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**Iran and US Policy: Legal, Strategic and Policy Options**

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First, I would like to thank Professor Yonah Alexander and the Potomac Institute for the kind invitation to address you today. Secondly, I would like to thank each of you for attending this important symposium. Today, my remarks will focus on the legal tools which the United States and litigators within our courts who represent victims of Iranian state sponsored terrorism have vis-à-vis holding the Islamic Republic of Iran responsible for their heinous terrorist activity.

As you may know, the United States Department of State maintains a list of designated State-Sponsors of Terrorism. Countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism are designated pursuant to three US laws: section 6(j) of the Export Administration Act, section 40 of the Arms Export Control Act, and section 620A of the Foreign Assistance Act.

There are essentially four main sets of US Government sanctions that apply once the State Department determines that a state should be listed on the official list of State Sponsors of Terrorism. The four categories of sanctions resulting from designation under these authorities include but are not solely limited to restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of what are called “dual use” items; and other restrictions pertaining to, *inter alia*, finance.

The list is also important, because at one level, it designates and specifies which countries may be sued in U.S. courts by the American victims as a result of the terrorist acts which caused damage to them and their loved ones.

Today, four officially designated State Sponsors of Terrorism remain on the Secretary of State’s official list. This is contrasted with seven designated State Sponsors of Terrorism when President George W. Bush came into office. The seven were Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. During the Bush administration, as a result of different circumstances regarding each country, Iraq, Libya and North Korea were removed from the list, leaving the remaining four (Cuba, Iran, Sudan and Syria), Iran remains one of the four currently designated State Sponsors of Terrorism and was officially designated on January 14, 1984.

In designating Iran in 1984, the State Department determined at that time that Iran was not only repeatedly supporting terrorism in its official capacity but was reported in the State Department's 1984 *Patterns of Global Terrorism* publication to be "the world's leading supporter of terrorism." The State Department determined that Iran had directly sponsored terrorist activities against the US and its citizens. Again, I quote from the State Department's 1984 *Patterns of Global Terrorism* publication, "Iran's fundamental regime, which ultimately hopes to drive US and Western influence from the Islamic world, has championed some of the most viciously anti-Western groups in the region—such as the Hizballah in Lebanon."

One of the most heinous Iranian supported Hezbollah attacks against the United States of America which many assert led to Iran's designation as a State Sponsor of Terrorism, was the 1983 bombing of the U.S. Marine Barracks in Beirut, Lebanon. The Marines targeted in that attack were in Beirut on a mission of peace when their headquarters was maliciously destroyed by an Iranian supported suicide vehicle bombing.

Our law firm, Heideman Nudelman & Kalik, P.C., is active in bringing civil lawsuits in U.S. courts against these State Sponsors of Terrorism, such as Iran. Included among the many suits we have initiated against State Sponsors of Terrorism are cases we have brought against Iran on behalf of American victims who suffered loss of life or limb in the Marine Barracks bombing.

The Marine Barracks Bombing related litigation is something that I will talk about in a very quick moment, but prior to speaking about this case study, I want to put it in the broader context for you.

United States legislative, executive and judicial branches have been working in concert to prevent Iran from supporting international terrorism and bring justice to those American victims who have suffered as a result of Iran's horrific use of terrorism as a foreign policy instrument.

In addition to the trio of legislation authorizing the designation and listing of Iran as a State Sponsor of Terrorism, Congress has been instrumental in ratcheting up pressure on Iran by passing legislation such as the Iran-Libya Sanctions Act and its subsequent modification in 2004 and again this past year. There has also been a great deal of legislation that has impacted Iran as a primary state sponsor of terror. Such legislation includes the passage of the 1996 legislation that amended the Foreign Sovereign Immunities Act which removed Iran's immunity from civil suits in American courts for its state sponsorship of terrorism. The Foreign Sovereign Immunities Act was recently modified again as a result of the passage of the National Defense Authorization Act in 2008. This new amendment permits litigants to seek, *inter alia*, punitive damages in suits against State Sponsors of Terrorism such as Iran.

With regards to the Executive Branch, many agencies under the President's direct authority such as the Departments of State, Treasury and Commerce are engaged in the issues of sanctions and enforcement of the laws restricting State Sponsors of Terrorism. These government agencies enforce presidentially and congressionally invoked sanctions to put pressure on these international pariahs. An example where one can see the outcome of the interplay between legislative and executive pressure exerted on a State Sponsor of Terrorism is to look at the recent example of Libya coming off the designated list. Some believe that Libya didn't just come to the other side of the table because they loved the United States; they came to the other side of the table because they wanted a better future. The combination of UN sanctions and US sanctions put pressure upon them not only to turnover their nuclear armament capabilities; but also their commitment to stop funding and to cease sponsorship of terrorism was key to their acceptance back into the larger world community. Libya is an interesting example; query can we see Syria follow that track? Query, can we see Iran follow that track?

Turning to the judicial branch, as I have previously mentioned, Iran has been the rightful target of civil law suits for its sponsorship of various international acts of terrorism. Unlike Libya, Iran hasn't really paid much attention to litigation brought against it, and in fact in an opinion issued on September 30, 2009, just barely a year ago by Chief Judge Royce C. Lamberth of the United States District Court for the District of Columbia, commented on a group of cases that he and other judges in Washington had decided against Iran. At that time Chief Judge Lamberth commented on his frustration that Iran wasn't listening. He then did a very unique thing for a federal judge, he spoke to the President of the US through his decision, he spoke to the Congress through his decision, and I quote from 659 Fed. Supp. 2<sup>nd</sup> page 31 just two paragraphs:

Judge Lamberth said, "The challenges that confront the president with respect to our relations with Iran as are daunting as ever as thus this court must leave it to the experts in the political branches to consider whether a balanced and meaning political compromise can be reached with respect to these difficult terrorism cases. It seems to this judge that it is time for a new approach and perhaps it is time to think more systematically about how these cases can work with concert rather than in conflict with a broader strategy towards the goals of better relations with the Muslim world, peace in the Middle East and the eradication of terrorism."

He then comments, "To all the plaintiffs, this court wishes to stress that it as always will endeavor to see to it that plaintiffs in these actions get all the relief in which they are entitled under the law, this court continues to hope that one day soon, justice might be achieved". This was a very comprehensive review by the judge of decisions that had rendered and billions of dollars in assessed damages against Iran to which Iran had paid no attention, and the judge commented in his decision about the fact that we need teeth in order to be able to allow people to recover, otherwise our judicial system really does not deliver justice.

Most recently Judge Lamberth asked me to argue the question of the extent to which, under the 2008 amendment of the FSIA, 28 USC §1605A, the Court had authority to impose punitive damages against Iran in a lawsuit relating to the Marine Barracks bombing. And, if the court had that authority, what amount of punitive damages the Court should award. Knowing of his decision of September 30, 2009, and knowing that this federal judge had expressed in writing his frustration on the question of whether or not Iran is listening, I argued that it was necessary to change the equation to get Iran's attention, and that punitive damages were appropriate.

During the argument and subsequent filings, we presented testimony of Dr. Patrick Clawson of the Washington Institute. Dr. Clawson had testified in a number of earlier cases which had been pending in the federal courts against Iran. In those cases, Dr. Clawson had testified about Iran's expenditures for terrorism and helped put Iran's moniker as the world's worst state sponsor of terrorism into dollar figures. In other words, Clawson shed light on how many dollars Iran was spending on terrorism. Previously, in other earlier cases, Clawson testified that Iran spent approximately 100 to 150 million dollars on terrorism. In the case we argued, we went back to Dr. Clawson and asked him to update his opinion.

According to Dr. Clawson's updated analyses and opinion, Iran is now spending between 300 million and 500 million dollars a year on the sponsorship of terrorism. Moreover, Clawson testified that when parties with judgments have shown up in other countries where Iran has assets and where there are collection efforts of these billions of dollars judgments against Iran, Iran has shown up to attempt to defend and derail the collection efforts. Iran has reportedly appeared with counsel in Europe and in

Canada. Even in this country in a case pending in Chicago trying to attach Persian museum artifacts, Iran has appeared in our judicial system, with lawyers, and this says a great deal.

Following the oral argument, Judge Lamberth in a 2010 opinion awarded, not only more than 290 million dollars in compensatory damages to the Plaintiffs, Marines and their family members who had been injured or killed in the marine barracks bombing, but Judge Lamberth also did an extraordinary thing with regards to punitive damages.

Judge Lamberth accepted Professor Clawson's testimony and subsequently decided in his conclusion, that, "Iran and the Ministry of Internal Security are responsible for the deaths and injuries of hundreds of American servicemen are liable for the emotional Injures that family members have suffered as a result and Iran deserves to be punished to the fullest legal extent possible." Judge Lamberth then went on to note, and quoting from 700 Fed Supp 2<sup>nd</sup> on page 52, "Iran has recently begun to actively participate in litigation in the US and elsewhere according to Patrick Clawson."

Iran's participation in the legal system garnered great weight with Judge Lamberth. It was as if he was saying that because it appeared that Iran was possibly beginning to listen, maybe it was necessary that we need to speak even louder. So despite the fact that in 2009 Judge Lamberth appears to have expressed tremendous pessimism about the litigation process, in 2010 he was moved to grant a significant award of punitive damages against the Islamic Republic of Iran for their past and continued sponsorship of terrorism. I further quote from Judge Lamberth, "in the hopes that Iran is paying more attention to the cases that had been brought against it, this court seeks to send the strongest possible message that Iran-supported terrorism against citizens of the United States absolutely will not be tolerated by the courts of this nation." Judge Lamberth then awarded a record setting one billion dollars in punitive damages against Iran. The victims and the entire judicial process are being well served by Judge Lamberth's diligent review and stewardship of the pending cases against the Islamic Republic of Iran as a state sponsor of terror.

Finally, it is important that we remember that we cannot forget those who have been repressed, we cannot forget those who have been victimized and we cannot forget those who have been brutalized by senseless and heinous acts of terrorism committed by the Islamic Republic of Iran. It is in the spirit of the victims and their families, on behalf of those who are gone, and those who have lost limbs, we as officers of the federal courts hope that in the confluence of the work of the executive branch, legislative branch and judicial branch that we continue to get Iran's attention. If a billion dollars won't get Iran's attention, let us not give up. It is important to continue to strive towards restoring some measure of justice to these victims of Iranian terrorism by using all of the legal strategic options available. Failing to consider this as part of the overall strategic options in relation to the subject of this symposium: "Iran and US Policy: Legal and Strategic Options would be a mistake for us all and would deny the victims the justice they deserve under applicable US laws enacted for the purpose of protecting the rights of the victims and providing a meaningful avenue for them to seek justice for heinous acts of terrorism committed against the victims and their families..

We have prepared materials which are available to you relating to Iran as a State Sponsor of Terrorism. We hope you will find them of interest and that each of you will leave here today with a continuing commitment to stand with the victims as they seek justice for the unforgiving acts of international terrorism committed by the Islamic Republic of Iran.

Thank you.