

A Duty to Protect: The Failure of UK Sanctions Against Iran and The Necessity of Proscribing the IRGC

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Title: “A DUTY TO PROTECT: THE FAILURE OF UK SANCTIONS AGAINST IRAN AND THE NECESSITY OF PROSCRIBING THE IRGC” By Elizabeth Samson.

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As global terrorism surges with every passing year, calls for the United Kingdom (UK) to proscribe Iran's Islamic Revolutionary Guard Corps (IRGC) as a terrorist organisation have become more vocal and determined, but to little effect. Government ministers have consistently deflected inquiries on proscription by referring to the heavy sanctions regime the UK already imposes on the IRGC. Only this month, the Government has announced plans to further extend sanctions on Iran and the IRGC and to introduce new legislation to further widen its power to sanction Iran. Sanctions, though, are often ineffective and carry neither the same impact nor the same force of law as proscription, which broadly criminalises terror groups and imposes criminal penalties on anyone who associates with them.

The Iranian Government has been behind 15 credible threats to kill or kidnap British citizens or UK-based individuals in the past year alone, yet its extrajudicial and extraterritorial agent, the IRGC, practically operates with impunity in the UK. The UK Government's continued evasiveness in committing to proscription in the face of the IRGC's circumvention of sanctions and its growing threat profile can arguably be deemed a dereliction of its "Duty to Protect" the British public, founded in the English Common Law tradition and extended to the present day.

This policy brief examines the Government's "Duty to Protect" its citizens in the context of the English legal tradition, provides background on the IRGC, discusses the advent of the Iranian Nuclear Deal as an attempt by Western governments to minimise Iran's threatening impact, and explains the deal's failure, which has led to both sanctions and proscription by democracies. The brief then examines why sanctions are used and their limits, and evaluates the strength of proscription as an alternative. Four examples of IRGC terror threats are presented; each event was followed by parliamentary debates where MPs and Lords inquired about IRGC proscription, with subsequent deflections from Government.

Possible reasons for the Government's delay are discussed with explanations as to why those excuses do not pass muster. The brief concludes with a call to the Government, in light of the evidence presented, to exercise its "Duty to Protect" the British public and finally proscribe the IRGC, while also offering the following recommendations.

Recommendations for MPs

- 1) MPs must assert the failure of sanctions due to improper enforcement; the minor impact of multilateral sanctions and unilateral sanctions; and the ease of evading sanctions.
- 2) MPs must ask the Government why it has not revised the National Security Bill to make proscription easier and why it has not implemented the Independent Reviewer's suggestions to circumvent the restrictions of the Terrorism Act 2000.
- 3) MPs should insist that the Terrorism Act 2000 be interpreted to include State organisations like the IRGC whose conduct includes acts of terrorism, irrespective of the UK's long-standing policy position.

Recommendations for the Government:

In evaluating the need for proscription in light of the failure of sanctions, the Government should consider the following points:

- 1) The “Duty to Protect” obligates the Government to use all its power to protect citizens from harm, thereby requiring the Government to find a way to utilise proscription to protect the British public from the IRGC.
- 2) The October 2023 expiration of the Joint Comprehensive Plan of Action (JCPOA) sunset clauses will eliminate many sanctions and should present a deadline for the Government to evaluate the efficacy of sanctions and the alternative of proscription.
- 3) The ease with which Iran is able to evade sanctions in light of UK universities producing military technology studies funded by Tehran.
- 4) The fact that IRGC proscription would not necessarily close down lines of communication with Tehran, allowing for continued diplomatic ties.
- 5) The need to establish a new legal approach – either interpreting the Terrorism Act 2000 to include State organisations engaged in acts of terrorism and violations of International Humanitarian Law (IHL), or revising the National Security Bill to include the power to proscribe State bodies.

Introduction

On 22 May 2017, an Islamist extremist entered the Manchester Arena and, amidst 14,200 concertgoers, detonated an improvised explosive device strapped to his person. In the UK’s first suicide attack since the London bombings of 7 July 2005, the bomber injured 1017 people, many of them children, and killed 22 others.

After a terror attack, a public inquiry is held to determine points of weakness and to assess what can be done to prevent attacks in the future. In the aftermath of 22 May, the Home Office acknowledged that the Government’s first duty “is to protect the public”¹ and supported legislation that would introduce a new “Protect Duty” to help secure places of public accommodation in the event of a terrorist attack. “Martyn’s Law”² – named for Martyn Hett who was killed in the Manchester Arena attack – was finally announced on 19 December 2022, but since the 2017 attack, the UK has seen 15 terrorist attacks and Martyn’s Law has still not passed.³ The “Protect Duty”, upon enactment, will have a specific legal definition pertaining only to proprietors’ responsibilities to better secure their public venues.

¹ Statement of Home Secretary Priti Patel, “Work of the Home Office”, Statement UIN HCWS81, UK Home Office, 4 November 2019, <https://questions-statements.parliament.uk/written-statements/detail/2019-11-04/HCWS81>.

² “Martyn’s Law to ensure stronger protections against terrorism in public places”, UK Home Office, 19 December 2022, <https://www.gov.uk/government/news/martyns-law-to-ensure-stronger-protections-against-terrorism-in-public-places>.

³ Statement of Home Secretary Suella Braverman, “Homeland Security Policy Update”, Statement UIN HCWS462, UK Home Office, 19 December 2022, <https://questions-statements.parliament.uk/written-statements/detail/2022-12-19/hcws462>.

The Home Office's statement that the "first duty of government is to protect the public"⁴ articulates a principle that extends far beyond that new law, especially with respect to the tremendous reach of terror opportunists. The British Government is, indeed, duty-bound to ensure the safety of its citizens from terror threats, and not simply by enacting a law to make proprietors, who are citizens themselves, more accountable.

The UK's Terrorism Act 2000⁵ provides the framework for counterterrorism operations, including expanding the definition of terror and revising the terms to proscribe or "outlaw" terrorist entities, thereby severely limiting their operational capabilities to a far greater extent than sanctions can achieve. Identifying and proscribing terror organisations is a key instrument in the war on terror. The UK has proscribed 78 organisations, but one persistently dangerous and threatening group has evaded UK proscription – Iran's Islamic Revolutionary Guard Corps (IRGC).

Designated by the United States as a Foreign Terrorist Organization (FTO) since 2019,⁶ the IRGC remains proscriptively "at large" in the UK, despite requests from the global community, Members of Parliament, and domestic citizenry to bring the UK's democratic laws to bear upon it.

On 12 January 2023, the House of Commons debated a motion⁷ calling upon the Government to proscribe the IRGC with great urgency.⁸ In a cross-party effort, the resolution unanimously passed, and though a legally non-binding instrument, it reflects the sentiments of British citizens conveyed through their elected MPs – Government must use all powers available to protect them, and what it has done so far is not enough.

MPs have raised the issue of IRGC proscription more than one hundred times in debates in Chambers, as far back as July 2018⁹ and as recently as 13 June 2023,¹⁰ asking ministers to answer for the Government's delay. The Government representatives, however, continue to avoid definitively answering questions about proscription and instead offer that the Government has imposed extensive sanctions on the IRGC, a weaker method than proscription, and an approach that has already failed to a large degree. On 6 July 2023, the Government again announced a continuation of this policy, with plans for new legislation to further expand its power to sanction Iran, rather than contemplating immediate proscription or legislative change to facilitate proscription.¹¹

Therefore, as the first duty of Government is, indeed, to protect the public, we must examine the source of the British Government's "Duty to Protect", the status of Iran and the IRGC as a terrorist threat, the inefficacy of sanctions, the necessity of proscription, and the possible reasons why the Government has not proscribed the IRGC, allowing it to slip through the cracks.

⁴ Patel, "Work of the Home Office".

⁵ "An Act to make provision about terrorism; and to make temporary provision for Northern Ireland about the prosecution and punishment of certain offences, the preservation of peace and the maintenance of order", 2000 c.11 (hereinafter Terrorism Act 2000) (Royal Assent 20 July 2000).

⁶ "Designated Foreign Terrorist Organizations", U.S. Department of State, Bureau of Counterterrorism, <https://www.state.gov/foreign-terrorist-organizations/>.

⁷ Hansard HC Deb., vol. 725, col. 727, 12 January 2023.

⁸ Ibid. at col. 772, Bob Blackman.

⁹ Hansard HC Deb., vol. 645, col. 949, 24 July 2018, Bob Blackman.

¹⁰ Hansard HC Deb., vol. 734, col. 142, 13 June 2023, Bob Blackman.

¹¹ <https://www.gov.uk/government/news/uk-steps-up-action-to-tackle-rising-threat-posed-by-iran>

A citizen's right to protection is rooted in the English common law tradition.¹² Seventeenth-century jurist Sir Edward Coke – considered the greatest jurist of the Elizabethan and Jacobean eras¹³ – described the relationship between sovereign and subject as one of “mutual bond and obligation”, where subjects owed allegiance to the Crown and the sovereign must “govern and protect his people”.¹⁴ Sir Edward encapsulated this tenet in the axiom “*protectio trahit subjectionem, et subiectio protectionem*” – protection implies subjection, and subjection protection.¹⁵ Noted eighteenth-century jurist Sir William Blackstone later affirmed this principle in his *Commentaries on the Laws of England*, stating it is “a maxim in the law, that protection and subjection are reciprocal”.¹⁶

The King's protection that Sir Edward described was the “protection of the law”, afforded through the legal process and allowing for the enforcement of rights.¹⁷ Therefore, the rights of individuals to be protected from violence and harm are recognised and protected by law and are not dependent on the arbitrary will of the government. The legislature has an affirmative obligation, a duty, to enact laws to protect individual rights; the executive is duty-bound to enforce the laws; and the courts must apply the laws for the protection of the public.¹⁸

England's Glorious Revolution, which resulted in the November 1688 removal of King James II and the installation of his daughter Mary II and her husband William III of Orange as Queen and King, transferred the governing powers from the Crown to an elected Parliament. The English Bill of Rights of 1689¹⁹ outlined those powers as well as their responsibilities, included in the following terms:

Lords Spiritual and Temporal and Commons ... being now assembled in a full and free representative of this nation, do ... declare:

... suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal; ... dispensing with laws or the execution of laws by regal authority ... is illegal; and that for redress of all grievances, and for the amending, strengthening and preserving of the laws, Parliaments ought to be held frequently.²⁰

In the Bill of Rights, the Parliamentary leaders who orchestrated this transfer of powers asserted the supremacy of Parliament over the king by making the ability to legislate one of the key powers of government.

¹² Steven J. Heyman, “The First Duty of Government: Protection, Liberty and the Fourteenth Amendment”, *Duke Law Journal* 41 (1991): 507, 513.

¹³ John Baker, *An Introduction to English Legal History* (Butterworths, 2002), 162.

¹⁴ Heyman, “The First Duty of Government”, 513, citing Calvin's Case 7 Co. Rep. 1a, 77 Eng. Rep. 377, 382 (1608), a legal decision which established that a child born in Scotland was considered under common law to be an English subject and entitled to the benefits of English law.

¹⁵ *Ibid.*

¹⁶ William Blackstone, *Commentaries on the Laws of England*, Ch. VI, “On the King's Duties” (Oxford: Clarendon Press, 1765-1770).

¹⁷ Edward Coke, *Institutes of the Lawes of England*, Part. 1 at 126a, 130a (1628-1644).

¹⁸ Heyman, “The First Duty of Government”, 520.

¹⁹ An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown, 1688 c.2 (1 Will and Mar Sess 2). The Act was dated 13 February 1688 and received Royal Assent on 16 December 1689.

²⁰ *Ibid.*

The Glorious Revolution effectively ended monarchical governance and shifted the justification for government from divine right to popular sovereignty – the people themselves are sovereign and will be represented by elected Members of Parliament. However, the powers that Parliament retained for itself also included reciprocal obligations – the people must obey the law but the government, as the originator of laws, has the duty to protect the people, a duty it retains to the present day.

Iran as a Global Threat: The Terror Origins of the IRGC and the Iran Nuclear Deal

With its vast global network and its ability to flout the rule of law in any territory in which it establishes itself, the IRGC arguably poses one of the most significant global terror threats, particularly in the UK where it evades sanctions, has been able to grow, and is not legally held to account.

The IRGC: Supporting Global Terror

In the aftermath of Iran's 1979 Islamic Revolution, the IRGC was established as a core branch of the Iranian Armed Forces on 5 May of that year. As distinct from the traditional Iranian Army, whose mandate is to protect the territorial integrity and sovereignty of the Republic, the IRGC is charged with preserving the ideology and values of the Islamic Revolution by preventing foreign interference as well as internal dissent in Iran. The IRGC was intended to operate extrajudicially, outside legal constraints, and to take any measures to preserve and maintain the Islamic Revolution's new theocratic structure.

After its initial founding, the Iran–Iraq War of 1980 to 1988 facilitated the consolidation of the IRGC into a force with a more articulated military structure. The IRGC's military branches grew to include ground forces across Iran's 31 provinces and Tehran; the Basij paramilitary force; naval forces separate from Iran's regular navy; an air force separate from the regular military and which runs Iran's ballistic missile program; and a cyber command which works with IRGC-affiliated businesses on military and commercial espionage.²¹ Another consequence of the Iran–Iraq War was that the IRGC began deploying agents outside of Iran and sponsoring ideologically aligned non-State armed fighters and terror groups, including Hezbollah; formed in 1982, its name means the "Party of God" and it is considered Iran's terror proxy in southern Lebanon.²²

The IRGC's five branches include the original ground, naval and air forces. In addition, after Ayatollah Ali Khamenei became Supreme Leader of the Islamic Republic in 1989, the IRGC formalised its external operations by adding another branch – the IRGC-Quds Force (IRGC-QF) – which handles unconventional warfare²³ by supporting violent non-State actors, many of which are proscribed groups in the UK, such as the Islamic State (ISIS), al-Qaeda, Hezbollah, Hamas and Palestinian Islamic

²¹ "Iran's Revolutionary Guards", Council on Foreign Relations, 20 April 2023, <https://www.cfr.org/background/irans-revolutionary-guards>.

²² "Lebanese Hezbollah", Congressional Research Service, 1 February 2021, <https://www.justice.gov/eoir/page/file/1363491/download>.

²³ "Counterterrorism Guide: Islamic Revolutionary Guard Corps (IRGC)", National Counterterrorism Center, March 2022, https://www.dni.gov/nctc/ftos/irgc_fto.html.

Jihad.²⁴ In 2009, the IRGC-Intelligence Organization (IRGC-IO) was established as a branch to operate domestically, arrest dissidents and suppress protests, including of dual citizens.²⁵

In the decades since its founding, the IRGC has evolved into a violent, Islamist-extremist organisation that has fully expanded its operations to function in the same way as terror groups that use violence, intimidation, hijackings and hostage-taking as tools to advance their militant agendas.

The Iran Nuclear Deal: A Failed Joint Comprehensive Plan of Action

Iran began developing nuclear technologies in the 1970s and its capabilities grew in the decades after; it was revealed in 2002 that Iran had two secret uranium-enriching nuclear facilities, which it claimed were low-grade for the operation of nuclear power plants. Alarm in the international community over Iran's potential development of weapons-grade nuclear materials led the United Nations to adopt resolutions denouncing Iran's nuclear efforts and to initiate a sanctions regime to pressure Iran. The sanctions froze assets of certain individuals and entities and banned Iran from transferring nuclear and missile technology.²⁶

As the years progressed, sanctions increased in number and severity until ultimately, on 14 July 2015, in exchange for sanctions relief, Iran agreed to significantly restrict and dismantle its nuclear power program, to reduce its stockpile of uranium by 98%, and to keep its level of uranium enrichment at 3.67% — significantly below the enrichment level needed to create a bomb.²⁷ The Iran Nuclear Deal of 2015, also known as the Joint Comprehensive Plan of Action (JCPOA), reflected political agreements²⁸ reached between Iran, the European Union and the P5+1 (the five permanent UN Security Council members – China, France, Russia, UK and US – plus Germany).

With the onset of the JCPOA there was a notable surge in IRGC activity.²⁹ While Iran claimed it wanted to bring about peaceful resolutions to its conflicts with the international community, the IRGC, backed by the Iranian regime, was simultaneously expanding its reach and increasing its operations in the UK, Europe and the US.³⁰

Practically from its inception, Iran defied the JCPOA, and due to its continued defiance, the US withdrew from the agreement on 8 May 2018, charging Iran with violating the spirit of the deal. Announcing that the IRGC – “a part of another government” – would be designated as an FTO on 15 April 2019, the US stated that this was intended to send a strong message: “Our designation makes clear to the world that the Iranian regime not only supports terrorist groups but engages in terrorism

²⁴ “Country Reports on Terrorism 2019”, U.S. Department of State, <https://www.state.gov/reports/country-reports-on-terrorism-2019/>.

²⁵ “Treasury Sanctions Officials of Iranian Intelligence Agency Responsible for Detention of U.S. Nationals in Iran”, U.S. Department of the Treasury, 27 April 2023, <https://home.treasury.gov/news/press-releases/jy1444>.

²⁶ UN Security Council, Security Council resolution 2231 (2015) [on Joint Comprehensive Plan of Action (JCPOA) on the Islamic Republic of Iran's nuclear programme], 20 July 2015.

²⁷ See The White House: President Barack Obama, “Implementation Day”, 17 January 2016, <https://obamawhitehouse.archives.gov/issues/foreign-policy/iran-deal>.

²⁸ Julia Frifield, Letter to Secretary of State Mike Pompeo, United States Department of State, 19 November 2015, <http://www.humanrightsvoices.org/assets/attachments/documents/11.24.2015.state.dept.letter.jcpoa.pdf>.

²⁹ Kasra Aarabi, “Making the Case for the UK to Proscribe Iran's IRGC”, Tony Blair Institute for Global Change, 17 January 2023, <https://www.institute.global/insights/geopolitics-and-security/making-case-uk-proscribe-irans-irgc>.

³⁰ Ibid.

itself.”³¹ The FTO designation supplemented and enhanced the many sanctions already imposed; the US also retained Iran’s 1984 State Sponsor of Terror (SST) designation.³²

In 2019, the JCPOA began to collapse when Iran stated its intention to suspend implementation of some parts of the JCPOA and announced that it had started to increase uranium enrichment beyond the 3.67% limit to 4.5% and then 5%.³³ Despite that proclamation and the extensive Iranian violations, the UK has not withdrawn from the JCPOA or proscribed the IRGC as a terror organisation as the US has done, and continues to claim the sufficiency of sanctions on Iran and the IRGC.

The Efficacy of UK Sanctions Against Iran and the IRGC

The UK Government has insisted that imposing financial and individual sanctions on the IRGC is an effective means of obstructing its ability to function and endanger the British public. However, it is well-documented that sanctions often fail to achieve their desired purpose, cause unintended harm and often increase the ire of the target. Thus, it cannot be said that sanctions on Iran and the IRGC categorically and unequivocally serve to protect British citizens.

The Limits of Sanctions

Sanctions can be used to advance foreign policy objectives or accomplish national security goals by obstructing a country’s financial supply chains, imposing trade restrictions and freezing the assets of an adversary. Governments often impose economic sanctions on nations, organisations, groups or individuals in an attempt to thwart the capabilities of terror networks. Bank wire transfers are used in global transactions when moving large amounts of money. By inhibiting the use of banks, sanctions make it difficult for aggressive State actors, non-State actors and affiliates such as terror groups to raise money, conduct business or launder the proceeds of criminal enterprises.³⁴

Counterintuitively, although economic sanctions are widely used by many countries, they have been found to only be effective 13% of the time.³⁵ Additional studies have shown the percentages to be a bit higher. In a study of 204 instances of economic sanctions imposed in the twentieth century, researchers “found sanctions to be at least partially successful in 34 percent” of the documented

³¹ “Secretary Pompeo Announces Intent To Designate IRGC as a Foreign Terrorist Organization”, U.S. Embassy in Egypt, 8 April 2019, <https://eg.usembassy.gov/secretary-pompeo-announces-intent-to-designate-irgc-as-a-foreign-terrorist-organization/>.

³² Iran was first designated as a State Sponsor of Terror in 1984, a few years after the Islamic Revolution proved to have dangerous implications for democracies and Western institutions due to state-sanctioned terror campaigns. Since then, Iran’s continued support for proxy terrorist groups and Shia militia outfits, as well as Iranian external operations, has reinforced the necessity of the terror designation. The signing of the JCPOA did not remove that designation. “State Sponsors of Terrorism: An Examination of Iran’s Global Terrorism Network”, House Homeland Security Subcommittee on Counterterrorism and Intelligence, 115th Congress, 17 April 2018, <https://www.congress.gov/event/115th-congress/house-event/108155/text>. See also generally, “State Sponsors of Terrorism”, U.S. Department of State, <https://www.state.gov/state-sponsors-of-terrorism/>.

³³ “Iran will enrich uranium to 5% at Fordow nuclear site – official”, *The Jerusalem Post*, 5 November 2019, <https://www.jpost.com/breaking-news/iran-will-enrich-uranium-to-5-percent-at-fordow-nuclear-site-official-606964>. Iran also claimed to be capable of enriching uranium to 20% if needed. *Ibid*.

³⁴ Paddy Hirsch, “Why sanctions don’t work – but could if done right”, NPR, 11 April 2023, <https://www.npr.org/sections/money/2023/04/11/1169072190/why-sanctions-dont-work-but-could-if-done-right>.

³⁵ *Ibid*.

cases.³⁶ But depending on the desired effect of the sanctions, the success rate varied: 21% success in disrupting military adventures; 31% each in “military impairment” and in regime change and democratisation; and 30% in “other” major policy changes.³⁷ While certainly greater than 13%, the numbers do not paint a picture of sweeping effectiveness. There are several reasons why sanctions often do not have the intended effect.

1) Sanctions are often improperly enforced.

Proper enforcement of sanctions is frequently a problem,³⁸ particularly international sanctions imposed via UN bodies. For sanctions to be effective, UN Member States must invest resources to enforce the sanctions regime both through the international system and via the enactment of national legislation to govern sanctions violations. Enforcement in the form of various UN taskforces requires substantial resources which may not always be present due to lack of political will and generally inadequate international regulation.³⁹ Furthermore, at the national level, loopholes in enforcement mechanisms allow for relatively easy evasion of the limitations imposed by sanctions.

2) Sanctions are particularly ineffective for large, sweeping goals.

When the goal of sanctions is particularly large or sweeping – such as the thwarting of the IRGC’s global terrorist network – they are arguably even more unlikely to accomplish their goal, even with broad international support. For instance, sanctions could not force Saddam Hussein to withdraw from Kuwait, or force Serbia and Bosnia’s Serbs to halt their military aggression, though in both cases sanctions were indeed effective at achieving very narrow, targeted foreign policy goals.⁴⁰ These are examples of multilateral sanctions that had limited impact. Unilateral sanctions, such as the UK’s individual sanctioning of the IRGC, rarely have an effect as the target can routinely bypass the restrictions and find other sources of financial support.⁴¹

3) Financial sanctions are easily evaded.

As an aggressor’s access to financing is stymied by sanctions, it adapts by seeking other income streams. The IRGC is a prime example of what is called a “self-sustaining military proxy”.⁴² For more than four decades, the IRGC has effectively bypassed international and domestic sanctions through its vast network of regionally based front and shell companies which supply funding and help it avoid restrictions. This model is often used by shadow militaries or paramilitaries to evade externally imposed financial limitations – as we have

³⁶ Henry Kopel, *War on Hate: How to Stop Genocide, Fight Terrorism, and Defend Freedom*, Ch. 14 (Lexington Books, 2021), citing Gary Clyde Hufbauer et al., *Economic Sanctions Reconsidered* (Washington, DC: Peterson Institute for International Economics, 3d edn, June 2009), 158-159.

³⁷ Ibid.

³⁸ Peter Nadin, “Sanctions: And Why They Don’t Work (Very Well)”, Our World, 9 May 2014, <https://ourworld.unu.edu/en/sanctions-and-why-they-dont-work-very-well>.

³⁹ Ibid.

⁴⁰ Richard N. Haass, “Testimony: Economic Sanctions”, Brookings, 9 September 1998, <https://www.brookings.edu/testimonies/economic-sanctions/amp/>.

⁴¹ Ibid.

⁴² Kiron K. Skinner, “Wagner Group and the IRGC: The Rise of Self-Sustaining Military Proxies”, The Heritage Foundation, 17 March 2023, <https://www.heritage.org/defense/commentary/wagner-group-and-the-irgc-the-rise-self-sustaining-military-proxies>.

seen with Russia's Wagner Group.⁴³ For instance, when the US sanctioned Iran's Khatam al-Anbia engineering subsidiary, a substantial source of IRGC funding, the US was initially extremely effective at thwarting its operations, which led to sanctions against other subsidiaries. However, the victory was short-lived and the IRGC adapted to circumvent the restrictions and sustain itself, meaning the sanctions had little impact on its ability to maintain activity.⁴⁴

The Ineffectiveness of Iran and IRGC Sanctions

While proscription is under review, UK Government ministers maintain that Iran and the IRGC are sanctioned, implying that sanctions and proscription have the same effect, but the following illustrate the weaknesses of UK sanctions.

1) UK Universities and Tehran-funded Military Technology

In June 2023, the Prime Minister, the Rt Hon Rishi Sunak MP, announced an investigation into 11 universities whose scientists had produced Iran-funded military technology studies into improving the capabilities of suicide drones and fighter aircraft.⁴⁵ The Shadow Foreign Secretary, the Rt Hon David Lammy MP, asked the Government to "urgently investigate whether or not UK universities and academics have breached UK sanctions on Iran regarding collaboration on military technologies".⁴⁶ This example uniquely demonstrates the challenges of sanctions enforcement and the ease of evasion in the UK.

2) The JCPOA Sunset Clauses

The British Government continues to maintain that its sanctions on Iran protect UK citizens, but the expiration in October 2023 of the JCPOA "sunset clauses", which will lift many sanctions, undermines the Government's assertion.⁴⁷ Known as **Transition Day, it falls** "eight years after Adoption Day"⁴⁸ or when the IAEA [International Atomic Energy Agency] has reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities, whichever is earlier ..."⁴⁹ The October 2023 date initiates a series of lapsing

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Louisa Clarence-Smith, "British universities 'helping Iran develop suicide drones' to be investigated", *The Telegraph*, 21 June 2023, <https://www.telegraph.co.uk/news/2023/06/21/british-universities-help-iran-suicide-drones-investigated/>; Tariq Tahir, "UK universities accused of helping Iran develop suicide drones and fighter jets", 9 June 2023, <https://www.thenationalnews.com/world/uk-news/2023/06/09/uk-universities-accused-of-helping-iran-develop-suicide-drones-and-fighter-jets/>.

⁴⁶ Ibid.

⁴⁷ Adoption Day of the JCPOA was 18 October 2015, 90 days after the passage of the UN Security Council Resolution endorsing the deal (20 July 2015). Adoption Day triggered Iran and the P5+1 to take steps to meet the commitments to fully implement the JCPOA. For reference, Termination Day is October 2025, ten years after Adoption Day. Termination Day terminates Resolution 2231, and the Security Council will close Iran's nuclear file.

⁴⁸ See Ibid.

⁴⁹ United Nations Security Council Resolution 2231 (2015), S/RES/2231, para 23 (2015). This resolution established the JCPOA agreement on 14 July 2015 and was signed between Iran and the states making up the E3/EU+3 Group (China, the United States, Russia, Germany, France and the United Kingdom), together with the High Representative of the European Union for Foreign Affairs and Security Policy (doc.S/2015/544). Security Council Resolution 2231 (2015), of 20 July, sets out this agreement in its Annex A. On the same date, the countries making up the aforementioned group and the European Union also presented a declaration with a view to promoting transparency and creating a climate conducive to full application of the JCPOA (S/2015/545).

limitations and gradually allows Iran to escalate its nuclear program and permits the expiration of other missile and military restrictions.⁵⁰

The IAEA will evidently not be concluding that Iran remains in “peaceful activities” by October, so the terms of the JCPOA will then expire. However, in the event of significant non-performance by Iran of JCPOA provisions and commitments, UN sanctions against Iran that had been terminated pursuant to the terms of the JCPOA may be re-imposed and specific restrictions, including restrictions on the transfer of proliferation-sensitive goods, may apply.⁵¹ Although sanctions may be reinstated in the event of Iran’s non-compliance,⁵² and the UK has already separately announced plans to bring forward legislation later this year to introduce a new sanctions regime on Iran, the October 2023 sunset provisions should be seen as a sharp deadline for the UK Government to evaluate the impact of its sanctions, both on Iran generally and on the IRGC in particular, and to give an honest assessment of their true efficacy.

As sanctions have likely accomplished very little, based both on statistics and empirical example, reinstating them or extending them would do little to aid the Government in fulfilling its duty to protect British citizens, and a stronger legal measure is needed.

Outlawing Terror Groups: Designation and Proscription in the National Legal Context

In seeking to prevent and counter terrorism, proscription is the legal designation of certain organisations and their members and associated individuals as “terrorist organisations”, “terrorists”, individuals “associated with terrorism” and similar categorisations. It is the strongest weapon in a country’s counterterrorism arsenal as it brings the full force of the law against a designated entity and also indicates a government’s willingness to cast a wide net to criminalise any and all affiliations with the proscribed group.

When an entity is proscribed, the law bans all its activities and makes it a crime to associate with it in any way; it broadly results in immigration and travel restrictions, heightened monitoring and freezing of assets.⁵³ For instance, while sanctions may order the freezing of assets or prevent transfer of materials, proscription would require businesses and banks to guarantee that companies with which they conduct financial transactions are not connected to the proscribed group in any material way, otherwise they face criminal penalties and prison time.

⁵⁰ Behnam Ben Taleblu and Andrea Stricker, “Shining a Light on the Iran Deal’s Sunset Problem”, *The National Interest*, 9 February 2021, <https://nationalinterest.org/feature/shining-light-iran-deal%E2%80%99s-sunset-problem-177945>.

⁵¹ S/RES/2231, Annex V, para 18.1 (2015). Paragraph 18.1 reads: “In accordance with the UN Security Council resolution endorsing this JCPOA, the provisions imposed in UN Security Council resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010) and 2224 (2015) will be terminated subject to re-imposition in the event of significant non-performance by Iran of JCPOA commitments, and specific restrictions, including restrictions regarding the transfer of proliferation sensitive goods will apply.”

⁵² “Security Council, Adopting Resolution 2231 (2015), Endorses Joint Comprehensive Agreement on Iran’s Nuclear Programme”, United Nations Security Council, 7488th Meeting, SC/11974, 20 July 2015, <https://press.un.org/en/2015/sc11974.doc.htm>.

⁵³ See generally, “Guide on the proscription of organizations in the context of countering terrorism”, United Nations Office of the High Commissioner for Human Rights, <https://www.ohchr.org/sites/default/files/documents/issues/terrorism/2022-10-04/HRC-Flyer-FINAL-DIGITAL.pdf>.

Acknowledging the threat that Iran and the IRGC pose to global safety and security, the US has designated the IRGC as a terror organisation, withdrawn from the JCPOA due to Iran's violations of the deal, and has continued to identify Iran as an SST. The UK – arguably the strongest ally of the US – has done none of those things and has merely imposed sanctions on the IRGC and other individuals and entities, but, as seen in the previous section, sanctions are of limited use.

Terrorism Act 2000: Proscribed Organisations

Understanding the Government's need for a stronger mechanism than sanctions to thwart terrorists, the UK's Terrorism Act 2000 defined the laws pertaining to "Proscribed Organisations" and criminalised affiliations with those organisations, from the most basic to the most advanced degree.⁵⁴ The purpose of proscription is to impede recruitment and support, and to prevent the organisation from growing, functioning and enhancing its terrorist agenda. Under the Act, the Home Secretary may proscribe an organisation if he or she "believes that it is concerned in terrorism", and it is proportionate to do so. For the purposes of the Act, this means that the organisation:

- 1) commits or participates in acts of terrorism,
- 2) prepares for terrorism,
- 3) promotes or encourages terrorism, or
- 4) is otherwise concerned in terrorism.

An organisation is considered to promote or encourage terrorism if its activities:

- 1) include the unlawful glorification of the commission or preparation (whether in the past, in the future or generally) of acts of terrorism; or
- 2) are carried out in a manner that ensures that the organisation is associated with statements containing any such glorification.

Part II of the Act details the procedural requirements for proscription, and elaborately describes the many criminal "Offences" connected to associating with a proscribed group with respect to "Membership", "Support" and "Uniform and Publication of Images". Those categories also specify the amount of prison time imposed for violating the law.⁵⁵ Proscribing the IRGC would legally change its status in the UK and make it a criminal offence for anyone to belong to the group, attend its meetings, express support for its aims, meet its members or carry its flag or logo in public, among other restrictions. The criminalisation of the IRGC would severely hamper its ability to recruit and radicalise individuals in the UK, an activity which has increased substantially since 2015.⁵⁶

Pursuant to the United States Code regarding Designation of Foreign Terrorist Organizations,⁵⁷ the US has currently designated 68 FTOs, including the IRGC in April 2019 because of its support for

⁵⁴ Terrorism Act 2000, Part II.

⁵⁵ Ibid. at Part II, nos 11-13.

⁵⁶ Kasra Aarabi, "Making the Case for the UK to Proscribe Iran's IRGC".

⁵⁷ "8 USC §1189: Designation of foreign terrorist organizations", Sec. (a)(1), authorises the Secretary of State to designate an organisation as a foreign terrorist organisation if:

“(A) the organization is a foreign organization;

(B) the organization engages in terrorist activity (as defined in section 1182(a)(3)(B) of this title or terrorism (as defined in section 2656f(d)(2) of title 22), or retains the capability and intent to engage in terrorist activity or terrorism); and

(C) the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States.”

regional terrorist groups, assassination attempts, violations of international humanitarian law and acts of global terror. The FTO designation severely limits the IRGC's ability to access US markets.⁵⁸ In spite of imposed sanctions, UK markets remain viable income sources in the absence of proscription because of the IRGC's ability to continuously adapt its sources of funding. The UK has currently proscribed 78 terrorist organisations under the Terrorism Act 2000.⁵⁹ Of the 78, 66 are Islamist or Islamist-affiliated groups, including Hezbollah, and yet the British Government still abstains from proscribing the IRGC, despite ample evidence that the organisation functions similarly to the 66 proscribed Islamist groups and satisfies the Act's criteria.

The UK Government Stance on Proscription

In the many debates in both houses of Parliament, Lords and MPs have delineated instances of IRGC action that would satisfy the Act's conditions for proscription. In response, attending ministers have confirmed the veracity of the IRGC having met the conditions of the Act and have frequently affirmed the positions set forth in the debates. Nonetheless, they refuse to comment on where the Government stands with respect to proscription.

There has been renewed discussion of IRGC proscription in UK Government circles in the past year, and at the time of the House of Commons debate in January 2023,⁶⁰ the Home Secretary, the Rt Hon Suella Braverman MP, and the Security Minister, the Rt Hon Tom Tugendhat MP, vocally supported proscription, giving the impression that the Government was close to achieving that goal.

While there appears to be support for proscription from both the Rt Hon Rishi Sunak MP as Prime Minister and the Home Office,⁶¹ there are delays due to internal disagreements at Whitehall. The Foreign Office has apparently opposed proscription, causing friction between Mr Tugendhat and the Foreign Secretary, the Rt Hon James Cleverly MP,⁶² whose claim that the IRGC has been sanctioned "in its entirety"⁶³ ignores the fact that the sanctions have failed. IRGC proscription is now at a standstill in the UK and British citizens are left paying the price of bureaucratic indecision as the Government refrains from fully exercising its duty to protect them.

⁵⁸ "Risch, Colleagues Encourage EU to Designate IRGC as Terrorist Organization", United States Senate Foreign Relations Committee, 23 March 2023, <https://www.foreign.senate.gov/press/rep/release/risch-colleagues-encourage-eu-to-designate-irgc-as-terrorist-organization>.

⁵⁹ 14 organisations in Northern Ireland were proscribed under previous legislation.

⁶⁰ Hansard HC Deb., vol. 725, col. 727, 12 January 2023.

⁶¹ Lahav Harkov, "What does the new UK Prime Minister Rishi Sunak think of Israel?", *The Jerusalem Post*, 25 October 2022, <https://www.jpost.com/israel-news/article-720543>; "Foreign Office accused of resisting proscribing Iran's Revolutionary Guard", *The Telegraph*, 5 February 2023, <https://www.telegraph.co.uk/politics/2023/02/04/foreign-office-accused-resisting-proscribing-irans-revolutionary/>.

⁶² Greg Heffer, "Security minister Tom Tugendhat takes swipe at Foreign Secretary James Cleverly amid claims he's 'blocking move to declare Iran's Revolutionary Guard as a terror group'", *Daily Mail*, 6 February 2023, <https://www.dailymail.co.uk/news/article-11718931/Tom-Tugendhat-fuels-claims-Cabinet-row-declaring-Irans-Revolutionary-Guard-terror-group.html>.

⁶³ Hansard HC Deb., vol. 724 col. 873, 13 December 2022, James Cleverly.

The IRGC has engaged in terrorism practically since its founding in 1979, with activities increasing under the Ayatollah's regime, and has materially and financially supported violent non-State actors. Decades later, the IRGC poses no less a threat and the expansion of its mandate and development of various new forces has spread terror to all corners of the globe.

Britain and her citizens have increasingly been targets, with threats growing in the last decade. To respond to the elevated danger and to demonstrate that threats will not be tolerated, the British Government's response has been, as previously explained, to impose sanctions on the IRGC. As mentioned previously, sanctions are limited in their effectiveness and do not have the same impact as proscription – a legally more forceful measure. Nonetheless, even when confronted with new reports of terror threats, the Government keeps reverting to the refrain about sanctions, despite staunch opposition from MPs.

The following four incidents provide a sample of that dynamic whereby an overt threat occurs, Lords and MPs debate in Parliament to seek accountability from the Government regarding IRGC proscription, and the Government dodges their requests for answers.

June 2019: The Bomb Factory

In 2019, journalists reported that in autumn 2015, months after the signing of the JCPOA, MI5 and the Metropolitan Police Counter Terrorism Command had uncovered an operation in which terrorists connected to Iran and Hezbollah were caught stockpiling explosives in north-west London. Hezbollah was ultimately proscribed four years later in 2019, but at the time the Rt Hon David Cameron MP and the Rt Hon Theresa May MP, then Prime Minister and Home Secretary, knew of the discovery and kept the information hidden from MPs and the public, ostensibly to not disrupt progress on the newly formed JCPOA.⁶⁴ In a 10 June 2019 House of Commons debate, the Rt Hon Joan Ryan MP stated:

I was horrified to read that a Hezbollah bomb factory storing three tonnes of explosive materials was discovered in north-west London in 2015—three and a half years before the Home Secretary fully proscribed the antisemitic terror group. Why did the Government wait so long to act? Why were the public and MPs not informed, given the debates that we have had on this issue?⁶⁵

The Minister for Security at the time, the Rt Hon Ben Wallace MP, replied that “the Home Secretary recently moved to proscribe the entirety of Hezbollah, partly because of such cases”.⁶⁶ However, this inadequately explains why it took nearly four years to do so, having had knowledge of the terror plots. The MPs' newfound knowledge of the IRGC-backed Hezbollah bomb factory further enraged them in that the Government had still taken no action to proscribe the IRGC.

⁶⁴ Ben Riley-Smith, “Iran-linked terrorists caught stockpiling explosives in north-west London”, *The Telegraph*, 9 June 2019, <https://www.telegraph.co.uk/news/2019/06/09/iran-linked-terrorists-caught-stockpiling-explosives-north-west/>.

⁶⁵ Hansard HC Deb., vol. 661, col. 395, 10 June 2019, Joan Ryan.

⁶⁶ Ibid. at col. 396, Ben Wallace.

On 9 December 2020, the House of Commons debated “Government Policy on Iran”, with MPs referencing the bomb factory discovery when urging IRGC proscription.⁶⁷ They asserted that while welcoming proscription of Hezbollah the year before, the Government must go further and proscribe the IRGC, as “IRGC-linked terrorist activity ... is well-documented” and they would “surely meet the criteria for full proscription”.⁶⁸

In response, the Government’s representative reiterated that imposing sanctions on the IRGC was a rebuke of Iran. The Rt Hon James Cleverly MP, then Minister for the Middle East and North Africa, acknowledged Iran’s destabilising regional activity and its support of militant and proscribed organisations and groups, including Hezbollah in Lebanon and in Syria, militias in Iraq and the Houthis in Yemen, but he fell short of affirming the need for proscription.⁶⁹

January 2020: Bombing of Ukraine International Airlines Flight 752

In January 2020, the IRGC shot down Ukrainian International Airlines Flight 752 after mistakenly identifying it as an American cruise missile, killing all 176 passengers and crew, including four British citizens.⁷⁰

To address that latest attack on British citizens, MPs suggested in a January 2020 debate in Chambers that “one practical step” for the UK would be “to proscribe the Iranian Revolutionary Guard Corps as a foreign terrorist organisation”⁷¹ and that it was time the UK sent a “very strong signal by proscribing the IRGC [and] freezing its assets.”⁷² The Foreign Secretary at the time, the Rt Hon Dominic Raab MP, acknowledged the IRGC-QF threat, but deflected attention from proscription by asserting that the IRGC was subject to sanctions, stating: ⁷³

The [IRGC] Quds force ... is responsible for working with the militias, the proxies and the terrorist groups from Lebanon through to Iraq and Syria. ... On proscription more generally, they are subject to sanctions, but we will obviously keep the issue under very careful review.⁷⁴

The bombing of Flight 752 was mentioned again in a debate in the House of Lords on 19 January 2022 with Lord Stuart Polak presenting the question:

We have failed to hold the IRGC to account for its regional destabilisation activities, such as the downing of Ukraine International Airlines flight 752 in January 2020 or the killing of British citizen Adrian Underwood on “MV Mercer Street” in July 2021. ... Her Majesty’s Government rightly proscribed Hezbollah. Hezbollah was a creation of the IRGC, so can I ask my noble friend to press his colleagues at the Home Office to fully proscribe the Islamic Revolutionary Guard Corps?⁷⁵

⁶⁷ Hansard HC Deb., vol. 685, col. 430WH, 9 December 2020, Steve McCabe.

⁶⁸ Ibid. at col. 427WH, John Howell.

⁶⁹ Ibid. at col. 444WH, James Cleverly.

⁷⁰ Oliver Carroll, Andrew Buncombe and Andrew Woodcock, “Iran plane crash: Boris Johnson says ‘body of information’ indicates Iran shot down UK jet”, *Independent*, 9 January 2020, <https://www.independent.co.uk/news/world/middle-east/iran-plane-crash-news-latest-ukraine-jet-boeing-737-a9277291.html>.

⁷¹ Hansard HC Deb., vol. 669, col. 755, 13 January 2020, Stephen Crabb.

⁷² Ibid. at col. 757, Bob Blackman.

⁷³ Ibid. at col. 757, Dominic Raab.

⁷⁴ Ibid.

⁷⁵ Hansard HL Deb., vol. 817, col. 1639, 19 January 2022, Lord Polak.

Lord Sharpe of Epsom replied by expressing that the Government's "concerns about the IRGC's continued destabilising activity throughout the region" were the "reason that the IRGC is sanctioned in its entirety by the UK".⁷⁶ He then toed the Government line by stating that the "list of proscribed organisations is kept under constant review, but we do not routinely comment on whether an organisation is or is not under consideration for proscription."⁷⁷

August 2022: Attempted Murder of Salman Rushdie

British-American citizen and internationally noted author Sir Salman Rushdie was stabbed several times on 12 August 2022 by an IRGC supporter and Shia extremist, just before he was to lecture in New York.⁷⁸ Following the attempt on Mr Rushdie's life, the Prime Minister said that it should be a "wake-up call for the West" and argued that "Iran's reaction to the attack strengthens the case for proscribing the IRGC".⁷⁹

The House of Lords responded in a debate on 12 October 2022 which referenced the attempted murder of Salman Rushdie, the 2021 attempted kidnapping of Iranian women's rights activist Masih Alinejad and "numerous foiled plots"⁸⁰ in asserting that the IRGC represents a present danger and that "now is the time to proscribe the Revolutionary Guard".⁸¹ Lord Ahmad of Wimbledon, Minister of State for the Foreign, Commonwealth and Development Office (FCDO), agreed that the IRGC is a destabilising force, but stated that he could not give assurances regarding proscription.⁸²

The House of Lords again advocated for IRGC proscription in a debate on 27 October 2022, referring to the "IRGC-inspired extremism which led to the attack on Salman Rushdie"⁸³ and further referenced the attack in a debate on "British-Iranian Relations" as recently as 23 February 2023.⁸⁴ Yet the attempted murder of a knighted and widely respected British citizen has still not forced the Government's hand on proscription.

⁷⁶ Ibid. at col. 1640, Lord Sharpe of Epsom.

⁷⁷ Ibid.

⁷⁸ Joshua Goodman, "Author Salman Rushdie attacked on lecture stage in New York", Associated Press, 12 August 2022, <https://apnews.com/article/salman-rushdie-attacked-9eae99aea82cb0d39628851ecd42227a>; Ramon Antonio Vargas, "Salman Rushdie attack: suspect pleads not guilty to attempted murder charge", *The Guardian*, 14 August 2022, <https://www.theguardian.com/us-news/2022/aug/13/hadi-matar-charged-with-attempted-of-salman-rushdie>.

⁷⁹ "CFI Congratulates 'Staunch Friend' Rishi Sunak on Becoming Prime Minister", Conservative Friends of Israel, 2 November 2022, <https://cfoi.co.uk/cfi-congratulates-staunch-friend-rishi-sunak-on-becoming-prime-minister/>.

⁸⁰ Hansard HL Deb., vol. 824, col. 783, 12 October 2022, Lord Palmer of Childs Hill.

⁸¹ Ibid.

⁸² Ibid. at col. 784, Lord Ahmad of Wimbledon.

⁸³ Hansard HL Deb., vol. 824, col. 1599, 27 October 2022, Lord Turnberg.

⁸⁴ Hansard HL Deb., vol. 827, col. 518GC, 23 February 2023, Baroness Ruth Deech.

February 2023: Iran International TV Flees London Terrorist Threats

In November 2022, “severe and credible” threats were made against two journalists of London-based broadcaster Iran International TV.⁸⁵ Although police placed fortifications around the business park in Chiswick, West London, where Iran International is located,⁸⁶ the continued threats from the Iranian Government in Tehran against its journalists forced the broadcaster to “reluctantly” close its London studios and move its operations in February 2023 to what it deemed a safer location – Washington DC. The Metropolitan Police Counter Terrorism Command shockingly admitted it could not guarantee the safety of Iran International’s journalists or the public if they remained in the UK.⁸⁷ Calling the “significant escalation in state-backed threats from Iran” a threat to “the British public at large”⁸⁸ the station manager felt the broadcaster had no choice but to move.⁸⁹

In the same week that Iran International moved to the US, the Minister for Security, the Rt Hon Tom Tugendhat MP, told Parliament that in a little over a year, the Iranian Government had been behind 15 credible threats to kill or kidnap British citizens or UK-based individuals,⁹⁰ but he declined to give answers to MPs who asked why the Government had still not proscribed the IRGC. Holly Lynch MP addressed Mr Tugendhat, saying that she had “asked the Government five times in this Chamber since October why we are not going further to deploy ... proscription powers against those acting on behalf of Iran” and that while the Minister had expressed a desire to proscribe the IRGC, “why are they not?”⁹¹ Mr Tugendhat said that he was waiting to receive “full advice” before deciding on whether to go ahead with proscription.⁹²

Mr Tugendhat attempted to placate the MPs by explaining that the new National Security Bill would allow for the exercise of “almost all the powers of proscription against state threats”, although he did not indicate how the Bill would do this; he also fell short of confirming the Government’s intent to proscribe the IRGC under the Terrorism Act 2000.⁹³

As substantial threats against and attacks on British citizens continue, the debates in both Houses of Parliament indicate that MPs, as representatives of their constituencies, are expressing to Government ministers the sentiments and will of the British public – that the IRGC threatens British citizenry, qualifies as a terror organisation pursuant to the Terrorism Act 2000, and that the Government, in furtherance of its duty to protect the public, must proscribe the IRGC.

⁸⁵ “Armed Police guard Iranian TV studios in London after Tehran threats”, *The Guardian*, 19 November 2022, <https://www.theguardian.com/world/2022/nov/19/armed-police-guard-iranian-tv-studios-in-london-after-tehran-threats>.

⁸⁶ “Chiswick Business Park fortified against potential terror attacks”, *The Chiswick Calendar*, 29 November 2022, <https://chiswickcalendar.co.uk/chiswick-business-park-fortified-against-potential-terror-attacks/>.

⁸⁷ Mark Townsend and Geneva Abdul, “Met police and MI5 foil 15 plots by Iran against British or UK-based ‘enemies’”, *The Guardian*, 18 February 2023, <https://www.theguardian.com/uk-news/2023/feb/18/met-police-mi5-foil-15-iranian-plots-against-british-or-uk-based-enemies>.

⁸⁸ George Wright, “Iran International: Channel leaves UK after regime threats”, *BBC News*, 18 February 2023, <https://www.bbc.com/news/world-middle-east-64690387>.

⁸⁹ “Iran International editor says Tehran threats ‘getting out of hand’ after TV channel forced to leave UK”, *Sky News*, 19 February 2023, <https://news.sky.com/story/iran-international-editor-says-tehran-threats-getting-out-of-hand-after-tv-channel-forced-to-leave-uk-12814783>.

⁹⁰ Hansard HC Deb., vol. 728, col. 50, 20 February 2023, Tom Tugendhat.

⁹¹ *Ibid.* at col. 59, Holly Lynch.

⁹² *Ibid.* at col. 52, Tom Tugendhat. See also Robert Wright, “Iran behind 15 credible threats against people in UK, says minister”, *Financial Times*, 20 February 2023, <https://www.ft.com/content/18f1a09e-7bde-4648-85a4-11b654052cf8>.

⁹³ Hansard HC Deb., vol. 728, col. 54, 20 February 2023, Tom Tugendhat.

Evading Proscription: Delays of the UK Government

With the many calls from Parliament, the media and the public to proscribe the IRGC with immediate effect, in January 2023 it was reported that the Government would soon review the case for to proscribe the IRGC.⁹⁴ At that time, there was a sense that proscription was imminent but, to date, the Government has refused to commit to proscribing the IRGC using the Terrorism Act 2000 or by amending the National Security Bill to introduce a new basis for the IRGC's proscription. Instead, ministers have continued to repeat their refrain that the IRGC is already subject to sanctions and the Government will not "speculate on future designations"⁹⁵ or "comment on whether an organisation is under consideration for proscription".⁹⁶

On 7 June 2023, the RT Hon Andrew Mitchell MP, Minister of State for the FCDO, deflected from the proscription question yet again in a debate in the House of Commons when MPs vigorously presented their positions on the immediate need to proscribe the IRGC. The MPs asked why no action to proscribe the organisation had been taken nearly six months after the Government had taken it under review.⁹⁷

The Government's delay has been attributed to two possible reasons. First, that proscription would inhibit communication with Tehran and hamper the possibility of reaching peaceful terms; and second, that proscribing the IRGC is not possible within the terms of the Terrorism Act 2000 as it is not an independent terror organisation but rather a military arm of the Iranian Government, so proscription would necessarily force designation of Iran as a State Sponsor of Terrorism.

The first argument is relatively simple to refute, but the second poses greater challenges due to the legal complexity of the IRGC's status as a State actor. On closer examination, however, the second argument also fails to support Government inaction. We will now consider each in turn.

IRGC Proscription and Communication with Iran

It has been reported that IRGC proscription stalled after the Foreign Office expressed concerns about keeping communication channels open with Iran. However, proscription would not necessarily close the door to diplomatic engagement with Tehran. As seen in the case of the UK's proscription of Hezbollah in 2019, the Government has been able to continue diplomacy with the Lebanese Government and engage with it on areas of mutual interest and concern.⁹⁸ Similarly, just as the proscription of Hezbollah has not impeded London's diplomatic engagement with Beirut, so too, IRGC proscription need not obstruct communication lines with Tehran, but it would send a strong message that the UK will not abide the pursuit of aggression through the IRGC.

⁹⁴ Ben Riley-Smith, "Iran's Islamic Revolutionary Guard set to be proscribed as terror group", *The Telegraph*, 2 January 2023, <https://www.telegraph.co.uk/politics/2023/01/02/irans-islamic-revolutionary-guard-set-proscribed-terror-group/>

⁹⁵ See Hansard HC Deb., vol. 732, col. 6, 2 May 2023, James Cleverly. See also, Hansard HC Deb., vol. 729, col. 689, 14 March 2023, James Cleverly; Hansard HC Deb., vol. 627, col. 639, 6 February 2023, Tom Tugendhat.

⁹⁶ Hansard HC Deb., vol. 733, col. 350WH, 7 June 2023, Andrew Mitchell.

⁹⁷ Ibid.

⁹⁸ Kasra Aarabi, "Making the Case for the UK to Proscribe Iran's IRGC".

IRGC Proscription and Legal Categorisation of Aggression

On 16 November 2022, the Director General of the Security Service (MI5) Ken McCallum presented his annual threat update. On addressing threats by States, he described Iran as the “state actor which most frequently crosses into terrorism”.⁹⁹ Denying that Iran facilitates and sponsors global terror is denying stark reality, and the vehicle through which it does so is the IRGC.

The IRGC is an arm of the Iranian military. However, it does not behave like conventional militaries which are beholden to the Geneva Conventions and International Humanitarian Law (IHL). The IRGC was established with the express purpose of acting extrajudicially and extraterritorially to achieve its ends of defending the Islamic Republic and exporting the Islamic Revolution to other countries by any means necessary. The IRGC’s actions mirror the behaviour of non-State actors and extremist groups that target civilians and have no regard for civilian welfare in contravention to the laws of war.

Regardless of the fact that MI5 and various Government ministers have confirmed Iran’s support of terror and that the IRGC’s behaviour qualifies as terrorism under UK law, the Government apparently hesitates to proscribe the IRGC due to a legal complication which arises from the IRGC’s unconventional status.

Unlike most other proscribed groups, the IRGC is not an independent actor but rather a part of the Iranian Government.¹⁰⁰ As such, there is concern that proscribing the IRGC under the Terrorism Act 2000 would trigger an SST designation for Iran. Jonathan Hall KC, the Independent Reviewer of Terrorism Legislation, noted on 11 January 2023 that the policy of the UK Government has consistently been to “treat terrorism by states as falling outside the Terrorism Act 2000. This appears to be a policy position rather than a view on the interpretation of the Act.”¹⁰¹ Proscribing the IRGC would run contrary to the UK’s established policy position – that the Terrorism Act 2000 cannot designate State forces and therefore States as being “concerned in terrorism”.¹⁰²

As distinguished from the US,¹⁰³ the UK does not designate SSTs as it perceives the designation to cause the UK to enter murky legal waters with respect to whether States can be concerned in terrorism; this hinges on what the definition of terrorism actually is, and the slippery slope of how that would apply to the actions of allies with respect to acts of aggression. However, despite Mr Hall’s analysis and legal concerns, he acknowledges that a solution lies in the ability of the Government to take action via revisions to the National Security Bill currently before Parliament. Instead of the

⁹⁹ “Director General Ken McCallum gives annual threat update”, Security Service, 16 November 2022, <https://www.mi5.gov.uk/news/director-general-ken-mccallum-gives-annual-threat-update>.

¹⁰⁰ Fiona Hamilton, “Outlawing Iranian guards as terrorists is put on hold”, *The Times*, 2 February 2023, <https://www.thetimes.co.uk/article/outlawing-iranian-guards-as-terrorists-is-put-on-hold-rbvnnq7zz>.

¹⁰¹ Jonathan Hall KC, Independent Reviewer of Terrorism Legislation, “Hidden Implications: Islamic Revolutionary Guard Corps and Terrorism Proscription”, para. 11, 11 January 2023, <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2023/01/IRGC-Note-Jan-23-1.pdf>.

¹⁰² *Ibid.* at para. 16.

¹⁰³ In the US, to designate a country as an SST, the Secretary of State must determine that the government of such a country has “repeatedly provided support for acts of international terrorism”. Once a country is designated, it remains an SST until the designation is rescinded in accordance with statutory criteria (U.S. Department of State, “State Sponsors of Terrorism”, <https://www.state.gov/state-sponsors-of-terrorism/>). Furthermore, an SST designation in the US may result in a ban on arms-related exports and sales; controls over exports of dual-use items, requiring 30-day Congressional notification for goods or services that could significantly enhance the terrorist-list country’s military capability or ability to support terrorism; prohibitions on economic assistance; and imposition of miscellaneous financial and other restrictions.

National Security Bill granting “almost all the powers of proscription”, as ambiguously described by the Rt Hon Tom Tugendhat MP before the House of Commons on 20 February 2023, the Bill should be revised to include the power to proscribe State bodies based on a definition of “hostile State activity” in the context of terrorism being aggressive or threatening State action that is not a legitimate use of force and is executed in violation of IHL.

Conversely, in light of the current delays to the passage of the National Security Bill, a simpler route would be to allow the Terrorism Act 2000 to be interpreted to include State organisations like the IRGC whose conduct evidently includes acts of terrorism, irrespective of the UK’s long-standing policy position. To delay proscription any further would only serve to embolden the IRGC, and would continue to set an example for other States to follow where they can incorporate hostile non-State actors into their official government structures in order to evade UK proscription laws.

Conclusion

During the Rt Hon Rishi Sunak MP’s campaign for Prime Minister, he stated in August 2022 that IRGC proscription “must now be on the table”,¹⁰⁴ and in December 2022 he vowed unequivocally that he and the Home Secretary would utilise “the full range of tools at our disposal to protect UK citizens from the threat of the IRGC”,¹⁰⁵ referencing the important actions of his predecessors who proscribed Hamas and Hezbollah, indicating that IRGC proscription would be the next step.¹⁰⁶

The IRGC is already evading UK sanctions, and expanding this failed policy will not make it more effective. In the absence of proscription, the IRGC will continue to be emboldened by the Government’s indecision and will continue to recruit, advertise, disseminate propaganda, proselytise and raise funds within the UK with few consequences. On the campaign trail, Mr Sunak clearly expressed the urgent need to proscribe the IRGC, borne of the duty that members of the Government have to “protect UK citizens”. As Prime Minister, he has failed to deliver. His Government has U-turned on proscription, and now proposes yet more sanctions against Iran instead.

The “Duty to Protect” is a broad and sweeping obligation of government, rooted in Common Law tradition and recognized by UK leaders to the present day. The Government’s refusal to commit to proscription of the IRGC, and its insistence that sanctions are sufficient despite all evidence to the contrary, demonstrates a failure to uphold this fundamental duty. Since IRGC activity has continued unabated and even grown under sanctions, proscription must now be used to help keep the public safe.

For a long time, both Houses of Parliament have tried to hold the Government to account on IRGC proscription. In a House of Lords debate on the “Middle East: Islamic Revolutionary Guard Corps” on 19 January 2022,¹⁰⁷ several Lords issued strongly worded statements, demanding answers as to

¹⁰⁴ “CFI Congratulates ‘Staunch Friend’ Rishi Sunak on Becoming Prime Minister”, Conservative Friends of Israel, 2 November 2022, <https://cfoi.co.uk/cfi-congratulates-staunch-friend-rishi-sunak-on-becoming-prime-minister/>.

¹⁰⁵ Hansard HC Deb., vol. 733, col. 330WH, 7 June 2023, Brendan Clarke-Smith.

¹⁰⁶ Ben Bloch and Felix Pope, “PM pledges UK support to Israel in key UN vote”, The JC, 12 December 2022, <https://www.thejc.com/news/news/pm-pledges-uk-support-to-israel-in-key-un-vote-4hEq6boYxMwtPsywwiuAUN>; “UK to proscribe Iran’s Islamic Revolutionary Guard Corps”, *Jewish News*, 3 January 2023, <https://www.jewishnews.co.uk/irgc-proscription-uk/>.

¹⁰⁷ Hansard HL Deb., vol. 817, col. 1639, 19 January 2022.

why the IRGC has not been proscribed. Treating the Government's evasions as suspect, Lord Purvis of Tweed stated:

Since America proscribed the corps in April 2019, the UK presumably has been in constant contact. The Government gave a lot of detail on the proscription of Hamas, so I am not sure why the Government are not prepared to say what differences we have from the United States, given the fact that the US has proscribed it.¹⁰⁸

After Lord Sharpe of Epsom, the Government's minister, deflected in reply, Lord Shinkwin later asked:

My Lords, given that, as we have already heard, British citizens have died as a result of numerous actions of terrorism by the IRGC, can my noble friend indicate *what sort of British body count we are looking at before the IRGC is proscribed as a terrorist group?*¹⁰⁹ (emphasis added)

The outlawing of terror groups via proscription is not a silver bullet, but it is a powerful and effective tool. The expiration of the JCPOA sunset clauses in October, and the continued threat to British citizens and British-based individuals and organisations make the need for proscription more urgent than ever. Yet the British Government has now announced its determination to continue down a failed path of ever-expanding sanctions against Iran and the IRGC. Instead, it should now use all means available to deter its enemies and proscribe the IRGC.

With every passing day and every incident, the IRGC endangers British lives. It has years of threats and attacks on Britain behind it, and potentially years more to come, for as long as the Government continues to pursue an ineffective sanctions policy. The Government should not need more terrorist incidents and more casualties to compel it to proscribe the IRGC as a terrorist group and discharge its "Duty to Protect" the British people.

¹⁰⁸ Ibid. at 1640, Lord Purvis of Tweed.

¹⁰⁹ Ibid. at 1649, Lord Shinkwin.

Policy Recommendations

To restore public confidence in the willingness of the British Government to exercise its duty to protect its citizens, the following recommendations should be taken under advisement with the hope that they lead to the imminent proscription of the IRGC in the UK.

Recommendations for MPs

- 1) When challenging Government ministers in Parliamentary debates, refute their insistence that sanctions are sufficient in the absence of proscription, by asserting that:
 - a. sanctions are often improperly enforced
 - b. sanctions are ineffective for such a sweeping goal as thwarting the IRGC
 - c. sanctions are easily evaded.
- 2) Ask the Government why it has not revised the National Security Bill to make proscription easier and why it has not implemented the suggestions of the Independent Reviewer to circumvent the restrictions of the Terrorism Act 2000.
- 3) Insist that the Terrorism Act 2000 be interpreted to include State organisations like the IRGC whose conduct includes acts of terrorism, irrespective of the UK's long-standing policy position.

Recommendations for the Government:

In evaluating the need for proscription in light of the failure of sanctions, the Government should consider the following points:

- 1) The “Duty to Protect” obligates the Government to use all its power to protect its citizens from harm, thereby requiring the Government to find a way to utilise proscription to protect the British public from the IRGC.
- 2) The October 2023 expiration of the JCPOA sunset clauses will eliminate many sanctions and should present a deadline for the Government to evaluate the efficacy of sanctions and the alternative of proscription.
- 3) The ease with which Iran is able to evade sanctions in light of UK universities producing military technology studies funded by Tehran.
- 4) The fact that IRGC proscription would not necessarily close down lines of communication with Tehran, allowing for continued diplomatic ties.
- 5) The need to establish a new legal approach – either interpreting the Terrorism Act 2000 to include State organisations engaged in acts of terrorism and violations of IHL, or revising the National Security Bill to include the power to proscribe State bodies.

About the Author

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