

JCPOA: The Participants and International Law

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Abstract

On 14 July 2015, the Joint Comprehensive Plan of Action (JCPOA) was finalized, marking the end of long-term negotiations between the Ministry of Foreign Affairs of both Iran and the E3/EU+3. Only six days later, the United Nations Security Council asked all participants of JCPOA to fully implement the deal. It also adopted Resolution 2231 and terminated all previous resolutions.

However, despite all absolute commitments of the participants of JCPOA and contrary to the U.N. Security Council resolution, the U.S. overlooked the deal starting from the implementation day. Eventually, the current U.S. President, Donald Trump, announced on Tuesday, May 8, 2018, that he will withdraw the United States from the Iran nuclear deal.

Nevertheless, according to international law, JCPOA is not considered a bilateral agreement and so does not provide grounds for any participants to alter their position as they wish. Rather, it is a multilateral political comprehension endorsed by the UNSC and has a binding nature deriving from Resolution 2231. This resolution reiterates full and holistic implementation of JCPOA and prohibits any violation regarding the deal.

The main question of the present paper is about the legal nature of the JCPOA. The approach of the UNSC towards JCPOA and the responsibilities of the participants and other U.N. member states toward JCPOA are other questions that are worth considering from an international perspective.

Keywords: JCPOA, Cooperation, International Commitments, IAEA, UNSC 2231.

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The Participants and International Law

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Introduction

The Joint Comprehensive Plan of Action (JCPOA) was finalized on 14 July 2015 after a long term negotiations between the Foreign Ministers of Iran and the E3/EU+3.¹

Prevailing distrustful atmosphere between the Islamic Republic of Iran and the opposing parties caused a prudent approach by both sides during the JCPOA's implementation phase. This was the main reason for the U.N. Security Council to take the first step towards building congenial atmosphere among the participants and through Resolution 2231, it reiterated its commitment to cooperation by the states, in order to enhance the guarantee of JCPOA's success during this crucial stage.

The resolution urged participants of JCPOA to implement their commitments outlined in the plan, so that all previous resolutions sanctioned against Iran would be annulled.²

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1 see: http://eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf

2 UNSC Res.2231, session 7488, 20 July 2015.

The violation of U.S. against the deal has been started from the beginning period of the implementation date of JCPOA and eventually President Trump finally announced on Tuesday 8th May 2018 that he will withdraw the United States from the Iran nuclear deal.

This article will argue about the legal nature of the JCPOA by focusing on the concept of “Obligation to Cooperate” as a milestone of the JCPOA that distinguishes it from other international agreements.

I will also discuss:

- The approach of the UNSC towards JCPOA;
- How far the JCPOA has been implemented in the current political climate;
- The responsibilities of the participants;
- Iranian reading of the implementation of JCPOA.

1-Background of the Issue:

At the implementation stage of the deal, during the Obama Presidency, Iran initiated numerous negotiations in an effort to preserve other participants' commitment to JCPOA and convince them that some methods and decisions of the U.S. and the European Union are inconsistent with the ‘good faith’ which are requested to implement of such an international deal.

In spite of the White House’s repeated assurance to Iran that it would respect JCPOA, measures such as the 10-year extension of the Sanctions Act (ISA) taken by the U.S. House of Representatives and the Act of December 8 2015, both acted against the ‘good faith’ of JCPOA and was openly objected to by Iran.¹

These sanctions imposed new restrictions on entry to the U.S for certain ‘third-world’ country citizens who have been visited Iran.²

From the very beginning of presidential campaign of Mr. Donald

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1 The U.S Treasury Department issues an announcement that new sanctions will be imposed on 11 individuals and entities involved with Iran's ballistic missile programs. The U.S Senate voted unanimously on Thursday 1 December 2015, to extend the Iran Sanctions Act (ISA) for another decade. The measure passed the Senate by 99-0, **January 17, 2016**;

2 **Statement by the President on the One Year Anniversary of the Joint Comprehensive Plan of Action**, The White House, Office of the Press Secretary, July 14, 2016. VISA Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (House of Representatives - December 08, 2015).

Trump in 2016, he explicitly questioned the credibility of the JCPOA.¹

Donald Trump terming the JCPOA “a bad deal,” said: “U.S. will force the Iranians back to the bargaining table to make a much better deal.”(September 2015);

He said that “We have been humiliated by Press Obama and his policies. We have been humiliated by the Iran deal,”(Florida, August, 2016).

During the Presidential Campaign, Trump and his appointees continually demonstrated controversial views and condemned the JCOPA as fundamentally flawed; Trump himself calling it “horrible.”²

They resorted to hate speech against Iran and toward JCPOA.

His former national security advisor, Michael Flynn underlined “regime change in Tehran as the best way to stop the Iranian nuclear weapons deal,” while the candidate for secretary of state, Rex Tillerson, promised a “full review of the accord” as one of their campaign promises.³

From the beginning period of U.S. illegal behavior on JCPOA, this issue was rejected repeatedly by the other participants.

The EU foreign policy chief, Federica Mogherini, who warned that the unilateral attempt by the U.S. to abandon the deal could put it on the opposite side of the EU, further that the accord’s demise would be “unforgivable.”⁴

1In a **letter dated 7 December 2016 to UN chief, Iran’s Ambassador to the United Nations** Gholam Ali Khoshroo deplored violation of the Joint Comprehensive Plan of Action (JCPOA) by the United States after the US Congress passed a bill extending sanctions against Iran for ten more years.

2Republican presidential front-runner Donald Trump says the nuclear deal with Iran is so bad, he is close to wondering whether it was done poorly on purpose. Jan, 02,2016

3Donald Trump terming the Joint Comprehensive Plan of Action “**a bad deal**,” said: “US will force the Iranians back to the bargaining table to make a much better deal.” September 2015; “We have been humiliated by Press Obama and his policies. We have been humiliated by the Iran deal,” the Republican presidential nominee said at a rally in Daytona Beach, Florida, August, 2016. “Michael Flynn’s Testimony on Iran”, Joint House Foreign Affairs and Arms Services Subcommittees, U.S. Congress, 10 June 2015; “Mike Pompeo’s Iran file”, *The Wall Street Journal*, 21 November 2016; Rex Tillerson confirmation hearing, Senate Foreign Relations Committee, 11 January 2017; Ilan Goldenberg, “How James Mattis could stop Trump from ripping up the Iran Nuclear Deal”, *Fortune*, 17 December 2016.

4Mogherini said, “case by case, you will find issues where I wouldn’t be surprised to see the Europeans and the Russians on the same side — Iran deal, Middle East peace process, possibly the role of the U.N”, quoted in Laurence Norman and Julian E. Barnes, “**Top EU diplomat, says bloc is prepared for Trump**”, *The Wall Street Journal*, 14 December 2016; “**Council conclusions on Iran**”, European Council, 14 November 2016; “**Russia says loss of Iran nuclear deal would be unforgivable**”, Interfax, 15 December 2016.

“**China warns Trump: Iran nuclear deal must stand**”, France-Press, 5 December 2016.

China also made comment on President Trump's abrasive attitude toward the JCPOA, stating the deal should not be affected by "changes in the domestic situations" of the countries involved.

Although as a result of these objections, the U.S. administration coerced Trump into redefining his official position toward the JCPOA but the violation of U.S. against the deal has been continued until 2018 and President Trump finally announced on Tuesday 8th May 2018 that he will withdraw the United States from the Iran nuclear deal.

To react to Trump's withdrawal from JCPOA, U.K. Prime Minister, Theresa May, Germany Chancellor, Angela Merkel and French President Emmanuel Macron in the joint statement, announced their commitment to ensure 'the continuing economic benefits ... that are linked to the agreement'.¹

The EU high representative has emphasized that "for the sake of our own collective security, not only the European Union is determined to preserve the deal, but also 'expect the rest of the international community to continue to do its part to guarantee that it continues to be fully implemented". She also expressed that "the deal, which 'is one of the biggest achievements diplomacy has ever delivered... belongs to the entire international community'.²

Accordingly, the President of the European Commission stated that "We must act now and we will act now. That's why we are launching the process to use the 1996 Blocking Statute to neutralize the extraterritorial effects of U.S sanctions on European companies".³

2. The implementation of the JCPOA;

According to the JCPOA, Iran and the E3/EU+3 were supposed to implement their own commitments in three phases, "Finalization Day", "Adoption Day", and "Implementation Day".⁴

¹ Joint statement from Prime Minister Theresa May, Chancellor Angela Merkel and President

Emmanuel Macron following President Trump's statement on Iran, Published 8 May 2018;

² Declaration by the High Representative, Federica Mogherini, on behalf of the European

Union on the situation in Burundi ahead of the constitutional referendum, Rome, 08/05/2018;

³ EU-Western Balkans Summit: "Improving Connectivity and Security in the Region", Brussels, 17 May 2018;

⁴ **Art.34, JCPOA:** Iran and the E3/EU+3 will implement JCPOA commitments according to sequence specified in Annex V., the milestones for implementation are as follows:->

The IAEA Director General, Yukiya Amano issued the “Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015)” on 16 January 2016 and confirmed that Iran has completed the necessary preparatory steps based on the verification by IAEA’s inspectors.¹

The report was submitted to the IAEA Board of Governors and the UNSC.²

Also, the former Spokesman of U.N. Secretary General welcomed the implementation of JCPOA as a “significant milestone and witness to good faith effort of the all parties to fulfill their agreed commitments.”³

It is important to note that since this report, the IAEA has continued to verify Iran’s fulfilled obligations under JCPOA more than six times.⁴

2-1: JCPOA AND PARTICIPANTS;

Following the approval of JCPOA by the Supreme National Security

←i. Finalization Day is the date on which negotiations of this JCPOA are concluded among the E3/EU+3 and Iran, to be followed promptly by submission of the resolution endorsing this JCPOA to the UN Security Council for adoption without delay.

ii. Adoption Day is the date 90 days after the endorsement of this JCPOA by the UN Security Council, or such earlier date as may be determined by mutual consent of the JCPOA participants, at which time the JCPOA and the commitments in this JCPOA come into effect. Beginning on that date, JCPOA participants will make necessary arrangements and preparations for the implementation of their JCPOA commitments.

iii. Implementation Day is the date on which, simultaneously with the IAEA report verifying implementation by Iran of the nuclear – related measures described in section 15.1 to 15.11 of the Annex V. , the EU and the United states take the actions described in section 16 and 17 of Annex V. respectively and in accordance with the UN Security Council resolution, the actions described in section 18 of Annex V. occur at the UN level.

¹IAEA Director General’s Statement on Iran , Saturday 16 January;

² Ibid,GOV/INF/2016/1; See the text: <https://www.iaea.org/newscenter/statements/iaea-director-general%E2%80%99s-statement-iran> (IBID TO CITATION 46)

³ STATEMENT ATTRIBUTABLE TO THE SPOKESMAN FOR THE SECRETARY-GENERAL ON IMPLEMENTATION DAY OF THE JOINT COMPREHENSIVE PLAN OF ACTION, UNITED NATIONS SECRETARY-GENERAL, 16 JANUARY 2016; SEE THE TEXT: [HTTPS://WWW.UN.ORG/SG/EN/CONTENT/SG/STATEMENT/2016-01-16/STATEMENT-ATTRIBUTABLE-SPOKESMAN-SECRETARY-GENERAL-IMPLEMENTATION](https://www.un.org/sg/en/content/sg/statement/2016-01-16/statement-attributable-spokesman-secretary-general-implementation).

⁴Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015)”, GOV/INF/2016/1, 16 January 2016; GOV/2016/8, 26 February 2016; GOV/2016/23, 27 May 2016; GOV/2016/46, 8 September 2016; [GOV/2016/55](#), 9 November 2016; and GOV/2017/1, 16 January 2017

Council of Iran¹, the parliament passed a bill regarding "Iranian government's reciprocal and proportional action in implementation the JCPOA."²

By correspondence of the Supreme Leader to the President, the Guardian Council ratified the multi-lateral nuclear agreement.³

Subsequently, a vast array of nuclear-related sanctions of the U.S. against Iran was relaxed from the Implementation Day.

Thereafter, Iran's economic performance envisioned a promotion.

Oil production and exports returned to pre-sanction levels of 3.85 million barrels per day, of which around two million exported; The country grasped more than \$11 billion of foreign direct investment – the highest annual level in nearly two decades; trade with the EU increased by 42 per cent; Iran regained access to \$55 billion of frozen assets; inflation dropped from a peak of 45 per cent in 2013 to less than 8 per cent in December 2016; Iranian companies signed contracts worth \$150 billion with major European, Asian and even U.S. firms. IMF forecasted the economy would have grown 4.5 per cent during the 2016-2017 fiscal periods.⁴

According to the Iranian Parliament Bill the minister of foreign affairs was required to report on the implementation of JCPOA to the Supreme National Security council and Iranian parliament's National Security and Foreign Policy Commission every three months.⁵

So far Iran's foreign minister has presented seven reports to the Parliament on the methods taken to implement JCPOA.⁶

The third Report given by the Foreign minister to the Parliament

Quoted from **chairman of the Iranian parliament's National Security and Foreign Policy Commission**, The Supreme national Security Council approved JCPOA on 4/Oct/2015;
Iran's parliament approves a detailed bill supporting the Iran deal, October 13, 2015;
3The Supreme Leader issues a statement endorsing the nuclear deal and bill passed by the Iranian parliament, October 20, 2015;

4 Quoted from Bulletin of the Atomic Scientists, "**Iran issues first progress report on nuclear deal**", 19/Apr/2016;

5**The first report**(14/Apr/2016), **the second report**(16/Jul/2016), **the third report**(17/Oct/2016), **the fourth report**(15/Jan/2017) , **the 5th report**(15/Apr/2017), **the 6th report**(18/July/2017) presented to the National Security and Foreign Policy Commission of the Iranian Parliament.

6Until the date of present paper.

expressed that the ten-year renewal of the U.S-born Iran Sanctions Act (ISA) was a flagrant violation of JCPOA.

The ISA was the bedrock of several more unilateral U.S sanctions against Iran, and for the first time was approved in 1996 with the aim of preventing foreign investment in the Iranian Oil and Gas sector. The ISA was extended in 2006 and supposed to be expired at the end of 2016.

The fourth Iranian MFA report to parliament remarked that although in the negotiations of JCPOA, lifting all U.S sanctions against Iran, including ISA, had been agreed, but President Barack Obama extended U.S sanctions against Iran when avoided to veto the bill of extending the sanctions against Iran (ISA).¹

Paragraph 26 of JCPOA expressly defines the general obligation of the United States to refrain from imposing or re-imposing sanctions that have already become ineffective or canceled. Iran then emphasized that this commitment included the suspension of the extension of the ISA as well. Iran evaluated these deeds as inconsistent with JCPOA and called for a joint commission meeting to investigate U.S infractions.²

The Iranians, in an official correspondence to the High Representative of the European Union and the Coordinator of the Joint Commission, underlined the repercussions to an extension of the ISA as "an unprecedented threat to JCPOA, and expressed it obviously violates the spirit and purpose of the JCPOA".³

On 17 December 2016, the Iranian Foreign Minister, in a letter to the High Representative of the European Union and the Coordinator of the Joint Commission, stated "The ISA, whether signed by the President of the United States or not, violates U.S. obligations mentioned in paragraphs 26 and 28 of JCPOA and not only fades the principle of good faith in implementation of JCPOA but also devitalizes the commitments of all participants to the text (Article 8 of the preamble and the General Conditions of JCPOA)".⁴ The letter requested the coordinator of the Joint Commission, in addition to submitting the letter to all involved parties, to convene a joint commission meeting to adopt

¹Iran MFA 4th report to parliament, part 3(a),p.33;

²Ibid;

³Ibid, p.34;

⁴Ibid, p.35;

requisite arrangements for the meeting of the Working Group.¹

Subsequently, the meeting of the Joint Commission of Iran and the E3/EU+3 was held on 10 January 2017. The Commission underscored its members "strong commitment to continue full and effective implementation of the JCPOA."²

The press release issued at the end of this meeting also reiterated the importance of the obligations by the U.S of lifting its sanctions, particularly with regard to ISA. The press release also stated U.S. guarantees that an extension of the ISA would have had no effect on JCPOA and would not restrict companies in business with Iran.³ Once again, the obligations of the participants of JCPOA reaffirmed their commitment and the states recognized a necessity to the full and effective implementation of JCPOA.

On 18 April 2017, the U.S. Secretary of State at the time issued a letter to the House of Representatives, saying that Iran was committed to its obligations upon JCPOA, but at the same time, the White House added a number of the Iranian and non-Iranian individuals to the sanction list upon accusation of supporting Iranian missile programs.

Subsequently, the Iranian foreign minister immediately took reciprocal action and put a number of U.S. nationals onto the Iranian sanctions list for their support for Israel's crimes against the Palestinian people, terrorism, and also, to regional dictators.⁴

116 December 2016

2EEAS homepage > EEAS > Press release on behalf of the Joint Commission of the JCPOA (10 January 2017);

3"All sides reaffirmed their strong commitment to continued full and effective implementation of the JCPOA. The Joint Commission underscored the sanctions lifting commitments contained in the JCPOA, in particular as they relate to the Iran Sanctions Act, and recognized the United States' assurance that extension of the Iran Sanctions Act does not affect in any way the sanctions lifting Iran receives under the deal or the ability of companies to do business in Iran consistent with the JCPOA. The Joint Commission also reiterated the commitments by the participants to the continued lifting of sanctions, in particular under paragraph 21 of the JCPOA.", Press release on behalf of the Joint Commission of the JCPOA (10 January 2017)

Brussels, 10/01/2017 ;

4 The Iranian Foreign Ministry announced in a statement on Sunday(26/Mar/2017) that **the Islamic Republic of Iran has imposed sanctions on 15 American companies involved in propping up the Zionist regime, terrorists and suppressing civilians in the region;** Tehran, March 26, IRNA;

The former U.S. Secretary of State, Rex Tillerson, after the above-mentioned letter to the congress, devoid of obligations, declared the Trump administration has decided to "make a comprehensive review" of its policy towards Iran. Tillerson accused Iran of supporting terrorism, destabilizing the region and undermining the interests of the United States in Syria, Yemen, Iraq and Lebanon, saying that Iran's nuclear ambitions are a major threat to international peace and security and JCPOA is not able to prevent Iran from becoming a nuclear state, so the U.S. government would announce its decision to remain in or withdraw from JCPOA after the end of the review. On 18 May 2017, the President of the U.S. again issued a presidential decree to extend the sanctions exempted by section 125 of the 2012 U.S. National Defense Authorization Act (NDAA) against Iran for 120 days; which was also a violation of the main commitments of the United States upon JCPOA.¹ Despite the fact that IAEA and even the U.S. confirmed Iran's compliance with its commitments under the JCPOA,² White House extremists like Herbert Raymond McMaster and Nikki Haley accused Iran of breaching JCPOA, in an aim to pressurize Iran into agreeing to renegotiate the deal.

The seventh Joint Commission meeting of JCPOA was held in Vienna on 25 April 2017 with the participation of representatives from Iran and the E3/EU+3.³

¹ Secretary of State **Rex Tillerson**, in a letter to speaker of the House Paul Ryan, **certifies to Congress that Iran is compliant in meeting its obligations under the JCPOA, April 18, 2017**;

² WASHINGTON (Reuters) - **U.S. President Donald Trump on Wednesday (17/May/2017) extended wide sanctions relief for Iran** called for under a 2015 international nuclear deal even as he imposed narrow penalties on Iranian and Chinese figures for supporting Iran's ballistic missile program.

³ **IAEA verifies that Tehran has taken certain steps to remove infrastructure and excess centrifuges from Fordow within the necessary timeframe required by the JCPOA, January 15, 2017**;

Secretary of Energy **Moniz** releases a statement noting **"Iran successfully met the milestone of removing excess centrifuges and infrastructure from Fordow, demonstrating that the deal continues to limit Iran's nuclear program so as to provide confidence that Iran is not developing a nuclear weapon and maintain at least a one year breakout time."**, **January 15, 2017**;

⁴ TEHRAN, Apr. 25 (MNA) – **The seventh joint commission between Iran and the 5+1 in Vienna ended after three hours of debate and discussion of topics like breach of commitment by the US and Iran's purchase of 950 tons of yellowcake**;

Bothered by political developments in the United States and its announcement to review its approach, the Iranian delegation denounced the U.S. approach towards JCPOA and noted that this policy contradicts the text and spirit of JCPOA.

During the meeting, the Coordinator of the Joint Commission and other member states highlighted the dire necessity to fulfill the commitments made by all parties.

The third report of the U.N. Secretary General on the implementation of Resolution 2231 was published on 20 June 2017 with the Director General of IAEA reaffirming Iran's fulfillment of the commitments to JCPOA.

The report also welcomed the final joint statement of the seventh meeting of the Joint Commission of JCPOA, and stressed its reliance on need of participatory states to maintain full compliance with their obligations.¹

The session featured the Security Council's review of the report by the U.N. Secretary General. The contributing states at this meeting, included permanent and non-permanent members of the UNSC, insisted on the need to preserve the JCPOA as "the benefits of diplomacy" and admired Iran's adherence to JCPOA.²

From Iran's point of view the controversial measures of the U.S. towards JCPOA had the potential to inflict serious negative damages to the implementation of JCPOA, and to normalizing Iran's economic interactions with other countries.

According to a second report of the Central Bank of Iran on 13 of July 2017, the barriers and challenges to the Iranian monetary-banking activities which are created by the US are as follows:³

- Prohibiting financial settlement (by US dollar) because of the risks

<http://en.mehrnews.com/news/125016/7th-JCPOA-Joint-Commission-wraps-up-in-Vienna>;
¹ S/2017/515, **The Secretary-General's Third report on implementation of the resolution 2231**, 20 JUNE 2017; [This biannual report](#) on UN Security Council Resolution 2231 has affirmed that [Iran is complying with the JCPOA](#) but raising concerns about Iran's ballistic missile activity;
² Ibid, "2. At the start of my tenure as Secretary-General, I am encouraged by the continued implementation of the Joint Comprehensive Plan of Action. I hope that ongoing commitments to the Plan can provide an example of the benefits of diplomacy, which leads to the reduction of tensions among States. I encourage all States to act in accordance with and support this historic agreement, and avoid provocative actions and speech", S/2017/515, 20 JUNE 2017;
³ **The 7th Foreign Ministry report on the implementation of the Joint Comprehensive Plan of Action (JCPOA)**, Tehran, Nov 1, 2017 (IRNA);

associated with the initial sanctions of the United States.

- US law, non-acceptance of the act of tax payment of foreign bank accounts (FATCA).¹
- The situation of Iran in the classification of the Financial Action Task Force (FATF), which drives from US disciplinary rules on combating money laundering and financing terrorism.
- US PATRIOT ACT.²
- The risk of a resumption of sanctions created by the new US administration.
- Continuance of problems on fining banks and companies under the US sanctions.

2-2: JCPOA and dispute settlement mechanisms;

A legal inference from the text of JCPOA and pre-JCPOA negotiations, as well as in tacit expressions of the participants of JCPOA, blatantly expose that JCPOA is a multilateral, comprehensive political agreement to settle an international issue. It is neither a bilateral agreement nor an International Treaty, but rather, is an executive and political deal annexed to a resolution of the United Nations Security Council.

The Resolution 2231, notified the general commitments of the states to cooperate. It also expressed that these obligations were in the framework of the obligations set forth in Article 25 of the Charter of the UN with respect to cooperation of the states of the Security Council. Resolution 2231 confirmed JCPOA to be a decisive achievement of international diplomacy, and, since it is not an International Treaty, it is free from the limits of an International Treaty regime. Thus, none of the participants are authorized to withdraw from the agreement.

Due to the aforementioned complexities, the JCPOA devised a

¹The Foreign Account Tax Compliance Act (FATCA) is an important development in U.S. efforts to combat tax evasion by U.S. persons holding accounts and other financial assets offshore. The Treasury Department and the IRS continue to develop guidance concerning FATCA.

For current and more in-depth information, please visit [FATCA](#).

²The USA Patriot Act is an antiterrorism law enacted by the U.S. Congress in October 2001, at the request of then-President George W. Bush in response to the terrorist attacks that took place on Sept. 11, 2001, in New York and Washington, D.C. Often referred to simply as *the Patriot Act*, it was signed by Bush on Oct. 26, 2001.

parsimonious methodology for resolving any dispute. In accordance with paragraph 36 of JCPOA (Dispute Resolution Mechanism), in the case of an allegation of violation by any participant, the complaining participant can refer the case to the Joint Commission. The time table to exhaust the dispute resolution process includes a 15-day deadline of consideration for the Commission and if the dispute is not resolved, the matter should get remanded to the Foreign Ministers of the participants (in another 15- day deadline). Then, in the case the matter it is still not resolved, the deliberators of the advisory board (including a representatives from both sides of the dispute and an independent representative) will be conducted and, when the non-binding opinion of the advisory board – which should be announced in 15 days – does not resolve the dispute, the Joint Commission will review the opinion of the advisory board again within 5 days. If the dispute still is not resolved, the complaining participant declares a “significant non-performance.”¹ Accordingly, that participant may cite unresolved issue to cease performing its commitments under JCPOA in whole or in part. It may also inform the UN that such difficulty constitutes significantly a non-performance. Article 37 of JCPOA also notifies a 30-day deadline for Security Council to make decision.

In a nut-shell, in the occurrence of a dispute to the claim of a significant non-performance, in the eighty days until the decision of the Security Council has been made (only if the deadlines mentioned in Articles 36 and 37 are not extended), Resolution of 2231 can prevent any unilateral decision of any participant to cease performing the commitments. So, any unilateral measure of a participant of JCPOA (including the White House administration and the Congress) is a clear violation of JCPOA during this time. This is supported by paragraph 36 and 37 of the Dispute Resolution Mechanism, as well as paragraphs 10 to 15 of Resolution 2231, and Article 25 of the UN Charter.

3. JCPOA and the international obligations; the commitments of the participants

In order to determine the legal nature of the JCPOA, and the consequences of retracting from JCPOA, it is necessary to clarify the legal characteristics of the deal.

¹JCPOA, Art.37;

On initial interpretation, the main legal notion of the JCPOA are “comprehensive commitment to cooperation,” “the right to development,” “the right to free trade,” and “the right to economic and political relations with all countries.”¹

The following section will analyze the latter concepts such as “cooperation” in a framework of international law; the legal nature of JCPOA; and the approach of the United Nations Security Council to JCPOA.²

3-1: JCPOA and “Duty to Cooperate”

The authenticity of the legal obligation of the states to “cooperate” (Duty to Cooperate) is of significant importance in international law.³

Basically the international norms stem from the interrelationship of the main actors in the international system (states and international organizations). This means that the international law is based on the principle of inter-state cooperation.

Although, the international public order has not managed to benefit from an advanced legal platform, the commitment of the states to collaborate on basic international issues in an axiomatic principle of international law.

The United Nations declares “the maintaining international peace and security” as its main purpose.⁴

The U.N. takes on a more active role to “common interest” for states by calling for a peaceful settlement of international disputes under the “Principles of International Justice and Law” (“common interest”).⁵

¹ **Joint Comprehensive Plan of Action**, Vienna, 14 July 2015, Article 19;

² *Ibid*, Preface, Para. 2: “Iran envisions that this JCPOA will allow it to move forward with an exclusively peaceful, indigenous nuclear programme, in line with scientific and economic considerations, in accordance with the JCPOA, and with a view to building confidence and encouraging international cooperation”.

³ See: Gareth Ducan, “**Common but Differentiated Responsibilities: The Implication of Principle Seven and Duty to Cooperate on the Implementation of the Convention on Biological Diversity**”, Dalhousie University Law School, Halifax, Canada, 2002.

⁴ **UN Charter, Preamble**: “to unite our strength to maintain international peace and security”

⁵ **UN Charter, Art.1**: The Purposes of the United Nations are :1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

In this regard, the Charter of the UN highlights certain conditions which international agreements must be adhered to.

Article 49 of the Charter commits U.N. members to implement the decisions which are adopted on “partnership and cooperation” and in Article 73(d) also reminds the “commitment” of the cooperation of the member states with specialized international bodies.¹

The International Court of Justice (ICJ) underlines that goal. It is also expressed in the Convention of the Prevention and Punishment of the Crime of Genocide, and in Article 53 of the Vienna Convention of Law in the 1969 Treaties, as well.²

The legal commitment of “co-operation” is the subject of a long discussion in international law.

While some lawyers like Antonio Cassese believe this commitment is just a simple general duty and if we believe it is something more than it, then we are violating a principle of the state’s sovereignty and the principle of “voluntarily of international obligations”, some others like Gareth Duncan, Amparo Sanjose, Rebecca Wallace and Ian Brownlie, believe that it is an “Independence and Legal Authenticity” in international law.³

1 **ART.49, UN CHARTER:** THE MEMBERS OF THE UNITED NATIONS SHALL JOIN IN AFFORDING MUTUAL ASSISTANCE IN CARRYING OUT THE MEASURES DECIDED UPON BY THE SECURITY COUNCIL. **ART.73,IBID:**MEMBERS OF THE UNITED NATIONS WHICH HAVE OR ASSUME RESPONSIBILITIES FOR THE ADMINISTRATION OF TERRITORIES WHOSE PEOPLES HAVE NOT YET ATTAINED A FULL MEASURE OF SELF-GOVERNMENT RECOGNIZE THE PRINCIPLE THAT THE INTERESTS OF THE INHABITANTS OF THESE TERRITORIES ARE PARAMOUNT, AND ACCEPT AS A SACRED TRUST THE OBLIGATION TO PROMOTE TO THE UTMOST, WITHIN THE SYSTEM OF INTERNATIONAL PEACE AND SECURITY ESTABLISHED BY THE PRESENT CHARTER, THE WELL-BEING OF THE INHABITANTS OF THESE TERRITORIES, AND, TO THIS END: D. TO PROMOTE CONSTRUCTIVE MEASURES OF DEVELOPMENT, TO ENCOURAGE RESEARCH, AND TO CO-OPERATE WITH ONE ANOTHER AND, WHEN AND WHERE APPROPRIATE, WITH SPECIALIZED INTERNATIONAL BODIES WITH A VIEW TO THE PRACTICAL ACHIEVEMENT OF THE SOCIAL, ECONOMIC, AND SCIENTIFIC PURPOSES SET FORTH IN THIS ARTICLE; AND...

2 **Advisory Opinion on the right of Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide- 1951;** Law of Treaty, Article 53 - Treaties conflicting with a peremptory norm of general international law (jus cogens): A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

3 See: Antonio Cassese, **International Criminal Law**, Oxford University Press, 2003; Amparo Sanjose Gil, "**State Responsibility for Human Rights Violations**", Review of Legal Research, No.20-30, p.305, Spring/Summer of 2000. He believes that "no state is bound

In spite of the aforementioned differences of opinions over the legal bases of the “duty to cooperate”, the nature of obligatory and universality of “the duty to cooperate” on the arenas such as “human rights, humanitarian law and international peace and security,” is obvious.¹The “commitment of cooperation” is one of the important proponents of JCPOA which is required by the participants.²

In the JCPOA, all participants are pledged to take steps to ensure Iran’s access in areas of trade, technology, finance and energy.

In this context, the EU and its Member States are exploring possible areas of cooperation including the use of export credits to facilitate trade, project financing, and investment in Iran.³

To demonstrate the importance of the commitment within JCPOA, in a “statement by the E3/EU+3 in post-JCPOA”, the participants expressed the readiness to cooperate with Iran on economic developments.⁴

4. JCPOA and the International Law of Treaties;

Following the diversion in Iran’s “peaceful Nuclear” issue by referring it from the International Atomic Energy Agency (IAEA) to the United Nations Security Council, the constant debate was about the destiny of the Iran’s “peaceful nuclear activities” and the correct methodology would usher it to its right path within the IAEA.⁵

These expectations were realized on July 14 2015 in Vienna when

by the obligation to cooperate with states in the general field of international law as a third party.” See also, Rebecca Wallace, Olga Martin-Ortega **“International Law”**, *University of Greenwich, London*, Published, 2013. Gareth Duncan, *ibid*, p.17

1 Christopher Schreuer, **“State Sovereignty and the Duty of States to Cooperate – Two incompatible Notions?”** (Summary and Comments) in *International Law of Cooperation and State Sovereignty*, Kiel, 2002, p. 171.

2 **JCPOA, Preamble and general provisions:**

Xiii) The EU and E3+3 countries and IRAN, in the framework of the JCPOA, will “cooperate”, as appropriate, in the field of ...

r **JCPOA, Preface, Para.2:** Iran envisions that this JCPOA will allow it to move forward with an exclusively peaceful, indigenous nuclear programme, in line with scientific and economic considerations, in accordance with the JCPOA, and with a view to building confidence and encouraging international cooperation.

4 **Statement by France, Germany, United Kingdom, United States and the High Representative of the European Union for Foreign Affairs and Security Policy on Post-JCPOA Business with Iran**”, Bruxelles, 19/05/2016

5 **GOV/2006/14 - Implementation of the NPT Safeguards Agreement in the Islamic republic of Iran**, 4 February 2006.

the Foreign Ministers of Iran and the E3/EU+3 agreed on JCPOA.¹

Swiftly after that conclusion, a question circulated in the international arena concerning the legal characteristics of JCPOA within the realm of the International Law of Treaties.

The legitimacy of JCPOA as an “international treaty” or just a “political agreement” would greatly determine the actions of the Iranian parliament when enacting domestic policy.²

According to the International Law of Treaties, as certified in the 1969 Vienna Convention, a treaty is a written agreement concluded between the states under the international law, whether it is in one or more documents and irrespective of the name.³

Therefore, if JCPOA is characterized as an international treaty (under the Art.2 of Vienna Convention) then all parties will be duty-bound to make arrangements and pass procedures to conclude the treaty.

According to the Convention, a formal international treaty is required to pass five stages. These stages are “negotiation”, “writing”, “signature” (initial signing), “approval,” and “exchange of the document”.⁴

If JCPOA had been recognized as a treaty, then Iran in accordance with its Constitution and the Civil Code would have been committed to adopt it in the Parliament and after approval by the Guardian Council, it also should have been signed by the President, whereas JCPOA did not pass these processes.⁵

1 see: http://eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf

2For reading more about this question, See, Nader Marandi & Mohammad Mehdi Hooshmand, "JCPOA; A Dialectical Paradigm of Treaty and other International Instruments", Journal of Politics and Law, Vol.9 , No. 3 , Published by Canadian Center of Science and Education, 2016

3Article 2 of the 1969 Vienna Convention

4Articles 7,11,12,13, Law of Treaty, 1969;

◊ Art.77, **The Constitution Law of the Islamic Republic of Iran:** "International treaties, protocols, contracts, and agreements must be approved by the Islamic Consultative Assembly". Art. 9, **The Civil Code of The Islamic Republic of Iran:** "Treaty stipulations which have been, in accordance with the Constitutional Law, concluded between the Iranian Government and other government, shall have the force of law." Art. 125, The Constitution Law of the Islamic Republic of Iran "The President or his legal representative has the authority to sign treaties, protocols, contracts, and agreements concluded by the Iranian government with other governments, as well as agreements pertaining to international organizations, after obtaining the approval of the Islamic Consultative Assembly".

Iran believed JCPOA to not be a multilateral treaty, and so, did not adopt the “five stages,” therefore can be considered only to be a political conclusion between Iran and the E3/EU+3, which ultimately were annexed to the UN Security Council Resolution 2231.

As Iranian Foreign Minister reiterated, “The deal is not a bilateral treaty that would require congressional ratification; it is not also a multilateral treaty which requires congressional ratification, but it is rather a Security Council resolution.”¹

Similarly, the other participants of the JCPOA also considered the document as a political compromise not a Treaty.²

Within the U.S, each of the 32 states did not acknowledge JCPOA as a treaty either so following that JCPOA was agreed, the 32 American states, along with the District of Columbia, maintained their own sanctions against Iran target insurance divestment and banking, because they discussed such categories had not been affected by JCPOA.

The frequent emphasis by the participants of the JCPOA leaves no doubt on the intention and legal readings which defined the nature of this deal.

The intention and approach of the participants signified that the document embodied a comprehensive political agreement with the guarantee of political performance derived from the Security Council Resolution 2231.

This resolution repealed the previous six resolutions which were issued against Iran. By this resolution, UNSC has intended to cancel the unilateral US sanctions by U.S as well as lifting the E.U sanctions.

5. JCPOA and the United Nations Security Council

The United Nations Security Council in pursuit of its "primary responsibility in maintaining international peace and security" has continually enforced member states to settle their disputes through

Iranian Minister for foreign affairs in an interview with the Global Politico, 2 October 2017; See full interview at: <http://www.politico.com/magazine/story/2017/10/02/javad-zarif-transcript-215663>

²This is not a bilateral agreement. This is not an agreement that involves six or seven parties. This is a UN Security Council Resolution with an annex. And as such, all Member States of the United Nations are considered to be bound to the implementation of it. So, it doesn't belong to one country, to six countries, to seven countries, to the European Union - it belongs to the international community." **Remarks by High Representative/Vice-President Federica Mogherini following the Ministerial Meeting of the E3/EU + 3 and Iran, Bruxelles, 21/09/2017 .**

peaceful means avoiding any violation of international peace and security.¹

As it is outlined in the U.N. Charter, “peaceful means” include negotiation, mediation, compromise, arbitration, judicial review, recourse to regional institutions, and arrangements. Examples of such settlements between member states can be seen in a number of cases such as “hostage-taking and abduction,” and on Great Lakes region (Uganda, Burundi, and Rwanda).² Such examples highlight the capability of member states to cooperate in times of crisis when international peace and security is threatened.

Since the beginning of the “Iran nuclear issue” and on its referral to the U.N Security Council,³ several resolutions under Chapter VII of the UN Charter were imposed against Iran. What matters in these resolutions, regardless of their binding nature, is the generalization of the requirements of the resolutions to “all states” of the world. These resolutions emphasized strict implementation of the announced measures on Iran through committing the “whole international community,” including member states, non-members, international organizations, and even, in some cases, individuals and non-governmental organizations.⁴

The obligatory enforcement of UNSC through several resolutions from 2006 to 2010, have strongly restricted all states to cut any politically and economically interact with Iran. Resolution 1696 in 2006, urged all states (not just member states) to adhere to certain restrictive measures against Iran. Resolutions 1747, 1803, and 1929 similarly enforced all states to follow specific sanctions against the Islamic Republic of Iran.⁶

¹ ART. 24(1), UN CHARTER: 1) IN ORDER TO ENSURE PROMPT AND EFFECTIVE ACTION BY THE UNITED NATIONS, ITS MEMBERS CONFER ON THE SECURITY COUNCIL PRIMARY → ← RESPONSIBILITY FOR THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY, AND AGREE THAT IN CARRYING OUT ITS DUTIES UNDER THIS RESPONSIBILITY THE SECURITY COUNCIL ACTS ON THEIR BEHALF. **ART. 33(2), UN CHARTER:** 2) THE SECURITY COUNCIL SHALL, WHEN IT DEEMS NECESSARY, CALL UPON THE PARTIES TO SETTLE THEIR DISPUTE BY SUCH MEANS.

² S/RES/638 (1989); S/RES/1653 (2006);

³ GOV/2006/14 - **Implementation of the NPT Safeguards Agreement in the Islamic republic of Iran**, 4 February 2006;

⁴ **S/RES/1737(2006), 1747(2007), 1803(2008), 1835(2008), 1887(2009) and 1929(2010).**

⁵ **S/RES/1696(2006)**, paragraph 5;

⁶ **S/RES/1747(2007)**, preamble and paragraph 2, 6, 7 and 8; **S/RES/1803(2008)**, Para. 1, 3, 5, 8, 9, 10, 11, 13 and 17; **S/RES/1929(2010)**, Para. 8, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 30, 31 and 35.

Resolution 1737(2006), expresses clear guidelines for all states toward Iran.¹

These guidelines include a wide range of prohibitions in the supply various items that are directly or indirectly imported into Iran from the territory of the exporting state as well as the restrictive measures on oil trade, and the banking system of Iran.

Bearing in mind that the emphasis on the phrase "all states" by the Security Council is based on the perception outlined in Article 25 of the Charter, that United Nations member states proclaimed to obey all decisions of the Security Council in the spirit of international peace and security, and that even non-member states of the United Nations are unable to exclude themselves from these obligations.²

However, Resolution 2231 adopted in 20 July 2015, changed the story.

Unlike the other resolutions enacted against Iran, Res. 2231 highlighted an innovative approach by the Security Council to demonstrate prosperous achievements of JCPOA.

In fact the Resolution 2231 has brought in light the pivotal question about the legal nature of obligations of JCPOA participants.

What distinguishes this resolution with six previous consecutive resolutions is the unique approach that the Security Council came up with the latter resolution.

The Security Council in Resolution 2231 recalling the six previous resolutions on Iran ,declaring that all are terminated,encouraged member states to cooperate with Iran in implementation of JCPOA, emphasized the commitment of the member states to implement the decisions of the Security Council upon Article 25 of the Charter.³

When the Security Council adopts a decision under Article 25 of the UN Charter, as it is done in Art.2231, it is for member States to comply with that decision.⁴

¹S/RES/1737(2006), Paras.3, 4, 6, 12, and 19.

²ART.2(6),UN CHARTER: THE ORGANIZATION SHALL ENSURE THAT STATES WHICH ARE NOT MEMBERS OF THE UNITED NATIONS ACT IN ACCORDANCE WITH THESE PRINCIPLES SO FAR AS MAY BE NECESSARY FOR THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY.

³S/RES/2231(2015), Para.11; S/RES/2231(2015), preamble, Para.14.

⁴ICJ, " Legal consequences for states of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276(1970)", Advisory Opinion, para. 116,21 June,1971;

It is important to note that in the previous resolutions on Iran the Security Council did not directly refer to Article 25 of the Charter.

The obligatory character of the Security Council's decisions, even those that are not related to the enforcement measures under Chapter VII of the Charter, has been emphasized by the ICJ in its Advisory Opinion on "Reparation for Injuries Suffered in the Service of the United Nations".¹

The Court elaborates this point further in its Advisory Opinion on Namibia, to reject the contention that Article 25 of the Charter applies only to enforcement measures adopted under Chapter VII of the Charter.²

The Resolution 2231 welcomed JCPOA, and urged all contracting participants to implement JCPOA with good faith. This means that despite the previous resolutions whereby all states were asked to take certain restrictive measures against Iran, Resolution 2231 called on all member states "to cooperate with Iran to implement JCPOA" or to reverse all their past actions.³

In other words, by Resolution 2231, the UN Security Council asked all member states to not act upon previous resolutions.

The Council, through Article 1 of the Resolution 2231, endorsed JCPOA and called on full implementation of JCPOA on the basis of the timetable set forth in the resolution.

In Article 2, "all states" and regional and international organizations are required to take appropriate measures to support JCPOA.

¹ ICJ, "Reparation for Injuries suffered in the service of the United Nations", Advisory Opinion, 11-Apr-1949;

² ICJ, "Legal consequences for states of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276(1970)", Advisory Opinion, 21 June, 1971;

³ Res.2231, Preamble Paras.11 -12:

"Encouraging Member States to cooperate, including through IAEA involvement, with Iran in the framework of the JCPOA in the field of peaceful uses of nuclear energy and to engage in mutually determined civil nuclear cooperation projects, in accordance with Annex III of the JCPOA,

Noting the termination of provisions of previous resolutions and other measures foreseen in this resolution, and inviting Member States to give due regard to these changes"; Art. 7: "Decides, acting under Article 41 of the Charter of the United Nations, that, upon receipt by the Security Council of the report from the IAEA described in paragraph 5"

6. The Responsibility of Violator;

The withdrawal of United States from JCPOA and the subsequent measures that were taken to defy the implementation of the Resolution is a material breach of U.S. obligations to comply with the decisions of the Security Council under the Charter and therefore, entails its international responsibility

Upon the general obligations of States under international law, States have not to provide any aid or assistance to another with a view to facilitating the commission of an internationally wrongful act by the latter.¹

Considering the fact that the challenge imposed by the U.S. is not only against Iran but it targets what forms the universally recognized bases of international legal order and the basic principles like *pacta sunt servanda*, good faith, multilateralism, international cooperation, and the rule of law, the UN member states have a number positive obligations in taking appropriate measures to ensure the continuous implementation of the Resolution 2231 and the JCPOA.

Obligations of states under the Charter, in general, and the decisions of the Security Council, in particular, have special importance not only because of the expressed reference of Article 103 of the UN Charter, but also due to the important role they play in maintaining international peace and security.²

Conclusion

- A legal assessment of JCPOA and the U.S treatment against Iran during post-JCPOA shall be reviewed below:
- JCPOA is a political conclusion of Iran and the E3/EU+3's nuclear negotiation as well as the rights and obligations of the participants of JCPOA. Any other issue concerning these political entities, other than nuclear is out of its mandate.
- JCPOA is a multilateral political agreement made upon the

¹Article 16 of the draft rules of Responsibility of State for Internationally Wrongful Act, The text annexed to the UN General Assembly resolution 56/83, 12 Dec. 2001;

²Article 103: In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

intentions of the participants. Therefore, the participants do not treat it as an International Treaty. Any unilateral decision about JCPOA based on any allegations, like, non-implementation of the commitments by others, which may be used by the other party as a rationale for reciprocation that Article 60 of the Treaty Convention 1969 permits is not admissible in JCPOA.

- Resolution 2231 as the guarantee for the implementation of JCPOA, stipulates the full endorsement of the deal, requires all participants to comply with their obligations and also annuls the previous resolutions of the Security Council under Chapter 7 of the United Nations Charter.
- The U.S. unilateral withdrawal of JCPOA not only contradicts its obligations but also is a grave breach of Resolution 2231 of the Security Council for it requires "all states and regional and international organizations to take appropriate measures supporting JCPOA."
- Due to explicit and unconditional confirmation by the Security Council, it is imperative that any alleged breach of the obligations must be settled in the framework of the mechanism embodied in JCPOA.
- Violation of JCPOA as an annexed document to Resolution 2231 of the Security Council, notifies the states responsible for the violation in question.
- The Resolution 2231 contains positive obligations by emphasizing on the 'States' rights and obligations relating to:
 - International trade (preamble);
 - To accept and carry out the Security Council's decisions under Article 25 of the Charter (preamble);
 - To take such actions as may be appropriate to support the implementation of the JCPOA; (para 2).
- Emphasis of this Resolution on Article 41 of the Charter (seventh chapter) means all countries are legally obliged under Article 25 of the Charter to terminate all sanctions against Iran.
- Most importantly, with respect to the approach taken by the UN Security Council, any sanction against Iran or any decision by any party causing some negative effects on the economic situation of Iran, is against Resolution 2231 for violating the spirit and entity of

JCPOA.

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**The 2018 Danish “Burqa Ban” :
Joining a European Trend and Sending a National Message**

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Dr. Bronik Matwijkiw **

1. Introduction: Law L 219

There will be no bad incidents involving Muslim women – no

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The authors note that Dr. Oriolo and Dr. Long are also participants in and contributors to the collective research project that resulted in the response article, *The Burqa Ban: Legal Precursors for Denmark, American Experiences and Experiments, and Philosophical and Critical Examinations*.

“French trouble” –so the Danish Minister of Justice Søren Pape Poulsen reassured the citizenry when §134 c. of the Danish penal law, the provision for the so-called “*burqa* ban”, was adopted and signed into law.¹ In spite of the minister’s reassurance, however, the new prohibitive and legal measure is an instance of censorship in the public space. One general argument for the measure relies on the premise that “it is not Danish and will never become Danish to wear the *burqa*” or, for that matter, any other Islamic full-face veil.² At the same time, the inference that “it is (typical) Danish to legislate for the area of clothing” is impossible to substantiate with a reference to positive domestic law, legal precedent and/or the “the tradition of culture” for policymaking and rule-application, which influential Danish theorists like Alf Ross accommodates.³ Instead, the relevant freedom-restricting

1 The “French trouble” refers to Muslim women who refuse to show their face in public or to non-Muslims’ attempts to rip off their veil. See Ritzau, TV2, 31 May 2018, available at <<http://nyheder.tv2.dk/politik/2018-05-31-folketinget-vedtager-et-tildækningsforbud>>; Peter Allen, *France has first ‘burqa rage’ incident*, The Telegraph, 18 May 2010, available at <<https://www.telegraph.co.uk/news/worldnews/europe/france/7735607/France-has-first-burka-rage-incident.html>>; Ben McPartland, *Burqa ban five years on – ‘we created a monster’*, Local (Fr), 12 October 2015, available at <<https://www.thelocal.fr/20151012/france-burqa-ban-five-years-on-we-create-a-monster>>; Folketinget [National Parliament], 3. Behandling af L 219: Om et tildækningsforbud. Endelig vedtagelse 2017-18 L 219 [3. Reading of L 219: Ban to Cover. Final Adoption], 31 May 2018, available at <<https://www.retsinformation.dk/Forms/R0710.aspx?id=201753>> [hereinafter National Parliament Ban of 31 May 2018]; Ministry of Justice, j.nr. 2017-0090-0233, 8 June 2018, available at <<https://www.retsinformation.dk/forms/R0710.aspx?id=201839>> (for Queen Margrethe II of Denmark’s royal consent (*cf.* “samtykke”) and confirmation (*cf.* “stadfæstelse”) “by the grace of God” in accordance with the 1953 Danish Constitution whereby Denmark is a constitutional monarchy (*cf.* Chapter I, § 2) with the Evangelic-Lutheran church as the state-sponsored Christian denomination (*cf.* Chapter 1, § 4) and with the Queen as the formal head of the executive branch of government; National Parliament, Danmarks Riges Grundlov af 5. Juni 1953 [Danish Constitution of 5 June 1953], available at <<http://www.ft.dk/da/dokumenter/bestil-publikationer/publikationer/grundloven/danmarks-riges-grundlov/kapitel-1/paragraf-2>> [hereinafter Danish Constitution of 5 June 1953].

2 National Parliament, Retsudvalget, Betænkning over Forslag til Lov om Ændring af Straffeloven (Tildækningsforbud) [Parliamentary Report on Proposal for Amendment of the Penal Law (Cover Ban)], 24 May 2018, 2, available at <<https://www.retsinformation.dk/Forms/R0710.aspx?id=201598>> [hereinafter Parliamentary Report of 24 May 2018].

3 ALF ROSS, ON LAW AND JUSTICE, 97 (2004) (1959 1st ed.); Ministry of Justice, Forslag (og Bemærkninger) til Lov om Ændring af Straffeloven (Tildækningsforbud) [Proposal (and Commentaries) for Amendment of the Penal Law (Cover Ban)], 11 April 2018, 3 (for the non-existence (in Danish law) of a “general prohibition” against garments that cover the face in public places), 8-9 (for references to Ross’ interpretation of Danish constitutional law), available at <<http://www.ft.dk/da/search?msf=&q=tild%C3%A6kningsforbud&as=1>> [hereinafter Ministry of Justice Proposal (and Commentaries) of 11 April 2018].

Note that Ross’ general jurisprudence, namely Scandinavian realism, has influenced the →