

Why is the UK Still Party to the Iran Nuclear Deal?: *Practical Applications for the Future of the JCPOA*

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Cover image: ‘Nuclear Missiles With Warhead Aimed at Gloomy Sky’ taken by Victor Micallef for Shutterstock.

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Executive Summary

At the time of publication of this report, the 78th Session of the United Nations General Assembly (UNGA 78) is being held at the United Nations headquarters in New York, with the high-level General Debate proceeding from 19-29 September. This year, the Islamic Republic of Iran holds a leadership position, having been appointed in June 2023 as a Vice-President of the UNGA 78. In addition to that role, and in macabre irony, the UN also appointed Iran's envoy, Heidar-Ali Balouji, as the Rapporteur of the Disarmament and International Security Committee of the General Assembly, charged with presenting resolutions on disarmament, global challenges and threats to peace that affect the international community.

In a further stroke of wilful blindness and hypocrisy, Iran's UN ambassador Ali Bahraini was appointed in May to the chair of the UN Human Rights Council 2023 Social Forum to be held in Geneva on 2 and 3 November, igniting anger and fury from the enlightened public. The forum will focus on the contribution of science, technology and innovation to the promotion of human rights.

The 67th General Conference of the International Atomic Energy Agency (IAEA) is being held in Vienna from 25-29 September 2023 and will overlap with the UNGA 78. Iran will undoubtedly be networking and negotiating before, during and after the conference, making empty pledges of cooperation as it often does around IAEA meetings.

These examples of the acceptance of Iran, and indeed the reverence with which it is held in the community of nations, despite its well-documented human rights violations and the decades-long threat of its unabated nuclear programme, underscores the necessity of shining a strong light on Iran's activities with the goal of demanding accountability for Iran and imposing consequences for violations of international law.

This Research Brief examines the Iran Nuclear Deal, known as the Joint Comprehensive Plan of Action (JCPOA), as it concludes its eighth year and several provisions of the Deal are set to lapse or "sunset"; it also looks at the British Government's prospects for achieving Iran's compliance in light of its repeated JCPOA violations.

The United States withdrew from the Deal in 2018, alleging violations, but the United Kingdom (and other State parties) remained in the Deal, drawing both praise and criticism for that decision from Members of Parliament and the public. This report offers several reasons for the UK's continued participation with an ultimate evaluation as to whether the decision to remain has been validated and justified.

The report first provides background on the Iranian nuclear threat, the JCPOA and Iran's many violations of the Deal. Next, Security Council Resolution 2231, which endorses the JCPOA, will be examined with respect to the "Sunset" and "Snapback" provisions and how they impact the continuation of the Deal. Other enforcement mechanisms for the Deal are explored and then compared to the snapback provision.

The positions of the UK Government and members of both Houses of Parliament are examined with respect to Iran's non-compliance and the action the Government needs to take to contain the nuclear threat. The report then advocates the use of snapback as the UK's best tool to demonstrate its own strength.

The brief concludes with several recommendations for courses of action available to the UK and its partners and includes a call to the Government to use the full powers at its disposal to compel Iran to comply and curb further expansion of its nuclear activity with the hope of fulfilling the original purpose of the JCPOA of containing and suppressing the development of Iran's potential nuclear weapons programme.

Introduction

When Iran entered into an agreement in 2015 to receive sanctions relief in exchange for dismantling a large part of its nuclear programme, limiting its uranium enrichment and opening all of its facilities to the International Atomic Energy Agency (IAEA)¹ for international inspections, the intention was that the agreement would be time-limited with several of its clauses containing expiration dates and the entire deal itself expiring after ten years in 2025. The Iran Nuclear Deal of 2015 (Iran Deal or Deal), also known as the Joint Comprehensive Plan of Action (JCPOA),² reflected political commitments³ reached between Iran, the European Union and the P5+1 (the five permanent UN Security Council members – China, France, Russia, UK and US – plus Germany), with the expectation that Iran would demonstrate to the international community that it was not seeking to develop weapons-grade nuclear materials and that its nuclear programme would only be used for peaceful purposes.

This landmark agreement was concluded in Vienna on 14 July 2015; the UN Security Council endorsed it on 20 July 2015 and adopted it on 18 October 2015 – known as Adoption Day.⁴ The JCPOA was to remain in effect thereafter, either until the IAEA “reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities”⁵ or until Transition Day, which falls “eight years after Adoption Day”⁶ at which point several of the provisions would expire or “sunset”. Transition Day falls on 18 October 2023; this looming date initiates a series of lapsing limitations and gradually allows Iran to escalate its nuclear programme and permits the expiration of missile and military restrictions.⁷

This deadline has presented challenges to the State parties to the JCPOA as Iran has consistently and systematically acted in bad faith by breaking the Deal. Pursuant to the agreement, the IAEA

¹ International Atomic Energy Agency (IAEA), <http://www.iaea.org>.

² UN Security Council, “Resolution 2231, S/RES/2231 (2015)”, 20 July 2015, <https://daccess-ods.un.org/tmp/8704694.50950623.html>.

³ Julia Frifield, “Letter to Secretary of State Mike Pompeo”, United States Department of State, 19 November 2015, <http://www.humanrightsvoices.org/assets/attachments/documents/11.24.2015.state.dept.letter.jcpoa.pdf>.

⁴ Adoption Day of the JCPOA was 18 October 2015, 90 days after the passage of the UN Security Council Resolution endorsing the deal (20 July 2015). Adoption Day triggered Iran and the P5+1 to take steps to meet the commitments to fully implement the JCPOA. The JCPOA came into full effect on 16 January 2016 (Implementation Day). For reference, Termination Day is October 2025, ten years after Adoption Day. Termination Day terminates Resolution 2231, and the Security Council will close Iran’s nuclear file.

⁵ “Security Council Resolution 2231”, para 23. This resolution established the JCPOA agreement on 14 July 2015 and was signed between Iran and the States making up the E3/EU+3 Group (China, the United States, Russia, Germany, France and the United Kingdom), together with the High Representative of the European Union for Foreign Affairs and Security Policy (doc.S/2015/544). Security Council Resolution 2231 sets out this agreement in its Annex A. On the same date, the countries making up the aforementioned group and the European Union also presented a declaration with a view to promoting transparency and creating a climate conducive to full application of the JCPOA (S/2015/545).

⁶ See *Ibid*.

⁷ Behnam Ben Taleblu and Andrea Stricker, “Shining a Light on the Iran Deal’s Sunset Problem”, *The National Interest*, 9 February 2021, <https://nationalinterest.org/feature/shining-light-iran-deal%E2%80%99s-sunset-problem-177945>.

will certainly not be reaching a “Broader Conclusion” that Iran remains in peaceful activities, so what remains are terms that will lapse, weakening the strength of the agreement, unless an alternative is found.

In the years since the initiation of the agreement it has been widely understood that Iran has not complied with the JCPOA. Due to Iran’s repeated violations of the Deal, practically from its inception, the US withdrew from the agreement on 8 May 2018, charging Iran with violating the spirit of the deal.⁸ The other parties did not follow suit, remaining on board with the hope that retaining a seat at the table would enable them to better influence Iran to hold up its end of the bargain.

While many in the UK wondered whether the Government should have followed the example set by the US and withdrawn as well, the Government ultimately chose to remain in the Deal, having stated that its priority remains “to find a diplomatic way forward and bring an end to Iran’s continuous systematic non-compliance with its JCPoA commitments.”⁹ Then Foreign Secretary Boris Johnson stated after the US withdrawal that the UK would “strive to preserve the gains” made by the agreement and that while the UK shared US concerns about Iran, the “painfully negotiated” agreement was effective and had increased the amount of time it would take Tehran to develop nuclear weapons.¹⁰

Since that time, however, the Government has continuously been held to account by Parliament as well as the public. At this point, several years on, the question of what can be done with respect to Iran, in light of its flagrant violations and now the pending sunset of the Deal’s provisions, presents both challenges as well as opportunities for the UK to stand firm and assert its powers to contain Iran’s nuclear armament.

⁸ The word “spirit” is used twice in the JCPOA (in Paragraph vii of the preamble and Paragraph 28 of the main text). Both instances refer to sanctions commitments. Jarrett Blanc and James M. Acton, “The Trump Administration and the Iran Nuclear Deal: Analysis of Noncompliance Claims”, Carnegie Endowment for International Peace, 3 October 2017, <https://carnegieendowment.org/2017/10/12/trump-administration-and-iran-nuclear-deal-analysis-of-noncompliance-claims-pub-73214#spirit-of-the-deal>.

⁹ James Cleverly, “Iran: Nuclear Power, Question for Foreign, Commonwealth and Development Office”, UK Government, 24 June 2021, <https://questions-statements.parliament.uk/written-questions/detail/2021-06-24/21899>.

¹⁰ “Iran nuclear deal: UK won't walk away, says Boris Johnson”, BBC News, 9 May 2018, <https://www.bbc.com/news/uk-politics-44044946>.

Background on the Threat of a Nuclear Iran

The IAEA and the JCPOA

After the devastating and destructive impact of the nuclear weapons the US dropped on the Japanese cities of Hiroshima and Nagasaki during World War II, the threat of a nuclear arms race, and the possibility that other nations would seek their own nuclear weapons, made it clear that mechanisms and strict guidelines were needed to rein in nuclear development. In response to that need, the International Atomic Energy Agency was established in 1957 as an intergovernmental organisation within the UN system to promote the peaceful use of nuclear energy and to inhibit its use for military purpose, including nuclear weapons.

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT),¹¹ which was designed to prevent the spread of nuclear weapons and promote disarmament and peaceful uses of nuclear energy, was introduced approximately 10 years later.¹² Iran signed the NPT in 1968 as a non-nuclear weapons state and ratified the NPT in 1970. “Article III of the treaty requires nonnuclear-weapon states-parties to accept comprehensive IAEA safeguards; Tehran concluded a comprehensive safeguards agreement with the IAEA in 1974.”¹³

However, even as a member of the NPT, Iran began developing nuclear technologies in the 1970s and its capabilities grew in the decades after. In August 2002, an Iranian dissident group revealed that Iran had two secret facilities – the Arak heavy-water production facility and the Natanz enrichment facility, which it was later claimed were only intended to produce low-grade uranium for the operation of civilian nuclear power plants.¹⁴ IAEA inspectors visited the sites and found that Iran had violated the terms of the previous nuclear agreements it had entered into to not produce weapons-grade nuclear material.¹⁵

Alarm in the international community over Iran’s potential development of weapons-grade nuclear materials led the United Nations to adopt resolutions denouncing Iran’s nuclear efforts and to initiate a sanctions regime to pressure Iran. The sanctions froze assets of certain individuals and entities and banned Iran from transferring nuclear and missile technology; Iran agreed to continue to allow IAEA inspectors to monitor their various sites.¹⁶

As the years progressed, sanctions increased in number and severity. Ultimately, the sanctions regime was so significant that Iran agreed to terms that would offer relief in exchange for its

¹¹ Treaty on the Non-Proliferation of Nuclear Weapons, 729 UNTS 161, 7 ILM 8809 (1968).

¹² Nuclear Threat Initiative, <https://www.nti.org/>. “The NPT is a treaty aimed at limiting the spread of nuclear weapons through the three pillars of non-proliferation, disarmament, and peaceful use of nuclear energy.”

¹³ Paul K. Kerr, “Iran’s Nuclear Program: Tehran’s Compliance with International Obligations”, Congressional Research Service, Updated 12 April 2023, <https://sgp.fas.org/crs/nuke/R40094.pdf>.

¹⁴ Kate Lyons, “Iran nuclear talks: timeline”, *The Guardian*, 14 July 2015, <https://www.theguardian.com/world/2015/apr/02/iran-nuclear-talks-timeline>.

¹⁵ See Ibid. IAEA published its findings in a June 2003 report.

¹⁶ See Ibid, discussing the Tehran Declaration of 2003 between Iran and the EU-3.

own guarantees of dismantling its nuclear programme, and on 14 July 2015, the JCPOA was signed by all parties. Pursuant to the terms of the Agreement, in exchange for sanctions relief, Iran agreed to the following:

1. To decrease its stockpile of low-enriched uranium by 98% with reduction in place for 15 years.
2. To enrich uranium only to 3.67%, a percentage sufficient for civilian nuclear power and research, but not for building nuclear weapons.
3. To place over two-thirds of its centrifuges in storage and to limit any enrichment capacity to only the Natanz plant, which will be monitored by the IAEA. To refrain from building any new uranium enrichment facilities for 15 years.
4. To cease enriching uranium at the Fordow facility for at least 15 years and to convert the facility to a nuclear physics and technology centre.
5. To implement an Additional Protocol agreement, which would continue in perpetuity for as long as Iran remains a party to the NPT.
6. To allow a comprehensive inspection and verification regime by the IAEA which will have continuous monitoring access.¹⁷

Iran's Violations of the JCPOA and Disregard for IAEA Protocols

Despite the initial good faith exercised by all parties at the establishment of the Deal, Iran's violations of the JCPOA led to the US withdrawal in 2018. After the US withdrawal, the JCPOA began to further collapse in 2019 when Iran stated its intention to suspend implementation of some parts of the JCPOA and announced that it had started to increase uranium enrichment beyond the 3.67% limit.

To date, Iran has committed the following violations of the JCPOA:¹⁸

1. Research & Development (R&D): The JCPOA permits R&D with uranium using only several specified types of centrifuges. Iran's current enrichment R&D activities include JCPOA-prohibited centrifuge types, locations and configurations.
2. Centrifuge Operation: The JCPOA requires Iran to use only its commercial-scale facility at Natanz to enrich uranium, but Iran has installed additional prohibited centrifuges in that

¹⁷ Milena Sterio, "President Obama's Legacy: The Iran Nuclear Agreement?", 48 Case W. Res. J. Int'l L. 69, 74-5 (2016).

¹⁸ Kerr, "Iran's Nuclear Program".

facility. Iran is also using centrifuges at the Fordow enrichment facility and using centrifuges to produce enriched uranium at a pilot-scale enrichment facility.

3. Centrifuge Manufacturing: Iran has manufactured centrifuges for prohibited R&D and manufactured centrifuge components using carbon fibre that has not received approval from the JCPOA-established Joint Commission.
4. Enriched Uranium Limits: The JCPOA requires that Iran's enriched uranium stockpile must not exceed 300 kilograms of uranium hexafluoride containing 3.67% "or the equivalent in other chemical forms". Iran has far exceeded that limit and has enriched uranium to a purity of 83.7%, just shy of the 90% threshold required for the uranium to be considered weapons-grade.
5. Uranium Metal: The JCPOA prohibits Iran for 15 years from "producing or acquiring plutonium or uranium metals or their alloys" since this is a key step in producing nuclear weapons. Iran has produced natural and enriched uranium metal; while IAEA reports indicate that Tehran has halted these activities, that could be open to change.
6. Heavy Water: Since the P5+1 began implementing the agreement, Iran's stock of heavy water exceeded the JCPOA-required limit of 130 metric tons and in November 2019, the IAEA noted that Iran had exceeded the limit on several occasions. Since 23 February 2021, Iran has neither informed the IAEA about its heavy water inventory "nor allowed the Agency to monitor the quantities of Iran's heavy water stocks and the amount of heavy water produced."¹⁹

¹⁹ See Ibid.

Security Council Resolution 2231: The JCPOA “Sunset” and “Snapback”

“Sunset”

Although Iran has been flagrantly violating the JCPOA for years, there is now cause for serious concern that despite those violations and the abject non-compliance, and despite the fact that many UN-imposed sanctions have been withdrawn in exchange for Iran’s commitments, several of Iran’s obligations under the JCPOA will be imminently removed in accordance with the JCPOA’s terms.

Certain JCPOA provisions will “sunset” or expire on 18 October 2023, known as Transition Day. Paragraph 19 of the *JCPOA Annex V – Implementation Plan* states that:

Transition Day will occur 8 years from Adoption Day or upon a report from the Director General of the IAEA to the IAEA Board of Governors and in parallel to the UN Security Council stating that the IAEA has reached the Broader Conclusion that all nuclear material in Iran remains in peaceful activities, whichever is earlier.²⁰

As evidenced by the extensive violations Iran has committed, the IAEA will certainly not be concluding in October that Iran remains in “peaceful activities”, meaning the terms of the JCPOA that are set to sunset will expire. While there are justifiable concerns over the sunset or expiration of various provisions of the JCPOA on 18 October, the architects of the Deal did not leave themselves without options in the event of Iran’s non-compliance. There are several mechanisms that offer relief.

“Snapback”

UN sanctions against Iran had been removed by the JCPOA in exchange for Iran’s limitations and cessation of certain nuclear activities and development, limitations which would then be removed in accordance with the sunset provisions. However, in the event of significant non-performance by Iran of its JCPOA commitments, sanctions that had been previously withdrawn may be re-imposed and specific restrictions reinstated.

Known as “snapback” because all previous restrictions on Iran from various Security Council resolutions snap back into place, this mechanism reinstates the sanctions in the event that Iran demonstrates “significant non-performance of commitments under the JCPOA”.²¹ Snapback was designed to allow any State party to the agreement that deems Iran’s violations to be

²⁰ S/RES/2231, Annex V, Sec. D, para 19.

²¹ S/RES/2231, Annex V - Implementation Plan, para. 18.1.

“significant” to rapidly reinstate the previously removed sanctions without consensus from the five permanent members of the UN Security Council.²²

Specifically, pursuant to *JCPOA Annex V – Implementation Plan* para. 18.1, the following sanctions would immediately be reinstated:

In accordance with the UN Security Council resolution endorsing this JCPOA, the provisions imposed in UN Security Council resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010) and 2224 (2015) will be terminated subject to re-imposition in the event of significant non-performance by Iran of JCPOA commitments, and specific restrictions, including restrictions regarding the transfer of proliferation sensitive goods will apply.²³ (emphasis added)

In the event a snapback is exercised by any party to the Deal, the following would immediately be re-instated:

1. An indefinite embargo on the transfer of conventional arms to and from Iran.
2. An indefinite ban on international support for Iran’s missile programme.
3. A prohibition on all testing and development of nuclear-capable missiles.
4. A required cessation of enrichment-related activities.
5. An indefinite travel and asset ban for sanctioned individuals.²⁴

The process by which a snapback can occur is as follows.

1. A State party to the Deal informs the Security Council that they believe Iran has demonstrated “significant non-performance of commitments under the JCPOA.” Then...
2. Any Security Council member can submit a resolution to ignore the complaint. Then...
3. After 10 days, if no member has already done so, the president of the Security Council must submit such a resolution for a vote.
4. Unless the Security Council adopts a resolution within 30 days to ignore the complaint, all of the provisions of various Security Council resolutions that had been terminated by UNSCR 2231 come back into force.

²² The five permanent members of the UN Security council are the US, UK, China, France and Russia.

²³ S/RES/2231, Annex V - Implementation Plan, para. 18.1.

²⁴ Richard Goldberg, “The ‘Snapback’ of UN Sanctions on Iran”, Foundation for Defense of Democracies, 9 July 2020, <https://www.fdd.org/wp-content/uploads/2020/07/fdd-background-FAQ-the-snapback-of-un-sanctions-on-iran.pdf>.

5. The resolution to ignore a complaint can be vetoed by any permanent member of the Security Council, in which case the snapback would come into force after the 30 days expire.

Other Accountability and Enforcement Mechanisms

Dispute Resolution under the JCPOA

The JCPOA contains a dispute resolution mechanism (DRM) for resolving disagreements between parties to the Deal. However, the mechanism requires many stages of dialogue and consensus before it is presented to the Security Council for a determination. It can take up to 65 days to go through the whole process, and even then, it can be extended by consensus.²⁵ The lengthy process is as follows:

1. If any party believes another party is not complying, they can refer the issue to a Joint Commission, comprised of Iran, Russia, China, Germany, France, UK and EU.²⁶ The Commission has 15 days to resolve the issue, unless it agrees by consensus to an extension.
2. If any party believes the issue was not resolved after that first step, they can refer it to the foreign ministers of the parties to the deal. The ministers have 15 days to resolve the issue, unless they agree by consensus to an extension. Any party could also ask a three-member advisory board to examine the issue. The participants in the dispute would each appoint a member and the third member would be independent. The advisory board must provide a non-binding opinion within 15 days.
3. If the issue is not resolved during the initial 30-day process, the Commission has five days to consider any advisory board opinion to settle the dispute.
4. If the complaining party is not satisfied and still deems the matter to “constitute significant non-performance” they could “treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part.” They could also notify the Security Council that the issue constitutes “significant non-performance” and must describe their efforts to utilise the Commission dispute resolution process.
5. Once the complaining party notifies the Security Council, the Council must vote within 30 days on a resolution to continue Iran’s sanctions relief. A resolution needs nine votes in favour and no vetoes by the United States, Russia, China, Britain or France to pass.

²⁵ “How the Iran nuclear deal dispute mechanism works”, Reuters, 14 January 2020, <https://www.reuters.com/article/us-iran-nuclear-factbox/how-the-iran-nuclear-deal-dispute-mechanism-works-idUSKBN1ZD111>.

²⁶ The United States was a member before it withdrew from the deal in 2018.

6. If a resolution has not been adopted within 30 days, the sanctions in all previous UN resolutions would be re-imposed – referred to as snapback – unless the Council decided otherwise. If the previous sanctions are re-imposed, they would not apply retroactively to contracts Iran signed.²⁷

With all these steps, the DRM is very long and protracted, and due to possibilities of countless delays, ultimately minimally effective.

For instance, on 14 January 2020, the UK, France and Germany triggered the DRM in what was arguably at the time the strongest step taken to enforce the Iran Deal. The three States, also known as the E3, invoked the DRM as a means to keep Iran accountable while avoiding the US's maximum pressure campaign against Iran. In July 2020, Iran triggered the DRM as well, accusing the E3 of ineffectively delivering sanctions relief following the withdrawal of the United States from the Deal.²⁸ In both cases, the process stalled and eventually went nowhere.

A New Security Council Resolution

Another mechanism that may be applied to hold Iran accountable is the adoption of a new UN Security Council resolution to restore sanctions and restrictions on Iran, in the event that the sunset date of 18 October passes with no action on the part of the State parties to the agreement. However, this mechanism has been criticised for its inherent weakness in that the resolution could be vetoed by any permanent member of the Security Council (such as China or Russia who may be more sympathetic to Iran); this is not only possible but likely, effectively making any Security Council resolution against Iran a non-starter. It has been established that Russia and China plan to sell advanced missiles to Iran starting in October when the missile embargo on Iran is scheduled to expire, and they plan to support Iran's missile programme after the 18 October sunset, assuming no snapback occurs, which may in fact be a practical impossibility.

²⁷ "How the Iran nuclear deal dispute mechanism works".

²⁸ Lorne Cook, "EU says Iran has triggered nuclear deal dispute mechanism", AP News, 3 July 2020, <https://apnews.com/article/9e1ac61d0918b930c42da69d349df6ec>.

The Position of the UK Government

The UK Government has recently “likened the JCPOA to a hollow shell”²⁹ which has comprehensively failed to halt Iran’s nuclear advances, and it has been said in the halls of Parliament that Iran has never been closer than at this moment to developing a nuclear weapon,³⁰ a sentiment shared by many others in the international community.³¹ Nonetheless, the UK has not withdrawn from the JCPOA in the consistent hope that keeping a seat at the table may lead to some level of rapprochement with Iran, and with the aim of “bringing Iran back into full compliance with its commitments and restoring the benefits of the deal for all” and bringing “an end to Iran’s continuous systematic non-compliance with its JCPOA commitments.”³²

Recognising that Iran has been a failed partner in fulfilling its obligations under the JCPOA throughout the years, Members of Parliament from both the House of Lords and the House of Commons have continually made their feelings known to the Government, seeking answers and demanding accountability. As recently as July 2023, debates in both Houses demonstrated continued concerns over Iran.

The UK’s decision not to withdraw from the JCPOA, as the US has done, has at times been called into question. In January 2023 there were renewed calls for the UK to leave the Deal in the wake of the Iranian authorities’ execution of ex-deputy Iranian defence minister Alireza Akbari, a dual citizen of Iran and the UK.³³ Since the US withdrew in 2018, the JCPOA has become increasingly fragile and the future of the Deal has been imperilled.

However, scholars have asserted that despite the fragility of an agreement that no longer contains the US,³⁴ the JCPOA must not be abandoned for two basic reasons. First, containing the Iran nuclear programme would help prevent a nuclear arms race in the Middle East, and second, maintaining the JCPOA ensures that the EU and its allies will retain leverage over Iran.³⁵ As to the first, it would, indeed, seem likely that if Iran developed nuclear weapons capabilities

²⁹ Hansard HC Deb., vol. 733, col. 327WH, 7 June 2023, Brendan Clarke-Smith

³⁰ Ibid.

³¹ See Tal Schneider “Iran closer than ever to weapons-grade uranium, ex-top defense official says”, Times of Israel, 25 December 2022, <https://www.timesofisrael.com/iran-closer-than-ever-to-weapons-grade-uranium-ex-top-defense-official-says/>. See also Tamara Qiblawi, “Iran is closer than ever to a nuclear weapon as Biden runs out of options”, CNN, 12 June 2022, <https://www.cnn.com/2022/06/12/middleeast/iran-nuclear-weapon-analysis-intl-cmd/index.html>; “Iran has never been closer to the verge of nuclear weapons than it is today”, France 24, 23 November 2022, <https://www.france24.com/en/video/20221123-iran-has-never-been-closer-to-the-verge-of-nuclear-weapons-than-it-is-today>.

³² Cleverly, “Iran: Nuclear Power, Question for Foreign, Commonwealth and Development Office”.

³³ Emily McGarvey and Aoife Walsh, “Alireza Akbari: Iran executes British-Iranian dual national”, BBC News, 14 January 2023, <https://www.bbc.com/news/world-middle-east-64273520>.

³⁴ Ali Fathollah-Nejad, “Europe and the Future of Iran Policy: Dealing with a Dual Crisis”, Brookings Doha Center Policy Briefing, October 2018, <https://www.brookings.edu/wp-content/uploads/2018/10/europe-and-the-future-of-iran-policy-dealing-with-a-dual-crisis-english.pdf>.

³⁵ See Ibid.

then the threat it posed would ignite regional instability, with its Middle Eastern neighbours feeling they, too, needed to develop their own weapons to contain the threat. As to the second, while the JCPOA theoretically offers the State parties to the Deal the opportunity for leverage over Iran, time appears to be running out with few options available in the wake of the imminent October sunset.

Despite discussions about UK withdrawal, sentiments were expressed in the House of Lords in July 2023 that reflected the view that in order to retain some possibility of “effective control over Iran’s nuclear ambitions” it is important to stay in the Deal and see it through. Many in the UK criticised the US withdrawal of 2018, saying that “by pulling out, Iran took that as an opportunity to develop its programme further.”³⁶ As such, it seems to be generally accepted in parliamentary circles – whether rightly or wrongly – that the UK should preserve its ambitions to salvage what remains of the Deal with the hope of containing Iran in whatever time is left before the clock runs out.

The British Government is aware that the clock is ticking and that Transition Day is fast approaching. Foreign Secretary James Cleverly has recognised the imminence of the sunset clause, and asserted that the Government continues to be firm in its commitment “that Iran cannot become a nuclear weapons state... [with] evolved measures to ensure that that is the case.”³⁷ Those ostensibly bold statements aside, the Government has been slow to articulate the “measures” it plans to take to ensure that Iran is contained for whatever time remains of the JCPOA. However, it has in recent weeks announced a compromise plan, alongside the other E3 countries, for domestic sanctions to replace those sanctions which are subject to the sunset clause, a plan which is discussed in the next section in comparison to the far stronger leverage which snapback still offers.

The Shadow Foreign Secretary, the Rt Hon David Lammy MP, challenged the Government on 6 July to answer for its evasiveness in providing concrete steps to negotiate with Iran, stating that the UK Government:

*supported the nuclear agreement as the best approach to preventing Iran from acquiring a nuclear weapon. We remain determined and committed to that vital non-proliferation goal. However, there is a clear and ongoing pattern of Iran breaching the JCPOA’s terms, preventing monitoring and verification, and enriching uranium past the point of any civilian justification. It has also continued to violate UN Security Council resolution 2231, including in its ballistic missile activities.*³⁸

In what Lammy called a “less for less” deal, he claimed that as one of the signatories of the JCPOA, the UK must take a leading role to contain Iran.³⁹ Although sanctions may be reinstated

³⁶ Hansard HL Deb., vol. 831, col. 1407, 6 July 2023, Baroness Northover.

³⁷ Hansard HC Deb., vol. 734, col. 142, 23 June 2023, James Cleverly.

³⁸ Hansard HC Deb., vol. 735, col. 999, 6 July 2023, David Lammy.

³⁹ See Ibid.

in the event of Iran’s non-compliance, and the UK has already separately announced plans to bring forward legislation later this year to introduce a new sanctions regime on Iran,⁴⁰ the October 2023 sunset provisions should be seen as a sharp deadline for the UK Government to boldly initiate the strongest possible directives to hold Iran accountable and enforce the JCPOA.

Snapback: The UK’s Strongest Bet

The Strength of Snapback

Resolution 2231 provides the UK (and other parties) with a powerful tool to encourage compliance with the JCPOA. Iran entered into the Deal in 2015 with a purely self-interested agenda – to receive relief from the crippling sanctions imposed upon it by the UN, US and EU. After receiving that relief, Iran began to unabashedly flout the JCPOA, with no real consequences, with the exception of the reimposition of US sanctions after it withdrew from the Deal due to Iran’s violations.

In view of Iran’s recent violations of Resolution 2231, such as development and testing of ballistic missiles and exporting drones to Russia to be used against Ukraine, it is justifiable and necessary to not allow the 18 October 2023 sunset to pass without any action on the part of the UK and her partners.⁴¹ Those developments, combined with Iran’s continuous expansion of its uranium enrichment and stockpiling and its repeated ballistic missile tests which violate Resolution 2231, Annex B, para. 3,⁴² underscore that action must be taken imminently to thwart Iran’s apparent nuclear ambitions.

Earlier this year it was reported that the E3 planned to either impose new sanctions on Iran, essentially starting from scratch, or to not lift the remaining sanctions on Iran’s nuclear programme as required by the JCPOA, thereby allegedly violating or breaching the Deal but not rendering it obsolete.⁴³

⁴⁰ UK steps up action to tackle rising threat posed by Iran, <https://www.gov.uk/government/news/uk-steps-up-action-to-tackle-rising-threat-posed-by-iran>.

⁴¹ Anthony Ruggiero and Andrea Stricker, “US should snap back UN sanctions to counter Iran’s drone and missile exports”, The Hill, 26 August 2023, <https://thehill.com/opinion/national-security/4167422-us-should-snap-back-un-sanctions-to-counter-irans-drone-and-missile-exports/>.

⁴² UNSC Resolution 2231, Annex B, para. 3 states:

Iran is called upon not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology, until the date eight years after the JCPOA Adoption Day or until the date on which the IAEA submits a report confirming the Broader Conclusion, whichever is earlier.

See also, Lahav Harkov, “Europe not planning to ‘snapback’ Iran sanctions despite continued violations”, *The Jerusalem Post*, 5 July 2023, <https://www.jpost.com/international/article-748948>.

⁴³ Patrick Wintour, “UK to breach Iran nuclear deal with refusal to lift sanctions”, *The Guardian*, 2 July 2023, <https://www.theguardian.com/world/2023/jul/02/uk-to-breach-iran-nuclear-deal-with-refusal-to-lift-sanctions>.

In September, the UK, together with the other members of the E3, announced that it plans to incorporate the “sunset” sanctions into its domestic law.⁴⁴ The legal justification used is from the DRM, where the relevant paragraph states: “If the issue still has not been resolved to the satisfaction of the complaining participant, and if the complaining participant deems the issue to constitute significant nonperformance, then that participant could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part.”

This approach is an awkward compromise. It will take time for the three countries to create independent domestic substitutes for the original coordinated sanctions, and it remains to be seen whether these will impose enough of a burden on Iran to act as a significant diplomatic lever. It also provides legal precedent for Iran, which has also previously triggered the DRM, to use the same loophole and “cease performing... in whole or in part” its JCPOA commitments.

Snapback remains a better option. It would expeditiously reimpose all of the original sanctions from which Iran sought relief. However, if it were invoked, it would essentially obliterate the Deal.⁴⁵ To date, even while recognising Iran’s many substantial and consistent violations, none of the other State parties has pulled this powerful trigger which would end the JCPOA.

Of all the mechanisms outlined to compel Iran to comply with the JCPOA, the effectiveness of snapback lies in its ability to threaten the reimposition of the harsh sanctions from which Iran sought relief. Therefore, snapback’s ability to threaten Iran to come to the table far surpasses the DRM or a new Security Council resolution as a viable mechanism of accountability and Deal enforcement. It is also much stronger, faster and more coordinated than the new E3 compromise of using three separate sets of national sanctions.

As opposed to the introduction of a new Security Council resolution, the snapback cannot be blocked by Russia or China, or any other permanent member of the Security Council for that matter. And compared to the challenges of coordinating multiple national sanctions packages, or of using the DRM, which involves the possibility of endless delays, pursuant to Resolution 2231, the snapback automatically takes effect 30 days after a complaint is sent to the Security Council and it can’t be delayed if a permanent member wants snapback to occur, since the permanent member can veto any resolution to ignore the complaint.

Snapback is an extremely powerful and credible threat that the UK has in its diplomatic arsenal. Making Iran aware that the UK stands ready at any moment to reimpose sanctions that would bring many of Iran’s activities to a standstill, and that it can be done very quickly, demonstrates that the UK is prepared to engage in brinksmanship to contain Iran.

⁴⁴ <https://www.gov.uk/government/news/uk-to-bring-un-sanctions-on-iran-into-uk-law>.

⁴⁵ John Caves, John Krzyzaniak and Valerie Lincy, “Trigger Warning: The Consequences of Snapping Back Sanctions on Iran”, Iran Watch, 31 January 2023, <https://www.iranwatch.org/our-publications/policy-briefs/trigger-warning-consequences-snapping-back-sanctions-iran>.

Is Snapback Worth It?

If it is understood that triggering snapback and reimposing sanctions on Iran would effectively destroy the JCPOA, some wonder if the price is worth it.

The answer is undoubtedly yes.

If Iran continues on its current path without accountability or consequences, and the JCPOA and Resolution 2231 are flouted at every turn with Iran unrestrictedly developing multiple weapons capabilities, including the enrichment of weapons-grade uranium, then the Deal has no actual value anyway. Iran's actions in undermining a signed treaty between the powers have made a mockery of British diplomacy in the area. Snapback, while obliterating the JCPOA, would restore a sense of justice and equilibrium, allowing the UK and its allies to know firmly where they stand, and to reassert that the international rules-based system requires those who sign agreements to obey them or face the consequences.

Furthermore, the mere threat of a snapback and the reinstatement of the prior Security Council resolutions and their harsh sanctions on Iran could serve to pressure Iran to discontinue its prohibited activities.

Conclusion & Policy Recommendations

The goal of the UK and its allies is to contain Iran's nuclear armament ambitions, something which is needed for the security of the free world. While the US may have thought that withdrawing from the JCPOA was the greatest show of strength, what it really did was deprive itself of the power of compulsion built into the international agreement. The US tried to initiate snapback in 2020, but the Security Council refused to allow it, due to the US's exit from the JCPOA in 2018. In retrospect, while the US departure might have seemed right in 2018, it needed other partners to also leave the Deal in order for the US move to have been truly effective, and the US might actually have achieved more by invoking snapback itself from within the Deal confines.

The UK, having stayed in the Deal, now has the greatest power at its fingertips – either the threat of the reinstatement of crippling sanctions will compel Iran to comply with the JCPOA's terms, or the imposition of snapback will, indeed, reimpose those sanctions. This would deprive Iran of the relief it sought with the introduction of the Deal, effectively rendering the JCPOA obsolete and removing the UK's need to make an unnecessary political statement by withdrawing two years before the entire deal is set to expire.

If it is to have any impact whatsoever, triggering snapback is extremely time sensitive. It must be noted that in addition to the sunset scheduled for 18 October 2023 for various terms of the JCPOA, Resolution 2231 also establishes a sunset on snapback itself on 18 October 2025. Unless snapback is invoked before that date, the clock will have entirely run out.

In the very near future, the UK and other parties to the JCPOA will have their defining moment – their opportunity to demonstrate strength in the face of the growing Iranian nuclear threat and to show resolve against a violator of international agreements that has become more emboldened by the inaction of the UK and its allies.

The British Government now has the ability to display its power as a major international player by wielding the snapback to bring Iran to heel and restore the credibility of its diplomacy and the rules-based international order. Either way, the UK wins – Iran desists with violations of the JCPOA or the Deal is obliterated through the triggering of the snapback provision. Essentially, the mechanisms of the Deal will function as they were intended to – to provide safeguards that could potentially contain Iran's development of nuclear materials.

Recommendations for the UK

To demonstrate strength and power in the international arena, , and the importance of adherence to the terms of signed international treaties, the following is recommended:

1. Do not withdraw from the JCPOA. The US withdrew from the JCPOA in 2018 and if there was a time for another country to withdraw, the time would have been then or shortly after in solidarity and agreement that Iran's violations must not be tolerated.

Withdrawing so many years later would simply serve as a weak political statement with no practical impact as the whole agreement is set to expire in two years.

2. Utilise the Resolution 2231 snapback provisions in one of two ways:
 - a. Wield the snapback as a threat of renewed crippling sanctions on Iran, with the intended consequence that Iran will refrain from continued JCPOA violations; or
 - b. In the event that the threat of the snapback does not encourage JCPOA compliance, trigger the snapback with immediate effect, which will display strength and demonstrate the consequences of non-compliance, while also effectively dissolving the JCPOA, eliminating the need for withdrawal.

Recommendations to the International Community

To maintain some semblance of intellectual honesty and credibility amongst the community of nations, the following simple recommendations should be implemented:

1. Stop appointing Iran and other human rights violators to the UN Human Rights Council.
2. Do not appoint States like Iran that secretly engage in the development of nuclear weapons to the UNGA's Disarmament and International Security Committee.
3. Do not reward Iran's violations of human rights and international law with an appointment as Vice-President of the UNGA 78.

The international community has a simple choice ahead of it – to reward Iranian breaches of internationally expected norms or to make a stand against them. How it chooses to react will help define the future of Iran, the Middle East and nuclear security.

About the Author

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