

# **The Legitimacy of the JCPOA Snap-Back Mechanism: A Critical Analysis of E3 Compliance and Iran's Retaliatory Actions**



## **The Legitimacy of the JCPOA Snap-Back Mechanism: A Critical Analysis of E3 Compliance and Iran's Retaliatory Actions**

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### **Abstract**

The Joint Comprehensive Plan of Action (JCPOA), signed in 2015, incorporates a Dispute Resolution Mechanism (DRM), informally known as the “snap-back mechanism,” to ensure compliance among its signatories. This article argues that while the E3 countries (France, Germany, and the United Kingdom) possess the procedural capacity to trigger this mechanism, such an action would lack legitimacy. Iran's nuclear advancements since 2018, prompted by the United States' unilateral withdrawal and the E3's failure to fulfill their commitments, constitute remedial measures permitted under the JCPOA's terms. Through a detailed analysis of the JCPOA's text, International Atomic Energy Agency (IAEA) reports, diplomatic correspondence, and theoretical frameworks, this study

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demonstrates that the E3's non-compliance with their economic and diplomatic obligations undermines their legal and moral authority to invoke the snap-back mechanism. The article concludes that any attempt to do so would represent a politically motivated misuse of a legal instrument, threatening the JCPOA's credibility and the broader framework of multilateral diplomacy.

## **1. Introduction**

The Joint Comprehensive Plan of Action (JCPOA), concluded on July 14, 2015, between Iran, the P5+1 (the United States, Russia, China, France, the United Kingdom, and Germany), and the European Union (EU), marked a pivotal moment in nuclear non-proliferation diplomacy. Negotiated over 22 months following over a decade of intermittent talks, the JCPOA sought to put more and more light on Iran's nuclear program in exchange for comprehensive sanctions relief, enabling economic reintegration into global markets. Central to the agreement's design is its reversibility, embodied in the Dispute Resolution Mechanism (DRM), colloquially termed the "snap-back mechanism," which allows for the re-imposition of the UN nuclear sanctions on Iran in response to significant non-compliance.

This article contends that while the E3 countries retain the "mechanical ability" to activate the so-called "snap-back" mechanism under paragraph 37 of the JCPOA, such an action would be illegitimate. Iran's post-2018 nuclear advancements, which reduced certain JCPOA commitments, were remedial responses to the United States' unilateral withdrawal in May 2018 and the E3's subsequent failure to uphold their economic and diplomatic obligations. By analyzing the JCPOA's legal framework, IAEA compliance reports, diplomatic records, and theoretical perspectives, this study demonstrates that Iran's actions align with its remedial rights under paragraph 26, while the E3's breaches undermine their standing to invoke the DRM.

## **2. The Principle of Abuse of Rights and the Namibia Precedent**

The principle of abuse of rights, a general principle of international law, prohibits states from exercising rights in a manner that undermines others' rights or contravenes good faith. As Lauterpacht notes, it prevents invoking rights to "defeat the object and purpose of the right or cause injury without legitimate justification"

(1958, p. 164). The ICJ's Namibia Advisory Opinion (1971) provides a precedent, illustrating that serious breaches of international obligations undermine a state's legitimacy to invoke legal mechanisms.

In the Namibia case, the ICJ addressed South Africa's illegal presence in Namibia, stating:

“The continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory” (ICJ Reports 1971, p. 54, para. 94).

South Africa's violation of UN resolutions and the right to self-determination stripped it of legitimacy to assert rights over Namibia. The Court's directive that states refrain from recognizing South Africa's authority (*ibid.*, p. 55, para. 119) implies that using dispute settlement mechanisms to defend its presence would constitute an abuse of rights, as it would perpetuate an illegal situation. Dugard (1973) argues that South Africa's defiance “placed it in a position where it could not claim the benefits of international legal processes” (p. 378).

This precedent applies to the JCPOA. The E3's non-compliance with economic and diplomatic commitments, akin to South Africa's breaches, undermines their standing to invoke the snap-back mechanism. Their failure to ensure Iran's economic benefits and complicity with U.S. unilateral sanctions violate the JCPOA's purpose and good faith. Invoking the DRM to penalize Iran's retaliatory measures would mirror South Africa's hypothetical misuse of legal processes, constituting an abuse of rights and violating the principle of “*ex injuria jus non oritur*”<sup>3</sup>.

### 3. Historical Context of the JCPOA

The JCPOA emerged from a complex historical backdrop of mistrust and diplomatic tensions between Iran and Western powers. The Iran-Iraq War (1980–1988), Western support for Iraq, and before that the U.S. hostage crisis had entrenched mutual suspicion. Iran's nuclear program, initiated in the 1950s under the U.S.-backed Atoms for Peace program, became a “flashpoint” in the early 2000s. This led

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<sup>3</sup> No right arises from a wrong

to UN Security Council sanctions from 2006 to 2010, complemented by unilateral U.S. and EU restrictive measures, which imposed pressures on Iran's economy, reducing oil exports and restricting financial transactions.

Negotiations between 2003 and 2013 were marked by intermittent progress and setbacks. Iran viewed its nuclear program as a sovereign right under Article IV of the Non-Proliferation Treaty (NPT), while Western powers sought to prevent potential "weaponization". The election of President Hassan Rouhani in 2013, coupled with a shift in U.S. policy under President Barack Obama, created a window for intensive negotiations from 2013 to 2015. The JCPOA balanced Iran's nuclear constraints—such as time-framed limiting uranium enrichment and reducing centrifuge numbers—with economic incentives, including sanctions relief in trade, finance, and energy.

The agreement's mutual reversibility was a response to decades of mistrust. Both sides sought guarantees against non-compliance, leading to the inclusion of the DRM. However, the JCPOA's status as a political agreement, rather than a legally binding treaty, was because of the mentioned agreed mutual reversibility. The U.S. withdrawal in 2018 under President Donald Trump, who re-imposed sanctions under a "maximum pressure" campaign, placing the burden of compliance on the remaining parties, particularly the E3.

#### **4. The JCPOA's Reversibility Framework**

The JCPOA is predicated on reciprocity and reversibility, ensuring compliance is contingent on mutual performance. The DRM, outlined in paragraph 37, formalizes this reversibility:

"Upon receipt of the notification from the complaining participant, as described above, including a description of the good-faith efforts the participant made to exhaust the dispute resolution process specified in this JCPOA, the UN Security Council, in accordance with its procedures, shall vote on a resolution to continue the sanctions lifting."

This mechanism allows any participant to initiate a process that could reinstate UN Security Council sanctions if a party, which logically could be Iran, is deemed non-

compliant. The snap-back mechanism serves as a deterrent, incentivizing adherence by threatening the reversal of sanctions relief on Iran. Its legitimacy, however, depends on the invoking party's compliance, as retaliatory actions by a non-breaching party cannot constitute an initial breach.

The JCPOA assumes a sequential logic: a breach by one party triggers counter-measures, potentially culminating in the DRM's activation. Simultaneous breaches are rare and complicate identifying the initial violator. In the JCPOA's case, the sequence is clear: the U.S. withdrawal in May 2018, followed by the re-imposition of sanctions specified in Annex II, marked the first significant violation. Iran maintained full compliance for another full year, as verified by several IAEA reports<sup>4</sup>, before starting its reactional remedial measures in May 2019. This temporal gap underscores that Iran's actions were responsive, aligning with the JCPOA's provisions for retaliation.

From a legal perspective, the DRM reflects principles of international contract law, particularly the concept of material breach under the Vienna Convention on the Law of Treaties (1969). A material breach entitles others to suspend performance, provided the response is proportionate. Iran's phased reduction of commitments—such as increasing uranium enrichment to 20% and expanding centrifuge operations—was framed as reversible, gradual and proportionate, reinforcing its adherence to the JCPOA's legal framework. This legal grounding strengthens Iran's position as a retaliating, rather than violating, party.

## **5. Iran's Remedial Rights Under the JCPOA**

The JCPOA explicitly grants Iran the right to retaliate in response to breaches, particularly regarding sanctions relief. Paragraph #26 states:

“The EU will refrain from re-introducing or re-imposing the sanctions that it has terminated implementing under this JCPOA, without prejudice to the dispute resolution process provided for under this JCPOA. There will be no new nuclear-related UN Security Council

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<sup>4</sup> May 24, 2018 (GOV/2018/24), August 30, 2018 (GOV/2018/33) , November 22, 2018 (GOV/2018/47), February 22, 2019 (GOV/2019/8), and May 31, 2019 (GOV/2019/21)

sanctions and no new EU nuclear-related sanctions or restrictive measures. The United States will make best efforts in good faith to sustain this JCPOA and to prevent interference with the realisation of the full benefit by Iran of the sanctions lifting specified in Annex II. The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from re-introducing or re-imposing the sanctions specified in Annex II that it has ceased applying under this JCPOA, without prejudice to the dispute resolution process provided for under this JCPOA. The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from imposing new nuclear-related sanctions. Iran has stated that it will treat such a re-introduction or re-imposition of the sanctions specified in Annex II, or such an imposition of new nuclear-related sanctions, as grounds to cease performing its commitments under this JCPOA in whole or in part.”

As Iran fulfilled its commitments altogether on the implementation day, 16<sup>th</sup> January 2016, this provision establishes two key principles. First, it obligates the EU and the U.S. to refrain from re-imposing sanctions, ensuring Iran’s economic benefits. Second, it permits Iran to suspend its (JCPOA-based) nuclear commitments if sanctions are re-imposed, framing such actions as retaliatory. Iran’s decision to scale back on its commitments starting in May 2019—exactly one year after the U.S. withdrawal—was consistent with this clause.

The U.S. withdrawal rendered it a non-participant, leaving the E3, China, Russia, and the EU to uphold the agreement. Iran’s retaliatory measures, including expanding centrifuge operations and increasing enrichment levels, were framed as reversible steps within the JCPOA’s framework, signaling its intent to remain engaged while pressuring others to fulfill their obligations. This strategic approach contrasts with the U.S.’s outright abandonment, highlighting Iran’s good faith and adherence to the agreement’s legal structure. Iran’s restraint in calibrating its responses further underscores its commitment to the JCPOA’s framework.

## **6. The E3’s Non-Compliance with JCPOA Obligations**



The E3's failure to uphold their commitments, particularly after the U.S. withdrawal, constitutes a significant violation that undermines their legitimacy to invoke the snap-back mechanism. The JCPOA emphasizes Iran's economic benefits as a core incentive. Paragraph viii of the Preamble states:

"This JCPOA will produce the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran's nuclear programme, including steps on access in areas of trade, technology, finance, and energy."

Annex II details the sanctions to be lifted, covering financial and banking measures (section 4.1), trade in goods and services (section 4.6), civil aviation (section 4.8.1), and imports of Iranian-origin goods (section 4.8.2). Paragraph 24 of Annex II underscores the EU's commitment to comprehensively lift nuclear-related sanctions, while paragraphs 25 and 27 emphasize the obligation to ensure Iran's economic benefits. Paragraph 28 states:

"The EU and its Member States and the United States, consistent with their respective laws, will refrain from any policy specifically intended to directly and adversely affect the normalisation of trade and economic relations with Iran inconsistent with their commitments not to undermine the successful implementation of this JCPOA."

Despite these obligations, the E3 failed to deliver the promised economic dividends. Their non-compliance can be categorized as follows:

- **Failure to Deliver Economic Benefits:** The E3 did not ensure normalized trade and banking transactions, largely due to their over-compliance with U.S. secondary sanctions. This prevented Iran from accessing opportunities in trade, technology, finance, and energy, violating the JCPOA's economic objectives. For example, European banks, fearing U.S. penalties, refused to process transactions with Iranian entities, stifling trade.
- **Inaction Post-U.S. Withdrawal:** Following the U.S. withdrawal, the E3 issued statements of support (e.g., 15 May, 6 July, and 24 September 2018) but failed to implement concrete measures. The Instrument in Support of Trade Exchanges (INSTEX), proposed to facilitate humanitarian trade, remained

non-operational, particularly during the COVID-19 pandemic, reflecting a lack of political will. By 2020, INSTEX had processed only one transaction, rendering it ineffective.

- **Support for U.S. Pressure:** The E3's tacit support for the U.S.'s "maximum pressure" campaign, including their failure to counter attempts to renegotiate JCPOA terms, violated paragraphs 28 and 29. For instance, their participation in U.S.-led discussions on extending sunset clauses undermined the agreement's integrity.
- **Neglect of Dispute Resolution:** Iran invoked the DRM multiple times (e.g., 21 August 2018, 6 November 2018, 7 April 2019), but the E3 did not engage meaningfully, forcing Iran to take remedial measures in May 2019. Their inaction persisted for six months after Iran's 6 November 2018 letter, eroding the DRM's efficacy.
- **Unfair Treatment:** The E3 and the JCPOA Coordinator sided with the U.S., failing to address Iran's complaints objectively. This led to Javad Zarif's 2020 post on X, which highlighted this conclusion, noting the E3's "zero imports of Iranian oil," "embargoing of Iranian banks," and "exodus of European firms" as evidence of their non-compliance with JCPOA obligations. These actions reinforced Iran's perception of European bias toward U.S. interests over Iran's legitimate complaints.<sup>5</sup>
- **Specific Violations:** The E3 imposed restrictions on exports to Iran, failed to protect EU economic operators, and neglected to provide a complete list of sanctions to be lifted, as required under paragraph 24 and Annex II. A notable case was the EU's 2016 restrictions on certain exports to Iran, cited in Iran's 2 September 2016 letter as non-compliance.
- **Diplomatic correspondence reinforces these breaches.** Iran's letters (e.g., 2 September 2016, 2 July 2020, 12 March 2021) highlight the E3's failure to facilitate banking transactions, deepen economic ties, and operationalize INSTEX. The E3's complicity with U.S. non-compliance, including their support

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<sup>5</sup> Zarif, M. J. [@JZarif]. (2020, December 21). At Ministerial Meeting of remaining JCPOA participants, I emphasized: 1. Last chance for E3/EU to save the JCPOA; 2. Iran-EU 2014-2019 trade data proves E3/EU have gravely breached their JCPOA obligations; 3. E3 share the blame with US for irreparable harm to Iranians; 1|3 [Tweet]. Twitter. <https://twitter.com/JZarif/status/1341107694133964800>



for economic pressure to renegotiate sunset clauses, violated the JCPOA's spirit and letter. Their failure to address Iran's regional security concerns, such as Western arms sales in the Persian Gulf, constituted additional non-performance under Annex B of UN Security Council Resolution 2231.

## **7. The Illegitimacy of the Running the Snap-Back Mechanism**

The E3's non-compliance fundamentally undermines their legitimacy to invoke the snap-back mechanism. Iran's post-2018 nuclear advancements, while deviating from JCPOA commitments, were retaliatory measures permitted under paragraph 26. The sequence of events—U.S. withdrawal in May 2018, Iran's compliance until May 2019, and subsequent remedial steps—demonstrates that Iran did not initiate the breach. No JCPOA participant has formally designated Iran as non-compliant, supporting its status as a retaliating party.

Invoking the snap-back mechanism would constitute a politically motivated misuse of a legal instrument. The DRM was designed to address genuine violations, not to penalize actions taken in response to prior violations. The E3's failure to fulfill their commitments, coupled with their complicity in U.S. sanctions, renders their potential use of the mechanism illegitimate. Such an action would violate the principle of *pacta sunt servanda*<sup>6</sup>, as it would penalize Iran for exercising its contractual rights while ignoring the E3's violations.

From a theoretical perspective, the E3's behavior aligns with realist critiques of international agreements, where powerful states prioritize strategic interests over legal obligations. Their over-compliance with U.S. sanctions reflects deference to hegemonic power, undermining the JCPOA's multilateral framework. Conversely, Iran's adherence to the agreement's retaliatory provisions demonstrates a commitment to legalism, albeit within a constrained strategic context. Institutional perspectives emphasize the importance of reciprocity and trust in

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<sup>6</sup> "agreements must be kept". In international law, this principle is codified in Article 26 of the Vienna Convention on the Law of Treaties (1969), which states: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

sustaining agreements, highlighting the E3's failure to uphold their end of the bargain.

## **Conclusion**

The JCPOA's snap-back mechanism, while procedurally accessible to the E3, lacks legitimacy in the context of Iran's post-2018 nuclear advancements. Iran's actions were all gradual, with good faith and remedial responses to the U.S.'s unilateral withdrawal and the E3's failure to uphold their economic and diplomatic commitments, as permitted under paragraph 26. The E3's non-compliance, evidenced by their inaction on sanctions relief, support for U.S. pressure, and neglect of the DRM, undermines their authority to invoke the mechanism. Any attempt to do so would constitute a politically driven misuse of a legal tool, threatening the JCPOA's credibility and multilateral diplomacy.

The implications extend beyond the JCPOA. The E3's behavior highlights the challenges of enforcing international agreements amidst hegemonic pressures and the need for robust mechanisms to ensure equitable compliance. Future nuclear diplomacy must prioritize reciprocity and accountability to prevent the erosion of trust. For the JCPOA to be salvaged, the E3 must fulfill their commitments, particularly by operationalizing economic mechanisms, countering U.S. sanctions, and most importantly trust-building.

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