

# THE IMPLICATIONS OF AN IRAN SANCTIONS SNAPBACK

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For several months, it has seemed likely that the Trump administration would elect to pursue the reimposition, or snapback, of UN Security Council (UNSC) sanctions against Iran. For those less steeped in the terminology, the concept of sanctions “snapback” is one developed as part of the Joint Comprehensive Plan of Action (JCPOA). It refers to the ability of the United States and other partners to quickly reimpose the sanctions that were suspended as part of the quid pro quo that saw Iran accept significant restrictions and transparency requirements for its nuclear program. Conceptually, this was necessary because Iran had the ability to restart its nuclear program if the United States or others were seen as cheating on the deal. The United States and its partners needed some assurance that, if Iran were found to be cheating, they could react just as swiftly.

On August 20, Secretary of State Mike Pompeo finally submitted the notification that, according to the US government, would trigger a 30-day timeline for the reimposition of these sanctions. In the US view there is now no stopping the return of the UNSC’s original Iran sanctions regime, though there may be some procedural wrangling over how and when the measures will be reimposed.

It is not clear, however, whether this will be the case. A fair amount of analysis has gone into the fundamental question of whether the United States has the standing to trigger snapback, which is an issue I explored in 2019.<sup>1</sup> European, Russian, Chinese, Iranian, and other observers argue that the United States has no such standing, because, under the terms of the UN Security Council resolution that created the snapback mechanism (UNSCR 2231), it is no longer a “participant” of the JCPOA following its withdrawal in 2018. Even former National Security Advisor John Bolton—who was in large part responsible for the US withdrawal from the JCPOA—tends to agree with this reading.<sup>2</sup> The Trump administration obviously disagrees.

It is an important question, and one that speaks to the underlying credibility and integrity of the US snapback decision as well as its results. But, ultimately, there is no way of finding a conclusive answer. International law being what it is, there are no authoritative arbiters available to determine whether the United States or its many critics are right. Snapback is happening and will have consequences, we now need to shift to considering what comes next. I see four main outcomes that are directly relevant to this decision and the future of US sanctions policy and negotiations.

## Risks to Future UNSC Snapbacks

The United States will find it difficult—if not impossible—to ever negotiate the concept of a sanctions “snapback” into future agreements.

Constructing snapback for national measures is straightforward and relatively simple, though the mechanisms that might be involved would depend on the national legal systems of the countries in question. Countries are sovereign and can impose sanctions as they deem fit. Snapping back UNSC sanctions is harder because of the presence of voting majorities—JCPOA participants could only number six of the 15 members of the UNSC at any time—and the permanent members’ veto rights. Since there was concern that the veto holders might disagree on the nature of any Iranian cheating, there had to be a shortcut.

The choice made was to create a system whereby the UNSC veto was enlisted rather than sidestepped. Thus, the concept laid out in UNSCR 2231 is that in the event of cheating a resolution could be introduced for the *continuation* of UNSC sanctions relief. If a veto holder disagreed, then the veto would be used, thus killing the sanctions relief. Other parts of the text outline alternative approaches, but the key part is that the veto-wielding members of the UNSC each agreed to give up a bit of their privileged position in order to make the JCPOA possible.

From my perspective, as a former negotiator on the JCPOA who dealt with this problem in talks with other members of the UNSC, suffice to say that this was a controversial concept. No one in the negotiations was entirely comfortable with it, in large part because there was fear that granting just one member of the UNSC the right to overcome the reservations of the others was too much power. It is uncomfortable to admit that these skeptics were patently right, though the present circumstances were hard to envision at the time.

The result of all of this is that it will be practically impossible to convince UNSC members to relinquish their veto rights in the future, no matter how attractive the proposition. This is potentially prejudicial not only in the near term—if the United States wanted to re-enter the JCPOA, would other participants agree to the terms of a deal that preserves snapback as a tool—but also for other agreements. There was some hope among sanctions negotiators that this could serve as a means of managing the sanctions relief aspects of a future North Korea deal or in other situations. Politically, the *absence* of a snapback tool will deprive any future administration of the ability to assure skeptical members of the US public and Congress that, in the event of cheating on an agreement involving the relaxation of UNSC sanctions, the response will be forceful and immediate. It will be harder to negotiate and sell such deals as a consequence.

## Risks to Future UNSC Sanctions Efforts

It is a deliberate exaggeration to suggest that the UNSC will not be able to negotiate sanctions resolutions in the future, but it will be much more difficult to do so. This is not simply because of snapback, but more for what the snapback decision reflects: the inability of the international community to come to a reliable set of expectations for what constitutes an acceptable negotiated outcome to a problem and to stick to it.



The JCPOA may not have been perfect, but it was supported by the vast majority of the world's states, including the powers that be at the UNSC. The decision of one state to withdraw from the JCPOA has imperiled this international consensus in deference to the views and concerns of a single state. That might be enough on a normal day to cause problems, but in the context of international disagreements over a wide range of issues, the snapback decision only deepens the pool of antagonism that exists in the UNSC.

Perhaps more fundamental to the issue of sanctions policy, the snapback decision deepens the sense among some in the international community that once sanctions are in place, they never end because (a) the United States is “addicted” to sanctions and (b) the US can never come to an acceptable definition of “end state” for the use of sanctions.<sup>3</sup>

In the UNSC context, the last point is particularly problematic because countries want to understand how sanctions will be eased and removed. As outlined in my book *The Art of Sanctions*, offering clarity as to when sanctions end is a crucial part of getting agreement to impose them in the first place.<sup>4</sup> In a national context, this is a deal to be struck domestically; internationally, you need other countries to understand it too.

Previous US administrations have understood this, even if they didn't like it. The George W. Bush Administration, for instance, may not have liked the concept overly much, but in resolution 1737, paragraph 24, they accepted the terms under which sanctions would be suspended or terminated against Iran.<sup>5</sup> Put simply, these terms were: first, that sanctions would be suspended if Iran suspended its problematic nuclear activities, and second, that sanctions would be terminated if Iran restored confidence in the peaceful nature of its nuclear program. Though the Trump administration and others may not believe that the tests set in paragraph 24 were met by the JCPOA, the rest of the world disagreed. The logical consequence of discarding the JCPOA and coming up with still different tests for Iran—embodied in the speech given by Secretary Pompeo in May 2018—the speech given by Secretary Pompeo in May 2018—is that the rest of the world has been given notice that the terms of resolution 1737 are no longer sufficient for the United States to accept removal of UNSC sanctions on Iran.<sup>6</sup> Having been involved in the drafting of resolution 1737, I can say with assurance that the terms Pompeo laid out in May 2018 would not have been accepted as a substitute for paragraph 24 in December 2006.

Countries will learn from this experience to distrust what Washington says are the intentions behind US sanctions campaigns. They will try to limit sanctions further (including trying to prevent complementary national measures that have served as a primary vehicle for sanctions pressure, as in the cases of Iran and North Korea) or will refuse to negotiate resolutions that include them altogether. This will undermine US national security interests in the long term, especially our ability to use sanctions to advance our diplomatic efforts. Notably, this is already a feature in international talks since Russia and China believe that the terms of the Libyan and Iraqi UNSC resolutions were misused by US administrations to inappropriately authorize military force; we may also see similar demands too on the sanctions front.

## Tangled Up in Blue

Of course, Russia, China, and other countries don't have to just wait for another UNSC resolution to be presented in order to start presenting problems on a sanctions policy front.



There are dozens of other sanctions committees and activities underway, many of which involve core US interests such as with respect to North Korea. Procedurally, there are many ways in which countries upset with US sanctions policy approaches could seek to retaliate either in earnest expression of concern or to make trouble. Such tactics have the potential to gum up the works in New York and undermine US interests there.

For example, the United States has taken advantage of the existence of various panels of experts (POEs) attached to the sanctions resolutions adopted by the UNSC to investigate violations and breaches of sanctions. Washington has used the sanctions committees created by the resolutions in question to adopt new sanctions measures that are legally obligatory on all member states. Washington has also used the existence of unambiguous UNSC sanctions measures to convince foreign governments, banks, companies, and individuals to cease engaging in sanctions evasion and business of benefit to our sanctions targets.

Countries opposed to US sanctions tactics and the use of the UNSC system can complicate all of those mechanisms. They can refuse to endorse the creation of POEs, hamstringing investigations. They can block consensus at sanctions committees. They can block interpretation and guidance documents from being given to the private sector and member state governments. They can make it practically impossible to adopt an agenda for meetings or to consider urgent issues of implementation.

All of this will harm US sanctions efforts, perhaps especially those associated with the “snapped-back” UNSC sanctions on Iran. Without support for the entire concept, staffing an Iran POE will prove impossible. Decisions by the Iran sanctions committee that would have to be recreated pursuant to the resolutions re-adopted under snapback would likely be denied by “no” votes from hostile UNSC members. Adding to the confusion that will be created by the United States and other UNSC members disagreeing over snapback, there may not even be an updated web page to reflect the resolutions returning into place. None of that will make it easier to convince countries to implement the UNSC sanctions that would return pursuant to snapback, which is ostensibly the reason for triggering snapback in the first place. The result will be a two-track UNSC sanctions regime in which—somewhat akin to Schrodinger’s cat—the sanctions will be both active and inactive at the same time.

### Giving Up on the UN

Unfortunately, these debates will create a negative feedback loop in US policy-making circles, even among those inclined to see the benefits of multinational cooperation in sanctions development. Not entirely unreasonably, policy makers will likely choose to invest their mental and diplomatic dollars in more effective ways, including by avoiding the use of the UNSC sanctions system where possible. Instead, they will prioritize working through partners and “coalitions of the willing,” much as the Bush Administration did in 2008 when Russia’s invasion of Georgia rendered any discussion of new Iran sanctions moot, and the Obama administration did after resolution 1929—which imposed substantial new sanctions on Iran—proved so difficult to secure.

While understandable, such an approach will be intrinsically less productive than one involving UNSC sanctions, as it will depend on national coercion from Washington and/or a common view



of Iran to work. Those countries prepared to flout US sanctions—which may be an increasingly large part of the international community, as a future commentary piece will explore—may serve as a pressure release for Iran and any other future sanctions target. If sufficiently expansive, such release valves can ultimately limit the power of coalition sanctions pressure.

More fundamentally, moving away from the UNSC sanctions regime means another step taken away from a rules-based international order. Some in the US administration may applaud such a move, seeing the UNSC and other international organizations as limiting US power. (Of course, by seeking snapback in the first place, they are acknowledging the value of such rules in their “max pressure” campaign; otherwise it is unclear why they would bother.) But, considering the UN’s generally deferential system for UNSC permanent members that exists today, this would be tantamount to giving up a major international advantage in service of a mostly rhetorical opportunity to declare American independence.

## Conclusion

The snapback of UN sanctions against Iran will happen, at least insofar as the United States under Donald Trump is concerned. Whether it turns out to be the start of a disastrous era of US international affairs will depend in large part on the outcome of the US presidential election in November and the decisions made by the administration in power as of January 2021. But the decision to trigger snapback should not be seen in any event as merely the culmination of a process. It is instead the precipitating factor of a far more consequential set of international developments to come.

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## Notes

1. *Iran: The U.S. Brings Maximum Pressure to the UN: Middle East Report No. 218* (Brussels, Belgium: International Crisis Group, 2020), <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iran/218-iran-us-brings-maximum-pressure-un>; Robert Einhorn and Richard Nephew, *Constraining Iran’s Future Nuclear Capabilities* (Washington, DC: The Brookings Institution, 2019), <https://www.brookings.edu/research/constraining-irans-future-nuclear-capabilities/>.
2. John Bolton, “Iran ‘Snapback’ Isn’t Worth the Risk,” *Wall Street Journal*, August 16, 2020, <https://www.wsj.com/articles/iran-snapback-isnt-worth-the-risk-11597595060>.
3. Neil Bhatiya and Edoardo Saravalle, “America Is Addicted to Sanctions. Time for an Intervention,” Center for a New American Security, August 6, 2018, <https://www.cnas.org/publications/commentary/america-is-addicted-to-sanctions-time-for-an-intervention>.
4. Richard Nephew, *The Art of Sanctions: A View from the Field* (New York, Columbia University Press: 2017).
5. UN Security Council, Resolution 1737, The situation concerning Iran Non-proliferation, S/RES/1737 (December 27, 2006), [https://www.iaea.org/sites/default/files/unsc\\_res1737-2006.pdf](https://www.iaea.org/sites/default/files/unsc_res1737-2006.pdf).



6. Mike Pompeo, “After the Deal: A New Iran Strategy,” Heritage Foundation, May 21, 2018, <https://www.heritage.org/defense/event/after-the-deal-new-iran-strategy>.

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**Richard Nephew** joined the Center on Global Energy Policy in February 2015 directly from his role as principal deputy coordinator for sanctions policy at the US Department of State, a position he had held since February 2013. Nephew also served as the lead sanctions expert for the US team negotiating with Iran. From May 2011 to January 2013, Nephew served as the director for Iran on the national security staff, where he was responsible for managing a period of intense expansion of US sanctions on Iran.



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