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Ending Security Council Resolutions

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ENDING SECURITY COUNCIL RESOLUTIONS

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The Security Council resolution implementing the Iran deal spells out the terms of its own destruction. It contains a provision that allows any one of seven countries to terminate its key components. This provision – which this Comment terms a trigger termination *– is both unusual and important. It is unusual because, up to now, the Security Council has almost always either not specified the conditions under which resolutions terminate or used time-based sunset clauses. It is important not only for the Iran deal, but also as a precedent and a model for the use of trigger terminations in the future. The political and legal dimensions of trigger terminations are striking. As to political dimensions, this Comment shows that by providing for the termination of resolutions, trigger terminations can influence the bargaining surrounding the creation and implementation of resolutions. As to legal dimensions, this Comment analyzes trigger terminations in light of the broader literature on the Security Council's power to delegate authority and defends their legality within wide boundaries. Overall, this Comment argues that trigger terminations hold considerable promise but also some peril for the future.*

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Criticism of the Security Council tends to take one of two forms: first, that it does not act enough; and second, that it acts unwisely. Although these sound like opposite kinds of concerns, they both have partial causal roots in the Security Council's voting process. Article 27 of the United Nations Charter provides that Security Council decisions on non-procedural matters require "an affirmative vote of nine members including the concurring votes of the permanent members."[1] The ability of any of the five permanent members to veto a Security Council resolution makes it difficult both for the Security Council to act in the first place and for the Security Council to pass a corrective resolution when existing resolutions come to be criticized as problematic. Indeed, the difficulty of undoing resolutions can make Security Council members wary about allowing the passage of resolutions in the first place.

The interplay between the creation and termination of Security Council resolutions was a crucial issue in the high-stakes negotiations between China, France, Germany, Russia, the United Kingdom, the United States, the European Union, and Iran during the summer of 2015. A Security Council resolution would be needed to help implement whatever deal was reached, but such a resolution might also lock in certain aspects of the deal in ways that would be difficult to undo if Iran were to breach other aspects of the deal. To address this concern, the negotiators of the Iran deal agreed that the Security Council resolution which would help implement the deal – ultimately Resolution 2231 – would include an unusual provision. This provision is what I will call a *trigger termination*: a clause that authorizes an actor other than the Security Council to terminate all or part of the resolution. The trigger termination in Resolution 2231 effectively allows any one of the seven nations involved in negotiating the Iran deal to terminate key provisions of Resolution 2231 on thirty days notice if that nation believes that another nation is not substantially complying with its commitments under the deal.[2] Although a process akin to trigger terminations was proposed by David Caron as far back as 1993,[3] up to now

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[1] U.N. Charter art. 27 (as amended Aug. 31, 1965) (further providing that "in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting"). Security Council practice establishes that a resolution passes for purposes of Article 27 if it has at least nine affirmative votes and no vetoes, even if one or more permanent members abstain from voting. *See, e.g.*, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16, 22 (June 21).

[2] *See* S.C. Res. 2231 paras 11-12 (July 20, 2015).

[3] David D. Caron, *The Legitimacy of the Collective Authority of the Security Council*,

the Security Council has almost never employed trigger terminations, and Resolution 2231 appears to be the first to grant termination authority to individual states.[4]

With Resolution 2231 to serve as a precedent and a model, the prospects for trigger terminations in future Security Council resolutions are strengthened. In Part I, I describe Resolution 2231 and argue that we should think about its trigger termination – and trigger terminations more generally – as having three components: an activator, a substantive standard for activation, and the time that it takes the resolution to terminate after activation of the trigger. I then consider the political implications of trigger terminations in Part II and their legal and normative implications in Part III.

Politically, trigger terminations are risk management devices that can facilitate the initial passage of Security Council resolutions. A trigger termination makes the passage of a resolution more appealing to Security Council members who are ambivalent about its desirability or concerned about how it may be implemented. This is because the trigger termination both makes it easier to end the resolution in the future and gives those who can activate the trigger greater bargaining power during the resolution's implementation. In this regard, trigger terminations resemble risk management devices found in other negotiated agreements, such as exit clauses in treaties or "legislative vetoes" in U.S. congressional practice. The degree of risk management provided by the trigger termination will depend on the choice of the activator, the standard, and the time until it takes effect.

The legality of trigger terminations turns on the extent to which the Security Council can delegate the authority to terminate part or all of a resolution. Broadly speaking, I argue that a trigger termination whose activator is another U.N. organ, another international organization, or one or more member states will be lawful if it provides adequate protection against arbitrary activation. This protection could be supplied by the nature of the activator, by the substantive standard, or by some balance between the two. In providing that the trigger termination can be activated by any one of seven states as long as this state "believes" there is significant non-compliance of commitments made in the Iran deal,[5] Resolution 2231 offers such protection against arbitrary activation, though with little room to spare.

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87 AJIL 552, 584-88 (1993); *see also infra* note 31 and accompanying text (discussing differences between Professor Caron's proposal and the approach taken in Resolution 2231).

[4] *See infra* notes **Error! Bookmark not defined.-Error! Bookmark not defined.** and accompanying text.

[5] S.C. Res. 2231 paras 11-12 (July 20, 2015).

Trigger terminations thus can be politically useful and lawful. But are they desirable? My own view is that right now trigger terminations are underused. With more inclusion of trigger terminations, the Security Council could get done and could adjust implementations more easily – and I think these developments would be desirable overall. Yet trigger terminations pose especially difficult questions about the trade-offs between procedural fairness and effectiveness when, as in Resolution 2231, the trigger can be activated by a single state. The importance of the low threshold for trigger termination to the negotiation of the Iran deal seems worth the costs in this particular instance. Going forward, however, to the extent that the Security Council uses trigger terminations, it would do well to use higher thresholds for activation in most instances.

I. RESOLUTION 2231 AND ITS POTENTIAL AS A MODEL

Although some past Security Council resolutions have used sunset provisions, Resolution 2231 is unusual in delegating termination authority to discrete actors.[6] The creativity of this resolution may be related to the process surrounding its negotiation. For the content of Resolution 2231's trigger termination is derivative of the Joint Comprehensive Plan of Action (JCPOA) between the P5 countries, Germany, the European Union, and Iran, which developed not through negotiations under the auspices of the Security Council in New York, but rather through multilateral negotiations in Vienna.[7] In this fresh setting, the JCPOA participants let necessity be the mother of invention.

Broadly speaking, the issue that drove the JCPOA participants to design a trigger termination was one of enforcement. The negotiations with Iran took place against a backdrop of Security Council resolutions passed between 2006 and 2010 that imposed sanctions on Iran and certain non-state actors in response to Iran's efforts to develop a nuclear weapon.[8] The core bargain in the JCPOA was that Iran would cease its efforts to develop a

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[6] By sunset provisions, I mean provisions that limit an operative part of a Security Council resolution to a particular period of time. *See, e.g.*, S.C. Res. 1343 paras 9-10 (Mar. 7, 2001) (setting certain sanctions but subject to a one-year limit); S.C. Res. 954 para. 1 (Nov. 4, 1994) (extending a UN mission in Somalia until a specified date).

[7] *See* JCPOA para. 37 (July 14, 2015), *available at* http://www.state.gov/documents/organization/245317.pdf (describing the trigger termination that would come to be adopted in Resolution 2231). In describing the JCPOA and Resolution 2231, this Comment focuses only on aspects relevant to the issue of trigger terminations and not on their many other complexities.

[8] *See* S.C. Res. 1696 (July 31, 2006); S.C. Res. 1737 (Dec. 23, 2006); S.C. Res. 1747 (Mar. 24, 2007); S.C. Res. 1803 (Mar. 3, 2008); S.C. Res. 1835 (Sept. 27, 2008); S.C. Res. 1929 (June 9, 2010).

nuclear weapon, subject to monitoring, and that in return various sanctions against Iran – including those previously imposed by the Security Council – would be lifted.[9] But what if Iran failed to hold up its end of the bargain? Theoretically, the Security Council could then vote to impose new sanctions, but negotiators for those countries most concerned about Iranian non-compliance could not be sure that, in the future, the votes would be there on the Security Council for the introduction of new sanctions. So the negotiators insisted on a trigger termination that would enable *any one* JCPOA participant to reinstate the earlier sanctions.[10]

Paragraphs 7 to 15 of Resolution 2231 realize this goal. First, in paragraph 7, the resolution provides for the termination of the prior resolutions that impose sanctions, with this termination to occur when the Director General of the International Atomic Energy Agency (IAEA) reports to the Security Council that it has verified certain actions taken by Iran.[11] But then the resolution makes clear that this very provision – this termination of the prior resolutions – can itself be terminated by a trigger. The procedure boils down to the following: if one "JCPOA participant State" notifies the Security Council "of an issue that [it] believes constitutes significant non-performance of commitments under the JCPOA," then within thirty days the old sanction-imposing resolutions are reinstated, unless the Security Council has affirmatively voted otherwise.[12] (Interestingly, this right is given only to a JCPOA participant *state* and therefore does not appear available to the European Union.[13]) As paragraph

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[9] *See* JCPOA, *supra* note 7, at preamble.

[10] *See* JCPOA, *supra* note 7, at paras 36-37. This trigger termination is available for the ten years following the adoption of Resolution 2231. After ten years, Resolution 2231 automatically expires pursuant to a separate sunset provision (provided that the trigger termination has not been invoked in the meantime). If Resolution 2231 expires pursuant to the ten-year sunset provision, then the prior resolutions remain terminated. *See* S.C. Res. 2231 paras 8-9 (July 20, 2015).

[11] *Id.* para. 7. This paragraph is itself akin to a trigger termination in providing for termination to occur upon the receipt of the IAEA report, although at issue in this paragraph is the termination of prior resolutions rather than of Resolution 2231.

[12] *Id.* paras. 11-12. The JCPOA further provides that before notifying the Security Council of perceived significant non-compliance, the JCPOA country should invoke the dispute resolution procedure set forth within the JCPOA – a procedure that is to take no more than 35 days unless extended by consensus. *See* JCPOA, *supra* note 7, at para. 36. In practice, this means that there will be a minimum of a 65-day window between a JCPOA's country's initial invocation of the JCPOA complaint procedure and the taking effect of the trigger termination. For purposes of this Comment, however, I focus only on the thirty-day time period specified in Resolution 2231.

[13] The language of the JCPOA envisions a trigger termination which any JCPOA "participant" could activate, JCPOA, *supra* note 7, at paras 36-37. It is unclear why Resolution 2231 limits this authority to any "JCPOA participant State." Perhaps it reflects political or legal concerns about treating the European Union like a state, or perhaps it

12 puts it, the Council

> 12. *Decides*, acting under Article 41 of the Charter of the United Nations, that, if the Security Council does not adopt a resolution … to continue in effect the termination in paragraph 7(a), then effective midnight Greenwich Mean Time after the thirtieth day after the notification to the Security Council [by a JCPOA participant State], all of the provisions of resolution 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), and 1929 (2010) that have been terminated pursuant to paragraph 7(a) shall apply in the same manner as they applied before the adoption of this resolution, and the measures contained in paragraphs 7,8, and 16-20 of this resolutions shall be terminated, unless the Security Council decides otherwise.[14]

Because this paragraph effectively enables one JCPOA country to reinstitute prior resolutions, it has been referred to as a "snap back."[15] But as a procedural mechanism, its most striking attribute is not that it reinstates the prior resolutions, but rather simply that it delegates authority to terminate portions of this resolution. For assuming it is lawful, such an attribute could be incorporated into just about any Security Council resolution, with the structure tweaked to reflect the negotiated preferences of Security Council members.

To consider how this might be done, it is worth thinking about trigger terminations as having three components. Specifically, each trigger termination will explicitly or implicitly identify *(1) the activator who can set off the trigger; (2) the standard that the activator is to apply in doing so; and (3) the time it takes for the termination to take effect after the trigger is activated.* In the case of Resolution 2231, these components are filled with (1) any JCPOA country; (2) that country's belief that there is significant non-performance of JCPOA commitments; and (3) thirty days. But other specifics could easily fill these placeholders. As to the activators, the

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reflects the practical reality that the fact that France, Germany, and the United Kingdom can *each* activate the trigger means that the likely universe under which the EU would want to activate the trigger is already covered.

[14] S.C. Res. 2231 para. 12 (July 20, 2015). The reinstatement of the prior resolutions is subject to some additional qualifications. *See id.* paras 14-15. In addition, if the state that submitted the notification withdraws its notification before the 30 days are up, then the trigger does not activate. *See id.* para. 13.

[15] *See* Statement by President Obama on Iran (July 14, 2015), at https://www.whitehouse.gov/the-press-office/2015/07/14/statement-president-iran (stating that the Security Council resolution memorializing the JCPOA would provide that "if Iran violates the deal, all of these sanctions will snap back into place").

Security Council could designate individual nations as in Resolution 2231, but it could also designate groups of nations (such as two P5 members or a majority of Security Council members), other UN organs (such as the Secretary-General), other international organizations (or organs within them), and hypothetically even private actors. As to standards, the Security Council could give the activator anything from total discretion to very specific requirements. As to timing, the Security Council could specify anything from the trigger taking immediate effect to its taking days, months, or even years.

Prior to Resolution 2231, a few Security Council resolutions had entrusted termination authority to the Secretary General, accompanied by fairly specific standards.[16] One such instance was in Resolution 1267, which "*[d]ecides* to terminate" certain of the sanctions that it set on the Taliban "once the Secretary-General reports to the Security Council that the Taliban has fulfilled the obligations set out in" another paragraph of the resolution – specifically, that the Taliban turn over Osama bin Laden to a country in which he had been indicted.[17] Another was in Resolution 1021, which provided that sanctions imposed under a prior resolution would terminate a fixed period of time after the Secretary-General reported to the Council that Bosnia, Croatia, and Serbia had all signed the Dayton Accords.[18]

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[16] As I discuss further in Part III, Security Council resolutions can of course delegate powers other than the power to terminate. Some such powers have similarities to the power to terminate all or part of a resolution, such as the power to suspend sanctions or the power to terminate sanctions against particular actors. *See, e.g.*, S.C. Res. 943 paras 1(c) & 4 (Sept. 23, 1994) (providing that certain sanctions will be suspended for 100 days if the Co-Chairmen of the Steering Committee of the International Conference of the Former Yugoslavia make certain certifications and further providing that this suspension itself can be lifted in five days if the Secretary-General makes certain findings); S.C. Res. 1989 paras 23 & 27 (June 17, 2011) (providing a process by which, in the absence of objection from a state on the sanctioning committee, particular subjects of sanctions can be delisted upon the recommendation either of the state that designated that subject in the first place or of the Ombudsperson).

[17] S.C. Res. 1267 para. 14 (Oct. 15, 1999). One might read this language simply as a statement of future intent on the part of the Security Council to act, but its use of the operative term "*decides*" strongly suggests a trigger termination. Subsequent resolutions have changed and supplemented these sanctions in a complicated manner that is beyond the scope of this Comment to discuss and the death of Osama bin Laden has rendered it impossible for the Taliban to hand him over in any event.

[18] S.C. Res. 1021 para. 1 (Nov. 22, 1995); *see also id.* para. 2 (requesting the Secretary-General to be timely in making his report). These provisions differ somewhat from the other trigger terminations discussed here in that they refer to the termination of aspects of a *prior* resolution. In that respect, they are more like paragraph 7 of Resolution 2231 which, as noted earlier, activates a trigger termination of prior resolutions once the Security Council receives a report from the Director General of the IAEA. *See supra* note

Resolution 2231 grants a far broader trigger termination authority than did these prior resolutions. This in turn opens the door wider for future broad uses of trigger terminations. It thus is timely and important to consider when and how Security Council members might seek to use trigger terminations in future Security Council resolutions and to evaluate what if any parameters are set upon trigger terminations by principles of legality.

II. THE POLITICAL ECONOMY OF TRIGGER TERMINATIONS

Why might Security Council members want to write trigger terminations into Security Council resolutions? In essence, trigger terminations are a form of risk management. Because they ease the process of ending Security Council resolutions, they reduce the likelihood that members will find themselves locked into resolutions that they no longer favor or that they believe are being implemented inappropriately. Stronger control over termination thus could make ambivalent Security Council members more likely to vote for a resolution in the first place (or at least not to veto it). Trigger terminations could also influence how resolutions are implemented, since implementers will have strong incentives to respond to concerns raised by potential trigger activators.

Trigger terminations thus can matter for all three stages of a Security Council resolution – formation, implementation, and termination. In exploring the implications of trigger terminations at each of these stages, this Part is situated within a broader managerial literature. For although trigger terminations are unusual in Security Council practice, the usefulness of termination provisions as a form of risk management has been studied in other contexts. In treaty formation, for example, Larry Helfer has explored how withdrawal clauses and other "flexibility mechanisms" serve to "make the treaty more attractive by authorizing the parties to manage the risk of joining the agreement ... [since they allow] a state to revise, readjust, or even renounce its commitments if the anticipated benefits of treaty-based cooperation turn out to be overblown."[19] As an example from a domestic

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[19] Laurence R. Helfer, *Flexibility in International Agreements*, 175, 175 *in* INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART (Jeffrey Dunoff & Mark A. Pollack, eds., 2012); *see also, e.g.*, Laurence R. Helfer, *Exiting Treaties*, 91 VA. L. REV. 1579, 1599-1601 (2005); RICHARD B. BILDER, MANAGING THE RISKS OF INTERNATIONAL AGREEMENTS 52-55 (1981). Treaty withdrawal clauses typically only give each state the right to withdraw *itself* from a treaty rather than the right to end the entire treaty. Their practical implications thus differ in important ways from those for trigger terminations, but at a high level of generality they share risk management implications.

law context, the U.S. Congress has at times used devices similar to trigger terminations in seeking to preserve control over how the executive branch implements statutes.[20] These contexts of course differ from the one at hand in terms both of their legal and practical dimensions, but they all engage with the broader relationships between entrance, voice, and exit.[21]

For purposes of this Part, I make several assumptions. First, in considering why Security Council members might want to include trigger terminations, I focus almost exclusively on the five permanent members because these are the members with by far the most bargaining power.[22] Second, I treat these members as basing their voting decisions primarily on their perceived self-interest. I consider this assumption to be a largely accurate description of the practice regardless of its appropriateness.[23] In addition to these assumptions, I defer discussion of the legality of trigger terminations until Part III.

A. Lowering the Cost of Initial Commitment

Prior to the passage of a Security Council resolution, each P5 member has the power to block it. But once the resolution is passed, in the absence of a sunset provision or trigger termination it cannot be undone unless either it can be interpreted to expire as a matter of law[24] or the Security Council

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[20] *E.g.*, An Act to Promote the Defense of the United States, Pub. L. 77-11, 55 Stat. 31 (1941) (the Lend-Lease Act) (giving the President authority to sell, lend, or otherwise provide other countries with defense materials, but providing that this authority would expire if Congress passed a concurrent resolution to that effect); *see also* Robert H. Jackson, *A Presidential Legal Opinion*, 66 HARV. L. REV. 1354 (1953) (discussing the legality of this provision). The Supreme Court held in 1983 that the use of such "legislative veto" mechanisms was unconstitutional, *see* INS v. Chadha, 462 U.S. 919, 960 (1983), but Congress has nonetheless continued to use formal and informal mechanisms of this sort. Louis Fisher, *The Legislative Veto: Invalidated, It Survives*, 56 LAW & CONTEMPORARY PROBLEMS 273, 288-291 (1993).

[21] *See* ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY 1 (1970) (noting commonalities regarding such issues for "a wide variety of noneconomic organizations and situations").

[22] *See, e.g.*, Barry O'Neill, *Power and Satisfaction in the Security Council* 59, 79, *in* THE ONCE AND FUTURE SECURITY COUNCIL (Bruce Russett, ed., 1997) ("a veto gives a state high voting power, no veto means a state has almost none"); JOSÉ E. ALVAREZ, INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS 199 (2005).

[23] *Compare, e.g.*, Anne Peters, *The Responsibility To Protect and the Permanent Five* 195, 203, 205 *in* RESPONSIBILITY TO PROTECT: FROM PRINCIPLE TO PRACTICE (Julia Hoffman and André Nollkaemper, eds.) (2012) (stating that "[m]embers of the Security Council act as delegates of all other UN members, and as trustees of the international community" and suggesting that it would be "doctrinally consistent" to treat an "abusive veto … as an illegal act" although state practice does not currently support this).

[24] *See* Caron, *supra* note 3, at 578-82 (discussing this issue and concluding that

passes another resolution undoing it. This high procedural bar for undoing a Security Council resolution amounts to what Professor Caron termed a "reverse veto" – a situation in which any P5 country can block the termination of the resolution.[25] This reverse veto benefits those who strongly favor the existing resolution, especially if they have control over how it is implemented. After the first Gulf War, for example, the reverse veto power of the United States prevented the lessening of Security Council sanctions on Iraq.[26] More broadly, this power preserved from repeal the resolutions regarding the first Gulf War – resolutions which the United States would eventually claim provided a legal justification for U.S. action in the second Gulf War.[27]

With a trigger termination, an ambivalent P5 member no longer needs to worry about the reverse veto. This is also largely true of sunset provisions,[28] but in some contexts members –particularly ambivalent members – should prefer trigger terminations. For while sunset clauses offer certainty about when a provision in a resolution will cease to be operative, they are far more rigid. With a trigger termination, unlike with a sunset provision, the activator has a pathway to terminating the resolution *at any time*, conditional on the constraints imposed by the standard and timing provision set out in the trigger mechanism. Moreover, as discussed in the next sub-part, trigger terminations can give ambivalent members more voice in the implementation process than can sunset provisions.

A trigger termination thus makes it more likely that ambivalent P5 members will vote for the resolution in the first place – or at least not veto it.[29] Where this is the case, Security Council members who are strong

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resolutions do not naturally expire in the absence of termination provisions or subsequent Security Council action).

[25] *Id.* at 556.

[26] JOY GORDON, INVISIBLE WAR AND THE IRAQ SANCTIONS 43 (2010). As another example, the Iran deal itself was negotiated in the shadow of the reverse veto that the United States held with regard to the existing sanctions on Iran.

[27] *See* William H. Taft IV & Todd F. Buchwald, *Preemption, Iraq, and International Law*, 97 AJIL 557 (2003).

[28] *See* Lutz Oette, *A Decade of Sanctions against Iraq: Never Again! The End of Unlimited Sanctions in the Recent Practice of the Security Council*, 13 EJIL 93, 97 (2002). Some sunset provisions do attempt to write in a partial standard for renewal, although the enforceability of these standards is unclear in practice. *E.g.*, S.C. Res. 1343 (Mar. 7, 2001) setting a one-year limit on sanctions and indicating that the Council's future decision whether to extend them would take into account whether or not Liberia complied with the other terms of the resolution). It is possible, of course, to include both a trigger termination and a sunset provision, as is done in Resolution 2231. *See supra* note 10.

[29] Although for convenience I focus on a choice between passing a resolution and not passing a resolution, trigger terminations could similarly have implications for the content of a resolution. The inclusion of a trigger termination might make an ambivalent P5 member accept stronger substantive provisions within a resolution than would otherwise be

supporters of the resolution may then accept the inclusion of a trigger termination as a necessary price of securing the resolution's passage. Trigger terminations can accordingly smooth the path of initial action on the part of the Security Council.

This core insight is intuitive and is supported by the role played by termination mechanisms in other contexts.[30] The harder questions are about how trigger terminations are likely to be structured and when they are likely to be used. When Professor Caron proposed that resolutions specify modified voting procedures for their own termination, he had in mind that these procedures would require a super-majority of the Security Council and thus would "empower the nonpermanent members" by stripping the reverse veto from the permanent members.[31] The trigger termination in Resolution 2231 stands in stark contrast to this proposal. Instead of requiring a super-majority of the Security Council, it can be activated by any single permanent member (or Germany or theoretically Iran). It thus comes close to replacing the reverse veto with a traditional veto that remains available even after the resolution is passed, with the important qualification that this ongoing veto is now conditioned on the activator's belief of significant non-performance of JCPOA commitments and on a thirty-day waiting period.

Given how low the threshold is in Resolution 2231, one might expect similarly low triggers in future Security Council resolutions. Indeed, to the extent trigger terminations are permissible within Security Council practice, we might think that the least enthusiastic P5 member with regard to any particular resolution would always try to bargain for unilateral triggering authority. Yet although Resolution 2231 shows that such low triggers can be essential to deal-making, there are several reasons why they are unlikely to become the norm.

To begin with, in some situations, for example, there may be no least enthusiastic P5 member, and they all thus might prefer a resolution that does not have a low threshold for termination. Furthermore, in some situations the P5 members who are actively seeking a resolution might prefer no resolution to a resolution that contains a trigger termination with a

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the case.

[30] *See* Helfer, *supra* note 19, at 181 (observing that exit clauses in treaties can enable more participation in treaties and deeper substantive provisions by providing a "low-cost option for states to end treaty-based cooperation if an agreement turns out badly"); Fisher, *supra* note 20, at 274 (observing how "by attaching the safeguard of a legislative veto, Congress was willing to delegate greater discretion and authority to the executive branch").

[31] Caron, *supra* note 3, at 587; *see also* Jean Galbraith, *The Security Council Resolution on the Iran Deal: A Way around the "Reverse Veto"*, Opinio Juris Blog (July 23, 2015) (noting the relationship between Professor Caron's argument and Resolution 2231).

low threshold. In the use of force context, for example, the United States and some other P5 countries interpret international law in ways that are quite permissive. Rather than allowing any single P5 member to trigger the termination of a resolution authorizing a use of force, these countries might prefer to intervene without a resolution in the first place on a proclaimed basis of consent, of individual or collective self-defense pursuant to Article 51, or possibly of humanitarian intervention.[32] By contrast, they might conceivably accept a trigger termination provision with a high threshold, such as requiring a super-majority of the Security Council for its activation, in effect betting that the greater legitimacy and legality conferred by getting the resolution would outweigh the risk that the high trigger would in fact one day be activated over their objection.

In addition, even if an unenthusiastic P5 member could secure a low-threshold trigger termination, it might not wish to do so. It might prefer to accept a higher trigger (or no trigger) in exchange for side-deals. There might be domestic political reasons why the decision-makers for that country might prefer to bind themselves to the mast.[33] Or that country might prefer a higher threshold for trigger termination in order to spread the international political costs that could come with actually exercising the trigger.

There is thus no one-size-fits-all narrative for when and how Security Council members might provide for trigger terminations in resolutions. The type of resolution and the particular context must be taken into account. But as the circumstances surrounding Resolution 2231 show, there are times where the inclusion of a trigger termination can be crucial to the passage of a resolution. By lowering the cost of the initial commitment, trigger terminations can make Security Council resolutions easier to achieve.

B. Influencing the Implementation Process

Trigger terminations can also affect how Security Council resolutions are implemented by giving more voice to those who might otherwise activate the triggers. If the resolution delegates implementation authority to other actors, then potential activators can use their increased voice as they seek to influence how these actors exercise their authority. Furthermore, regardless of whether the resolution delegates implementation authority,

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[32] *Cf.* Erik Voeten, *Delegation and the Nature of Security Council Authority* 43, 51-54 *in* THE UN SECURITY COUNCIL AND THE POLITICS OF INTERNATIONAL AUTHORITY (Bruce Cronin and Ian Hurd, eds.) (2008) (describing how the prospect of unilateral action can change bargaining dynamics within the Security Council).

[33] *See* Steven R. Ratner, *Precommitment Theory and International Law: Starting a Conversation*, 81 TEX. L. REV. 2055, 2064, 2072 (2003) (noting that domestic political factors may lead state decision-makers to favor precommitment in certain contexts).

potential activators can use their increased influence in trying to force renegotiation of the resolution.

With the rejuvenation of the Security Council following the Cold War has come a sharp uptake in its delegations to other actors.[34] Resolutions have authorized uses of force by member states in certain contexts, set up international criminal tribunals, granted the Secretary-General various powers, and established committees with decision-making authority in the context of sanctions. Such delegations are an inevitable feature of effective governance, yet among other things they present the risk that the delegatees will exercise their authority poorly or exceed its limits. In the sanctions context, for example, Resolution 1267 and successor resolutions set up a sanctions regime that came to be viewed as lacking in sufficient due process guarantees for the individuals sanctioned. While the Security Council eventually amended its approach, it took quite a while and significant external pressure for it to do so.[35] Similarly in the use of force context, the way in which the United States interpreted Security Council resolutions related to the use of force in Iraq was extremely controversial, as to a lesser extent was the way in which NATO countries interpreted Resolution 1973 with respect to Libya.[36]

Trigger terminations can increase the influence of activators over the actions of those to whom the Security Council delegates authority. Where these activators can credibly threaten to activate the trigger if their views are not listened to, then the delegatees have stronger incentives to try to accommodate any concerns these activators have with the resolution's implementation. For example, if any two P5 countries can activate the trigger if they think the countries implementing this resolution are not doing so in compliance with its terms, then the implementers should pay especially close attention to any signals of concern shared by two P5 countries. Trigger terminations can thus be a check on how delegatees carry out their responsibilities. This is true to some extent for sunset clauses as well, since delegatees may wish to have their mandates renewed

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[34] *See generally* DAN SAROOSHI, THE UNITED NATIONS AND THE DEVELOPMENT OF COLLECTIVE SECURITY (1999).

[35] *See, e.g.*, Juliane Kokott & Christoph Sobotta, *The Kadi Case – Constitutional Core Values and International law – Finding the Balance?*, 23 EJIL 1015, 1021 (2012) (discussing the first *Kadi* case in the European Court of Justice, describing subsequent changes made by the Security Council to its sanctions regime, and noting some potential shortcomings of the revised regime).

[36] *See, e.g.*, William W. Burke-White, *Power Shifts in International Law: Structural Realignment and Substantive Pluralism*, 56 HARV. J. INT'L L. 1, 55 (2015) (describing how China and Russia felt that NATO had improperly implemented the Security Council resolution authorizing the use of force in Libya and noting how this influenced their later voting with respect to Syria).

and therefore be closely attentive to concerns of each P5 country. But because of the greater power trigger terminations confer on the activators, the effect should be stronger where they are used – at least where these triggers have relatively flexible standards for activation.[37]

Even where a Security Council resolution does not delegate decision-making authority to other actors, trigger terminations will give their activators a strong hand in seeking renegotiation of a resolution. Activators might come to be dissatisfied with an existing Security Council resolution for any number of reasons, including new information suggesting that it is not having the desired effect or changes in their own preferences. If they have the power to terminate the resolution, they also have more bargaining power to urge its revision.[38] Indeed, the heightened voice that trigger terminations give to their activators with respect to implementation and renegotiation is one reason why trigger terminations can make it easier to pass Security Council resolutions in the first place.

C. Facilitating Termination

The most obvious effect of a trigger termination is of course that it makes a Security Council resolution easier to terminate. How much easier will depend on the specifics – on the choice of activator, standard, and timing rule.

While trigger terminations can make Security Council resolutions much easier to end, there are nonetheless reasons why activators might be cautious to use their termination power. For one thing, doing so might carry significant political costs, particularly if the activator is a single state. Along these lines, some commentators on the Iran deal have suggested that the trigger termination in Resolution 2231 "looks snappy on paper [but] may well be anything but in practice."[39] For another thing, activating a trigger could risk bad side effects. Imagine, for example, a trigger termination on a use of force that takes effect sixty days after its activation.

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[37] Where the trigger termination is tied to a strict standard, as was the Secretary-General's termination authority in Resolution 1267, then trigger terminations will provide little negotiating clout over implementation. Where the standard is more flexible, the bargaining power of the activator will be greater. In the U.S. domestic context, for example, "the mere possibility of a [legislative veto in certain contexts] also allow[ed] Congress to influence administrative decisions even when it ultimately does not exercise the power." Jonathan B. Fellows, *Congressional Oversight through Legislative Veto after INS v. Chadha*, 69 CORNELL L. REV. 1265 (1984).

[38] *See* Timothy L. Meyers, *Power, Exit Costs, and Renegotiation in International Law*, 51 HARV. J. INT'L L. 379, 382 (2010) (highlighting this dynamic in considering the role that exit clauses can play in treaties).

[39] Eric Lorber & Peter Feaver, *Do the Iran Deal's 'Snapback' Sanctions Have Teeth*, FOREIGN POLICY (July 21, 2015), at http://foreignpolicy.com/2015/07/21/do-the-iran-deals-snapback-sanctions-have-teeth/.

Once the trigger is activated, the countries authorized to use force by the resolution might sharply ramp up their use of force in order to accomplish their goals within sixty days. The activator might thus prefer whatever negotiating clout comes from the threat of activation to the effects that come from actual activation. Finally, trigger terminations might be used less than anticipated if activators have an inherent preference for the status quo.[40] In combination, these factors may make the activation of discretion-based trigger terminations relatively rare events in practice.

III. LEGAL AND NORMATIVE CONSIDERATIONS

This Part considers the extent to which trigger terminations are lawful and the extent to which they serve broader normative objectives. Both inquiries are difficult ones. The legal question is difficult because it is far easier to ask than to answer "what are [the] limits and what body, if other than the Security Council, is competent to say what those limits are?"[41] The normative question is difficult because it depends on assessments of different objectives and on how trigger terminations navigate tensions between these objectives.

In what follows, I argue that many types of trigger terminations are legal, including the one in Resolution 2231, because they are permissible delegations of authority by the Security Council. Whether trigger terminations are desirable will depend on the context and on the design of the trigger termination at issue. Overall, I suggest that trigger terminations are currently underused and that careful design choices – including making trade-offs between their three components – can maximize their normative appeal. The arguments that I make in this Part depend on certain assumptions which I set forth in the course of the discussion.

A. Trigger Terminations as Lawful Delegations?

The legality of trigger terminations turns on whether their inclusion in Security Council resolutions is consistent with the United Nations Charter and the role it sets forth for the Council. This inquiry is different from whether exit clauses in treaties are lawful (they are)[42] or whether

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[40] *See* Jean Galbraith, *Treaty Options: Towards a Behavioral Understanding of Treaty Design*, 53 VA. J. INT'L L. 309, 349-55 (2013) (suggesting several reasons why states might have preferences for the status quo).

[41] Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Prov. Measures), Libya v. United States, IJC Rep. (1992), at 142 (separate opinion of Judge Shahabuddeen).

[42] Vienna Convention on the Law of Treaties art. 54, *opened for signature* May 23, 1969, 1155 UNTS 331 (providing that "the termination of a treaty or the withdrawal of a

"legislative vetoes" in the U.S. congressional practice are lawful (they are not).[43] The Charter is silent as to how Security Council resolution are to end. It is clear that the Security Council can put sunset provisions in resolutions and can itself vote to terminate resolutions.[44] The question is whether and to what extent the Security Council can delegate power to terminate all or part of a resolution to another actor.[45]

The answer to this question depends in the first place on whether there are any meaningful legal limits to the contents of a Security Council resolution.[46] For purposes of this Comment, I assume that such limits exist, even if these limits can evolve over time, and I do not engage with the extent to which institutional actors other than the Security Council can or will exercise authority to establish what these limits are. In other words, in what follows I assess the legality of trigger terminations in light of other scholarship that views Security Council actions as subject to legal limits.

The Security Council's authority to delegate power has been explored with respect to the *implementation* of Security Council resolutions. The Charter explicitly contemplates that some such delegations will occur[47] and practice provides many instances of delegations.[48] The delegation principles developed in the implementation context should apply to the termination context unless the two are meaningfully different. Dan Sarooshi has argued that such a difference exists because, in his view, the power to decide when a threat to international peace and security no longer exists is a core, non-delegable power of the Security Council.[49] If correct,

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party may take place … in conformity with the provisions of the treaty").

[43] INS v. Chadha, 462 U.S. 919 (1983). Specifically the Supreme Court held that such termination would be an exercise of "legislative" power and further that the Constitution permitted legislative power only to be exercised by the voting procedure specified for passing laws in the first place. *Id.* at 944-53; *but see id.* at 967 (White, J., dissenting).

[44] *E.g.*, Oette, *supra* note 28, at 97 (finding "no doubt" about the legality of sunset provisions).

[45] Aside from Professor Caron's article, little scholarship explores the legality of termination procedures (other than sunset provisions). Professor Caron concluded that modified voting procedures for terminating resolutions would be lawful but did not take up whether delegation principles bounded the scope of this lawfulness. Caron, *supra* note 3, at 584-85; *see also* MICHAEL J. MATHESON, COUNCIL UNBOUND 31-33 (2006) (discussing the termination of Security Council resolutions without expressing any doubts about the legality of Council-designed termination mechanisms).

[46] For a discussion of this much broader, long-running debate, see José E. Alvarez, *Judging the Security Council*, 90 AJIL 1, 2-4 (1996).

[47] *E.g.*, U.N. Charter art. 29 (authorizing the Security Council to establish subsidiary organs); *id.* art. 98 (signaling the appropriateness of delegations to the Secretary-General).

[48] For discussion and legal analysis, see generally SAROOSHI, *supra* note 34; *see also*, *e.g.*, Niels Blokker, *Is the Authorization Authorized?*, 11 EJIL 541 (2001); Anna Spain, *The U.N. Security Council's Duty to Decide*, 4 HARV. NAT'L SEC. J. 320, 331-332 (2013).

[49] SAROOSHI, *supra* note 34, at 32-33 ("It was always intended that the five Permanent

Professor Sarooshi's conclusion would bar trigger terminations that rest on the activator's determination that no threat remains to peace and security. But it is unclear why this determination should not be delegable. The power to determine the end of a threat to the peace and security is a more modest power than the power to determine that a threat exists, since it can only end extraordinary action and not create it. It seems reasonable that the Security Council should be able to decide on a way to exercise this more modest power that avoids the problem of the reverse veto.[50] In any event, even if correct Professor Sarooshi's approach would presumably not bar the delegation of the power to terminate measures taken to address a threat to peace and security, but only delegation of the power to resolve the underlying question of whether there is such a threat in the first place.

If anything, concerns about delegation of termination authority should typically be weaker than concerns about the delegation of implementation authority. For while both situations are open to the risk that the actor to whom power is delegated will misuse its authority, the effects of misuse are likely to be greater for implementation. The power to terminate is a comparatively focused power. Of course, it can bring with it major consequences including, in the case of Resolution 2231's trigger termination provision, reinstatement of prior Security Council resolutions. But while activators could potentially misuse their power to terminate, as delegatees they cannot do more than they cannot do more than undertake their single act of triggering the termination. By contrast, implementers can not only misuse their implementation authority but also potentially exceed its scope in ways that are unpredictable and deeply concerning. Consider, for example, Resolution 678's authorization to member states at the time of the first Gulf War to use "all use all necessary means" to uphold and implement [relevant resolutions] and to restore international peace and security in the area."[51] That the United States interpreted this resolution to authorize its actions in the *second* Gulf War is an example of how risky the delegation of implementation authority can be. The risks associated with delegations of termination authority are more likely to be cabined. Therefore it makes sense that the Security Council's power to delegate regarding termination should be at least as broad as its power to delegate regarding implementation and arguably broader.

Members should be able to veto a decision that a particular situation constituted a threat to, or breach of, the peace *or that such a situation had ended*") (emphasis added); *see also id.* at 115-116, 151-52.

[50] Professor Sarooshi's acknowledges that his approach is in some tension with practice. *See id.* at 115-116 (expressing doubts about the legality of the ability of the UN Command, which was led by the United States, to conclude the armistice to the Korean War without further approval from the Security Council).

[51] S.C. Res. 678 (Nov. 29, 1990).

In the implementation context, the Security Council has delegated authority to other UN organs (especially the Secretary-General), to member states, and to other international organizations.[52] Other UN organs have both legal obligations and structural incentives to carry out their duties in an appropriate manner and member states have a duty to "fulfill in good faith the obligations assumed by them in accordance with the present Charter."[53] Delegations to other international legal organizations present more complicated legal issues; while they may not have direct legal obligations with regard to the U.N. Charter, nonetheless they are public law entities and state parties to these international organizations do have such legal obligations.[54] If we accept that these delegations can be lawful in the implementation context, then similarly there should be no blanket bar against them in the termination context.

In the implementation context, the Security Council typically specifies the purpose for which powers are being delegated.[55] Such standards can be quite specific but sometimes they are at a high level of generality. Resolution 794, for example, "[d]ecides that the operations and further deployment of the 3,500 personnel of the United Nations Operation in Somalia … should proceed at the discretion of the Secretary-General in light of his assessment of conditions on the ground."[56] Although the Council seems particularly comfortable with delegations to the Secretary-General, authorizations to member states can transfer considerable discretion as well. Authorizations for the use of force leave considerable discretion to member states. Resolution 678 quoted above is a particularly broad example, but even narrower authorizations involve the exercise of discretion. Resolution 1973, for example, gives a more limited

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[52] *See generally* SAROOSHI, *supra* note 34 (discussing delegations to the Secretary General, to member states, and also to regional organizations). The Security Council's referral of cases to the International Criminal Court (ICC) is another example of a delegation to another international organization. *See* Dapo Akande, *The Effect of Security Council Resolutions and Domestic Proceedings on State Obligations to Cooperate with the ICC*, 10 J. INT'L CRIM. JUST. 299, 305-08 (2010).

[53] UN Charter art. 2(2); *see also id.* art. 2(5).

[54] Professor Sarooshi argues that delegations to such public law entities are more legally acceptable than delegations to private actors. *See* SAROOSHI, *supra* note 34, at 18 n. 74. I do not discuss delegations to private actors here, as I view them as unlikely in practice, but their different legal status supports a good argument that the Security Council cannot lawfully delegate termination power to them. As to international organizations, I do not analyze the extent, if any, to which the lawfulness of delegations may differ based upon the particulars of the international organization in question.

[55] *See* Blokker, *supra* note 48, at 561-62*; cf.* SAROOSHI, *supra* note 34, at 41 (stating that there needs to be "clear specification by the Council of the objective for which powers are being delegated").

[56] S.C. Res. 794 para. 6 (Dec. 3, 1992).

authorization with respect to Libya—member states implementing the resolution were to cooperate with the Secretary-General and were not to send an occupation force— but it still inevitably conferred discretion in authorizing them to "take all necessary measures to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya."[57] Applying these principles to the termination context would suggest that at least at times the standard can be one of considerable discretion.

The analogy to the implementation context thus suggests that a range of activators can be permissible and that the standard can be at a high level of generality. But it also suggests that these two factors need to be considered in combination, in order to ensure some minimum protection against the arbitrary exercise of termination authority.[58] The more concern there is that the activator is an entity which might act arbitrarily, the more need there will be for a meaningful standard. Where the activator is the Secretary-General, there are substantial procedural protections against arbitrariness given both his role as a UN organ and his reasonably good incentives to exercise discretion appropriately. Similarly, where the activator is a majority (or stronger still a super-majority) of the Security Council, the process of assembling support from a group of at least moderately disparate states offers some procedural safeguards against arbitrariness. By contrast, where the activator can be a single state, the risk of arbitrariness is increased and correspondingly a stronger substantive standard should be required. Where the activator is an international organization, the risk of arbitrariness will vary with the nature of the organization – and, in any event, other considerations may be relevant to the Security Council's willingness to delegate power to it.[59]

Resolution 2231's trigger termination has some protections against arbitrariness, but not very strong ones. The activator can be a single state – any one of the P5, Germany, or theoretically Iran. The standard is that this

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[57] S.C. Res. 1973 para. 4 (Mar. 17, 2011).

[58] *E.g.*, Prosecutor v. Tadić, Decision on Jurisdiction, No. IT-94-1-T para. 15 (Aug. 10, 1995) (observing that it "is a matter of logic that if the Security Council acted arbitrarily [in establishing the ICTY] or for an ulterior purpose it would be acting outside the purview of the powers delegated to it by the Charter"); Peters, *supra* note 23, at 203.

[59] Thus, Resolution 2231 delegates to the IAEA the authority to trigger the termination of the previous resolutions once Iran takes certain steps, *see supra* note 11, but does not give the European Union the same trigger termination authority regarding Resolution 2231 that it gives to the other JCPOA participants, *see supra* note 13. It is unclear what underlay this decision. It cannot be ruled out that it had to do with delegation concerns (although the risk of arbitrary activation is less with respect to the European Union than with respect to individual countries). But it might well have to do with broader political and legal considerations about the relationship between the United Nations and the European Union.

state must "believe" that there is "significant non-performance of commitments under the JCPOA."[60] While "significant non-performance of commitments under the JCPOA" is a reasonably clear criterion, the fact that the activator is only required to "believe" this to be the case makes the standard a fairly flexible one. But although flexible it is not a grant of total discretion. It must require a good faith belief in significant non-performance, for otherwise it would be meaningless.[61] Indeed, if such a good faith belief is demonstrably absent, other states would have grounds for considering that the trigger termination has not been properly activated. In that case, they could presumably treat Resolution 2231 as continuing in force and thereby have a legal basis for declining to reinstitute the prior sanctions. Given these various factors, Resolution 2231 offers sufficient protection against arbitrariness (though not with a lot of room to spare).

As noted earlier, questions about the scope of the Security Council's powers are difficult ones. Those who see no meaningful limits to the legality of Security Council delegations can nonetheless treat this discussion as relevant to legitimacy. For those who consider that there are legal limits and yet accept the legality of many kinds of delegations in the implementation context, I hope I have made a case for why delegations should work similarly and perhaps even more fluidly in the termination context.

B. Balancing Process and Effectiveness

Trigger terminations can raise difficult questions about the relationship between the fairness of process and the effectiveness of outcomes. When Professor Caron proposed that Security Council resolutions should specify modified voting procedures for their termination, he saw this as a win for both values: allowing a super-majority of the Security Council to terminate a resolution without concern for the reverse veto would both increase the ease of getting resolutions in the first place and reduce the dominance of the permanent members in favor of a more representative process.[62] The trigger termination in Resolution 2231 presents a different reality. It does promote the effectiveness of the Security Council by having smoothed the path to the underlying Iran deal and to Resolution 2231. But it does not "provid[e] the opportunity for representative participation and fostering dialogue as to the

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[60] S.C. Res. 2231 paras 7, 12 (July 20, 2015). In addition, the state will go through the JCPOA dispute resolution procedure discussed *supra* note 12.

[61] *Cf.* Liversidge v. Anderson, [1942] A.C. 206, 233 (Atkin, J., dissenting) (observing that good faith constitutes a limit on the actions of a public official entrusted with power if he is "satisfied" that certain circumstances exist).

[62] *See* Caron, *supra* note 3, at 582-88.

legitimacy of any action."[63] Rather, it places unilateral authority to activate the trigger in the hands of any P5 member or Germany (or theoretically Iran).

What are we to make of this? On the one hand, Resolution 2231's trigger termination is in tension with the values underlying existing concerns about the concentration of power in P5 members and the lack of representativeness of the Security Council.[64] It looks like an old-school political deal made to further the interests of the great powers – an impression furthered by the fact that content of the resolution was effectively developed during the JCPOA negotiations rather than at the United Nations. On the other hand, the trigger termination in Resolution 2231 helped enable a deal that has strong support around the world, including from countries not in the JCPOA. Resolution 2231's unanimous passage in the Security Council strongly suggests that even if there were any process-based concerns about the trigger termination, they were taking a distant back seat to the outcome.[65]

Overall, I think trigger terminations are currently underused relative to their desirability. From a substantive standpoint, this will be true if the benefits that trigger terminations bring to formation, implementation, and termination of resolutions are greater than their costs. This will depend on context and on normative views of the merits or demerits of particular Security Council actions. In general, I would like to see both more robust Security Council action and more control over actors to whom the Security Council delegates authority and thus favor significantly increased use of trigger terminations to promote both of these interests. But even for those who are more skeptical about Security Council action (or who want less control over delegatees), the near total absence of trigger terminations from Security Council practice to date should suggest that they are underused. From a procedural standpoint, although trigger terminations that can be activated by single states may look distasteful, even these will typically be

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[63] *Id.* at 561.

[64] These values are manifesting themselves, for example, in the push for a responsibility not to veto and in the move to make the Security Council more representative by expanding it and adding more permanent members. *See* Nadia Banteka, *Dangerous Liaisons: The Responsibility to Protect and a Reform of the UN Security Council*, 54 COLUM. J. TRANSNAT'L L. _ (2015) (forthcoming) (describing these trends and arguing that they are in fact in tension with each other).

[65] *See* United Nations Meetings Coverage and Press Releases, Security Council, Adopting Resolution 2231 (2015) Endorses Joint Comprehensive Agreement on Iran's Nuclear Programme (July 20, 2015), at http://www.un.org/press/en/2015/sc11974.doc.htm (summarizing the remarks made by representatives of all fifteen member countries, all of whom supported the deal and none of whom raised concerns about the legality or appropriateness of the trigger termination).

fairer than the status quo of the reverse veto. Both require just one state, but the use of the reverse veto is subject to no meaningful standard and has immediate consequences, while the use of a trigger termination requires application of whatever the substantive standard there is and may not take immediate effect.

More generally, trigger terminations can be designed to try to build in more procedural fairness than we find in the trigger termination in Resolution 2231. Security Council members should recognize that it will often be in their international political interest to do so,[66] especially given that other nations and the international community more generally will likely care about procedural fairness. Importantly, trade-offs can potentially be made between the three components of trigger terminations in ways that further procedural fairness without doing much to change the implications from a risk management perspective. For example, a trigger termination activated by the Secretary-General that allows him or her considerable discretion and takes a week to effectuate could have roughly the same activation potential – and yet be perceived as more legitimate – as a trigger termination that takes effect two months after any two P5 members activate it following their conclusion that a fairly specific standard has been met.

It remains for the future to say how much or how little trigger terminations will get incorporated into Security Council practice. Whether and how they are included in resolutions will depend first on whether negotiators perceive them as part of the toolkit. If that is the case, then it will further depend on the particular context at issue. For example, in the sanctions context, trigger terminations with relatively low thresholds for activation seem like plausible developments. Trigger terminations that give the Secretary-General termination authority under specified conditions have already been used in this context;[67] in the future they could plausibly be used more and with even lower thresholds. In the use of force context, by contrast, trigger terminations would likely be harder to procure and would have to have a high threshold for activation. To the extent that trigger terminations are used, the careful choice of components can help strike a good balance between process and outcomes.

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[66] *See supra* Part II.C. Domestic political interests might cut the other way and override these interests. Thus, with regard to the Iran deal, it has been politically important to the Obama Administration's defense of the Iran deal to the U.S. public that the United States can unilaterally "snap back" the prior resolutions. *See* President Obama's Remarks on the Iran Nuclear Deal (Aug. 5, 2015), at https://www.whitehouse.gov/the-press-office/2015/08/05/remarks-president-iran-nuclear-deal ("We won't need the support of other members of the Security Council; America can trigger snapback on our own").

[67] *See supra* notes **Error! Bookmark not defined.-Error! Bookmark not defined.** and accompanying text.

IV. CONCLUSION

Trigger terminations bring to mind the uneasy space that the Security Council occupies "between power and law."[68] The use of such devices in the future will depend largely on power – on whether Security Council members, especially the permanent ones, seek the inclusion of a trigger termination when they are uncertain about a resolution or concerned that they may cease to favor it in the future. Yet any such uses must also comply with law and take account of broader values. The more trigger termination clauses incorporate protections against arbitrary activation, the more easily they will survive scrutiny under delegation principles. Done well, trigger termination provisions could become an important and desirable tool of Security Council practice.

[68] ALVAREZ, *supra* note 21, at 199 (2005).