

**INTERNATIONAL LAW PERSPECTIVE ON THE JCPOA AND POST-JCPOA****\*Samin Ustiashvili**

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**Abstract**

Signed on July 14, 2015, the Joint Comprehensive Plan of Action (JCPOA) concluded the long-term negotiations of the Ministry of Foreign Affairs of Iran and the P5+1. Following this document's signature and only six days later, on July 20, 2015, the Security Council Resolution 2231 was adopted. All previous sanctions of the United Nations Security Council were terminated, and Security Council asked all parties of the JCPOA to implement the action plan completely. The negligence of Western parties, especially the United States, in the months following the implementation of the JCPOA and, more specifically, after President Trump's inauguration, conflicted with the good faith in implementing the UNHCR's international obligations. As part of accountability and critical analysis of the measures to control the enrichment of uranium in Iran and its access to nuclear power, this paper will seek to find the impact of the United States' exit from the agreement on both Iran and the United States' security. Considering the Security Council Resolution 2231 on the need for full implementation of the U.N. Security Council and refraining from any action undermining this instrument of cooperation, the remarks of the U.S. President and some actions taken by his administration and the Congress on UNSC undermined this document and was contrary to the spirit of the U.N. Security Council and binding Resolution 2231, acknowledged as well by the European Union, European countries and Russia. To attain the specifications of this research, a descriptive methodology will be used. The advantages presented by this method include enabling the collection of a significant amount of data at once; it is less costly and presents the researcher with diverse ways of collecting primary data, which is key in establishing existing circumstances on the impact of U.S. exit from the JCPOA agreement. In terms of data collection, the study will use both quantitative and qualitative approaches. A qualitative approach will be used to collect data in numeral form, while a quantitative will be used to collect data describing attitudes and views from interviewees.

**Keywords:** Iran, U.S.A, Russia, Nuclear Negotiations, Resolution, Russia, Sanctions, JCPOA.

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**INTRODUCTION**

The Joint Comprehensive Plan of Action (JCPOA) was signed on July 14, 2015, between the Ministers of Foreign Affairs of P5+1 and the Islamic Republic of Iran's Foreign Affairs Minister. To strengthen this agreement's practical foundations and enforcement, the United Nations Security Council adopted Resolution 2231 on July 20, 2015, and called on the signatory countries to implement diligence in their commitments and lift all previous sanctions against Iran. However, the signatory countries' path of cooperation on the JCPOA agreement from the very beginning was not an easy one. Obligations based on lack of good faith on the part of the West, especially the United States, months after JCPOA was implemented, was repeatedly protested by Iranian officials. In the months leading up to the end of Obama's presidency, with numerous negotiations, the Islamic Republic of Iran tried to convince some of the Western Parties of the decisions and actions taken by the United States, which conflicted with the good faith of the implementation of the obligations of the JCPOA agreement. Measures, such as the 10-year extension of Anti-Iranian sanctions, or the resolution on December 8, 2015, imposing new restrictions on entry to the United States by third-country nationals traveling to Iran, were taken by the House of Representatives, proving the dishonesty in the implementation of this international agreement. In response to the protests of the Islamic Republic of Iran against this wrong method and Non-constructive actions of the American side and following the methods envisaged in JCPOA to resolve disputes arising from the implementation of JCPOA, the White House initially (last days of Obama's Presidency), repeatedly stressed

the country's adherence to the UN Security Council and the need to uphold this international commitment. Barack Obama's replacement with Donald Trump, however, took the issue to a new level. With the new White House team, US President Donald Trump continued with his campaign promises and undermined the JCPOA and its international credibility. With deed restrictions and sanctions that contradict the JCPOA, he tried to deplete the agreement's spirit. He tried to implement the multilateral international agreement, which with Resolution 2231 of the Security Council guaranteed its international implementation, to the stage of a bilateral commitment between Iran and the United States and finally, announce the unilateral termination of this bilateral commitment. This unprincipled and unprofessional approach of Trump was immediately met with strong and explicit opposition from the European Union and the three countries of Russia, France, Britain, and even the US State Department's political team. President Trump was in a position where he had no other choice but to withdraw from the agreement. Nevertheless, the iteration of actions that violate the purpose and spirit of the JCPOA was still on the agenda of the new White House team. In this regard, the question is that, regardless of the political and security consequences, the Violation of the American Covenant in JCPOA, does this country or any other member of the JCPOA agreement have the legal possibility of violating it? Is the Trump administration's imposition of sanctions on the Iranian nuclear issue compatible with the UN Security Council's implementation?

Within this article, the agreement's legal nature and its primary basis, which is the commitment to cooperate, according to the terms of international treaty law, will be clarified. The UN Security Council's approach to this international agreement and the effects and consequences of that outlook and the

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responsibilities of the contracting parties, and finally, the current implementation of JCPOA, will be reviewed.

### **Part I: The JCPOA and the international obligations of its parties**

What are the legal features of the JCPOA document? This fundamental question clarifies the legal and binding dimensions of the obligations contained therein and the consequences of possible breaches of its provisions by the signatory parties and the international responsibilities of these countries and other members of the United Nations. What about the nature of this international document and the not-so-brief negotiations between the parties? This document clarifies that the basis of the nature of JCPOA is the emphasis on a "comprehensive commitment to cooperation." In order to address the concerns related to Iran's nuclear activities, the Islamic Republic of Iran has been recognized as having international rights, such as the "right to development," the "right to free trade," and the "right to economic and political relations with all countries." In this section, while briefly referring to the concept of "commitment to cooperation" in international law, we will discuss the legal nature of the UNHCR document and the UN Security Council's approach to this international agreement.

#### **"Commitment to Cooperation" in JCPOA**

One of the critical features of the JCPOA is the emphasis of the signatories of this international document on the element of "commitment." In the eighteenth paragraph of the "Introduction and General Regulations" section of JCPOA, this document's signatories emphasize the need for cooperation on nuclear energy's peaceful uses. Additionally, the P5 + 1 countries and the European Union, in a "Statement of the High Representative of the European Union, France, Germany, Britain, and the United States, mentioned the Security and Trade Policy with Iran post-JCPOA, emphasizing the readiness of these countries to cooperate with Iran for economic and industrial development. The theory of the originality of states' legal obligation to "international cooperation as the "Duty to Cooperate" is one of the concepts in international law that has a special place. The main structure of international law is based on the principle of cooperation between governments since they are the core of international commitments in the sociological connection and interrelationship between the international system's main actors, such as the governments and international organizations. Although the international public order has not yet been developed into a legal organization, governments' willingness to cooperate on some general international concepts is not without its place. The International Court of Justice, in its 1951 advisory opinion on the case of the right to stipulate the Convention on the Prohibition and Punishment of the Crime of Genocide, while specifying the "common interest" in achieving the lofty goals that are the philosophy of the Convention, called the basis of international public order "common good," a concept referred to in Article 53 of the 1969 Convention on the Law of Treaties, specifying the rules of common international law. Article 1 of the Charter of the United Nations, while emphasizing the maintenance of international peace and security, explicit the main objectives of the United Nations as the need to resolve international disputes between states under the "Principles of Justice and International Law," which is the "common interest" over the sovereign considerations and interests of states. The

Charter, in this regard, and in articulating the binding aims and regulations of the United Nations's members, repeatedly refers to the "cooperation of the Members" and the "Partnership" in achieving the goals of the United Nations and, above all, international peace and security, development and stability for all the nations (common interest). The preamble to the Charter states We, the people of the United Nations determined to "work together" to achieve these goals. (UN Charter, Preamble). Article 49 of the Charter requires the United Nations members to implement the Security Council's decisions and commit to "joint efforts and cooperation"; in Article 73, the "Commitment" of the members to cooperate, where appropriate, with specialized organizations, is again reminded. The legal nature of the obligation to "cooperate" in international law is a highly challenging issue. Whether this obligation, in its real sense of the word, has the legal characteristics of a "duty and Obligation," and in cases of breach, including "the breach of the international liability" would be violated or not, is the subject of detailed legal discussions that are beyond the scope of this discussion.

While writers such as Antonio Cassese believe that this general obligation's transgression into a legal obligation (in its strict sense) is a violation of the sovereignty of a nation and the principle of "optionality" of international obligations, a group of lawyers such as Gareth Duncan, Rebecca M. M. Wallace, and Ian Brownlie, are committed on the nature of the "independence and legal authenticity."

#### **The JCPOA and the Law of International Treaties**

Ever since the shift in the "issue of Iran's peaceful nuclear capabilities" from the International Atomic Energy Agency to the UN Security Council, the question was raised about how Iran's peaceful nuclear activities would return to its main specialized channel. This expectation ended on July 23, 2015, in Vienna. On that day, the P5+1 ministers, together with the EU Representative of Foreign Affairs and Security Policy, agreed on a framework with the Islamic Republic of Iran, called the "Joint Comprehensive Plan of Action" (JCPOA). The question that arose immediately after the unveiling of the JCPOA in the international arena, especially in Iran, was the legal nature of the JCPOA from the perspective of international treaty law. The question was important whether the implementation of JCPOA required a hammer of approval from the Islamic Consultative Assembly of Iran, and was that document essentially an international treaty, as enshrined in the international treaty law literature? In other words, was JCPOA an "international treaty" or a "political agreement"?

International law on the manner of concluding international treaties has a particular regime, which was cited in the framework of the 1969 Vienna Convention, and some of its provisions, in addition to a treaty, have a customary character. According to Article 2 of the 1969 Vienna Convention, a treaty is an agreement written between States and concluded under international law, whether it is in one or more documents and regardless of its name. According to this article, assuming that JCPOA is an international treaty, the contracting parties must have completed the preparations and stages of concluding a treaty. A formal international treaty under Articles 7, 11, 12, and 13 of the 1969 Vienna Convention is required in five stages: "negotiation," "writing," "initialing," (preliminary signatures), "ratification," and "exchange" of the document.

If the JCPOA were an international treaty under the 1969 Vienna Convention on the Law of Treaties, it would be necessary under the Iranian Constitutional Law to approve it first by the Islamic Consultative Assembly. If it had been in non-contradiction with the Islamic Shari'a Law and the Iranian constitution, the guardian council would present it under Article 125 of the Iranian constitution to the president to be approved and signed. However, the JCPOA did not pass the approval stage in the Islamic Consultative Assembly, nor is the Iranian nuclear a primary issue within the scope of the Assembly's responsibilities, and at the same time, the Legal Affairs team of the president stressed that this text (JCPOA) is not a treaty. From this point of view, the constitution does not require the parliament's approval for this document. Nevertheless, before the approval of the JCPOA in Vienna, the Islamic Consultative Assembly, by passing laws that had also been approved by the Guardian Council, absolved itself of dealing with JCPOA and left it to the Supreme National Security Council. However, the Supreme Leader, Ali Khamenei, based on a long-standing distrust of the United States, ordered the work of ratification of this agreement paralleled it in the national parliament, in the National High-Security Council.

The Supreme Leader's agreement regarding the review of JCPOA by the Islamic Consultative Assembly was from the perspective of the implementation of Article 71 of the Constitution (centrality and being in charge of the Assembly's affairs). For this reason, the JCPOA signed in July 2015 in Vienna, despite the specialized and detailed discussions in the Foreign Policy and National Security Commission of the Islamic Consultative Assembly, was not presented to the parliamentary members for approval. Similarly, the other parties did not seek their parliaments' approval, which confirms their interpretation as the exclusion from the scope of the 1969 law of treaties. US officials formally and in hearings as well as in their correspondence, defined the JCPOA agreement as a set of political commitments. China and Russia only looked at the JCPOA agreement from the Security Council's perspective and did not consider it an international treaty. The European Union considers this document as a political agreement as well. It is crucial to consider the domestic law of the other Contracting Parties in this document since, in essence, the parties' intentions to an international agreement play a decisive role in determining the nature of that agreement. None of the UN Security Council parties has commented on the legally binding and international liability for violations of the JCPOA agreement. Moreover, the Islamic Republic of Iran's political statement, which was registered as a document of the Security Council during the ratification of Resolution 2231, indicates that the JCPOA document is part of a political package of promises and agreements that have been accepted in a political process. Paragraph 5 of the Iranian Political Statement states that the Islamic Republic of Iran emphasizes that these commitments were voluntary and their implementation would be subject to the other party's good faith. As a result, the parties' intention in the Comprehensive Joint Action Plan, or JCPOA, is that this document contains a comprehensive political agreement guaranteeing political implementation. Of course, the same guarantee of political performance based on the relative trust formed between the parties led to the issuance of a Security Council resolution to repeal the other six resolutions issued against Iran and the lifting of unilateral US sanctions by President Obama and the lifting of EU sanctions.

## **Part II: JCPOA in execution**

After the finalization of the JCPOA document, it was time to implement it. The fundamental principle was that the main parties to this document (the Islamic Republic of Iran and the United States) were historically distrustful of each other. The atmosphere of distrust in the current relations between the Islamic Republic of Iran and the other parties has caused both sides to move cautiously, and in this regard, the level of caution and distrust of the Iranian side towards the West's movements, of course, was higher. The UN Security Council took the first step towards building relative trust between those around the JCPOA. By approving Resolution 2231, the Council sought to increase the guarantee of implementing this document from the Council's charter powers' perspective while reiterating the governments' commitment to cooperate on the JCPOA document.

### **The JCPOA and the UN Security Council**

In line with its "primary competence" to maintain international peace and security, the Security Council has committed States to resolve their differences peacefully. Thus, under Article 33 of the Charter, states are committed to the non-violation of international peace and security and their parties to resolve their disputes through negotiation, mediation, compromise, arbitration, litigation, and recourse. It also interacts with regional institutions or arrangements or other peaceful means, actions that all require a minimum of cooperation. For this reason, the Security Council has committed States to cooperate on several issues, including Resolution 638 (1989) on hostage-taking and Resolution 1653 (2006) on the Great Lakes of Uganda, Burundi, and Rwanda. Nuclear issues and challenges of the past and present of the Islamic Republic of Iran with the International Atomic Energy Agency has involved the Security Council by determining whether Iran is a threat to international peace and security. The result of the UN Security Council's unjustified entry into the Islamic Republic of Iran's nuclear issue was the imposition of several resolutions under Chapter VII of the Security Council against Iran. What is essential in these resolutions, regardless of their binding nature, is the generalization of the resolutions' requirements to all governments. Addressing "the entire international community," including member states, non-member states, international organizations, and in some cases, individuals and non-governmental organizations, these resolutions emphasize the need for strict implementation of the declaratory arrangements. In Resolution 1696(2006), in paragraph 5, the Security Council strongly urges all States to take some appropriate measures against Iran. The Security Council's emphasis on "all States" is based on the consent of the United Nations members to Article 25 of the Charter to implement all Security Council resolutions in the field of international peace and security. In the meantime, even non-UN governments are unable to exempt themselves from the obligation to implement Security Council decisions. (Paragraph 6 of Article 2 of the Charter of the United Nations). Resolution 1737 (2006) of the Security Council, in paragraphs 3, 4, 6, 12, and 19, provides explicit instructions to "all states." These guidelines range from a ban on the supply of various items exported directly or indirectly from different territories to Iran to restrict oil and banking activities. Security Council Resolution 1747 (2007), in the introduction and paragraphs 2, 6, 7 and 8, Resolution 18032 (2008), Paragraphs 1, 11, 10, 9, 8, 5, 3, 13, 17 and finally, in the 1929 Constitution (0201), in paragraphs 22, 21,

20, 18, 17, 16, 15, 14, 8, 23, 31, 30, 24 and 35, required "all States" to impose sanctions against The Islamic Republic of Iran. Whether the Security Council acted beyond its remit in the resolutions mentioned above is a matter of debate among the authors of international law under the heading "Intrinsic Jurisdiction and Provincial Jurisdiction" of the Security Council. Following the UN Security Council's signing, the United Nations Security Council adopted Resolution 2231 on July 29, 2015, during its 7488th session. What sets this resolution apart from the previous six resolutions is its unique innovation by the Security Council to showcase the JCPOA negotiating powers' achievements. What is the legal status of committing all governments to cooperate with the Islamic Republic of Iran? This is a crucial question in the evaluation of Resolution 2231 and the legal nature of the JCPOA document. Security Council Resolution 2231 (2015) on Iran's agreements with the P5+1 is significant. Recalling previous resolutions on Iran, the Council encouraged member states to "cooperate" with Iran in implementing the UN Security Council in paragraph 11 of its preamble. Under paragraph 14 of the preamble, the importance of the member states' commitment to implement Security Council resolutions of Article 25 of the Charter is stressed. This is an important point, as first of all, while, as noted earlier, the tone of previous Security Council resolutions on Iran was the general-purpose and application of the "All States," in the present resolution, the Security Council used only the words "member states" and not "all states." The difference is apparent from paragraph 2 of Article 2 of the Charter, which extends certain specific obligations from States Parties to non-members of the United Nations. The second point is that the emphasis of Resolution 2231 is on the legal basis of governments' obedience to the Security Council's decisions, which is mentioned in the fourteenth paragraph of the introduction, specifying Article 25 of the Charter. However, in previous resolutions on Iran, the Security Council did not reference this article or the obligations of governments, since it referred to the duties and responsibilities of governments in specific actions against Iran. What sets this resolution apart from the previous six resolutions is a unique innovation presented by the Security Council.

This innovation has two aspects:

- UN Security Council Resolution 2231, recalling all six previous resolutions, declared the expiration of all of them and called on all States to comply with this resolution's provisions under Article 25 of the United Nations Charter.
- Welcoming the JCPOA urged all contracting members to implement and agree to this Agreement in good faith and sincerity.

This resolution informs governments that, as in previous resolutions on Iran, all states were required to take some restrictive action against Iran, and according to this resolution, the Security Council considers all member states "committed to cooperating with Iran to implement the UN Security Council" and committed to "eliminating" previous actions. In other words, in Resolution 2231, the Security Council prohibited the governments' previous mandatory measures against Iran. In Article 1 of its resolution, the Council "approves the JCPOA and calls for its full implementation following the schedule outlined in the agreement." Article 2 also calls on all governments, regional and international organizations to take appropriate measures to support the JCPOA. With all the stress on the cooperation and

commitment by the UN security Council, the United States still imposed sanctions and extended the previous ones.

## Conclusion

A legal and impartial assessment of Iran's action in the missile test and the US response to the implementation of new sanctions in the post-conflict period reveals the following points:

The JCPOA agreement was exclusively about Iran's nuclear activities, and the rights and obligations of the JCPOA parties outside of nuclear issues have no basis in the agreement. The JCPOA was a multilateral political agreement, and depending on the intentions of the agreement's parties, this document does not fall within the framework of international treaties. Therefore, its parties can not merely claim a breach of the other party's obligation, citing the mutual breach (Article 60 of the Convention on the Law of Treaties, 1969), allowed to take reciprocal action in violation of the agreement, and in this case, it is necessary to rely only on the mechanism provided in JCOPA agreement itself. UN Security Council Resolution 2231, as a guarantee of the implementation of the JCPOA, while fully endorsing the UN Security Council and emphasizing the need for its implementation, called on all parties to this document to adhere to their obligations and implement them while all previous sanctions under Chapter VII of the UN Charter should have been repealed. The US government's recent efforts to weaken the JCPOA and impose new sanctions on some Iranian companies and individuals violate its obligations and the Security Council Resolution 2231, which required its full implementation on schedule.

In addition, given the explicit and unconditional approval of the JCPOA by the Security Council, it is necessary to consider and ultimately decide on any allegations of violations of the JCPOA within the framework of the mechanism envisaged in this document. Articles 36 and 37 of the JCPOA include mechanisms for reviewing and deciding on the parties' claims regarding possible breaches of the JCPOA obligations. Despite the clarification of the JCPOA and the emphasis of Resolution 2231, the United States, in a hasty and unaccounted decision, adhered to the Iranian missile test, which was not included in the JCPOA either in form or content. Hence, the new sanctions have violated its obligations. The violation of the JCPOA, under Security Council Resolution 2231, imposes liability on the violating government for its commitment to UN Security Council resolutions. Article 25 of the Charter of the United Nations obliges all United Nations members to cooperate with the Security Council's decisions and, in matters relating to international peace and security, to oblige non-member States to implement the decisions of the Security Council. The implication of this resolution for Article 41 of the Charter, Chapter VII, is that, as all countries had a legal obligation under Article 25 of the Charter in implementing the seven resolutions, they were obliged to end all sanctions against the Islamic Republic of Iran, which they did not. In view of this approach of the Security Council, any sanctioning action against the Islamic Republic of Iran or any decision by the member states of the UN Security Council, which resulted in restrictive measures against the economic and political relations of the Islamic Republic of Iran with the outside world, was contrary to Iran's nuclear issue. Consequently, it was considered as a violation of UN Security Council Resolution 2231.

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