The Impact of Transnational Private Actors on Public International Law in Economic Sanctions Regime: The Case of Iran Nuclear Program

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I. Abstract

Economic sanctions have become a favorite instrument of foreign policy to bring about a change in political behavior or status quo of sanctioned states. However, the cost of sanctions on global trade, targets' economies, and especially civilians of designated repressive sanctions has caused scholars of different disciplines to evaluate this instrument through an academic perspective. Among them, legal scholars have tried to examine the legitimacy and legality of such coercive measures imposed in the international arena in order to demonstrate sanctions' boundaries within the framework of public international law. When sanctions are determined to be illegitimate or illegal under public international law, other international actors may negatively react against the sanctions of a sanctioning state, and seek to protect international order from an ambitious sanctioning state. Such an effort, nevertheless, would be fruitless when "transnational private actors" (TNPAs) strive to comply with a sanctions episode to protect their essential interest, according to their rational choice and risk mitigation policies, rather than strict compliance with public international law.

In chapter one, this thesis examines economic sanctions from the perspective of public international law. While emphasizing that international law makes the imposition of economic sanctions possible, this chapter illustrates how international law limits the freelance application of economic sanctions, specifically the "secondary smart sanctions". Chapter two investigates the expanded role of TNPAs, including transnational banks (TNBs) and transnational corporations (TNCs), in the contemporary world with an emphasis on their mechanisms of market selections and business risk management in conducting business abroad, especially in sanctioned markets. Finally, chapter three explores the impact of TNPAs on public international law in economic sanctions regimes with respect to the case of Iran's nuclear program. It explains that TNPAs, who act based on their essential interests, are the interpreters of public international law under sanctions regimes, the point that underlines the expanded role of transnationalism in the contemporary world.

II. Résumé

Les sanctions économiques sont devenues un instrument privilégié de la politique étrangère pour provoquer un changement des systèmes politiques ou du comportement politique des États sanctionnés. Cependant, le coût des sanctions sur le commerce mondial, sur les économies sanctionnées, et en particulier sur les civils faisant l'objet de sanctions répressives a amené des spécialistes de différentes disciplines à évaluer cet instrument dans une perspective académique. Parmi eux, des juristes ont tenté d'examiner la légitimité et la légalité de telles mesures de contrainte imposées sur la scène internationale afin de déterminer les limites des sanctions dans le cadre du droit international public. Lorsqu'il est déterminé que les sanctions sont illégitimes ou illégales au regard du droit international public, d'autres acteurs internationaux peuvent réagir négativement contre les sanctions d'un État sanctionneur, cherchant ainsi à protéger l'ordre international en face d'un État sanctionneur ambitieux. Un tel effort serait néanmoins infructueux lorsque des "acteurs privés transnationaux" (APTA) s'efforceront de se conformer à une étape des sanctions afin de protéger leurs intérêts essentiels, conformément à leur choix rationnel et à leur politique de réduction des risques, plutôt que de se conformer strictement au droit international public.

Le premier chapitre sera consacré à l'examen des sanctions économiques du point de vue du droit international public. Tout en soulignant que le droit international rend possible l'imposition des sanctions économiques, ce chapitre montre également comment le droit international limite l'application libre des sanctions économiques, en particulier des sanctions "intelligentes secondaires". Le deuxième chapitre examine le rôle élargi des APTA, y compris les banques transnationales (BTN) et les sociétés transnationales (CTN), dans le monde contemporain en mettant l'accent sur leurs mécanismes de sélection des marchés et de gestion des risques de l'entreprise dans la conduite des affaires à l'étranger, en particulier sur des marchés sanctionnés. Enfin, le troisième chapitre se consacre à l'impact des APTA sur le droit international public dans les régimes des sanctions économiques en ce qui concerne le programme nucléaire iranien. Il explique que les APTA qui agissent en fonction de leurs intérêts essentiels interprètent également le droit international public dans le cadre de régimes des sanctions appliquées, ce qui souligne le rôle accru du transnationalisme dans le monde contemporain.

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IV. Introduction

Economic sanctions have been a favorite instrument of foreign policy from 432 BC when Athens deployed economic measures against Megara through today's modern sanctions imposed on Russia, Syria, Iran, North Korea, and many other countries. During history, sanctions evolved from siege of cities to "secondary smart sanctions" in which sanctioning states punish not only specific individuals and entities within their territory who conduct business with targets of sanctions, but also other persons who reside in foreign countries.

The modern and complex set of sanctions has induced various scholars of different disciplines to investigate this multidimensional phenomenon from the perspective of political science, sociology, economics, history, linguistics, law, and other relevant fields of study. This thesis seeks to provide a legal analysis of economic sanctions by exploring a framework in which public international law enables the imposition of sanctions yet constrains freelance applications of such economic instrument.

Within this framework, the key players of sanctions regimes consist of public and private actors, such as international organizations, trading unions, non-governmental organizations, international firms, governments, authorities, transnational private actors, domestic firms, entities, and individuals. The role of these players varies during a sanctions episode. For example, the principle author of an economic sanction episode is a "sender or sanctioning" state/party and the recipient of sanctions is a "target or sanctioned" body of a sanctions episode.

Historically, with the aim of bringing about a change in political behavior or status quo of a target, individual states began with "unilateral" or one-sided economic sanctions and imposed "comprehensive sanctions", which affect the entire target state, regardless of specific sector. Over time, as part of ongoing evolution of economic sanctions, sender states realized that imposing sanctions on specific individuals and entities that reside in a target state would improve the

outcomes of sanctions yet considerably reduces the negative effects of sanctions on blameless civilians of target states. The "smart/targeted sanctions", thus, were created.

Not surprisingly, sender states also understood that the support of "third-party states" through the establishment of a sanctions coalition to impose "multilateral sanctions" can considerably reinforce their sanctions. Sender states, however, realized that "third-party states" may conversely defy the sender's sanctions if they play the role of "black knights/sanctions-busters" and offset the loss of sanctions for target states. To reduce third-party states' sanctions-busting activities, therefore, sender states designed "secondary sanctions" to prohibit individuals and entities residing in the jurisdiction of foreign countries from dealing with their counterparts in a target state. In response, third-party states adopted retaliatory measures against the sender's sanctions by enacting "Blocking Statutes/Orders/Legislation/Regulation" and bringing a claim to the World Trade Organizations (WTO), amongst others.

The design of "smart sanctions" and "secondary sanctions" as traditional sanctions approaches considerably improved the functionality of economic sanctions against target states. In recent decades, sender states moved one step forward and combined these two types of sanctions by imposing "secondary smart sanctions", though as a disfavoured iteration of these traditional sanctions; "secondary smart sanctions" embraces the issues of extraterritoriality as well as due process concern regarding blacklisted persons and entities. One of the remarkable examples of a "secondary smart sanctions" episode is the Paris-headquartered French Bank BNP Pariba's guilty plea and agreement to pay $8.9 billion fine to the U.S. for the violation of U.S. sanctions against Cuba, Sudan, and Iran.

Besides states that can initiate a sanctions episode, trading unions (e.g., the European Union) and the United Nations (UN) may also decide to design and deploy economic sanctions. The decision of trading unions to impose sanctions are only binding over their member states,

similar to the decision of the UN Security Council to impose "universal sanctions". After reaching the desired outcomes, trading unions as well as the UN Security Council may decide to lift the sanctions, which correspondingly has binding effects over their member states, according to the norms and obligations of public international law.

The compliance of states and their governments with binding unilateral, multilateral, or universal sanctions does not guarantee the success of sanctions considering the expanded role of transnationalism in recent decades. By virtue of globalization through integration of economics and societies as well as the development of communication and information technology, the role of transnational private actors (TNPAs) in the global economy has been considerably increased so that imposing economic sanctions will be impossible without considering the role of these actors in the outcome of sanctions.

The expanded role of TNPAs in the global economy attracts the attention to the "compliance theory" of international law in which states' compliance with or defiance of the norms of international law is detailed, but it extends the discussion beyond just state-centric perspective of this theory; although states are deemed to be the addressees of international norms, they are not the only targets of these norm. In other words, having an actor focused approach may not be sufficient to understand the critical role of TNPAs, in the interpretation and enforcement of international law and subsequent compliance with these norms under economic sanctions. In fact, TNPAs' interpretation and enforcement of law under sanctions is more focused on rational choice and risk mitigation rather than strict compliance with law, so the legal and institutional origin of sanctions (universal, multilateral, or unilateral) inevitably must be folded into the risk calculations made by TNPAs.

A remarkable example of the TNPAs' rational choice and risk mitigation approach can be found in 2018 U.S. unilateral sanctions against Iran's nuclear program. In May 2018, the U.S.

decided to pull out of Iran nuclear deal of 2015, known as the Joint Comprehensive Plan of Action (JCPOA). The role of TNPAs in this round of sanctions indicates that their exit from Iran's market not only deprived Iran's economy of millions of dollars in foreign investment, but it also empowered the U.S. to use economic measures as a lever to strike a better deal with Iran.

One of the examples of these TNPAs that played a significant role in the reinforcement of U.S. sanctions against Iran is the Worldwide Interbank Financial Telecommunication (SWIFT). As a private network of interbank communications and successful example of a bottom-up lawmaking or *lex mercatoria*, SWIFT transfers financial messages throughout the world. The private nature of SWIFT, which over time gained critical mass on a worldwide basis, provided a situation in which the U.S. considered SWIFT as a means of sanctions pressure; although SWIFT is headquartered in Belgium and incorporates the EU laws, it complied with U.S. sanctions by disconnecting Iranian banks from its network and subsequently from the global banking system.

To detail the above discussions in this thesis, chapter one begins with the permissible limits of public international sanctions by reviewing the legality of "smart sanctions", "secondary sanctions", and the combination of the two, i.e., "secondary smart sanctions". It shows that "secondary smart sanctions" would violate due process rights of sanctioned persons and would increase the issue of extraterritoriality with respect to individuals and entities residing beyond the borders of sanctioning states.

Chapter two investigates the expanded role of TNPAs in the contemporary world and their influence on the creation of bottom-up *lex mercatoria* as well as the unification and harmonization of divergent laws and regulations. In order to further explore the expanded role of transnationalism, this chapter adopts a fundamental research method by investigating the study fields of market selection and business risk management (including country risk, industry risk, institutional risk, and legal risk) in conjunction with economic sanctions regime. The result indicates that in

sanctions regime, legal risks (business liability arising out of stakeholders' negligence and misconduct in a sanctioned market or violating sanctions of sanctioning states) can transform to country, industry and institutional risk, and considerably affect the TNPAs decisions to stay or withdraw from a sanctioned market.

Chapter three focuses on Iran nuclear sanctions as a case study and explores TNPAs' compliance with or defiance of the obligations of public international law. This investigation begins with the history of Iran nuclear sanctions and the legal framework in which public international law permits or restrains the imposition of economic sanctions against Iran's nuclear program. By exploring the laws governing nonproliferation of nuclear weapons, such as the Treaty on Non-Proliferation of Nuclear Weapons (NPT) and the International Atomic Energy Agency's (IAEA) Statute, the chapter continues with an analysis of Iran's nuclear program within the framework of public international law. This analysis includes the binding effects of the Iran nuclear agreement known as the Joint Comprehensive Plan of Action (JCPOA) and UN Security Council Resolution 2231, as well as the dispute resolution mechanism of the JCPOA to examine the 2018 U.S. withdrawal from this deal. The chapter ends with highlighting the role of TNPAs in the reinforcement of 2018 U.S. sanctions against Iran's nuclear program and determines that TNPAs are one of the main interpreters of public international law under sanctions regimes because sanctions policies inevitably must be folded into the risk calculations made by these TNPAs who act according to their rational choice and risk mitigation rather than strict compliance with public international law.

Chapter One – Economic Sanctions: A Public International Law Phenomenon

A. The Realm of Economic Sanctions

In recent years, economic sanctions have become a favorite instrument of foreign policy, affecting international relations and trade flows on a large scale. Despite the frequent use of such a coercive instrument, the effectiveness of economic measures imposed on targets of the designed sanctions (hereinafter taregts) has been called into question by the scholarly studies of different disciplines. Some sanctions scholars contest the effectiveness of these sanctions, believing economic sanctions cause no significant policy change in targets.[1] According to others, sanctions have been successful, or at least effective, in bringing about a change in targets' political behavior or status quo.[2] Regardless of this disagreement, one can see that from a policy perspective, sanctions studies "have gradually moved away from the question of 'Do sanctions work?' to the more pertinent question of 'Under what conditions are sanctions more likely to be effective?'"[3]. Put differently, so-called unsuccessful economic sanctions should still be considered one of the key elements in bringing a target to a bargaining table by increasing the cost of non-compliance.[4]

The cost of sanctions on global trade, targets' economies, and especially on civilians of designated repressive sanctions has caused legal scholars to examine the legitimacy and legality

[1] See e.g. James Barber, "Economic Sanctions as a Policy Instrument" *(1979) 55:3 Intl Affairs 367* at 384; Johan Galtung, "On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia" (1967) 19:3 world Politics 378 at 409; T Clifton Morgan & Valerie Schwebach, "Fools Suffer Gladly: The Use of Economic Sanctions in International Crises" (1997) 41:1 Intl Studies Q 27 at 38. See generally Robert A Pape, "Why Economic Sanctions Do Not Work" (1997) 22:2 Intl Security 90.

[2] Gary Clyde Hufbauer et al, *Economic Sanctions Reconsidered,* 3rd ed (Washington DC: Peterson Institute for International Economics, 2007) at 158-59.

[3] Yitan Li, "US Economic Sanctions Against China: A Cultural Explanation of Sanction Effectiveness, (2014) 38:2 Asian Perspective 311 at 312.

[4] Hufbauer, *supra* note 2 at 45.

of coercive measures imposed in the international arena.[5] This examination begins with the doctrine of legal equality and peaceful co-existence in that states mutually and equally are obligated to maintaining peace, security, and harmony in their relations by complying with norms and regulations of international law, according to all states' interest.[6] If such principles are breached, the international community can react, for example, by re-establishing the original situation, obtaining reparations for the damages caused by wrongdoers,[7] or even enforcing these principles through the invocation of available mechanisms of international law, including the imposition of economic sanctions.

Economic sanctions, from "French, sanction; Latin, sanctio from sancrire",[8] are imposed at three levels: unilaterally (imposed by an individual country), multilaterally (imposed by a coalition of countries or international organizations) or universally (imposed by the entire international community through the decisions of the UN Security Council).[9] This research project will expand the discussion of sanctions by employing all these three notions of unilateral, multilateral, and universal sanctions.

Economic sanctions also have various definitions in different scholarly studies. For example, Hufbauer et al. describe economic sanctions as "the deliberate, government-inspired withdrawal,

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[5] W Michael Reisman & Douglas L Stevick, "The Applicability of International Law Standards to United Nations Economic Sanctions Programm" (1998) 9:1 Eur J Intl L 86 ("Only recently, as concerns have mounted in a number of circles over the manifest deprivations endured by the people of Iraq and Haiti as a result of the application of mandatory UN sanctions, has this issue drawn the attention of international legal scholars, policy-makers, and ethicists." at 87).

[6] Malcolm N Shaw, *International Law*, 7th ed (Cambridge, UK: Cambridge University Press, 2014) at 214.

[7] See generally Laura Magdalena Trocan, "Sanctions in Public International Law" in *Dny práva -2009- Days of Law: The Conference Proceedings*, 1st ed (Brno: Masaryk University, 2009), online: <https://www.law.muni.cz/sborniky/dny_prava_2009/files/prispevky/mezin_soud/Trocan_Laura_Magdalena.pdf>.

[8] Geoff L Simons, *Imposing Economic Sanctions: Legal Remedy or Genocidal Tool?* (London: Pluto Press, 1999) at 9.

[9] In some scholarly studies, multilateral sanctions and universal sanctions are used interchangeably. See e.g., William H Kaempfer & Anton D Lowenberg "Unilateral Versus Multilateral International Sanctions: A Public Choice Perspective." (1999) Intl Study Q 43:1 37.

or threat of withdrawal, of customary trade or financial relations."[10] Likewise, Carter describes them as "coercive measures imposed by one country, or coalition of countries, against another country, its government or individual entities therein, to bring about a change in behavior or policies."[11] Moreover, Simon broadly describes the notion of economic sanctions as a means by which "a targeted group, society or country [is] deliberately deprived of the means to an effective economic life."[12] Notably, the given definitions may include other equivalent terms like boycott and embargo, and they can even embrace the example of historical sieges of cities as a kind of economic sanctions.

Therefore, a more precise account of economic sanctions—provided by the writer of this thesis—will be used for the remainder of this thesis as follows: "economic sanctions are a weapon for international actors to deter, coerce, or threaten to coerce individuals, entities, organizations, and governments to cause a change in their political behavior or status quo when international obligations are violated, international interest is endangered, or states' national security is jeopardized."

This "weapon" embraces the example of trade restrictions, assets freezes, monetary limitations, and travel bans. The notion of "international actors" contains states, transnational public and private actors, and international organizations, such as the UN, WTO, and EU. The purpose of imposing sanctions is "to cause a change in political behavior or status quo" which in Hufbauer et al's language they are listed as modest changes in policy, regime change, disrupting

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[10] Gary C Hufbauer, Jeffrey J Schott & Kimberly A Elliott, *Economic Sanctions in Support of Foreign Policy Goals* (Washington, DC: Institute for International Economics,1983) at 3.
[11] Barry E Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime* (Cambridge, UK: Cambridge University Press 1988) at 4.
[12] Simons, *supra* note 8 at 11. For more information regarding the definition of economic sanctions see Galtung, *supra* note 1 at 379; Robert A Pape, *supra* note 1 at 94.

military adventures, impairing military potential, and other major policy changes.[13] Lastly, the "international obligations violation, international interest endangerment, or states' national security jeopardy" can be considered as the main triggers of deploying economic sanctions on targets.

With respect to the given definitions, it is to be said that although "economic" sanctions include various examples of coercive economic measures against other states, some studies exclude specific measures from its realm, including but not limited to travel bans and limitations on selling military goods to targets.[14] Nevertheless, travel bans deprive targets from the economic benefits of the tourism industry and simultaneously increase the maintenance fees of aircraft and sea vessels. Similarly, arms embargoes impose a monetary loss on targets when they offset the lack of military equipment through black markets. Thus, any type of sanctions that cause financial loss to targets is entitled to be examined under the realm of economic sanctions.

B. Impermissible Limits of Public International Sanctions

1. Smart Sanctions: Violating Due Process Rights

In order to coerce a target state to opt to comply with a legitimate demand of the international community, the design of "comprehensive" economic sanction helped authorities to deploy sanctions against an entire target country, comprising governments, public and private entities, authorities, and civilians altogether. On the other hand, on some occasions, sender states undertook

[13] Hufbauer, *supra* note 2 at 65-72.

[14] See e.g. Steve Chan & A Cooper Drury, *Sanctions as Economic Statecraft: Theory and Practice*, (Basingstoke: Macmillan Press, 2000) at 183-84. But see Jeffrey A Meyer, "Second Thoughts on Secondary Sanctions" (2009) 30:3 U Pa J Intl L 905 at 911; Gary Hufbauer & Barbara C Oegg, "Targeted Sanctions: A Policy Alternative" (2000) 32:1 Law & Pol'y Intl Bus 11 at 15; Dursun Peksen, "Better or Worse? The Effect of Economic Sanctions on Human Rights." (2009) J of Peace Research 46:1 59 at 66; Richard N Haass, "Sanctioning Madness" (1997) 74:6 Foreign Affairs 74 at 74.

measures, namely "smart/targeted" sanctions, against particular groups, entities, industry, and individuals deemed to be responsible for a wrongful act.[15]

Whether comprehensive sanctions have a more devastating impact than smart sanctions on targets' economy needs to be discussed elsewhere.[16] The significance of this discussion under public international law, however, is that comprehensive sanctions have blunt collateral damage on target's blameless civilians and infringe their humanitarian and human rights,[17] according to the criteria in the four Geneva Conventions of 1949 and their two additional protocols of 1997, Universal Declaration of Human Rights, and International Covenant on Civil and Political Rights.[18] To avoid such harm and to protect civilian population, senders increasingly relied on smart sanctions especially after the terroristic attack on 11 September 2001.[19]

Despite their advantages, smart sanctions have been subject to criticism for violating individuals or entities' standards of due process based on general principles of law recognized by civilized nations. More specifically, smart sanctions deny the blacklisted persons' rights, for example, to the property through asset freezes, to the freedom of movement through travel bans, to a fair hearing through lack of rule and procedure of law, and to an effective judicial review

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[15] Targeted sanctions differ from "selective" sanctions, in which the latter refers to ban on a group of produces or financial flows rather than particular groups or individuals. See e.g. Hufbauer, *supra* note 2 at 138.

[16] See e.g. David Cortright, *Economic Sanctions Panacea or Peacebuilding in a Post-Cold War World?,* 1st ed (London: Taylor and Francis, 2018) at 108.

[17] David Cortright & George A Lopez, *Smart Sanctions: Targeting Economic Statecraft* (Lanham, Maryland: Rowman & Littlefield Publishers, 2002) at 1; Gary Clyde Hufbauer, *supra* note 2 at 138. See especially Ali Fathollah-Nejad "Why Sanctions Against Iran Are Counter Productive: Conflict Resolution and State–Society Relations" (2014) 69:1 Intl J 48 ("[e]conomic sanctions, particularly multilateral ones, worsen the targeted country's human rights situation by reducing the government's respect for physical integrity rights, including freedom from disappearances, extrajudicial killings, torture, and political imprisonment." at 61—62). See also Peksen, *supra* note 14 ("economic coercion inadvertently worsens public health, economic conditions, the development of civil society, and education in target countries." at 60). See generally Cortright, *supra* note 16; Galtung, *supra* note 1.

[18] August Reinisch, "Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions" (2201) AJIL 95:4 851 at 859—63.

[19] Grant L Willis, "Security council targeted sanctions, due process and the 1267 ombudsperson" (2011) 42:3 Geo J Intl L 673 at 679.

through lack of appellate body.[20] In addition, as will be discussed shortly, in many situations still no effective remedy, i.e., delisting, is available to protect innocent people against senders' smart sanctions.[21]

With respect to the due process violation at universal level through the UN Security Council's (UNSC) smart sanctions, one can explore the example of Al-Qaida and Taliban and the subsequent remedy that was provided to protect due process values.[22] In the 2005 World Summit Outcome Document, the General Assembly called on the Security Council "to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions."[23] As such, one of the major reforms was made through the 2006 UNSC's Resolution 1730 by creating a "focal point" to receive delisting request directly from targeted individuals and entities who believed they were erroneously designated on a blacklist.[24] Correspondingly, in 2009, the Resolution 1904 created the Office of Ombudsperson to review delisting request of individuals and entities associated with Al-Qaeda and Taliban.[25] Since then, the measures taken to protect due process values have constantly been improving. Today, blacklisted persons can submit a delisting request to an independent and impartial

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[20] Thomas J Biersteker, "Targeted Sanctions and Individual Human Rights" (2009) Intl J 65:1: 99 at 104.

[21] Monika Heupel, "UN Sanctions Policy and the Protection of Due Process Rights: Making Use of Global Legal Pluralism" in Monika Heupel & Michael Zürn, eds, *Protecting the Individual from International Authority: Human Rights in International Organizations* (Cambridge, UK: Cambridge University Press, 2017) 86 at 95.

[22] Kato Verbouwe, *The EU competence to adopt restrictive measures against individuals and the relationship between article 75 TFEU and article 215 TFEU* (Master Thesis, Ghent University, 2014) [unpublished] at 13 (the Resolution 1267 imposed targeted sanctions on members of Al-Qaida and Taliban and also created a new sanction committee, a subsidiary of UNSC, to include individuals on the sanctions list).

[23] UNGAOR, 60th Sess, UN Doc A/RES/60/1 (2005), online: <http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf>.

[24] Willis, *supra* note 19 at 682.

[25] *Ibid* at 688.

authority, like the Office of Ombudsperson, be informed of the case materials, have an opportunity to be heard within a reasonable time, respond in a fair hearing, and enjoy an effective remedy.[26]

Despite these improvements at UN level, smart sanctions still raise concerns about due process-related rights. For example, although the number of delisting requests has been increased through mechanisms like focal points, they are insignificant.[27] In the case of Ombudsperson, delisting recommendations still can be overruled by the UNSC, "albeit at a political cost".[28] In addition, the mechanism of Ombudsperson is not available to other sanctions programs so that today its mandate only covers the members and affiliates of Al-Qaida and ISIL (Da'esh).[29]

Although today's universal smart sanctions adopted by UNSC are more in line with international standards than before, the situation can be even more ambiguous as a consequence of deploying unilateral smart sanctions by single state against individuals and entities within s target state. Considering the U.S. as a state frequently seeks smart sanctions as its foreign policy instrument,[30] when the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) designates persons on Specially Designated Nationals and Blocked Persons List (SDN List), there is a limited opportunity to have a fair hearing and to request a decision reviewed in a timely fashion.[31] In practice, OFAC imposes sanctions without prior notice and publicizes no blacklisting criteria.[32] More vaguely, every request of removal from the SDN list must be filed by

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[26] Sue E Eckert & Thomas J Biersteker, "Due Process and Targeted Sanctions: An Update of the 'Watson Report'", *Watson Institute for International Studies* (2012), online: <https://openaccess.leidenuniv.nl/bitstream/handle/1887/43690/WatsonReportUpdate12_12.pdf?sequence=1 Rhode> at 16.

[27] *Ibid* at 12.

[28] Heupel, *supra* note 21 at 102.

[29] "The Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee" (last visited 8 November 2018), online: *United Nations* <https://www.un.org/sc/suborg/en/ombudsperson >.

[30] Homer E Moyer & Linda A Mabry, "Export Controls as Instruments of Foreign Policy: The History, Legal Issues, and Policy Lessons of Three Recent Cases" (1983) Law & Pol'y Intl Bus 15:1 1 at 2; Meyer, *supra* note 13 at 906.

[31] "Filing a Petition for Removal from an OFAC List, online", online: *U.S. Department of the Treasury* <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/petitions.aspx> [*OFAC*]

[32] *OFAC*.

sending email to ofac.reconsideration@treasury.gov or postal mail to OFAC office in Washington D.C.[33] If a delisting request is denied, the reviewing body is again OFAC itself, and the method of sending the reviewing request is again through the email or postal mail.

As a matter of timing, the duration of OFAC administrative review is indefinite, depends on several factors such as "whether OFAC needs additional information, how timely and forthcoming the petitioner is in responding to OFAC's requests, and the specific facts of the case."[34] If administrative actions are not satisfactory, petitioners can have recourse to judicial review.[35] In that case, if courts find out, *inter alia*, that the OFAC's decision is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law",[36] they must hold the agency action unlawful and set it aside.[37] Nevertheless, in *Zevallos v. Obama*, the Court of Appeal considered the "arbitrary-capricious" test as a "highly deferential standard" to examine the Department of the Treasury's blacklisting decision, indicating that "we may not substitute our judgment for [Treasury's], but we will require it to 'examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'"[38] Therefore, a specially designated national needs to meet a high standard to be able to invoke a judicial review after a failure in administrative review, which means there are fewer opportunities to protect due process values.

To sum up, although smart sanctions were invented to have a much lesser devastating impact on civilians and be a proper replacement for comprehensive sanctions regimes, they still

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[33] *OFAC*.
[34] *OFAC*.
[35] Martin Shapiro, "Administrative Discretion: The Next Stage" (1983) Yale LJ 92:8 1487 at 1488.
[36] *Administrative Procedure Act*, 5 U.S. Code § 706 (1946).
[37] See generally Jared P Cole, Cong. Research Serv., R44699, "An Introduction to Judicial Review of Federal Agency Action" (7 December 2016), online (pdf): *U.S. Congress* < https://fas.org/sgp/crs/misc/R44699.pdf> see summary.
[38] *Zevallos v Obama*, 793 F (3d) 106 (DC Cir 2015).

would violate the standards of due process with respect to blacklisted persons. Smart sanctions also can combine with "secondary sanctions" and create a more problematic situation from the perspective of public international law, which will be examined in the next section.

2. Secondary Sanctions: The Issue of Extraterritoriality

During a sanction episode, states take different steps to compel other nations to consider a change in their political behavior or status quo. Preliminarily, a sender restricts or suspends economic relationship with a target through trade sanctions, travel bans, assets freezes, and monetary limitations. In addition, the sender prohibits its citizens and domestic firms within its jurisdiction from dealing with their counterparts in the target state (called primary sanctions). Failing to impact the target under this strategy, the sender seeks to either establish a coalition of states to reinforce the efficiency of sanctions,[39] or, more challenging, to induce that coalition by punishing third parties engaging in activities with the target (secondary sanctions).[40]

When a secondary sanction regime is in operation, third parties, consisting of states and their businesses, evaluate the risk of non-compliance. As a result, they either voluntarily withdraw from the target market or decide to stay and play the role of black knights/sanctions-busters.[41]

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[39] The importance of senders' allies can be found in the study of Suzanne Maloney, "Sanctions and the Iranian Nuclear Deal: Silver Bullet or Blunt Object?" (2015) 82:4 A Social Research 887 at 889—90. See generally Navin A Bapat & Clifton Morgan, "Multilateral Versus Unilateral Sanctions Reconsidered: A Test Using New Data" (2009) 53:4 Intl Studies Q 1075; Bryan R Early, "Alliances and Trade with Sanctioned States: A Study of U.S. Economic Sanctions" (2012) 56:3 J Conflict Resolution 547; Daniel W Drezner, "Serious about Sanctions" (1998) 53:1 National Interest 66; Lisa L Martin, "Credibility, Costs, and Institutions: Cooperation on Economic Sanctions" (1993) 45:3 World Politics 406; Elena McLean & Taehee Whang, "Friends or Foes? Major Trading Partners and the Success of Economic Sanctions" (2010) 54:2 Intl Studies Q 427; Lisa L Martin, *Coercive Cooperation: Explaining Multilateral Economic Sanctions* (Ph.D. Harvard University, 1990) [unpublished]; Daniel W Drezner, "Bargaining, Enforcement, and Multilateral Sanctions: When Is Cooperation Counterproductive?" (2000) 54:1 Intl Organization 73; Kaempfer *supra* note 9.

[40] See generally Cécile Fabre, "Secondary Economic Sanctions" (2016) 69:1 259; Jeffrey A Meyer, *supra* note 14.

[41] Hufbauer, *supra* note 2 at 8; George-Dian Balan, "The Latest United States Sanctions against Iran: What Role to the Wto Security Exceptions?" (2013) 18:3 J Confl & Se L 365 at 374.

Circumventing sender states' sanctions both dilutes the purpose of imposing sanctions[42] and creates several opportunities for third parties' agents to be replaced with the senders' businesses.[43]

Given that the imposition of secondary sanctions restricts the activities of third parties' agents outside sender's jurisdiction, there are ongoing debates over the legitimacy of secondary sanctions under international law. For instance, one can dispute that the exercise of extraterritorial jurisdiction of senders' national legislation would violate the principles of UN Charter, including but not limited to equality of states, national sovereignty, and nonintervention.[44] In addition, as Marossi and Bassett observed:

> Unilateral sanctions imposed against third parties by virtue of the application of one's own national legislation extraterritoriality also breach certain basic tenets of general principles of international law. These include the principle of self-determination; the 'right to development' of the citizens and individuals residing in the targeted territory; countermeasures and dispute settlement; and freedom of trade and navigation.[45]

In addition, states are free to determine the policies of international trade independently and are bound to exercise their domestic business and trade laws extraterritorially.[46] As such, the application of secondary sanctions, as an example of the extraterritorial exercise of jurisdiction, can be challenging and even impermissible under international law.[47]

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[42] *Contra* 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 at 381.
[43] Meyer, *supra* note 14 at 917.
[44] 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) at 71—73; Fabre, *supra* note 40 at 285.
[45] Mohamad, *supra* note 44 at 79.
[46] J Curtis Henderson, "Legality of Economic Sanctions Under International Law: The Case of Nicaragua" (1986) 43:1 Wash & Lee L Rev 167 at 179; Hague Academy of International Law Center for Studies and Research, "Les Sanctions Économiques En Droit International: Economic Sanctions in International Law." (The Hague: M. Nijhoff, 2015) ("States are free in principle to shape their internal and external economic policy with no outside interference; any research on international economic sanctions from the angle of customary law is bound to start from such freedom. State sovereignty and the principle of nonintervention nourish it." at 131).
[47] See e.g. Meyer, *supra* note 14 at 932; Peter L Fitzgerald, "Pierre Goes Online: Blacklisting and Secondary Boycotts in U.S. Trade Policy." (1998) Vand J Transnat'l L 31:1 1 at 91; Andreas F Lowenfeld, "Congress and Cuba: The Helms-Burton Act" (1996) AJIL 90:3 419 at 430; Sara H Cleveland, "Norm Internalization and U.S. Economic Sanctions" (2001) Yale J Intl L 26 1 at 56—57.

Nevertheless, scholarly studies have tried to define legal bases for the imposition of secondary sanctions. So far, they have acknowledged that secondary sanctions are considered permissible under international law if they incorporate both nationality and territoriality jurisdiction.[48] Considering the U.S. sanctions on Russia, when the U.S. government, as a sovereign, seeks to punish U.S. persons (nationality jurisdiction) located in the U.S. territory (territorial jurisdiction) who engage in activity with Indian counterparts having business in Russia, it is considered a legitimate sanctions episode to punish the U.S. persons.[49]

In light of the foregoing remarks, academic commentaries tend to justify secondary sanctions by establishing a minimal jurisdictional nexus between sender and third-party states. This tendency so far has led to the identification of six major principles of legitimate extraterritorial jurisdiction under a secondary sanctions episode as follows:

Nationality Jurisdiction: whereby a sender prohibits its nationals wherever they are located from conducting business with third parties.

Territorial Jurisdiction: whereby a sender prohibits individuals and entities within its borders from conducting business with third parties, regardless of their nationality.

Passive Personality Jurisdiction: whereby a sender imposes sanctions to protect its nationals from injury or threat to injury, regardless of the place of occurrence.

Protective Jurisdiction: whereby a sender imposes sanctions to protect that state's security and interests.

Universal Jurisdiction: whereby a sender imposes sanctions to protect the international community as a whole when an issue becomes a concern to all states.

[48] Meyer, *supra* note 14 at 908 (in Meyer's language it is called "terrinational jurisdiction").
[49] *Ibid*.

Goods-Territoriality Jurisdiction: whereby a sender prohibits re-exportation of goods originated fully or in part on its territory from anywhere in the world to a target.[50]

To refrain from arbitrary use of these grounds of jurisdiction, sender states should consider the standard of "reasonableness". Although this standard is not defined by the sources of international law,[51] several studies recognize it as a criterion of exercising jurisdiction,[52] and it is also defined in the Restatement Third of the Foreign Relations Law of the United States section 403.[53] As Meyer summarizes it, the exercise of jurisdiction is reasonable by considering:

> [T]he nature of the activity; the extent to which it takes place in the territory of the regulating state; the strength of ties such as nationality, residence, and business activity between the regulating state and the person subject to regulation; the "importance" of regulation to the regulating state; and the existence of, interest in, and conflict with regulation of the activity by other states.[54]

Therefore, if a state does not meet the requirements of reasonableness in exercising extraterritorial jurisdiction, its action, i.e. imposing secondary sanctions, would be illegal and might result, among others, in the interruption in international trade flow, retaliation of other states, and violation of customary international law.[55]

Whether the application of secondary sanctions is a reasonable exercise of extraterritorial jurisdiction can be shown in an example of U.S. sanctions against North Korea. Under this

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[50] See Fabre, *supra* note 40 at 273—74; Meyer, *supra* note 14 at 937—38; Cécile Fabre, *Economic Statecraft: Human Rights, Sanctions, and Conditionality* (Cambridge, Massachusetts: Harvard University Press 2018) at 81—83.

[51] Phillip R Trimble, "The Supreme Court and International Law: The Demise of Restatement Section 403" (1995) AJIL 89:1 53 ("[h]ad Justice Scalia employed elementary customary law analysis, he would have found ample evidence that U.S. prescriptive jurisdiction has never been as sharply limited as suggested by section 403." at 54). See also Geoffrey R Watson "The Passive Personality Principle" (1993) Tex Intl LJ 28:1 1 at 45.

[52] Andreas F Lowenfeld, "International Litigation and the Quest for Reasonableness" (1998) 68:1 Brit YB Intl L 283 at 283—84; Curtis A Bradley, "Universal Jurisdiction and U.S. Law" U Chicago Legal F 2001:1 323 at 323—24; Cleveland, *supra* note 47 at 56; Fitzgerald, *supra* note 47 at 89—90; Meyer, *supra* note 14 at 939.

[53] American Law Institute, *Restatement of the Law Third, the Foreign Relations Law of the United States*, Revised and enlarged. (St. Paul, Minn. American Law Institute, 1987) § 403 ("a state may not exercise jurisdiction to prescribe law with respect to a person or activity having connections with another state when the exercise of such jurisdiction is unreasonable …").

[54] Meyer, *supra* note 14 at 939.

[55] Meyer, *supra* note 14 at 935.

sanctions episode, any U.S. citizen (nationality jurisdiction) or entity registered and operated in U.S. territory (territorial jurisdiction) would be subject to U.S. secondary sanctions. Considering the U.S. banks as a financial entity, it is capable of limiting the access of foreign entities to correspondent accounts and payable-through accounts in the U.S.[56] Furthermore, because all the global transactions that occur in U.S. dollars must be settled under the U.S. monetary policies, its Central Bank is able to limit the access to the U.S. financial system.[57] Also, the U.S. has full control over any goods initially produced within its borders, and as a result, has the right to restrict their export from its territory or their re-export from other countries to North Korea (goods-territoriality jurisdiction).[58] Moreover, by giving a broad interpretation to the account of passive personality jurisdiction and protective jurisdiction, it can be said that for the safety of its citizens abroad and to protect the state's security, the U.S. can put a limitation on third parties involved in North Korean nuclear proliferation. As a last resort, since North Korea's nuclear activities are deemed to be a universal concern to all states, U.S claim on secondary sanctions may receive full support from the international community, a means to use the universal jurisdiction.

Despite the above, the secondary sanctions are complex and multifaceted. In particular, there are situations in which the sanctions are imposed on North Korea over goods which did not originate in the U.S. territory.[59] Similarly, in some situations, the U.S. can impose secondary sanctions against North Korea in matters irrelevant to the issue of nuclear proliferation. For

[56] Balan, *supra* note 41 at 375, 378.
[57] "Fedwire: The US Dollar in International Payments", online: *American Express* <https://www.americanexpress.com/us/content/foreign-exchange/articles/fedwire-us-dollar-in-international-payments/>.
[58] Moyer, *supra* note 30 ("[t]he United States effectively controls such foreign exports and reexports by obtaining the consent of the foreign company to comply with U.S. restrictions prior to approving the original export from the United States." at 127).
[59] Fabre, *supra* note 40 at 275.

example, if the U.S. limits the ability of North Koreans to buy chocolate from Nestlé company located in a third-party state,[60] this action may call into question the legality of U.S. sanctions.

More controversial is the legal liability of a sender's parent company subsidiaries located in third parties' jurisdiction.[61] Under the U.S. law, U.S.-owned or -controlled affiliates and subsidiaries are under pressure to comply with U.S. sanctions.[62] This compliance is made via either indirect extraterritoriality when the U.S. government pressures parent companies to influence their subsidiaries, or from direct extraterritoriality when the U.S. directly forbids subsidiaries registered under the laws of a third party state from engaging in activity with the target.[63] For example, in 1997, the U.S. forbade transactions with Cuba. As a result, Walmart Stores (both inside and outside of the U.S.) were obliged to comply with the demand to remove Cuban pajamas from their stores. In retaliation, Canadian authorities threatened to punish Canadian firms who would comply with the U.S. demand, including Walmart Canada. By evaluating its legal liability, Walmart Canada announced that "it had decided to resume sales of pajamas made in Cuba, in direct defiance of American laws that seek to isolate the Government of Fidel Castro",[64] a decision which contradicted its parent company's instruction.[65]

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[60] Meyer, *supra* note 14 at 941.

[61] Kam S Wong, "The Cuban Democracy Act of 1992: The Extraterritorial Scope of Section 1706(a)" (2014) 14:4 U Pa J Intl L 651 at 660 (expresses that the extension of nationality jurisdiction over subsidiaries may allow the U.S. to impose secondary sanctions).

[62] The standards of control are as follows: "(1) one that is more than 50% owned by the U.S. parent; (2) one in which the parent firm holds a majority on the Board of Directors of the subsidiary; or (3) one in which the parent firm directs the operations of the subsidiary" U.S., Cong. Research Serv., RS20871, "Iran Sanctions" (6 November 2018), online (pdf): *U.S. Congress* <http://www.fas.org/sgp/crs/mideast/RS20871.pdf> at 10. See generally Harry L Clark, "Dealing with U.S. Extraterritorial Sanctions and Foreign Countermeasures" (1999) 20 U Pa J Intl L 61; Wong, *supra* note 61 at 655, 659—672.

[63] Harold H Tittmann, "Extra-Territorial Application to U.S. Export Control Laws on Foreign Subsidiaries of U.S. Corporations: An American Lawyer's View from Europe" (1982) Intl Lawyer 16:4 730 at 734. See also Fabre, *supra* note 40 at 375.

[64] "Wal-Mart Canada Is Putting Cuban Pajamas Back on Shelf" (14 March 1997), online: <https://www.nytimes.com/1997/03/14/business/wal-mart-canada-is-putting-cuban-pajamas-back-on-shelf.html>.

[65] See Clark, *supra* note 62 at 61.

Apart from the contestability of the aforementioned grounds of jurisdiction, the most recent U.S. secondary sanctions on Iran complicates the issue of extraterritoriality. In short, after almost a decade of negotiations, in 2015 P5+1 (U.S., China, Russia, France, United Kingdom, and Germany), the EU, and Iran reached the Joint Comprehensive Plan of Action (JCPOA) to ensure Iran's nuclear program will remain peaceful.[66] In May 2018, U.S. President Trump announced that the U.S. would no longer stay in this agreement, alleging that it cannot constrain Iran's ability to create nuclear bombs.[67] Subsequently, a new set of unilateral sanctions were imposed, in a two-phase round, by the U.S. which mostly relied on secondary sanctions.

To detail U.S. sanctions, as noted above, imposing economic measures extraterritorially requires a jurisdictional nexus through the six principles.[68] If the U.S. secondary sanctions do not meet the requirements of these principles, they violate the international rules governing "prescriptive jurisdiction".[69] The legality of U.S. sanctions, therefore, needs to be examined.

On the one hand, due to nationality and territorial jurisdiction, the U.S. can legitimately prohibit its citizens, as well as registered entities within its territory, from dealing with Iran. This limitation also includes American banks providing facilities to foreign persons and transactions denominated in U.S. dollars. Similarly, due to goods-territory jurisdiction, the U.S. can claim jurisdiction over products and technology originating fully or partially in the U.S. and then

[66] Preamble, Joint Comprehensive Plan of Action, P5+1 and Iran, 14 July 2015 (entered into force 18 October 2015) [*JCPOA*].
[67] Kenneth Katzman & Paul K Kerr, Cong. Research Serv., R4333, "Iran Nuclear Agreement and U.S. Exit" (20 July 2018), online (pdf): <https://fas.org/sgp/crs/nuke/R43333.pdf> see summary.
[68] Cleveland, *supra* note 47 at 57.
[69] Bradley, *supra* note 52 ("[p]rescriptive jurisdiction is 'the authority of a state to make its law applicable to persons or activities.'" at 323)

exported or re-exported to Iran.[70] Moreover, the U.S. can exercise jurisdiction over products and technology made outside the U.S. with partially incorporated U.S. materials. As Section 560.205 (b)(2) of Iranian Transactions and Sanctions Regulations indicates, if the total value of such U.S. goods and technologies constitutes more than 10% of the total value of a foreign product, it is prohibited from exportation to Iran.[71]

On the other hand, there are instances of U.S. secondary sanctions against Iran when non-U.S. persons are involved in transactions with Iran, foreign entities out of U.S. territory establish business ties with Iranian businesses, transactions occur between Iranians and non-U.S. persons through other currencies, and goods originate out of U.S. territory. These examples attract the attention at best of the principles of protective jurisdiction, passive personal jurisdiction and universal jurisdiction, which will be discussed below.[72]

Given that the JCPOA obliged Iran to restrain its nuclear activity fully and was endorsed by the UNSC Resolution 2231,[73] the invocation of universal jurisdiction is too far-fetched.[74] As

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[70] For example, the U.S. revoked the Airbus license (a France-based company) to sell aircrafts to Iran because some of its jet parts originated in U.S. companies: Boeing, Airbus to lose $39 billion in contracts because of Trump sanctions on Iran, "Boeing, Airbus to lose $39 billion in contracts because of Trump sanctions on Iran" (9 May 2018), online (pdf): <https://www.washingtonpost.com/business/economy/boeing-airbus-to-lose-39-billion-in-contracts-because-of-trump-sanctions-on-iran/2018/05/08/820a8f08-5308-11e8-a551-5b648abe29ef_story.html?>.

[71] *Iranian Transactions and Sanctions Regulations*, 31 CFR § 560.205 (b)(2) (2012). Under this regulation, Airbus, a European-based manufacturer, stopped selling aircraft to Iran: "Boeing and Airbus to lose $40bn due Trump's decision on Iran deal" (9 May 2018), online: *Independent* <https://www.independent.co.uk/news/world/middle-east/iran-nuclear-deal-donald-trump-boeing-airbus-sanctions-a8342366.html>.

[72] Watson, *supra* note 51 (in Watson's point of view and in reality, the exercise of these jurisdictions are a matter of self-declaration: "[a]ny state can declare that [a] conduct violates "universal" norms, that it implicates the state's "national security," or that the conduct has "effects" within the state's territory, and therefore apply the protective principle of jurisdiction." at 10).

[73] "Security Council, Adopting Resolution 2231 (2015), Endorses Joint Comprehensive Agreement on Iran's Nuclear Programme" (20 July 2015), Online (pdf): <https://www.un.org/press/en/2015/sc11974.doc.htm>.

[74] " Legality of the Threat or Use of Nuclear Weapons" (8 July 1996), online (pdf): *Advisory Opinion* <https://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf> (this advisory opinion of regarding the Legality of the Threat or Use of Nuclear Weapons indicates: "[t]here is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons…A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons." at 265-66), cited in Meyer, *supra* note 14 at 946.

with the protective and passive personality jurisdiction, it is doubtful that within 3 years after reaching the JCPOA Iran's nuclear program could have generated threats to U.S. interest, its citizens, and subsidiaries of its corporations located in Iran,[75] or broadly interfered in any other countries because the IAEA has acknowledged Iran's compliance with the JCPOA from 2015 to 2018 in 12 reports, as the main responsible organ to monitor and verify Iran's nuclear program. For peaceful uses.[76] These reports indicated that since then Iran's nuclear program has generated no new threat and this program remained as constrained as its previous year.

Notably, still the U.S. can argue that the proliferation of ballistic missiles, human rights violations, and support for terrorism are considered a threat to the U.S. security and its citizens which constitute justified grounds for exercising one of these jurisdictions to initiate a new yet separate sanctions program against Iran.[77]

When a U.S. secondary sanctions episode does not fall within one of the categories of protective, passive personality, and universal jurisdictions, the imposed-sanctions seems to be problematic under the rules of international law. The U.S. secondary sanctions threat against car manufacturers like PSA Group (Maker of Peugeot and Citroen) and Renault is an example to illustrate the issue at hand. With a substantial interest in Iran's auto market, PSA Group and

[75] Watson, *supra* note 51 at 38 (saying the U.S. usually extends the protection to its corporates' subsidiaries).
[76] "Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231" (30 August 2018), online (pdf): *International Atomic Energy Agency GOV/2018/33* <https://www.iaea.org/sites/default/files/18/09/gov2018-33.pdf >.
[77] Kenneth Katzman & Paul K Kerr, Cong. Research Serv., R4333, "Iran Nuclear Agreement and U.S. Exit" (20 July 2018), online (pdf): <https://fas.org/sgp/crs/nuke/R43333.pdf> see summary.

Renault left Iran[78] over the risk of noncompliance to U.S. secondary sanctions threat.[79] To elaborate the jurisdictional ties, one can see the headquarters of these companies which are located in Europe, rather than the U.S.; lack of business ties and sales in the U.S.; ability to make transaction in Euro currency through European banks; and production of original parts separate from the U.S. companies. Moreover, it is far more debatable to consider car manufacturers' activity in Iran in association with the nuclear program.

In addition, whether secondary sanctions episodes are imposed reasonably does not change the fact that any form of them inevitably has harmful impacts on civilians of target countries.[80] Reconsidering the examples of PSA Group and Renault, after leaving Iran's market, there would be an increase in the price of their spare parts, the rate of unemployment, the use of alternative low-quality brands, road crash injuries, and the respiratory death as a result of air pollution. According to statistics, "twenty times more than the world's average, … every year, road traffic crashes kill 28,000 people in Iran."[81] Even worse, around 33,000 people in Iran die yearly due to exposure to air pollution,[82] and its capital, Tehran, is facing around 5000 death caused primarily

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[78] "Peugeot to Pull Out of Market in the U.S" (7 August 1991), online <https://www.nytimes.com/1991/08/07/business/worldbusiness/IHT-peugeot-to-pull-out-of-market-in-the-us.html>; "Why Aren't French Cars Sold in America?" (14 November 2014), online: <http://www.french-cars-in-america.com/2013/11/why-aren-t-french-cars-sold-in-america.html>.

[79] Sanction threat plays an import role during a sanction episode. See e.g. Baran Han, "The Role and Welfare Rationale of Secondary Sanctions: A Theory and a Case Study of the US Sanctions Targeting Iran" (2016) Conflict Management & Peace science 1 at 1—2; Bo Ram Kwon, "The Conditions for Sanctions Success: A Comparison of the Iranian and North Korean Cases" (2016) 28:1 Korean J Defense Analysis 139 at 155.

[80] Mohamad, *supra* note 44 at 80.

[81] "Road Traffic Injuries in Iran and their Prevention, A Worrying Picture" (last visited 9 November 2018), online: *UNICEF* <https://www.unicef.org/iran/media_4783.html>.

[82] "Air Pollution; Not This Again", *Tehran Times* (20 January 2018), online: <https://www.tehrantimes.com/news/420497/Air-pollution-not-this-again>.

by the emission of low-qualified motor vehicles.[83] In dealing with these issues odds are against civilians as long as sanctions are in effect because civilians would be deprived of well-qualified cars that could otherwise considerably lesson these impacts.

In sum, the danger inherent in secondary sanctions implies that secondary sanctions (directly and indirectly) affect civilians and causes irreversible harm to the population of target states. What is more controversial, however, is the imposition of secondary sanctions in conjunction with smart sanctions and their permissible limitations under the principles of public international law.

3. Secondary Smart Sanctions: Far Beyond Permissible Limits

As discussed above, broad application of smart or secondary sanctions can violate some principles of public international law,[84] such as human rights, due process values, humanitarian rights, national sovereignty, nonintervention, and territorial jurisdiction. This is not to suggest that sanction regimes are inherently problematic. As long as they are consistent with the principles of international law, the sanctions regimes constitute legitimate coercive measures.[85] Nonetheless, in one situation sanctions would violate several norms of international law at once, and this is when sender countries impose "secondary smart sanctions".

Under secondary smart sanctions regime, a sender state unilaterally prohibits persons in third parties' jurisdictions from conducting business with a target's individuals and entities designated in the sender's blacklist. For example, In 2018, Mehmet Hakkan Atilla, the former

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[83] Vahid Hosseini & Hossein Shahbazi, "Urban Air Pollution in Iran" (2016) 49:6 Iranian Studies 1029 at 1037. See also "Iran's Domestic Car Market Stalls as Nuclear Deal Falters" (21 September 2018) online: *The Guardian* <https://www.theguardian.pe.ca/business/irans-domestic-car-market-stalls-as-nuclear-deal-falters-243451/>.
(Politically looking at the issue in hand, the secretary of Iran's Supreme National Security Council believes "[t]he enemy in the economic war is after damaging public contentment and the auto industry is one of the front lines in the war".")

[84] Joy Gordon, "A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions" (1999) 13:1 Ethics & Intl Affairs 123 at 124.

[85] Fabre, *supra* note 40 at 281; Cleveland, *supra* note 47 at 48.

deputy general manager of a Turkey's state-owned Halkbank was found guilty in New York of violating U.S. secondary sanctions against Iran.[86] As a background, in 2012, the U.S. imposed secondary smart sanctions with respect to foreigners who would conduct business with their counterparts in the energy sector and financial system of Iran, and targeted, *inter alia*, Central Bank of Iran, National Iranian Oil Company, and National Iranian Tanker Company.[87] In response, Iran directed Reza Zarrab—a Turkish-Iranian citizen—to evade U.S. sanctions through illegal transactions. As an account holder of Iran's petrodollars, Halkbank illegally released the blocked money, thus allowing Zarrab to buy gold and ship it to Iran.[88] As the U.S. alleged in the court, "Mr. Atilla… used Halkbank to 'launder billions of dollars-worth of Iranian oil proceeds, ultimately creating a slush fund for Iran to use however it wished — the very harm that U.S. sanctions were put in place to avoid.'"[89] The judgment against Atilla raised several questions regarding the validity of U.S. measures by virtue of principles of state sovereignty, state equality, and nonintervention so that Turkish President, Erdogan, expressed that "[i]f Hakan Atilla is going to be declared a criminal, that would be almost equivalent to declaring the Turkish Republic a criminal."[90]

For two principal reasons, deploying a secondary smart sanctions episode must be restricted. First, it violates due process rights of blacklisted persons when limited access is provided to materials of a case, a fair hearing, a judicial review, and an immediate remedy, as

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[86] "Turkish Banker in Iran Sanctions-Busting Case Sentenced to 32 Months" (16 May 2018) online: *The New York Times <https://www.nytimes.com/2018/05/16/world/turkish-iran-sanctions-trial.html>* [*The New York Times*].

[87] *Iran Threat Reduction and Syria Human Rights Act*, 22 USC § 8722, 8742 (2012) [*ITRSHRA*]; *Iran Sanctions Act*, 50 USC § 1701 note (1996).
available https://www.treasury.gov/resource-center/sanctions/Documents/hr_1905_pl_112_158.pdf

[88] "The Biggest Sanctions-Evasion Scheme in Recent History" (4 January 2018), Online: *The Atlantic* <https://www.theatlantic.com/international/archive/2018/01/iran-turkey-gold-sanctions-nuclear-zarrab-atilla/549665/>.

[89] *The New York Times*, supra note 86.

[90] "Turkey's lira hammered after Erdogan says wants greater economic control" (15 May 2018), online: Reuters <https://www.reuters.com/article/us-turkey-economy-erdogan/turkeys-lira-hammered-after-erdogan-says-wants-greater-economic-control-idUSKCN1IG0F0>.

detailed in this thesis in the section relevant to the smart sanctions. Second, if the exercise of extraterritorial jurisdiction extends beyond the standard of reasonableness, these types of sanctions will violate the principles of equality, national sovereignty, nonintervention, and amongst others, as discussed in this thesis in the section relevant to the secondary sanctions. In other words, the permissibility of public international sanctions reaches its limit when a sender's invocation of unilateral secondary smart sanctions does not meet the following requirements:

1. Governing the rule of law by creating a domestic mechanism similar to Ombudsperson at UN level to emphasize predictability, determinacy and procedural due process.
2. Extending the reach of the sanctions beyond national jurisdiction, territorial jurisdiction, or the combination of the two,[91] and goods-territory jurisdiction.

When states fail to meet these requirements, it would be more in line with the requirements of international law if the UN stays in charge of imposing sanctions because the UNSC's decisions are biding over the entire member states through the mandate of Article 25 and 49 of UN Charter.[92] Furthermore, the UN mechanisms of the focal point and Ombudspersons have significantly reformed the UN sanctions system in order to protect persons' due process rights.

C. Reaction to Secondary Smart Sanctions

1. Aligned Reaction

During a sanctions episode, the reaction of third-party states highly relies on three elements: the source of sanctions (e.g., UN vs. individual state's sanctions), the reasons for

[91] Meyer, *supra* note 48 and accompanying text.
[92] *Charter of the United Nations*, **26 June 1945, Can TS 1945 No 25, 49 [*UN Charter*]** (Article 25: The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter. Article 49: The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.).

imposition (e.g., breach of jus cogens), and prior relationship between a sender and target state. Starting with the source of sanctions, under a universal sanctions regime when the UN adopts coercive measures, states are obliged to comply based on prior consent given at the time of ratification.[93] In carrying out this obligation, if sanctions cause economic problem to third countries, they are entitled to receive relief by consulting the issue with the UN Security Council to find a solution for that problem.[94] Under the situation in which the source of sanctions is only an individual state's action against a target state and therefore carrying out UN's sanctions are not required, the reaction of third states depends on two other factors, i.e., reasons for imposition of sanctions and prior relationship.

With respect to the second element of "reasons for impositions", a target's breach of international peremptory norms of *jus cogens* can trigger third states' action against this target.[95] In other words, when a target impairs the principles of *jus cogens*, not only is its invocation of responsibility the sender's right [as an injured state], but also the entire international community.[96] Elaborating on this concept, Cleveland explains that:

> Jus cogens norms are universally binding on all states and cannot be superceded. They prevail over all competing principles of treaty and customary international law. States cannot persistently object or enter reservations to their obligations, and principles of universal jurisdiction give states authority to punish certain jus cogens violations regardless of whether the state otherwise would enjoy jurisdiction.[97]

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[93] *The UN Charter*, Article 25, 41.
[94] *The UN Charter,* Article 50. See also Reisman and Stevick, *supra* note 5 at 140; Cortright, *supra* note 16 at 25.
[95] International Law Commission, Draft Article on Responsibility of States for Internationally Wrongful Acts, with commentaries, UNGAOR, 53rd Sess, UN Doc A/56/10 art 26 (2001) ("Those peremptory norms that are clearly accepted and recognized include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self determination."). See also Responsibility of States for Internationally Wrongful Acts, UNGAOR, 56th Sess, UN Doc A/56/83 art 50 (2001).
[96] Gerhard Erasmus, "Third States and Sanctions in Public International Law—The Position of South Africa" (1992) Archiv des Völkerrechts 30:1 128 at 133. See also Responsibility of States for Internationally Wrongful Acts, UNGAOR, 56th Sess, UN Doc A/56/83 art 48 (2001).
[97] Sara H Cleveland, "Human Rights Sanctions and International Trade: A Theory of Compatibility" (2002) J Intl Econ L 5:1 133 at 151.

In addition, a target may breach no preemptory norms of international law and, nevertheless, be responsible for violating international obligations *erga omnes*,[98] which are universal and binding for the entire members of the international community.[99] After a target commits a wrongful act, it therefore is the obligations of third-party states to recover international juridical order alongside the sender state.

Under certain circumstances in which sanctions imposed are neither universal (first element) nor in response to the violation of *jus cogens* or *erga omnes* obligations (second element); the non-legal element of "prior relationship" between states determines the side third party states choose to support. From a policy perspective, the triangulation of a sender, target, and third-party state is affected by the volume of trade,[100] rate of foreign direct investment (FDI),[101] degree of warm and friendly relationship,[102] share of foreign firms in the market,[103] cultural ties,[104] shared international values, and amongst others, which change the composition of sanctions coalitions.[105] As a result, a third state may decide to join the sender's sanctions to increase sanction-pressure on target if, for example, they have a significant trade linkage.

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[98] ICJ makes the classical examples of obligations erga omnes as follows: "Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination." "Case Concerning Barcelona Traction, Light and Power Company, Limited" (5 February 1970), at 33, online: *International Court of Justice* <https://www.icj-cij.org/files/case-related/50/050-19700205-JUD-01-00-EN.pdf>.

[99] Maurizio Ragazzi, *The Concept of International Obligations Erga Omnes* (Oxford: Clarendon Press 2002) at 17; Cleveland, *supra* note 47 ("*erga omnes* obligations may include the prohibitions against gender and employment discrimination, discrimination in fundamental human rights, and the execution of juveniles… as well as the rights to a fair trial, property, freedom of association, and free exercise of religion." at 91).

[100] Hufbauer, *supra* note 2 at 62, 90, 165—66.

[101] David Lektzian & Glen Biglaiser, "The Effect of Foreign Direct Investment on the Use and Success of US Sanctions" (2014) 3:1 Conflict Management & Peace Science 70 at 85.

[102] Hufbauer, *supra* note 2 at 55, 73, 141, 164—67.

[103] Navin A Bapat & Bo Ram Kwon, "When Are Sanctions Effective? A Bargaining and Enforcement Framework" (2015) 69:1 Intl Organization 131 at 132, 160.

[104] Donna Driscoll et al, "Economic Sanctions and Culture" (2011) 22:4 Defence & Peace Economics 423 at 442.

[105] Scholarly studies have examined these factors in Sender-Target relationship. However, they play a significant role in the relationship with third party sates as well. Therefore, they are mentioned here as factors influencing them all.

It is also possible for a third state to create a sanctions coalition with a sender, but the third-party state plays the role of a black knight and becomes a sanctions-buster for the target's benefit. Conversely, a third party-state may officially oppose the sender's position and adopt retaliatory measures against the sender's sanctions. At the state level, the retaliatory measures include the enactment of "Blocking Statutes/Orders/Legislation/Regulation" or bringing a claim to the World Trade Organization (WTO).

2. Counteraction

a. Blocking Regulations

Two remarkable examples of the blocking regulations in the history of sanctions are as follows. In 1985, the Canadian Parliament enacted the Foreign Exterritorial Measures Act (FEMA)[106] to protect Canadian persons from the exercise of foreign extraterritorial jurisdiction.[107] FEMA section 3(1) allowed the Attorney General of Canada to issue an order when a foreign tribunal:

> [H]as exercised, is exercising or is proposing or likely to exercise jurisdiction or powers of a kind or in a manner that has adversely affected or is likely to adversely affect [:]
>
> [A.] significant Canadian interests in relation to international trade or commerce involving a business carried on in whole or in part in Canada, or
>
> [B.] that otherwise has infringed or is likely to infringe Canadian sovereignty, or jurisdiction or powers that is or are related to the enforcement of a foreign trade law or a provision of a foreign trade law set out in the schedule.[108]

In 1992, as a derivative of FEMA, a Blocking Order was enacted in response to the U.S. Cuban Democracy Act (CDA).[109] The purpose of this Order was to insulate Canadian subsidiaries

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[106] Foreign Extraterritorial Measures Act, RSC 1985, F-29 [*FEMA*].
[107] Kern Alexander, *Economic Sanctions: Law and Public Policy* (Basingstoke, England: Palgrave Macmillan, 2009) at 236.
[108] *FEMA*, Article 3 (1)
[109] Clark, *supra* note 62 at 72.

of U.S. owned or controlled companies from extraterritorial effects of U.S. secondary sanctions against Cuba.[110] In 1996, an amendment broadened the scope of FEMA[111] in response to the newly enacted U.S. laws against Cuba, known as The Cuban Liberty and Democratic Solidarity (Libertad/Helms-Burton) Act.[112] This Amendment subsequently broadened the scope of the 1992 Blocking Order and created the 1996 Blocking Order.[113] For instance, it allowed Canadian individuals or entities to recover from damages resulting from a judgment given outside Canada in Canadian courts.[114] In addition, it increased the monetary penalty of compliance to U.S. sanctions up to CAD 1.5 million for corporations and CAD 150,000 for individuals along with imprisonment of up to five years.[115] The ultimate aim of Canadian counter-measures was to mitigate the effects of U.S. secondary sanctions on Canadian persons.

Besides the Canadian Blocking Orders that are further discussed in details elsewhere in sanctions literature, the European Union has adopted similar counter-measures against the U.S. sanctions on Cuba. In 1996, to take effective measures against U.S. sanctions, the EU issued Regulation 2271/96 to mitigate the effects of the LIBERTAD/Helms-Burton Act, Iran Libya Sanctions Act (ILSA/D'Amato Act), Cuban Democracy Act, and relevant provisions of Cuban Assets Control Regulations (Annexed Acts), specified in the Annex of this Regulation.[116]

This EU blocking statute was applied to EU legal persons and natural persons residing in the EU community as well as included its territorial water and airspace with respect to vessels and

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[110] *Ibid* at 237.
[111] Act to Amend the Foreign Extraterritorial Measures Act, RSC 1996, C-54 [*Amended FEMA*].
[112] Alexander, *supra* note 107 at 237.
[113] See generally Peter Glossop, "Canada's Foreign Extraterritorial Measures Act and U.S. Restrictions on Trade with Cuba" (1998) Intl Lawyer 32:1 93.
[114] *Amended FEMA*, section 9.
[115] *Amended FEMA*, section 7 (1)
[116] EC, *Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom,* [1996] OJ, L 309/1 [*Regulation 2271/96*], online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996R2271&from=EN>.

aircraft within the Member's jurisdiction.[117] This blocking statute also forbade EU persons to directly or indirectly comply with the above annexed Acts[118] and gave no effect to any judgment issued outside the EU jurisdiction.[119] Although, the penalty predicted for violation of this Regulation had to be "effective, proportional and dissuasive",[120] no specific monetary fine or duration of imprisonment was detailed in the blocking statute. The statute also granted claw-back rights to injured EU persons to recover damages caused by the U.S. sanctions as a result of engagement in "international trade and/or the movement of capital and related commercial activities"[121] with U.S. persons. As indicated in Article 6, the form of this recovery is seizure or sale of assets "through judicial proceedings instituted in the Courts of any Member State where that person, entity, person acting on its behalf or intermediary holds assets."[122] In light of these provisions, the EU strongly objected to the credibility of U.S secondary sanctions and subsequently brought a claim to the WTO, which will be discussed shortly.[123]

The latest EU blocking regulation concerns 2018 U.S. secondary smart sanctions against the Iran's nuclear program. After U.S. withdrawal from the JCPOA, U.S. President Trump reimposed nuclear-related sanctions despite the fact that IAEA acknowledged Iran's compliance with its JCPOA commitments by 12 reports.[124] In response, in August 2018, the EU updated the 1996 Blocking Statute to mitigate the impact of U.S. sanctions on its companies dealing with

[117] *Regulation 2271/96*, Article 11.
[118] *Regulation 2271/96*, Article 5.
[119] *Regulation 2271/96*, Article 4.
[120] *Regulation 2271/96*, Article 9
[121] *Regulation 2271/96*, Article 1
[122] *Regulation 2271/96*, Article 6. See especially Clark, *supra* note 62 at 81-82.
[123] See e.g. Stefaan Smis & Kim van der Borght, "The EU-U.S. Compromise on the Helms-Burton and D'amato Acts" (1999) AJIL 93:1 227 at 227-28; Alexander Layton & Angharad M Parry, "Extraterritorial Jurisdiction-European Responses" (2004) Hous J Intl L 26:2 309 at 315-16; Han, *supra* note 79 at 475-76; Clark, *supra* note 62 at 82-83.
[124] "IAEA and Iran - IAEA Reports" (last visited 10 November 2018), online: *International Atomic Energy Agency* <www.iaea.org/newscenter/focus/iran/iaea-and-iran-iaea-reports>.

Iran.[125] In addition to the previous annexed Acts to EU Regulation 2271/96, the updated version included the Iran Freedom and Counter-Proliferation Act of 2012, National Defense Authorization Act for Fiscal Year 2012, Iran Threat Reduction and Syria Human Rights Act of 2012, and Iranian Transactions and Sanctions Regulations.[126] When compared to the impacts of its 1996 version, it remains debatable whether the updated blocking statute could ever hinder the extraterritorial exercise of U.S. laws, especially considering that the U.S. President labeled this new round of sanctions as the "toughest ever" sanctions.[127]

b. International Organizations: WTO

Apart from the blocking regulations, third-party states may invoke regional or international organizations to challenge a sender's sanctions. At the regional level, for example, pursuant to the enactment of LIBERTAD and ILSA in 1996, Mexico and Canada threatened to bring a claim against the U.S. under Article 1105 of the North American Free Trade Agreement (NAFTA) to examine whether U.S. secondary sanctions were in accordance with international law.[128]

In October of 1996, the EU simultaneously initiated a proceeding under the WTO dispute settlement system, initially through consultation[129] and then through the submission of a request for the establishment of a panel.[130] The EU allegation encompassed a violation of the rules of

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[125] EC, *Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom*, [2018] OJ, L 199I/1 [*Regulation 2018*], online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1100&from=EN>

[126] *Regulation 2018,* Annex.

[127] "What's So Tough About The 'Toughest Ever' U.S. Sanctions On Iran?" (6 November 2018), online: *Radio Free Europe Radio Liberty* <https://www.rferl.org/a/iran-toughest-ever-u-s-sanctions-explainer/29585958.html>.

[128] *North American Free Trade Agreement Between the Government of Canada, the Government of Mexico and the Government of the United States*, 17 December 1992, Can TS 1994 No 2 (entered into force 1 January 1994) [*NAFTA*] art 1105. See Alexander, *supra* note 107 at 255.

[129] Kinka Gerke, "The Transatlantic Rift Over Cuba. the Damage Is Done" (1997) 32:2 Intl Spectator 27 at 40.

[130] *United States - The Cuban Liberty and Democratic Solidarity Act (Complaint by the European Communities)* (1996) WTO Doc WT/DS38/2 (Panel Report) [*EU-US Panel*], online: *WTO* <docs.wto.org> [**perma.cc/XJ29-72J3**].

General Agreement on Tariffs and Trade (GATT) as well as the General Agreement on Trade in Services (GATS).[131] Although the defense of the U.S. deemed to be the national security exceptions provisions of GATT and GATS, the U.S decided not to participate in the Panel proceedings.[132] Instead, parties began an intense negotiation round that led to an agreement regarding the suspension of the EU action brought to the attention of the WTO in return for granting the EU persons a waiver concerning the provisions of ILSA and suspension of the effective measures of LIBERTAD.[133]

As part of this agreement, known as the "European Union-United States: Memorandum of Understanding Concerning the U.S. Helms-Burton Act And the U.S. Iran And Libya Sanctions Act", the parties committed "to work together to counter the threat to international security posed by Iran and Libya [,] … to continue their efforts to promote democracy in Cuba" and "to address and resolve through agreed principles the issue of conflicting jurisdictions, including issues affecting investors of another party because of their investments in third countries."[134] This agreement promptly demonstrated the significance of the invocation to WTO dispute settlement body in settling challenges of secondary sanctions episodes at the international level.

With respect to the established Panel, the EU announced its objection against the U.S. secondary measures in six points:

(a) Trade restriction between the EU and Cuba/U.S.;
(b) U.S. access denial to its sugar tariff-rate quota;
(c) U.S. transit denial to EU goods and vessels through its ports;
(d) Prohibition of granting "any loan, credit or other financing" by US person;
(e) Granting a right to U.S. persons to sue EU persons in US forums; and,
(f) U.S. visa denial.[135]

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[131] Balan, *supra* note 41 at 368.
[132] Clark, *supra* note 62 at 88; Alexander, *supra* note 107 at 317.
[133] Balan, *supra* note 41 at 369.
[134] *European Union-United States: Memorandum of Understanding Concerning the U.S. Helms-Burton Act and The U.S. Iran And Libya Sanctions Act*, 11 April 1997, 36 I.L.M. 529 (1997).
[135] *EU-Us Panel*, at 1-2.

Based on the EU's claim before the Panel, the above measures violated several of the WTO's Articles, including Articles II (schedules of concessions), III (national treatment), V (freedom of transit), VI (anti-dumping and countervailing duties), XI (general elimination of quantitative restrictions), XIII (non-discriminatory administration of quantitative restrictions), XVI (subsidies), and XVIII (state trading enterprises) of GATT as well as GATS Annex on the Movement of Natural Persons Supplying Services under the Agreement paragraph 3 and 4.[136]

In addition to the inconsistency of the U.S. measures with the WTO's Articles, the EU argued that even if no conflict existed with the Articles of GATT and GATS mentioned earlier, the U.S. measures nullified and impaired (the wordings of GATT Article XXIII) the benefits of EU Members in dealing with Cuba.[137] Moreover, it was the EU's belief that the attainment of the objectives of GATT (the wordings of GATT Article XVIII), was impeded. These objectives include "the expansion of production and trade" as well as "the overall balance of rights and obligations between WTO Members, in particular, the right of access to markets, and the principle, recognized in GATT jurisprudence, that WTO Members should not try to force other WTO Members to change their sovereign policies through trade sanctions."[138]

The importance of the legal bases of the EU's complaint, made in 1996, is to recall that the EU remains free to react to 2018 U.S. secondary smart sanctions against Iran by bringing a new dispute to the WTO. The additional legal grounds that the EU can potentially invoke at the WTO include contesting the U.S.'s action to freeze the EU Members' corresponding bank accounts in

[136] *EU-Us Panel*, at 1-3. See also Balan, *supra* note 41 at 378-79.
[137] *EU-Us Panel*, at 3.
[138] *EU-Us Panel*, at 3.

the U.S., the U.S. exemptions given to only a few countries to buy Iran's oil[139] (violating GATS Article II and GATT Article I the most-favoured-nation treatment (MFN)), the U.S. sanction restricting EU Members' capital transactions and money transfer (violating GATS Article XI) and denying EU Members' access to U.S. market (violating GATS Article XVI).[140]

In contrast, although the U.S. did not participate in the established Panel in 1996 regarding Cuban sanctions, its action seems to be justified under national security exceptions of GATT Article XXI or its counterpart GATS Article XIV bis. Article XXI of GATT provides the following:

> Nothing in this Agreement shall be construed
> (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
> (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
>
> (i) relating to fissionable materials or the materials from which they are derived;
> (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
> (iii) taken in time of war or other emergency in international relations; or
>
> (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.[141]

The legality of WTO members' sanctions is embodied in this article. It suggests that imposing economic sanctions is based on the "essential security interest" in which the discretionary power is vested to parties who "consider" the appropriate measurements by themselves.[142] In the present

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[139] "India, China among 8 countries allowed to buy Iranian oil: Mike Pompeo" (5 November 2018): online, *The Economic Times* <economictimes.indiatimes.com/news/international/world-news/us-to-exempt-china-india-japan-from-iran-oil-sanctions-mike-pompeo/articleshow/66513697.cms>.
[140] See e.g. Balan, *supra* note 41 at 378—79.
[141] *General Agreement on Tariffs and Trade*, 30 October 1947, 58 UNTS 187 art XXI (entered into force 1 January 1948) [GATT 1947].
[142] Rostam J Neuwirth & Alexandr Svetlicinii, "The Economic Sanctions over the Ukraine Conflict and the WTO: 'Catch-XXI' and the Revival of the Debate on Security Exceptions" (2015) 49:5 J World Trade 891 at 904.

dispute, the U.S. may seek the subparagraph (b)(i) to justify its financial and oil sanctions to prevent indirectly Iran from acquiring fissionable materials necessary to build nuclear weapons.[143] Moreover, the "emergency in international relations" can be construed as a means to impose justified sanctions when interpreted broadly.[144]

The ambiguity of this Article allows the Member States to use sanctions readily. Ironically, Professor John Jackson describes its wordings as follows:

> This language is so broad, self-judging, and ambiguous that it obviously can be abused. It has even been claimed that maintenance of shoe production facilities qualifies for the exception because an army must have shoes![145]

Perhaps it is the ambiguity of this Article that no ruling has been made so far on national security exceptions claims in the dispute settlement mechanism of the WTO.[146]

Nevertheless, the attempt to invoke the security exception should not be neglected. In addition to the EU-U.S. challenge to Cuban sanctions, in 1985, the U.S. imposed economic sanctions against Nicaragua by invoking Article XXI.[147] In response, Nicaragua brought the case to the WTO, which led to the establishment of a Panel with a Report on "United States - Trade Measures Affecting Nicaragua",[148] but which was never adopted. The report indicated that "the Panel cannot examine or judge the validity or motivation for the invocation of Article XXI(b)(iii) by the United

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[143] Balan, *supra* note 41 at 384.
[144] *Ibid* at 387. *Contra* David T Shapiro, "Be Careful What You Wish for: U.S. Politics and the Future of the National Security Exception to the GATT" (1997) Geo Wash Intl L Rev 31:1 97 ("The WTO should follow the original interpretation of Article XXI, which permitted trade sanctions only in the face of threats to national security in time of war or other emergency. Under this definition the United States could only sanction its wartime enemies, nations that support such enemies, and nations that use indirect means to undermine U.S. national security." at 113).
[145] John H Jackson, *The World Trading System: Law and Policy of International Economic Relations,* 2nd ed (Cambridge, MA: MIT Press, 1997) at 229.
[146] Neuwirth and Svetlicinii, *supra* note 142 at 906.
[147] For detailed information regarding this sanctions episode, see William M Leogrande, "Making the Economy Scream: Us Economic Sanctions against Sandinista Nicaragua" (1996) 17:2 Third World Q J Emerging Areas 329.
[148] WTO, General Council, *Minutes of Meeting* (held on 12 March 1986), WTO Doc C/M/196 at 7, online (pdf): *WTO* <docs.wto.org> **[perma.cc/252K-UV83] [*US-Nicaragua*]**

States"[149] because the U.S. conditioned its participation in the Panel by not examining the motivations behind the invocation of XXI(b)(iii).[150] Therefore, while there is no precise meaning of the national security exceptions, the U.S. merit defense against the EU possible dispute at the WTO regarding the 2018 Iran sanctions may encompass the provisions of GATT Article XXI or its counterpart GATS Article XIV bis.[151]

[149] ***US-Nicaragua,*** at 14. See also WTO, "Interpretation and Application of Article Xxi" online (pdf): WTO <www.wto.org> [**perma.cc/74YH-5ER3] at 601.**
[150] Alan S Alexandroff & Rajeev Sharma, "The National Security Provision – GATT Article XXI' in Arthur E Appleton & Patrick F J Macrory, eds, *The World Trade Organization: Legal, Economic, and Political Analysis* (New York: Springer, 2005) 1571 at 1576.
[151] See generally Raj Bhala "National Security and International Trade Law: What the GATT Says, and What the United States Does" (1998) 19:2 U Pa J Intl L 263.

D. Conclusion

In the evaluation of the legitimacy of economic sanctions under public international law, this chapter began with situations in which states invoke forceful economic measures against a wrongdoer when international obligations are violated, international interest is endangered, or states' national security is jeopardized.

To evaluate the permissible limits of public international sanctions, the components of the notion of "secondary smart sanctions" was discussed in details with a special focus on the mechanisms of Ombudsperson and focal points at UN level as well as the violation of due process rights and the issue of extraterritoriality. These discussions illustrated that although international law both makes it possible to impose "smart sanctions" and "secondary sanctions" and limits their application, the combination of these two, i.e., "secondary smart sanctions", would call into question the permissible limits of public international law.

It was also discussed that with a sender's demand, third-party states choose between compliance or defiance during a sanctions episode. By choosing the latter, third states may issue a blocking regulation to mitigate the effects of sanctions on their businesses such as the Canadian Blocking Order of 1996 against U.S. secondary sanctions on Cuba, EU Blocking Statute of 1996 against the same U.S. secondary sanctions on Cuba, and EU Blocking Statute of 2018 against U.S. secondary sanctions on Iran. In addition, they can bring a claim to international forums like the dispute settlement body of the WTO. For instance, this was a case when the EU retaliated the U.S. sanctions against Cuba, Libya, and Iran by establishing a WTO Panel. It was shown that under such circumstance, the possible merit defense of the U.S. relied on the national security exceptions of GATT Article XXI and GATS Article XIV bis.

V. Chapter Two: The Role, Challenges, and Approaches of Transnational Actors in the Contemporary World

The fundamental concerns regarding economic sanctions regimes under public international law were addressed in Chapter one. In the evaluation of the legality of economic sanctions, it was seen that "secondary smart sanctions regime" would extend beyond the permissible limits of public international law. As expected, an invocation of such a regime can lead to negative reactions of other international actors against the sanctions imposers. The international actors' efforts to protect international order from an ambitious sender state would nevertheless be fruitless when transnational actors—including transnational corporations (TNCs) and transnational banks (TNBs)—strive to comply with senders' sanctions to protect their essential interest. Chapter two, hence, investigates the expanded role of transnational actors in the contemporary world, the challenges they have in selecting appropriate foreign markets, and the approaches they take to manage and control risks inherently existing in trans-border commerce, especially in sanctioned countries.

In order to explore the expanded role of transnationalism, this chapter employs an interdisciplinary approach to offer economic implications of transnationalism and to provide a deeper understanding of the role of transnational private actors (TNPAs) in lawmaking and policymaking processes. By adopting a fundamental research method, this chapter continues investigating the study fields of market selection and business risk management (including country risk, industry risk, institutional risk, and legal risk) in conjunction with economic sanctions regimes.[152] The result indicates that in sanctions regimes, legal risks (business liability arising out

[152] Terry Hutchinson & Sanne Taekema, "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law" (2016) Erasmus L Rev 130 at 131.

of stakeholders' negligence or misconduct in sanctions episodes) can transform to country, industry and institutional risk, and therefore, affect the TNPAs' decisions to stay or withdraw from a sanctioned market. Notably, half of the discussion on market selection and business risk management has devoted to definitions and categorization of concepts as a prerequisite to comprehend the conclusion of this chapter and to understand the challenges of dealing with a sanctioned market.

This chapter also employs the compliance theory in which states' compliance with or defiance of the norms of international law is detailed, but it extends the discussion beyond just state-centric perspective of this theory;[153] although states are deemed to be the addressees of international norms, they are not the only targets of these norm.[154] In other words, having an actor focused approach may not be sufficient to understand the critical role of other international actors, such as transnational private actors, in the interpretation and enforcement of international law and subsequent compliance with these norms.[155] In fact, transnational private actors' interpretation and enforcement of law is more focused on rational choice and risk mitigation rather than strict compliance with law, as will be discussed during this chapter.

A. Expanded Scope of Transnationalism in recent Decades: Integration of Economies, Harmonization of Laws, and Development of Lex Mercatoria

Operating cross-border businesses are not limited to recent decades or centuries. Nonetheless, its contemporary scope varies considerably by virtue of globalization through

[153] Robert Howse & Ruti Teitel, "Beyond compliance: Rethinking Why International Law Really Matters" (2010) 1:2 Global Policy 127 at 131.
[154] Tanja Börzel, "Private Actors on the Rise? The Rol of Non-StateActors in Compliance with International institutions" (2001) Otto Suhr Institute for Political Science 2000/14 1 at 1—2.
[155] Andrew T Guzman, "A Compliance-Based Theory of International Law" (2002) Cal L Rev 90:6 1823 at 1830.

integration of economics and societies as well as the development of communication and information technology.[156]

TNCs, as the key players of the globalization process, initially expand their activities in neighbouring territories and then take advantage of colonial links to promote their international trade and transaction by creating internal trade networks.[157] Such networks of parent-subsidiaries spread throughout the world which results in the creation of business-related services in the form of banks to respond to demands for internationalization of capital transfer.[158]

TNCs contribute to global developments by exporting foreign direct investments (FDI) to host countries, thereby boosting economic development and providing more economic opportunities for low-income states.[159] According to the United Nations Conference on Trade and Development (UNCTAD), in 1995, the number of foreign subsidiaries of parent companies was estimated around 250,000, while this number increased to 890,000 in 2010.[160] In 2017, the total sales of the top 100 most valuable companies reached approximately ten percent of the world GDP.[161] Today, TNCs control more than half of international trade and help to increase the global

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[156] Grazia Ietto-Gillies, *Transnational Corporations: Fragmentation Amidst Integration* (London: Routledge, 2002) at 3—4.
[157] *Ibid* at 4.
[158] John Langdale, "Electronic Funds Transfer and the Internationalisation of the Banking and Finance Industry" (1985) 16:1 Geoforum 1 at 1—2.
[159] Stephen R Buzdugan & Heinz Tüselmann, "Making the Most of FDI for Development: "New" Industrial Policy and FDI Deepening for Industrial Upgrading" in *Transnational Corporations Investment and Development* (New York, UN, 2018) 1 at 2—4. UNCTAD, "Transnational Corporations" online: <https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=2125>.
[160] Małgorzata Jaworek & Marcin Kuzel, "Transnational Corporations in the World Economy: Formation, Development and Present Position." (2015) 4:1 Copernican J Finance & Accounting 55 at 57—58.
[161] World Investment Report 2018, *UNCITAD,* online: <Https://Unctad.Org/En/Pages/Publicationwebflyer.Aspx?Publicationid=2130 > at 26.

wealth, access to modern technology, and rate of employment.[162] By virtue of comparative advantages, TNCs produce better-qualified yet cheap products.[163]

As an inevitable outcome of spreading TNCs, TNBs expanded internationally in response to their customers abroad in order to provide them financial services.[164] According to the United Nations Centre on Transnational Corporations (UNCTC), a bank is considered transnational when it has branches and majority-owned subsidiaries in five or more different countries.[165] Historically, the modern cross-border banking started with the growth of British banks prior to World War I and continued through the expansion of U.S. banks in 1960s;[166] the number of U.S. foreign affiliates increased from 124 banks in 1960 to 532 in 1970.[167]

The primary services of these financial institutions include the attraction of money deposit and lending at higher interest.[168] In 1975, the TNBs possessed total assets of $442 million U.S. dollars with 84 parent companies and a total of 3,941 subsidiaries around the world.[169] In 2015, the total assets of only 100 biggest banks in the world reached $78 trillion U.S. dollars, and the foreign subsidiaries of the top 10 of them reached 13,174.[170] This rapid expansion of overseas branches

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[162] Marcel Kordos & Segej Vojtovic, "Transnational Corporations in the Global World Economic Environment" (2016) 230 Procedia - Social and Behavioral Sciences 150 at 152—53.
[163] *Ibid* at 152. Comparative Advantage is "The Application of the Specialisation Principle to the Situation Where the Actors Are in Different Nations." Simon N Lester, Bryan Mercurio & Arwel Davies, *World Trade Law: Text, Materials, And Commentary*, 3d Ed (Oxford: Hart Publishing, 2018) at 23.
[164] Greg Crouch, 1979 "Transnational Banks and the World Economy." (1979) 51:2 Australian Q 66 at 66.
[165] Richard Bernal, "Transnational Banks, the International Monetary Fund and External Debt of Developing Countries" (1982) 31:4 Soc & Economic Studies 71 at 72.
[166] Barry Williams, "Multinational Banking and Global Capital Markets" in Pasquale Michael Sgro, ed, *International Economies, Finance, and Trade*, vol 2 (Paris, EOLSS Publications, 2009) at 2.
[167] Langdale, *supra* note 158 at 2.
[168] Crouch, *supra* note 164 at 67.
[169] Crouch, *supra* note 164 at 67.
[170] James R Barth & Clas Wihlborg, "Too Big to Fail and Too Big to Save: Dilemmas for Banking Reform", *Research* gate *(December 2015)*, online: <https://www.researchgate.net/publication/288488654_Too_Big_to_Fail_and_Too_Big_to_Save_Dilemmas_for_Banking_Reform> at 59—69.

and subsidiaries of TNBs had played a major role in the mobility of capital and production around the globe.

In addition to the economic role of transnational private actors, they have had a significant influence on the development of new bodies of law. Over time, the daily cross-border practices and behaviour of businesses and financial institutions developed an informal, technical, specific, and non-state oriented rulemaking process.[171] The first model of this bottom-up *lex mercatoria* or merchant law distinguished itself from traditional top-down international lawmaking process where states supplied treaty-based rules and public authorities enacted, interpreted and enforced national laws.[172] In fact, the practices of private actors led to the creation of guiding norms and provisions for future interactions and soon became binding when market participants repeatedly employed them in their daily activities.[173]

A common feature of this bottom-up lawmaking processes is their creation of a soft international law that lacks a coercive power to implement and enforce industry self-regulated norms.[174] Instead, the voluntary participation in community networks creates a strong pressure

[171] Roger Cotterrell, "What Is Transnational Law?" (2012) 37:2 Law & Soc Inquiry 500 at 513, 520; Janet K Levit, "A Bottom-Up Approach to International Lawmaking: The Tale of Three Trade Finance Instruments" (2005) 30:1 Yale J Intl Law 125 at 180.
[172] Cotterrell, *supra* note 171 at 509; Levit, *supra* note 171 at 126.
[173] See Harold Hongju Koh, "Why Do Nations Obey International Law?" (1997) 106:8 Yale J Intl Law 2599 at 2646; Ralf Michaels, "The True Lex Mercatoria: Law Beyond the State." (2008) 14:22 Ind J Global Leg Stud 447 at 457. See Also Levit, *supra* note 20 at 182.
[174] Levit, *supra* note 171 at 172.

against a member's misbehaviour to cover a wide range of powerful sanctions.[175] As Cotterrell explains:

> Among specific sanctions are reduction in reputation among peers and business partners; loss of opportunities for productive dealing with other members of the communal network; denial of access to knowledge available to other members; blacklisting; less favourable terms and conditions of trade; less availability of co-operation from other members; and ultimately exclusion from the communal network.[176]

Over time, this growing interest in the harmonization of *lex mercatoria* constituted a global law that was independent from national laws and international state-made commercial laws and was adequate for international commerce. To exemplify, in the late 20th century, the Uniform Customs and Practice for Documentary Credits (UCP) determined uniform standards for issuing letters of credit via commercial banks.[177]

The bottom-up lawmaking evolved into a new form of *lex mercatoria* by establishing a new system of harmonized law by re-publicization of private regulations through international institutions, such as UNIDROIT, UNCITRAL, and international arbitration forums.[178] The soft law generated by these institutions gains more legal weight and concretizes into hard law if states ratify it, embed it in international treaties,[179] or apply it through domestic courts.[180] For example, the

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[175] Marie-Laure Djelic & Sigrid Quack, "Transnational Communities and Their Impact on the Governance of Business and Economic Activity" in Marie-Laure Djelic & Sigrid Quack, Eds, *Transnational Communities: Shaping Global Economic Governance* (Cambridge: University Press, 2010) 377 at 389. The examples of these serious and powerful sanctions can be seen in e.g., Lisa Bernstein, "Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms, And Institutions" (2001) Michigan Law Rev 99:7 1724 at 1737-38 ("[b]ecause membership in a shippers' association strongly affects the profitability of a merchant's domestic business and is essential to participation in the international cotton trade, these association and exchange imposed penalties, together with their attendant social and reputational sanctions, are usually sufficient to induce merchants to promptly comply with arbitration decisions unless they are bankrupt or in severe financial distress.")

[176] Cotterrell, *supra* note 171 at 521.

[177] Levit, *supra* note 171 at 129; Michaels, *supra* note 173 at 457.

[178] Faria José Angelo Estrella, "Future Directions of Legal Harmonisation and Law Reform: Stormy Seas or Prosperous Voyage?" (2009) 14 Unif L Rev 5 at 5–7; Michael, *supra* note 22 at 448.

[179] Levit, *supra* note 20 at 173; Michaels, *supra* note 22 at 448 (it is also said that PICC is not a *lex mercatoria* because it is derived from municipal laws of states rather than mere private practices. However, in the literature, it is called a "new new *lex mercatoria*" which constitutes a new source of global commercial law.).

[180] Levit *supra* note 171 at 142.

UNIDROIT Principles of International Commercial Contracts (PICC) were drafted as a restatement of global commercial contract law which was then employed in legislative reforms, like the Civil Code of Quebec and the Uniform Act of Organization for the Harmonization of Business Law in Africa (OHADA).[181] The importance of *lex mercatoria* in economic sanctions regimes will be detailed at the end of chapter three by providing the example of the Worldwide Interbank Financial Telecommunication (SWIFT), and its role in the reinforcement of U.S. sanctions against Iran's nuclear program.

The role of TNPAs' lawmaking in the contemporary world, whether rooted in individuals' practices or institutionalized rulemaking, is significant for two reasons. First, TNPAs improve and reform domestic commercial laws by exposing them to better laws.[182] Second, they reduce uncertainty and unpredictability between transaction parties facing divergent rules of international commerce in different jurisdictions and so, mitigate legal risk and maximize the value of transactions in foreign markets.[183] Mitigating legal risk allows merchants to fulfill their commitments based on clear and explicit instructions and expectation while it provides contractual flexibility where needed.[184] Transnational private regulations therefore constitutes:

> [A] new body of rules, practices and processes, created primarily by private actors, firms, NGOs, independent experts like technical standard-setters and epistemic communities, either exercising autonomous regulatory power or implementing delegated power, conferred by international law or by national legislation. Its recent

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[181] Sarah Lake, "An Empirical Study of the UNIDROIT Principles: International and British Responses" (2011) 16:3 Unif Law Rev 669 at 696-97. See generally Michael Joachim Bonell, *The UNIDROIT Principles in Practice: Case law and Bibliography on the UNIDROIT Principles of International Commercial Contracts*, 2nd ed (Ardsley, NY: Transnational, 2006) at 47. See also Presentation: OHADA – UNIDROIT, online: <Https://Www.Unidroit.Org/121-Research-Scholarships-And-Internships/516-Preparation-By-Unidroit-Of-A-Draft-Ohada-Uniform-Act-On-Contract-Law>.

[182] Levit, *supra* note 171 at 141.

[183] Paul B Stephan, "The Futility of Unification and Harmonization in International Commercial Law" (1999) 39:3 Va J Intl L 743 at 746.

[184] *Ibid* at 746—47.

> growth reflects (A) a reallocation of regulatory power from the domestic to the global sphere and (B) a redistribution between public and private regulators. [185]

The proliferation of transnationalism and internationalization of private practices have played a major role in the unification and harmonization of divergent rules in addition to affecting global wealth and welfare. On this basis, one can see that TNBs and TNCs, as key players of transnationalism, have a significant influence on the development of countries and possess an important role in the expansion of international business and trade. Because of such an influence, TNPAs' exit from target states' markets not only would have a negative impact on target states' economies but also considerably reinforces sender states' sanctions, as will be detailed in chapter three.

B. Transnationalism, Market Selection, and Business Risk Management

In transacting business abroad, TNBs and TNCs act in their own best interest and evaluate international opportunities to establish their affiliates in less risky and more stable environments. Hence, selecting the right markets as well as detecting and managing potential risk become strategically important. In this section, market selection and business risk management will constitute the main discussion of the chapter. The ultimate aim is to understand how transnational actors expand in foreign markets, especially the markets of countries currently facing with sanctions or those that had experienced sanctions, and how they change the sanctions' outcome.

For the life of their businesses, transnational private actors (TNPAs) operating in foreign markets should be aware of political, social, legal, and economic situations and conditions in foreign host countries. In order for TNPAs to choose the best foreign market, two challenges need

[185] Colin Scott, Fabrizio Cafaggi & Linda Senden, "The Conceptual and Constitutional Challenge of Transnational Private Regulation" (2011) 38:1 JL & Soc'y 1 at 1.

to be addressed: (1) selecting attractive and profitable markets and (2) evaluating their potential business risks.

1. Market Selection

Selecting target markets is crucial for TNPAs because it helps them to develop effective marketing strategies and distribute products and services more easily in competitive markets. The importance of selecting the appropriate target markets will be seen at the end of this chapter. From an interdisciplinary perspective, in market selection literature, scholars have suggested different factors for selection of appropriate markets. This includes market size and growth, economic development, infrastructure, quality of life and life expectancy, market intensity (the ability to satisfy unfulfilled needs), market receptivity (the ability to export and import), cultural distance (the differences between foreigners and host countries), investment climate, psychic distance (differences in language, education, business practice, and industrial development), legal framework (intellectual property and property rights), competition, market knowledge, technology, available resources, amongst others.[186]

In order to evaluate the potential markets, TNPAs can choose between grouping (clustering) and ranking approaches.[187] The importance of using these approaches will be shown at the end of this chapter; TNPAs can use, e.g., the ranking of the Work Bank Report on Ease of Doing Business for evaluating the sanctioned markets. Concerning the grouping approach, TNPAs group countries based on similarities that exist in political, social and economic environments

[186] Henric Arnstorp, *Foreign Market Entry Strategies in Developed and Emerging Economies* (Master Thesis, Norwegian University of Science and Technology, 2013) [unpublished] at 8, 49—50. See also Dorota Górecka & Małgorzata Szałucka, "Country Market Selection in International Expansion Using Multicriteria Decision Aiding Methods" (2013) 8 Publishing House U Economics Katowice 31 at 33; Sema Sakarya, Molly Eckman & Karen H Hyllegard, "Market Selection for International Expansion: Assessing Opportunities in Emerging Markets" (2007) 24:2 Intl Marketing Rev 208 at 211—12; Jan Johanson & Jan-Erik Vahlne, "The Internationalization Process of the Firm—a Model of Knowledge Development and Increasing Foreign Market Commitments" (1977) 8:1 J Intl Bus Studies 23 at 24.

[187] Górecka, *supra* note 186 at 37.

between potential markets and their own domestic market. With respect to the ranking approach, TNPAs score countries based on their overall attractiveness, such as their ease of access to foreign market and economic size of host countries. Markets that receive the highest scores will be selected for further analyses.[188]

By choosing one of these approaches, TNPAs begin with evaluating the market selection factors indicated above in three stages: preliminarily screening, in-depth screening/identification, and final selection.[189] At the screening level, although there is no common criteria to determine screening factors, TNPAs can analyze macro-level factors, e.g., market size and economic growth rate, to remove from the list of potential markets those countries that do not meet their business objectives.[190] At the identification stage, TNPAs examine short-listed countries extracted from the screening stage in order to investigate the attractiveness of their industries, e.g., the level of competition between TNPAs and the role of substitute products and services.[191] At final selection stage, a chosen foreign market should meet the goals and objectives of the business, provide suitable resources and infrastructure for business operation, matched with estimated costs and revenues, and be compatible with a proposed project.[192]

In the selection of potential countries, emerging markets such as developing countries should be examined differently because they provide long-term opportunities that do not exist in saturated developed countries, especially in sanctioned countries.[193] In addition to the above factors, examining emerging markets requires analyzing extra elements; in study by Sakarya,

[188] Sakarya, *supra* note 35 at 212.
[189] Górecka, *supra* note 186 at 34.
[190] *Ibid* at 36.
[191] Sakarya, *supra* note 186 at 212.
[192] Górecka, *supra* note 186 at 34.
[193] Sakarya, *supra* note 186 at 213.

Eckman, and Hyllgerad, four additional elements of analyses consider long-term market potentials, cultural distance, competitive strength of the industry, and customer receptiveness.[194]

Long-term market potentials have a primary role in the expansion of TNPAs into emerging foreign countries, in which a young population of consumers exists, a less competitive market is beneficial, and economic liberalization is on the agenda.[195] With respect to cultural distance, the market selection process can be influenced when cultural differences—including differences in legal systems, administrative practices, and working style[196]—put a barrier on TNPAs' obtaining knowledge of target markets.[197] By analyzing competitive strength, TNPAs improve their understanding of foreign markets through the evaluation of rival competition in target industries,[198] and by analyzing customer receptiveness TNPAs find the opportunity to assess customers' perspectives on their social acceptance rates, their global reputation, and the reputation of the TNPAs country of origin.[199]

TNPAs' decisions to expand abroad create several opportunities for their stakeholders, yet business risk constantly threatens their interests. In some situations, long-term opportunities exist in countries where risk factors can negatively influence the expansion of TNPAs. Sanctioned countries, for example, potentially carry more risks which may or may not be found in other countries. If sanctioned countries receive the highest score in the market selection process, not only is risk management needed, but also familiarization with risk indicators directly associated with economic sanctions become a priority.

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[194] Sakarya, *supra* note 186 at 215–20.
[195] Arnstorp, *supra* note 186 at 1; Sakarya, *supra* note 186 at 215.
[196] Sakarya, *supra* note 186 at 217.
[197] Johanson, *supra* note 186 at 26.
[198] Sakarya, *supra* note 186 at 217.
[199] Sakarya, *supra* note 186 at 219–20.

To investigate the risk of doing business abroad, this paper begins with business risk management applicable to all markets and ends with risks that inherently exist in sanctioned markets.

2. Business Risk Management

After selecting an appropriate market, the other overlapping issue in doing business abroad is risk management because successful TNPAs should continuously observe threats and hazards that negatively would impact their business's operation and objectives. If a business fails, not only its business managers lose, but also investors, employees, suppliers, and consumers will be significantly affected in much the same way.[200] In environments full of uncertainty and unpredictability, therefore, managing risk is inevitably a necessary.

A risk is defined as "the chance that an undesirable event will occur and the consequences of all its possible outcomes."[201] For some scholars, a risk is a performance variance which may encompass positive or negative outcomes such as when a war puts countries' infrastructure at risk but brings more profit for arms manufacturers. For others, a risk is the likelihood of negative impacts on expected profits.[202] For both groups, the negative aspect of risk requires the adoption of risk management strategies to reduce behaviours that put business at risk. According to the International Organization for Standardization (ISO), risk management is needed when "[r]isks affecting organizations can have consequences in terms of economic performance and professional reputation, as well as environmental, safety and societal outcomes. Therefore, managing risk effectively helps organizations to perform well in an environment full of uncertainty."[203]

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[200] Rahul Patil, Katie Grantham & David Steele "Business Risk in Early Design: A Business Risk Assessment Approach" (2012) 24:1 Engineering Management J 35 at 35
[201] *Ibid*.
[202] Michel Henri Bouchet, Ephraim Clark & Bertrand Groslambert, *Country Risk Assessment: A Guide to Global Investment Strategy*" (Hoboken, NJ: Wiley Finance, 2003) at 9—11.
[203] ISO 31000, *Risk Management*, online: <https://www.iso.org/iso-31000-risk-management.html>.

Given that performing risk management forecasts financial loss and market failure, TNPAs who develop risk strategies can effectively control and manage uncertainty in doing business, compare and rank opportunities, and help stakeholders in decision-making processes.[204] This performance requires analyzing different risk indicators existing in foreign markets; scholars have analyzed and categorized these indicators and created different category of risk, including country risk, industry risk, institution risk, and legal risk. After reviewing the nature of each category, risk management steps will be investigated by using the examples of legal risk.

a) Country Risk

In general, the mainstream sources of business risk can be either governments' interference or environmental instability.[205] The interaction between these sources creates different types of risk (political risk, sovereign risk, credit risk, foreign exchange risk, cross-border risk, financial risk, country risk, and the like)[206] in which the more inclusive one is the "country risk". That is, any additional risk in foreign capricious markets which is not available in domestic environments, including national differences in economic, social, and political circumstances.[207] From the point of view of Bouchet, Clar, and Groslambert, country risk is a broader category consisting of natural risk, socio-political risk, and economic risk.[208]

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[204] Glenn R Koller, *Risk Assessment and Decision Making in Business and Industry: A Practical Guide*, 2nd ed, (Boca Raton, FL: Chapman & Hall/CRC, 2005) at 13.

[205] Duncan H Meldrum, "Country Risk and Foreign Direct Investment: Customized, Systematic Country Risk Assessment Is Critical for Companies that Contemplate Activity Abroad" (2000) 35:1 Bus Economics 33 at 13.

[206] Susan K Schroeder, "The Underpinnings of Country Risk Assessment." (2008) 22:3 J Economic Surveys 498 ("[s]overeign risk is the risk that a country cannot generate the earnings to keep up with debt service payments (credit risk) and/or that it does not have enough foreign exchange on hand to transmit earnings to foreign creditors (transfer or foreign exchange risk). Foreign exchange risk is thought to depend on a country's nondebt payments such as reparations or assistance to allies and on economic imbalances that could lead to an expansion of the money supply" at 504). See also Bouchet, *supra* note 202 ("Financial risk analysis involves an assessment of the country' s foreign financial obligations compared to its ongoing and prospective economic situation." at 45).

[207] Meldrum, *supra* note 205 at 33.

[208] Bouchet, *supra* note 202 at 13, 16.

In their study, natural risk simply concerns natural phenomena such as an earthquake which negatively impacts the business objectives directly (the destruction of buildings, headquarters, equipment) and indirectly (blocking the access to businesses' facilities).[209] More challenging concepts are economic risk, which splits into macroeconomic and microeconomic, as well as socio-political risk, which divides into the three subcategories of social movements, political incidences, and government policy.

Macroeconomic risk occurs when all TNPAs are affected in the same way due to economic fluctuations, such as constant increase and decrease in banks' interest rates, foreign exchange rates, inflation rates, and goods and services prices. The remarkable example of macroeconomic risk for businesses is Venezuela where the inflation rates reached 1,700,000% in December 2018, and national currency plummeted at least 30 times from 2014 to the end of 2018 compared to the U.S. dollar.[210]

At the same time, if economic risk is directed towards a specific sector or at the firm level, it constitutes a microeconomic risk. This risk affects "production, marketing, finance, supply and logistics, human resources, technology, [and] organizational structure" as well as business resources such as labour, capital, and raw materials.[211]

The category of social movements risk generally comprises informal people's actions or non-governmental organizations movements against the influence of TNPAs in foreign markets.[212] Specifically, social risk is embedded in collective social movements like social unrests,

[209] Bouchet, *supra* note 202 at 16.
[210] Venezuela Inflation Rate, *Trading Economics*, online: <https://tradingeconomics.com/venezuela/inflation-cpi>; 4 Reasons why Venezuela became the World's Worst Economy, *CNN Business (October 25, 2016)*, online: <https://money.cnn.com/2016/10/25/news/economy/venezuela-breaking-point/index.html>; The Impact of Venezuela's Bolivar Exchange Rates, *Investopedia*, online: <https://www.investopedia.com/articles/forex/022415/impact-venezuelas-bolivar-exchange-rates.asp>.
[211] Bouchet, *supra* note 202 at 22–24.
[212] *Ibid* at 17.

disagreements, boycott, demonstrations, and even small-scale terroristic attacks. If such social reactions develop aggressively, they may lead to violence, such as when the U.S.-based Occidental Petroleum Corp. was facing terroristic attacks from rebel groups in Columbia while it was extracting oil from a newly found oil field.[213] This risk distinguishes itself from political risk by questioning the legitimacy of foreign businesses' operation in a home country rather than laying out political demands to incumbent government.[214]

A prevalent example of socio-political risk is political incidents risk.[215] This subcategory of risk threatens TNPAs when political changes, political instabilities, political violence, wars, or democratic evolutions occur in a host country.[216] These incidences may lead to nationalization, expropriation, or confiscation of TNPAs assets as well as discriminatory behaviours such as tax and operation limitation.[217] As Robock describes, political risk exists:

> (1) [w]hen discontinuities occur in the business environment, (2) when they are difficult to anticipate and (3) when they result from political change. To constitute a 'risk' these changes in the business environment must have the potential for significantly affecting the profit or other goals of a particular enterprise.[218]

The last subcategory of socio-political risk is the government-policy risk which differs from policy risk by covering authorities' unanticipated and harmful actions against TNPAs. The examples include "expropriation/nationalization, breach of contract including loan repudiation, foreign exchange controls, trade restrictions or trade agreements that could favor some foreign competitors at the expense of others".[219] If the breach of a contract arises out of parties' failure to

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[213] Bouchet, *supra* note 202 at 18.
[214] Kent D Miller, "A Framework for Integrated Risk Management in International Business" (1992) 23:2 J Intl Bus Studies 311 at 315–316.
[215] *Ibid* at 311.
[216] Bouchet, *supra* note 202 at 18.
[217] Charles Pahud de Mortanges & Vivian Allers, "Political Risk Assessment: Theory and the Experience of Dutch Firms" (1996) 5:3 Intl Bus Rev 303 at 304; Bouchet, *supra* note 202 at 19.
[218] Steely H Robock, "Political Risk: Identification and Assessment" (1971) 6:4 Columbia J World Bus 6 at 7.
[219] Pahud de Mortanges, *supra* note 217 at 304; Bouchet, *supra* note 202 at 19.

fulfill their obligations, it does not constitute a government-policy risk; rather, it is a legal risk which will be discussed shortly.

b) Industry Risk

Industry risk is a broad category of risks which is associated with production process, demand for products, and competition between rivals.

The more TNPAs expand, the more they need to examine quantities and qualities of inputs needed for their production process that are available in foreign markets. This examination is important because other domestic and foreign businesses may require the same input while the number of input suppliers is limited. In this situation, competition is reduced and prices may be manipulated more easily. In addition to these input-related concerns, industry risk increases when demand for final products varies based on changes in customers' taste or the existence of substitute products. More serious industry risks emerge when TNPAs fail to consider existing competitors' outputs or when new entrants come up with new technologies and innovations.[220]

c) Institutional Risk

Risk on a smaller scale than country risk and industry risk may come from businesses' internal affairs in the forms of operational issues, research and development projects (R&D) disruption, and debt collection problems.

The operational issue arises from different situations. Mainly, it relates to labour unrest and unproductivity as well as managerial self-interest behaviours. These issues reduce TNPAs' productivity and in the worst-case scenarios may create legal risk against stakeholders. Operation-related issues also concern the risk of raw material shortage and supply restrictions that make

[220] Miller, *supra* note 63 at 214—18.

products inputs scarce.[221] Input deficit can be evaluated within the framework of microeconomic risk when negotiations between a purchaser and supplier fail or within the framework of macroeconomic risk when economic sanctions limit import and export of raw materials, product-related materials and spare parts. Operational risk may also arise out of machine failure or cyber-attacks, which may create body injury, data breach, or monetary damage to business.[222]

Research and development (R&D) disruption and debt collection problems also increase the risk of an institution. Investing in R&D requires predictability of businesses' outcome, timeline building, business budget planning, and products innovation in order to meet long term goals. Correspondingly, lack of long-term plan with respect to collection of debt from customers and clients would affect an institution's income. This issue has much more impact on transnational banks and financial sectors who rely on financial stability in the form of money deposit and loan.[223]

d) Legal Risk

After briefly exploring the aforementioned risk categories, what matters to the discussion flow of this thesis is legal risk, specifically when country, industry, and institution risks also create legal uncertainty among transnational actors.

In the first glimpse, legal risk refers to business liability arising out of stakeholders' negligence or misconduct. However, legal risk also encompasses the situations in which legal provisions themselves unexpectedly impact different components of societies, businesses, and individuals who apply them in their daily routine.

The literature pays attention to both aspects; first, legal fear makes TNPAs exercise caution to avoid lawsuit abuse and subsequent reputation damage. This form of legal risk may arise out of

[221] Miller, *supra* note 63 at 214—20.
[222] Miller, *supra* note 214 at 318—20.
[223] *Ibid*.

customers' complaints; breach of a statute, regulation, mandate, or contract; infringement of intellectual property rights; ignorance of precedents; or non-compliance with bylaws, articles of incorporations, and operating procedures. The existence of such potential legal risks in the life of every business, therefore, creates more responsibility for TNPAs to seek higher protection levels (e.g. putting warning labels on products) to prevent legal actions.[224]

Second, rights and obligations determined by laws and regulations may create legal risk when TNPAs find them unclear and uncertain and their lack of legal knowledge make interpretation difficult. The situation can be worse if TNPAs simultaneously encounter international laws, regional agreements, and domestic laws governing their activities.[225]

Despite lack of standard definition of legal risk in the literature,[226] the International bar Association (IBA) and the Operational Risk Exchange Organization (ORX) have tried to describe it. According to IBA, legal risk is

> [t]he risk of loss to an institution which is primarily caused by:
>
> 1. (a) a defective transaction; or
> 2. (b) a claim (including a defense to a claim or a counterclaim) being made or some other event occurring which results in a liability for the institution or other loss (for example, as a result of the termination of a contract) or;
> 3. (c) failing to take appropriate measures to protect assets (for example, intellectual property) owned by the institution; or

[224] See generally Luc Thévenoz, "Intermediated Securities, Legal Risk, and the International Harmonisation of Commercial Law" (September 19, 2007), online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1008859>.; Philip K Howard, "The Dynamics of Legal Risk" (2008) 56:2 Drake L Rev 505; J. R. Terblanché, "Legal Risk and Compliance for Banks Operating in a Common Law Legal System" (2012) 7:2 J Operational Risk 67; Katja Julie Würtz, "The Definition of Legal Risk and Its Management by Central Banks" (2007) 1:1 Intl In-House Counsel J 43.
[225] Emilia Mišćenić & Raccah Aurélien, eds. 2016. *Legal Risks in EU Law: Interdisciplinary Studies on Legal Risk Management and Better Regulation in Europe* (Switzerland: Springer, 2016); Luc Thevenoz, "Intermediated Securities, Legal Risk, and the International Harmonization of Commercial Law" (2008) 13:2 Stan JL Buss & Fin 384 at 417.
[226] Richard Moorhead & Steven Vaughan, "Legal Risk: Definition, Management and Ethics" (March 2015), online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2594228> at 2; Mišćenić, *supra* note 225 at 5.

4. (d) change in law.[227]

According to ORX, legal risk is defined as:

> [t]he risk of loss resulting from exposure to (1) noncompliance with regulatory and/or statutory responsibilities, and/or (2) adverse interpretation of and/or unenforceability of contractual provisions.

These definitions include both aforementioned situations where business operations result in legal responsibility and where legal provisions are considered the source of risk, but excludes the potential risks that exist in uncodified rules and precedents in a common law legal system.[228]

In order to manage legal risk, TNPAs take the same steps that were taken in dealing with country, industry, and institution risks i.e., risk identification and prevention, risk assessment, and eventually risk mitigation and control.[229] At identification level, based on the opinion of legal experts, an institution initially needs to define which functional areas of a business would become subjects to legal audit.[230] These areas include responsibility of employers and employees with respect to internal bylaws and policies as well as business operational adjustment according to external applicable laws.[231] After, TNPAs need to identify the fields of law that give birth to legal risk, e.g., tax law, antitrust law, intellectual property law, labour law, and alike.[232] Identified factors are then prioritized according to their level of impact on institutions' objectives.[233]

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[227] International Bar Association Working Party on Legal Risk, "The Management of Legal Risk by Financial Institutions", 2003, online: <https://www.federalreserve.gov/SECRS/2005/August/20050818/OP-1189/OP-1189_2_1.pdf> at 13 [IBA]; Operational risk reporting standards (ORRS), July 12, 2012, online: <http://www.susep.gov.br/setores-susep/cgsoa/coris/dicem/arquivos-gt-operacional/ORRS%20Complete%20Text.pdf>.

[228] Terblanché, *supra* note 224 ("[t]he IBA and ORX definitions of legal risk and compliance focus on statutory compliance as well as contract management …these definitions are also inadequate, because they disregard the rest of the legal system in so far as it is uncodified." at 70).

[229] Moorhead, *supra* note 226 at 13—14.

[230] Pekka Abrahamsson et al, *Software Process Improvement* (Potsdam, Germany: Springer, 2007) at 121.

[231] Terblanché, *supra* note 224 at 73,76.

[232] Hugh Calkins, "The Case for a Legal Risk Strategy" (1989) 10:5 J Bus Strategy 42 at 42—45.

[233] Terblanché, *supra* note 224 at 75.

In the next step, legal departments and legal experts assess identified risk according to the jurisdiction that their businesses are located. Experts' assessment preliminarily examines "the independence of judges, the sophistication of contract and corporate law concepts, enforcement of judgments and arbitration awards and risks associated with transactional and contractual certainty."[234] Next, experts' assessment investigates public reports generated by governments with respect to the governing laws and precedents. In these reports, government research organizations assess the efficiency and effectiveness of current laws and precedent to review and monitor whether legal risk indirectly exists in laws.[235] As publicly available as possible, this source of information can be found in online platforms like governments' websites (e.g. European Commission website)[236] in order to help TNPAs become familiar with regulatory risk in specific industry and with historical records of other institutions.[237]

At the last stage, after detecting the available or potential risks, control and mitigation process starts. This stage begins with training sessions to review policies and regulations, monitor periodically business activities to confirm its operation with applicable external laws, and create immediate or regular reports about all aspects of a legal system that may concern business' activities. Legal departments then prepare a defensive mechanism to protect TNPAs against possible lawsuit abuse. The mechanisms extracted from the stipulations of the laws of European Union where international trade law, regional agreements, and domestic laws apply simultaneously are worth mentioning and provide useful hints about confronting legal risk. According to Mišćenić

[234] IBA, *supra* note 227 at 3.
[235] Mišćenić, *supra* note 225 at 15—17.
[236] See e.g. European Commission, *Better Regulation for Better Results – An EU Agenda* (May 19, 2015), online: <http://ec.europa.eu/smart-regulation/>.
[237] IBA, *supra* note 227 at 4.

and Raccah, the mechanisms of precautionary principle, certainty principle, and legitimate expectation principle exist in EU laws that enables TNPAs s to manage arisen legal risks.[238]

The "precautionary principle", as described by the Commission of the European Communities, explains that "[w]here there is uncertainty as to the existence or extent of risks … the institutions may take protective measures without having to wait until the reality and seriousness of those risks become fully apparent."[239] The "certainty principle" requires that legal obligations and sanctions be precisely defined so that, in the legal interpretation of foreign laws and regulations, institutions and individuals be protected against uncertain laws.[240] Ultimately, the "legitimate expectation" explains that TNPAs' wrongful actions are protected against legal sanctions if they act according to the reliable and available sources of laws, rules, provisions, and precedents.[241] The existence of such principles in the legal system of host countries thus would empower any TNPAs to minimize legal risk.

To sum up, legal risk is considered as either the legal consequences attributed to an institution's operation or risks that originated from legal provisions and precedents. Not only can legal risks cause reputational damage and financial loss, but it may also lead to other relevant discussion pertaining to ethics and corruption which can be investigated elsewhere.

In addition to the aforementioned categories of business risks broadly available in every foreign market, specific risks emerge only in sanctioned countries. As such, the risk of selecting sanctioned markets and expanding business requires obtaining additional information to examine adequately sanctions risk indicators.

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[238] Mišćenić, *supra* note 225 at 8–12.
[239] Communication from the Commission on the precautionary principle, Commission of the European Communities, online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52000DC0001&from=GA> at 23.
[240] Mišćenić, *supra* note 225 at 9.
[241] Mišćenić, *supra* note 225 at 10.

C. Transnationalism, Market Selection, and Sanctions Risks Management

Given that sanctions landscape has been evolving since the end of World War I, today new and diverse sanctions programs considerably affect businesses' operations and objectives. Economic sanctions regimes inherently possess varying risk, as mentioned earlier, which manifest themselves at the time of imposition as well as during and even after lifting them. The expansion of business into foreign markets suffering from economic sanctions or having a history of sanctions can thus cause harm, from reputational damage to monetary fines.

1. Types of Sanctions Risk

At the time of imposition, sanctions are considered a macroeconomic risk that affects the entire country and its operating industries. The country-wide effects of sanctions render import-related raw materials, spare parts, and financial services scarce and, subsequently, negatively affect goods and services inputs. Input deficit results in industry risk where a few suppliers can manipulate the quality and price in the market. The supply manipulation and market monopoly consequently increase costs of transnational private actors (TNPAs) so that they consider either (1) staying in that market and tolerating hardships or (2) leaving despite investments made.

By staying in a sanctioned market and tolerating hardships, the institutional risk increases for three reasons. First, enhancing the price of outputs would increase the risk of substituting this output with other products and services. This replacement can have an adverse effect on businesses' interests. Lack of business income, customer loss, and costliness of operation could lead to pay cuts, work suspension, employment discharge, contract termination, R&D suspension, and even lodging lawsuits against stakeholders. Second, debt collection can be difficult because all businesses operating in a sanctioned market suffer almost in similar ways as others facing bankruptcy and monetary loss. Last and most importantly, staying in a sanctioned market is

conceived as a sanction-busting reaction to senders' economic sanctions. Businesses defiance of sanctions may be subject to senders' monetary penalty or lead to limitations regarding access to senders' markets and financial systems.

Leaving a foreign market is a double-edged sword; on the one hand TNPAs will lose their investment and will be replaced by other foreign businesses that have less concern about senders' sanctions. On the other hand, they remain responsible for obligations and promises made prior departing. Consequently, TNPAs not only face the monetary loss but also damage business reputation when they fail to value their customers and meet people's expectations. Upon lifting sanctions, more famous TNPAs should work harder than others to regain customers' trust in order to minimize social risks that arise in the form of boycott or minimize legal risk that engender the filing lawsuits for breaching TNPAs' previous obligations.

There is also a nexus between economic sanctions and political risk. According to Hufbauer et al's who observed 204 sanctions episodes from the end of World War II to 2007, the five purposes of imposing economic sanctions were changes in regime and policy (modest and major changes) as well as disrupting military adventures and impairing military potential.[242] If a sanctions episode successfully reaches one of these goals, political uncertainty largely affects businesses' operations and objectives.

2. Indicators of Sanctions Risk

Given various risk inherently existing in economic sanctions, identifying the indicators of sanctions risk helps TNPAs respond properly before, during, and after deploying economic sanctions. In order to locate these indicators, this section has adopted an interdisciplinary approach to extract from sanctions literature the recognized factors that have been employed intentionally

[242] Hufbauer, *supra* note 2 at 65—72.

or unintentionally by sanctions imposers and can affect TNPAs' strategies in confronting sanctions.

These factors constituting sanctions risk indicators enable TNPAs to manage the risk of conducting business in foreign sanctioned countries and empowering them to evaluate the worthiness of staying in these markets as well as to estimate the duration of the sanctions period they would suffer. The indicators include the importance of timing, severity of sanctions, targets' vulnerability and adoptability, economic ties, cultural perception, information about imposed sanctions, historical experiences, media implications, regime type of governments, public opinion, industry-based alternatives, symbolism, role of third-party states, ability to put pressure, and level of sanctions threat.

Importance of Timing

If sanctions last longer, it is expected that they have less impact upon target states.[243] During the first two years after imposing sanctions, TNPAs should expect the largest amount of effects on target states which should be considered as part of their calculation in expanding in such markets.[244] Subsequent effects drastically decline between five and ten years and then reduce more slowly.[245]

Timing is also important in finding an opportune time to deploy sanctions. Sanctions are more likely to be imposed after dramatic political incidence in target states, such as coup d'Etats, or after less dramatic incidents, such as controversial elections, the victory of hardliners, or governance of inexperienced politicians.[246]

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[243] *Ibid* at 171—72.
[244] Sajjad Dizaji & Peter Bergeijk, "Potential Early Phase Success and Ultimate Failure of Economic Sanctions: A VAR Approach with an Application to Iran" (2013) 50:6 J Peace Research 721 at 721.
[245] Susan H Allen, "The Determinants of Economic Sanctions Success and Failure" (2005) 31:2 international interactions 117 at 130.
[246] Christian Soest & Michael Wahman, "Not All Dictators Are Equal: Coups, Fraudulent Elections, and the Selective Targeting of Democratic Sanctions" (2015) 52:1 J Peace Research 17 at 17, 28; Maloney, *supra* note 39 at 895—96.

Severity of Sanctions

If the senders' agenda contains multiple rounds of sanctions meant to intensify economic measures gradually, the effects of sanctions will be considerably severe, and would be expected to create a riskier market for TNPAs.[247]

Targets' Vulnerability and Adaptability

During the design stage, senders identify targets' vulnerabilities, and the methods with which targets adapt themselves to sanctions to overcome vulnerabilities. Through this identification, sender states can ban trade linkage with respect to industries that targets rely on the most, in order to exacerbate the sanctions' impact.[248] By enumerating targets' vulnerability, TNPAs would also be able to manage sanctions risks by withdrawing from those industries promptly.

Economic Ties

Assessing capital flows in the form of foreign direct investment (FDI) informs TNPAs of the feasibility of imposing sanctions, because adopting economic measures may be costly for senders whose rate of FDI is considerably high in target states.[249] The information regarding the global FDI or country-based FDI is available on different online sources.[250]

Economic ties also consider the share of senders' businesses in foreign markets. If senders' businesses are dominant in the targets' market, sanctions are unenforceable because of the financial harm these businesses would face and the threat of replacement by other foreign

[247] Kwon, *supra* note 79 at 155.
[248] *Ibid* at 154—55.
[249] Lektzian, *supra* note 101 at 85.
[250] The World Factbook, Central Intelligence Agency (CIA), online: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2198rank.html>; World Investment Report 2018, UNCTAD, online: <https://unctad.org/en/PublicationsLibrary/wir2018_overview_en.pdf>.

competitors. However, if senders maintain a moderate number of businesses in foreign markets, sanctions are more likely to be imposed since the impact of sanctions is negligible.[251]

Moreover, strong trade linkage and economic dependency between targets and senders also determine the extent to which TNPAs should take the sanctions risk seriously because an interruption in such a relation can harm the targets' market. [252]

Cultural Perception

Culturally, states perceive sanctions differently; one chooses to resist the imposition of sanctions, the other prefers conflict avoidance and negotiation. Evaluating the people's norms of general society which may have roots in their history and religion, hence, empowers TNPAs to predict the outcome of sanctions.[253]

In addition, cultural perception is not limited to individual countries; instead, it can be expanded to mutual relationships between the sender and target states, so that the risk of imposing sanctions decreases when two countries have cultural ties or a prior friendly relationship.[254]

Information about imposed sanctions

Sender states share measures, duties, and information regarding a sanction episode to their own private sectors in order to prevent them from violating sanctions regulations. TNPAs' awareness of such information, which is available on government websites, enables them to identify not only sanctioned customers but also their customers' customers who are subject to sanctions.[255]

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[251] Bapat, *supra* note 103 at 132, 160.
[252] Hufbauer, *supra* note 2 at at 91, 161.
[253] Yitan Li, *supra* note 3 at 323.
[254] Donna Driscoll, *supra* note 104 at 442; Hufbauer, *supra* note 2 at 91, 161.
[255] Dina Esfandiary & Mark Fitzpatrick, "Sanctions on Iran: Defining and Enabling Success" (2011) 53:5 Survival 143 at 152.

Historical Experiences

Countries with a history full of warfare and invasions rely on military capabilities more than others in dealing with social, political, and economic uncertainty. Such nations respond to economic sanctions by increasing the defense industry's expenditures because a strong defense industry positively influences economic performance and offsets the economic loss. Military-related industries, therefore, may become subject to senders' monitoring and control, and subsequently bear greater sanctions risk.[256]

Furthermore, the history of a country may also help to promote the sense of nationalism. Nationalist nations increase sanctions risk because tolerating punishment is considered to be a value even though sanctions compliance would bring them more benefit.[257]

Media Implications

Linguistic assessment with respect to mainstream media, e.g., the New York Times, enables TNPAs to evaluate the risk of senders' sanctions because mainstream media justifies sanctions and changes people's beliefs in order to align them with political goals.[258]

Regime Type of Governments

Compared to autocratic regimes, democratic regimes comply faster with the demands of sanctions imposers; leaders of non-democratic countries tend to resist the sanctions because they do not take responsibility for domestic issues caused by sanctions, and the movements of domestic

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[256] Bruce McDonald & Vicent Reitano, "Sanction Failure: Economic Growth, Defense Expenditures, and the Islamic Republic of Iran" (2016) 42:4 Armed Forces & Society 635 at 635, 647, 649.
[257] Robert A Pape, *supra* note 1 at 93, 107.
[258] Nafiseh Hosseinpour & Hossein Tabrizi, "Depiction of Iran's Nuclear Activities Through Argumentative Strategies: The Case of the New York Times" (2016) 6:2 Theory & Practice in Language Studies 242 at 249 (They focused on the articles of New York Times regarding the Iran's nuclear sanctions and concluded that due to its influence on public opinion, U.S. sanctions were considered as a necessity in dealing with Iran). See also Alireza Rasti & Rahman Sahragard, "Actor Analysis and Action Delegitimation of Participants Involved in Iran's Nuclear Power Contention: A Case Study of 'The Economist'" (2012) 23:6 Discourse & Society 729.

opposition groups do not create political costs for them.[259] Leaders of authoritarian regimes also take advantage of sanctions to justify and legitimatize their wrongful acts.[260]

Public Opinion

Public opinion within a sender state may gradually change so that sanctions policies suffer from public setbacks especially if the sanctions lead to the collapse of target states' governments. At this stage, TNPAs receive signals that sanctions might be lifted and they may then be prepared to return to the sanctioned market.[261]

Industry-based Alternatives:

This indicator concerns oil-producing countries whose energy market can be replaced with other countries' overproduction of oil or with alternative green energies. Such a replacement will isolate target states and negatively impact dependent energy industries.[262]

Symbolism

TNPAs who monitor political trends within the country of where sanctions are generated can predict the likelihood of deploying economic sanctions; on one hand, sender states may symbolically impose sanctions on foreign nations to distract their people from more serious domestic problems. On the other hand, to regain popular support, senders' governments

[259] Susan H Allen, "The Domestic Political Costs of Economic Sanction" (2008) 52:6 J Conflict Resolution 916 at 917, 939. See also Hufbauer, *supra* note 2 at 167; David Lektzian & Mark Souva, "An Institutional Theory of Sanctions Onset and Success" (2007) 51:6 J Conflict Resolution 848 at 849; Katerina Oskarsson, "Economic Sanctions on Authoritarian States: Lessons Learned" (2012) 19:4 Middle East Policy 88 at 88—89.
[260] Julia Grauvogel & Christian Soest, "Claims to Legitimacy Count: Why Sanctions Fail to Instigate Democratisation in Authoritarian Regimes" (2014) 53:4 European J Politial Research 635 at 635, 637.
[261] Trita Parsi, "Why Did Iran Diplomacy Work this Time Around?" (2014) 16:3 Insight Turkey 47 at 53.
[262] Maloney, *supra* note 242 at 891—92.

symbolically impose sanctions to show themselves as being as decisive as possible against international wrongdoers.[263]

In addition, TNPAs who monitor sanctions trends around the globe can reduce the sanctions risk because sender states may symbolically impose sanctions on a target to alert other potential targets about their wrongful behaviours.[264] TNPAs operating in those potential markets should understand the goal of sanctions initially imposed against the first target state and assess their host countries' similarities to that target state in order to manage business risks.

The Role of Third-Party States

National interests of third-party states may prevent them from establishing a coalition with a sanctions imposer. Under this circumstance, unilaterally imposed sanctions have less effect on the market of target states. More importantly, if third-party states decide to play the role of the black knights and circumvent the sanctions, e.g., by providing trade facilitation or expanding mutual black markets, the purpose of sanctions will be diluted. As such, TNPAs operating in third-party states would have more flexibility to conduct business in the sanctioned market of target states.[265] Conversely, if none of these conditions exist, a target state is isolated and sanctions risk considerable increases.

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[263] James M Lindsay, "Trade Sanctions as Policy Instruments: A Re-Examination" (1986) 30:2 Intl Studies Q *153 (*"Eisenhower administration embargoed Cuba two weeks before the presidential election, partly to improve Nixon's electoral chances.") at 153, 155—56, 167). See also Anna P Schreiber, "Economic Coercion as an Instrument of Foreign Policy: U.S. Economic Measures Against Cuba and the Dominican Republic" (1973) 25:3 World Politics 387 at 389.

[264] Lindsay, *supra* note 263 at 156.

[265] Kwon, *supra* note 247 at 154—55. See generally Manuel De Leon, *The Ineffectiveness of Multilateral Sanctions Regimes Under Globalization: The Case of Iraq* (Ph.D. Thesis, Florida International University, 2011) [unpublished]; Hufbauer, *supra* note 2 at 8. See contra Early, *supra* note 42 at 381 (Early argues that although black knights reduce the effectiveness of sanctions, little evidence can support this claim.).

Ability of Putting Pressure

Previous sanctions imposed by a sender state are evidence of a sender's ability to pressure other nations. Correspondingly, a sender's ongoing war conflicts are evidence of whether or not they have the ability to put sanctions pressure on a target state or whether they should still use their energy on the involved wars.[266] Any previous evidence of failure signals TNPAs to expect less or shorter-lasting sanctions risk.

The level of Sanctions Threat

Eventually, every target state evaluates the risk of sanctions before complying or defying senders' demands. The seriousness of sanctions risk, therefore, can be understood at threat stage especially if senders threaten to impose secondary smart sanctions.[267]

3. Statistics of Sanctions Risk

Success in sanctioned markets depends, to some extent, on the ability of TNPAs to promptly detect, asses, and react to sanctions risk indicators because according to the upcoming illustration from the World Bank report on Doing Business 2019, current sanctioned countries generate more business risks for TNPAs and rank low regarding ease of doing business.

[266] Nikolay Kozhanov, "U.S. Economic Sanctions Against Iran: Undermined by External Factors" (2011) 18:3 Middle East Policy 144 at 157.

[267] Han, *supra* note 79 at 474—75. See also Kwon, *supra* note 247 at 155; Nicholas Miller, "The Secret Success of Nonproliferation Sanctions" (2014) 68:4 Intl Organization 913 at 914. For more information about the role of threat stage before imposing sanctions, see e.g. Daniel W Drezner, "Conflict Expectations and the Paradox of Economic Coercion" (1998) 42:4 Intl Studies Q 709 at 713; Daniel W Drezner, "The Hidden Hand of Economic Coercion" (2003) 57:3 Intl Organization 643 at 644; Dean Lacy & Emerson M S Niou, "A Theory of Economic Sanctions and Issue Linkage: The Roles of Preferences, Information, and Threats" (2004) 66:1 J Politics 25 at 27; T Clifton Morgan et al, "The Threat and Imposition of Economic Sanction, 1971—2000" (2009) 26:1 Conflict Management & Peace Science 92 at 93. See generally Taehee Whang et al, "Coercion, Information, and the Success of Sanction Threats" (2013) 57:1 American J Political Science 65.

According to the United Nations Department of Political and Peacebuilding Affairs (DPPA),[268] the U.S. Department of the Treasury,[269] and European Union Sanctions Map,[270] in March 2019, 30 countries are subject to economic sanctions globally:

> Russia, China, Belarus, Moldova, Tunisia, Bosnia and Herzegovina, Egypt, Côte d'lvoire, Iran, Nicaragua, Lebanon, Cuba, Mali, Guinea, Zimbabwe, Sudan (north and South), Afghanistan, Burundi, Iraq, Myanmar, Syria, Haiti, Central African Republic, Democratic Republic of the Congo, Libya, Yemen, Venezuela, Eritrea, and Somalia.

World Bank Report on Doing Business 2019 ranks every country based on "information about an economy's performance in business regulation relative to the performance of other economies."[271] This report investigates 11 factors influential on the life of a business and the risk associated with every one of them. These factors comprise of starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, resolving insolvency and labor market regulation.[272] The report implies that countries with low business risk are among economies which receive a higher score on ease of doing business.

Overlapping the current list of sanctioned countries with the World Bank report on Doing Business 2019 highlights the large spectrum of risk involved in doing business in these countries. A striking result found through analyzing 190 economies determines that from the top ten

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[268] United Nations Security Council, *United Nations*, online: <https://www.un.org/securitycouncil/sanctions/information>.
[269] Resource Center, *The U.S. Department of the Treasury*, online: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.
[270] EU Sanctions Map, *EU Sanctions Map*, online: <https://sanctionsmap.eu/#/main>.
[271] The World Bank, *Doing Business 2019 (October 31, 2018),* online: <http://www.doingbusiness.org/en/reports/global-reports/doing-business-2019 > at 23.
[272] *Ibid* at 2.

economies that rank highest in ease of doing business, only China is currently faced with EU arms embargo. Not surprisingly, within the bottom ten economies, nine countries are experiencing the pressure of economic sanctions. Looking more closely at the economic scores illuminates the fact that 80% of sanctioned countries ranked economically between 120 to 190, and only 3% of them are among the top 30 economies (see highlighted countries in table 1.1).

Notably, this analysis does not intend to establish a causal relationship between the effects of economic sanctions and the risk of doing business, as implied by 11 variables used by this report. Rather, the results suggest that sanctioned countries have more business risks than others, and thus, for market selection, TAs are encouraged to employ such ranking approaches in order to evaluate the indicators of sanctions risk as well as the indicators of country risk, industry risk, institution risk, and legal risk.

TABLE 1.1 Ease of doing business ranking

Rank	Economy	EODB score	EODB score change	Rank	Economy	EODB score	EODB score change	Rank	Economy	EODB score	EODB score change
1	New Zealand	86.59	0.00	65	Colombia	69.24	+0.20	129	Barbados	56.78	0.00
2	Singapore	85.24	+0.27	66	Luxembourg	69.01	0.00	130	St. Vincent and the Grenadines	56.35	+0.01
3	Denmark	84.64	+0.59	67	Costa Rica	68.89	-0.47	131	Cabo Verde	55.95	+0.02
4	Hong Kong SAR, China	84.22	+0.04	68	Peru	68.83	+0.56	132	Nicaragua	55.64	+0.37
5	Korea, Rep.	84.14	-0.01	69	Vietnam	68.36	+1.59	133	Palau	55.59	+0.01
6	Georgia	83.28	+0.48	70	Kyrgyz Republic	68.33	+2.57	134	Guyana	55.57	-1.21
7	Norway	82.95	+0.25	71	Ukraine	68.25	+0.94	135	Mozambique	55.53	+1.78
8	United States	82.75	-0.01	72	Greece	68.08	-0.12	136	Pakistan	55.31	+2.53
9	United Kingdom	82.65	+0.33	73	Indonesia	67.96	+1.42	137	Togo	55.20	+6.32
10	Macedonia, FYR	81.55	+0.32	74	Mongolia	67.74	+0.27	138	Cambodia	54.80	+0.41
11	United Arab Emirates	81.28	+2.37	75	Jamaica	67.47	+0.55	139	Maldives	54.43	+0.10
12	Sweden	81.27	0.00	76	Uzbekistan	67.40	+1.08	140	St. Kitts and Nevis	54.36	+0.01
13	Taiwan, China	80.90	+0.24	77	India	67.23	+6.63	141	Senegal	54.15	+0.37
14	Lithuania	80.83	+0.29	78	Oman	67.19	-0.02	142	Lebanon	54.04	+0.07
15	Malaysia	80.60	+2.57	79	Panama	66.12	+0.41	143	Niger	53.72	+1.24
16	Estonia	80.50	+0.01	80	Tunisia	66.11	+1.51	144	Tanzania	53.63	+0.34
17	Finland	80.35	+0.05	81	Bhutan	66.08	+0.20	145	Mali	53.50	+0.23
18	Australia	80.13	-0.01	82	South Africa	66.03	+1.37	146	Nigeria	52.89	+1.37
19	Latvia	79.59	+0.33	83	Qatar	65.89	+0.64	147	Grenada	52.71	+0.07
20	Mauritius	79.58	+1.29	84	Malta	65.43	+0.28	148	Mauritania	51.99	+0.92
21	Iceland	79.35	+0.05	85	El Salvador	65.41	+0.21	149	Gambia, The	51.72	+0.23
22	Canada	79.26	+0.38	86	Botswana	65.40	+0.46	150	Marshall Islands	51.62	+0.01
23	Ireland	78.91	-0.51	87	Zambia	65.08	+1.48	151	Burkina Faso	51.57	+0.12
24	Germany	78.90	0.00	88	San Marino	64.74	+2.27	152	Guinea	51.51	+2.02
25	Azerbaijan	78.64	+7.10	89	Bosnia and Herzegovina	63.82	+0.27	153	Benin	51.42	+0.13
26	Austria	78.57	+0.03	90	Samoa	63.77	+0.01	154	Lao PDR	51.26	+0.11
27	Thailand	78.45	+1.06	91	Tonga	63.59	+0.03	155	Zimbabwe	50.44	+1.92
28	Kazakhstan	77.89	+0.73	92	Saudi Arabia	63.50	+1.62	156	Bolivia	50.32	+0.15
29	Rwanda	77.88	+4.15	93	St. Lucia	63.02	+0.06	157	Algeria	49.65	+2.06
30	Spain	77.68	+0.07	94	Vanuatu	62.87	-0.21	158	Kiribati	49.07	+0.33
31	Russian Federation	77.37	+0.61	95	Uruguay	62.60	+0.34	159	Ethiopia	49.06	+0.91
32	France	77.29	+0.99	96	Seychelles	62.41	-0.01	160	Micronesia, Fed. Sts.	48.99	0.00
33	Poland	76.95	-0.36	97	Kuwait	62.20	+0.75	161	Madagascar	48.89	+0.71
34	Portugal	76.55	-0.07	98	Guatemala	62.17	+1.01	162	Sudan	48.84	+3.75
35	Czech Republic	76.10	+0.05	99	Djibouti	62.02	+8.87	163	Sierra Leone	48.74	+0.15
36	Netherlands	76.04	+0.01	100	Sri Lanka	61.22	+1.80	164	Comoros	48.66	+0.14
37	Belarus	75.77	+0.72	101	Fiji	61.15	+0.04	165	Suriname	48.05	-0.05
38	Switzerland	75.69	+0.01	102	Dominican Republic	61.12	+0.55	166	Cameroon	47.78	+0.83
39	Japan	75.65	+0.05	103	Dominica	61.07	+0.04	167	Afghanistan	47.77	+10.64
40	Slovenia	75.61	+0.02	104	Jordan	60.98	+1.42	168	Burundi	47.41	+0.73
41	Armenia	75.37	+2.06	105	Trinidad and Tobago	60.81	-0.12	169	Gabon	45.58	-0.23
42	Slovak Republic	75.17	+0.29	106	Lesotho	60.60	+0.19	170	São Tomé and Príncipe	45.14	+0.30
43	Turkey	74.33	+4.34	107	Namibia	60.53	+0.24	171	Iraq	44.72	+0.04
44	Kosovo	74.15	+0.44	108	Papua New Guinea	60.12	+1.19	171	Myanmar	44.72	+0.51
45	Belgium	73.95	+2.24	109	Brazil	60.01	+2.96	173	Angola	43.86	+2.16
46	China	73.64	+8.64	110	Nepal	59.63	-0.32	174	Liberia	43.51	-0.04
47	Moldova	73.54	+0.38	111	Malawi	59.59	+0.84	175	Guinea-Bissau	42.85	+0.27
48	Serbia	73.49	+0.17	112	Antigua and Barbuda	59.48	+0.06	176	Bangladesh	41.97	+0.91
49	Israel	73.23	+0.64	113	Paraguay	59.40	+0.41	177	Equatorial Guinea	41.94	+0.28
50	Montenegro	72.73	+0.20	114	Ghana	59.22	+2.06	178	Timor-Leste	41.60	+1.71
51	Italy	72.56	-0.15	115	Solomon Islands	59.17	+0.33	179	Syrian Arab Republic	41.57	+0.02
52	Romania	72.30	-0.53	116	West Bank and Gaza	59.11	+0.39	180	Congo, Rep.	39.83	+0.36
53	Hungary	72.28	+0.34	117	Eswatini	58.95	+0.13	181	Chad	39.36	+1.15
54	Mexico	72.09	-0.18	118	Bahamas, The	58.90	+0.77	182	Haiti	38.52	+0.11
55	Brunei Darussalam	72.03	+1.85	119	Argentina	58.80	+0.87	183	Central African Republic	36.90	+2.67
56	Chile	71.81	+0.37	120	Egypt, Arab Rep.	58.56	+2.74	184	Congo, Dem. Rep.	36.85	+0.67
57	Cyprus	71.71	+0.44	121	Honduras	58.22	+0.09	185	South Sudan	35.34	+2.04
58	Croatia	71.40	+0.34	122	Côte d'Ivoire	58.00	+4.94	186	Libya	33.44	+0.23
59	Bulgaria	71.24	+0.11	123	Ecuador	57.94	+0.12	187	Yemen, Rep.	32.41	-0.59
60	Morocco	71.02	+2.46	124	Philippines	57.68	+1.36	188	Venezuela, RB	30.61	-0.24
61	Kenya	70.31	+5.25	125	Belize	57.13	+0.02	189	Eritrea	23.07	+0.13
62	Bahrain	69.85	+1.82	126	Tajikistan	57.11	+0.08	190	Somalia	20.04	+0.06
63	Albania	69.51	+0.50	127	Uganda	57.06	+0.65				
64	Puerto Rico (U.S.)	69.46	+0.20	128	Iran, Islamic Rep.	56.98	+2.34				

Source: Doing Business database.

Note: The ease of doing business rankings are benchmarked to May 1, 2018, and based on the average of each economy's ease of doing business scores for the 10 topics included in the aggregate ranking. For the economies for which the data cover two cities, scores are a population-weighted average for the two cities. A positive change indicates an improvement in the score between 2016/17 and 2017/18 (and therefore an improvement in the overall business environment as measured by *Doing Business*), while a negative change indicates a deterioration and a 0.00 indicates no change in the score.

D. Conclusion

Chapter two investigated the expanded scopes of transnationalism by focusing on the role of transnational corporations and transnational banks in the contemporary world. This chapter began with the contribution of transnational actors to the development of the world economically, and their influence on the creation of bottom-up *lex mercatoria* as well as the unification and harmonization of divergent laws and regulations.

In transacting their businesses abroad, it was pointed out that transnational actors are faced with various examples of uncertainty in foreign markets in the forms of country risk, industry risk, institutional risk, and legal risk. As such, market selection and business risk management were considered as two essential strategies in conducting their business abroad.

Despite seeking higher protection levels by implementing business risk management, transnational private actors in host countries under economic sanctions are confronted with additional risks that inherently exist in every sanctions regime. By examining different types of sanctions risks, such as sanctions industry risks, this chapter proceeded with sanctions risk indicators extracted from sanctions literature, such as the role of third-party states and regime types of governments in increasing the risk of doing business in sanctioned markets.

To conclude, it was shown that in 2019, the listed sanctioned countries were receiving lower scores in terms of ease of doing business, implying a robust relationship between economic sanctions and the risk of doing business in these countries.

In chapter three, the clash between the obligations of public international law and the expanded role of transnational private actors in economic sanctions regimes will be investigated by focusing on the toughest ever sanctions imposed against Iran's nuclear program.

VI. Chapter Three: Transnational Private Actors as Interpreters of Public International Law in Sanctions Regime: The Case of Iran Nuclear Sanctions

Sanctions imposed by sender states vary and encompass a variety of measures in the form of comprehensive sanctions, secondary sanctions, smart sanctions, or secondary smart sanctions. In chapter one, the legitimacy of economic sanctions regimes was investigated within the framework of public international law. It was pointed out that although international law makes it possible to deploy economic measures against wrongdoers, it also limits the free application of such regimes, especially the "secondary smart sanctions" regimes. Chapter two discussed the significant role of transnational private actors (TNPAs) in development of countries through legal reforms as well as the flow of capitals. It was shown that several mechanisms of risk management and risk analysis are involved in market selection and expansion of businesses abroad, especially with respect to sanctioned countries.

The implication of the discussions in chapters one and two is that the goal of economic sanctions regimes moves in opposite directions to the goal of TNPAs in expanding abroad; while the purpose of sanctions imposers is limitation of economic relations, TNPAs' objective is liberalization of economies for greater participation in host countries. As a result, the public goal of imposing sanctions can end up trumping the private goal of maintaining economic relations, especially if sanctions are imposed legally and legitimately according to the obligations of public international law.

By deploying legal and legitimate sanctions, TNPAs are expected to exit from the market of target states. This correlation, nevertheless, is not always straightforward, meaning TNPAs can still exit from a foreign market even when the legitimacy of the imposed sanctions is under question by the international community. In other words, although illegal and illegitimate

sanctions are not expected to be complied with, and TNPAs can carry on their operations in a sanctioned market, they may nonetheless decide to depart from target states' markets. TNPAs' decision to stay or depart from a host market depends on their business risk analysis: the risk of being sanctioned by sanctions imposers *vis-a-vis* the risk of losing profits in an invested target market.

Among the variety of business risk categories (e.g., country risk), what matters from the perspective of legal studies is legal risk analysis. As mentioned in chapter two, legal risk is associated with two situations: risks that originate from the stipulations of legal provisions, and risks that come from the legal consequences of TNPAs' operation in foreign markets. Legal risk analysis concerning a sanctioned market investigates both these situations. First, TNPAs evaluate legal provisions governing the imposed sanctions by considering the stipulations of public international law, mainly treaties, as well as other existing sources, such as bilateral agreements, international judicial decisions, international organizations' decisions, domestic laws, and any other laws applicable to their operations. Second, TNPAs operating in target states evaluate the risk of customers' lawsuits in the case of departure as well as senders' penalty in the case of staying.

In chapter three, the main focus will be on the first situation in which TNPAs analyze the stipulations of public international law. To detail, the major theme of this chapter focuses on Iran nuclear sanctions and TNPAs' compliance with or defiance of the mandates of public international law. This investigation begins with the history of Iran's nuclear program and the legal framework in which public international law permits or restrains the imposition of economic sanctions against Iran's nuclear program. The chapter ends with the TNPAs' influence on the outcome of Iran

sanctions and considers TNPAs as direct interpreters of public international law under sanctions regimes, the point that underlines the expanded role of transnationalism in the contemporary world.

A. The Case of Iran Nuclear Sanctions: 1959—2019

In order to investigate the confrontation of public international law and TNPAs in sanctions regimes, this section begins with the details of Iran nuclear-related sanctions from 1959 to 2019, emphasizing three main stages to depict a bigger picture of challenges and solutions. The first stage covers the period from 1959 to 2005 with insignificant unilateral U.S. sanctions on Iran's nuclear program. The second stage runs from 2006 to 2016, during which universal sanctions are deployed by the whole international community. The third and last stage begins with the unilateral U.S. sanctions against Iran's nuclear program in 2018 and continues to date.

Iran's early nuclear efforts can be traced back in the 1950s. Under the Shah's regime, Iran's nuclear program began with the help of the U.S. as part of the U.S. Atom for Peace Program.[273] In 1959, the U.S. supplied the University of Tehran with a small reactor for research and cooperation on peaceful nuclear energy.[274] In 1967, Tehran Research Reactor (a U.S. supplied 5-megawatt reactor) and a set of research laboratories constituted Iran's first research centre, known as the Tehran Nuclear Research Centre (TNRC).[275] In 1974, Iran signed the Safeguard Agreement of the Nonprolifration Treaty (NPT) to allow the International Atomic Energy Agency (IAEA) to monitor and verify its nuclear activities for peaceful uses.[276] In the same year, the Shah launched

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[273] Alvite Singh Ningthoujam, "Iranian Nuclear Program: A Chronology" (2016) 3:1 Contemporary Rev Middle East" 111 at 111.

[274] Antonella Vicini, "Iran and nuclear power before the revolution" *ResetDoc* (9 December 2011), online: <https://www.resetdoc.org/story/iran-and-nuclear-power-before-the-revolution/>.
See also Mohammad Javad Zarif, "Tackling the Iran-U.S. Crisis: The Need for a Paradigm Shift" (2007) 60:2 J Intl Affairs 73 at 81.

[275] "Iran's Nuclear Program Timeline and History", *NTI* (Updated May 2018), online: <https://www.nti.org/learn/countries/iran/nuclear/>. See also Semira N Nikou, "Timeline of Iran's Nuclear Activities", *The Iran Primer* (9 June 2018), online: <http://iranprimer.usip.org/search/google?as_q=Semira+N.+Nikou> at 1 [Timeline].

[276] Timeline, *supra* note 273 at 1.

an extensive nuclear program by constructing Iran's first nuclear site, the Bushehr Nuclear Power Plant, with the help of the German Kraftwerk Union.[277] The Shah aimed to build 23 nuclear power reactors to generate 23,000 megawatts of electricity within 20 years, a plan which was supported by U.S. President Gerald Ford.[278] These efforts, however, were halted because of the 1979 Iranian revolution, the U.S. hostage crisis, and the subsequent Iran-Iraq war.

After the war, in the 1980s and 1990s, Iran revived its nuclear program. In 1985, it opened a nuclear research centre in Isfahan with the help of China and two years later, Argentina supplied the Tehran Research Reactor with a new core worth 5.5 USD million.[279] At the beginning of the 1990s, Iran rebuilt the Bushehr Nuclear Power Plant, which was constructed during the Shah's period and was damaged during Iraq's attack, with the assistance of Russia, China, and black-market networks in Pakistan.[280] In 1995, Iran opened its energy sector to foreign investment, which in essence could help Iran to expand its stepped up nuclear capacity.[281] As such, during Clinton's administration, the U.S. Congress enacted the *Iran and Libya Sanctions Act (ILSA)* of 1996, retitled as the *Iran Sanctions Act (ISA)*, to target Iran's energy sectors as well as its nuclear program.[282] In 1998, U.S. President Bill Clinton raised serious concerns regarding Iran's developing nuclear capacity for military purposes on the basis that Iran has enough oil and gas for energy production.[283] Consequently, at the beginning of the 21st century, the U.S. Congress enacted the *Iran Nonproliferation Act (INA),* retitled as the *Iran-North Korea-Syria Nonproliferation Act*

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[277] Robert J Reardon et al, *Containing Iran: Strategies for Addressing the Iranian Nuclear Challenge* (Santa Monica, CA: RAND, 2012) at 11.
[278] Timeline, *supra* note 275 at 1.
[279] Timeline, *supra* note 275 at 2.
[280] "A History of Iran's Nuclear Program", *Iran Watch* (9 August 2016), online: <https://www.iranwatch.org/our-publications/weapon-program-background-report/history-irans-nuclear-program>.
[281] Kenneth Katzman, CRS Report for congress, RS20871, "The Iran Sanctions Act (1996)" (12 October 2007), online: <https://fas.org/sgp/crs/row/RS20871.pdf>.
[282] *Iran Sanctions Act*, 50 USC § 1701 note (1996), online: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/isa_1996.pdf>.
[283] Timeline, *supra* note 275 at 3.

(INKSNA), to target foreign persons who transfer to Iran certain goods, services, or technology regarding not only its nuclear program, but also missile technology and biological and chemical weapons.[284] Around this time, Iran signed a nuclear contract with Russia to build the second nuclear power plant after the Bushehr site.[285]

In 2002, around the time that the U.S. was convincing Russia not to participate in Iran's nuclear activities, an Iranian opposition group, the National Council of Resistance of Iran, revealed Iran's two secret nuclear sites.[286] The existence of these sites, a uranium enrichment plant at Natanz and a heavy water production plant in Arak, was acknowledged by then Iranian President Khatami, and this raised serious concern about Iran's secret nuclear program.[287]

In 2003, the inspectors found traces of highly enriched uranium at one of these sites at Natanz, and subsequently, new rounds of negotiations began between Iran and EU-3 (France, Germany, and Britain) to end Iran's uranium enrichment and to open its sites to unannounced inspection.[288] As a result, the Tehran Accord was adopted, stating Iran's cooperation with the IAEA by voluntarily suspending uranium enrichment and reprocessing activities as well as by signing the Additional Protocol to the NPT's Safeguard Agreement, in return for providing advance nuclear technology to Iran.[289]

In 2004, however, the IAEA's concerns were again raised with Iran's continued producing feed material used in the uranium enrichment process.[290] Therefore, Iran and EU-3 engaged in

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[284] *Iran-North Korea-Syria Nonproliferation Act*, 50 USC § 1701 note (2000), online :<https://www.congress.gov/106/plaws/publ178/PLAW-106publ178.pdf>.
[285] Timeline, *supra* note 275 at 3.
[286] Alireza Jafarzadeh, "Remarks by Alireza Jafarzadeh on New Information on Top Secret Projects of the Iranian Regime's Nuclear Program", *Iran Watch* (14 August 2002), online: <https://www.iranwatch.org/library/ncri-new-information-top-secret-nuclear-projects-8-14-02>.
[287] Timeline, *supra* note 275 at 4.
[288] Ningthoujam, *supra* note 273 at 113.
[289] A Savion, "The Iran-E.U. Agreement on Iran's Nuclear Activity", *Memri* (21 December 2004), online: <https://www.memri.org/reports/iran-eu-agreement-irans-nuclear-activity>.
[290] Ronen Yaël, *The Iran Nuclear Issue* (Portland, OR, USA: Hart, 2010) at 2.

several rounds of negotiations to reach a consensus over a resolution—otherwise known as the Paris Accord—to recognize Tehran's rights to have nuclear energy for peaceful uses in return for full suspension of tests and production of uranium enrichment.[291] This agreement was considered a trust-building agreement backed by the Bush Administration in return for facilitating Iran's accession to the WTO and allowing the EU to provide aircraft spare parts to Iran.[292]

In 2005, after the election of Mahmoud Ahmadi Nejad, a conservative president, Iran decided to resume its uranium enrichment in accordance with the Guardian Council's decision to develop a nuclear fuel cycle, contrary to the Tehran and Paris mandates.[293] Simultaneously, the EU-3 proposed "the framework for a long-term agreement" to assure supplying nuclear fuel for Iran's light-water reactor to generate peaceful energy, in return, *inter alia*, abandoning construction of a heavy-water reactor at Arak site as well as to end fuel cycle activities.[294] Iran rejected this proposal and resumed uranium conversion activities because Iran saw the proposal as being against the Tehran and Paris Agreements, which would end Iran's nuclear fuel programs.[295] Consequently, the IAEA threatened to refer the case to the UNSC, and Iran warned that it would terminate the IAEA's sudden inspections if the UNSC was involved.[296] The U.S. response, however, differed by

[291] Najmeh Bozorgmehrand & Gareth Symth, "Iran Agrees Under Deal with Europe", *The Financial Times* (29 November 2004), online: <https://www.ft.com/content/3208e52a-416c-11d9-9dd8-00000e2511c8>.
[292] Sebastian Harnisch, "Preventing Crisis Militarization: The European union he United States, and the Iranian Nuclear Program" in Gordon Friedrichs et al, Eds, *The Politics of Resilience and Transatlantic Order Enduring Crisis?* London: Routledge, 2019) 90 at 94.
[293] Yaël, *supra* note 290 at 58.
[294] Yaël *supra* note 290 at 58; Timeline, *supra* note 275 at 7; Robin B Wright, *The Iran Primer: Power, Politics, and U.S. Policy* (Washington: United States Institute of Peace, 201) at 246.
[295] Yaël, *supra* note 290 at 59.
[296] Yaël, *supra* note 290 at 59—60;

imposing sanctions against Iran's nuclear program through Executive Order (EO) 13382 to freeze assets and financially isolate, among other things, nuclear-related persons and entities in Iran.[297]

At the beginning of 2006, Iran suspended its voluntarily permission of sudden inspection as well as the voluntarily measures stipulated in the Additional Protocol. In addition, Iran resumed enrichment activities at Natanz, as a result of the IAEA's report GOV/2006/14 that referred the Iranian nuclear program to the UNSC and subsequent adaptation of Resolution 1696 by this organ of the UN.[298] Although this Resolution demanded that Iran cease nuclear enrichment activities, no sanctions were imposed.[299] This Resolution expressed its intention to impose sanctions if Iran failed to comply with its requirements.[300]

Failure to comply with the IAEA's and UNSC's demands, the UN passed Resolution 1737 in the same year to forbid sales of nuclear-related technology and to freeze the assets of persons involved in Iran's nuclear program.[301] Simultaneously, the U.S. passed the *Iran Freedom Support Act* (IFSA) to target assistants in Iran's nuclear program,[302] and the EU adopted Council Common Position 2007/140/CFSP in compliance with the UNSC Resolution 1737.[303]

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[297] *Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters*, 70 Fed Reg 38567 (2005), online: <https://www.treasury.gov/resource-center/sanctions/Documents/whwmdeo.pdf>. The power to issue EOs is vested in the Presidents of the U.S. via the 1976 National Emergencies Act (NEA), 1977 International Emergency and Economic Powers Act (IEEPA), and section 301 of title 3, United States Code[297] to impose sanctions against individuals, entities, or countries who endanger U.S. national security or its foreign interests.

[298] Yaël, *supra* note 290 at 63; IAEA, Board of Governors, Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran, Resolution GOV/2006/14, online: <https://www.iaea.org/sites/default/files/gov2006-14.pdf>; UNSCOR,5500th Mtg, UN Doc: S/RES/1696 (2006).

[299] Timeline, *supra* note 275 at 7.

[300] Daniel Joyner, *Iran's Nuclear Program and International Law: From Confrontation to Accor*d, 1st ed (New York, NY: Oxford University Press, 2016) at 35—36.

[301] *Ibid;* UNSCOR, 5612th Mtg, UN Doc, S/RES/1737 (2006).

[302] *Iran Freedom Support Act*, 50 USC § 1701 note (2006), online: <https://www.congress.gov/109/plaws/publ293/PLAW-109publ293.pdf>.

[303] EC, *Commission Common Poisition 2007/140/CFSP of 27 February 2007* 2007/140/CFSP*, Concerning Restrictive Measures Against Iran* [2007] OJ, L 61/1, online: <https://publications.europa.eu/en/publication-detail/-/publication/5f438282-de46-4e7b-a3fa-86ad28d13946/language-en>.

From 2007 to 2009, the UN passed three Resolutions, including Resolutions 1747,[304] 1803,[305] and 1835[306] that imposed further sanctions on Iran. Alongside, the EU complied with Resolution 1803 through the adoption of Common Position 2008/479/CFSP.[307] In 2009, several rounds of negotiations began between the U.S. and Iran to transfer 1200 Kg low enriched uranium (3.5%) out of Iran to Russia and France in exchange for enriched uranium (20%) to be supplied as a fuel for the Tehran Research Reactor.[308] The negotiations encompassed transferring out a considerable amount of Iran's uranium needed for use in nuclear weapon and simultaneously recognizing the legitimacy of Iran's nuclear activity with no suspension of enrichment activities.[309] Although initially Iran accepted this deal, the negotiations failed because of disagreement on the time and amount of exchangeable uranium stockpile and Iran's dissatisfaction with an unexpected statement from U.S. Secretary of State Hillary Clinton criticizing Iran's political behavior.[310]

In 2010, although Iranian President Ahmadi Nejad announced that Iran by itself had increased its capacity to enrich uranium up to 20 percent in order to provide fuel for the Tehran Research Reactor,[311] Iran started a new round of negotiations with Turkey and Brazil.[312] This round

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[304] UNSCOR, 5647th Mtg, UN Doc: S/RES/1747 (2007), online: <https://www.iaea.org/sites/default/files/unsc_res1747-2007.pdf>.
[305] UNSCOR, 5848th Mtg, UN Doc: S/RES/1803 (2008), online: <http://unscr.com/files/2008/01803.pdf>.
[306] UNSCOR, 5984th Mtg, UN Doc: S/RES/1835 (2009), online: <http://unscr.com/files/2008/01835.pdf>.
[307] EC, *Commission Common Poisition 200/652/CFSP of 07 August 2008, Concerning Restrictive Measures Against Iran* [2008] OJ, L 213/58, online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008E0652&from=EN>.
[308] Joyner, *supra* note 300 at 44.
[309] Joyner, *supra* note 300 at 44—45.
[310] Joyner, *supra* note 300 at 46; Mohamed El Baradei, *The Age of Deception: Nuclear Diplomacy in Treacherous Times*, 1st ed (NY, New York: Metropolitan Books/Henry Holt, 2011) ("'[t]he international community will not wait indefinitely for evidence that Iran is prepared to live up to its international obligations' and [w]ith Iran, it is tragic that a country with such a great history, with so much to give to the rest of the world, is so afraid of their own people. The way that they are utilizing secret prisons and detentions, show trials, is a reflection of the discontent that they know people feel toward the current leadership" at 304—05). See Gregory Feifer, "Clinton Looking For Russian Support On Iran During Moscow Visit" (13 October 2009), online: *RFERL* <https://www.rferl.org/a/Clinton_to_Push_Russia_on_Iran_During_Moscow_Visit/1850020.html>.
[311] Azadeh Ansari, "Iran's President Orders Higher Enrichment of Uranium", *CNN* (7 February 2010), online: <http://www.cnn.com/2010/WORLD/meast/02/07/iran.nuclear/index.html>.
[312] Joyner, *supra* note 300 at 47—49.

was encouraged by U.S. President Barack Obama who spelled out the standards of this deal in a letter issued to Turkey and Brazil:[313] immediate shipment of 1200 Kg uranium to Turkey (this request was similar to the 2009 U.S. proposal to transfer 1200 Kg of enriched uranium).[314]

As a historical turning point, this trilateral cooperation resulted in the Tehran Declaration of May 17th, 2010,[315] whereby the international tension over Iran's nuclear program through diplomatic and peaceful instruments was addressed.[316] Nevertheless, the U.S. announced that this agreement manifested nothing fundamentally new and that it did not meet international concerns over Iran's nuclear capacity.[317] The U.S. pointed out that Iran had increased its stockpile more than 1200 Kg since 2009 and that it should transfer out more than this amount.[318] In addition, the U.S. believed that this agreement did not stop Iran's enrichment activity, but rather delayed imposing further sanctions and endangered the world's safety.[319]

In 2010 and less than a month after the Tehran Declaration, the UN adopted resolution 1929[320] which severely tightened up, *inter alia*, Iran's involvement in uranium-related commercial activities.[321] Simultaneously, the U.S. Congress passed the *Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010* (CISADA), imposed sanctions, *inter alia*, on foreign

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[313] "JFP 5:24: Brazil, Turkey: Obama Asked Us to Get the Deal", *Just Foreign Policy* (24 May 2010), online: <https://www.justforeignpolicy.org/jfp-5-24-brazil-turkey-obama-asked-us-to-get-the-deal/>.
[314] Trita Parsi, *A Single Roll of the Dice: Obama's Diplomacy with Iran* (New Haven: Yale University Press, 2012) at 187—88.
[315] "Security Council Imposes Additional Sanctions on Iran, Voting 12 in Favour to 2 Against, with 1 Abstention", *UN* (9 June 2010), online: <https://www.un.org/press/en/2010/sc9948.doc.htm>.
[316] "UN's Ban Hopes Iran Deal May Bring Settlement", *Tehran Times* (22 May 2010), online: <https://www.tehrantimes.com/news/219828/UN-s-Ban-hopes-Iran-deal-may-bring-settlement>. (UN Secretary general Ban Ki-moon described the deal as "an important initiative in resolving international tensions over Iran's nuclear program by peaceful means").
[317] Joyner, *supra* note 300 at 48.
[318] Timeline, *supra* note 275 at 9.
[319] Joyner, *supra* note 300 at 48—48. See also "Clinton's Criticizes Brazil's Iran Diplomacy", *VOA News* (26 May 2010), online: <https://www.voanews.com/a/clinton-criticizes-brazils-iran-diplomacy-95064654/118426.html>.
[320] UNSCOR, 6335th Mtg, UN Doc: S/RES/1929 (2010), online: <https://www.iaea.org/sites/default/files/unsc_res1929-2010.pdf>.
[321] Timeline, *supra* note 275 at 9.

exchange and banking transactions occurring under U.S. jurisdiction, on foreign financial institutions that conduct business with Iran and have correspondent and payable-through accounts in the U.S., and on companies that export refined petroleum to Iran.[322] Correspondingly, in compliance with UN sanctions, the E.U. adopted Council Decision 2010/413/CFSP to underline its concerns regarding Iran's nuclear program by prohibiting Member States from "the sale, supply or transfer to Iran of key equipment and technology as well as related technical and financial assistance, which could be used in key sectors in the oil and natural gas industries."[323] At the end of 2010, Iran completed its first nuclear power plant, the Bushehr Nuclear Reactor, under the supervision of the IAEA.[324]

Considering the constant setbacks in the negotiations, the clash between Iran's nuclear program and the U.S. and its Western allies reached its summit from 2011 to 2014. In May 2011, the EU Council Decision 2011/299/CFSP expanded its sanctions to more than 70 persons and entities[325] and the U.S. issued Executive Order 13574 to sanction more individuals according to the *Iran Sanctions Act* of 1996.[326] At the end of this year, the IAEA's report claimed that some of Iran's activity undertaken after 2003 would be relevant to the nuclear weaponization program.[327] As a result, other countries than U.S., such as the U.K. and Canada, targeted Iranian Banks and

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[322] *Comprehensive Iran Sanctions, Accountability, and Divestment Act*, 22 USC §§ 8501–51 (2010).
[323] EC, *Commission Decision 2010/413//CFSP of 26 July 2010, Concerning Restrictive Measures Against Iran and Repealing Common Position 2007/140/CFSP,* [2010] OJ, L 195/39, online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02010D0413-20150408&from=EN>.
[324] Fuel Loading Starts at Bushehr 1", *World Nuclear News* (23 August 2010), online: <http://www.world-nuclear-news.org/NN-Fuel_loading_starts_at_Bushehr_1-2308104>.
[325] EC, *Commission Regulation (EU) No 503/2011 of 23 May 2011, Implementing Regulation (EU) No 961/2010 on Restrictive Measures Against Iran,* [2011] OJ, L 136/26, online: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:136:0026:0044:EN:PDF>.
[326] *Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Sanctions Act of 1996, As Amended*, 3 74 Fed Reg 30505 (2011), online: < https://www.treasury.gov/resource-center/sanctions/Programs/Documents/2011_isa_eo.pdf >.
[327] IAEA, Board of Governors, Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolution in the Islamic Republic of Iran, Resolution GOV/2011/65, online: <https://www.iaea.org/sites/default/files/gov2011-65.pdf> at 6.

restricted financial transactions with Iranian blacklisted individual and entities,[328] and the U.S. itself issued Executive Order 13590 with respect to Iran's energy and petrochemical sector.[329]

In 2012, while Iran produced its first nuclear fuel rod (a piece used in a reactor) and enriched uranium up to 27 percent,[330] a second major round of sanctions after 2010 began in which Iranian currency lost its value by 80 percent within a year.[331] This pressure tightened with the U.S. Congress's enactment of *Section 1245 of the National Defense Authorization Act for Fiscal Year 2012* (NDAA) (mainly targeting the Central Bank of Iran),[332] the *Iran Threat Reduction and Syria Human Rights Act of 2012* (ITRSHRA) (mainly targeting uranium extraction, vessels and shipping services, shipping insurance as well as further restricting the activity of the Central Bank of Iran and financial institutions involved with oil revenues),[333] and the *Iran Freedom and Counter-Proliferation Act of 2012* (IFCA) (mainly targeting correspondent accounts or payable-through accounts of foreign financial institutions involved in business with Iranian counterparts).[334] Simultaneously, Obama's administration issued Executive Orders 13599,[335] 13606,[336] 13608,[337]

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[328] "U.S., Britain, and Canada Slap New Sanctions on Iran", *CNN* (21 November 2011), online: < https://www.cnn.com/2011/11/21/world/meast/iran-sanctions/index.html>.
[329] *Authorizing the Imposition of Certain Sanctions with Respect to the Provisions of Good, Services, Technology, or Support of Iran's Energy and Petrochemical Sectors*, 77 Fed Reg 72609, online: https://www.treasury.gov/resource-center/sanctions/Documents/13590.pdf.
[330] Timeline, *supra* note 275 at 11.
[331] "Timeline: Sanctions on Iran", *Aljazeera* (16 October 2012), online: <https://www.aljazeera.com/news/middleeast/2012/10/201210161327578575 88.html>.
[332] *National Defense Authorization Act for Fiscal Year 2012*, Pub L No 112–8 (2012), online: https://www.govinfo.gov/content/pkg/PLAW-112publ81/pdf/PLAW-112publ81.pdf.
[333] See *Iran Threat Reduction and Syria Human Rights Act*, 22 USC (1996), online: <https://www.congress.gov/112/plaws/publ158/PLAW-112publ158.pdf>.
[334] *Iran Freedom and Counter-Proliferation Act*, 22 USC (2012), online: <http://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter95&edition=prelim>.
[335] *Blocking Property of the Government of Iran and Iranian Financial Institutions*, 77 Fed Reg 6659 (2012), online: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_eo_02062012.pdf>.
[336] *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 In- formation Technology*, 77 Fed Reg 24571 (2012), online: <https://fas.org/irp/offdocs/eo/eo-13606.pdf>.
[337] *Prohibiting Certain Transactions with the Suspending Entry Into the United States of Foreign Sanctions Evaders with Respect to Iran and Syria*, 77 Fed Reg 26409 (2012), online: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/fse_eo.pdf>.

13622,[338] and 13628,[339] prohibiting export of gold to the government of Iran, targeting all Iranian financial institutions and foreign persons conducting business with Iran, and banning the world's banks from finalizing oil transactions with Iran.[340] The U.S.'s allies, mainly the EU, similarly increased pressure on Iran. The Council of the EU banned, *inter alia*, Iranian oil exports and the delivery of newly printed banknotes and coinage to or for the benefit of the Central Bank of Iran and cut off Iranian banks from messaging services, such as SWIFT, through Council Decision 2012/35/CFSP and Council Regulation (EU) No 267/2012.[341]

In 2013, the U.S. blacklisted more persons and imposed sanctions through Executive Order 13645 with respect to purchase, sale or maintenance of Iranian currency outside the territory of Iran.[342] As a result of all these pressures, the P5+1 (permanent members of the UNSC including Russia, China, France, the U.K., and the U.S., with the addition of Germany) and Iran intensified their negotiations so that in November 2013 an interim agreement was reached to relieve some of the sanctions' pressures.[343] For example, this agreement provided Iran's access to $4.2 billion of its blocked oil sales, in return for ceasing enrichment of uranium beyond 5%.[344]

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[338] *Authorizing Additional Sanctions with Respect to Iran*, 77 Fed Reg 45897 (2012), online: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13622.pdf>.
[339] *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), online: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/2012iranthreat_eo.pdf>.
[340] "Timeline: Sanctions on Iran", *Aljazeera* (16 October 2012), online: <https://www.aljazeera.com/news/middleeast/2012/10/20121016132757857588.html>.
[341] EC, *Commission Decision 2012/35 CFSP of 23 January 2012, Amending Decision 2010/413/CFSP Concerning Restrictive Measures Against Iran,* [2012] OJ, L 19/22, online: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:019:0022:0030:EN:PDF>; EC, *Commission Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures Against Iran and Repealing Regulation (EU) No 961/2010,* [2012] OJ, L 88/1, online:>https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:088:0001:0112:EN:PDF>.
[342] *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), online: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13645.pdf>.
[343] Timeline, *supra* note 275 at 15.
[344] Kenneth Katzman & Paul K Kerr, Cong. Research Serv., R43333, "Interim Agreement on Iran's Nuclear Program" (11 December 2013), online (pdf): <http://www.parstimes.com/history/crs_dec_13.pdf>.

In the preamble to this agreement, the Joint Plan of Action (JPOA), the goal of these negotiations was "to reach a mutually agreed long-term comprehensive solution that would ensure Iran's nuclear program will remain exclusively for peaceful uses."[345] Therefore, in 2014, Iran and P5+1 began to draft the final version of the nuclear agreement, which was concluded two and a half years later, on June 14th, 2015. The Joint Comprehensive Plan of Action (JCPOA) lifted Iran's sanctions while restricting Iran's nuclear capability under the surveillance of the IAEA.[346]

Consequently, the UNSC unanimously endorsed the JCPOA by adopting Resolution 2231,[347] U.S. President Obama issued Executive Order 13716,[348] and the E.U. Council adopted Decision (CFSP) 2015/1863 to revoke Iran's nuclear-related sanctions.[349] Parties to the JCPOA marked October 18th, 2015 as the Adoption Date of the JCPOA to bring this agreement into effect and prepared themselves for the implementation of the JCPOA's commitments.[350] On January 16th, 2016, the nuclear deal became fully implemented after IAEA's verification of Iran's initial nuclear commitments under the JCPOA.[351]

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[345] *Join Plan of Action Agreement on Iran's Nuclear Program*, 24 November 2013, online: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa.pdf>.
[346] *Joint Comprehensive Plan of Action on Iran's Nuclear Program*, 14 July 2015, online: http://www.europarl.europa.eu/cmsdata/122460/full-text-of-the-iran-nuclear-deal.pdf>.
[347] UNSCOR, 7488th Mtg, UN Doc: S/RES/2231 (2015), online: <https://www.undocs.org/S/RES/2231(2015)>.
[348] *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), online: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_eo.pdf>.
[349] EC, *Commission Decision (CFSP) 2015/1863 of 18 October 2016, Amending Decision 2010/413/CFSP Concerning Restrictive Measures Against Iran,* [2015] OJ, L 274/174, online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1863&from=GA>.
[350] "Statement Relating to the Joint Comprehensive Plan of Action "Implementation Day" of January 16", 2016, *Treasury* (8 May 2018), online: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/jcpoa_archive.aspx>.
[351] IAEA, Board of Governors, Verification and Monitoring I the Islamic Republic of Iran in Light of United Nations Security Council 2231(2015), Resolution GOV/INF/2016/1, online: <https://www.iaea.org/sites/default/files/gov-inf-2016-1.pdf>.

The Iran's sanctions from 2012 to 2015, which ended Iran's nuclear concern after ten years of negotiations, was "unprecedented" among all sanctions episodes, as expressed by the U.S. Department of State:

> In response to Iran's continued illicit nuclear activities, the United States and other countries have imposed unprecedented sanctions to censure Iran and prevent its further progress in prohibited nuclear activities, as well as to persuade Tehran to address the international community's concerns about its nuclear program.[352]

From the implementation day of the JCPOA in 2016 until February 2019, the IAEA confirmed Iran's compliance with the stipulations of the JCPOA in 15 reports in accordance with UNSC Resolution 2231 and verified Iran's restricted nuclear activities.[353] Nonetheless, this deal has faced challenges in implementation since May 2018.

Although the newly elected President of the U.S., Donald Trump, certified Iran's compliance with its commitments under the nuclear deal every 90 days, he warned that he would pull out of this "one-sided" deal.[354] Thus, on May 8th, 2018, the U.S. withdrew from the JCPOA, as Trump's administration was concerned with the lack of a sufficient mechanism in the JCPOA to deter Iran from developing its weaponization program, to control Iran's missile development, and to restrict its support of militant groups in the Middle East.[355]

Subsequently, the U.S. reinstated previous economic measures that had been lifted or waived under the JCPOA by two new stages of sanctions. First, sanctions imposed after the 90-

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[352] Elissa Kirkham, "Bank of America Freezes Iranians' Accounts in Response to U.S. Sanctions", *Go Banking Rates* (15 May 2014), online: <https://www.gobankingrates.com/banking/bank-of-america-freezes-iranians-accounts-us-sanctions>.
[353] "IAEA and Iran – IAEA's Reports", IAEA, online: <https://www.iaea.org/newscenter/focus/iran/iaea-and-iran-iaea-reports>.
[354] Zaheena Rasheed, "What Sanctions Did Trump Slap on Iran?" *Aljazeera* (13 May 2019), online: <https://www.aljazeera.com/news/2019/05/sanctions-trump-slap-iran-190512201108239.html>.
[355] Rick Gladstone, "Iran Sanctions Explains: U.S. Goals and the View from Tehran", New York Times (5 November 2018), online: <https://www.nytimes.com/2018/11/05/world/middleeast/iran-sanctions-explained.html>.

day wind-down period targeted mainly trading in gold, transaction with Iranian currency, and purchasing or acquiring U.S. dollar banknotes. Second, sanctions imposed after the 180-day wind-down period were more severe so that they targeted mainly (according to the Executive Order 13846)[356] Iran's Central Bank, oil, petroleum, insurance, shipping, and energy sectors.[357] As the U.S. Department of the Treasury indicates:

> These are the toughest U.S. sanctions ever imposed on Iran, and will target critical sectors of Iran's economy, such as the energy, shipping and shipbuilding, and financial sectors. The United States is engaged in a campaign of maximum financial pressure on the Iranian regime and intends to enforce aggressively these sanctions that have come back into effect.[358]

As a direct result, Iran's economy slumped because it was severely affected by the U.S. unilateral sanctions. According to the International Monetary Fund (IMF), Iran's real GDP growth was +3.7 in 2017, but it will touch -7 in 2019, with an inflation rate of 9.6 in 2017 and 37.2 in 2019.[359] This round of "unilateral" sanctions in 2018 could be considered as successful as the "universal" sanctions imposed in 2010 and 2012.

B. Iran Sanctions and Public International Law Analysis

Iran's nuclear sanctions involve several key players whose actions have embedded themselves within the framework of public international law. They include the IAEA, UN,

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[356] *Reimposing Certain Sanctions with Respect to Iran*, 83 Fed Reg 38939 (2018), online: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/08062018_iran_eo.pdf>.
[357] "Frequently Asked Questions Regarding the Re-imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA)", *Treasury* (Last Update August 6, 2018), online: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf>.
[358] "Iran's Sanctions", *Treasury*, online: <https://www.treasury.gov/resource-center/sanctions/Programs/pages/iran.aspx>;
[359] "Islamic Republic of Iran", *International Monetary Fund*, online: <https://www.imf.org/en/Countries/IRN>. See generally Richard Nephew, *The Art of Sanctions: A View from the Field* (New York: Columbia University Press, 2018).

individual countries (e.g., the U.S., China, and Russia) and trading unions (e.g., the EU). The legal analysis of Iran's nuclear sanctions, therefore, will be influenced by the actions of these players.

With the aim of nuclear disarmament and peaceful use of nuclear energy, in 1968, the Nonproliferation Treaty (NPT) was opened for signature, and, in 1970, it came into force.[360] In order to verify parties' compliance with its stipulations, the NPT foresaw a Safeguard Agreement to be created and implemented by the IAEA as a surveillance mechanism.[361] According to NPT Article III.1, each non-nuclear weapon state undertakes to accept the IAEA's Safeguard Agreements to allow inspectors to verify whether all sources or special fissionable materials are not diverted from peaceful uses to nuclear weapons or other nuclear explosive devices.[362] States that sign the Safeguard Agreement may become subject to the Additional Protocol to permit more and sudden access to inspectors' visits of nuclear sites.[363]

Almost ten years after initiating its nuclear program, Iran acceded to the NPT in 1968 and ratified it in 1970. In 1974, in cooperation with the IAEA, Iran accepted the Safeguard Agreement as a consent to inspection. The constant monitoring and inspection of the IAEA allowed the Shah to develop nuclear plants with the help of the U.S. and its Western allies.

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[360] Treaty on the Non-Proliferation of Nuclear Weapons", *Disarmament*, online: <http://disarmament.un.org/treaties/t/npt>.
[361] Safeguard Agreements", *IAEA*, online: <https://www.iaea.org/topics/safeguards-agreements>.
[362] IAEA, *The Structure and Content of Agreements Between the Agency and states Required in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*", Doc No INFCIRC/153 (1972), online: <https://www.iaea.org/sites/default/files/publications/documents/infcircs/1972/infcirc153.pdf> article 1; *Treaty on the Non-Proliferation of Nuclear Weapon*, the government of United Kingdom of Great Britain and Northern Island, the United States of America, and the Union of the Soviet Socialist Republics, art 3 (entered into force 5 March, 1970), online: <https://www.iaea.org/sites/default/files/publications/documents/infcircs/1970/infcirc140.pdf>.https://www.iaea.org/sites/default/files/publications/documents/infcircs/1970/infcirc140.pdf article 3.
[363] *Model Protocol Additional to the Agreement(s) between State(s) and the International Atomic Energy Agency for the Application of Safeguards*, Doc No INFCIRC/540 (1998) Preamble, online: <https://www.iaea.org/sites/default/files/infcirc540c.pdf>.

Since the 1979 revolution, which affected the Iran-U.S. relationship, Iran's nuclear program has faced constant turbulence. Until 1996, Iran's nuclear program was not a major concern for the international community because the NPT acknowledged the rights of state parties, including Iran, to have nuclear energy as long as they stay in line with the regulations of the NPT and Safeguard Agreements (according to the NPT Article IV.1, nothing shall prevent states from developing research, production and use of nuclear energy for peaceful purposes).[364] However, in 1996 and in 2000, the Clinton administration expressed its uncertainty with respect to Iran's motives behind its nuclear program which led to the enactment of the ISA and INA.[365]

After two secret nuclear sites were revealed in 2002, Iran's nuclear program became a concern for the international community. In 2003, Iran, thus, voluntarily implemented the Additional Protocol to allow sudden inspections and concluded the Tehran agreement. These efforts provided a context to sign the Paris Accord in the following year in 2004. In 2005, pursuant to Iran's policy of resumption of its nuclear activities, the IAEA adopted Resolution GOV/200577 to express its concern about Iran's breach of the Safeguard Agreement and Additional Protocol.[366] This Resolution found that Iran's behavior had to be reported to the UNSC and General Assembly according to the Statute of IAEA Article XII.C, which indicates:

> The inspectors shall report any non-compliance to the Director General who shall thereupon transmit the report to the Board of Governors. The Board shall call upon the recipient State or States to remedy forthwith any non-compliance which it finds

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[364] *Treaty on the Non-Proliferation of Nuclear Weapon*, the government of United Kingdom of Great Britain and Northern Island, the United States of America, and the Union of the Soviet Socialist Republics, art 4 (entered into force 5 March, 1970), online: <https://www.iaea.org/sites/default/files/publications/documents/infcircs/1970/infcirc140.pdf>.

[365] *Iran Sanctions Act*, 50 USC § 1701 note (1996), online: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/isa_1996.pdf>; *Iran-North Korea-Syria Nonproliferation Act*, 50 USC § 1701 note (2000), online :<https://www.congress.gov/106/plaws/publ178/PLAW-106publ178.pdf>.

[366] IAEA, Board of Governors, Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran (2005), Resolution GOV/2005/77, online: <https://www.iaea.org/sites/default/files/gov2005-77.pdf>.

> to have occurred. The Board shall report the non-compliance to all members and to the Security Council and General Assembly of the United Nations.[367]

From 2006 to 2012, Iran faced ad hoc unilateral U.S. sanctions as well as six UNSC resolutions that accompanied the EU's sanctions incorporating these UNSC resolutions under the mandates of UN Charter Article 41. In 2013 upon reaching a joint plan of action, the parties to the interim nuclear agreement (JPOA) agreed to implement volunteer measures in order to reach a long-term comprehensive solution for Iran's nuclear program. The preamble of the JPOA highlighted the goals that was concluded later in the JCPOA nuclear deal of 2015.

1. Binding Effects of the JCPOA

The JCPOA, which comprises five annexes and is detailed in 159 pages, verifies Iran's nuclear program for peaceful uses. This agreement was endorsed by UNSC Resolution 2231 with the aim of reducing the number of Iran's centrifuges to two-thirds and removal of 98% of its enriched uranium.[368] In detail, the restrictions of the JCPOA go beyond the requirements of the IAEA Safeguard Agreement and Iran's application of the Additional Protocol,[369] and restrain Iran's nuclear capacity for 10 to 25 years, depending on the nature of the activity.[370] For example, among a number of voluntary measures, Section A.2 of the JCPOA indicates that for 10 years Iran will keep its enrichment capacity at 5060 IR-1 centrifuges at the Natanz nuclear site, compared to 15,500 IR-1 centrifuges before the JCPOA.[371] In addition, according to Section A.7, Iran will keep

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[367] IAEA, Statute, art 12 (entered into force 29 July 1957), online: <https://www.iaea.org/about/statute#a1-12>.
[368] Gary Samore et al, "The Iran Nuclear Deal: A Definitive Guide" (2015) Belfer Center for Science & Intl Affairs, Harvard Kennedy School, online: <https://dash.harvard.edu/handle/1/27029094> at 5; Mark Fitzpatrick, "Iran: A Good Deal" (2015) 57:55 Survival, 47 at 47.
[369] Michael D Rosenthal, "United Nations Security Council Resolution 2231 & Joint Comprehensive Plan of Action" (2016) 55:1 Intl Leg Materials, 55:1, 2016 98 at 100.
[370] Jonathan L Black-Branch and Dieter Fleck, eds, *Nuclear Non-Proliferation in International Law*, vol 1 (T.M.C. The Hague, The Netherlands: Asser Press, 2014) at 78.
[371] *Joint Comprehensive Plan of Action on Iran's Nuclear Program*, 14 July 2015 art 2; Samore, *supra* note 368 at 23; See also "Understanding the JCPOA", online: *Arms Control* <https://www.armscontrol.org/reports/Solving-the-Iranian-Nuclear-Puzzle-The-Joint-Comprehensive-Plan-of-Action/2015/08/Section-3-Understanding-the-JCPOA>.

a maximum of 300 Kg of uranium stockpiled at up to 3.67 percent for 15 years, compared to approximately 7 tons in 2014.[372] Likewise, the stipulations of Section C.15 illustrate that the IAEA will monitor Iran's production of uranium ore concentrate plants for 25 years.[373] After the expiration of these restrictions, Iran's obligations and nuclear restrictions will continue under the IAEA Safeguard Agreement and Additional Protocol, by which the IAEA ensures monitoring Iran's nuclear activity for peaceful-uses.[374]

Whether such obligations and restrictions on participants in the JCPOA have binding effects on them and on third-party states may have different consequences. The JCPOA itself is not a binding international agreement between participants,[375] nor is it considered a treaty according to the Vienna Convention on Law of Treaty Article 2(1)(a): The JCPOA is an unsigned agreement that does not contain standard treaty terminology, such as ratification, acceptance, approval, accession, date of entry into force, and reservation, nor does it call the involved state "parties", but rather "participants".[376] Nor are there any binding obligations in the JCPOA: as indicated in the title of Sections 1 to 17, "Iran and E3/EU+3 will take the following voluntary measures within the timeframe as detailed in this JCPOA and its Annexes", with respect to nuclear

[372] *Joint Comprehensive Plan of Action on Iran's Nuclear Program*, 14 July 2015 art 7; Samore, *supra* note 368 at 29.
[373] *Joint Comprehensive Plan of Action on Iran's Nuclear Program*, 14 July 2015 art C.15.
[374] Arun Vishwanathan, "Iranian Nuclear Agreement: Understanding the Nonproliferation Paradigm" (2016) 3:1 Contemporary Rev Middle East 3 at 15. See contra Bruno Tertrais, "Iran: An Experiment in Strategic Risk-Taking" (2015) 57:5 Survival 67 ("The deal's main flaw, even assuming that implementation goes smoothly for more than a decade, is its short duration. at 69"); Avis Bohlen, "Iran: An Opening for Diplomacy?" (2015) 57:5 Survival 59 ("The limited duration of the agreement is unquestionably its biggest shortcoming, although many of the allegations about how quickly Iran could break out and develop a nuclear weapon after 15 years are overblown." at 61).
[375] Black-Branch, *supra* note 370 at 435.
[376] Stephen P. Mulligan, Cong. Research Serv., R44761, "Withdrawal from International Agreements: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement" (4 May 2018), online: <https://fas.org/sgp/crs/row/R44761.pdf>.

enrichment, enrichment and R&D, stockpiles, heavy water, reprocessing, transparency, and confident building measures.[377] Such a title emphasizes the "voluntary" nature of this agreement.

While participants in the JCPOA treated this agreement as a nonbinding political commitment, the endorsement of UNSC Resolution 2133 has converted several of its provisions into binding obligations. This endorsement, therefore, has raised a controversy over the binding effects of the JCPOA on its participants and third-party countries. For example, the Resolution "calls upon" all Members to take actions as may be appropriate to support the implementation of the JCPOA.[378] In some scholarly studies, the interpretation of the phrase "calls upon" refers to the hortatory and nonbinding effects of this Resolution, but from others' point of view, this phrase reemphasizes its binding nature.[379] Regardless of this kind of disagreement, it seems that other provisions of this Resolution suggest further reflection on the binding nature of the nuclear deal, as will be discussed here in three points.

First, according to UN Charter Articles 25 and 48, the Members of the UN agree to accept and carry out the decisions of the Security Council.[380] The Preamble and Operative Paragraph (OP) 1 of Resolution 2231 explicitly underscore the Members' duty under Article 25 and urges the full implementation of the JCPOA according to the timetable established in it.[381]

Second, 10 out of 30 paragraphs of Resolution 2231 invoke UN Charter Article 41 ("[t]he Security Council may decide what measures not involving the use of armed force are to be

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[377] *Joint Comprehensive Plan of Action on Iran's Nuclear Program*, 14 July 2015, Premise to subsections 1 to 17.
[378] *Joint Comprehensive Plan of Action on Iran's Nuclear Program*, 14 July 2015 operative paragraph 2.
[379] Black-Branch, *supra* note 370 at 437. See contra Colum Lynch & John Hudson, "Obama Turns to U.N. to Outmaneuver Congress" (July 15, 2015), online: *Foreign Policy* <http://foreignpolicy.com/2015/07/15/obama-turns-to-u-n-to-outmaneuver-congress-iran-nuclear-deal>;Kaveh L Afrasiabi, "Trump and the Iran Nuclear Accord: The Legal Hardles" (28 February 2018) online: *Sipa Columbia* <https://jia.sipa.columbia.edu/online-articles/trump-and-iran-nuclear-accord-legal-hurdles>.
[380] *Charter of the United Nations*, 26 June 1945, Can TS 1945 No 25, 25, 48.
[381] *Joint Comprehensive Plan of Action on Iran's Nuclear Program*, 14 July 2015 preamble, art 1.

employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures") as their starting sentence to emphasize the binding effects of the Security Council's decisions. Specifically, OP 7(b) determines that acting under Article 41, all states "shall" comply with a number of provisions in JCPOA Annex B, which in Black-Branch's words "results in requalification of the JCPOA as legally binding … also for States that have not participated in its conclusion."[382]

Third, OP 7(a) indicates that acting under Article 41 of the UN Charter, and upon receipt of the IAEA's verification of Iran's pre-implementation of nuclear-related duties expressed in Annex V, all previous UN sanctions "shall" be terminated, which shows the explicit intention of the Security Council to lift the sanctions.

The third point provides a further hint for dealing with the binding effects of the JCPOA. All states/organizations that incorporated the UN sanctions to impose sanctions of their own against Iran shall terminate their sanctions. Termination of sanctions shall occur from the implementation date of January 16th, 2016, when the IAEA verified Iran's compliance with the nuclear deal, according to JCPOA paragraph 34(iii).[383] Hence, a sanctions-imposer, such as the EU, whose sanctions were in accordance with UN sanctions had to halt its sanctions and implicitly not reimpose sanctions unless the UN decided otherwise (Table 1).

UNSC Sanctions	EU's Sanctions
Resolution 1737	2007/140/CFSP
Resolution 1747	2007/246/CFSP
Resolution 1803	2008/652/CFSP
Resolution 1929	2010/413/CFSP

Table 1: EU full compliance with UN sanctions

[382] Black-Branch, *supra* note 370 at 438. See generally Stephen P Mulligan, Cong. Research Serv., LSB10134, "Withdrawal from the Iran Nuclear Deal: Legal Authorities and Implications" (17 May 2018) online: <https://fas.org/sgp/crs/nuke/LSB10134.pdf>.

[383] IAEA, Board of Governors, Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015), Resolution GOV/INF/2016/1, online: < https://www.iaea.org/sites/default/files/gov-inf-2016-1.pdf>.

Despite this clear-cut binding obligation on all UN Member States to impose sanctions or lift sanctions according to the decisions of the UNSC, the reinstatement of unilateral sanctions or lift of sanctions is problematic if the sender state has not incorporated the UN sanctions decisions as a legal basis to form its own unilateral sanctions. Considering the U.S. withdrawal from the JCPOA in 2018 and reinstatement of sanctions against Iran, two points need to be highlighted. First, it seems that those provisions of U.S. Congress Acts that incorporated UNSC resolutions to sanction Iran must be terminated in line with UNSC Resolution 2231 OP 7(a) that terminated all the previous UN sanctions against Iran. Out of eight Congressional sanctions against Iran from 1996 to 2012, three partially recognized and incorporated the UN sanctions (Table 2).

Table 2: U.S. sanctions in line with UN Sanctions

U.S. Sanctions	**UN Related Sections**
Iran Sanctions Act of 1996 (ISA)	-
Iran-North Korea-Syria Nonproliferation Act of 2000 (INKSNA)	-
Trade Sanctions Reform and Export Enhancement Act of 2000 (TSREEA)	-
Iran Freedom Support Act of 2006 (IFSA)	-
Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA)	*Sections: 104(a)(3)-104(b)(1)-104(c)(2)(B)(i)-107-108-302(2)(b)(2)-303(d)(1)(A)(iii)*
National Defense Authorization Act for Fiscal Year 2012 (NDAA)	-
Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRSHRA)	*302(a)(1)(C)(i)-303(a)(2)(B)(i-v)-*
Iran Freedom and Counter-Proliferation Act of 2012 (IFCA)	*1244(a)(2)(4)(5)*

For example, Section 108 of CISADA (Authority To Implement United Nations Security Council Resolutions Imposing Sanctions With Respect To Iran) indicates:

> In addition to any other authority of the President with respect to implementing resolutions of the United Nations Security Council, the President may prescribe such regulations as may be necessary to implement a resolution that is agreed to by the United Nations Security Council and imposes sanctions with respect to Iran.[384]

Second, the reinstatement of U.S. ad hoc secondary smart sanctions would be beyond the permissible limits of public international law, as detailed in chapter one, and therefore, reinstatement of nuclear sanctions seems to be problematic as well.[385] As was discussed, secondary smart sanctions would violate due process rights of blacklisted persons; and, simultaneously, the exercise of extraterritorial jurisdiction would extend beyond the standard of reasonableness.[386]

Besides provisions of Resolution 2231 that suggested further reflection on the binding nature of Iran's nuclear deal, other evidence in support of the binding effects of the JCPOA can be traced back to the negative reaction of all P5+1 (including the former U.S. president Obama and Secretary of State Kerry) and other world leaders to U.S. withdrawal from the JCPOA in 2018.[387] The reactions of all these leaders not only emphasized the significance of the JCPOA's nuclear restrictions for the entire world, but also broke the pattern of claims for establishing customary international law with respect to such binding agreements by manifesting a clear protest against U.S. reliance on economic sanctions.[388] In exploring these manifestations, one sees that the EU's position moved one step forward by challenging the U.S. sanctions through the adaptation of Blocking Statute to hinder the application of U.S. jurisdiction within its territory, as detailed in

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[384] *Comprehensive Iran Sanctions, Accountability, and Divestment Act*, 22 USC §§ 8501–51 108 (2010).
[385] Chapter 1 at 10 – 26.
[386] Chapter 1 at 17 – 18.
[387] "World leaders react to US withdrawal from Iranian nuclear deal" (9 May 2018), online: *Aljazeera* <https://www.aljazeera.com/news/2018/05/world-leaders-react-withdrawal-iranian-nuclear-deal-180508184130931.html>; "EU rejects Iran nuclear deal 'ultimatum', regrets US sanctions" (9 May 2019), online: *Aljazeera* <https://www.aljazeera.com/news/2019/05/eu-rejects-iran-nuclear-deal-ultimatum-regrets-sanctions-190509092136144.html>.
[388] Shaw, *supra* note 6 at 63.

chapter one.[389] In addition, the EU set up the Instrument in Support of Trade Exchanges (INSTEX) as a payment channel, Euro-dominated clearing house, and a trade facilitator with Iran. INSTEX's mechanisms are supposed to be finalized at the end of 2019 which can be used as an alternative to SWIFT. More details on SWIFT and economic sanctions will be provided shortly.[390]

To conclude the discussion on the legally binding effects of Resolution 2231, it is worth quoting the speech of Ms. Pierce, the representative of the U.K., at the 8418th Security Council meeting, on the implementation of Resolution 2231:

> Leaving aside the question of whether the language is legally binding or not, the Council has the power to make recommendations to Member States with a view of resolving any matter that threatens the maintenance of international peace and security. It is clear that those recommendations should be taken seriously by Member States rather than openly flouted.[391]

2. Dispute Resolution Mechanisms of the JCPOA

The significance of the discussion on the binding or non-binding nature of the JCPOA and Resolution 2231 pertains to the dispute resolution mechanisms of the JCPOA because when these mechanisms fail to guarantee participants' rights, the binding effects of the JCPOA would pave the way to invoke the mechanisms of public international law to settle disputes.

To elaborate the dispute procedure mechanism of Resolution 2231 in detail, the OP 10 refers disputes over the implementation of participants' commitments to JCPOA Articles 36 and

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[389] Chapter 1 at 30 – 33.
[390] Chase Winter, "What is the EU-Iran Payment Vehicle INSTEX?" (31 January 2019) <https://www.dw.com/en/what-is-the-eu-iran-payment-vehicle-instex/a-47306401>.
[391] UNSCOR, 73d Year, 8418 MTG, UN Doc S/pv/.8418 (2018), online: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_8418.pdf>.

37. These articles provide the following multistage dispute resolution procedures when participants are not "meeting their commitments".[392]

First, only participants to the JCPOA can refer disputes to a Joint Commission (including Germany, China, France, the Russian Federation, the U.K., and the U.S., with the EU's High Representative for Foreign Affairs and Security Policy). Second, the commission's failure to reach a resolution within 15 days allows the participants to refer an issue either to ministers of foreign affairs (to resolve the issue in 15 days) or an Advisory Board (to resolve the issue in 15 days in a three-member group, two appointed by each participant and one by a third independent member), or both. Third, only the Advisory Board's decision will return to the Joint Committee to be reviewed within 5 days, while the ministers' decisions seem to be final. Fourth, the complaining participant could cease performing its commitments if it believed the unsolved issue constituted "significant non-performance" and/or notified the UNSC as the fifth stage.[393]

Upon the receipt of this notification, the Security Council shall vote to continue lifting of sanctions, the stage known as the "snap-back" procedure.[394] The snap-back procedure refers to the effects of JCPOA Article 37, which requires that all Members of the Security Council vote affirmatively within 30 days to "withhold" previous UN sanctions imposed on Iran from 2006 to 2015. Otherwise, Resolution 2231 Article 12 stipulates that sanctions shall apply in the same manner as they applied before the adoption of this resolution.[395] The permanent Members of the Security Council with a veto power, specifically the U.S., therefore would be able to reimpose

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[392] Resolution 2231 (2015) On Iran Nuclear Issue, SC Res 2231, UNSCOR, UN Doc S/RES/2231 (2015) art 10, 26; Black-Branch, *supra* note 370 at 432;

[393] Resolution 2231 (2015) On Iran Nuclear Issue, SC Res 2231, UNSCOR, UN Doc S/RES/2231 (2015) art 36.

[394] Kristina Daugirdas & Julian Mortenson, "Contemporary Practice of the United States Relating to International Law" (2016) 110:2 AJIL 346 at 347; Eric B Lorber & Peter Feaver, "Do the Iran Deal's 'Snapback' Sanctions Have Teeth?", *Foreign Policy*, online: <https://foreignpolicy.com/2015/07/21/do-the-iran-deals-snapback-sanctions-have-teeth/>.

[395] Resolution 2231 (2015) On Iran Nuclear Issue, SC Res 2231, UNSCOR, UN Doc S/RES/2231 (2015) art 12.

sanctions by vetoing continuation of the lifting of sanctions.[396] This snap-back mechanism will expire on the termination day of the JCPOA, which is October 18th, 2025, 10 years after the Adoption Date of the JCPOA.[397]

To sum up, in the case of the U.S. withdrawal from the JCPOA, it seems that general principles of public international law would be able to provide more support for participants in the JCPOA than the dispute settlement mechanisms of the nuclear deal because of the failure of these mechanism to solve U.S.'s concerns regarding Iran's nuclear program and their failure to keep the U.S. in the JCPOA. For this reason, the discussion around the binding or nonbinding nature of Resolution 2231 has a considerable impact on the enforcement of Iran's nuclear deal, taking into consideration the reactions of opponents to U.S. withdrawal in the forms of clear contestation, enactment of EU Blocking Statute, and establishment of EU-Iran INSTEX.

C. Iran's Sanctions and Transnationalism

1. The Role of TNBs and TNCs in the Reinforcement of Sanctions Against Iran

In order to investigate the role of transnational private actors (TNPAs) in Iran, several indicators can be evaluated, such as the number of TNPAs, the invested sectors, the amount of transferred capital, and the like. For the purpose of this section, the research project employs the rates of foreign direct investment (FDI)[398]because the FDI rate is an inclusive indicator for TNPAs' willingness to expand in foreign market and also both international and national sets of data are available for FDI.

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[396] Mulligan, *supra* note 382 at 28.
[397] *Joint Comprehensive Plan of Action on Iran's Nuclear Program*, 14 July 2015 operative paragraph 34 (v); Daugirdas, *supra* note 394 at 653.
[398] According to the World Bank, "Foreign direct investment refers to direct investment equity flows in the reporting economy. It is the sum of equity capital, reinvestment of earnings, and other capital. Direct investment is a category of cross-border investment associated with a resident in one economy having control or a significant degree of influence on the management of an enterprise that is resident in another economy. Ownership of 10 percent or more of the ordinary shares of voting stock is the criterion for determining the existence of a direct investment relationship.", online: *The World Bank* <https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD>.

According to the Central Bank of Iran, from 1963 to the 1979 revolution, the rate of FDI had been increasing,[399] so that in 1978, Iran's net inflow stood at above $900 USD million.[400] After 1979, the political instability resulting from the revolution, asset freezes, economic sanctions, the Iran-Iraq war, and the misbehavior of the Iranian government towards foreign firms led to the departure of TNPAs and their capital.[401] According to the United Nations Conference on Trade and Development (UNCTAD), the annual average of inward FDI dropped from 1985 to 1995 to -$47 USD million,[402] indicating reverse investment or disinvestment.[403]

From the beginning of the 21st century, TNPAs' investment tendency towards Iran's market positively changed yet reacted to the nuclear sanctions cautiously. According to the World Bank, the rate of FDI plunged one time when the universal nuclear-related sanctions were deployed from 2006 to 2008 by the UN (Resolutions 1696, 1737, 1747, 1803) and again when sanctions were intensified from 2012 to 2015.[404] Unsurprisingly, the rate of FDI reached an all-time high of 5 USD billion in 2017 but dropped to 3.4 USD billion in 2018 pursuant to U.S. withdrawal from the JCPOA and reinstatement of nuclear sanctions (Figure 1).

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[399] Mohammad Reza Sodagar, "Roshde Sarmaye Dari dar Iran: Marhaleye Gostaresh: 1344-1357—The Development of Capitalism in Iran: Expansion Level (1344-1357)" (Tehran, Iran: Andishe Shole, 1990) at 507; Mohsen Bahmani-Oskooee, "The Decline of the Iranian Rial during the Post-Revolutionary Period: The Monetary Approach and Johansen's Cointegration Analysis" (1995) 16 :2 Can J Development Studies 277 at 278.

[400] Mehdi Ghodsi et al, "The Iranian Economy: Challenges and opportunities", online: *The Vienna Institute for International Economic Studies* <https://wiiw.ac.at/the-iranian-economy-challenges-and-opportunities-dlp-4599.pdf> at 52.

[401] Jahangir Amuzegar, "The Iranian Economy Before and After the Revolution" (1992) 46:3 Middle East J 413 at 419

[402] "World Investment Report 2003 FDI Policies for Development: National and International Perspectives", online: <https://unctad.org/sections/dite_dir/docs/wir03_fs.ir.en.pdf>

[403] The definition of FDI net inflows can be found in "World Investment Report FDI from Developing and Transition Economies: Implications for Development", online: <https://unctad.org/en/Docs/wir2006_en.pdf> at 294.

[404] "Iran foreign Direct Investment", online: *Ceice Data* <https://www.ceicdata.com/en/indicator/iran/foreign-direct-investment>.

Figure 1: Iran Foreign Direct Investment in the 21st Century

Despite ongoing economic pressures and downward shifts in the FDI rate from 2006 to 2009, one can see that the rate of FDI suddenly increased in the period 2010 to 2012 and again declines from 2012 to 2015. To explain this sudden shift, it should be recalled that Iran nuclear sanctions were initiated in 2006 and were intensified in two stages, one in 2010 with respect to Iran's energy sectors and banking system,[405] and two in 2012 with respect to its oil industry and Central Bank.[406] The second stage, as could be expected, had a major effect on TNPAs' disinvestment, considering the comprehensive nature of the sanctions universally imposed. The first stage, however, not only had minimal impact on TNPAs' investment in Iran's market, but even attracted more investment.

Two explanations may cast light on this TNPAs' behaviour. First, the group of companies that continued conducting business in Iran should be considered. Major TNPAs in the world with direct or indirect business ties with U.S. and EU had left Iran since 2010, including Siemens,

[405] Specifically through adaptation of Resolution 1929: *Non-Proliferation*, SC Res 1929, UNSCOR, 2010, 6335th Mtg, UN Doc S/Res/1929 1 at 3, online: <http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1929%282010%29>.
[406] "Fact Sheet: Sanctions Related to Iran" (31 July, 2012), online: *The White House* <https://www.whitehouse.gov/the-press-office/2012/07/31/fact-sheet-sanctions-related-iran>.

Thyssen-Krupp, Mercedes-Benz, Porsche, Toyota, BNP Paribas, NYK Line Ltd (Hong-Kong shipping business), and many other firms in energy sectors.[407] In addition, since 2010, energy firms have been subject to intense U.S. sanctions so that no TNPAs have developed Iran's oil and gas sites since then, considering the fact that these sites attract the highest amount of Iran's FDI annually.[408] Therefore, the increase in the rate of FDI can be associated with the activity of small and medium-sized TNPAs that are neither in the energy sectors nor have business exposure to the U.S. and EU markets, so that they cannot be sanctioned by them.

Second, how TNPAs' sanctions risk indicators detailed in chapter two sheds light on the fact that the first two years after imposition of sanctions had the largest amount of impact on the target states. The negative effects of sanctions initiated in 2006, therefore, reached its summit in 2008 but lessened in 2011. In 2011, TNPAs' investment in Iran's market reached 4.3 USD billion, the highest ever FDI before the nuclear deal in 2015.

After the nuclear deal, in 2016, TNPAs rushed back into Iran's $400 billion economy, which had suffered from sanctions for more than a decade but was now re-opened to marketers.[409] During this period, major TNPAs found Iran's investment climate improved. For example, the French oil company Total partnered with the Chinese CNPC energy company to sign a deal worth 5 USD billion to develop the world's largest gas field, alongside Airbus (selling 100 aircraft worth

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[407] Kenneth Katzman, Cong. Research Serv., RS20871, "Iran Sanctions" (12 January 2016), online: < https://www.everycrsreport.com/files/20160112_RS20871_92fd8451a2990952927d8b01db812325fc11c950.pdf> at 45.

[408] *Ibid* at 51.

[409] "Factbox: Companies rush to Iran as sanctions are lifted" (19 January 2016), online: *Reuters* < https://uk.reuters.com/article/us-iran-nuclear-business-factbox/factbox-companies-rush-to-iran-as-sanctions-are-lifted-idUKKCN0UX16S>; European Businesses Abuze with Preprations to Rush Back into Iran" (22 January 2014), online: *Haaretz* <https://www.haaretz.com/european-businesses-rush-back-to-iran-1.5314263>.

more than $19 billion),[410] the PSA carmaker group ($400 million),[411] Danske Bank Denmark ($500 million),[412] Renault, Siemens, ATR, and many others.[413]

In 2018 and pursuant to U.S. withdrawal from the JCPOA, TNPAs wondered about staying in Iran's market under the extraterritorial effects of U.S. sanctions or exiting. According to the report prepared by the Foundation for Defense for Democracies, out of 232 major TNPAs operating in Iran at the end of 2018, 71 decided to withdraw, 19 planned to stay, and 142 remained with no decision or no broadcasted decision.[414]

Among the major TNPAs that withdrew were "France's Total, Airbus, and PSA/Peugeot; Denmark's Maersk, Germany's Allianz, and Siemens; Italy's Eni; Japan's Mazda and Mitsubishi UFJ, Financial Group; and the UK's BP."[415] The reason behind these TNPAs decisions not to evade U.S. sanctions came from the seriousness of U.S. punishments against sanctions-busters, which alerted the TNPAs to conduct a more precise business risk analysis. For example, in 2019, the British Bank Standard Chartered was penalized $1 billion for circumventing Iran's sanctions from 2007 to 2010.[416] Similarly, in 2015, the U.S. charged BNP Paribas 9 USD billion for evading the

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[410] "Companies that Rushed into Iran Now Prepare to Rush Back Out" (9 May 2018) online: *Bloomberg Quint* <https://www.bloombergquint.com/global-economics/companies-that-rushed-into-iran-now-prepare-to-rush-back-out>; Nader Habibi, "The Iranian Economy Two Years After the Nuclear Agreement", online: *Crown Center for Middle East Studies* <https://www.brandeis.edu/crown/publications/meb/MEB115.pdf>.

[411] "Peugeot-Citroen back on the road in Iran with deal to build cars" 22 January 2016), online: *The Guardian* <https://www.theguardian.com/world/2016/jun/22/peugeot-citroen-back-on-the-road-in-iran-with-deal-to-build-cars>.

[412] Iran Signs €500 Million Finance Deal with Denmark" (20 September 2017), online: Financial Tribune <https://financialtribune.com/articles/economy-business-and-markets/72826/iran-signs-500-million-finance-deal-with-denmark>.

[413] Iran nuclear deal: The EU's billion-dollar deals at risk (17 May 2018), online: *BBC* <https://www.bbc.com/news/world-europe-44080723>.

[414] David Adesnik and Saeed Ghasseminejad, "Foreign Investment in Iran: Multinational Firms' Compliance with U.S. Sanctions" (10 September 2018), online: Foundation for Defense of Democracies <https://www.fdd.org/wp-content/uploads/2018/09/MEMO_CompaniesinIran.pdf>.

[415] *Ibid*.

[416] "US Penalizes British Bank $1B in Iranian Trade Sanctions Case" (9 April 2019), online: *VOA* <https://www.voanews.com/world-news/europe/us-penalizes-british-bank-1b-iranian-trade-sanctions-case>.

U.S. sanctions against Sudan, Iran, and Cuba from 2004 to 2012.[417] German UniCredit SPA Bank,[418] Huawei Technology Company,[419] and German Deutsche Bank,[420] are among several other penalized TNPAs.

The risk of being sanctioned by the U.S. was considerably high so that four months after reimpsoing sanctions against Iran, 31 European and Asian TNPAs which were among the Fortune Global 500 list of largest firms in terms of highest revenues in the world left Iran's market.[421] These TNPAs as well as other TNPAs that withdrew from this market over time, in fact, ignored particular aspects of public international law. For example, they ignored the political statements of world leaders in support of the JCPOA, the binding effects of Resolution 2231 which endorsed the JCPOA, the installment of EU-Iran INSTEX transaction channel to mitigate U.S. sanctions pressure, and even the EU Blocking Statute that was enacted to support TNPAs' business with Iran and fight against the extraterritorial application of U.S. sanctions.

The impact of TNPAs' withdrawal from a foreign sanctioned market is not limited to the ignorance of public international law, profit lost, and monetary damage on host countries' economies but rather, substantially reinforces sender states' sanctions. To explain this reinforcement, once sanctions arise, TNPAs preliminarily comply with sender's sanctions by

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[417] "BNP Paribas Capital Punishment" (5 July 2014), online: *economist* <https://www.economist.com/news/finance-and-economics/21606321-frances-largest-bank-gets-fined-evading-american-sanctions-capital-punishment>; "BNP Paribas sentenced in $8.9 billion accord over sanctions violations" (1 May 2015), online: *Reuters* <https://www.reuters.com/article/us-bnp-paribas-settlement-sentencing/bnp-paribas-sentenced-in-8-9-billion-accord-over-sanctions-violations-idUSKBN0NM41K20150501>.

[418] Sonia Sirletti & GregFarrell, "UniCredit to Pay $1.3 Billion in Biggest Iran Sanctions Fine" (15 April 2019), online: *Bloomberg* <https://www.bloomberg.com/news/articles/2019-04-15/italy-s-unicredit-agrees-to-pay-1-3-billion-over-iran-sanctions>.

[419] "US charges China's Huawei with bank and wire fraud for violating Iran sanctions" (28 January 2019), online: *The Irish Times* <https://www.irishtimes.com/business/economy/us-charges-china-s-huawei-with-bank-and-wire-fraud-for-violating-iran-sanctions-1.3773963>.

[420] "Deutsche Bank fined $258m for violating US sanctions" (4 November 2015), online: *The Guardian* <https://www.theguardian.com/business/2015/nov/04/deutsche-bank-us-sanctions-fine>.

[421] Adesnik, *supra* note 414; "Global 500" online: *Fortune* <http://fortune.com/global500/>.

withdrawing from those markets to minimize the impact of sanctions on their business. In the case of Iran nuclear sanctions, correspondingly, not only did TNPAs' decision to withdraw from Iran's market after May 2018 deprive Iran's economy of millions of dollars in foreign investment, it also empowered the U.S. to use economic measures as a lever to strike a better deal with Iran.[422] To detail, almost one year after U.S. reinstatement of secondary sanctions on TNBs and TNCs, Iran's crude oil export declined from 2.5 million barrels per day to 400,000 as a result of withdrawal of energy companies, such as CNPC, Total, BP and their subsidiaries as well as the ban on financial transaction between Iranian banks, foreign banks, and messaging platforms such as SWIFT.[423] In addition to the impacts of this withdrawal on Iran's economy, the U.S. also enabled to move one step forward and made 12 demands as part of a new nuclear deal with Iran, such as stopping uranium enrichment, ending the proliferation of ballistic missiles, ceasing threat to Israel's existence, and withdrawing forces under Iran's command from Syria.[424]

The unintended consequences of TNPAs' withdrawal are not negligible as well. For example, to offset the governments' budget losses, Iran sells its oil illegally through neighboring countries and black markets, which in essence increases corruption in these countries.[425] In addition, in the worst-case scenario, such an unintended consequence can trigger a war between

[422] Nahal Toosi, "Iran tests Trump's desire to actually strike a new deal" (17 June 2019), online: *Politico* <https://www.politico.com/story/2019/06/17/iran-trump-deal-1366736>.
[423] Chen Aizhu, "China's CNPC ready to take over Iran project if Total leaves: sources" (11 May 2018), online: *Reuters* <https://www.reuters.com/article/us-iran-nuclear-cnpc-total/chinas-cnpc-ready-to-take-over-iran-project-if-total-leaves-sources-idUSKBN1IC0TE>; "US hits Iranian bank, companies with new sanctions" (26 March 2019), online: *Aljazeera* < https://www.aljazeera.com/news/2019/03/hits-iranian-bank-companies-sanctions-190326161903698.html>.
[424] Joseph Trevithick, "Pompeo's 12 Demands For Iran Read More Like A Declaration Of War Than A Path To Peace" (21 May 2018), online: *The Drive* <https://www.thedrive.com/the-war-zone/20989/pompeos-12-demands-for-iran-read-more-like-a-declaration-of-war-than-a-path-to-peace>.
[425] See generally Azar Mahmoudi, *The Proliferation of Corruption in Sanctions Regimes: The Case of Iran* (Master Thesis, McGill University, 2018) [unpublished].

sender and target states to reinforce sender's sanctions or mitigate sanctions pressure on target state.[426]

2. Lex Mercatoria and Economic Sanctions: The Example of SWIFT as an Amalgam of Public and Private Interests

A controversial example of TNPAs' sanctions reinforcement against a target state is the role of the Society for Worldwide Interbank Financial Telecommunication (SWIFT). As the most secured and trusted platform of transferring financial messages throughout the world, SWIFT has facilitated the integration of financial marketplaces and benefited its members by providing reliable and fast communication services.[427] The SWIFT's development ties in the expansion of global markets and especially transnational banks' competition to attract more customers who suffered from a lack of safe, fast and cheap messaging system for transfer of electronic payment orders.[428]

As a result of improvement in computer technology, in the 1960s, six major banks including the Bank of America, Barclays Bank, Algemene Bank, Banca Nazional del Lavoro, Banque Nationale de Paris, and Dresdner Bank initiated a project to set up a private network of interbank communications to replace Telex, then existing messaging system, with a lower operational risk.[429] Eventually, in 1977, 239 member banks in a bottom-up approach established a *lex mercatoria* reflected in SWIFT's bylaws, articles of incorporations, and other governing documents.[430]

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[426] Grace Shao, "US-Iran military conflict will be a 'lose-lose situation,' analysts say" (21 June 2019), online: *CNBC* <https://www.cnbc.com/2019/06/21/us-iran-military-conflict-will-be-a-lose-lose-situation-analysts.html>.
[427] Susan V Scott & Markos Zachariadis, "Origins and Development of Swift, 1973-2009" (2012) 54:3 Business History 462 at 466, 474.
[428] *Ibid* at 467.
[429] *Ibid* at 463-66, 478. See Also John Langdale, *supra* note 158 at 6.
[430] "SWIFT History", online: *SWIFT* <Https://Www.Swift.Com/About-Us/History>.

What distinguishes SWIFT from most other transnational organizations is its private nature; governments or public authorities have the least role in its creation and continuance. This private network of communication was established "by a relatively small number of banks to reduce errors and increase efficiency in interbank payments [and] evolved into a broader industry cooperative and became an unexpected network phenomenon."[431] Today, it provides infrastructure to more than 11,000 institutions in more than 200 countries and territories around the world and can be considered as one of the most successful examples of transnationalism.[432]

SWIFT's bylaws determine its objectives for the "collective benefit of the Shareholders of the Company, the study, creation, utilisation and operation of the means necessary for the telecommunication, transmission and routing of private, confidential and proprietary financial messages."[433]As a limited liability cooperative company headquartered in Belgium,[434] this not-for-profit company is owned and controlled by its shareholders, and it recovers costs through a one-time entrance fee and subsequent messaging fees.[435] SWIFT's Board of Directors (BOD) comprises 25 directors who conduct its businesses under Belgium law.[436]

Since the birth of SWIFT in 1977, SWIFT has expanded its membership to cover any "international, supranational, intergovernmental or national governmental body or institution that as a main activity engages in payment, securities, banking, financial, insurance or investment services or activities (including central banks)."[437] In addition, it provides services to closed

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[431] Scott, *supra* note 427 at 467
[432] "SWIFT History", online: *SWIFT* <Https://Www.Swift.Com/About-Us/History>.
[433] "SWIFT By-laws", online: *SWIFT* Https://Www.Swift.Com/About-Us/Legal/Corporate-Matters/Swift-By-Laws art 3.
[434] *Ibid* art 1.
[435] "SWIFT Corporate Rules", online: *SWIFT* < https://www.swift.com/about-us/legal/corporate-matters/corporate-rules> arts 3.11, 7.1; See Also Scott, *supra* note 427 at 470.
[436] *Ibid* art 1.2.
[437] "SWIFT User and Shareholder Eligibility Criteria" Titled User Eligibility Criteria, online: *SWIFT* <Https://Www.Swift.Com/About-Us/Legal/Corporate-Matters/User-Categories#Swiftusercategoriesusagerights> art 1.2.

groups, such as Corporate, Financial Market Regulator, Payment System Participant, Securities Market Data Provider, Securities Market Infrastructure System Participant, Service Participant within Member Administered Closed User Group and Treasury Counterparty.[438] Today, SWIFT processes more than 5.6 billion financial messages through its system annually. Without SWIFT, businesses would not be able to complete inter-institution payments on their products and service unless old fashioned and slow solutions such as bartering, bags full of cash or gold, or exchange agents are involved.

Despite the private nature of SWIFT, it played a major role in reinforcing sanctions against Iran before signing the 2015 JCPOA and after the 2018 U.S. withdrawal. To expand this discussion, it should be noted that SWIFT's users voluntarily join this community by accepting its terms and conditions, and SWIFT is obliged to operate for the benefit of all its shareholders to support the global economy.[439] Cutting off institutions from this network, hence, is not in the interest of its users and may create a potential risk for SWIFT to be replaced by other messaging services. For example, such a replacement can happen with the establishment of EU-Iran INSTEX explained earlier.[440]

According to SWIFT Corporate Rules Article 3.5(2), disconnecting users would be the result of resignation, suspension, or termination. Any users' resignation from the company can be

[438] "SWIFT User Categories", online: *SWIFT* <https://www.swift.com/about-us/legal/corporate-matters/user-categories>; "SWIFT User and Shareholder Eligibility Criteria" Titled Closed User groups and Corporate Entities, online: *SWIFT* <Https://Www.Swift.Com/About-Us/Legal/Corporate-Matters/User-Categories#Swiftusercategoriesusagerights>.
[439] "SWIFT By-laws", online: *SWIFT* <Https://Www.Swift.Com/About-Us/Legal/Corporate-Matters/Swift-By-Laws> art 8; "SWIFT and Sanctions" (last visit: 12 August 2019), online: *SWIFT* <Https://Www.Swift.Com/About-Us/Legal/Compliance/Swift-And-Sanctions?Tl=En#Topic-Tabs-Menu>.
[440] Susan V Scott & Markos Zachariadis, *The Society for Worldwide Interbank Financial Telecommunication (Swift): Cooperative Governance for Network Innovation, Standards, And Community* (NY: Routledge, 2013) at 135.

delivered in a written notice to "SWIFT management", a body working on behalf of the BOD.[441] In the event of suspension or termination, SWIFT invokes a reasonable interpretation of any of the following conditions in relation to a user:

> Article 3.5(2):
> a. [D]oes not observe or ceases to observe the terms and conditions [e.g., corporate rules and bylaws];
> b. becomes insolvent or generally fails to pay, or admits its inability to pay, all or a substantial part of its debts as they become due;
> c. becomes subject to, or avails itself of, a liquidation, receivership, bankruptcy, insolvency;
> d. fails to comply with any law, decree, regulation, order or any other act or intervention of a regulatory, governmental, legislative or judicial authority, including a court or arbitral tribunal; and,
> e. has not been actively using or ceases to actively use SWIFT messaging services.[442]

Furthermore, Article 3.2 adds more criteria for termination of a user's status if that user's access to SWIFT

> - [H]as adversely affected, or may adversely affect, the security, reliability and/or resiliency of its operations or, more generally, SWIFT's reputation, brand or goodwill;
> - demonstrates a conduct which is not in line with generally accepted business conduct principles;
> - is subject to regulations impacting its SWIFT user status;
> - does not comply with applicable laws or regulations; and,
> - its business, regulatory and/or geographical profile does not conform to the expected use of SWIFT services…[443]

In 2012, pursuant to EU Council Regulation 267/2012 against Iran's nuclear program,[444] for the first time SWIFT cut off from its network more than 24 Iranian banks and institutions to

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[441] The User Validation Process" (last visit: 12 August 2019) Titled Responsibility for the approval and admission process, online: SWIFT < Https://Www.Swift.Com/About-Us/Legal/Corporate-Matters/Validation-Process >.
[442] "SWIFT Corporate Rules" online: *SWIFT* < https://www.swift.com/about-us/legal/corporate-matters/corporate-rules> art 3.5(2).
[443] "SWIFT Corporate Rules", online: *SWIFT* < https://www.swift.com/about-us/legal/corporate-matters/corporate-rules> art 3.2.
[444] EC, *Commission Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures Against Iran and Repealing Regulation (EU) No 961/2010,* [2012] OJ, L 88/1, online: >https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:088:0001:0112:EN:PDF>.

comply with EU sanctions and made it impossible to complete inter-institution payments for more than three years.[445] EU Regulation Article 23(4) instructs as follows:

> [I]t shall be prohibited to supply specialised financial messaging services, which are used to exchange financial data to the natural or legal persons, entities or bodies listed in Annexes VIII and IX.[446]

As a corporation governed by Belgian law incorporating EU regulations, SWIFT was bound to comply with this EU Regulation.[447] According to the stipulations of SWIFT Corporate Rules Article 3.5(2)(d), the BOD is allowed to suspend or terminate users' access if users fail to comply with any law or order (in this case, Iran's defiance of EU's legislation to restrict its nuclear activities). Moreover, Article 3.2 implies that Iran's suspected nuclear program and sanctions-busting activities would be considered grounds to adversely affect SWIFT's reputation and security and contrary to the expected use of its services.

Although clear-cut provisions of EU Regulation and SWIFT's Corporate Rules permitted the disconnection of SWIFT's services in 2012, a more challenging situation arose out of the 2018 U.S. reinstatement of unilateral secondary smart sanctions against Iran and subsequent Iranian banks be cut off from SWIFT. In November 2018, again SWIFT suspended certain Iranian banks' access to its network in conformity with the unilateral U.S. sanctions. Not only was this round of sanctions not regulated and instructed by the EU, but SWIFT also disobeyed EU Regulation

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[445] "SWIFT and Sanctions" (last visit: 12 August 2019), online: *SWIFT* <Https://Www.Swift.Com/About-Us/Legal/Compliance/Swift-And-Sanctions?Tl=En#Topic-Tabs-Menu>.
[446] EC, *Commission Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures Against Iran and Repealing Regulation (EU) No 961/2010,* [2012] OJ, L 88/1, online: >https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:088:0001:0112:EN:PDF>.
[447] EC, *Consolidated Version of the Treaty on the Functioning of the European Union*, [2008] OJ, C 326/47 art 288, online: *Eur-Lex Europa* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>; EC, *Commission Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures Against Iran and Repealing Regulation (EU) No 961/2010,* [2012] OJ, L 88/1, online: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:088:0001:0112:EN:PDF>.

2271/96 (the Blocking Statute), which prohibited any EU persons from complying with the U.S. sanctions.

In more detail, SWIFT's cut off was in violation of its governing laws, a fact that can be found in SWIFT's contradictory official statements. In 2012, SWIFT declared the drivers of sanctions as follows: "SWIFT was exceptionally prohibited under EU Regulation 267/2012 from providing financial messaging services to EU-sanctioned Iranian banks. SWIFT is incorporated under Belgian law and had to comply with this regulation as confirmed by its home country government."[448] By contrast, in 2018, it announced that the suspension of Iranian banks "while regrettable, was taken in the interest of the stability and integrity of the wider global financial system, and based on an assessment of the economic situation."[449] According to the documents governing SWIFT, such as the Corporate Rules, Usership Validation Process, and Bylaws, "stability", "integrity of global financial system", and "assessment of economic situation" are not to be considered as grounds for suspension or termination of membership.

The SWIFT's cut off thus might encompass different reasons. First, it seems that a shift has happened from focusing on Belgian law to focusing on multiple jurisdictions. This claim can be interpreted on the bases of the above mentioned official statements as well as the statement below announced after the 2012 sanctions and a comparable statement in 2018:

> [2012:] Whilst sanctions are imposed independently in different jurisdictions around the world, SWIFT cannot arbitrarily choose which jurisdiction's sanction regime to follow. Being incorporated under Belgian law it must instead comply with related EU regulation, as confirmed by the Belgian government.[450]
>
> [2018:] SWIFT has been and remains in full compliance with all applicable sanctions regulations of the multiple jurisdictions in which it operates, and has

[448] "SWIFT and Sanctions" (last visit: 12 August 2019), online: *SWIFT* <Https://Www.Swift.Com/About-Us/Legal/Compliance/Swift-And-Sanctions?Tl=En#Topic-Tabs-Menu>.
[449] *Ibid*.
[450] "SWIFT and Sanctions" (last visit: 12 August 2019), online: *SWIFT* <Https://Www.Swift.Com/About-Us/Legal/Compliance/Swift-And-Sanctions?Tl=En#Topic-Tabs-Menu>.

> received confirmation of this from the competent regulatory authorities. As a global provider of secure messaging services, SWIFT has no involvement in or control over the underlying financial transactions that are contained in the messages of its member banks.[451]

On the one hand, in 2012, SWIFT expressed that it could not arbitrarily choose which "jurisdiction's sanctions" to follow unless the source of obligation were to come from the EU and be confirmed by the Belgian government. On the other hand, in 2018, it declared that it remains in full compliance with all applicable sanctions of the "multiple jurisdictions" in which it operates. The source of this shift on the part of SWIFT's decision-makers may come from its private nature, which is to gain critical mass on a worldwide basis, in conjunction with its usage as an instrument of foreign policy.

Second, the "multiple jurisdictions in which it operates" suggests that in order for SWIFT to comply with U.S. sanctions, it would be sufficient to establish a jurisdictional nexus through SWIFT's operating centers (OPCs) in U.S. jurisdiction. To elaborate, "for resilience, security, and availability purposes",[452] SWIFT stores its message data in multiple OPCs, including in the EU, the U.S., and Switzerland.[453] Each OPC works as a backup in case of disruption in two other centres.[454] The U.S. centre stores financial messages transferred from EU customers to Trans-Atlantic customers.[455] The importance of this centre, besides the technical aspects of its operation, is its mandatory compliance with subpoenas served by the OFAC.[456] This mandate originated from

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[451] "SWIFT Instructed to Disconnect Sanctioned Iranian Banks Following EU Council Decision" (15 March 2012), online: *SWIFT* <https://www.swift.com/insights/press-releases/swift-instructed-to-disconnect-sanctioned-iranian-banks-following-eu-council-decision>.
[452] "Personal Data Protection Policy" (last visit 12 August 2019), online: *SWIFT* <https://www.swift.com/about-us/legal/compliance/data-protection-policies> art 4.4.
[453] *Ibid*.
[454] "SWIFT Ad Hoc Clauses" (last visit 12 August 2019), online: *SWIFT* <https://www.swift.com/about-us/legal/compliance/data-protection-policies>.
[455] "SWIFT Corporate Brochure" (last visit 12 August 2019), online: *SWIFT* <https://www.swift.com/sites/default/files/resources/swift_corporate_brochure.pdf> at 33.
[456] "Compliance" (last visit 12 August 2019), online: *SWIFT* <https://www.swift.com/about-us/legal/compliance/tftp>.

the stipulations of Terrorist Finance Tracking Program (TFTP) created shortly after the terroristic attacks of September 11, 2001.[457] In response to the OFAC's subpoenas, SWIFT is required to provide the financial records of its messages for counter-terrorism purposes.[458] Whether or not the OFAC as the main responsible U.S. body for implementing sanctions regulations can influence SWIFT for non-terrorism purposes (e.g., nuclear-related goals), the subpoenas may inevitably expose SWIFT to U.S. jurisdiction, thereby enforcing sanctions compliance.

Third and last, one can consider the effects of U.S. secondary smart sanctions to be influential on SWIFT's decision. In November 2018, the U.S. frankly instructed SWIFT to cut off its services to Iranian institutions, as SWIFT had done in 2012. The U.S. threatened to impose sanctions on SWIFT, similar to any other entities, by restricting its activity in U.S. jurisdiction or by imposing monetary punishments.[459] In addition, the U.S. threatened to impose criminal charges, travel bans, and asset freezes against the members of SWIFT's BOD and even against the entities they work for.[460] The risk of sanctions defiance, thus, could force SWIFT's BOD to comply with U.S. sanctions.

In sum, SWIFT's reactions to the recent economic sanctions shed more light on the expanded role of transnationalism in recent decades. As detailed above, when such a private entity gains critical mass and extends beyond borders, it can influence policymaking and rule-making so that sanctions designers should consider SWIFT as part of their plans to increase pressure on target states. In addition, the example of SWIFT helps to understand how TNPAs' exit from a target market may drastically reinforce senders' sanctions and simultaneously, introduce TNPAs as the

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[457] *Ibid*.
[458] *Ibid*.
[459] Ralph Peters, "US threatens to smack SWIFT with sanctions if it fails to cut off financial services to Iran" (2 November 2018), online: *RT* <https://www.rt.com/business/442970-us-threatens-to-smack-swift />.
[460] J P Koning, "Europe's SWIFT Problem" (last visit: 12 August 2019), online: *Bourse and Bazaar* <https://www.bourseandbazaar.com/articles/2018/8/24/europes-swift-problem>.

interpreters of public international law who act for their own benefit in the opposite direction of the stipulations of public international law.

D. Conclusion

Chapter three examined the impact of TNPAs on public international law in sanctions regimes by investigating the case of Iran nuclear-related sanctions. This chapter began with the history of Iran's nuclear program and the challenges the international community faced to reach the 2015 JCPOA. By exploring the laws governing nonproliferation of nuclear weapons, such as the NPT and the IAEA's Statute, the chapter continued with an analysis of Iran's nuclear program within the framework of public international law. The binding effects of the JCPOA and UNSC Resolution 2231 as well as the dispute resolution mechanism of the JCPOA were discussed mainly to highlight public international law efforts to support and save the nuclear deal, despite the 2018 U.S. withdrawal.

Nevertheless, the TNPAs' exit from Iran's market—disregarding the obligations of public international law—not only had an impact on Iran's economy but also considerably reinforced U.S. sanctions. The TNPAs s' influence on the outcome of Iran's sanctions, especially the role of SWIFT, suggest that TNPAs could be considered one of the main interpreters of public international law under sanctions regimes, a fact that underlines the expanded role of transnationalism in the contemporary world.

VII. Conclusions and Recommendations

This thesis discussed that by deploying legal and legitimate economic sanctions, transnational private actors (TNPAs) exit from the market of target states, but this correlation is not always straightforward, meaning these actors can still exit from a foreign market even when the legitimacy of the imposed sanctions is under question by the international community. In other words, although illegal or illegitimate sanctions are not expected to be complied with and transnational banks (TNBs) and transnational corporations (TNCs) can carry on their operations in a sanctioned market, they may nonetheless decide to depart from target states' markets. It was shown that their decision to stay or depart from such a market depended on their business risk analysis: the risk of customers' lawsuits in the case of departure as well as senders' penalty in the case of staying.

In order to understand why transnational private actors might depart from such a sanctioned market disregard of the illegality or illegitimacy of sanctions, this thesis developed three chapters. Chapter one began with the permissible limits of public international sanctions. To detail, the components of the notion of "secondary smart sanctions" was discussed with a special focus on the mechanisms of Ombudsperson and focal points at UN level as well as the violation of due process rights and the issue of extraterritoriality. These discussions illustrated that although international law makes it possible to impose "smart sanctions" and "secondary sanctions" and at the same time limits their applications, the combination of these two, i.e., secondary smart sanctions, would call into question the permissible limits of public international law.

Chapter two investigated the expanded scopes of transnationalism by focusing on the role of TNCs and TNBs in the contemporary world. This chapter began with the contribution of TNPAs to the development of the world economically, and their influence on the creation of bottom-up

lex mercatoria as well as the unification and harmonization of divergent laws and regulations. In transacting their businesses abroad, it was pointed out that TNPAs are faced with various examples of uncertainty in foreign markets in the forms of country risk, industry risk, institutional risk, and legal risk. As such, market selection and business risk management were considered as two essential strategies in conducting their business abroad. Despite seeking higher protection levels by implementing business risk management, TNPAs in host countries under economic sanctions are confronted with additional risks that inherently exist in every sanctions regime. By examining different types of sanctions risks, such as "industry risk", this chapter ended with sanctions risk indicators extracted from sanctions literature, such as "the role of third-party states" and "regime types of governments".

Chapter three examined the impact of TNPAs on public international law in sanctions regime by investigating the case of Iran nuclear-related sanctions. This chapter began with the history of Iran's nuclear program and the challenges the international community faced to reach the 2015 JCPOA. By exploring the laws governing nonproliferation of nuclear weapons, such as the NPT and the IAEA's Statute, the chapter continued with an analysis of Iran's nuclear program within the framework of public international law. The binding effects of the JCPOA and UNSC Resolution 2231 as well as the dispute resolution mechanism of the JCPOA were discussed mainly to highlight public international law efforts to support and save the nuclear deal, despite the 2018 U.S. withdrawal. Nevertheless, the transnational actors' exit from Iran's market, according to their risk analyses and disregarding the obligations of public international law, not only had an impact on Iran's economy but also considerably reinforced U.S. sanctions. Their influence on the outcome of Iran's sanctions suggest that TNPAs could be considered one of the main interpreters of public

international law under sanctions regime who act according to their interests, a point that underlines the expanded role of transnationalism in the contemporary world.

VIII. Bibliography

Primary Materials:
Legislation
Domestic
USA

1. Act to Amend the Foreign Extraterritorial Measures Act, RSC 1996, C-54 [*Amended FEMA*].
2. *Administrative Procedure Act*, 5 U.S. Code § 706 (1946).
3. *Authorizing Additional Sanctions with Respect to Iran*, 77 Fed Reg 45897 (2012).
4. *Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Sanctions Act of 1996, As Amended*, 3 74 Fed Reg 30505 (2011).
5. *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).
6. *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).
7. *Authorizing the Imposition of Certain Sanctions with Respect to the Provisions of Good, Services, Technology, or Support of Iran's Energy and Petrochemical Sectors*, 77 Fed Reg 72609.
8. *Blocking Property of the Government of Iran and Iranian Financial Institutions*, 77 Fed Reg 6659 (2012).
9. *Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters*, 70 Fed Reg 38567 (2005).
10. *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 In- formation Technology*, 77 Fed Reg 24571 (2012).
11. *Comprehensive Iran Sanctions, Accountability, and Divestment Act*, 22 USC §§ 8501–51 (2010).
12. Foreign Extraterritorial Measures Act, RSC 1985, F-29 [*FEMA*].
13. *Iran Freedom and Counter-Proliferation Act*, 22 USC (2012).
14. *Iran Freedom Support Act*, 50 USC § 1701 note (2006).
15. *Iran Sanctions Act*, 50 USC § 1701 note (1996).
16. *Iran Threat Reduction and Syria Human Rights Act*, 22 USC (1996).
17. *Iran-North Korea-Syria Nonproliferation Act*, 50 USC (2000).
18. *Iranian Transactions and Sanctions Regulations*, 31 CFR (2012).
19. *National Defense Authorization Act for Fiscal Year 2012*, Pub L No 112–8 (2012).
20. *Prohibiting Certain Transactions with the Suspending Entry Into the United States of Foreign Sanctions Evaders with Respect to Iran and Syria*, 77 Fed Reg 26409 (2012).
21. *Reimposing Certain Sanctions with Respect to Iran*, 83 Fed Reg 38939 (2018).

22. *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).

International

23. American Law Institute, *Restatement of the Law Third, the Foreign Relations Law of the United States*, Revised and enlarged. (St. Paul, Minn. American Law Institute, 1987).
24. *Charter of the United Nations***,** 26 June 1945, Can TS 1945 [*UN Charter*].
25. EC, *Commission Common Poisition 200/652/CFSP of 07 August 2008, Concerning Restrictive Measures Against Iran* [2008] OJ, L 213/58.
26. EC, *Commission Common Poisition 2007/140/CFSP of 27 February 2007.* 2007/140/CFSP*, Concerning Restrictive Measures Against Iran* [2007] OJ, L 61/1.
27. EC, *Commission Decision (CFSP) 2015/1863 of 18 October 2016, Amending Decision 2010/413/CFSP Concerning Restrictive Measures Against Iran,* [2015] OJ, L 274/174.
28. EC, *Commission Decision 2010/413//CFSP of 26 July 2010, Concerning Restrictive Measures Against Iran and Repealing Common Position 2007/140/CFSP,* [2010] OJ, L 195/39.
29. EC, *Commission Decision 2012/35 CFSP of 23 January 2012, Amending Decision 2010/413/CFSP Concerning Restrictive Measures Against Iran,* [2012] OJ, L 19/22.
30. EC, *Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom*, [2018] OJ, L 199I/1 [*Regulation 2018*].
31. EC, *Commission Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures Against Iran and Repealing Regulation (EU) No 961/2010,* [2012] OJ, L 88/1.
32. EC, *Commission Regulation (EU) No 503/2011 of 23 May 2011, Implementing Regulation (EU) No 961/2010 on Restrictive Measures Against Iran,* [2011] OJ, L 136/26.
33. EC, *Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom,* [1996] OJ, L 309/1 [*Regulation 2271/96*],
34. *European Union-United States: Memorandum of Understanding Concerning the U.S. Helms-Burton Act and The U.S. Iran And Libya Sanctions Act*, 11 April 1997, 36 I.L.M. 529 (1997).
35. *General Agreement on Tariffs and Trade*, 30 October 1947, 58 UNTS 187 (entered into force 1 January 1948) [GATT 1947].
36. IAEA, Board of Governors, Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran, Resolution GOV/2006/14.
37. IAEA, Board of Governors, Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolution in the Islamic Republic of Iran, Resolution GOV/2011/65.
38. IAEA, Board of Governors, Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran (2005), Resolution GOV/2005/77.

39. IAEA, Board of Governors, Verification and Monitoring the Islamic Republic of Iran in Light of United Nations Security Council 2231(2015), Resolution GOV/INF/2016/1.
40. IAEA, Statute, (entered into force 29 July 1957).
41. IAEA, *The Structure and Content of Agreements Between the Agency and states Required in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons*", Doc No INFCIRC/153 (1972).
42. International Law Commission, Draft Article on Responsibility of States for Internationally Wrongful Acts, with commentaries, UNGAOR, 53rd Sess, UN Doc A/56/10 (2001).
43. *Join Plan of Action Agreement on Iran's Nuclear Program*, 24 November 2013.
44. Joint Comprehensive Plan of Action, P5+1 and Iran, 14 July 2015 (entered into force 18 October 2015) [*JCPOA*].
45. *Model Protocol Additional to the Agreement(s) between State(s) and the International Atomic Energy Agency for the Application of Safeguards*, Doc No INFCIRC/540 (1998).
46. *Non-Proliferation*, SC Res 1929, UNSCOR, 2010, 6335th Mtg, UN Doc S/Res/1929.
47. *North American Free Trade Agreement Between the Government of Canada, the Government of Mexico and the Government of the United States*, 17 December 1992, Can TS 1994 No 2 (entered into force 1 January 1994) [*NAFTA*].
48. Resolution 2231 (2015) On Iran Nuclear Issue, SC Res 2231, UNSCOR, UN Doc S/RES/2231 (2015).
49. Responsibility of States for Internationally Wrongful Acts, UNGAOR, 56th Sess, UN Doc A/56/83 (2001).
50. *Treaty on the Non-Proliferation of Nuclear Weapon*, the government of United Kingdom of Great Britain and Northern Island, the United States of America, and the Union of the Soviet Socialist Republics, (entered into force 5 March, 1970).
51. UNGAOR, 60th Sess, UN Doc A/RES/60/1 (2005).
52. *United States - The Cuban Liberty and Democratic Solidarity Act (Complaint by the European Communities)* (1996) WTO Doc WT/DS38/2 (Panel Report) [*EU-US Panel*].
53. UNSCOR, 5500th Mtg, UN Doc: S/RES/1696 (2006).
54. UNSCOR, 5612th Mtg, UN Doc, S/RES/1737 (2006).
55. UNSCOR, 5647th Mtg, UN Doc: S/RES/1747 (2007).
56. UNSCOR, 5848th Mtg, UN Doc: S/RES/1803 (2008).
57. UNSCOR, 5984th Mtg, UN Doc: S/RES/1835 (2009).
58. UNSCOR, 6335th Mtg, UN Doc: S/RES/1929 (2010).
59. UNSCOR, 73d Year, 8418 MTG, UN Doc S/pv/.8418 (2018).
60. UNSCOR, 7488th Mtg, UN Doc: S/RES/2231 (2015).
61. WTO, General Council, *Minutes of Meeting* (held on 12 March 1986), WTO Doc C/M/196.

Jurisprudence:

Domestic

62. *Zevallos v Obama*, 793 F (3d) 106 (DC Cir 2015).

International

63. "Case Concerning Barcelona Traction, Light and Power Company, Limited" (5 February 1970), at 33, online: *International Court of Justice* <https://www.icj-cij.org/files/case-related/50/050-19700205-JUD-01-00-EN.pdf>.

Secondary Materials:

Monographs

64. Abrahamsson, Pekka et al, *Software Process Improvement* (Potsdam, Germany: Springer, 2007).
65. Alexander, Kern, *Economic Sanctions: Law and Public Policy* (Basingstoke, England: Palgrave Macmillan, 2009).
66. Alexandroff, Alan S & Rajeev Sharma, "The National Security Provision – GATT Article XXI' in Arthur E Appleton & Patrick F J Macrory, eds, *The World Trade Organization: Legal, Economic, and Political Analysis* (New York: Springer, 2005).
67. Black-Branch, Jonathan L and Dieter Fleck, eds, *Nuclear Non-Proliferation in International Law*, vol 1 (T.M.C. The Hague, The Netherlands: Asser Press, 2014).
68. Bonell, Michael Joachim, *The UNIDROIT Principles in Practice: Case law and Bibliography on the UNIDROIT Principles of International Commercial Contracts*, 2nd ed (Ardsley, NY: Transnational, 2006).
69. Bouchet, Michel Henri, Ephraim Clark & Bertrand Groslambert, *Country Risk Assessment: A Guide to Global Investment Strategy*" (Hoboken, NJ: Wiley Finance, 2003).
70. Buzdugan, Stephen R & Heinz Tüselmann, "Making the Most of FDI for Development: 'New' Industrial Policy and FDI Deepening for Industrial Upgrading" in *Transnational Corporations Investment and Development* (New York, UN, 2018).
71. Carter, Barry E*, International Economic Sanctions: Improving the Haphazard U.S. Legal Regime* (Cambridge, UK: Cambridge University Press 1988).
72. Chan, Steve & A Cooper Drury, *Sanctions as Economic Statecraft: Theory and Practice*, (Basingstoke: Macmillan Press, 2000).
73. Cortright, David & George A Lopez, *Smart Sanctions: Targeting Economic Statecraft* (Lanham, Maryland: Rowman & Littlefield Publishers, 2002).
74. Cortright, David, *Economic Sanctions Panacea or Peacebuilding in a Post-Cold War World?,* 1st ed (London: Taylor and Francis, 2018).
75. Djelic, Marie-Laure & Sigrid Quack, "Transnational Communities and Their Impact on the Governance of Business and Economic Activity" in Marie-Laure Djelic & Sigrid Quack, Eds, *Transnational Communities: Shaping Global Economic Governance* (Cambridge: University Press, 2010).
76. El Baradei, Mohamed, *The Age of Deception: Nuclear Diplomacy in Treacherous Times*, 1st ed (NY, New York: Metropolitan Books/Henry Holt, 2011).
77. Fabre, Cécile, *Economic Statecraft: Human Rights, Sanctions, and Conditionality* (Cambridge, Massachusetts: Harvard University Press 2018).

78. Gary Clyde Hufbauer et al, *Economic Sanctions Reconsidered,* 3rd ed (Washington DC: Peterson Institute for International Economics) at 65—72.
79. Hague Academy of International Law Center for Studies and Research, "Les Sanctions Économiques En Droit International: Economic Sanctions in International Law." (The Hague: M. Nijhoff, 2015).
80. Harnisch, Sebastian, "Preventing Crisis Militarization: The European union he United States, and the Iranian Nuclear Program" in Gordon Friedrichs et al, Eds, *The Politics of Resilience and Transatlantic Order Enduring Crisis?* London: Routledge, 2019).
81. Heupel, Monika, "UN Sanctions Policy and the Protection of Due Process Rights: Making Use of Global Legal Pluralism" in Monika Heupel & Michael Zürn, eds, *Protecting the Individual from International Authority: Human Rights in International Organizations* (Cambridge, UK: Cambridge University Press, 2017).
82. Hufbauer, Gary C, Jeffrey J Schott & Kimberly A Elliott, *Economic Sanctions in Support of Foreign Policy Goals* (Washington, DC: Institute for International Economics,1983).
83. Ietto-Gillies, Grazia, *Transnational Corporations: Fragmentation Amidst Integration* (London: Routledge, 2002).
84. Jackson, John H, *The World Trading System: Law and Policy of International Economic Relations,* 2nd ed (Cambridge, MA: MIT Press, 1997).
85. Joyner, Daniel, *Iran's Nuclear Program and International Law: From Confrontation to Accor*d, 1st ed (New York, NY: Oxford University Press, 2016).
86. Koller, Glenn R, *Risk Assessment and Decision Making in Business and Industry: A Practical Guide*, 2nd ed, (Boca Raton, FL: Chapman & Hall/CRC, 2005).
87. Lester, Simon N, Bryan Mercurio & Arwel Davies, *World Trade Law: Text, Materials, And Commentary*, 3d Ed (Oxford: Hart Publishing, 2018).
88. Mišćenić, Emilia & Raccah Aurélien, eds. 2016. *Legal Risks in EU Law: Interdisciplinary Studies on Legal Risk Management and Better Regulation in Europe* (Switzerland: Springer, 2016).
89. Mohamad, Rahmat, "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).
90. Nephew, Richard, *The Art of Sanctions: A View from the Field* (New York: Columbia University Press, 2018).
91. Parsi, Trita, *A Single Roll of the Dice: Obama's Diplomacy with Iran* (New Haven: Yale University Press, 2012).
92. Ragazzi, Maurizio, *The Concept of International Obligations Erga Omnes* (Oxford: Clarendon Press 2002).
93. Reardon, Robert J et al, *Containing Iran: Strategies for Addressing the Iranian Nuclear Challenge* (Santa Monica, CA: RAND, 2012).
94. Scott, Susan V & Markos Zachariadis, *The Society for Worldwide Interbank Financial Telecommunication (Swift): Cooperative Governance for Network Innovation, Standards, And Community* (NY: Routledge, 2013).
95. Shaw, Malcolm N, *International Law* 7th ed (NY: Cambridge University Press, 2014).
96. Simons, Geoff L, *Imposing Economic Sanctions: Legal Remedy or Genocidal Tool?* (London: Pluto Press, 1999) at 9.

97. Sodagar, Mohammad Reza, "Roshde Sarmaye Dari dar Iran: Marhaleye Gostaresh: 1344-1357—The Development of Capitalism in Iran: Expansion Level (1344-1357)" (Tehran, Iran: Andishe Shole, 1990).
98. Trocan, Laura Magdalena, "Sanctions in Public International Law" in *Dny práva -2009-Days of Law: The Conference Proceedings*, 1st ed (Brno: Masaryk University, 2009).
99. Williams, Barry, "Multinational Banking and Global Capital Markets" in Pasquale Michael Sgro, ed, *International Economies, Finance, and Trade*, vol 2 (Paris, EOLSS Publications, 2009).
100. Wright, Robin B, *The Iran Primer: Power, Politics, and U.S. Policy* (Washington: United States Institute of Peace, 201).
101. Yaël Ronen, *The Iran Nuclear Issue* (Portland, OR, USA: Hart, 2010).

Articles

102. Allen, Susan H, "The Determinants of Economic Sanctions Success and Failure" (2005) 31:2 international interactions 117.
103. Allen, Susan H, "The Domestic Political Costs of Economic Sanction" (2008) 52:6 J Conflict Resolution 916.
104. Amuzegar, Jahangir, "The Iranian Economy Before and After the Revolution" (1992) 46:3 Middle East J 413.
105. Angelo Estrella, Faria José, "Future Directions of Legal Harmonisation and Law Reform: Stormy Seas or Prosperous Voyage?" (2009) Unif L Rev 14 5.
106. Bahmani-Oskooee, Mohsen, "The Decline of the Iranian Rial during the Post-Revolutionary Period: The Monetary Approach and Johansen's Cointegration Analysis" (1995) 16 :2 Can J Development Studies 277.
107. Balan, George-Dian, "The Latest United States Sanctions against Iran: What Role to the WTO Security Exceptions?" (2013) 18:3 J Confl & Se L 365.
108. Bapat, Navin A & Bo Ram Kwon, "When Are Sanctions Effective? A Bargaining and Enforcement Framework" (2015) 69:1 Intl Organization 131.
109. Bapat, Navin A & Clifton Morgan, "Multilateral Versus Unilateral Sanctions Reconsidered: A Test Using New Data" (2009) 53:4 Intl Studies Q 1075.
110. Barber, James, "Economic Sanctions as a Policy Instrumen*t" (1979) 55:3 Intl Affairs 367*.
111. Bernal, Richard, "Transnational Banks, the International Monetary Fund and External Debt of Developing Countries" (1982) Soc & Economic Studies 31:4 71.
112. Bernstein, Lisa, "Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms, And Institutions" (2001) Michigan Law Rev 99:7 1724.
113. Bhala, Raj "National Security and International Trade Law: What the GATT Says, and What the United States Does" (1998) 19:2 U Pa J Intl L 263.
114. Biersteker, Thomas J, "Targeted Sanctions and Individual Human Rights" (2009) Intl J 65:1: 99.
115. Bohlen, Avis, "Iran: An Opening for Diplomacy?" (2015) 57:5 Survival 59.
116. Börzel, Tanja, "Private Actors on the Rise? The Rol of Non-StateActors in Compliance with International institutions" (2001) Otto Suhr Institute for Political Science 2000/14 1.

117. Bradley, Curtis A, "Universal Jurisdiction and U.S. Law" U Chicago Legal F 2001:1 323.
118. Calkins, Hugh, "The Case for a Legal Risk Strategy" (1989) 10:5 J Bus Strategy 42.
119. Cécile Fabre, "Secondary Economic Sanctions" (2016) 69:1 259.
120. Clark, Harry L, "Dealing with U.S. Extraterritorial Sanctions and Foreign Countermeasures" (1999) 20 U Pa J Intl L 61.
121. Cleveland, Sara H, "Human Rights Sanctions and International Trade: A Theory of Compatibility" (2002) J Intl Econ L 5:1 133.
122. Cleveland, Sara H, "Norm Internalization and U.S. Economic Sanctions" (2001) Yale J Intl L 26 1.
123. Cotterrell, Roger, "What Is Transnational Law?" (2012) Law & Soc Inquiry 37:2 500.
124. Crouch, Greg, 1979 "Transnational Banks and the World Economy." (1979) Australian Q 51:2 66.
125. Daugirdas, Kristina & Julian Mortenson, "Contemporary Practice of the United States Relating to International Law" (2016) 110:2 AJIL 346.
126. Dizaji, Sajjad & Peter Bergeijk, "Potential Early Phase Success and Ultimate Failure of Economic Sanctions: A VAR Approach with an Application to Iran" (2013) 50:6 J Peace Research 721.
127. Drezner, Daniel W, "Bargaining, Enforcement, and Multilateral Sanctions: When Is Cooperation Counterproductive?" (2000) 54:1 Intl Organization 73.
128. Drezner, Daniel W, "Conflict Expectations and the Paradox of Economic Coercion" (1998) 42:4 Intl Studies Q 709.
129. Drezner, Daniel W, "Serious about Sanctions" (1998) 53:1 National Interest 66.
130. Drezner, Daniel W, "The Hidden Hand of Economic Coercion" (2003) 57:3 Intl Organization 643.
131. Driscoll, Donna et al, "Economic Sanctions and Culture" (2011) 22:4 Defence & Peace Economics 423.
132. Early, Bryan R "Unmasking the Black Knights: Sanctions Busters and Their Effects on the Success of Economic Sanctions" (2011) 7:4 Foreign Policy Analysis 381.
133. Early, Bryan R, "Alliances and Trade with Sanctioned States: A Study of U.S. Economic Sanctions" (2012) 56:3 J Conflict Resolution 547.
134. Erasmus, Gerhard, "Third States and Sanctions in Public International Law—The Position of South Africa" (1992) Archiv des Völkerrechts 30:1 128.
135. Esfandiary, Dina & Mark Fitzpatrick, "Sanctions on Iran: Defining and Enabling Success" (2011) 53:5 Survival 143.
136. Fathollah-Nejad, Ali "Why Sanctions Against Iran Are Counter Productive: Conflict Resolution and State–Society Relations" (2014) 69:1 Intl J 48.
137. Fitzgerald, Peter L, "Pierre Goes Online: Blacklisting and Secondary Boycotts in U.S. Trade Policy" (1998) Vand J Transnat'l L 31:1 1.
138. Fitzpatrick, Mark, "Iran: A Good Deal" (2015) 57:55 Survival 47.
139. Galtung, Johan, "On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia" (1967) 19:3 world Politics 378.
140. Gerke, Kinka, "The Transatlantic Rift Over Cuba. the Damage Is Done" (1997) 32:2 Intl Spectator 27.

141. Glossop, Peter, "Canada's Foreign Extraterritorial Measures Act and U.S. Restrictions on Trade with Cuba" (1998) Intl Lawyer 32:1 93.
142. Gordon, Joy, "A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions" (1999) 13:1 Ethics & Intl Affairs 123.
143. Górecka, Dorota & Małgorzata Szałucka, "Country Market Selection in International Expansion Using Multicriteria Decision Aiding Methods" (2013) Publishing House U Economics Katowice 8 31.
144. Grauvogel, Julia & Christian Soest, "Claims to Legitimacy Count: Why Sanctions Fail to Instigate Democratisation in Authoritarian Regimes" (2014) 53:4 European J Politial Research 635.
145. Guzman, Andrew T, "A Compliance-Based Theory of International Law" (2002) Cal L Rev 90:6 1823.
146. Haass, Richard N, "Sanctioning Madness" (1997) 74:6 Foreign Affairs 74.
147. Han, Baran, "The Role and Welfare Rationale of Secondary Sanctions: A Theory and a Case Study of the US Sanctions Targeting Iran" (2016) 35:5 Conflict Management & Peace science 474.
148. Henderson, J Curtis, "Legality of Economic Sanctions Under International Law: The Case of Nicaragua" (1986) 43:1 Wash & Lee L Rev 167.
149. Hongju Koh, Harold, "Why Do Nations Obey International Law?" (1997) Yale J Intl Law 106:8 2599.
150. Hosseini, Vahid & Hossein Shahbazi, "Urban Air Pollution in Iran" (2016) 49:6 Iranian Studies 1029.
151. Hosseinpour, Nafiseh & Hossein Tabrizi, "Depiction of Iran's Nuclear Activities Through Argumentative Strategies: The Case of the New York Times" (2016) 6:2 Theory & Practice in Language Studies 242.
152. Howard, Philip K, "The Dynamics of Legal Risk" (2008) Drake L Rev 56:2 505; J. R. Terblanché, "Legal Risk and Compliance for Banks Operating in a Common Law Legal System" (2012) J Operational Risk 7:2 67.
153. Howse, Robert & Ruti Teitel, "Beyond compliance: Rethinking Why International Law Really Matters" (2010) Global Policy 1:2 127.
154. Hufbauer, Gary & Barbara C Oegg, "Targeted Sanctions: A Policy Alternative" (2000) 32:1 Law & Pol'y Intl Bus 11.
155. Hutchinson, Terry & Sanne Taekema, "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law" (2016) Erasmus L Rev 130.
156. Jaworek, Małgorzata & Marcin Kuzel, "Transnational Corporations in the World Economy: Formation, Development and Present Position." (2015) 4:1 Copernican J Finance & Accounting 55.
157. Johanson, Jan & Jan-Erik Vahlne, "The Internationalization Process of the Firm—a Model of Knowledge Development and Increasing Foreign Market Commitments" (1977) J Intl Bus Studies 8:1 23.
158. Kaempfer, William H & Anton D Lowenberg "Unilateral Versus Multilateral International Sanctions: A Public Choice Perspective." (1999) Intl Study Q 43:1 37.
159. Kordos, Marcel & Segej Vojtovic, "Transnational Corporations in the Global World Economic Environment" (2016) Procedia - Social and Behavioral Sciences 230 150.
160. Kwon, Bo Ram, "The Conditions for Sanctions Success: A Comparison of the Iranian and North Korean Cases" (2016) 28:1 Korean J Defense Analysis 139.

161. Lacy, Dean & Emerson M S Niou, "A Theory of Economic Sanctions and Issue Linkage: The Roles of Preferences, Information, and Threats" (2004) 66:1 J Politics 25.
162. Lake, Sarah, "An Empirical Study of the UNIDROIT Principles: International and British Responses" (2011) Unif Law Rev 16:3 669.
163. Langdale, John, "Electronic Funds Transfer and the Internationalisation of the Banking and Finance Industry" (1985) 16:1 Geoforum 1.
164. Layton, Alexander & Angharad M Parry, "Extraterritorial Jurisdiction-European Responses" (2004) Hous J Intl L 26:2 309.
165. Lektzian, David & Glen Biglaiser, "The Effect of Foreign Direct Investment on the Use and Success of US Sanctions" (2014) 3:1 Conflict Management & Peace Science 70.
166. Lektzian, David & Mark Souva, "An Institutional Theory of Sanctions Onset and Success" (2007) 51:6 J Conflict Resolution 848.
167. Leogrande, William M, 1996. "Making the Economy Scream: Us Economic Sanctions against Sandinista Nicaragua" (1996) 17:2 Third World Q J Emerging Areas 329.
168. Levit, Janet K, "A Bottom-Up Approach to International Lawmaking: The Tale of Three Trade Finance Instruments" (2005) Yale J Intl Law 30:1 125.
169. Li, Yitan, "US Economic Sanctions Against China: A Cultural Explanation of Sanction Effectiveness, (2014) 38:2 Asian Perspective 311.
170. Lindsay, James M, "Trade Sanctions as Policy Instruments: A Re-Examination" (1986) 30:2 Intl Studies Q *153*.
171. Lowenfeld, Andreas F, "Congress and Cuba: The Helms-Burton Act" (1996) AJIL 90:3 419.
172. Lowenfeld, Andreas F, "International Litigation and the Quest for Reasonableness" (1998) 68:1 Brit YB Intl L 283.
173. Maloney, Suzanne, "Sanctions and the Iranian Nuclear Deal: Silver Bullet or Blunt Object?" (2015) 82:4 A Social Research 887.
174. Martin, Lisa L, "Credibility, Costs, and Institutions: Cooperation on Economic Sanctions" (1993) 45:3 World Politics 406.
175. McDonald, Bruce & Vicent Reitano, "Sanction Failure: Economic Growth, Defense Expenditures, and the Islamic Republic of Iran" (2016) 42:4 Armed Forces & Society 635.
176. McLean, Elena & Taehee Whang, "Friends or Foes? Major Trading Partners and the Success of Economic Sanctions" (2010) 54:2 Intl Studies Q 42.
177. Meldrum, Duncan H, "Country Risk and Foreign Direct Investment: Customized, Systematic Country Risk Assessment Is Critical for Companies that Contemplate Activity Abroad" (2000) Bus Economics 35:1 33.
178. Meyer, Jeffrey A, "Second Thoughts on Secondary Sanctions" (2009) 30:3 U Pa J Intl L 905.
179. Michaels, Ralf, "The True Lex Mercatoria: Law Beyond the State." (2008) Ind J Global Leg Stud 14:22 447.
180. Miller, Kent D, "A Framework for Integrated Risk Management in International Business" (1992) J Intl Bus Studies 23:2 311.
181. Miller, Nicholas, "The Secret Success of Nonproliferation Sanctions" (2014) 68:4 Intl Organization 913.

182. Morgan, T Clifton & Valerie Schwebach, "Fools Suffer Gladly: The Use of Economic Sanctions in International Crises" (1997) 41:1 Intl Studies Q 27.
183. Morgan, T Clifton et al, "The Threat and Imposition of Economic Sanction, 1971—2000" (2009) 26:1 Conflict Management & Peace Science 92.
184. Moyer, Homer E & Linda A Mabry, "Export Controls as Instruments of Foreign Policy: The History, Legal Issues, and Policy Lessons of Three Recent Cases" (1983) Law & Pol'y Intl Bus 15:1 1.
185. Neuwirth, Rostam J & Alexandr Svetlicinii, "The Economic Sanctions over the Ukraine Conflict and the WTO: 'Catch-XXI' and the Revival of the Debate on Security Exceptions" (2015) 49:5 J World Trade 891.
186. Nikolay Kozhanov, "U.S. Economic Sanctions Against Iran: Undermined by External Factors" (2011) 18:3 Middle East Policy 144.
187. Ningthoujam, Alvite Singh, "Iranian Nuclear Program: A Chronology" (2016) 3:1 Contemporary Rev Middle East" 111.
188. Oskarsson, Katerina, "Economic Sanctions on Authoritarian States: Lessons Learned" (2012) 19:4 Middle East Policy 88.
189. Pahud de Mortanges, Charles & Vivian Allers, "Political Risk Assessment: Theory and the Experience of Dutch Firms" (1996) Intl Bus Rev 5:3 303.
190. Pape, Robert A, "Why Economic Sanctions Do Not Work" (1997) 22:2 Intl Security 90.
191. Parsi, Trita, "Why Did Iran Diplomacy Work this Time Around?" (2014) 16:3 Insight Turkey 47.
192. Patil, Rahul, Katie Grantham & David Steele "Business Risk in Early Design: A Business Risk Assessment Approach" (2012) Engineering Management J 24:1 35.
193. Peksen, Dursun, "Better or Worse? The Effect of Economic Sanctions on Human Rights." (2009) J of Peace Research 46:1 59.
194. Rasti, Alireza & Rahman Sahragard, "Actor Analysis and Action Delegitimation of Participants Involved in Iran's Nuclear Power Contention: A Case Study of 'The Economist'" (2012) 23:6 Discourse & Society 729.
195. Reinisch, August, "Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions." (2201) AJIL 95:4 851.
196. Reisman, W Michael & Douglas L Stevick, "The Applicability of International Law Standards to United Nations Economic Sanctions Programm" (1998) 9:1 Eur J Intl L 86.
197. Robock, Steely H, "Political Risk: Identification and Assessment" (1971) Columbia J World Bus 6:4 6.
198. Rosenthal, Michael D, "United Nations Security Council Resolution 2231 & Joint Comprehensive Plan of Action" (2016) 55:1 Intl Leg Materials, 55:1, 2016 98.
199. Sakarya, Sema, Molly Eckman & Karen H Hyllegard, "Market Selection for International Expansion: Assessing Opportunities in Emerging Markets" (2007) Intl Marketing Rev 24:2 208.
200. Schreiber, Anna P, "Economic Coercion as an Instrument of Foreign Policy: U.S. Economic Measures Against Cuba and the Dominican Republic" (1973) 25:3 World Politics 387.
201. Schroeder, Susan K, "The Underpinnings of Country Risk Assessment." (2008) J Economic Surveys 22:3 498.

202. Scott, Colin, Fabrizio Cafaggi & Linda Senden, "The Conceptual and Constitutional Challenge of Transnational Private Regulation" (2011) JL & Soc'y 38:1 1.
203. Scott, Susan V & Markos Zachariadis, "Origins and Development of Swift, 1973-2009" (2012) 54:3 Business History 462.
204. Shapiro, David T, "Be Careful What You Wish for: U.S. Politics and the Future of the National Security Exception to the GATT" (1997) Geo Wash Intl L Rev 31:1 97.
205. Shapiro, Martin, "Administrative Discretion: The Next Stage" (1983) Yale LJ 92:8 1487.
206. Smis, Stefaan & Kim van der Borght, "The EU-U.S. Compromise on the Helms-Burton and D'amato Acts" (1999) AJIL 93:1 227.
207. Soest, Christian & Michael Wahman, "Not All Dictators Are Equal: Coups, Fraudulent Elections, and the Selective Targeting of Democratic Sanctions" (2015) 52:1 J Peace Research 17.
208. Stephan, Paul B, "The Futility of Unification and Harmonization in International Commercial Law" (1999) Va J Intl L 39:3 743.
209. Tertrais, Bruno, "Iran: An Experiment in Strategic Risk-Taking" (2015) 57:5 Survival 67.
210. Thevenoz, Luc, "Intermediated Securities, Legal Risk, and the International Harmonization of Commercial Law" (2008) 13:2 Stan JL Buss & Fin 384 at 417.
211. Tittmann, Harold H, "Extra-Territorial Application to U.S. Export Control Laws on Foreign Subsidiaries of U.S. Corporations: An American Lawyer's View from Europe" (1982) Intl Lawyer 16:4 730.
212. Trimble, Phillip R, "The Supreme Court and International Law: The Demise of Restatement Section 403" (1995) AJIL 89:1 53.
213. Vishwanathan, Arun, "Iranian Nuclear Agreement: Understanding the Nonproliferation Paradigm" (2016) 3:1 Contemporary Rev Middle East 3.
214. Watson, Geoffrey R "The Passive Personality Principle" (1993) Tex Intl LJ 28:1 1.
215. Whang, Taehee et al, "Coercion, Information, and the Success of Sanction Threats" (2013) 57:1 American J Political Science 65.
216. Willis, Grant L, "Security council targeted sanctions, due process and the 1267 ombudsperson" (2011) 42:3 Geo J Intl L 673.
217. Wong, Kam S, "The Cuban Democracy Act of 1992: The Extraterritorial Scope of Section 1706(a)" (2014) 14:4 U Pa J Intl L 651.
218. Würtz, Katja Julie, "The Definition of Legal Risk and Its Management by Central Banks" (2007) Intl In-House Counsel J 1:1 43.
219. Zarif, Mohammad Javad, "Tackling the Iran-U.S. Crisis: The Need for a Paradigm Shift" (2007) 60:2 J Intl Affairs 73.

Other Materials:

Thesis

220. Arnstorp, Henric, *Foreign Market Entry Strategies in Developed and Emerging Economies* (Master Thesis, Norwegian University of Science and Technology, 2013) [unpublished].
221. De Leon, Manuel, *The Ineffectiveness of Multilateral Sanctions Regimes Under Globalization: The Case of Iraq* (Ph.D. Thesis, Florida International University, 2011) [unpublished].

222. Mahmoudi, Azar, *The Proliferation of Corruption in Sanctions Regimes: The Case of Iran* (Master Thesis, McGill University, 2018) [unpublished].
223. Martin, Lisa L, *Coercive Cooperation: Explaining Multilateral Economic Sanctions* (Ph.D. Harvard University, 1990) [unpublished].
224. Verbouwe, Kato, *The EU competence to adopt restrictive measures against individuals and the relationship between article 75 TFEU and article 215 TFEU* (Master Thesis, Ghent University, 2014) [unpublished].

Online Sources

225. "BNP Paribas sentenced in $8.9 billion accord over sanctions violations", *Reuters* (1 May 2015), online:
226. "Boeing and Airbus to lose $40bn due Trump's decision on Iran deal" (9 May 2018), online: *Independent* <https://www.independent.co.uk/news/world/middle-east/iran-nuclear-deal-donald-trump-boeing-airbus-sanctions-a8342366.html>.
227. "Boeing, Airbus to lose $39 billion in contracts because of Trump sanctions on Iran" (9 May 2018), online (pdf): <https://www.washingtonpost.com/business/economy/boeing-airbus-to-lose-39-billion-in-contracts-because-of-trump-sanctions-on-iran/2018/05/08/820a8f08-5308-11e8-a551-5b648abe29ef_story.html?>.
228. "Deutsche Bank fined $258m for violating US sanctions", *The Guardian* (4 November 2015), online: <https://www.theguardian.com/business/2015/nov/04/deutsche-bank-us-sanctions-fine>.
229. "EU rejects Iran nuclear deal 'ultimatum', regrets US sanctions", *Aljazeera* (9 May 2019), online: <https://www.aljazeera.com/news/2019/05/eu-rejects-iran-nuclear-deal-ultimatum-regrets-sanctions-190509092136144.html>.
230. "Factbox: Companies rush to Iran as sanctions are lifted", *Reuters* (19 January 2016), online: <https://uk.reuters.com/article/us-iran-nuclear-business-factbox/factbox-companies-rush-to-iran-as-sanctions-are-lifted-idUKKCN0UX16S>;
231. "Fedwire: The US Dollar in International Payments", online: *American Express* <https://www.americanexpress.com/us/content/foreign-exchange/articles/fedwire-us-dollar-in-international-payments/>.
232. "Filing a Petition for Removal from an OFAC List, online", online: *U.S. Department of the Treasury* <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/petitions.aspx>.
233. "Frequently Asked Questions Regarding the Re-imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA)", *Treasury* (Last Update August 6, 2018), online: < https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf>.
234. "Global 500", *Fortune,* online: <http://fortune.com/global500/>.
235. "India, China among 8 countries allowed to buy Iranian oil: Mike Pompeo" (5 November 2018): online, *The Economic Times* <economictimes.indiatimes.com/news/international/world-news/us-to-exempt-china-india-japan-from-iran-oil-sanctions-mike-pompeo/articleshow/66513697.cms>.

236. "Iran foreign Direct Investment", *Ceice Data*, online: <https://www.ceicdata.com/en/indicator/iran/foreign-direct-investment>.
237. "Iran nuclear deal: The EU's billion-dollar deals at risk", *BBC* (17 May 2018), online: <https://www.bbc.com/news/world-europe-44080723>.
238. "Iran's Domestic Car Market Stalls as Nuclear Deal Falters" (21 September 2018) online: *The Guardian* <https://www.theguardian.pe.ca/business/irans-domestic-car-market-stalls-as-nuclear-deal-falters-243451/>.
239. "Iran's Sanctions", *Treasury*, online: <https://www.treasury.gov/resource-center/sanctions/Programs/pages/iran.aspx>;
240. "Islamic Republic of Iran", *International Monetary Fund*, online: <https://www.imf.org/en/Countries/IRN>.
241. "Peugeot-Citroen back on the road in Iran with deal to build cars", *The Guardian* (22 January 2016), online: <https://www.theguardian.com/world/2016/jun/22/peugeot-citroen-back-on-the-road-in-iran-with-deal-to-build-cars>.
242. "Road Traffic Injuries in Iran and their Prevention, A Worrying Picture" (last visited 9 November 2018), online: *UNICEF* <https://www.unicef.org/iran/media_4783.html>.
243. "Security Council Imposes Additional Sanctions on Iran, Voting 12 in Favour to 2 Against, with 1 Abstention", (9 June 2010), online: *UN* <https://www.un.org/press/en/2010/sc9948.doc.htm>.
244. "Security Council, Adopting Resolution 2231 (2015), Endorses Joint Comprehensive Agreement on Iran's Nuclear Programme" (20 July 2015), Online (pdf): <https://www.un.org/press/en/2015/sc11974.doc.htm>.
245. "Statement Relating to the Joint Comprehensive Plan of Action "Implementation Day" of January 16", 2016, (8 May 2018), online: *Treasury* <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/jcpoa_archive.aspx>.
246. "SWIFT History", online: *SWIFT* <Https://Www.Swift.Com/About-Us/History>.
247. "The Biggest Sanctions-Evasion Scheme in Recent History" (4 January 2018), Online: *The Atlantic* <https://www.theatlantic.com/international/archive/2018/01/iran-turkey-gold-sanctions-nuclear-zarrab-atilla/549665/>.
248. "The Office of the Ombudsperson to the ISIL (Da'esh) and Al-Qaida Sanctions Committee" (last visited 8 November 2018), online: *United Nations* <https://www.un.org/sc/suborg/en/ombudsperson >.
249. "Turkey's lira hammered after Erdogan says wants greater economic control" (15 May 2018), online: Reuters <https://www.reuters.com/article/us-turkey-economy-erdogan/turkeys-lira-hammered-after-erdogan-says-wants-greater-economic-control-idUSKCN1IG0F0>.
250. "Turkish Banker in Iran Sanctions-Busting Case Sentenced to 32 Months" (16 May 2018) online: *The New York Times <https://www.nytimes.com/2018/05/16/world/turkish-iran-sanctions-trial.html>* [*The New York Times*].
251. "U.S., Britain, and Canada Slap New Sanctions on Iran", (21 November 2011), online *CNN*: < https://www.cnn.com/2011/11/21/world/meast/iran-sanctions/index.html>.
252. "Understanding the JCPOA", online: *Arms Control* <https://www.armscontrol.org/reports/Solving-the-Iranian-Nuclear-Puzzle-The-Joint-Comprehensive-Plan-of-Action/2015/08/Section-3-Understanding-the-JCPOA>.

253. "US charges China's Huawei with bank and wire fraud for violating Iran sanctions", *The Irish Times* (28 January 2019), online: <https://www.irishtimes.com/business/economy/us-charges-china-s-huawei-with-bank-and-wire-fraud-for-violating-iran-sanctions-1.3773963>.
254. "US hits Iranian bank, companies with new sanctions", *Aljazeera* (26 March 2019), online: <https://www.aljazeera.com/news/2019/03/hits-iranian-bank-companies-sanctions-190326161903698.html>.
255. "US Penalizes British Bank $1B in Iranian Trade Sanctions Case", *VOA* (9 April 2019), online: <https://www.voanews.com/world-news/europe/us-penalizes-british-bank-1b-iranian-trade-sanctions-case>.
256. "Wal-Mart Canada Is Putting Cuban Pajamas Back on Shelf" (14 March 1997), online: <https://www.nytimes.com/1997/03/14/business/wal-mart-canada-is-putting-cuban-pajamas-back-on-shelf.html>.
257. "What's So Tough About The 'Toughest Ever' U.S. Sanctions On Iran?" (6 November 2018), online: *Radio Free Europe Radio Liberty* <https://www.rferl.org/a/iran-toughest-ever-u-s-sanctions-explainer/29585958.html>.
258. "World leaders react to US withdrawal from Iranian nuclear deal", *Aljazeera* (9 May 2018), online: <https://www.aljazeera.com/news/2018/05/world-leaders-react-withdrawal-iranian-nuclear-deal-180508184130931.html>;
259. <https://www.reuters.com/article/us-bnp-paribas-settlement-sentencing/bnp-paribas-sentenced-in-8-9-billion-accord-over-sanctions-violations-idUSKBN0NM41K20150501>.
260. 4 Reasons why Venezuela became the World's Worst Economy, *CNN Business (October 25, 2016)*, online: <https://money.cnn.com/2016/10/25/news/economy/venezuela-breaking-point/index.html>;
261. Adesnik, David and Saeed Ghasseminejad, "Foreign Investment in Iran: Multinational Firms' Compliance with U.S. Sanctions", *Foundation for Defense of Democracies* (10 September 2018), online: <https://www.fdd.org/wp-content/uploads/2018/09/MEMO_CompaniesinIran.pdf>.
262. Afrasiabi, Kaveh L, "Trump and the Iran Nuclear Accord: The Legal Hardles", *Sipa* (28 February 2018) online: *Columbia* <https://jia.sipa.columbia.edu/online-articles/trump-and-iran-nuclear-accord-legal-hurdles>.
263. Aizhu, Chen, "China's CNPC ready to take over Iran project if Total leaves: sources", *Reuters* (11 May 2018), online: <https://www.reuters.com/article/us-iran-nuclear-cnpc-total/chinas-cnpc-ready-to-take-over-iran-project-if-total-leaves-sources-idUSKBN1IC0TE>.
264. Bozorgmehrand, Najmeh & Gareth Symth, "Iran Agrees Under Deal with Europe", *The Financial Times* (29 November 2004), online: <https://www.ft.com/content/3208e52a-416c-11d9-9dd8-00000e2511c8>.
265. Chase Winter, "What is the EU-Iran Payment Vehicle INSTEX?" (31 January 2019) <https://www.dw.com/en/what-is-the-eu-iran-payment-vehicle-instex/a-47306401>.
266. Communication from the Commission on the precautionary principle, Commission of the European Communities, online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52000DC0001&from=GA>.

267. "Companies that Rushed into Iran Now Prepare to Rush Back Out", *Bloomberg Quint* (9 May 2018) online: <https://www.bloombergquint.com/global-economics/companies-that-rushed-into-iran-now-prepare-to-rush-back-out>;
268. Eric B Lorber & Peter Feaver, "Do the Iran Deal's 'Snapback' Sanctions Have Teeth?", online: Foreign Policy <https://foreignpolicy.com/2015/07/21/do-the-iran-deals-snapback-sanctions-have-teeth/>.
269. EU Sanctions Map, *EU Sanctions Map*, online: <https://sanctionsmap.eu/#/main>.
270. European Businesses Abuze with Preprations to Rush Back into Iran", *Haaretz* (22 January 2014), online: <https://www.haaretz.com/european-businesses-rush-back-to-iran-1.5314263>.
271. European Commission, *Better Regulation for Better Results – An EU Agenda* (May 19, 2015), online: <http://ec.europa.eu/smart-regulation/>.
272. Feifer, Gregory, "Clinton Looking For Russian Support On Iran During Moscow Visit" (13 October 2009), online: *RFERL* <https://www.rferl.org/a/Clinton_to_Push_Russia_on_Iran_During_Moscow_Visit/1850020.html>.
273. Ansari, Azadeh, "Iran's President Orders Higher Enrichment of Uranium", *CNN* (7 February 2010), online: <http://www.cnn.com/2010/WORLD/meast/02/07/iran.nuclear/index.html>.
274. Gladstone, Rick, "Iran Sanctions Explains: U.S. Goals and the View from Tehran", *New York Times* (5 November 2018), online: <https://www.nytimes.com/2018/11/05/world/middleeast/iran-sanctions-explained.html>.
275. Habibi, Nader, "The Iranian Economy Two Years After the Nuclear Agreement", *Crown Center for Middle East Studies,* online: <https://www.brandeis.edu/crown/publications/meb/MEB115.pdf>.
276. International Bar Association Working Party on Legal Risk, "The Management of Legal Risk by Financial Institutions", 2003, online: <https://www.federalreserve.gov/SECRS/2005/August/20050818/OP-1189/OP-1189_2_1.pdf>.
277. Iran Signs €500 Million Finance Deal with Denmark", *Financial Tribune* (20 September 2017), online: <https://financialtribune.com/articles/economy-business-and-markets/72826/iran-signs-500-million-finance-deal-with-denmark>.
278. Jafarzadeh, Alireza, "Remarks by Alireza Jafarzadeh on New Information on Top Secret Projects of the Iranian Regime's Nuclear Program", *Iran Watch* (14 August 2002), online: <https://www.iranwatch.org/library/ncri-new-information-top-secret-nuclear-projects-8-14-02>.
279. Kirkham, Elissa, "Bank of America Freezes Iranians' Accounts in Response to U.S. Sanctions", (15 May 2014), online: *Go Banking Rates* <https://www.gobankingrates.com/banking/bank-of-america-freezes-iranians-accounts-us-sanctions>.
280. Koning, J P, "Europe's SWIFT Problem", *Bourse and Bazaar* (last visit: 12 August 2019), online: <https://www.bourseandbazaar.com/articles/2018/8/24/europes-swift-problem>.
281. Lynch, Colum & John Hudson, "Obama Turns to U.N. to Outmaneuver Congress", *Foreign Policy* (July 15, 2015), online: <http://foreignpolicy.com/2015/07/15/obama-turns-to-u-n-to-outmaneuver-congress-iran-nuclear-deal>.

282. Ghodsi, Mehdi et al, "The Iranian Economy: Challenges and opportunities", online: *The Vienna Institute for International Economic Studies* <https://wiiw.ac.at/the-iranian-economy-challenges-and-opportunities-dlp-4599.pdf>.
283. Moorhead, Richard & Steven Vaughan, "Legal Risk: Definition, Management and Ethics" (March 2015), online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2594228>.
284. Nikou, Semira N, "Timeline of Iran's Nuclear Activities", *The Iran Primer* (9 June 2018), online: <http://iranprimer.usip.org/search/google?as_q=Semira+N.+Nikou>.
285. Peters, Ralph, "US threatens to smack SWIFT with sanctions if it fails to cut off financial services to Iran", *RT* (2 November 2018), online: <https://www.rt.com/business/442970-us-threatens-to-smack-swift />.
286. Rasheed, Zaheena, "What Sanctions Did Trump Slap on Iran?" *Aljazeera* (13 May 2019), online: <https://www.aljazeera.com/news/2019/05/sanctions-trump-slap-iran-190512201108239.html>.
287. Resource Center, *The U.S. Department of the Treasury*, online: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.
288. Savion, A, "The Iran-E.U. Agreement on Iran's Nuclear Activity", *Memri* (21 December 2004), online: <https://www.memri.org/reports/iran-eu-agreement-irans-nuclear-activity>.
289. Shao, Grace, "US-Iran military conflict will be a 'lose-lose situation,' analysts say", *CNBC* (21 June 2019), online: <https://www.cnbc.com/2019/06/21/us-iran-military-conflict-will-be-a-lose-lose-situation-analysts.html>.
290. Sirletti, Sonia & GregFarrell, "UniCredit to Pay $1.3 Billion in Biggest Iran Sanctions Fine", *Bloomberg* (15 April 2019), online: <https://www.bloomberg.com/news/articles/2019-04-15/italy-s-unicredit-agrees-to-pay-1-3-billion-over-iran-sanctions>.
291. The Impact of Venezuela's Bolivar Exchange Rates, *Investopedia*, online: <https://www.investopedia.com/articles/forex/022415/impact-venezuelas-bolivar-exchange-rates.asp>.
292. The World Factbook, Central Intelligence Agency (CIA), online: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2198rank.html>;
293. Thévenoz, Luc, "Intermediated Securities, Legal Risk, and the International Harmonisation of Commercial Law" (September 19, 2007), online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1008859>.
294. Toosi, Nahal, "Iran tests Trump's desire to actually strike a new deal", *Politico* (17 June 2019), online: <https://www.politico.com/story/2019/06/17/iran-trump-deal-1366736>.
295. Treaty on the Non-Proliferation of Nuclear Weapons", *Disarmament*, online: <http://disarmament.un.org/treaties/t/npt>.
296. Trevithick, Joseph, "Pompeo's 12 Demands For Iran Read More Like A Declaration Of War Than A Path To Peace", *The Drive* (21 May 2018), online: <https://www.thedrive.com/the-war-zone/20989/pompeos-12-demands-for-iran-read-more-like-a-declaration-of-war-than-a-path-to-peace>.
297. UNCTAD, "Transnational Corporations" online: <https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=2125>.

298. United Nations Security Council, *United Nations*, online: <https://www.un.org/securitycouncil/sanctions/information>.
299. Venezuela Inflation Rate, *Trading Economics*, online: <https://tradingeconomics.com/venezuela/inflation-cpi>;
300. Vicini, Antonella, "Iran and nuclear power before the revolution" (9 December 2011), online: *ResetDoc* <https://www.resetdoc.org/story/iran-and-nuclear-power-before-the-revolution/>.
301. World Investment Report 2018, *UNCITAD,* online: <Https://Unctad.Org/En/Pages/Publicationwebflyer.Aspx?Publicationid=2130 > at 26.
302. WTO, "Interpretation and Application of Article Xxi" online (pdf): WTO <www.wto.org> [perma.cc/74YH-5ER3].
303. "Peugeot to Pull Out of Market in the U.S." (7 August 1991), online <https://www.nytimes.com/1991/08/07/business/worldbusiness/IHT-peugeot-to-pull-out-of-market-in-the-us.html>;
304. "UN's Ban Hopes Iran Deal May Bring Settlement", (22 May 2010), online: *Tehran Times* <https://www.tehrantimes.com/news/219828/UN-s-Ban-hopes-Iran-deal-may-bring-settlement>.
305. Fuel Loading Starts at Bushehr 1", (23 August 2010), online: *World Nuclear News* <http://www.world-nuclear-news.org/NN-Fuel_loading_starts_at_Bushehr_1-2308104>.
306. Operational risk reporting standards (ORRS), July 12, 2012, online: <http://www.susep.gov.br/setores-susep/cgsoa/coris/dicem/arquivos-gt-operacional/ORRS%20Complete%20Text.pdf>.
307. "Timeline: Sanctions on Iran", *Aljazeera* (16 October 2012), online: <https://www.aljazeera.com/news/middleeast/2012/10/20121016132757857588.html>.
308. "BNP Paribas Capital Punishment", *economist* (5 July 2014), online: <https://www.economist.com/news/finance-and-economics/21606321-frances-largest-bank-gets-fined-evading-american-sanctions-capital-punishment>;
309. "Why Aren't French Cars Sold in America?" (14 November 2014), online: <http://www.french-cars-in-america.com/2013/11/why-aren-t-french-cars-sold-in-america.html>.
310. "A History of Iran's Nuclear Program", *Iran Watch* (9 August 2016), online: <https://www.iranwatch.org/our-publications/weapon-program-background-report/history-irans-nuclear-program>.
311. "Air Pollution; Not This Again" (20 January 2018), online: *Tehran Times* <https://www.tehrantimes.com/news/420497/Air-pollution-not-this-again>.
312. "IAEA and Iran - IAEA Reports" (last visited 10 November 2018), online: *International Atomic Energy Agency* <www.iaea.org/newscenter/focus/iran/iaea-and-iran-iaea-reports>.
313. "Iran's Nuclear Program Timeline and History", *NTI* (Updated May 2018), online: <https://www.nti.org/learn/countries/iran/nuclear/>.
314. "Clinton's Criticizes Brazil's Iran Diplomacy", *VOA News* (26 May 2010), online: <https://www.voanews.com/a/clinton-criticizes-brazils-iran-diplomacy-95064654/118426.html>.
315. "Fact Sheet: Sanctions Related to Iran", *The White House* (31 July, 2012), online: <https://www.whitehouse.gov/the-press-office/2012/07/31/fact-sheet-sanctions-related-iran>.

316. "Compliance", *SWIFT* (last visit 12 August 2019), online: <https://www.swift.com/about-us/legal/compliance/tftp>.

317. "SWIFT and Sanctions" (last visit: 12 August 2019), online: *SWIFT* <Https://Www.Swift.Com/About-Us/Legal/Compliance/Swift-And-Sanctions?Tl=En#Topic-Tabs-Menu>. "SWIFT Instructed to Disconnect Sanctioned Iranian Banks Following EU Council Decision" (15 March 2012), online: *SWIFT* <https://www.swift.com/insights/press-releases/swift-instructed-to-disconnect-sanctioned-iranian-banks-following-eu-council-decision>.

318. "JFP 5:24: Brazil, Turkey: Obama Asked Us to Get the Deal", *Just Foreign Policy* (24 May 2010), online: <https://www.justforeignpolicy.org/jfp-5-24-brazil-turkey-obama-asked-us-to-get-the-deal/>.

Other Materials

319. "IAEA and Iran – IAEA's Reports", IAEA, online: <https://www.iaea.org/newscenter/focus/iran/iaea-and-iran-iaea-reports>.

320. "Legality of the Threat or Use of Nuclear Weapons" (8 July 1996), online (pdf): *Advisory Opinion* <https://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>.

321. "Personal Data Protection Policy" (last visit 12 August 2019), online: *SWIFT*

322. "SWIFT Ad Hoc Clauses" (last visit 12 August 2019), online: *SWIFT* <https://www.swift.com/about-us/legal/compliance/data-protection-policies>.

323. "SWIFT By-laws", online: *SWIFT* <Https://Www.Swift.Com/About-Us/Legal/Corporate-Matters/Swift-By-Laws>.

324. "SWIFT Corporate Brochure" (last visit 12 August 2019), online: *SWIFT* <https://www.swift.com/sites/default/files/resources/swift_corporate_brochure.pdf>.

325. "SWIFT User and Shareholder Eligibility Criteria" Titled User Eligibility Criteria, online: *SWIFT* <Https://Www.Swift.Com/About-Us/Legal/Corporate-Matters/User-Categories#Swiftusercategoriesusagerights>.

326. "SWIFT User Categories", online: *SWIFT* <https://www.swift.com/about-us/legal/corporate-matters/user-categories>.

327. "Verification and monitoring in the Islamic Republic of Iran in light of United Nations Security Council resolution 2231" (30 August 2018), online (pdf): *International Atomic Energy Agency GOV/2018/33* <https://www.iaea.org/sites/default/files/18/09/gov2018-33.pdf >.

328. "World Investment Report 2003 FDI Policies for Development: National and International Perspectives", online: <https://unctad.org/sections/dite_dir/docs/wir03_fs.ir.en.pdf>.

329. "World Investment Report FDI from Developing and Transition Economies: Implications for Development", online: <https://unctad.org/en/Docs/wir2006_en.pdf>.

330. <https://www.swift.com/about-us/legal/compliance/data-protection-policies>.

331. Barth, James R & Clas Wihlborg, "Too Big to Fail and Too Big to Save: Dilemmas for Banking Reform", *Research* gate *(December 2015)*, online: <https://www.researchgate.net/publication/288488654_Too_Big_to_Fail_and_Too_Big_to_Save_Dilemmas_for_Banking_Reform>.

332. Cole, Jared P, Cong. Research Serv., R44699, "An Introduction to Judicial Review of Federal Agency Action" (7 December 2016), online (pdf): *U.S. Congress* <https://fas.org/sgp/crs/misc/R44699.pdf>.
333. EC, *Commission Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures Against Iran and Repealing Regulation (EU) No 961/2010,* [2012] OJ, L 88/1.
334. Eckert, Sue E & Thomas J Biersteker, "Due Process and Targeted Sanctions: An Update of the 'Watson Report'", *Watson Institute for International Studies* (2012), online: <https://openaccess.leidenuniv.nl/bitstream/handle/1887/43690/WatsonReportUpdate12_12.pdf?sequence=1 Rhode>.
335. ISO 31000, *Risk Management*, online: <https://www.iso.org/iso-31000-risk-management.html>.
336. Katzman, Kenneth & Paul K Kerr, Cong. Research Serv., R4333, "Iran Nuclear Agreement and U.S. Exit" (20 July 2018), online (pdf): <https://fas.org/sgp/crs/nuke/R43333.pdf>.
337. Katzman, Kenneth & Paul K Kerr, Cong. Research Serv., R43333, "Interim Agreement on Iran's Nuclear Program" (11 December 2013), online (pdf): <http://www.parstimes.com/history/crs_dec_13.pdf>.
338. Katzman, Kenneth, Cong. Research Serv., RS20871, "Iran Sanctions" (12 January 2016), online: < https://www.everycrsreport.com/files/20160112_RS20871_92fd8451a2990952927d8b01db812325fc11c950.pdf>.
339. Mulligan, Stephen P, Cong. Research Serv., LSB10134, "Withdrawal from the Iran Nuclear Deal: Legal Authorities and Implications" (17 May 2018) online: <https://fas.org/sgp/crs/nuke/LSB10134.pdf>.
340. Mulligan, Stephen P., Cong. Research Serv., R44761, "Withdrawal from International Agreements: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement" (4 May 2018).
341. Presentation: OHADA – UNIDROIT, online: <Https://Www.Unidroit.Org/121-Research-Scholarships-And-Internships/516-Preparation-By-Unidroit-Of-A-Draft-Ohada-Uniform-Act-On-Contract-Law>.
342. Safeguard Agreements", *IAEA*, online: <https://www.iaea.org/topics/safeguards-agreements>.
343. Samore, Gary et al, "The Iran Nuclear Deal: A Definitive Guide" (2015) Belfer Center for Science & Intl Affairs, Harvard Kennedy School, online: <https://dash.harvard.edu/handle/1/27029094>.
344. The User Validation Process" (last visit: 12 August 2019) Titled Responsibility for the approval and admission process, online: SWIFT < Https://Www.Swift.Com/About-Us/Legal/Corporate-Matters/Validation-Process>.
345. The World Bank, *Doing Business 2019 (October 31, 2018),* online: <http://www.doingbusiness.org/en/reports/global-reports/doing-business-2019 >.
346. U.S., Cong. Research Serv., RS20871, "Iran Sanctions" (6 November 2018), online (pdf): *U.S. Congress* <http://www.fas.org/sgp/crs/mideast/RS20871.pdf>.
347. World Investment Report 2018, UNCTAD, online: <https://unctad.org/en/PublicationsLibrary/wir2018_overview_en.pdf>.