

The Proliferation of Corruption in Sanctions Regimes:

The Case of Iran

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“Power does not corrupt.

Fear corrupts ...

perhaps the fear of a loss of power.”

- John Steinbeck, *The Short Reign of Pippin IV* (1957)

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Abstract

In international law, policymakers have replaced military interventions with economic sanctions over recent decades. However, the imposition of sanctions has its own costs and unintended results, including humanitarian issues in sanctioned countries and economic costs for sanctioning states. This proposed study concentrates on another undesirable outcome of sanctions: it argues that economic sanctions increase the level of corruption in sanctioned countries and other countries.

The first chapter begins with a conceptual background and briefly reviews economic sanctions and corruption debates in the law and other fields. The second chapter uses a case study of Iran to obtain a better understanding between the relationship of economic sanctions and corruption. This study concludes the imposition of economic sanctions affects countries with specific consequences, leading to a rise in the level of corruption in sanctioned and third countries. It further proposes that countries that have undergone economic sanctions appear to deal with the issue of corruption even after sanctions are lifted. Finally, this study raises implications that could be useful for policymakers to choose the right combination of foreign policy tools for future cases of economic sanctions.

Résumé

En droit international, les décideurs ont remplacé les interventions militaires par des sanctions économiques au cours des dernières décennies. Cependant, l'imposition de sanctions a ses propres coûts et des résultats imprévus, y compris des problèmes humanitaires dans les pays sanctionnés et des coûts économiques pour les États qui les sanctionnent. Cette étude proposée se concentre sur un autre résultat indésirable des sanctions: elle fait valoir que les sanctions économiques augmentent le niveau de corruption dans les pays sanctionnés et dans d'autres pays.

Le premier chapitre commence par un contexte conceptuel et passe brièvement en revue les sanctions économiques et les débats sur la corruption dans le droit et dans d'autres domaines. Le deuxième chapitre utilise une étude de cas sur l'Iran pour mieux comprendre la relation entre les sanctions économiques et la corruption. Cette étude conclut que l'imposition de sanctions économiques affecte les pays ayant des conséquences spécifiques, entraînant une augmentation du niveau de corruption dans les pays sanctionnés et les pays tiers. Il propose en outre que les pays qui ont été soumis à des sanctions économiques semblent confrontés au problème de la corruption même après la levée des sanctions. Enfin, cette étude soulève des implications qui pourraient être utiles aux décideurs politiques pour choisir la bonne combinaison d'instruments de politique étrangère pour les futurs cas de sanctions économiques.

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Introduction

Over recent decades, the world's leading developed countries have replaced military interventions with sanctions, and so the realm of economic sanctions has been significantly developed in international law. However, the implementation of economic sanctions has its own costs and unintended results, including humanitarian issues in sanctioned countries and economic costs for sanctioning states. This proposed research attempts to determine the consequences of economic sanctions from a different point of view: it considers the effects of economic sanctions on the proliferation of corruption and argues that sanctions cause particular consequences, leading to a rise in corruption.

Due to the growing use of economic sanctions as well as the development of anti-corruption movements, policymakers need to pay attention to the relationship between economic sanctions and corruption. By considering the underappreciated impacts of sanctions on corruption, this research claims that economic sanctions increase the level of corruption in sanctioned countries and other countries. This study further provides policymakers with considerations for the evaluation of economic sanctions and implications that could be useful for choosing the right combination of policy tools for future cases.

In international law, although scholarly and policy debates over both economic sanctions and corruption are vast, both debates have been developing in separate directions. The academic and policy discussions on economic sanctions have mostly focused on the effectiveness and humanitarian costs of sanctions. Some scholars touch upon the issues of smuggling and corruption in sanctions regimes, but they primarily consider these corrupt activities as methods to circumvent sanctions. Johan Galtung is one of the first scholars who refer to smuggling activities as a way to

evade sanctions.¹ Similarly, Gary Clyde Hufbauer et al point to the “defensive strategies, smuggling and stockpiling” as methods of evading sanctions and comment on the role of “black knights” who help a sanctioned country to circumvent sanctions.² Further, David Lektzian and Mark Souva argue that the effectiveness of sanctions depends on the political system of a state and conclude that, in a non-democratic system, a leader would “extract rents” and “encourage smuggling” to evade sanctions.³ Nevertheless, a comprehensive legal study of economic sanctions which addresses corruption has not been conducted.

As for corruption, remarkable studies have discussed its history, types, causes, measurement, and control methods. While scholars have undoubtedly contributed to placing corruption in the debates on international law, no one has attempted to focus on the inconsistency between imposing sanctions and anti-corruption policies. For example, Robert Klitgaard considers laws restricting economic activities as a root of corruption, but he refers to domestic laws and does not consider international restrictions such as economic sanctions.⁴

Instead of answering the question of whether economic sanctions work or policymakers should use them as a foreign policy tool, this research focuses on the role of international restrictions in increasing the levels of corruption. This study, therefore, intends to highlight that the implementation of economic sanctions leads to the excessive growth of corruption in countries.

This research begins with a brief review of economic sanctions and corruption debates in the law and other fields. It provides a conceptual analysis of the law and practice of sanctions at

¹ See Johan Galtung, “On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia” (1967) 19:3 World Policy 378 at 397.

² Gary Clyde Hufbauer et al, *Economic Sanctions Reconsidered* (Washington, DC: Peterson Institute for International Economics, 2007) at 47–48; see also A Cooper Drury, “Revisiting Economic Sanctions Reconsidered” (1998) 35:4 J Peace Research 497 at 502; Bryan R Early, “Unmasking the Black Knights: Sanctions Busters and Their Effects on the Success of Economic Sanctions” (2011) 7:4 Foreign Policy Analysis 381.

³ David Lektzian & Mark Souva, “An Institutional Theory of Sanctions Onset and Success” (2007) 51:6 J Confl Resolution 848 at 853.

⁴ See Robert E Klitgaard, *Controlling Corruption* (Berkeley, Cal: University of California Press, 1988).

the United Nations Security Council, as an international body initiating economic sanctions, and in the US, as a state which frequently imposes sanctions against other countries. Then, this study analyzes the issue of corruption, defines the concept of corruption, examines several types of corruption, and explains its causes and effects in society. Then, this research briefly talks about the measurement of corruption and also well-known anti-corruption instruments, namely the Foreign Corruption Practices Act of 1977, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the United Nations Convention against Corruption.

To obtain a better understanding of the relationship of economic sanctions and corruption, the second chapter uses a case study of Iran to illustrate that economic sanctions affect sanctioned and other countries with specific consequences, leading to a rise in the level of corruption. This chapter presents an overview of both economic sanctions and corruption in Iran. Next, through an in-depth analysis of nuclear-related sanctions, it compares the level of corruption before, during, and after sanctions in Iran. By examining several scandals and evidence from corruption cases, this study traces the corruption that resulted from nuclear-related sanctions in Iran's oil sector, its government, its civil society, and the region of Middle East during the sanctions episode and after the nuclear-related sanctions were eased.

Focusing on legal sources like statutes and international treaties as well as a wide range of secondary literature, this study applies an empirical method to the case study of Iran and gathers related data about the effects of economic sanctions on corruption in Iran and other countries which helped Iran to circumvent the sanctions. Essential data drives mainly from documents and records in legal periodicals and journals, newspaper gazettes, previous studies, official statistics, government reports, and web information.

Ultimately, the results have various implications for policy. First, by considering the underappreciated impacts of economic sanctions on corruption, the study provides valuable insights that may contribute to the design and implementation of anti-corruption reforms. Second, since the study identifies circumstances in which economic sanctions are most likely to be circumvented, it provides policymakers with considerations in evaluating the effectiveness of sanctions.

Chapter 1 – Economic Sanctions and Corruption: A General Background

This chapter provides a conceptual background for the second chapter that intends to analyze the relationship between economic sanctions and corruption through a detailed examination of sanctions against Iran. This chapter begins with a brief review of economic sanctions and covers their definitions, types, goals, the effectiveness factors, and consequences. It also provides a conceptual analysis of the law and practice of economic sanctions at the United Nations Security Council, as an international body initiating economic sanctions, and in the US, as a state which frequently imposes sanctions against other countries.

The second section analyzes the issue of corruption in different disciplines, including law, social science, and economics. It defines the concept of corruption, examines several types of corruption, and explains its causes and effects in society. Then, this section briefly talks about the measurement of corruption and well-known anti-corruption instruments, namely the Foreign Corruption Practices Act of 1977, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the United Nations Convention against Corruption.

A. ECONOMIC SANCTIONS

Countries have various foreign policy goals, from making the world as peaceful and democratic as possible to furthering cooperative international trade. In order to achieve these objectives, they also have different tools: diplomacy, economic sanctions, and military interventions. Today, if negotiations are insufficient, and military interventions are too costly, economic sanctions seem more reasonable to resolve disputes in the international community. Over the past few decades, numerous countries, entities, and individuals have been subjected to economic sanctions by other states or international organizations. The use of economic sanctions

in all cases, whether unilateral or multilateral, whether comprehensive or smart, has been controversial. A systematic legal study of economic sanctions, therefore, must deal with every aspect of the subject, i.e., it needs to define and categorize economic sanctions, identify their goals, capture their consequences, and explain their legal frameworks.

Thus, this section attempts to explore economic sanctions from a legal point of view as well as to reflect other comparative perspectives towards them, including social science, economics, and political science. This section begins with definitions and explanations of economic sanctions and discusses different types of economic sanctions. Next, it examines economic sanctions regarding goals, the determinants of effectiveness, and consequences in several aspects of society. Further, the section provides a conceptual analysis of the law and practice of sanctions at the United Nations Security Council, as an international body initiating economic sanctions, and in the US, which frequently imposes sanctions against other countries.

1. The Origin and Nature of Economic Sanctions

After giving a brief history, this study defines economic sanctions and clarifies common terms that are used in the sanctions debates. Further, it discusses the legality of economic sanctions and presents their different types.

Economic sanctions are not new to international law; their application has been pervasive and controversial throughout history. While countries started to consider economic sanctions as a substitute for military force during the World Wars, their history goes back almost 2500 years. Up until World War I, economic sanctions had generally “foreshadowed or accompanied warfare.”⁵ The earliest cited use of economic sanctions was in 432 BC by the Athenians.⁶ Pericles issued an

⁵ Hufbauer et al, *supra* note 2 at 10.

⁶ See e.g. Geoff L Simons, *Imposing Economic Sanctions: Legal Remedy or Genocidal Tool?* (London, UK: Pluto Press, 1999) at 13–16.

import embargo to limit the entry of products from Megara in response to the Megarian territorial expansion.⁷

However, it was only at the time of the World Wars that states realized that military force could replace economic sanctions.⁸ In the *Covenant of League of Nations*, members authorized states to impose economic sanctions against other states in the case of military aggression.⁹ In 1935, the League imposed a trade embargo against Italy, but the members lacked a political will to create an effective sanctions regime.¹⁰ Thus, the sanction efforts operated to discredit the League itself. Nevertheless, sanctions were more effective during World War II, when the US and Britain imposed several sanctions to disrupt military adventures.¹¹

While during the Cold War, economic sanctions were used to stop military actions and territorial acquisition,¹² in the post-Cold War era, the most common goals of economic sanctions were regime change and democratization.¹³ Following the attacks on the US on 11 September 2001, states adopted sanction regimes to confront international terrorism and the development of weapons of mass destruction.¹⁴ Today, the world's leading developed countries have replaced military interventions with economic sanctions and significantly developed the realm of economic sanctions in international law. The nature of current economic sanctions differs from those of the past, and every aspect of current sanctions requires an in-depth consideration of legal and other perspectives.

⁷ See *ibid.*

⁸ See Hufbauer et al, *supra* note 2 at 10.

⁹ *Covenant of the League of Nations*, 28 June 1919, art 16 (entered into force 10 January 1920) [*Covenant*].

¹⁰ See Kern Alexander, *Economic Sanctions: Law and Public Policy* (Basingstoke, UK: Palgrave Macmillan, 2009) at 9; see also Andreas F Lowenfeld, *International Economic Law* (Oxford: Oxford University Press, 2008) at 849.

¹¹ See Alexander, *supra* note 10 at 16–17.

¹² See e.g. Hufbauer et al, *supra* note 2 at 14.

¹³ See *ibid.*

¹⁴ See *ibid.*

Economic sanctions have no universal definition in the literature: economic sanctions are primarily defined as an international reaction to illegality.¹⁵ *Economic Sanctions Reconsidered*, as the most comprehensive work on economic sanctions, defines economic sanctions as “the deliberate, government inspired withdrawal, or threat of withdrawal, of customary trade or financial relations.”¹⁶ By the word “deliberate,” the definition intends to exclude tactics that unintentionally impose limitations on trade or financial relations. Sanctions also need to be applied by governments, not by an individual or entity. The definition further reflects that an outcome of sanctions may be either an imposed sanction or a mere threat. Finally, by the word “customary,” the definition means that withdrawals cover not only contracts but all commercial activities that “would probably have occurred in the absence of sanctions.”¹⁷

Moreover, Andreas Lowenfeld outlines a definition to cover the reasons and goals of economic sanctions instead of enumerating their characteristics. He describes economic sanctions as the “measures of an economic ... character taken by states to express disapproval of the acts of the target or to induce that target to change some policy or practices or even its governmental structure.”¹⁸ This purpose-oriented approach asserts that sanctions are imposed because a country condemns specific acts of another country, and desires to change the policies or governmental

¹⁵ See e.g. Hans Kelsen, *Law of the United Nations: A Critical Analysis of Its Fundamental Problems: With Supplement* (New York: Frederick A Praeger, 1950) at 706; Antonios Tzanakopoulos, “Reaction to Illegal Sanctions” in Matthew Happold & Paul Eden, eds, *Economic Sanctions and International Law* (Oxford: Hart Publishing, 2016) 67 at 67.

¹⁶ Hufbauer et al, *supra* note 2 at 3.

¹⁷ *Ibid*; see also Ernest H Preeg, *Feeling Good or Doing Good with Sanctions: Unilateral Economic Sanctions and the U.S. National Interest* (Washington, DC: Center for Strategic and International Studies, 1999) at 4 (defining an economic sanction as a “restriction on normal commercial relations with the target country”).

¹⁸ Lowenfeld, *supra* note 10 at 850.

structure of that country.¹⁹ By specifying the “economic” aspect, Lowenfeld intends to exclude all diplomatic or military measures from the scope of economic sanctions.²⁰

Occasionally, economic sanctions and specific other terms may have overlap with each other or be used interchangeably. A “boycott” is the withdrawal of a country from relations with an individual, group, or state as means of expressing disapproval or forcing change.²¹ While economic sanctions need to be primarily economic, a boycott is a refusal to have relations, whether economic, diplomatic, or both. The terms “embargo,” “isolation,” and “quarantine” are an official prohibition of trade with a particular country.²² A state uses them to ban all trade and business with a particular country, but economic sanctions may restrict trade with a particular individual, state, or entity and in specific types of goods. Finally, in a military conflict, a country may undertake a “blockade,” “economic warfare,” “military siege,” or “military sanction” to deprive another country of vital sources of resistance;²³ conversely, economic sanctions are adopted in peacetime.

The literature of economic sanctions has its own terminology. A sanctions regime usually involves three parties: a “sender,” a “target,” and “third countries.” A sender or sanctioning body is a country or international organization that disapproves of an act or policy of a country and imposes economic sanctions against it. While a number of countries may impose an economic sanction, one state usually takes the lead role.²⁴ The target or sanctioned body is an immediate

¹⁹ See also Robert Eyler, *Economic Sanctions: International Policy and Political Economy at Work* (New York: Palgrave Macmillan, 2008) at 4 (defining an economic sanction as “a country’s discriminatory economic restriction of either trade or credit flows with another country in an attempt to affect or reverse current policy in the sanctioned nation”); Robert A Pape, “Why Economic Sanctions Do Not Work” (1997) 22:2 Intl Security 90 at 93–94 (arguing that “economic sanctions seek to lower the aggregate economic welfare of a target state by reducing international trade in order to coerce the target government to change its political behavior”).

²⁰ But see e.g. Simons, *supra* note 6 at 11 (defining the central principle of an economic sanction as that “a targeted group, society or country be deliberately deprived of the means to an effective economic life” and considering military force as another example of economic sanctions).

²¹ See e.g. *ibid* at 8.

²² See e.g. *ibid* at 9.

²³ See Simons, *supra* note 6 at 10.

²⁴ See e.g. Hufbauer et al, *supra* note 2 at 43.

object of economic sanctions and may be a state, non-governmental entity, or individual. Third parties are other states, entities, and individuals whose level of involvement is significant in terms of outcomes because they may help either the sender or the target.²⁵ Occasionally, a sender imposes economic sanctions against third parties if they support a target to circumvent sanctions.²⁶

But how do economic sanctions work? Economic sanctions force a target to comply with the requests of a sender in two ways. Effective economic sanctions may create difficult economic circumstances for a target, to the extent that it complies with the sender's objectives.²⁷ In other words, when a sender disapproves of a particular act of a target and imposes economic sanctions against it, effective sanctions decrease the target's wealth. Sanctions may increase the price of imports, reduce the income from exports, or impede the flow of finance; therefore, the target realizes that the cost of noncompliance with the sender would be higher than the cost of compliance.²⁸ By calculating financial costs and benefits or political gains and losses, the target decides whether to fulfill the sender's requests or not.

Alternatively, effective economic sanctions may change the behavior of a government through its people.²⁹ Effective sanctions impose economic hardship on the target's population by reducing their wealth and income. In turn, these domestic actors pressure the government to comply with the sender's requests. Hence, the targeted government satisfies the request of the sender in order to avoid political costs and maintain its power.

Besides the mechanisms, it is essential to consider the legality of economic sanctions and answer the question of whether countries have the right to take extraterritorial measures and extend

²⁵ See Eyler, *supra* note 19 at 4.

²⁶ See Alexander, *supra* note 10 at 1.

²⁷ See generally Galtung, *supra* note 1.

²⁸ See Eyler, *supra* note 19 at 22.

²⁹ See generally Susan H Allen, "The Domestic Political Costs of Economic Sanctions" (2008) 52:6 J Confl Resolution 916; see also Galtung, *supra* note 1.

their laws to foreign governments and persons. States began to provide a legal framework for economic sanctions only after World War I.³⁰ A number of international agreements have condemned any economic or political measure by a state to force its will upon other states.³¹ Similarly, several developing countries have attempted to establish an international standard against the imposition of economic sanctions. However, the frequent use of economic sanctions indicates that there is no clear norm in international law against their implementation.³² Some scholars believe that when an international organization like the United Nations imposes sanctions against a member, the prior consent of that member justifies this measure because all members have agreed to be bound by the organization's decisions.³³ However, this reasoning does not explain unilateral sanctions in which there is no agreement between the sender and the target.

Since the United Nations considers only multilateral measures as economic sanctions, there are several explanations about the legitimacy of unilateral sanctions in the literature. Economic sanctions that are imposed because of the wrongful act of a target can be justified under the concept of "countermeasures" or "measures of retorsion and reprisal."³⁴ In this regard, Article 22 of the *RSIWA* authorizes states to take specific measures in response to "[t]he wrongfulness of an act of a State not in conformity with an international obligation towards another State."³⁵ In the absence of a wrongful act in a sanctions regime, it is argued that a state has the freedom to modify its political and economic relations with other states.³⁶ However, some scholars argue that it is

³⁰ See *Covenant*, art 16.

³¹ See e.g. *Charter of the Organization of American States*, 119 UNTS 3 art 19.

³² See Lowenfeld, *supra* note 9 at 891.

³³ See e.g. Matthew Happold, "Economic Sanctions and International Law: An Introduction" in Happold & Eden, *supra* note 15, at 2.

³⁴ See e.g. Hufbauer et al, *supra* note 2 at 137.

³⁵ *Responsibility of States for Internationally Wrongful Acts*, UNGAOR, 56th Sess, UN Doc A/56/83 art 22 (2001) [*RSIWA*].

³⁶ See e.g. Hufbauer et al, *supra* note 2 at 137.

unlawful for a state to take any measure to force another state to change its political, economic, or social policies within its domestic jurisdiction.³⁷

To answer the question of whether it is required for economic sanctions to be lawful, it is argued that international law recognizes only international or multilateral measures as lawful economic sanctions and unilateral sanctions are impermissible under the *UN Charter*.³⁸ However, the nature of international law does not bind all states, and it lacks the authority to enforce its rules.³⁹ Thus, a state may comply with a specific rule of international law if it would be in its interests, or a state may choose not to adhere to a rule of international law based on the principle of sovereignty. In the issue of international sanctions, powerful states, like the United States, frequently implement unilateral sanctions, arguing that they have the right to formulate their own foreign trade policies with other nations.

Nonetheless, “the foreign economic policies of states are subject to the limitations of international law.”⁴⁰ Under customary international law, states are required to comply with three principles when implementing unilateral economic sanctions. The “principle of proportionality” demands a sender to consider the economic, political, and social consequences of sanctions within a target; the “principle of discrimination” asks for a specific precision in the imposition of economic sanctions, and the “principle of necessity” requires a sender to assess and weigh economic sanctions to conclude whether sanctions would be successful in achieving their goals.⁴¹

³⁷ See *ibid*.

³⁸ See Rahmat Mohamad, “Unilateral Sanctions in International Law: A Quest for legality”, in Ali Z Marossi & Marisa R Bassett, eds, *Economic Sanctions Under International Law: Unilateralism, Multilateralism, Legitimacy, and Consequences* (The Hague, The Netherlands: T.M.C. Asser Press, 2015) 71 at 72; *Charter of the United Nations*, 26 June 1945, Can TS 1945 No 7 [*UN Charter*].

³⁹ See Curtis Henderson, “Legality of Economic Sanctions Under International Law: The Case of Nicaragua” (1986) 43:1 Wash & Lee L Rev 167 at 168.

⁴⁰ *Ibid* at 179.

⁴¹ See e.g. Rahmat Mohamad “Unilateral Sanctions in International Law: A Quest for legality”, in Ali Z Marossi & Marisa R Bassett, *supra* note 38 at 80.

Depending on its goals, a sender may apply different types of economic sanctions against a target. A sanction can take a form from a mild economic sanction, like non-renewal of specific economic benefits such as fishing rights or foreign assistance, to the most severe economic sanction, i.e., a total embargo. Generally, economic sanctions are divided into two categories: “trade sanctions” and “financial sanctions.”

“Trade sanctions” are economic sanctions that prevent citizens of a sender from buying from or selling to the government or citizens of a target.⁴² These sanctions are further subdivided into “export sanctions” and “import sanctions.” Export sanctions limit exports of certain classes of goods, services, or technology from a sender to the target’s economy; indeed, they restrict the target’s supply of imports. A sender may ban various types of goods, like weapons, products or technical data with dual-use potential,⁴³ products with advanced technology in the scope of military or economic strength, or development aid.⁴⁴ These sanctions may affect the world price of goods and services, increase prices of other products, and decrease the quality of sanctioned goods in the target’s market.⁴⁵ In contrast, import sanctions restrict imports of certain types of products from a target to the economy of a sender. These sanctions impose losses on the wealth of the target through reducing export revenues.⁴⁶

On the other hand, “financial sanctions” are associated with financial privileges, while they may have impacts on the goods market of a target.⁴⁷ “Asset freezes” and “blocking orders” are two main types of financial sanctions. An asset freeze holds all funds and other financial assets of a person, entity, or state within the jurisdiction of a sender and prohibits financial institutions from

⁴² See Aaron Xavier Fellmeth, *The Law of International Business Transactions* (St. Paul, Minn: Thomson/West, 2011) at 308.

⁴³ Products or data which can have both military and civilian uses.

⁴⁴ See Lowenfeld, *supra* note 9 at 895

⁴⁵ See Eyler, *supra* note 19 at 17.

⁴⁶ See e.g. *ibid* at 12–16.

⁴⁷ See *ibid* at 20.

disbursing those assets to the target.⁴⁸ If the target is a state, an asset freeze not only stops the financial flows but also affects the state's trade market.⁴⁹ A blocking order forbids any citizen or entity to do business or have financial and commercial transactions with a blocked person, entity, or state. The prohibition may be at the domestic or international level, or both; and prohibited transactions may relate to complete or partial ownership of a property owned by blocked persons.⁵⁰

One type of economic sanction that does not easily fall into these categories is "travel bans." Travel bans may take two forms: (1) limitations on air travel to and from a targeted state in order to impede its tourism revenue; or (2) travel bans and visa restrictions against individuals, either all nationals or a political leader, a military official, or their supporters.⁵¹

Economic sanctions can be classified in other dimensions. Based on who imposes economic sanctions against a target, sanctions are divided into (1) unilateral sanctions, when only one state imposes sanctions against a target; (2) multilateral sanctions, when several states that are injured by an internationally wrongful act or have a common interest impose sanctions against a target; (3) universal sanctions, when all or almost all states impose sanctions against a target; and (4) institutional sanctions, when an international organization reacting to an internationally wrongful act imposes sanctions against a target.⁵²

Concentrating on the target of economic sanctions, economic sanctions are categorized into (1) comprehensive or collective sanctions, when economic sanctions direct the whole targeted country and may even include innocent persons and entities; (2) targeted or smart sanctions, when economic sanctions restrict particular products or activities, or are aimed at a specific person or

⁴⁸ See Fellmeth, *supra* note 42 at 308.

⁴⁹ See Hufbauer et al, *supra* note 2 at 48.

⁵⁰ See Fellmeth, *supra* note 42 at 308.

⁵¹ See Hufbauer et al, *supra* note 2 at 140.

⁵² See e.g. Galtung, *supra* note 1 at 381.

entity in a target, like an asset freeze or travel ban on certain governmental officials or business elites; and (3) sectorial sanctions, when economic sanctions target a specific sector that affects the power and security of a state, such as arms embargoes or export prohibitions.⁵³

2. *The Use and Practice of Economic Sanctions*

This section deals with several goals of economic sanctions and clarifies that different economic, social, and political factors have determined the effectiveness of sanctions. It further explains the consequences of economic sanctions on both targets and senders.

A sender may seek various economic, political, or ideological goals by choosing economic sanctions from its foreign policy toolkit. It is essential to recognize the goals and objectives of sanctions so that their imposition is justified. Moreover, in determining the effectiveness of sanctions and making a decision to lift them, it is necessary to know whether a sender achieves its particular goals. While senders usually announce their objectives, sometimes they pursue hidden goals which can be entirely different from their claims.⁵⁴

A sender may disapprove of specific policies in a target, so it imposes economic sanctions to pursue a change. A sender also may seek to modify particular foreign or domestic policies or change the regime of a target. In the 1970s, human rights abuses and religious persecution cases were the primary goals of US sanctions against other states.⁵⁵ Following the attack on the US on 11 September 2001, numerous sanctions have been imposed to fight against international terrorism and its supporters.⁵⁶ Confronting drug trafficking, opposing corruption, settling expropriation

⁵³ See generally Matthew Happold, “Targeted Sanctions and Human Rights” in Happold & Eden, *supra* note 15 at 88–89. Also, for a further discussion on sanction’s dimensions, see Galtung, *supra* note 1.

⁵⁴ See Makio Miyagawa, *Do Economic Sanctions Work?* (Basingstoke, UK: Macmillan, 1992) at 89.

⁵⁵ See Hufbauer et al, *supra* note 2 at 13.

⁵⁶ See e.g. Alexander, *supra* note 10 at 9.

claims, disapproving unilateral declaration of independence, and condemning violent repression of demonstrations are among other incentives to change a policy or regime in targets.

Moreover, a sender may choose to impose economic sanctions against a target to “disrupt military adventures” or “impair military potential.”⁵⁷ The imposition of sanctions to stop military adventures was a common goal among states after the World Wars. A well-known example of sanctions aiming to weaken military capability is sanctions responding to the development of weapons of mass destruction, particularly nuclear proliferation and ballistic missiles.

Sometimes, through imposing economic sanctions, a sender intends to signal political messages to the world and highlight certain principles that it considers to be the rules of international law.⁵⁸ An example is associated with the US sanctions against Cuba in which the US attempted to show the world that there would be no future for communism in western countries.⁵⁹

Finally, in some cases, a sender may choose to impose economic sanctions as a response to specific domestic or international public concerns. In those cases, the public requires a state to do something more than merely condemn an internationally wrongful act. Therefore, especially at the time of elections, a government may answer this concern by resorting to more concrete measures like implementing economic sanctions. Sanctions imposed by the US against the Soviet Union in 1981 were a measure to satisfy domestic public opinion.⁶⁰ Similarly, when countries ask other nations to participate in condemning an internationally wrongful act, a state may decide to

⁵⁷ Hufbauer et al, *supra* note 2 at 69–70.

⁵⁸ See Miyagawa, *supra* note 54 at 91–93.

⁵⁹ See *ibid*.

⁶⁰ See *ibid* at 94–99 (following the deceleration of marital law by the Polish government on 13 December 1981, President Reagan decided to announce comprehensive sanctions against the Soviet Union, due to the pressures coming from the Chairman of the Polish American Council, the International Longshoreman’s Association, and the President of the American Federation of Labor-Congress of Industrial organization).

impose sanctions to maintain its relations with allies. In the example of sanctions against the Soviet Union, the US put pressure upon its allies in NATO, and they agreed to join the US sanctions.⁶¹

In *Economic Sanctions Reconsidered*, Hufbauer et al examine 174 cases and conclude that in only 34 percent of cases, economic sanctions accomplished their initial goals.⁶² Other scholars evaluate the success rate even lower: Galtung believes sanctions are generally unsuccessful,⁶³ and Pape argues that less than 5 percent of sanctions can be classified as successful.⁶⁴ Despite different estimates of whether or not economic sanctions work, several political and economic factors affect the outcomes of sanctions.

One of the political factors of the effectiveness of sanctions is associated with the degree of international cooperation. If a sender asks other countries and international organizations to support sanctions against a target, the extent of their cooperation may determine the outcome of sanctions. In other words, multilateral sanctions are more likely to be successful than unilateral sanctions. In the case that a sender has allies, political and economic costs on a target are intensified. However, if third parties do not engage in the efforts of a sender, the impacts of sanctions on the target may be diminished. Moreover, the likelihood of achieving the objectives decreases in a sanctions regime in which “black knights” and sanction-busters assist the target with sanctions evasion.⁶⁵

Another political aspect is related to the political structure or regime type of a target. If democracy exists in a target, people can create political pressure on the government to comply with the sender’s demands. On the other hand, in autocratic states, the public does not have a

⁶¹ See *ibid* at 98.

⁶² Hufbauer et al, *supra* note 2 at 158–59.

⁶³ Galtung, *supra* note 1 at 409.

⁶⁴ Pape, *supra* note 19 at 108.

⁶⁵ See generally Hufbauer et al, *supra* note 2 at 57–60.

significant influence on the government. The autocratic government, further, may protect its key supporters, such as the army, from sanctions pressure to “make them unlikely to rebel.”⁶⁶ Moreover, if a sender and a target have had prior financial relations, economic sanctions are more likely to be successful.⁶⁷ In that case, the sender better knows how to efficiently impose sanctions so that the target responds in accordance with the objectives. In addition, the target may consider its long-term relations with the sender before responding to the sanctions.

As for economic factors, the effectiveness of sanctions partly depends on the level of cost that sanctions impose on the economies of both the target and the sender.⁶⁸ The larger the economic hardship on the target, the larger the possibility of success. On the other hand, if economic sanctions impose higher costs on the sender’s economy than on the target’s, sanctions cannot be considered a success. Examples may include cases where domestic firms in the sender’s nation may lose businesses as a result of adhering to sanctions regulations, and the uncertainty in the economy provides conditions that trading partners seek for alternative markets.⁶⁹

Furthermore, commercial relations between the sender and the target, and their respective economic sizes, play an essential role in the effectiveness of sanctions.⁷⁰ For a successful economic sanction, a sender needs to have financial or trade relations with a target. Banning trade or restricting financial transactions with a target that has no prior economic relations with the sender does not produce any change in the behavior of the target. Similarly, if the target has a larger market than the sender’s and more economic power, economic sanctions are less effective.

⁶⁶ Allen, *supra* note 29 at 917, 923.

⁶⁷ See generally Hufbauer et al, *supra* note 2 at 60–61; see also Eyler, *supra* note 19 at 9.

⁶⁸ See Drury, *supra* note 2 at 508.

⁶⁹ See generally Hufbauer et al, *supra* note 2 at 108.

⁷⁰ See generally *ibid* at 89–91.

Another relevant economic factor is related to the type of sanctions. In their examination of sanctions cases, Hufbauer et al conclude that financial sanctions have generally been more effective than trade sanctions.⁷¹ Moreover, several scholars believe that while comprehensive sanctions are inefficient, smart or targeted sanctions are comparatively more effective when they direct costs to the targeted persons or entities.⁷² Finally, the vulnerability of a target influences the level of success;⁷³ sanctions are more likely to succeed in the target that has a weak economy and economic issues, like struggles with inflation, economic crisis, or political instabilities.

Far beyond the economic and political costs to a target, imposing economic sanctions may cause several concerns for targets, senders, and third parties. Humanitarian impacts on targets have been a continuous challenge in the imposition of sanctions. Through depriving people of their social and economic rights, economic sanctions may harm innocent individuals instead of the targeted government or entities. The “human costs of the Iraqi sanctions” were far more than those of the “weapons of mass destruction and ballistic missiles” throughout the history.⁷⁴ Similarly, Weiss believes that humanitarian damages of sanctions are equal to the costs of war.⁷⁵

Both comprehensive and targeted sanctions can create social concerns for targets. Comprehensive sanctions may have life-threatening consequences for civilians due to the lack of food, drugs, and other essential resources. Economic sanctions further impose unfavorable political costs on the regime’s opponents, so the government, which controls national resources, may overcome opposition groups who are suffering from the lack of vital resources.⁷⁶ On the other

⁷¹ See *ibid* at 97–98.

⁷² See Happold, *supra* note 15 at 8; David Cortright & George A Lopez, *Smart Sanctions: Targeting Economic Statecraft* (Lanham, Md: Rowman & Littlefield Publishers, 2002); Alexander, *supra* note 10 at 1. But see Arne Tostensen & Beate Bull, “Are Smart Sanctions Feasible?” (2002) 54:3 *World Politics* 373 at 389–94.

⁷³ See generally Hufbauer et al, *supra* note 2 at 99.

⁷⁴ John Mueller & Karl Mueller, “Sanctions of Mass Destruction” (1999) 78:3 *Foreign Affairs* 43 at 51.

⁷⁵ Thomas G. Weiss, “Sanctions as a Foreign Policy Tool: Weighing Humanitarian Impulses” (1999) 36:5 *J Peace Research* 499 at 506.

⁷⁶ See generally Allen, *supra* note 29, at 924–25.

hand, imposing targeted sanctions against key institutions, like central banks, can cause inflation in the economy and create hardship for people who are already struggling to survive.⁷⁷ Also, if a sanction wrongfully targets a person or entity, they cannot protect themselves against this injustice because they do not have the procedural rights of access to a court, fair trial, or remedy.⁷⁸

Furthermore, economic sanctions may impose economic costs on the sender's businesses.⁷⁹ Economic sanctions place the economy of a sender at a comparative disadvantage in world markets. While other countries continue to do business with the target, sanctions regulations limit the flow of goods and services to, and from, a sender and compel domestic businesses to cancel existing contracts with a target. In addition, other trading partners of a sender may seek alternative partners because the level of uncertainty increases in the economy when a state frequently uses economic sanctions against other countries. Finally, another unwanted consequence of using economic sanctions is associated with their impact on the level of corruption in the target, sender, and third countries. The relationship between economic sanctions and corruption has been underappreciated in the sanctions debate. In the second chapter, this study attempts to analyze the effects of economic sanctions on the excessive growth of corruption.

3. *Legal Framework of Economic Sanctions*

This section analyzes the legal framework and procedures of economic sanctions. The first focus is on mechanisms at the United Nations Security Council (hereinafter UNSC) because it usually develops sanctions regimes that other states and international organizations adopt. Then, this study considers the sanctions procedures in the state that imposes the most sanctions in the

⁷⁷ See generally Happold, *supra* note 15 at 10.

⁷⁸ See generally Tzanakopoulos, *supra* note 15.

⁷⁹ See generally Hufbauer et al, *supra* note 2 at 108.

world, i.e. the United States. This research explores the legal framework and formal management of economic sanctions in each case.

i. The United Nations

The sanctions policy of the United Nations (hereinafter UN) is originally derived from Article 16 of the *Covenant*.⁸⁰ The drafters of the *UN Charter* improved the legacy of Article 16 and made specific provisions for economic sanctions in chapter VII, “Action with Respects to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.”⁸¹ Since 1966, the UN has instituted 26 different sanctions regimes, and among them, today, 16 cases are still in progress.⁸² Before the 1990s, the UN imposed mandatory economic sanctions on two states, Rhodesia and South Africa. After the fall of the Berlin Wall and Iraq’s invasion of Kuwait, the UN has implemented economic sanctions more routinely. The nature of the first economic sanctions applied by the UN was comprehensive. However, following the humanitarian consequences of sanctions imposed on Iraq, Haiti, and Yugoslavia, the UN moved away from comprehensive sanctions and started to design targeted or smart economic sanctions.⁸³

Provisions of economic sanctions are specifically set in the Articles 39 and 41 of the *UN Charter*. Chapter VII begins with Article 39 which states:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or

⁸⁰ Article 16 of the *Covenant* is as follows:

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

⁸¹ The *UN Charter*.

⁸² For a complete list of sanctions regimes, see “Sanctions” (last visited 24 July 2018), online: *United Nations Security Council Subsidiary Organs* <www.un.org/sc/suborg/en/sanctions/information>.

⁸³ See generally LJ Herik, *Research Handbook on UN Sanctions and International Law* (Cheltenham, UK: Edward Elgar Publishing, 2017) at 3–5; see also Hufbauer et al, *supra* note 2 at 132.

decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

In addition, Article 41 provides specific requirements for economic sanctions:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

According to the Articles, only the UNSC has the discretion to impose mandatory sanctions. Furthermore, neither an international court nor a domestic court can challenge the UNSC decisions.⁸⁴ In addition, the United Nations General Assembly (hereinafter UNGA) is authorized to pass non-binding resolutions suggesting member states impose economic sanctions against a target.⁸⁵

The Articles authorize the UNSC to pass resolutions regarding economic sanctions and specify three steps that must be carried out for an economic sanction to become mandatory. First, the UNSC has to determine the existence of one of these circumstances: a threat to peace, breach of peace, or act of aggression. Under the broad language of Article 39, threats to or breaches of the peace may take several forms. So far, the UNSC has considered the following issues as threats to or breaches of the peace: inter-state conflicts, internal conflicts, breaches of democracy and constitutional boundaries, human rights or humanitarian law violations, terrorism, and piracy.⁸⁶

After determining a threat to or a breach of the peace, or an act of aggression, the UNSC may make either a recommendation or a decision regarding imposition of economic sanctions

⁸⁴ See Lowenfeld, *supra* note 9 at 858.

⁸⁵ See Alexander, *supra* note 10 at 24.

⁸⁶ For more information, see Alain Pellet & Alina Miron, "Sanctions" in Max Plank Encyclopedia of Public International Law, (Oxford: Oxford Public International Law, Last updated: 2013), online: <opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e984?rskey=2UTOGI&result=1&prd=EPIL> at para 20.

against a target. While the recommendations are not binding, the decisions are binding and states are required to comply with them. In other words, if a state does not comply with a recommendation, it cannot be held that it breaches the recommendation.⁸⁷ Article 27 of the *UN Charter* requires “an affirmative vote of nine members including the concurring (or abstention) votes of the permanent members” for a decision made by the UNSC.⁸⁸

Lastly, if the UNSC decides to impose an economic sanction, it asks member states to consider and impose sanctions against a target. Article 25 of the *UN Charter* provides, “The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”⁸⁹ Hence, the decision regarding the imposition of economic sanction becomes binding, and all member states have to comply with it. Application of a mandatory sanction may contradict an international agreement, a bilateral agreement, the most-favored-nation provision of GATT,⁹⁰ a preexisting contract, or domestic law; however, the UNSC decision prevails over them.⁹¹

Concerning the types of economic sanctions, Article 41 uses the phrase “[t]hese may include ...” and, then, provides a list of possible measures. Therefore, the list is not exhaustive, and the UNSC may consider any measure as an economic sanction.⁹² Finally, the *UN Charter* does not provide any specific requirement for the termination of economic sanctions. Similarly, the UNSC decisions have not included any provision giving a period or a specific event for the expiration. Therefore, an economic sanction may be terminated by another UNSC decision with

⁸⁷ See Lowenfeld, *supra* note 9 at 855, 870.

⁸⁸ *The UN Charter*, Art 27.

⁸⁹ *Ibid*, art 25.

⁹⁰ *General Agreement on Tariffs and Trade*, 30 October 1947, 58 UNTS 187 art 1 (entered into force 1 January 1948).

⁹¹ See Lowenfeld, *supra* note 9 at 855, 859–60.

⁹² See *ibid* at 859.

the same voting procedures. Alternatively, sanctions may be terminated by a permanent member who declares that it will no more impose sanctions against the target.⁹³

“Institutional resources” and “engagement by individuals in key positions” are essential for effective UN economic sanctions.⁹⁴ In the UN structure, specific procedures and institutions are equipped to deal with sanctions regimes. Any UNSC resolution initiating a specific sanctions regime usually assigns a Sanctions Committee and provides it with working procedures for operating the sanctions program.⁹⁵ A committee is comprised of representatives of the UNSC members and a chairperson who directs the committee. Each committee has specific tasks including controlling the implementation of sanctions through monitoring teams and panels of experts, examining reports on the implementation of sanctions, managing applications for waivers and exemptions, identifying persons and entities for placement on the “naming and shaming list,”⁹⁶ considering the humanitarian costs of sanctions, and improving sanctions implementation.⁹⁷

The Subsidiary Sanctions Branch at the UN Department of Affairs controls the work of Sanctions Committees. It advises committees on practices and procedures, monitors committees’ reports, performs committees’ decisions, and analyzes sanctions.⁹⁸ Another core task of the Sanctions Branch is associated with the administration of the naming and shaming list.⁹⁹ The UNSC also has established the Panels of Experts in order to monitor the implementation and compliance of sanctions.¹⁰⁰ These panels are responsible for reporting their activities to the related

⁹³ See *ibid* at 864.

⁹⁴ Mikael Eriksson, *Targeting Peace: Understanding UN and EU Targeted Sanctions* (Farnham, UK: Ashgate, 2011) at 120–21.

⁹⁵ See Jeremy M Farrall, *United Nations Sanctions and the Rule of Law* (Cambridge, UK: Cambridge University Press, 2009) at 147–157.

⁹⁶ The list indicates states, individuals, companies, and organizations who do not comply with the UNSC sanctions policies.

⁹⁷ See Eriksson, *supra* note 94 at 118–19.

⁹⁸ See *ibid* at 118.

⁹⁹ See *ibid*.

¹⁰⁰ See Farrall, *supra* note 95 at 163–174.

Sanctions Committee. In addition to the mentioned bodies, the UNSC has established the Security Council Working Group on Sanctions, disarmament commissions and commissions of inquiry, monitoring bodies, and United Nations peacekeeping operations for specific sanctions regimes.¹⁰¹

ii. The US

Economic sanctions have played an essential role in the US foreign policy toolkit, and the total number of US sanctions is far more than the combined number of applied sanctions by all other countries. In addition to the abundant record of implementing sanctions, US economic sanctions significantly affect non-US markets because the US plays a key role in the global economy and US dollars are used as the major currency in the worldwide practice. Moreover, other countries and international organizations consider US sanctions as an example while designing their own sanctions regimes.¹⁰² Therefore, this section focuses on the US jurisdiction to provide a better understanding of the legal structure of US economic sanctions.

US economic sanctions are classified as unilateral sanctions since it is only a country that imposes sanctions against targets, and these unilateral measures may be considered as lawful or unlawful under international law. Some scholars believe that the US has no right to implement sanctions that are not authorized by the UN or not considered as a countermeasure. For example, O'Connell and Molla argue that imposing sanctions against third parties who do not engage in the US sanctions coalitions violates specific international legal principles, including but not limited to the due process and non-intervention principles.¹⁰³ However, the US argues that it has the right to

¹⁰¹ For further information on the bodies and their activities, see *ibid* at 157–163, 174–181.

¹⁰² For further details, see Rachel Barnes, “United States Sanctions: Delisting Applications, Judicial Review and Secret Evidence” in Matthew Happold & Paul Eden, eds, *Economic Sanctions and International Law* (Oxford: Hart Publishing, 2016) 197 at 197.

¹⁰³ See e.g. Marry Ellen O'Connell & Reyan El Molla, “The Prohibition on the Use of Force for Arms Control: The Case of Iran's Nuclear Program”, (2013) 2:2 Penn State JL & Intl Aff 315 at 324.

regulate its own foreign trade policies with other states. Therefore, the imposition of unilateral economic sanctions, whether lawful or not, has become a frequent practice of US foreign policy.

Considering the history of US sanctions, although the first uses of economic sanctions by the US preceded the twentieth century, the World Wars and Cold War are recognized as landmarks for the US sanctions. However, since the 1990s, the US has intensified its imposition of economic sanctions. Hufbauer et al believe that the US intends to show its leadership in world affairs by imposing sanctions.¹⁰⁴ The US has imposed economic sanctions against different countries, entities, and individuals, to pursue a broad range of foreign policy objectives, from preventing the proliferation of weapons of mass destruction to improving human rights to fighting against corruption.

While the imposition of economic sanctions in the US legal system was initially rooted in common law principles,¹⁰⁵ statutes and regulations currently govern US sanctions. The US Constitution provides, “[t]he Congress shall have Power ... [t]o regulate Commerce with foreign Nations, and among the several States.”¹⁰⁶ Congress further has delegated the authority of imposing sanctions to the President by enacting a number of general and specific statutes. Four general statutory authorities enable the President to implement sanctions against other states:

TWEA:¹⁰⁷ After US entry into World War I, Congress passed this act that authorized the President to apply economic sanctions against targeted states and their governments in times of war or declaration of a national emergency. The *TWEA* had been the main statutory authority for

¹⁰⁴ Hufbauer et al, *supra* note 2 at 5.

¹⁰⁵ See Alexander, *supra* note 10 at 92 (citing *Kershaw v. Kelsey*, 97 US 124, 127–28 “[i]n a state of war the question when and under what regulations commercial intercourse, which is a partial suspension of the war, shall be permitted, must be determined, on views of public policy, by the sovereign, who alone has the power of declaring war and peace; and not by individuals, upon their own notions of convenience, and possibly on grounds of private advantage, not reconcilable with the general interest of the state.”).

¹⁰⁶ US Const art I, § 8, cl 3.

¹⁰⁷ *Trading with the Enemy Act*, 50 USC §§ 1–44 (1917) [*TWEA*].

most US economic sanctions from 1917 to 1977. In 1977, Congress limited the application of the *TWEA* to the existing economic sanctions at that time, namely sanctions against North Korea, Cuba, Cambodia, and Vietnam.¹⁰⁸ Today, economic sanctions against Cuba are the only remaining sanctions under this “grandfather clause.”¹⁰⁹

IEEPA:¹¹⁰ Since 1977, this act has been the primary statutory authority for most US sanctions regimes. It authorizes the President to impose sanctions against a target in order to deal with national emergencies and confront threats “to the national security, foreign policy or economy.”¹¹¹ To exercise this power, the President must declare a national emergency and justify the Congress. In 1988, Congress amended the *IEEPA* to limit restrictions on certain transactions involving travel and exchange of information.¹¹² As for the termination of *IEEPA*-based sanctions, the President may terminate them at any time; however, if the president intends to extend the sanctions, they must be renewed appropriately under the *IEEPA*’s sunset provisions.¹¹³

*ECA*¹¹⁴ and successor statutes and amendments: Due to Cold War tensions, Congress enacted the *ECA* as a temporary act and prohibited exports of all materials and technology from the US to other countries, unless exporters obtain a valid license.¹¹⁵ This act also authorized the President to control exports and re-exports of US products and technology without declaring any national emergency.¹¹⁶ In 1979, Congress replaced the *ECA* with the *EAA*¹¹⁷ which contained similar limitations on trade. In general, whereas the *TWEA* and *IEEPA* have restricted “all

¹⁰⁸ See Alexander, *supra* note 10 at 92–95.

¹⁰⁹ Kay C Georgi & Paul M Lalonde, eds, *Export Controls and Economic Sanctions* (Chicago: American Bar Association, 2013).

¹¹⁰ *International Emergency Economic Powers Act*, 50 USC §§ 1701–08 (2006) [*IEEPA*].

¹¹¹ *Ibid.*, s 1701-a.

¹¹² See Alexander, *supra* note 10 at 95–97.

¹¹³ See Georgi & Lalonde, *supra* note 109 at 2–3.

¹¹⁴ *Export Control Act*, 50 USC §§ 2021–32 (1952) [*ECA*].

¹¹⁵ See Alexander, *supra* note 10 at 97–105.

¹¹⁶ See *ibid.*

¹¹⁷ *Export Administration Act*, 50 USC §§ 2401–20 (1979) [*EAA*].

commercial and financial activities of US persons and US-controlled persons” with targets, *ECA* and *EAA* have explicitly prohibited the export or re-export of certain goods, services, and technology.¹¹⁸

United Nations Participation Act:¹¹⁹ If the UN mandates the imposition of economic sanctions against a state, individual, or entity, the President imposes sanctions under the statutory authority of this act.

In addition to these general statutes, Congress enacted several specific statutes to mandate and encourage the imposition of sanctions against states for particular reasons like fighting against international terrorism or narcotics trafficking. Primary examples include the *CISADA*,¹²⁰ the *Syria Accountability and Lebanese Sovereignty Restoration Act*,¹²¹ the *Cuban Liberty and Democratic Solidarity Act*,¹²² and the *ISA*.¹²³

The President exercises her power to impose economic sanctions on a target through issuing an executive order in which the President usually declares a new national emergency, or refers to a pre-existing one. An executive order identifies a threat, specifies targets, determines the effective date, and delegates the authority of implementation to certain officials. The President usually delegates administrative and enforcement authorities to the Secretary of the Treasury, acting in consultation with the Secretary of State and other specified officials.¹²⁴ Additionally, the Secretary of the Treasury assigns the director of the Office of Foreign Assets Control (hereinafter OFAC) as the primary regulatory authority for sanctions.¹²⁵ Thus, the OFAC manages and enforces

¹¹⁸ See Alexander, *supra* note 10 at 106.

¹¹⁹ *United Nations Participation Act*, 22 USC § 287 (1949).

¹²⁰ *Comprehensive Iran Sanctions, Accountability, and Divestment Act*, 22 USC §§ 8501–51 (2010) [*CISADA*].

¹²¹ *Syria Accountability and Lebanese Sovereignty Restoration Act*, 22 USC § 2151 (2003).

¹²² *Cuban Liberty and Democratic Solidarity Act*, 22 USC §§ 6021–91 (1996).

¹²³ *Iran Sanctions Act*, 50 USC § 1701 note (1996) [*ISA*].

¹²⁴ See Georgi & Lalonde, *supra* note 109 at 5–6.

¹²⁵ See *ibid.*

sanctions programs by publishing implementation regulations, collecting reports concerning the targeted transactions, issuing licenses, and taking measures in response to violations.¹²⁶

The prohibitions of US economic sanctions are applied to all individuals and entities subject to the jurisdiction of the US, including:

- (a) Any individual, wherever located, who is a citizen or resident of the United States;
- (b) Any person within the United States...;
- (c) Any corporation organized under the laws of the United States or of any state, territory, possession, or district of the United States; and
- (d) Any corporation, partnership, or association, wherever organized or doing business, that is owned or controlled by persons specified in paragraph (a) or (c) of this section.¹²⁷

US sanctions are in the form of either country-based or list-based programs.¹²⁸ In country-based programs, the US imposes comprehensive sanctions against a targeted state and prohibits certain types of transactions with or within its territory. Examples of such sanctions cover the economic sanctions imposed against Cuba, Iran, North Korea, Sudan, Burma, and Syria. On the other hand, in list-based programs, sanctions are imposed against certain persons, entities, or government officials who involve in activities that threaten the national security, foreign policy, or economy of the US. Human rights abuses, terrorism, nuclear proliferation, and genocide have been among the examples of such threats.¹²⁹ After identifying targeted persons or entities, the OFAC places their names in the list of “specially designated nationals and blocked persons.”¹³⁰

The OFAC, acting in consultation with the US State Department, administrates and issues general and specific licenses to provide exceptions to the prohibited transactions.¹³¹ By issuing a

¹²⁶ See *ibid*.

¹²⁷ *Foreign Assets Control Regulations*, 31 CFR § 515.329 (2006).

¹²⁸ See Georgi & Lalonde, *supra* note 109 at 9–12.

¹²⁹ *Ibid* at 12.

¹³⁰ “Specially Designated Nationals and Blocked Persons List (SDN) Human Readable Lists” (last modified 19 July 2018), online: *US Department of the Treasury* <www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

¹³¹ See Georgi & Lalonde, *supra* note 109 at 18–22.

general license, the OFAC authorizes certain types of transactions, with no requirement to apply for a license.¹³² However, persons or entities need to apply for obtaining a specific license through a written application,¹³³ and so the OFAC, on a case-by-case basis, may issue or deny license applications. In response to the violations of US sanctions, the OFAC imposes penalties on individuals and entities. While a violator can be subject to imprisonment, fines, or both, administrative sanctions suspend or deny her “export privileges” for a period.¹³⁴

B. CORRUPTION

Since the issue of corruption is multidimensional, this section attempts to analyze several aspects of corruption in the fields of law and other disciplines, including social science, economics, and criminology. First, the study defines the concept of corruption, examines several types of corruption, and explains its causes and effects. Then, the study discusses the measurement of corruption and assesses its measurement tools. The last part is devoted to anti-corruption movements and international legal instruments for combating corruption.

1. *The Emergence, Causes, and Effects*

Although the concept of corruption can be traced back to Ancient Greece and Rome,¹³⁵ corruption has emerged as a global concern in the past few decades. Corruption occurs in all countries, from a developing country in Africa to a Western country, and in all forms of government, from autocracy to an advanced democracy. Since the 1990s, several global movements have been launched throughout the world to fight against corruption. Today, almost

¹³² “OFAC Licenses” (last visited 24 July 2018), online: *US Department of the Treasury* <www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx-licenses>.

¹³³ “OFAC License Application Page” (last visited 24 July 2018), online: *U.S. Department of the Treasury* <www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx>.

¹³⁴ See Lowenfeld, *supra* note 9 at 899–900.

¹³⁵ See generally Ronald C Wilson, *Ancient Republicanism: Its Struggle for Liberty Against Corruption* (New York: Peter Lang, 1989).

all countries consider corruption as a transnational problem. Although people usually understand corruption when they see an actual corrupt act, there is no single agreed-upon definition for corruption because of its complexity and breadth. Another reason for having several definitions is that corruption has been studied through different lenses and disciplines, like law, political science, sociology, or economics. Moreover, since the law and culture differ in every country, the notion of corruption has become varied.

While classic approaches define corruption as a deviation of behavior from moral values, social and political scientists consider behavior standards as a basis for explaining corruption.¹³⁶ Some scholars consider “subjective standards,” like cultural or legal norms, to clarify corruption.¹³⁷ On the other hand, others concentrate on “objective standards” and consider the role of the market, public interest, or public office as a center for analysis.¹³⁸ Besides the classic and behavioral definitions, another main approach towards the definition of corruption is to classify it into “grand corruption” and “petty corruption.”¹³⁹ In grand corruption, generally, a high-ranking official commits corruption which involves large sums of money, while petty corruption is usually associated with everyday corruption by junior officials in their meetings with ordinary citizens.

In legal scholarship, however, the most well-known definition of corruption is the definition given by *Transparency International* (hereafter TI): “the abuse of entrusted power for private gain.”¹⁴⁰ Unlike the similar definition which is given by the World Bank (hereinafter

¹³⁶ See Michael Johnston, “The search for Definitions: The Vitality of Politics and the Issue of Corruption” (1996) 48:149 Intl Social Science J 321 at 322.

¹³⁷ See generally Michael Johnston, “Right and Wrong in British Politics: ‘Fits of Morality’ in Comparative Perspective” (1991) 24:1 Polity 1.

¹³⁸ See generally Arnold J Heidenheimer & Michael Johnston, *Political Corruption: Concepts & Contexts* (New Brunswick, NJ: Transaction Publishers, 2002) at 44–52. But see Klitgaard, *supra* note 4 at 75 (providing an equation for the definition of corruption: “CORRUPTION = MONOPOLY + DISCRETION – ACCOUNTABILITY”).

¹³⁹ See generally Susan Rose-Ackerman & Bonnie J Palifka, *Corruption and Government: Causes, Consequences, and Reform* (New York: Cambridge University Press, 2016) at 11.

¹⁴⁰ “How Do You Define Corruption?” (last visited 24 July 2018), online: *Transparency International* <www.transparency.org/what-is-corruption - define>.

WB),¹⁴¹ the TI's definition does not specify that the power needs to be in the public sector. In other words, corruption may happen in either a public or private sector.

The concept of corruption may overlap with some terms and concepts: "Economic or financial crimes" are crimes against property and cover a broad range of offenses, from theft to money-laundering. While economic crimes cover the abuse of entrusted power for financial gain, the achieved gain in corruption may be either economic or political benefits.¹⁴² The term "white collar crime" includes a wide range of crimes committed by high-level public officials and involves large amounts of money. While white collar crimes are similar to grand corruption, corruption also covers petty corruption, which is committed at the lowest levels of powers and involves relatively small values.¹⁴³ "Fraud" also occurs when a person intentionally deceives another person to receive an illegal benefit. While some scholars believe that fraud is a type of corruption, others consider fraud as a method of committing corruption.¹⁴⁴ Finally, the term "collusion" refers to a crime in which parties make a secret agreement to gain improper benefits through an illegal act; nonetheless, this agreement may cause or lead to corruption.¹⁴⁵

For the purpose of this study, a single definition of corruption is not sufficient to determine particular acts which constitute corruption. Therefore, we need specific legal standards to identify specific offenses which are perceived as "an abuse of entrusted power for private gain." Corruption may take several types; however, the *UNCAC* considers five crimes as corruption:¹⁴⁶

¹⁴¹ "Helping Countries Combat Corruption: The Role of the World Bank?" (last visited 24 July 2018), online: *the World Bank Group* <www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm#define> (defining corruption as "the abuse of public office for private").

¹⁴² See Martine Boersma, *Corruption: A Violation of Human Rights and a Crime under International Law?* (Cambridge, UK: Intersentia, 2012) at 30.

¹⁴³ See *ibid.*

¹⁴⁴ See *ibid* at 31.

¹⁴⁵ See *ibid.*

¹⁴⁶ *United Nations Convention against Corruption*, 31 October 2003, A/58/422 arts 15–42 (entered into force 14 December 2005) [*UNCAC*].

“Bribery” is the hardcore and most common type of corruption. Speed money, grease payments, kickbacks, baksheesh, sweeteners, and pay-off are other informal terms referring to bribery.¹⁴⁷ Since at least two parties, a bribe-giver and a bribe-taker, engage in the act of bribery, the *UNCAC* distinguishes two separate types of bribery. Article 15, first, defines “active bribery” as an intentional “promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”¹⁴⁸ The article further describes “passive bribery” as an intentional “solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, so that the official act or refrain from acting in the exercise of his or her official duties.”¹⁴⁹

The second most well-known type of corruption is “embezzlement,” which is also known as “misappropriation, peculation, diversion of property, pillaging of state assets, and simply theft.”¹⁵⁰ The *UNCAC* describes this offense as an intentional “embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.”¹⁵¹

“Trading in influence” or so-called background corruption is similar to bribery. The only difference is that a person bribes another person “in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for

¹⁴⁷ Boersma, *supra* note 142 at 34.

¹⁴⁸ *UNCAC*, art 15.

¹⁴⁹ *Ibid.*

¹⁵⁰ See Boersma, *supra* note 142 at 35.

¹⁵¹ *UNCAC*, art 17.

any other person.”¹⁵² In other words, a person who is, or is supposed to be, able to influence the decision of a public official solicits or accepts a bribe to affect that decision.

Under the *UNCAC*, the “abuse of functions” is described as an intentional “performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.”¹⁵³ Since the *UNCAC* believes that the abuse of functions needs to be “in violation of laws,” different jurisdictions may have different opinions about the acts and omissions that constitute this crime. However, the interpretive notes of the *UNCAC* consider “an improper disclosure by a public official of classified or privileged information” as an example of it.¹⁵⁴

Article 20 of the *UNCAC* defines “Illicit enrichment” as “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.”¹⁵⁵ Some scholars believe that this definition indicates an outcome of corruption instead of describing the conduct of a public official. Additionally, based on several international and national legislation, Linda Muzila suggests five elements for illicit enrichment: “persons of interest,” “period of interest,” “conduct of enrichment,” “intent,” and “the absence of justification.”¹⁵⁶

Scholarly attention towards corruption has primarily been devoted to the causes and drivers of corruption. Some efforts identify ethical and cultural roots and indicate that dominant moral and

¹⁵² *UNCAC*, art 18.

¹⁵³ *UNCAC*, art 19.

¹⁵⁴ *Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions, Addendum: Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Corruption*, GAOR, 58th Sess, UN Doc A/58/422/Add.1 (2003).

¹⁵⁵ *UNCAC*, art 20.

¹⁵⁶ For further information, see Lindy Muzila, *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (Washington, DC: World Bank, 2012) at 13.

social values determine the level of corruption in a society.¹⁵⁷ Economists mainly concentrate on agency relationships on the issue of corruption. In this approach, a public official is an agent who acts on behalf of a principal, i.e. a public office, but she prefers her own interests and behaves corruptly. However, before making any decision, an agent considers several legal and moral factors that determine the potential costs and benefits of a fraudulent act.¹⁵⁸ Moreover, political scientists consider the role of institutions and systems in corruption. In Klitgaard's view, a combination of three circumstances, in a particular system or institution, results in corruption: (1) existence of monopoly, which means a system restricts economic activities and feeds opportunities for extracting rents through a significant number of laws and orders; (2) presence of discretion, which is associated with the massive amount of freedom that authorities have and thereby can decide cases on their own preference; and (3) lack of accountability, which is related to the absence of any institutions or procedures to hold authorities responsible for their actions.¹⁵⁹

On the other hand, some scholars consider a combination of social, economic, and political factors as the roots of corruption. Most notably, Rose-Ackerman and Palifka divide the causes of corruption into three categories of “incentives,” “institutions,” and “personal ethics” and believe that corruption is their shared outcome.¹⁶⁰ In their view, incentives include “low salaries, monopoly power, discretion, and lack of accountability,” and institutions consist of “political structure, legal structure, culture, and the rule of law.”¹⁶¹ Finally, other scholars refer to specific circumstances as roots of corruption. While Uslaner argues that inequality in the economy and

¹⁵⁷ Amanda Morgan, *Corruption: causes, consequences, and policy implications* (San Francisco: The Asia Foundation 1998) at 11.

¹⁵⁸ For more details, see Susan Rose-Ackerman, *Corruption: A Study in Political Economy* (New York: Academic Press, 2013) at 6–10.

¹⁵⁹ See Klitgaard, *supra* note 4 at 75.

¹⁶⁰ Rose-Ackerman & Palifka, *supra* note 139 at 27–29.

¹⁶¹ *Ibid.*

laws, as well as the lack of trust, lead to corruption,¹⁶² Fan et al believe that the type and size of a government impact the level of corruption.¹⁶³ “Being a rentier state”¹⁶⁴ and “reconstruction after a war period”¹⁶⁵ may cause corruption in society as well. Interestingly, in international law, while scholars have certainly addressed the issue of corruption, no one has attempted to focus on economic sanctions as a driver of corruption. Therefore, the primary goal of the second chapter is to consider the effects of economic sanctions on the excessive growth of corruption.

Corruption hurts a society, an economy, and people in numerous ways. While some scholars claim that certain types of corruption have positive effects on society,¹⁶⁶ others believe that even if corruption has some advantages, they are beneficial for short periods of time. Corruption undermines the economy at both the microeconomic level, like households or small businesses, and the macroeconomic level, such as taxing systems or international trade. Most notably, corruption affects the rate of economic growth because it damages competition and harms free trade. This problem may discourage investments, create inflation and depression in the economy, and ultimately, weaken the economic growth and development.¹⁶⁷

¹⁶² Eric M Uslaner, *Corruption, Inequality, and the Rule of Law: The Bulging Pocket Makes the Easy Life* (Cambridge: Cambridge University Press, 2008) at 4–5; see also Lawrence Lessig, *Republic, Lost: How Money Corrupts Congress and a Plan to Stop It* (New York: Twelve, 2011).

¹⁶³ See C Simon Fan et al, “Political Decentralization and Corruption: Evidence from Around the World” (2009) 93:1 J Public Economics 14; see also Raymond Fisman & Roberta Gatti, “Decentralization and Corruption: Evidence Across Countries” (2002) 83:3 J Public Economics 325.

¹⁶⁴ Charles K Rowley et al, *The Political Economy of Rent-Seeking Society* (Boston: Kluwer Academic Publishers, 1988).

¹⁶⁵ Alan Doig & Martin Tisne, “A Candidate for Relegation? Corruption, Governance Approaches and the (Re)Construction of Post-War States” (2009) 29:5 Public Administration & Development 374.

¹⁶⁶ See generally Nathaniel H Leff, “Economic Development Through Bureaucratic Corruption” (1964) 8:3 American Behavioral Scientist 8 (claiming that corruption assists weak states to get necessary things done); see also Ivan Krastev, *Shifting Obsessions: Three Essays on the Politics of Anticorruption* (New York: Central European University Press, 2004) (arguing corruption assists local investors to antecede over foreign investors); Luigi Manzetti & Carole J Wilson, “Why Do Corrupt Governments Maintain Public Support?” (2007) 40:8 Comparative political studies 949 at 949 (“people in countries where government institutions are weak and patron-client relationships strong are more likely to support a corrupt leader from whom they expect to receive tangible benefits.”).

¹⁶⁷ See e.g. Leslie Holmes, *Corruption: A Very Short Introduction* (Oxford: Oxford University Press, 2015) at 24.

Corruption also drains the national wealth and revenue of a state. Since officials exempt corporations and persons who bribe them from paying taxes or fines, corruption reduces the income of a state. Moreover, corrupt officials may prefer high-profile projects, like dams and pipelines, to fill their pockets with more bribes, and ignore the essential needs of the economy for infrastructure projects like roads or schools.¹⁶⁸ Moreover, high levels of corruption may prevent a country from becoming a member of international or regional economic and financial organizations, like the World Trade Organization or the European Union.¹⁶⁹ Therefore, corruption deprives a country of foreign aid and trading privileges in the international community.

While corruption harms the society as a whole, it mostly affects the poor and vulnerable groups. Corruption may create or increase inequalities in the distribution of national resources used for public policies, like education, healthcare, or security.¹⁷⁰ Additionally, corruption creates inequality between people who pay bribes and those who are not willing or able to pay bribes.¹⁷¹ Moreover, corruption negatively impacts the health of citizens and thereby costs lives; for instance, corrupt officials may take bribes to authorize illegal constructions and endanger the lives of people.¹⁷² In addition, corruption may increase the rate of crime in a country or region, and corrupt officials may assist criminals in the illegal trafficking of arms, humans, or drugs.¹⁷³

Corruption endangers democracy and the rule of law.¹⁷⁴ In a corrupt society, politicians may grant favors to particular persons or groups in order to buy their votes. Also, public officials can illegally interfere with the results of an election and manipulate votes. Furthermore, corruption may lead to political instabilities and violent conflicts. By spreading corruption, people lose trust

¹⁶⁸ See Transparency International, *supra* note 147.

¹⁶⁹ See Holmes, *supra* note 167.

¹⁷⁰ See *ibid* at 19.

¹⁷¹ See *ibid*.

¹⁷² See Boersma, *supra* note 142 at 48.

¹⁷³ See Holmes, *supra* note 167 at 20–21.

¹⁷⁴ See generally *ibid* at 27–30.

in the government, become discontent with political and legal systems, and participate in political change movements, such as armed conflicts, revolutions, or coups. However, even new leaders may intend to engage in corrupt activities and gain rents.¹⁷⁵

In the regulation and application of environmental programs, corruption exploits natural resources and harms ecological systems. By giving bribes, persons and businesses may conduct illegal logging, mining, and destruction, circumvent environmental regulations and produce pollutions, damage wildlife, or trade animals and their products on the black market.¹⁷⁶ Furthermore, corrupt officials may embezzle financial sources used for environmental conservation.

2. *Measurement*

Due to the distinct nature of corruption, it is demanding to estimate the actual extent of corruption that occurs in a specific place and at a particular time. It is not even clear what should be measured because corruption is an outcome of several social, economic, and legal factors and includes a wide range of activities. Another difficulty is associated with obtaining information; for example, people who have bribed officials are not willing to report it since they themselves committed a crime too and are afraid to lose what they have acquired through the bribery. Moreover, particular cases of corruption do not have an anonymous victim to report crimes because a state or the society as a whole is the victim.¹⁷⁷ Finally, the measurement of intangible corruption, like abuse of functions, is significantly problematic. However, several methods have been developed to estimate the level of corruption. None of them perfectly measures corruption,

¹⁷⁵ For further information, see Boersma, *supra* note 142 at 41–44.

¹⁷⁶ See *ibid* at 49–51.

¹⁷⁷ See e.g. Holmes, *supra* note 167 at 36.

but even having a perception is valuable. Also, a combination of different methods may be helpful to obtain a better result. Here, this study briefly discusses the common methods of measurement:

“Official statistics” neither cover all cases of corruption in a country nor are a proper method to compare corruption in different countries. Nevertheless, they can be an initial step in measuring the level of corruption in a country. In general, these statistics are divided into two groups: (1) legal statistics, which include the number of reports, investigations, prosecutions, convictions, and given sentences in the cases of corruption; and (2) economic statistics, which are associated with the average amount of bribes and impacts of corruption on the economy.¹⁷⁸

Instead of measuring the actual occurrence of corruption, “perceptual surveys” provide the amount of perceived corruption in a country through concentrating on a variety of economic, social, and political factors, like transparency, accountability, or democracy. Perceptual surveys ask people or experts about their perceptions of corruption and feelings about it in a particular country. The Corruption Perception Index (hereinafter: CPI) is the most cited source in the measurement of corruption. Since 1995, this index has been conducted by the TI, and its results have been annually published on its website.¹⁷⁹ The index measures the “endemic corruption in a country’s public sector” by conducting expert ratings and surveys among business people.¹⁸⁰ The TI does not produce actual surveys, but it uses data gathered from other surveys.¹⁸¹ In every country, the perception of corruption is measured on a scale of 0 (highly corrupt) to 100 (very clean). Then, the TI ranks countries based on their scores. In the CPI 2017, the TI produced scores for 180 countries around the world.¹⁸² In this index, New Zealand was perceived to be the cleanest

¹⁷⁸ For more details, see *ibid* at 37–38.

¹⁷⁹ “Corruption Perceptions Index” (last visited 10 August 2018), online: *Transparency International* <www.transparency.org/research/cpi/overview>.

¹⁸⁰ *Ibid.*

¹⁸¹ For more details, see Holmes, *supra* note 167 at 38–40.

¹⁸² For more details, see “Corruption Perception Index 2017” (31 February 2018), online: *Transparency International* <www.transparency.org/news/feature/corruption_perceptions_index_2017>.

country, with the score of 89, Somalia was perceived to be the most corrupted country, with the score of 9, and the global average score was 43.07.

The CPI has been criticized for several reasons, mostly because of its applied methodology.¹⁸³ The number of countries given in the CPI is different for each year since the TI analyzes the perception of corruption in a country only if it has access to three surveys. Thus, comparing countries based on their ranks does not generate useful results. Moreover, evaluating the CPI of a country over several years is not appropriate because the used sources have been different in each year. Some critics believe that the CPI does not reflect the public opinion and seeks perceptions presented by business leaders or experts. In addition, perceptions of respondents and participants may be affected by previous CPI scores, prior experiences, and other business experts and leaders. Despite these criticisms and concerns, the CPI has been successful in raising the awareness of the world about corruption. Through the CPI, the TI has pressed international organizations and local reformers to consider anti-corruption policies and stressed the importance of transparency and accountability to governments.¹⁸⁴ In addition, researchers use the CPI to determine the causes of corruption or its effects on other variables.

The World Bank's Governance Indicators (hereinafter: WBGI) is another well-known method for measuring the perceptions of corruption. Since 1996, the WBGI has used six indicators to measure the quality of governance in over 200 countries. The data has been collected from several surveys which have reflected opinions and experiences of people, experts, or entrepreneurs about corruption in private and public sectors as well as the NGOs throughout the world.¹⁸⁵

¹⁸³ See generally Rose-Ackerman & Palifka, *supra* note 139 at 19–20.

¹⁸⁴ See Finn Heinrich & Robin Hodess, "Measuring corruption" in Adam Graycar & Russell G Smith eds, *Handbook of Global Research and Practice in Corruption* (Cheltenham: Edward Elgar, 2011) 18 at 21.

¹⁸⁵ "WGI Aggression Methodology" (last visited 24 July 2018), online: *Worldwide Governance Indicators* <info.worldbank.org/governance/wgi/index.aspx#doc-methodology>.

Measures are on a scale from -2.5 to +2.5, in which higher values correspond to better governance. Among the indicators, “control of corruption” is associated with “perceptions of the extent to which public power is exercised for private gain” and “capture of the state by elites and private interests.”¹⁸⁶ This dimension is based on several individual variables, like “corruption among public officials,” “irregular payments in export and import,” or “transparency, accountability and corruption in public sector.”¹⁸⁷ The WGI provides scholars with a comparison of perceived levels of corruption with other dimensions of governance. The WGI further allows a measurement of the perception of corruption over time and an observation of its improvement or deterioration in a country.¹⁸⁸

Another method is related to “experiential surveys” which ask people about their actual experience of corruption instead of their perceptions of corruption. In the beginning, there was a concern that people might not disclose their payment of bribes. However, the results show that if people are sure of the confidentiality of surveys, they actually reveal the given bribes.¹⁸⁹ A prominent example of experiential surveys is the Global Corruption Barometer (hereinafter GCB) conducted by the TI since 2003. Unlike the CPI, the TI conducts actual surveys by itself in the GCB and asks “citizens about their direct personal experience of bribery in their daily lives, their perceptions of corruption challenges in their own countries, and their willingness to act against corruption.”¹⁹⁰ The last survey, which questioned people in 119 countries between 2014 and 2017, indicated that 57% of questioners believed that their government was doing poorly in fighting against corruption, and the police and elected representatives were reported to be the most corrupt

¹⁸⁶ For further information and a list of individual indicators, see “Worldwide Governance Indicators” (last visited 24 July 2018), online: *Worldwide Governance Indicators* <info.worldbank.org/governance/wgi/#doc>.

¹⁸⁷ *Ibid.*

¹⁸⁸ See Heinrich & Hodess, *supra* note 184 at 21.

¹⁸⁹ See Holmes, *supra* note 167 at 41–42.

¹⁹⁰ “People and Corruption: Citizen’s Voices from Around the World” (14 November 2017) at 3, online (pdf): *Transparency International* <www.transparency.org/_view/publication/8064>.

groups and institutions among public services.¹⁹¹ The Middle East and North Africa had the highest bribery rate (30%), and the European Union had the lowest one (9%).¹⁹²

“Specific multi-Method assessments,” as another way to measure corruption, try to generate a comprehensive and detailed evaluation of corruption in a specific section. The target may be an institution, law or policy, subsystem, or sector in a given country.¹⁹³ While these assessments are not able to compare the level of corruption in different sections, they provide policy-makers with an in-depth assessment of corruption. Several methods can be applied in the assessments, including in-depth case studies, focus groups, the Delphi method (the panel of experts), interviews, content analysis, case statistical analysis, real or laboratory experiments, and proxies.¹⁹⁴

3. *Legal Instruments to Fight against Corruption*

Corruption became an international concern in the 1990s, while it, formerly, was seen as a domestic issue in each jurisdiction. In 1977, the US, as a pioneer, criminalized foreign bribery. The “Watergate Scandal” and its following investigations, which revealed numerous US firms operating abroad had bribed foreign government officials for business purposes, resulted in the enactment of the *FCPA*.¹⁹⁵ Following its enforcement, the US turned its attention to the international arena and played a significant role in drafting and negotiating for both the *OECD Convention*¹⁹⁶ and the *UNCAC*. Today, several international organizations, including the United

¹⁹¹ See *ibid*.

¹⁹² See *ibid*.

¹⁹³ See Heinrich & Hodess, *supra* note 184 at 25–29.

¹⁹⁴ For more information regarding the application of methods in the issue of corruption, see Holmes, *supra* note 167 at 47–52.

¹⁹⁵ *Foreign Corrupt Practices Act of 1977*, 15 USC §§ 78m, 78dd1–3, 78ff (1977) [*FCPA*].

¹⁹⁶ *Organization for Economic Co-Operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, 17 December 1999, 37 ILM 1 (entered into force 15 February 1999) [*OECD Convention*].

Nations, Council of Europe, World Trade Organization, International Monetary Fund, and World Bank Group, have adopted legal instruments to fight against corruption. This section intends to explore the *FCPA*, as the first international regulations dealing with public official's corruption, the *OECD Convention*, as the first major international treaty addressing the foreign bribery, and the *UNCAC*, as the only genuinely global anti-corruption instrument.

i. Foreign Corrupt Practices Act of 1977

In the 1970s, the *FCPA* was enacted in response to the Watergate Scandal and investigations conducted by the Securities and Exchange Commission (hereinafter: SEC) of the US. The investigations demonstrated over 400 US companies, including the Gulf Oil Corporation, United Brands, Exxon, Mobil Oil, and Lockheed, had bribed foreign government officials, politicians, and political parties more than 300 million US dollars.¹⁹⁷ Congress decided to enact the *FCPA* because: (1) bribery threatened the US moral values;¹⁹⁸ (2) the US reputation was distorted among the American public and the world due to the involvement of world-class corporations in the bribery;¹⁹⁹ and (3) bribery was realized as an obstacle in the US trade because it damaged the competitiveness among businesses.²⁰⁰

The *FCPA* has both anti-bribery and accounting provisions. The anti-bribery provisions criminalize the active bribery of US persons and businesses, public issuers (corporations listed on stock exchanges in the US or required to file a report with the SEC), and persons and entities acting in the territory of the US who give a bribe to a foreign official, foreign political party or official,

¹⁹⁷ For a further discussion of the Watergate Scandal, see e.g. John Ashcroft & John Ratcliffe, "The Recent and Unusual Evolution of an Expanding FCPA" (2012) 26:1 Notre Dame JL Ethics & Pub Pol'y 25.

¹⁹⁸ See e.g. B Earle, "The United States' Foreign Corrupt Practices Act and the OECD Anti-Bribery Recommendation: When Moral Suasion Won't Work, Try the Money Argument" (1996) 14:2 Dick J Intl L 207 at 208, 224.

¹⁹⁹ Wesley Cragg & William Woof, "The US Foreign Corrupt Practices Act: A Study of Its Effectiveness" (2002) 107:1 Business & Society Rev 98 at 231–32.

²⁰⁰ See e.g. EC Lashbrooke, "The Foreign Corrupt Practices Act of 1977: A Unilateral Solution to an International Problem" (1979) 12:2 Cornell Intl LJ 227 at 231.

or candidate for foreign political office in order to obtain or retain business.²⁰¹ The accounting provisions require public issuers to meet appropriate record-keeping and accounting standards.²⁰² The Department of Justice (hereinafter DOJ) and the SEC are both responsible for enforcing the *FCPA* provisions. While the SEC is responsible for the accounting provisions, the DOJ, specifically its Fraud Section, has the responsibility to implement the anti-bribery provisions.²⁰³ Moreover, upon the request of corporations or individuals, the DOJ may offer an opinion on whether particular activities are allowed under the *FCPA* provisions.

As a response to critics, Congress amended the *FCPA* in 1988. Opponents claimed that the enforcement of the *FCPA* provisions brought disadvantages to the American businesses since businesses in other countries still had the opportunity to bribe and gain benefit in the world market.²⁰⁴ Other criticisms were associated with the vague language of provisions as well as their extraterritorial applications. In addition, the amendments have authorized the payment of facilitating or expediting payments.²⁰⁵ Moreover, the amendments have considered certain exceptions to the general prohibitions, including lawful payments under the written laws of a foreign country, or a reasonable and bona fide business expenditure.²⁰⁶

ii. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)

In 1997, following the US efforts to internationalize the *FCPA* and increased international awareness of corruption, the Organization for Economic Co-Operation and Development

²⁰¹ See *FCPA*, § 78dd-1(a).

²⁰² *Ibid*, s 78m.

²⁰³ See e.g. Norm Keith, *Canadian Anti-Corruption Law and Enforcement* (Toronto: LexisNexis Canada, 2017) at 10–11.

²⁰⁴ See Boersma, *supra* note 142 at 56–58.

²⁰⁵ See *FCPA*, §§ 78dd-1(b), 78dd-2(b), 78dd-3(b).

²⁰⁶ See *ibid*, ss 78dd-1(c), 78dd-2(c), 78dd-3(c).

(hereinafter OECD) adopted the *OECD Convention*. The *OECD Convention* entered into force on 15 February 1999, and so far, 43 countries have signed it, including all OECD members and eight non-OECD countries.²⁰⁷ The parties constitute the significant strength of the *OECD Convention* because they are the home states of the majority of multinational corporations and represent 70% of total world exports and over 90% of Foreign Direct Investments.²⁰⁸

The *OECD Convention* calls on parties to criminalize and punish an individual or entity which intentionally,

offer[s], promise[s] or give[s] any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.²⁰⁹

Thus, the *OECD Convention* focuses on the supply side or active form of bribery because criminalizing the passive bribery might result in jurisdictional problems.²¹⁰ The Working Group on Bribery in International Business Transactions monitors parties in their implementation and enforcement of obligations of the *OECD Convention*.²¹¹ The monitoring process has been implemented through a peer review evaluation in several phases, and so far, three phases were conducted, and the fourth phase is currently being performed.²¹²

²⁰⁷ For a complete list of ratifying countries, see “OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions” (last visited 24 July 2018), online: *OECD* <www.oecd.org/corruption/oecdantibriberyconvention.htm>.

²⁰⁸ See Boersma, *supra* note 142 at 75.

²⁰⁹ *OECD Convention*, art 1(1).

²¹⁰ See e.g. Imelda Higgins, *Corruption Law* (Dublin: Thomson Reuters, 2012) at 7.

²¹¹ *OECD Convention*, art 12.

²¹² For a further discussion on monitoring mechanisms in the *OECD Convention* and detailed reports of phases, see “Country monitoring of the OECD Anti-Bribery Convention” (last visited 24 July 2018), online: *OECD* <www.oecd.org/daf/anti-bribery/countrymonitoringoftheoecdanti-briberyconvention.htm>; see also Boersma, *supra* note 142 at 77–80.

iii. The United Nations Convention Against Corruption (2003)

Subsequent to the adoption of several resolutions addressing corruption, the UNGA instituted the first universal legal instrument against corruption in October 2003. The *UNCAC* entered into force on 14 December 2005, and so far 183 state parties have signed or ratified it.²¹³ The Convention is divided into four main chapters: The first chapter is associated with general provisions and goals of the Convention.²¹⁴ It includes articles addressing preventive measures, standards, and procedures in both the public and private sectors.²¹⁵ The provisions ask state parties to adopt or maintain measures aiming to engage the civil society, support the rule of law, manage public interests, and promote transparency and accountability.²¹⁶ Nonetheless, the language of the chapter makes these measures optional for the parties.²¹⁷

The second chapter is related to the criminalization and law enforcement.²¹⁸ It addresses the required substantive criminal law and suggests measures and procedures for its effective enforcement. The provisions not only consider the act of bribery but also include other types of corrupt practices. The language of a provision determines whether the criminalization of an offense is obligatory or optional. In some provisions, the *UNCAC* states, “Each State Party shall adopt such legislative and other measures ...”²¹⁹ and requires the states to establish such a crime in their domestic legislation.²²⁰ However, in other provisions, the *UNCAC* proposes minimum standards

²¹³ “United Nations Convention against Corruption: Signature and Ratification Status” (last visited 24 July 2018), online: *United Nations Office on Drugs and Crime* <<http://www.unodc.org/unodc/en/corruption/ratification-status.html>>.

²¹⁴ *UNCAC*, arts 5–14.

²¹⁵ *Legislative Guide for the Implementation of the United Nations Convention against Corruption* (New York: United Nations, 2006) at 15 para 38.

²¹⁶ See *ibid.*

²¹⁷ See Philippa Webb, “The United Nations Convention against Corruption Global Achievement or Missed Opportunity?” (2005) 8:1 *J Intl Econ L* 191 at 205–06.

²¹⁸ See *UNCAC*, arts 15–42.

²¹⁹ *Ibid.*, art 15 (“the bribery of national public officials”); art 16 para 1 (the active “[b]ribery of foreign public officials and officials of public international organizations”); art 17 (“Embezzlement, misappropriation or other diversion of property by a public official”); art 23 (“Laundering of proceeds of crime”); art 25 (“Obstruction of justice”).

²²⁰ *Legislative Guide for the Implementation of UNCAC*, *supra* note 215 at 76–77 paras 177–78.

by indicating “[e]ach State Party shall consider adopting such legislative and other measures . . . ,”²²¹ thereby the criminalization is optional, for states.²²²

The second two chapters are respectively concerned with the international cooperation²²³ and asset recovery.²²⁴ Since globalization helps corruption to cross the borders, the *UNCAC* requires all state parties to cooperate with each other in the matters of “extradition,”²²⁵ “mutual legal assistance,”²²⁶ “the transfer of criminal proceedings,”²²⁷ and “law enforcement.”²²⁸ In addition, the *UNCAC* asks states to consider special agreements for the “transfer of sentenced persons.”²²⁹ Finally, because corruption leads to the exportation of money or properties and has negative consequences for the state of origin, the *UNCAC* asks state parties to confiscate and return the stolen assets.²³⁰

As for the monitoring and enforcement, Article 63 of *UNCAC* instructs the Conference of the States Parties to the Convention to improve the implementation of the *UNCAC*. In the third conference held in 2009, the state parties adopted the Implementation Review Mechanism. In this mechanism, a state party is reviewed by two other state parties, and the Implementation Review Group guides and controls their performance. While the first cycle of the review mechanism

²²¹ *UNCAC*, art 16 para 2 (the passive “[b]ribery of foreign public officials and officials of public international organizations”); art 18 (“Trading in influence”); art 19 (“Abuse of functions”); art 20 (“Illicit enrichment”); art 21 (“Bribing in the private sector”); art 22 (“Embezzlement of property in the private sector”); art 24 (“Concealment”).

²²² *Legislative Guide for the Implementation of UNCAC*, *supra* note 215 at 77 paras 179.

²²³ See *UNCAC*, arts 51–59.

²²⁴ See *ibid*, arts 60–62.

²²⁵ *Ibid*, art 44.

²²⁶ *Ibid*, art 46.

²²⁷ *Ibid*, art 47.

²²⁸ *Ibid*, art 48.

²²⁹ *Ibid*, art 45.

²³⁰ *Legislative Guide for the Implementation of UNCAC*, *supra* note 215 at 229 paras 660.

covered the criminalization, law enforcement, and international cooperation in 2010, the second cycle included the preventive measures and asset recovery in 2015.²³¹

CONCLUSION

This chapter conducts a brief review of economic sanctions and corruption. As for economic sanctions, it covers their history, definitions, mechanisms, legality, and different types. Then, it briefly talks about the goals, effectiveness factors, and consequences of economic sanctions. Finally, this section provides an analysis of the law and practice of economic sanctions at the United Nations Security Council and in the US. The chapter further analyzes the issue of corruption in different aspects; it defines the concept of corruption, legally examines several types of corruption, and explains its causes and effects in society. Then, this study briefly reviews the measurement of corruption and talks about the methods of official statistics, perceptual surveys, experiential surveys, and specific multi-method assessments. Finally, this section explores three well-known anti-corruption instruments, namely the Foreign Corruption Practices Act of 1977, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the United Nations Convention against Corruption.

All in all, this chapter provides a conceptual background of economic sanctions and corruption for the second chapter which intends to analyze the relationship between economic sanctions and corruption through a detailed examination of the sanctions on Iran.

²³¹ For a further discussion on the Implementation Review Mechanism, see “United Nations Convention against Corruption: Implementation Review Mechanism” (last visited 24 July 2018), online: *United Nations Office on Drugs and Crime* <www.unodc.org/unodc/en/corruption/implementation-review-mechanism.html>.

Chapter 2 – The Relationship between Economic Sanctions and Corruption: The Case of Iran

Instead of dealing with the question of whether economic sanctions work, this chapter intends to investigate one of their side effects which has been overshadowed in the sanctions debate. The statement that economic sanctions may lead to unwanted results for countries has remained an inevitable fact, and many studies have revealed their unintended consequences, such as humanitarian concerns in targets or economic costs in senders. However, few attempts have been made to consider the relationship between economic sanctions and corruption in sanctions regimes. Thus, this chapter examines the issue of corruption as a potential impact of economic sanctions on a target and other countries as well as their legacy in the post-sanctions era. Using the case study of Iran, this study suggests that the imposition of economic sanctions increases the level of corruption in target and third countries. It further proposes that countries that have undergone economic sanctions appear to deal with the issue of corruption even after sanctions are lifted.

However, it should be noted that, by focusing on the corruption resulting from economic sanctions, this study does not intend to claim that there was no corruption before imposing sanctions or corruption would not have been an issue if sanctions had not existed. In the case of Iran, for example, other variables, such as being a rentier state, the size and power of the government, the weak rule of law, and low salaries, created opportunities for people to act corruptly, even before the imposition of nuclear-related sanctions. This chapter, thus, attempts to illustrate that nuclear-related sanctions led to a more fertile ground for corruption in Iran. Although it is demanding to precisely determine how much of corruption in Iran is caused by the economic sanctions, this chapter claims that nuclear-related sanctions produced much higher levels of corruption than would otherwise have been the case in the absence of such sanctions.

In the most basic explanation, it is the economic nature of sanctions that affects the economic root of corruption.²³² Generally, the imposition of any economic pressure on a country may lead to unintended consequences in that country and also third countries that have economic relations with it.²³³ Economic sanctions, as an international economic factor, influence international trade openness, provide institutional changes, create rent-seeking opportunities, and alter the level of competition in target and third countries; therefore, they increase the level of corruption in those countries.²³⁴

To obtain a better understanding of the relationship between economic sanctions and corruption, this chapter uses the case study of Iran to illustrate that economic sanctions affect target and third countries with specific consequences, leading to a rise in the level of corruption. Accordingly, this chapter, first, presents an overview of both economic sanctions and corruption in Iran. Next, through an in-depth examination of nuclear-related sanctions, it compares the level of corruption before, during, and after these sanctions in Iran. By providing several scandals and evidence from corruption cases, this study traces the corruption resulting from nuclear-related sanctions within and outside of Iran, and during and after the sanctions.

²³² See generally, Peter Andreas, “Criminalizing Consequences of Sanctions: Embargo Busting and Its Legacy” (2005) 49:2 Intl Studies Q 335; see also Tahereh Kamali et al, “The Impact of Economic Sanctions on Corruption in Target Countries: A Cross-Country Study” (2016) 45:2 World Scientific News 276; Ioan Radu et al, “Coercive Economic Diplomacy-Corruption Trigger or Deterrent” (2015) 49:1 Economic Computation & Economic Cybernetics Studies & Research 53.

²³³ See Kamali et al, *supra* note 232 at 277.

²³⁴ See Aleksei Balanov, *When Words Are Worse than Bullets: A Study of Corruption as an Unintended Consequence of Threats of Sanctions* (MA Thesis, Wright State University Department of Political Science, 2017), online (pdf): *CORE Scholar* <corescholar.libraries.wright.edu/cgi/viewcontent.cgi?referer=https://scholar.google.ca/scholar?cluster=11613070860253200320&hl=en&as_sdt=0,5&httpsredir=1&article=2916&context=etd_all> at 15–16.

A. AN OVERVIEW OF ECONOMIC SANCTIONS AND CORRUPTION IN IRAN

This section traces the development of the sanctions regime against Iran, exploring the causes and events that resulted in the imposition of the UN sanctions as well as the US sanctions. Next, this section provides a brief perspective on corruption in Iran.

1. *History of Economic Sanctions against Iran (1979-2016)*

The sanctions regime against Iran has been “arguably the most complex the United States and the international community have ever imposed on a rogue State”²³⁵ and has included a number of UNSC resolutions as well as several laws, executive orders, and regulations in US law. For more than three decades, various economic sanctions have been imposed on Iran. Mainly, following the Iranian revolution of 1978, a significant feature of US policy toward Iran has unilaterally shaped a sanctions regime pursuing different policies. In the 2000s, eventually, the US succeeded in convincing other countries to internationally pressure Iran and created a multilateral consensus on the issue of Iranian nuclear enrichment. The UNSC, subsequently, passed several resolutions in response to the Iranian nuclear program.

However, after that International Atomic Energy Agency (hereinafter IAEA) verified Iranian compliance with its nuclear commitments on 16 January 2016, the *JCPOA* was adopted as a multilateral nuclear accord.²³⁶ As a result of the *JCPOA*, UN economic sanctions and US nuclear-related sanctions were lifted, while other US sanctions pursuing different goals have remained in effect.

This section, first, analyzes international sanctions against Iran that were imposed by the UNSC; and then, it examines the US sanctions regime against Iran from 1979 to 2016. Finally, it

²³⁵ Dianne E Rennack, “Iran: US Economic Sanctions and the Authority to Lift Restrictions” (2015) 6:4 Current Politics & Economics of the Middle East 619 at 619.

²³⁶ *Joint Comprehensive Plan of Action*, P5+1 and Iran, 14 July 2015 (entered into force 18 October 2015) [*JCPOA*].

considers the impact of the *JCPOA* on sanctions and explores that which economic sanctions were lifted in 2016.

i. United Nations Sanctions against Iran

While after 1979 the US tried to push the international community to implement UN sanctions against Iran, it was in 2006 that the UNSC adopted its first resolution regarding the Iranian nuclear program. From 2003 to 2006, the IAEA, which was assigned to investigate whether Iran's nuclear program posed a threat to international peace and security, was unable to confirm that Iran had no secret nuclear activities or any undisclosed nuclear facilities.²³⁷ In 2006, following the IAEA's announcement of Iran's failure to report nuclear materials and activities, five permanent members of the UNSC plus Germany (hereinafter P5+1) asked Iran to promise that it would permanently end its nuclear activities. However, Iran rejected their request and claimed that it had a right to develop and use nuclear energy for peaceful purposes.²³⁸ Therefore, the UNSC, acting under Article 40 of the *UN Charter*,²³⁹ adopted its first resolution on the subject of the Iranian nuclear program on 31 July 2006. UNSC Resolution 1696 demanded that "Iran shall suspend all enrichment-related and reprocessing activities, including research and development, to be verified by the IAEA."²⁴⁰ Therefore, while the Resolution did not include any sanctions, it provided a basis for future sanctions.

²³⁷ "Verification and Monitoring in Iran", (last visited 24 July 2018), online: *International Atomic Energy Agency* <www.iaea.org/newscenter/focus/iran>.

²³⁸ See Agnese Macaluso, "The Apparent Success of Iran Sanctions" (2014) The Hague Institute for Global Justice Working Paper No 2014/2 at 6.

²³⁹ Article 40 is as follows:

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

²⁴⁰ *Resolution 1696: On Suspension by Iran of All Enrichment-Related and Reprocessing Activities, Including Research and Development*, UNSCOR, UN Doc S/RES/1696 (2006).

As a result of Iran's refusal to suspend its nuclear program, the UNSC, acting under Article 41 of the *UN Charter*, adopted its second resolution on 23 December 2006 and imposed its first episode of sanctions against Iran. UNSC Resolution 1737 banned trade with Iran "of all items, materials, equipment, goods, and technology" relating to its enrichment program and imposed financial sanctions against persons and entities involved in the Iranian nuclear program through freezes on assets.²⁴¹ The Resolution further established a sanctions committee to monitor the implementation of its provisions.²⁴²

Following Iran's failure to comply with the previous resolutions, the UNSC adopted additional resolutions. While UNSC Resolution 1747, adopted in March 2007, added a ban on the sale of arms,²⁴³ UNSC Resolution 1803, adopted in March 2008, introduced a travel ban against individuals who engaged in nuclear-related activities.²⁴⁴ Although UNSC Resolution 1835, adopted in September 2008, did not impose any new sanctions, it reaffirmed the four previous resolutions regarding new evidence that confirmed Iran's noncompliance.²⁴⁵ Finally, in June 2010, the UNSC adopted Resolution 1929 as "the most advanced and comprehensive package of UN sanctions."²⁴⁶ While the Resolution expanded previous sanctions, it targeted mainly the Iranian oil, financial, and other sectors and limited its development of ballistic missiles.²⁴⁷

²⁴¹ *Resolution 1737: On Measures Against Iran in Connection with Its Enrichment-Related and Reprocessing Activities, Including Research and Development*, UNSCOR, UN Doc S/RES/1737 (2006) (the list of persons and entities that are targeted with an assets freeze was expanded by further resolutions).

²⁴² See *ibid.*

²⁴³ *Resolution 1747: On Further Measures Against Iran in Connection with Its Development of Sensitive Technologies in Support of Its Nuclear and Missile Programs*, UNSCOR, UN Doc S/RES/1747 (2007).

²⁴⁴ *Resolution 1803: On Further Measures Against Iran in Connection with Its Development of Sensitive Technologies in Support of Its Nuclear and Missile Programs*, UNSCOR, UN Doc S/RES/1803 (2008).

²⁴⁵ *Resolution 1835: On Iran's Obligations to Comply with Security Council's Resolutions and to Meet the Requirements of the IAEA Board of Governors*, UNSCOR, UN Doc S/RES/1835 (2008).

²⁴⁶ Macaluso, *supra* note 238 at 7.

²⁴⁷ *Resolution 1929: On Measures Against the Islamic Republic of Iran in Connection with Its Enrichment-Related and Reprocessing Activities, Including Research and Development*, UNSCOR, UN Doc S/RES/1929 (2010).

ii. US Sanctions against Iran (1979–2016)

After decades of friendly ties between the US and Iran, the Islamic Revolution of 1979 put an end to this relationship. In response to the embassy seizure in 1979, the US imposed its first episode of sanctions against Iran. Although most of those sanctions were lifted in 1981, so far the US trend of imposing sanctions has been actively continued. US sanctions against Iran have pursued multiple goals and have gone through several transformations over the last four decades. The US sanctions against Iran listed below are grouped by foreign policies that the US has sought to impose in each case:

a. The US-Iran Hostage Crisis of 1979-1981

The US, initially, imposed economic sanctions against Iran during the hostage crisis in which a group of Iranians entered the US embassy in Tehran and held a number of American diplomats as hostages in November 1979.²⁴⁸ Subsequently, President Carter issued Executive Order 12170 and, through a declaration of a national emergency, blocked the assets of the Iranian government in US banks and their foreign subsidiaries.²⁴⁹ Moreover, Executive Orders 12205²⁵⁰ and 12211²⁵¹ banned all trade and financial transactions with Iran and placed limitations on travel to and from Iran. In January 1981, Iran finally came to the negotiating table with the US, and the hostage crisis was resolved through the Algiers Accords.²⁵² Accordingly, Iran agreed to the release of US hostages in exchange for lifting the sanctions and unblocking Iranian assets.

²⁴⁸ For a further discussion of the hostage crisis, see e.g. Hossein Askari et al, *Case Studies of US Economic Sanctions: The Chinese, Cuban, and Iranian Experience* (Westport, Conn: Praeger, 2003) at 172–74.

²⁴⁹ *Blocking Iranian Government Property*, 44 Fed Reg 65729 (1979).

²⁵⁰ *Prohibiting Certain Transactions with Iran*, 45 Fed Reg 24099 (1980).

²⁵¹ *Prohibiting Certain Transactions with Iran*, 45 Fed Reg 26685 (1980).

²⁵² “Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran” (Claims Settlement Declaration), 19 January 1981, 75 A.J.I.L. 418 (1981).

b. Iran's Support for International Terrorism

The US re-imposed economic sanctions against Iran in 1983 when Iran was involved in the terrorist bombing of the US marine peacekeepers in Lebanon and began to support Hezbollah.²⁵³ The US Secretary of State added Iran to the list of State Sponsors of Terrorism²⁵⁴ in January 1984, which triggered specific sanctions against any country so designated.²⁵⁵ Particular acts and Executive Orders aim to dissuade Iran from its support for international terrorism. The *EAA* restricts the sales of US dual-use items to state sponsors of terrorism,²⁵⁶ and the *Arms Export Control Act* prohibits the sale of arms to them.²⁵⁷ The International Financial Institutions Act also requires US officials to vote against international lending to such countries.²⁵⁸ Moreover, the *Foreign Assistance Act* bars any direct US financial assistance to terrorist-listed countries, and it requires the President to withhold US contributions to countries that assist or sell arms to terrorist-listed countries and to cut US aid to international organizations that assist them.²⁵⁹

Iran, moreover, has been recognized as a country that is “not cooperating fully with US anti-terrorism efforts” under the *Anti-Terrorism and Effective Death Penalty Act*, and this designation bans any sale or licensing of “US defense articles and services” to Iran.²⁶⁰ In addition to the prohibition of any financial transactions with terrorist-listed governments, this Act requires the President to withhold US aid from any country that financially assists a terrorist-listed country.²⁶¹ Moreover, following the attacks on the US on 11 September 2001, President George

²⁵³ See e.g. Hufbauer et al, *supra* note 2 at 145.

²⁵⁴ For a complete list of State Sponsors of Terrorism, see “State Sponsors of Terrorism” (last visited 24 July 2018), online: *US Department of State* <www.state.gov/j/ct/list/c14151.htm>.

²⁵⁵ See Kenneth Katzman, “Iranian Sanctions”, Congressional Research Service RS20871 (11 May 2018), online (pdf): *Congressional Research Service* <fas.org/sgp/crs/mideast/RS20871.pdf> at 4.

²⁵⁶ See *EAA*, § 2404.

²⁵⁷ See *Arms Export Control Act*, 22 USC § 2780 (1976).

²⁵⁸ See *International Financial Institutions Act*, 22 USC § 262p-4p (1977).

²⁵⁹ See *Foreign Assistance Act*, 22 USC § 2371 (1961).

²⁶⁰ *Antiterrorism and Effective Death Penalty Act of 1996*, Pub L No 104—132, § 330, 110 Stat 1214 at 1258 (1997).

²⁶¹ See *ibid*, s 321, 325, 326.

W Bush issued Executive Order 13244 which blocked the US-based assets of foreign persons who supported international terrorism and prohibited US transactions with entities so designated.²⁶² Though the Executive Order initially targeted Al Qaeda, subsequent administrations have implemented this order to impose sanctions against Iranian arms sales.²⁶³

In addition, specific economic sanctions have been imposed against Iran to limit its import and export of goods and services that may contribute financial support to terrorism. In 1987, President Reagan signed Executive Order 12613 and banned all imports from Iran, including Iranian crude oil.²⁶⁴ In the 1990s, through the declaration of a state of emergency, the Clinton administration broadened these sanctions by arguing that Iran supported terrorist movements and posed a threat to US economic interests and security.²⁶⁵ Additionally, Executive Order 12957 prohibited US investors from investing in Iran's petroleum sector,²⁶⁶ and Executive Order 12959 barred all US firms and their subsidiaries from investing in Iran and exporting goods and services to it.²⁶⁷ Moreover, Executive Order 13059 forbidden US companies from knowingly exporting goods, services, or technologies to a third country with the goal of incorporation into products shipped to Iran.²⁶⁸ In addition, the *CISADA* gathers and codifies all these trade sanctions in one place.²⁶⁹ Lastly, the *IFCA* imposes secondary sanctions on entities that assist any Iranian entities designated as a "specially designated national" (hereinafter SDN) and blocks their US-based

²⁶² *Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*, 66 Fed Reg 49079 (2001).

²⁶³ See Katzman, *supra* note 255 at 6.

²⁶⁴ *Prohibiting Imports from Iran*, 52 Fed Reg 41940 (1987).

²⁶⁵ See *IEEPA*, § 1701.

²⁶⁶ *Prohibiting Certain Transactions with Respect to the Development of Iranian Petroleum Resources*, 60 Fed Reg 14615 (1995).

²⁶⁷ *Prohibiting Certain Transactions with Respect to the Development of Iranian Petroleum Resources*, 60 Fed Reg 24757 (1995).

²⁶⁸ *Prohibiting Certain Transactions with Respect to the Development of Iranian Petroleum Resources*, 62 Fed Reg 44531 (1997).

²⁶⁹ See *CISADA*, § 8501-51.

assets.²⁷⁰ Several Executive Orders have specified SDNs for their activities of support of international terrorism, the proliferation of nuclear programs, and abuse of human rights.²⁷¹ The *IFCA* further bars from operating in the US any “foreign financial institution” that knowingly assists an Iranian SDN in making financial transactions.²⁷²

Another US attempt has associated with its restrictions on Iran’s financial resources that provide support for terrorist groups as well as develop its nuclear and weapons of mass destruction (hereinafter WMD) programs. The *Iran and Libya Sanctions Act* of 1996, which was retitled the *Iran Sanctions Act* in 2006, has been considered the “first major extra-territorial sanction on Iran” because it extends US penalties to third-country firms.²⁷³ This Act authorizes the President to impose sanctions against persons and entities that make an investment of \$20 million or more in Iran’s oil and gas fields in a year, sell gasoline to Iran, provide Iran with equipment or services for oil, gas, or petrochemical production, or transport Iranian crude oil.²⁷⁴

The *NDAA*, the *ITRSHRA*, Executive Order 13622, and Executive Order 13645 impose further restrictions on Iran’s financial resources. With the purpose of reducing Iranian oil exports, the *NDAA* asks other countries to “significantly reduce” their purchases of oil from Iran.²⁷⁵ The *NDAA* requires the President to prohibit a foreign bank that processes payments through the Iranian Central Bank from opening an account in the US.²⁷⁶ The *ITRSHRA* imposes sanctions against entities that provide insurance to the National Iranian Oil Company (hereinafter NIOC) or the Naftiran Intertrade Company (hereinafter NICO), that purchase, subscribe to, or facilitate the

²⁷⁰ *Iran Freedom and Counter-Proliferation Act*, 22 USC § 8806 (2012) [*IFCA*].

²⁷¹ See Katzman, *supra* note 255 at 33.

²⁷² *IFCA*, § 8806.

²⁷³ Katzman, *supra* note 255 at 11.

²⁷⁴ See *ISA* § 1701. The Act also provides a list of six different sanctions and requires the President to impose at least two measures against targeted entities.

²⁷⁵ *National Defense Authorization Act for Fiscal Year 2012*, Pub L No 112–81, § 1245, 125 Stat 1298 at 1647 (2012) [*NDAA*].

²⁷⁶ See *Ibid.*

issuance of Iranian sovereign debt, or that support or make certain transactions with sanctioned persons.²⁷⁷ President Obama issued Executive Order 13622 that prohibited US banks from purchasing Iranian oil, other petroleum, or petrochemical products, and making transactions with the NIOC or the NICO.²⁷⁸ This order also blocked all US-based assets of entities that provided goods or services to the NIOC, the NICO, and Iran’s Central Bank, or aided the Iranian government in purchasing US bank notes or precious materials.²⁷⁹ Furthermore, Executive Order 13645 extended the economic sanctions on Iran’s energy sector to its automotive sector, rial trading, and precious stones.²⁸⁰

Finally, the US has implemented specific banking sanctions on Iran because it believes that Iran has benefited from the international financial system to support international terrorism and develop its WMD-related technology. Thus, under US regulations, Iran was banned from having direct access to the US financial system, and US banks needed to direct funds through an intermediate financial institution to send money to Iran for authorized transactions.²⁸¹ In 2008, however, the Department of the Treasury also prohibited US banks from indirect transactions with all Iranian banks.²⁸² Moreover, the *CISADA* prohibits US banks from opening new “correspondent accounts” or “payable-through accounts” for specific persons and entities to limit Iran’s ability to obtain letters of credit.²⁸³

²⁷⁷ See *Iran Threat Reduction and Syria Human Rights Act*, 22 USC §§ 8722, 8723, 8742 (1996) [*ITRSHRA*].

²⁷⁸ *Authorizing Additional Sanctions with Respect to Iran*, 77 Fed Reg 45897 (2012).

²⁷⁹ See *ibid*.

²⁸⁰ *Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions with Respect to Iran*, 78 Fed Reg 33945 (2012).

²⁸¹ *Iran Transactions Regulations*, 31 CFR § 560 (2011).

²⁸² See Katzman, *supra* note 255 at 30.

²⁸³ *CISADA*, § 8513a.

c. Iran's Development of Weapons of Mass Destruction and Ballistic Missiles

The next episode of US sanctions against Iran followed Iran's progress in its WMD and ballistic missiles programs, and sanctions were increased as the IAEA discovered Iran's nuclear activities in 2003. New sanctions were imposed to impair the military potential of Iran, to prevent Iran's uranium enrichment and its development of ballistic missiles and nuclear research facilities, and to bar Iran from obtaining components and technologies that can be used for production and delivery of nuclear, chemical, and biological weapons.²⁸⁴ The decision of Ahmadinejad, president of Iran in 2005, to resume the nuclear program and develop uranium enrichment facilities encouraged the US to impose more restrictions on Iran, including implementing its secondary sanctions on foreign firms that conducted business with Iran.²⁸⁵

Specific acts and executive orders target Iran's development of WMD and ballistic missiles programs and impose sanctions on it. The *Iran-Iraq Arms Nonproliferation Act* imposes sanctions against persons and foreign entities that assist Iran in acquiring WMD technology or obtaining specific weapons, including ballistic missiles.²⁸⁶ The *ISA* also authorizes the President to impose sanctions on persons and entities that sell WMD-related technologies or advanced conventional weaponry to Iran, or participate in Iran's uranium mining ventures.²⁸⁷ Similarly, the *Iran Nonproliferation Act*, which was retitled as the *Iran-North Korea-Syria Nonproliferation Act*, allows the imposition of sanctions against foreign individuals and entities that assist Iran in its WMD programs.²⁸⁸ In 2005, President George W Bush signed Executive Order 13382 and froze the assets of persons that proliferated or supported WMD programs.²⁸⁹ The *CISADA* authorizes

²⁸⁴ See Hufbauer et al, *supra* note 2 at 17.

²⁸⁵ See Christopher Beall, "The Emerging Investment Landscape of Post-Sanctions Iran: Opportunities, Risks, and Implications on US Foreign Policy" (2016) 39:4 Fordham Intl LJ 839 at 866.

²⁸⁶ *Iran-Iraq Arms Nonproliferation Act*, 50 USC § 1701 note (1992).

²⁸⁷ See *ISA*, § 1701 note.

²⁸⁸ *Iran-North Korea-Syria Nonproliferation Act*, 50 USC § 1701 note (2000).

²⁸⁹ *Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters*, 70 Fed Reg 38567 (2005).

the President to impose sanctions on “Destination of Diversion Concern,” which is defined as a country that re-exports or diverts US goods, services, or technologies to Iran so that Iran could use them in its WMD programs.²⁹⁰ It should be noted that US sanctions which limit Iran’s financial power (i.e., sanctions on trade, the energy sector, and banks) also intend to bar Iran from developing its WMD and ballistic missiles programs.

d. Human Rights Abuses and Censorship

Human rights abuses and censorship in Iran have prompted additional economic sanctions to restrict Iranian officials that are responsible for such violations. The US specifically intensified target sanctions against specific persons and entities due to the 2009 Iranian presidential election uprising.²⁹¹ In that year, following the domestic opposition against the allegedly fraudulent re-election of Ahmadinejad, the government violently suppressed the demonstrators and unlawfully arrested, tortured, and abused them. The government also implemented a broad Internet and press censorship to remove the news of protests from the media.

The *CISADA*, the *ITRSHRA*, the *IFCA*, and Executive Order 13553, target Iranian officials who violate human rights. The *CISADA* blocks US-based assets of targeted officials and provides a ban on their travel to the US, and it also extends the trade sanctions to prior exceptions for Iranian caviar, carpets, and pistachios.²⁹² The *ITRSHRA*, similarly, imposes travel bans and asset freezes on individuals and entities that sell anti-riot equipment to the Iranian government.²⁹³ Under the *IFCA*, specific sanctions are also designed for individuals who have been engaged in corruption

²⁹⁰ *CISADA*, § 8543.

²⁹¹ For a further discussion of the 2009 Iranian presidential election uprising, see e.g. Yahya Kamalipour, *Media, power, and politics in the digital age: the 2009 presidential election uprising in Iran* (Maryland: Rowman & Littlefield Publishers, 2010).

²⁹² *CISADA*, § 8512.

²⁹³ *ITRSHRA*, § 8792.

or diverted humanitarian goods for Iranians.²⁹⁴ Executive Order 13553 provided *CISADA* sanctions for Iranian officials who were designated responsible for human rights abuses.²⁹⁵

Concerning Iran’s censorship, several sanctions have been introduced to increase Internet freedom in Iran or limit the power of the Iranian government in monitoring the Internet usage of Iranians.²⁹⁶ While the *Victims of Iranian Censorship Act* mandates imposing sanctions on companies that sell Internet monitoring and censorship technology to Iran,²⁹⁷ the *CISADA* bars the US government from making contracts with such companies.²⁹⁸ In addition, Executive Order 13606 froze the US-based assets of individuals and entities that assisted the Iranian government in committing “grave human rights abuses” through information technology, and it also prohibited trade with them and suspended their entry to the US.²⁹⁹ Furthermore, the *ITRSHRA*³⁰⁰ and Executive Order 13628³⁰¹ imposed sanctions on persons and companies that have been involved in Iran’s censorship. Finally, the *IFCA* designates the Islamic Republic of Iran Broadcasting as an SDN and human rights violator due to its restrictions on free expression in Iran.³⁰²

e. Other Economic Sanctions

Iran has been subjected to specific US economic sanctions that address different perceived threats from Iran. Numerous sanctions have been imposed against Iran to limit its power in the region and to destabilize regional activities. For example, while Executive Order 13438 sanctioned

²⁹⁴ *IFCA*, § 8802.

²⁹⁵ *Blocking Property of Certain Persons with Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions*, 75 Fed Reg 60567 (2010).

²⁹⁶ See e.g. Katzman, *supra* note 255 at 36.

²⁹⁷ *Victims of Iranian Censorship Act*, 22 USC § 6201 note (2009).

²⁹⁸ *CISADA*, § 8515.

²⁹⁹ *Blocking the Property and Suspending Entry into the United States of Certain Persons with Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology*, 77 Fed Reg 24571 (2012).

³⁰⁰ *ITRSHRA*, § 8754.

³⁰¹ *Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions with Respect to Iran*, 77 Fed Reg 62139 (2012).

³⁰² *IFCA*, § 8807.

individuals who have posed a threat to Iraqi stability,³⁰³ Executive Order 13572 targeted persons that have committed human rights abuses with regards to the Syrian people.³⁰⁴

The US additionally implements economic sanctions against Iran by designating it as a “jurisdiction of primary money laundering concern” and stating that Iran’s financial system poses a continuing risk to the international financial system.³⁰⁵ The *USA Patriot Act* provides US banks with special procedures regarding Iranian access to the US financial system,³⁰⁶ and Executive Order 13599 blocked any US-based assets of Iran’s Central Bank.³⁰⁷

Finally, the US imposes several sanctions against Iran’s cyber activities, since it claims that Iran attacked infrastructure in the US and other countries through cyber and transnational criminal activities. Executive Order 13694 froze US-based assets of foreign entities that were involved in malicious cyber activities,³⁰⁸ and Executive Order 13581 blocked all US-based assets of those that were involved in a significant transnational criminal organization.³⁰⁹

iii. Joint Plan of Action, Joint Comprehensive Plan of Action, and Their Effects on Sanctions against Iran

In 2013, Hassan Rouhani, who promised better relations with the international community, particularly regarding nuclear negotiations, won the Iranian presidential election. Following the resumed nuclear negotiations, the non-binding and preliminary *JPA* was signed between P5+1 and Iran in November 2013 and went into effect in January 2014.³¹⁰ According to the *JPA*, in exchange

³⁰³ *Blocking Property of Certain Persons Who Threaten Stabilization Efforts in Iraq*, 72 Fed Reg 39719 (2007).

³⁰⁴ *Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria*, 76 Fed Reg 24787 (2011).

³⁰⁵ “Fact Sheet: New Sanctions on Iran” (21 November 2011), online: *US Department of Treasury* <www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>.

³⁰⁶ See *USA Patriot Act*, 18 USC § 1 note (2001).

³⁰⁷ *Blocking Property of the Government of Iran and Iranian Financial Institutions*, 77 Fed Reg 6659 (2012).

³⁰⁸ *Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities*, 80 Fed Reg 18077 (2015).

³⁰⁹ *Blocking Property of Transnational Criminal Organizations*, 76 Fed Reg 44757 (2011).

³¹⁰ *Joint Plan of Action*, P5+1 and Iran, 24 November 2013 (entered into force 20 January 2015) [*JPA*].

for temporary relief of international sanctions, Iran agreed to stop critical parts of its nuclear program for a short period to allow time to negotiate for a long-term agreement.

US sanctions relief under the *JPA* was as follows: (1) enabling Iran's customers to buy their current average of oil purchases by waiving section 1245 of *NDAA*; (2) not imposing sanctions on foreign banks regarding the Executive Orders 13622, 13645, and 13382; (3) allowing transactions with the NIOC through a waiver of section 302 of *ITRSHRA*; (4) issuing a waiver for Iran's access to hard currency of \$700 million per month from its oil sales and an extra \$65 million to pay tuition for Iranian students abroad; and (5) resuming trade in Iran's sectors of automotive manufacturing, airlines, petrochemicals, and precious metals by suspending the application of Executive Orders 13622, 13645, 13382, and specific provisions of *IFCA*.³¹¹

For the next two years, the P5+1 and Iran continued their negotiations and extended the deadline several times; eventually, the *JCPOA* was endorsed in July 2015, adopted in October 2015, and implemented in January 2016.³¹² The *JCPOA* restricts Iran's nuclear, enrichment, and heavy water programs, and it also provides the IAEA with monitoring power to control Iran's enrichment program and its nuclear weapons-related activities. The *JCPOA* contains nuclear-related clauses, sanctions-related commitments, civil nuclear cooperation, the creation of an institutional joint commission, and procedural provisions.³¹³

Consequently, the UNSC endorsed the *JCPOA* by adopting Resolution 2231 in July 2015.³¹⁴ Following the verification of the IAEA regarding Iran's compliance with the *JCPOA*, the UNSC terminated all previous resolutions and sanctions regarding Iran's nuclear program. While the

³¹¹ See Pual Kerr & Kenneth Katzman, Congressional Research Service, RS43333, Iran Nuclear Agreement (2 May 2018), online (pdf): <fas.org/spp/crs/nuke/R43333.pdf> at 7.

³¹² *JCPOA*.

³¹³ *Ibid.*

³¹⁴ *Resolution 2231: On Joint Comprehensive Plan of Action (JCPOA) on the Islamic Republic of Iran's Nuclear Programme*, UNSCOR, UN Doc S/RES/2231 (2015).

Resolution calls on Iran “not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons ... until the date eight years after the JCPOA Adoption Day,”³¹⁵ it does not provide any specific sanctions in the case of its non-compliance.

US sanctions which were suspended by the *JCPOA* were mostly those that targeted Iran’s energy sector as a financial resource for its nuclear activities. The relief was associated with sanctions on foreign entities that were involved in Iran’s production and export of oil, sales of gasoline and equipment for the energy sector to Iran, and transactions with Iranian banks, as well as sanctions on Iran’s auto sector and rial trading.³¹⁶ Subsequently, in January 2016, the following laws and Executive Orders were waived or terminated: (1) *ISA*’s provisions related to energy and financial sectors, but not WMD-related provisions,³¹⁷ (2) the *NDAA*’s provision which was related to sanctions on foreign banks of countries that had not significantly reduced their purchases of oil from Iran,³¹⁸ (3) *ITRSHRA* provisions regarding the financial sector, not its provisions about human rights abuses,³¹⁹ (4) specific *IFCA* provisions,³²⁰ and (5) Executive Orders 13590, 13622, 13645, and sections 5–7 and 15 of 13628.³²¹

The *JCPOA* further provides that, “The sanctions that the United States will cease to apply, and subsequently terminate, or modify to effectuate the termination of, pursuant to its commitment under Section 4 are those directed towards non-US persons.”³²² In other words, while sanctions on foreign companies that are involved in the energy, financial, and auto sectors were lifted, sanctions

³¹⁵ *JCPOA*, Annex II § 3.

³¹⁶ See Kerr & Katzman, *supra* note 311 at 20.

³¹⁷ *ISA*, § 1701 note.

³¹⁸ *NDAA*, § 1245d.

³¹⁹ *ITRSHRA*, § 8722–23.

³²⁰ *IFCA*, § 8803–06.

³²¹ These Executive Orders were revoked by Executive Order 13716, *Revocation of Executive Orders 13574, 13590, 13622, and 13645 With Respect to Iran, Amendment of Executive Order 13628 With Respect to Iran, and Provision of Implementation Authorities for Aspects of Certain Statutory Sanctions Outside the Scope of US Commitments Under the Joint Comprehensive Plan of Action of July 14, 2015*, 81 Fed Reg 3693 (2016).

³²² *JCPOA*, Annex II § 4 n.6.

on direct trade between the US and Iran have not been waived or terminated. In addition, those US sanctions that were imposed on Iran due to other reasons than its nuclear programs, like Iran's support for international terrorism or human rights abuses, have remained effective.

2. *An Overview of Corruption in Iran*

Iran's economy has historically suffered from corruption, and different statistics have indicated the high risk of corruption in its different sectors. It has been impossible to directly measure corruption in Iran because not only corruption generally owns complex and secretive nature and takes numerous forms and aspects, but also the Iranian government has been largely reluctant to publish official statistics that indicate its quality of governance. Nonetheless, there have been international indicators that indirectly measure the levels of corruption in Iran by using perceptual surveys. Although the perception-based indicators may not precisely measure the levels of corruption in a country, they are beneficial in conducting statistical analysis and studying correlations between corruption and other variables.³²³

Among several indicators, the CPI and the WGI of Control of Corruption have been the most cited indexes that compare the levels of perceived corruption among different countries. In order to determine the CPI, the TI uses corruption-related data that are concluded from business and expert surveys and ranks a country on a zero to 100 scale, with a score of zero representing a very high corruption.³²⁴ In this regard, Figure 1 shows Iran's CPI scores from 2003 to 2017. In 2003, the TI ranked the perceived levels of corruption in Iran for the first time in which its score

³²³ See e.g. Anja Rohwer, "Measuring corruption: a comparison between the transparency international's corruption perceptions index and the World Bank's worldwide governance indicators" (2009) 7:3 CESifo DICE Report 42 at 43.

³²⁴ For a further discussion on the CPI's methodology, see "Corruption Perceptions Index 2017: Technical Methodology Note" (21 February 2018), online: *Transparency International* <www.transparency.org/news/feature/corruption_perceptions_index_2017>.

was 30, and its rank was 78 among 133 nations.³²⁵ However, its CPI reached a record low of 18 in 2009. According to the recent CPI, Iran’s rank was 130 among 180 nations in 2017.³²⁶

Similarly, in the Worldwide Governance Indicators, the World Bank reports the control of corruption as a dimension of governance in different countries. The data has been collected from several surveys, and measures are on a scale from -2.5 to +2.5, in which higher values correspond to better governance.³²⁷ Figure 2 illustrates Iran’s scores over the period 1996–2016. While its average score during this period was -0.59, Iran had a maximum of -0.19 points in 2002 and a minimum score of -0.95 in 2010. In its recent report, Iran obtained a score of -0.72 in 2016.³²⁸

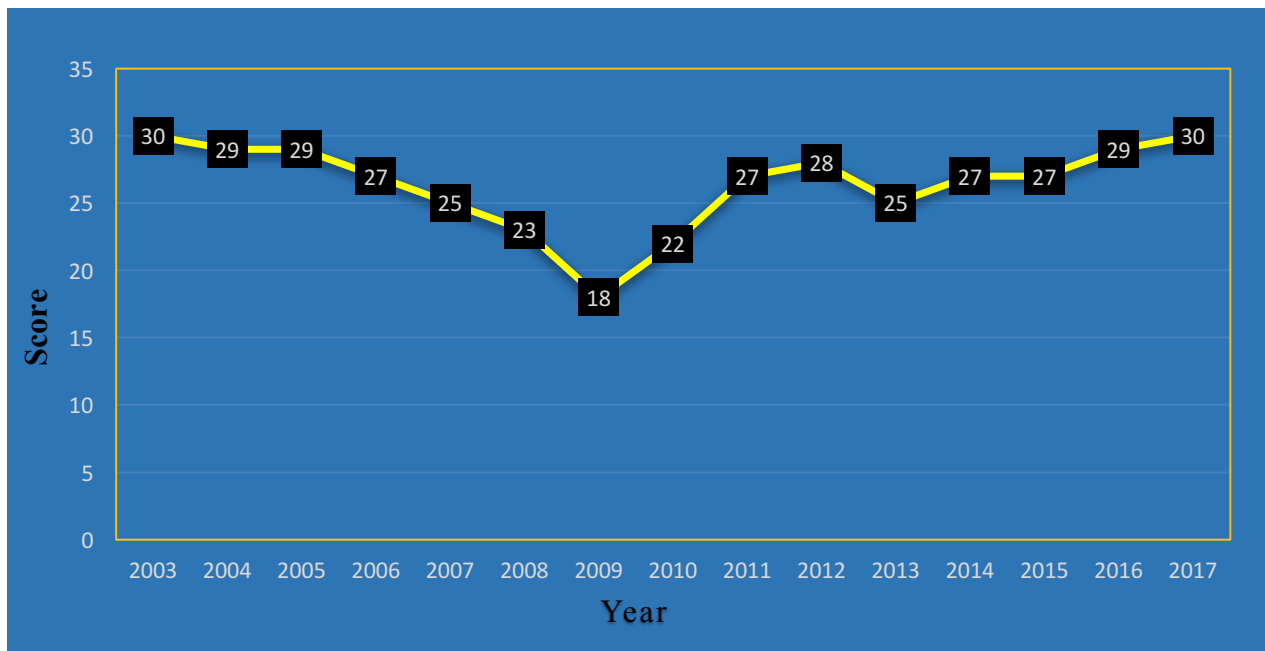


Figure 1: Iran's CPI Scores (2003-2017)³²⁹

³²⁵ See “Corruption Perception Index 2003” (7 October 2003), online: *Transparency International* <www.transparency.org/research/cpi/cpi_2003/0>.

³²⁶ See “Corruption Perceptions Index 2017”, (21 February 2018), online: *Transparency International* <www.transparency.org/news/feature/corruption_perceptions_index_2017>.

³²⁷ See “WGI Aggression Methodology” (last visited 1 August 2018), online: *the World Bank*, <info.worldbank.org/governance/wgi/index.aspx#doc-methodology>.

³²⁸ “Worldwide Governance Indicators: Interactive Data Access: Control of Corruption” (last visited 1 August 2018), online: *the World Bank*, <info.worldbank.org/governance/wgi/index.aspx#reports>.

³²⁹ The CPI scale from 2003 to 2011 was from 0 to 10, but for the purpose of this study, the scale for all scores are considered from 0 to 100; see “Corruption Perceptions Index” (last visited 1 August 2018), online: *Transparency International* <www.transparency.org/research/cpi>.

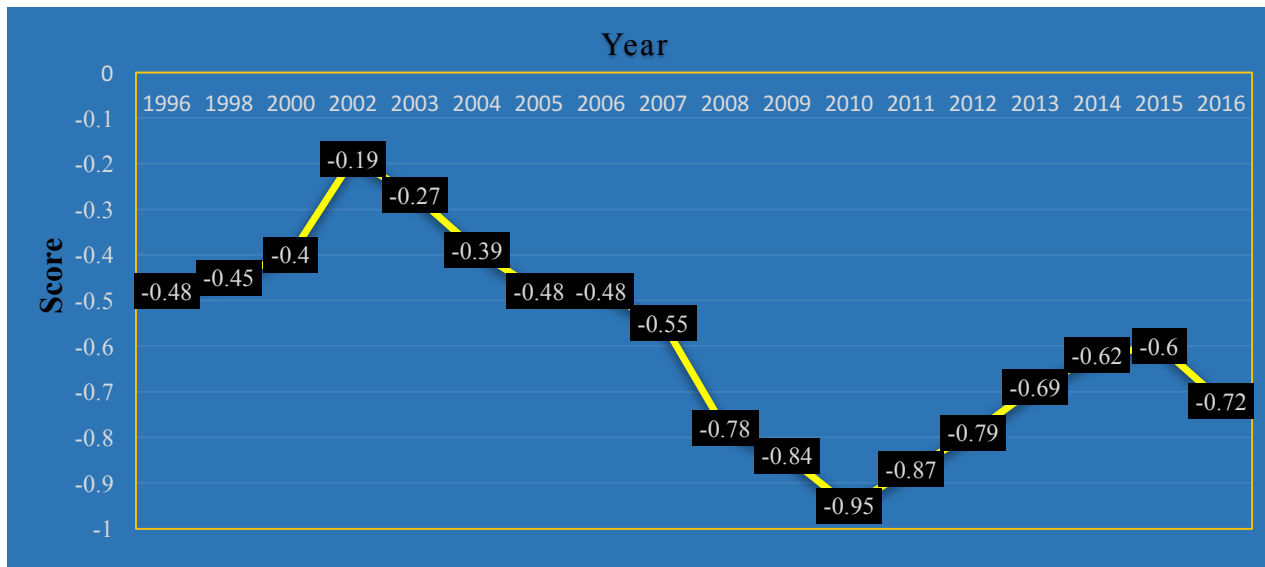


Figure 2: Iran's Scores of Control of Corruption (1996-2016)³³⁰

In addition to these statistics, there have been numerous reports and records that indicate the increasing level of corruption in different sectors in Iran. Iran adopts the UNCAC and addresses different types of corruption in its laws and regulations.³³¹ In particular, Iranian laws consider severe cases of corruption as a “*fisad fil-arz*”³³² (corruption on earth), which is a capital crime and punishable by the death penalty. However, in practice, several cases of corruption are not detected, and the penalty rate and probability of prosecution are significantly low in Iran.³³³ Even in case of detection, there is the possibility of bribing authorities to avoid penalties.

Corruption in Iran has its own institutional roots; the poor quality of the rule of law and democracy, being a rentier state, and low levels of voice and accountability affect its level of corruption. Although the Iranian Constitution predicts the separation of powers, different branches

³³⁰ “Worldwide Governance Indicators: Interactive Data Access: Control of Corruption” (last visited 1 August 2018), online: *the World Bank* <info.worldbank.org/governance/wgi/index.aspx#reports>.

³³¹ See e.g. *Islamic Republic of Iran's Criminal Code of Procedure for Public and Revolutionary Courts*, art 35 (1999); *Islamic Penal Code of the Islamic Republic of Iran*, chapter 7 (2012).

³³² *Islamic Penal Code of the Islamic Republic of Iran*, art 183.

³³³ See e.g. “Country Reports on Human Rights Practices for 2017” (last visited 1 August 2018), online: *US Department of State* <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm - wrapper>>.

of governments are not entirely independent and cannot control each other in exercising their power.³³⁴ In this matter, the Judicial Branch is no exception, and the Supreme Leader has absolute power over the entire judicial system. Bribery in exchange for favorable court decisions and unfair trials for influential people are typical examples of corruption in the judicial system.³³⁵ Moreover, bribery, embezzlement, and other irregular payments are critically widespread among public officials in different sectors of government, including the Iranian police force, public services, land administration, tax administration, customs administration, and public procurement.³³⁶

Moreover, Iran is a rentier state, and its economy mainly depends on oil revenues.³³⁷ The Iranian government controls all oil resources; therefore, public officials, who often earn less than those in the private sector, have considerable discretionary power in deciding who is eligible for oil benefits. Iran's economy, moreover, suffers from a weak monitoring system, low accountability, and lack of transparency among public officials. Due to all these factors, Iran's economy faces a situation in which public officials have many incentives to gain benefits through corrupt activities such as bribery or embezzlement.

Hence, while this study focuses on the effects of sanctions on corruption in Iran, it does not claim that there was little or no corruption before imposing economic sanctions or that corruption would not have been a problem in the absence of sanctions. This study intends to

³³⁴ Article 57 (Separation of Powers) of Constitution of the Islamic Republic of Iran (24 October 1979) provides that, The powers of government in the Islamic Republic are vested in the legislature, the judiciary, and the executive powers, functioning under the supervision of the absolute religious Leader and the Leadership of the Ummah, in accordance with the forthcoming articles of this Constitution. These powers are independent of each other.

³³⁵ See e.g. "The Global Competitiveness Report 2015–2016" (last visited 1 August 2018), online (pdf): *World Economic Forum* <www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf>.

³³⁶ See "Iran Corruption Report" (last visited 1 August 2018), online: *GAN Business Anti-Corruption Portal* <<http://www.business-anti-corruption.com/country-profiles/iran/>>.

³³⁷ See e.g. Yadollah Dadgar & Rouhollah Nazari, "The Impact of Oil Revenue on the Economic Corruption in Iran" (2012) 128:2 *Actual Problems Economics* 375 at 376–77.

illustrate that in addition to other variables, economic sanctions produced much higher levels of corruption than would otherwise have occurred the case in the absence of such sanctions.

B. CORRUPTION RESULTING FROM ECONOMIC SANCTIONS AGAINST IRAN

This study breaks down the corruption resulting from economic sanctions into three categories: internal consequences, external outcomes, and legacy effects. Subsequently, while the first section explains how economic sanctions affect the level of corruption in Iran, the next sections examine their effects on the level of corruption in the region and post-sanctions era.

1. Corruption Resulting from Economic Sanctions within Iran

First of all, it is useful to compare Iran's key economic indicators of 2016, the year nuclear-related economic sanctions were lifted, with those of 2012, when the most stringent nuclear-related sanctions were ongoing, and those of 2005, a year before the imposition of nuclear-related sanctions. Table 1 compares Iran's indicators of gross domestic product, inflation rate, industrial production growth rate, oil production, the CPI and control of corruption over the specified years. The statistics suggest that as the number of economic sanctions was increasing, the economy was affected more and more by sanctions. The numbers further indicate that the year after the *JCPOA* was signed, Iran's economy was not able to completely rebound from economic sanctions.

Here, this section explores consequences of economic sanctions that caused corruption within Iran in detail and analyzes their impacts on three places: the oil sector, public officials, and civil society.

| | GDP (Real Growth Rate) | Inflation Rate | Industrial Production Growth Rate | Oil Production (barrels per day) | CPI's Score | Control of Corruption's Score |
|-------------|---------------------------------------|---------------------------|--|---|------------------------|--|
| 2005 | 6.90 % | 13.5 % | 3.50 % | 3.98 Million | 29 | -0.48 |
| 2012 | 2.00 % | 27.1 % | -5.69 % | 3.56 Million | 28 | -0.79 |
| 2016 | 4.50 % | 8.0 % | 4.50 % | 4.07 Million | 29 | -0.72 |

Table 1. Iran's Economic Indicators in 2005, 2012, and 2016³³⁸

i. Corruption Resulting from Economic Sanctions in Iran's Oil Sector

Due to the imposition of energy and banking sanctions, the Iranian government was not able to directly sell its crude oil in international markets; therefore, its revenue from oil sales dropped sharply. To circumvent the sanctions and compensate the loss, government officials inevitably turned to informal intermediaries that were not subjected to sanctions at that time and requested them to sell oil on behalf of them. Thus, economic sanctions fueled corruption and developed several informal markets, smuggling channels, and illegal trade within Iran.

The Iranian government has been and continues to be a rentier state, i.e. a government that significantly relies on limited sources of revenue and solely benefits from renting its natural resources to other countries.³³⁹ In a rentier state, the government and individuals attempt to maximize their rents from restricted sources; consequently,

a rent-based economy generates corruption. It foregoes the culture of effort and risk-taking and does not compare rewards with effort as long as wealth is flowing without any effort or risk. ... Government relying on the flow of rent-based

³³⁸ See "Iran, Islamic Rep Data" (last visited 1 August 2018), online: *the World Bank* <data.worldbank.org/country/iran-islamic-rep?view=chart>; "Corruption Perceptions Index 2017" (21 February 2018), online: *Transparency International* <www.transparency.org/news/feature/corruption_perceptions_index_2017>; "Worldwide Governance Indicators: Interactive Data Access: Control of Corruption" (last visited 1 August 2018), online: *the World Bank* <info.worldbank.org/governance/wgi/index.aspx#reports>.

³³⁹ For a further discussion on rentier states, see e.g. Hazem Beblawi & Giacomo Luciani, *The rentier state* (London: Croom Helm, 1987).

revenues is more concerned with their distribution than with generating wealth based upon real effort.³⁴⁰

As a result, corruption is an essential characteristic of a rentier state, and imposing more restrictions on its economy intensifies the level of corruption in such a society.

Iran has the most substantial joint resources of oil and natural gas throughout the world, and its energy sector forms about thirty percent of Iran's GDP and eighty-five percent of government's income.³⁴¹ Thus, while both the wealth and power of the government are heavily dependent on the extraction and export of natural resources, the economy is significantly vulnerable to economic sanctions that target its energy sector. In Iran, economic sanctions negatively affected the economy in general, and the government's revenue in particular. Energy sanctions prohibited the import, purchase, and transport of Iranian crude oil, and sanctions on the Iranian Central Bank created obstacles for the government to receive petrodollars from importing countries.³⁴² Economic sanctions, moreover, barred insurers from providing insurance for Iranian ships and oil tankers.³⁴³ In 2012, Iranian oil production dropped by 686,000 barrels per day, and the value of Iranian oil fell by almost 11 percent compared to 2011, and Iran was only able to sell its oil to six international markets compared to 21 purchasers in the prior year.³⁴⁴ Specific records estimated that in 2012, economic sanctions caused Iran to lose about \$133 million per day in its oil sector.³⁴⁵

³⁴⁰ Ziad Hafez, "The Culture of Rent, Factionalism, and Corruption: A Political Economy of Rent in the Arab World" (2009) 2:3 *Contemporary Arab Affairs* 458 at 474.

³⁴¹ See Beall, *supra* note 285 at 918.

³⁴² See Mohammad Reza Farzanegan, "Effects of International Financial and Energy Sanctions on Iran's Informal Economy" (2013) 33:1 *SAIS Rev Intl Affairs* 13 at 14, 32.

³⁴³ *Ibid.*

³⁴⁴ See *ibid.*; see also Beall, *supra* note 285 at 895.

³⁴⁵ See e.g. Anthony DiPaola & Isaac Arnsdorf, "Iran Loses \$133 Million a Day on Embargo, Buoying Obama" (2 August 2012), online: *Bloomberg* <www.bloomberg.com/news/articles/2012-08-01/iran-loses-133-million-a-day-from-sanctions-as-oil-buoys-obama>.

On the other hand, economic sanctions provided the Iranian government with incentives and opportunities to resort to smuggling channels and informal intermediates and illegally sell its oil in international markets. Accordingly, economic sanctions undermined formal international markets in Iran and created “new economic elites,” i.e., local and international actors who possessed the most connections and skills in evading sanctions.³⁴⁶ These elites, as intermediates, received oil barrels from the Iranian government and sold them abroad on its behalf, exchanged petrodollars to Iranian rial in the black market, and transferred the money to the government. As a result, a region-wide network of black market and smuggling channels, which was sponsored and directed by the government, emerged in Iran and assisted the government in evading sanctions and generating rents. Economic sanctions further became a justification for these illegal methods of business within the government.

The most significant case of corruption in the oil sector is related to an Iranian businessman, Babak Zanjani, who was sentenced to death for embezzlement and corruption on earth by an Iranian court in 2016. During the sanctions period, Zanjani was assigned by the Ministry of Petroleum (hereinafter MOP) to sell Iranian oil in international markets and return the money to Iran’s economy. He received oil barrels from the MOP and sold them abroad by using a web of companies in Dubai, Turkey, and Malaysia. In 2013, he was arrested by the Iranian government because officials accused him of embezzling more than 2.7 billion dollars’ worth of oil.³⁴⁷ The MOP claimed that Zanjani received oil barrels as well as amounts of cash in his account from the MOP to transfer them to specific contractors in oil projects, but he withheld them. The court asked him to repay embezzled funds, but Zanjani argued that sanctions were preventing him from

³⁴⁶ See e.g. Galtung, *supra* note 1 at 397; see also Andreas, *supra* note 232 at 357.

³⁴⁷ See e.g. “Iran Billionaire Babak Zanjani Sentenced to Death” (6 March 2016), online: *BBC* <www.bbc.com/news/world-middle-east-35739377>.

returning the funds. Although the court sentenced him to death, his trial continued after sanctions were lifted, and the execution of sentence has been delayed since the Ministry of Intelligence has been identifying his properties outside of Iran.³⁴⁸ The investigation also revealed that the former head of Central Bank hired him to exchange petrodollars to Iranian rials in the black market.³⁴⁹

Another notable case is associated with Reza Zarrab, an Iranian-Turkish gold trader who was arrested by US authorities in 2016. Zarrab was accused of using his gold business to help the Iranian government to circumvent oil sanctions and laundering about 1 billion dollars through US banks by trading Iran's oil and gas for gold.³⁵⁰ During his court proceedings, Zarrab pled guilty to all charges against him and admitted that:

[B]etween 2010 and my arrest in 2016, I managed a money exchange business in Turkey. Among other things, as part of the money exchange business, I agreed with others to obstruct the U.S. Department of the Treasury enforcement of economic sanction laws and regulations, and to violate the [IEEPA] by engaging in commercial transactions designed to evade U.S. sanctions against Iran. [] I agreed with others to engage in, and engaged in, a scheme to mislead United States bank[s] through the use of falsified documents and materials that omitted Iran beneficiary information in order to convince the United States banks to process financial [] transactions prohibited . . . by United States sanction[s]. [] I agreed with others . . . to engage in, and engaged in, transaction[s] that involved the movement of funds from inside the United States to places outside the United States for purpose of promoting the IEEPA violation and bank fraud I previously described and payments of bribes to Turkish officials.³⁵¹

His testimonies also revealed that nine other people conspired with Zarrab to funnel Iranian money through the US financial system, but among them, only Mehmet Hakan Atilla, a deputy general

³⁴⁸ See e.g. “Judiciary to reconsider death penalty for drug traffickers” (17 February 2017), online: *Mehr News Agency* <en.mehrnews.com/news/123515/Judiciary-to-reconsider-death-penalty-for-drug-traffickers>; “A new sanctions-related case might be on the way, this time from Iran, columnist says” (2 January 2018), online: *Ahval* <ahvalnews.com/zanjani/new-sanctions-related-case-might-be-way-time-iran-columnist-says>.

³⁴⁹ See e.g. “Corruption Among Iran's Business Elites” (14 March 2016), online: *Deutsche Welle* <www.dw.com/en/corruption-among-irans-business-elites/a-19116640>.

³⁵⁰ See e.g. Jonatham Schanzer, “The Biggest Sanctions-Evasion Scheme in Recent History” (4 January 2018), online: *The Atlantic* <www.theatlantic.com/international/archive/2018/01/iran-turkey-gold-sanctions-nuclear-zarrab-atilla/549665/>; Benjamin Weiser, “US Can Pursue Turk Accused of Conspiring to Violate Iran Sanctions” (17 October 2016), online: *NY Times* <www.nytimes.com/2016/10/18/world/americas/turkey-reza-zarrab-gold-trader.html>.

³⁵¹ *United States v Mehmet Hakan Atilla*, 2018 US Lexis 20156 at 4 (USSC).

manager of the Turkish Halkbank, was convicted by the US court.³⁵² Describing his scheme, Zarrab explained,

The funds of Iranians [] which accumulated [from] gas and oil sales, and on the other side the Iranians had the international payment orders [obligations]. I received those orders, and I made their [Iran's] international financial payments. Their income from gas and oil sales was accumulated in [accounts at] Halkbank. Taking those moneys out of Halkbank, I made the international payments [with the blocked Iranian funds].³⁵³

In addition, Zarrab implied that the current President of Turkey was part of his scheme, and also admitted that he bribed the highest levels of the Turkish government, including three Turkish ministers and the charity of Turkish First Lady to continue business in Turkey.³⁵⁴

Another strange case is associated with the Missing Fortuna Oil Rig, which was about an oil drilling rig that Iran bought in 2011, but it was never delivered to Iran.³⁵⁵ In that year, due to the sanctions, Iranian Offshore Engineering and Construction (hereinafter IOEC) was not able to rent oil rigs. Thus, Iranian officials approached Reza Mostafavi Tabatabaei, an Iranian broker in Turkey, and asked him to purchase an oil rig on behalf of them. Tabatabaei found a rig, which belonged to the GSP, a Romanian company. The real price of the oil rig was about 67 million dollars, but the company asked for an extra 20 million dollars, as a surplus of circumventing the sanctions. Again because of the sanctions on the IOEC, the deal was done through a mediator, the Dean International Trading company, which was a registered trading company in the United Arab Emirates (hereinafter UAE). Due to some delays in the payments, the GSP canceled the deal with

³⁵² See *ibid.*

³⁵³ *Ibid.*, at 15–16.

³⁵⁴ See e.g. Ercan Ersoy, “Turkish First Lady's Charity Got Millions from Accused Fraudster” (26 May 2016), online: *Bloomberg* <www.bloomberg.com/news/articles/2016-05-26/turkish-first-lady-s-charity-got-millions-from-accused-fraudster>.

³⁵⁵ Bozorgmehr Sharafedin, “Broker Says He's Innocent in Missing Iran Oil Rig Case” (4 September 2015), online: *Reuters* <www.reuters.com/article/us-iran-oil-scandal-idUSKCN0R41I920150904>; see also “Indictments in the ‘Missing’ Oil Rigs case” (8 August 2017), online: *Radio Farda* <en.radiofarda.com/a/iran-indicts-six-for-missing-oil-rigs/28665679.html>.

the Dean, while Iranian officials who were not aware of the cancellation paid 87 million dollars. Subsequently, the rig was never delivered to Iran, and instead, it was taken to the Gulf of Mexico. In that time, Iran, which had no guarantee for the delivery of the rig, could not detect to which accounts the money was transferred because of economic sanctions.³⁵⁶ Recently, Iranian authorities claimed that Tabatabaei, who was the real owner of the dummy company of Dean, committed a defalcation and invested the money in other places, including making donations to Donald Trump's presidential campaign.³⁵⁷

In the end, it should be noted that while this section uses significant scandals and severe cases of corruption to illustrate the main challenges of Iran's economy, these are only a few examples of what actually occurred during the sanctions episode. Beside these scandals, specific reports indicated that during the sanctions period, Iranian authorities ordered the captains of oil tankers to switch off their tracking systems or gave false information about the origin of their shipments.³⁵⁸ Moreover, at the low level of this region-wide black market and alongside the state-sponsored smuggling channels, local smugglers played a complementary role in illegally exporting and importing oil. For example, in Khor Fakkan port in the UAE, private ships labeled the barrels of Iranian crude oil as Iraqi oil destined to other countries.³⁵⁹ In Baluchistan, child smugglers, who

³⁵⁶ See also Timothy Gardner, "US blacklists firms for evading Iran oil sale sanctions" (9 May 2013), online: *Reuters* <www.reuters.com/article/us-usa-iran-oil-sanctions/u-s-blacklists-firms-for-evading-iran-oil-sale-sanctions-idUSBRE94814Q20130509> (explaining how an UAE-based company and a Venezuelan company assisted Iran to evade economic sanctions).

³⁵⁷ See e.g. "Poul-e Dakal-e Nafti-e Iran dar Camp-e Tablighie' Trump" [Iranian Oil Rig's Money in Trump's Presidential Campaign], (21 May 2018), online: *Ghanoon* <www.ghanoondaily.ir/fa/news/detail/78877/> [translated by author].

³⁵⁸ See e.g. Christopher Johnston & Peg Mackey, "Exclusive: Iran ships 'off radar' as Tehran conceals oil sales" (13 April 2012), online: *Reuters* <www.reuters.com/article/us-iran-oil-tracking/exclusive-iran-ships-off-radar-as-tehran-conceals-oil-sales-idUSBRE83C0TS20120413>.

³⁵⁹ See e.g. "Smugglers breaching Iran sanctions at Khor Fakkan" (15 April 2015), online: *Logistics* <www.logisticsmiddleeast.com/article-11170-smugglers-breaching-iran-sanctions-at-khor-fakkan>.

carried Pepsi bottles filled with oil, and pick-up trucks and mules, which were loaded with oil barrels, illegally smuggled Iranian fuel to Pakistan or Afghanistan through mountains.³⁶⁰

ii. Corruption Resulting from Economic Sanctions among Government Officials

Economic sanctions enrich rent-seeking opportunities for public officials, who are responsible for economic sectors and make decisions about national economic benefits, because sanctions, as an economic barrier, provide a situation in which officials take advantage of new circumstances for their private benefits.³⁶¹ In all societies, a number of officials usually disapprove illegal activities, even in countries with high levels of corruption; however, economic sanctions may totally undermine their logic of bargaining and create incentives for their corrupt behaviors.³⁶² Officials, who struggle to stay in power, distribute productive resources based on the rent-seeking activities, privilege those closest to the regime, grant contracts to their close ties, and even support smuggling activities to evade sanctions for private gain.³⁶³

In Iran, another consequence of economic sanctions was associated with the gradual empowerment and dominance of the Iranian Revolutionary Guard Corps (hereinafter IRGC) in Iran's economy. The IRGC, which was initially established in 1979, consists of 125,000 individuals that are under the direct control of Iran's Supreme Leader and tasked with defending the Islamic Republic of Iran against internal and external threats and preserving the principles of the 1979 revolution.³⁶⁴ Less than a decade after its establishment, the IRGC began to intervene in

³⁶⁰ See e.g. Hamdan Albaoshi, "Iran sanctions spur boom for Pakistani diesel smugglers" (31 March 2013), online: *Reuters* <www.reuters.com/article/us-pakistan-iran-smugglers-idUSBRE92U08X20130401>.

³⁶¹ See Anne Krueger, "The Political Economy of the Rent-Seeking Society." (1974) 64:3 *American Economic Review* 291–303.

³⁶² See Andreas, *supra* note 232 at 337.

³⁶³ See e.g. Lektzian & Souva, *supra* note 3 at 853.

³⁶⁴ See "Islamic Revolutionary Guard Corps (IRGC)" (last visited 1 August 2018), online: *Counter Extremism Project* <www.counterextremism.com/threat/islamic-revolutionary-guard-corps-irgc>.

Iran's economy, claiming to rebuild the economy after the Iran-Iraq war.³⁶⁵ Since then, the IRGC has been awarded major contracts in Iran's economy, "from energy to construction, telecommunications to auto making, and even banking and finance"³⁶⁶ and so became an economic giant. Benefiting from close ties to the Supreme Leader and its national security power, the IRGC has expanded its control over Iran's economy without governmental supervision.

Alongside these activities, however, the IRGC has arguably administrated a massive shadow economy of illegal businesses and black markets. In his speech in 2014, President Rouhani referred to the IRGC activities and stated, "If guns, money, newspapers and propaganda all gather in one place, one can be confident of corruption there ... Even Abuzar and Salman [allies of Prophet Mohammad] would have become corrupt under one organization that has accumulated everything."³⁶⁷ Additionally, Ali Ghanbari, a former member of Parliament, claimed that "unfortunately one-third of the imported goods are delivered through the black market, underground economy, and illegal jetties. Appointed institutions [by Supreme Leader Khamenei] that don't obey the [rules of] the government and have control over the means of power [violence]; institutions that are mainly military, are responsible [for those illegal activities]."³⁶⁸ Therefore, while the IRGC has been accused of widespread corruption in Iran, the imposition of nuclear-related sanctions against Iran, even more, enriched its power and wealth.

After the imposition of nuclear-related sanctions, while economic pressures reduced competitiveness in Iran's economy and decreased the opportunities of trade and investment for other countries, the IRGC took advantage of Iran's isolation and extended its control over several

³⁶⁵ See Alireza Nader, "The Bazaar" in Robin Wright ed. *The Iran Primer: Power, Politics, and US Policy* (Washington DC: United States Institute of Peace, 2010) 59 at 60.

³⁶⁶ *Ibid.*

³⁶⁷ Najmeh Bozorgmehr, "Rouhani confronts Iran's hardliners on corruption" (8 December 2014), online: *Financial Times* <www.ft.com/content/5ae48de4-7edf-11e4-a828-00144feabdc0> (quoting President Rouhani's speech).

³⁶⁸ Frederic Wehrey, *The Rise of the Pasdaran: Assessing the Domestic Roles of Iran's Islamic Revolutionary Guards Corps* (Santa Monica, CA: RAND National Defense Research Institute, 2009) at 64 (quoting Ali Ghanbari's speech).

sectors through its national security authority.³⁶⁹ In the absence of international competitors, a significant number of non-bid government contracts in Iran's energy, infrastructure, and construction, as well as billion-dollar loans, were granted to the IRGC.³⁷⁰ As Nader stated, "Ironically, tougher sanctions would undoubtedly further damage Iran's economy, but they may actually strengthen the very force driving national security policies, including the nuclear program."³⁷¹ According to statistics, in 2015, the IRGC's control upon Iran's economy was about thirty percent,³⁷² and regarding sanctions evasion, the IRGC involved in several illegal economic activities and operated numerous smuggling channels within Iran and the region.³⁷³

Another effect of economic sanctions is that they reduce the level of accountability among officials, and thus sanctions become an excuse for committing illicit and corrupt activities. During the sanctions episode in Iran, decisions were made quickly, individually, intuitively, and without adequate supervision; therefore, many officials who were later charged with corruption justified their acts by claiming that they intended to circumvent the sanctions.³⁷⁴ Most importantly, "the economic pressures of foreign-imposed international sanctions provided President Ahmadinejad with a convenient scapegoat to mask his own blatant mismanagement."³⁷⁵ During his presidency, while Ahmadinejad blamed sanctions for economic problems in Iran, he made gross economic policies, ran the government with huge budget deficits, mishandled billions of dollars, and ended

³⁶⁹ See Beall, *supra* note 285 at 901.

³⁷⁰ See Nader, *supra* note 365.

³⁷¹ *Ibid.*

³⁷² See e.g. Beall, *supra* note 285 at 869.

³⁷³ See e.g. Thomas Erdbrink, "Iran Saps Strength of Revolutionary Guards with Arrests and Cutbacks", (21 October 2017), online: NY Times <www.nytimes.com/2017/10/21/world/middleeast/iran-revolutionary-guards.html>; see also Megan Reiss, "Did Iran Sanctions Make the Revolutionary Guard Stronger?" (3 November 2017), online: *Foreign Policy* <foreignpolicy.com/2017/11/03/did-iran-sanctions-make-the-revolutionary-guard-stronger/>.

³⁷⁴ See e.g. "Dor Zadan-e Tahrirha Bahanei Baray-e Fesad va Makhfikari Shod" [Sanctions Evasion Became an Excuse for Corruption and Secrecy] (10 January 2014), online: *Entekhab* <www.entekhab.ir/fa/news/144474> [translated by author].

³⁷⁵ Beall, *supra* note 285 at 868.

up with numerous corruption scandals.³⁷⁶ Replacing qualified technocrats with his own loyalists and close ties, ordering government banks to offer non-profit loans to government institutions, and directing banks to engage in “speculative activities,” like real estate, were a few examples of his mismanagements in banking policies which led to the formation of a “shadow banking system” in Iran’s economy.³⁷⁷

In addition, economic sanctions worsen the level of transparency among government officials and provide them with a breeding ground for corrupt behavior. The pressure of economic sanctions and the absence of international players encourage officials to practice more censorship and suppress the media and social networks, and so generate a corrupt environment.³⁷⁸ During the sanctions period, Iran’s isolation and its lack of access to international trade standards reduced transparency in the Iranian government, and this created a close link between officials and smugglers. Mohammad Javad Zarif, current Foreign Minister of Iran, stated, “Sanctions and the way they were addressed by the previous administration ... ruined fiscal discipline and transparency in Iran’s economy.”³⁷⁹ As a result, the level of transparency became too low insofar as the government neglected to announce the real inflation rate for a while and even censored websites that promulgate the real inflation rate or foreign exchange rates.³⁸⁰

Finally, economic sanctions, particularly banking sanctions, affect legitimate methods of international money transfer and lead to a growth in the number of money-laundering cases. Due

³⁷⁶ See e.g. Frud Bezhan, “Corruption Verdicts Seen as Warning To Former Iranian President” (31 July 2017), online: *RadioFreeEurope/RadioLiberty* <www.rferl.org/a/iran-ahmadinejad-corruption-verdicts-warning/28650926.html>; see also “Former Iranian president Ahmadinejad facing sentencing over misuse of funds” (30 July 2017), online: *Reuters* <www.reuters.com/article/us-iran-politics-ahmadinejad/former-iranian-president-ahmadinejad-facing-sentencing-over-misuse-of-funds-idUSKBN1AF0QV>.

³⁷⁷ Cyrus Amir-Mokri & Hamid Biglari, “A Windfall for Iran?” (2015) 94:25 *Foreign Affairs* 25 at 31.

³⁷⁸ See Radu, *supra* note 232 at 13.

³⁷⁹ See “Zarif: Sanctions impaired Iran’s economic transparency” (15 April 2017), online: *TehranTimes* <www.tehrantimes.com/news/412642/Zarif-Sanctions-impaired-Iran-s-economic-transparency>.

³⁸⁰ See e.g. “Site Elam-e Nerkh-e Arz va Tala Filter Shod” [The Website Declaring Exchange and Gold Rates Was Filtered], (3 January 2012), online: *Tabnak* <www.tabnak.ir/fa/news/216587> [translated by author].

to the sanctions, Iranian banks and government officials were not able to transfer money internationally. Hence, they inevitably transferred cash through illegal networks. This issue decreased the monitoring power of the government to control financial transactions and money transfers, resulting in a significant number of embezzlement and money-laundering cases. As an example, some Iranian officials borrowed 130 million dollars from another country, but they paid only 100 million dollars to the government, meaning that 30 million dollars are still missing.³⁸¹

iii. Corruption Resulting from Economic Sanctions in Civil Society

Economic sanctions may transform civil society into “uncivil society” and cause people to perceive smuggling and illegal sources of income as normal.³⁸² By creating conditions of economic scarcity, the pressure of economic sanctions makes people apply specific “social defense mechanisms.”³⁸³ Among these mechanisms, the “competition” over the shrinking “economic pie” is a common reaction to sanctions, and people attempt to maximize their shares by “any means necessary.”³⁸⁴ In other words, sanctions force a person to struggle with available economic resources, while everybody else reaches the same conclusion and is ready to fight over resources. This situation triggers corrupt behaviors in society and provides an entire nation with powerful incentives to increase their profits through alternative sources of income. Subsequently, corruption and illicit activities are not viewed as opposing legal or moral standards, and the rule of law and morality have no more respect in society.³⁸⁵

³⁸¹ See e.g. “130 Million Dolar az Bank-e Khareji Tahvil Gereftand va 100 Million Dolar Tahvil Dadand” [They Received 130 Million Dollars from a Foreign Bank, But They Delivered 100 Million Dollars] (24 August 2016), online *Melimazhabi*: <melimazhabi.com/130> [translated by author].

³⁸² Andreas, *supra* note 232 at 337.

³⁸³ Balanov, *supra* note 234 at 16–17.

³⁸⁴ *Ibid.*

³⁸⁵ See Andreas, *supra* note 232 at 337.

In Iran, economic sanctions affect people with several consequences, which eventually leads to corruption. First and foremost, economic sanctions created a more fertile ground for corrupt practices by causing a high rate of inflation in Iran's economy and made people consider other sources of income.³⁸⁶ In 2010, the Iranian government implemented its critical economic reform program and changed its subsidy system through the enactment of the *Targeted Subsidy Reform Act* (hereinafter *TSRA*). From 1980 to 2010, as a promising policy of the Iranian revolution to bring "natural resource wealth to the tables of ordinary Iranian citizens," the government subsidized domestic goods and services, such as food, medicine, petroleum products, and utilities.³⁸⁷ The debate over changing the subsidy program started in Parliament in 2008. However, in 2010, the pressure of economic sanctions drastically decreased the government's oil revenue, so the enactment of *TSRA* became necessary as an urgent measure. The *TSRA* eliminates the subsidies that helped people to afford essential goods; instead, it authorizes the government to offer people small cash payments.³⁸⁸

Nevertheless, this reform resulted in periods of extreme inflation in Iran's economy and thus led to an increase in the level of corruption. The distribution of cash payments among Iranians increased liquidity and customer demand in the economy. On the other hand, economic sanctions reduced market supply by restricting imports and industrial capacity.³⁸⁹ Hence, the significant difference between the demand and the supply considerably raised prices insofar as the economy faced its highest inflation rate of 45 percent in June 2013.³⁹⁰ The high rate of inflation created

³⁸⁶ For considering the effect of inflation on corruption, see Miguel Braun & Rafael Di Tella, "Inflation, inflation variability, and corruption" (2004) 16:1 *Economics & Politics* 77.

³⁸⁷ Beall, *supra* note 285 at 869.

³⁸⁸ For a detailed discussion of subsidy reforms in Iran, see e.g. Dominique Guillaume et al, "Iran—the Chronicles of the Subsidy Reform" (2011) IMF, Working Paper No. 32.

³⁸⁹ See Farzanegan, *supra* note 342 at 16.

³⁹⁰ See "Iran, Islamic Rep Data" (last visited 3 June 2018), online: *the World Bank* <data.worldbank.org/country/iran-islamic-rep?view=chart>.

economic difficulties for Iranian wage earners and encouraged them to consider illegal activities and smuggling as an alternative source of income, turning to the informal economy.³⁹¹

In addition to the inflation, economic sanctions reduced the power of authorities to monitor economic activities in the market, increasing the size of the informal market. Due to the sanctions, the Iranian Central Bank lost its control over the foreign exchange market, and this brought opportunities for people to act corruptly; particularly, those closest to the regime and had access to subsidized foreign currency took advantage of small imported goods. In 2012, economic sanctions significantly decreased the government's oil revenue and made it difficult for the government to transfer petrodollars into the domestic economy. The Central Bank was not able to maintain a fixed foreign exchange rate system anymore; therefore, the government decided to substitute a three-layered foreign exchange rate system for its unified exchange rate regime. Accordingly, Iran's market faced three different foreign exchange rates for importing products: the "official exchange rate," which was the most subsidized one for importing the most necessary goods, like medicine or food; the "non-reference exchange rate," whose rate was set by the Central Bank for importing other necessary products; and the "free market rate," which was the black-market rate for importing less necessary products.³⁹² The difference between the second and third rates had to be two percent, but, in practice, it reached about fifty percent.³⁹³

High domestic demands for foreign exchange and inadequate supplies in the market provided the black market with a more significant role than the Central Bank in setting the exchange rate.³⁹⁴ Hence, the difference between the official and black-market rates became so remarkable that eventually led to corrupt activities, smuggling, and forging international trade

³⁹¹ See e.g. Farzanegan, *supra* note 342 at 16.

³⁹² *Ibid.*, at 17.

³⁹³ See *ibid.*

³⁹⁴ See *ibid* at 15, 16.

documents. The difference, particularly, created rent-seeking opportunities for well-connected traders who had access to the subsidized foreign exchange rate.³⁹⁵ For example, using subsidized exchange rate, several traders imported goods, but they over-invoiced their imports and sold the extra subsidized foreign exchange on the black market.³⁹⁶ Another group used the subsidized foreign exchange to import goods, but they did not distribute the products in Iran. Instead, they exported the goods to neighboring countries, obtained foreign exchange, and then sold it on the black market.³⁹⁷ Finally, some traders used the subsidized foreign exchange to import luxury goods, like sports cars, rather than necessary products.³⁹⁸

Moreover, economic sanctions that reduced oil revenues created budgetary issues for the Iranian government. Thus, the government attempted to transfer the economic pressure from itself to people to address its massive budget deficit. In order to compensate for the loss of oil revenues, the government increased tax rates, such as corporate tax and labor tax.³⁹⁹ Moreover, the government imposed greater tariffs and duties on trade; for example, it raised the export cost of a container by 15 percent and its import cost by 11 percent from 2011 to 2012.⁴⁰⁰ The increased costs of formal business motivated people to turn to informal business and illegal activities, like

³⁹⁵ See Richard Clay Barnett, “Smuggling, Non-fundamental Uncertainty, and Parallel Market Exchange Rate Volatility,” (2003) 36:3 *Canadian J Economics* 701.

³⁹⁶ See Farzanegan, *supra* note 342 at 20–21; see also Donough McDonald, “Trade Discrepancies and the Incentives to Smuggle,” (1985) IMF Working Paper No 32 at 668–692.

³⁹⁷ See Farzanegan, *supra* note 342 at 21–22.

³⁹⁸ See e.g. “Taeed-e varedat-e khodroha-ye Lux ba Arz-e Marja” [Allocation of Reference Exchange to Imports of Luxury Cars Is Confirmed] (14 December 2012), online: *Entekhab* <www.entekhab.ir/fa/news/87474> [translated by author]; see also “Medicines Dry Up in Iran but Porsches Still Roll in” (20 October 2012), online: *The Australian Times* <www.theaustralian.com.au/news/world/medicines-dry-up-in-iran-but-porsches-still-roll-in/news-story/7c07fd1b5c0cd93bc8a7f9f4e99f2c8d?sv=e12090847b03398961e31bfaef93be4> (quoting Iranian Health Minister at the time, Marzieh Vahid Dastjerdi: “We have been pursuing the currency which we were told was allocated to import medicine with since February but ... the amount received is so little it's not even worth mentioning”).

³⁹⁹ See Ladan Nasser, “Iran Fiscal 2013 Draft Budget Projects 40% Drop in Oil Revenue” (28 February 2013), online: *Bloomberg*: <www.bloomberg.com/news/2013-02-28/iran-fiscal-2013-draft-budget-projects-40-drop-in-oil-revenue.html>; see also Farzanegan, *supra* note 342 at 16.

⁴⁰⁰ See Farzanegan, *supra* note 342 at 27.

conducting tax evasion, committing fraud in trade documents, or trade goods through smuggling channels and black markets.

Additionally, economic sanctions limited the ability of the Iranian government to provide the young population with productive job opportunities. In 2006, Iran experienced its demographic window as young people dominated the population.⁴⁰¹ Despite this golden opportunity, economic pressures of sanctions disabled the government from employing these young and educated people in the market properly. In the absence of job opportunities in the formal market, a significant portion of the population turned to informal markets and smuggling channels.⁴⁰²

All in all, the increased corruption that resulted from sanctions had several negative effects on Iran's economy. Habibollah Ghanbari, the chief of the Iranian task force to combat smuggling, claimed that \$25 billion of products illegally entered Iran between March 2013 and March 2014.⁴⁰³ Moreover, sanctions on imports increased the prices of previously imported goods and promoted rent-seeking behaviors among domestic producers and smugglers. Similarly, sanctions on exports decreased the prices of previously exported goods and encouraged smugglers to buy those goods domestically and sell them abroad for a profit.⁴⁰⁴

2. *Corruption Resulting from Economic Sanctions in the Region and Third Countries*

As the examples of Iran demonstrate, economic sanctions not only increase the level of corruption in a target, but they may also lead to the development of black markets and smuggling

⁴⁰¹ For a detailed discussion of demographic transition in Iran, see Hatam Hosseini, "Demographic Transition, Window of Opportunity, and Population Bonus: Toward a New Population Policy in Iran." (Paper delivered at the European Population Conference, Stockholm, Sweden, 14 June 2012), online (pdf): <profs.basu.ac.ir/h-hoseini/upload_file/conf.4679.pdf>.

⁴⁰² See Farzanegan, *supra* note 342 at 33.

⁴⁰³ See "Billion-dollar smuggling industry drains Iran's economy" (12 August 2015), online: *Almonitor* <www.al-monitor.com/pulse/originals/2015/02/iran-smuggling-trafficing.html> (quoting Habibollah Ghanbari's announcement on 22 January 2015).

⁴⁰⁴ See Lektzian & Souva, *supra* note 3, at 853.

channels within a region and affect the economy of third countries. After imposing international sanctions, other countries and foreign companies stop to do business with a target. Nevertheless, countries and companies that have more financial interests in doing business with the target become its sanctions-busters. As a result, like a cancer, corruption may spread out within a region and beyond that.

Third countries that assist a target in evading economic sanctions are either “politically motivated” or “commercially motivated.”⁴⁰⁵ In the former case, third countries are political allies for a target, and as sanction-busters, they may assist the target in offering subsidies or loans to it. However, third countries in the second scenario are “black knights” that help the target in order to exploit its imbalanced terms of trade under sanctions and gain profit for themselves.⁴⁰⁶ In this case, the government of a third country either does not support the target, or it intends to avoid being the subject of secondary sanctions, so sanctions evasion occurs through smuggling channels and illegal activities.

Although formal trade relations between a target and its neighbors are disrupted due to the sanctions, underground activities and sanctions-evading networks arise throughout the region at the same time.⁴⁰⁷ As Early argues, “the harsher the sanctions imposed against a target state are, the more profitable trade with it will be for sanctions busters.”⁴⁰⁸ Consequently, smuggling and illicit activities become institutionalized as a mode of trade, and corrupt business practices, including reflagging ships, offering bribes, using front companies, or bartering goods instead of dealing with money, spread throughout the region and beyond that.

⁴⁰⁵ Early, *supra* note 2 at 387.

⁴⁰⁶ See *ibid.*

⁴⁰⁷ See Andreas, *supra* note 232 at 336.

⁴⁰⁸ Early, *supra* note 2 at 386.

After imposing sanctions against Iran, western countries and large companies ceased to do business with the government and Iranian companies. Nonetheless, countries and companies that had more financial interests in doing business with Iran played the role of black knights for Iranian sanctions. Countries like the UAE, Turkey, China, Pakistan, Bahrain, India, Venezuela, Brazil, Ecuador, and East Europe filled the gap of departing major trading partners. Although the US attempted to convince these countries to limit their trade with Iran, they continued to bust Iranian sanctions through underground activities. Even in the case of cutting off the trade, Iran found replacements for those countries.⁴⁰⁹ Additionally, countries that had no business relations with the US were more encouraged to conduct business with Iran because they had no concern for American scrutiny.⁴¹⁰ As a result, smuggling channels and sanction-busting networks developed enormously throughout the Middle East and even beyond the region.

Among several countries, the UAE took a more leading role as an Iran's non-oil trading partner, and it began to bust the sanctions from the first episode of US sanctions in 1979. Primarily, its port city of Dubai emerged as "a hub for sanctions-busting transactions,"⁴¹¹ and numerous regional businesses, US firms, and multinational corporations that conducted business in Dubai assisted Iranian companies in busting the sanctions. Dubai, acting as a mediator, transshipped or smuggled sanctioned products to Iran through both formal and illicit methods. The sanctions-busting relationship between Dubai and Iran was driven mostly by profitability and profit-seeking behaviors rather than politics.⁴¹²

⁴⁰⁹ See *ibid* at 400.

⁴¹⁰ See Nikolay Kozhanov, "US economic sanctions against Iran: Undermined by external factors" (2011) 18:3 Middle East Policy 144 at 155-57.

⁴¹¹ Bryan Early, *Busted Sanctions: Explaining why economic sanctions fail* (Stanford: Stanford University Press, 2015) at 106.

⁴¹² See *ibid* at 88.

Several factors enabled the sanctions-busting relationship between Iran and Dubai. Geographically, the UAE, which is located across the Persian Gulf, is 95 kilometers from Iranian borders, and its proximity to Bandar Abbas facilitates the maritime trade between two countries. While the Persian Gulf waters provide traders with the rapid and cheap transport of goods, “the short span of largely territorially held waters separating the two countries was ideal for smuggling.”⁴¹³ In addition to the prior trade relationship with Iran, Dubai’s openness in commercial relations offers large trade networks and a friendly atmosphere for sanction-busting activities.⁴¹⁴ Its free trade zones, which were designed to draw foreign trade and investments and reduce bureaucratic procedures, are an ideal place for conducting illicit trade and smuggling. Traders and businesses regularly use these zones to avoid paying customs or duties and conduct “reverse counterfeiting,” i.e., importing, repackaging, and re-exporting products to cover their actual origins or final destinations.⁴¹⁵

In such circumstances, Iranian firms that intensified their presence in Dubai and operated right next to other countries’ businesses not only had access to all-origin products but also were able to make contact with all companies directly. In conducting business with American companies, Iranians used front companies or mediators and then imported American goods to Iran through smuggling channels.⁴¹⁶ Smuggled American products consisted of both regular products and dual-use goods and technology because the UAE has been an ally to the US and had access to

⁴¹³ *Ibid* at 107.

⁴¹⁴ *Ibid*.

⁴¹⁵ For more details, see Christopher Stewart, “The Axis of Commerce” (September 2008), online: *International Business News* <upstart.bizjournals.com/news-markets/international-news/portfolio/2008/08/13/US-Trades-With-Iran-Via-Dubai>.

⁴¹⁶ See “Dubai: A Booming Entrepot and Growing Diversion Risk” (last visited 20 June 2018) online: *Wisconsin Project on Nuclear Arms Control* <www.wisconsinproject.org/dubai-a-booming-entrepot-and-growing-diversion-risk/>.

American products that could be used for military aims.⁴¹⁷ Moreover, a significant number of Iranian products were exported to Dubai and then re-exported to the US from Dubai.⁴¹⁸

From 2007 to 2009, the US investigations indicated that half of the violations related to sanctions against Iran occurred with the assistance of the UAE; therefore, the US attempted to convince the UAE to stop its sanctions-busting practices.⁴¹⁹ The US also threatened the UAE with the designation of the country as a “destination of diversion concerns”⁴²⁰ and the imposition of its secondary sanctions against banks and entities that assisted Iran in evading sanctions. As a result of an increase in the transaction costs of legitimate trade with Iran, the US succeeded in reducing the formal sanctions-busting in Dubai. Nonetheless, these efforts resulted in the excessive growth of smuggling channels and illicit trade between Dubai and Iran.⁴²¹

As another response to the US attempts that addressed the issue of sanctions-busting in Dubai, Iran expanded its sanctions-busting relationships with other countries. China, which benefited from the lower oil price of Iran’s market, assisted Iran in importing sanctioned goods. In 2012, an official stated, “The money Iran earns from oil sales goes into banks in China and is then used for Iranian purchases of other goods and materials. It is a very good way of getting around the sanctions.”⁴²² Thus, China’s trade with Iran increased by more than fifteen times from 2001 to 2011.⁴²³

⁴¹⁷ See Early, *supra* note 411 at 127.

⁴¹⁸ See Askari et al, *supra* note 248 at 197–98.

⁴¹⁹ See “Iran Sanctions: Complete and Timely Licensing Data Needed to Strengthen Enforcement of Export Restrictions” (4 March 2010), online: *US Government Accountability Office* <www.gao.gov/products/GAO-10-375>.

⁴²⁰ *CISADA*, § 8543.

⁴²¹ For more details, see Early, *supra* note 411 at 136–38.

⁴²² Con Caughlin, “Turkey and China ‘helping Iran evade UN sanctions’” (19 February 2012), online: *The Telegraph* <www.telegraph.co.uk/news/worldnews/middleeast/iran/9091736/Turkey-and-China-helping-Iran-evade-UN-sanctions.html>; see also Peter Fritsch, “Chinese Evade US Sanctions on Iran” (4 January 2010), online: *The Wall Street Journal* <www.wsj.com/articles/SB126256626983914249>.

⁴²³ See *ibid* at 137.

Another sanction-buster country was Turkey, a neighboring ally to Iran. Several cases and records presented evidence that the government, banks, businesses, and traders in Turkey assisted Iran to circumvent economic sanctions through illicit methods and smuggling channels. Similarly, the details in the case of Reza Zarrab indicated that the US sanctions evasion and smuggling were reached the top levels of the Turkish government. Particularly, Zarrab claimed that the Turkish President was personally involved in his plan for Iran's sanction-busting.⁴²⁴ Moreover, according to the investigations, Turkish businesses attempted to buy European firms to purchase sanctioned products on behalf of Iran.⁴²⁵ In addition, in 2010, the Turkish Prime Minister announced that Turkey had a plan to triple its trade with Iran for the next five years.⁴²⁶

In addition to China and Turkey, documents in a case in the Permanent Court of Arbitration recently revealed that a bank in Bahrain aided Iran in sanctions-busting.⁴²⁷ In 2004, Future Bank was established in Bahrain as a joint venture between two large Iranian banks and a Bahraini bank; however, the bank was shut down by Bahraini regulators in 2016. Subsequently, Iranian owners of the Future Bank brought a claim to the UNCITRAL arbitration. The Bahraini government, filing its statement of defense, responded with documents that from 2004 to 2015, the Future Bank concealed at least seven billion dollars of transactions which were smuggled through shady accounts. The accusations showed that, acting as a "Trojan horse," the Future Bank provided

⁴²⁴ See *United States v Mehmet Hakan Atilla*, at 15–16.

⁴²⁵ See e.g. Caughlin, *supra* note 422.

⁴²⁶ See Early, *supra* note 2 at 400 (quoting the Turkish Prime Minister's speech).

⁴²⁷ See Souad Mekhennet & Joby Warrick, "Billion-dollar sanctions-busting scheme aided Iran, documents show" (3 April 2018), online: *The Washington Post* <www.washingtonpost.com/world/national-security/billion-dollar-sanctions-busting-scheme-aided-iran-documents-show/2018/04/03/37be988a-3356-11e8-94fa-32d48460b955_story.html>; see also "Coincidental documents reveal Iranian Guard smuggled billions via Bahraini bank" (5 April 2018), online: *Alarabiya* <english.alarabiya.net/en/business/banking-and-finance/2018/05/02/Saudi-finance-minister-says-on-track-to-cut-budget-deficit-to-7-pct-of-GDP.html>.

Iranians with “secret access to the international monetary system in defiance of [the] US and other international sanctions,”⁴²⁸ although Iranian officials denied such a claim.

3. *Corruption Legacy of Economic Sanctions*

Economic sanctions have longstanding consequences, and countries that have undergone economic sanctions appear to deal with corruption even after the lifting of sanctions. The effects of sanctions continue to exist; corruption that was a part of the system during the sanctions period may consolidate its position in the target’s structure and replicate itself, like a cancer.⁴²⁹ Thus, the corruption residue of economic sanctions not only remains in the system, but it also continues to grow. Because a target has reached its highest levels of corruption in the sanctions episode, reversing the process and reinstating the rule of law will be a demanding economic and political task. After sanctions are gone, old habits of smuggling and illicit trade may resist the reform and acceptance of legal norms.⁴³⁰

After sanctions are lifted in Iran, remnants of corruption continue to exist in the government, among citizens, and throughout the region. Since the government sponsored and directed smuggling channels to evade sanctions for a while, one of the main challenges in the post-sanctions era is breaking these illegal networks and removing corrupt practices from the government. Corruption additionally became institutionalized among people, and societal acceptance of corrupt behaviors may prevent them from shifting to legal practices after sanctions are gone. Smuggling channels may continue to operate or transfer to other sectors of the economy, while people may look for other illicit sources of income. Those who took advantage of sanctions

⁴²⁸ Richard Gibbon & Sassi Riar, “Iran’s ‘Trojan Horse’ Bank”, (26 April 2018), online: *The Anticorruption Blog* <www.anticorruptionblog.com/anti-terrorism-financing-laws/irans-trojan-horse-bank/>.

⁴²⁹ See Radu, *supra* note 232 at 51.

⁴³⁰ See Andreas, *supra* note 232 at 336–37.

may also use their power to preserve their illegal profits.⁴³¹ Moreover, economic sanctions leave a corruption legacy not only within the country but throughout the whole region. Sanction-busting networks and smuggling channels, which were developed during the sanctions episode, may continue to operate or turn to other commodities or smuggling activities.⁴³²

By comparing corruption rates in Iran, it is clear that the level of corruption has not returned to its point preceding the intensification of sanctions.⁴³³ Corruption effects of economic sanctions created specific difficulties even at the time of their lifting. In 2016, a member of Parliament stated:

During last eight years, some people, who claimed that they were evading sanctions, received oil barrels from the Ministry of Petroleum and sold them in international markets, while they did not transfer the money to the government's treasury. It is obvious that if we were them, we would also attempt to sabotage the JCPOA or question its results ... Rent-seekers in sanctions time became the opponents of the JCPOA.⁴³⁴

Therefore, certain people, who had more financial interests during the sanctions period, whether inside or outside of Iran, were against the *JCPOA*, and they deliberately sabotaged plans for lifting the sanctions.⁴³⁵

Another example is associated with Iran's position regarding the Financial Action Task Force (hereinafter FATF), which is an inter-governmental body that sets standards and takes action to fight "money laundering, terrorist financing and other related threats to the integrity of the international financial system."⁴³⁶ In 2016, Iran, facing pressure from the international community, intended to expand its international cooperation regarding its financial system. Thus, the Rouhani

⁴³¹ See *ibid*.

⁴³² See *ibid* at 340.

⁴³³ See Figure 1 and 2 that compare the CPI and the WG control of corruption in Iran in different years.

⁴³⁴ Morteza Golpour, "Mottahari: Rent-seekers in Sanctions time became the opponents of the JCPOA" [Mottahari: Rant-kharan-e Dore-e Tahrir Mokhalefan-e Barjam Shodand] (20 April 2016), online: *Iran* <iran-newspaper.com/Newspaper/BlockPrint/125958> [translated by author].

⁴³⁵ See e.g. Ali Khoram, "Kheili az Montaghedin-e Barjam Naft-Foroush Boudand" [Many Opponents of Nuclear Deal Were Oil-Sellers] (22 April 2016), online: *Pouyesh* <puyesh.net/fa/news/71333> [translated by author].

⁴³⁶ See "Who We Are" (last visited 1 August 2018) online: *FATF* <www.fatf-gafi.org>.

administration attempted to remove Iran from the FATF blacklist, which identified countries with strategic deficiencies in their financial systems. The government further instructed the Central Bank to develop proper structures and assign adequate financial resources to combat money laundering and terrorism financing.⁴³⁷ Recently, the government has begun applying different measures to satisfy the requirements of its action plan which was set by the FATF. Nonetheless, a group of people in Iran who benefit from the corruption remnants of sanctions and are in favor of unclear laws and the lack of transparency in banking accounts and financial transactions have sabotaged the legislation of the FATF-related provisions.⁴³⁸

Finally, people in smuggling channels throughout the Middle East, whose benefits have been ceased by the *JCPOA* since 2016, await the re-imposition of economic sanctions against Iran to take advantage of its circumstances for their private gains. One example is related to Musandam's smugglers in Oman that illegally imported products to Iran before sanctions were lifted in 2016.⁴³⁹

CONCLUSION

This chapter attempts to concentrate on the effects of economic sanctions on the proliferation of corruption. The focus on the effects of sanctions on Iran's corruption does not suggest that there was little or no corruption before sanctions or that corruption would not have been a problem in the absence of sanctions, but they were part of a more substantial enabling ground for corruption. It explores that how economic sanctions affect the corruption levels of a

⁴³⁷ See e.g. "Official urges removal of Iran's name from FATF blacklist" (29 April 2018), online: *Mehr* <en.mehrnews.com/news/133679/Official-urges-removal-of-Iran-s-name-from-FATF-blacklist>.

⁴³⁸ See "Iran Parliament in Heated Debate Over Money Laundering Legislation" (21 May 2018), online: *Radio Farda* <en.radiofarda.com/a/iran-parliament-debate-money-laundering-fatt/29238782.html>.

⁴³⁹ See e.g. Alexander Balas, "Oman's Smugglers Await the Return of Iranian Sanction" (15 November 2017), online: *The Maritime Executive* <www.maritime-executive.com/editorials/omans-smugglers-await-the-return-of-iranian-sanctions#gs.CG1=9BI>.

target as well as third countries through a detailed examination of nuclear-related sanctions in Iran as a case study. This chapter first provides a background for Iran's economic sanctions and also an overview of its corruption. Then, by explaining several corruption cases and scandals, it argues that economic sanctions against Iran provided particular consequences leading to a rise in its levels of corruption. Evidence from Iran suggests that sanctions provided specific consequences that proliferated corruption in Iran's oil sector, its government, its civil society, and the region of Middle East during the sanctions episode and after the nuclear-related sanctions were eased.

Conclusion and Recommendation

This study claims that there is something more than the internal circumstances of a country that triggers corrupt behaviors in society; it argues that the pressures of economic sanctions increase opportunities for rent-seeking activities. In other words, economic sanctions intensify the competition for national resources within interest groups in society, which eventually increases incentives for corrupt activities to gain private benefits. Economic sanctions adversely affect social norms since they disparage the condemnation of corrupt behaviors in society. Therefore, the corruption owes its origins to attempts to combat and circumvent the financial difficulties of economic sanctions.

Although there are many types of corruption resulting from economic sanctions, this study suggests two propositions regarding which forms of corruption are most enabled by sanctions. The first proposition is that economic sanctions trigger acts of fraud, embezzlement, and favoritism within a target. Economic sanctions provide public officials and people with opportunities to deceptively use national resources, misappropriate those resources, or redistribute them to their friends and relatives. These activities involve different corrupt methods and instruments, such as using fake accounts or shell companies, doing business through exchange offices, or pushing economic activities toward black markets.

The second proposition is associated with the fact that economic sanctions increase corrupt activities of bribery and smuggling in a region, during the sanctions and after they are eased. While economic sanctions limit the financial relations of a target with other countries, they increase rent-seeking behaviors among foreign officials and embroil other countries in the target's illicit trade.

In such a situation, smuggling channels transmit currency, precious metals, and sanctioned products through black markets and free trade zones in a region.⁴⁴⁰

Subsequently, this study contributes to what is mostly absent from both sanctions and anti-corruption debates. Tracing corruption cases in the sanctions regime against Iran, this research identifies that far beyond the political costs and humanitarian issues in targets and economic costs in senders, another concern is associated with the impacts of sanctions on the level of corruption in targets and third countries, which eventually affects the effectiveness of sanctions. Moreover, this research includes unwanted outcomes of economic sanctions within anti-corruption debates since sanctions challenge and undermine the global movements and domestic reforms that have developed to fight against corruption.

Through the consideration of the relationship between the economic sanctions and corruption, this study raises implications that could be useful for policymakers to choose the right combination of foreign policy tools for future cases of economic sanctions. By identifying the techniques of sanctions evasion as well as the circumstances in which economic sanctions most likely result in the proliferation of corruption, this research provides policymakers with considerations in the evaluation of sanctions effectiveness and their consequences.

This study suggests that policymakers need to consider the effects of economic sanctions on corruption and their legacy as a more central part of their evaluation of sanctions. The imposition of sanctions against a country is not merely about restricting financial relations with its government. Economic sanctions may lead to several unintended economic and social matters and pose many difficulties for citizens of a country including higher levels of corruption that may stay

⁴⁴⁰ It should be noted that corruption scandals normally release only cases that involve well-known people or companies, or huge amounts of money, but they cannot truly represent the bottom of corruption.

even after sanctions are gone. By considering these effects, policymakers should ask themselves the following question: whether imposing a sanctions regime is the best policy that will lead to their desired political goals, or there are alternative solutions like employing diplomatic approaches or promising economic benefits to a target.

In case of the imposition of sanctions, policymakers should also make arrangements at both levels of design and implementation to decrease their adverse outcomes, particularly the increased levels of corruption. For example, at the level of design, they can design smart sanctions that target specific people, sectors, or transactions instead of imposing comprehensive sanctions which affect the whole country. While comprehensive sanctions may lead to several unintended consequences, smart sanctions may achieve their goals without producing extreme pressures for citizens. Targeting financial assets of a government or imposing travel bans on public officials may decrease rent-seeking opportunities in society and can discourage people to behave corruptly. Moreover, smart sanctions may reduce incentives of third countries to assist a target to circumvent sanctions. Another attempt at this level could be related to the evaluation of particular circumstances in each country, such as its vulnerability to corruption or the role of third countries in sanctions evasions, in order to predict the potential corruption resulting from sanctions.

Furthermore, particular efforts at the level of implementation may reduce the negative impacts of economic sanctions, including the corruption resulting from sanctions. Each sanctions regime needs to have its own monitoring system that reviews economic sanctions and their impacts on the target and third countries, so it can suggest modifications to decrease their unintended results. In addition to the monitoring system, senders may form a panel in which experts are responsible for evaluating the effectiveness of sanctions and their consequences. In the case of

raising the levels of corruption, these experts may advise policymakers to target people and countries that deliberately violate sanctions through their corrupt activities.

All in all, this study tries to bridge the gap between economic sanctions and corruption in the legal scholarship. Through a detailed examination of the sanctions regime against Iran, it concludes that the imposition of economic sanctions increases the level of corruption in a target and third countries. It further claims that countries that have undergone economic sanctions appear to deal with the issue of corruption even after sanctions are lifted. Thus, the implications of this study can assist policymakers in monitoring sanctions regimes and controlling their unintended results.

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