The UN Must Have No Say On U.S. Sanctions Against Iran

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United Nations Special Rapporteur Idriss Jazairy sharply criticized the Trump administration’s decision to reimpose sanctions against Iran after the withdrawal of the United States from the Iran nuclear deal known as the Joint Comprehensive Plan of Action (“JCPOA”). “The reimposition of sanctions against Iran after the unilateral withdrawal of the United States from the Iran nuclear deal, which had been unanimously adopted by the Security Council with the support of the US itself, lays bare the illegitimacy of this action,” Mr. Jazairy charged. “This illegitimacy was confirmed by the opposition of all other permanent members of the Security Council and indeed of all international partners. The UN Charter calls for sanctions to be applied only by the UN Security Council precisely to ensure such wanton attacks on nations are avoided.”

The JCPOA is not a legally binding treaty. The Obama State Department admitted as much in 2015, in a letter released by then-Representative Mike Pompeo (now the Secretary of State in the Trump administration):

“The Joint Comprehensive Plan of Action (JCPOA) is not a treaty or an executive agreement, and is not a signed document. The JCPOA reflects political commitments between Iran, the P5+1 (the United States, the United Kingdom, France, Germany, Russia, China) and the European Union…The success of the JCPOA will depend not on whether it is legally binding or signed, but rather on the extensive verification measures we have put in place, as well as Iran’s understanding that we have the capacity to re-impose – and ramp up – our sanctions if Iran does not meet its commitments.”

Just last January, the spokesman for the Atomic Energy Organization of Iran proclaimed that his country will never permit the inspection of Iranian military sites by the International Atomic Energy Agency (IAEA). Thus, the IAEA must rely on Iran for self-inspection of the most problematic sites that the regime does not want the IAEA to inspect freely on its own. IAEA inspectors have avoided examining military sites it knows exists and has no reliable way of tracking undeclared sites. The Trump administration has every right to determine that the U.S. national interest would not be served by remaining a party to the JCPOA charade lacking effective verification mechanisms, whatever UN bureaucrats or other UN member states may think.

The United Nations Security Council Resolution 2231 to which Mr. Jazary referred endorsed the JCPOA. While purporting to magically make the JCPOA binding as a matter of international law via such endorsement, which is doubtful in itself, the Security Counsel also called upon Iran “not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons.” The intent to shut down any activity by the Iranian regime related to such ballistic missiles, and its intrinsic connection to the nuclear deal itself endorsed by the same resolution, is clear. Nevertheless, the Security Council failed to take any steps to enforce its own resolution against the Iranian regime’s ballistic missile program. Resolution 2231 did not require the United States to lift domestic sanctions imposed on the Iranian regime relating to the regime’s ballistic missile program, egregious human rights abuses or state sponsorship of terrorism. Nor did the resolution prohibit the United States from re-imposing previously lifted domestic sanctions on those same grounds, which are outside the scope of the JCPOA. In any case, the notion that the United States must stay in the JCPOA because the Security Counsel endorsed it while Iran is free to flout the very same resolution is absurd on its face.

Mr. Jazairy’s assertion that only the Security Council has the authority to impose sanctions is wrong. There is nothing in the UN Charter that gives such exclusive power to the Security Council or to any other UN body. The Security Council has “primary” responsibility under Article 24 of the UN Charter to act on behalf of the member states to try to maintain international peace and security. However, the member states do not lose their own sovereign powers to act, particularly after they have given the Security Council ample opportunity to enforce its own resolutions. The Security Council has failed to hold the Iranian regime to account for violating the terms of the very same Security Council resolution that endorsed the JCPOA. The UN Charter does not—and indeed cannot—take away the sovereign right of each member state to make the ultimate decision as to how to defend its own citizens. The Iranian regime’s continued development and testing of increasingly longer range ballistic missiles capable of carrying nuclear weapons represents a potential threat to the security of the American people, as North Korea’s unchecked and more advanced intercontinental ballistic program has demonstrated. Nowhere does the UN Charter compel a member state to get permission from the Security Council before making the sovereign decision to impose or re-impose under its domestic laws economic sanctions in its own national security interest.

The Iranian regime recently brought suit against the United States at the International Court of Justice (ICJ), the UN’s principal judicial body, over the Trump administration’s sanctions decision, relying of all things on the 1955 Treaty of Amity, Economic Relations and Consular Rights. Iran is asking the ICJ to order a lifting of the sanctions immediately, pending a full-blown hearing of its case. The Trump administration told the ICJ judges in effect to butt out, arguing that the ICJ does not have jurisdiction to hear the case. The United States has the right to protect its national security against a hostile regime that has not abided by a treaty put into effect years before the Islamic revolution when the United States and Iran truly had an amicable relationship.

“Iran is committed to the rule of law in the face of U.S. contempt for diplomacy and legal obligations,” Iranian Foreign Minister Mohammad Javad Zarif shamelessly declared. Iran apparently was not so concerned about “amity” and “consular rights” when its Supreme Leader Ayatollah Khomeini proclaimed back in 1979 the Iranian state’s endorsement of both the seizure of the U.S. embassy in Tehran and the detention of hostages by the regime’s supporters. The regime rejected the ICJ’s judgment against it, claiming that the ICJ had no jurisdiction over the matter. It refused to take responsibility for directly compensating the hostages for physical and emotional harm inflicted on them during their captivity. Now the Iranian regime is seeking redress from the same UN international court it had once so cavalierly spurned and is relying on the same treaty that it has so violently breached.

If the International Court of Justice were so foolish as to side with the lawless Iranian regime, the Trump administration should simply ignore the court’s ruling. Similarly, it should ignore the United Nations Special Rapporteur Jazairy’s unfounded criticisms of its sanctions decisions. It is time to retire the romantic fiction that the United Nations is the only claimant to multilateral “legitimacy.” Nor can we expect that a dictatorial regime such as the Iranian Islamist theocracy will ever adhere to the mutual rules-based, verifiable commitments necessary to form a durable multilateral agreement, whether or not the UN endorsed it such as it did with the JCPOA. The Iranian regime’s real objective at every turn is to game the system. The Trump administration has taken the first steps to move away from being overly entangled in the UN’s flawed institutions gamed by Iran and to assert U.S. leadership of the free world once again.