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# Ending Security Council Resolutions

Jean Galbraith

*University of Pennsylvania Law School*

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## NOTES AND COMMENTS

### ENDING SECURITY COUNCIL RESOLUTIONS

*Jean Galbraith\**

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 concerns are quite different, they both have partial causal roots in the Council's voting process. Article 27 of the United Nations Charter provides that Council decisions on nonprocedural matters require "an affirmative vote of nine members including the concurring votes of the permanent members."<sup>1</sup> The ability of any of the five permanent members to veto a Council resolution makes it difficult for the Council both to act in the first place and to pass corrective resolutions when existing resolutions are criticized as problematic. Indeed, the difficulty of undoing resolutions can make Council members wary about allowing the passage of resolutions at the very outset.

The interplay between the creation and termination of 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 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 Council resolution that would help implement the deal—ultimately Resolution 2231—would include an unusual provision. This provision is what I will call a *trigger termination*—that is, a clause that authorizes an actor other than the 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.<sup>2</sup> Although a process akin to trigger terminations was proposed by David Caron as far back as 1993,<sup>3</sup> up to now the Council has

\* Assistant Professor, University of Pennsylvania Law School. I thank the participants at the Penn Law Global Forum for their comments.

<sup>1</sup> UN 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 the 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 ICJ 16, 22 (June 21).

<sup>2</sup> *See* SC Res. 2231, paras. 11–12 (July 20, 2015).

<sup>3</sup> David D. Caron, *The Legitimacy of the Collective Authority of the Security Council*, 87 AJIL 552, 584–88 (1993); *see also infra* note 31 and accompanying text (discussing differences between Caron's proposal and the approach taken in Resolution 2231).

almost never employed trigger terminations, and Resolution 2231 appears to be the first to grant termination authority to individual states.<sup>4</sup>

With Resolution 2231 to serve as a precedent and a model, the prospects for trigger terminations in future 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 Council resolutions. A trigger termination makes the passage of a resolution more appealing to Council members who are ambivalent about its desirability or concerned about how it may be implemented. The reasons are that 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 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 UN 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 if that state "believes" that there is significant noncompliance with commitments made in the Iran deal,<sup>5</sup> Resolution 2231 offers such protection against arbitrary activation, though with little room to spare.

Trigger terminations can thus be politically useful and lawful. But are they desirable? My own view is that trigger terminations are currently underused. If the Council included more trigger terminations, it could implement and adjust resolutions more easily, and I think that 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. A low threshold for trigger termination to the negotiation of the Iran deal was important and seems worth the costs in this particular instance. Going forward, however, to the extent that the 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 Council resolutions have used sunset provisions, Resolution 2231 is unusual in delegating termination authority to discrete actors.<sup>6</sup> The creativity of this resolution

<sup>4</sup> See *infra* notes 15–17 and accompanying text.

<sup>5</sup> SC Res. 2231, *supra* note 2, paras. 11–12.

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

may be related to the process surrounding its negotiation. The content of its trigger termination is derivative of the Joint Comprehensive Plan of Action (JCPOA) between the five Permanent Members (P5), Germany, the European Union, and Iran, which developed not through negotiations under the auspices of the Council in New York but rather through multilateral negotiations in Vienna.<sup>7</sup> 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 Council resolutions passed between 2006 and 2010 that imposed sanctions on Iran and on certain non-state actors in response to Iran's efforts to develop a nuclear weapon.<sup>8</sup> The core bargain in the JCPOA was that Iran would cease its efforts to develop a nuclear weapon, subject to monitoring, and that, in return, various sanctions against Iran—including those previously imposed by the Council—would be lifted.<sup>9</sup> But what if Iran failed to hold up its end of the bargain? Theoretically, the Council could then vote to impose new sanctions, but negotiators for those countries most concerned about Iranian noncompliance could not be sure that, in the future, the votes would be there on the 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.<sup>10</sup>

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 reports to the Council that the Agency has verified certain actions taken by Iran.<sup>11</sup> But then the resolution makes clear that this very provision—the termination of the prior resolutions—can itself be terminated by a trigger. The procedure is basically the following: if one “JCPOA participant State” notifies the 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 Council has affirmatively voted otherwise.<sup>12</sup>

<sup>7</sup> See Joint Comprehensive Plan of Action, para. 37 (July 14, 2015) [hereinafter JCPOA], 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.

<sup>8</sup> See SC Res. 1696 (July 31, 2006); SC Res. 1737 (Dec. 23, 2006); SC Res. 1747 (Mar. 24, 2007); SC Res. 1803 (Mar. 3, 2008); SC Res. 1835 (Sept. 27, 2008); SC Res. 1929 (June 9, 2010).

<sup>9</sup> See JCPOA, *supra* note 7, pmbl.

<sup>10</sup> *Id.*, 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 SC Res. 2231, *supra* note 2, paras. 8–9.

<sup>11</sup> SC Res. 2231, *supra* note 2, para. 7. This paragraph is itself akin to a trigger termination in providing for termination to occur upon the receipt of the International Atomic Energy Agency report—although at issue in this paragraph is the termination of prior resolutions rather than of Resolution 2231.

<sup>12</sup> *Id.*, paras. 11–12. The JCPOA further provides that before notifying the 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, para. 36. In practice, this step results in a minimum of a 65-day window between a JCPOA 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 30-day time period specified in Resolution 2231.

(Interestingly, this right is given only to a JCPOA participant *state* and therefore appears to be unavailable to the European Union.)<sup>13</sup> As paragraph 12 puts it, the Council

*[d]ecides, 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 terminations 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 resolutions 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 to 20 of this resolution shall be terminated, unless the Security Council decides otherwise[.]*<sup>14</sup>

Because this paragraph effectively enables one JCPOA country to reinstitute prior resolutions, it has been referred to as a “snap back.”<sup>15</sup> But as a procedural mechanism, its most striking attribute is not that it reinstates the prior resolutions but simply that it delegates authority to terminate portions of this resolution. Assuming it is lawful, such an attribute could be incorporated into just about any Council resolution, with the structure tweaked to reflect the negotiated preferences of 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, the corresponding components are (1) any JCPOA country, (2) that country’s belief that there is significant nonperformance of JCPOA commitments, and (3) thirty days. But other specifics could easily fill these place holders. As to the activators, the 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 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 Council could give the activator anything from total discretion to very specific requirements. As to timing, the Council could specify anything from the trigger taking immediate effect to its taking days, months, or even years.

Prior to Resolution 2231, a few Council resolutions had entrusted termination authority to the secretary-general, accompanied by fairly specific standards.<sup>16</sup> One such instance was Resolution 1267, which “[d]ecides to terminate” certain of the sanctions [that it set on the Taliban

<sup>13</sup> The language of the JCPOA envisions a trigger termination that any JCPOA “participant” could activate. JCPOA, *supra* note 7, 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 reflects a practical reality; France, Germany, and the United Kingdom can *each* activate the trigger, which means that the likely universe under which the European Union would want to activate the trigger is already covered.

<sup>14</sup> SC Res. 2231, *supra* note 2, para. 12. 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 it before the 30 days are up, the trigger does not activate. *See id.*, para. 13.

<sup>15</sup> *See* Statement by the President on Iran (July 14, 2015), at <https://www.whitehouse.gov/the-press-office/2015/07/14/statement-president-iran> (Barack Obama 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”).

<sup>16</sup> As I discuss further in part III, 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.*, SC Res. 943, paras. 1(c),

“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.<sup>17</sup> Another was 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.<sup>18</sup>

Resolution 2231 grants a far broader trigger termination authority than did these prior resolutions, opening the door wider for future broad uses of trigger terminations. It thus is timely and important to consider when and how Council members might seek to use trigger terminations in future 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 Council members want to write trigger terminations into Council resolutions? In essence, trigger terminations are a form of risk management. Because they ease the process of ending 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 could thus make ambivalent 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 can therefore matter at all three stages of a Council resolution: formation, implementation, and termination. Although trigger terminations have rarely been used in the past, they might come to be more common in the future. Their implications at each of these stages thus merit consideration. In exploring these implications, this part is situated within a broader managerial literature. Although trigger terminations are unusual in Council practice to date, the usefulness of termination provisions as a form of risk management has been studied in other contexts. In treaty formation, for example, Laurence Helfer has explored how withdrawal clauses and other “flexibility mechanisms” serve to “make the treaty more attractive by authorizing the parties to manage the risks of joining the agreement. . . . [They] allow[] a

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); SC Res. 1989, paras. 23, 27 (June 17, 2011) (providing a process by which, in the absence of objections 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).

<sup>17</sup> SC 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 in any event the death of Osama bin Laden has rendered it impossible for the Taliban to hand him over.

<sup>18</sup> SC 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 Council receives a report from the director general of the International Atomic Energy Agency. *See supra* note 11.

state to revise, readjust, or even renounce its commitments if the anticipated benefits of treaty-based cooperation turn out to be overblown.<sup>19</sup> As an example from a domestic law context, the U.S. Congress has at times used devices similar to trigger terminations when seeking to preserve control over how the executive branch implements statutes.<sup>20</sup> These contexts, of course, differ from the one at hand in terms of both their legal and practical dimensions, but they all engage with the broader relationships between entrance, voice, and exit.<sup>21</sup>

For the purposes of this part, I make several assumptions. First, in considering why Council members might want to include trigger terminations, I focus almost exclusively on the five permanent members because these members have by far the most bargaining power.<sup>22</sup> 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.<sup>23</sup> In addition to these assumptions, I defer discussion of the legality of trigger terminations until part III.

### *Lowering the Cost of Initial Commitment*

Prior to the passage of a Council resolution, each P5 member has the power to block it. But once the resolution is passed, it cannot be undone in the absence of a sunset provision or trigger termination unless either it can be interpreted to expire as a matter of law<sup>24</sup> or the Council passes another resolution undoing it. This high procedural bar for undoing a Council resolution amounts to what Caron termed a “reverse veto”—a situation in which any P5 country can

<sup>19</sup> Laurence R. Helfer, *Flexibility in International Agreements*, in *INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART* 175, 175 (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 give each state only 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 of trigger terminations, but at a high level of generality, they share risk-management implications.

<sup>20</sup> *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 & CONTEMP. PROBS. 273, 288–91 (1993).

<sup>21</sup> *See* ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY* 1 (1970) (noting commonalities regarding such issues for “a wide variety of noneconomic organizations and situations”).

<sup>22</sup> *See, e.g.*, Barry O’Neill, *Power and Satisfaction in the Security Council*, in *THE ONCE AND FUTURE SECURITY COUNCIL* 59, 79 (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).

<sup>23</sup> *Compare, e.g.*, Anne Peters, *The Responsibility to Protect and the Permanent Five*, in *RESPONSIBILITY TO PROTECT: FROM PRINCIPLE TO PRACTICE* 195, 203, 205 (Julia Hoffman & 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” (emphasis omitted), and suggesting that it would be “doctrinally consistent” to treat an “abusive veto . . . as an illegal act,” although state practice does not currently support such a stance).

<sup>24</sup> *See* Caron, *supra* note 3, at 578–82 (discussing this issue and concluding that resolutions do not naturally expire in the absence of termination provisions or subsequent Council action); *see also* Marko Divac Öberg, *The Legal Effects of the United Nations Resolutions in the Kosovo Advisory Opinion*, 105 AJIL 81, 86–87 (2011) (considering these issues regarding resolutions related to Kosovo).

block the termination of the resolution.<sup>25</sup> 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 Council sanctions on Iraq.<sup>26</sup> More broadly, this power preserved from repeal the resolutions regarding the first Gulf war—resolutions that the United States would eventually claim provided a legal justification for U.S. action in the second Gulf war.<sup>27</sup>

With a trigger termination, an ambivalent P5 member no longer needs to worry about the reverse veto. The same is also largely true of sunset provisions,<sup>28</sup> 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 subsection, 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.<sup>29</sup> In this situation, Council members who are strong 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 Council.

This core insight is intuitive and is supported by the role played by termination mechanisms in other contexts.<sup>30</sup> The harder questions are about how trigger terminations are likely to be structured and when they are likely to be used. When 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 Council and thus would “empower the nonpermanent members” by stripping the reverse veto from the permanent

<sup>25</sup> See Caron, *supra* note 3, at 556.

<sup>26</sup> 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.

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

<sup>28</sup> 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 EUR. J. INT'L L. 93, 97 (2002). Some sunset provisions attempt to write in a partial standard for renewal, although the enforceability of these standards is unclear in practice. *E.g.*, SC Res. 1343, *supra* note 6 (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.

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

<sup>30</sup> See Helfer, *Flexibility in International Agreements*, *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”).



members.<sup>31</sup> The trigger termination in Resolution 2231 stands in stark contrast to this proposal. Instead of requiring a super-majority of the 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 nonperformance 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 to become more common in future Council resolutions. Indeed, to the extent trigger terminations are permissible within 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 no P5 member may be least enthusiastic, and thus all members 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 one that contains a trigger termination with a 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.<sup>32</sup> By contrast, they might conceivably accept a trigger-termination provision with a high threshold (such as requiring a super-majority of the Council for its activation), in effect betting that the greater legitimacy and legality that is conferred by a resolution would outweigh the risk that the high trigger would, in fact, one day be activated over their objections.

In addition, even if an unenthusiastic P5 member could secure a low-threshold trigger termination, that member 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.<sup>33</sup> 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 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, at times the inclusion of a trigger termination can be crucial to the passage of a resolution. By

<sup>31</sup> 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 (July 23, 2015) (noting the relationship between Caron's argument and Resolution 2231).

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

<sup>33</sup> 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).

lowering the cost of the initial commitment, trigger terminations can make Council resolutions easier to achieve.

### *Influencing the Implementation Process*

Trigger terminations can also affect how 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, potential activators can use their increased influence in trying to force renegotiation of the resolution.

With the Council's rejuvenation following the end of the Cold War has come a sharp uptake in its delegations to other actors.<sup>34</sup> 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 delegates 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 Council eventually amended its approach, it took some time and significant external pressure for it to do so.<sup>35</sup> Similarly, in the use of force context, the way in which the United States interpreted Council resolutions that were 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.<sup>36</sup>

Trigger terminations can increase the activators' influence over the actions of those to whom the Council delegates authority. When activators can credibly threaten to activate the trigger if their views are not listened to, delegates have stronger incentives to try to accommodate the activators' concerns regarding the resolution's implementation. For example, if any two P5 countries can activate the trigger if they think that the countries implementing the resolution are not complying 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 delegates carry out their responsibilities. So too, to some extent, can sunset clauses since delegates may wish to have their mandates renewed and therefore be closely attentive to concerns of each P5 country. But because of the greater power conferred on the activators by

<sup>34</sup> See generally DANESH SAROOSHI, *THE UNITED NATIONS AND THE DEVELOPMENT OF COLLECTIVE SECURITY* (1999).

<sup>35</sup> See, e.g., Juliane Kokott & Christoph Sobotta, *The Kadi Case—Constitutional Core Values and International Law—Finding the Balance?*, 23 EUR. J. INT'L L. 1015, 1021 (2012) (discussing the first *Kadi* case in the European Court of Justice, describing subsequent changes made by the Council to its sanctions regime, and noting some potential shortcomings of the revised regime).

<sup>36</sup> 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 Council resolution authorizing the use of force in Libya and noting how this assessment influenced their later voting with respect to Syria).

trigger terminations, their effect should be stronger—at least where triggers have relatively flexible standards for activation.<sup>37</sup>

Even where a Council resolution does not delegate decision-making authority to other actors, trigger terminations will give their activators a strong hand when seeking renegotiation of a resolution. Activators might come to be dissatisfied with an existing 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.<sup>38</sup> 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 Council resolutions in the first place.

### *Facilitating Termination*

The most obvious effect of a trigger termination is, of course, that it makes a 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 Council resolutions much easier to end, activators might be cautious to use their termination power for several reasons. 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.”<sup>39</sup> 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. 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 may result from the threat of activation to the effects resulting from actual activation. Finally, trigger terminations might be used less than anticipated if activators have an inherent preference for the status quo.<sup>40</sup> 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,

<sup>37</sup> When the trigger termination is tied to a strict standard, as was the secretary-general’s termination authority in Resolution 1267, it will provide little negotiating clout over implementation. Where the standard is more flexible, the activator’s bargaining power 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).

<sup>38</sup> 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).

<sup>39</sup> 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/>.

<sup>40</sup> 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).

if other than the Security Council, is competent to say what those limits are?”<sup>41</sup> 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 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 trade-offs between the three trigger 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.

### *Trigger Terminations as Lawful Delegations?*

The legality of trigger terminations turns on whether their inclusion in Council resolutions is consistent with the UN Charter and the role it sets forth for the Council. This inquiry is different from whether exit clauses in treaties are lawful (they are)<sup>42</sup> or whether “legislative vetoes” in U.S. congressional practice are lawful (they are not).<sup>43</sup> The Charter is silent as to how Council resolutions are to end. It is clear that the Council can put sunset provisions in resolutions and can itself vote to terminate resolutions.<sup>44</sup> The question is whether and to what extent the Council can delegate power to terminate all or part of a resolution to another actor.<sup>45</sup>

The answer to this question depends in the first place on whether there are any meaningful legal limits to the contents of a Council resolution.<sup>46</sup> 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 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 Council actions as subject to legal limits.

The Council’s authority to delegate power has been explored with respect to the *implementation* of Council resolutions. The Charter explicitly contemplates that some such delegations

<sup>41</sup> Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.S.), Provisional Measures, 1992 ICJ REP. 115, 140, 142 (Sep. Op. Shahabuddeen, J.).

<sup>42</sup> Vienna Convention on the Law of Treaties, Art. 54, May 23, 1969, 1155 UNTS 331 (providing that “the termination of a treaty or the withdrawal of a party may take place . . . [i]n conformity with the provisions of the treaty”).

<sup>43</sup> *INS v. Chadha*, *supra* note 20. 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).

<sup>44</sup> *E.g.*, Oette, *supra* note 28, at 97 (finding “no doubt” about the legality of sunset provisions).

<sup>45</sup> Aside from Caron’s article, little scholarship explores the legality of termination procedures (other than sunset provisions). 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 Council resolutions without expressing any doubts about the legality of Council-designed termination mechanisms).

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

will occur,<sup>47</sup> and practice provides many instances of delegations.<sup>48</sup> The delegation principles developed in the implementation context should apply to the termination context unless the two are meaningfully different. Danesh 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 Council.<sup>49</sup> If correct, Sarooshi's conclusion would bar trigger terminations that rest on the activator's determination that no threat should remain 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 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 Council should be able to decide on a way to exercise this more modest power that avoids the problem of the reverse veto.<sup>50</sup> In any event, even if correct, Sarooshi's approach would presumably not bar delegating the power to terminate measures taken to address a threat to peace and security but only the power to resolve the underlying question of whether such a threat exists in the first place.

If anything, concerns about the 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 Council resolutions. But while activators could potentially misuse their power to terminate, as delegates 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 necessary means to uphold and implement . . . relevant resolutions and to restore international peace and security in the area."<sup>51</sup> That the United States interpreted this resolution (in conjunction with other resolutions from the same era) 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 Council's power to delegate regarding termination should be at least as broad as, and arguably broader than, its power to delegate regarding implementation.

<sup>47</sup> *E.g.*, UN Charter, Art. 29 (authorizing the Council to establish subsidiary organs); *id.*, Art. 98 (signaling the appropriateness of delegations to the secretary-general). In the discussion that follows, as elsewhere in this Comment, I do not distinguish resolutions passed under Chapter VII from other resolutions, although most of the resolutions that I discuss have been passed under Chapter VII.

<sup>48</sup> For discussion and legal analysis, see generally SAROOSHI, *supra* note 34; *see also, e.g.*, Niels Blokker, *Is the Authorization Authorized?*, 11 EUR. J. INT'L L. 541 (2001); Anna Spain, *The U.N. Security Council's Duty to Decide*, 4 HARV. NAT'L SEC. J. 320, 331–32 (2013).

<sup>49</sup> SAROOSHI, *supra* note 34, at 32–33 ("It was always intended that the five Permanent 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 115–16, 151–52.

<sup>50</sup> Sarooshi acknowledges that his approach is in some tension with practice. *See* SAROOSHI, *supra* note 34, at 115–16 (questioning 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).

<sup>51</sup> SC Res. 678 (Nov. 29, 1990).

In the implementation context, the Council has delegated authority to other UN organs (especially the secretary-general), to member states, and to other international organizations.<sup>52</sup> 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 “fulfil in good faith the obligations assumed by them in accordance with the present Charter.”<sup>53</sup> Delegations to other international legal organizations present more complicated legal issues; while they may not have direct legal obligations with regard to the UN Charter, nonetheless they are public law entities, and state parties to these international organizations do have such legal obligations.<sup>54</sup> 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.

When delegating authority to implement, the Council typically specifies the purpose for which powers are being delegated.<sup>55</sup> 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 the further deployment of the 3,500 personnel of the United Nations Operation in Somalia . . . should proceed at the discretion of the Secretary-General in the light of his assessment of conditions on the ground.”<sup>56</sup> Although the Council seems particularly comfortable with delegations to the secretary-general, authorizations to member states can transfer considerable discretion as well, such as authorizations for the use of force. Resolution 678 quoted above is a particularly broad example, but even narrower authorizations involve the exercise of discretion. Resolution 1973, for example, gave a more limited 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 member states to “take all necessary measures . . . to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya.”<sup>57</sup> 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.<sup>58</sup> The greater the concern that the activator is an

<sup>52</sup> See generally SAROOSHI, *supra* note 34 (discussing delegations to the secretary-general, to member states, and also to regional organizations). The Council’s referral of cases to the International Criminal Court is an additional example of delegating 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).

<sup>53</sup> UN Charter, Art. 2(2); see also *id.*, Art. 2(5).

<sup>54</sup> 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 since I view them as unlikely in practice, but their different legal status supports a good argument that the 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.

<sup>55</sup> 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”).

<sup>56</sup> SC Res. 794, para. 6 (Dec. 3, 1992).

<sup>57</sup> SC Res. 1973, para. 4 (Mar. 17, 2011).

<sup>58</sup> *E.g.*, Prosecutor v. Tadić, Case No. IT-94-1-T, Decision on Jurisdiction, 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

entity that might act arbitrarily, the greater the need for a meaningful standard. Where the activator is the secretary-general, substantial procedural protections against arbitrariness are connected to 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 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 Council's willingness to delegate power to it.<sup>59</sup>

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 state must “believe” that there is “significant non-performance of commitments under the JCPOA.”<sup>60</sup> 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 nonperformance to have occurred 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 nonperformance, for otherwise it would be meaningless.<sup>61</sup> 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 with little room to spare).

As noted earlier, questions about the scope of the Council's powers are difficult ones. Those who see no meaningful limits to the legality of Council delegations can nonetheless treat this discussion as relevant to legitimacy. For those who identify legal limits and yet accept the legality of many kinds of delegations in the implementation context, there are good reasons to conclude that delegations should work similarly and perhaps even more fluidly in the termination context.

### *Balancing Process and Effectiveness*

Trigger terminations can raise difficult questions about the relationship between the fairness of process and the effectiveness of outcomes. When Caron proposed that Council resolutions

purpose it would be acting outside the purview of the powers delegated to it in the Charter”); Peters, *supra* note 23, at 203.

<sup>59</sup> Thus, Resolution 2231 delegates to the International Atomic Energy Agency 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, but one can rule out neither delegation concerns (although the risk of arbitrary activation is less with respect to the European Union than with respect to individual countries) nor broader political and legal considerations about the relationship between the United Nations and the European Union.

<sup>60</sup> SC Res. 2231, *supra* note 2, paras. 11. In addition, the state will go through the JCPOA dispute resolution procedure discussed *supra* note 12.

<sup>61</sup> *Cf. Liversidge v. Anderson*, [1942] A.C. 206, 233 (H.L.) (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).

should specify modified voting procedures for their termination, he saw this measure as a win for both values; allowing a super-majority of the 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.<sup>62</sup> The trigger termination in Resolution 2231 presents a different reality. It promotes the Council's effectiveness by having smoothed the path to the underlying Iran deal and to Resolution 2231. But it does not provide "the opportunity for representative participation and fostering . . . dialogue as to the legitimacy of any action."<sup>63</sup> 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 Council's lack of representativeness.<sup>64</sup> It looks like an old-school political deal made to further the interests of the great powers—an impression furthered by the resolution's content being 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 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.<sup>65</sup>

Overall, I think trigger terminations are currently underused relative to their desirability. From a substantive standpoint, this assessment will be true if the benefits that trigger terminations bring to the formation, implementation, and termination of resolutions are greater than their costs. The balance of benefits and costs will depend on context and on normative views of the merits or demerits of particular Council actions. In general, I would like to see both more robust Council action and more control over actors to whom the Council delegates authority, and thus I favor significantly increased use of trigger terminations to promote both of these interests. But even for those who are more skeptical about Council action, the near total absence of trigger terminations from 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 types of trigger terminations will typically be 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, whereas the use of a trigger termination requires the application of whatever substantive standard there is, and the trigger termination may not take immediate effect.

<sup>62</sup> See Caron, *supra* note 3, at 582–88.

<sup>63</sup> *Id.* at 561.

<sup>64</sup> These values are manifesting themselves, for example, in the push for a responsibility not to veto and in the move to make the 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. (forthcoming) (describing these trends and arguing that they are in fact in tension with each other).

<sup>65</sup> 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).



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. Council members should recognize that it will often be in their international political interest to do so,<sup>66</sup> 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 specific standard has been met.

It remains for the future to say how much or how little trigger terminations will be incorporated into Council practice. Whether and how they are included in resolutions will initially depend on whether negotiators perceive them as part of the toolkit. If they do, then the particular context at issue will next play a role. 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.<sup>67</sup> 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 high thresholds 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.

#### IV. CONCLUSION

Trigger terminations bring to mind the uneasy space that the Council occupies “between power and law.”<sup>68</sup> The use of such devices in the future will depend largely on power—on whether Council members, particularly 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 Council practice.

<sup>66</sup> See “Facilitating Termination” in part II above. 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 Remarks by the President on the Iran Nuclear Deal (Aug. 5, 2015) (Barack Obama: “We won’t need the support of other members of the U.N. Security Council; America can trigger snapback on our own.”), at <https://www.whitehouse.gov/the-press-office/2015/08/05/remarks-president-iran-nuclear-deal>.

<sup>67</sup> See *supra* notes 16–17 and accompanying text.

<sup>68</sup> ALVAREZ, *supra* note 22, at 199.