



Withdrawal from the Iran Nuclear Deal: Legal Authorities and Implications

May 17, 2018

President Trump recently [announced](#) that the United States is withdrawing from the Joint Comprehensive Plan of Action (JCPOA) related to Iran’s nuclear program, which is often referred to as the “Iran nuclear deal.” The JCPOA identified a series of “[voluntary measures](#)” in which Iran agreed to impose limits on its nuclear program in exchange for sanctions relief from the “P5+1”—the [five permanent members](#) of the U.N. Security Council (the United States, the United Kingdom, France, Russia, China) plus Germany. As discussed [here](#), the JCPOA called for lifting or easing of three forms of sanctions: (1) U.S. “secondary” sanctions designed to discourage non-U.S.-parties from doing business with Iran; (2) sanctions imposed by the U.N. Security Council; and (3) European Union (EU) sanctions.

In his May 8, 2018 withdrawal announcement and [presidential memorandum](#) issued the same day, the President directed federal agencies to begin to take steps to re-impose the sanctions established under U.S. law that were lifted or waived in order for the United States to meet its commitments in the JCPOA. But some questions remain regarding the legal authorities for the President’s withdrawal and the legal implications of the decision. (For analysis of the foreign policy implications of the withdrawal, see this [CRS Report](#).)

Domestic Legal Authority for Withdrawal

As discussed in this [CRS Report](#) and [seminar](#), the legal framework for withdrawal from an international pact depends on, among other features, the type of pact at issue and whether withdrawal is analyzed under domestic law or international law. Both the [Obama Administration](#) and [Trump Administration](#) treated the JCPOA— an unsigned document that purports to rely on “voluntary measures”—as a nonbinding political commitment rather than a legally binding international agreement. To the extent this understanding of the JCPOA’s legal status is correct, which [some](#) have [debated](#), historical practice (examined [here](#)) suggests that the President has authority under domestic law to withdraw unilaterally from the pact. Moreover, because Congress delegated to the President the power to choose whether to waive the U.S. sanctions that were lifted pursuant to the United States’ commitments in the JCPOA (via the authorities identified [here](#) and [here](#)), the President also has statutory authority to re-impose U.S. sanctions on Iran.

International Legal Authorities Impacted in Withdrawal

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The framework for withdrawal from the JCPOA under international law potentially is more complex. Political commitments are not legally binding between nations, and a party can withdraw at any time without violating international law—although there may be political consequences for doing so. But this general rule is complicated by the fact that the JCPOA was “endorsed by” and incorporated into [U.N. Security Council Resolution 2231 \(2015\)](#). Some [observers](#) and [European officials](#) have [contended](#) that, even if the JCPOA began as a nonbinding pact between the P5+1 and Iran, Resolution 2231 converted its voluntary commitments into legal obligations that are binding under the [U.N. Charter](#).

Under [Articles 25](#) and [48](#) of the U.N. Charter, Member States of the United Nations agree to accept and carry out the “decisions” of the Security Council—meaning that such decisions are binding under international law. The Security Council’s “recommendations,” on the other hand, lack binding effect [according to](#) the International Court of Justice (ICJ), the U.N.’s [principal judicial organ](#). Whether a provision is understood as a nonbinding *recommendation* or a binding *decision* depends on the precise language of the resolution.

In Resolution 2231, it seems clear that the Security Council intended the provisions that lifted U.N.-based sanctions to be legally binding (for the reasons discussed [here](#)). But whether Resolution 2231 creates an obligation under international law for the United States to withhold its domestic secondary sanctions or to comply with the JCPOA more broadly is more difficult to resolve. Resolution 2231 “[c]alls upon all Members States . . . to take such actions as may be appropriate to support the implementation of the JCPOA, including by . . . refraining from actions that undermine implementation of commitments under the JCPOA[.]” While this provision arguably seeks general compliance with the JCPOA, [some](#) commentators [interpret](#) the phrase “calls upon” as a [hortatory](#), nonbinding expression in Security Council parlance. [Others](#) argue that the phrase can create an obligation under international law to comply. And a third group [falls in between](#), describing the phrase as [purposefully ambiguous](#) or dependent on its context.

In a [1971 advisory opinion](#), the ICJ [concluded](#) that a [provision](#) in a Security Council resolution that “[c]all[ed] upon all States . . . to refrain from any dealings with the Government of South Africa” was binding under the U.N. Charter. But the ICJ based its conclusion on the [historical context](#) of the provision rather than on a categorical interpretation of the operative language. Since the ICJ’s opinion, U.N. Member States have ascribed [varying levels of significance](#) to the phrase “calls upon” in subsequent Security Council resolutions. Consequently, there is no clear answer to whether Resolution 2231 creates an obligation to comply with the JCPOA that is binding as a matter of international law.

Legal Implications of Withdrawal and Potential Conflict of Laws

As detailed in this [CRS Report](#), the Trump Administration has not stated that it intends to utilize the JCPOA’s so-called “[snapback](#)” provisions that [would re-apply](#) sanctions imposed by the U.N. Security Council. But the United States will re-impose the U.S. secondary sanctions lifted pursuant to the commitments in the JCPOA under a [90-to-180-day wind-down period](#). While secondary sanctions are based in U.S. law, the penalties they impose are directed toward non-U.S. parties for conduct involving Iran that occurs outside of the United States’ territorial jurisdiction. Although the other nations in the P5+1 [have stated](#) that they will remain part of the JCPOA and continue to abide by Resolution 2231, U.S. secondary sanctions potentially will apply to non-U.S. persons and companies that transact business with Iran from within the jurisdictions of P5+1 nations and elsewhere. This dynamic has led to [renewed discussion](#) over potential conflict of laws arising from the extraterritorial application of U.S. sanctions.

When the United States’ European allies have resisted extraterritorial application of U.S. secondary sanctions in the past, the disputes often have been resolved through international negotiations rather than in a judicial forum or other mandatory dispute resolution setting. For example, in 1982, European nations claimed that U.S. export regulations that were designed, in part, to block construction of a gas pipeline from Siberia to Western Europe, were “[unacceptable under international law because of their extraterritorial aspects](#).” The United States [withdrew](#) the regulations later that year.

In 1996, the European Union (EU) adopted a so-called “blocking regulation”—[Council Regulation 2271/96](#)—in response to secondary sanctions and other extraterritorial provisions imposed by, among other U.S. laws, the [Cuban Liberty and Democratic Solidarity \(LIBERTAD\) Act](#) (also known as the Helms-Burton Act) and [Iran and Libya Sanctions Act of 1996](#). Under the blocking regulation, EU entities are prohibited from complying with the extraterritorial provisions of the listed U.S. laws, and EU courts cannot enforce judgments based on those laws. The EU also instituted a [formal diplomatic protest](#) and [initiated](#) dispute resolution proceedings at the [World Trade Organization](#) (WTO) in 1996, claiming that provisions in the Helms-Burton Act violated the General Agreement on Tariffs and Trade 1994 ([GATT 1994](#)) and the General Agreement on Trade in Services ([GATS](#)). Although the United States did not participate in the WTO proceedings, arguing the dispute fell within the [national security exception](#) to the WTO’s jurisdiction, it eventually resolved the matter through a 1997 [memorandum of understanding](#) (MOU) with the EU. In that MOU, the United States made non-binding commitments to waive certain extraterritorial provisions in dispute in exchange for suspension of the WTO proceedings and the EU’s commitment to promote democracy in Cuba, among other pledges.

Whether similar disputes arise from the re-imposition of U.S. secondary sanctions on those doing business with Iran likely will depend on the actions of U.S. officials in effectuating the U.S. exit from the JCPOA and the response of the EU. Moreover, Congress has broad power to enact legislation related to international sanctions through its authority to “[regulate commerce with foreign nations](#)” and other constitutional powers. Accordingly, Congress could play a role in defining the reach of U.S. sanctions and responding to potential foreign efforts to block U.S. secondary sanctions.

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