-forma note just saying that he determines that it's in the national security interests of the United States to waive the law. Do you have a sense for how the waiver provision works here, and the extent to which, who gets to declare that after 240 days or whatever time period that the Iranians are not living up to their agreement?

Orde Kittrie: I have just begun to study that part of the bill. But I can take a quick look here; maybe take another question while I look for that particular page.

Omri Ceren: We've actually got one that just came in by email, while you flip for Daroff. The idea, the idea of the early reports have been a little bit confused, and a couple of statements have come out that have to do with the degree to which this legislation authorizes the use of military force. I was wondering if, I know that you've begun to look at it, but we've talked about this specifically, whether you could clarify what this, where that passage that's been so controversial appears, and what it actually signifies.

Orde Kittrie: Yeah, I don't, I don't see that this bill authorizes any use of military force. I know that there have been some comments about the sense of Congress provision, right, I mean, it says it the sense, it is the sense of congress, and, you know, you see the sense of Congress you know right away that that is not legally binding. It's the sense of Congress that if the government of Israel is compelled to take military action in legitimate self-defense against Israel's, against Iran's nuclear weapon program, the U.S. government should – should – stand with Israel and provide – in accordance with the laws of the United States and the constitutional responsibility of Congress – diplomatic, military, and economic support for the government of Israel. That is, that is not, authority to use military force; that's sense of Congress, that says, should, I think it sends a, you know, a political signal, but it's, it doesn't send, doesn't change anything from a legal perspective.

Omri Ceren: Ok, so I, I think we only have time, then, if you've got the, uh, answer to William's question; otherwise, certainly we can follow up and connect the two of you. Uh, have you found that passage yet or is it buried?

Orde Kittrie: Yeah, I think, I think what I'd like to do is, uh, talk offline about that. I want to make sure that, uh, I don't mischaracterize something that I'm just sort of reading now quickly. But I'm happy to talk, um, if there are additional questions certainly about implementation of the agreement thus far, or about the article that Olli Heinonen and I just posted. I'm happy to, uh, to take those and address them

Omri Ceren: I think we're actually about out of time. As always, people who want to follow up should contact us at press@theisraelproject.org, press@theisraelproject.org. And we will be happy to connect folks with Orde offline, or to follow up with any specific questions that you folks have about the legislation, the context, and so on. As always, we will bounce around the transcript and the audio for this call as soon as we get it. And on that note, uh, thank you, everybody, for joining us at this late hour, and, uh, we look forward to talking more about this in the coming days, weeks, and months. And thank you specifically again, Orde, for taking the time this afternoon.

Orde Kittrie: My pleasure.

Omri Ceren: Bye, everyone.

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Orde Kittrie: My pleasure.

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