



How the U.S. Could End the Iran Nuclear Deal Once and for All

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Is the United States still a participant in the Iran nuclear deal? Well, yes and no. The U.S. is seeking to maintain an international conventional-arms embargo on Iran that's set to expire in October. The embargo was included in the enabling resolutions that the United Nations Security Council passed as part of the 2015 Joint Comprehensive Plan of Action (JCPOA), otherwise known as the Iran nuclear deal. Its restrictions on small-arms sales to Iran expire this year, with its ban on the sale of missile parts and other weapons extending another three years.

The State Department is promoting a new Security Council resolution that would extend the embargo indefinitely, which is certain to face opposition from Russia or China, both of whom have veto power. It would be smarter to simply activate the "snapback" mechanism in the JCPOA, restoring the entire pre-agreement U.N. sanctions regime and killing the deal for good.

Critics might object that President Trump withdrew the United States from the JCPOA two years ago, so Washington has no standing to engage its snapback provision. But it's not that simple.

The Obama administration could have tried to craft a binding, entirely self-contained multilateral treaty, which would be more clear-cut — a country would either be a signatory to the treaty or not. But Obama's team knew it lacked the influence to craft a deal that the U.S. Senate would approve as a formal treaty, or even the minimal political clout to change the existing sanctions regime. So instead negotiators came up with what amounted to an executive agreement to use temporary loopholes in existing U.S. law to lift American sanctions, and crafted an omnibus 104-page Security Council resolution, UNSCR 2231, to clean things up on the U.N. side. And whatever the status of the JCPOA, UNSCR 2231 is still operative, and the United States, as a U.N. member state, is still a participant in it.

There are several ways in which the JCPOA can self-destruct under UNSCR 2231. Article 26 tells us that Iran would consider the re-introduction of sanctions "as grounds to cease performing its commitments under this JCPOA in whole or in part." The United States has already re-imposed sanctions, and Iran has been enriching uranium well beyond the limits of the agreement, meaning both conditions for the deal's destruction have been met.

Article 10, meanwhile, notes one means of resolution, in which any "JCPOA participant State" can bring a complaint. Critics claim this means that the U.S. can't scuttle the JCPOA, because it is no longer such a participant state. But that's not quite right, either. The dispute-resolution mechanism detailed in Article 36 allows "any of the E3/EU+3," including the U.S., to refer a case of "significant non-performance" of duties under the JCPOA to a Joint Commission and Advisory Board for a series of reviews over 30 days. If the "complaining participant" is not satisfied with the outcome of this process, it may "notify the UN Security Council that it believes the issue constitutes significant non-performance."

Here is the beautiful part: Once that notification occurs, Article 37 gives the Security Council 30 days to consider a resolution to "continue the sanctions lifting" — i.e. to leave the deal in place. If it fails to pass such a resolution in that time period, "the provisions of the old UN Security Council resolutions would be re-imposed." This is the so-called "snap back" that we have heard so much about. And because it kicks in automatically unless the Security Council passes a continuing resolution, the veto power that Russia and China hold as permanent Security Council members is irrelevant, and the veto power that the U.S. similarly holds is decisive.

The United States has every right under UNSCR 2231 to bring the matter of Iranian non-compliance to the Joint Commission. For that matter, Iran could file a complaint against the United States on the same grounds. The fact that Iran has not yet done so tells us that it knows where that process would lead, and is a great argument for the U.S. to start the clock ticking immediately. Presented with a poison pill, pro-Iranian members of the Security Council may decide that extending the current arms embargo is the lesser of two evils. But either way, the Trump administration will win.