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Since John Marshall stated in Congress in 1800 that the President is the sole representative of the United States “with foreign nations,” it has been widely understood that, in the words of the Supreme Court, “the President alone has the power to speak” with other states on America’s behalf (*United States v. Curtis Wright Export Corporation*, 1936). In flagrant violation of at least the spirit of that principle, several dozen Republican Senators have independently **communicated** with the leadership in Iran; writing to foreign leaders *during* executive negotiation with the clear intent of undermining those negotiations by suggesting that an Agreement between Iran and the US Executive on nuclear weapons would have no binding legal force but is merely the personal promise of the incumbent Barack Obama. The letter is clearly intended to provide ammunition to hardliners within the Iran regime, unreconstructed enemies of America, who are desperate to block a deal before the March 24 deadline, because it could lead ultimately to a thawing of relations, and put pressure on Iran to curb policies against US interests, such as support to terrorists.

Indeed, the Republican Senators’ letter is already being understood as an attempt to throw a wrench in the works by Iran’s foreign minister Mohammed Javad Zarif who said Tuesday a letter from US Republican lawmakers warning that any nuclear deal could be scrapped once President Barack Obama leaves office suggests the United States is “not trustworthy.” And that “This kind of communication is unprecedented and undiplomatic.”

The Senators’ letter is misleading and inaccurate both as a statement of US law, and for what it implies by omission with respect to international law. They claim “under our Constitution, while the president negotiates international agreements, Congress plays the significant role of ratifying them.” Here the Senators appear to insinuate that a US

Iran Agreement would lack ultimate legal force and have questionable validity unless there were some form of approval by Congress. This would be wrong as matter of law and policy.

A reality check could usefully start with a 2009 article by Yale law professor Oona Hathaway, who is currently serving as a special counsel in the Pentagon. Though Professor Hathaway is an outspoken critic of the President making executive agreements with foreign states without Congressional approval, she is equally clear that the law today permits this. As she shows through examining Congressional and Executive practice over a considerable period of time, “the President is now able to make law over an immense array of issues...by concluding binding international agreements on his own.” Professor Hathaway also traces how the courts, including the United States Supreme Court, have dismissed challenges to the exercise of this power. The Senators suggest that “future Congresses could modify the terms of the Agreement at any time.” But they fail to inform their counterparts among the Iranian hardliners that the President could then veto such legislation.

Moreover, the President’s role as Commander-in-Chief and generally in the conduct of international affairs necessarily implies some independent Presidential authority over matters of international security; it is unquestionable that ancillary to this authority, the President can enter into international agreements. This power, contrary to what some in the Bush Administration were maintaining, is far from unlimited or unbounded. In *Youngstown Steel*, the Supreme Court for example held that the power was not so broad that it could be used to seize private property in a domestic labor dispute, far removed from the realm of international security. But the authority *is* more than sufficient to provide a basis for a deal with Iran, and for the President to implement the United States’ obligations under that Agreement (though there are some sanctions that only Congress has the authority to lift, but this is old news, well-known to all the players).

But what of the Senators’ claim that a future President could simply rip up an Agreement with Iran, refusing to honor it? That brings us to international law, on which the Senators have been silent, but on which Iran’s foreign minister, rightly, has not. This silence is meaningful. Because, as a matter of international law, a state’s internal constitutional system is normally irrelevant to its duty to perform its international obligations. Change of government or administration does not alter a state’s international legal

commitments, nor does it provide a valid basis for repudiating or renegotiating them. Of course, there is a risk that a future President could decide not to honor an Executive Agreement made with Iran by the Obama Administration, but there is always a risk that political changes can lead to a violation of international law. (Perhaps a hidden purpose of the Senators is to encourage hardliners in Iran to think that if they win the next elections they could have Iran walk away from the deal.) But the law is the law, and any future Administration would be bound (provided of course that the agreement is on its own terms one that is intended to have a binding effect in international law and doesn't violate the US constitution or other fundamental principles), and would face the consequences of being an international law-breaker.

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