

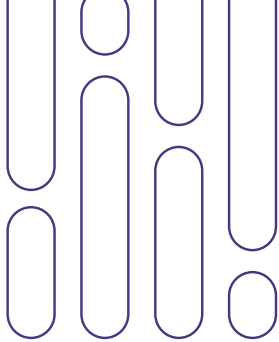
POSITION PAPER

# The Snapback Provision: The Prospects of Reimposing UN Sanctions and Iran's Options

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US Secretary of State Mike Pompeo headed to the United Nations (UN) headquarters in New York on August 20, 2020 at the request of President Donald Trump. The aim of his visit was to file a formal complaint with the president of the UN Security Council (UNSC). The complaint accused Iran of violating the 2015 nuclear agreement, and sought to activate the “snapback provision,” or the “automatic return of sanctions,” endorsed by the UNSC in its Resolution 2231. The move was taken after the United States failed to convince UNSC members to adopt a draft resolution on August 18, 2020 aimed at extending the UN arms embargo on Iran, set to expire on October 18, 2020.

Such a development certainly raises several important questions concerning the Iran file and the way the international community will address it. The most important questions are: How does the snapback provision work? What obstacles prevent the enforcement of this provision? What are the

chances of its enforcement? And what would Iran's response be? To answer these questions, the following points should be noted:

## **I. US Aims Behind Activating the “Snapback” Provision**

The word “snapback” in English means a sudden rebound or recovery or a quick return to a previous condition. The snapback provision was described in paragraphs 11 and 12 of Resolution 2231 issued after the Joint Comprehensive Plan of Action (JCPOA), or the Iran nuclear deal, was reached between Iran and the P5+1 in 2015. Sanctions against Iran were lifted under Resolution 2231. Therefore, if the “snapback” provision is triggered, all sanctions in place before the 2015 nuclear deal would be automatically reimposed on Iran.

Former US President Barack Obama's administration has always bragged about this provision, as it gave the United States the right to immediately impose sanctions on Iran. All participants to the 2015 nuclear deal have the right to execute the snapback provision to reimpose sanctions on Iran. UN Resolution 2231 states [in paragraph 11](#) that the Security Council “within 30 days of receiving a notification by a JCPOA participant State of an issue that the JCPOA participant State believes constitutes significant non-performance of commitments under the JCPOA, shall vote on a draft resolution to continue in effect the terminations in paragraph 7(a) of this resolution, decides further that if, within 10 days of the notification referred to above, no Member of the Security Council has submitted such a draft resolution for a vote, then the President of the Security Council shall submit such a draft resolution and put it to a vote within 30 days of the notification referred to above, and expresses its intention to take into account the views of the States involved in the issue and any opinion on the issue by the Advisory Board established in the JCPOA.”

Despite the US withdrawal from the Iran nuclear deal on May 8, 2018, it believes it has legal grounds to trigger the snapback provision. The key argument is that paragraphs 11 and 12 of Resolution 2231, which gave all participant states to the nuclear deal, including the United States, the right to initiate the snapback provision and the US decision on May 8, 2018 to stop abiding by the terms of the nuclear deal, have absolutely no bearing on the rights and obligations of the United States under Resolution 2231.

The aforementioned US argument is based on drawing a distinction between being a “participant state”, which it believes to be a “permanent” designation under Resolution 2231, and its withdrawal from the nuclear deal. For the United States, the withdrawal from the nuclear deal has no bearing on its status as a participant in the JCPOA. The United States has argued that the language of the relevant paragraph in Resolution 2231 does not state that it shall cease to be a JCPOA participant following its withdrawal from the deal. On this basis, Pompeo visited the UN headquarters in New York on August 20 and 21 and delivered letters to both the UN Secretary-General António Guterres and the president of the Security Council. In these letters, Pompeo communicated to them that the United States is restoring virtually all UN sanctions on Iran that were lifted under UNSC Resolution 2231.

If the United States succeeds in its quest, a wide range of sanctions imposed on Iran before the 2015 nuclear deal will be reimposed. It will also reinstate the provisions of the six Security Council resolutions: 1835, 1803, 1747, 1737, 1737 and 1669, including the arms embargo on Iran. Then, theoretically, the enforcement of the pre-2015 UN sanctions on Iran will be binding on all UNSC member states.

The United States aims to activate the snapback provision for several reasons, including:

#### **A. To Undermine the Nuclear Deal**

This is a primary goal of the US administration and one of Trump’s electoral promises, as the survival of the nuclear deal provides Iran with a legal framework to make political and diplomatic gains. It is likely that the Trump administration intends to completely undermine the nuclear deal before the US presidential election and to impose more pressure on Iran to force it back to the negotiating table.

#### **B. The High Risk of the Arms Embargo on Iran Expiring so That it Will Be Able to Sign Weapons Deals with Russia and China**

According to the congressionally mandated [annual report](#) of the US Defense Intelligence Agency (DIA) on Iran’s military power in 2019, released in November 2019, Iran wants to “purchase new advanced weapon systems from foreign suppliers to modernize its armed forces, including equipment it has largely been unable to acquire for decades.” The report also stated that the ban on Iranian arms exports “has arguably not been effective,” as Iran

has been able to transfer a wide range of weapons and military equipment to state and non-state actors, including designated terrorist organizations in various regional countries. Moreover, the United States is concerned about potential weapons deals between Iran and Russia or Iran and China if the arms embargo on Iran expires, along with Tehran exporting weapons to its militias, increasing the Iranian threat and its quest to destabilize the region. The United States has used the expiry date of the arms embargo on Iran to support its argument that the entire nuclear deal was flawed and further heightened the Iranian threat, and therefore this threat must be ended via the snapback provision.

### **C. The Need to Create a New International Reality in Relation to the Iranian Crisis**

The lack of international consensus on US policy towards Iran is one of the biggest challenges facing Washington's maximum pressure strategy. During the summer of 2020, when the United States raised the issue of extending the arms embargo on Iran before the UNSC, deep rifts emerged between itself and other UNSC states and given their extensive nature, they could potentially extend beyond the Iranian file. These differences in turn have hindered the development of any real international consensus against Iran, resulting ultimately in the [rejection](#) of the US draft resolution on August 14, 2020 which sought to extend the arms embargo on Iran by a substantial majority.

### **D. The Pressures Applied on the United States by Regional Allies to Intensify Its Campaign Against Iran**

Regional pressures have increased in recent months due to concerns with regard to the arms embargo on Iran expiring, the imminent US presidential elections, and the potential impact of these developments on regional security.

## **II. The Difficulties in Relation to Implementing Snapback Sanctions**

In theory, it seems that the process of reinstating UN sanctions on Iran is a procedural issue, with UNSC states having 30 days to avert the snapback. The reimposition of the pre-2015 sanctions on Iran would enable the

United States to stymie the nuclear deal and effectively put Iran in the same situation which preceded the signing of the deal in 2015, in accordance with Chapter VII of the UN Charter. However, US efforts in this regard face several problems with the principal ones being:

#### **A. A Legal Dilemma**

This United States' eligibility to invoke the dispute resolution mechanism (DRM) presents a legal question. Iran, along with the other parties to the nuclear deal, argue that the United States withdrew from the nuclear deal on May 8, 2018, and according to its documented official announcements and statements, it is no longer a party to the nuclear deal and therefore has no right to activate the DRM according to Resolution 2231. By announcing its withdrawal from the JCPOA, they argue, the United States does not have the right to trigger the DRM clause of UNSC Resolution 2231.

#### **B. World Powers Resisting US Efforts**

The UNSC's 13 member states, including four permanent and nine nonpermanent members, announced their opposition to US efforts to invoke the snapback provision immediately after this request was introduced, deeming it to have no legal basis. For its part, Iran has alleged that the United States does not have the legal capacity to implement the snapback provision. In a joint [statement](#), the European troika announced its rejection of the US move, arguing that it has lost the ability to enforce the snapback provision and stating that this move is incompatible with their ongoing efforts to maintain the nuclear deal. The statements also underlined that the three countries are committed to preserving the processes and institutions which constitute the foundations of multilateralism and are committed to the objective of upholding the authority and integrity of the UNSC. This indicates a potential crisis between the United States and other world powers within the corridors of the UNSC.

#### **C. The Lack of any Entity Capable of Deciding Whether the United States Has the Legal Capacity to Implement the Snapback Provision**

In light of the aforementioned disagreement and the hard position of [Russia and China](#) in rejecting the implementation of the snapback provision, along with the positions of the European powers and the rest of the UNSC members, there is another problem in relation to whether the United States has the legal capacity to invoke this provision or not. This problem could

extend to the UNSC itself where the United States has veto power to block the passage of any resolution that considers it to be a nonparticipant party to the nuclear deal and, therefore, ineligible to invoke the provision. In case of deep differences and escalation, more time could elapse before seeking a legal interpretation request from the International Court of Justice. According to Article 96-A of the UN Charter, the UN General Assembly or Security Council may request the International Court of Justice to provide an advisory opinion on any legal question. This could take a long time. If such a scenario were to arise, the issue of selling arms to Iran, or maybe the entire Iranian file, might be a *fait accompli* which will not be accepted by the United States.

#### **D. The Possible use of the Iranian File as a Lever to Settle Differences Among World Powers**

The Iranian file has led to much polarization among major world powers in the international arena. This polarization goes beyond the differences arising among these world powers on whether to extend the arms embargo on Iran or not. The issue is used as a pressure card by some of these players, such as Russia and China and even some European countries, against the United States, which Iran takes advantage of. This polarization falls within the framework of deep differences between these powers and the United States on the nature and structure of the current world order. They consider the current crisis as an opportunity to defy the United States' unilateral leadership, as well as to resist pressures and sanctions imposed by the United States on all these countries. This has prompted these powers to use the Iranian file to break the rule of US unilateral leadership and move towards a new multilateral world order and a different role in the international arena.

#### **E. The Scope of International Commitment to the Sanctions on Iran**

The restoration of UN sanctions on Iran faces a final problem in relation to international commitment to the international sanctions in case they are reinstated after the passing of a UN resolution in the interest of the US administration. International commitment may not hold in regard to the sanctions on Iran. This would lead to a practical problem, as both legal differences and underlying political differences will result in tensions on the ground, especially since both Russia and China have signed contracts to sell weapons to Iran. Both countries do not share the United States' suspicions about Iran's nuclear behavior, with both viewing Iran as a potentially reliable



ally in a vital region of the world. This is in addition to the possibility of Iran continuing to comply with the nuclear deal, despite its diminishing returns, which will push the Europeans on their part to fulfil their commitments in the hope of seeing a change in the coming US elections.

### III. The Prospect of Reinstating Sanctions and Iran's Options

#### A. The Restoration of Sanctions

Despite the aforementioned problems, the outlining of the DRM as part of UN Resolution 2231 makes it difficult to avert US efforts. Hence, it is possible that the United States cannot ultimately be prevented from reinstating international sanctions on Iran. Furthermore, the United States can veto any UNSC resolution to end the sanctions imposed on Iran within 30 days, according to the 2015 nuclear deal. Even in the event that Russia and China decide to pass a resolution in relation to the United States' legal eligibility to use the snapback provision, the United States may use its veto against it, opening the door for the provision to be activated within 30 days automatically reinstating sanctions. Any of the European countries participating in the nuclear deal could side with the United States in case the matter reaches an impasse. Pompeo has stated that the Europeans agree with the United States' position on the Iranian arms embargo, thus expressing a [different position](#) privately compared to their public position. A call by any of the European parties to implement the DRM would end this ongoing debate.

There is no doubt that the implementation of the snapback provision through reimposing sanctions by the end of September would trigger a great deal of controversy within the UNSC and create a serious rift among the powers involved in the nuclear deal. There could be a degree of ambiguity about the mechanisms needed to implement sanctions, and to what extent all the parties would agree to commit to them. These differences could continue up to the date of the US elections after which a change in the US leadership might take place, which in turn might lead to reconsideration of the issue of reimposing sanctions on Iran.

This scenario is supported by the fact that the opponents of the US initiative have no alternatives, as well as by the US rejection of any compromises. This

is in addition to the US insistence on moving ahead on its current trajectory, which will fulfill Trump's desire to render the nuclear deal ineffective. This scenario is also supported by the extensive international and regional pressures to punish Iran for its nuclear excesses, developing its missiles program, and its belligerent behavior internationally and regionally. This is in addition, to the growing concerns about the Iranian political system's behavior, its expanding scope of influence, and its policy of backing militias and spreading chaos and instability in the region. Such problems will be intensified when Iran is given the right to purchase weapons and boost its military capabilities, along with the growing possibility of Iran exporting weapons to militias which will undermine regional and international security and stability.

## **B. The Failure to Reinstate Sanctions**

Another possible scenario is that the United States fails to implement the snapback sanctions provision on the basis that it is no longer a party to the nuclear deal. Former US National Security Adviser [John Bolton](#) had warned that an attempt by the Trump administration to reimpose sanctions via the snapback provision could subsequently undermine its veto in the UNSC or fail to prove that there is a major breach by Iran, especially as Tehran cites the International Atomic Energy Agency's reports, most of which have said that Iran is honoring its commitments under the nuclear deal. The United States could also face procedural impediments to the implementation of the provision within the Security Council.

This scenario would be a huge blow for Trump, a substantial dent in his maximum pressure strategy and a reduction of US prestige in the international arena. The president's Democratic Party rivals would certainly leverage this ahead of the elections to underline Trump's failed foreign policy. This is unlikely, however, as the United States will use a combination of power and law to implement a clear provision in Resolution 2231, even if other parties to the nuclear deal question it.

It is worth mentioning that its inability to automatically reinstate sanctions will prompt the US administration to use the existing sanctions mechanism to deter any arms sales to Iran. This mechanism includes the Iran-Iraq Arms Non-Proliferation Act, the Iran, North Korea, and Syria Nonproliferation Act (INKSNA), Executive Order 13382, the Countering

America's Adversaries Through Sanctions Act, and the designation of Iran as a state sponsor of terrorism. This gives the US president powers to impose sanctions on suppliers of arms to Iran. The United States could also instead make attempts to dissuade the potential suppliers of arms to Iran from concluding any sales.

### **C. The Return of Sanctions Legally, With no International Compliance**

Sanctions could legally be reinstated but would not be effective. This is due to the lack of international consensus in relation to implementing the UN sanctions on Iran, which renders any effort to resort to the snapback provision ineffective. This will no doubt happen if there is a desire by world powers to undermine the United States' unilateral moves on the international stage and to change global power structures in a way that curbs US hegemony over the world order.

This scenario, however, depends on the ability of the world powers to defy the United States and to introduce an alternative initiative which other parties consent to through which the arms embargo on Iran could be extended while maintaining the nuclear deal. This scenario also depends on the ability of world powers to bear the consequences and confront US sanctions in case they allow Iran to breach UN sanctions. In accordance with this scenario, the world powers would reject the position of major regional powers which support the US maximum pressure strategy on Iran and reject Tehran's aggressive behavior. This would create a regional crisis, with ramifications spilling over regionally and internationally, threatening the interests of these world powers in particular.

### **D. Consequences and Iran's Potential Options**

The United States' failure to implement the snapback provision or the ineffectiveness of UN sanctions on Iran after their reinstatement would give Iran a strong push to continue its destructive policies at home and overseas. This situation is unlikely to be accepted even by the Democrats. It has become a well-established belief that Iran is a threat and must be confronted, not only by the United States but also by the European countries along with a number of regional and global powers.

In the case of the reinstatement of international sanctions, which is the most likely scenario, the nuclear deal will face a major setback and Iran will face wide-ranging international sanctions. Iran would then no longer only

face unilateral US pressures. Amid this potential development, there will be several options available to Iran; the main one includes the possibility of implementing legal and diplomatic tools to thwart the efforts of the United States to implement the snapback provision and cooperating with the countries which reject US behavior towards it. Iran could also attempt to buy time and bet on the results of the US elections in November 2020 and the success of the Democratic nominee Joe Biden, Trump's rival, which could lead to a change in the US approach toward the Iranian file and the possible return of the United States to the nuclear deal. Iran could also encourage the countries opposing the United States in the international arena not to respond to the sanctions, thus rendering them to be ineffective.

Iran could resort to using some of its levers, via continuing its nuclear program according to its own plans and restoring all its nuclear activities to the pre-2015 levels via the use of its IR4, IR6, and IR8 centrifuges. Iran might accelerate the process of manufacturing nuclear fuel or pull out of the nuclear deal. However, this option remains uncertain given Iran's need for the nuclear deal to support its legal, political, and diplomatic efforts in the face of the United States.

Should Trump- who has already [said](#) he will win the upcoming election and sign a deal with Iran within 30 days - prevail, Iran is still expected to face extremely intense pressures. Iran's insistence on its aggressive [confrontational policy](#) and its defiance of pressure to curb this will ultimately be detrimental to Iran's political system to the extent of pushing it to the verge of collapse. Due to unilateral US sanctions alone, Tehran finds itself in an extremely tough position facing a disastrous political and economic crisis which it has never experienced since the 1979 revolution.

The situation will become more difficult if the remaining parts of the nuclear deal are dismantled and all sanctions according to the Chapter VII of the UN Charter are reinstated. In such a situation, Iran may be pushed towards a return to the negotiating table in order to reach a new understanding and formulate a new agreement.



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