

BOFAXE

The U.S. v. the Rest of the World

How the recent attempts to reinstall sanctions against Iran undermine the Security Council (I)

— On October 18, an arms embargo on Iran imposed by the UN Security Council a decade ago will expire. As of that day, Iran will be allowed to deal with weapons despite its recent violations of the ‘Iran Nuclear Deal’ and the risk of fueling an arms race in the Middle East. One month earlier, on September 21, the U.S. announced that it unilaterally imposed sanctions to uphold the embargo. Moreover, the Secretary of State argued that under the so-called ‘snapback mechanism’ in Security Council resolution 2231, all previously suspended UN sanctions are reactivated for all UN members. This post will examine the legality and implications of America’s claim that the UN sanctions on Iran reapply.

General background

After Iran stopped cooperating with the International Atomic Energy Agency (IAEA) in 2005, the Security Council adopted a number of sanctions under article 41 of the UN Charter (see [here](#), [here](#), [here](#), [here](#), and [here](#)). On July 14, 2015, after years of negotiations, the EU3+3 (United Kingdom, France, Germany, Russia, China, U.S.) and Iran came to an agreement on the Joint Comprehensive Plan of Action (JCPOA or ‘Iran deal’).

Under the JCPOA, Iran would reduce its nuclear activities in exchange for sanctions relief. The JCPOA was endorsed by the Security Council and annexed to resolution 2231, according to which all abovementioned sanctions would phase out five to eight years after the so-called ‘adoption day’ (October 18, 2015).

Timeline of an escalating conflict

For three years all JCPOA participants complied until President Trump decided to withdraw on May 8, 2018, and reimposed far-reaching sanctions (see [here](#), [here](#), [here](#), and [here](#)). Although the remaining states urged Iran to hold up to its commitments, Iran announced that it no longer felt compelled to honor the agreement.

Earlier this year, the Secretary General introduced his ninth report on the implementation of Security Council resolution 2231 in which he stated that Iran has exceeded its limitations on nuclear material, partially stopped cooperating with the IAEA, developed ballistic missiles, and engaged in illicit arms trade. At that point Secretary of State Mike Pompeo called upon the Council to extend the embargo which expires on October 18. The remaining JCPOA participants did not support his suggestion because they feared that Iran could fully abandon the agreement.

On August 17, the U.S. unsuccessfully proposed a draft resolution with the purpose of extending the arms embargo beyond October 18. And on August 20, Pompeo sent a letter to the President of the Security Council notifying that the U.S. intends to trigger the ‘snapback mechanism’ which would reinstate all UN sanctions after 30 days.

Can the U.S. still trigger the ‘snapback mechanism’?

According to paragraph 11 of resolution 2231, a notification by any “JCPOA participant State of a [...] significant non-performance of commitments under the JCPOA” starts the ‘snapback mechanism.’ First, the Council has to vote on a resolution whether to reinstate the sanctions suspended under paragraph 7. Additionally, paragraph 12 specifies that if no such resolution can be adopted within 30 days following the notification, all suspended UN sanctions are automatically reactivated. This mechanism was designed to avoid a scenario in which permanent members could block the reimposition of sanctions with their veto under article 27(3) of the Charter.

The U.S. government argues that since its proposed resolution was not adopted as of September 20 (30 days after Secretary Pompeo’s letter), all UN sanctions reapply. In a recent legal brief, the State Department put forward a twofold argument. First, the JCPOA and resolution 2231 are distinct legal instruments and the U.S. can still make claims under the Security Council resolution although it left the JCPOA. Second, the wording of paragraph 10 of the resolution authoritatively defines the U.S. as a “JCPOA participant”:

“Encourages China, France, Germany, the Russian Federation, the United Kingdom, the United States, the European Union (EU), and Iran (the “JCPOA participants”) [...]” (emphasis added)

Following the State Department’s logic, since the U.S. is defined as a participant state in paragraph 10 it can still activate the sanctions snapback under paragraphs 11 and 12.

To the contrary, the majority of states in the Security Council argues that the U.S. cannot trigger the snapback mechanism because it withdrew from the JCPOA in 2018. Paragraph 11 clearly states that only a “JCPOA participant State” may start the snapback process. A number of eminent international lawyers have even started a petition in support of this position.