



Iran: The U.S. Brings Maximum Pressure to the UN

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Principal Findings

What's new? A U.S. resolution seeking to extend UN arms restrictions on Iran beyond their October 2020 expiration failed at the Security Council. Washington has asserted that it will claim the right to unilaterally restore UN sanctions, which were terminated as part of the 2015 nuclear agreement.

Why does it matter? Any U.S. attempt to reimpose sanctions will be controversial, given the Trump administration's withdrawal from the 2015 Iran nuclear deal, and likely to create deadlock at the Security Council. The administration's goal is clear: kill the deal or make it that much harder for a successor administration to rejoin it.

What should be done? The remaining parties to the deal should be united in resisting Washington's efforts, as should other Security Council members. They should essentially disregard a U.S. "snapback" – restoring sanctions – as ineffectual, obstruct attempts to implement it and discourage Iran from overreacting to what will end up being a symbolic U.S. move.

Executive Summary

The Trump administration's "maximum pressure" campaign against Iran is reaching its logical conclusion: an attempt to wipe out the 2015 nuclear deal, or Joint Comprehensive Plan of Action (JCPOA), through unilateral action at the UN Security Council. The administration first sought to extend the UN arms restrictions upon Iran set to expire on 18 October through a new resolution. With that effort's embarrassing failure, it has headed to the next stage, invoking the right to "snap back", or restore, UN sanctions. This right is reserved for JCPOA participants, but Washington somehow claims it despite loudly broadcasting an exit from the deal over two years ago. Its goal is clear: to force Iran to surrender to U.S. demands in a new accord (should President Donald Trump win a second term) or make it that much harder for the U.S. to re-enter the JCPOA (should former Vice President Joe Biden win a first). Council members should dismiss the snapback move as a non-event, impede U.S. attempts to set up UN sanctions committees and press Iran not to overreact to a manoeuvre that will change nothing on the ground.

For more than two years, coercion has been the leitmotif of the Trump administration's Iran policy. Since leaving the JCPOA in May 2018, Washington has enacted powerful unilateral sanctions against the Islamic Republic with the intent of destabilising it, forcing concessions related to its nuclear program and its behaviour on the Middle Eastern stage, or both. Yet, although Iran's economy undoubtedly has suffered considerably, it has yielded neither on the nuclear front, where its program is today more advanced than before the U.S. withdrawal, nor on the regional front, where its actions and those of its allies have if anything become more belligerent.

The October expiration of the UN arms restrictions on Iran (agreed to in the nuclear talks and enshrined in UN Security Council Resolution 2231) has emerged as the next major flashpoint in the standoff. U.S. officials have said they are determined not to let those constraints lapse. They claimed they would achieve this goal in one of two ways: by passing a stand-alone resolution that would prolong the embargo indefinitely or by invoking a provision of Resolution 2231 to restore all UN sanctions – a move that would bring back pre-JCPOA sanctions and could spell the nuclear deal's demise. On 14 August, the first option collapsed ignominiously on a vote of two in favour, two against and eleven abstentions. The stage is now set for the second option.

The administration's intent has never been in doubt. If its goal in fact was to minimise the impact of permissible weapons sales and purchases on Middle East security, then Washington had more realistic options than the open-ended extension it sought and the resort to a UN Security Council snapback mechanism it now threatens. Yet, rather than engaging in delicate diplomacy, in close consultation with allies but also reaching out to rivals who have an important say in the outcome, the Trump administration approached the problem with maximal demands and minimal willingness to compromise. The administration asserted that it is prepared to kill the JCPOA in order to extend the arms embargo. In reality, its track record suggests that it was prepared to invoke the arms embargo in order to kill the JCPOA.

The real choice, therefore, is not between the presence or absence of arms restrictions, but between the survival, tenuous but crucial, of the 2015 nuclear deal and

its dissolution. The remaining parties to the agreement may not view the easing of restrictions on conventional weaponry similarly – the three European participants, France, Germany and the UK, voice serious concerns about its implications, while Iran, Russia and China stress the fact that it was part and parcel of the understandings reached in 2015 – but they share the opinion that a new nuclear crisis is of greater concern. The path to which the U.S. is beckoning them may lead to precisely such a crisis.

To UN Security Council member states therefore falls the task of countering Washington's decision to invoke the snapback process. It may seem fanciful that the Trump administration, which announced its exit from the nuclear deal with a presidential memorandum entitled "Ceasing U.S. Participation in the JCPOA", now asserts its right as a "JCPOA participant", but there is no obvious or airtight mechanism for challenging this argument. The most likely scenario is a rancorous quarrel in New York, at the end of which the U.S. will assert that sanctions have legitimately been restored; Russia and China say they have not; and European nations (as well as other Council members) do their best to avoid both trouble with Iran and injury to the international body. Such a crisis will intensify existing tensions among permanent members and undercut the Council's already severely diminished value as a venue for decision-making by major powers.

The nuclear deal's fate may now rest on several factors: how many countries accept the U.S. claim that sanctions have been restored in the event of a snapback gambit, and which ones; the posture of the three principal European stakeholders; the actions of the UN Secretary-General and Secretariat; whether, how and how quickly Iran reacts; and, of course, the outcome of the U.S. presidential election. As the vote on the U.S. arms embargo resolution clearly suggests, the vast majority of Council members want to preserve the JCPOA and object to Washington's stratagem.

There is no similarly clear-cut way for them to dispatch the likely U.S. snapback manoeuvre. But there is an effective way nonetheless: to greet the Trump administration's claim that sanctions have been reimposed with a collective shrug, making plain that they dispute the move's legitimacy and that they will neither recognise new sanctions nor give them any effect. At that point, the JCPOA can only suffer fatal damage if Iran reacts by exiting it or retaliating by withdrawing from the nuclear Non-Proliferation Treaty. It is surprising, perhaps, that the JCPOA has held on until now, absorbing one blow after another. If the deal's remaining participants act wisely, it could still live to fight another day.

New York/Washington/Brussels, 19 August 2020

Iran: The U.S. Brings Maximum Pressure to the UN

I. Introduction

The Joint Comprehensive Plan of Action (JCPOA) was concluded on 14 July 2015 by the Islamic Republic of Iran and the five permanent members of the UN Security Council as well as Germany (the so-called P5+1). In this lengthy agreement, the culmination of years of fraught international negotiations over Iran's nuclear program, Iran undertook to limit its nuclear activities, including enrichment of uranium, and to accept continuous UN inspections of its nuclear facilities in exchange for relief from UN, U.S. and European Union (EU) sanctions. Donald Trump repeatedly excoriated the deal during his presidential campaign and pledged to withdraw the U.S. from it if elected. In May 2018, Trump followed through on his promise. The other members of the P5+1 (now, minus the U.S., known as the P4+1) stuck with the accord, as did Iran, albeit under increasing duress from renewed and tightened U.S. sanctions, including secondary sanctions that penalise the Islamic Republic's trade partners.

Though it survived the U.S. withdrawal, the JCPOA has steadily weakened, to the point that its long-term prospects are tenuous. Anxious to save the deal, the "E3" of France, Germany and the UK promised to find ways of preserving trade in the face of reinforced U.S. sanctions, thereby extending to Iran some of the economic benefits it would have reaped had the JCPOA proceeded as prescribed. To this end, in 2019, they set up a special purpose vehicle called the Instrument for Support of Trade Exchanges (INSTEX). Thus far, however, the fruits of INSTEX have been slow to appear. Iran in turn took a series of steps reinvigorating its nuclear program that, while incremental and measured, violated its obligations under the JCPOA.

The Trump administration, for its part, has hardly been coy about its objectives. It has sought, via the "maximum pressure" of sanctions and other measures, either to strong-arm Iran into a new, significantly more stringent nuclear deal or to shred what remains of the existing one, so as to realign world powers against an Iran that presumably would ramp up its nuclear program. Finding itself foiled in the first objective, the White House swung behind efforts to achieve the second.

The latest of these efforts took place in early August, when the UN Security Council took up the issue of arms restrictions imposed on Iran beginning in 2007. By the terms of the Security Council's endorsement of the JCPOA, these restrictions are to be lifted on 18 October 2020. The U.S. sought to extend them through a new draft resolution, which failed. It now intends to resort to a mechanism allowing JCPOA participants to "snap back" all pre-JCPOA UN sanctions unilaterally, thereby – if successful – all but ensuring the deal's collapse. In addition to eliminating the sunset on arms restrictions, snapback would restore other measures, such as a ban, which Resolution 2231 recast as a call on Iran that itself would lapse in 2023, with respect to "ballistic missiles capable of delivering nuclear weapons". Also restored would be the Council's injunction against uranium enrichment and international scrutiny of Iran's shipping and banking activities. Additionally, Iran would once again be classed

as a threat to international security under Chapter VII of the UN Charter, a characterisation that Tehran profoundly resents.

Crisis Group closely tracked the negotiations leading up to the JCPOA. Since the deal was struck, Crisis Group has likewise monitored its implementation in detail, along with the U.S., Iranian, Middle Eastern and global politics swirling around it.¹ This report builds on that body of work, examining the debate surrounding UN arms restrictions and the U.S. snapback effort that now seems imminent. It is based on more than 40 interviews conducted with U.S., European, Russian, Chinese, Iranian and UN officials, as well as with independent experts, since late 2019.

¹ Each year on the anniversary of the JCPOA's implementation, Crisis Group has published a report assessing the impact of geopolitical developments on the deal. The most recent of these is Crisis Group Middle East Report N°210, *The Iran Nuclear Deal at Four: A Requiem?*, 16 January 2020. The earlier reports in this series, as well as additional topical reports and briefings, are listed in Appendix C.

II. The Incredible Shrinking Nuclear Deal

The debate about UN arms restrictions and snapback has taken place against the backdrop of wider tensions around the JCPOA. The nuclear deal has been under steadily growing strain since the U.S. exited the agreement in 2018 and embarked on a “maximum pressure” campaign against the Islamic Republic. By reinstating pre-JCPOA sanctions and expanding their scope, notably with respect to Iranian oil exports, the Trump administration erased much if not all of the economic relief Iran was to enjoy in return for acceding to constraints on its nuclear program.

In May 2019, one year after the U.S. withdrew from the deal and, in Tehran’s view, the remaining parties failed to deliver on the economic dividends it had expected to make up for unilateral U.S. sanctions, Iran began incrementally breaching its nuclear commitments. It broke the 300kg cap on low-enriched uranium and the size of its heavy water stockpile; raised enrichment levels from the deal’s 3.67 per cent ceiling to 4.5 per cent; stepped up research and development; resumed enrichment at the Fordow facility; and exceeded the pact’s limits on the number of centrifuges it can spin.² Separately, its relations with the International Atomic Energy Agency (IAEA) grew more strained as Tehran denied inspectors access to two sites where the agency seeks clarification on “possible undeclared and nuclear-related activities”.³

On 14 January 2020, the E3 responded to Iran’s breaches by triggering the agreement’s Dispute Resolution Mechanism (DRM), which allows any one of the JCPOA’s participants to raise what it considers non-performance by another. The E3 stated,

² Crisis Group Report, *The Iran Nuclear Deal at Four: A Requiem?*, op. cit. Tehran maintains that its breaches are reversible, though the E3 have noted that research and development activities in particular are “irreversibly improving its enrichment capabilities”. “E3 Statement on Verification and Monitoring in Iran (JCPOA) at the IAEA Board of Governors”, UK Mission to the UN in Vienna, 16 June 2020. U.S. Assistant Secretary of State Christopher Ford assessed in May 2020 that, “So far, Iran has been notably measured in building up its nuclear capabilities ... even though these are violations of its JCPOA commitments. Iran does not seem to wish to antagonise the remaining participants in the JCPOA”. “Briefing on Keeping the World Safe from Iran’s Nuclear Program”, U.S. State Department, 27 May 2020. In its latest quarterly report on Iran, the IAEA reported that Iran’s enriched uranium stockpile stood at 1,571.6kg as of 20 May, nearly eight times the 202.8kg limit set in the JCPOA. Iran broke the 3.67 per cent cap on enrichment levels in July 2019 but has yet to exceed 4.5 per cent. “Verification and Monitoring in the Islamic Republic of Iran in Light of UN Security Council Resolution 2231 (2015) (GOV/2020/26)”, IAEA, 16 June 2020.

³ The two sites are among three locations with respect to which the agency has queried Iran on nuclear activities dating back to the early 2000s. On 19 June, in a 25-2 vote (with seven abstentions), the IAEA Board of Governors passed an E3-proposed resolution urging Iran to “fully cooperate ... without any further delay”. “NPT Safeguards Agreement with the Islamic Republic of Iran (GOV/2020/34)”, IAEA, 19 June 2020. Iran has thus far denied the agency’s requests, maintaining that they are premised on “baseless” claims and could lead to “an endless process of verifying and cleaning up of ever-continuing fabricated allegations”. “Statement by H.E. Ambassador Kazem Gharib Abadi”, Islamic Republic of Iran Permanent Mission to the UN and Other International Organisations, 19 June 2020. “Statement by H.E. Ambassador Kazem Gharib Abadi”, Islamic Republic of Iran Permanent Mission to the UN and Other International Organisations, 17 June 2020. An Iranian official said Tehran feared that the requests “would open Pandora’s box on possible military dimensions, which was closed in 2015”. Crisis Group interview, Iranian official, Vienna, November 2019. More recently, another Iranian official predicted that the matter would “soon be resolved” to the IAEA’s satisfaction. Crisis Group interview, July 2020.

“We do this in good faith with the overarching objecting of preserving the JCPOA”.⁴ Iran likewise invoked the mechanism on 2 July, citing in particular “concerns regarding implementation issues” on the E3’s part.⁵

The duelling claims are moving slowly, however, as the European Union’s High Representative, Josep Borrell – who acts as coordinator of the JCPOA’s Joint Commission, where the parties convene for discussions – announced that the COVID-19 pandemic had ruled out an in-person session for the time being. In effect, Borrell extended the timeline for the dispute resolution mechanism process.⁶ Although in theory this process can lead back to the Security Council and set the stage for restoring sanctions and terminating the deal, both the E3 and Iran have underscored their desire to ensure the JCPOA’s survival.⁷

The moribund JCPOA now faces a new crisis, the purported reason for which is the 18 October 2020 expiration of the UN’s arms restrictions upon Iran. In Resolution 1747 (2007), the Security Council, which took up the Iran nuclear dossier in 2006 and in December that year imposed nuclear and ballistic missile-related sanctions designations, agreed that “Iran shall not supply, sell or transfer ... any arms or related materiel” and urged governments “to exercise vigilance and restraint” in weapons exports to the Islamic Republic.⁸ These restrictions were tightened by Resolution 1929 (2010), which, on the basis of Iran’s nuclear activities, directed “that all states shall prevent the direct or indirect supply, sale or transfer to Iran ... of any battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems as defined for the purpose of the United Nations Register of Conventional Arms, or related materiel”.⁹

When the JCPOA was negotiated, Iran, backed by Russia and China, argued that insofar as the arms restrictions were imposed in response to the nuclear crisis, they should be lifted once that crisis had been dealt with – in other words, immediately. The U.S. and its European partners objected, seeking to preserve those prohibitions in the long term as a response to what they see as Iran’s disruptive Middle East policies and for the sake of stability. The timetable for lifting those restrictions – as well

⁴ “E3 Foreign Ministers’ Statement on the JCPOA”, UK Foreign and Commonwealth Office, 14 January 2020. Iran claims to have repeatedly triggered the dispute resolution mechanism prior to July, an assertion that the E3 contest. See “Iran has triggered JCPOA DRM ‘six times’, FM Zarif says”, Tasnim News Agency, 5 July 2020.

⁵ EU High Representative Josep Borrell confirmed receipt of Iran’s letter on 3 July. “JCPOA: Statement by the High Representative Josep Borrell as Coordinator of the Joint Commission of the Joint Comprehensive Plan of Action on the Dispute Resolution Mechanism”, EU European External Action Service (EU EEAS), 3 July 2020. “Zarif writes to Borrell on EU’s noncompliance with JCPOA”, Islamic Republic News Agency, 3 July 2020.

⁶ “JCPOA: Statement by the High Representative Josep Borrell as Coordinator of the Joint Commission of the Joint Comprehensive Plan of Action on the Dispute Resolution Mechanism”, EU EEAS, 17 July 2020.

⁷ On 19 June, the E3 underscored that they had initiated the DRM “in hope of finding a diplomatic way forward, preserving the agreement and bringing Iran back to full compliance with its commitments under the JCPOA”. “Statement by the Foreign Ministers of France, Germany and the UK”, French Foreign Ministry, 19 June 2020. Iran echoed the sentiment. See “FM Zarif Raps EU3’s Non-Compliance with JCPOA in Letter to Borrell”, Iranian Ministry of Foreign Affairs, 4 July 2020.

⁸ Resolution 1747 (2007), UNSC S/RES/1747 (2007), 24 March 2007.

⁹ Resolution 1929 (2010), UNSC S/RES/1929 (2010), 9 June 2010.

as those related to Iran's ballistic missiles program – proved among the most contentious issues in the talks. A compromise solution came only in the final days, as part of the overall package.¹⁰ That solution, enshrined in UN Security Council Resolution 2231, which endorsed the JCPOA and passed unanimously on 20 July 2015, retained restrictions on arms imports and exports for a period of five years (and eight years for ballistic missile parts) from the deal's 18 October 2015 adoption day.¹¹ The resolution also stipulated that travel bans for designated Iranian officials would expire after five years.¹²

¹⁰ Crisis Group interview, JCPOA negotiator, August 2020. At the time, a senior U.S. diplomat, Wendy Sherman, remarked: "Even though Iran, China [and] Russia thought that these sanctions, these restrictions, should come off immediately, the rest of the P5+1 did not. ... We were able to negotiate that these restrictions would stay in place even though one could read [Resolution] 1929 to read that they should have technically come off". "Briefing to the Press on the Iran Nuclear Deal", U.S. State Department, 16 July 2015. Sherman is a member of Crisis Group's Board of Trustees.

¹¹ Those dates can be moved forward if the IAEA delivers a "[b]roader Conclusion that all nuclear material in Iran remains in peaceful activities". See UNSC S/RES/2231 (2015), Annex B, Paragraph 5.

¹² Ibid., Paragraph 6.e. The 2231 list refers to 23 individuals, including Qassem Soleimani, the commander of the Islamic Revolutionary Guards Corps' elite Qods Force, who was killed by the U.S. in January 2020.

III. Key Players' Positions and Perspectives

A. *The U.S.*

The U.S. approach to the expiration of the UN Security Council's arms restrictions on Iran has centred on two scenarios: extending the restrictions through a new UN Security Council resolution or, failing that, asserting its right as a Resolution 2231 participant to snap back past Council sanctions on Iran, which would have the same effect, while also reimposing other sanctions imposed by the Council between 2006 and 2010. Either option could in theory have delivered a fatal blow to the JCPOA, the former because it would have constituted in Iran's eyes a blatant violation of the accord and a non-consensual change in its terms, and the latter because it would, in effect, kill the deal. As President Trump's first term comes to a close, and with growing uncertainty about whether he will serve a second, his administration's sense of urgency in achieving that barely concealed objective has only become more apparent.

U.S. officials, led by Secretary of State Michael Pompeo and (outgoing) Special Representative Brian Hook, have for months flagged the arms restrictions expiration as a concern, with Pompeo raising the issue at the UN Security Council as early as 2018.¹³ The U.S. contends that Iran will go on a weapons buying spree and also be unshackled as "a rogue weapons dealer, supplying arms to fuel conflicts from Venezuela to Syria to the far reaches of Afghanistan".¹⁴ Officials argue that Iran's actions in the Middle East underscore the need to maintain restrictions on its ability to supply arms to its allies and proxies, and on purchasing arms for itself.¹⁵ They point in particular to a June 2019 attack on two oil tankers in the Persian Gulf that many blame on Tehran; Iran's widely suspected involvement in carrying out the September 2019 attack on Aramco's oil facilities in Saudi Arabia; and UN investigations of arms shipments of Iranian-made weapons, notably those reportedly headed to the Huthis in Yemen.¹⁶

¹³ See, for example, "Remarks at the United Nations Security Council Meeting on Iran", U.S. State Department, 12 December 2018. Ahead of remarks by Pompeo to the Security Council in August 2019, the State Department launched a live countdown timer to the restrictions' end on its website, which remains positioned on its Iran page.

¹⁴ "Secretary Michael R. Pompeo at the UN Security Council on the Iran Arms Embargo", U.S. State Department, 30 June 2020.

¹⁵ "Briefing with Special Representative for Iran and Senior Advisor to the Secretary Brian Hook on Depriving Iran of the Weapons of War", U.S. State Department, 30 April 2020.

¹⁶ These were detailed in an April 2020 letter from the U.S. to the UN Security Council. "Letter dated 21 April 2020 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council", UNSC S/2020/322, 23 April 2020. The most recent publicly announced instance of an interdiction was on 28 June, when, according to Secretary Pompeo, "U.S. and partner forces interdicted a vessel off the coast of Yemen with illicit cargo including 200 RPGs, more than 1,700 AK rifles, 21 surface-to-air and land-attack missiles, several anti-tank missiles, and other advanced weapons and missiles". "Secretary Michael R. Pompeo at a Press Availability", U.S. State Department, 8 July 2020. Based on its investigation of two U.S. arms seizures, the UN Secretariat concluded that Iran had undertaken weapons transfers that "may be inconsistent" with the resolution. See remarks by UN Under-Secretary-General Rosemary DiCarlo, "Joint Comprehensive Plan of Action Remains Best Way to Ensure Exclusively Peaceful Nature of Iran's Nuclear Program", UN, 30 June 2020. See also "Implementation of Security Council Resolution 2231 (2015): Ninth Report of the Secretary-General", UNSC S/2020/531, 11 June

The U.S. claims that lifting the arms restrictions despite this behaviour would embolden Iran to more freely supply weapons to its allies in Iraq, Lebanon, Syria and Yemen, handing Iran “a sword of Damocles over the economic stability of the Middle East”.¹⁷ U.S. officials told Crisis Group that enabling Iran to resume arms transfers would be a “huge problem. But it’s not just our problem. ... It would be a major shift in regional security dynamics”.¹⁸ They further argue that in the absence of such restrictions, Tehran would bolster its arsenal through purchases of, inter alia, fighter jets from China and Russia.¹⁹ Israel and Saudi Arabia, both key U.S. regional allies, have supported extending the embargo, as has the Gulf Cooperation Council.²⁰

But prolonging the arms restrictions should be understood as part of a U.S. strategy of denying Tehran any benefit from the JCPOA, in effect scotching the pact. The aim is to weaken Iran’s government and pressure it into a new, more stringent deal. U.S. officials have made it clear that they intend to use Resolution 2231’s provisions to snap back all UN sanctions on Iran, if necessary, to maintain arms restrictions on Tehran.²¹ Indeed, snapback appears less a U.S. fallback solution to the failure of its extension resolution than its primary objective: even if reimposition of sanctions

2020. Tehran has rejected these findings, countering that Washington has been “spreading disinformation, fabrications and accusations” against it. “Letter dated 22 May 2020 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General and the President of the Security Council”, S/2020/434, 22 May 2020.

¹⁷ “UN Report Exposes Iran’s Defiance of the United Nations”, Office of the Spokesperson, U.S. State Department, 30 June 2020. “Secretary Michael R. Pompeo at the UN Security Council on the Iran Arms Embargo”, U.S. State Department, 30 June 2020. A senior U.S. official has additionally mooted the possibility that Iran would resell materiel to Venezuela, whose government maintains close ties to Tehran. Special Representative for Venezuela Elliott Abrams, quoted in “Special Representatives Brian Hook and Elliott Abrams on the Evolving Tehran-Caracas Relationship”, Hudson Institute, 16 July 2020.

¹⁸ Crisis Group interview, U.S. official, December 2019.

¹⁹ “If the @UN arms embargo on Iran expires in October, Iran will be able to buy new fighter aircraft like Russia’s SU-30 and China’s J-10. With these highly lethal aircraft, Europe and Asia could be in Iran’s crosshairs. The U.S. will never let this happen”. Tweet by Michael Pompeo, @SecPompeo, U.S. secretary of state, 23 June 2020. A 2019 study by the U.S. Defense Intelligence Agency assessed that “Iran’s potential acquisitions after the lifting of UNSCR 2231 restrictions include Russian Su-30 fighters, Yak-130 trainers and T-90 MBTs [Main Battle Tanks]. Iran has also shown interest in acquiring S-400 air defense systems and Bastian coastal defense systems from Russia”. “Iran Military Power: Ensuring Regime Survival and Securing Regional Dominance”, Defense Intelligence Agency, 19 November 2019.

²⁰ Marwa Rashad, “Saudi, U.S. officials call for extending UN arms embargo on Iran”, Reuters, 29 June 2020. Israeli Prime Minister Benjamin Netanyahu on 30 June urged the U.S. “to implement now snapback sanctions”. “PM Netanyahu Meets with U.S. Special Representative for Iran Brian Hook”, Israeli Prime Minister’s Office, 30 June 2020. On 9 August, the Gulf Cooperation Council (GCC) issued a statement asserting that “it is inappropriate to lift restrictions on the supply of weapons from and to Iran until Iran gives up its destabilising activities in the region and stops supplying terrorist and sectarian organisations with weapons”. Quoted in Lisa Barrington, “GCC unites to seek UN extension of Iran arms embargo”, Reuters, 9 August. An official from one GCC country, however, said his government was “not really supporting this”, while a senior official from another GCC state indicated that “a letter from the Council’s Secretary General normally means there are no agreements by all the countries to sign a joint letter”. Crisis Group interviews, 10 August 2020.

²¹ Some European diplomats viewed these threats partly as an effort to garner E3 support for the U.S. arms embargo resolution. Crisis Group interviews, European diplomats, June-August 2020.

would not bury the deal – a future U.S. administration could reverse course – it almost certainly would make U.S. re-entry into the JCPOA harder, requiring a U.S. executive decision as well as the other Council members' assent to a new resolution. Rather than seeking a (difficult) compromise on the arms restrictions, the U.S. insisted on its open-ended extension with certain knowledge that Russian and Chinese vetoes would ensue. That, as a European diplomat told Crisis Group, was a dead giveaway of Washington's ultimate goal.²²

The diplomat would seem to have been right. After a U.S.-sponsored draft resolution lengthening the arms embargo on Iran won no support from other members in late June, Washington put forward a shorter text in early August stripping away some of the first draft's more far-reaching elements – criticising Iran's regional activities and introducing stringent interdiction demands from member states. But the new draft retained the central U.S. call for an indefinite extension of arms restrictions, a clause unacceptable to all other JCPOA signatories, dooming it to the original's fate.²³ A Council diplomat surmised that this approach was aimed at allowing the U.S. to argue that it had exhausted all avenues to extend the embargo at the Council and was left with no choice but to trigger snapback.²⁴ If so, the Trump administration got its wish: on 14 August, the resolution failed, despite Washington's energetic arm twisting, with only the Dominican Republic joining the U.S. in voting yes.²⁵ On 15 August, President Trump made clear what seemed preordained: that the U.S. would seek to restore UN sanctions through snapback.²⁶

B. *Russia*

For Russian officials, Washington's insistence on extending the arms restrictions was driven by its twin goals of unravelling the JCPOA and achieving a diplomatic success in the lead-up to the November presidential election.²⁷ As they saw it, the Trump administration's various scenarios were intended to torpedo the deal no matter what: had Moscow supported the extension, Iran would have withdrawn from the JCPOA, precipitating its collapse. Moscow's better option was to block Washington's resolution, but it figured that the U.S. would then try to snap back sanctions, a move which – if successful – would produce the same outcome.

²² As he put it, Brian Hook did “a pretty bad job” of concealing that snapback was the ultimate objective at a June closed-door briefing of Council members. Crisis Group telephone interview, European diplomat, June 2020.

²³ “Draft UN Security Council Resolution on Iranian Regional Attacks and Arms Proliferation”, viewed by Crisis Group on 4 August 2020.

²⁴ Crisis Group telephone interview, Security Council diplomat, August 2020.

²⁵ The U.S. and Dominican Republic voted in favour of the draft resolution. Russia and China voted no. The other eleven Security Council members, including the E3, abstained. In its explanation of vote, the UK noted that this draft would not “contribute to improving security and stability in the region”, asserting that London “remains resolutely committed to the JCPOA” and to working with France and Germany to take “forward the JCPOA's Dispute Resolution Mechanism negotiations”. “United Kingdom – Explanation of Vote on Non-proliferation (Iran) resolution (S/2020/797)”, UK Mission to the United Nations, 14 August 2020.

²⁶ “Donald Trump vows ‘snapback’ over humiliating UN defeat on Iran arms embargo”, *The Guardian*, 15 August 2020.

²⁷ Crisis Group interviews and telephone interviews, Russian officials, November 2019–June 2020.

Russia's response has been twofold. First, officials made clear that they would, if necessary, veto any effort to adopt a new UN Security Council resolution extending restrictions beyond October. Secondly, rejecting what they called U.S. attempts to "blackmail" the deal's remaining participants with the threat of snapback, they signalled that they would not recognise reinstatement of past Security Council sanctions because the U.S., having withdrawn from the deal, lacks the legal standing to bring these sanctions back.²⁸ As a Russian diplomat told Crisis Group, "You cannot withdraw from a treaty and then try to dissolve it. They are trying to game the resolution language".²⁹

Russian diplomats floated potential compromise solutions, albeit without much conviction. For example, as recently as 14 August, Russian President Vladimir Putin suggested taking the issue away from the Security Council and convening the JCPOA's original signatories to find an acceptable solution – a proposal the U.S. swiftly turned down.³⁰ Russian officials previously had told Crisis Group that the goal should be to discuss terms Tehran might accept in exchange for extending the restrictions; these could entail, for example, allowing Iran to resume some oil sales or shortening the duration of some nuclear constraints.³¹ Yet, as Moscow surely knew, neither of these options would have been acceptable to Washington – the former because it would relieve pressure on Iran when maximising it remains the U.S. goal; the latter because a salient Trump administration complaint is that the existing timetables are far too short already.

Although some Europeans had banked on the threat of U.S. snapback to press Russia to compromise further on the arms restrictions, the gambit almost certainly was ill considered.³² Moscow wants to salvage the JCPOA, but it might not look with disfavour at the prospect of a Security Council clash over whether the U.S. can unilaterally reimpose sanctions. As other European officials point out, such a scenario would fuel additional tensions between Washington and its trans-Atlantic allies, further undercut U.S. credibility and throw the integrity of the entire sanctions regime

²⁸ In May, Russia referenced a 1971 International Court of Justice ruling to dismiss the possibility of the U.S. asserting its rights under the JCPOA after having withdrawn from the deal in 2018. "Letter dated 27 May 2020 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General and the President of the Security Council", UNSC S/2020/451, 28 May 2020.

²⁹ Crisis Group telephone interview, Russian diplomat, May 2020.

³⁰ "Statement by President of Russia Vladimir Putin on Russia's Proposal to Convene Meeting of Heads of State of UN Security Council Permanent Members with Participation of Heads of Germany and Iran", President of Russia, 14 August 2020. U.S. National Security Advisor Robert O'Brien on 16 August remarked that, "What the Russians are proposing is a summit with Russia, Germany, Iran and the other P5 members to try and bully the U.S. back into this terrible JCPOA deal. ... We're not doing that". "Transcript: Meet the Press", NBC News, 16 August 2020. Too, a State Department spokesperson said, "The United States believes strongly that the Security Council is the best place to have discussions related to extending the UN arms embargo, and we have the benefit of 13 years of Security Council precedent on our side". "State Dept on Putin's online summit proposal: UNSC best place to discuss arms embargo", Zee 5 News, 16 August 2020.

³¹ Crisis Group telephone interview, Russian diplomat, June 2020.

³² Crisis Group telephone interviews, European diplomats, June-July 2020.

into question, all without necessarily dealing the JCPOA a fatal blow for reasons described below.³³

C. *China*

China's positions largely mirror Russia's. It characterises the U.S. withdrawal from the JCPOA as the "original sin" and the starting point for all discussions on non-compliance with the deal's terms. Beijing faults Washington for imposing unilateral sanctions on Iran and asserts that the U.S. has "no right to demand that the Security Council invoke the snapback provision" given its exit from the deal.³⁴ China has called on other member states to jointly oppose the U.S. and urge it to return to compliance with the JCPOA.³⁵

Privately, some Chinese officials acknowledge that the U.S. may be in a position to prevail at the Security Council owing to the unprecedented provisions outlined in Resolution 2231. Even so, they view the ultimate decision as political rather than legal: they argue that other Council members should refuse to recognise the reimposition of sanctions measures on Iran following a U.S.-initiated snapback.³⁶

Like their Russian counterparts, Chinese officials express openness to dialogue outside the Council.³⁷ But China takes a more acerbic tone than Russia regarding efforts by European members to carve out a mutually acceptable compromise, sharply criticising the E3 for favouring outcomes tilted toward Washington insofar as they are predicated on increasing pressure on Tehran.³⁸ Chinese diplomats also dismiss suggestions floated by some Europeans about entering into voluntary commitments to forgo arms sales to Iran and instead assert Beijing's right to pursue bilateral security cooperation arrangements with Tehran.³⁹

D. *The E3*

The E3 have attempted to strike a balance between echoing Washington's concerns on Iran's arms transfers, on one hand, while simultaneously trying to safeguard the JCPOA, prevent snapback and avert severe damage to the Security Council's credibility, on the other.⁴⁰ This task has proved impossible, given the scope of U.S. demands

³³ Crisis Group interviews, European officials, June-July 2020.

³⁴ "Letter dated 8 June 2020 from the Permanent Representative of China to the United Nations addressed to the Secretary-General and the President of the Security Council", UNSC S/2020/517, 8 June 2020.

³⁵ "Foreign Ministry Spokesperson Hua Chunying's Remarks on the Iranian Nuclear Issue", Ministry of Foreign Affairs of the People's Republic of China, 14 July 2020.

³⁶ Crisis Group telephone interview, Chinese official, July 2020.

³⁷ Crisis Group telephone interview, Chinese official, August 2020.

³⁸ *Ibid.*

³⁹ Beijing and Tehran are reportedly on the verge of a new bilateral security and economic cooperation agreement. "Defying U.S., China and Iran near trade and military partnership", *New York Times*, 11 July 2020.

⁴⁰ In a joint 19 June statement, the E3 foreign ministers said, "The planned lifting of the UN conventional arms embargo established by Resolution 2231 next October would have major implications for regional security and stability", while also underscoring their sense "that any unilateral attempt to trigger UN sanctions would have serious adverse consequences in the UNSC". "E3 Foreign Ministers' Statement on the JCPOA", UK Foreign and Commonwealth Office, 19 June 2020.

and Russian as well as Chinese resistance to any move that would extend the restrictions without a commensurate inducement for Iran.

European diplomats regularly express concerns about Tehran's regional activities and signal support for maintaining at least some restrictions for some time. As a result, as an E3 diplomat put it, they have been searching for "a constructive and creative solution that acknowledges U.S. concerns on [the] arms embargo and Iran's destabilising activity in the region" – including, for instance, retaining restrictions on exports from Iran for some time while permitting some imports.⁴¹ But they do not believe that achieving these objectives is worth courting the kind of nuclear crisis a U.S. snapback would provoke, especially given other means of checking Iran's arms exports and imports.⁴²

European belief in the possibility of compromise with Washington, weak to begin with, eroded over time. Privately, European diplomats questioned U.S. intentions – "Whether they're serious about [their arms embargo] draft resolution or if their ultimate goal is to get rid of the JCPOA".⁴³ Such doubts discouraged the E3 from presenting their own proposals, as they were concerned that these could either result in additional U.S. demands or be disregarded en route to snapback (reprising the E3-U.S. negotiations that preceded the Trump administration's exit from the deal).⁴⁴ Washington's apparent lack of interest in compromise fuels the doubts. So, too, does its singular focus on sanctions with only limited implications for Iranian arms transfers. Iran was not a major importer of conventional weapons even prior to the UN restrictions. It is unlikely to make substantial future weapons acquisitions due to high costs and the dire state of its economy. The EU embargo remains in place until 2023, and the U.S. one indefinitely. Lastly, UN restrictions do not even cover surface-to-air missiles, perhaps the item of greatest concern.⁴⁵

⁴¹ Crisis Group telephone interview, European diplomat, June 2020. For more on potential arrangements for restricting arms sales to Iran, see Ellie Geranmayeh, "Avoiding the clash over the Iran arms embargo: how Europe can square the circle", *Bulletin of the Atomic Scientists*, 28 April 2020.

⁴² "E3 foreign ministers' statement on the JCPOA", 19 June 2020, *op. cit.* A senior E3 diplomat said, "Our argument is that we should look at the whole picture: the EU embargo lasts until 2023; UN missiles prohibitions also until 2023; there are UN resolutions barring arms exports that apply to Yemen and Lebanon. So, if we could add to that commitments by Russia and China that are strong, it should be satisfactory. But my sense is that the U.S. won't go for it, because they want a resolution". Crisis Group telephone interview, New York, 1 July 2020.

⁴³ Crisis Group telephone interview, non-E3 European diplomat, June 2020.

⁴⁴ Some question why Europe should "do the work of the U.S." in seeking to retain an arms embargo on Iran while trying to salvage the JCPOA if Washington is intent on dismantling it anyway. Crisis Group telephone interview, European diplomat, June 2020.

⁴⁵ According to the Stockholm International Peace Research Institute (SIPRI), between 1999 and 2008, Iran purchased just under three billion TIV (trend-indicator value, a metric that "measures transfers of military capability rather than the financial value of arms transfers"). By comparison, over the same period, Saudi arms imports were just over 4.6 billion TIV and Emirati acquisitions equal to 8.85 billion TIV. Between 2009 and 2018, a period throughout which Iran was under UN arms restrictions, SIPRI estimates that "the total value of Iran's arms imports ... was equivalent to just 3.5 per cent of Saudi Arabian arms imports in the same period". Pieter Wezeman and Alexandra Kuimova, "Military Spending and Arms Imports by Iran, Saudi Arabia, Qatar and the UAE", SIPRI Fact Sheet, May 2019. Iranian officials acknowledge that Tehran's capacity for big-ticket purchases is limited in the near term, due partly to the financial impact of U.S. sanctions and partly to Iran's wider economic woes. Crisis Group telephone interview, Iranian official, June 2020. In 2015,

Two arguments likewise can offset fear that lifting the UN restrictions will drive an increase in Iranian weapons transfers to allied non-state actors: first, separate Security Council resolutions would remain in effect that prohibit arms exports to Iranian non-state allies, including the Huthis in Yemen and Hizbollah in Lebanon.⁴⁶ Secondly, as illustrated by the Secretary-General's 2231 reports and as repeatedly stressed by U.S. officials, such Iranian transfers have continued notwithstanding those sanctions as well as those targeting Iran.⁴⁷

Even as European officials believe that Washington is overemphasising the impact of a decision to lift restrictions on conventional arms transfers, they have been struck by how little the U.S. seems to worry about the likelihood that the current path might induce Iran to accelerate its nuclear program. As one senior E3 diplomat put it:

U.S. officials don't seem to care at all if Iran no longer abides by nuclear restrictions. We tell them that if you get snapback, it will be worth nothing because Russia and China will ignore it, so you will end up with weapons sales as well as Iranian nuclear steps. Their response is: "That's a hypothetical and we don't deal in hypotheticals".⁴⁸

E. Iran

For Tehran, lifting the arms restrictions is an inherent component of the nuclear deal and one of its anticipated benefits, hailed by President Hassan Rouhani as "a major political, security and defence goal".⁴⁹ They argue that "any attempt to change or amend the agreed timetable is ... tantamount to undermining Resolution 2231 in its entirety".⁵⁰ Iranian officials thus describe U.S. efforts to extend the arms embargo as part of a campaign to erase any dividend Tehran might receive from the JCPOA: Washington went after the economic returns by imposing unilateral sanctions; nu-

Russia reversed a ban then-President Dmitry Medvedev had issued in 2010, following the adoption of Resolution 1929, upon the transfer of S-300 missiles to Iran. Moscow explained that, in light of advances toward the JCPOA, "The need for this kind of embargo, and a separate voluntary Russian embargo, has completely disappeared", adding that the system was "exclusively of a defensive nature". Foreign Minister Sergei Lavrov, quoted in "Russia lifts its ban on delivery of S-300 surface-to-air missile system to Iran", *The Wall Street Journal*, 13 April 2015.

⁴⁶ See Resolution 2216 (2015) on Yemen and Resolution 1701 (2006) addressing Lebanon. Resolution 1373 (2001) requires states to "refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by ... eliminating the supply of weapons to terrorists". Resolutions 2216 (2015), UNSC S/RES/2216 (2015), 14 April 2015; 1701 (2006), UNSC S/RES/1701 (2006), 11 August 2006; and 1373 (2001), UNSC S/RES/1373 (2001), 28 September 2001.

⁴⁷ U.S. intelligence assessments note that "Tehran is often able to get high-priority arms transfers to its customers". "Iran Military Power: Ensuring Regime Survival and Securing Regional Dominance", op. cit., p. 90.

⁴⁸ Crisis Group telephone interview, senior E3 diplomat, July 2020.

⁴⁹ "President addressing the bumper crowd of people in Rafsanjan", Iranian Presidency, 11 November 2019. Defence Minister Amir Hatami on 16 August indicated: "Iran will use all capacities in the world to meet its arms requirements, selling and exporting weapons after sanctions removal". "Iran to export weapons after sanctions lift: defence minister", Mehr News, 16 August 2020.

⁵⁰ Foreign Minister Javad Zarif, quoted in "Zarif slams Washington for undermining global peace, security", *Tehran Times*, 1 July 2020.

clear benefits by revoking waivers permitting international civil nuclear cooperation projects; and now this.⁵¹

Iran has been circumspect about how it would react to either a resolution extending the embargo or a restoration of all UN sanctions. When asked, an Iranian official said the Trump administration was seeking to provoke the Islamic Republic into responding in a manner that would lead the E3 to side with Washington against Tehran; he added that, until now, his country had carefully calibrated its reactions to U.S. violations so as to preserve the JCPOA and its ties with Europe. He pointed out that Iran, weighing the prospect of a change of administration in the U.S., would try not to take steps that jeopardised the possibility of the U.S. rejoining the deal, as the Democratic candidate Joe Biden has vowed to do.⁵²

Still, he was quick to add that Tehran could not remain passive and would have to respond strongly, even to a U.S. snapback that was not recognised by others and had little effect.⁵³ One possibility that has been floated by Iranian and other analysts would be for Iran to formally notify the IAEA of its intention to withdraw from the Non-Proliferation Treaty (NPT) – a measure that, while consequential, would not take effect for 90 days, giving both Washington and Tehran the opportunity to walk back their respective steps should Biden become president in January 2021.⁵⁴

⁵¹ On 27 May, the U.S. announced a 60-day notice for terminating “all remaining JCPOA-originating nuclear projects in Iran – the Arak reactor conversion, the provision of enriched uranium for the Tehran Research Reactor and the export of Iran’s spent and scrap research reactor fuel”. “Keeping the World Safe from Iran’s Nuclear Program”, U.S. State Department, 27 May 2020.

⁵² Crisis Group telephone interview, Iranian official, July 2020. Iran firmly holds the view that Washington, having pulled out of the JCPOA, cannot avail itself of the snapback mechanism. *Ibid.*

⁵³ *Ibid.*

⁵⁴ Crisis Group telephone interview, Iran analyst, July 2020.

IV. A Procedural Minefield

Given the now negligible possibility of a last-minute compromise on the arms restrictions and U.S. pledges to trigger snapback, Security Council members have spent considerable time forecasting how the process could play out in New York. The Council will be in uncharted territory as the process envisaged in Resolution 2231 is unique. It was designed by JCPOA negotiators as a means of guaranteeing that, after the suspension of UN sanctions on Iran, China and Russia could not say no if the U.S. or its allies sought their reimposition.

Under the rules devised for the JCPOA, any single participant state can notify the Council of “significant non-performance of commitments under the JCPOA”.⁵⁵ Notification starts a 30-day period in which the Council can pass a new resolution continuing the termination of sanctions agreed to in Resolution 2231. If it does not, all sanctions come back into force at the end of the 30-day window. Since any permanent Security Council member can veto a resolution to continue sanctions relief, the mechanism in effect gave the U.S., along with France and the UK, the ability to unilaterally reimpose sanctions notwithstanding Russian or Chinese objections.

Resolution 2231 “underscores that Iran and the other JCPOA participants should strive to resolve the issue giving rise to the notification”.⁵⁶ By the same token, it “encourages” participants to “resolve any issues arising with respect to implementation of JCPOA commitments through the procedures specified in the JCPOA”, which include a very detailed dispute resolution mechanism.⁵⁷ For the U.S. to avail itself of this provision without first having made any such effort or taken any of the steps described in the JCPOA would, in itself, be controversial.

But the recent U.S. claim that it can trigger snapback *despite having unilaterally withdrawn from the JCPOA* – and despite then-National Security Advisor John Bolton saying the U.S. was “not using [the provisions of Resolution 2231] because we are out of the deal” – was bound to set the scene for an especially vehement row in New York.⁵⁸

This quarrel and how it plays out will turn on three questions. The first, and most important, is whether the U.S. still has standing to trigger snapback while outside the JCPOA. The second is whether other Council members could use procedural rules to block or delay the process leading to snapback. The third is whether JCPOA supporters can take steps to undermine the implementation of sanctions if Washington claims snapback has occurred, either by obstructing UN sanctions oversight mechanisms or persuading other states to ignore the U.S. Looming over all three questions is the larger issue of whether any of this can happen without seriously harming the Security Council’s reputation and ability to agree on and enforce its decisions.

⁵⁵ For an earlier analysis of the procedural implications of snapback, see Loraine Sievers and Sam Daws, “Action initiated by three European countries on Iran’s nuclear programme brings attention back to Resolution 2231’s ‘snapback mechanism’”, update website of *The Procedure of the UN Security Council*, 4th edition, 19 January 2020.

⁵⁶ Resolution 2231 (2015), UNSC S/RES/2231 (2015), 20 July 2015, Paragraph 13.

⁵⁷ *Ibid.*, Paragraph 10.

⁵⁸ “Press Briefing by National Security Advisor John Bolton on Iran”, White House, 8 May 2018.

Answers to the first two questions are murky. The UN rulebook for resolving such controversies is less definitive than many outsiders assume, and there are few useful precedents. At the end of the day, there is a good chance that the U.S. will claim to have triggered the reimposition of sanctions while most other Council members will deem the entire process illegitimate and deny that sanctions are back in force. In contrast, most knowledgeable observers concur that there are relatively straightforward ways for snapback opponents to complicate the reinstatement of UN sanctions, notably the committee overseeing their implementation.

For those who want to save the JCPOA, the importance of invalidating a U.S. attempt to invoke snapback or, at a minimum, postponing its impact largely rests on the U.S. electoral calendar. The reasoning is straightforward: if Trump is re-elected, the JCPOA will be finished no matter what; conversely, should Biden win in November and assume office in January, he is expected to carry out his commitment to resume compliance with the nuclear deal if Iran does so as well. If the deal is still salvageable at that point – if, in other words, the parties have avoided steps from which they cannot retreat – then the new administration could undo its predecessor’s measures, including at the Security Council. While it would be foolhardy for anyone to predict the outcome of U.S. polls with three months of an entirely unpredictable campaign to go, growing prospects of a Biden victory could embolden Council members eager to preserve the nuclear deal to stand up to the U.S.

A. *The Question of Standing*

The clearest-cut way to stymie a U.S. snapback push would be to argue that the U.S. forfeited its standing by exiting the deal. The basic question is whether the U.S. is still a “JCPOA participant State” for purposes of Resolution 2231, and so entitled to notify the Security Council of “significant non-performance” by Iran. In averring that it is, the Trump administration is resorting to a tortured reading of the resolution and contradicting its own prior statements. It relies on a “plain language” reading of Resolution 2231, which, in Article 10, lists “JCPOA participants” as the P5+1, the EU and Iran without reference to whether and how they could lose this status. The U.S. thus asserts that it remains a participant state for purposes of Resolution 2231, even though it is no longer a participant for purposes of the JCPOA.⁵⁹ It follows, U.S. offi-

⁵⁹ See, for example, “President Donald J. Trump is Ending United States Participation in an Unacceptable Iran Deal”, White House Fact Sheet, 8 May 2018. Secretary Pompeo, speaking in May 2018 about the U.S. withdrawal, noted, “Two weeks ago, President Trump terminated the United States participation in the Joint Comprehensive Plan of Action, more commonly known as the Iran nuclear deal”. “After the Deal: A New Iran Strategy”, speech by Michael R. Pompeo, Secretary of State, 21 May 2018. The novel theory presented by the U.S. is well expressed by Brian Hook, outgoing special representative for Iran: “Participant has two meanings, and I think the people that sort of haven’t really stared at this long enough don’t understand that there are two participant meanings. One is you can be a participant in the Iran nuclear deal, the Joint Comprehensive Plan of Action. Participant also has another legal meaning, and that occurs in the context of 2231. And so, if you read operative paragraph 10, which concerns resolving any issues with respect to implementation of the JCPOA – and we are defined in operative paragraph 10 as a participant. And so, for the purposes of resolving issues, we are – we have certain rights that are clearly there”. “Briefing with Special Representative for Iran and Senior Advisor to the Secretary Brian Hook on Depriving Iran of the Weapons of War”, *op. cit.*

cials contend, that Washington retains the prerogatives of Resolution 2231 participants, in particular the right to invoke snapback.

Critics of this U.S. claim – who include, not surprisingly, Iran, China and Russia, but also some European governments, the EU high representative and even John Bolton, who was U.S. national security advisor at the time of the withdrawal – have flatly rejected the view that the U.S. is still a JCPOA participant state, whether for purposes of the nuclear deal or of Resolution 2231.⁶⁰ Russia points to a 1971 International Court of Justice ruling holding that countries that fail to uphold their commitments under international agreements lose the rights associated with them.⁶¹ Even officials from European nations that have not taken an unambiguous public position argue privately that any fair reading of Resolution 2231 should take account of its history and its drafters' intent. In that light, they say, it simply strains credulity for a state to withdraw from the nuclear deal, violate its provisions and then turn around and claim the ability to invoke it against an actual participant.⁶²

Even a textual interpretation does not fully support the U.S. view, according to several European officials: Paragraph 10 of Resolution 2231, which identifies the “JCPOA participants”, also calls on them to “resolve any issues arising with respect to implementation of JCPOA commitments through the procedures specified in the JCPOA” – procedures of which the U.S. could not avail itself due to its withdrawal.⁶³

⁶⁰ See, for example, “Remarks by Ambassador Christoph Heusgen in the Security Council VTC Meeting on Non-proliferation, June 30, 2020”, Permanent Mission of the Federal Republic of Germany to the UN, 30 June 2020; “JCPOA: Statement by EU High Representative Josep Borrell in His Capacity as Coordinator of the Joint Commission on the Fifth Anniversary of the Iran Deal”, Statement by the EU High Representative, 14 July 2020. In a 16 August op-ed column, Bolton agreed with these critics' view of U.S. standing. “They're right. It's too cute by half to say we're in the nuclear deal for purposes we want but not for those we don't. That alone is sufficient reason not to trigger the snapback process”. John Bolton, “Iran ‘snapback’ isn't worth the risk”, *Wall Street Journal*, 16 August 2020.

⁶¹ “Letter dated 27 May 2020 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General and the President of the Security Council”, UNSC S/2020/451, 28 May 2020.

⁶² Crisis Group interviews, E3 officials, June–July 2020. A European official said, “We have four ways of looking at the text. One is about plain wording. The second is about intention – did we intend for this scenario. A third way is to look at the history of the text. A fourth way is to say a party only has the right to snapback if it lives up to its own commitments. Only one of those four [the plain wording] may give the U.S. the right to snap back. But even then, we don't read the resolution as saying they have rights just because they're named in the resolution”. Crisis Group telephone interview, 24 July 2020. In private, some officials were particularly caustic, describing the U.S. position as “laughable” and “not deserving of consideration”. Crisis Group telephone interview, E3 official, July 2020.

⁶³ Crisis Group interview, E3 official, July 2020. As noted above, the E3 are not entirely of one view on this issue. Some UK officials say they see some merit to the U.S. legal argument, even as they reject it on policy grounds. Crisis Group interview, European diplomat, January 2020. In June, the E3 foreign ministers issued a joint declaration warning of the “serious adverse consequences” of a unilateral (meaning, U.S.) snapback for the Security Council. “E3 Statement on Iran”, German Federal Foreign Office, 19 June 2020. The statement did not weigh in on the legality of such a move, purportedly due in part to the UK's reluctance to do so. Crisis Group telephone interview, E3 official, June 2020.

Faced with these competing legal positions, one might imagine that the UN could serve as the arbiter of last resort. Yet the UN lacks a designated person or institution with clear authority to adjudicate whether the U.S. has standing or not. In theory, the Security Council could request the opinion of Secretary-General António Guterres, the UN Office for Legal Affairs (OLA) or the International Court of Justice (ICJ). But the U.S. in all likelihood could block the Council from issuing a formal request from any of these sources, either in the format of a letter by the Council president or a resolution.⁶⁴ Individual states also could ask OLA or the ICJ for their views. Still, regardless of the request's origin, it is unlikely to receive an unambiguous response.

There is no precedent for either the Secretary-General or OLA to offer a decisive position on a political dispute of this magnitude among the Council's permanent five members, or P5.⁶⁵ OLA members have made plain that they would prefer not to be asked.⁶⁶ Should Guterres or OLA be compelled to weigh in, they probably would respond that the authority to interpret Resolution 2231 resides primarily with the Council itself. There are precedents for the ICJ interpreting a Security Council resolution at the Council's request, but they suggest Council members must first pass a resolution endorsing the request, which the U.S. would likely veto in this instance.⁶⁷ In any event, the Court tends to move slowly, so even if some JCPOA participants individually asked for its views, it could take the best part of a year for it to issue an advisory opinion, meaning that it would have little political impact on a snapback dispute.⁶⁸

Given the absence of a neutral UN arbiter, Security Council members tend to agree that they will have to address the question of whether the U.S. is qualified to trigger snapback less as a legal than as a political matter. Again, there is no straightforward vehicle for Council members to do so. In theory, China or Russia could table a stand-alone resolution stating that the U.S. no longer qualifies as a JCPOA participant, but the U.S. would nix it; by the same token, a U.S. resolution reaffirming that it is still a participant state would be subject to its rivals' vetoes.

Some diplomats speculate that China or Russia might choose to table a procedural resolution dismissing the U.S. claim, on the theory that the UN Charter provides

⁶⁴ If it were proposed that a request be sent to the Secretary-General, OLA or the ICJ in the format of a letter from the Council president, such a letter would require full Council consensus. The U.S. undoubtedly would block it. Article 96.a of the UN Charter states that the Security Council "may request the International Court of Justice to give an advisory opinion on any legal question". "Charter of the United Nations", 24 October 1945. OLA's primary tasks include "providing advice on the interpretation of the UN charter, treaties, UN resolutions and decisions, rules of procedure". UN Office of Legal Affairs, "United Nations and the Rule of Law". See also Loraine Sievers and Sam Daws, *The Procedure of the UN Security Council*, 4th edition (Oxford, 2014), p. 426.

⁶⁵ OLA primarily focuses on the legal implications of Security Council resolutions for the UN secretariat and other agencies. It has interpreted some General Assembly resolutions in the past.

⁶⁶ Crisis Group telephone interviews, non-proliferation expert, April 2020; European diplomats, July 2020; UN officials, July and August 2020.

⁶⁷ "Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)", International Court of Justice. On some occasions, the ICJ has offered interpretations of Council resolutions arising in the course of cases not pursuant to Council requests, but this option is not relevant to this case.

⁶⁸ An official from a Security Council member state told Crisis Group that even if the ICJ gets involved, it "will take a couple of years" for the jurists to issue a ruling. Crisis Group telephone interview, Security Council diplomat, June 2020.

for no right to veto such motions. This argument would be difficult to make based on Council precedent; more to the point, the U.S. could call for a preliminary vote to decide the issue's status.⁶⁹ In practice, the Council has determined that the question as to whether or not a proposal is procedural is itself a substantive question, and therefore subject to veto. Hence the U.S. can veto a proposal to treat the question of its standing as procedural and thereby (i) force the Council to treat the subject of its standing as a substantive issue and then (ii) block any resolution challenging it. This process, which was fairly common in the Council's early years, is known as the "double veto" (as a P5 state can veto both a proposal to consider a resolution procedural and then the resolution itself) and snapback advocates see it as a U.S. tool for addressing procedural challenges in forthcoming debates.⁷⁰ Nonetheless, questions over UN procedure will bedevil the snapback process.

B. *Procedural Manoeuvres*

Resolution 2231 sets out a clear 30-day timeline for initiating snapback after the Security Council receives notification of non-performance; it was devised to be impervious to procedural objections (although its authors did not contemplate that a party would trigger it after withdrawing from the deal). Diplomats and UN officials have examined the issue in depth for months, but they have been unable to find a sure-fire procedural obstacle to snapback.⁷¹ Still, those opposed to the U.S. manoeuvre may seek to complicate the process and challenge its validity.

The Security Council president – a position that rotates monthly among members – has an important role to play. The president typically oversees the order of business, the conduct of votes and communications between member states and the Council. New York-based diplomats note that the U.S. moved slowly on its arms embargo resolution in June and July, when France and Germany held the presidency, perhaps expecting the E3 members to throw up procedural hurdles. Indonesia took up the presidency in August and will now oversee initial snapback discussions. Niger is to follow in September and Russia in October.⁷²

A Council president opposed to the U.S. standing claim or sensitive to the objections of most Council members could seek to delay triggering of the process by refusing to transmit its "notification of significant non-performance" to other members.

⁶⁹ UN General Assembly Resolution 267 (III) of 14 April 1949 offered a (non-binding) list of issues that the Security Council could treat as procedural, providing the basis for subsequent practice. This list does not include the interpretation of resolutions or deciding their standing.

⁷⁰ See Richard Goldberg, "FAQ: The 'Snapback' of UN Sanctions on Iran", Foundation for the Defense of Democracies, 9 July 2020; Alan R. Feldstein, "The Double Veto in The Security Council: A New Approach", *Buffalo Law Review*, vol. 18, no. 3 (1969); Sievers and Daws, *The Procedure of the UN Security Council* (Oxford, 2014), pp. 318-327.

⁷¹ Crisis Group telephone interviews, Security Council and other UN diplomats, July 2020.

⁷² Crisis Group telephone interview, Security Council diplomat, June 2020. See also Mark Fitzpatrick, "Why is US pushing unworkable plan to renew UN arms ban?" *Al-Monitor*, 14 May 2020. That said, Niger also enjoys close ties with France and the EU. It might not accede to Washington's wishes. In June, Niger abstained from a vote to adopt an IAEA Board of Governors resolution calling on Iran to fully cooperate with the agency and grant access to two suspected sites, signalling that it might not blindly follow the U.S. "U.N. nuclear watchdog's board raises pressure on Iran over suspect sites", Reuters, 19 June 2020.

Hence, Council members – and notably some or all of the P4+1 – might want to send their own counter-letter to the Council president, asserting their disagreement with the U.S. interpretation, highlighting the Trump administration’s lack of good-faith efforts to resolve the issue diplomatically and generally discounting the validity of a U.S.-initiated process.

If the president simply ignored the U.S. notification, Washington would argue that this breached rules and conventions governing states’ communication with the Council; the longest a Council president has delayed acting on a communication from a state in recent years was a mere eleven working days.⁷³ The U.S. also could get around this obstacle by asking the Secretary-General to pass on the message, which he must do under Council rules.⁷⁴ Nonetheless, the president could assess on the basis of consultations that the majority of the Council does not recognise the U.S. notification’s legitimacy and thus conclude that there is no basis for the snapback process to proceed.⁷⁵ Such an opinion would not be dispositive, however, and the U.S. could well state that it will carry on regardless. Still, by voicing a negative opinion, the president would cast further doubt on the validity of the process as a whole.

Resolution 2231 states that the Council has 30 days to table a resolution extending the current sanctions terminations after receiving a notification of non-compliance. Although any Council member could take this step, the resolution states that if no party has done so after ten days, “the president of the Security Council shall submit such a draft resolution and put it to a vote within 30 days of the notification”. The U.S. could then veto the resolution, thus triggering snapback. In other words, even if no other Council member tables a resolution – and even if the president refuses to submit a text – the U.S. could say it has the right to propose its own draft and then veto it.

That would not necessarily be the end of the story. Council members could keep trying to impede a vote – and a subsequent U.S. veto – through procedural means. They could, for example, demand a procedural vote on whether to put the U.S. notification on the Council agenda.⁷⁶ (While Resolution 2231 states firmly that the Coun-

⁷³ Even in that case – concerning a 2014 discussion of human rights in North Korea – the president (Chad) circulated the initial request for a meeting, but then took his time holding it. See Sievers and Daws, “Procedural vote on new DPRK agenda item”, update website of *The Procedure of the UN Security Council*, 4th edition, 2 January 2015.

⁷⁴ By convention, the Council president transmits letters from states to the Council, but no hard rule requires this. The U.S. could ask Secretary-General Guterres to bring the notification to the Council’s attention instead. For the Secretary-General to slow-roll transmission would risk creating a disruptive precedent for communications with states over other crises. Rule 6 of the Security Council’s rules of procedure says: “The Secretary-General shall immediately bring to the attention of all representatives on the Security Council all communications from States, organs of the United Nations, or the Secretary-General concerning any matter for the consideration of the Security Council in accordance with the provisions of the Charter.” United Nations Security Council Provisional Rules of Procedure, S/96/Rev.7. A Council diplomat told Crisis Group that the U.S. “would be smart to call on the Secretary-General if the [Council] president doesn’t circulate a notification”. Crisis Group telephone interview, Security Council diplomat, June 2020.

⁷⁵ On precedents for the Council president’s search for consensus, see Sievers and Daws, *The Procedure of the UN Security Council*, op. cit., pp. 194-201.

⁷⁶ There is no recent case of Council members blocking a vote in this way, but in 2018, China and Russia gained sufficient support from other Council members to stop the UN high commissioner for human rights from briefing the council on Syria in this way. France, the UK and the U.S. used a

cil “shall” act on a notification, Council members who reject the U.S. claim to standing will presumably feel no obligation to respect this.) The U.S. and eight other members would need to vote in favour of proceeding, and the U.S. likely would struggle to secure this level of support given the Council’s unenthusiastic response to the U.S. effort to renew the arms embargo. A blocking minority of states might thus be able to prevent the body from holding a vote on whether to continue sanctions terminations. Some Council members may interpret Resolution 2231 as stating that, in the absence of a vote, snapback is incomplete. But this reading of the text would be strained, and the U.S. is bound to reject it.⁷⁷

The fact is that, procedural guerrilla warfare notwithstanding, Resolution 2231 was written so as to give the U.S. (in this instance) powerful workarounds. As noted, Paragraph 12 stipulates that if no resolution extending the termination of sanctions has been passed after 30 days, sanctions will be restored, regardless of whether the Council has voted. In other words, Washington could merely sit out other members’ blocking tactics and declare victory after 30 days.

The bottom line is that procedural debates would play out in the same way as the debate over whether the U.S. has standing to initiate snapback in the first place – a fruitless exchange in which Washington will assert that it has standing, and all procedural manoeuvres are irrelevant, while others will maintain that it lacks standing and the procedural obstacles are effective. In the end, the U.S. will say snapback has been triggered, a claim that most other Council members will simply dismiss.

C. *Potential Obstacles to Security Council Sanctions Implementation*

Any initial argument over snapback would be a prelude to a further, and likely equally polarising and confusing debate over whether governments should implement the UN sanctions. Both the U.S. and its critics can be expected to demarche third-party states and present their argument about what happened in New York. Given unclear and conflicting legal readings, governments will face the difficult political decision about whom to follow, with the U.S. potentially threatening secondary sanctions and other penalties in the event of non-implementation.⁷⁸ The EU, too, will face a choice; typically, it swiftly incorporates UN sanctions into its own laws, but in this case the most relevant EU member states are likely to say there is no reason to do so.⁷⁹

similar tactic to block a Russian request for a meeting on Ukraine in May 2019. “Procedural Vote Blocks Holding of Security Council Meeting on Human Rights Situation in Syria, Briefing by High Commissioner”, UN Security Council Meetings Coverage, 19 March 2018. “Security Council Decides Not to Discuss Ukraine, Rejecting Russian Federation’s Request by 6 Votes Against to 5 in Favour, with 4 Abstentions”, UN Security Council Meetings Coverage, 20 May 2019.

⁷⁷ This claim rests on language in the resolution stating that the Security Council “shall vote on a draft resolution” on the continued termination of sanctions (emphasis added). One could perhaps argue that if the Council does not vote, the snapback process will not have been completed in full. But few experts find merit in this argument. Crisis Group communication, former Security Council diplomat, August 2020.

⁷⁸ Crisis Group telephone interviews, European diplomats, July 2020.

⁷⁹ During the JCPOA negotiations, the E3 and Germany made clear that in the event of UN snapback, EU sanctions also would come back into effect. But they did not contemplate a scenario in which the U.S. would withdraw from the deal and then initiate the process. Crisis Group telephone interview, JCPOA negotiator, August 2020.

The dispute between the U.S. and its critics will persist within the UN. UN sanctions regimes are administered by committees typically chaired by one of the ten elected members and operating by consensus. In turn, panels monitoring sanctions implementation by member states and other entities report to these committees.⁸⁰ For example, the pre-JCPOA Security Council sanctions regime on Iran was overseen by the 1737 Iran Sanctions Committee established by Resolution 1737; it was tasked with monitoring implementation of sanctions imposed by the Council between 2006 and 2010.⁸¹ This committee – along with the panel of experts tracking sanctions infringements mandated by Resolution 1929 in 2010 – was disbanded following adoption of Resolution 2231. It was replaced by a new monitoring structure overseen by one council member as a “facilitator” (currently Belgium), supported by UN Secretariat officials reporting on implementation of remaining sanctions.

In theory, snapback would mean the end of these arrangements and the reestablishment of a full Iran sanctions committee together with the appointment of a new panel of experts to support it. Were they to impede formation of a new committee, Council members could thwart the setting-up of mechanisms that play an important role in ensuring that countries enforce sanctions. It is far from implausible that they might do so in this case. Russia and China, among others, could obstruct restoration of the committee by refusing to recognise the reinstatement of Resolution 1737.⁸² Any number of dissenting Council members could further hinder the committee’s formation by declining to participate in consultations among members through which the committee chairperson is appointed.⁸³

Secretary-General Guterres would need to decide whether to appoint a new panel of experts to monitor the sanctions restoration envisaged under snapback – although the panel is meant to assist a sanctions committee, it is an independent entity under the Secretary-General’s auspices. Doing so would offer the U.S. a symbolic win, as it would suggest that the UN Secretariat and its lawyers grant the U.S. case *prima facie* credibility, although Council members could block the selection of individual experts. (Adding to the potential confusion, if Guterres accepts that snapback is real, he should also dismantle the alternative monitoring mechanisms created under Resolution 2231.) UN General Assembly members also could step in: some have said they would hold up funds to appoint a new panel of experts via the Assembly’s Fifth Com-

⁸⁰ There are ten monitoring groups supporting the work of eleven of the fourteen existing Security Council sanctions committees. For more, see “United Nations Security Council – Sanctions”, available at the UN website.

⁸¹ These include Resolutions 1737 (2006), UNSC S/RES/1737 (2006), 27 December 2006; 1747 (2007), UNSC S/RES/1747 (2007), 24 March 2007; 1803 (2008), UNSC S/RES/1803 (2008), 3 March 2008; 1835 (2008), UNSC S/RES/1835 (2008), 27 September 2008; and 1929 (2010), UNSC S/RES/1929 (2010), 9 June 2010.

⁸² Paragraph 18 of Resolution 1737 (2006) decided “to establish ... a Committee of the Security Council consisting of all the members of the Council” to oversee the sanctions regime’s enforcement. UNSC S/RES/1737 (2006).

⁸³ According to the Security Council’s established practice as set out in a December 2012 note by the Council president, “The members of the Security Council support an informal process with the participation of all Council members as regards appointing the Chairpersons of the subsidiary organs from among Council members in a balanced, transparent, efficient and inclusive way”. “Note by the President of the Security Council”, UNSC S/2012/937, 17 December 2012.

mittee, which oversees the UN budget.⁸⁴ In theory, none of these disputes would affect new sanctions' validity (the committees and panels are not obligatory), but the arguments might affect how UN members perceive the U.S. position's legitimacy and whether they are prepared to enforce sanctions.

The broader implications of such multiple potential procedural disputes should not be underestimated. The prospect of Security Council members at odds over the ability to reintroduce a prior Council resolution would further undermine the credibility of a body already suffering from serial failure to address pressing conflicts. Disputes over the reestablishment of sanctions mechanisms to deal with Iran could spill over into discussions of other sanctions regimes, with Council members (many of whom dislike sanctions on principle) engaging in more procedural warfare over the committees and panels overseeing them.⁸⁵ One diplomat predicted that the "damage to [the] UN will be long-term".⁸⁶

Yet while a hard-fought, thwarted snapback would harm the Security Council, it is worth considering the alternative – an uncontested U.S. snapback. Already, it is quite clear that a future attempt to include a similar snapback mechanism in a future deal (say, with North Korea) is virtually doomed to fail. But if other Council members fail to challenge Washington's claim, many states might conclude that the apparent benefits to Iran of embedding the JCPOA in Resolution 2231 were illusory, and question why they should place any trust in such Council resolutions, now or in the future. Resolution 2231's negotiators believed that by embedding the agreement in a UN resolution they could better guarantee its implementation. Should those assurances turn out to be hollow, the Council's status as guarantor of complex international agreements would suffer, perhaps even more seriously than as a result of a disputed snapback process.

⁸⁴ Crisis Group telephone interview, diplomat from Security Council member state, May 2020.

⁸⁵ The Security Council has already witnessed three notable disputes regarding sanctions in 2020: the first over whether the Council should call for sanctions relief in the wake of the COVID-19 pandemic; the second over the impact of sanctions on Venezuela; and the third over whether the retention of cross-border corridors supplying aid to Syria also needed to consider the impact of sanctions on the humanitarian situation. In all three instances, the Council's Western members were at odds with China and especially Russia over perceived attempts at a "systematic instrumentalisation" of sanctions. These members blamed Moscow for "using COVID-19 as a pretext and an excuse" to call for the lifting of sanctions. Crisis Group telephone interview, diplomat from Security Council member state, July 2020.

⁸⁶ Ibid.

V. Options and Recommendations

The Trump administration's predictable failure to extend the arms restrictions via a resolution, coming atop its unwillingness to seriously contemplate a viable compromise, further validates the view that its supposed fallback position – snapback – was always its preferred option. Under the circumstances, the priority for remaining JCPOA signatories – notably, the E3 – is to maintain a principled approach: rejecting efforts to unilaterally rewrite the deal; seeking to buy time in the short term; pressing Iran to eschew a harsh reaction in the medium term; and preserving the JCPOA in the long term.

There may have been a way to avoid this showdown. But for that, the U.S. would have had to back off elements of its “maximum pressure” policy, something it never seemed to entertain. Putin may well have had that in mind when he suggested a virtual meeting of the P5+1 and Iran; perhaps he was counting on the combination of Trump's penchant for deal-making and Iran's battered economy to push both toward a new understanding.

Such an understanding might have entailed a one-time, short-term – perhaps three-month – technical rollover of the arms restrictions, in exchange for which the P4+1 could have provided financial relief to Tehran, perhaps by boosting INSTEX or helping secure an emergency International Monetary Fund (IMF) loan Iran requested to deal with COVID-19.⁸⁷ For its part, Tehran could have provided the IAEA access to the two disputed locations.⁸⁸ Such a compromise would have addressed immediate E3/U.S. concerns over the arms restrictions while defusing a Security Council showdown over snapback. By vowing that the U.S. would immediately initiate snapback, however, Trump seemingly gave Putin his response, nixing this possibility.⁸⁹

With a U.S. snapback effort on the immediate horizon, the best response for those countries that want to preserve the JCPOA may well be the simplest: to ignore the U.S. drive to restore terminated sanctions on Iran, dismissing it as an inconsequential non-event. Council members should convey their views on the matter to the Council president; if the majority of Council members assert that the U.S. lacks standing, the Council president should so notify the body. Under the circumstances, it would be difficult for him to oversee the snapback process as envisaged in Resolution 2231.

⁸⁷ On 31 March 2020, the E3 confirmed the first INSTEX transaction. A European official subsequently estimated that “about €300 million worth of trade is being processed under INSTEX. That is encouraging, but we need faster results”. Crisis Group interview, Brussels, 2 June 2020. As Crisis Group has previously suggested, the IMF loan could be routed through the Swiss Humanitarian Trade Arrangement, a channel developed in consultation with the U.S. to ensure adequate due diligence. See Crisis Group Middle East Briefing N°76, *Flattening the Curve of U.S.-Iran Tensions*, 2 April 2020.

⁸⁸ Negotiations over such a deal would presumably have taken place outside of the Security Council: the JCPOA's Joint Commission could have invoked a provision in Annex B of Resolution 2231 that provides for review of the resolution's timelines by current participants, thereby giving Iran a voice. Any agreement would then have been referred to the Security Council for its approval.

⁸⁹ On 14 August, Putin proposed “an online meeting of Heads of Security Council Permanent Member-States with the participation of the leaders of Germany and Iran. The aim is to outline steps that will allow [us] to avoid confrontation and escalation of the situation in the Security Council”. For an unofficial translation of Putin's statement, see tweet by Dmitry Polyanskiy, @Dpol_un, first deputy permanent representative of Russia to the UN, 10:47am, 14 August 2020.

Secretary-General Guterres will need to tread carefully. In the absence of clear guidance from the Council on snapback's status he might be wise to refrain from any step that appears to endorse either the U.S. case or opposing positions. The UN Secretariat should warn Council members that it cannot commence work on new sanctions procedures without instructions from the Council and the funding to go with them.

Some Council members may well be tempted to throw up procedural obstacles to snapback and delay the process to some extent, but it is unclear to what avail since the disagreement will persist. In some ways, engaging the U.S. in a procedural battle could lend its efforts a veneer of legitimacy. Rather than getting bogged down in procedural issues, opponents of snapback should simply, in the words of one European diplomat, greet the U.S. endeavour with a "collective shoulder shrug".⁹⁰

Ignoring snapback at the Council does not mean ignoring its potential effects, of course. Consistent with their position that snapback has not occurred, Council members will need to take action, as described above, to hinder any effort to reconstitute a sanctions committee or panel of experts. That does not necessarily mean that snapback will be wholly without consequence: the U.S. is likely to strong-arm various states to enforce the sanctions and to punish them if they do not. But limiting any further damage to the JCPOA – and postponing it as much as possible – ought to be the main goal.

Salvaging the nuclear deal must also be an Iranian responsibility. If most Council members agree to disregard the U.S. effort, then Tehran should avoid overreacting to a formal U.S.-led snapback. It should focus less on what Washington proclaims rhetorically and more on what happens practically on the ground. If sanctions are not reimposed, or prove ineffective, it should bide its time, refrain from reacting by either exiting the JCPOA or withdrawing from the NPT, and await potential changes in the U.S. It should also urgently grant access requested by the IAEA to ensure that the crisis does not escalate. Iran may revel in U.S. isolation over the draft resolution, but it would be mistaken to interpret opposition to Washington's approach as *carte blanche* for Tehran. Should it choose instead to respond strongly to the U.S. action, Tehran might force the E3's hand and prompt them to react in kind, accelerating the deal's unravelling and making it difficult to resurrect it regardless of the U.S. election result.

⁹⁰ Crisis Group telephone interview, August 2020. Given the circumstances of COVID-19, the UN will be convening a "virtual" high-level session of the General Assembly in the last week of September. Leaders will send pre-recorded video speeches. Those who object to the U.S. manoeuvres on snapback could use this opportunity to strongly restate their views.

VI. Conclusion

Washington's "maximum pressure" campaign has now been supplemented with a minimal diplomatic one – a futile effort to extend the UN's arms restrictions followed by a disingenuous effort to reimpose all UN sanctions. Because the snapback procedures set out in the JCPOA and Resolution 2231 are airtight, the strictly legal outcome of a Security Council tug of war will be in doubt. But its political consequences ought not to be. By making clear their view that the U.S. lacks standing to trigger snapback, shrugging off its actions as meaningless and actively thwarting any step at the UN to revive the sanctions mechanisms, the rest of the Council – and in particular the P4 – can help sustain what is left of the nuclear deal. Iran, too, should avoid playing into U.S. hands by taking the Trump administration's actions more seriously than they warrant.

The Trump administration has made no secret of its ultimate goal, which is to bury the JCPOA once and for all. At this stage, there is one smart way to respond to its political antics: ignore them.

New York/Washington/Brussels, 19 August 2020

Appendix A: Snapback Process (UNSCR 2231)



Appendix B: About the International Crisis Group

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early-warning bulletin, providing a succinct regular update on the state of play in up to 80 situations of conflict or potential conflict around the world.

Crisis Group's reports are distributed widely by email and made available simultaneously on its website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is co-chaired by President & CEO of the Fiore Group and Founder of the Radcliffe Foundation, Frank Giustra, as well as by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord (Mark) Malloch-Brown.

Crisis Group's President & CEO, Robert Malley, took up the post on 1 January 2018. Malley was formerly Crisis Group's Middle East and North Africa Program Director and most recently was a Special Assistant to former U.S. President Barack Obama as well as Senior Adviser to the President for the Counter-ISIL Campaign, and White House Coordinator for the Middle East, North Africa and the Gulf region. Previously, he served as President Bill Clinton's Special Assistant for Israeli-Palestinian Affairs.

Crisis Group's international headquarters is in Brussels, and the organisation has offices in seven other locations: Bogotá, Dakar, Istanbul, Nairobi, London, New York, and Washington, DC. It has presences in the following locations: Abuja, Addis Ababa, Bahrain, Baku, Bangkok, Beirut, Caracas, Gaza City, Guatemala City, Jerusalem, Johannesburg, Juba, Kabul, Kiev, Manila, Mexico City, Moscow, Seoul, Tbilisi, Toronto, Tripoli, Tunis, and Yangon.

Crisis Group receives financial support from a wide range of governments, foundations, and private sources. Currently Crisis Group holds relationships with the following governmental departments and agencies: Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Union Emergency Trust Fund for Africa, European Union Instrument contributing to Stability and Peace, Finnish Ministry of Foreign Affairs, French Development Agency, French Ministry of Europe and Foreign Affairs, Global Affairs Canada, Iceland Ministry for Foreign Affairs, Irish Department of Foreign Affairs and Trade, the Principality of Liechtenstein Ministry of Foreign Affairs, Luxembourg Ministry of Foreign and European Affairs, Norwegian Ministry of Foreign Affairs, Qatar Ministry of Foreign Affairs, Swedish Ministry of Foreign Affairs, Swiss Federal Department of Foreign Affairs, UK Department for International Development, and the World Bank.

Crisis Group also holds relationships with the following foundations: Carnegie Corporation of New York, Global Challenges Foundation, Henry Luce Foundation, John D. and Catherine T. MacArthur Foundation, Open Society Foundations, Ploughshares Fund, Robert Bosch Stiftung, and Rockefeller Brothers Fund.

August 2020

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