Sanctions implications of nuclear use: Israel

SHARON SQUASSONI
RESEARCH PROFESSOR
ELLIOTT SCHOOL OF INTERNATIONAL AFFAIRS
THE GEORGE WASHINGTON UNIVERSITY

NPEC PREPARATORY BRIEFING
NOVEMBER 1, 2023

Baseline Information

- "Would the U.S. Sanction Allies Seeking the Bomb?" Newell Highsmith, April 20, 2023 CEIP
  - Broader than this mandate. <u>Pertains to all nonproliferation activities</u> (not just explosion of a nuclear device) and <u>all kinds of partners</u>, including those who have nuclear cooperation agreements with the United States.
- Key distinctions
  - Israel never joined NPT *(but is considered non-nuclear-weapon state (nnws) under the treaty)*
  - Israel and US no longer have a nuclear cooperation agreement… although Soreq reactor governed by INFCIRC/249

Israel as a U.S. nuclear partner

- There is no Section 123 agreement in place
- INFCIRC/249 is an INFCIRC/66-type agreement. Amended in 1977
  - Requires Israel not to use anything listed in the inventory for any military purpose whatsoever
  - Unlikely to be able to connect anything in that inventory to nuclear weapons use
  - Most (if not all?) of the HEU supplied by the US has been returned to the US
  - However, INFCIRC/249 will remain in effect until the IAEA terminates safeguards on the reactor
- Soreq was scheduled to shut down in 2018
- Website did not mention shutdown as of 2021

Relevant section of Highsmith analysis

- Glenn Amendment sanctions (22USC 2799aa-1(b))
  - Terminate assistance under Foreign Assistance Act*
  - Terminate defense sales & licensing of Munitions list exports
  - Terminate foreign military financing (FMF)
  - Deny U.S. govt credit, credit guarantees, other financial assistance **
  - Oppose loans, financial/technical assistance from international financial institutions
  - Prohibit loan/credit from US banks to foreign government (except food, agricultural commodities)
  - Prohibit Export Administration Act of exports licensed by the Commerce Dept (except food, other agric. Commodities)

* Except humanitarian assistance, food, or other agri. Commodities

**Except medical, humanitarian assistance, agri. exports

Not exactly “no waiver provision”

- Paragraphs 4 & 5 of USC 22 2799 aa 1 (b)
- Paragraph 4: President can delay imposition for not more than 30 days if certifies to Speaker, SFRC that immediate imposition would be detrimental to the national security of the United States.
  - President gets only 1 30-day delay per detonation
  - A joint resolution gets introduced to permit waiver within 30 days
- Paragraph 5: If Congress enacts a joint resolution pursuant to Para 4,
  - Waiver goes through if President certifies that “sanctions would be seriously prejudicial to the achievement of United States nonproliferation objectives *or otherwise jeopardize the common defense and security*. The President shall transmit with such certification a statement setting forth the specific reasons therefor.”

Highsmith’s conclusion

- Congress would have to “enact new legislation authorizing the president to waive some or all of these sanctions.”
- In the case of sanctions for Indian and Pakistani nuclear tests if 1998, Congress at first pass limited waivers and spent 6 months authorizing a series of waivers. After 9/11, became broader still.

Snapshot of U.S. Foreign Aid to Israel

- Largest recipient ($158 B current, non-adjusted for inflation $, CRS)
  - From 1971 to 2007, received economic assistance
  - All bilateral aid now is military

- FMF: $3.5B per year through 2028 (per 2016 MOU); $.5B on missile defenses
- * Recommend analysis by Jeremy Sharp, CRS, "US Foreign Aid to Israel, March 1, 2023" https://sgp.fas.org/crs/mideast/RL33222.pdf

Back to the Glenn Amendment list

1. TERMINATE ASSISTANCE UNDER FOREIGN ASSISTANCE ACT

Israel is not a recipient of development aid, but listed as major non-NATO ally under FAA, which allows it to purchase Excess Defense Articles. Israel received $385M in EDA from 2010 to 2020.

Section 514 of FAA allows transfer of stockpiles of US defense articles to foreign country. CRS estimates that if DoD contributed maximum amount allowable, about $4.4B worth of stocks are in Israel

2. TERMINATE DEFENSE SALES & LICENSING OF MUNITIONS LIST EXPORTS

F-35 (still to receive 14 of 50 jets)

planned sale of 8 KC-46A Pegasus refueling tankers ($2.4B)

2021 plan to buy 18 CH-53K transport hx for $3.4B

3. TERMINATE FOREIGN MILITARY FINANCING (FMF) -- $3.8B/YEAR

Back to the Glenn Amendment list

4. DENY U.S. GOVT CREDIT, CREDIT GUARANTEES, OTHER FINANCIAL ASSISTANCE
    - Loan guarantees authorized through FY 2028 ($, billions)
    - EXIM Bank

5. OPPOSE LOANS, FINANCIAL/TECHNICAL ASSISTANCE FROM INTERNATIONAL FINANCIAL INSTITUTIONS

6. PROHIBIT LOAN/CREDIT FROM US BANKS TO FOREIGN GOVERNMENT
    - E.g., Abraham Fund

7. PROHIBIT EXPORT ADMINISTRATION ACT OF EXPORTS LICENSED BY THE COMMERCE DEPT
    - Dual-use exports

Other sanctions on Newell's list

1. *Arms transfer sanctions* – NA since tailored to countries that have materially breached binding commitments to US under international agreements
2. *Foreign assistance sanctions* – NA for same reason
3. *Nuclear Cooperation sanctions* (AEA) – NA because we don't have an agreement with Israel
4. *Export-Import Bank sanctions* (12 USC 635 (b) (4)). Applicable
   1. SecState to submit a report to congressional committees and Exim Bank Board of directors. No guaranteed, insured or extended credit. President must certify 45 days before approval of credit that "it is in the national interest of the Bank to give such approvals" to waive the sanctions.
5. *ENR Transfer sanctions* – NA unless really stretching it
6. *Discretionary sanctions* (EO 12938) – Possible for SecState, SecTreasury

The key word is "entanglement"

- Per State Department, Israel can use FMF to finance direct commercial sales contracts, purchasing directly from US vendors
- Before 2024, Israel used FMF to finance development/purchases of its own weapons production (about 25% of total). Gradual phase out process through 2028.
  - Alternative is now to establish US subsidiaries of Israel firms (e.g., Elbit). Do R&D in Israel and produce in US.
- Israeli firms deeply involved in F-35 procurement
- Various other Congressionally funded programs (anti-tunnelling, UAV detection, etc.). However, Congress holds the cards here

The key word is "entanglement"

- Israel clearly dependent on the US for major platforms, but is exporting $9B worth of sophisticated subsystems annually.
- Sanctions will hurt US as well as Israel
- Likely outcome would be immediate 30-day waiver; threat of lapsed waiver unless Israel meets U.S. requirements (whatever those may be)