



## Security Council

Distr.: General  
24 August 2020

Original: English

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### **Letter dated 21 August 2020 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General**

Please find attached an explanation of the legal basis for the United States' right to initiate snapback under Security Council resolution [2231 \(2015\)](#) (see annex).

I ask that the present letter and its annex be circulated as a document of the Security Council.

*(Signed)* Kelly **Craft**  
Ambassador  
Representative of the United States to the United Nations



## **Annex to the letter dated 21 August 2020 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General**

### **The United States has an explicit right to initiate snapback under Security Council resolution 2231 (2015)**

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

Resolution 2231 (2015) provides the United States with the right to initiate the "snapback" of United Nations measures on Iran that had been in place prior to January 2016. That right is available to the United States irrespective of its current position on, or activities in relation to, the Joint Comprehensive Plan of Action (JCPOA), a non-binding political arrangement that is related to but distinct from resolution 2231 (2015). As explained in section A below, resolution 2231 (2015) establishes a term, "JCPOA participants", that is fixed in content and fixed over time, and provides the States identified in that term's definition, including the United States, the right to initiate snapback. Resolution 2231 (2015) sets no other conditions on the eligibility of such States to initiate snapback. Additionally, as set out in section B below, no events subsequent to the adoption of resolution 2231 (2015) have altered the United States' right to initiate snapback. In particular, the United States' announcement on 8 May 2018 that, for national security reasons, it did not intend to continue to provide Iran with relief from United States' sanctions that had been lifted under the JCPOA had effects only for that non-binding political arrangement. That announcement, and the United States' actions to implement it, did not, and, as a legal matter, could not, alter resolution 2231 (2015) and the United States' right to initiate snapback thereunder.

#### **A. The text of resolution 2231 (2015) gives "the United States" a fixed right to initiate snapback**

"The United States" and any other "JCPOA participant State" may initiate snapback. Paragraph 11 of resolution 2231 (2015) sets out the requirements for initiating snapback. Those requirements are that a "JCPOA participant State" notify the Security Council of an issue it believes constitutes "significant non-performance" of commitments under the JCPOA. As described in section B below, non-binding political commitments under the JCPOA are separate and distinct from the legal right to initiate snapback under resolution 2231 (2015).

##### **1. Resolution 2231 (2015) establishes a fixed term, "JCPOA participants", that expressly includes "the United States" in its definition**

The text of resolution 2231 (2015) provides the United States with the right to initiate snapback regardless of its current position on, or activities in relation to, the non-binding political commitments of the JCPOA. Specifically, paragraph 10 of resolution 2231 (2015) creates a defined term – "JCPOA participants" – and expressly lists "the United States" as one of those "JCPOA participants", in addition to "China, France, Germany, the Russian Federation, the United Kingdom, ... the European

Union (EU), and Iran”.<sup>1</sup> Paragraph 11 explicitly states that a “JCPOA participant State” may initiate snapback. That right endures regardless of whether one views the United States as being in non-performance of the commitments it made under the JCPOA or as not currently participating in that political arrangement.

**2. Resolution 2231 (2015) places no other conditions on the eligibility of States that are among the named “JCPOA participants”**

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

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

The assertion that the term “JCPOA participant State” in paragraph 11 should be interpreted independently of the definition of “JCPOA participants” in paragraph 10 and that paragraph’s express listing of entities within that grouping is also not persuasive. Specifically, this argument overlooks – and gives no force to – the drafters’ purposeful modification in paragraph 11 of the term in paragraph 10 with the additional word “State” to exclude the European Union from the group given the right to initiate snapback. If the term “JCPOA participants” established in paragraph 10 were to have no relevance in interpreting the meaning of references to a “JCPOA participant” or “JCPOA participant State” in subsequent paragraphs of the resolution – all of which appear in binding provisions<sup>2</sup> – then the establishment of that term in paragraph 10 would be rendered mere surplusage. It should be clear to all that the Council did not intend to waste its words. Whether one calls the term “JCPOA participants” in paragraph 10 a “defined term”, “shorthand” or a “label” for a grouping that is then given operative effect in later paragraphs, including in paragraph 11, is irrelevant. The fact is that paragraph 10 establishes a term – “JCPOA participants” – that is given a meaning that is fixed in content and fixed over time.

**3. Developments beyond the four corners of resolution 2231 (2015) did not and could not change the United States’ right to initiate snapback**

Unilateral statements or other actions by a State Member of the United Nations cannot alter the language or meaning of a term defined by the Security Council, nor the rights it created for the States identified. Only the Security Council itself can

<sup>1</sup> Para. 10 of Security Council resolution 2231 (2015) lists China, France, Germany, the Russian Federation, the United Kingdom, the United States, the European Union and Iran, and then defines the grouping in parentheses as “the ‘JCPOA participants’”.

<sup>2</sup> Security Council resolution 2231 (2015), paras. 11, 13 and 21.

modify the text of one of its resolutions by adopting a subsequent resolution. One Member State, even one member of the Security Council, cannot unilaterally change the text of a Security Council resolution. For example, Security Council resolution [2531 \(2020\)](#) established the term “the Malian parties” and defined it as “the Government of Mali and the *Plateforme* and *Coordination* armed groups”.<sup>3</sup> That resolution then proceeds to urge “the Malian parties” to take certain action.<sup>4</sup> No Member State has the ability to declare that – owing to a changed circumstance or some other reason – one of the three named entities is no longer one of “the Malian parties” to which the Council’s entreaties in resolution [2531 \(2020\)](#) are directed. It is a defined term, with fixed content, used for the purposes of that resolution. The only way to adjust the definition of “the Malian parties” for the purposes of the Council’s efforts to address the situation in Mali would be through the adoption of a subsequent Security Council resolution amending the definition of the term. Any argument to the contrary aggrandizes power to States Members of the United Nations that they simply do not have as a matter of international law. The meaning of paragraphs 10 and 11 of resolution [2231 \(2015\)](#) must be determined in accordance with the plain language of the text negotiated, drafted and adopted by the Council, and that text alone.

## **B. The United States’ decision of 8 May 2018 to cease performance of commitments it had under the JCPOA had no effect on United States’ rights and obligations under resolution [2231 \(2015\)](#)**

### **1. The JCPOA is a non-binding political arrangement, and resolution [2231 \(2015\)](#) did not change that**

The JCPOA is a political arrangement consisting of non-binding political commitments, not an international agreement that imposes binding obligations. Resolution [2231 \(2015\)](#) did not transform the JCPOA from a non-binding political arrangement, despite unfounded claims to the contrary. The JCPOA participants therefore were and are free to cease performing the non-binding political commitments they had under the nuclear arrangement at any time without violating international law, so long as they comply with international obligations they have that are independent of the JCPOA, including their obligations under resolution [2231 \(2015\)](#). Ceasing performance of non-binding political commitments under the JCPOA has no effect on Member States’ rights and obligations under resolution [2231 \(2015\)](#).

The non-binding JCPOA is distinct from resolution [2231 \(2015\)](#), even though there is a close relationship between the two, and even though resolution [2231 \(2015\)](#) makes binding some aspects of the political arrangement – particularly, the nuclear-related “procurement channel”.<sup>5</sup> When the Security Council imposes obligations under Chapter VII of the Charter of the United Nations, as is the case for resolution [2231 \(2015\)](#), it does not mean that all of the provisions contained therein are legally binding. Because Article 25 of the Charter requires Member States to “accept and carry out” the “decisions” of the Security Council, and Article 41 of Chapter VII of the Charter authorizes the Security Council to “decide” to impose certain measures, it is generally understood that when the Council uses other verbs, such as “calls upon” or “urges” or even “demands”, it is not imposing legally binding obligations.

In resolution [2231 \(2015\)](#), the Council went to great lengths to make clear which of the resolution’s provisions were intended to impose legal obligations. The Council not only used the word “decides” in resolution [2231 \(2015\)](#) when it intended to impose obligations on States Members of the United Nations, but also took the

<sup>3</sup> Security Council resolution [2531 \(2020\)](#), para. 1.

<sup>4</sup> *Ibid.*, paras. 3, 9 and 11, among others.

<sup>5</sup> Security Council resolution [2231 \(2015\)](#), paras. 16–20.

unusual step of specifying in such provisions that it was “acting under Article 41 of the Charter of the United Nations” to make clear that those provisions of the resolution are legally binding. These legally binding provisions do not include paragraph 1, which “endorses” the JCPOA, or paragraph 2, which “calls upon all Member States” to support implementation of the JCPOA. The Security Council’s endorsement of the JCPOA in paragraph 1 of resolution 2231 (2015) was, consistent with the plain meaning of that word and Council precedent, simply an expression of political support.<sup>6</sup> Neither that endorsement nor the inclusion of the JCPOA as an annex to the resolution transformed the JCPOA into a set of legal obligations binding on either the JCPOA participants or other States Members of the United Nations.<sup>7</sup> The text of resolution 2231 (2015) itself makes clear that the annexes to the resolution are not automatically rendered legally binding. Paragraph 7 (b) of resolution 2231 (2015) specifies that certain provisions of annex B are legally binding; if the entire annex were automatically legally binding by annexation, then paragraph 7 (b) would serve no purpose. Similarly, in paragraph 2, the Council issued a non-binding request that “calls upon” Member States to support implementation of the JCPOA, rather than a binding directive that “decides” Member States shall do so. Other Member States have repeatedly pointed out that Iran’s missile launches do not violate Iran’s obligations under resolution 2231 (2015) because paragraph 3 of annex B “call[s] upon” Iran not to undertake certain missile activity, and such “calls upon” provisions are non-binding. Resolution 2231 (2015) thus imposes no obligation on Member States as a general matter to implement or support implementation of the non-binding commitments made under the JCPOA.

## 2. The United States’ reimposition of sanctions on Iran did not change the United States’ legal rights and obligations under resolution 2231 (2015)

Thus, the United States’ decision, announced on 8 May 2018, that the JCPOA failed to protect United States’ national security interests and, therefore, that the United States would immediately begin the process of reimposing its sanctions on Iran that had been lifted under the political arrangement did not violate any obligations of the United States under international law. Moreover, the United States is in full compliance with its obligations under resolution 2231 (2015), namely the measures in annex B to the resolution that the Council rendered legally binding through paragraph 7 (b), which place restrictions on nuclear- and missile-related transfers to Iran, as well as transfers of arms in and out of Iran, and establish a targeted asset freeze and travel ban.<sup>8</sup>

<sup>6</sup> The Council has on many occasions endorsed and/or annexed non-binding documents to its resolutions, but doing so did not render them legally binding. See, for example, resolution 2510 (2020), para. 2 (endorsing “the Conference Conclusions as contained in the document circulated as S/2020/63” and noting “that these represent an important element of a comprehensive solution to the situation in Libya”); resolution 2202 (2015), para. 1 (in the context of the conflict in eastern Ukraine, endorsing and annexing the “package of measures for the Implementation of the Minsk Agreements”); resolution 750 (1992), para. 4 (in the context of Cyprus, endorsing “the set of ideas described in paragraphs 17 to 25 and 27 of the Secretary-General’s report as an appropriate basis for reaching an overall framework agreement, subject to the work that needs to be done on the outstanding issues, in particular on territorial adjustments and displaced persons, being brought to a conclusion as an integrated package mutually agreed upon by both communities”); and resolution 668 (1990), para. 1 (endorsing “the framework for a comprehensive political settlement of the Cambodia conflict” and encouraging “the continuing efforts of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America in this regard”).

<sup>7</sup> See, for example, Security Council resolution 2118 (2013), para. 6, in which the Council “decides” that Syria “shall comply” with a decision of the Executive Council of the Organisation for the Prohibition of Chemical Weapons that was annexed to the resolution.

<sup>8</sup> Security Council resolution 2231 (2015), annex B, paras. 2, 4, 5 and 6 (a)–(f).

In disputing the United States' right to initiate snapback, some have asserted that a State cannot avail itself of legal rights if it is in violation of corresponding legal obligations. Without a hint of irony, those who make this assertion nevertheless recognize that Iran continues to reap significant benefits from resolution 2231 (2015), even though Iran has repeatedly violated the resolution through numerous arms transfers that have been widely recognized as a violation by other JCPOA participants and the international community.<sup>9</sup> Even assuming, *arguendo*, that the aforementioned principle applies in this context, the premise that the United States is in violation of international obligations under the JCPOA and/or resolution 2231 (2015) is legally inaccurate. As explained above, the United States' decision to cease performing the commitments it had under the JCPOA violated no United States' obligations under international law. Therefore, even with such a theory, it cannot be said that the United States no longer has the right under paragraph 11 of resolution 2231 (2015) to initiate the snapback of United Nations measures on Iran.

The United States' action on 8 May 2018 – deciding not to perform commitments the United States had under the Plan of Action – in and of itself therefore only had effects for the JCPOA, not resolution 2231 (2015). On that date, the United States announced that it did not intend to provide Iran with relief from United States' sanctions that had been lifted under the JCPOA, a political agreement, and this announcement of United States' non-performance of the political arrangement was simply that. Neither the United States President's announcement that day nor any associated documents mention or were addressed to any aspect of resolution 2231 (2015). Nor was there any notification by the United States to the Security Council of the steps the United States was taking to reimpose nuclear-related sanctions on Iran. There is a straightforward reason for this: such a notification was not required by resolution 2231 (2015), and the decision by the United States on 8 May 2018 was not intended to, and, as a legal matter, could not, have any legal effect on the United States' independent legal rights and obligations under the resolution.

### C. Conclusion

The plain text of resolution 2231 (2015) establishes and fixes the United States' right to initiate the snapback of United Nations measures on Iran. As explained above, this is a straightforward and uncomplicated proposition, and arguments to the contrary would have the effect of supplanting the resolution's plain text with silent conditions to alter the rights created by the Council. Developments beyond the four corners of resolution 2231 (2015) did not and could not change the United States' right to initiate snapback. In particular, the United States' decision to cease providing Iran relief from United States' sanctions under the separate, non-binding political arrangement that is the JCPOA did not and could not alter the text of resolution 2231 (2015). Arguments that the United States has forfeited or waived its right to initiate snapback are unfounded. The resolution's text is clear: upon notification by a JCPOA participant State, including the United States, to the Security Council of significant non-performance of commitments under the JCPOA, the process set out in paragraphs 11 and 12 of resolution 2231 (2015) leading to the reimposition of specified measures terminated under the resolution shall be initiated. If, following such notification by the United States, the Council does not adopt a resolution to continue in effect the terminations under resolution 2231 (regardless of whether a resolution continuing relief is tabled – and vetoed), then, effective midnight Greenwich Mean Time after the thirtieth day after such notification, such measures shall be reapplied.

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<sup>9</sup> Iran's violations of the arms-related restrictions in resolution 2231 (2015) are a matter of public record. See, for example, the ninth report of the Secretary-General on the implementation of Security Council resolution 2231 (2015) (S/2020/531), para. 11.