

The United States Has an Explicit Right to Initiate Snapback under United Nations Security Council Resolution 2231

The United States has an explicit right under United Nations (UN) Security Council resolution 2231 (2015) (Resolution 2231) to initiate the snapback of UN measures on Iran. Any argument to the contrary would supplant the resolution's plain text with silent conditions, effectively allowing any State's national policy decision to strike critical text from a UN Security Council resolution. Such an approach would create a perilous precedent that could threaten the force of virtually any Security Council decision.

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Resolution 2231 provides the United States with the right to initiate the “snapback” of UN measures on Iran that had been in place prior to January 2016. That right is available to the United States irrespective of its current position on, or activities in relation to, the Joint Comprehensive Plan of Action (JCPOA), a non-binding political arrangement that is related to but distinct from Resolution 2231. As explained in section I, Resolution 2231 establishes a term, “JCPOA participants,” that is fixed in content and fixed over time, and provides the States identified in that term's definition, including the United States, the right to initiate snapback. Resolution 2231 sets no other conditions on the eligibility of such States to initiate snapback. Additionally, as set out in section II, no events subsequent to Resolution 2231's adoption have altered the United States' right to initiate snapback. In particular, the United States' May 8, 2018 announcement that, for national security reasons, it did not intend to continue to provide Iran with relief from U.S. sanctions that had been lifted under the JCPOA had effects only for that non-binding political arrangement. That announcement, and the United States' actions to implement it, did not, and as a legal matter, could not, alter Resolution 2231 and the United States' right to initiate snapback thereunder.

I. The Text of Resolution 2231 Gives “the United States” a Fixed Right to Initiate Snapback

“[T]he United States” and any other “JCPOA participant State” may initiate snapback. Operative paragraph (OP) 11 of Resolution 2231 sets out the requirements for initiating snapback. Those requirements are that (i) a “JCPOA participant State” (ii) notify the UN Security Council (iii) of an issue it believes constitutes “significant non-performance” of commitments under the JCPOA.¹ As described further in section II below, non-binding political commitments under the JCPOA are separate and distinct from the legal right to initiate snapback under Resolution 2231.

¹ S.C. Res. 2231, ¶ 11, U.N. Doc. S/RES/2231 (July 20, 2015) (UNSCR 2231).

a. Resolution 2231 Establishes a Fixed Term, “JCPOA Participants,” That Expressly Includes “the United States” in Its Definition

The text of Resolution 2231 provides the United States with the right to initiate snapback regardless of its current position on, or activities in relation to, the JCPOA’s non-binding political commitments. Specifically, OP 10 of Resolution 2231 creates a defined term—“JCPOA participants”—and expressly lists “the United States” as one of those “JCPOA participants,” in addition to “China, France, Germany, the Russian Federation, the United Kingdom, ... the European Union (EU), and Iran.”² OP 11 explicitly states that a “JCPOA participant State” may initiate snapback.³ That right endures regardless of whether one views the United States as being in non-performance of the commitments it made under the JCPOA or as not currently participating in that political arrangement.

b. Resolution 2231 Places No Other Conditions on the Eligibility of States That Are Among the Named “JCPOA Participants”

The Security Council could have defined the term “JCPOA participants” in OP 10 by means other than a list of named entities. But it did not do so. It fixed a list of entities, including “the United States,” that are eligible to initiate snapback. Similarly, if it had wished to condition the right to initiate the snapback mechanism on more than just that the actor initiating snapback be one of the States identified as “JCPOA participants” in OP 10, it could have done so. But it did not do so. It would have been a simple task for the Council, for example, to have stated that the right to initiate snapback is available only to States considered to be “currently” participating in the JCPOA or in full performance of their JCPOA commitments at the time of the initiation. But it did not do so.

Instead, the Council provided the right to initiate the snapback mechanism to States identified as “JCPOA participants” in OP 10. Indeed, the fact that the Council used the phrase “JCPOA participant *State*” (emphasis added) to purposefully exclude one “JCPOA participant” listed in OP 10—the European Union—from the set of actors that could initiate snapback demonstrates that the Council: (i) clearly contemplated whether the right should be limited in some manner; (ii) was aware of how to draft such a limitation; and (iii) affirmatively decided that the only limitation on the “JCPOA participants” that have that right under OP 11 is that they be one of the *States* listed by name in OP 10, including the United States.

The assertion that the term “JCPOA participant State” in OP 11 should be interpreted independently from the definition of “JCPOA participants” in OP 10 and that paragraph’s express listing of entities within that grouping is also not persuasive. Specifically, this argument overlooks—and gives no force to—the drafters’ purposeful modification in OP 11 of the OP 10 term with the additional word “State” to exclude the European Union from the group given the right to initiate snapback. If the term “JCPOA participants” established in OP 10 were to have

² UNSCR 2231, ¶ 10 (listing China, France, Germany, the Russian Federation, the United Kingdom, the United States, the European Union, and Iran and then defining the grouping in a parenthetical as “the ‘JCPOA participants’”).

³ UNSCR 2231, ¶ 11.

no relevance in interpreting the meaning of references to a “JCPOA participant” or “JCPOA participant State” in subsequent paragraphs of the resolution—all of which appear in binding provisions⁴—then the establishment of that term in OP 10 would be rendered mere surplusage. It should be clear to all that the Council did not intend to waste its words. Whether one calls the term “JCPOA participants” in OP 10 a “defined term,” “shorthand,” or a “label” for a grouping that is then given operative effect in later paragraphs, including in OP 11, is irrelevant. The fact is that OP 10 establishes a term—“JCPOA participants”—that is given a meaning that is fixed in content and fixed over time.

c. Developments Beyond the Four Corners of Resolution 2231 Did Not and Could Not Change the United States’ Right To Initiate Snapback

Unilateral statements or other actions by a UN Member State cannot alter the language or meaning of a term defined by the Security Council, nor the rights it created for the States identified. Only the Security Council itself can modify the text of one of its resolutions by adopting a subsequent resolution. One UN Member State, even one Member of the Security Council, cannot unilaterally change the text of a Security Council resolution. For example, UN Security Council resolution 2531 (2020) established the term “the Malian Parties” and defined it as “the Government of Mali and the *Plateforme* and *Coordination* armed groups.”⁵ That resolution then proceeds to urge “the Malian Parties” to take certain action.⁶ No Member State has the ability to declare that—due to a changed circumstance or some other reason—one of the three named entities is no longer one of “the Malian parties” to which the resolution Council’s entreaties in resolution 2531 are directed. It is a defined term, with fixed content, used for purposes of that resolution. The only way to adjust the definition of “the Malian parties” for purposes of the Council’s efforts to address the situation in Mali would be through adoption of a subsequent Security Council resolution amending the definition of the term. Any argument to the contrary aggrandizes power to UN Member States that they simply do not have as a matter of international law. The meaning of OPs 10 and 11 of Resolution 2231 must be determined in accordance with the plain language of the text negotiated, drafted, and adopted by the Council, and that text alone.

II. The May 8, 2018 U.S. Decision To Cease Performance of Commitments It Had Under the JCPOA Had No Effect on U.S. Rights and Obligations under Resolution 2231

a. The JCPOA Is a Non-Binding Political Arrangement, and Resolution 2231 Did Not Change That

The JCPOA is a political arrangement consisting of non-binding political commitments, not an international agreement that imposes binding obligations. Resolution 2231 did not

⁴ UNSCR 2231, ¶¶ 11, 13, and 21.

⁵ S.C. Res. 2531 ¶ 1, U.N. Doc. S/RES/2531 (June 29, 2020).

⁶ See, e.g., *id.* at ¶¶ 3, 9, and 11.

transform the JCPOA from a non-binding political arrangement, despite unfounded claims to the contrary. The JCPOA participants therefore were and are free to cease performing the non-binding political commitments they had under the nuclear arrangement at any time without violating international law, so long as they comply with international obligations they have that are independent of the JCPOA, including their obligations under Resolution 2231. Ceasing performance of non-binding political commitments under the JCPOA has no effect on Member States' rights and obligations under Resolution 2231.

The non-binding JCPOA is distinct from Resolution 2231, even though there is a close relationship between the two, and even though Resolution 2231 makes binding some aspects of the political arrangement—particularly, the nuclear-related “procurement channel.”⁷ When the Security Council imposes obligations under Chapter VII, as is the case for Resolution 2231, it does not mean that all of the provisions contained therein are legally binding. Because article 25 of the UN Charter requires Member States to “accept and carry out” the “decisions” of the Security Council, and article 41 of Chapter VII of the Charter authorizes the Security Council to “decide” to impose certain measures, it is generally understood that when the Council uses other verbs, such as “calls upon” or “urges” or even “demands,” it is not imposing legally binding obligations.

In Resolution 2231, the Council went to great lengths to make clear which of the resolution's provisions were intended to impose legal obligations. The Council not only used the word “decides” in Resolution 2231 when it intended to impose obligations on UN Member States, but also took the unusual step of specifying in such provisions that it was “acting under Article 41 of the Charter of the United Nations” to make clear that those provisions of the resolution are legally binding. These legally binding provisions do not include OP 1, which “endorses” the JCPOA, or OP 2, which “calls upon all Member States” to support implementation of the JCPOA. The Security Council's endorsement of the JCPOA in OP 1 of Resolution 2231 was, consistent with the plain meaning of that word and Council precedent, simply an expression of political support.⁸ Neither that endorsement nor the inclusion of the JCPOA as an annex to the resolution transformed the JCPOA into a set of legal obligations

⁷ See UNSCR 2231, ¶¶ 16-20.

⁸ The Council has on many occasions endorsed and/or annexed non-binding documents to its resolutions, but doing so did not render them legally binding. See, e.g., S.C. Res. 2510 (2510), ¶ 2, U.N. Doc. S/RES/2510 (Feb. 12, 2020) (“Endors[ing] the Conference Conclusions as contained in the document circulated as S/2020/63 and notes that these represent an important element of a comprehensive solution to the situation in Libya”); S.C. Res. 2202, ¶ 1, U.N. Doc. S/RES/2202 (Feb. 17, 2015) (in the context of the conflict in eastern Ukraine, endorsing and annexing the “Package of Measures for the Implementation of the Minsk Agreements”); S.C. Res. 750, ¶ 4, U.N. Doc. S/RES/750 (Apr. 10, 1992) (in the context of Cyprus, endorsing “the set of ideas described in paragraphs 17 to 25 and 27 of the Secretary-General's report as an appropriate basis for reaching an overall framework agreement, subject to the work that needs to be done on the outstanding issues, in particular on territorial adjustments and displaced persons, being brought to a conclusion as an integrated package mutually agreed upon by both communities”); S.C. Res. 668, ¶ 1, U.N. Doc. S/RES/663 (Sept. 20, 1990) (endorsing “the framework for a comprehensive political settlement of the Cambodia conflict and encourag[ing] the continuing efforts of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America in this regard”).

binding on either the JCPOA Participants or other UN Member States.⁹ The text of Resolution 2231 itself makes clear that the annexes to the resolution are not automatically rendered legally binding. OP 7(b) of Resolution 2231 specifies that certain provisions of Annex B are legally binding; if the entire annex were automatically legally binding by annexation, then OP 7(b) would serve no purpose. Similarly, in OP 2, the Council issued a non-binding request that “calls upon” Member States to support implementation of the JCPOA rather than a binding directive that “decides” Member States shall do so. Other Member States have repeatedly pointed out that Iran’s missile launches do not violate Iran’s obligations under Resolution 2231 because paragraph 3 of Annex B “call[s] upon” Iran not to undertake certain missile activity, and such “calls upon” provisions are non-binding. Resolution 2231 thus imposes no obligation on Member States as a general matter to implement or support implementation of the non-binding commitments made under the JCPOA.

b. The U.S. Re-Imposition of Sanctions on Iran Did Not Change the United States’ Legal Rights and Obligations under Resolution 2231

Thus, the United States’ decision, announced on May 8, 2018, that the JCPOA failed to protect U.S. national security interests and, therefore, that the United States would immediately begin the process of re-imposing U.S. sanctions on Iran that had been lifted under the political arrangement did not violate any obligations of the United States under international law. Moreover, the United States is in full compliance with its obligations under Resolution 2231, namely the measures in Annex B to the resolution that the Council rendered legally binding through OP 7(b), which place restrictions on nuclear- and missile-related transfers to Iran, as well as transfers of arms in and out of Iran, and establish a targeted asset freeze and travel ban.¹⁰

In disputing the U.S. right to initiate snapback, some have asserted that a State cannot avail itself of legal rights if it is in violation of corresponding legal obligations. Without a hint of irony, those who make this assertion nevertheless recognize that Iran continues to reap significant benefits from Resolution 2231, even though Iran has repeatedly violated the resolution through numerous arms transfers that have been widely recognized as a violation by other JCPOA participants and the international community.¹¹ Even assuming, *arguendo*, that the aforementioned principle applies in this context, the premise that the United States is in violation of international obligations under the JCPOA and/or Resolution 2231 is legally inaccurate. As explained above, the U.S. decision to cease performing the commitments it had under the JCPOA violated no U.S. obligations under international law. Therefore, even on such a theory, it cannot be said that the United States no longer has the right under OP 11 of Resolution 2231 to initiate the snapback of UN measures on Iran.

⁹ Cf., e.g., OP 6 of UN Security Council resolution 2118 (2014), in which the Security Council “decides” that Syria “shall comply” with a decision of the Executive Council of the Organisation for the Prohibition of Chemical Weapons that was annexed to the resolution. S.C. Res. 2118, ¶ 6, U.N. Doc. S/RES/2118 (Sept. 26, 2013).

¹⁰ UNSCR 2231, Annex B, ¶¶ 2, 4, 5, 6(a)-(f).

¹¹ Iran’s violations of Resolution 2231’s arms-related restrictions are a matter of public record. See, e.g. Ninth Report of the UN Secretary-General on the Implementation of Security Council Resolution 2231 (2015), U.N. Doc. S/2020/531 (June 11, 2020), ¶ 11.

The May 8, 2018 U.S. action—deciding not to perform commitments the United States had under the Plan of Action—in and of itself therefore only had effects for the JCPOA, not Resolution 2231. On that date, the United States announced that it did not intend to provide Iran with relief from U.S. sanctions that had been lifted under the JCPOA, a political agreement, and this announcement of U.S. non-performance of the political arrangement was simply that. Neither the U.S. President’s announcement that day nor any associated documents mention or were addressed to any aspect of Resolution 2231. Nor was there any U.S. notification to the UN Security Council of the steps the United States was taking to re-impose nuclear-related sanctions on Iran. There is a straightforward reason for this: such a notification was not required by Resolution 2231, and the May 8, 2018 decision by the United States was not intended to, and, as a legal matter, could not, have any legal effect on the United States’ independent legal rights and obligations under the resolution.

III. Conclusion

The plain text of Resolution 2231 establishes and fixes the United States’ right to initiate the snapback of UN measures on Iran. As explained above, this is a straightforward and uncomplicated proposition, and arguments to the contrary would have the effect of supplanting the resolution’s plain text with silent conditions to alter the rights created by the Council. Developments beyond the four corners of Resolution 2231 did not and could not change the United States’ right to initiate snapback. In particular, the United States’ decision to cease providing Iran relief from U.S. sanctions under the separate, non-binding political arrangement that is the JCPOA did not and could not alter Resolution 2231’s text. Arguments that the United States has forfeited or waived its right to initiate snapback are unfounded. The resolution’s text is clear: upon notification by a JCPOA participant State, including the United States, to the Security Council of significant non-performance of commitments under the JCPOA, the process set forth in OPs 11 and 12 of Resolution 2231 leading to the re-imposition of specified measures terminated under the resolution shall be initiated. If, following such notification by the United States, the Council does not adopt a resolution to continue in effect the terminations under Resolution 2231 (regardless of whether a resolution continuing relief is tabled—and vetoed), then effective midnight Greenwich Mean Time after the thirtieth day after such notification, such measures shall be re-applied.