



Executive Power and the Role of Congress in the Paris Climate and Iran Nuclear Agreements

By Gwynne Taraska and Hardin Lang January 11, 2015

In recent months, multilateral efforts have produced two historic agreements aimed at improving global security: the Iran nuclear agreement and the Paris climate agreement.

The Iran nuclear agreement, which blocks Iran's nuclear capacity in exchange for a gradual lifting of economic sanctions, was finalized in July and is expected to be implemented imminently.¹ Before negotiations concluded, Congress passed the Iran Nuclear Agreement Review Act of 2015, which gave Congress a 60-day period in which it could seek to pass a joint resolution of disapproval. On September 10, all but four Democrats in the U.S. Senate voted to filibuster such a resolution. The agreement, which is nonbinding under international law, therefore proceeded without the need for a presidential veto.²

Concurrently, the country parties to the U.N. Framework Convention on Climate Change, or UNFCCC, were negotiating an international agreement to rein in greenhouse gas emissions and improve resilience to the effects of climate change.³ The agreement, which has force under international law, was finalized in Paris on December 12.⁴ It obliges countries to submit and update national climate goals and participate in systems to review national and collective progress. In the run-up to the Paris agreement, Congress held several hearings, but there were no developments akin to the Iran Nuclear Agreement Review Act.

As these two feats of international cooperation were under negotiation, Congress played an unusually involved role in the case of Iran but a more minimal role in the case of Paris. This brief discusses the status of both agreements and explains why the Iran and Paris agreements differ with respect to triggers of congressional intervention.

The Iran nuclear agreement

Content and status of the agreement

On July 14, 2015, Iran, the European Union, and the P5+1—which includes China, France, Germany, Russia, the United Kingdom, and the United States—signed the Iran nuclear agreement, known formally as the Joint Comprehensive Plan of Action, or JCPOA. The agreement curbs Iran’s nuclear capability in exchange for a phaseout of nuclear-related economic sanctions.⁵ Under the deal, all of Iran’s pathways to a nuclear weapon will be blocked. Iran’s uranium enrichment facilities face severe restrictions, and its plutonium pathway will be dismantled. For 15 years, Iran cannot enrich uranium higher than 3.67 percent, and it is required to reduce its stockpiles of enriched uranium by 98 percent to 300 kilograms—not enough to make a nuclear weapon. The Arak plutonium reactor will be redesigned so it cannot produce weapons-grade plutonium, and Iran cannot build similar reactors for 15 years, closing off the plutonium pathway. Iran cannot build facilities to reprocess spent nuclear fuel for 15 years and will ship its spent nuclear fuel out of the country indefinitely.

The agreement forces Iran to accept the most rigorous inspections regime ever imposed on any country through a negotiated agreement.⁶ The International Atomic Energy Agency, or IAEA, will monitor all known elements of Iran’s nuclear supply chain and fuel cycle for 25 years. The IAEA also will be able to conduct inspections of potential covert sites, and Iran will implement the Additional Protocol, giving the IAEA timely access to any suspect site indefinitely.⁷ Iran cannot conduct research that could “contribute to the development of a nuclear explosive device” indefinitely.⁸

If Iran violates the agreement, the U.N. Security Council has already approved the mechanism that will snap back the sanctions regime. Concerns over a potential violation would first be lodged with an eight-member review board on which the United States and its allies have a majority. If the body fails to resolve the issue in 35 days, the United States and its allies can immediately resume their own sanctions and charge Iran with noncompliance at the U.N. Security Council. Thirty days later, U.N. sanctions will automatically snap back unless the Security Council votes to keep them lifted. The United States can veto such a move. The deal enables the United States and its allies to stop any attempt to shield Iran from the consequences of breaking the agreement.

Under the deal, Iran will regain access to international energy markets and the global financial system once the IAEA verifies that the country has granted inspectors sufficient access to nuclear facilities and taken agreed-upon steps to restrict its nuclear program. The U.N. embargoes on conventional weapons and ballistic missiles are poised to be lifted within five and eight years, respectively.

Domestic political context

While negotiations were still underway, Congress passed the Iran Nuclear Agreement Review Act of 2015, which gave Congress a formal period to evaluate the agreement and seek to vote on a resolution of approval or disapproval.⁹ The measure was signed by President Barack Obama and became law on May 22. Given that a resolution of disapproval would have faced a presidential veto—which would have been sustained without a two-thirds majority to override it—the Iran Nuclear Agreement Review Act stands as “a bizarre inversion of the Treaty Clause,” as noted by law professor John Yoo.¹⁰ Several legal scholars have now observed that the act gives the agreement more legal weight than it would have had otherwise, as it implied congressional consent in the absence of a veto-proof majority.¹¹ In the end, a veto was unnecessary, as 42 Senate Democrats voted to filibuster the resolution of disapproval on September 10.

Members of Congress sought to play an unusually involved role even before the passage of the Iran Nuclear Agreement Review Act, sometimes controversially so. In March, Sen. Tom Cotton (R-AR) and 46 other Republican senators issued a letter directly to Iran—an unprecedented action in U.S. foreign affairs, given that representing the country internationally is within the purview of the president. The letter was an attempt to derail the negotiations by declaring that the United States could renege on its obligations under the agreement in future administrations and congresses.¹²

The Paris climate agreement

Content and status of the agreement

In December 2015, the 195 country parties to the UNFCCC finalized a global, legally binding agreement to limit carbon pollution and improve resilience to the effects of climate change.¹³ The agreement, adopted in Paris, will take effect in 2020.

A central aspect of the agreement is an associated set of nationally determined goals to reduce greenhouse gas emissions. More than 180 countries representing approximately 95 percent of global emissions have now submitted national targets to the UNFCCC.¹⁴ The United States, for example, aims to reduce emissions 26 percent to 28 percent below 2005 levels by 2025.¹⁵

Although the combined national targets are inadequate to limit warming to “well below” 2 degrees Celsius above preindustrial levels—which is the new UNFCCC-agreed temperature goal—the agreement has three elements that allow it to narrow the so-called ambition gap over time.¹⁶ First, the agreement establishes a framework in which countries are obligated to submit new national climate goals every five years.

Each goal is expected to be stronger than its predecessor and represent the country's greatest effort. Second, the agreement establishes stock-taking sessions every five years to review collective progress toward the long-term temperature goal. These sessions are to inform each round of national targets. Third, the agreement establishes a legally binding accountability framework to facilitate clarity with respect to each country's progress toward meeting its national goals.¹⁷

Importantly, the obligations to submit and update national targets and to participate in the collective and national accountability systems apply to all parties to the UNFCCC, including both developed and developing countries.¹⁸ The Paris agreement therefore stands in stark contrast to the Kyoto Protocol of 1997, which required emissions reductions only from developed countries and therefore covered only a fraction of global emissions.¹⁹ It is possible that the Paris agreement will prove to be the first accord that is effective in addressing climate change.

Domestic political context

In contrast to the Iran agreement, Congress had no formal role in reviewing the Paris agreement. There were, of course, similar expressions of censure from those opposed to President Obama's foreign policy agenda in both cases.

Senate committees held several hearings in the six months preceding the Paris conference that served as platforms for some congressional Republicans to voice opposition to international climate cooperation and the U.S. emissions reduction target.²⁰ Although there were several notable exceptions, congressional Republicans were largely resistant to climate action in 2015, including participation in the Paris agreement and even modest contributions to international climate finance.²¹

Some members of Congress contemplated a Cotton-like letter directed to the parties of the UNFCCC—for example, Sen. Jefferson Sessions (R-AL) during a hearing in July 2015—to convince other governments that the United States is an untrustworthy partner in the Paris agreement.²² In addition, statements that the United States will not meet its climate goals and will dismantle the Clean Power Plan—which can be viewed as informal Cotton-like letters in oral form—were ubiquitous.²³

Congressional resolutions that any agreement resulting from the Paris conference should be submitted as a treaty for formal consent by the Senate were introduced—but had insufficient traction to progress—in the months preceding the agreement.²⁴ Treaties require formal consent from a two-thirds majority of the Senate, which likely would not have been forthcoming in the current political environment.

Why the different roles of Congress?

It was clear from the start of the Iran negotiations that U.S. obligations under the agreement—and the success of the agreement generally—would centrally focus on the congressionally imposed regime of economic sanctions aimed at constraining Iran’s nuclear capacity.²⁵ Congress, which has the constitutional authority to regulate foreign commerce, set this regime in place through a series of statutes.²⁶

In the final agreement, it is possible for the executive branch to meet U.S. obligations without congressional action. The United States is obliged, for example, to “cease the application of, and to seek such legislative action as may be appropriate to terminate, or modify to effectuate the termination of, all nuclear-related sanctions” if Iran complies with the terms of the agreement.²⁷ The president has the authority—delegated by Congress in the statutory regime—to waive sanctions in some circumstances, such as when doing so would be in the national interest.²⁸ The president is also free to urge legislative action.

Nevertheless, it remains true that a central focus of the agreement is U.S. legislation and that the United States must at the very least change the way this legislation is satisfied—that is, through the application of sanctions or through presidential waiver. Furthermore, if Iran’s nuclear program is verified as peaceful, congressional action to permanently lift the sanctions regime—and to refrain from imposing new sanctions—could be appropriate and relevant to the successful functioning of the agreement. These facts were known before the conclusion of the Iran negotiations and provided political grounds for early congressional involvement even before the agreement was signed.

Under the Paris agreement, by comparison, U.S. obligations do not have existing statutes as their subject matter and do not have any effect on U.S. laws or the way they function. In this context, it is worth noting that U.S. participation in the Paris agreement, contrary to what one might expect, does not require new legislation—known as implementing legislation—in order for the agreement to take domestic effect. Although the Paris agreement is legally binding, the associated set of national emissions reduction goals have political rather than legal force.²⁹ The Paris agreement also does not impose legally binding national targets to provide international climate finance.

Instead, national obligations under the agreement are procedural: Countries are required, for example, to submit and update their climate goals and report on progress. As such, the same statutes that gave the UNFCCC domestic effect will also implement the Paris agreement.³⁰ These include the Clean Air Act, as well as the Energy Policy Act of 1992, which directed the U.S. Energy Information Administration to inventory emissions.³¹

Another point of contrast with the Iran agreement is the existence of an umbrella treaty: the UNFCCC, which received bipartisan support from the Senate in 1992 during the George H.W. Bush administration. The Paris agreement is pursuant to the mission of the prior treaty, which includes the goals of limiting carbon pollution and building resilience to the effects of climate change. It is also noteworthy that the UNFCCC already obliges the United States to seek emissions reductions and to report on emissions levels.³²

Given the consent of the Senate to the UNFCCC and the consistency of the Paris agreement with U.S. laws and their application, formal congressional intervention or consent would have been unnecessary and uncharacteristic given historical practice, as the Center for American Progress explained in a recent report.³³ The agreement therefore qualifies as an executive agreement rather than a treaty.³⁴

Conclusion

As the Iran and Paris agreements are dissimilar in many respects, it would not have made sense to view congressional intervention during the Iran negotiations as a template for the Paris negotiations. There is, however, a striking similarity between the agreements: Many who oppose them have positions that contradict their own stated values—namely, protecting national security and ensuring accountability.

In the case of Iran, a congressional block to the agreement would have threatened national security by unraveling the international consensus and sanctions regime.³⁵ Iran would have gained financially and the United States would have lost the ability to monitor and control Iran's nuclear program.³⁶

In the case of Paris, the failure of the agreement would have threatened accountability. Greenhouse gas emissions from any country have detrimental economic, health, and security effects that cross its borders. Participation in the Paris agreement is central to monitoring emissions and holding all parties—including both developed countries and fast-emerging economies, such as China and India—accountable for carbon pollution.

Gwynne Taraska is Associate Director of Energy Policy at the Center for American Progress, where she works on international climate policy. Hardin Lang is Senior Fellow at the Center, where he works on U.S. national security and Middle East policy.

Thanks to Nigel Purvis from Climate Advisers for reviewing an earlier version of this manuscript. The views expressed in this brief do not necessarily reflect those of the reviewer; any errors are the responsibility of the authors.

Endnotes

- 1 For an analysis of the Iran agreement, see Brian Katulis and others, "Ensuring that the Nuclear Agreement Effectively Constrains Iran" (Washington: Center for American Progress, 2015), available at <https://www.americanprogress.org/issues/security/report/2015/07/17/117653/ensuring-that-the-nuclear-agreement-effectively-constrains-iran/>.
- 2 As the Iran agreement is nonbinding, it is neither a treaty nor an executive agreement, both of which have force under international law. *Iran Nuclear Agreement Review Act of 2015*, H.R. 1191, 114 Cong. 1 sess. (Government Printing Office, 2015), available at <https://www.congress.gov/bill/114th-congress/house-bill/1191/text/pl>. The vote count in the Senate was 98-1. See U.S. Senate, "U.S. Senate Roll Call Votes 114th Congress - 1st Session: On Passage of the Bill (H.R. 1191 As Amended)," available at http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?&congress=114&session=1&vote=00174 (last accessed January 2016).
- 3 For an analysis of the Paris outcomes, see Gwynne Taraska, "The Paris Agreement" (Washington: Center for American Progress, 2015), available at <https://www.americanprogress.org/issues/green/report/2015/12/15/127360/the-paris-climate-agreement/>.
- 4 UNFCCC, "Adoption of the Paris Agreement" (2015), available at <http://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf>.
- 5 The term P5+1 refers to the five permanent members of the U.N. Security Council plus Germany. For the text of the agreement, see The Washington Post, "Full text of the Iran nuclear deal," July 14, 2015, available at <http://apps.washingtonpost.com/g/documents/world/full-text-of-the-iran-nuclear-deal/1651/>.
- 6 Thomas E. Shea, "IAEA Verification of the Iran Nuclear Deal: 10 Hot Issues," Arms Control Association, July 23, 2015, available at <http://www.armscontrol.org/blog/ArmsControlNow/2015-07-23/IAEA-Verification-of-the-Iran-Nuclear-Deal-10-Hot-Issues>.
- 7 Arms Control Association, "The 1997 IAEA Additional Protocol At a Glance," available at <https://www.armscontrol.org/factsheets/IAEAProtocol> (last accessed December 2015).
- 8 European Union, "Joint Comprehensive Plan of Action" (2015), p. 9, available at http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf.
- 9 Iran Nuclear Agreement Review Act of 2015, H.R. 1191.
- 10 Treaties, according to the U.S. Constitution, require approval by a two-thirds majority of the Senate. For John Yoo's evaluation of the legal status of the Iran agreement, see John Yoo, "Why Obama's Executive Action on Iran Does Not Violate the Law," National Review, July 26, 2015, available at <http://www.nationalreview.com/article/421621/iran-deal-constitution-supports-obama-executive-action>.
- 11 Ibid.; Steven Nelson "Iran Deal May Bind Next President," U.S. News & World Report, July 15, 2015, available at <http://www.usnews.com/news/articles/2015/07/15/iran-deal-may-bind-next-president>.
- 12 Letter from Sen. Tom Cotton (R-AR) and others to the leaders of Iran, March 9, 2015, available at <https://assets.documentcloud.org/documents/1683798/the-letter-senate-republicans-addressed-to-the.pdf>.
- 13 UNFCCC, "Adoption of the Paris Agreement."
- 14 Climate Action Tracker, "Tracking INDCs," available at <http://climateactiontracker.org/indcs.html> (last accessed December 2015); UNFCCC, "INDCs as communicated by Parties," available at <http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx> (last accessed December 2015).
- 15 The White House, "U.S.-China Joint Announcement on Climate Change," Press release, November 11, 2014, available at <https://www.whitehouse.gov/the-press-office/2014/11/11/us-china-joint-announcement-climate-change>.
- 16 For the "well below" language, see UNFCCC, "Adoption of the Paris Agreement." For the inadequacy of the first round of targets, see Climate Action Tracker, "Effect of current pledges and policies on global temperature," available at <http://climateactiontracker.org/global.html> (last accessed December 2015); Climate Interactive, "Climate Scoreboard," available at <https://www.climateinteractive.org/tools/scoreboard/> (last accessed December 2015).
- 17 UNFCCC, "Adoption of the Paris Agreement."
- 18 Ibid.
- 19 UNFCCC, "Kyoto Protocol," available at http://unfccc.int/kyoto_protocol/items/2830.php (last accessed December 2015).
- 20 U.S. Senate Committee on Environment and Public Works, *Road to Paris: Examining the President's International Climate Agenda and Implications for Domestic Environmental Policy*, 114th Cong. 1st sess., July 8, 2015, available at <http://www.epw.senate.gov/public/index.cfm/hearings?ID=99E70038-D5CB-4E63-8695-231AB995D089>; U.S. Senate Committee on Foreign Relations, *2015 Paris International Climate Negotiations: Examining the Economic and Environmental Impacts*, 114th Cong. 1st sess., October 20, 2015, available at http://www.foreign.senate.gov/hearings/2015-paris-international-climate-negotiations-examining-the-economic-and-environmental-impacts_102015p; U.S. Senate Committee on Environment and Public Works, *Examining the International Climate Negotiations*, 114th Cong. 1st sess., November 18, 2015, available at <http://www.epw.senate.gov/public/index.cfm/hearings?ID=0BF4E2BB-416F-40A1-9698-5BED0FE72B-DC>.
- 21 See Greg Dotson and Gwynne Taraska, "Republican legacy on international climate policy," *The Hill*, November 30, 2015, available at <http://thehill.com/blogs/congress-blog/energy-environment/261215-republican-legacy-on-international-climate-policy>.
- 22 U.S. Senate Committee on Environment and Public Works, *Road to Paris*.
- 23 Lisa Friedman, "Critics tell Washington's diplomatic corps that U.S. climate pledge is 'shaky,'" ClimateWire, July 22, 2015, available at www.eenews.net/climatewire/stories/1060022205/.
- 24 For example, see *A resolution expressing the sense of the Senate that any protocol to, or other agreement regarding, the United Nations Framework Convention on Climate Change of 1992, negotiated at the 2015 United Nations Climate Change Conference in Paris will be considered a treaty requiring the advice and consent of the Senate*, S.Res. 290, 114 Cong. 1 sess. (Government Printing Office, 2015), available at <https://www.congress.gov/bill/114th-congress/senate-resolution/290>; *A concurrent resolution expressing the sense of Congress that the President should submit the Paris climate change agreement to the Senate for its advice and consent*, S.Con.Res. 25, 114 Cong. 1 sess. (Government Printing Office, 2015), available at <https://www.congress.gov/bill/114th-congress/senate-concurrent-resolution/25>.
- 25 Dianne E. Rennack, "Iran: U.S. Economic Sanctions and the Authority to Lift Restrictions" (Washington: Congressional Research Service, 2015), available at <https://fas.org/sgp/crs/mideast/R43311.pdf>.
- 26 Ibid., which lists a series of sanctions acts, largely from the 1990s.
- 27 The Washington Post, "Full text of the Iran nuclear deal."

- 28 Rennack, "Iran: U.S. Economic Sanctions and the Authority to Lift Restrictions"; Jack Goldsmith, "Why Congress is effectively powerless to stop the Iran deal," The Brookings Institution, July 21, 2015, available at <http://www.brookings.edu/blogs/markaz/posts/2015/07/21-congress-powerless-to-stop-iran-deal>; Zachary Laub interview with John B. Bellinger III, "How Binding Is the Iran Deal?," Council on Foreign Relations, July 23, 2015, available at <http://www.cfr.org/iran/binding-iran-deal/p36828>.
- 29 This sets the Paris agreement apart from the Kyoto Protocol, in which the United States did not participate.
- 30 UNFCCC, "Adoption of the Paris Agreement."
- 31 Gwynne Taraska and Ben Bovarnick, "The Authority for U.S. Participation in the Paris Climate Agreement" (Washington: Center for American Progress, 2015), available at <https://www.americanprogress.org/issues/green/report/2015/07/07/116690/the-authority-for-u-s-participation-in-the-paris-climate-agreement/>.
- 32 Ibid.
- 33 Ibid.; Daniel Bodansky, "Legal Options for U.S. Acceptance of a New Climate Change Agreement" (Arlington, VA: Center for Climate and Energy Solutions, 2015), available at <http://www.c2es.org/docUploads/legal-options-us-acceptance-new-climate-change-agreement.pdf>.
- 34 Again, the Iran agreement is not legally binding and therefore neither an executive agreement nor a treaty. There are two senses of the term "treaty." In the international context, the term refers to any international agreement with legal force. In the U.S. context, it refers to an international agreement in which U.S. participation is authorized by a two-thirds majority of the Senate. The Paris agreement is a treaty in the first sense but not the second. See Taraska and Bovarnick, "The Authority for U.S. Participation in the Paris Climate Agreement."
- 35 Katulis and others, "Ensuring that the Nuclear Agreement Effectively Constrains Iran."
- 36 Ibid.